Queensland

INDUSTRIAL RELATIONS REFORM ACT 1994

Act No. 12 of 1994

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TABLE OF PROVISIONS

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Industrial Relations Reform Act 1994

Act No. 12 of 1994

An Act to amend the Industrial Relations Act 1990 to further promote workplace reforms and protect workers' entitlements, and for other purposes

[Assented to 30 March 1994]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations Reform Act 1994.*

PART 2—AMENDMENT OF INDUSTRIAL RELATIONS ACT 1990

Act amended

2. This Part and the Schedule amend the *Industrial Relations Act 1990*.

Amendment of s 3 (Objects)

3.(1) Section 3, after paragraph (a)—

insert—

'(aa) to encourage and assist the making of agreements, between the parties involved in industrial relations, to decide matters about the relationship between employers and employees, particularly at the enterprise or workplace level; and

(ab) to provide the means for—

(i) establishing and maintaining an effective framework for protecting wages and employment conditions through awards; and

(ii) ensuring that labour standards meet Australia's international obligations; and

(ac) to provide a framework of rights and responsibilities for the

parties involved in industrial relations that—

(i) encourages fair and effective bargaining; and

(ii) ensures the parties abide by agreements between them; and**'.**

(2) Section 3, after paragraph (g)—

insert—

'(ga)to help prevent and eliminate discrimination on the basis of—

(i) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*; or

(ii) family responsibilities.**'.**

(3) Section 3(d)—

omit **'**recognise and encourage the formation**',**

insert **'**encourage the formation and registration**'.**

Amendment of s 5 (Meaning of terms)

4.(1) Section 5(1), definition **"certified agreement"**—

omit.

(2) Section 5(1)—

insert—

' "Anti-Discrimination Conventions" means—

(a) the Equal Remuneration Convention; and

(b) the Convention on the Elimination of all Forms of Discrimination against Women (the English text of which is set out in Schedule 3); and

(c) the Discrimination (Employment and Occupation) Convention; and

(d) Articles 3 and 7 of the Economic, Social and Cultural Rights Covenant;

"certified agreement"means an agreement certified under Part 10A, Division 2 that is in force or a certified agreement as amended under the Division;

"Discrimination (Employment and Occupation) Convention" means the Discrimination (Employment and Occupation) Convention 1958 (the English text of which is set out in Schedule 4);

"Discrimination (Employment and Occupation) Recommendation" means the Discrimination (Employment and Occupation) Recommendation 1958 (the English text of which is set out in Schedule 7);

"discriminatory provision" means a provision about employment that discriminates against an employee on the basis of—

(a) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*; or

(b) family responsibilities;

but does not include a provision that—

(c) discriminates on the basis of the inherent requirements of the employment; or

(d) discriminates—

(i) for an institution conducted to conform with the doctrines, tenets, beliefs or teachings of a particular religion or creed—about staff membership on the basis of the doctrines, tenets, beliefs or teachings; and

(ii) in good faith to avoid injury to the religious susceptibilities of adherents of the religion or creed; or

(e) discriminates by remunerating a young employee according to the employee's age;

"Economic, Social and Cultural Rights Covenant" means the International Covenant on Economic, Social and Cultural Rights (the English text of the Preamble, and Parts II and III of which is set out in Schedule 5);

"enterprise flexibility agreement" means an agreement approved for implementation under Part 10A, Division 3 that is in force or an enterprise flexibility agreement as amended under the Division;

"Equal Remuneration Convention" means the Equal Remuneration Convention 1951 (the English text of which is set out in Schedule 2);

"Equal Remuneration Recommendation" means the Equal Remuneration Recommendation 1951 (the English text of which is set out in Schedule 6);

"Family Responsibilities Convention" means the Workers with Family Responsibilities Convention 1981 (the English text of which is set out in Schedule 8);

"Family Responsibilities Recommendation" means the Workers with Family Responsibilities Recommendation 1981 (the English text of which is set out in Schedule 9);

"Full Bench" means the Full Bench of the Commission;

"industrial action" means a lockout or strike;

"Minimum Wages Convention" means the Minimum Wage Fixing Convention 1970 (the English text of which is set out in Schedule 1);

"paid rates award" means an award that specifies actual entitlements, rather than minimum entitlements, for wages and employment conditions;

"Termination of Employment Convention" means the Termination of Employment Convention 1982 (the English text of which is set out in Schedule 10);**'.**

(3) Section 5(1), definition **"decision"**, after 'approved'—

insert **'**, approved for implementation**'.**

Insertion of new ss 30A and 30B

5. After section 30 (in Division 1)—

insert—

'Performance of Commission's functions (s 90AA Cwlth)

'30A.(1) The Commission must perform its functions under any provision of this Act in a way that furthers the objects of this Act relevant to the provision.

'(2) In performing the functions, the Commission must—

(a) ensure, so far as it can, that the system of awards provides for secure, relevant and consistent wages and employment

conditions; and

(b) have proper regard to the interests of the parties immediately concerned and of the community as a whole; and

(c) take into account the principles embodied in the Family Responsibility Convention, particularly those about—

(i) preventing discrimination against workers who have family responsibilities; or

(ii) helping workers to reconcile their employment and family responsibilities.

'(3) To avoid doubt, it is declared that changes necessary to maintain wages and employment conditions at a relevant level—

(a) may be implemented in stages to achieve consistency over a period; and

(b) may be made on condition that relevant parties comply with principles established by the Commission.

'Commission decisions to be in plain English (s 143(2A) Cwlth)

'30B. The Commission must ensure that its written decisions are—

(a) written in plain English; and

(b) structured in a way that is as easy to understand as the subject matter allows.**'.**

Insertion of new Divs 4–7 in Pt 4 (Industrial Relations Commission)

6. In Part 4—

insert—

'Division 4—Minimum wages

'Object of Division (s 170AA Cwlth)

'49AA. The object of this Division is to give effect to the Minimum Wages Convention.

‘Meaning of expressions (s 170AB Cwlth)

‘49AB. If an expression used in this Division is also used in the Minimum Wages Convention, it has the same meaning as in the Convention.

‘Orders setting minimum wages (s 170AC Cwlth)

‘49AC. The Commission may make an order setting—

(a) the same minimum wage for all employees in a specified group; or

(b) different minimum wages for different categories of employees in a specified group.

‘Orders only on application (s 170AD Cwlth)

‘49AD. The Commission may make an order under this Division only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order.

‘When Commission may make order (s 170AE Cwlth)

‘49AE.(1) The Commission must, and may only, make an order if satisfied—

(a) coverage by a system of minimum wages is appropriate, given the employment conditions of the group of employees to be covered by the order; and

(b) the order will operate for at least some of the employees in the specified group having regard to employees ineligible under subsection (3).

‘(2) An order must specify which of the group’s employees are excluded from its operation because they are ineligible.

‘(3) An employee is ineligible only if—

(a) minimum wages for the employee are set by an award, industrial agreement, certified agreement or enterprise flexibility agreement; or

(b) proceedings have been commenced under Part 10 or Part 10A for the setting or adjustment of minimum wages for the employee.

'(4) Before deciding which group an order should cover, and whether it is satisfied under subsection (1)(a), the Commission must—

(a) give the following organisations an opportunity to express their views—

(i) an industrial organisation whose rules entitle it to represent the industrial interests of any of the employees concerned;

(ii) an industrial organisation whose rules entitle it to represent the industrial interests of employers of the employees;

(iii) another organisation representing employers of the employees; and

(b) take the views into account.

'(5) Before making an order, the Commission must give each employer of employees in the group to be covered by the order an opportunity, as prescribed by regulation, to be heard about the making of the order.

'Matters to be considered when setting minimum wages (s 170AF Cwlth)

'49AF. When setting minimum wages under this Division, the Commission must consider—

(a) the principles it would apply when setting minimum wages under Part 10; and

(b) the needs of workers and their families, taking into account the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and

(c) economic factors, including the requirements of economic development, levels of productivity and the desirability of reaching and keeping a high level of employment.

‘Division does not limit other rights (s 170AG Cwlth)

‘49AG. This Division does not limit any right a person or industrial organisation may otherwise have to establish minimum wages.

‘Division 5—Equal remuneration for work of equal value

‘Object of Division (s 170BA Cwlth)

‘49BA. The object of this Division is to give effect to—

(a) the Anti-Discrimination Conventions; and

(b) the Equal Remuneration Recommendation; and

(c) the Discrimination (Employment and Occupation) Recommendation.

‘Meaning of expressions (s 170BB Cwlth)

‘49BB.(1) In this Division—

“equal remuneration for work of equal value” means equal remuneration for men and women workers for work of equal value.

‘(2) If an expression used in this Division is also used in the Equal Remuneration Convention, it has the same meaning as in the Convention.

‘Orders requiring equal remuneration (s 170BC Cwlth)

‘49BC.(1) The Commission may make any order it considers appropriate to ensure employees covered by the order will receive equal remuneration for work of equal value.

‘(2) An order may provide for an increase in remuneration rates, including minimum rates.

‘Orders only on application (s 170BD Cwlth)

‘49BD. The Commission may make an order under this Division only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or

(c) the Anti-Discrimination Commissioner.

'When Commission must and may only make order (s 170BC Cwlth)

'49BE. The Commission must, and may only, make an order if—

(a) it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal value; and

(b) the order can reasonably be regarded as appropriate and as giving effect to—

(i) 1 or more of the Anti-Discrimination Conventions; or

(ii) the Equal Remuneration Recommendation; or

(iii) the Discrimination (Employment and Occupation) Recommendation.

'Immediate or progressive introduction of equal remuneration (s 170BF Cwlth)

'49BF. The order may introduce equal remuneration for work of equal value—

(a) immediately; or

(b) progressively, in specified stages.

'Employer not to reduce remuneration (s 170BG Cwlth)

'49BG.(1) An employer must not reduce an employee's remuneration because an application or order has been made under this Division.

'(2) If an employer purports to do so, the reduction is of no effect.

'Division does not limit other rights (s 170BH Cwlth)

'49BH. This Division does not limit any right a person or industrial

organisation may otherwise have to secure equal remuneration for work of equal value.

'Division 6—Further provisions about orders under Division 4 or 5

'Orders to be written (s 170JA Cwlth)

'49CA. An order of the Commission under Division 4 or 5 must be written.

'When orders take effect (s 170JB Cwlth)

'49CB. An order of the Commission under Division 4 or 5 takes effect from the date of the order or a later specified date.

'Compliance with orders (s 170JC Cwlth)

'49CC. An order of the Commission under Division 4 or 5 is enforceable in the same way as an award.

'Amendment and revocation of orders (s 170JD Cwlth)

'49CD. The Commission may amend or revoke an order under Division 4 or 5 only if it has received an application from any of the following persons (whether or not named or described in the order)—

(a) an employer, or representative of an employer, covered by the order;

(b) an employee, or representative of any employee, covered by the order.

'Inconsistent awards or orders (s 170JG Cwlth)

'49CE. An award, industrial agreement, certified agreement, enterprise flexibility agreement or order of the Commission that is inconsistent with an order under Division 4 or 5 does not apply to the extent the inconsistency detrimentally affects the rights of the employees concerned.

'Division 7—Industry consultative councils

'Industry consultative councils (s 133 Cwlth)

'49D.(1) In this section—

"industry" includes—

(a) a business, trade, manufacture, undertaking or calling of employers; and

(b) a calling, service, employment, handicraft, industrial occupation or vocation of employees; and

(c) a branch of an industry and a group of industries.

'(2) The Commission must encourage and assist the establishment and effective operation of consultative councils for particular industries.

'(3) The Commission must encourage the participants in an industry to use the relevant consultative council—

(a) to develop measures to improve efficiency and competitiveness in the industry; and

(b) to address barriers to workplace reform in the industry.

'(4) To promote the effective operation of a consultative council for an industry, a Commissioner may, if the Chief Industrial Commissioner agrees—

(a) chair the council's meetings; or

(b) take part in the council's discussions; or

(c) nominate another Commission member to chair the council's meetings or take part in its discussions.

'(5) The Chief Industrial Commissioner may agree only if the Chief Industrial Commissioner is satisfied the council properly represents—

(a) industrial organisations, and associations, of employers in the industry; and

(b) industrial organisations of employees in the industry.**'.**

Amendment of s 70 (Basis of procedures and decisions of the Commission and Industrial Magistrates)

7. Section 70(3), before paragraph (a)—

insert—

'(aa)the objects of this Act; and**'.**

Amendment of s 83 (Representation of parties)

8. Section 83(1)(d)(ii)—

omit, insert—

'(ii) with the Commission's leave if the Commission considers representation by counsel or solicitor is desirable for the effective conduct of the proceedings and the proceedings are—

(A) for the exercise of the Commission's powers under section 39; or

(B) about the rules of an industrial organisation, or an association seeking registration as an industrial organisation; or**'.**

Replacement of s 89 (Enforcement of Commission's orders)

9. Section 89—

omit, insert—

'Enforcement of Commission's orders

'89.(1) The Commission may make an order about an industrial dispute directed to—

(a) an industrial organisation; or

(b) a person in a capacity as an officer or agent of an industrial organisation; or

(c) another person.

'(2) If an order may be directed either to an industrial organisation or a person, the Commission may make an order directed to the person only

after considering whether it would be more appropriate to direct the order against the industrial organisation.

'(3) An order must specify—

(a) a time for complying with the order; and

(b) if the order is made against a person—the person's name.

'(4) The Commission may extend the specified time.

'(5) If a party to the industrial dispute considers the industrial organisation or person has not substantially complied with the order, the party may cause a notice to be issued under the rules of court calling on the industrial organisation or person to show cause to the Full Industrial Court at a specified time why the industrial organisation or person should not be dealt with under section 90.**'.**

Amendment of Pt 10 (Awards and industrial agreements)

10.(1) Part 10, before Division 1—

insert—

'Division 1—The award system

'Subdivision 1—Objects of Division

'Objects of Division (Cwlth s 88A)

'105A. The objects of this Division are to ensure—

(a) employees are protected by—

(i) awards setting fair and enforceable minimum wages and employment conditions that are kept at a relevant level; and

(ii) in appropriate cases, by paid rates awards setting fair and enforceable wages and employment conditions that are kept at a relevant level; and

(b) awards (other than paid rates awards) act as a safety net of minimum wages and employment conditions underpinning direct bargaining; and

(c) awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees' interests are properly taken into account; and

(d) when making, reviewing and amending awards, regard is had to stable and appropriate relativities based on skill, responsibility, the conditions under which work is performed, and the need for skill-based career paths; and

(e) the Commission's functions and powers in relation to making and amending awards are performed and exercised in a way that gives employees prompt access to fair and enforceable minimum wages and employment conditions, so far as they do not already have them.**'.**

(2) Part 10, Division 1—

renumber as Subdivision 2.

(3) Part 10, Division 2—

omit, insert—

'Subdivision 3—Paid rates awards

'Objects of Subdivision (s 170SA Cwlth)

'108A. The objects of this Subdivision are to ensure that—

(a) in appropriate cases, employees are protected by paid rates awards setting fair and enforceable wages and employment conditions that are kept at a relevant level; and

(b) paid rates awards are suited to the efficient performance of work according to the needs of particular industries and enterprises, while employees' interests are also properly taken into account.

'Making or amending paid rates awards (s 170UB Cwlth)

'108B.(1) This section applies if—

(a) the Commission proposes—

(i) to make a new award covering employees of a particular kind in an industry; or

(ii) to amend an existing award to cover employees of a particular kind in an industry; and

(b) the employees' wages and employment conditions, so far as they have customarily been decided by an award, have been decided by a paid rates award.

'(2) The Commission must—

(a) make the new award as a paid rates award; or

(b) amend the existing award to be a paid rates award;

so far as the award decides the employees' wages and employment conditions that have customarily been decided by a paid rates award.

'(3) However, the Commission need not do so if—

(a) it considers the matters that would be dealt with by the proposed award would be more appropriately dealt with by a certified agreement or an enterprise flexibility agreement; or

(b) there is a reasonable prospect of the matters, that would be dealt with by the proposed award, being dealt with by a certified agreement or an enterprise flexibility agreement; or

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

(d) the parties to the proposed award, or the award as proposed to be amended, have agreed to the award not being a paid rates award.

'Commission to maintain existing paid rates awards (s 170UC Cwlth)

'108C.(1) The Commission must maintain and amend existing paid rates awards, having regard to the objects of this Division and the Commission's functions under section 30A(2).

'(2) However, the Commission need not act under subsection (1) so far as the Commission is satisfied it is against the public interest.

'(3) Section 30A(2)(a) does not require the Commission to ensure paid rates awards are consistent with awards that are not paid rates awards.

'Party acting inconsistently with award's status as a paid rates award (s 170UD Cwlth)

'108D. The Commission may—

(a) cancel a paid rates award and replace it with an award that is not a paid rates award; or

(b) amend a paid rates award to stop it being a paid rates award;

if the Commission is satisfied, after giving the parties to the award an opportunity to be heard, that the party has acted in a way so inconsistent with the award as to make it inappropriate for the award to continue as a paid rates award.

'Statement identifying paid rates award (s 170UE Cwlth)

'108E.(1) The Commission must include in a new paid rates award a statement that the award is a paid rates award.

'(2) If the Commission amends—

(a) an existing paid rates award; or

(b) an existing award so that it becomes a paid rates award;

the Commission must include in the amended award a statement that the award is a paid rates award, unless the award already contains the statement.

'(3) If the Commission amends an award to stop it being a paid rates award, it must remove the statement from the award.

'(4) This section does not affect the validity of an award or amendment.**'.**

Amendment of s 128 (Persons bound by agreement)

11. Section 128—

insert—

'(2) In this section—

"party" to an industrial agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the party's business, including a corporation that has acquired or taken over the whole or part of the party's business.**'.**

Amendment of s 131 (Powers of Commission re awards)

12. Section 131—

insert—

'(4) The Commission may refrain from hearing, further hearing, or deciding an application to amend an award while—

(a) it considers that, in all the circumstances, the parties concerned should try to negotiate a certified agreement or enterprise flexibility agreement to deal with the subject matter of the proposed amendment; and

(b) it is satisfied that there is a reasonable prospect of the parties making the agreement.**'.**

Insertion of new ss 131A and 131B

13. After section 131—

insert—

'Commission to include enterprise flexibility provisions in awards (s 113A Cwlth)

'131A.(1) This section applies when the Commission makes or amends an award.

'(2) If it considers it appropriate, the Commission must include in the award a provision establishing a process for negotiating agreements at the enterprise or workplace level about how the award should be amended to make the enterprise or workplace operate more efficiently according to its particular needs.

'Amendment of award to give effect to agreement negotiated under enterprise flexibility provision (s 113B Cwlth)

'131B.(1) This section applies if an application is made for the amendment of an award, as it applies to an enterprise or workplace, to give effect to an agreement made under a provision included in the award under section 131A.

'(2) The Commission may amend the award only if it is satisfied the

amendment would not disadvantage the employees who would be affected by the amendment in relation to their employment conditions.

'(3) An amendment disadvantages employees in relation to their employment conditions only if—

(a) it would result in the reduction of the employees' entitlements or protection under the award, another award or an industrial agreement; and

(b) in the context of their employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

'(4) Each industrial organisation of employees that is a party to the award may be heard on the application.

'(5) The Commission must not refuse to amend the award merely because an industrial organisation refuses to agree or consent to the amendment, if the Commission is satisfied the refusal is unreasonable.**'.**

Insertion of new s 134A

14. Before section 135 (in Division 5)—

insert—

'Commission must review awards and industrial agreements (s 150A Cwlth)

'134A.(1) Each award or industrial agreement in force must be reviewed by the Commission—

(a) within 3 years after—

(i) it was made; or

(ii) if it was made before the commencement of this section—the commencement; and

(b) within 3 years after it was last reviewed under this section.

'(2) After reviewing an award or industrial agreement, the Commission must take the steps that may be prescribed by regulation to remedy any of the following deficiencies found by it—

(a) for an award or industrial agreement—

(i) the award or industrial agreement contains a discriminatory provision;

(ii) the award or industrial agreement contains obsolete or dated provisions;

(iii) the award or industrial agreement is not structured in a way that is as easy to understand as the subject matter allows;

(iv) the award or industrial agreement prescribes matters in unnecessary detail;

(b) for an award—

(i) the award's terms are no longer appropriate having regard to the Commission's function under section 30A(2)(a) to ensure the system of awards provides for secure, relevant and consistent wages and employment conditions;

(ii) the award is not written in plain English;

(c) for an industrial agreement—the agreement's terms no longer provide for secure, relevant and consistent wages and employment conditions.

