



ANNO VICESIMO PRIMO

ELIZABETHAE II REGINAE

A.D. 1972

No. 125 of 1972

An Act to consolidate and amend the law relating to industrial conciliation and arbitration and for other purposes.

[Assented to 30th November, 1972]

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

PART I

PART I

PRELIMINARY

1. This Act may be cited as the "Industrial Conciliation and Arbitration Act, 1972". Short title.

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

3. This Act is arranged as follows:—

Arrangement
of Act.

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4. (1) The Acts and portions of the Acts set out in the schedule to this Act are repealed. Repeal of certain Acts.

(2) Notwithstanding anything in subsection (1) of this section a trade union, as defined in the Trade Union Act, 1876-1935, that was, immediately before the commencement of this Act, registered under that Act may continue in existence as a registered trade union for a period of twelve months next following that commencement in all respects as if this Act had not been enacted and upon the expiration of that period that trade union shall cease to be a registered trade union.

5. (1) The Industrial Code, 1967-1972, as amended by this Act, may be cited as the "Industrial Code, 1967-1972". Amendment of Industrial Code.

(2) Sections 6 to 12 inclusive and sections 18 to 160, both inclusive, of the Industrial Code, 1967-1972, are repealed.

(3) Notwithstanding the repeal effected by subsection (2) of this section—

(a) subject to paragraph (b) of this subsection that repeal shall not affect any award, order, judgment, determination, direction, recommendation, decision, industrial or other agreement, proclamation, registration of an association or any other matter or thing whether or not of the same kind as the foregoing or having effect under any provision of the Industrial Code, 1967-1972, so repealed immediately before the commencement of this Act;

(b) except as provided in this Act, any matter or thing referred to in paragraph (a) of this subsection shall continue to have effect in the same manner and to the same extent as it would have had had this Act been in operation when it first had effect;

(c) the President, any Deputy President, any Commissioner, any Industrial Magistrate, the Registrar and any other officer appointed and in office under any repealed provision of the Industrial Code, 1967-1972, shall continue in office as if this Act had been in force at the time of his appointment;

and

(d) any proceedings pending or part-heard before the Court, the Commission, the President, a Deputy President, a Committee, the Registrar or any other person, court or tribunal under any provision of the Industrial Code, 1967-1972, so repealed may, except as provided by this Act, be continued and completed as if this Act had not been enacted.

(4) Where in any other Act, or in any document, rule or regulation a reference is made to—

(a) the Industrial Code, 1920, as amended from time to time or any provision of that Act, that reference shall where the context admits of that construction be read as a reference to this Act or to the provision of this Act that corresponds with the provision of that Act;

and

(b) a Part of or provision of the Industrial Code, 1967, as amended from time to time, repealed by this Act that reference shall so far as it is applicable be read as a reference to this Act or to the part or provision of this Act that corresponds with the provision of the Industrial Code, 1967, as from time to time in force.

Interpretation.

6. (1) In this Act unless the contrary intention appears—

“adult” means a person of or over the age of twenty-one years:

“allowances” means any allowances or concessions or customary payments in kind granted or made by an employer to his employees, and having an assessable monetary value, but shall not include—

(a) uniforms;

(b) privilege tickets and passes;

(c) allowances or concessions granted to employees while in camp;

(d) any other allowances or concessions declared by regulation not to be included in the expression “allowances”:

“apprentice” means an apprentice as defined in the Apprentices Act, 1950, as amended:

“association” means an association, a society or a body composed of or representative of employers or employees or for furthering or protecting the interests of employers or employees and includes any branch of any such association, society or body:

“award” means an award or order of the Commission or a Committee and includes a variation of such an award whether such award, order or variation was made before or after the commencement of this Act:

“club” means a body whether corporate or unincorporate, of which the members are associated together for any social, literary, political, sporting, athletic or similar purpose:

“Commission” means the Industrial Commission of South Australia:

“Commissioner” means a Commissioner appointed or continued in office under section 23 of this Act:

“Committee” means a conciliation committee constituted under Part V of this Act and includes a committee to which that Part applies as if it were such a conciliation committee:

“council” means a council as defined in the Local Government Act, 1934, as amended and includes the Garden Suburb Commissioner for the time being appointed under the Garden Suburb Act, 1919, as amended:

“Court” means the Industrial Court of South Australia:

“Deputy President” means—

(a) in relation to the Court, a Deputy President of the Court;

and

(b) in relation to the Commission, a Deputy President of the Commission:

“employee” means—

(a) any person employed for remuneration in any industry;

(b) any person engaged to drive a motor vehicle, used for the purposes of transporting members of the public, which is not registered in his name, whether or not the relationship of master and servant exists between that person and the person who has so engaged him;

(c) any person (not being the owner or occupier of premises) who is, pursuant to a contract or agreement, engaged to perform personally the work of the cleaning of those premises whether or not the relationship of master and servant exists between that person and the person who has so engaged him;

or

(d) any person who is usually employed for remuneration in an industry or who is usually engaged in an

occupation or calling specified in paragraphs (b) or (c), notwithstanding that at the material time he is not so employed or engaged;

but does not include—

- (e) any person employed by his spouse or parent;
- (f) any person employed in a casual or part time capacity where that employment is wholly or mainly carried on in or about a private residence and is not for the purposes of the employer's trade or business;

or

- (g) any person or person of a class prescribed as not being an employee or employees for the purposes of this definition:

“employer” includes any person or body, whether corporate or unincorporate, who or which on behalf of himself or itself or another employs one or more employees in any industry and—

- (a) in relation to public service employees other than Railway employees, means the Public Service Board;
- (b) in relation to Railway employees, means The South Australian Railways Commissioner;
- (c) in relation to a person referred to in paragraph (b) of the definition of “employee”, means the person or body, whether corporate or unincorporate, in whose name the vehicle was registered;

and

- (d) in relation to the person referred to in paragraph (c) of the definition of “employee” means the person or body, whether corporate or unincorporate, who engaged the person to perform personally the work:

“Full Commission” means the Commission constituted in the manner provided for by subsection (2) of section 24 of this Act:

“Full Court” means the Full Court constituted in the manner provided for by section 92 of this Act:

“improver” means an employee who has not attained the age of twenty-one years who is serving a period of training in an industry other than as an apprentice for the purpose of becoming a qualified worker in an industry:

“industrial agreement” means an industrial agreement filed under section 108 of this Act and includes any industrial agreement that is pursuant to section 112 of this Act continued in operation as an industrial agreement and an industrial agreement to and in relation to which this Act applies pursuant to section 113 of this Act:

“industrial dispute” means any dispute as to any industrial matter, and, without limiting the generality of the foregoing, includes a threatened or impending or probable dispute as to any industrial matter and an industrial dispute within the meaning of this Act shall be deemed to have arisen in every case in which the Commission in its discretion so decides and an industrial dispute shall be deemed not to have ceased where, in consequence of such dispute, the relationship of employer and employee has ceased as between the parties thereto or any of them:

“industrial matter” means any matter, situation or thing or any industrial dispute affecting or relating to work done or to be done or the privileges, rights or duties of employers or employees or persons intending to become employers or employees in any industry and without limiting the generality of the foregoing includes any matter, situation or thing affecting or relating to—

- (a) the wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the piece-work, contract, or other prices paid or to be paid therein in respect of that employment, including any loading or amount that may be included in such wages, allowances, remuneration or prices as compensation for lost time and the wages, allowances, or remuneration to be paid for work done during overtime or on holidays, or for other special work, and also the question whether piece-work shall be allowed in any industry;
- (b) the hours of employment in any industry, including the lengths of time to be worked, and the quantum of work or service to be done, to entitle employees therein to any given wages, allowances, remuneration or prices, and what times shall be regarded as overtime;
- (c) the sex, age, qualification, or status of employees, and the mode, terms and conditions of employment including the question whether persons of either sex shall be disqualified for employment in an industry;

- (d) the number or proportionate number of apprentices and improvers and juvenile workers that may be employed by an employer in any industry;
- (e) the relationship of master and apprentice;
- (f) the employment of juvenile workers, or of any person or class of persons in any industry;
- (g) the refusal or neglect, without reasonable cause or excuse, of any person bound by an award or order or an industrial agreement as to employment in any industry, to offer or accept employment, or to continue to be employed upon the terms of such award, order or agreement;
- (h) any established or alleged established custom or usage of any industry, either generally or in any particular locality;
- (i) the monetary value of any allowances granted to or enjoyed by employees;
- (j) any matter that is prescribed for the purposes of this definition;
- (k) all questions of what is fair and right in relation to any industrial matter having regard to the interests of the persons immediately concerned and of society as a whole:

“industry” means any undertaking, trade, business, occupation or calling in which persons are employed or engaged for remuneration or reward and without limiting the generality of the foregoing includes any such undertaking, trade, business, occupation or calling carried on or engaged in by—

(a) the Crown or any instrumentality or agency of the Crown;

(b) any council;

or

(c) any body corporate in respect of which the Governor or a Minister of the Crown has the right to appoint any one or more of the persons responsible for its conduct or management,

and includes any class, kind, division, or section of any activity, trade, business, occupation or calling mentioned

in this definition or any combination, arrangement or grouping of one or more such classes, kinds, divisions or sections:

“Inspector” means an Inspector appointed or deemed to have been appointed under section 49 of this Act:

“juvenile” means an employee, who has not attained the age of twenty-one years and who is not an apprentice or an improver:

“legal practitioner” means a legal practitioner as defined in the Legal Practitioners Act, 1936, as amended:

“living wage” until a living wage is declared under Division III of Part III of this Act, means the living wage declared under Division III of Part III of the Industrial Code, 1967-1972, in force immediately before the commencement of this Act and upon the declaration of a living wage under Division III, Part III of this Act means that living wage as from time to time declared:

“lock out” includes the closing of place of employment, a suspension of work, or a refusal by an employer to continue to employ any number of his employees with a view to—

(a) compelling those employees;

or

(b) aiding another employer in compelling his employees, to accept terms of employment:

“metropolitan area” means the part of the State comprised by—

(a) the municipalities of Adelaide, Brighton, Burnside, Campbelltown, Elizabeth, Enfield, Gawler, Glenelg, Henley and Grange, Hindmarsh, Kensington and Norwood, Marion, Mitcham, Payneham, Port Adelaide, Prospect, St. Peters, Salisbury, Tea Tree Gully, Thebarton, Unley, Walkerville, West Torrens and Woodville;

(b) the district council districts of Munno Para, East Torrens, Stirling and Noarlunga;

(c) the area of the Garden Suburb;

(d) the wards known as the Happy Valley, Coromandel, Clarendon and Kangarilla wards of the district council of Meadows;

and

(e) the portion of the Hundred of Willunga that lies within the district council district of Willunga:

“order” means an order or direction of the Court or Commission and includes a variation of any such order or direction:

“permanent head” means the officer for the time being designated by the Minister by notice published in the *Gazette* (which notice the Minister is hereby authorized from time to time to give) as permanent head for the purposes of this Act:

“prescribed employer” means—

- (a) the Public Service Board as regards any public service employees;
- (b) The South Australian Railways Commissioner, as regards any railway employees;
- (c) the Metropolitan and Export Abattoirs Board;
- (d) any council;
- (e) The Fire Brigades Board;
- (f) the State Bank of South Australia;
- (g) The Savings Bank of South Australia;
- (h) The Electricity Trust of South Australia;
- (i) the Municipal Tramways Trust;
- (j) the South Australian Housing Trust;
- (k) the Lotteries Commission of South Australia;
- (l) the South Australian Totalizator Agency Board;
and
- (m) any body or person constituted by or under any Act or any instrumentality or agency of the Crown which the Governor has declared by regulation to be a prescribed employer for purposes of this Act:

“President” means—

- (a) in relation to the Court, the President of the Court;
and
- (b) in relation to the Commission, the President of the Commission:

“Presidential Member” in relation to the Commission, means the President or a Deputy President:

“public holiday” means a public holiday within the meaning of the Holidays Act, 1910, as amended:

“Public Service Board” means the Public Service Board constituted under the Public Service Act, 1967, as amended:

“public service employee” means—

(a) any person employed under or subject to the Public Service Act, 1967, as amended;

and

(b) any other person not being a railway employee employed for salary or wages or engaged for remuneration in any capacity in the service of the State:

“railway employee” means any person employed or engaged for remuneration in the service of The South Australian Railways Commissioner:

“registered association” means an association registered under Division I of Part IX of this Act and includes any association that, pursuant to this Act, is regarded as being registered under that Part:

“Registrar” means the Industrial Registrar appointed or continued in office under section 48 of this Act and includes a Deputy Industrial Registrar so appointed or continued in office:

“Rules” means rules made by the President under Division IV of Part X of this Act or under any other provision of this Act under which he is authorized to make rules:

“strike” includes—

(a) a cessation of work for an employer by any number of employees acting in combination;

or

(b) a concerted refusal or a refusal under a common understanding by any number of employees to continue to work for an employer,

with a view to compelling that employer or to aid other employees in compelling their employer to accept terms of employment or with a view to enforcing compliance by an employer or employers generally with demands made on him or them by or on behalf of employees:

“the *Conciliation and Arbitration Act* 1904-1972 of the Commonwealth” means the *Conciliation and Arbitration Act* 1904-1972 of the Commonwealth and includes that Act as from time to time amended and any Act passed in substitution therefor.

PART I

(2) The exercise by the Court, the Commission, a Committee or any other person of its or his jurisdiction over an industrial matter does not depend upon the existence of a dispute or the making of a prior claim or demand in relation to the industrial matter and in relation to any matter affecting a member of the police force that jurisdiction shall not be affected, limited or restricted by the existence of any General Order under the Police Regulation Act, 1952, as amended.

Application of
award to
industry.

7. This Act shall not be construed so as to cause any award made before the commencement of this Act to operate in relation to any industry in respect of which that award did not operate immediately before that commencement.

PART II

PART II

THE COURT

DIVISION I

DIVISION I—CONSTITUTION OF THE COURT

Constitution of
the Court.

8. (1) The Court by the name of the Industrial Court of South Australia continued in existence by the Industrial Code, 1967, as amended, shall, under that name, continue in existence.

(2) The Court shall continue to be a court of record and the seal of the Court shall be judicially noticed.

President and
Deputy
President.

9. (1) There shall continue to be—

(a) A President of the Court who shall have the same rank, title, status and precedence as a Judge of the Supreme Court;

and

(b) one or more Deputy Presidents of the Court.

(2) Whenever a vacancy occurs in the office of President of the Court or Deputy President of the Court the Governor may appoint a person, who is eligible for appointment as a Judge of the Supreme Court, to that office.

(3) A person appointed President of the Court or a Deputy President of the Court shall before assuming the functions of his office make and subscribe an oath in the prescribed form before the Chief Justice of the Supreme Court.

(4) The person holding—

(a) the office of President of the Court immediately before the commencement of this Act shall, on and after that commencement and subject to this Act, continue in office as President of the Court;

and

(b) an office of Deputy President of the Court, immediately before the commencement of this Act shall, on and after that commencement and subject to this Act continue in office as a Deputy President of the Court.

10. (1) Where the President of the Court is for any reason unable to perform the duties of his office the most senior in office of the Deputy Presidents of the Court shall act in the office of President during the period of that inability and in respect of his so acting in that office that Deputy President may be paid such allowance as is determined by the Governor.

Absence from
office of
President or
Deputy
President.

(2) A Deputy President of the Court while acting in the office of the President of the Court shall have and may exercise all the powers and functions conferred on the President of the Court by or under this Act or any other Act.

(3) Where a Deputy President is for any reason unable to perform the duties of his office, the Governor may appoint a person, who is eligible for appointment as a Judge of the Supreme Court, to act in the office of Deputy President during the period of the inability and while he is so acting this Act shall apply to and in relation to that person as if he were a Deputy President appointed under this Act.

11. (1) The President of the Court shall receive a salary at the rate of twenty-five thousand seven hundred and fifty dollars per annum and each Deputy President of the Court shall receive a salary at the rate of twenty thousand two hundred dollars per annum.

Salaries.

(2) The salaries referred to in subsection (1) of this section shall be paid out of the general revenue of the State on the warrant of the Governor which warrant the Governor is hereby authorized and required to issue from time to time.

Tenure of
office.

12. (1) The President of the Court and each Deputy President of the Court shall, unless lawfully removed, be entitled to hold office until he attains the age of sixty-five years, and, except as provided in subsection (2) of this section, shall cease to hold office upon attaining that age.

(2) The President of the Court or a Deputy President of the Court may complete the hearing and determination of any proceedings part-heard by him before attaining the age of sixty-five years, and, for the purpose of completing any such hearing and determination shall be deemed to continue in the office of President or, as the case may be, of Deputy President.

(3) The President of the Court or a Deputy President of the Court may, by written notice addressed to the Governor, retire at any time preceding his attainment of sixty-five years of age.

(4) Neither the President of the Court nor any Deputy President of the Court shall be removed from office otherwise than in the manner in which and upon the grounds upon which a Judge of the Supreme Court is by law liable to be removed from office.

Industrial
Magistrate.

13. (1) The Governor may appoint one or more persons to be an Industrial Magistrate.

(2) Each Industrial Magistrate shall—

(a) be paid such remuneration and allowances;

and

(b) be subject to such provisions of the Public Service Act, 1967, as amended, and the regulations thereunder,

as the Governor from time to time determines.

(3) Each Industrial Magistrate shall be an employee as defined in the Superannuation Act, 1969, as amended.

(4) Each Industrial Magistrate shall be a special magistrate and the Justices Act, 1921, as amended, shall for all purposes apply and have effect in relation to his office of special magistrate as if he had been appointed a special magistrate under and in accordance with that Act.

(5) The Industrial Magistrate appointed under the Industrial Code, 1967, as amended, and in office on the commencement of this Act shall on and after that commencement continue in office and this section shall apply to and in relation to him as if he had been appointed under this section.

14. (1) The President and the Deputy Presidents of the Court shall each be a Judge of the Court. Constitution of Court.

(2) Subject to this Act, the Court shall be constituted of—

(a) two or more Judges;

(b) a Judge;

or

(c) an Industrial Magistrate,

as directed by the President of the Court.

DIVISION II—JURISDICTION AND POWERS OF COURT

DIVISION II

15. (1) In addition to the jurisdiction conferred on it elsewhere in this Act, or under any other Act whether of this State or the Commonwealth the Court shall, subject to this Act, have jurisdiction— Jurisdiction of Court.

(a) to interpret any award or industrial agreement;

(b) to hear and determine any question of law or case stated that is referred to it by the Commission or a Committee;

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

and

(d) to hear and determine—

(i) claims for sums due to employees or former employees from employers or former employers pursuant to this Act, to a contract of service or a contract under which services are rendered which is governed by an award or an industrial agreement where those sums were due and payable within the period of three years concluding on the day on which the application in relation to the claim was filed;

(ii) claims for sums due to employers or former employers from employees or former employees pursuant to this Act, to a contract of service or a contract under which services are rendered which is governed by an award or an industrial agreement where those sums were due and payable within the period of three years concluding on the day on which the application in relation to which the claim was filed;

(iii) claims for the recovery of sums due to employees or former employees from employers or former employers pursuant to a contract of service or a contract under which services are rendered which is governed by an award made or having effect or an agreement certified under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth;

and

(iv) applications under section 12 of the Long Service Leave Act, 1967-1972;

(e) to hear and determine any question as to whether the dismissal from his employment of an employee, not being an employee who has under any Act or law a right of appeal or review against his dismissal, was harsh, unjust or unreasonable and the Court may, if it thinks fit, direct the employer of that employee to re-employ that employee in his former position on terms that are not less favourable to the employee than if he had not been dismissed from his employment and without limiting the generality of the foregoing may order that the employee be paid a sum not exceeding a sum equal to the wages that he would have received had he been employed in that employment between the time of his dismissal and the time at which he was re-employed but the Court shall not exercise the jurisdiction conferred on it by this paragraph unless an application invoking that jurisdiction is made, by or on behalf of the dismissed employee, within twenty-one days from the day on which it is alleged that the employee was so dismissed from his employment.

