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Robyn Webb  
Chief Parliamentary Counsel  
Dated 15 November 2021



## TASMANIA

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# INDUSTRIAL RELATIONS ACT 1984

No. 21 of 1984

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## CONTENTS

### PART I – PRELIMINARY

1. Short title
2. Commencement
3. Interpretation
4. Crown bound by Act

### PART II – TASMANIAN INDUSTRIAL COMMISSION

#### *Division 1 – Constitution, &c., of the Commission*

5. Constitution of the Commission
6. Provisions relating to appointment of Commissioners
- [6A. *Repealed*]
7. Oath or affirmation of office
8. Judicial notice of official signatures of Commissioners
9. Protection of Commissioners

- 10. Substitute to act during absence of certain Commissioners
- [10A. *Repealed*]
- 11. Removal and suspension of Commissioners
- 12. Resignation from office
- 13. Exercise of powers and jurisdiction of the President and the Commission
- 14. Constitution of Full Bench of Commission
- 15. General functions and powers of President
- 16. Reference of industrial matters to Australian Commission for determination under this Act
- 17. Power of Commission to sit in joint proceedings
- 18. Staff of Commission

***Division 2 – Jurisdiction, functions and powers of the Commission***

- 19. Jurisdiction of Commission
- 19AA. Commission to review matters under section 50 of the *State Service Act 2000*
- 19AB. Commission to determine remuneration, &c., of members of Parliament
- 19A. Commission may conduct dispute resolutions
- 20. Commission to act according to equity and good conscience
- 21. Procedure of Commission and associated matters
- 22. Powers of inspection

***Division 3 – Proceedings before the Commission***

- 23. Applications for awards and variations of awards
- 24. Award hearings before Commissioner sitting alone
- 25. Award hearings before Full Bench
- 26. Proceedings may be in public or private
- 27. Intervention and appearances
- 28. Representation

***Division 4 – Hearings for settling disputes***

- 29. Hearings for settling disputes

- 30. Criteria applying to disputes relating to termination of employment
- 30A. Employees under federal award
- 31. Orders arising from hearings

***Division 5 – Cooperation between State industrial tribunals***

- 31A. Interpretation of Division
- 31B. Joint proceedings
- 31C. Commission may perform functions and exercise powers imposed and conferred under industrial law of another State

**PART III – AWARDS**

***Division 1 – Power to make awards and related matters***

- 32. Subject-matter of awards
- 33. Power of Commission to make awards in respect of private sector employment
- 34. Power of Commission to make awards in respect of public sector employment
- 35. Certain matters to be dealt with by Full Bench of Commission
- 36. Commission to be satisfied of public interest
- 37. Signature, operation and lodging of awards, &c.
- 38. Effect of awards
- 39. Validity of awards, &c.
- 40. Extension of awards by regulation
- 41. Formulation of grievance or dispute settling procedures
- 42. Award subject to Acts dealing with same subject-matter
- 43. Interpretation of awards
- 44. Evidence of awards, order, &c.
- 45. Disclosure of trade secrets

***Division 2 – Provisions in respect of industries or employment not otherwise subject to award or registered agreement***

- 46. Application of Division
- 47. General provisions as to employment

***Division 2A – Minimum conditions of employment relating to all employees***

- 47AA. Purpose and application of Division
- 47AB. Minimum weekly wage
- 47AC. Maximum ordinary working hours
- 47AD. Meal break
- 47AE. Annual leave
- 47AF. Personal leave
- 47AG. Parental leave
- 47AH. Redundancy
- 47AI. Payments to be based on ordinary pay
- 47AJ. Offence provision

***Division 3 – Enforcement of awards and registered agreements***

- 47A. Enforcement of awards and registered agreements after transfer of business
- 48. Breach of awards and registered agreements
- 49. Remuneration fixed by award or registered agreement
- 50. Piecework rates
- 50A. Power to stand down without pay
- 51. Offences relating to remuneration
- 52. Remedy of employees
- 53. Employment subject to more than one award
- 54. Lock-outs and strikes

**PART IV – INDUSTRIAL AGREEMENTS AND PRIVATE ARBITRATION**

- 55. Making of industrial agreements
- 56. Registration and evidence of agreement
- 57. Addition of parties to industrial agreements
- 58. Persons bound by agreement
- 59. Variation, &c., of agreement
- 60. Award not to apply while agreement is in force
- 61. Private conciliation and arbitration

## **PART IVA – ENTERPRISE AGREEMENTS**

### ***Division 1 – Enterprise agreements***

- 61A. Interpretation
- 61B. Purpose of enterprise agreement
- 61C. Single or separate enterprises
- 61D. Parties to enterprise agreement
- 61E. Content of enterprise agreement
- 61F. Minimum conditions of employment
- 61G. Formal considerations
- 61H. Lodgement of enterprise agreement
- 61I. Hearing
- 61J. Approval of enterprise agreement
- 61K. Withdrawal from enterprise agreement
- 61L. Registration of enterprise agreement
- 61M. Effect of registered enterprise agreement
- 61N. Persons bound by registered enterprise agreement
- 61O. Duration of registered enterprise agreement
- 61P. Variation of registered enterprise agreement
- 61Q. Notice to be given of working conditions
- 61R. Termination of registered enterprise agreement
- 61S. New enterprises