'(3) The steps prescribed may include amending the award or industrial agreement after giving a party to the award or industrial agreement who has a genuine interest in the matter an opportunity to be heard.**'.**

Insertion of new Pt 10A

15. After Part 10—

insert—

'PART 10A—PROMOTING BARGAINING AND FACILITATING AGREEMENTS

'Division 1—Objects and interpretation

'Objects of Part (s 170LA Cwlth)

'139AA.(1) The objects of this Part are—

(a) to promote bargaining and assist agreements that will assist labour market reform by encouraging—

(i) single bargaining units; and

(ii) workplace bargaining directed at increased productivity; and

(iii) continuous improvement in the workplace; and

(iv) the achievement in the workplace of best practice, increased work satisfaction and career opportunities; and

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

'(2) The Commission must, as far as practicable, perform its functions under this Part in a way that furthers the objects of this Act and, in particular, the objects of this Part.

'(3) Section 70(3) does not apply to the performance of the Commission's functions under this Part.

'(4) The Commission's functions under this Part may be performed by an Industrial Commissioner.

'Definitions (s 170LB Cwlth)

'139AB. In this Part—

"eligible union", for an agreement that applies to an enterprise carried on by an employer, means an industrial organisation of employees—

(a) that is a party to an award or industrial agreement binding the employer for work performed in the enterprise; and

(b) of which 1 or more employees whom the employer employs to perform work in the enterprise are members;

"employer" in Division 3 includes 2 or more employers carrying on a business as a joint venture or common enterprise;

"enterprise" means—

(a) a business carried on by a single employer; or

(b) a geographically distinct part of the business; or

(c) 2 or more geographically distinct parts of the same business

carried on by a single employer;

"negotiating party" in Division 3 means the initiating party and the other proposed party mentioned in section 139DD;

"part" of a single business includes—

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

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

"party" to an agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of a party's business, including a corporation that has acquired or taken over the whole or part of the party's business;

"period of the agreement" means the period of operation of the agreement specified in the agreement or the period as extended under either of the following sections—

- section 139BK (Extension of certified agreements)
- section 139CJ (Extension of enterprise flexibility agreements);

"relevant industrial matter" in Division 4 means an industrial matter that is the subject of negotiations;

"single business" means—

(a) a business carried on by a single employer; or

(b) a business carried on by 2 or more employers as a joint venture or common enterprise; or

(c) a single project or undertaking; or

(d) activities carried on by—

(i) the State; or

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

(iii) another body in which the State has a controlling interest;

"single enterprise" means—

(a) a single business; or

(b) part of a single business; or

(c) a single workplace.

'Division 2—Certified agreements

'Certified agreements (s 170MA Cwlth)

'139BA.(1) An employer or an industrial organisation of employers and an industrial organisation of employees may make a memorandum of agreement between them about an industrial matter.

'(2) The parties to the agreement must apply to the Commission to certify the agreement.

'Organisations entitled to be heard (s 170MB Cwlth)

'139BB.(1) An industrial organisation of employees is entitled to be heard on an application to the Commission to certify an agreement, or to approve an extension or amendment of a certified agreement, applying to a single enterprise if—

(a) the organisation is entitled to represent the industrial interests of the organisation's members who are employed by an employer who is a party to the agreement to perform work in the single enterprise; or

(b) the organisation—

(i) is bound by an award that binds the employer for work performed in the single enterprise; and

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

'(2) As soon as practicable after the application is made, the Commission must notify, as prescribed by regulation, each industrial organisation entitled to be heard that—

(a) the application has been made; and

(b) the industrial organisation is entitled to be heard on the application.

'(3) This section does not affect another right of an industrial organisation

of employees or of another entity to intervene or be heard, or apply to intervene or be heard, on an application.

'Certification of agreements (s 170MC Cwlth)

'139BC.(1) The Commission must, and may only, certify an agreement if satisfied—

(a) the agreement does not disadvantage the employees covered by the agreement in relation to their employment conditions; and

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

(c) the agreement either—

(i) establishes a process for the parties to the agreement to consult each other about changes to the organisation or performance of work in any workplace to which the agreement relates; or

(ii) states that it is not appropriate for the agreement to provide for the consultation; and

(d) during the negotiations for the agreement, reasonable steps were taken to consult the employees covered by the agreement about the agreement; and

(e) before the application for certification was made, reasonable steps were taken to inform the employees covered by the agreement of—

(i) the agreement's terms; and

(ii) the effect of the terms; and

(iii) in particular, the procedures mentioned in paragraph (b); and

(iv) the intention to apply to the Commission to certify the agreement, and about the consequences of certification; and

(f) if the agreement applies only to a single enterprise—

(i) subject to subsections (4) and (5), the parties to the agreement include each industrial organisation of employees

that—

(A) is a party to the award or industrial agreement binding the employer; or

(B) if no award or industrial agreement binds the employer—is entitled to represent the industrial interests of the employees who are covered by the agreement; and

(ii) the agreement has been negotiated—

(A) on the one hand, by each employer concerned or the employer's representative; and

(B) on the other hand, by a person representing all the other parties to the agreement; and

(g) the agreement specifies its period of operation.

'(2) Under subsection (1)(a), an agreement disadvantages employees in relation to their employment conditions only if—

(a) certification of the agreement—

(i) would result in the reduction of the employees' entitlements or protection under an award or industrial agreement that binds the employer; or

(ii) if no award or industrial agreement binds the employer—would not provide employee entitlements or protection at least equal to the employees' entitlements or protection under an appropriate award or industrial agreement nominated in the agreement; and

(b) in the context of the employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

'(3) Subsection (1)(d) and (e) does not apply if the Commission is satisfied—

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

(b) when the application for certification was made, no-one had been employed for the business, project or undertaking.

‘(4) Subsection (1)(f)(i) does not apply if the Commission is satisfied—

(a) each industrial organisation of employees mentioned in the subsection has been given the opportunity to be a party to the agreement; and

(b) at least 1 of the industrial organisations is a party to the agreement; and

(c) the agreement is in the interests of the employees whose employment is covered by the agreement.

‘(5) Subsection (1)(f)(i) does not apply to an industrial organisation of employees if none of its members is employed in the single enterprise concerned.

‘When Commission must refuse to certify agreements (s 170MD Cwlth)

‘139BD.(1) The Commission may refuse to certify an agreement other than an agreement applying only to a single enterprise if it considers certifying the agreement would be against the public interest.

‘(2) The Commission must not certify an agreement if it considers a provision of the agreement is inconsistent with—

(a) a provision of Part 4, Divisions 2 and 3 and Part 11, Division 4; or

(b) a Commission order under those Divisions.

‘(3) The Commission must not certify an agreement if satisfied—

(a) an employer has, in connection with negotiating the agreement, contravened 1 or more of the following sections—

- section 139FA (Employer not to discriminate between union members and non-union members when negotiating agreements)
- section 342 (Prejudice of employee by reason of membership of industrial organisation)
- section 343 (Prejudice of employee by reason of non-membership of industrial organisation)

- section 344 (Conduct in relation to holder of conscientious objector's certificate); or

(b) the employer has caused an entity, in connection with negotiations for the agreement, to engage in conduct that, had the employer engaged in it, would be a contravention by the employer of any of the sections mentioned in paragraph (a); or

(c) an entity has, for the employer—

(i) engaged in the conduct mentioned in paragraph (b); or

(ii) caused another entity to engage in the conduct.

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

'(5) The Commission must not certify an agreement if it considers the agreement contains a discriminatory provision.

'(6) The Commission may refuse to certify an agreement if it considers the agreement applies only to a part of a single business that—

(a) is neither a geographically distinct part of the single business nor a distinct operational or organisational unit within the single business; and

(b) is defined by the agreement so that the agreement will not cover employees it could reasonably cover, having regard to—

(i) the nature of the work performed by the employees covered by the agreement; and

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

(c) it is unfair for the agreement not to cover the employees.

'(7) This section applies despite section 139BC.

'How agreement may provide for amendment (s 170ME Cwlth)

'139BE.(1) If an agreement provides for any of its terms to be amended by a later agreement, the Commission may certify the agreement only if satisfied the agreement—

(a) specifies the amendable terms and when and how they can be

amended; and

(b) provides that an amendment has effect only if—

(i) it is agreed to by all the parties who are bound by the agreement when the amendment is made; and

(ii) it is approved by the Commission under section 139BM.

'(2) To avoid doubt, it is declared that subsection (1) does not apply to an agreement so far as the obligations under the agreement can change, because of the agreement's terms, without the need for a later agreeement between the parties.

'Other options open to Commission instead of refusing to certify agreement (s 170MF Cwlth)

'139BF.(1) This section applies if the Commission has grounds not to certify an agreement under any of the following sections—

- section 139BC (Certification of agreements)
- section 139BD (When Commission to refuse to certify agreements)
- section 139BE (How agreement may provide for amendment).

'(2) The Commission may accept an undertaking about the agreement's operation from 1 or more of the parties.

'(3) The Commission may certify the agreement if satisfied the undertaking meets its concerns.

'(4) If the undertaking is not complied with, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

'(5) In any case, before refusing to certify the agreement, the Commission must give the parties an opportunity—

(a) to amend the agreement; or

(b) to do what is necessary for the Commission to be able to certify the agreement.

‘Commission to protect interests of certain employees (s 170MG Cwlth)

‘139BG.(1) The Commission must comply with this section in performing its functions and exercising its powers about an application to certify an agreement.

‘(2) The Commission must identify the employees who may be covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

‘(3) Examples of employees whose interest may not have been taken into account are—

(a) women; and

(b) persons whose first language is not English; and

(c) young persons.

‘(4) When deciding whether it is satisfied under section 139BC(1)(d) and (e), the Commission must do whatever is necessary to find out—

(a) whether the employees were consulted about the agreement and informed of the matters mentioned in section 139BC(1)(e) in ways appropriate to their particular circumstances and needs; and

(b) in particular, whether the effects on the relevant employees of the agreement’s terms were properly explained to the employees.

‘(5) If it considers there has been a failure to consult or explain as mentioned in subsection (4), the Commission must make the orders it considers necessary to remedy the failure and its effects.

‘Procedures for preventing and settling disputes (s 170MH Cwlth)

‘139BH. Dispute prevention and settling provisions in a certified agreement may empower the Commission to settle disputes, if the Commission approves of the provisions.

‘Operation of certified agreements (s 170MI Cwlth)

‘139BI.(1) A certified agreement comes into force when it is certified.

‘(2) A certified agreement remains in force unless—

(a) it is terminated by the Commission under section 139BF(4); or

(b) because of 1 or more orders or declarations under the relevant sections—

(i) it is terminated; or

(ii) all the remaining parties to the agreement are industrial organisations of employees; or

(iii) all the remaining parties to the agreement are employers or industrial organisations of employers; or

(c) it is amended by the parties, other than under section 139BN(4)(c); or

(d) it is replaced by a new certified agreement or by an enterprise flexibility agreement.

'(3) In this section—

"relevant sections" means—

- section 139BN (Certified agreements may be amended or terminated by Full Bench)
- section 139BP (Certified agreements may be terminated by parties)
- section139BQA (Party affected by industrial action may withdraw).

'Party may retire from a certified agreement

'139BJ.(1) A party to a certified agreement may file in the Industrial Registrar's office a notice of intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

'(2) The notice must be filed—

(a) within 30 days before the end of the period of the agreement; or

(b) if the agreement remains in force after the end of the period of the agreement because of section 139B1(2)—while the agreement remains in force because of section 139B1(2).

'(3) At the end of the specified period, the party who filed the notice ceases to be a party to the certified agreement.

'Extension of certified agreements (s 170MJ Cwlth)

'139BK.(1) The period of a certified agreement may be extended if—

(a) the parties agree to the extension; and

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

(i) if the agreement applies only to a single enterprise—1 or more of the parties apply to the Commission to approve the extension; or

(ii) otherwise—1 or more of the parties notify the Commission of the extension.

'(2) If an application is made under subsection (1)(b)(i), the extension has effect at least until the application is decided, even if that happens after the period mentioned in subsection (1)(b).

'(3) The Commission must approve the extension unless an industrial organisation of employees, entitled under section 139BB to be heard, satisfies the Commission the extension would not be in the interests of the employees covered by the agreement.

'(4) If that happens, the Commission must not approve the extension.

'Effect of certified agreements (s 170MK Cwlth)

'139BL. While a certified agreement is in force—

(a) subject to paragraph (b), the agreement's terms prevail over the terms of an award or industrial agreement to the extent of the inconsistency; and

(b) the agreement has no effect so far as it is inconsistent with an enterprise flexibility agreement approved for implementation before the agreement was certified; and

(c) a term of the agreement can be amended by the parties, but only as provided in either of the following sections—

- section 139BM (Amendment of certified agreement as provided in the agreement)
- section 139BN (Certified agreements may be amended or

terminated by Full Bench); and

(d) the agreement may only be amended to remove ambiguity or uncertainty; and

(e) the Commission may not exercise powers to amend the agreement other than under this Division.

'Amendment of certified agreement as provided in the agreement (s 170ML Cwlth)

'139BM.(1) If a certified agreement provides for any of its terms to be amended by a later agreement, the amendment takes effect only if approved by the Commission on application by the parties bound by the agreement when the amendment was made.

'(2) The Commission must, and may only, approve the amendment if satisfied—

(a) the amendment was made as required by the agreement; and

(b) the amendment has been agreed to by all parties bound by the agreement when the amendment was made; and

(c) the Commission would have no grounds under a relevant section to refuse to certify the agreement as amended if—

(i) the application for approval were an application to the Commission to certify the agreement as amended; and

(ii) the agreement as in force before the amendment takes effect were not in force.

'(3) In this section—

"relevant section" means 1 of the following—

- section 139BC (Certification of agreements)
- section 139BD (When Commission must refuse to certify agreements).

'Procedure if grounds to refuse amendments exist (s 170ML Cwlth)

'139BMA.(1) This section applies if the Commission has grounds to refuse to approve the amendment of a certified agreement under

section 139BM (Amendment of certified agreement as provided in the agreement).

'(2) The Commission may accept an undertaking from 1 or more of the parties about the agreement's operation as amended and, if it is satisfied the undertaking meets the Commission's concerns, may approve the amendment.

'(3) If an undertaking is not observed, the Commission may set aside the amendment after giving the parties an opportunity to be heard.

'(4) In any case, before refusing to approve the amendment, the Commission must give the parties an opportunity to do what is necessary for the Commission to be able to approve the amendment.

'Certified agreements may be amended or terminated by Full Bench (s 170MM Cwlth)

'139BN.(1) While a certified agreement is in force, the Full Bench may review the agreement's operation after giving the parties to the agreement an opportunity to be heard.

'(2) The Full Bench may do so only—

(a) on its own initiative; or

(b) on application by a party to the agreement.

'(3) The remainder of this section applies if the Full Bench finds—

(a) for any agreement—that the continued operation of the agreement would be unfair to the employees covered by the agreement; or

(b) for an agreement that does not apply only to a single enterprise—that the continued operation of the agreement would be against the public interest.

'(4) The Full Bench may—

(a) terminate the agreement; or

(b) accept an undertaking about the agreement's operation; or

(c) permit the parties to amend the agreement.

'(5) If an undertaking is not complied with, the Full Bench may terminate the agreement after giving the parties an opportunity to be heard.

'Review of certified agreements (s 170MM Cwlth)

'139BO. The Full Bench must review the operation of each certified agreement—

(a) within 3 years after—

(i) it was made; or

(ii) if it was made before the commencement of this section and was not reviewed by the Full Bench before the commencement—the commencement; and

(b) within 3 years after it was last reviewed by the Full Bench.

'Party may withdraw by consent (s 170MN Cwlth)

'139BPA.(1) In this section—

"relevant party" to an agreement means—

(a) for a party to the agreement who is an employer or an industrial organisation of employers—a party who is an industrial organisation of employees; or

(b) for a party to the agreement who is an industrial organisation of employees—a party who is an employer or an industrial organisation of employers.

'(2) A party to a certified agreement may, with the consent of all the relevant parties, notify the Commission that the party does not want to remain bound by the agreement.

'(3) The Commission may declare that the notifier is no longer bound if satisfied that it is in the public interest to make the declaration.

'Certified agreements may be terminated by parties (s 170MN Cwlth)

'139BP.(1) All the parties to a certified agreement may jointly notify the Commission that they want the agreement to be terminated.

'(2) The Commission may declare that the agreement is terminated if satisfied that it is in the public interest to make the declaration.

‘Party affected by industrial action may withdraw (s 170MM Cwlth)

‘139BQA.(1) If a party to a certified agreement engages in industrial action about a matter dealt with in the agreement, another party affected by the industrial action may apply to the Commission for a declaration that the applicant is no longer bound by the agreement.

‘(2) The Commission may declare that the applicant is no longer bound if satisfied it is in the public interest to make the declaration.

‘Enforcement of certified agreements

‘139BQ. An agreement certified under this Division is enforceable in the same way as an award.

‘Division 3—Enterprise flexibility agreements

‘Employer may apply for approval of implementation of enterprise flexibility agreement (s 170NA Cwlth)

‘139CA.(1) An employer carrying on an enterprise may prepare an agreement about an industrial matter relating to the enterprise.

‘(2) The employer may apply to the Commission to approve implementation of the agreement.

‘Organisations entitled to be heard (s 170NB Cwlth)

‘139CB.(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 industrial organisation of employees is entitled to be heard if it is bound by an award or industrial agreement that binds the employer for work performed in the enterprise.

‘(2) As soon as practicable after the application is made, the Commission must notify (as prescribed by regulation) each industrial organisation of employees entitled to be heard that—

(a) the application has been made; and

(b) the industrial organisation is entitled to be heard on the application.

'(3) This section does not affect any other right of an industrial organisation of employees or another entity to intervene or be heard, or to apply to intervene or be heard, on an application.

'Approval of implementation of agreement (s 170NC Cwlth)

'139CC.(1) In this section—

"majority of employees" means a majority of the persons who were employees covered by the agreement as at the end of a day specified in the application that is not earlier than 7 days before the application was made.

'(2) The Commission must, and may only, approve implementation of an agreement if satisfied—

(a) the agreement applies only to the enterprise mentioned in section 139CA and is only about an industrial matter; and

(b) the wages and employment conditions of the employees covered by the agreement are regulated by 1 or more awards or industrial agreements that bind the employer; and

(c) the agreement covers all of the employees—

(i) whose wages and employment conditions are regulated by 1 or more awards or industrial agreements that bind the employer; and

(ii) who the employer employs to perform work in the enterprise; and

(d) the agreement does not disadvantage the employees covered by the agreement about their employment conditions; and

(e) the agreement includes procedures for preventing and settling disputes between the persons bound by the agreement about matters arising under the agreement; and

(f) the agreement either—

(i) establishes a process for the persons bound by the agreement to consult each other about changes to the organisation or performance of work in the enterprise; or

(ii) states that it is not appropriate for the agreement to provide for the consultation; and

(g) during the negotiations for the agreement, reasonable steps were taken to consult the employees covered by the agreement about the agreement; and

(h) before the application for approval was made, reasonable steps were taken to inform the employees covered by the agreement of—

(i) the agreement's terms; and

(ii) the effect of the terms; and

(iii) in particular, the procedures mentioned in paragraph (e); and

(iv) the intention to apply to the Commission to approve implementation, and the consequences of approval; and

(i) a majority of employees have (on or before the day specified in the application) genuinely agreed to be bound by the agreement, even if they agreed at different times; and

(j) the agreement specifies its period of operation.

'(3) Under subsection (2)(d), an agreement disadvantages employees in relation to their employment conditions only if—

(a) approval of implementation would result in the reduction of the employees' entitlements or protection under an award or industrial agreement; and

(b) in the context of the employment conditions considered as a whole, the Commission considers the reduction is against the public interest.

'When Commission must refuse to approve implementation of agreements (s 170ND Cwlth)

'139CD.(1) The Commission must not approve implementation if it considers a provision of the agreement is inconsistent with—

(a) a provision of Part 4, Division 2 or 3 or Part 11, Division 4; or

(b) an order of the Commission under the Divisions.

'(2) The Commission may refuse to approve implementation if satisfied that approving implementation would be against the public interest because of exceptional circumstances.