(2) A claim under paragraph (d) of subsection (1) of this section may be made on behalf of an employee or former employee, by a registered association but nothing in this section shall be construed so as to prevent a claim under this section being made otherwise than by a registered association.

Representation.

16. (1) In proceedings before the Court any party may be represented by a legal practitioner or agent.

(2) Nothing in this Act shall affect the operation or effect of section 25 of the Workmen's Compensation Act, 1971, and a reference in that section to section 21 of the Industrial Code, 1967, as amended, shall be read as a reference to subsection (1) of this section.

Powers of Court.

17. (1) The Court shall in addition to the powers conferred on it elsewhere in this Act or by any other Act including an Act of the Commonwealth, as regards every matter over which it has jurisdiction, have power—

-
- (a) to take steps, at or before the hearing, to ascertain whether all persons and associations who ought, in its opinion, to be bound by its orders have been summoned to attend or are parties to, or represented in the proceedings;
 - (b) to direct that persons or associations not summoned to attend or given notice of the proceedings shall be so summoned or given notice, if the Court is of the opinion, whether from the suggestion of parties or otherwise, that such persons or associations should be so summoned or given notice of the proceedings;
 - (c) to hear and determine such matter in such manner in all respects as the Court in its discretion thinks best suited for that purpose and to make such order as it thinks fit;
 - (d) to allow the amendment of the submission, reference, notice of appeal, report or application or any subsequent proceeding;
 - (e) to admit as evidence matter that is not, in law, so admissible, where in equity and good conscience it considers that the matter should be so admitted;
 - (f) to dismiss any matter, or refrain from further hearing or from determining the matter if it appears that such matter is trivial, or that in the public interest further proceedings by the Court are not necessary or desirable;
 - (g) to proceed to hear and determine such matter in the absence of any party thereto or other person who has been summoned or served with notice to appear therein;
 - (h) to sit in any place, for the hearing and determination of such matter;
 - (i) to adjourn its sittings to any time and place or to a time and place to be fixed;
 - (j) to rescind or vary its orders, decisions, directions, or any reference or act made or done by it, and to re-open any questions;
 - (k) to direct parties to be joined or struck out;
 - (l) to correct, amend or waive any error, defect or irregularity whether in substance or in form whether or not the existence of that error, defect or irregularity would otherwise have failed to invoke the jurisdiction of the Court;
 - (m) to extend any prescribed time, not being a time within which to lodge or file an appeal;

- (n) to waive compliance with any Rule of the Court;
and
(o) generally to give all such directions and do all such things as it deems necessary or expedient in the proceedings.
- (2) The Court, any member thereof or any person authorized by the Court may at any time during working hours—
- (a) enter any place or premises or any ship or vessel of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made or is being sought;
- (b) inspect and view any work, material, machinery, appliances, article, matter or thing whatsoever, being in such place, premises, ship or vessel;
- and
(c) question any person or persons who may be in or upon such place, premises, ship or vessel in respect of or in relation to any matter or thing, hereinbefore mentioned.
- (3) A person shall not—
- (a) hinder or obstruct the Court, any member thereof or any person authorized under subsection (2) of this section in the exercise of any power conferred by or under this section;
- (b) refuse to the Court, any member thereof or any person authorized under subsection (2) of this section entrance to any place, premises, ship or vessel as is authorized under that subsection;
- or
(c) refuse or fail to answer truthfully any question put to him pursuant to subsection (2) of this section.
- Penalty: One hundred dollars.
- (4) In any matter before the Court it may on the application of any party or on its own motion and at any stage give such directions or make such orders as to the proceedings or the conduct thereof as to it shall seem just and proper and in particular but without prejudice to the generality of the foregoing may give directions or make orders as to—
- (a) the control of and prevention of abuse of the process of the Court;
- (b) the consequences of failure to comply with any direction or order of the Court and in particular staying and dismissal of proceedings or the striking out of documents or portions of documents filed therein;
- and

(c) any steps to be taken in the course of proceedings to lead to the more expeditious and efficient disposal thereof.

(5) The Court may if it thinks fit, at any stage of the proceedings before it, state a case for the opinion of the Full Court upon any question that is, in its opinion, a question of law and the Full Court shall hear and determine the question and remit the case with its opinion to the Court and may make such order as to costs as it thinks fit.

(6) Except as is provided in this Act, the Court may make such order as to the payment of costs of proceedings by one party to any other party to those proceedings as it deems proper and the Court may assess the amount of such costs or may direct that the costs be taxed by the Registrar upon the scale fixed by the Rules.

(7) The Court may exercise the powers conferred on it by this section upon such terms as it thinks fit.

18. (1) This section applies to and in relation to the jurisdiction conferred on the Court under paragraph (d) of section 15 of this Act.

Special provisions relating to claims under awards, etc.

(2) In the exercise of the jurisdiction to which this section applies the Court—

(a) shall not proceed to hear and determine a claim where it appears to the Court that proceedings in relation to that claim have been commenced in another court and that those proceedings have not been withdrawn or struck out;

(b) shall not, except as is expressly provided in this section, award costs in any proceedings;

and

(c) shall be governed in its procedure, judgment, orders and decisions by equity, good conscience and the substantial merits of the case without regard to technicalities, legal forms or the practice of other courts and shall not be bound by any rules or practice as to evidence and may inform its mind on any matter in such manner as it thinks just.

(3) Where the jurisdiction to which this section applies is to be exercised—

(a) in relation to a claim of or that does not exceed one thousand dollars, that jurisdiction shall be exercised by the Court constituted of an Industrial Magistrate;

and

(b) in relation to a claim that exceeds one thousand dollars, that jurisdiction may be exercised by the Court constituted of a Judge.

(4) A person who has not attained the age of majority may make an application to the Court in the exercise of the jurisdiction to which this section applies and the Court may hear and determine that application in all respects as if that person had attained the age of majority.

(5) Where an appeal is commenced against an order or decision of the Court in the exercise of the jurisdiction to which this section applies and that appeal is not allowed or is withdrawn the Court before which the appeal was commenced may order that the costs of the respondent to the appeal be paid by the appellant in an amount determined pursuant to subsection (6) of this section.

(6) Costs awarded pursuant to this section shall be—

- (a) as assessed by the Court that orders the costs to be paid;
- or
- (b) as taxed by the Registrar upon the scale fixed by the Rules.

Enforcement
of orders for
payment.

19. (1) Where the Court makes an order, or gives a direction to a person (in this section called the “judgment debtor”) to pay a sum of money to another person (in this section called the “judgment creditor”) and that sum or any part thereof is not paid within fourteen days next following the day upon which that order was made or direction was given or within such other time as may be ordered by the Court the judgment creditor may obtain from the Registrar a certificate of the order containing the following particulars—

- (a) the name, place of residence and occupation or description of the judgment creditor;
- (b) the name, place of residence and occupation or description of the judgment debtor;
- (c) the date on which the order was made;
- and
- (d) the amount ordered to be paid.

(2) Upon production of a certificate referred to in subsection (1) of this section to a clerk of a local court, the clerk shall forthwith register the certificate by entering the particulars thereof in a book to be kept by him and to be called the “Register of Industrial Court Orders”.

(3) From the date of registration by the clerk of the local court the certificate shall be a record of the local court in which it is registered and shall have the same force and effect in all respects as a judgment or order of that court, and the like proceedings may be taken upon the certificate as if the order mentioned therein were a judgment or order of that court.

(4) The costs of and incidental to registering a certificate and of any proceedings under a certificate shall be added to the amount payable under the certificate and payment thereof shall be enforceable accordingly.

(5) No execution shall be issued or other proceedings taken upon any such certificate unless there is first filed in the local court an affidavit made within thirty days immediately before the execution is issued or the proceedings are taken or within such further time as a judge or special magistrate may order stating that the amount for which it is proposed to issue execution or to take other proceedings is actually due and unpaid and any such order of a judge or special magistrate may be made *ex parte* and the affidavit shall be made by the judgment creditor or by some other person cognizant of the facts.

(6) The local court in which any such certificate has been registered shall, in respect of execution upon the certificate, and the enforcement of the order, have the same control and jurisdiction over the order as if it were a judgment or order of that local court.

(7) The powers conferred by section 28 of the Local and District Criminal Courts Act, 1926-1971, as amended, shall include power to make rules for regulating the practice and procedure relating to the registration of certificates under this section and proceedings subsequent thereto, and the court fees payable thereon.

(8) The Register of Industrial Court Orders kept pursuant to paragraph (c) of subsection (6) of section 36 of the Industrial Code, 1967-1972, in any local court shall continue to be kept as the Register of Industrial Court Orders in that local court under subsection (2) of this section.

(9) Notwithstanding the amendment to the Industrial Code, 1967-1972, effected by section 5 of this Act, this section shall have effect in relation to a certificate registered pursuant to paragraph (c) of subsection (6) of section 36 of the Industrial Code, 1967-1972, in all respects as if that certificate had been registered under subsection (2) of this section.

PART III
DIVISION I**PART III****THE COMMISSION****DIVISION I—CONSTITUTION OF THE COMMISSION****Continuation
of Com-
mission.**

20. (1) The Commission by the name of the Industrial Commission of South Australia continued in existence by the Industrial Code, 1967, as amended, shall, under that name, continue in existence.

(2) The seal of the Commission shall be judicially noticed.

**Constitution of
Commission.**

21. The Commission shall be constituted in the manner provided for by section 24 of this Act.

**Presidential
members.**

22. (1) The President of the Court shall be the President of the Commission.

(2) Each Deputy President of the Court shall be a Deputy President of the Commission.

Commissioners.

23. (1) The Governor may appoint one or more persons as Commissioners.

(2) A Commissioner shall, unless lawfully removed from office, be entitled to hold office until reaching the age of sixty-five years, but shall, subject to subsection (3) of this section, cease to hold office on reaching that age.

(3) A Commissioner who ceases to hold office under this section on reaching the age of sixty-five years may nevertheless, after reaching that age, with the approval of the President of the Commission, complete the hearing and determination of any proceedings part-heard by him before reaching that age, and for the purpose of such hearing and determination shall be deemed to continue to be a Commissioner.

(4) The persons holding office as Commissioners at the commencement of this Act shall, subject to this Act, continue as Commissioners.

(5) The Governor shall so exercise his powers of appointment under this section as to ensure that—

(a) there shall be an even number of Commissioners;
and

(b) each of the persons comprising one-half of the number of Commissioners are persons experienced in industrial affairs by reason of having been associated with the interests of employers and each of the persons comprising the remaining half of the number of Commissioners are persons experienced in industrial affairs by reason of having been associated with the affairs of associations of employees.

(6) A Commissioner may retire at any time, but, whenever the office of Commissioner becomes vacant, the Governor may, subject to subsection (5) of this section, appoint another person to the vacant office.

(7) Each Commissioner shall—

(a) be paid such remuneration and allowances;

and

(b) be subject to such provisions of the Public Service Act, 1967, as amended, and the regulations thereunder,

as the Governor from time to time determines.

(8) Each Commissioner shall be an employee as defined in the Superannuation Act, 1969, as amended.

(9) Each Commissioner shall as soon as practicable after his acceptance of office take the prescribed oath, which shall be taken before the President.

(10) Where a Commissioner is for any reason unable to perform the duties of his office, the Governor may appoint a person to act in the office of Commissioner during the period of the inability and while he is so acting this Act shall apply to and in relation to that person as if he were a Commissioner appointed under this Act.

24. (1) Except as expressly provided in this Act, the Commission at the direction of the President, shall be constituted of—

(a) a Presidential Member;

or

(b) a Commissioner.

(2) Except as expressly provided by this Act the Commission sitting as the Full Commission at the direction of the President shall be constituted of—

(a) two Presidential Members and one Commissioner;

or

(b) a Presidential Member and two Commissioners.

(3) Where in the opinion of the President, an appeal or reference to the Full Commission does not appear to involve substantial matters of law, the President shall wherever practicable direct that the Full Commission be constituted of a Presidential Member and two Commissioners.

(4) Where a sitting of the Commission is comprised of more than one member the decision concurred in by the majority of the members comprised in the sitting shall be the decision of the Commission.

Composition of
Commission.

DIVISION II

DIVISION II—JURISDICTION AND POWERS OF COMMISSION

Jurisdiction of
Commission.

25. (1) In addition to and not in derogation from the jurisdiction elsewhere conferred on the Commission by this Act the Commission shall, subject to this Act, have jurisdiction to hear and determine—

(a) any matter or thing arising from or relating to any industrial matter;

and

(b) any question as to the rights of employees in a specified occupation or calling or in specified occupations or callings to do certain work or a certain kind of work to the exclusion of all other employees or to the exclusion of employees in all or some specified occupations or callings,

but except as provided in this Act the Commission shall not have jurisdiction over any matter or thing that is within the jurisdiction of a Committee.

(2) In the exercise of its jurisdiction under this Act, the Commission shall, at all times, make all such suggestions and do all such things as to it appear to be right and proper for effecting conciliation between parties, for preventing and settling disputes and for settling claims by amicable agreement between parties.

(3) Notwithstanding anything contained in this section the Commission shall not, except as is provided in this Act, have jurisdiction over any industrial matter concerning any industry for which, at the time, a Committee is or is in the course of being constituted, and as to which matter such Committee has or will have jurisdiction, but the alteration of the area of the State within which a Committee shall have jurisdiction or the constitution of a new Committee shall not affect the validity of an award or order of the Commission in operation at the time when such alteration or constitution becomes effective and every such award or order shall continue in force, subject to the provisions of section 32 of this Act, until a Committee makes an award dealing with the same matter or, if the Committee makes an award dealing with some only of such matters, every such award or order of the Commission shall continue in force as regards matters not dealt with by that Committee.

Mediation.

26. (1) Where it appears to a Presidential Member or a Commissioner that—

(a) mediation in an industrial matter is desirable in the public interest;

and

(b) the matter or thing in relation to which mediation is desirable would be, if submitted to the Commission, within the jurisdiction of the Commission,

then the Presidential Member or Commissioner may act as a mediator to deal with that industrial matter and for that purpose may call a voluntary conference of the parties involved.

(2) Any person who attends a voluntary conference called under subsection (1) of this section and who makes application to the Registrar shall on application be entitled to be paid out of the general revenue of the State, which is hereby to the necessary extent appropriated accordingly, such recompense as the Presidential Member or Commissioner presiding over the conference certifies to be reasonable, having regard to the conduct of the person in relation to the matter of the conference both before and at the conference and to the expenses and loss of time incurred by the person.

27. (1) The Commission constituted of a Presidential Member, shall, for the purposes of the jurisdiction conferred on the Commission elsewhere in this Act have power on its own motion or on application by a registered association, to convene a compulsory conference presided over by a Presidential Member or a Commissioner by summoning any person to attend such a conference at a time and place specified in the summons. Compulsory conference.

(2) The Presidential Member or Commissioner presiding over a conference referred to in subsection (1) of this section may summon any person to attend at the conference.

(3) Any person may be summoned under this section notwithstanding that he is not a party to or directly involved in the matter the subject of the conference if the Presidential Member or Commissioner presiding over the conference, considers that the presence of that first mentioned person is likely to assist in dealing with or settling the matter.

(4) A conference referred to in subsection (1) of this section may be held in public or in private or partly in public and partly in private, at the discretion of the Presidential Member or Commissioner presiding over the conference.

(5) Any person who is summoned under this section, who attends pursuant to that summons and who continues his attendance as directed by the Presidential Member or Commissioner presiding over the conference and who makes application to the Registrar shall, on application, be entitled to be paid out of the general revenue of the State, which is hereby to the necessary extent appropriated accordingly, such recompense as the Presidential Member or Commissioner presiding over the conference certifies to be reasonable, having regard to the conduct of the person in relation to the matter of the conference both before and at the conference and to the expenses and loss of time incurred by the person.

(6) A person summoned under this section shall not, without reasonable excuse (proof of which shall lie upon him), refuse or fail to attend the conference in obedience to the summons and continue in his attendance as directed by the Presidential Member or Commissioner presiding over the conference.

Penalty: Five hundred dollars.

(7) It shall be a defence to proceedings for an offence that is a contravention of subsection (6) of this section for the defendant to prove that the summons was not brought to his attention.

(8) A person shall be deemed to have been summoned under this section if—

- (a) he is served with a copy of the summons in any manner provided for the service of documents under this Act;
 - (b) the substance of the summons is contained in a telegram sent to that person at his place of residence or business last known to the Commission;
- or
- (c) a copy of the summons is sent by certified mail to the person at his place of residence or business last known to the Commission.

(9) Whenever in the opinion of the Presidential Member or Commissioner presiding over the conference it is desirable to do so, he may refer the matter of the conference to the Commission constituted of himself and thereupon the Commission as so constituted may of its own motion and without any application being made hear and determine any industrial matter or thing arising out of the conference notwithstanding that the industrial matter or thing would, but for this subsection, be within the jurisdiction of a Committee.

(10) Notwithstanding anything in this Act, an order, made by the Commission in the exercise of the power conferred on it by subsection (9) of this section, shall be binding only on those persons represented before the Commission or summoned to appear at the conference.

General powers
of the
Commission.

28. (1) The Commission shall, as regards any matter within its jurisdiction, have power—

- (a) at or before the hearing to take steps to ascertain whether all persons and associations who ought, in its opinion, to be bound by its award have been summoned to attend the proceedings, or given notice of such proceedings;
- (b) to direct that persons not summoned to attend the proceedings, or given notice thereof, shall be summoned or given notice thereof, if the Commission is of opinion, whether from the suggestion of parties or otherwise, that such persons should be so summoned or given such notice;

- (c) to hear and determine such matter in such manner in all respects as the Commission, in its discretion, thinks best suited for that purpose;
 - (d) to allow the amendment of any relevant application, reference, notice of appeal, report or any subsequent proceedings;
 - (e) to give any direction in the course or in pursuance of the hearing or determination of that matter;
 - (f) to dismiss such matter, or to refrain from further hearing or from determining the matter if it appears that such matter is trivial, or that in the public interest further proceedings by the Commission are not necessary or desirable;
 - (g) to order any party to such matter to pay to any other party such costs and expenses, including expenses of witnesses but excluding costs of preparation of the case and representation during the hearing, as are specified in the order, or as may be taxed by the Registrar;
 - (h) to proceed to hear and determine such matter in the absence of any party thereto or other person who has been summoned or served with notice to appear therein;
 - (i) to sit in any place for the hearing and determination of such matter;
 - (j) to adjourn its sittings to any time and place or to a time and place to be fixed;
 - (k) to refer any technical matter or matters of account to an expert, and to accept his report as evidence;
 - (l) subject to this Act, to rescind or vary its awards, orders, decisions, directions, or appointments, or any reference or act made or done by it, and to re-open any question;
 - (m) to direct parties to be joined or struck out;
 - (n) to correct, amend, or waive any error, defect, or irregularity whether in substance or in form whether or not the existence of that error, defect or irregularity would otherwise have failed to invoke the jurisdiction of the Commission;
 - (o) to extend any prescribed time, other than the time for appealing prescribed by subsection (1) of section 98 of this Act;
- and
- (p) to waive compliance with any Rule made pursuant to this Act which applies to the Commission.