### ***Division 2 – Employee committees***

- 61T. Decision to form employee committee
- 61U. Election of members of employee committee
- 61V. Periodic elections
- 61W. Function of employee committee
- 61X. Decisions and procedure
- 61Y. Casual vacancy
- 61Z. Dissolution

### ***[Division 3 – Repealed]***

61ZA - 61ZC. *Repealed*

***Division 4 – Miscellaneous***

- 61ZD. Secret ballots under this Part
- 61ZE. Register

**PART V – REGISTRATION OF ORGANIZATIONS**

- 62. Qualifications for registration
- 63. Registration of associations
- [63A. *Repealed*]
- 64. Certificate of registration
- 65. Effect of registration
- 65A. Recall and re-issue of certificate of registration
- 66. Extension of entitlement of rights specified in section 65 to certain private employers and certain associations
- 67. Alteration of rules or constitutions of organizations
- 67A. Amalgamation of organizations
- 68. Cancellation of registration

**PART VI – APPEALS**

- 69. Interpretation of Part
- 70. Rights of appeal
- 71. Procedure on appeals
- 72. Provisions relating to finality of decisions of Full Bench

**PART VII – RECORDS AND INSPECTION**

- [73. *Repealed*]
- 74. Functions of Secretary
- 75. Records of employment and advice of pay details
- 76. Powers of inspectors
- 77. Right of entry of union officials
- 78. Service of requisitions on employers, &c.

**PART VIII – MISCELLANEOUS**

- 79. Employment of infirm persons

- 80. Employment of persons with disabilities in sheltered workshops, &c.
- 81. Employment of students
- 82. Appeals in respect of matters under sections 79, 80 and 81
- 83. Requirements as to secrecy of officers, &c.
- 84. Copies of awards and registered agreements
- 85. Awards and registered agreements prevail
- 86. Prohibition on victimisation
- 87. Freedom of association
- 87A. Responsibility of Secretary and Registrar for enforcement of certain provisions of Act
- 88. Service of documents
- 89. Protection from liability
- 90. Provision for change of names of certain bodies
- [91. *Repealed*]
- 92. Proceedings for offences
- 93. Offences by bodies corporate
- 94. Costs of administration
- 95. Application of penalties, &c.
- 96. Regulations
- 97. Power of Governor to make orders altering amounts in relation to penalties in Act
- 98. Savings provision
- 99. Registered agreements and awards to remain in force
- 100. Validation and transitional

**SCHEDULE 1 – FORM OF OATH AND FORM OF AFFIRMATION**

**SCHEDULE 2 – UNPAID PARENTAL LEAVE**

**[SCHEDULE 3 – *Repealed*]**







## **INDUSTRIAL RELATIONS ACT 1984**

**No. 21 of 1984**

**An Act to provide for the establishment of a Tasmanian Industrial Commission having a jurisdiction to hear and determine matters and things arising from, or relating to, industrial matters, including the making of awards, the conduct of hearings and the settling of disputes, to provide for the registration of employer and employee organisations, to encourage workplace bargaining, to determine salaries, allowances and benefits for members of Parliament, and to provide for related and other matters**

**[Royal Assent 16 May 1984]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 1

Part I – Preliminary

---

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the *Industrial Relations Act 1984*.

**2. Commencement**

- (1) This section and section 1 shall commence on the day on which this Act receives the Royal Assent.
- (2) Except as provided in subsections (1) and (3), this Act shall commence on such day as may be fixed by proclamation.
- (3) Sections 16, 17, and 20(2)(b) shall commence on such day as may be fixed by proclamation, being a day that is the same as, or that is subsequent to, the day fixed by proclamation under subsection (2).

**3. Interpretation**

- (1) In this Act, unless the contrary intention appears  
—

*accumulation scheme*, in relation to a Commissioner, means the default fund, within the meaning of the *Public Sector Superannuation Reform Act 2016*, in relation to which the Commissioner is a relevant employee within the meaning of section 21 of that Act;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

---

***adult*** means a person who has attained the age of 21 years;

***Agency*** means a Government department or State authority or other organization specified in Column 1 of Schedule 1 to the *State Service Act 2000*;

***Australian Commission*** means the Australian Industrial Relations Commission established by section 8 of the Commonwealth Act;

***award*** means an award made under this Act by the Commission and includes a variation of such an award;

***casual employee***, unless prescribed otherwise in an award or agreement, means a person who is engaged to work casual employment;

***casual employment***, unless prescribed otherwise in an award or agreement, means work performed by an employee on an irregular, variable or unpredictable basis or on an as and when required basis;