'(3) Approving implementation is not against the public interest merely because the agreement is inconsistent with principles established by the Full Bench that apply when determining wages and employment conditions by awards.

'(4) The Commission must not approve implementation if satisfied—

(a) the employer has, in connection with negotiating the agreement, contravened 1 or more of the following provisions—

- section 139FA (Employer not to discriminate between union members and non-union members when negotiating agreements)
- section 139ED(3) (Representation of employees in negotiations for enterprise flexibility agreements)
- section 342 (Prejudice of employees by reason of membership of industrial organisation)
- section 343 (Prejudice of employee by reason of non-membership of industrial organisation)
- section 344 (Conduct in relation to holder of conscientious objector's certificate); or

(b) the employer has caused an entity, in connection with negotiations for the agreement, to engage in conduct that, had the employer engaged in it, would be a contravention by the employer of any of the provisions mentioned in paragraph (a); or

(c) an entity has, for the employer—

(i) engaged in the conduct mentioned in paragraph (b); or

(ii) caused another entity to engage in the conduct.

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

‘(6) The Commission may refuse to approve implementation, or may adjourn an application to approve the implementation, if it is satisfied the employer did not—

(a) before or as soon as practicable after negotiations for the agreement began, notify each industrial organisation that was at the time an eligible union about the negotiations; or

(b) give the industrial organisation a reasonable opportunity to take part in the negotiations and to agree, before the application for approval was made, to be bound by the agreement.

‘(7) Subsection (6) does not apply to an industrial organisation if the employer could not reasonably have known when, or within a reasonable period after, the negotiations for the agreement began that the organisation was an eligible union.

‘(8) When deciding what action to take under subsection (6), the Commission must consider whether it considers the failure was intentional and other relevant circumstances.

‘(9) The Commission must not approve implementation if it considers the agreement contains a discriminatory provision.

‘(10) This section applies despite section 139CC (Approval of implementation of agreement).

‘How agreement may provide for its amendment (s 170NE Cwlth)

‘139CE.(1) If an agreement provides for any of its terms to be amended by a later agreement applying to the enterprise, the Commission must not approve implementation of the agreement unless satisfied the agreement specifies—

(a) the amendable terms; and

(b) when and how the terms can be amended.

‘(2) To avoid doubt, it is declared that subsection (1) does not apply to an agreement so far as the obligations under the agreement can change because of the terms of the agreement itself.

‘Other options open to Commission instead of refusing to approve implementation (s 170NF Cwlth)

‘139CF.(1) This section applies if the Commission has grounds not to approve the implementation of an agreement under any of the following sections—

- section 139CC (Approval of implementation of agreement)
- section 139CD (When Commission must refuse to approve implementation of agreements)
- section 139CE (How agreement may provide for its amendment).

‘(2) The Commission may accept an undertaking about the agreement’s operation from a person who—

(a) would be bound by the agreement; and

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

‘(3) The Commission may approve the implementation if satisfied the undertaking meets its concerns.

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

‘(5) Before refusing to approve the implementation, the Commission in any case must give—

(a) the employer an opportunity to amend 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) the persons who would be bound by the agreement an opportunity to do what is necessary for the Commission to be able to approve implementation.

‘Commission to protect interests of certain employees (s 170NG Cwlth)

‘139CG.(1) The Commission must comply with this section in

performing its functions and exercising its powers in relation to an application to approve the implementation of an agreement.

'(2) The Commission must identify any employees who may be covered by the agreement but whose interests may not have been sufficiently taken into account in the negotiations for, or the terms of, the agreement.

'(3) Examples of employees whose interest may not have been taken into account are—

(a) women; and

(b) persons whose first language is not English; and

(c) young persons.

'(4) When deciding whether it is satisfied under section 139CC(2)(g) and (h), the Commission must do what is necessary to find out—

(a) whether the employees were consulted about the agreement and informed of the matters mentioned in section 139CC(2)(g) and (h) in ways appropriate to their particular circumstances and needs; and

(b) whether the effects on the relevant employees of the agreement's terms were properly explained to the employees.

'(5) If it considers there has been a failure to consult, inform or explain as mentioned in subsection (4), the Commission must make the orders it considers necessary to remedy the failure and its effects.

'Procedures for preventing and settling disputes (s 170NI Cwlth)

'139CH. Dispute prevention and settling provisions in an enterprise flexibility agreement may empower the Commission to settle disputes, if the Commission approves of the provisions.

'Provisions relevant when business has distinct parts (s 170LC Cwlth)

'139CHA.(1) If, on an application to approve implementation of an agreement, the Commission is satisfied—

(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 the part, or each of the parts, as a geographically distinct part of the business;

the part is taken to be, and to have been when the agreement was made, a geographically distinct part of the business.

'(2) If a business is made up of 2 or more geographically distinct parts, the Commission may approve implementation of—

(a) an agreement that applies to an enterprise formed by the entire business; or

(b) 1 or more agreements each relating to an enterprise formed by 1 or more of the distinct parts.

'(3) However, an enterprise flexibility agreement that applies to an entire business cannot be in force at the same time as an enterprise flexibility agreement that applies to 1 or more parts of the business.

'Operation of enterprise flexibility agreements (s 170NJ Cwlth)

'139CI.(1) An enterprise flexibility agreement comes into force when its implementation is approved.

'(2) An enterprise flexibility agreement remains in force unless—

(a) it is terminated by the Commission under section 139CF(4); or

(b) because of 1 or more orders or declarations under the relevant sections—

(i) it is terminated; or

(ii) no employer is bound by the agreement; or

(iii) no employee or industrial organisation of employees is bound by the agreement; or

(c) it is replaced by a new enterprise flexibility agreement or by a certified agreement.

'(3) In this section—

"relevant sections" means—

• section 139CM (Enterprise flexibility agreements may be

amended or terminated by Full Bench)

- section 139COA (Person bound may withdraw by consent)
- section 139CO (Enterprise flexibility agreements may be terminated by persons bound)
- section 139CPA (Persons affected by industrial action may withdraw).

'Person may retire from enterprise flexibility agreement

'139CJA.(1) A person bound by an enterprise flexibility agreement may file in the Industrial Registrar's office a notice of intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

'(2) The notice must be filed—

(a) within 30 days before the end of the period of the agreement; or

(b) if the agreement remains in force after the end of the period of the agreement because of section 139C1(2)—while the agreement remains in force because of section 139C1(2).

'(3) At the end of the specified period, the person who filed the notice is no longer bound by the enterprise flexibility agreement.

'Extension of enterprise flexibility agreements (s 170NK Cwlth)

'139CJ.(1) In this section—

"majority of employees" means a majority of the persons who were employees covered by the agreement as at the end of a day specified in the application not earlier than 7 days before the application was made.

'(2) The Commission must extend the period of operation of an enterprise flexibility agreement, as required by the employer's application, if it is satisfied a majority of employees have genuinely agreed to the proposed extension on or before the day specified in the application, even if they agreed at different times.

'(3) However, the Commission must not extend the period of operation if—

(a) the period, or the period as last extended, has ended; or

(b) an industrial organisation of employees, that is entitled under section 139CB 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.

'(4) If the Commission considers the period of operation, or the period as last extended, will end before the application is decided, it may extend the period until the application is determined.

'Effect of enterprise flexibility agreements (s 170NL Cwlth)

'139CK. While an enterprise flexibility agreement is in force—

(a) subject to paragraph (b), the agreement's terms prevail over the terms of an award or industrial agreement to the extent of the inconsistency; and

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

(c) a term of the agreement can be amended by the employer, but only as provided in either of the following sections—

- section 139CL (Amendment of enterprise flexibility agreement as provided in the agreement)
- section 139CM (Enterprise flexibility agreements may be amended or terminated by Full Bench); and

(d) the agreement may only be amended to remove ambiguity or uncertainty; and

(e) the Commission must not exercise any powers to amend the agreement other than under this Division.

'Amendment of enterprise flexibility agreement as provided in the agreement (s 170NM Cwlth)

'139CL.(1) This section applies to an application to the Commission to approve implementation of an agreement (the **"amendment"**) amending an enterprise flexibility agreement (the **"main agreement"**) that provides for

any of its terms to be amended by a later enterprise flexibility agreement.

'(2) 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 amended; and

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

'(3) The Commission may approve implementation of the amendment only if it is satisfied—

(a) the amendment was made as required by the main agreement; and

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

(c) the amendment provides only for amending the main agreement and for matters incidental to amending it.

'Enterprise flexibility agreements may be amended or terminated by Full Bench (s 170NN Cwlth)

'139CM.(1) While an enterprise flexibility agreement is in force, the 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 do so only—

(a) on its own initiative; or

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

'(3) If the Full Bench finds the continued operation of the agreement would be unfair to the employees covered by the agreement, it may—

(a) terminate the agreement; or

(b) accept an undertaking about the agreement's operation; or

(c) permit the employer to amend 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 specified day, were employees covered by the agreement.

'(4) If an undertaking is not complied with, the Full Bench may terminate

the agreement after giving the persons bound by it an opportunity to be heard.

'Review of enterprise flexibility agreements (s 170NN Cwlth)

'139CN. The Full Bench must review the operation of each enterprise flexibility agreement—

(a) within 3 years after it was made; and

(b) within 3 years after it was last reviewed by the Full Bench.

'Person bound may withdraw by consent (s 170NO Cwlth)

'139COA.(1) A person bound by an enterprise flexibility agreement may, with the consent of all other persons bound, notify the Commission that the person does not want to remain bound by the agreement.

'(2) The Commission may declare that the person is no longer bound if satisfied it is in the public interest to make the declaration.

'Enterprise flexibility agreements may be terminated by persons bound (s 170NO Cwlth)

'139CO.(1) All the persons bound by an enterprise flexibility agreement may jointly notify the Commission that they want the agreement to be terminated.

'(2) The Commission may declare that the agreement is terminated if satisfied it is in the public interest to make the declaration.

'Persons affected by industrial action may withdraw (s 170NN Cwlth)

'139CPA.(1) If a person bound by an enterprise flexibility agreement engages in industrial action about a matter dealt with in the agreement, another person bound by the agreement who is affected by the industrial action may apply to the Commission for a declaration that the applicant is no longer bound by the agreement.

'(2) The Commission may declare that the applicant is no longer bound if satisfied it is in the public interest to make the declaration.

'Eligible union may agree to be bound by enterprise flexibility agreement (s 170NP Cwlth)

'139CP.(1) If—

(a) an employer has prepared an agreement under this Division; and

(b) the Commission has not yet approved implementation of the agreement (whether or not an application for approval has been made);

an eligible union may notify the employer that it agrees to be bound by the agreement if and when the Commission approves its implementation.

'(2) If an amendment made under this Division is proposed, or made but not yet effective, an eligible union may notify the employer that it agrees to be bound—

(a) if the union is already bound by the agreement—by the amendment if and when it takes effect; or

(b) if it is not already bound by the agreement—by the agreement as amended if and when the amendment takes effect.

'(3) Subsection (2) applies even if a previous amendment of the agreement has taken effect.

'(4) While an enterprise flexibility agreement is in force because of section 139CI, an eligible union may notify the employer that it agrees to be bound by the agreement on and after a specified day.

'(5) Subsection (4) applies whether or not an amendment of the agreement has taken effect.

'(6) A notice under subsection (1), (2) or (4) cannot be revoked.

'(7) An eligible union that has agreed under subsection (1), (2) or (4) is bound by the agreement concerned.

'(8) However, after an amendment (however made) of the agreement takes effect, or a further amendment takes effect, the union—

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

(b) is not bound by the agreement as amended;

unless, before the amendment or further amendment took effect, the union

agreed under subsection (2) to be bound by the amendment or further amendment.

'(9) Subsection (8) does not apply to an amendment made under section 139CK(d).

'(10) If, immediately before an amendment made under section 139CK(d) takes effect, the union is still bound by the agreement, the union is bound by the agreement as amended.

'Division 4—Immunity from civil liability for protected action during bargaining period

'Object of Division (s 170PA Cwlth)

'139DA.(1) The object of this Division is to give effect, in particular situations, to Australia's international obligation to provide for a right to strike.

'(2) This obligation arises under—

(a) Article 8 of the Economic, Social and Cultural Rights Covenant; and

(b) the Freedom of Association and Protection of the Right to Organise Convention 1948 (the English text of the Preamble, and Parts I and II, of which is set out in Schedule 11); and

(c) the Right to Organise and Collective Bargaining Convention 1949 (the English text of the Preamble, and Articles 1 to 6, of which is set out in Schedule 12); and

(d) the Constitution of the International Labour Organisation; and

(e) customary international law about freedom of association and the right to strike.

'(3) The Parliament considers it necessary to provide specific legislative protection for the right to strike, subject to limitations compatible with the existence of the right, when—

(a) an industrial dispute exists involving an employer and 1 or more industrial organisations whose members are—

(i) employed by the employer to perform work in a single enterprise; and

(ii) covered by an award or industrial agreement; and

(b) the employer and 1 or more of the organisations are negotiating an agreement under Division 2.

'Division's purpose (s 170PC Cwlth)

'139DC. This Division provides legal immunity for certain industrial action (defined as protected action) happening during a particular period (defined as the bargaining period).

'Initiation of bargaining period (s 170PD Cwlth)

'139DD.(1) This section applies if, for an industrial matter—

(a) an employer; or

(b) an industrial organisation of employees;

wants to negotiate a certified agreement about the employees who are employed in a single enterprise.

'(2) Subject to section 139DP(5)(b), the employer or organisation (the **"initiating party"**) may initiate a period (the **"bargaining period"**) for negotiating the proposed agreement.

'(3) The bargaining period is initiated by the initiating party notifying—

(a) the other proposed party to the agreement; and

(b) the Commission;

that the initiating party intends to try, or to continue to try to reach a certified agreement with the party about an industrial matter.

'Particulars to accompany notice (s 170PE Cwlth)

'139DE. The notice must state the following particulars—

(a) the single enterprise to be covered by the proposed agreement;

(b) the proposed parties to the agreement;

(c) the matters the initiating party proposes the agreement should deal with;

(d) the industrial matter to which the proposed agreement relates;

(e) the proposed period of the agreement;

(f) other matters that may be prescribed by regulation.

'When bargaining period begins (s 170PF Cwlth)

'139DF. The bargaining period begins at the end of 7 days after—

(a) the day the notice was given; or

(b) if the notice was given to different parties on different days—the later or latest of the days the notice was given.

'Protected action for which immunity is provided (s 170PG Cwlth)

'139DG.(1) This section identifies action (**"protected action"**) to which section 139DM (Immunity for protected action) applies.

'(2) During the bargaining period—

(a) an industrial organisation of employees that is a negotiating party; or

(b) a member of the organisation who is employed by the employer; or

(c) an officer or employee of the organisation acting in that capacity;

is entitled to organise or engage in industrial action directly against the employer to support or advance claims made by the organisation that are the subject of the relevant industrial matter.

'(3) The organising of, or engaging in, the industrial action is protected action.

'(4) During the bargaining period, the employer is entitled to lock out all or any of the employees to be covered by the agreement from their employment—

(a) to support or advance claims made by the employer that are the subject of the relevant industrial matter; or

(b) to respond to industrial action by any of the employees.

'(5) The lockout is protected action.

'(6) An employer locks out employees from their employment if the employer prevents the employees from performing work under their employment contracts without terminating the contracts.

'(7) If the employer locks out employees, the employer may refuse to pay any remuneration to the employees for the period of the lockout.

'(8) An employee's employment is not affected by the lockout, other than for the purposes prescribed by regulation.

'(9) However, this section applies subject to sections 139DH to 139DK.

'72 hours' notice of action must be given (s 170PH Cwlth)

'139DH.(1) Action taken under section 139DG(2) by an organisation, member, officer, or employee is protected action only if the organisation has given the other negotiating party at least 72 hours' notice of the intention to take the action.

'(2) Action taken under section 139DG(4) by the employer is protected action—

(a) only if the employer has given the other negotiating party at least 72 hours' notice of the intention to take the action; and

(b) so far as it relates to a particular employee, only if, at least 72 hours before the action is taken, the employer has—

(i) notified the employee of the intended action; or

(ii) taken other reasonable steps to notify (whether or not by written notice) the employee of the intended action.

'(3) A notice under subsection (2)(a) or (b)(i) must state the nature of the intended action and the day when it will begin.

'Negotiation must precede industrial action (s 170PI Cwlth)

'139DI.(1) Industrial action engaged in by a member of an industrial organisation of employees is protected action only if the organisation has, before the member begins to engage in the industrial action—

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

(b) if the Commission has made an order under section 139EC about the negotiations—complied with the order so far as it applies to the organisation.

'(2) Industrial action engaged in by an employer is protected action only if the employer has, before the employer begins to engage in the industrial action—

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

(b) if the Commission has made an order under section 139EC about the negotiations—complied with the order so far as it applies to the employer.

'What happens if Commission orders a ballot under s 190 (s 170PJ Cwlth)

'139DJ. If the Commission has ordered a vote of an industrial organisation's members be taken by secret ballot about the subject matter of the industrial dispute, the organising of, or engaging in, industrial action after the making of the order by—

(a) the organisation; or

(b) a member of the organisation; or

(c) an officer or employee of the organisation acting in that capacity;

is protected action only if the ballot has been taken and the industrial action has been approved by a majority of the valid votes cast in the ballot.

'Industrial action must be properly authorised (s 170PK Cwlth)

'139DK.(1) Industrial action engaged in by a member of an industrial organisation of employees is protected action only if, before the industrial action begins—

(a) the industrial action is authorised by—

(i) the organisation's committee of management; or

(ii) someone authorised by the committee to authorise the

industrial action; and

(b) if the rules of the organisation provide for how the industrial action must be authorised—the industrial action is authorised under the rules; and

(c) notice of the giving of the authorisation is given to the Industrial Registrar.

'(2) Industrial action is taken to be authorised under the rules even though a technical breach happened in authorising the industrial action, if the person who committed the breach acted in good faith.

'(3) Examples of a technical breach are—

(a) a contravention of the organisation's rules; and

(b) an error or omission in complying with this Act; and

(c) the taking part in the making of a decision by a committee of management, or in the making of the decision by members, of the organisation by a person who was not eligible to take part in the making of the decision.

'(4) Industrial action is taken to have been authorised under the rules, and to have been authorised before the industrial action began, unless the Commission declares that the industrial action was not authorised under the rules.

'(5) An application for the Commission's declaration must be made within 6 months after a notice is given to the Industrial Registrar under subsection (1)(c).

'(6) So far as the rules of an industrial organisation of employees provide for how industrial action (that the organisation is entitled to organise or engage in under section 139DG) is to be authorised, the rules do not contravene section 204 unless the way provided for contravenes the section.

'What happens if application to certify agreement is not made within 21 days (s 170PL Cwlth)

'139DL. Unless an application to the Commission to certify an agreement is made within 21 days after the day when a memorandum of agreement is made, nothing done by a party to the agreement during the bargaining period is protected action.

'Immunity for protected action (s 170PM Cwlth)

'139DM.(1) An action does not lie under any law for industrial action that is protected action unless the industrial action has involved or is likely to involve unlawful—

(a) personal injury; or

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

(c) taking, keeping or use of property.

'(2) Subsection (1) does not prevent an action for defamation being brought for anything that happened during the industrial action.

'When bargaining period ends (s 170PN Cwlth)

'139DN. The bargaining period ends when—

(a) an agreement under Division 2 is entered into between the employer and any 1 or more of the other negotiating parties; or

(b) the initiating party notifies the other negotiating party that the initiating party no longer wants to reach an agreement under Division 2 with the other party; or

(c) the Commission terminates the bargaining period.

'Power of Commission to suspend or terminate bargaining period (s 170PO Cwlth)

'139DO.(1) The Commission may suspend or terminate the bargaining period, after giving the negotiating parties an opportunity to be heard, if it is satisfied—

(a) a negotiating party who has organised, is organising or has taken industrial action to support or advance claims the subject of the relevant industrial matter—

(i) is not genuinely trying to reach an agreement with the other negotiating parties; or

(ii) has not complied with a Commission order about negotiating in good faith; or

(b) industrial action being taken to support or advance claims the

subject of the relevant industrial matter is threatening—

(i) to endanger the life, personal safety, health or welfare of the population or of part of it; or

(ii) to cause significant damage to the economy or an important part of it; or

(c) if the bargaining period relates to employees employed in a part of a single enterprise—the initiating party is not complying with an award, industrial agreement, order or direction of the Commission about another part of the single business or another workplace in the single business.