(2) The Commission may exercise the powers conferred on it by subsection (1) of this section upon such terms as it thinks fit.

(3) The Commission, any member thereof or any person authorized by the Commission may at any time during working hours—

(a) enter any place or premises or any ship or vessel of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made or is being sought;

(b) inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever, being in such place, premises, ship or vessel;

and

(c) question any person or persons who may be in or upon such place, premises, ship or vessel in respect of or in relation to any matter or thing hereinbefore mentioned.

(4) A person shall not—

(a) hinder or obstruct the Commission or any person authorized under subsection (3) of this section in the exercise of any power conferred by or under this section;

(b) refuse to the Commission or any person authorized under subsection (3) of this section entrance to any place, premises, ship or vessel as is authorized under that subsection;

or

(c) refuse or fail to answer truthfully any question put to him pursuant to subsection (3) of this section.

Penalty: One hundred dollars.

(5) Notwithstanding anything in this Act, in any other law or in any practice to the contrary—

(a) the Commission, in the exercise of any jurisdiction, duty, power or function conferred or imposed by or under this Act, shall be governed in its procedure and in its judgments, awards, orders and decisions by equity, good conscience, and the substantial merits of the case, without regard to the technicalities or legal forms or the practice of courts;

and

(b) the Commission, in the exercise of any such jurisdiction, duty, power, or function, shall not be bound by any rules or practice as to evidence, but may inform its mind on any matter in such manner as it thinks just.

Further powers
of Commission.

29. (1) In the exercise of its powers the Commission may—

(a) make an award, including an interim award and, without being restricted to the specific relief claimed by the

parties, may include in the award or interim award any matter or thing which the Commission thinks necessary or expedient;

- (b) by award appoint in any award a board of reference consisting of one or more members to deal with any matters prescribed by that award or provide in any award for the appointment of a board of reference consisting of one or more members to deal with any matters prescribed by the award and to appoint the chairman of such board of reference but there shall be an appeal from any decision or order of any board of reference appointed under this paragraph, and the jurisdiction of any such board of reference shall not include jurisdiction in relation to any matter referred to in paragraph (d) of subsection (1) of section 15 of this Act and that appeal shall, as directed by the President, be heard and determined by the President or a Deputy President and shall be made within the time prescribed by rules made pursuant to this Act;
- (c) subject to subsection (2) of this section, by award authorize that preference in employment shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to members of a registered association of employees;
- (d) by award authorize an official of a registered association of employees who are subject to the award concerned to inspect time books and wages records of an employer subject to the award subject to that official giving that employer the notice (if any) prescribed in the award;
- (e) include in any award provisions setting out the procedure to be adopted in the settlement of any industrial dispute but any such provision shall not be held or construed as limiting, restricting or affecting the exercise or performance of the jurisdiction or powers of the Commission in relation to any such dispute;
- (f) direct with due regard to local circumstances within what limits of area (if any) and subject to what conditions and exceptions (if any), an award shall be binding upon the persons engaged in an industry whether as employers or employees 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;
- (g) direct that an award shall have effect on and from a day that occurred before the day on which the award was made being a day not earlier than the day on which the application in respect of which the award was made was lodged with the Commission.

(2) An award referred to in paragraph (c) of subsection (1) of this section shall only provide for preference in employment to members of a registered association of employees in circumstances where and to the extent that all factors relevant to the employment of such members and the other person or persons affected or likely to be affected by the award, are otherwise equal.

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

Applications to
Commission.

30. (1) Except as elsewhere provided in this Act, proceedings before the Commission shall be commenced by an application submitted to it—

(a) by the Minister as being in his opinion one which, in the public interest, concerns a matter appropriate to be dealt with by the Commission;

(b) by an employer or employers of not less than twenty employees in the industry concerned or of not less than seventy-five per cent of the employees in the industry concerned whichever is the lesser;

(c) by not less than twenty employees in the industry concerned or by not less than seventy-five per cent of the employees in the industry concerned whichever is the lesser;

(d) by a registered association of employers, the members of which employ not less than twenty employees in the industry concerned, or not less than seventy-five per cent of the employees in the industry concerned, whichever is the lesser;

or

(e) by a registered association of employees of which association not less than twenty members are employees in the industry concerned, or not less than seventy-five per cent of all the employees in the industry concerned are members, whichever is the lesser.

(2) The Commission shall not deal with any matter the subject of an application before it until it is satisfied that the substance of the application and the day and time on which it is to be heard has been advertised in the manner prescribed by the Rules or has been communicated to representatives of all persons likely to be bound by the award.

Living wage
to be secured.

31. The Commission shall not in any award fix wages or rates in respect of adult employees which do not secure the payment of the living wage, for the time being in force to those employees.

Form,
operation and
continuance of
award.

32. (1) Any award of the Commission, not being an order of the Commission, in any matter shall—

(a) be binding on all persons it is expressed to bind;

- (b) be framed in such a manner as to best express the decision of the Commission and to avoid unnecessary technicality;
- (c) have effect, subject to any variation ordered by the Commission, within the locality or localities specified in the award;
- (d) subject to the provisions of subsections (2) and (3) of this section, continue in force for a period to be specified in the award not exceeding two years from the date thereof;
- (e) prevail over any contract of service or apprenticeship or over any contract or agreement under which services are or are to be rendered so far as the terms of the award are more beneficial to the employee than those of the contract or agreement and the contract or agreement shall thereafter be construed and have effect as if it had been modified, so far as necessary, in order to conform to the award but no provision of an award which is at variance with a provision of the Apprentices Act, 1950, as amended, shall have effect so as to vary the terms of an apprenticeship;

and

- (f) be settled and signed by the Registrar.

(2) After the expiration of the period referred to in paragraph (d) of subsection (1) of this section, an award shall, unless the Commission otherwise orders, continue in force until a new award has been made with respect to any of the employees covered by the award, in which case the former award shall cease to have any effect as regards those employees.

(3) Notwithstanding anything in paragraph (d) of subsection (1) of this section but subject to section 33 of this Act the Commission may vary an award whether or not the period of operation specified therein has elapsed.

33. (1) Subject to subsection (2) of this section the Commission may, in the course of any proceedings before it, exercise any of its powers of its own motion or on the application of any party to the matter, or of any association or person bound by the award.

Exercise of
powers by
Commission.

(2) No award or order of the Commission shall be varied and no application shall be re-opened except on the application of an association or person affected or aggrieved by the award or order, or claiming to be so affected or aggrieved.

34. (1) Subject to subsection (2) of this section in proceedings before the Commission any party may be represented by a legal practitioner or agent.

Representation
of parties.

PART III
DIVISION II

(2) The costs incurred by a party in respect of a representation referred to in subsection (1) of this section shall not be included in any order for the payment of costs under this Act.

DIVISION III

DIVISION III—LIVING WAGE

Living wage
inquiry.

35. (1) The Full Commission, of its own motion, or upon application made to it by the Minister, the South Australian Chamber of Manufactures Incorporated, the South Australian Employers' Federation Incorporated, The United Trades and Labor Council of South Australia, or any registered association by leave of the President, may make a determination declaring the living wage to be paid to adult male employees, and the living wage to be paid to adult female employees.

(2) In making any such determination the Full Commission may to such extent and in such manner as it thinks fit take into consideration any decision of the Commonwealth Conciliation and Arbitration Commission (whether made upon the basis of economic considerations or otherwise) affecting or likely to affect wages payable generally to employees subject to its awards in this State.

(3) In making such a determination the Full Commission shall have power to fix different rates to be paid in different areas.

(4) Every living wage so declared shall be a weekly living wage.

(5) No new determination shall be made until the expiration of at least six months from the date of the previous determination.

(6) When the Full Commission makes a determination under this section, a copy of the determination shall be forwarded to the Minister who shall publish it in the *Gazette* and the determination shall come into force as from the day or days determined by the Full Commission.

Alteration of
awards.

36. (1) Where the Full Commission is satisfied that, having regard to any decision of the Commonwealth Conciliation and Arbitration Commission affecting or likely to affect the wages or other remuneration payable generally to employees subject to its awards in this State, any variation (which variation may include provision for a minimum wage in excess of the living wage) should be made in the wages or other remuneration payable generally to employees under awards, the Full Commission may order that any such variation be made, and such a variation shall come into force as from a day or days determined by the Full Commission.

(2) An award declared to be a common rule pursuant to the provisions of the Industrial Code, 1967-1972, shall, notwithstanding any variation in the award under this section, continue, as amended, to be a common rule.

(3) An order may be made under subsection (1) of this section by the Full Commission of its own motion, or upon application by

the Minister, the South Australian Chamber of Manufactures Incorporated, the South Australian Employers' Federation Incorporated, The United Trades and Labor Council of South Australia, or any registered association by leave of the President.

37. (1) Subject to this section the Governor may by proclamation declare any one or more of the following living wages:—

Power of
Governor to
declare living
wage.

- (a) the living wage for adult male employees throughout the whole State;
- (b) the living wage for adult male employees in any part or parts of the State specified in the proclamation;
- (c) the living wage for adult female employees throughout the whole State;
- (d) the living wage for adult female employees in any part or parts of the State specified in the proclamation.

(2) A proclamation shall not be made under subsection (1) of this section unless—

- (a) the Minister is satisfied that the proclamation is desirable in order to avoid unjustifiable differences between comparable rates of wages fixed under Commonwealth and State laws respectively;

and

- (b) the President has recommended that the proclamation be made.

(3) When a proclamation made under subsection (1) of this section is published in the *Gazette* it shall be deemed to be and shall have the same effect in all respects as if it were a determination of a living wage by the Full Commission published in the *Gazette* pursuant to this Act but any such proclamation may specify the day on which the living wage thereby declared shall come into force, and that living wage shall come into force accordingly.

(4) A living wage declared under this section shall remain in force until another living wage in lieu thereof is declared by proclamation under this section or is determined by the Full Commission under this Part, and comes into force.

(5) Neither this section nor any proclamation in force under this section shall take away any power of the Full Commission to declare a living wage but the Full Commission shall not make a determination of a living wage for any employees for whom a living wage has been declared by proclamation and is in force, until the expiration of at least six months after the day when the living wage so declared by proclamation came into force.

(6) If the Full Commission declares a living wage for any employees while such a proclamation is in force but after the expiration of the period mentioned in subsection (5) of this section, that living wage shall, notwithstanding the proclamation previously

in force, but subject to any proclamation made under subsection (1) of this section after the declaration, be the living wage in relation to employees to whom it applies.

(7) Any reference in this Act to a variation or an increase or decrease in the living wage occurring by reason of a determination of the Full Commission shall be construed so as to include any increase or decrease occurring in the living wage as a result of a proclamation made under this section.

Variations of
awards with
variations in
living wages.

38. (1) When a variation occurs in the living wage (or wages) for adult male or adult female employees or both the following consequences shall ensue as regards awards operative in the area for which such living wage (or wages) was (or were) declared and which awards were based on such living wage (or wages) as last previously declared:—

- (a) every weekly wage prescribed by such awards for adult male or adult female employees shall be increased or decreased by the amount of the increase or decrease in the appropriate weekly living wage and every wage so prescribed for any other period shall be increased or decreased by an amount which bears the same proportion to the amount of the increase or decrease in the appropriate weekly living wage as the period for which such wage is prescribed bears to the normal working week in the particular industry and every annual salary prescribed shall be increased or decreased by fifty-two and one-sixth times the amount of the increase or decrease in the weekly living wage;
- (b) every wage prescribed by such awards for employees under twenty-one years of age shall be increased or decreased as nearly as practicable by an amount bearing the same ratio to that wage as the amount of the increase or decrease in the living wage bears to the living wage prior to the increase or decrease, but such amount shall not be greater than the amount prescribed by paragraph (a) of this subsection for adult male or adult female employees, as the case may be, but notwithstanding any other provision of this subsection, where a wage mentioned in this paragraph is expressed as a percentage of a rate for adult employees the provisions of this paragraph shall not apply and such award shall be construed as meaning that such wage shall be the percentage of the adult rate as varied in accordance with paragraph (a) of this subsection;
- (c) notwithstanding any other provision of this subsection, where an annual salary, if increased or decreased in accordance with any of the preceding paragraphs of this

subsection, would be an amount ending with a fraction of a dollar not exceeding forty-nine cents such salary shall be increased or decreased to that amount omitting that fraction, and where a weekly wage if so increased or decreased would be an amount other than a multiple of ten cents, that wage shall be increased or decreased to the nearest multiple of ten cents but where an annual salary if so increased or decreased would be an amount ending with a fraction of a dollar exceeding forty-nine cents such salary shall be increased or decreased to the multiple of one dollar next above that amount and where a weekly wage, if so increased or decreased, would be an amount exceeding a multiple of ten cents by more than five cents, that wage shall be increased or decreased to the multiple of ten cents next above that amount;

and

(d) each award shall be read and construed for all purposes as if it had been altered by the Commission or a Committee, as the case may be, in accordance with the preceding paragraphs of this subsection and the increased or decreased rates shall be payable as from the day when the increase or decrease comes into force until a different living wage comes into force or until the award is otherwise altered, or ceases to operate and the appropriate common rule order, if any, shall be deemed to have been varied accordingly.

(2) The provisions of this section shall have effect notwithstanding any other provision of this Act.

(3) Where a variation occurs in the living wage (or wages) for adult employees in the metropolitan area the wages prescribed by awards in force in other areas for which no living wage (or wages) has (or have) been declared shall be varied in the same manner as prescribed by subsection (1) of this section.

(4) For the purposes of this section an award shall be taken to be based on the living wage as last previously declared if—

(a) that award was made during the currency of that living wage or of a previous living wage of the same amount;

or

(b) that award has been varied as to wages either by the Commission or a Committee or by the operation of this Act during the currency of that living wage.

(5) Nothing contained in this section shall be construed as in any way limiting the power or discretion of the Full Commission to declare different living wages for different defined areas or the power or discretion of the Commission or a Committee to prescribe different rates of pay for different areas.

PART III
DIVISION IIIPublication of
amended
awards.

39. (1) The Registrar shall as soon as practicable after any alteration is made—

(a) in the living wage;

or

(b) pursuant to subsection (1) of section 36 of this Act,

publish in the *Gazette* a copy of every award affected by the alteration amended in accordance with that alteration.

(2) A copy of the *Gazette* containing an award published under this section shall be *prima facie* evidence of the terms of the award as so altered.

PART IV

PART IV

PROCEEDINGS BEFORE COURT OR COMMISSION,
ETC.

DIVISION I

DIVISION I—PROCEEDINGS

President may
make arrange-
ments.

40. (1) The President may make all such arrangements as are necessary or convenient for the hearing and disposing of all causes, actions, matters and proceedings that are pending before the Court, the Commission or a Committee.

(2) The President may assign a Commissioner to an industry or group of industries and may from time to time vary or revoke any such assignment and that Commissioner shall, so far as is practicable, deal with industrial disputes relating to that industry or that group of industries.

Proceedings
may be in
public or
private.

41. (1) The proceedings of the Court or the Commission shall be conducted in public, unless at any stage of the proceedings the Court or the Commission of its own motion or on the application of any of the parties, directs that the proceedings be conducted in private.

(2) Whenever the Court or the Commission directs that the proceedings shall be conducted in private, all persons (other than the parties, their representatives, the officers of the Court or the Commission and any witness under examination) shall withdraw.

Power to issue
orders to take
evidence.

42. (1) The Court or the Commission may, with the consent of the parties, issue an order appointing any person to take evidence on behalf of the Court or the Commission in relation to any matter over which it has jurisdiction.

(2) The person so appointed shall have all the powers of the Court or the Commission (as the case may be) in relation to the summoning of witnesses, the production of books and documents, and the taking of evidence on oath or affirmation or declaration.

Special mode
of service may
be directed.

43. When it is apparent to the Court or the Commission that personal or other service of any summons, notice, or other document

in connection with or for the purposes of any proceeding before or intended to be brought before the Court or the Commission cannot promptly be effected in manner provided for, it may in its discretion make any order for substituted service or the substitution for service of notice by letter, telegram, public advertisement, or otherwise, which it deems necessary or convenient and in such case compliance with such order shall be sufficient service.

44. (1) The Minister may, where, in his opinion the public interest is or would be likely to be affected by the award, order, decision, or determination of the Court or Commission, intervene in any proceedings before the Court or Commission and make such representations and tender such evidence as he thinks necessary.

Intervention by
Crown and
others.

(2) Any other person or registered association who or which can show an interest may, with the leave of the Court or Commission, intervene in any proceedings.

45. (1) In any proceeding before the Court or the Commission the Court or Commission may reserve its decision.

Decisions and
adjournments.

(2) Where a decision has been so reserved the same may be given at any continuance or adjournment of the Court, or Commission, or at any subsequent holding thereof, or, where the Court or Commission is composed of more than one member, such decision may be delivered by any one or more of such members of the Court or the Commission, or a member thereof may draw up such decision in writing, and, having signed the same, forward it to the Registrar, in which case the Registrar shall notify the parties of his intention to make available the same at some specified time and place, and he shall make available the same accordingly, and thereupon such decision shall be of the same force and effect as if it had been pronounced by the Court or the Commission.

(3) When the Court or Commission is unable to sit at the time appointed for the hearing of any matter or for any proceeding, the Registrar may adjourn the Court or the Commission and also adjourn any business set down for the day to such day and time as he deems convenient.

46. Subject to this Act, the following provisions shall apply in all proceedings before the Court or the Commission—

Summons and
evidence, etc.

(a) on the application of any of the parties the Registrar may issue a summons to any party or parties, or other person or persons, to appear and give evidence before the Court or the Commission, and any number of witnesses' names may be inserted in one summons but the Registrar may determine the number of parties or persons who shall be summoned to appear at the same time and the day or days and times upon which specified parties or persons shall be required to attend;

- (b) the summons shall be in the prescribed form, and may require any person therein named to produce before the Court or the Commission any books, papers, and other documents in his possession or under his control in any way relating to the matter;
- (c) all books, papers, and other documents produced before the Court or the Commission, may be inspected by such of the parties as the Court or the Commission allows but the information obtained therefrom shall not be made public without permission of the Court or the Commission;
- (d) books, papers, and documents produced before the Court or the Commission relating to any trade secret or the profits or financial position of any person shall not, without the consent of that person be inspected except by the Court or the Commission and any parts of the books, papers, and documents which in the opinion of the Court or Commission do not relate to any matter in issue before the Court or Commission may be sealed up;
- (e) no evidence relating to a trade secret, or to the profits or financial position of a witness or party, shall be disclosed or published without the consent of the person entitled to the benefit of the trade secret or non-disclosure;
- (f) every person who duly attends as a witness on a summons, or who gives evidence at the request of a party, shall be entitled to be paid by the party who called him the prescribed allowance for his attendance and expenses and until otherwise prescribed, the allowance shall be according to the scale for the time being in force with respect to witnesses in civil actions in the Supreme Court;
- (g) any party to the proceedings before the Court or the Commission shall be competent and may be compelled to give evidence as a witness;
- (h) the Court or the Commission may, if it thinks fit, dispense with evidence on any matter on which all parties have agreed, or on any matter as to which the Court or the Commission deems evidence unnecessary;
- and
- (i) the Court or the Commission may take evidence on oath, affirmation, or declaration.

