1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

**HOUSE OF REPRESENTATIVES**

# VOTES AND PROCEEDINGS

No. 36

MONDAY, 22 NOVEMBER 1993

1 The House met, at 2 p.m., pursuant to adjournment. The Speaker (the Honourable Stephen Martin) took the Chair, and read Prayers.

2 **QUESTIONS**

Questions without notice being asked—

*Paper:* Mr Dawkins (Treasurer) presented the following paper:

Foreign investment policy: Mass circulation newspapers—Copy of press release (No. 32) issued by the Treasurer, 20 April 1993.

Questions without notice continued.

3 **SUSPENSION OF STANDING AND SESSIONAL ORDERS—MOTION OF CENSURE OF THE MINISTER FOR THE ENVIRONMENT, SPORT AND TERRITORIES**

Mr Costello, by leave, moved—That so much of the standing and sessional orders be suspended as would prevent the Member for Higgins moving forthwith—That this House censures the Minister for the Environment, Sport and Territories for the maladministration of her Department and political bias in the selection of grants under the Community Cultural, Recreational and Sporting Facilities Program.

Question—put and passed.

4 **MINISTER FOR THE ENVIRONMENT, SPORT AND TERRITORIES—MOTION OF CENSURE**

Mr Costello moved—That this House censures the Minister for the Environment, Sport and Territories for the maladministration of her Department and political bias in the selection of grants under the Community Cultural, Recreational and Sporting Facilities Program.

Debate ensued.

*Paper:* Mr Costello, by leave, presented the following paper:

Senate Estimates Committee B—Extract from Senate *Hansard*, 4 December 1992.

Question—put.

The House divided (the Speaker, Mr Martin, in the Chair)—

AYES, 58

| | | | |
|---|---|---|---|
| Mr Aldred | Mr Evans | Mr McGauran | Mr Ruddock |
| Mr Anderson | Mr Filing* | Mr Mack | Mr Sharp |
| Mr J. N. Andrew | Mr Fischer | Mr MacKellar | Mr Sinclair |
| Mr K. J. Andrews | Mr Forrest | Mr McLachlan | Mr Slipper |
| Mr Atkinson | Mrs Gallus | Mrs Moylan | Mrs Sullivan |
| Mr Beale | Mr Hall | Mr Nehl | Mr Taylor |
| Mr Braithwaite | Mr Halverson | Mr Neville | Mr Truss |
| Mr Cadman | Mr Hawker | Mr Nugent | Mr Tuckey |
| Mr Cameron | Mr Hicks* | Mr Peacock | Mr Vaile |
| Mr Charles | Mr Howard | Mr Prosser | Mr Wakelin |
| Mr Cobb | Mr Jull | Mr Pyne | Mr Williams |
| Mr Connolly | Mr Katter | Mr Reid | Dr Wooldridge |
| Mr Costello | Dr Kemp | Mr Reith | Ms Worth |
| Mr Dobie | Mr Lieberman | Mr Rocher | |
| Mr Downer | Mr Lloyd | Mr Ronaldson | |

NOES, 69

| | | | |
|---|---|---|---|
| Mr Adams | Mr Duncan | Mr Johns | Mr Punch |
| Mr Baldwin | Mrs Easson | Mr Jones | Mr Quick |
| Mr Beazley | Mr Elliott | Mrs Kelly | Mr Sawford |
| Mr Beddall | Ms Fatin | Mr Kerin | Mr Sciacca |
| Mr Bevis | Mr Ferguson | Mr Kerr | Mr L. J. Scott |
| Mr Bilney | Mr Fitzgibbon | Mr Knott | Mr Snow |
| Dr Blewett | Mr Gear | Mr Langmore | Mr Snowdon |
| Mr Brereton | Mr Gibson | Mr Lavarch | Mr Staples |
| Mr Campbell | Mr Gorman | Mr Lee | Mr Swan |
| Mr Chynoweth | Mr Grace* | Mr Lindsay | Mr Tanner |
| Mr Cleeland | Mr Griffin | Ms McHugh | Dr Theophanous |
| Ms Crawford | Mr Griffiths | Mr McLeay* | Mr Tickner |
| Mr Crean | Mr Haviland | Mr A. A. Morris | Mr Walker |
| Mr Cunningham | Ms Henzell | Mr P. F. Morris | Mr Willis |
| Mr Dawkins | Mr Holding | Mr Newell | Mr Woods |
| Ms Deahm | Mr Horne | Mr O'Connor | |
| Mr Dodd | Mr Howe | Mr O'Keefe | |
| Mr Duffy | Mr Humphreys | Mr Price | |

* Tellers

And so it was negatived.

## 5 AUDITOR-GENERAL'S REPORT—PUBLICATION OF PAPER

The Speaker presented the following paper:

Audit Act—Auditor-General—Audit report No. 12 of 1993-94—Efficiency audit—Administration of the 150% taxation incentive for industry research and development: Department of Industry, Technology and Regional Development, Australian Taxation Office.

Mr Beazley (Leader of the House), by leave, moved—That:

(1) this House authorises the publication of the Auditor-General's audit report No. 12 of 1993-94; and

(2) the report be printed.

Question—put and passed.

## 6 PAPERS

The following papers were presented:

Administrative Appeals Tribunal Act—Administrative Review Council—17th report, for 1992-93.

Australian Securities Commission Act—

Australian Accounting Standards Board—Report for 1992-93.

Australian Securities Commission—Report for 1992-93.

Companies Auditors and Liquidators Disciplinary Board—Report for 1992-93.

Corporations and Securities Panel—Report for 1992-93.

7 **PAPERS—MOTION TO TAKE NOTE OF PAPERS**

Mr Beazley (Leader of the House) moved—That the House take note of the following papers:

Australian Securities Commission Act—

Australian Securities Commission—Report for 1992-93.

Companies Auditors and Liquidators Disciplinary Board—Report for 1992-93.

Corporations and Securities Panel—Report for 1992-93.

Debate adjourned (Mr Howard), and the resumption of each debate made an order of the day for the next sitting.

8 **PROPOSED DISCUSSION OF MATTER OF PUBLIC IMPORTANCE—MINISTER FOR THE ENVIRONMENT, SPORT AND TERRITORIES**

The House was informed that Mr Costello had proposed that a definite matter of public importance be submitted to the House for discussion, namely, "The failure of the Minister for the Environment, Sport and Territories to adequately respond to the efficiency audit of the Auditor-General on the Community Cultural, Recreational and Sporting Facilities Program".

The proposed discussion having received the necessary support—

Mr Costello rising to address the House—

Mr Beazley (Leader of the House) moved—That the business of the day be called on.

Question—put and passed.

9 **MESSAGES FROM THE SENATE**

Messages from the Senate were reported returning the following Bills without amendment:

18 November 1993—Message—

No. 134—Appropriation (Parliamentary Departments) 1993-94.

No. 135—Appropriation (No. 1) 1993-94 (*without requests*).

No. 136—Appropriation (No. 2) 1993-94.

19 November 1993—Message—

No. 138—Loan 1993.

No. 139—States Grants (General Purposes) 1993.

10 **MESSAGE FROM THE SENATE—OCCUPATIONAL HEALTH AND SAFETY (MARITIME INDUSTRY) BILL 1993**

Message No. 132, dated 18 November 1993, from the Senate was reported transmitting for the concurrence of the House a Bill for "*An Act to promote the occupational health and safety of persons employed in the maritime industry, and for related purposes*".

Bill read a first time.

Ordered—That the second reading be made an order of the day for the next sitting.

11 **MESSAGE FROM THE SENATE—INDUSTRIAL RELATIONS AND OTHER LEGISLATION AMENDMENT BILL 1993**

Message No. 137, dated 19 November 1993, from the Senate was reported transmitting for the concurrence of the House a Bill for "*An Act to amend the law about industrial relations, and for other purposes*".

Bill read a first time.

Ordered—That the second reading be made an order of the day for the next sitting.

12 **MESSAGE FROM THE SENATE—MIGRATION AMENDMENT ("POINTS" SYSTEM) BILL 1993**

Message No. 133, dated 18 November 1993, from the Senate was reported transmitting for the concurrence of the House a Bill for "*An Act to amend the 'Migration Act 1958', and for related purposes*".

Bill read a first time.

Ms McHugh (Minister for Consumer Affairs) moved—That the Bill be now read a second time.

*Paper:* Ms McHugh presented an explanatory memorandum to the Bill.

Debate adjourned (Mr Ruddock), and the resumption of the debate made an order of the day for the next sitting.

13 **INDUSTRIAL RELATIONS REFORM BILL 1993**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

Debate resumed.

*Limitation of debate:* At 9.50 p.m., the Deputy Speaker having called the attention of the House to the fact that the time allotted for the second reading had expired—

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

The House resolved itself into a committee of the whole.

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*In the committee*

Clauses 1 to 11, by leave, taken together.

On the motion of Mr Brereton (Minister for Industrial Relations), by leave, the following amendments were made together:

Clause 4—

Page 2, proposed subparagraph 3(b)(i), line 24, omit "a consistent and", substitute "an".

Page 2, at the end of proposed section 3 add the following paragraph:

"(g) helping to prevent and eliminate discrimination on the basis of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.".

Clause 6, page 3, after the proposed definition of "paid rates award" insert the following definition:

"'**State award**' means an award, order, decision or determination of a State industrial authority;'.".

Clause 7—

Page 3, proposed subparagraph 88A(a)(i), line 16, omit "terms", substitute "wages".

Page 3, proposed subparagraph 88A(a)(ii), line 20, omit "terms", substitute "wages".

Page 3, proposed paragraph 88A(b), line 22, after "safety net" insert "of minimum wages and conditions of employment".

Page 3, proposed paragraph 88A(c), line 25, after "enterprises" insert ", while employees' interests are also properly taken into account".

Page 3, at the end of proposed section 88A add the following paragraph:

"; and

(e) the Commission's functions and powers in relation to making and varying awards are performed and exercised in a way that both:

(i) gives employees prompt access to fair and enforceable minimum wages and conditions of employment, so far as they do not already have them; and

(ii) encourages the prevention and settlement of industrial disputes by the making of agreements under Part VIB.".

Clause 10—

Page 4, proposed subsection 90AA(3), line 11, omit "To avoid doubt, changes", substitute "Changes".

Page 4, at the end of proposed section 90AA add the following subsection:

" '(4) Subsection (3) is enacted to avoid doubt.".

Clauses, as amended, agreed to.

Clause 12—

On the motion of Mr Brereton, by leave, the following amendments were made together:

Page 4, lines 29 to 34, omit paragraph 12(a), substitute the following paragraph:

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

'(1AA) The Commission must not, in relation to an industrial dispute, dismiss or refrain as mentioned in paragraph (1)(g) because of subparagraph (1)(g)(iii) unless it has made a determination and findings under section 101 in relation to the dispute.';".