'(2) The Commission may only act under subsection (1) on a ground stated in subsection (1)(b)—

(a) on its own initiative; or

(b) on an application by the negotiating party or the Minister.

'(3) The Commission may only act under subsection (1) on a ground stated in subsection (1)(a) and (c) on an application by the negotiating party.

'(4) The Commission's power to suspend or terminate the bargaining period because of particular circumstances may be exercised whether the circumstances happened before or during the bargaining period.

'(5) Section 139DM (Immunity for protected action) does not apply to 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 relevant industrial matter when the bargaining period is suspended.

'What happens if Commission terminates a bargaining period under s 139DO(1)(b)? (s 170PP Cwlth)

'139DP.(1) If a bargaining period initiated by an industrial organisation of employees is terminated on the ground set out in section 139DO(1)(b), the Commission must immediately begin to take action to settle the industrial dispute.

‘(2) If, to settle the industrial dispute, the Commission proposes to make a new award, or to amend an existing award, to cover employees whose employment conditions are the subject of the matter, it must—

(a) for a new award—make the new award as a paid rates award; or

(b) for the amendment of an existing award—amend the award to be a paid rates award;

for the employees employed in the single enterprise to which the bargaining period relates.

‘(3) When deciding the terms to be included in an award that it proposes to make or amend, the Commission—

(a) must base its decision on the merits of the matters under consideration; and

(b) need not follow principles that generally apply in deciding wages and employment conditions when making awards under this Act.

‘(4) Despite subsection (2), the new award or amended award need not be a paid rates award if the parties to the industrial dispute have agreed to the award not being a paid rates award.

‘(5) An award made or amended under subsection (2) must specify a period during which—

(a) the award may only be amended to remove ambiguity or uncertainty; and

(b) the parties to the award may not initiate a bargaining period under section 139DD for negotiating an agreement about matters dealt with in the award.

‘Division 5—Conciliation in relation to proposed agreements

‘Commission may conciliate proposed agreements under this Part (s 170QH Cwlth)

‘139EA.(1) This section applies if the Commission becomes aware that a party wants to negotiate, or is negotiating, a certified agreement or enterprise flexibility agreement with another party.

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

'(3) If a party asks the Commission to exercise powers under subsection (2), the Commission must decide as quickly as possible whether or not to do so.

'Directions and orders to assist the making of agreements (s 170QI Cwlth)

'139EB.(1) The Full Bench may give directions and make orders to assist the making of agreements under this Part.

'(2) A direction or order has effect subject to an order of the Court.

'Commission orders about negotiations for agreements under this Part (s 170QK Cwlth)

'139EC.(1) The Commission may make orders to—

(a) ensure the parties negotiating an agreement under this Part negotiate in good faith; or

(b) promote the efficient conduct of negotiations for the agreement; or

(c) otherwise assist the making of the agreement.

'(2) In particular, the Commission may order a party to take, or not to take, specified action.

'(3) In deciding what orders to make, the Commission—

(a) must consider the conduct of each of the parties to the negotiations and, in particular, whether the party concerned has—

(i) agreed to meet at reasonable times proposed by another party; or

(ii) attended meetings that the party had agreed to attend; or

(iii) complied with negotiating procedures agreed to by the parties; or

(iv) capriciously added or withdrawn items for negotiation; or

(v) disclosed relevant information as appropriate for the

negotiations; or

(vi) failed to negotiate with 1 or more of the parties; or

(vii) in or in connection with the negotiations, contravened section 139ED(3) by failing to negotiate with a person who is entitled under the section to represent an employee; and

(b) may consider—

(i) proposed conduct of any of the parties, including proposed conduct of a type mentioned in paragraph (a); and

(ii) other relevant matters.

'Representation of employees in negotiations for enterprise flexibility agreements (s 170RB Cwlth)

'139ED.(1) This section applies to negotiations between employer and employees for the making of an enterprise flexibility agreement.

'(2) An officer or employee of an industrial organisation of employees (the **"official"**) may 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 authorised under the organisation's rules, or by its committee of management, to represent the employee's interests; and

(d) the employee has informed the employer that the employee wants to be represented by the official for the negotiations.

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

Maximum penalty for subsection(3)—80 penalty units.

'Division 6—Provisions common to certified agreements and enterprise flexibility agreements

'Employer not to discriminate between union members and non-union members when negotiating agreements (s 170RA Cwlth)

'139FA. When negotiating the terms of an agreement under this Part, an employer must not discriminate between the employer's employees—

(a) because some of the employees are members of an industrial organisation of employees while others are not members; or

(b) because some of the employees are members of a particular industrial organisation of employees, while others are not members or are members of a different industrial organisation.

'Components of wage rates

'139FB.(1) Each rate of wages provided for by a certified agreement or enterprise flexibility agreement (whether before or after the commencement of this section) as payable to adult employees, or employees who are seniors, is taken to consist of, and to be expressed by reference to—

(a) the guaranteed minimum wage declared at the time the agreement is or was made and a margin; or

(b) if after the making of the agreement there has been made a declaration of a general ruling that amends the guaranteed minimum wage—the guaranteed minimum wage as amended by the declaration last made and a margin.

'(2) Subsection (1) does not apply to a rate of wages provided for by an agreement that immediately before the commencement of this section provides for a rate of wages equal to or less than the guaranteed minimum wage contained in the declaration of a general ruling last made before the commencement, until the rate of wages provided for by the agreement becomes greater than the guaranteed minimum wage last declared before the greater rate is provided for.

'Effect of appeal decisions on agreements

'139FC. If—

(a) a decision of the Industrial Court—

(i) on appeal from a decision of the Industrial Commission; or

(ii) on a case stated by the Industrial Commission; or

(b) a decision of the Full Bench on appeal from a Commissioner;

affects a certified agreement or enterprise flexibility agreement, the Commission must immediately amend the agreement to give effect to the Court's or Commission's decision.

'Inconsistency between agreements and contracts

'139FD.(1) A certified agreement or enterprise flexibility agreement prevails over any contract of service that is—

(a) in force when the agreement becomes enforceable; or

(b) made while the agreement remains in force;

to the extent of any inconsistency between the agreement and the contract.

'(2) The contract only has effect as if it were amended so far as is necessary to make it conform to the agreement.

'(3) Under this section, there is no inconsistency between an agreement and a contract only because the contract provides for employment conditions more favourable to the employee than the agreement.**'.**

Amendment of s 159 (Entitlement to long service leave)

16.(1) Section 159(1)—

omit all words from **'**Subject to**'** to **'**170, the**',** *insert* **'**The**'.**

(2) Section 159—

insert—

'(3) This section applies subject to adjustments made for—

(a) a seasonal employee under either of the following sections—

- section 169 (Long service leave in meat works and sugar industry)
- section 170 (Long service leave for other seasonal workers); and

(b) an employee with an entitlement to long service leave based on

continuous service calculated under section 164 (Continuous service of casual employees).**'.**

Replacement of s 164 (Continuous service of casual employees)

17. Section 164—

omit, insert—

'Continuous service of casual employees

'164.(1) When calculating an employee's entitlement to long service leave under this Division, service of an employee who is employed more than once by the same employer over a period constitutes continuous service with the employer even if the employment is broken during the period.

'(2) However, the continuous service ends if the employment is broken by the passing of more than 3 months between the end of 1 employment contract and the next employment contract.

'(3) Subsection (1) applies despite the fact that—

(a) any of the employment is not full-time employment; or

(b) the employee is employed by the employer under 2 or more employment contracts; or

(c) the employee would, apart from this section, be regarded as engaged in casual employment; or

(d) the employee has engaged in other employment during the period.

'(4) When calculating the employee's continuous service under section 159—

(a) subject to subsection (5), service by the employee before 23 June 1990 must not be taken into account; and

(b) if the employee only obtained the entitlement because of the enactment of this section under the *Industrial Relations Reform Act 1994*—the employee's service between 23 June 1990 and the commencement of the section must not be taken into account; and

(c) subject to subsection (2), any period when the employee was not in employment with the employer must be taken into account.

‘(5) Subsection (4)(a) does not affect an employee’s entitlement to long service leave under—

(a) an award or industrial agreement made before 23 June 1990; or

(b) the *Industrial Conciliation and Arbitration Act 1961*.

‘(6) This section does not limit an entitlement to long service leave calculated other than under this section.[1]**’.**

Insertion of new s 165A

18. After section 165—

insert—

‘Time and manner of taking long service leave—casual employees

‘165A.(1) An employer may agree with an employee who has an entitlement to long service leave based on continuous service calculated under section 164 that the entitlement may be taken in the form of its full-time equivalent.

Example—

If an employee—

(a) is entitled to be paid for 260 hours long service leave; and

(b) works under an award that provides for a full-time working week of 40 ordinary hours;

the employee and the employer may agree that the employee take $6^1/_2$ weeks leave ($260 \div 40 = 6^1/_2$).

‘(2) This section applies subject to a provision in an award, industrial agreement, certified agreement or enterprise flexibility agreement about the employee’s long service leave.**’.**

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1 See section 160, which provides other rules for calculating an employee’s entitlement to long service leave.
This section does not affect an employees entitlement to long service leave accrued under section 164 of the *Industrial Relations Act 1990* between 23 June 1990 and the commencement of the section because this is protected under section 20 of the *Acts Interpretation Act 1954*.

Amendment of s 166 (Payment for long service leave)

19. Section 166(5)—

omit, insert—

'(5) The amount payable to an employee mentioned in section 164(1) for long service leave is calculated using the formula—

$$\textbf{number of hours} \times \textbf{hourly rate}$$

in which the number of hours is calculated using the formula—

$$\frac{\textbf{actual service}}{\textbf{52}} \times \frac{\textbf{13}}{\textbf{15}}$$

'(5A) In subsection (5)—

"actual service" means the total ordinary hours actually worked by an employee during the period of continuous service to which the entitlement to long service leave relates;

"hourly rate" means the hourly rate for ordinary time payable to the employee—

(a) if the employee takes the long service leave—on the day the employee starts the leave; or

(b) otherwise—on the day immediately before the entitlement becomes payable;

"number of hours" means the number of hours for which payment is to be made for long service leave.

Example of subsection (5)—

An employee who worked 15 600 ordinary hours over a 15 year period and is being paid an hourly rate of $10 would be entitled to be paid—

$$\$10 \times \left(\frac{15\,600}{52} \times \frac{13}{15}\right)$$

$$= \$10 \times 260$$

$$= \$2\,600\textbf{'.}$$

Amendment of Pt 11 (General conditions of employment)

20. Part 11, Division 4—

omit, insert—

'Division 3A—Parental leave

'Subdivision 1—Preliminary

'Object of Division (s 170KA Cwlth)

'174AA. The object of this Division is to give effect to the Family Responsibilities Convention and the Family Responsibilities Recommendation.

'Basic principles (Sch 14 cl 1 Cwlth)

'174AB.(1) Under this Division, an employee who gives birth to a child, and her spouse, are entitled to unpaid parental leave (totalling 52 weeks) to care for the child.

'(2) However, an employee's entitlement to leave under this Division is reduced by the employee's other entitlements to parental leave other than under this Division.

'(3) To obtain parental leave under this Division, an employee must satisfy specified requirements about—

(a) length of service; and

(b) notice periods; and

(c) information and documentation.

'(4) Except for 1 week at the time of the birth, an employee and the employee's spouse must take parental leave at different times.

'(5) An employee may take other leave (annual leave for example) in conjunction with parental leave, but this will reduce the amount of parental leave the employee may take.

'(6) Parental leave may be varied in certain circumstances.

'(7) In general, if a variation is foreseeable, an employee must give notice of it, but if a variation is not foreseeable notice is not required (for example, when the birth is premature).

'(8) Cancellation of parental leave by the employer is limited to situations when—

(a) the employee will not become, or ceases to be, the child's primary care-giver; or

(b) there has been a mistake in calculating the amount of leave to which the employee is entitled.

'(9) An employee who takes parental leave is, in most circumstances, entitled to return to the position the employee held before the leave was taken.

'(10) Parental leave does not break an employee's continuity of service.

'Definitions (Sch 14 cl 2 Cwlth)

'174AC. In this Division—

"continuous service" means—

(a) service under an unbroken contract of employment other than as a casual or seasonal employee; and

(b) includes a period of leave or absence authorised by—

(i) the employer; or

(ii) an award, industrial agreement, certified agreement, enterprise flexibility agreement or order; or

(iii) a contract of employment; or

(iv) this Division;

"Division 3A long paternity leave" has the meaning given by section 174CA;

"Division 3A maternity leave" has the meaning given by section 174BA;

"Division 3A short paternity leave" has the meaning given by section 174CA;

"employee" includes a part-time employee, but not a casual or seasonal employee;

"law" includes an unwritten law;

"long paternity leave" means Division 3A long paternity leave or other

leave—

(a) that an employee is entitled to, has been applied for or been granted for the birth of his spouse's child, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 3A long paternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) different rules govern eligibility for it; or

(iii) it can be taken for different periods;

"maternity leave" means Division 3A maternity leave or other leave—

(a) that an employee is entitled to, has been applied for or been granted for her pregnancy or her child's birth, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 3A maternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) it can begin before the estimated date of birth; or

(iii) different rules govern eligibility for it; or

(iv) it can be taken for different periods;

"medical certificate" means a certificate signed by a doctor;

"parental leave" means maternity leave or paternity leave;

"paternity leave" means short paternity leave or long paternity leave;

"short paternity leave" means Division 3A short paternity leave or other leave—

(a) that an employee is entitled to, has been applied for or been granted for the birth of his spouse's child, other than under this Division (for example, under an award, order or agreement); and

(b) that is analogous to Division 3A short paternity leave, or would be analogous except that—

(i) it is paid leave; or

(ii) different rules govern eligibility for it; or

(iii) it can be taken for different periods;

"spouse" of an employee includes—

(a) a former spouse; and

(b) a person of the opposite sex to the employee who lives with the employee in a marriage-like relationship, although not legally married to the employee.

'Subdivision 2—Maternity leave

'Entitlement to maternity leave (Sch 14 cl 3 Cwlth)

'174BA. An employee who becomes pregnant is entitled to 1 period of unpaid leave (**"Division 3A maternity leave"**) for the child's birth and to be the child's primary care-giver.

'Conditions of entitlement to maternity leave (Sch 14 cl 3 Cwlth)

'174BB.(1) An employer must grant Division 3A maternity leave to an employee if—

(a) she notifies the employer of the estimated date of birth at least 70 days before the date; and

(b) she applies for the leave at least 28 days before the first day of the leave; and

(c) the application states the first and last days of the leave; and

(d) the first day of the leave is the estimated date of birth or a later day; and

(e) she submits with the application a medical certificate that states—

(i) she is pregnant and the estimated date of birth; or

(ii) she has given birth to a living child and the date of birth; and

(f) she submits with the application a statutory declaration stating—

(i) the first and last days of all the following—

(A) short paternity leave for which her spouse intends to apply, or has applied, for the child's birth;

(B) long paternity leave for which her spouse intends to apply, or has applied, for the child's birth;

(C) annual or long service leave for which her spouse intends to apply or has applied, instead of or in conjunction with, the paternity leave; and

(ii) that she—

(A) will be the child's primary care-giver throughout the maternity leave; and

(B) will not engage in conduct inconsistent with her contract of employment while on maternity leave; and

(g) it is reasonable to expect that she will complete, or she had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

'(2) Subsection (1)(a) and (g) does not apply if—

(a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to comply with subsection (1)(a); and

(b) if it was not reasonably practicable for the employee to notify the employer before the actual date of birth of the estimated date of birth—she notified the employer as soon as reasonably practicable; and

(c) otherwise—the medical certificate submitted under subsection (1)(e) also states the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and

(d) it is reasonable to expect the employee will complete, or the employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

'(3) Subsection (1)(b) does not apply if—

(a) it was not reasonably practicable for the employee to comply with the paragraph because the child was premature, or for some other compelling reason; and

(b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the leave; and

(c) if the child is born before the employee submits the application—the first day of the leave is the day of the child's birth or a later day.

'(4) If subsection (3)(c) applies, subsection (1)(d) does not apply.

'(5) If, because the child was premature, the first day of the leave is earlier than the estimated date of birth, a reference in this Division to 1 year of continuous service means a period of continuous service equal to 1 year less the period—

(a) beginning on the first day of the leave; and

(b) ending on the estimated date of birth.

'(6) When an employee applies for maternity leave (the **"substitute leave"**) to be taken instead of maternity leave for which she has already applied (the **"original leave"**)—

(a) if a document, submitted under subsection (1)(e) or (f) with the application for the original leave, applies to the application for the substitute leave—the document is not required to be submitted with the latter application; and

(b) if the employer grants the substitute leave—the employer—

(i) must cancel the original leave if it has been granted; or

(ii) must not give the original leave if it has not been granted.

'Period of maternity leave (Sch 14 cl 4 Cwlth)

'174BC.(1) The Division 3A maternity leave—

(a) if the child has not been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the estimated date of birth; and

(ii) must not extend beyond the first anniversary of the estimated date of birth; and

(b) if the child has been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the child's date of birth; and

(ii) must not extend beyond the child's first birthday; and

(c) must not overlap with the spouse's leave (other than short paternity leave) stated in the relevant statutory declaration; and

(d) must be for a continuous period equal to the shorter of—

(i) the period applied for; or

(ii) the period of entitlement.

'(2) The period of entitlement is 52 weeks less the total of all the following—

(a) unpaid leave (other than maternity leave) or paid sick leave that the employer has already granted to the employee for the pregnancy; and

(b) annual or long service leave the employee has applied to take instead of, or in conjunction with, maternity leave for the pregnancy; and

(c) the spouse's leave stated in the relevant statutory declaration.

'Entitlement reduced by other maternity leave available to employee (Sch 14 cl 5 Cwlth)

'174BD.(1) In this section—

"period of alternative leave" means the leave mentioned in subsection (2)(b);

"relevant section" means 1 of the following—

- section 174BB (Conditions of entitlement to maternity leave)
- section 174BC (Period of maternity leave);

"unadjusted period of maternity leave" means any Division 3A maternity leave that a relevant section would, apart from this section, require the employer to grant to the employee for the child's birth.

'(2) This section applies if, had this Division not been enacted—

(a) an employee could have applied (for her pregnancy or her child's birth) for maternity leave to which paragraphs (a) and (b) of the definition of "maternity leave" in section 174AC applies, whether or not she has in fact applied; and

(b) if she had applied as required by the rules governing the maternity leave, she would have a legally enforceable right to the leave, whether or not she has in fact applied.

'(3) If the period of alternative leave is at least as long as the unadjusted period of maternity leave, the employer must not grant maternity leave to the employee under a relevant section.

'(4) Otherwise, the employer must grant to the employee, instead of the unadjusted period of maternity leave, a period of maternity leave that—

(a) equals the difference between the unadjusted period of maternity leave and the period of alternative leave; and

(b) begins immediately after the period of alternative leave if the employer grants it; and

(c) otherwise complies with section 174BC.

'Taking annual or long service leave instead of, or in conjunction with, maternity leave (Sch 14 cl 6 Cwlth)

'174BE. If an employee applies to take annual or long service leave instead of, or in conjunction with, Division 3A maternity leave, the employer must grant the annual or long service leave if—

(a) had this Division not been enacted, the employer would have been obliged to grant it; or

(b) the total of all the following is not more than 52 weeks—

(i) the annual or long service leave;

(ii) annual or long service leave that the employer has already granted to the employee instead of, or in conjunction with, the maternity leave;

(iii) the maternity leave;

(iv) unpaid leave (other than maternity leave) or paid sick leave that the employer has already granted to the employee for the pregnancy;

(v) the spouse's leave under section 174BB(1)(f) stated in the relevant statutory declaration.

'Extending maternity leave (Sch 14 cl 7 Cwlth)

'174BF.(1) An employee may apply to extend the Division 3A maternity leave granted to her.

'(2) The employer must grant the application if—

(a) the application is given to the employer at least 14 days before the last day of the leave; and

(b) the application states the first or last day of the extended leave; and

(c) unless the things mentioned in section 174BB(1)(f)(i) are still as stated in the relevant statutory declaration—the employee submits with the application a statutory declaration stating the things mentioned; and

(d) the period of leave, if extended, would not exceed the period of entitlement under section 174BC, calculated at the time of granting the application.

'(3) The maternity leave may be extended again only by agreement between the employer and the employee.