47. The President of the Commission, each Deputy President of the Commission, each Commissioner, each Industrial Magistrate and the Registrar shall have, in the performance of their functions and duties pursuant to this Act or any other Act, the same protection and immunity as that of the President of the Industrial Court.

Protection of
Commission,
etc.

DIVISION II—OFFICERS

DIVISION II

48. (1) There shall be—

Industrial
Registrar.

(a) an Industrial Registrar;

and

(b) such Deputy Industrial Registrars and other officers as the Governor deems necessary for the purposes of this Act.

(2) The Industrial Registrar, the Deputy Industrial Registrars and any other officer shall be appointed under and be subject to the Public Service Act, 1967, as amended.

(3) In connection with any matter over which the Court, the Commission or a Committee has jurisdiction the Industrial Registrar, any Deputy Industrial Registrar and any other officer shall have and may exercise such powers, duties and functions as are prescribed or as are directed by the President.

(4) The persons holding the offices of Industrial Registrar and Deputy Industrial Registrar under the Industrial Code, 1967, as amended, immediately before the commencement of this Act shall on and after that commencement respectively continue in those offices in all respects as if they held those offices under this section.

49. (1) The Governor may appoint any person to be an Inspector under this Act.

Inspectors.

(2) Each Inspector shall be furnished by the Minister with a certificate of his appointment.

(3) Any person holding office as a Chief Inspector of Factories or inspector under section 205 of the Industrial Code, 1967, as amended, immediately before the commencement of this Act shall on and after that commencement be deemed for the purposes of this Act to have been appointed an Inspector under this section.

50. (1) An Inspector may at any time with such assistants as he considers necessary without any warrant other than this section—

Powers of
Inspectors,
etc.

(a) enter any place or premises or any ship or vessel of any kind whatsoever, wherein or in respect of which any industry is carried on or any work is being or has been done or commenced, or any matter or thing is taking or has taken place in relation to which any industrial matter exists, or any award has been made, or any offence against this Act is suspected;

(b) inspect and view any work, material, machinery, appliances, article, matter, or thing whatsoever, being in such place, premises, ship, or vessel;

and

(c) question any person or persons who may be in or upon such place, premises, ship, or vessel in respect of or in relation to any matter or thing hereinbefore mentioned.

(2) An Inspector may require the production of any book, pay-sheet, notice, record, list, indenture of apprenticeship, or document which is required to be kept by this Act or any other Act, and may inspect, examine and copy them.

(3) Every employer shall at all reasonable times furnish the means required by an Inspector which are necessary for the exercise of his duties and powers.

(4) Where an Inspector puts a question to a person through an interpreter that question shall for the purpose of this Act be deemed to have been put to that person by that Inspector and an answer to that question given by that person to that interpreter shall be deemed to have been given by that person to that Inspector.

(5) A person shall not—

(a) hinder or obstruct any Inspector or person authorized under subsection (1) of this section, in the exercise of any power conferred by or under this section;

(b) refuse to any Inspector or person so authorized entrance to any place, premises, ship or vessel referred to in subsection (1) of this section;

(c) refuse or fail to answer truthfully any question put to him pursuant to subsection (1) of this section;

or

(d) without lawful excuse, proof whereof shall lie on him, fail to comply with a requirement of an Inspector acting under this section.

Penalty: One hundred dollars.

51. No suit, prosecution or other legal proceeding shall lie against any person, in his personal capacity, in respect of any act or thing done or performed in good faith in the exercise or performance or the purported exercise or performance of his powers, functions or duties as—

Protection for
Registrar, etc.

- (a) the Industrial Registrar;
- (b) a Deputy Industrial Registrar;
- or
- (c) an Inspector.

52. (1) No Inspector or former Inspector shall divulge the contents of any record of persons employed in, or of the work done in any industry, except to the Minister or the officers of his department, and no person authorized by an award or order who has inspected any record in accordance with the provisions of this Act shall divulge the contents of any record so inspected to any person other than the appropriate officials of his association or to the Court or to the Commission.

Inspector
divulging
contents of
record.

Penalty: Five hundred dollars.

(2) No person shall make use of his knowledge of the contents of any such record, except for the purpose of the compilation of general statistical information or for the purpose of proving an offence under this Act.

Penalty: Five hundred dollars.

PART V

CONCILIATION COMMITTEES

DIVISION I

DIVISION I—CONSTITUTION OF CONCILIATION COMMITTEES

Definitions.

53. In this Part—

“calling” in relation to an employee, means the occupation of an employee of a prescribed employer:

“employee” does not include a person who is remunerated by way of annual salary:

“industry” does not include—

(a) any undertaking, trade or business, not being such an undertaking, trade or business carried on by the Crown or any instrumentality or agency of the Crown, in which persons are employed or engaged for remuneration, which is not carried on by way of trade or for the purposes of gain;

or

(b) the employment of persons in receipt of wages by The St. John Ambulance Brigade South Australia District Incorporated or the St. John Council for South Australia Incorporated:

“occupation” in relation to an employee, means the occupation of an employee of an employer other than a prescribed employer:

“trade or business” in relation to an employer, means an activity of an employer other than a prescribed employer:

“undertaking” in relation to an employer, means an activity of a prescribed employer.

**Inquiries by
the Commission
with reference
to Conciliation
Committees.**

54. (1) The Full Commission may inquire and report to the Minister—

(a) what Committees it recommends should be constituted for any industries and what should be the trade or business, undertaking, occupation or calling for each such Committee in accordance with the governing principles set out in section 55 of this Act;

(b) whether two, three or four members, representative of employers, together with an equal number of representatives of employees, should be appointed to a Committee;

- (c) whether the number of members of any existing committee should be altered but not so as to exceed the maximum number fixed by paragraph (b) of this subsection;
 - (d) what Committees should be dissolved;
 - (e) under the operation of which (if any) duly constituted Committees any class of employers or employees should for the future be placed;
 - (f) in relation to what area of the State a Committee should have jurisdiction to make awards;
- and
- (g) whether the description of the trade or business, undertaking, occupation or calling for which any Committee is appointed should be altered.

(2) The Full Commission may inquire and report on the matters referred to in subsection (1) of this section of its own motion or upon application made in the prescribed manner by—

- (a) an employer or employers who, in the opinion of the Full Commission, have a direct interest in the subject of such inquiry;
 - (b) not less than twenty employees who, in the opinion of the Full Commission, have a direct interest in the subject of such inquiry;
- or
- (c) a registered association whose members, in the opinion of the Full Commission, have a direct interest in the subject of such inquiry.

55. (1) The Full Commission, before recommending the appointment of a Committee, shall determine whether the general interests of the community will be best and most conveniently served by appointing a Committee for or in respect of the occupation or calling of any particular employee or class of employees employed in or in connection with a trade or business or undertaking or whether such interests will be best and most conveniently served by appointing a Committee for or in respect of all employees who are employed in and in connection with the particular trade or business or undertaking or whether such interests will be best and most conveniently served by placing some of such employees under the operation of a Committee covering all or some of the employees engaged in a particular occupation or calling and in cases of conflict the terms of an award of a Committee expressed to relate to the occupation or calling of any particular employee or class of employees, in such trade or business or undertaking shall prevail over the terms of an award of a

Governing
principles.

Committee expressed to relate to occupations or callings generally which in turn shall prevail over the terms of an award expressed to relate to a particular trade or business or undertaking.

(2) The Full Commission, before recommending that the area of the State in relation to which a Committee should have jurisdiction to make awards should extend beyond the metropolitan area, shall determine whether the general interests of the community and of the employers and employees engaged in the industry in the area concerned will be best and most conveniently served by so extending such jurisdiction, and in making its recommendation shall give effect to such determination.

Alteration of
area of
jurisdiction.

56. (1) If the Full Commission reports to the Minister that the area of the State in relation to which any existing Committee shall have jurisdiction to make awards shall be altered—

(a) the Minister shall publish in the *Gazette* and in a newspaper circulating in the City of Adelaide and another newspaper circulating in the area of the State affected by such report a notice setting out the substance of the report;

and

(b) upon that publication the Committee shall have jurisdiction to make awards extending throughout the area as altered.

(2) Until the Minister has published a notice in accordance with subsection (1) of this section in relation to a Committee that has jurisdiction to make awards throughout the metropolitan area that Committee shall continue to have jurisdiction to make awards throughout the metropolitan area and, as regards public service employees and railway employees and employees of any council throughout the State.

Operation of
report.

57. The report of the Full Commission shall remain in force until cancelled, varied, or added to by a subsequent report, and no new Committee shall be constituted except in accordance with the report of the Commission for the time being in force.

Members of
committees.

58. (1) Each Committee shall consist of a chairman and the number of members recommended by the Full Commission.

(2) One-half in number of such members shall be representatives of the employers and the other half shall be representatives of the employees.

(3) Except as provided in subsection (5) of this section, the representatives of the employers shall be actual employers or managing experts in one of the industries in respect of which the appointment of a Committee has been recommended.

(4) Except as provided in subsection (5) of this section, the representatives of the employees shall be actual employees in one of the industries in respect of which the appointment of a Committee has been recommended.

(5) Notwithstanding the provisions of subsections (3) and (4) of this section, one representative on each side may be appointed who does not hold the qualifications referred to therein but no such member shall be a legal practitioner.

59. (1) When the Full Commission has recommended the appointment or constitution of a new Committee or when the period for which a Committee has been constituted has terminated or is about to terminate, the Registrar shall give notice in the prescribed manner calling for nominations of members on such Committee.

Notice calling
for
nominations.

(2) Nominations referred to in subsection (1) of this section shall be made within the time and in the manner prescribed.

(3) When the Full Commission has recommended the appointment of additional members to a Committee the Registrar shall call for nominations for such additional members, and the provisions of subsections (1) and (2) of this section shall apply, *mutatis mutandis*.

60. (1) After the date for lodging nominations has passed the President of the Commission shall select the required number of members.

Selection of
members.

(2) If the employers or employees concerned duly submit the number of nominations required pursuant to subsection (1) of section 58 of this Act the President shall, having regard to the requirements of subsection (4) of this section, select the persons so nominated, unless he is satisfied that there is some reason why he should not do so.

(3) In the event of more nominations being received than there are members to be appointed, the Commission constituted by the President after taking such evidence as it may deem sufficient shall select the required number from the persons so nominated.

(4) In selecting members from the persons nominated the President shall endeavour to secure, as far as possible, a fair representation of the interests of all employers and employees concerned.

(5) In the event of insufficient nominations being received the President may select such qualified persons as have been nominated and such other qualified persons as may be necessary.

(6) The President, after selecting the members in accordance with the provisions of this section, shall forthwith cause to be forwarded to the Minister and to each of such members a notice containing the names and addresses of the selected members.

(7) The provisions of this section shall, with such modifications as may be necessary, apply to and in relation to the selection of members, whether for a new Committee or the re-constitution of a Committee or the selection of additional members of a Committee.

Allocation of
Commissioner
to act as
Chairman.

61. (1) As soon as possible after the selection of the members of a Committee, not being the selection of additional members, the President of the Commission shall allocate a Commissioner to act as chairman of the committee for a period determined by the President not being a period in excess of three years but notwithstanding such allocation the President may cancel the allocation at any time before the expiration of such period and may then allocate another Commissioner, or the President may allocate a Commissioner as an acting chairman without cancelling the existing allocation where for any reason the existing chairman is unable to act.

(2) The President shall cause notice of every allocation to be forwarded to the Minister and, where such allocation is an allocation made after the constitution of the Committee, the President shall cause notice thereof to be published in the *Gazette*.

(3) Upon the receipt of the notice of the allocation of the chairman and the notice of the selection of the members the Minister shall proceed to constitute the Committee in accordance with such notices and the report of the Full Commission.

Constitution.

62. (1) A Committee shall consist of—

(a) the chairman who shall be the Commissioner allocated as chairman of the Committee by the President pursuant to the provisions of section 61 of this Act;

and

(b) the members of such Committee who shall be the persons selected by the President pursuant to section 60 of this Act.

(2) The period for which a Committee is constituted shall be three years from the date when the Minister publishes the notice required by section 63 of this Act, and at the expiration of that period the members shall cease to hold office.

(3) Subject to subsection (1) of section 61 of this Act, the chairman shall hold office for the period determined pursuant to that subsection.

Publication of
notice con-
stituting
Committee.

63. (1) The Minister shall, in relation to each Committee, publish in the *Gazette* a notice which—

- (a) shall, in accordance with the report of the Full Commission, specify the business, undertaking, occupation or calling in respect of which the Committee is appointed;
- (b) shall set out the names and addresses of the chairman and of the members of the Committee;
- (c) may include a direction that such Committee may be described for all purposes by a specified short title;
- and
- (d) shall, if the report of the Full Commission specifies the area of the State in relation to which the Committee shall have jurisdiction, specify such area.

(2) Upon the publication of such notice the Committee shall be duly constituted.

(3) Where the President of the Commission following a report from the Full Commission, has selected additional members on a Committee the Minister shall, upon receipt of notice from the President, publish in the *Gazette* a notice setting out the names and addresses of the additional members, and upon publication of the notice the members shall be deemed to be duly appointed to the Committee, and shall hold office until the expiration of the term of office of the original members of the Committee.

64. (1) If the Full Commission reports to the Minister that the constitution or the short title of any Committee should be changed the Minister shall publish in the *Gazette* notice thereof and upon the expiration of fourteen days after such publication such change shall become operative.

Change in
constitution of
Committee.

(2) Where the report is to the effect that any particular class of employers or employees should for the future be subject to the jurisdiction of an existing committee the employers or employees to whom the report relates shall, until fourteen days after the publication in the *Gazette* of a new award relating to them, be subject to the existing award (if any) relating to them.

(3) Nothing contained in this section shall affect the appointment of the members of the Committee or the period for which they hold office.

65. The Minister may—

(a) whenever necessary to give effect to a report of the Full Commission—

(i) dissolve a Committee;

or

Dissolution of
Committees,
cancellation of
awards and
removal of
members.

(ii) cancel any award of a Committee, or any part of such an award;

or

(b) on the recommendation of the President of the Commission, remove any member of a Committee from his office on the ground that such member is seriously ill or is ill and that his illness will probably be prolonged, or is of unsound mind, or is in prison, or has abandoned his residence in the State, or is not properly discharging his duties as a member of such Committee, or (not being a member appointed pursuant to subsection (5) of section 58 of this Act) does not hold the necessary qualification.

Vacancies and filling of vacancies on Committees.

66. (1) If the chairman ceases at any time to hold office as a Commissioner he shall thereupon cease to hold office as chairman.

(2) A member of a Committee and the chairman, with the approval of the President of the Commission, may resign by writing under his hand addressed and forwarded to the Minister.

(3) Where from any cause the chairman of a Committee ceases to hold office as chairman, the President of the Commission shall either re-allocate such Commissioner or allocate another Commissioner as chairman of the Committee, inform the Minister of such allocation, and publish notice thereof in the *Gazette*.

(4) Where from any cause a member of a Committee ceases to hold office, the Minister may appoint a duly qualified person, who shall be recommended by the President of the Commission to his office for the remainder of the period for which such member was appointed but, if within twenty-one days of the receipt by the Minister of notification of such vacancy, a majority of the members on the Committee representative of the employers or employees, as the case may be, nominates a qualified person to be appointed to fill such vacancy, the Minister shall appoint the person so nominated unless the Minister is of the opinion that by the appointment of the person so nominated a fair representation of the interests of all employers or employees concerned would not be maintained in which event the Minister shall refer the matter to the President of the Commission and the President shall recommend a person to be appointed to fill the vacancy.

(5) The Minister shall publish in the *Gazette* a notice of the appointment of any member to fill a vacancy on a Committee.

67. (1) During a vacancy in the office of a member of a Committee the continuing members may, unless a member objects, act as if no vacancy existed.

Effect of
vacancy.

(2) Where a person is appointed to any vacancy on a Committee, the Committee as newly constituted may, if no member of the Committee objects, continue the consideration of and may determine any part-heard matter.

68. This Act shall apply to and in relation to a conciliation committee in operation under Part V of the Industrial Code, 1967-1972, in all respects as if that conciliation committee were a Committee constituted under this Part and that this Act had been in operation on the day on which that conciliation committee was constituted.

Continuation
of previous
conciliation
committees.

DIVISION II—JURISDICTION AND DUTIES OF COMMITTEES

DIVISION II

69. (1) A Committee, on any direction or application to it, shall with respect to the industry and area of the State in relation to which it has been constituted, have jurisdiction—

Jurisdiction of
Committees.

- (a) to deal with any industrial matter pursuant to this Part and to make an award concerning any such industrial matter;
- (b) to rescind or vary any award made in respect of such industry;
- (c) to authorize by award that preference in employment shall, in relation to such matters, in such manner and subject to such conditions as are specified in the award, be given to members of a registered association of employees;
- (d) to include in any award provisions setting out the procedure to be adopted in the settlement of any industrial dispute but any such provision shall not be held or construed as limiting, restricting or affecting the exercise or performance of the jurisdiction or powers of the Commission or Committee in relation to any such dispute;
- (e) to authorize by award an official of a registered association of employees who are subject to the award concerned to inspect time books and wages records of an employer subject to the award subject to that official giving the employer the notice, if any, prescribed in the award;
- (f) to appoint a board of reference in the same manner and subject to the same conditions and rights of appeal as the Commission may appoint such a board;

and

(g) to direct that an award shall have effect on and from a day that occurred before the day on which the award was made, being a day not earlier than the day on which the matter first came before the Committee,

but a Committee shall not have jurisdiction to deal with or include in an award any provision or matter which the Commission, if the matter were before it, would not be empowered to include in its award or order, or which is not included in the direction or application, nor may a Committee determine annual salaries.

(2) A Committee shall not in any award fix wages or rates in respect of adult employees which do not secure the payment of the living wage, for the time being in force, to those employees.

Oath to be
taken by
members.

70. (1) Each member of a Committee shall, upon his appointment, take an oath not to disclose at any time any matter or evidence before the Committee relating to—

- (a) trade secrets;
 - (b) the profits or losses or the receipts and outgoings of any employer;
 - (c) the books of an employer or witness, produced before the Committee;
- or
- (d) the financial position of any employer or of any witness,

but it shall not be necessary for a member of a Committee who has been re-appointed on the expiration of the term of a Committee of which he has been a member to take a further oath.

(2) Any person who, having taken an oath in pursuance of the provisions of subsection (1) of this section, violates such oath shall be guilty of an offence against this Act and liable to a penalty not exceeding one thousand dollars, and, on conviction of such offence, shall cease to hold office as a member of the Committee.

(3) A person who has been appointed as a member of a committee shall not, before first sitting as a member thereof, fail to take an oath in pursuance of the provisions of subsection (1) of this section.

Penalty: Twenty dollars.

Failure of
member of
Committee to
attend meetings,
etc.