Page 5, proposed paragraph 111(1D)(a), line 2, omit "employees", substitute "the employees whom it would cover".

Mr Howard moved the following amendment:

Page 5, line 6, after proposed paragraph (b) insert the following paragraph:

"(c) making such award will facilitate the approval under Division 3 of Part VIB of an agreement covering employees who are not already covered by an award.".

Debate ensued.

Amendment negatived.

On the motion of Mr Brereton, by leave, the following amendments were made together:

Page 5, paragraph (b), after proposed subsection 111(1F) insert the following subsections:

"'(1G) In determining an application for the Commission to dismiss or refrain as mentioned in paragraph (1)(g) because of subparagraph (1)(g)(ii) or (iii), the Commission must give particular weight to the benefits of not disturbing a particular employment agreement (as defined in subsection (1A)) if the application is made on the ground, or on grounds including the ground, that:

(a) the matter or part, or the industrial dispute or part, concerns terms and conditions of employment of a particular kind and application; and

(b) terms and conditions of that kind and application are regulated by the employment agreement; and

(c) a State industrial authority could have prevented the employment agreement from coming into force if the authority had considered that:

(i) the agreement would result in the reduction of any entitlements or protections of employees under:

(A) a State award; or

(B) any law of the State that the authority thought relevant; and

(ii) in the context of those employees' terms and conditions considered as a whole, the reduction would be contrary to the public interest.

"'(1H) Subsection (1G) does not limit the matters to which the Commission may have regard in considering whether to dismiss or refrain as mentioned in paragraph (1)(g).".

Page 5, at the end of the clause add the following paragraph:

"(c) by inserting in subsection (2) '(except subsection (1AA))' after 'section'.".

Clause, as amended, agreed to.

Clauses 13 and 14, by leave, taken together.

On the motion of Mr Brereton, by leave, the following amendments were made together:

Clause 13, page 5, lines 18 to 25, omit proposed subsections 113(4A) and (4B), substitute the following subsection:

"'(4A) The Commission may refrain from hearing, further hearing, or determining, as the case requires, an application for variation of an award for so long as:

(a) it considers that, in all the circumstances, the parties concerned should try to negotiate an agreement under Part VIB to deal with the subject matter of the proposed variation; and

(b) it is not satisfied that there is no reasonable prospect of the parties making such an agreement.'.".

Clause 14—

Page 5, lines 28 to 34, omit proposed section 113A, substitute the following section:

**Commission to include enterprise flexibility provisions in awards**

"'113A. So far as the Commission considers appropriate, an award must establish a process for agreements to be negotiated, at the enterprise or workplace level, about how the award (as it applies to the enterprise or workplace concerned) should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs.".

Page 6, proposed subsection 113B(4), lines 16 and 17, omit "and has an interest in the proposed variation".

Clauses, as amended, agreed to.

*Proposed new clause—*

Mr Howard moved—That the following new clause be inserted in the Bill:

**Repeal of section 122**

"**14A.** Section 122 of the Principal Act is repealed.".

Debate ensued.

Proposed new clause negatived.

Clauses 15 to 20, by leave, taken together.

On the motion of Mr Brereton, by leave, the following amendments were made together:

Clause 15—

page 6, lines 24 to 39, omit proposed subsections 123A(1) and (2), substitute the following subsections:

"'123A.(1) Subsection (1A) applies if:

(a) the Commission proposes to make a new award covering, or to vary an existing award so as to cover, employees of a particular kind in an industry carried on by employers; and

(b) the wages and conditions of employees of that kind in that industry, in so far as they have customarily been determined by an award or a State award, have customarily been determined by a paid rates award or a State award in the nature of a paid rates award.

"'(1A) The Commission must make the new award as a paid rates award, or must vary the existing award so as to be a paid rates award, in so far as it determines wages and conditions of employment, of employees of that kind in that industry, that have customarily been determined by a paid rates award or a State award in the nature of a paid rates award.

"'(1B) However, the Commission need not do so in so far as:

(a) the Commission is satisfied that it would be against the public interest; or

(b) each of the parties to the proposed award, or to the award as proposed to be varied, has consented to the award not being a paid rates award.

"'(2) The Commission must maintain existing paid rates awards, and vary them from time to time, as appropriate having regard to the objects of this Part and the Commission's duty under subsection 90AA(2). However, the

Commission need not do so in so far as the Commission is satisfied that it is against the public interest.".

Page 7, lines 8 and 9, omit "them an opportunity to be heard, that the parties to the paid rates award have", substitute "the parties to the award an opportunity to be heard, that such a party has".

Clause 16, page 7, proposed subsection 143(2A), line 16, omit "under", substitute "covered by".

Clause 17—

Page 7, proposed subsection 150A(2), lines 36 and 37, omit "a secure, relevant and consistent framework of", substitute "for secure, relevant and consistent".

Page 8, line 4, omit proposed paragraph 150A(2)(e).

Clauses, as amended, agreed to.

Clause 21—

On the motion of Mr Brereton, by leave, the following amendments were made together:

Page 9, proposed section 170AD, line 27, omit "representing", substitute "whose rules entitle it to represent the industrial interests of".

Page 10, lines 19 to 21, omit proposed subparagraphs 170AE(4)(a)(i) and (ii), substitute the following subparagraphs:

"(i) each trade union whose rules entitle it to represent the industrial interests of any of the employees concerned; and

(ii) each organisation or association representing employers of any of those employees;".

Page 11, proposed section 170AG, line 20, omit "secure", substitute "establish".

Page 11, after proposed section 170AG insert the following section in proposed Division 1:

**Additional effect of Division**

"'170AH.(1) Because of this section, this Division has the effect it would have if section 170AA were repealed. That effect is additional to, and does not prejudice, the effect that this Division has otherwise than because of this section.

'(2) The Commission must determine by arbitration an application made under this Division as it has effect because of this section.

'(3) The Commission may make an order under this Division (as it so has effect) only if:

(a) it considers that the order is necessary to prevent an industrial dispute about minimum wages for employees; and

(b) it has given to each organisation or other person who, in its opinion, would be likely to be a party to the dispute an opportunity to be heard in relation to the making of the order.

'(4) An order so made must be expressed to bind only such of the following as the order specifies:

(a) the organisations and other persons to whom the Commission has given, as required by subsection (3), an opportunity to be heard;

(b) the respective members of those organisations.".

Page 12, proposed paragraph 170BD(a), line 26, omit "representing", substitute "whose rules entitle it to represent the industrial interests of".

Page 12, lines 29 to 40, omit proposed section 170BE, substitute the following section:

**No order if adequate alternative remedy exists**

" '170BE. The Commission must refrain from considering the application, or from determining it, if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an adequate alternative remedy that:

(a) exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and

(b) will ensure, for the employees concerned, equal remuneration for work of equal value.".

Page 13, lines 1 to 4, omit proposed section 170BF, substitute the following section:

**Immediate or progressive introduction of equal remuneration**

" '170BF. The order may implement equal remuneration for work of equal value when the order takes effect. However, if it is not deemed feasible to implement it immediately, the order may implement it in stages (as provided in the order).".

Page 13, after proposed section 170BH insert the following section in proposed Division 2:

**Additional effect of Division**

" '170BJ.(1) Because of this section, this Division has the effect it would have if section 170BA were repealed and paragraph 170BC(3)(b) were omitted. That effect is additional to, and does not prejudice, the effect that this Division has otherwise than because of this section.

'(2) The Commission must determine by arbitration an application made under this Division as it has effect because of this section.

'(3) The Commission may make an order under this Division (as it so has effect) only if:

(a) it considers that the order is necessary to prevent an industrial dispute about equal remuneration for work of equal value; and

(b) it has given to each organisation or other person who, in its opinion, would be likely to be a party to the dispute an opportunity to be heard in relation to the making of the order.

'(4) An order so made must be expressed to bind only such of the following as the order specifies:

(a) the organisations and other persons to whom the Commission has given, as required by subsection (3), an opportunity to be heard;

(b) the respective members of those organisations.".

Page 13, at the end of proposed section 170CA add the following subsection:

'(2) Without limiting subsection (1), the reference in paragraph 170DF(1)(f) to other parental leave has been included in order to give effect, or further effect, to the Family Responsibilities Convention and to the Recommendation referred to in paragraph 170KA(1)(b).".

Page 14, lines 2 to 4, omit proposed section 170DA, substitute the following section:

**Commencement of Subdivision**

"'170DA.(1) Subject to subsection (2), this Subdivision (except this section) commences on a day, not earlier than 26 February 1994, to be fixed by Proclamation.

'(2) If this Subdivision (except this section) does not commence under subsection (1) within the period of 6 months beginning on the day on which the *Industrial Relations Reform Act 1993* received the Royal Assent, it commences on the first day after the end of that period.".

Page 14, proposed subsection 170DB(2), line 13, omit "The employer must give the period of notice", substitute "The required period of notice is first".

Mr Howard moved the following amendment:

Page 15, proposed section 170DF, after paragraph (b) of subsection (1) insert the following paragraph:

"(ba) non-membership of a union or of an association that has applied to be registered as a union under the provisions of the Principal Act;".

Debate continued.

*Limitation of debate:* At 10.20 p.m., the Deputy Chairman having called the attention of the committee to the fact that the time allotted for the committee stage had expired—

Amendment negatived.

Question—That clause 21, as amended, and the further amendments to clause 21 circulated by the Government be agreed to—put and passed.

Further question—That the remainder of the Bill and the remaining amendments and new clauses circulated by the Government be agreed to, and that the Bill be reported with amendments—put and passed.

The further amendments to clause 21 and the remaining amendments circulated by the Government were accordingly made in the Bill, and are as follows:

*Amendments—*

Clause 21—

Page 16, lines 9 to 11, omit proposed subsection 170EA(2), substitute the following subsection:

"'(2) A trade union whose rules entitle it to represent the industrial interests of a person (**"the employee"**) may, on the employee's behalf, apply to the Court for a remedy in respect of termination of the employee's employment.".

Page 16, lines 20 to 28, omit proposed section 170EB, substitute the following section:

**Court must decline jurisdiction if adequate alternative remedy exists**

"'170EB. The Court must decline to consider or determine an application under section 170EA if satisfied that there is available to the employee by or on whose behalf the application was made an adequate alternative remedy, in respect of the termination, under existing machinery that satisfies the requirements of the Termination of Employment Convention.".

Page 17, at the end of proposed section 170EE add the following subsection:

"'(4) Nothing in section 170EC or in this section limits the Court's power to make an interim or interlocutory order in relation to an application under section 170EA.".

Page 18, proposed paragraph 170EF(2)(d), line 4, after "officer" insert "or employee".

Page 18, proposed paragraph 170EF(2)(d), line 5, after "officer" insert "or employee".