'Shortening maternity leave (Sch 14 cl 8 Cwlth)

'174BG.(1) An employee may apply to shorten the Division 3A maternity leave granted to her.

'(2) The employer may grant the application if it states the last day of the shortened leave.

'Effect on maternity leave of failure to complete 1 year of continuous service (Sch 14 cl 9 Cwlth)

'174BH. The employer may cancel Division 3A maternity leave if—

(a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and

(b) the employee does not complete the period on the day.

'Effect on maternity leave if pregnancy terminates or child dies (Sch 14 cl 10 Cwlth)

'174BI.(1) This section applies if an employer has granted Division 3A maternity leave to an employee and—

(a) the pregnancy terminates other than by the birth of a living child; or

(b) she gives birth to a living child but the child later dies.

'(2) If an event mentioned in subsection (1)(a) or (b) happens before the

leave begins, the employer may cancel the leave before it begins.

'(3) If the leave has begun, the employee may notify the employer that she wishes to return to work.

'(4) If the employee does so, the employer must notify her of the day when she must return to work.

'(5) The day must be within 4 weeks after the employer received the notice.

'(6) Also, despite subsections (3) to (5), if the leave has begun, the employer may notify the employee of the day when she must return to work.

'(7) The day must be at least 4 weeks after the employer gives the notice.

'(8) If the employee returns to work, the employer must cancel the rest of the leave.

'Effect on maternity leave of ceasing to be the primary care-giver (Sch 14 cl 11 Cwlth)

'174BJ.(1) This section applies if—

(a) during a substantial period beginning on or after the beginning of an employee's Division 3A maternity leave, the employee is not the child's primary care-giver; and

(b) having regard to the length of the period and to any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary care-giver within a reasonable period.

'(2) The employer may notify the employee of the day when she must return to work.

'(3) The day must be at least 4 weeks after the employer gives the notice.

'(4) If the employee returns to work, the employer must cancel the rest of the leave.

'Return to work after maternity leave (Sch 14 cl 12 Cwlth)

'174BK.(1) This section applies when an employee returns to work after

Division 3A maternity leave.

'(2) The employer must employ her in the position she held immediately before—

(a) if she was transferred to safe duties under section 174BL (Transfer to safe duties because of pregnancy)—the transfer; or

(b) if she began working part-time because of the pregnancy—she began working part-time; or

(c) otherwise—she began maternity leave.

'(3) If—

(a) the position no longer exists; but

(b) she is qualified for, and can perform the duties of, other positions in the employer's employment;

the employer must employ her in whichever of the other positions is nearest in status and remuneration to the position.

'Transfer to safe duties because of pregnancy

'174BL. If, in the opinion of a doctor—

(a) an illness or risk arising out of an employee's pregnancy; or

(b) hazards connected with an employee's work having regard to the employee's pregnancy;

make it inadvisable for the employee to continue existing duties, the employer may—

(c) assign the employee to other duties that—

(i) the employee can efficiently perform; and

(ii) nearest in status and remuneration to the existing duties; or

(d) direct the employee to take leave for the period that the doctor considers necessary.

'Subdivision 3—Paternity leave

'Entitlement to paternity leave (Sch 14 cl 13 Cwlth)

'174CA. For the birth of his spouse's child, an employee is entitled to—

(a) up to 1 week of unpaid paternity leave (**"Division 3A short paternity leave"**) beginning on the child's date of birth; and

(b) unpaid paternity leave (**"Division 3A long paternity leave"**) to be the child's primary care-giver.

'Conditions of entitlement to short paternity leave (Sch 14 cl 14 Cwlth)

'174CB.(1) An employer must grant Division 3A short paternity leave to an employee if—

(a) at least 70 days before the estimated date of birth, he gives to the employer—

(i) a notice stating his intention to apply for the leave and how long (up to 1 week) the leave is to last; and

(ii) a medical certificate that names his spouse and states she is pregnant and the estimated date of birth; and

(b) he applies for the leave as soon as reasonably practicable on or after the first day of the leave; and

(c) the application states the first and last days of the leave; and

(d) the leave is for not more than 1 week; and

(e) unless the first day of the leave is the estimated date of birth—

(i) he submits with the application a medical certificate that names his spouse and states the actual date of birth; and

(ii) the first day of the leave is the actual date of birth; and

(f) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the estimated date of birth.

'(2) Subsection (1)(a) and (f) does not apply if—

(a) because the child was premature, or for some other compelling reason, it was not reasonably practicable for the employee to

comply with subsection (1)(a); and

(b) if it was reasonably practicable for the employee to give to the employer (before the actual date of birth) the notice and certificate mentioned in subsection (1)(a)—he gave them as soon as reasonably practicable; and

(c) otherwise—the medical certificate submitted under subsection (1)(e)(i) also states the date that, as at the 70th day before the actual date of birth, was the estimated date of birth; and

(d) it is reasonable to expect the employee will complete, or the employee had completed, 1 year of continuous service with the employer on the day before the estimated date of birth.

'Conditions of entitlement to long paternity leave (Sch 14 cl 15 Cwlth)

'174CC.(1) An employer must grant Division 3A long paternity leave to an employee if—

(a) he applies for the leave at least 70 days before the first day of the of leave; and

(b) the application states the first and last days of the leave; and

(c) he submits with the application a medical certificate that names his spouse and states—

(i) she is pregnant and the estimated date of birth; or

(ii) she has given birth to a living child and the date of birth; and

(d) he submits with the application a statutory declaration stating—

(i) the first and last days of all—

(A) unpaid leave (other than maternity leave) or paid sick leave for which his spouse intends to apply, or has applied, for the pregnancy; and

(B) maternity leave for which his spouse intends to apply, or has applied, for the child's birth; and

(C) annual or long service leave, for which his spouse intends to apply, or has applied, instead of, or in conjunction with, maternity leave; and

(ii) that he—

(A) will be the child's primary care-giver throughout the paternity leave; and

(B) will not engage in conduct inconsistent with his contract of employment while on paternity leave; and

(e) it is reasonable to expect that he will complete, or he had completed, at least 1 year of continuous service with the employer on the day before the first day of the leave.

'(2) Subsection (1)(a) does not apply if—

(a) it was not reasonably practicable for the employee to comply with the subsection because the child was premature, or for some other compelling reason; and

(b) the employee submits the application as soon as reasonably practicable before, on or after the first day of the leave.

'Period of long paternity leave (Sch 14 cl 15 Cwlth)

'174CD.(1) The Division 3A long paternity leave—

(a) if the child has not been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the estimated date of birth; and

(ii) must not extend beyond the first anniversary of the estimated date of birth; and

(b) if the child has been born—

(i) must begin on the later of—

(A) the day stated in the application as the first day of the leave; or

(B) the child's date of birth; and

(ii) must not extend beyond the child's first birthday; and

(c) must not overlap with the spouse's leave stated in the relevant

statutory declaration; and

(d) must be for a continuous period equal to the shorter of—

(i) the period applied for; or

(ii) the period of entitlement.

'(2) The period of entitlement is 52 weeks less the total of all the following—

(a) if the employee has notified the employer of his intention to apply for short paternity leave for the child's birth—the short paternity leave; and

(b) annual or long service leave the employee has applied to take instead of, or in conjunction with, long paternity leave for the child's birth; and

(c) the spouse's leave stated in the relevant statutory declaration.

'Entitlement reduced by other paternity leave available to employee (Sch 14 cl 16 Cwlth)

'174CE.(1) In this section—

"period of alternative leave" means the leave mentioned in subsection (2)(b);

"relevant section" means 1 of the following—

- section 174CB (Conditions of entitlement to short paternity leave)
- section 174CC (Conditions of entitlement to long paternity leave);

"unadjusted period of paternity leave" means any Division 3A short paternity leave or Division 3A long paternity leave that a relevant section would, apart from this section, require the employer to grant to the employee for the child's birth.

'(2) This section applies if, had this Division not been enacted—

(a) an employee could have applied (for the birth of his spouse's child) for short paternity leave or long paternity leave to which paragraphs (a) and (b) of the definition of "short paternity leave" or "long paternity leave" in section 174AC apply, whether or not he has in fact applied; and

(b) if he had applied as required by the rules governing the paternity leave—he would have a legally enforceable right to the leave, whether or not he has in fact applied.

'(3) If the period of alternative leave is at least as long as the unadjusted period of paternity leave, the employer must not grant leave to the employee under a relevant section.

'(4) Otherwise, the employer must grant to the employee, instead of the unadjusted period of paternity leave, a period of short paternity leave, or long paternity leave, that—

(a) equals the difference between the unadjusted period of paternity leave and the period of alternative leave; and

(b) begins immediately after the period of alternative leave if the employer grants it; and

(c) otherwise complies with a relevant section.

'Taking annual or long service leave instead of, or in conjunction with, paternity leave (Sch 14 cl 17 Cwlth)

'174CF. If an employee applies to take annual or long service leave, instead of, or in conjunction with, Division 3A short paternity leave or Division 3A long paternity leave, the employer must grant the annual or long service leave if—

(a) had this Division not been enacted, the employer would have been obliged to grant it; or

(b) the total of all the following is not more than 52 weeks—

(i) the annual or long service leave;

(ii) annual or long service leave that the employer has already granted to the employee instead of, or in conjunction with, the paternity leave;

(iii) the paternity leave;

(iv) the spouse's leave stated under section 174CC(1)(d) in the relevant statutory declaration.

'Extending long paternity leave (Sch 14 cl 18 Cwlth)

'174CG.(1) An employee may apply to extend the Division 3A long paternity leave granted to him.

'(2) The employer must grant the application if—

(a) the application is given to the employer at least 14 days before the last day of the leave; and

(b) the application states the first or last day of the extended leave; and

(c) unless the things mentioned in section 174CC(1)(d)(i) are still as stated in the relevant statutory declaration—the employee submits with the application a statutory declaration stating the things mentioned; and

(d) the period of leave, if extended, would not exceed the period of entitlement under section 174CD(2), calculated at the time of granting the application.

'(3) The paternity leave may be extended again only by agreement between the employer and the employee.

'Shortening paternity leave (Sch 14 cl 19 Cwlth)

'174CH.(1) An employee may apply to shorten the Division 3A paternity leave granted to him.

'(2) The employer may grant the application if it states the last day of the shortened leave.

'Effect on long paternity leave of failure to complete 1 year of continuous service (Sch 14 cl 20 Cwlth)

'174CI. The employer may cancel Division 3A long paternity leave if—

(a) it has been granted on the basis that it is reasonable to expect the employee will complete a period of at least 1 year of continuous service with the employer on a particular day; and

(b) the employee does not complete the period on the day.

‘Effect on long paternity leave if pregnancy terminates or child dies (Sch 14 cl 21 Cwlth)

‘174CJ.(1) This section applies if an employer has granted Division 3A long paternity leave to an employee and—

(a) his spouse’s pregnancy terminates other than by the birth of a living child; or

(b) his spouse gives birth to a living child but the child later dies.

‘(2) If an event mentioned in subsection (1)(a) or (b) happens before the leave begins, the employer may cancel the leave before it begins.

‘(3) If the leave has begun, the employee may notify the employer that he wishes to return to work.

‘(4) If the employee does so, the employer must notify him of the day when he must return to work.

‘(5) The day must be within 4 weeks after the employer received the notice.

‘(6) Also, despite subsections (3) to (5) the leave has begun, the employer may notify the employee of the day when he must return to work.

‘(7) The day must be at least 4 weeks after the employer gives the notice.

‘(8) If the employee returns to work, the employer must cancel the rest of the leave.

‘Effect on paternity leave of ceasing to be the primary care-giver (Sch 14 cl 22 Cwlth)

‘174CK.(1) This section applies if—

(a) during a substantial period beginning on or after the beginning of an employee’s Division 3A long paternity leave, the employee is not the child’s primary care-giver; and

(b) having regard to the length of the period and to any other relevant circumstances, it is reasonable to expect the employee will not again become the child’s primary care-giver within a reasonable period.

‘(2) The employer may notify the employee of the day he must return to work.

‘(3) The day must be at least 4 weeks after the employer gives the notice.

‘(4) If the employee returns to work, the employer must cancel the rest of the leave.

‘Return to work after paternity leave (Sch 14 cl 23 Cwlth)

‘174CL.(1) This section applies when an employee returns to work after Division 3A long paternity leave.

‘(2) The employer must employ him in the position he held immediately before he began paternity leave.

‘(3) If—

(a) the position no longer exists; but

(b) he is qualified for, and can perform the duties of, other positions in the employer’s employment;

the employer must employ him in whichever of the other positions is nearest in status and remuneration to the position.

‘Subdivision 4—General

‘Employee’s duty if excessive leave granted or if maternity leave and paternity leave overlap (Sch 14 cl 24 Cwlth)

‘174DA.(1) This section applies if—

(a) the total of all the following is more than 52 weeks—

(i) maternity leave granted by an employer to an employee for a pregnancy;

(ii) annual or long service leave granted by the employer to the employee instead of, or in conjunction with, the maternity leave;

(iii) unpaid leave (other than maternity leave) or paid sick leave granted by the employer to the employee for the pregnancy;

(iv) paternity leave granted by an employer to the employee’s spouse;

(v) annual or long service leave granted by the employer to the employee's spouse instead of, or in conjunction with, the paternity leave; or

(b) leave granted to the employee overlaps with leave granted to the employee's spouse.

'(2) The employee must give to her employer a notice—

(a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and specifying the amount of the excess; and

(b) if subsection (1)(b) applies—specifying the period of overlap; and

(c) suggesting how the employer may vary or cancel leave granted to her (other than leave she has already taken) to reduce or remove the excess or overlap; and

(d) unless the variations and cancellations suggested will remove the excess or overlap—setting out the suggestions her spouse has made or will make under subsection (3)(c).

'(3) The employee's spouse must give to his employer a notice—

(a) if subsection (1)(a) applies—stating that the total is more than 52 weeks and specifying the amount of the excess; and

(b) if subsection (1)(b) applies—specifying the period of overlap; and

(c) suggesting how the employer may vary or cancel leave granted to him (other than leave he has already taken) to reduce or remove the excess or overlap; and

(d) unless the variations or cancellations suggested will remove the excess or overlap—setting out the suggestions his spouse has made or will make under subsection (2)(c).

'(4) The variations and cancellations suggested must be of a kind that, if they are all made, the excess or overlap will be removed.

'(5) An employer who receives a notice under subsection (2) or (3) may vary or cancel leave as suggested in the notice, or as agreed with the employee or her spouse.

‘Employer to warn replacement employee that employment is only temporary (Sch 14 cl 25 Cwlth)

‘174DB. An employer must not employ a person—

(a) to replace an employee while the employee is on parental leave; or

(b) to replace an employee who, while another employee is on parental leave, must perform the duties of the position held by the other employee;

unless the employer has informed the person—

(c) that the person’s employment is only temporary; and

(d) about the rights of the employee who is on parental leave.

‘Parental leave and continuity of service (Sch 14 cl 26 Cwlth)

‘174DC. A period of parental leave does not break an employee’s continuity of service, but does not count as service other than—

(a) to determine the employee’s entitlement to a later period of parental leave; or

(b) as expressly provided in this Act, or in an award, industrial agreement, certified agreement, enterprise flexibility agreement or order; or

(c) as prescribed by regulation.

‘Effect of Division on other laws (Sch 14 cl 27 Cwlth)

‘174DD.(1) To avoid doubt, this Division has effect despite—

(a) another law of the State; or

(b) an award, industrial agreement, certified agreement, enterprise flexibility agreement or order.

‘(2) However, this Division is not intended to exclude or limit the operation of the law, award, industrial agreement, certified agreement, enterprise flexibility agreement or order so far as it can operate concurrently with this Division.

'Regulations for adoption leave (s 170KC Cwlth)

'174DE. The regulations may provide for employers to give employees unpaid adoption leave.

'Division 4—Dismissal

'Subdivision 1—Object and interpretation

'Object of Division (s 170CA Cwlth)

'175AA. The object of this Division is to give effect to—

(a) the Termination of Employment Convention; and

(b) the Termination of Employment Recommendation 1982 (the English text of which is set out in Schedule 13); and

(c) the Discrimination (Employment and Occupation) Convention; and

(d) the Discrimination (Employment and Occupation) Recommendation; and

(e) the Family Responsibilities Convention; and

(f) the Family Responsibilities Recommendation.

'Meaning of expressions (s 170CB Cwlth)

'175AB. If an expression used in this Division is also used in the Termination of Employment Convention, it has the same meaning as in the Convention.

'Exclusion of employees from Division (s 170CC Cwlth)

'175AC.(1) Section 175BC(1)(a) does not apply to—

(a) a casual, part-time or seasonal employee; or

(b) an employee engaged by the hour or day; or

(c) an employee engaged for a specific period or task.

'(2) Subdivisions 4 and 5 do not apply to—

(a) a casual or seasonal employee; or

(b) an employee engaged by the hour or day; or

(c) an employee engaged for a specific period or task; or

(d) an employee with less than 1 year of continuous service.

'(3) The regulations may exclude specified employees from the operation of specified provisions of this Division if the exclusion is—

(a) allowed by paragraph 2 of Article 2 of the Termination of Employment Convention; and

(b) limited to provide the safeguards required by paragraph 3 of Article 2.

'Subdivision 2—Requirements for lawful dismissal

'When dismissal is unlawful (ss 170DE, 170DF and 170DG Cwlth)

'175BA.(1) An employer must not dismiss an employee—

(a) in contravention of an order under section 175DA; or

(b) unless there is a valid reason—

(i) related to the employee's conduct, capacity or performance; or

(ii) based on the operational requirements of the employer's undertaking, establishment or service.

'(2) A reason is not valid if—

(a) having regard to the employee's conduct, capacity or performance and the operational requirements, the dismissal is harsh, unjust or unreasonable; or

(b) it is any of the following reasons—

(i) temporary absence from work because of illness or injury (other than an injury within the meaning of Division 5);

(ii) seeking office as, or acting or having acted in the capacity of, an employees' representative;

(iii) filing a complaint, or taking part in proceedings, against an employer involving alleged violation of laws or recourse to competent administrative authorities;

(iv) an attribute for which discrimination is prohibited under the *Anti-Discrimination Act 1991*;

(v) family responsibilities;

(vi) absence from work during parental leave.

'(3) Despite subsection (2), a matter mentioned in subsection (2)(b)(iv) is a valid reason for dismissal if—

(a) the reason is based on the inherent requirements of the particular position; or

(b) for staff of an institution conducted to conform with the doctrines, tenets, beliefs or teachings of a particular religion or creed—the dismissal is done in good faith to avoid injury to the religious susceptibilities of adherents of the religion or creed.

'Opportunity to defend against allegations before dismissal (s 170DC Cwlth)

'175BB.(1) An employer may dismiss an employee for reasons related to the employee's conduct, capacity or performance only if the employer first gives the employee a reasonable opportunity to defend against the allegations made.

'(2) Subsection (1) does not apply if the employer could not reasonably be expected to give the employee the opportunity.

'Notice of dismissal or compensation to be given (s 170DB Cwlth)

'175BC.(1) An employer may dismiss an employee only if—

(a) the employee has been given—

(i) the period of notice required by subsection (2); or

(ii) compensation; or

(b) the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period.

'(2) The minimum period of notice is—

(a) if the employee's continuous service is—

(i) not more than 1 year—1 week; and

(ii) more than 1 year but not more than 3 years—2 weeks; and

(iii) more than 3 years but not more than 5 years—3 weeks; and

(iv) more than 5 years—4 weeks; and

(b) increased by 1 week if the employee—

(i) is over 45 years old; and

(ii) has completed at least 2 years of continuous service with the employer.

'(3) A regulation may prescribe matters that must be disregarded when calculating continuous service under subsection (2).

'(4) The compensation must at least equal the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

'(5) The total must be calculated on the basis of—

(a) the ordinary hours worked by the employee; and

(b) the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and

(c) any other amounts payable under the employee's employment contract.

'Contravention of Subdivision not an offence (s 170EG Cwlth)

'175BD. A contravention of this Subdivision is not an offence.

'Subdivision 3—Remedies for unlawful dismissal

'Orders only on application (s 170EA Cwlth)

'175CA.(1) The Commission may make an order under this Subdivision only if it has received an application from—

(a) an employee; or

(b) an industrial organisation—

(i) whose rules entitle it to represent the industrial interests of the employee; and

(ii) acting on behalf of the employee with the employee's consent.

'(2) An application must be made—

(a) within 21 days after the dismissal; or

(b) within the further period the Commission allows on an application made during or after the 21 days.