71. Where the President of the Commission is satisfied on a report from the chairman of a Committee that a member of that Committee—

- (a) has, without leave of the chairman of the Committee, failed to attend two consecutive meetings of the Committee;
- or
- (b) being present at a meeting of the Committee, has failed to vote on any matter required to be voted upon by members of the Committee,

the President of the Commission may by order remove that member from office and upon the making of such an order the office of that member shall become vacant.

72. (1) Any member of a Committee shall, on making application in the prescribed form, be reimbursed such fares and out-of-pocket expenses incurred in attending a meeting of the Committee as are approved by the Minister.

Wages and
expenses of
members

(2) No employer shall make any deductions from the remuneration of any employee in respect of any time for which the employee is necessarily absent from his employment for the purpose of attending a meeting of a Committee of which the employee is a member.

Penalty: One hundred dollars.

DIVISION III—PROCEDURE OF CONCILIATION COMMITTEE

DIVISION III

73. (1) Proceedings before a Committee shall be commenced by—

Commence-
ment of
proceedings.

- (a) a direction of the President of the Commission under section 75 of this Act;
- or
- (b) an application made to the Committee by employers or employees in the industry for which the Committee has been constituted.

(2) Any application to the Committee shall be in the prescribed form and shall be signed—

- (a) on behalf of the Public Service Board, as regards public service employees;
- (b) by an employer or employers of not less than twenty employees in the industry or of not less than seventy-five per cent of the employees in the industry, whichever is the lesser;

- (c) by not less than twenty employees in the industry or not less than seventy-five per cent of the employees in the industry, whichever is the lesser;
- (d) on behalf of a registered association of employers the members of which employ not less than twenty employees in the industry or not less than seventy-five per cent of the employees in the industry, whichever is the lesser;
- (e) on behalf of a registered association of employees, of which association not less than twenty members are employees in the industry, or not less than seventy-five per cent of the employees in the industry are members, whichever is the lesser;

or

- (f) by The South Australian Railways Commissioner as regards railway employees.

(3) A Committee shall meet at the times, days and places fixed by the chairman, who shall cause notice thereof to be given to each member and the Committee shall, in such manner as it thinks fit, expeditiously and carefully inquire into the matters before it and anything incidental thereto or affecting the merits thereof.

(4) For the purposes of paragraphs (b), (c), (d) and (e) of subsection (2) of this section a Committee may have regard to the records (if any) contained in the annual report of the permanent head or to a certificate from him as to the number of employees in a particular industry.

Quorum and
voting at
meeting.

74. (1) Unless otherwise provided by this Act—

- (a) at any meeting of a Committee composed of four members and the chairman, at least one of the members representative of employers and at least one of the members representative of employees may, at the discretion of the chairman, form a quorum of such Committee for the purposes of any of its meetings but if any matter shall be put to the vote the voting power of the employer and employee members shall be taken to be equal;
- (b) at any meeting of a Committee composed of six members and the chairman, at least two of the members representative of employers and at least two of the members representative of employees may, at the discretion of the chairman, form a quorum of such Committee for the purposes of any of its meetings but if any matter shall be put to the vote, the voting power of the members representative of employers and employees shall be taken to be equal;

and

(c) at any meeting of a Committee composed of eight members and the chairman, at least three of the members representative of employers and at least three of the members representative of employees may, at the discretion of the chairman, form a quorum of such Committee for the purposes of any of its meetings but if any matter shall be put to the vote, the voting power of the employer and employee members shall be taken to be equal;

(2) A Presidential member of the Commission may direct that the provisions of paragraphs (a), (b) and (c) of subsection (1) of this section shall not apply to any particular Committee for any meeting or meetings and may direct what provision shall apply in lieu of such of those provisions as would otherwise be applicable and that direction shall have effect as if it were enacted in this Act.

(3) At any meeting of a Committee, the chairman shall preside and shall endeavour to bring the members to an agreement with respect to the matters referred to in the application or direction, and may make all such suggestions and do all such things as he deems right and proper for inducing the members to come to a fair and amicable settlement of such matters within the ambit of such application or direction.

(4) If the chairman has been unable to bring the majority of the members of the Committee to an agreement with respect to any matter referred to in an application or direction to the Committee, he shall appoint a time and place for the hearing and determination of the matter and at that hearing the chairman shall have and may exercise all the powers and functions of the Commission as if the matters were within the jurisdiction of the Commission but, the chairman shall not, pursuant to this subsection, have power to deal with any matter or thing that would not be within the jurisdiction of the Committee.

75. If—

Provision for
urgent matter.

(a) a Committee by reason of not being properly constituted, is not competent to act, or a Committee has not been re-constituted, and an urgent matter has arisen which, in the opinion of the President of the Commission, should be dealt with pending the re-constitution of the Committee;

or

- (b) a Committee, or the chairman thereof, or not less than one-half of its members, reports to the President that the Committee is unable to exercise or discharge some or any of its powers and duties,

the President may direct that such matter be dealt with or such powers and duties be exercised by the Commission or the Committee, constituted as directed by the President, and the award of such Commission or Committee shall have the force and effect of an award of the Committee, but if the Committee is not constituted the award shall specify a period of operation not exceeding six months.

DIVISION IV DIVISION IV—PUBLICATION, DURATION AND APPLICATION OF AWARDS
OF CONCILIATION COMMITTEES

Making of
award.

76. (1) Where a Committee has agreed on the matters before it, or where a Commissioner, or the Full Commission pursuant to a direction under section 101 of this Act has decided the matters in dispute, the chairman of the Committee in question shall make an award incorporating the matters agreed upon before the Committee, and those decided by the Commissioner or by the Full Commission, as the award of the Committee.

(2) Such award—

(a) shall be signed by the chairman and forwarded by him to the Registrar;

(b) shall be forthwith published by the Registrar in the *Gazette*; and

(c) shall be binding on all employers and employees in the industry specified therein within the area of the State prescribed by the award, which however shall not extend outside the area in relation to which the Minister has constituted the Committee, and, if no area is specified in the award, the area shall be that for which the Committee concerned has jurisdiction to make the award.

Period of
operation of
awards.

77. (1) Subject to subsection (2) of this section, an award of a Committee shall, unless previously cancelled or rescinded, continue in force during the period specified therein, which period shall in no case be expressed to extend beyond two years from the day on which it was expressed to take effect.

(2) After the expiration of the period so specified an award shall remain in force until a new award for the same industry made by the same or a subsequent Committee comes into force, unless it has been previously cancelled or rescinded.

PART VI

PART VI

GENERAL CONDITIONS OF EMPLOYMENT

78. (1) The Full Commission shall upon an appropriate application made therefor insert, by way of variation or otherwise, in any award or industrial agreement (which has been referred to the Full Commission pursuant to section 110 of this Act) that fixes rates of wages for adult male and adult female employees performing work of the same or a like nature and of equal value, provisions for equal pay as between the sexes based upon the principles set out in this section.

Equal pay for
males and
females in
certain
circumstances.

(2) Where the Full Commission is satisfied that adult male and adult female employees are performing work of the same or like nature and of equal value the same rates of wages shall be fixed irrespective of the sex of the employees but such wages may be increased by stages to equality, but this subsection shall not be construed as requiring the same rates for male and female employees to be fixed only where such male and female employees are performing work of the same or like nature and of equal value.

(3) Except as specifically provided in this section nothing herein contained shall limit or in any way affect the powers, authorities, duties and functions conferred or imposed on the Full Commission by or under this Act in respect of any provision relating to rates of wages for adult females but in the exercise or performance of such powers, authorities, duties or functions the Full Commission shall not in any award or industrial agreement, which fixes or contains provisions relating to rates of wages for male and female employees performing work of the same or a like nature and of equal value, insert any provisions relating to rates of wages for adult females less favourable to the female employees than the provisions prescribed by this section.

(4) The Registrar may upon application made as prescribed amend the terms of any award or industrial agreement affecting rates of wages to the extent necessary to give effect to subsection (2) of this section and the Registrar may refer any such application or any matter arising out of any such application or arising under this subsection to the Commission for direction.

(5) This section shall apply to and in respect of awards and industrial agreements whether made before or after the commencement of this Act.

79. (1) The Commission or a Committee may include in any award a provision that the contract of hiring of every person employed in a particular industry shall be a hiring by the hour, day, week or any other period specified in such award.

Declaration as
to terms of
contract.

(2) The contract of hiring of every person employed in an industry covered by an award but in which no provision has been made under subsection (1) of this section, shall be, in the absence of an express contract for some other specified period, a contract of hiring by the week.

(3) Except where the contract of hiring is for a period less than by the day, wages shall accrue from day to day.

Sick leave.

80. (1) Every full-time employee who is unable to attend or remain at his place of employment by reason of illness and who complies with the terms and conditions prescribed by the regulations shall be granted by his employer paid leave not exceeding the sick leave credit of that employee.

(2) For the purposes of this section the sick leave credit of an employee with an employer shall be determined by adding to the accumulation of the leave, if any, of a kind prescribed by subsection (1) of this section standing to the credit of that employee with that employer, pursuant to any award or industrial agreement, immediately before the commencement of this Act, the amount of leave that the employee is entitled to be granted by the employer pursuant to this section, and deducting from the total so obtained the amount of that leave that has, pursuant to this section, been so granted by the employer.

(3) In respect of—

(a) the first year of service with an employer that follows the commencement of this Act, an employee shall be entitled to a grant of leave under this section by that employer at the rate of ten days on full pay per year;

and

(b) the succeeding years of continuous service with that employer, an employee shall, on or after the commencement of each such year, be entitled to a grant of leave under this section by that employer equal to ten days on full pay.

(4) For the purposes of calculating the amount of leave to which an employee is entitled pursuant to paragraph (a) of subsection (3) of this section the service of that employee with his employer shall be regarded as the number of complete weeks service served by that employee with that employer.

(5) Where an award or industrial agreement—

(a) does not provide for the grant of sick leave;

or

(b) provides for the grant of sick leave in terms or on conditions less favourable to employees than the terms and conditions provided for by this section,

then on the application of a party bound by the award or industrial agreement that award or industrial agreement shall be amended to provide for the grant of sick leave in terms and conditions no less favourable to the employees than the terms and conditions provided for by this section.

(6) This section does not apply to employees of a prescribed employer or to an employee who in the terms of his employment receives an allowance or loading in lieu of sick leave.

81. (1) Every full-time employee, other than an employee of a prescribed employer, whose wages or other conditions of employment are not governed by an award or industrial agreement or an award or agreement under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth, shall unless he receives an allowance or loading in lieu of annual leave be granted by his employer such period of recreation leave for each year of continuous employment that commences after 1st January, 1972, as is the general standard, determined for the purposes of this section by the Full Commission from time to time.

Granting of and
payment for
annual leave.

(2) Such leave, or a payment in lieu of leave or proportionate leave on termination of employment, shall be granted in accordance with the requirements and subject to the conditions set out in the general standard determined by the Full Commission from time to time.

(3) The general standard determined by the Full Commission from time to time shall be published by the Commission in the *Gazette* and the production of the *Gazette* containing such a determination shall be proof of such standard.

(4) Every employee shall, in respect of annual leave, whether granted pursuant to this section or to an award, be entitled to payment in lieu of annual leave or proportionate leave on termination of employment and such payment shall be made irrespective of the reason for, or the manner of, such termination.

(5) The Full Commission shall upon application by the Minister from time to time determine the general standard of the period of annual leave for the purposes of this section.

82. Notwithstanding any other provisions of this Act the Commission or a Committee may, upon an appropriate application to it, insert in an award, whether by variation of an existing award or in a new award, provisions relating to the following matters—

Provisions
relating to
automation.

- (a) the obligations, duties and responsibilities of any employer upon the introduction or proposed introduction by that employer of automation or other like technological changes in the industry in relation to which he is an employer;

- (b) the employees to whom notices of termination of service (being not less than three months) are to be given on account of such introduction or proposed introduction and the form and effect of such notices and the consequences of failure to give such notices including, without limiting the generality of the foregoing, requirements that the ordinary rate of pay shall be paid for a period being the difference between the notice given and that required to be given under the provisions inserted in the award pursuant to this section and the period of notice to be given shall be deemed to be service with the employer for the purposes of the Long Service Leave Act, 1967, as amended;
 - (c) the notification to be given by the employer to the permanent head of such notices of termination of services;
- and
- (d) such other matters as the Commission or a Committee deems relevant to or consequential upon the matters referred to in paragraphs (a), (b) or (c) of this section.

Application of
certain awards.

83. (1) Where an employee performs two or more classes of work and the remuneration for such classes of work has been fixed by an award or awards, his employer, if bound by such award or awards, shall pay such employee in respect of the time occupied in each class of work remuneration at the rate fixed by the award or awards applicable to such class of work but nothing contained in this subsection shall prevent the insertion, or the operation thereof, of a clause in an award or order prescribing different rates of pay for an employee who performs different classes of work within the ambit of such award or order.

(2) Where an employee, during the same day, is employed partly at a class or classes of work for which remuneration has been fixed by an award or awards binding on the employer, and also partly at work for which no remuneration has been fixed by such an award or awards the employer shall pay the employee for such day's work as follows:—

- (a) for the time occupied in each class of work for which remuneration has been fixed by any such award or awards remuneration at the rate so fixed;
- (b) for the time occupied in work in any industry for which no remuneration has been fixed by any such award or awards remuneration at the rate fixed by the award applicable to the other portion of such day's work, or, if more than one such rate is so applicable, then at the higher or highest of the remunerations or the rates fixed by such award or awards but if an industrial

agreement, which is binding on the employer as regards such employee, fixes remuneration for the work for which no remuneration has been fixed by such an award, the remuneration payable for the time occupied in such work shall be fixed by such industrial agreement.

(3) Where an employee who works in the metropolitan area for his employer at work which is covered by an award limited to the metropolitan area, at the request of his employer performs similar work outside the metropolitan area which work is of the type covered by an award limited to areas outside the metropolitan area and which is binding on the employer, such last mentioned award shall apply to such work performed outside the metropolitan area if the employee so works for a week or more on any one occasion, but if such work is for less than a week's duration the award limited to the metropolitan area shall continue to apply.

(4) Where an employee who works outside the metropolitan area for his employer at work which is covered by an award limited to areas outside the metropolitan area, at the request of his employer, performs similar work inside the metropolitan area which work is of a type covered by an award limited to areas inside the metropolitan area and which is binding on that employer, such last mentioned award shall apply to such work performed inside the metropolitan area if the employee so works for a week or more on any one occasion, but if such work is for less than a week's duration the award limited to outside the metropolitan area shall apply.

84. All the time during which an apprentice or improver has worked at the industry in which he is for the time being employed shall be reckoned in calculating his experience, whenever by an award his wages are to vary in accordance with his experience.

Experience of
apprentice, etc.
how calculated.

85. Every employer liable to pay wages or make other payments under an award or agreement may, if so authorized by the award or agreement, deduct from the amount payable to such employee—

Allowable
deductions
from wages.

(a) any amount agreed to be paid by such employee for or towards the establishment or maintenance of a sick, accident or welfare fund for the benefit of the employees of such employer but—

(i) no such deduction shall be lawful or be made unless the Public Actuary has certified that the scheme for the distribution of such fund is equitable, and in the interests of, and for the benefit of such employees;

and

(ii) no amount paid to any employee out of such fund shall limit or affect any right, whether at common law or under the provisions of the

Workmen's Compensation Act, 1971, as amended, or the Wrongs Act, 1936, as amended, which that employee may have against his employer or any other person to receive compensation or damages in respect of any accident;

(b) any amount payable by such employee at his request to any organization registered as a medical benefits organization or a hospital benefits organization under the *National Health Act* 1953-1970 of the Commonwealth or the regulations thereunder or any amendments thereof;

or

(c) any amount payable by such employee at his request in respect of insurance premiums, association subscriptions or contributions to any superannuation scheme or for rent, board and lodging, protective clothing or equipment or allowances.

Consolidation
of awards.

86. (1) Where an award has been varied by one or more awards or orders and as so varied is in force, the Registrar may, at any time of his own motion, or, if so directed by the Commission or the Committee concerned, shall, consolidate such award or awards or orders and such consolidation shall include any variations of the award made under this Act.

(2) In consolidating an award pursuant to subsection (1) of this section the Registrar may correct any clerical or patent errors.

(3) The Registrar shall publish in the *Gazette* any award so consolidated.

(4) Notwithstanding any other provisions of this Act, a consolidated award of the Commission shall be binding on the persons and associations on whom or on which the awards so consolidated were binding, and any consolidated award of a Committee shall be deemed to have been made by that Committee.

Effect on legal
proceedings of
amendment of
award.

87. The alteration, variation or rescission of an award shall not affect—

(a) legal proceedings theretofore commenced in relation to such award;

or

(b) rights existing at the time of such alteration, variation or rescission.

Aged, slow,
inexperienced,
or infirm
workers.

88. (1) The permanent head, or any officer authorized by him may, on application, by an aged, slow, inexperienced, or infirm worker grant that worker a licence to work at a wage less than that fixed by the award.

(2) The permanent head or other officer shall not grant such licence until satisfied that such worker is, by reason of age, slowness, inexperience, or infirmity, unable to obtain employment at the wage fixed by the award.

(3) Such licence—

(a) shall specify the wage at which such worker is licensed to work;

(b) may be renewed;

and

(c) shall be in force for a period specified therein not exceeding twelve months from date of issue or renewal.

(4) An appeal shall lie to the Commission constituted by a Presidential member from a refusal by the permanent head or such other officer to grant such licence.

(5) On such appeal such Commission may—

(a) uphold the decision;

or

(b) fix the wage and direct the permanent head or other officer to issue a licence.

(6) No employer shall, without the consent of the Commission, employ any number of licensed aged, slow, inexperienced, or infirm workers exceeding one-fifth of the whole number of persons employed by him in the particular industry at the wage fixed for adults or at piece-work rates.

(7) Notwithstanding subsection (6) of this section, any employer may employ one such licensed worker.

(8) No person shall pay or offer to pay any such aged, slow, inexperienced, or infirm worker a wage lower than that specified in such licence.

Penalty: One hundred dollars.

89. (1) Notwithstanding anything in this Act, no award shall apply to or in relation to work performed by a person being assisted or trained in—

(a) a sheltered workshop;

(b) charitable institution;

or

(c) institution for the blind,

which has, for the time being, been declared by proclamation to be a workshop or institution to which this section applies.

Non-application
of certain
awards.

(2) The Governor may by proclamation published in the *Gazette* declare a sheltered workshop, charitable institution or institution for the blind to be a workshop or institution to which this section applies and may by proclamation published in a like manner revoke or vary any such declaration.

(3) This section shall apply to and in relation to a workshop or institution proclaimed for the purposes of section 83 of the Industrial Code, 1967, as amended, in all respects as if that workshop or institution were a workshop or institution declared by proclamation to be a workshop or institution to which this section applies.

**Declared
organization.**

90. (1) Where the Minister is satisfied that—

- (a) the objects of an organization are charitable, religious or non-profit making;
- and
- (b) it is in the public interest that he should exercise his powers under this subsection,

the Minister may by notice published in the *Gazette* declare that organization to be an organization to which this section applies and by a notice published in a like manner, revoke or amend any such declaration.

(2) Notwithstanding anything in this Act, no award shall operate in relation to an organization for the time being declared to be an organization to which this section applies.