Page 18, after proposed section 170EG insert the following section in proposed Subdivision C:

**Injunction under section 431 not available**

"'170EH. Section 431 does not apply to a contravention or proposed contravention of Subdivision B.".

Page 18, proposed section 170FB, line 26, omit "representing", substitute "whose rules entitle it to represent the industrial interests of".

Page 18, proposed section 170FC, lines 30 and 31, omit "some other existing", substitute "an adequate alternative".

Page 20, proposed paragraph 170GB(b), line 3, omit "representing", substitute "whose rules entitle it to represent the industrial interests of".

Page 20, lines 4 to 17, omit proposed section 170GC, substitute the following section:

**No order if adequate alternative remedy exists**

"170GC. The Commission must refrain from considering an application, or from determining it, if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an adequate alternative remedy under machinery:

(a) that exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and

(b) by which effect will be given to the requirements of Article 13 of the Termination of Employment Convention in relation to the employees and trade unions concerned.".

Page 20, proposed section 170HA, line 24, omit "After", substitute "On and after 26 February 1994, when".

Page 21, line 19, omit proposed paragraph 170JD(1)(c).

Clause 26—

Page 23, lines 29 and 30, omit paragraph (a).

Page 23, after paragraph (b) insert the following paragraph:

"**(ba)** by omitting from subsection (1) the definitions of 'award' and 'employer' and substituting the following definitions:

' **"award"** means:

(a) an award or order that has been reduced to writing under subsection 143(1); or

(b) a certified agreement; or

(c) an enterprise flexibility agreement;

**"employer"** includes:

(a) in any case:

(i) a person who is usually an employer; and

(ii) an unincorporated club; and

(b) in relation to an agreement under Division 3 of Part VIB—a constitutional corporation that is a successor, assignee or transmittee (whether immediate or not) to or of the whole, or any relevant part or parts, of the business of the employer that made the agreement, including such a corporation that has acquired or taken over the whole, or any relevant part or parts, of that business;';".

Page 23, paragraph 26(c), before the proposed definition of "constitutional corporation" insert the following definition:

" ' **"agreement"** has a meaning affected by section 170NA;".

Page 24, after paragraph (d) of the proposed definition of "constitutional corporation" insert the following paragraph:

" or (e) a Commonwealth authority;".

Page 24, lines 15 to 18, omit the proposed definition of "party", substitute the following definition:

" **'party'**, in relation to an industrial situation, means:

(a) an organisation of employees that is affected by the situation; or

(b) an organisation of employers that is affected by the situation, or members of which are so affected; or

(c) an employer who is affected by the situation;'.".

Clause 27, page 24, lines 19 to 21, omit the clause, substitute the following clause:

**No automatic flow-on of terms of certain awards or agreements**

"**27.** Section 95 of the Principal Act is amended:

**(a)** by inserting 'or an enterprise flexibility agreement' after 'certified agreement' (first occurring);

**(b)** by omitting 'the terms of a certified agreement' and substituting 'the terms of an award made or varied as mentioned in subsection 170PQ(3), or the terms of a certified agreement or of an enterprise flexibility agreement,'.".

Clause 30, page 25, lines 6 to 20, omit the clause, substitute the following clause:

**Persons bound by awards**

"**30.** Section 149 of the Principal Act is amended by adding at the end the following subsections:

'(4) An award that is constituted by an enterprise flexibility agreement is binding on:

(a) a constitutional corporation that is:

(i) the employer that applied for approval of implementation of the agreement; or

(ii) a successor, assignee or transmittee (whether immediate or not) to or of the whole, or any relevant part or parts, of that employer's business, including such a corporation that has acquired or taken over the whole, or any relevant part or parts, of that business; and

(b) each employee of such a corporation who is covered by the agreement, even if he or she was not such an employee when the agreement was made; and

(c) an organisation of employees, as provided by section 170NO; and

(d) all members of an organisation on which the agreement is binding because of paragraph (c).

'(5) Subsection (4) has effect subject to an order under subsection 170NM(6) or 170NN(3).'.".

Clause 31—

Page 25, lines 26 to 29, omit proposed subsection 170LA(1), substitute the following subsection:

" '(1) The objects of this Part are:

(a) to facilitate:

(i) the making and certifying of agreements under Division 2; and

(ii) the making, and approval of the implementation of, agreements under Division 3; and

(b) to encourage the use of agreements, particularly at the workplace or enterprise level.".

Page 26, proposed section 170LB, definition of "part", line 10, omit "means:", substitute "includes, for example:".

Page 26, at the end of proposed subsection 170LC(1) add the following paragraph:

"(c) 2 or more geographically distinct parts of the same business carried on by a single employer.".

Page 26, lines 37 to 40, omit proposed paragraphs 170LC(2)(a) and (b), substitute the following paragraphs:

"(a) the agreement applies only to a part of a business, or to 2 or more parts of the same business, carried on by a single employer; and

(b) it is appropriate to regard that part, or each of those parts, as a geographically distinct part of that business;".

Page 27, proposed paragraph 170LC(3)(b), line 8, after "one" insert "or more".

Page 27, proposed subsection 170LC(4), line 11, omit "a part", substitute "one or more parts".

Page 27, proposed subsection 170MA(4), line 24, omit "The parties", substitute "All or any of the parties".

Page 27, lines 27 to 38, and page 28, lines 1 to 4, omit proposed subsection 170MB(1), substitute the following subsection:

" '(1) On an application to the Commission:

(a) to certify an agreement that applies only to a single business, part of a single business, or a single place of work; or

(b) to approve an extension or variation of a certified agreement that so applies;

an organisation of employees is entitled to be heard if:

(c) the organisation is entitled to represent the industrial interests of members of the organisation who are employed, by an employer who is a party to the agreement, to perform work in that business, part of a business or place of work; or

(d) the organisation:

(i) is bound by an award that binds such an employer in respect of work performed in that business, part of a business or place of work; and

(ii) can show that it has a genuine interest in the application.".

Page 28, proposed subsection 170MB(2), lines 7 and 8, omit "to the Commission to certify an agreement".

Page 28, proposed paragraph 170MC(1)(a), line 13, after "awards" insert "(as defined in subsection (7))".

Page 28, proposed subparagraph 170MC(1)(d)(i), line 22, omit "provides", substitute "establishes a process for".

Page 28, proposed paragraph 170MC(1)(e), line 30, omit "the terms proposed to be included in".

Page 29, lines 3 to 6, omit proposed subparagraph 170MC(1)(g)(i), substitute the following subparagraph:

"(i) subject to subsections (5) and (6), the parties to the agreement include each organisation of employees that is a party to the award, or to one or more of the awards, referred to in paragraph (1)(a); and".

Page 29, proposed subparagraph 170MC(2)(a)(i), line 17, after "award" insert "(as defined in subsection (7))".

Page 29, lines 29 to 31, omit proposed subsection 170MC(4).

Page 29, at the end of proposed section 170MC add the following subsection:

"'(7) In this section:

**"award"** includes a State award but does not include:

(a) an order under Part VIA; or

(b) a certified agreement; or

(c) an enterprise flexibility agreement.".

Page 30, lines 1 to 37, and page 31, lines 1 and 2, omit proposed section 170MD, substitute:

**When Commission to refuse to certify agreements**

"'170MD.(1) Despite section 170MC, the Commission may refuse to certify an agreement if:

(a) in the case of any agreement—the Commission thinks that any of the terms is one that the Commission would not have power to include in an award (disregarding section 95); or

(b) except in the case of an agreement that applies only to a single business, a part of a single business or a single place of work—the Commission thinks that certifying the agreement would be contrary to the public interest.

'(2) Despite section 170MC, the Commission must refuse to certify an agreement if the Commission thinks that a provision of the agreement is inconsistent with:

(a) a provision of Part VIA; or

(b) an order by the Commission under that Part; or

(c) an injunction granted, or any other order made, by the Court under that Part.

'(3) Despite section 170MC, the Commission must refuse to certify an agreement if satisfied that:

(a) an employer who is a party to the agreement has, in connection with negotiating the agreement, contravened section 170RA, 320 or 334; or

(b) such an employer has caused a person or body to engage, in or in connection with negotiations for the agreement, in conduct that, had

the employer engaged in it, would be a contravention by the employer of section 170RA, 320 or 334; or

(c) a person or body has, on behalf of such an employer:

(i) so engaged in such conduct; or

(ii) caused another person or body so to engage in such conduct.

'(4) Subsection (3) does not apply if the Commission is satisfied that the contravention or conduct, and its effects, have been fully remedied.

'(5) Despite section 170MC, the Commission must refuse to certify an agreement if it thinks that a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.".

'(6) Despite section 170MC, the Commission may refuse to certify an agreement if:

(a) the agreement applies only to a part of a single business that is neither of the following:

(i) a geographically distinct part of the single business; or

(ii) a distinct operational or organisational unit within the single business; and

(b) the Commission considers that:

(i) the agreement defines that part in a way that results in the agreement not covering employees whom it would be reasonable for the agreement to cover, having regard to:

(A) the nature of the work performed by the employees whom the agreement does cover; and

(B) the organisational and operational relationships between that part and the rest of the single business; and

(ii) it is unfair for the agreement not to cover those employees.".

Page 31, lines 10 to 12, omit proposed paragraph 170ME(1)(b), substitute the following paragraph:

"(b) the agreement specifies the terms that can be so varied, and the circumstances in which, and the ways in which, they can be so varied; and".

Page 32, proposed paragraph 170MH(1)(b), line 6, after "section" insert "170MI,".

Page 32, lines 16 to 25, omit proposed subsections 170MH(2) and (3), substitute the following subsections:

" '(2) During the period of the agreement and for 3 months after that period, subsections 148(1) and (3) do not apply to the agreement, but subsection 148(2) does so apply.

'(3) If the agreement remains in force until the end of the 3 months after the period of the agreement, then, at the end of those 3 months:

(a) section 148 applies to the agreement; and

(b) the agreement continues in force accordingly.

'(3A) In the application of section 148 to the agreement in accordance with this section, a reference in that section to the period specified in the award as the period for which the award is to continue in force is taken to be a reference to the period of the agreement.".

Page 32, proposed subsection 170MI(1), line 31, omit "subsection (2),", substitute "this section,".

Page 32, lines 35 to 37, omit proposed paragraph 170MI(2)(b), substitute the following paragraph:

"(b) before the end of the period of operation of the agreement or that period as last extended under this section:

(i) if the agreement applies only to a single business, part of a single business or a single place of work—one or more of the parties apply to the Commission to approve the extension; or

(ii) otherwise—one or more of the parties notify the Commission in writing of the extension.".

Page 32, at the end of proposed section 170MI add the following subsections:

'(3) If an application is made in accordance with subparagraph (2)(b)(i), the extension has effect at least until the application is determined, even if that happens after the period referred to in paragraph (2)(b).