'Conciliation before application heard (s 170ED Cwlth)

'175CB.(1) For the purposes of this section, the parties to an application are, unless the Commission otherwise orders—

(a) the employer; and

(b) the employee; and

(c) if the application is made under section 175CA(1)(b)—the industrial organisation.

'(2) Before the Commission hears an application, the parties to the application must hold a conference—

(a) to explore the possibility of resolving the issues by conciliation; and

(b) to ensure the parties are fully informed of the possible consequences of further proceedings on the application.

'Orders for unlawful dismissal other than under s 175EC (s 170EE Cwlth)

'175CC.(1) Unless satisfied an employer has not dismissed an employee contrary to this Division other than section 175EC (Employer must notify CES of proposed dismissals), the Commission may make the orders it considers appropriate to put the employee in the same position (as nearly as can be done) as if the employee had not been dismissed.

‘(2) The orders the Commission may make include an order—

(a) declaring the dismissal to have contravened this Division; or

(b) for a contravention of a provision other than section 175BC (Notice of dismissal or compensation to be given) or 175EC (Employer must notify CES of proposed dismissals)—requiring the employer to reinstate the employee; or

(c) requiring the employer to pay the employee compensation.

‘(3) Neither section 175CB (Conciliation before application heard) nor this section limits the Commission’s power to make an interim or interlocutory order in relation to an application under section 175CA (Orders only on application).

‘Orders for unlawful dismissal under s 175EC (s 170EF Cwlth)

‘175CD.(1) If satisfied an employer has dismissed an employee contrary to section 175EC(2), the Commission may order the employer—

(a) to pay a penalty of an amount of not more than the monetary value of 16 penalty units; or

(b) not to dismiss the employee, other than as allowed by the order.

‘(2) An application for an order under subsection (1) may be made by—

(a) an Industrial Inspector; or

(b) an employee who has been, or is to be, dismissed; or

(c) an industrial organisation whose members include the employee; or

(d) an officer or employee of the industrial organisation, if the organisation’s rules allow the officer or employee to sue on the organisation’s behalf.

‘(3) An application must be made within 6 years after subsection 175EC(2) is contravened.

‘Effect of order on leave

‘175CE. If the Commission makes an order under section 175CC(2)(a), the interruption to the employee’s continuity of service caused by the

dismissal must be disregarded when calculating the employee's entitlement to sick, annual or long service leave.

'Costs for frivolous or vexatious applications

'175CF. If it considers an application under section 175CA (Orders only on application) is frivolous or vexatious, the costs the Commission may order against the applicant include costs of representation by counsel, solicitor or agent, whether or not the Commission has certified under section 84 (Costs).

'Further orders against employer

'175CG.(1) If an employer wilfully fails to comply with an order under section 175CA (Orders only on application), the Commission may—

(a) further order the employer to pay the employee—

(i) an amount of not more than the monetary value of 50 penalty units; and

(ii) an amount as remuneration for lost wages; and

(b) may make these further orders until the employer complies with the order under section 175CA.

'(2) This section does not affect another provision of this Act allowing proceedings to be taken against the employer.

'Subdivision 4—Orders giving effect to Articles 12 and 13 of Convention

'Orders giving effect to Articles 12 and 13 of Convention (s 170FA Cwlth)

'175DA.(1) The Commission may make an order giving effect to the requirements about the dismissal of employees under—

(a) Article 12 of the Termination of Employment Convention, so far as it is about a severance allowance or other separation benefits; or

(b) Article 13 of the Termination of Employment Convention.

‘(2) When making an order to give effect to Article 13, the Commission must limit the order’s application to cases where an employer decides to dismiss a number of employees that is at least the number (not less than 15) stated in the order.

‘Orders only on application (s 170FB Cwlth)

‘175DB. The Commission may make an order under section 175DA only if it has received an application from—

(a) an employee to be covered by the order; or

(b) an industrial organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order.

‘Commission’s powers not limited by Sdiv 5 (s 170FE Cwlth)

‘175DC. The Commission’s powers under this Subdivision are not limited by Subdivision 5.

‘Subdivision 5—Dismissals of 15 or more employees

‘Orders if employer does not consult industrial organisation about proposed dismissals (s 170GA Cwlth)

‘175EA.(1) An employer who decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature must, as soon as practicable after making the decision and in any event before dismissing any of the employees—

(a) notify each industrial organisation, of which any of the employees is a member, of—

(i) the dismissals; and

(ii) the reasons for the dismissals; and

(iii) the number and categories of employees; and

(iv) the time when, or the period over which, the employer intends to carry out the dismissals; or

(b) give each industrial organisation an opportunity to consult with the employer on ways—

(i) to avoid or minimise the dismissals; and

(ii) to minimise the adverse effects of the dismissals (for example, by finding alternative employment).

'(2) The Commission may make the orders it considers appropriate to put employees dismissed in contravention of subsection (1), and their industrial organisations, in the same position (as nearly as can be done) as if—

(a) when subsection (1)(a) applies—the employer had informed the industrial organisation; and

(b) when subsection (1)(b) applies—the employer had given the industrial organisation an opportunity to consult.

'(3) Subsections (1) and (2) do not apply to an industrial organisation if the employer could not reasonably be expected to have known (at the time of the decision) that the industrial organisation's rules entitled it to represent the industrial interests of the dismissed employees.

'Orders only on application (s 170GB Cwlth)

'175EB. The Commission may make an order under section 175EA only if it has received an application from an employee or industrial organisation whose position is to be affected by the order as mentioned in section 175EA(2).

'Employer must notify CES of proposed dismissals (s 170DD Cwlth)

'175EC.(1) This section applies if an employer decides to dismiss 15 or more employees for reasons of an economic, technological, structural or similar nature.

'(2) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies the Commonwealth Employment Service of—

(a) the dismissals; and

(b) the reasons for the dismissals; and

(c) the number and categories of employees; and

(d) the time when, or the period over which, the employer intends to carry out the dismissals.

'Subdivision 6—Miscellaneous

'Division does not limit other rights (s 170HB Cwlth)

'175FA. This Division does not limit any right a person or industrial organisation may otherwise have to secure the making of awards, certified agreements, enterprise flexibility agreements, industrial agreements or orders about a dismissal.

'Orders to be written (s 170JA Cwlth)

'175FB. An order of the Commission under this Division must be in writing.

'Inconsistent awards, orders etc. (s 170JG Cwlth)

'175FC. An award, industrial agreement, certified agreement, enterprise flexibility agreement or order of the Commission that is inconsistent with an order under this Division does not apply to the extent the inconsistency detrimentally affects the rights of employees concerned.**'.**

Insertion of new Div 1A in Pt 13 (Industrial organisations)

21. Part 13, before Division 1—

insert—

'Division 1A—Preliminary

'Objects of Part (s 187A Cwlth)

'194A. Without limiting section 3, the particular objects of this Part are—

(a) to encourage the democratic control of industrial organisations; and

(b) to encourage members of industrial organisations to participate in the organisation's affairs; and

(c) to encourage the efficient management of industrial organisations; and

(d) to encourage and assist industrial organisations to develop in a way that promotes economic prosperity and welfare; and

(e) to encourage and assist the amalgamation of industrial organisations.**'.**

Amendment of s 196 (Criteria for registration)

22. Section 196(2)(b)(i) and (c)(i)—

omit **'**1 000**',** *insert* **'**100**'.**

Amendment of s 197 (Continued registration of small industrial organisations)

23.(1) Section 197(1), definition **"relevant period"**—

omit.

(2) Section 197(1), definition **"small industrial organisation"**—

omit, insert—

' "small industrial organisation" means—

(a) for an industrial organisation of employees—an organisation that has fewer than 100 members who are employees; or

(b) for an industrial organisation of employers—an organisation, whose members who are employers have (in the aggregate)

employed, on an average taken per month, fewer than 100 employees in the 6 months immediately before the day the Commission acts under subsection (2).**'.**

(3) Section 197(3) and (4)—

omit.

(4) Section 197(5)—

omit **'**3**',** *insert* **'**1**'.**

Replacement of s 273 (Fixing hearing in relation to amalgamation etc.)

24. Section 273—

omit, insert—

'Fixing hearing for amalgamation etc.

'273.(1) If an application is filed under section 265 for a proposed amalgamation, the Commission must immediately fix a time and place for hearing submissions about—

(a) the granting of an approval for the submission of the amalgamation to ballot; and

(b) if an application for a declaration under section 264 was filed with the application—the making of a declaration under the section for the amalgamation; and

(c) if an application was filed under section 267 for exemption from the requirement that a ballot be held for the amalgamation—the granting of the exemption; and

(d) if an application was filed under section 268 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 285—the granting of the approval.

'(2) The Commission—

(a) must ensure all industrial organisations are promptly notified of the time and place of the hearing; and

(b) may notify other persons who are likely to be interested of the time and place of the hearing.

‘(3) The Commission must also ensure the members of the proposed amalgamated organisation are promptly notified of the time and the place of the hearing if—

(a) the hearing is about the granting of an exemption mentioned in subsection (1)(c); and

(b) section 283A (Exemption from ballot—recognition of federal ballot) applies to the application.

‘(4) A notice under subsection (3)—

(a) must inform the members of the right to object mentioned in section 283A(3); and

(b) may be given in 1 of the following ways—

(i) personally or by post addressed to the member’s residential address shown in the organisation’s register of members;

(ii) in a journal published by the organisation that is circulated generally to the organisation’s members;

(iii) by publication in a newspaper circulating throughout the State.**’.**

Amendment of s 275 (Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.)

25.(1) Section 275(1)—

omit all words from **‘**If, at**’,** to **‘**is satisfied—**’,**

insert **‘**At the hearing arranged under section 273, the Commission must consider whether the application satisfies the following conditions—**’.**

(2) Section 275(1)—

omit all words from **‘**the Commission must**’** to **‘**to ballot.**’.**

(3) Section 275(2)—

omit, insert—

‘(2) If the Commission considers the application satisfies the conditions, the Commission must grant the application and—

(a) approve the submission of the amalgamation to ballot; or

(b) if a successful application is made for an exemption from the requirement that the ballot be held—grant an exemption under section 283 or 283A.

'(2A) If it is not satisfied, the Commission must, subject to subsections (3) and (7), refuse the application.**'.**

(4) Section 275(3) and(7)—

omit **'**to approve the submission of the amalgamation to ballot**',**

insert **'**the application**'.**

(5) Section 275(3)—

omit **'**approve the submission of the amalgamation to ballot**',**

insert **'**grant the application under subsection (2)**'.**

Amendment of s 276 (Objections in relation to amalgamation involving extension of eligibility rules etc.)

26. Section 276(1) and(2)—

omit, insert—

'276.(1) If an objection to a matter involved in a proposed amalgamation is about the extension of eligibility rules, the objection may only be made to the Commission under this section.

'(2) The objection may only be made if the Commission has refused to approve, under section 275, the submission of the amalgamation to ballot.**'.**

Amendment of s 277 (Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.)

27.(1) Section 277(1), after 'ballot'—

insert—

'or, if a successful application is made for an exemption from the requirement that a ballot be held, grant an exemption under section 283 or 283A**'.**

(2) Section 277(3), after 'ballot'—

insert—

‘or, if a successful application is made for an exemption from the requirement that a ballot be held, grant an exemption under section 283 or 283A.**’.**

Amendment of s 283 (Exemption from ballot)

28. Section 283, heading—

omit, insert—

‘Exemption from ballot—number of members’.

Insertion of new s 283A

29. After section 283—

insert—

‘Exemption from ballot—recognition of federal ballot

‘283A.(1) This section applies if—

(a) counterpart federal bodies of industrial organisations have amalgamated after conducting a ballot under the Commonwealth Act (the **“federal ballot”**); and

(b) the industrial organisations propose to amalgamate under this Act.

‘(2) The proposed amalgamated organisation may apply to the Commission under section 267 for an exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

‘(3) A member of the proposed amalgamated organisation may object to the exemption—

(a) on the grounds that the exemption would detrimentally affect the objector’s interests; and

(b) in the way prescribed by regulation.

‘(4) At the conclusion of the hearing arranged under section 273 about the amalgamation, the Commission may grant the exemption only if satisfied that—

(a) of the Queensland members who voted in the federal ballot, the percentage who approved the amalgamation was equivalent to the

percentage required under section 286 (that is, if the Queensland members were the voters in an amalgamation to which the section applied); and

(b) if the State and Federal bodies' eligibility rules differ—the interests of the members of the proposed amalgamated organisation who were not eligible to vote in the federal ballot have not been detrimentally affected; and

(c) objections about the possible extension of eligibility rules have been resolved; and

(d) in the Federal jurisdiction, all likely legal challenges (including inquiries under the Commonwealth Act) have ended.

'(5) If satisfied of the matters mentioned in subsection (4), the Commission must grant the exemption unless it considers the exemption should be refused in the special circumstances of the case.

'(6) If the exemption is granted, the members of the applicant industrial organisation are taken to have approved the proposed principal amalgamation and any proposed alternative amalgamation.

'(7) For this section a federal organisation or a branch or part of a federal organisation is a **"counterpart federal body"** of an industrial organisation if a substantial number of members of each are—

(a) members or eligible to be members of both; or

(b) engaged in the same work, in aspects of the same work or in similar work; or

(c) employed in the same or similar work by employers engaged in the same industry; or

(d) engaged in work or in industries in relation to which there is a community of interest.

'(8) This section applies even if the federal counterpart bodies amalgamated before the commencement of this section.

'(9) Subsection (8) and this subsection expire at the end of the day on which this section commences.**'.**

Amendment of s 342 (Prejudice of employee by reason of membership of industrial organisation)

30.(1) Section 342(1)—

insert—

'(g) has failed to agree or consent to, or vote in favour of, the making of an agreement to which an industrial organisation of which the employee is a member would be a party; or

(h) has failed to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an enterprise flexibility agreement.**'.**

(2) Section 342(2)—

insert—

'(c) to force the employee, or because the employee has failed, to agree or consent to, or vote in favour of, the making of an agreement to which an industrial organisation of which the employee is a member would be a party; or

(d) to force the employee, or because the employee has failed, to become a party to, or otherwise agree or consent to the making of, or vote in favour of the making of, an enterprise flexibility agreement.**'.**

(3) Section 342—

insert—

'(2A) An employer must not, whether by threats, promises or otherwise, induce an employee to stop being an officer or member of—

(a) an industrial organisation; or

(b) an association that has applied to be registered as an industrial organisation.**'.**

Amendment of s 348 (Appointment of industrial inspectors)

31. Section 348(5) and (6)—

omit, insert—

'(5) Arrangements may be made under section 40 of the *Public Service Management and Employment Act 1988* for—

(a) officers of the Commonwealth public service to exercise the powers and perform the functions of inspectors; and

(b) officers of the Queensland public service to exercise the powers and perform the functions of an inspector under the Commonwealth Act.

'(6) An arrangement under subsection (5)(a) is sufficient authority for an officer of the Commonwealth public service to exercise the powers and perform the functions of an inspector.**'.**

Amendment of s 362 (Time and wages record of award employees)

32.(1) Section 362(3), after paragraph (c)—

insert—

'(da) for an employee whose entitlement to long service leave is calculated under section 164—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated up to 30 June in each year;**'.**

(2) Section 362—

insert—

'(7) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (3)(da) for the employee, calculated to the previous 30 June.**'.**

Amendment of s 363 (Wages record of non-award employees)

33. Section 363(3)—

omit, insert—

'(3) The wages book or similar record mentioned in subsection (1) must contain, for each employee for whom the book or record is required under the subsection to be kept, particulars of—

(a) for each pay period—

(i) the employee's designation; and

(ii) the employee's rate of wages; and

(iii) the gross wages payable to or for the employee; and

(iv) the deductions made from the employee's wages; and

(v) the net wages payable to or for the employee; and

(b) if an employee's entitlement to long service leave is calculated under section 164—the total hours (other than overtime) worked by the employee since the start of the period to which the entitlement relates, calculated to 30 June in each year.

'(4) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (3)(b) for the employee, calculated to the previous 30 June.**'.**

Insertion of new s 382

34. After section 381—

insert—

'Notices and applications to be written

'382. Unless otherwise provided, if a person is required to give a notice or make an application, the notice or application must be written.**'.**

Amendment of s 428 (Avoiding Act's obligations)

35.(1) Section 428(1)—

omit, insert—

'428.(1) In this section—

"obligation" under this Act includes an obligation under an award, industrial agreement, certified agreement or enterprise flexibility agreement.

'(1A) An employer must not, with intent to avoid an obligation under this Act about the payment to or for an employee for any public holiday or leave due or accruing to the employee by way of annual, sick or long service leave—

(a) dismiss or stand down the employee; or

(b) if the employee's entitlement to long service leave is calculated under section 164—interrupt the continuity of the employee's service.

Maximum penalty—40 penalty units.**'.**

(2) Section 428(2)—

omit **'**subsection (1)**',** *insert* **'**subsection (1A)**'.**

Amendment of s 466 (Breaches of awards etc. generally)

36. Section 466(1), penalty—

omit, insert—

'Maximum penalty—

(a) for an award made or amended under section 139DP, certified agreement, enterprise flexibility agreement or permit—

(i) for a first offence—

(A) if the offender is an employer or industrial organisation—80 penalty units; or

(B) if the offender is an employee—16 penalty units; or

(ii) for a second or subsequent offence consisting of a breach of the same provision of the award, agreement or permit—

(A) if the offender is an employer or industrial organisation—90 penalty units; or

(B) if the offender is an employee—20 penalty units; or

(b) otherwise—

(i) for a first offence—

(A) if the offender is an employer or industrial organisation—20 penalty units; or

(B) if the offender is an employee—4 penalty units; or

(ii) for a second or subsequent offence consisting of a breach of the same provision of the award, agreement or permit—

(A) if the offender is an employer or industrial organisation—40 penalty units; or

(B) if the offender is an employee—8 penalty units.**'.**

Insertion of new s 467A

37. After section 467—

insert—

'Employees not to be dismissed etc. for engaging in industrial action

'467A.(1) An employer must not dismiss an employee only because the employee has engaged, or is proposing to engage, in industrial action about an industrial dispute that—

(a) has been notified to the Commission; or

(b) the Commission has found to exist.

Maximum penalty—200 penalty units.

'(2) Subsection (1) does not apply if the industrial action has involved or is likely to involve unlawful—

(a) personal injury; or

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

(c) taking, keeping or use of property.

'(3) Subsection (1) does not apply to an employee included in a class of employees prescribed by regulation.

'(4) The regulation may prescribe a class of employees only if the exclusion of employees in the class is consistent with documents mentioned in section 139DA(2).

'(5) In proceedings for an offence against subsection (1) it is not necessary for the prosecution to prove—

(a) the defendant's reason for the action charged; or

(b) the intent with which the defendant took the action charged;

but it is a defence for the defendant to prove that the action was not motivated solely by the reason, or taken with the sole intent, stated in the charge.

'(6) If an employer is found guilty of an offence against subsection (1), the Commission may order the employer—

(a) to reinstate the dismissed person to the position that the person occupied immediately before the dismissal or to a position no less favourable than the position; and

(b) to pay the dismissed person compensation for loss suffered because of the dismissal.

'(7) The rights about reinstatement conferred on a person by this section do not limit the person's other rights.**'.**

Insertion of new ss 487–490

38. After section 486 (in Part 20)—

insert—

'Transitional certified agreements

'487.(1) In this section—

"amending Act" means the *Industrial Relations Reform Act 1994*;

"commencement day" means the day on which the amending Act commences.

'(2) Despite the omission of Part 10, Division 2 by the amending Act—

(a) a memorandum of agreement made under the Division (although not certified) immediately before the commencement day has effect as if it had been made under section 139BA; and

(b) an agreement certified under the Division and in force immediately before the commencement day has effect as if this Act had not been amended by the amending Act, but may be extended under section 139BK; and

(c) if an application that was made under the Division for certification of an agreement was pending immediately before the commencement day—

(i) if each of the applicants so requests, the Commission must deal with the application as if the Division had not been omitted, and, if the agreement is certified, it has effect as if

this Act had not been amended by the amending Act, but may be extended under section 139BK; or

(ii) otherwise—the Commission must deal with the application as if it had been made under section 139BA.

'(3) The Commission may allow the parties to an agreement to which subsection (2)(a) or (c)(ii) applies to amend its terms to agree with Part 10A, Division 2.