**Overlapping
awards, etc.**

91. Notwithstanding anything to the contrary contained in this Act or in any award or order of the Commission or a Committee where any employees or association of employees are bound by the provisions of an award or order of the Commission or a Committee, and whilst so bound file a plaint in the Commonwealth Conciliation and Arbitration Commission, or make application to that Commission for the summoning of a compulsory conference, then, in the event of that Commission making an award or order dealing with an industrial matter, or any part thereof, which is covered by an award or order of the Commission or a Committee, such last-mentioned award or order shall, as regards all employees and associations who are bound by the award or order of the Commonwealth Conciliation and Arbitration Commission, become null and void, but without prejudice to any rights, liabilities, or obligations theretofore accrued or incurred.

PART VII

PART VII

APPEALS AND REFERENCES

DIVISION I—THE COURT

DIVISION I

92. (1) For the purposes of this Act the Full Court shall be the Court constituted of not less than two Judges. Full Court.

(2) Where an appeal is made to the Full Court constituted of two Judges unless that appeal is upheld by both such Judges that appeal shall not be allowed.

(3) No order or decision or proceedings of any kind of the Full Court shall be challenged, appealed against, reviewed, quashed or called in question save on the ground of excess or want of jurisdiction before the Full Court as defined for the purposes of the Supreme Court Act, 1935, as amended.

93. (1) Except as is provided by subsection (2) of this section an appeal shall lie from any order or decision of the Court constituted of a single Judge to the Full Court and shall be made in the manner and within the time prescribed in the Rules. Appeal to Full Court.

(2) An appeal shall not lie from an order or decision of the Court constituted of a single judge where that order or decision relates to an appeal against an order or decision of the Court constituted of an Industrial Magistrate.

(3) On the hearing of an appeal the Full Court may—

(a) confirm, quash or vary the order or decision appealed against;

or

(b) refer the order or decision appealed against to the Court from whence the appeal arose for reconsideration or with a direction whether conditional, contingent or otherwise to make some other order and with or without such other directions and suggestions as it thinks fit.

94. (1) An appeal shall lie from any decision or order of the Court constituted of the Industrial Magistrate to the Court constituted of a single Judge. Appeal to Court from decision of Industrial Magistrate.

(2) On the hearing of an appeal the Court may—

(a) confirm, quash or vary the order or decision appealed against;

or

(b) refer the decision or order appealed against to the Court from whence the appeal arose for reconsideration or with a direction whether conditional, contingent or otherwise to make some other order and with or without such other directions and suggestions as it thinks fit.

PART VII
DIVISION I

(3) An appeal under subsection (1) of this section shall be commenced within fourteen days of the day upon which the order or decision appealed against was made or given.

DIVISION II

DIVISION II—THE COMMISSION AND COMMITTEES

Decision of
tribunal to
be final.

95. Except as is provided by section 96 of this Act—

(a) every award, order or decision of the Commission or a Committee shall be final and no such award, order or decision shall be removed to any other court;

and

(b) no award, order or proceeding of any kind whatsoever of the Commission or a Committee shall be challenged, appealed against, reviewed, quashed or called in question save on the ground of excess or want of jurisdiction.

Right of
appeal.

96. (1) There shall be an appeal—

(a) against the whole or part of an award or a decision of a Committee or chairman of a Committee exercising the powers of the Commission or the Commission comprised of a single member including an order made by the Commission pursuant to section 110 of this Act;

(b) in respect of the omission, failure or refusal of a chairman of a Committee exercising the powers of the Commission or a Committee or the Commission comprised of a single member to include in an award any matter which if included would have been within his or its jurisdiction;

and

(c) against the whole or part of the award of a Committee, the chairman of a Committee or the Commission constituted by a single member, challenging or disputing the award or part thereof on the ground of illegality.

(2) Such appeal shall be made to and shall be heard by the Full Commission.

Persons
entitled to
appeal.

97. An appeal under section 96 of this Act may be made—

(a) in the case of an appeal from a decision of a Committee, by the majority of the members representative of employers or the majority of the members representative of employees, on the Committee;

- (b) by an employer or group of employers employing not less than twenty employees subject to the award appealed against or not less than one-quarter of the total number of employees subject to the award, whichever is the lesser;
- (c) by not less than twenty employees subject to the award appealed against or not less than one-quarter of the total number of employees subject to the award whichever is the lesser;
- (d) by a registered association which is, or some of the members of which are, subject to the award appealed against;
- (e) by any prescribed employer subject to the award appealed against;
- (f) by any person or association interested if the appeal is an appeal only challenging or disputing the whole or a part of the award on the ground of illegality;

or

- (g) by any of the parties concerned where the appeal is against a decision or order made by the Commission in the exercise of the jurisdiction conferred on it by paragraph (b) of subsection (1) of section 25 of this Act.

98. (1) Any appeal shall be made in the prescribed manner and— Hearing of appeal.

- (a) unless it is made solely on the grounds of illegality, the notice of appeal shall be lodged not later than twenty-one days after the publication of the award appealed against in the *Gazette*;
- (b) if the appeal is in respect of a decision or the omission, failure or refusal of a Committee or the Commission constituted by a single member to include in an award any matter which if included would have been within his or its jurisdiction and it will not be followed by the publication in the *Gazette* of the award, the notice of appeal shall be lodged within forty-two days after the date of such decision, omission, failure or refusal, as the case may be.

(2) The notice of appeal—

- (a) shall specify the part or parts of the award or decision against which such appeal is lodged, the grounds relied upon and the relief sought;

and

- (b) shall, if or to the extent that the appeal is lodged in respect of the omission, failure or refusal of the Committee or the Commission constituted by a single member or in respect of the illegality of the award, specify such omission, failure, refusal or illegality and the relief sought.
- (3) On the hearing of an appeal the Full Commission may—
- (a) take fresh evidence;
 - (b) confirm, quash or vary the whole or part of the award or decision which is under appeal;
 - (c) direct a Commissioner to furnish a report with respect to a specified matter, and the Commissioner to whom the direction is given shall, after making such investigation as is necessary, furnish a report accordingly;
 - (d) refer the whole or part of the award or decision (whether the subject of the appeal or not), or the omission, failure or refusal appealed against or the matter in issue, to the Commission constituted by a single member or to the Committee to make an award or for reconsideration or with a direction whether conditional, contingent or otherwise to make some other order with or without such other directions or suggestions as it thinks fit;
 - (e) make an award dealing with the matters under appeal, but no such award shall include any provision which would be outside the powers of the Committee or the Commission constituted by a single member (as the case may be);
 - (f) subject to this Act, fix a date as from which any award or variation of any award made by the Committee or the Commission constituted by a single member shall come into operation;
- or
- (g) dismiss the appeal or any part thereof.
- (4) When an award is in any way altered or added to on appeal, the award of the Full Commission shall be drawn up so as to set out the relevant part or the whole of such award as so altered or added to, the date (if any), fixed by the Full Commission upon or from which such alteration or addition shall come into operation and the period of operation or the award may be drawn up so as to consolidate the award including any award made subsequently to the making of the appeal.

(5) Such award as so altered, added to or consolidated shall be published in the *Gazette*, and shall thereupon be deemed to be and take effect as the award of the Commission or the Committee as the case may be.

(6) When any award of the Full Commission confirms or quashes the award of a Committee or the Commission, a notice of such confirmation or quashing shall be published in the *Gazette*.

(7) Until the Full Commission has given its decision on an appeal, neither the Commission nor the Committee shall have power to alter or rescind the part of the award under appeal.

99. (1) When an appeal has been made against an award or part thereof, the Full Commission may on such terms and conditions as it thinks fit order that the operation of the whole or any specified part or parts of the award shall be stayed, pending the decision on the appeal or until further order of the Commission.

Stay of
operation of
award.

(2) Where an award was in existence prior to the making of the award under appeal, the Full Commission may on making the order referred to in subsection (1) of this section restore the comparable provisions of that prior award and may, if it considers it necessary so to do, modify any of such provisions until the appeal shall have been determined and in the event that the appeal is dismissed, the provisions of the award under appeal shall be restored retrospectively to the date from which they would have operated but for the stay order.

(3) Where no award existed prior to the making of the award under appeal, or where no comparable provisions appeared in an award that was in existence prior to the making of the award under appeal in addition to granting a stay order the Full Commission may make such interim award in relation to the provisions under appeal as it thinks proper in the circumstances, and, if the appeal is dismissed, then the provisions of the award under appeal shall be restored retrospectively to the date from which they would have operated but for the stay order.

(4) The powers conferred on the Full Commission by subsections (1), (2) and (3) of this section may be exercised on behalf of the Full Commission by any member thereof.

(5) If the appeal is allowed, either in whole or in part, then the Full Commission may make such order as it thinks proper and such order shall operate retrospectively to the date from which the award would have operated but for the stay order except where the appeal concerned the day from which the award was to operate.

PART VII
DIVISION IIReference by
Minister to
Commission.

100. (1) The Minister may refer any award of a Committee or any part thereof for consideration by the Full Commission.

(2) Upon any such reference the Commission shall deal with it in the same manner as if it were an appeal pursuant to section 96 of this Act.

Reference of
matters to Full
Commission.

101. (1) Whenever the Commission, comprised of a single member, is exercising any jurisdiction under this Act, and whenever a Commissioner is dealing with a matter as the chairman of a Committee, the Commission or the Commissioner may, upon its or his own motion and shall, if so requested by any party or a member of the Committee, consult with the President of the Commission as to whether such matter should be dealt with by the Full Commission, and the President after having been so consulted, shall determine whether or not the matter shall be so dealt with and direct accordingly.

(2) Whenever the Commission is constituted by the President, he shall hear any such request as is referred to in subsection (1) of this section, or may, of his own motion, determine whether or not the matter shall be so dealt with and direct accordingly.

(3) The Full Commission may, for the purposes of this section, direct a Commissioner to furnish a report with respect to a specified matter, and the Commissioner to whom the direction is given shall, after making such investigation or inspection as is necessary, furnish a report accordingly, and the Full Commission may act on such report.

(4) Where an industrial matter being dealt with under this section, was previously—

(a) before a member of the Commission, the Full Commission may, in addition to the powers elsewhere conferred on it, order the member of the Commission to deal with it in accordance with such directions or suggestions as the Full Commission thinks fit;

or

(b) before a Committee or a Commissioner pursuant to Part V of this Act, the Full Commission may, in addition to the powers elsewhere conferred on it, order the Committee or member of the Commission to deal with it in accordance with such directions or suggestions as the Full Commission thinks fit.

(5) The member of the Commission or, as the case may be, the Committee referred to in subsection (4) of this section is empowered to and shall do all things necessary to give effect to any decision of the Full Commission pursuant to this section.

102. (1) Notwithstanding the provisions of section 95 of this Act, any question of law arising in any proceedings before the Commission or a Committee under this Act may, in the discretion of the person presiding over such proceedings, be referred to the Court for determination.

Reference of
questions of
law to court.

(2) The Court shall determine the question of law referred to under subsection (1) of this section and shall return the matter to the Commission or, as the case may be, the Committee with its opinion or direction and the Commission or Committee shall give effect to that opinion or direction accordingly.

DIVISION III—THE REGISTRAR

DIVISION III

103. In this Division—

Definitions.

“Full Commission” means the Commission constituted of two Presidential Members and one Commissioner:

and

“matter” does not include the settling by the Registrar of the minutes of an order or judgment of the Court or the taxation by the Registrar of the costs of proceedings before the Court.

104. The Full Commission may grant leave to appeal to the Full Commission from an act or decision of the Registrar in relation to a matter before him and the Full Commission may hear and determine an appeal in respect of which leave is so granted.

Leave to appeal
from decision
of the Registrar

105. (1) Where leave to appeal has been granted under this Division, the Full Commission may, on such terms and conditions as it thinks fit, make an order that the operation of the act or decision of the Registrar be stayed pending the determination of the appeal or until further order of the Full Commission.

Appeals.

(2) The Full Commission may take further evidence for the purposes of an appeal under this Division.

(3) Upon the determination of an appeal under this Division by the Full Commission, the Full Commission shall make such order as it thinks fit and may confirm, quash or vary a decision of the Registrar appealed from.

PART VIII

PART VIII

INDUSTRIAL AGREEMENTS

Parties to industrial agreements.

106. Any association may make an industrial agreement under this Part with any other association, or with any person as to any industrial matter, or in relation thereto.

Information to be provided by association.

107. Any association which has made an industrial agreement shall, whenever requested by the Registrar so to do, inform the Registrar whether a specified person is or is not a member of that association.

Term and form of agreement.

108. (1) Every industrial agreement shall be in writing and shall be for a term to be specified therein, not exceeding, except in the case of an industrial agreement relating solely to long service leave, two years from the date of the making thereof, and shall be in a form commencing as follows or in a similar form—

“This industrial agreement, made in pursuance of the Industrial Conciliation and Arbitration Act, 1972, this day of between .”

(and the matter agreed upon shall be set out).

(2) A copy of every industrial agreement signed by the parties thereto shall be filed in the office of the Registrar, and in the office of every association party thereto, within thirty days of the day on which it is executed by the last party to execute it, and shall be open to inspection as prescribed.

Adding of parties to agreements.

109. At any time while an industrial agreement is in force any association or employer may become party thereto by filing in the office of the Registrar a notice in the form prescribed, signifying concurrence with such agreement, together with the written consent thereto of the original parties to the agreement and thereafter such association or employer shall be deemed to be a party thereto.

Effect of industrial agreement.

110. (1) Every industrial agreement shall, during its continuance, be binding on—

(a) all parties thereto;
and

(b) all members for the time being of any association which is a party thereto.

(2) The Commission on the application of one or more of the parties to an industrial agreement, may refer the agreement for hearing before the Commission and thereafter the Commission may rescind, vary or confirm the terms of such agreement by an order.

111. An industrial agreement may be rescinded or varied by any other industrial agreement made between the parties thereto for the time being, or by an order of the Commission made pursuant to section 110 of this Act.

Rescinding or
varying
agreement.

112. (1) In default of any express agreement to the contrary therein contained, an industrial agreement shall, unless rescinded, and subject to any variation made as provided by this Part, continue in force after the expiration of the term specified therein in respect of all parties thereto, except those who retire therefrom.

Continuance of
agreement
unless
rescinded.

(2) At any time after, or not more than a month before, the expiry of the term of an industrial agreement, any party thereto may file a notice in the office of the Registrar and serve a copy of such notice on each of the other parties to the agreement signifying his intention to retire therefrom at the expiration of a month from the date of such filing and such party shall, 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 such agreement shall also cease to be binding on employers as regards employees who are members of such association.

(4) Nothing contained in this section shall affect any right, obligation or liability which had arisen or occurred prior to a party ceasing to be a party.

113. This Act shall apply to and in relation to—

(a) an industrial agreement made under Division VII of Part II of the Industrial Code, 1920, as amended;

or

(b) an industrial agreement made under Part VII of the Industrial Code, 1967, as amended,

Application of
Act to
Industrial
Agreements
made under
former Acts.

that was in force immediately before the commencement of this Act as if that industrial agreement were an industrial agreement made under this Part.

PART IX

PART IX

ASSOCIATIONS

DIVISION I

DIVISION I—REGISTRATION

**Definition of
employee.**

114. (1) For the purposes of this Part, but subject to subsection (2) of this section—

“employee” (without limiting the generality of the definition contained in section 6 of this Act) includes—

- (a) a retired employee;
 - (b) a person who is undergoing a course of training to enable him to be an employee;
 - (c) a person employed by the Government of the Commonwealth or an instrumentality or agency of that Government;
- and
- (d) a person or a person of a class prescribed as being an employee or a class of employees for the purpose of this Part.

(2) Nothing in this Act shall be held or construed as making or purporting to make an award or order binding on or applicable to any person, referred to in paragraph (c) of the definition of employee in subsection (1) of this section, in his capacity as such.

**Registration of
associations.**

115. (1) Subject to the provisions of this Part any association consisting—

- (a) in the case of employers, of two or more employers, who, in the aggregate, employ not less than twenty employees;
- or
- (b) in the case of employees, of not less than twenty employees,

together with such other persons (if any), whether employers or employees or not as have been appointed officers of the association and admitted as members thereof may, on compliance with the prescribed conditions, be registered under this Part.

(2) Where the membership of an association consists in part of persons referred to in the definition of “employee” in subsection (1) of section 114 of this Act, those persons shall not be counted in determining whether the association is an association of not less than twenty employees, and the registration shall not be refused solely on the ground that such persons are members of the association and such persons may continue to be, or may become, members of such association and the registration of a registered association

shall not be cancelled under this Act solely on the ground that any such person was at or after the time at which that association was registered, whether that association was registered under this Act or under any corresponding previous enactment, a member of that registered association.

(3) The Governor may, by regulation, prescribe model rules for associations and the adoption of any such model rules by an association shall be sufficient compliance with such of the conditions prescribed as are dealt with by the adopted rules.

116. (1) Upon receipt of an application by any association to be registered under this Part, the Registrar shall—

Method of
dealing with
application for
registration.

(a) publish notice of the application once at least in the *Gazette* and once at least in one or more daily newspapers circulating in the metropolitan area;

(b) by notice in writing inform such registered associations as he considers may be affected by that application;

and

(c) fix a day, not being earlier than thirty days after the receipt of the application, for the consideration by the Registrar of any objections, made in the manner prescribed by the Rules, on the ground that the association is not qualified to be registered, or, in the case of an association of employees, on the ground mentioned in subsection (2) of this section, to the granting of such application.

(2) The Registrar shall, whether or not an objection has been made by any registered association, unless in all the circumstances he thinks it undesirable to do so, refuse an application to register an association where, in the same locality and connected with the same industry, there exists a registered association to which, in his opinion, the members of the association applying for registration (hereafter in this section referred to as "the applicant association") might conveniently belong, but if such registered association is registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth or is a branch of or forms part of an organization so registered and the applicant association is registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth or is a branch of or forms part of an organization so registered the Registrar shall not refuse to register the applicant association merely on the ground that its members might conveniently belong to such registered association.

(3) Subject to this section, the Registrar shall, on being satisfied that the association is qualified to be registered under this Part and that the prescribed conditions have been complied with register, without fee, the association and issue a certificate of registration.

(4) When any applicant association is registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth or is a branch, or forms part, of any organization so registered, the Registrar may dispense with compliance by any such association with any condition relating to its rules.

(5) An association shall not be registered—

(a) if its name is identical with that of any other registered association or of any organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth or so nearly resembles any such name as to be likely to deceive members of any such registered association or the public;

(b) until all objections have been finally dealt with;
and

(c) if, on appeal, the Full Commission has directed that it shall not be registered.

(6) An association aggrieved may, in the prescribed manner and within the prescribed time, object to the Registrar to the proposed registration of an association under this Part.

Effect of
certificate of
registration.

117. (1) A certificate of registration of a registered association shall be and shall be deemed always to have been conclusive evidence of the fact of such registration and of the validity thereof.

(2) In this section “certificate of registration” means—

(a) a certificate of registration issued under the Industrial Arbitration Acts, 1912 and 1915;

(b) a certificate of registration issued under Division VI of Part II of the Industrial Code, 1920, as amended;

(c) a certificate of registration issued under Part X of the Industrial Code, 1967, as amended;

or

(d) a certificate of registration issued under this Part.