'(4) On an application, the Commission must approve the extension unless an organisation of employees that is entitled under section 170MB to be heard satisfies the Commission that the extension would not be in the interests of the employees covered by the agreement. If that happens, the Commission must by order terminate the agreement.".

Page 33, proposed subsection 170MJ(1), lines 2 to 8, omit all the words from and including "(1) During" to the end of proposed paragraph 170MJ(1)(b), substitute the following:

"(1) While a certified agreement is in force:

(a) subject to paragraph (b), the terms of the agreement prevail over the terms of an award or order of the Commission; and

(b) the agreement has no effect in so far as it is inconsistent with an enterprise flexibility agreement whose implementation was approved before the first-mentioned agreement was certified; and".

Page 33, proposed paragraph 170MJ(3)(b), line 33, after "where" insert ", on application by a party to the agreement,".

Page 36, lines 5 to 23, omit proposed section 170NA, substitute the following section:

**When employer may apply for approval of implementation of agreement**

" '170NA.(1) An employer that is a constitutional corporation and carries on an enterprise may prepare an instrument that:

(a) applies to the enterprise; and

(b) is about matters pertaining to the relationship between employers and employees.

'(2) If an instrument is prepared under subsection (1):

(a) it is taken for the purposes of this Act to be an agreement and to have been made when the instrument was prepared; and

(b) the employer may apply to the Commission to approve implementation of the agreement.

Note: It is expected that an employer will apply to the Commission under subsection (2) only if the agreement reflects the outcome of negotiations by the employer with:
- employees covered by the agreement; and
- any eligible unions (as defined in section 170LB) that choose to take part.

This is because approval of implementation of the agreement:
- depends on a majority of the employees covered by the agreement genuinely agreeing to be bound by it (see paragraph 170NC(1)(i)); and
- may be refused if the employer failed to notify eligible unions about the negotiations or to give them a reasonable opportunity to take part (see subsection 170ND(5)).".

Page 36, lines 25 to 31, omit proposed subsection 170NB(1), substitute the following subsection:

" '(1) On an application to the Commission:
(a) to approve implementation of an agreement; or
(b) to extend an enterprise flexibility agreement's period of operation;

an organisation of employees is entitled to be heard if it is bound by an award that binds the employer in respect of work performed in the enterprise.".

Page 36, proposed subsection 170NB(3), lines 39 and 40, omit "to approve implementation of an agreement".

Page 37, lines 5 to 15, omit proposed paragraphs 170NC(1)(a), (b) and (c), substitute the following paragraphs:

"(a) the agreement applies only to the enterprise referred to in section 170NA and is only about matters pertaining to the relationship between employers and employees; and
(b) wages and conditions of employment of the employees covered by the agreement are regulated by one or more awards (as defined in subsection (3)) that bind the employer; and
(c) the agreement covers all of the employees:
(i) in respect of whom wages and conditions of employment are regulated by one or more awards (as defined in subsection (3)) that bind the employer; and
(ii) whom the employer employs to perform work in that enterprise; and".

Page 37, proposed paragraph 170NC(1)(e), line 20, omit "the employer and employees covered by", substitute "the persons bound by".

Page 37, proposed subparagraph 170NC(1)(f)(i), line 23, omit "the parties to", substitute "the persons bound by".

Page 37, proposed subparagraph 170NC(1)(f)(ii), line 26, omit "parties have agreed", substitute "agreement states".

Page 38, lines 1 to 4, omit proposed paragraphs 170NC(1)(i) and (j), substitute the following paragraphs:

"(i) a majority of the persons who, as at the end of a day that is specified in the application and is not more than 7 days before the day when the application was made, were employees covered by the agreement have, on or before the specified day, genuinely agreed to be bound by the agreement, even if they so agreed at different times; and
(j) the agreement specifies its period of operation.".

Page 38, proposed subparagraph 170NC(2)(a)(i), line 11, after "award" insert "(as defined in subsection (3))".

Page 38, lines 17 to 19, omit proposed subsection 170NC(3), substitute the following subsection:

" '(3) In this section:

**"award"** does not include:

(a) an order under Part VIA; or

(b) a certified agreement; or

(c) an enterprise flexibility agreement.".

Page 38, lines 20 to 33, omit all the words from and including "**When**" to the end of proposed subsection 170ND(1), substitute:

**When Commission to refuse to approve implementation of agreements**

" '170ND.(1) Despite section 170NC, the Commission may refuse to approve implementation of an agreement if the Commission thinks that the agreement includes a term that a provision of this Act (except section 95) or of any other Act would prohibit the Commission from including in an award.

(1A) Despite section 170NC, the Commission must refuse to approve implementation of an agreement if the Commission thinks that a provision of the agreement is inconsistent with:

(a) a provision of Part VIA; or

(b) an order by the Commission under that Part; or

(c) an injunction granted, or any other order made, by the Court under that Part.".

Page 38, lines 38 to 41, omit proposed subsection 170ND(3), substitute the following subsection:

" '(3) Approving implementation of an agreement is not contrary to the public interest merely because the agreement is inconsistent with principles established by a Full Bench that apply in relation to determining wages and conditions of employment by awards made under Part VI.".

Page 39, proposed subsection 170ND(4), line 1, omit "may", substitute "must".

Page 39, proposed paragraph 170ND(4)(a), line 4, after "170RA," insert "170RB,".

Page 39, proposed paragraph 170ND(4)(b), line 8, after "170RA," insert "170RB,".

Page 39, after proposed subsection 170ND(4) insert the following subsection:

" '(4A) Subsection (4) does not apply if the Commission is satisfied that the contravention or conduct, and its effects, have been fully remedied.".

Page 39, proposed paragraph 170ND(5)(b), line 19, omit "to be a party to", substitute "to agree, before the application for approval was made, to be bound by".

Page 39, lines 24 to 34, omit proposed subsection 170ND(7), substitute the following subsection:

" '(7) Despite section 170NC, the Commission must refuse to approve implementation of an agreement if it thinks that a provision of the agreement discriminates against an employee because of, or for reasons including, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.".

Page 39, lines 35 to 39, and page 40, lines 1 to 14, omit proposed section 170NE, substitute the following section:

**How agreement may provide for its variation**

" '170NE.(1) If an agreement (**"the main agreement"**) provides for any of its terms to be varied by a later enterprise flexibility agreement applying to the same enterprise, the Commission must refuse to approve implementation of the main agreement unless satisfied that the main agreement specifies the terms that can be so varied, and the circumstances in which, and the ways in which, they can be so varied.

'(2) To avoid doubt, subsection (1) does not apply to an agreement in so far as the obligations under the agreement can change because of the terms of the agreement itself.".

Page 40, lines 19 to 29, omit proposed subsections 170NF(2), (3) and (4), substitute the following subsections:

" '(2) The Commission may accept an undertaking, about the agreement's operation, from one or more persons:

(a) who would be bound by the agreement; and

(b) whom the Commission considers to be the appropriate person or persons to give the undertaking.

The Commission may approve implementation of the agreement if satisfied that the undertaking meets its concerns.

'(3) Whether or not it accepts an undertaking, the Commission must, before refusing to approve implementation of the agreement:

(a) give the employer an opportunity to vary the agreement by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement; or

(b) give the persons who would be bound by the agreement an opportunity to do whatever else is needed for the Commission to be able to approve implementation of the agreement.

'(4) If an undertaking under this section is not complied with, the Commission may terminate the agreement after giving the persons bound by it an opportunity to be heard.".

Page 40, proposed subsection 170NG(2), lines 38 and 39, omit "and in any other way that subsection 143(4) requires".

Page 41, proposed section 170NH, line 3, omit "employer and employees covered", substitute "persons bound".

Page 41, proposed subparagraph 170NI(1)(b)(ii), line 17, omit "a party to", substitute "bound by".

Page 41, proposed subparagraph 170NI(1)(b)(iii), line 18, omit "a party to", substitute "bound by".

Page 41, lines 22 to 31, omit proposed subsections 170NI(2) and (3), substitute the following subsections:

" '(2) During the period of the agreement and the 3 months after that period, subsections 148(1) and (3) do not apply to the agreement, but subsection 148(2) does so apply.

'(3) If the agreement remains in force until the end of the 3 months after the period of the agreement, then, at the end of those 3 months:

(a) section 148 applies to the agreement; and

(b) the agreement continues in force accordingly.

'(3A) In the application of section 148 to the agreement in accordance with this section, a reference in that section to the period specified in the award as the period for which the award is to continue in force is taken to be a reference to the period of the agreement.".

Page 41, lines 36 to 38, and page 42, lines 1 to 5, omit proposed section 170NJ, substitute the following section:

**Extension of enterprise flexibility agreements**

"'170NJ.(1) Subject to this section, the Commission must extend an enterprise flexibility agreement's period of operation, in accordance with an application by the employer, if the Commission is satisfied that a majority of the persons who, as at the end of a day that is specified in the application and is not more than 7 days before the day when the application was made, were employees covered by the agreement have, on or before the specified day, genuinely agreed to the proposed extension, even if they so agreed at different times.

'(2) However, the Commission must not extend the period of operation if:

(a) that period, or that period as last extended under this section, has ended; or

(b) an organisation of employees that is entitled under section 170NB to be heard on the application satisfies the Commission that the extension would not be in the interests of the employees covered by the agreement.

'(3) If it appears to the Commission that the period of operation, or that period as last extended under this section, will end before the application is determined, the Commission may by order extend that period until the application is determined. The Commission may revoke an order extending that period.".

Page 42, lines 7 to 16, omit all the words from and including "(1) During" to the end of proposed paragraph 170NK(1)(c), substitute:

"(1) While an enterprise flexibility agreement is in force:

(a) subject to paragraph (b), the terms of the agreement prevail over the terms of an award or order of the Commission; and

(b) the agreement has no effect in so far as it is inconsistent with a certified agreement that was certified before implementation of the first-mentioned agreement was approved; and

(c) a term of the agreement can be set aside or varied by the employer as provided in subsection 113(2D) or section 170NL or 170NM, but not otherwise; and".

Page 43, proposed subparagraph 170NK(3)(b)(i), line 2, omit "party", substitute "person".

Page 43, proposed subparagraph 170NK(3)(b)(i), line 4, omit "certified", substitute "first-mentioned".

Page 43, lines 11 to 40, page 44, lines 1 to 39, and page 45, lines 1 and 2, omit proposed sections 170NL, 170NM and 170NN, substitute the following sections:

**Variation of enterprise flexibility agreement as provided in the agreement**

" '170NL.(1) This section applies for the purposes of an application to the Commission to approve implementation of an agreement (**"the variation"**) varying an enterprise flexibility agreement (**"the main agreement"**) that provides for any of its terms to be varied by a later enterprise flexibility agreement.

'(2) Subject to subsection (3), the Commission must deal with the application as if:

(a) it were an application to the Commission to approve implementation of the main agreement as varied; and

(b) the main agreement as in force before the variation takes effect were not in force.