'Transitional provision about dismissals

'488.(1) Part 11, Division 4 as it existed immediately before the commencement of the *Industrial Relations Reform Act 1994* (the **"amending Act"**), from the commencement continues to apply to dismissals within the meaning of the Division that happened before the commencement as if the amending Act had not been passed.

'(2) Part 11, Division 4 as it exists after the commencement does not apply to the dismissals.

'Transitional provision about small industrial organisations

'489.(1) In this section—

"commencement" means the commencement of section 23(2) of the *Industrial Relations Reform Act 1994*;

"relevant industrial organisation" means an industrial organisation that before the commencement was a small industrial organisation, but ceased to be a small industrial organisation because of the commencement;

"small industrial organisation" means a small industrial organisation under section 197.

'(2) The Industrial Commission must not exercise a power under section 197(2) about a relevant industrial organisation after the commencement, even if it was doing so, or authorised to do so, before the commencement.

'Numbering and renumbering of Act

'490. In the first reprint of the Act produced under the *Reprints Act 1992*, section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used.**'.**

Insertion of new Schs 1–13

39. After Part 22—

insert—

'SCHEDULE 1

'MINIMUM WAGES CONVENTION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fifty-fourth Session on 3 June 1970, and

Noting the terms of the Minimum Wage-Fixing Machinery Convention, 1928, and the Equal Remuneration Convention, 1951, which have been widely ratified, as well as of the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951, and

Considering that these Conventions have played a valuable part in protecting disadvantaged groups of wage earners, and

Considering that the time has come to adopt a further instrument complementing these Conventions and providing protection for wage earners against unduly low wages, which, while of general application, pays special regard to the needs of developing countries, and

Having decided upon the adoption of certain proposals with regard to minimum wage fixing machinery and related problems, with

special reference to developing countries, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-second day of June of the year one thousand nine hundred and seventy, the following Convention, which may be cited as the Minimum Wage Fixing Convention, 1970—

Article 1

1. Each Member of the International Labour Organisation which ratifies this Convention undertakes to establish a system of minimum wages which covers all groups of wage earners whose terms of employment are such that coverage would be appropriate.

2. The competent authority in each country shall, in agreement or after full consultation with the representative organisations of employers and workers concerned, where such exist, determine the groups of wage earners to be covered.

3. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any groups of wage earners which may not have been covered in pursuance of this Article, giving the reasons for not covering them, and shall state in subsequent reports the position of its law and practice in respect of the groups not covered, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such groups.

Article 2

1. Minimum wages shall have the force of law and shall not be subject to abatement, and failure to apply them shall make the person or persons concerned liable to appropriate penal or other sanctions.

2. Subject to the provisions of paragraph 1 of this Article, the freedom of collective bargaining shall be fully respected.

Article 3

The elements to be taken into consideration in determining the level of minimum wages shall, so far as possible and appropriate in relation to national practice and conditions, include—

(a) the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups;

(b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment.

Article 4

1. Each Member which ratifies this Convention shall create and/or maintain machinery adapted to national conditions and requirements whereby minimum wages for groups of wage earners covered in pursuance of Article 1 hereof can be fixed and adjusted from time to time.

2. Provision shall be made, in connection with the establishment, operation and modification of such machinery, for full consultation with representative organisations of employers and workers concerned or, where no such organisations exist, representatives of employers and workers concerned.

3. Wherever it is appropriate to the nature of the minimum wage fixing machinery, provision shall also be made for the direct participation in its operation of—

(a) representatives of organisations of employers and workers

concerned or, where no such organisations exist, representatives of employers and workers concerned, on a basis of equality;

(b) persons having recognised competence for representing the general interests of the country and appointed after full consultation with representative organisations of employers and workers concerned, where such organisations exist and such consultation is in accordance with national law or practice.

Article 5

Appropriate measures, such as adequate inspection reinforced by other necessary measures, shall be taken to ensure the effective application of all provisions relating to minimum wages.

Article 6

This Convention shall not be regarded as revising any existing Convention.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the

Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall

communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

‘SCHEDULE 2

‘EQUAL REMUNERATION CONVENTION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of an International Convention,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Convention, which may be cited as the Equal Remuneration Convention, 1951—

Article 1

For the purpose of this Convention—

(a) the term **“remuneration”** includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker’s employment;

(b) the term **“equal remuneration for men and women workers for work of equal value”** refers to rates of remuneration established without discrimination based on sex.

Article 2

1. Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principal of equal remuneration for men and women workers for work of equal value.

2. This principle may be applied by means of—

(a) national laws or regulations;

(b) legally established or recognised machinery for wage determination;

(c) collective agreements between employers and workers; or

(d) a combination of these various means.

Article 3

1. Where such action will assist in giving effect to the provisions of this Convention measures shall be taken to promote objective appraisal of jobs on the basis of the work to be performed.

2. The methods to be followed in this appraisal may be decided upon by the authorities responsible for the determination of rates of remuneration, or, where such rates are determined by collective agreements, by the parties thereto.

3. Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value.

Article 4

Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

Article 5

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 6

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 7

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate—

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decisions pending further consideration of the position.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservation made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.

4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right

to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 9, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon

which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form

and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Thirty-fourth Session which was held at Geneva and declared closed the twenty-ninth day of June 1951.

IN FAITH WHEREOF we have appended our signatures this second day of August 1951.

‘SCHEDULE 3

‘CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

section 5(1)

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialised agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialised agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries

and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realisation of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognised, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the

Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following—

PART I

Article 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake—

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of

women against any act of discrimination;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to elimination discrimination against women by any person, organisation or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures—

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right—

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the

implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organisations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organisations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality.

They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with

men in the field of education and in particular to ensure, on a basis of equality of men and women—

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaption of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student drop-out rates and the organisation of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular—

(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures—

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social

services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, State Parties shall ensure to women appropriate services in connexion with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular—

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other forms of financial credit;

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right—

(a) To participate in the elaboration and implementation of development planning at all levels;

(b) To have access to adequate health care facilities, including information, counselling and services in family planning;

(c) To benefit directly from social security programmes;

(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organise self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(f) To participate in all community activities;

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to

housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women—

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in maters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the

implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilisation as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3, and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect—

(a) Within one year after the entry into force for the State concerned; and

(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with Article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialised agencies shall be entitled to be represented at the

consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained—

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realisation of the rights recognised in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of

ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organisation of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorised, have

signed the present Convention.

‘SCHEDULE 4

‘DISCRIMINATION (EMPLOYMENT AND OCCUPATION) CONVENTION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention, and

Considering that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and

Considering further that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human Rights,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Convention, which may be cited as the Discrimination (Employment and Occupation) Convention, 1958:

Article 1

1. For the purpose of this Convention the term **“discrimination”** includes—

(a) any distinction, exclusion or preference made on the basis of race,

colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employer's and worker's organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms **"employment"** and **"occupation"** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

Article 2

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Article 3

Each Member for which this Convention is in force undertakes, by methods appropriate to national conditions and practice—

(a) to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;

(b) to enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;

(c) to repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;

(d) to pursue the policy in respect of employment under the direct control of a national authority;

(e) to ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;

(f) to indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

Article 4

Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State shall not be deemed to be discrimination, provided that the individual concerned shall have the right to appeal to a competent body established in accordance with national practice.

Article 5

1. Special measures of protection or assistance provided for in other Conventions or Recommendations adopted by the International Labour conference shall not be deemed to be discrimination.

2. Any Member may, after consultation with representative employers' and workers' organisations, where such exist, determine that other special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status, are generally recognised to require special protection or assistance, shall not be deemed to be discrimination.

Article 6

Each Member which ratifies this Convention undertakes to apply it to non-metropolitan territories in accordance with the provisions of the Constitution of the International Labour Organisation.

Article 7

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 8

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 9

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration.

Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 10

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 11

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 12

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 13

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 9 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 14

The English and French versions of the text of this Convention are equally authoritative.

‘SCHEDULE 5

‘ECONOMIC, SOCIAL AND CULTURAL RIGHTS COVENANT

section 5(1)

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART II

Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the

nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular—

(a) Remuneration which provides all workers, as a minimum, with—

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure—

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join

international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed—

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and

food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for—

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right—

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other

territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone—

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

‘SCHEDULE 6

‘EQUAL REMUNERATION RECOMMENDATION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-fourth Session on 6 June 1951, and

Having decided upon the adoption of certain proposals with regard to the principle of equal remuneration for men and women workers for work of equal value, which is the seventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation, supplementing the Equal Remuneration Convention, 1951,

adopts this twenty-ninth day of June of the year one thousand nine hundred and fifty-one the following Recommendation, which may be cited as the Equal Remuneration Recommendation, 1951:

Whereas the Equal Remuneration Convention, 1951, lays down certain general principles concerning equal remuneration for men and women workers for work of equal value;

Whereas the Convention provides that the application of the principle of equal remuneration for men and women workers for work of equal value shall be promoted or ensured by means appropriate to the methods in operation for determining rates of remuneration in the countries concerned;

Whereas it is desirable to indicate certain procedures for the progressive application of the principles laid down in the Convention;

Whereas it is at the same time desirable that all Members should, in applying these principles, have regard to methods of application which have been found satisfactory in certain countries;

The Conference recommends that each Member should, subject to the

provisions of Article 2 of the Convention, apply the following provisions and report to the International Labour Office as requested by the Governing Body concerning the measures taken to give effect thereto:

1. Appropriate action should be taken, after consultation with the workers' organisations concerned or, where such organisations do not exist, with the workers concerned—

(a) to ensure the application of the principle of equal remuneration for men and women workers for work of equal value to all employees of central Government departments or agencies; and

(b) to encourage the application of the principle to employees of State, provincial or local Government departments or agencies, where these have jurisdiction over rates of remuneration.

2. Appropriate action should be taken, after consultation with the employers' and workers' organisations concerned, to ensure, as rapidly as practicable, the application of the principle of equal remuneration for men and women workers for work of equal value in all occupations, other than those mentioned in paragraph 1, in which rates of remuneration are subject to statutory regulation or public control, particularly as regards—

(a) the establishment of minimum or other wage rates in industries and services where such rates are determined under public authority;

(b) industries and undertakings operated under public ownership or control; and

(c) where appropriate, work executed under the terms of public contracts.

3.(1) Where appropriate in the light of the methods in operation for the determination of rates of remuneration, provision should be made by legal enactment for the general application of the principle of equal remuneration for men and women for work of equal value.

(2) The competent public authority should take all necessary and appropriate measures to ensure that employers and workers are fully

informed as to such legal requirements and, where appropriate, advised on their application.

4. When, after consultation with the organisations of workers and employers concerned, where such exist, it is not deemed feasible to implement immediately the principle of equal remuneration for men and women workers for work of equal value, in respect of employment covered by Paragraph 1, 2 or 3, appropriate provision should be made or caused to be made, as soon as possible, for its progressive application, by such measures as—

(a) decreasing the differentials between rates of remuneration for men and rates of remuneration for women for work of equal value;

(b) where a system of increments is in force, providing equal increments for men and women workers performing work of equal value.

5. Where appropriate for the purpose of facilitating the determination of rates of remuneration in accordance with the principle of equal remuneration for men and women workers for work of equal value, each Member should, in agreement with the employers' and workers' organisations concerned, establish or encourage the establishment of methods for objective appraisal of the work to be performed, whether by job analysis or by other procedures, with a view to providing a classification of jobs without regard to sex; such methods should be applied in accordance with the provisions of Article 2 of the Convention.

6. In order to facilitate the application of the principle of equal remuneration for men and women workers for work of equal value, appropriate action should be taken, where necessary, to raise the productive efficiency of women workers by such measures as—

(a) ensuring that workers of both sexes have equal or equivalent facilities for vocational guidance or employment counselling, for vocational training and for placement;

(b) taking appropriate measures to encourage women to use facilities for vocational guidance or employment counselling, for

vocational training and for placement;

(c) providing welfare and social services which meet the needs of women workers, particularly those with family responsibilities, and financing such services from general public funds or from social security or industrial welfare funds financed by payments made in respect of workers without regard to sex; and

(d) promoting equality of men and women workers as regards access to occupations and posts without prejudice to the provisions of international regulations and of national laws and regulations concerning the protection of the health and welfare of women.

7. Every effort should be made to promote public understanding of the grounds on which it is considered that the principle of equal remuneration for men and women workers for work of equal value should be implemented.

8. Such investigations as may be desirable to promote the application of the principle should be undertaken.

‘SCHEDULE 7

‘DISCRIMINATION (EMPLOYMENT AND OCCUPATION) RECOMMENDATION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Forty-second Session on 4 June 1958, and

Having decided upon the adoption of certain proposals with regard to discrimination in the field of employment and occupation, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fifth day of June of the year one thousand nine hundred and fifty-eight the following Recommendation, which may be cited as the Discrimination (Employment and Occupation) Recommendation, 1958;

The Conference recommends that each Member should apply the following provisions:

I—DEFINITIONS

1.(1) For the purpose of this Recommendation the term **“discrimination”** includes—

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of

opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, which such exist, and with other appropriate bodies.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination.

(3) For the purpose of this Recommendation the terms **"employment"** and **"occupation"** include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

II—FORMULATION AND APPLICATION OF POLICY

2. Each Member should formulate a national policy for the prevention of discrimination in employment and occupation. This policy should be applied by means of legislative measures, collective agreements between representative employers' and workers' organisations or in any other manner consistent with national conditions and practice, and should have regard to the following principles—

(a) the promotion of equality of opportunity and treatment in employment and occupation is a matter of public concern;

(b) all persons should, without discrimination, enjoy equality of opportunity and treatment in respect of—

(i) access to vocational guidance and placement services;

(ii) access to training and employment of their own choice on the basis of individual suitability for such training or employment;

(iii) advancement in accordance with their individual character, experience, ability and diligence;

(iv) security of tenure of employment;

(v) remuneration for work of equal value;

(vi) conditions of work including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;

(c) government agencies should apply non-discriminatory employment policies in all their activities;

(d) employers should not practise or countenance discrimination in engaging or training any person for employment, in advancing or retaining such person in employment, or in fixing terms and conditions of employment; nor should any person or organisation obstruct or interfere, either directly or indirectly, with employers in pursuing this principle;

(e) in collective negotiations and industrial relations the parties should respect the principle of equality of opportunity and treatment in employment and occupation, and should ensure that collective agreements contain no provisions of a discriminatory character in respect of access to, training for, advancement in or retention of employment or in respect of the terms and conditions of employment;

(f) employers' and workers' organisations should not practise or countenance discrimination in respect of admission, retention of membership or participation in their affairs.

3. Each Member should—

(a) ensure application of the principles of non-discrimination—

(i) in respect of employment under the direct control of a national authority;

(ii) in the activities of vocational guidance, vocational training and placement services under the direction of a national

authority;

(b) promote their observance, where practicable and necessary, in respect of other employment and other vocational guidance, vocational training and placement services by such methods as—

(i) encouraging state, provincial or local government departments or agencies and industries and undertakings operated under public ownership or control to ensure the application of the principles;

(ii) making eligibility for contracts involving the expenditure of public funds dependent on observance of the principles;

(iii) making eligibility for grants to training establishments and for a licence to operate a private employment agency or a private vocational guidance office dependent on observance of the principles.

4. Appropriate agencies, to be assisted where practicable by advisory committees composed of representatives of employers' and workers' organisations, where such exist, and of other interested bodies, should be established for the purpose of promoting application of the policy in all fields of public and private employment, and in particular—

(a) to take all practicable measures to foster public understanding and acceptance of the principles of non-discrimination;

(b) to receive, examine and investigate complaints that the policy is not being observed and, if necessary by conciliation, to secure the correction of any practices regarded as in conflict with the policy; and

(c) to consider further any complaints which cannot be effectively settled by conciliation and to render opinions or issue decisions concerning the manner in which discriminatory practices revealed should be corrected.

5. Each Member should repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy.

6. Application of the policy should not adversely affect special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities or social or cultural status are generally recognised to require special protection or assistance.

7. Any measures affecting an individual who is justifiably suspected of, or engaged in, activities prejudicial to the security of the State should not be deemed to be discrimination, provided that the individual concerned has the right to appeal to a competent body established in accordance with national practice.

8. With respect to immigrant workers of foreign nationality and the members of their families, regard should be had to the provisions of the Migration for Employment Convention (Revised), 1949, relating to equality of treatment and the provisions of the Migration for Employment Recommendation (Revised), 1949, relating to the lifting of restrictions on access to employment.

9. There should be continuing co-operation between the competent authorities, representatives of employers and workers and appropriate bodies to consider what further positive measures may be necessary in the light of national conditions to put the principles of non-discrimination into effect.

III—COORDINATION OF MEASURES FOR THE PREVENTION OF DISCRIMINATION IN ALL FIELDS

10. The authorities responsible for action against discrimination in employment and occupation should co-operate closely and continuously with the authorities responsible for action against discrimination in other fields in order that measures taken in all fields may be co-ordinated.

‘SCHEDULE 8

‘FAMILY RESPONSIBILITIES CONVENTION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that ‘all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the

changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are 'aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women', and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such

responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms **"dependent child"** and **"other member of the immediate family who clearly needs care or support"** mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as **"workers with family responsibilities"**.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term **"discrimination"** means discrimination in employment and occupation as

defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

(a) to enable workers with family responsibilities to exercise their right to free choice of employment; and

(b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken—

(a) to take account of the needs of workers with family responsibilities in community planning; and

(b) to develop or promote community services, public or private, such as childcare and family services and facilities.

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions—Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars off all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such dimes as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

‘SCHEDULE 9

‘WORKERS WITH FAMILY RESPONSIBILITIES RECOMMENDATION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that ‘all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family

Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are 'aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women', and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities, and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers—workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts the twenty-third day of June of the year one thousand nine hundred and eighty-one the following Recommendation, which may be cited as the Workers with Family Responsibilities Recommendation, 1981:

I—DEFINITION, SCOPE AND MEANS OF

IMPLEMENTATION

1.(1) This Recommendation applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(2) The provisions of this Recommendation should also be applied to men and women workers with responsibilities in relation to other members of their immediate family who need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

(3) For the purposes of this Recommendation, the terms **"dependent child"** and **"other member of the immediate family who needs care or support"** mean persons defined as such in each country by one of the means referred to in Paragraph 3 of this Recommendation.

(4) The workers covered by virtue of subparagraphs (1) and (2) of this Paragraph are hereinafter referred to as **"workers with family responsibilities"**.

2. This Recommendation applies to all branches of economic activity and all categories of workers.

3. The provisions of this Recommendation may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

4. The provisions of this Recommendation may be applied by stages if necessary, account being taken of national conditions—Provided that such measures of implementation as are taken should apply in any case to all the workers covered by Paragraph 1, subparagraph (1).

5. Employers' and workers' organisations should have the right to

participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Recommendation.

II—NATIONAL POLICY

6. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member should make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

7. Within the framework of a national policy to promote equality of opportunity and treatment for men and women workers, measures should be adopted and applied with a view to preventing direct or indirect discrimination on the basis of marital status or family responsibilities.

8.(1) For the purposes of Paragraphs 6 and 7 above, the term **"discrimination"** means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

(2) During a transitional period special measures aimed at achieving effective equality between men and women workers should not be regarded as discriminatory.

9. With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities should be taken—

(a) to enable workers with family responsibilities to exercise their right to vocational training and to free choice of employment;

(b) to take account of their needs in terms and conditions of

employment and in social security; and

(c) to develop or promote child-care, family and other community services, public or private, responding to their needs.

10. The competent authorities and bodies in each country should take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family responsibilities, as well as a climate of opinion conducive to overcoming these problems.

11. The competent authorities and bodies in each country should take appropriate measures—

(a) to undertake or promote such research as may be necessary into the various aspects of the employment of workers with family responsibilities with a view to providing objective information on which sound policies and measures may be based; and

(b) to promote such education as will encourage the sharing of family responsibilities between men and women and enable workers with family responsibilities better to meet their employment and family responsibilities.

III—TRAINING AND EMPLOYMENT

12. All measures compatible with national conditions and possibilities should be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

13. In accordance with national policy and practice, vocational training facilities and, where possible, paid educational leave arrangements to use such facilities should be made available to workers with family

responsibilities.