118. The Registrar may at any time and from time to time and upon such conditions as he sees fit adjourn an application to register an association to permit the rules or constitution of the association to be amended and the Registrar may treat that application as adjourned as if it were the original application.

Adjournment
of application
for registration.

119. (1) Any registered association which has changed its name in the manner prescribed by its rules, or if it has no rules relating to change of name, pursuant to a resolution passed by a majority of the members present and voting at a meeting of the association specially called for the purpose, of which meeting not less than fourteen days notice was given to all the members, may apply to the Registrar to register the change of name.

Power for
registered
association to
change name.

(2) A change of name shall not have any effect until it has been registered.

(3) An application to register a change of name shall be made by the secretary, director or some other prescribed officer of the association, and shall be made in such form and accompanied by such evidence as is prescribed.

(4) Upon registering the change of name of an association the Registrar shall make an endorsement upon the certificate of registration of the association stating that the name of the association has been changed and specifying the new name, or may issue an amended certificate showing the new name and the former name.

(5) No association shall change its name so that the name when changed is identical with that of any other registered association or an organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth or so nearly resembles any such name as to be likely to deceive members of any such registered association or organization or the public.

120. (1) Any branch of an association may in such circumstances as are prescribed be treated as an association distinct from the association of which it is a branch for the purpose of this Part, and, may be registered under this Part as an association.

Branch may be
treated as
distinct
association.

(2) No branch shall be registered as an association unless, in the opinion of the Registrar, it is a branch of sufficient importance to be registered separately.

121. (1) A registered association may, in the prescribed manner, and on compliance with the prescribed conditions add to, alter, or rescind any of its rules, including those rules which contain its constitution and the description of the industry in connection with which it is registered.

Change of
rules of
associations.

(2) No addition to, alteration or rescission of, any rules shall have any effect until registered.

(3) The Registrar shall, upon application made to him for the purpose in manner prescribed, and on being satisfied that all the prescribed conditions and requirements have been complied with, register any addition to, alteration or rescission of the rules of any association or any change in the constitution of an association, but the Registrar shall not be required to register any such addition, alteration, rescission or change which, in his opinion, would prejudicially affect the members of the applicant association or of any other association.

(4) Notwithstanding anything in subsection (3) of this section, the Registrar may register any addition to, alteration or rescission of the rules of, or any change of constitution of, an association notwithstanding that the addition, alteration, rescission or change may prejudicially affect the members of the applicant association, or any other association, if the applicant association is a branch of or forms part of an organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth and the effect of the addition to, alteration or rescission of the rules or any change of constitution of the applicant association is to bring those rules or that constitution into substantial conformity with the rules or constitution of the organization, registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth, of which the applicant association is a branch or, as the case may be, forms part.

(5) The Registrar may, if the applicant association so agrees, adjourn an application to register an addition to, alteration or rescission of a rule or rules, including any rule or rules which contains or contain the constitution of the association, for the purpose of enabling the applicant association to amend that rule or those rules, and the Registrar may treat the application so adjourned as if it were the original application.

(6) The Rules may prescribe the person or persons of a class who may object to the Registrar to the proposed registration of an addition to, alteration or rescission of a rule or rules under this section and the Rules may prescribe the manner in and the time within which an objection may be made.

Printed copies
of rules to be
supplied.

122. A printed or typewritten copy of the rules for the time being in force of a registered association shall be supplied by the association to any person applying therefor, on payment by the person to the association of a sum not exceeding one dollar.

123. In all proceedings affecting or taken by a registered association, the production of a copy of the rules of the association, certified under its seal and the hand of the secretary, director or other prescribed officer thereof as a true copy of such rules, shall, without proof of the making thereof or of the affixing of the said seal or of the signature of the said secretary or officer, be *prima facie* evidence of the rules of the association and of their validity.

Evidence of
rules.

124. (1) In addition to its principal office, a registered association may have a branch office in any locality in which any of its members reside or exercise their calling.

Registered
office and
branch office
of association.

(2) Upon application by the association, under its seal and the hand of its president or chairman or secretary or director, specifying the address of the branch office, the Registrar shall register such branch office.

(3) The address of the principal office or of any registered branch office may be changed from time to time in the prescribed manner.

(4) Every such change shall be forthwith notified to the Registrar by the secretary or director of the association and shall thereupon be registered by the Registrar.

125. Every dispute between a registered association and any of its members shall be decided in the manner directed by the rules of the association.

Disputes
between
association
and members.

126. The Court may, on the application of any registered association or any member thereof made in the manner prescribed, order that any member of such registered association shall cease to be a member thereof from a date to be named in the order and either absolutely or for a period named in the order.

Court may
order that
persons shall
cease to be
members of
registered
association.

127. During the pendency of any proceedings for an offence under this Act against a registered association no resignation or discharge from membership of such association shall have effect.

No resignation
while
proceedings
pending.

128. (1) In the month of January in every year every registered association shall forward to the Registrar a list of the names of all officers (including trustees) of such association and shall inform the Registrar in writing of the number of members of such association as on the preceding thirty-first day of December.

Registered
associations to
send half
yearly list of
officers to the
Registrar.

(2) In the month of July in every year every registered association shall inform the Registrar in writing of the alterations which have taken place during the six months ending on the preceding thirtieth day of June in the persons who are officers (including trustees) of such association.

(3) Every registered association shall keep an up-to-date register of the members of such association which the Registrar may inspect at any reasonable time, and every such association shall, whenever requested by the Registrar, furnish him within twenty-eight days of such request with a list of the names of all members of such association or of the number of members thereof as the case may be and every such list shall be verified by the statutory declaration of the president or chairman or secretary of the association.

(4) An association making default in complying with the provisions of this section shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding twenty dollars in respect of every week during which such default continues and penalties shall be recoverable on the complaint of the Registrar.

Registered
association to
send yearly
financial
statement to
Registrar.

129. (1) The secretary or director of every registered association shall, within one month after the completion of the yearly audit of the accounts of the association, deliver to the Registrar—

(a) a duly audited balance-sheet of the assets and liabilities of the association made up to the date of the closing of the accounts;

and

(b) a duly audited statement of the receipts and payments, or income and expenditure of the association during the year in respect of which such audit was made,

and the balance-sheet and statement shall be in such form and contain such information as is prescribed and shall be audited by a registered company auditor within the meaning of the Companies Act, 1962, as amended, and shall be accompanied by a certificate under the hand of the auditor as to whether in his opinion, the balance-sheet and statement exhibit a true and correct statement of the financial position of the association.

Penalty: Fifty dollars.

(2) Complaints for offences against the provisions of this section shall be made by the Registrar.

130. (1) The Registrar, or any officer of the Court or the Commission shall not, except by direction of the President, divulge to any person, other than an officer of a registered association —

Information
not to be
divulged.

(a) the name of any member of that association;

or

(b) the financial position of that association.

Penalty: Fifty dollars.

(2) Complaints for offences against the provisions of this section shall be made by an officer of the association.

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

Service of
notices on
registered
association.

(a) by leaving the same at its registered office;

(b) by posting the same to such registered office by certified mail addressed to such association;

or

(c) in the manner ordered under section 43 of this Act.

132. (1) If it appears to the Court on the application of the Registrar, or, subject to subsection (2) of this section, on the application of a registered association or a member or former member of such an association that—

Cancellation of
registration of
association.

(a) the rules of a registered association do not comply with the prescribed conditions, or have not been observed;

(b) the rules of a registered association or their administration do not or does not provide reasonable facilities for the admission of new members, or impose or imposes unreasonable conditions upon the continuance of membership, or are or is in any way tyrannical or oppressive;

(c) the proper authorities of a registered association wilfully neglect to levy and collect the subscriptions or levies prescribed by its rules;

(d) the accounts of a registered association have not been audited in pursuance of its rules, or the accounts of a registered association or of its auditor do not disclose the true financial position of the association;

(e) a registered association has wilfully neglected to obey any judgment or award of the Commission;

- (f) the number of the members of a registered association at the time of the application, would not, having regard to section 115 of this Act, entitle the association to registration;
- (g) a majority in number of the members of a registered association has, by ballot taken as prescribed, indicated a desire to have the registration of such association cancelled;
- or
- (h) for any other reason the registration of an association ought to be cancelled,

the Court may order the registration of the association to be cancelled and thereupon it shall cease to be registered under this Act.

(2) A registered association may make an application under this section only as regards its own registration and a member or former member of an association may make an application only as regards the association of which he is a member or, as the case may be, a former member.

(3) Such cancellation shall not relieve the association, or any member thereof, from the obligation to comply with any judgment, award or order of the Court or the Commission made before the cancellation, or from any penalty, liability or obligation incurred or created prior to the cancellation.

(4) On making an order for cancellation, the Court may direct that the order shall be suspended for a specified period and that if a requisition stated in the direction be complied with by the association, to the satisfaction of the Court within that period, then the order shall be annulled, but that if such requisition is not so complied with, then the order shall have effect from the making thereof and every such direction shall have effect according to the tenor thereof.

Certain actions
barred.

133. (1) Subject to subsection (2) of this section, the legal existence of any association or the registration thereof, the membership of any member or any person claiming to be a member of any association, the validity of the appointment or election of any officer of any association or the validity of any actions or decisions of such officer, the validity of any resolution passed or decision made at any meeting of an association or any committee thereof, shall not be challenged, impugned or in any way affected, nor shall the compliance of any rule or rules of any association with the prescribed conditions, or the observance of or validity of any such rule or rules or the operation of any award or order made under this Act or under an Act amended by this Act, or under the Industrial Code, 1920, as amended, or under the Industrial Arbitration Acts, 1912 and 1915, be challenged, impugned or in any way affected by reason only that—

(a) the association is also registered as an organization pursuant to the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth, or is a branch of or forms part of an organization so registered;

or

(b) members of the association are also members of an organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth, that no register of members separate and distinct from the register kept by the organization registered under the said Commonwealth Act is kept by the association, or no application for membership or membership fee separate from such application or fee made and paid to the organization registered under that Commonwealth Act has been made or paid to the association by any member thereof;

(c) the association keeps and maintains no or insufficient books, accounts, records or rules which are separate and distinct from any books, accounts, records or rules kept and maintained by an organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth, of which some or all of its members are members;

(d) officers of the association have been elected or appointed by or are also officers of an organization registered under the *Conciliation and Arbitration Act 1904-1972* of the Commonwealth;

or

(e) any matter consequential upon or arising out of the matters referred to in the preceding paragraphs of this subsection.

(2) This section applies only to any decision, resolution or appointment made and any act or thing done or omitted to be done by any registered association at any time prior to the last day of the second year that occurs after the commencement of this Act whether that decision, resolution or appointment was made or the act or thing was done before or after the commencement of this Act.

134. (1) A rule of a registered association—

(a) shall not be contrary to any provision of this Act, or an award, or otherwise be contrary to law;

(b) shall not be such as to prevent or hinder members of the registered association from observing the law or the provisions of an award;

and

Rules of
registered
association.

(c) shall not impose upon applicants for membership, or members of the registered association, conditions, obligations or restrictions which, having regard to the objects of this Act and the purpose of the registration of associations under this Act, are oppressive, unreasonable or unjust.

(2) A member of a registered association may apply to the Court for an order declaring that the whole or a part of a rule of that registered association contravenes subsection (1) of this section.

(3) Subject to subsection (4) of this section, the Court shall have jurisdiction to hear and determine an application under subsection (2) of this section.

(4) A registered association in respect of which an application is made under this section shall be given an opportunity of being heard by the Court.

(5) An order under this section may declare that the whole or a part of a rule contravenes subsection (1) of this section and, where such an order is made, the rule, or that part of the rule, as the case may be, shall be void as from the date of the order or as from such earlier day as is specified in the order.

(6) The Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and upon such terms and conditions as it thinks fit for the purpose of giving the registered association an opportunity to alter its rules.

Power to
direct
performance
of rules.

135. (1) The Court may, upon complaint by any member, or person who has been expelled from membership of a registered association and after giving any person against whom an order is sought an opportunity of being heard, make an order giving directions for the performance or observance of any of the rules of such registered association by any person who is under an obligation to perform or observe those rules.

(2) A person who fails to comply with a direction under subsection (1) of this section shall be guilty of an offence against this Act.

Penalty: One hundred dollars.

Amalgamation
of registered
associations.

136. (1) Subject to this section, the Registrar may register as an association a body that is comprised of an amalgamation of two or more registered associations.

(2) A registered association shall not amalgamate with any one or more registered associations except upon a resolution having been passed in accordance with the rules of the association relating to the alteration of its rules.

(3) Upon application being made under and in accordance with the Rules, the Registrar shall register as a registered association the body comprised of the amalgamating associations and shall forthwith issue a certificate of registration as an association under this Part in respect of the body so registered.

(4) On the day of the issue of a certificate of registration under this Part—

(a) the amalgamating associations shall be amalgamated as one association;

(b) persons who were immediately before that day members of the amalgamating associations shall cease to be such members and on and from that day shall be members of the amalgamated association;

and

(c) the registration of each of the amalgamating associations shall by force of this section be cancelled.

(5) A resolution referred to in subsection (2) of this section shall expressly approve the proposed constitution and rules of the body comprising the amalgamating associations, which constitution shall in its ambit of membership substantially be that of all of the said associations and the said body shall be deemed to have been constituted forthwith upon the passing of the last resolution as aforesaid of the amalgamating associations.

137. An association that was registered or that appeared or purported to be registered—

(a) under the Industrial Arbitration Acts, 1912 and 1915 and whose registration has not been cancelled—

(i) under that Act;

(ii) under the Industrial Code, 1920, as amended;

or

(iii) under the Industrial Code, 1967, as amended;

(b) under the Industrial Code, 1920, as amended, and whose registration has not been cancelled—

(i) under that Act;

or

(ii) under the Industrial Code, 1967, as amended;

or

Registered
associations
under previous
Acts to
continue.

(c) under the Industrial Code, 1967, as amended, and whose registration has not been cancelled under that Act,

shall be deemed to be and always to have been validly and effectually so registered and shall on and after the commencement of this Act be a registered association within the meaning of this Act and this Act shall apply to and in relation to that association as if that association were an association registered under this Part.

DIVISION II

DIVISION II—INCORPORATION

Continuation
of status of
registered
associations.

138. Every association referred to in section 137 of this Act shall, subject to this Act, on and after the commencement of this Act continue to be a body corporate by the name under which, immediately before that commencement, it was registered.

Incorporation
of registered
associations.

139. Every association registered under this Part shall on and from the day of its registration be a body corporate by its registered name.

Powers of
registered
association.

140. (1) A registered association—

(a) shall have a common seal;

(b) shall have perpetual succession;

(c) may in its corporate name and capacity sue and be sued;

and

(d) may make contracts in the same manner as an association incorporated pursuant to the Associations Incorporation Act, 1956, as amended.

(2) A registered association may purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property.

(3) Deeds and instruments to be executed by a registered association may be made and executed—

(a) under the seal of such association and the hands of the president or chairman and secretary or director thereof;

or

(b) in such other manner as the rules of such association prescribe.

141. All moneys payable to a registered association by any member thereof under its rules may, in so far as they relate to any period of membership after the date of registration of the association, be recovered in any court of competent jurisdiction by such association in its registered name as a debt due to the association.

Recovery of
moneys owing.

142. The cancellation of the registration of an association shall on and from the day the cancellation took effect, dissolve the incorporation of the association.

Effect of
cancellation of
registration.

PART X

PART X

MISCELLANEOUS

DIVISION I—GENERAL

DIVISION I

143. The purposes of any association, whether registered or not registered, shall not, by reason merely that they are in restraint of trade—

Purposes of
association not
in restraint of
trade.

- (a) be deemed to be unlawful so as to render any member of such association liable to criminal prosecution for conspiracy, or otherwise;
- (b) be unlawful so as to render void or voidable any agreement or trust;
- or
- (c) render such association unlawful or void.

144. (1) Where the Registrar is satisfied that any person has, by reason of his religious belief, a genuine conscientious objection to being or becoming a member of a registered association or of paying any fees to a registered association, the Registrar shall, upon payment of the prescribed fee and subject to this section, grant that person a certificate in the prescribed form.

Conscientious
objection.

(2) A certificate under this section shall remain in force for a period of twelve months or such lesser period as is specified therein but on the expiration of a certificate under this section, the Registrar may, subject to subsection (1) of this section, grant a further certificate under this section.

(3) Notwithstanding anything in this Act or in any other Act or Law, no differentiation shall be made for any purpose between the position of a person who is a member of a registered association and

the position of a person who holds a certificate that is in force under this section in relation to that registered association in so far as the fact, that a person is or is not a member of that association, is relevant.

(4) In this section, the prescribed fee means an amount equal to the amount that would be paid by the person, to whom the certificate is to be granted, to the registered association if he were a member of the association in respect of which the certificate is to be granted throughout the period during which the certificate is expressed to be in force.

(5) The Registrar shall, from time to time, pay to the Honorary Treasurer of The Adelaide Children's Hospital Incorporated for the purposes of that hospital, amounts equal to the amounts from time to time received by him in respect of the prescribed fees under this section and the receipt of the Honorary Treasurer shall be a full and sufficient discharge to the Registrar in respect of the amounts so paid.

Industrial
Gazette.

145. (1) The Minister may publish an Industrial Gazette in such form and at such intervals as he sees fit.

(2) On and after the appointed day, it shall be sufficient compliance with a requirement of this Act that any matter or thing be published in the *Gazette*, if that matter or thing is published in the Industrial Gazette, and the provisions of this Act relating to publication in, or production of a copy of, a *Gazette* will apply to and in relation to, the publication in, or the production of a copy of, an Industrial Gazette for all purposes as if that Industrial Gazette were a *Gazette*.

(3) The Minister may by notice published in the *Gazette* appoint a day to be the appointed day for the purposes of this section and a reference to the "appointed day" in subsection (2) of this section shall be read as a reference to the day so appointed by the Minister.

DIVISION II

DIVISION II—LOCK-OUTS AND STRIKES

Penalty for
Lock-out.

146. If any association or person does any act or thing in nature of a lock-out, or takes part in, aids or abets a lock-out, unless the employees working in the industry concerned are taking part in an illegal strike, that association or person shall be guilty of an offence against this Act.

Penalty: Five hundred dollars.

Illegal strikes.

147. The following strikes and no others shall be illegal strikes—

(a) any strike by the employees of a prescribed employer;

- (b) any strike by any other employees in a project, establishment or undertaking unless the association or associations representing the majority of those employees in respect of whom the strike takes place have observed the following conditions, that is to say—
- (i) the executive of the association or, as the case may be, the executives of the associations have given notice in writing to the Minister of the intention of the association or associations to commence the strike;
 - (ii) the strike did not commence until after the expiration of fourteen days from the day on which the notice was given to the Minister;
- and
- (iii) the notice given to the Minister was in or to the effect of the prescribed form and contained the prescribed particulars;
- (c) any strike referred to in paragraph (b) that commences or continues after any matter in dispute, referred to in the notice given to the Minister pursuant to that paragraph has been settled;
- and
- (d) any strike that commences or continues after an order has been lawfully given under this Act directing the employees on strike to return to work.

148. Subject to section 149 of this Act, any association, the executive or members of which are taking part in or aiding or abetting or have taken part in or aided or abetted an illegal strike, shall be guilty of an offence against this Act.

Penalty for
illegal strike.

Penalty: Five hundred dollars.