'(3) The Commission may approve implementation of the variation only if satisfied that:

(a) the variation was made in accordance with the main agreement; and

(b) the enterprise to which the variation applies is the same as the one to which the main agreement applies; and

(c) the variation provides only for varying the main agreement and for matters incidental to varying it.

**Enterprise flexibility agreements may be varied or terminated by Full Bench**

'170NM.(1) At any time while an enterprise flexibility agreement is in force, a Full Bench may review the agreement's operation after giving the persons bound by the agreement an opportunity to be heard.

'(2) The Full Bench may act under subsection (1) only:

(a) on its own initiative; or

(b) on application by a person bound by the agreement.

'(3) If the Full Bench finds that the continued operation of the agreement would be unfair to the employees covered by the agreement, it may do any of the following:

(a) by order, terminate the agreement;

(b) accept an undertaking in relation to the agreement's operation;

(c) permit the employer to vary the agreement by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement.

'(4) If an undertaking is not observed, the Full Bench may, by order, terminate the agreement after giving the persons bound by it an opportunity to be heard.

'(5) If a person bound by an enterprise flexibility agreement engages in industrial action in relation to a matter dealt with in the agreement, another person who is bound by the agreement and is affected by the industrial action may apply to the Commission for a declaration that the person is no longer bound by the agreement.

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

**Enterprise flexibility agreements may be terminated by consent**

'170NN.(1) A person bound by an enterprise flexibility agreement may, with the consent of all other persons bound by the agreement, give the Commission written notice stating that the person does not want to remain bound by the agreement.

'(2) All the persons bound by an enterprise flexibility agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

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

**Eligible union may agree to be bound by enterprise flexibility agreement**

'170NO.(1) An eligible union may, by written notice given to an employer:

(a) in any case—agree to be bound, on and after a day specified in the notice, by an agreement made by the employer under this Division:

(i) whether or not implementation of the agreement has been approved; and

(ii) whether or not the agreement has been varied; or

(b) if the union is already bound by such an agreement—agree to be bound by a variation (however made) of the agreement.

'(2) A notice under subsection (1) cannot be revoked.

'(3) An eligible union that has agreed under subsection (1) to be bound by an agreement is bound accordingly.

" '(4) However, after a variation (however made) of an agreement takes effect, the union:

(a) is no longer bound by the agreement as in force before the variation took effect; and

(b) is not bound by the agreement as varied unless, before the variation took effect, the union agreed under subsection (1) to be bound by the variation.".

Page 46, proposed paragraph 170PC(c), line 13, after "awards" insert "(as defined in subsection 170MC(7))".

Page 46, proposed subsection 170PD(1), line 18, omit "If", substitute "Subject to paragraph 170PQ(7)(c), if".

Page 48, proposed section 170PI, lines 22 to 34, omit the proposed section, substitute the following section:

**Negotiation must precede industrial action or lockout**

" '170PI.(1) The engaging in industrial action by a person who is a member of an organisation of employees is not protected action unless the organisation has, before the person begins to engage in the industrial action:

(a) tried to reach agreement with the employer; and

(b) if the Commission has made an order as mentioned in section 170QE in relation to the negotiations—complied with the order in so far as it applies to the organisation.

'(2) A lockout of employees by an employer is not protected action unless the employer has, before the employer begins the lockout:

(a) tried to reach agreement with the organisation or organisations of which the employees are members; and

(b) if the Commission has made an order as mentioned in section 170QE in relation to the negotiations—complied with the order in so far as it applies to the employer.".

Page 49, after proposed section 170PK, insert the following section:

**What happens if application to certify agreement is not made within 21 days**

" '170PKA. Unless an application to the Commission to certify an agreement is made within 21 days after the day when a memorandum of the terms of the agreement is made, nothing that was done by a party to the agreement during the bargaining period is protected action.".

Page 50, proposed section 170PM, line 19, after "parties" insert "in writing".

Page 50, proposed subsection 170PN(1), line 25, omit "The Commission", substitute "Subject to subsection (1A), the Commission".

Page 50, proposed subparagraph 170PN(1)(b)(ii), line 40, omit "it.", substitute "it; or".

Page 50, proposed subsection 170PN(1), at the end of the subsection add the following paragraph:

"(c) if the bargaining period relates to employees employed in a part of a single business, or at a single place of work in a single business, and the initiating party is not complying with an award or order, or a direction of the Commission, in relation to another part of the single business or another place of work in the single business.".

Page 50, proposed section 170PN, after proposed subsection (1), insert the following subsection:

" '(1A) The Commission:

(a) may not make an order under subsection (1) on a ground stated in paragraph (1)(a) or (c) except on an application made by a negotiating party; but

(b) may make an order under that subsection on the ground stated in paragraph (1)(b):

(i) on its own initiative; or

(ii) on an application made by a negotiating party or by the Minister.".

Page 51, proposed subsection 170PN(3), lines 4 and 5, omit the subsection, substitute the following subsection:

" '(3) Anything done by:

(a) a negotiating party; or

(b) a member, officer or employee of an organisation of employees that is a negotiating party;

in connection with the industrial dispute in so far as the dispute relates to the single business or part of the single business, or the single place of work, to which the bargaining period relates is not protected action if it is done at a time when the bargaining period is suspended.".

Page 51, after proposed section 170PN insert the following section in proposed Division 4:

**What happens if Commission terminates a bargaining period under paragraph 170PN(1)(b)**

" '170PQ.(1) This section applies if a bargaining period initiated by an organisation of employees is terminated on the ground set out in paragraph 170PN(1)(b).

'(2) The Commission must immediately begin to exercise its powers under this Act to prevent or settle the industrial dispute.

'(3) Subject to subsection (5), if the Commission proposes:

(a) to make a new award covering; or

(b) to vary an existing award so as to cover;

employees whose terms and conditions of employment were the subject of the industrial dispute, the Commission must:

(c) if paragraph (a) applies—make the new award as a paid rates award; or

(d) if paragraph (b) applies—vary the award so that it will be a paid rates award;

in relation to any of those employees who are employed in the single business or part of the single business, or at the single place of work, to which the bargaining period relates.

'(4) In deciding the terms to be included in an award that it proposes to make or vary as mentioned in subsection (3), the Commission must base its decision on the merits of the matters under consideration and need not follow principles that apply in determining wages and conditions of employment by making awards under Part VI.

'(5) Subsection (3) does not apply to a new award or a variation of an existing award if the parties to the industrial dispute agree that the subsection is not so to apply.

'(6) An award made or varied as mentioned in subsection (3):

(a) may, if the Commission thinks it appropriate, include a bans clause; and

(b) must be expressed to operate for a fixed period.

'(7) During the fixed period:

(a) subsections 148(1) and (3) do not apply to the award but subsection 148(2) does so apply; and

(b) the award may only be varied for the purpose of:

(i) removing ambiguity or uncertainty; or

(ii) including, omitting or varying a bans clause; or

(iii) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee; and

(c) the parties to the award may not initiate a bargaining period under section 170PD for negotiating an agreement in relation to matters dealt with in the award.".

Page 51, before proposed section 170QA insert the following heading:

" '***Subdivision A—Bargaining Division of Commission***".

Page 51, lines 10 to 26, omit proposed subsections 170QA(2), (3), (4), (5) and (6), substitute the following subsection:

" '(2) The Division consists of the Vice President, and the other member or members of the Commission, assigned to it under section 170QAB.".

Page 51, before proposed section 170QB insert the following sections and heading:

**Role of the Bargaining Division**

" '170QAA.(1) Subject to this Part, the Bargaining Division is to perform and exercise:

(a) the Commission's functions and powers under this Part; and

(b) the Commission's functions and powers in relation to an industrial dispute in relation to which a bargaining period has been initiated under section 170PD.

These are called **the Bargaining Division's functions and powers**.

'(2) The Bargaining Division's functions and powers may only be performed and exercised:

(a) by a member of the Division; or

(b) by a member of the Commission in accordance with a declaration in force under subsection 170QAC(1); or

(c) by the Commission constituted by 2 or more of its members, each of whom is:

(i) a member of the Division; or

(ii) a member of the Commission acting in accordance with a declaration in force under subsection 170QAC(1); or

(d) by a Full Bench (whether on appeal or otherwise); or

(e) by the President under section 108.

'(3) Subsection (2) does not affect the validity of any act or decision.

**Assignment of Commission members to the Bargaining Division**

'170QAB.(1) The Governor-General may by writing assign to the Bargaining Division a Vice President or acting Vice President, unless a Vice President or acting Vice President is already assigned to the Division.

'(2) The Governor-General may by writing assign to the Division a member of the Commission (except the President, a Vice President or an acting Vice President).

'(3) In this section:

**"acting Vice President"** means a person acting in an office of Vice President during a vacancy in the office.

**Exercise of Bargaining Division's functions and powers by other Commission members**

'170QAC.(1) The President may, by written declaration, make available a member of the Commission to perform or exercise, either generally or as otherwise specified in the declaration, all or any of the Bargaining Division's functions and powers.

'(2) However, the President may do so only in accordance with a written request from the Vice President assigned to the Bargaining Division.

'(3) If the Vice President assigned to the Bargaining Division revokes or varies a request in force under subsection (2), the President must revoke or vary accordingly the relevant declaration in force under subsection (1).

**Composition of Full Bench established to perform or exercise any of the Bargaining Division's functions and powers**

'170QAD.(1) A Full Bench established for the purposes of a proceeding that will involve performing or exercising any of the Bargaining Division's functions and powers (whether on appeal or otherwise) must consist, so far as practicable, of members of the Bargaining Division.

'(2) Before establishing a Full Bench for the purposes of such a proceeding, the President must consult the Vice President assigned to the Bargaining Division.

**Organisation of the Bargaining Division's work**

'170QAE. The Vice President assigned to the Bargaining Division is to organise and allocate its work. The other member or members of the Division, and a member or members made available to the Division under subsection 170QAC(1), must comply with the Vice President's directions in relation to that work.

**Assignment of other work to Bargaining Division**

'170QAF.(1) A member of the Bargaining Division may, as well as performing and exercising the Bargaining Division's functions and powers, perform other functions, and exercise other powers, as a member of the Commission, but only in accordance with a determination under subsection (2).

'(2) The President may determine in writing that specified members of the Bargaining Division are to perform specified functions, and exercise specified powers, as members of the Commission, either generally or as otherwise specified in the determination.

'(3) Before making an instrument under subsection (2), the President must consult the Vice President assigned to the Bargaining Division.

'(4) A determination under subsection (2) has effect despite section 37, in so far as the determination relates to a member of the Commission who is not a member of the relevant panel.

'(5) Subsection (1) does not affect the validity of an act or decision.

'***Subdivision B—Conciliation in relation to proposed agreements***".