14. Such services as may be necessary to enable workers with family responsibilities to enter or re-enter employment should be available, within the framework of existing services for all workers or, in default thereof, along lines appropriate to national conditions; they should include, free of charge to the workers, vocational guidance, counselling, information and placement services which are staffed by suitably trained personnel and are able to respond adequately to the special needs of workers with family responsibilities.

15. Workers with family responsibilities should enjoy equality of opportunity and treatment with other workers in relation to preparation for employment, access to employment, advancement within employment and employment security.

16. Marital status, family situation or family responsibilities should not, as such, constitute valid reasons for refusal or termination of employment.

IV—TERMS AND CONDITIONS OF EMPLOYMENT

17. All measures compatible with national conditions and possibilities and with the legitimate interests of other workers should be taken to ensure that terms and conditions of employment are such as to enable workers with family responsibilities to reconcile their employment and family responsibilities.

18. Particular attention should be given to general measures for improving working conditions and the quality of working life, including measures aiming at—

(a) the progressive reduction of daily hours of work and the reduction of overtime; and

(b) more flexible arrangements as regards working schedules, rest periods and holidays;

account being taken of the stage of development and the particular needs of the country and of different sectors of activity.

19. Whenever practicable and appropriate, the special needs of workers, including those arising from family responsibilities, should be taken into account in shift-work arrangements and assignments to night work.

20. Family responsibilities and considerations such as the place of employment of the spouse and the possibilities of educating children should be taken into account when transferring workers from one locality to another.

21.(1) With a view to protecting part-time workers, temporary workers and homeworkers, many of whom have family responsibilities, the terms and conditions on which these types of employment are performed should be adequately regulated and supervised.

(2) The terms and conditions of employment, including social security coverage, of part-time workers and temporary workers should be, to the extent possible, equivalent to those of full-time and permanent workers respectively; in appropriate cases, their entitlement may be calculated on a pro rata basis.

(3) Part-time workers should be given the option to obtain or return to full-time employment when a vacancy exists and when the circumstances which determined assignment to part-time employment no longer exist.

22.(1) Either parent should have the possibility, within a period immediately following maternity leave, of obtaining leave of absence (parental leave), without relinquishing employment and with rights resulting from employment being safeguarded.

(2) The length of the period following maternity leave and the duration and conditions of the leave of absence referred to in subparagraph (1) of this Paragraph should be determined in each country by one of the means

referred to in Paragraph 3 of this Recommendation.

(3) The leave of absence referred to in subparagraph (1) of this Paragraph may be introduced gradually.

23.(1) It should be possible for a worker, man or woman, with family responsibilities in relation to a dependent child to obtain leave of absence in the case of its illness.

(2) It should be possible for a worker with family responsibilities to obtain leave of absence in the case of the illness of another member of the worker's immediate family who needs that worker's care or support.

(3) The duration and conditions of the leave of absence referred to in subparagraphs (1) and (2) of this Paragraph should be determined in each country by one of the means referred to in Paragraph 3 of this Recommendation.

V—CHILD–CARE AND FAMILY SERVICES AND FACILITIES

24. With a view to determining the scope and character of the child-care and family services and facilities needed to assist workers with family responsibilities to meet their employment and family responsibilities, the competent authorities should, in co-operation with the public and private organisations concerned, in particular employers' and workers' organisations, and within the scope of their resources for collecting information, take such measures as may be necessary and appropriate—

(a) to collect and publish adequate statistics on the number of workers with family responsibilities engaged in or seeking employment and on the number and age of their children and of other dependants requiring care; and

(b) to ascertain, through systematic surveys conducted more particularly in local communities, the needs and preferences for child-care and family services and facilities.

25. The competent authorities should, in co-operation with the public and private organisations concerned, take appropriate steps to ensure that child-care and family services and facilities meet the needs and preferences so revealed; to this end they should, taking account of national and local circumstances and possibilities, in particular—

(a) encourage and facilitate the establishment, particularly in local communities, of plans for the systematic development of child-care and family services and facilities, and

(b) themselves organise or encourage and facilitate the provision of adequate and appropriate child-care and family services and facilities, free of charge or at a reasonable charge in accordance with the workers' ability to pay, developed along flexible lines and meeting the needs of children of different ages, of other dependants requiring care and of workers with family responsibilities.

26.(1) Child-care and family services and facilities of all types should comply with standards laid down and supervised by the competent authorities.

(2) Such standards should prescribe in particular the equipment and hygienic and technical requirements of the services and facilities provided and the number and qualifications of the staff.

(3) The competent authorities should provide or help to ensure the provision of adequate training at various levels for the personnel needed to staff child-care and family services and facilities.

VI—SOCIAL SECURITY

27. Social security benefits, tax relief, or other appropriate measures consistent with national policy should, when necessary, be available to workers with family responsibilities.

28. During the leave of absence referred to in Paragraphs 22 and 23, the workers concerned may, in conformity with national conditions and practice, and by one of the means referred to in Paragraph 3 of this Recommendation, be protected by social security.

29. A worker should not be excluded from social security coverage by reference to the occupational activity of his or her spouse and entitlement to benefits arising from that activity.

30.(1) The family responsibilities of a worker should be an element to be taken into account in determining whether employment offered is suitable in the sense that refusal of the offer may lead to loss or suspension of unemployment benefit.

(2) In particular, where the employment offered involves moving to another locality, the considerations to be taken into account should include the place of employment of the spouse and the possibilities of educating children.

31. In applying Paragraphs 27 to 30 of this Recommendation, a Member whose economy is insufficiently developed may take account of the national resources and social security arrangements available.

VII—HELP IN EXERCISE OF FAMILY RESPONSIBILITIES

32. The competent authorities and bodies in each country should promote such public and private action as is possible to lighten the burden deriving from the family responsibilities of workers.

33. All measures compatible with national conditions and possibilities should be taken to develop home-help and home-care services which are adequately regulated and supervised and which can provide workers with

family responsibilities, as necessary, with qualified assistance at a reasonable charge in accordance with their ability to pay.

34. Since many measures designed to improve the conditions of workers in general can have a favourable impact on those of workers with family responsibilities, the competent authorities and bodies in each country should promote such public and private action as is possible to make the provision of services in the community, such as public transport, supply of water and energy in or near workers' housing and housing with labour-saving layout, responsive to the needs of workers.

VIII—EFFECT ON EXISTING RECOMMENDATIONS

35. This Recommendation supersedes the Employment (Women with Family Responsibilities) Recommendation, 1965.

‘SCHEDULE 10

‘TERMINATION OF EMPLOYMENT CONVENTION

section 5(1)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since, the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982:

PART I—METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention—

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and

conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms **"termination"** and **"termination of employment"** mean termination of employment at the initiative of the employer.

PART II—STANDARDS OF GENERAL APPLICATION

Division A—Justification for termination

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination—

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

(e) absence from work during maternity leave.

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

Division B—Procedure prior to or at the time of termination

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Division C—Procedure of appeal against termination

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities—

(a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

Division D—Period of notice

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

Division E—Severance allowance and other income protection

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III—SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

Division A—Consultation of workers' representatives

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall—

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any

terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term **"the workers' representatives concerned"** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Division B—Notification to the competent authority

Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV—FINAL PROVISIONS

Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter,

may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

(a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

‘SCHEDULE 11

‘FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION

section 139DA

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares ‘recognition of the principle of freedom of association’ to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that ‘freedom of expression and of association are essential to sustained progress’;

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I—FREEDOM OF ASSOCIATION

Article 1

1. Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish

and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of

the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term **"organisation"** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II—PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

‘SCHEDULE 12

‘RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION

section 139DA

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this first day of July of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and Collective Bargaining Convention, 1949:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason

of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

Article 4

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

Article 5

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

2. In accordance with the principle set forth in paragraph 8 of article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 6

This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way.

‘SCHEDULE 13

‘TERMINATION OF EMPLOYMENT RECOMMENDATION

section 175AA

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation supplementing the Termination of Employment Convention, 1982;

adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Recommendation, which may be cited as the Termination of Employment Recommendation, 1982:

I—METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

1. The provisions of this Recommendation may be applied by national laws or regulations, collective agreements, works rules, arbitration awards or court decisions or in such other manner consistent with national practice as may be appropriate under national conditions.

2.(1) This Recommendation applies to all branches of economic activity

and to all employed persons.

(2) A Member may exclude the following categories of employed persons from all or some of the provisions of this Recommendation—

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

(3) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements, which as a whole provide protection that is at least equivalent to the protection afforded under the Recommendation.

(4) In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Recommendation or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

3.(1) Adequate safeguards should be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from the Termination of Employment Convention, 1982, and this Recommendation.

(2) To this end, for example, provision may be made for one or more of the following—

(a) limiting recourse to contracts for a specified period of time to cases in which, owing either to the nature of the work to be effected or to the circumstances under which it is to be effected or to the interests of the worker, the employment relationship cannot

be of indeterminate duration;

(b) deeming contracts for a specified period of time, other than in the cases referred to in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration;

(c) deeming contracts for a specified period of time, when renewed on one or more occasions, other than in the cases mentioned in clause (a) of this subparagraph, to be contracts of employment of indeterminate duration.

4. For the purpose of this Recommendation the terms **"termination"** and **"termination of employment"** mean termination of employment at the initiative of the employer.

II—STANDARDS OF GENERAL APPLICATION

Justification for Termination

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination—

(a) age, subject to national law and practice regarding retirement;

(b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6.(1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

Procedure prior to or at the time of termination

7. The employment of a worker should not be terminated for misconduct of a kind that under national law or practice would justify termination only if repeated on one or more occasions, unless the employer has given the worker appropriate written warning.

8. The employment of a worker should not be terminated for unsatisfactory performance, unless the employer has given the worker appropriate instructions and written warning and the worker continues to perform his duties unsatisfactorily after a reasonable period of time for improvement has elapsed.

9. A worker should be entitled to be assisted by another person when defending himself, in accordance with Article 7 of the Termination of Employment Convention, 1982, against allegations regarding his conduct or performance liable to result in the termination of his employment; this right may be specified by the methods of implementation referred to in Paragraph 1 of this Recommendation.

10. The employer should be deemed to have waived his right to terminate the employment of a worker for misconduct if he has failed to do so within a reasonable period of time after he has knowledge of the misconduct.

11. The employer may consult workers' representatives before a final decision is taken on individual cases of termination of employment.

12. The employer should notify a worker in writing of a decision to terminate his employment.

13.(1) A worker who has been notified of termination of employment or whose employment has been terminated should be entitled to receive, on request, a written statement from his employer of the reason or reasons for the termination.

(2) Subparagraph (1) of this Paragraph need not be applied in the case of collective termination for the reasons referred to in Articles 13 and 14 of the Termination of Employment Convention, 1982, if the procedure provided for therein is followed.

Procedure of appeal against termination

14. Provision may be made for recourse to a procedure of conciliation before or during appeal proceedings against termination of employment.

15. Efforts should be made by public authorities, workers' representatives and organisations of workers to ensure that workers are fully informed of the possibilities of appeal at their disposal.

Time off from work during the period of notice

16. During the period of notice referred to in Article 11 of the Termination of Employment Convention, 1982, the worker should, for the purpose of seeking other employment, be entitled to a reasonable amount of time off without loss of pay, taken at times that are convenient to both parties.

Certificate of employment

17. A worker whose employment has been terminated should be entitled to receive, on request, a certificate from the employer specifying only the dates of his engagement and termination of his employment and the type or types of work on which he was employed; nevertheless, and at the request of the worker, an evaluation of his conduct and performance may be given in this certificate or in a separate certificate.

Severance allowance and other income protection

18.(1) A worker whose employment has been terminated should be entitled, in accordance with national law and practice, to—

(a) a severance allowance or other separation benefits, the amount of which should be based, inter alia, on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

(2) A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in subparagraph (1)(a) of this Paragraph solely because he is not receiving an unemployment benefit under subparagraph (1)(b).

(3) Provision may be made by the methods of implementation referred to in Paragraph 1 of this Recommendation for loss of entitlement to the allowance or benefits referred to in subparagraph (1)(a) of this Paragraph in the event of termination for serious misconduct.

III—SUPPLEMENTARY PROVISIONS CONCERNING TERMINATIONS OF EMPLOYMENT FOR ECONOMIC, TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

19.(1) All parties concerned should seek to avert or minimise as far as possible termination of employment for reasons of an economic, technological, structural or similar nature, without prejudice to the efficient operation of the undertaking, establishment or service, and to mitigate the adverse effects of any termination of employment for these reasons on the

worker or workers concerned.

(2) Where appropriate, the competent authority should assist the parties in seeking solutions to the problems raised by the terminations contemplated.

Consultations on major changes in the undertaking

20.(1) When the employer contemplates the introduction of major changes in production, program, organisation, structure or technology that are likely to entail terminations, the employer should consult the workers' representatives concerned as early as possible on, inter alia, the introduction of such changes, the effects they are likely to have and the measures for averting or mitigating the adverse effects of such changes.

(2) To enable the workers' representatives concerned to participate effectively in the consultations referred to in subparagraph (1) of this Paragraph, the employer should supply them in good time with all relevant information on the major changes contemplated and the effects they are likely to have.

(3) For the purposes of this Paragraph the term **"the workers' representatives concerned"** means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

Measures to avert or minimise termination

21. The measures which should be considered with a view to averting or minimising terminations of employment for reasons of an economic, technological, structural or similar nature might include, inter alia, restriction of hiring, spreading the workforce reduction over a certain period of time to permit natural reduction of the workforce, internal transfers, training and retraining, voluntary early retirement with appropriate income protection, restriction of overtime and reduction of normal hours of work.

22. Where it is considered that a temporary reduction of normal hours of

work would be likely to avert or minimise terminations of employment due to temporary economic difficulties, consideration should be given to partial compensation for loss of wages for the normal hours not worked, financed by methods appropriate under national law and practice.

Criteria for selection for termination

23.(1) The selection by the employer of workers whose employment is to be terminated for reasons of an economic, technological, structural or similar nature should be made according to criteria, established wherever possible in advance, which give due weight both to the interests of the undertaking, establishment or service and to the interests of the workers.

(2) These criteria, their order of priority and their relative weight, should be determined by the methods of implementation referred to in Paragraph 1 of this Recommendation.

Priority of rehiring

24.(1) Workers whose employment has been terminated for reasons of an economic, technological, structural or similar nature, should be given a certain priority of rehiring if the employer again hires workers with comparable qualifications, subject to their having, within a given period from the time of their leaving, expressed a desire to be rehired.

(2) Such priority of rehiring may be limited to a specified period of time.

(3) The criteria for the priority of rehiring, the question of retention of rights—particularly seniority rights—in the event of rehiring, as well as the terms governing the wages of rehired workers, should be determined according to the methods of implementation referred to in Paragraph 1 of this Recommendation.

Mitigating the effects of termination

25.(1) In the event of termination of employment for reasons of an

economic, technological, structural or similar nature, the placement of the workers affected in suitable alternative employment as soon as possible, with training or retraining where appropriate, should be promoted by measures suitable to national circumstances, to be taken by the competent authority, where possible with the collaboration of the employer and the workers' representatives concerned.

(2) Where possible, the employer should assist the workers affected in the search for suitable alternative employment, for example through direct contacts with other employers.

(3) In assisting the workers affected in obtaining suitable alternative employment or training or retraining, regard may be had to the Human Resources Development Convention and Recommendation, 1975.

26.(1) With a view to mitigating the adverse effects of termination of employment for reasons of an economic, technological, structural or similar nature, consideration should be given to providing income protection during any course of training or retraining and partial or total reimbursement of expenses connected with training or retraining and with finding and taking up employment which requires a change of residence.

(2) The competent authority should consider providing financial resources to support in full or in part the measures referred to in subparagraph (1) of this Paragraph, in accordance with national law and practice.

IV—EFFECT ON EARLIER RECOMMENDATION

27. This Recommendation and the Termination of Employment Convention, 1982, supersede the Termination of Employment Recommendation, 1963.**'.**

PART 3—AMENDMENT OF PUBLIC SERVICE MANAGEMENT AND EMPLOYMENT ACT 1988

Act amended

40. This Part amends the *Public Service Management and Employment Act 1988.*

Amendment of s 40 (Cooperation between State and Commonwealth Services)

41. Section 40(2) and (3)—

omit, insert—

'(2) The Governor in Council, or a Minister authorised by the Governor in Council, may make arrangements with the appropriate Commonwealth authority for performance by an officer of the Commonwealth public service, for the Queensland Government, of any work or services or of duties of any office within the Queensland public service.

'(3) The Governor in Council, or a Minister authorised by the Governor in Council, at the request of the appropriate Commonwealth authority may authorise and cause any work or services to be performed for the Commonwealth Government by an officer of the Queensland public service.**'.**

PART 4—AMENDMENT OF VOCATIONAL EDUCATION, TRAINING AND EMPLOYMENT ACT 1991

Act amended

42. This Part amends the *Vocational Education, Training and Employment Act 1991.*

Relocation of Schedule (National Vocational Education and Training Statement)

43. Schedule—

relocate after Part 5.

SCHEDULE

MINOR AMENDMENTS

section 3

1. Sections 5(1) (definitions "bonus payment", "eligible employee" and "young employee"), 16, 32, 36(4)(a) and (b), (7) and (8), 37(2), 39(1)(a) and (b), 40(1) and (3), 41(1) and (4), 52(a)(v), 53(1) and (2), 77(2), 78(2)(a)(ii), 79(c), 90(1)(b), 98(6)(a), 140(1) and (4), 141(1), (6), (7) and (9), 142, 143, 144, 145(5), 146(1), 149(1), 151(1), (2) and (4), 152(1), (2) and (8), 153(2)(b), 154(a) and (b), 156(1), 157(1), 158(1) and (3), 160(1)(c)(iv)(A), 165(1), (3) and (4), 166(2) and (4), 170(1)(d), 171(1)(a) and (3), 187(10), 204(b)(ii) and (c)(i), 259(6), 264(5)(c), 291(2)(c)(ii)(A), 309(1)(a)(i) and (ii), 310(2)(a), 314(c) and (d), 342(1)(c), 343(4), 344(1), 358(2)(b)(i), 359(4)(a)(iii), 362(3)(c)(i) and (4), 373, 374, 377(3), 385(b), 386, 405(6)(c), 412, 462(1)(a), (3) and (4), 464(1)—

omit **'**or certified agreement**',**

insert **'**, certified agreement or enterprise flexibility agreement**'.**

2. Sections 5(1) (definition "party"), 6(3)(d)(i), 13(1)(b)(iii)(B), 15, 17(a)(ii), 49(1)(a)(vi), 52(a)(ii) and (iii)(A) and (B), 159(1)(a), 180(2), 353(1)(c), (e) and (g) and (4), 362(1)(a) and (b) and (3)(c)(iii) and (f), 363(1)(a) and (b), 383, 385, 405(1) and (2)(a) and (b), 461(1) and (2), 463(1) and (3), 466(1), (3) and (4), 467(1), 469(2)(a), 472(a), after 'certified agreement'—

insert **'**, enterprise flexibility agreement**'.**

3. Section 34(3) and (4)—

omit **'***Employment, Vocational Education and Training Act 1988***',**

insert **'***Vocational Education, Training and Employment Act 1991***'.**

4. Section 36(4)(b), after 'industrial agreement' (1st mention)—

insert **'**, certified agreement, enterprise flexibility agreement**'.**

5. Section 41(1), 2nd and 3rd mentions—

omit **'**industrial agreement**',** *insert* **'**agreement**'.**

6. Section 78(2)—

insert—

'(ca) a copy of an enterprise flexibility agreement, bearing a certificate purporting to be that of the Industrial Registrar that is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy and its approval by the Commission; and**'.**

7. Section 90(1) and (2)—

omit **'**section 89(4)**',** *insert* **'**section 89(5)**'.**

8. Section 93(3)—

omit.

9. Sections 135(1), 136, 138 and 139(1)—

omit **'**, industrial agreement or certified agreement**',**

insert **'**or industrial agreement**'.**

10. Sections 140(1) and 149(1), after 'employer, and an'

insert **'**employee or**'.**

11. Section 153(2)(a)—

omit **'***Employment, Vocational Education and Training Act 1988***',**

insert **'***Vocational Education, Training and Employment Act 1991***'.**

12. Section 204(c)(ii), after 'award'—

insert **'**, industrial agreement, certified agreement, enterprise flexibility agreement**'.**

13. Sections 275(1)(d) and 277(1)(b)—

omit **'**and certified agreements**',**

insert **'**, certified agreements and enterprise flexibility agreements**'.**

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