149. (1) No proceedings under section 148 of this Act shall be commenced except by leave of the Court, and no such leave shall be granted unless the Court is satisfied—

Proceedings for
illegal strike.

(a) that—

- (i) the employer or employers concerned in the illegal strike has not or have not taken part in any lock-out, which has either wholly or in part given rise to the strike;

(ii) the Registrar was notified, where possible, of the question, dispute or difficulty which was likely to give rise to the strike or, if this was not possible, of the commencement of such strike;

and

(iii) to the extent to which the circumstances permitted, the employer or employers made a genuine attempt to negotiate a settlement of the question, dispute, or difficulty which gave rise to the strike before the strike took place, or of the strike after it had taken place;

and

(b) that the causes of and the circumstances which gave rise to the question, dispute or difficulty referred to in paragraph (a) of this subsection have been investigated or adjudicated upon by the Commission or a Committee.

(2) An application for leave to commence proceedings under section 148 of this Act shall be lodged with the Registrar not later than fourteen days after the cessation of the strike to which the application refers.

Defence.

150. It is a defence to any proceedings under section 148 of this Act for the defendant to prove that—

(a) the employers in relation to whom the illegal strike occurred or their servants or agents have by any unjust or unreasonable action provoked or incited the strike;

or

(b) the executive of the association, after becoming aware of the circumstances concerning the illegal strike, has not aided, abetted or supported or did not aid, abet or support members of the association who are or were engaged in the strike, and has endeavoured or did endeavour by means reasonable under the circumstances to prevent members of the association from taking part in or aiding or abetting or continuing to take part in, aid or abet the strike.

Costs not to be awarded.

151. Costs shall not be awarded in any proceeding under this Part.

Proceedings for offences.

152. Proceedings in respect of offences under sections 146 or 148 may be heard and determined by the Court.

DIVISION III—OFFENCES

DIVISION III

153. (1) Subject to this section, where an employee does any work the wages or other payments for which is fixed by an award or industrial agreement, the employer of that employee shall pay to that employee, in full in money without any deduction, the wages or other payments so fixed.

Employees to
be paid in
money.

(2) For the purposes of this section a payment is a payment in money if it is made—

(a) in cash;

or

(b) with the authority in writing of the person employed—

(i) by cheque (duly met on presentation at the bank on which it is drawn), postal order or money order payable to the person;

or

(ii) into a bank account specified in the authority by a person.

(3) From any moneys payable under subsection (1) of this section by an employer to a person employed by him the employer may deduct and pay on behalf of the employee any payment authorized in writing by the employee to be deducted and paid.

(4) Where the employee withdraws in writing—

(a) the authority given pursuant to paragraph (b) of subsection (2) of this section and no authority is given in writing for payment in any of the other ways mentioned in that paragraph, the employer shall pay the employee in cash;

or

(b) the authority given pursuant to subsection (3) of this section with respect to a deduction and payment which was authorized by the employee, the employer shall cease to make that deduction and payment.

(5) This section shall not apply to or in relation to any deduction that pursuant to any Act or law whether of this State or the Commonwealth that is authorized or required to be made from the remuneration of any employee.

(6) Notwithstanding anything in the preceding provisions of this section any payment required to be made by the Crown to an employee (whether payable under subsection (1) of this section or pursuant to an award, order or decision of any other tribunal created by or under any other Act) may be made by cheque or by payment thereof into a bank account specified by the employee but no deduction shall be made from the amount payable because such payment has been made by cheque.

PART X

DIVISION III

Remedies and penalties for breach of award or agreement.

154. (1) If any person or association commits any breach or non-observance of an award or industrial agreement or fails to comply with an order of the Court or Commission (which breach, non-observance or failure to comply is not an offence under any other section of this Act) such association or person shall be guilty of an offence against this Act and shall be liable upon conviction to a fine not exceeding one hundred dollars.

(2) Any person who, or association which, contravenes any provision of this Act, whether by commission or omission, shall be guilty of an offence against this Act and shall, except where some other penalty or punishment is specifically provided, be liable to a fine not exceeding one hundred dollars.

(3) When any person or association is convicted of an offence under subsection (1) of this section, the court before which he is so convicted if it is of opinion that the defendant wilfully committed such offence may, on motion or without motion, and in addition to any penalty imposed, issue an injunction (including a mandatory injunction) to restrain such defendant from committing, or to compel him to cease committing any further or other breach or non-observance of the award, agreement or order.

(4) No person or association shall disobey an injunction issued under subsection (3) of this section.

Penalty: Five hundred dollars.

Penalties.

155. Where in any proceedings under this Act a registered association is a complainant, or an official of a registered association in his capacity as such is a complainant, any fine imposed in respect of those proceedings shall be paid to the registered association, otherwise such fine shall be paid to the Treasurer in aid of the general revenue of the State.

Employee not to be dismissed for taking part in industrial proceedings.

156. (1) No employer shall dismiss from his employment any employee in consequence of—

- (a) the employee becoming or acting in the capacity of a member of any Committee;
- (b) anything done by the employee as or in the capacity of a member of a Committee, or arising out of or consequent upon the employee being or acting in such capacity;
- (c) the employee becoming a party to any proceedings before the Commission or a Committee;
- (d) the employee taking part or being involved in any industrial dispute;

or

- (e) any evidence given or anything said or done or omitted to be said or done by the employee before the Commission or a Committee.

Penalty: One hundred dollars.

(2) If, in any proceedings for an offence against this section, it is proved that an employee was dismissed from any employment with the defendant within two months after any of the acts or matters mentioned in subsection (1) of this section, the burden of proving that such dismissal was not in consequence of such act or matters shall lie upon the defendant.

(3) Proceedings for an offence against this section may be commenced and prosecuted either by the employee alleged to have been dismissed, or by an Inspector.

(4) If the defendant is convicted, the dismissal shall be deemed to be a wrongful dismissal, and the court before which the proceedings are brought may, in addition to any penalty for the offence, award such sum as it deems proper by way of damages and costs, which sum may be recovered in the same way as a penalty imposed for an offence against this Act, but nothing contained herein shall restrict or limit the right of such an employee to seek an order directing his re-employment.

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

- (a) is or is not an officer or member of an association;
or
(b) is entitled to the benefit of an award or industrial agreement.

Penalty: One hundred dollars.

(2) In any proceeding for an offence under subsection (1) of this section it shall lie upon the employer to show that any employee, proved to have been dismissed or injured in his employment whilst he was or was not an officer or member of an association, or whilst entitled to the benefit of an award or industrial agreement as the case may be, was dismissed or injured in his employment for some substantial reason other than a reason mentioned in that subsection.

158. (1) No employee shall cease work in the service of an employer by reason only of the fact that the employer—

- (a) is a member or officer of an association;

Employer not to dismiss employee because member of association or taking benefit under the Act.

Employee not to cease work for certain reasons.

(b) is not a member of an association;

or

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

Penalty: Fifty dollars.

(2) In any proceeding for an offence under subsection (1) of this section it shall lie upon the employee proved to have ceased work in the service of an employer whilst the employer was an officer or member of an association or whilst he was not such a member, or whilst he was entitled to the benefit of an award, to show that he ceased to so work for some reason other than a reason mentioned in that subsection.

Employers to
keep certain
records.

159. (1) Every employer bound by an award shall, in respect of the employees to whom the award applies—

(a) make and keep a true record of the names and addresses of the employees employed by him and the age of every employee under twenty-one years of age so employed and produce such record whenever demanded by an Inspector;

(b) except as provided by subsection (4) of this section keep, or cause to be kept, for a period of three years from the dates of the respective entries therein a time book or time and wages record, wherein shall be entered (wherever practicable) such employee's times of beginning and of ending work on every day and there shall also be entered therein at the end of each week, fortnight or month according to the periodicity of the payment, the wages paid and the time book or time or wages record shall be signed (wherever practicable) by the employee concerned at the end of each week, fortnight or month as the case may be and when so signed shall be *prima facie* evidence of the correctness of the contents thereof;

(c) keep, or cause to be kept a record of annual, sick and long service leave granted to every employee;

and

(d) produce any time book, time or wages record or record of annual, sick and long service leave required to be kept pursuant to this section for inspection whenever production thereof is demanded by an Inspector and allow him to take a copy of any entry in such time book, time or wages record or record of such leave.

Penalty: One hundred dollars.

(2) Notwithstanding anything in subsection (1) of this section the record of the times of beginning and ending work of any employee in the building industry shall on each day be verified by that employee.

(3) Whenever a business, or part thereof, is transferred, conveyed or assigned to another employer, the former employer shall transmit to the new employer all records and books referred to in this section.

Penalty: Fifty dollars.

(4) An award may, if the parties thereto agree, direct that, in relation to all or some of the persons bound by the award, a time book need not be kept.

160. No person shall—

Penalty for
false entries.

- (a) wilfully make a false entry or false entries in a book, notice, certificate, list or document required by this Act to be kept, or served, or sent;
- (b) wilfully make or sign a false declaration under this Act;
- or
- (c) make use of any such entry or entries or declaration, knowing the same to be false.

Penalty: One hundred dollars.

161. Every employer bound by an award shall affix and keep affixed in legible characters in some conspicuous place at his principal place of business and at every branch or depot where twenty or more employees are required to work or report and so as to be easily read by his employees a copy of the award or awards for the time being in force in respect of his employees and shall make available to any employee a copy of this Act and a copy of the Workmen's Compensation Act, 1971, as from time to time amended, when so requested by any employee for the purpose of inspecting such Act.

Notices by
employers.

162. (1) No person shall either directly or indirectly, or by any pretence or device—

No premium to
be demanded
for apprentices
or improvers.

- (a) require or permit any person to pay or give;
- or
- (b) receive from any person,

any consideration, premium or bonus for engaging or employing a person as an apprentice or improver.

Penalty: Fifty dollars.

(2) A person who pays or gives such consideration, premium or bonus may recover the same as a debt with costs in a court of competent jurisdiction from the person who received the same.

PART X
DIVISION IIICertain
guarantees
illegal.

163. (1) Except with the consent in writing of the Minister, no person shall require or permit any person—

(a) to pay a sum of money;

or

(b) to enter into or make a guarantee or promise requiring or undertaking that such person shall pay a sum of money,

in the event of the behaviour or attendance or obedience of an apprentice, improver, or employee not being satisfactory to the employer.

Penalty: Fifty dollars.

(2) Any such guarantee or promise, or a guarantee or promise to the like effect, entered into or made without such consent shall be void.

(3) Any sum which is paid in contravention of this section shall, unless repaid upon demand, be recoverable as a debt with costs in a court of competent jurisdiction.

Contempt by
witness.

164. (1) No person who has been duly served with a summons to appear and give evidence before the Court, the Commission, the Registrar or any person or body by or under this Act empowered to take evidence, and to whom payment or tender has been made of a reasonable sum for the costs and expenses of attendance, shall, without good and sufficient cause, the proof whereof shall lie upon him, fail to appear duly in answer to such summons.

Penalty: One hundred dollars.

(2) A person shall not, without good and sufficient cause, proof of which shall lie upon him—

(a) refuse to be sworn or make affirmation or declaration as a witness;

(b) refuse to answer any question which he is required by the Court, the Commission, the Registrar or the person or body referred to in subsection (1) of this section to answer;

or

(c) refuse to produce any book, paper or document which he is required by the Court, the Commission, the Registrar or the person or body to produce.

Penalty: One hundred dollars.

(3) Proceedings in respect of offences under this section may be heard and determined by the Court.

165. A person who wilfully makes on oath, or by affirmation or declaration in any proceedings of any kind under this Act, any false statement knowing the same to be false, shall be guilty of perjury and may be proceeded against and punished accordingly.

Penalty for wilful false statement.

166. (1) A person shall not—

Punishment for contempt of Court or Commission.

(a) wilfully insult the President, a Deputy President, a Commissioner, an Industrial Magistrate or the Registrar, or any other officer of the Court or the Commission during his sitting or attendance in Court or Commission or in going to or returning from the said Court or Commission;

(b) wilfully disturb or interrupt the proceedings of the said Court or the Commission;

or

(c) otherwise misbehave himself in the said Court or before the Commission, or be guilty, in any manner, of contempt of the said Court or the Commission.

Penalty: One hundred dollars.

(2) Proceedings in respect of offences under this section may be heard and determined by the Court, but where the offence was committed in the presence of the Court the person (or persons) constituting such Court may forthwith convict the person guilty of such offence and impose a penalty as prescribed in subsection (1) of this section.

167. (1) When any costs or other sum is by the Court, the Commission, or the Registrar, ordered to be paid, and no other provision is made in this Part, or in the Rules, for the recovery thereof, the Registrar may issue a certificate in the form prescribed by the Rules, under his hand and the seal of the Court or the Commission, specifying the amount payable and the respective parties or persons by and to whom the same is payable.

Recovery of penalties and other sums ordered.

(2) Such certificate may be filed in any court of competent jurisdiction, and shall thereupon, according to its tenor, be enforceable in all respects as if it were a judgment of such court.

168. (1) Where a penalty is imposed under this Act on an association, or an association is under this Act ordered to pay any sum, then, for the recovery of such penalty or sum, process may be issued and executed against the property of such association, or any property in which such association has a beneficial interest, whether vested in trustees or however otherwise held, in the same manner as if the association were the absolute owner of the property or interest.

Recovery of penalty, etc., imposed on association.

(2) For the purposes of this section the property of an association shall be deemed to include the property of any association forming or forming part of the first-mentioned association, or in which it has a beneficial interest, whether vested in trustees or however otherwise held.

In default of association, penalty may be recovered from members.

169. Where a penalty is imposed under this Act on an association, or an association is, under this Act, ordered to pay any sum, if such penalty or sum is not fully paid within one month thereafter, all persons who were members of the association at the time when the penalty was imposed or, as the case may be, the order was made, shall be jointly and severally liable to pay such penalty or sum in the same manner as if the conviction or order had been made against them personally and all proceedings in pursuance of the conviction or order may be taken against them, or any of them, accordingly, but no person shall be liable under this section for a larger sum than ten dollars in respect of any one conviction or order.

Defence available to employers.

170. In any proceedings for an offence under this Act against an employer as such it shall be a defence for a defendant employer to show—

- (a) that another person was responsible for the act or omission that constituted the offence;
 - (b) that the defendant employer had used all due diligence to prevent the commission of the offence;
- and
- (c) that the offence was committed without the knowledge of the defendant employer and in contravention of his orders,

and upon such a defence being made out that other person may be charged and convicted of the offence as if he were the employer.

Person convicted may be ordered to pay arrears of wages, etc.

171. (1) The court by which any person is convicted of any offence against this Act may, in addition to imposing a fine or penalty or other punishment for such offence, order that the defendant shall pay to any person in respect of whom such offence was committed, and who is or has been in the employment of such defendant, any sum which, to the satisfaction of the court is shown to be due from the defendant to the person in connection with such employment and which first became payable within three years immediately prior to the commencement of proceedings in respect of that offence, less any deductions made in pursuance of any provision of this Act.

(2) Any sum ordered to be paid under this section may be recovered by a person referred to in subsection (1) of this section, by any other person authorized by him in writing, or by an Inspector on his behalf, in the same manner as a penalty imposed for an offence, and where a fine or penalty is imposed, such sum shall, for the purposes of recovering the same, be treated as part of such fine or penalty.

172. Proceedings in respect of any offence against this Act shall be commenced within twelve months after the commission of the offence and in any such proceeding the onus shall be on the defendant to prove—

Period within which proceedings to be brought and onus of proof.

- (a) that the provisions of any award with regard to the number of apprentices or improvers or juvenile workers who may be employed have been complied with;
 - (b) that a person named as being either an employee of the defendant generally or an employee of the defendant in a certain capacity was not so employed;
- or
- (c) that the premises or place alleged to be within a certain locality or area are or is not therein.

173. (1) A copy of any award, determination, decision, direction, appointment, reference, order or other act of the Court or the Commission or a Committee purporting to be sealed with the seal of the Court or the Commission and certified to be true under the hand of the Registrar, shall be received in all courts and tribunals and before all persons as evidence of the award, determination, decision, direction, appointment, reference, order or other act, without proof of the seal of the Court or the Commission or of the signature of the Registrar and it shall not be necessary to prove any condition precedent entitling the Court or the Commission or the Committee to make the award, determination, decision, direction, appointment, reference, order or other act and the production of such a copy of an award shall, except in proceedings pursuant to section 96 of this Act, be conclusive evidence of the making and existence of such award and of the contents thereof.

Proof of awards, etc.

(2) A copy of the *Gazette* purporting to contain a copy of any award, determination, decision, direction, appointment, reference, order or other act of the Court or the Commission or a committee shall, without further proof, have the same effect as a copy under subsection (1) of this section.

PART X

DIVISION IIISummary
procedure.

174. Proceedings in respect of offences against this Act shall, except where otherwise provided, be heard and determined summarily before a special magistrate.

DIVISION IV

DIVISION IV—RULES

Rules and
Procedure.

175. (1) The President may make Rules not inconsistent with the provisions of this Act—

- (a) regulating the practice and procedure and forms to be followed and used in, or in connection with, or for the purposes of proceedings before the Court (including the Full Court), the Commission, the Registrar or Committees, and in, or in connection with, or for the purpose of enforcing judgments, convictions, decisions, awards, orders and other acts given, made and done by the Court, the Commission, Committees or the Registrar;
- (b) as to the publication of the awards, orders, decisions, and other acts of the Court, the Commission or Committees and the effect of such publication;
- (c) for recovering penalties imposed, and enforcing orders for attachment, and orders for the payment of any moneys made under this Act;
- (d) prescribing the fees and expenses to be paid to witnesses;
- (e) prescribing what (if any) fees shall be paid in respect of any proceeding in the Court or the Commission and the party by whom such fees shall be paid;
- (f) prescribing the powers and duties of the Registrar, also of other officers so far as the same relate to matters within the jurisdiction of the Court, the Commission or Committees;
- (g) prescribing the manner of execution, and the officers or other persons by whom an industrial agreement may be executed, by reference to rules of the association concerned or otherwise;
- (h) prescribing in what circumstances a document shall, for the purposes of Part IX of this Act be deemed to be rules of an association, and any other matters which may be necessary or convenient for giving effect to the objects of Part IX of this Act;

and

- (i) such Rules as may be necessary or convenient for the full and effective exercise of the jurisdiction, duties, powers and functions of the Court, the President, the Commission, a Committee, or the Registrar.
- (2) Subject to this Act and such Rules, the practice and procedure of the Court, the Commission and the Committees shall be as directed by the President.
- (3) Without limiting the effect of the Acts Interpretation Act, 1915, as amended, in its application to this Act, section 38 of that Act shall apply to and in relation to the Rules made under this section.

DIVISION V—REGULATIONS**DIVISION V**

176. The Governor may make such regulations as may be necessary or convenient for carrying into effect the provisions and objects of this Act. **Regulations.**

THE SCHEDULE

The Trade Union Act, 1876.

Section 4 (1).

So much of the Second Schedule to the Statute Law Revision Act, 1935, as relates to an amendment to The Trade Union Act, 1876.

The Masters and Servants Act, 1878-1935.

So much of the Second Schedule to the Statute Law Revision Act, 1935, as relates to an amendment to The Masters and Servants Act, 1878.

Part XXV of the Schedule to the Age of Majority (Reduction) Act, 1971.

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

M. L. OLIPHANT, Governor