Page 51, lines 27 to 37, page 52, lines 1 to 40, and page 53, lines 1 to 22, omit proposed sections 170QB and 170QC, substitute the following sections:

**Commission may conciliate in relation to certain proposed agreements under this Part**

"'170QB.(1) This section applies if the Commission becomes aware that:

(a) a party to an industrial situation wants to negotiate, or is negotiating, with any other party or parties to the situation, an agreement under Division 2 for preventing the situation from giving rise to an industrial dispute between them; or

(b) an employer that is a constitutional corporation and carries on an enterprise wants to negotiate, or is negotiating, with employees whom the employer employs to perform work in that enterprise, for the making of an agreement under Division 3; or

(c) employees whom such an employer employs to perform work in the enterprise want to negotiate, or are negotiating, with the employer for the making of an agreement under Division 3.

'(2) The Commission may try, by conciliation, to facilitate the making of such an agreement if it considers that conciliation by it would facilitate the making of such an agreement.

'(3) If:

(a) a party to the industrial situation; or

(b) the employer, any of the employees, or an eligible union;

as the case requires, asks the Commission to exercise powers under subsection (2), the Commission must decide as quickly as it can whether or not to do so.

**Directions and orders to overcome procedural difficulties**

'170QC.(1) The Vice President assigned to the Bargaining Division may give directions, and make orders, in order to facilitate the making of agreements under this Part.

'(2) A direction or order has effect subject to an order of the Court, but despite:

(a) the regulations or the Rules of the Commission; or

(b) the rules of an organisation.".

Page 53, at the end of proposed section 170QD add the following paragraph:

"(d) with any other necessary changes.".

Page 54, proposed paragraph 170QE(3)(a), line 9, after "parties" insert "to the negotiations".

Page 54, after proposed subparagraph 170QE(3)(a)(iv) insert the following subparagraph:

"(iva) disclosed relevant information as appropriate for the purposes of the negotiations; or".

Page 54, lines 17 to 19, omit proposed subparagraph 170QE(3)(a)(v), substitute the following subparagraphs:

"(v) refused or failed to negotiate with one or more of the parties; or

(vi) in or in connection with the negotiations, contravened section 170RB by refusing or failing to negotiate with a person who is entitled under that section to represent an employee; and".

Page 55, after proposed section 170RA insert the following section:

**Representation of employees by union officials in negotiations for agreements under Division 3**

"'170RB.(1) This section applies for the purposes of negotiations, between an employer that is a constitutional corporation and employees of the employer, for the making of an agreement under Division 3.

'(2) An officer or employee (**"the official"**) of an organisation of employees is entitled to represent an employee if:

(a) the employee is a member of the organisation; and

(b) the organisation is entitled to represent the employee's industrial interests; and

(c) the official is duly authorised under the organisation's rules, or by its committee of management, to represent those interests; and

(d) the employee has informed the employer that he or she wishes to be represented by the official for the purposes of the negotiations.

'(3) An employer must not refuse or fail to negotiate with a person who is entitled under subsection (2) to represent an employee.'.".

Clause 32—

Page 55, proposed subparagraph 178(4)(a)(iia), line 26, after "flexibility agreement" insert ", or of a term of an award made or varied as mentioned in section 170PQ,".

Page 55, proposed subparagraph 178(4)(a)(iib), line 32, after "agreement" insert ", or of a term of an award made or varied as mentioned in section 170PQ,".

Page 55, at the end of the clause add the following paragraph:

"; (c) by inserting in paragraph (5)(e) 'or employee' after 'officer' (twice occurring).".

Clause 35, page 57, after subclause (3) insert the following subclauses:

"(4) A Full Bench established for the purposes of an appeal against a decision made, or an act done, in performing or exercising any of the Commission's functions and powers under Division 3A of Part VI must consist, so far as practicable, of members of the Bargaining Division.

"(5) Before establishing a Full Bench for the purposes of such an appeal, the President must consult the Vice President assigned to the Bargaining Division.".

Clause 38—

Page 58, proposed definition of "boycott dispute", line 22, after "award" insert "or under an award or order of the Coal Industry Tribunal established under the *Coal Industry Act 1946*".

Page 61, proposed subsection 162(1), line 13, omit "main", substitute "ultimate".

Page 61, proposed paragraph 162(2)(d), line 25, omit "a substantial", substitute "an immediate and substantial".

Page 62, proposed paragraph 162(7)(c), lines 25 and 26, omit "about industrial matters", substitute "against the fourth person".

Page 62, proposed subsection 162(8), line 36, omit "question of", substitute "question".

Page 63, proposed subsection 163(1), line 21, omit "main", substitute "ultimate".

Page 63, proposed subsection 163(1), line 23, omit "the third", substitute "a third".

Page 63, proposed paragraph 163(2)(b), lines 29 and 30, omit "in addition to the purpose mentioned in subsection (1), another substantial purpose", substitute "a substantial immediate purpose".

Page 65, proposed section 163B, at the end of the section, add the following subsection:

" '(2) The powers of the Commission under this Division apply in relation to a boycott dispute even though the Coal Industry Tribunal or a Local Coal Authority established under the *Coal Industry Act 1946* may exercise or is exercising powers in relation to the dispute, but this Division does not prevent or otherwise affect the exercise of any powers by that Tribunal or such an Authority.".

Page 66, proposed paragraph 163D(4)(c), lines 29 and 30, omit the paragraph, substitute the following paragraph:

"(c) in the Commission's opinion the other contravention is substantially related to the first-mentioned contravention".

Page 67, proposed subsection 163G(2), line 13, after "injunction" insert "under that subsection".

Page 68, proposed section 163K, lines 11 to 24, omit the section, substitute the following section:

**Conduct on behalf of an organisation of employees**

" '163K.(1) For the purposes of this Division, any conduct engaged in by:

(a) the committee of management of an organisation of employees or of a branch of such an organisation; or

(b) a member or group of members of an organisation of employees or a branch of such an organisation, acting in accordance with a resolution passed, or a direction given, under the rules of the organisation or branch;

is taken to have been engaged in also by the organisation.

'(2) For the purposes of this Division, any conduct engaged in by:

(a) a person acting as an officer, employee or agent of an organisation of employees or of a branch of such an organisation; or

(b) a person acting as a member of an organisation of employees who performs the function of dealing with an employer on behalf of the member and other members of the organisation;

within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the organisation.

'(3) Subject to subsection (4), for the purposes of this Division, conduct (the **"relevant conduct"**) is taken to have been engaged in by an organisation of employees if it is proved:

(a) that the committee of management of the organisation or of a branch of the organisation expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or

(b) that:

(i) a person acting as an officer, employee or agent of the organisation or of a branch of the organisation; or

(ii) a person acting as a member of the organisation who performs the function of dealing with an employer on behalf of the member and other members of the organisation;

with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the organisation expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

'(4) Paragraph (3)(b) does not apply if the organisation or branch, as the case may be, proves that it exercised due diligence to prevent the relevant conduct.".

Page 69, proposed section 163L, at the end of the section add the following subsection:

" '(3) In this section:

**"body corporate"** does not include an organisation of employees or a branch of such an organisation.".

Page 69, proposed subsection 163P(2), line 26, after "Division" insert "in relation to a boycott dispute".

Clause 39, page 69, proposed section 164, lines 32 to 38, omit proposed section 164, substitute the following section:

**Certain actions not to lie under other laws in relation to boycott conduct**

" '164.(1) Subject to this section, an action under a law of a State or Territory does not lie against a trade union, or officer, member or employee of a trade union, in relation to conduct of the trade union or of the officer, member or employee acting in that capacity if the conduct is boycott conduct as defined by section 156 or would be boycott conduct as so defined if subsections 162(7) and 163(4) and section 162A had not been enacted.

'(2) Subsection (1) does not apply in relation to conduct that has involved or is likely to involve:

(a) personal injury; or

(b) wilful or reckless destruction of, or damage to, property; or

(c) the unlawful taking, keeping or use of property.

'(3) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of engaging in boycott conduct.'.".

Clause 40—

Page 70, proposed subsection 166A(1), lines 4 to 10, omit the subsection, substitute the following subsection:

" '(1) Subject to this section, an action in tort under the law of a State or Territory may not be brought by a person against an organisation of employees, or an officer, member or employee of such an organisation, in relation to conduct by the organisation, or by the officer, member or employee acting in that capacity, in contemplation or furtherance of claims that are the subject of an industrial dispute unless the Commission:

(a) has certified in writing as mentioned in paragraph (5)(a) or (c) in respect of the conduct; or

(b) has certified in writing as mentioned in paragraph (5)(b) in relation to the person in respect of the conduct.".

Page 70, proposed section 166A, after subsection (3) insert the following subsection:

" '(3A) If a notice under subsection (3) is given to a Registrar, he or she must tell a member of the Commission as soon as practicable.".

Page 70, proposed subsection 166A(4), line 23, omit "is received by the Commission", substitute "is given".

Page 70, proposed subsection 166A(5), lines 26 to 36, omit the subsection, substitute the following subsection:

" '(5) If:

(a) after the Commission starts to exercise conciliation powers in relation to the industrial dispute it forms the opinion that it is not likely to be able to stop the conduct promptly; or

(b) the Commission decides that it would cause substantial injustice to the person who gave the notice under subsection (3) in respect of the conduct if the person were prevented from bringing the action to which the notice relates while the Commission is exercising conciliation powers in relation to the industrial dispute; or

(c) the Commission has not stopped the conduct by the end of 72 hours after the notice was given under subsection (3) in respect of the conduct;

the Commission must immediately certify in writing to that effect.".

Clause 56—

Page 74, lines 25 to 27, omit proposed subsection 362(6), substitute the following subsection:

" '(6) A person may hold office at the one time as a Judge of the Court and as a Judge of one or more other prescribed courts.".

Page 75, lines 21 to 24, omit proposed subsection 366(1), substitute the following subsection:

" '(1) If:

(a) a person becomes a Judge when he or she is already a judge of another prescribed court within the meaning of section 362; or

(b) a person becomes a judge of such court when he or she is a Judge;

subsections (3), (4) and (5) of this section apply so long as he or she is both a Judge and such a judge.".

Page 76, lines 31 to 35, omit proposed subsection 370(4).

Page 76, proposed subsection 370(5), line 36, omit "or (4)".

Page 78, lines 17 and 18, omit proposed paragraph 376(1)(a), substitute the following paragraph:

"(a) a claim for an amount of not more than the amount specified in the Rules; or".

Page 78, after proposed subsection 376(1) insert the following subsection:

" '(1A) For the purposes of paragraph (1)(a), the Rules may specify an amount of not more than:

(a) $10,000; or

(b) such greater amount as the regulations prescribe.".

Page 80, proposed paragraph 381(1)(a), line 4, omit "or Justice".

Page 80, proposed subsection 382(3), line 19, omit "7 years", substitute "5 years".

Page 87, proposed subsection 407(7), line 30, omit "$1,000", substitute "10 penalty units".

Page 88, proposed subsection 411(2), line 15, omit "of Australia", substitute "for an officer or officers of that Court".

Page 88, proposed paragraph 412(1)(f), line 37, after "section" insert "407 or".

Page 88, after proposed subsection 412(1) insert the following subsections:

" '(1A) For the purposes of section 44 of the *Judiciary Act 1903*, the Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under this Act or the *Coal Industry Act 1946*.

Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

'(1B) The Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.".

Page 89, at the end of proposed subsection 415(2) add the following paragraph:

"(d) matters in which a writ of mandamus or prohibition or an injunction is sought against:

(i) a Presidential Member; or

(ii) officers of the Commonwealth at least one of whom is a Presidential Member.".

Page 91, lines 2 to 4, omit proposed subsection 422(1), substitute the following subsection:

" '(1) An appeal lies to the Court from a judgment of a court of a State or Territory in a matter arising under this Act.".

Page 91, lines 24 to 26, omit proposed subsection 423(4).

Page 115, proposed subsection 485(1), line 1, omit "$1,000", substitute "10 penalty units".

Page 115, proposed subsection 485(2), line 9, omit "$1,000", substitute "10 penalty units".

Page 116, proposed paragraph 486(2)(w), line 28, omit "Division 3", substitute "any other provision of this Part".

Clause 63, page 118, after the definition of "new Court" insert the following definition:

" **'relevant proceeding'** means a proceeding in a matter under section 45D or 45E of the *Trade Practices Act 1974* that was pending immediately before the commencement of Part 6 of this Act.".

At the end of clause 67, page 120, add the following subclause:

"**(2)** Subsection (1) does not limit or affect the Federal Court's own powers.".

*New clauses—*

After clause 69, page 121, insert the following new clauses:

**Organisation coverage**

"**69A.** Section 118A of the Principal Act is amended by inserting after subsection (1) the following subsection:

'(1A) The Commission may make an order under subsection (1) in relation to a demarcation dispute only if:

(a) it has decided under section 100 not to refer the dispute for conciliation; or

(b) a conciliation proceeding in relation to the dispute is completed, but the dispute has not been fully settled.'.

**Unfair contracts with independent contractors: Court's powers**

"**69B.** Section 127A of the Principal Act is amended:

**(a)** by inserting in subsection (1) 'and in section 127B' after 'section';

**(b)** by omitting subsection (2) and substituting the following subsection:

'(2) Application may be made to the Court to review a contract on either or both of the following grounds:

(a) the contract is unfair;

(b) the contract is harsh.';

**(c)** by omitting from subsections (4), (5), (6) and (7) 'Commission' (wherever occurring) and substituting 'Court';

**(d)** by omitting paragraph (4)(c).

**Court may make orders about unfair contracts**

"**69C.** Section 127B of the Principal Act is amended by omitting from subsections (1) and (3) 'Commission' (wherever occurring) and substituting 'Court'.".

*Amendments—*

Clause 70—

Page 121, proposed subsection 133(3), lines 19 and 20, omit "who is a member of the panel to which that industry has been allocated".

Page 121, proposed paragraph 133(3)(c), line 23, omit "panel", substitute "Commission".

*New clauses—*

After clause 73, page 122, insert the following new clauses:

**Change of name or alteration of eligibility rules of organisation**

"**73A.** Section 204 of the Principal Act is amended by inserting after subsection (6) the following subsections:

'(6A) A designated Presidential Member may refuse to consent to an alteration of the eligibility rules of an organisation if satisfied that the alteration would contravene an agreement or understanding to which the organisation is a party and that deals with the organisation's right to represent under this Act the industrial interests of a particular class or group of persons.

'(6B) Subsection (6A) does not limit the grounds on which a Presidential Member may refuse as mentioned in that subsection.'.

**Resignation from membership**

"**73B.** Section 264 of the Principal Act is amended by adding at the end the following subsection:

'(7) Within 28 days after an organisation of employers receives from an employer a notice of the employer's resignation from membership of the organisation, the organisation must give written notice of the resignation to:

(a) the Industrial Registrar; and

(b) each organisation of employees that is bound by an award that, when the organisation received the notice from the employer, bound the employer because of membership of the organisation (see paragraph 149(1)(f)).'.".

After clause 74, page 122, insert the following new clause in Part 8:

"**74A.** After section 334 of the Principal Act the following section is inserted:

**Employees not to be dismissed etc for engaging in industrial action**

'334A.(1) The object of this section is to give effect, in certain respects, to Australia's international obligation to provide for a right to strike. This obligation arises as mentioned in section 170PA.

'(2) An employer must not dismiss an employee, injure an employee in his or her employment, or alter the position of an employee to the employee's prejudice, merely because the employee has engaged, or is proposing to engage, in industrial action in relation to an industrial dispute that has been notified to the Commission or that the Commission has found to exist.

Penalty:

(a) in the case of an individual—5 penalty units; or

(b) in the case of a body corporate—10 penalty units.

'(3) Subsection (2) does not apply if the industrial action has involved or is likely to involve:

(a) personal injury; or

(b) wilful or reckless destruction of, or damage to, property; or

(c) the unlawful taking, keeping or use of property.

'(4) Subsection (2) does not apply in relation to an employee included in a class of employees prescribed by the regulations.

'(5) Regulations may not prescribe a class of employees for the purposes of subsection (4) unless the exclusion of employees in that class from the operation of subsection (2) is consistent with Australia's international obligation referred to in subsection (1).

'(6) In a prosecution for an offence against subsection (2), it is not necessary for the prosecutor to prove the defendant's reason for the action charged or the intent with which the defendant took the action charged, but it is a defence to the prosecution if the defendant proves that the action was not motivated solely by the reason, or taken with the sole intent, stated in the charge.

'(7) If an employer is convicted of an offence against subsection (2), the Court may order the employer:

(a) if the offence was constituted by dismissing an employee—to reinstate the person dismissed to the position that the person occupied immediately before the dismissal or to a position no less favourable than that position; and

(b) in any case—to pay, to the person dismissed, injured or prejudiced, compensation for loss suffered as a result of the dismissal, injury or prejudice.

'(8) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.'.".

*Amendments—*

Schedule 2, page 191, omit the Schedule, substitute the following Schedule:

"**SCHEDULE 2** Section 34

**AMENDMENTS OF THE INDUSTRIAL RELATIONS ACT 1988 CONSEQUENT ON PART 5 OF THIS ACT**

**Subsection 4(1) (definition of 'designated Presidential Member'):**

Omit 'Vice President's', substitute 'Organisations'.

**Subsection 4(1) (definition of 'Presidential Member'):**

Omit 'the' (second occurring), substitute 'a'.

**Subsection 4(1) (definition of 'Vice President'):**

Omit the definition, substitute:

'"**Vice President**":

(a) means a Vice President of the Commission; and

(b) in the case of a reference to the Vice President assigned to the Bargaining Division—includes a person who is acting in an office of Vice President during a vacancy in the office;'.

**Subsection 4(1):**

Insert:

'**"Bargaining Division"** means the Bargaining Division of the Commission established by section 170QA;

**"Bargaining Division's functions and powers"** has the meaning given by subsection 170QAA(1);'.

**Paragraph 8(2)(ab):**

Omit the paragraph, substitute:

'(ab) 2 Vice Presidents;'.

**Subsection 9(1):**

Omit 'Vice President', substitute 'Vice Presidents'.

**Subsection 10(2):**

Omit 'the Vice President' (wherever occurring), substitute 'a Vice President'.

**Paragraph 11(ab):**

Omit the paragraph, substitute:

'(ab) the Vice Presidents, according to the days on which their commissions took effect, or, if their commissions took effect on the same day, according to the precedence assigned to them by their commissions;'.

**Subsection 17(1):**

After 'the Governor-General may appoint the' insert 'senior'.

**Subsection 17(1A):**

Omit the subsection, substitute:

'(1A) If, during a period referred to in subsection (1), the senior Vice President is unavailable to act in the office of President but the other Vice President is available, the Governor-General may appoint the other Vice President to act in that office.

'(1B) If, during a period referred to in subsection (1):

(a) neither Vice President is available to act in the office of President; or

(b) both offices of Vice President are vacant; or

(c) one of the offices of Vice President is vacant and the holder of the other is unavailable to act in the office of President;

the Governor-General may appoint any Presidential Member qualified to be appointed as President to act in the office of President.'.

**Subsection 17(2):**

Omit 'or subsection (1A)', substitute ', (1A) or (1B)'.

**Subsection 17A(1):**

**(a)** Omit 'the' (second occurring), substitute 'a';

**(b)** Omit 'the office of', substitute 'an office of'.

**Paragraph 17A(1)(b):**

Omit 'the Vice President', substitute 'the holder of the office'.

**Subsection 21(2):**

Omit 'The Vice President' substitute 'A Vice President'.

**Subsection 21(2E):**

**(a)** Omit 'the Vice President or a', substitute 'a Vice President or'.

**(b)** Omit 'the office', substitute 'an office'.

**Subsection 38(1):**

Omit the subsection, substitute:

'(1) There is to be an Organisations Panel, consisting of:

(a) the Vice President not assigned to the Bargaining Division; and

(b) at least one other Presidential Member (other than the President or a Vice President) assigned to the Panel by the President.'.

**Subsection 40(1):**

Omit 'the Vice President', substitute 'a Vice President'.

**Subsection 40(2):**

Omit the subsection, substitute:

'(2) If the President delegates a power to only one of the Vice Presidents, he or she may, in addition, delegate that power to a Senior Deputy President to be exercised when that Vice President is unable, for any reason, to exercise that power personally.

'(3) If the President delegates the same power to both Vice Presidents, he or she may, in addition, delegate that power to a Senior Deputy President to be exercised when, for any reason, neither Vice President is able to exercise that power personally.'.

**Paragraph 45(1)(e):**

Omit '3A of Part VI', substitute '2 of Part VIB'.

**After paragraph 45(1)(e):**

Insert:

'(eaa) a decision of a member of the Commission refusing to approve under Division 3 of Part VIB implementation of an agreement;'.

**Paragraph 45(1)(ec):**

Omit 'paragraph 134E(1)(e)', substitute 'paragraph 170MC(1)(g)'.

**After paragraph 45(3)(b):**

Insert:

'(baa) in the case of an appeal under paragraph (1)(eaa)—by any person who would have been bound by the agreement if implementation of it had been approved;'.

**Paragraph 45(3)(ba):**

Omit 'subparagraph 134E(1)(e)(i)', substitute 'subparagraph 170MC(1)(g)(i)'.

**Paragraph 103(1)(a):**

Omit '3A of Part VI', substitute '2 of Part VIB'.

**Subsection 108(2):**

Omit 'The President', substitute 'Subject to subsection (2A), the President'.

**After subsection 108(2):**

Insert:

'(2A) If dealing with a proceeding would involve performing or exercising any of the Bargaining Division's functions and powers, the President must consult the Vice President assigned to the Bargaining Division before deciding to deal with that proceeding under subsection (2).'.

**Subsection 108(8):**

Omit '3A of Part VI', substitute '2 of Part VIB'.

**Subsection 109(8):**

Omit the subsection, substitute:

'(8) This section does not apply to:

(a) an award constituted by a certified agreement or by an enterprise flexibility agreement; or

(b) a decision to certify, or to approve implementation of, an agreement.'.

**Paragraph 111(1)(c):**

Omit the paragraph, substitute:

'(c) in accordance with Division 2 of Part VIB, certify an agreement;

(ca) in accordance with Division 3 of Part VIB, approve implementation of an agreement;'.

**Paragraph 111(1)(f):**

After 'an award' insert '(except a certified agreement or enterprise flexibility agreement)'.

**After subsection 113(2C):**

Insert:

'(2D) Before taking action under subsection (2A) in relation to an enterprise flexibility agreement, the Commission must give the employer an opportunity to vary the agreement, so as to remove the discrimination, by an instrument made with the approval, obtained as directed by the Commission, of a majority of the persons who, as at the end of a day specified in the direction, were employees covered by the agreement.'.

**Division 3A of Part VI:**

Repeal the Division.

**After subsection 143(1):**

Insert:

'(1A) For the purposes of subsection (1), none of the following is an award or an order affecting an award:

(a) a decision to certify, or to approve implementation of, an agreement under Part VIB;

(b) a certified agreement;

(c) an enterprise flexibility agreement.'.

**Paragraph 143(2)(b):**

Omit 'either of the following', substitute 'one or more of these'.

**After subparagraph 143(2)(b)(ii):**

Insert:

'(iii) in the case of a decision—it is a decision to certify, or approve implementation of, an agreement under Part VIB;

(iv) the decision or determination is, in the Commission's opinion, an order affecting a certified agreement or an enterprise flexibility agreement;'.

**After each of subparagraphs 143(2)(d)(i) and (3)(a)(i):**

Insert:

'(ia) in the case of a decision to certify, or approve implementation of, an agreement under Part VIB—a copy of the agreement; and'.

**Paragraph 143(3)(b):**

Omit the paragraph, substitute:

'(b) ensure that copies of each of the following are available for inspection at each registry:

(i) the decision or determination; and

(ii) in the case of a decision to certify, or approve implementation of, an agreement under Part VIB—a copy of the agreement; and

(iii) any written reasons received by the Registrar for the decision or determination.'.

**Subsection 143(4):**

Omit the subsection, substitute:

'(4) The Industrial Registrar must ensure that the following are published as soon as practicable:

(a) a decision or determination covered by subsection (1) or (2), except:

(i) a decision to certify an agreement under Part VIB that applies only to a single business, part of a single business or a single place of work;

(ii) a decision to approve implementation of an agreement under Part VIB;

(iii) a decision or determination that is, in the Commission's opinion, an order affecting:

(A) a certified agreement covered by subparagraph (i); or

(B) an enterprise flexibility agreement;

(b) any written reasons for a decision or determination covered by paragraph (a) that are received by a Registrar;

(c) a certified agreement:

(i) that does not apply only to a single business, part of a single business or a single place of work; and

(ii) a copy of which is given to a Registrar under subparagraph (2)(d)(ia).'.

**Section 143A:**

Repeal the section.".

Schedule 4, page 193, line 3, omit "***Judiciary Act 1903***", substitute the following:

"***Crimes Act 1914***

**Paragraph 15A(1A)(a):**

After 'Australia' insert ', or by the Industrial Relations Court of Australia,'.

*"Judiciary Act 1903*

**Paragraph 23(2)(a):**

Before 'or a decision of the Family Court' insert ', a decision of the Industrial Relations Court of Australia or a Judge of that Court'.".

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The House resumed; Mr L. J. Scott reported accordingly.

On the motion of Mr Brereton, the House adopted the report.

Mr Brereton moved—That the Bill be now read a third time.

Debate ensued.

*Limitation of debate:* At 10.25 p.m., the Speaker having called the attention of the House to the fact that the time allotted for the remaining stages of the Bill had expired—

Question—put.

The House divided (the Speaker, Mr Martin, in the Chair)—

AYES, 69

| | | | |
|---|---|---|---|
| Mr Adams | Mr Duncan | Mr Johns | Mr Punch |
| Mr Baldwin | Mrs Easson | Mr Jones | Mr Quick |
| Mr Beazley | Mr Elliott | Mrs Kelly | Mr Sawford |
| Mr Beddall | Ms Fatin | Mr Kerin | Mr Sciacca |
| Mr Bevis | Mr Ferguson | Mr Kerr | Mr L. J. Scott |
| Mr Bilney | Mr Fitzgibbon | Mr Knott | Mr Snow |
| Dr Blewett | Mr Free | Mr Langmore | Mr Snowdon |
| Mr Brereton | Mr Gear | Mr Lavarch | Mr Staples |
| Mr Campbell | Mr Gibson | Mr Lee | Mr Swan |
| Mr Chynoweth | Mr Gorman | Mr Lindsay | Mr Tanner |
| Mr Cleeland | Mr Grace* | Ms McHugh | Dr Theophanous |
| Ms Crawford | Mr Griffin | Mr McLeay* | Mr Tickner |
| Mr Crean | Mr Griffiths | Mr A. A. Morris | Mr Walker |
| Mr Cunningham | Mr Haviland | Mr P. F. Morris | Mr Willis |
| Mr Dawkins | Ms Henzell | Mr Newell | Mr Woods |
| Ms Deahm | Mr Holding | Mr O'Connor | |
| Mr Dodd | Mr Horne | Mr O'Keefe | |
| Mr Duffy | Mr Humphreys | Mr Price | |

NOES, 51

| | | | |
|---|---|---|---|
| Mr Aldred | Mr Downer | Mr Lloyd | Mr Ronaldson |
| Mr J. N. Andrew | Mr Evans | Mr McGauran | Mr Ruddock |
| Mr K. J. Andrews | Mr Filing* | Mr Mack | Mr Sinclair |
| Mr Atkinson | Mr Fischer | Mr MacKellar | Mr Slipper |
| Mr Beale | Mr Forrest | Mrs Moylan | Mrs Sullivan |
| Mr Braithwaite | Mrs Gallus | Mr Nehl | Mr Taylor |
| Mr Cadman | Mr Hall | Mr Neville | Mr Truss |
| Mr Cameron | Mr Halverson | Mr Nugent | Mr Vaile |
| Mr Charles | Mr Hawker | Mr Peacock | Mr Wakelin |
| Mr Cobb | Mr Hicks* | Mr Pyne | Mr Williams |
| Mr Connolly | Mr Howard | Mr Reid | Dr Wooldridge |
| Mr Costello | Mr Jull | Mr Reith | Ms Worth |
| Mr Dobie | Mr Lieberman | Mr Rocher | |

* Tellers

And so it was resolved in the affirmative—Bill read a third time.

14 **ADJOURNMENT NEGATIVED**

It being past 10.30 p.m.—The question was proposed—That the House do now adjourn.

Mr Beazley (Leader of the House) requiring the question to be put forthwith without debate—

Question—put and negatived.

15 **INDUSTRIAL RELATIONS COURT (JUDGES' REMUNERATION) BILL 1993**

The order of the day having been read for the resumption of the debate on the question—That the Bill be now read a second time—

*Limitation of debate:* The time allotted for the remaining stages of the Bill having expired—

Question—That the Bill be now read a second time—put and passed—Bill read a second time.

*Message from the Governor-General:* Message No. 67, dated 28 October 1993, from His Excellency the Governor-General was announced recommending an appropriation of revenue for the purposes of the Bill.

Further question—That the remaining stages of the Bill be agreed to—put and passed—Bill read a third time.

16 **ADJOURNMENT**

Mr Beazley (Leader of the House) moved—That the House do now adjourn.

Debate ensued.

Question—put and passed.

And then the House, at 10.57 p.m., adjourned until tomorrow at 2 p.m.

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**PAPERS**

The following papers were deemed to have been presented on 22 November 1993:

Administrative Appeals Tribunal Act—Regulations—Statutory Rules 1993 No. 276.

Antarctic Treaty (Environment Protection) Act—Regulations— Statutory Rules 1993 No. 289.

Australian Antarctic Territory Act—Ordinance 1993 No. 1.

Census and Statistics Act—Australian Bureau of Statistics—Statement 1993 No.1.

Charter of the United Nations Act—Regulations—Statutory Rules 1993 No. 279.

Christmas Island Act—Ordinances 1993 Nos. 10, 11.

Cocos (Keeling) Islands Act—Ordinance 1993 No. 9.

Corporations Act—Regulations—Statutory Rules 1993 No. 277.

Currency Act—Determinations 1993 Nos. 13, 14.

Defence Act—Determinations under section 58B 1993 Nos. 38, 39, 40.

Federal Court of Australia Act—Rules—Statutory Rules 1993 No. 290.

Health Insurance Act—Regulations—Statutory Rules 1993 No. 272.

Heard Island and McDonald Islands Act—Ordinance 1993 No. 1.

Income Tax Assessment Act—Regulations—Statutory Rules 1993 Nos. 275, 288.

Jervis Bay Territory Acceptance Act—Ordinance 1993 No. 1.

Migration Act—Regulations—Statutory Rules 1993 Nos. 283, 310.

Mutual Assistance in Criminal Matters Act—Regulations—Statutory Rules 1993 No. 278.

National Health Act—

Declarations—1993 Nos. PB 16, PB 17, PB 18.

Regulations—Statutory Rules 1993 Nos. 280, 284.

Petroleum (Submerged Lands) Act—Regulations—Statutory Rules 1993 No. 282.

Primary Industries Levies and Charges Collection Act, Horticultural Levy Act and Horticultural Export Charge Act—Regulations—Statutory Rules 1993 No. 281.

Public Service Act—Determinations 1993 Nos. 91, 92, 160, 161, 224, 225, 227, 229.

Shipping Registration Act—Regulations—Statutory Rules 1993 No. 286.

Ships (Capital Grants) Act—Regulations—Statutory Rules 1993 No. 287.

*Telecommunications Act 1991*—Regulations—Statutory Rules 1993 No. 285.

**ATTENDANCE**

All Members attended (at some time during the sitting) except Mr Brown, Mr Carlton, Mr Cleary, Mrs Crosio, Mr Hollis, Mr Jenkins, Mr Keating, Mr McArthur, Mr Melham, Mr Miles, Mr Moore, Mr B. C Scott, Mr Simmons*, Mrs S. J. Smith, Mr S. F. Smith and Mr Somlyay.

*On leave

**L. M. BARLIN**
Clerk of the House of Representatives

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