***Commission*** means the Tasmanian Industrial Commission constituted under section 5;

***Commissioner*** means a member of the Commission appointed under section 5(2A);

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

***Commonwealth Act*** means the *Workplace Relations Act 1996* of the Commonwealth;

***conditions of employment*** includes wages;

***controlling authority*** means, in the case of –

- (a) a State employee who is a State Service employee – the Minister administering the *State Service Act 2000*;
- (b) a person appointed under section 11(3), 12 or 15 of the *Police Service Act 2003* – the Commissioner of Police; or
- (c) . . . . .
- (d) any other State employee – the principal officer of the State authority by which that employee is employed;

***Deputy President*** means the Deputy President of the Commission appointed under section 5(2A)(b), and includes a person acting in the office of Deputy President;

***employee*** means a private employee or a State employee, and includes –

- (a) a trainee as defined in the *Training and Workforce Development Act 2013*; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

- 
- (b) an apprentice as defined in the *Training and Workforce Development Act 2013*; and
  - (c) an outworker; and
  - (d) a person appointed under section 11(3), 12 or 15 of the *Police Service Act 2003*;

***employee organization*** means an organization of employees;

***employer*** means a private employer or a controlling authority;

***employer organization*** means an organization of private employers;

***enterprise*** means –

- (a) any business, undertaking or project or part of any business, undertaking or project; or
- (b) any combination of businesses, undertakings or projects or parts of businesses, undertakings or projects; or
- (c) any service provided by an Agency or State authority that is not an Agency or by part of an Agency or such a State authority; or
- (d) any combination of services provided by Agencies or State

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

authorities that are not Agencies  
or by parts of Agencies or such  
State authorities;

***enterprise agreement*** means an agreement  
referred to in section 61B;

***Full Bench*** means a Full Bench of the  
Commission constituted in accordance  
with section 14;

***full-time employee***, unless prescribed  
otherwise in an Act, award or agreement,  
means a person engaged to work full-  
time employment;

***full-time employment***, unless prescribed  
otherwise in an Act, award or agreement,  
means the employment of an employee  
for 38 ordinary hours per week;

***functions*** includes duties;

***Government department*** means –

- (a) a department established under  
the *State Service Act 2000*; or
- (b) the Police Service;

***industrial agreement*** means an agreement  
referred to in section 55(1);

***industrial dispute*** means a dispute in relation  
to an industrial matter –

- (a) that has arisen; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

- 
- (b) that is likely to arise or is threatened or impending;

***industrial matter*** means any matter pertaining to the relations of employers and employees and, without limiting the generality of the foregoing, includes –

- (a) a matter relating to –
- (i) the mode, terms and conditions of employment; or
  - (ii) the termination of employment of an employee or former employee; or
  - (iii) the reinstatement or re-employment of an employee or a former employee who has been unfairly dismissed; or
  - (iv) the payment of compensation to an employee or a former employee if the Commission determines that reinstatement or re-employment is impracticable; or
  - (v) severance pay for an employee or a former employee whose

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

employment is to be, or  
has been, terminated as a  
result of redundancy; or

- (vi) a dispute under the *Long Service Leave Act 1976* or the *Long Service Leave (State Employees) Act 1994* relating to an entitlement to long service leave, or payment instead of any such leave, or the rate of ordinary pay at which any such leave or payment is to be paid in respect of an employee or former employee; or

- (b) a breach of an award or a registered agreement –

but does not include a matter relating to –

- (c) the opening or closing hours of an employer's business premises;

- (d) . . . . .

- (e) compensation payable to employees in respect of injuries or diseases suffered in the course of their employment;

- (ea) . . . . .

- (f) the preferential employment or non-employment of a particular



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

---

person or class of persons who  
are or are not members of an  
organization;

(g) a bonus payment made at the  
discretion of an employer;

(h) the insurance of employees; or

(i) appointments, or promotions,  
other than in respect of the  
qualifications required for  
advancement;

(j) . . . . .

***industry*** means any industry, trade, business,  
undertaking, profession, calling,  
function, process, or work performed,  
carried on, or engaged in by a private  
employer;

***inspector*** means an inspector appointed and  
holding office under section 74(2), and  
includes the Secretary;

***intervener*** means an intervener pursuant to  
section 27;

***joint proceedings*** means proceedings in which  
a Commissioner sits with a member of  
the Australian Commission pursuant to  
section 17;

***officer*** means a person appointed pursuant to  
section 18;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

***ordinary hourly or weekly rate of pay*** means the wages paid to an employee in respect of his or her ordinary working hours;

***organization*** means an organization registered under Part V;

***outworker*** means a person who performs for an employer work related to the manufacture of a garment outside the employer's premises;

***part-time employee***, unless prescribed otherwise in an award or agreement, means a person who is engaged to work part-time employment;

***part-time employment***, unless prescribed otherwise in an award or agreement, means employment –

(a) that is performed by an employee on a regular basis for less hours per day or week than the ordinary hours of an equivalent full-time employee; and

(b) the hours of which may vary from time to time but will generally remain constant from day to day or week to week;

***powers*** includes authorities;

***President*** means the President of the Commission appointed under section 5(2A)(a);

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

---

***principal officer*** means, in relation to a State authority that is not an Agency, the president, chairman, or other principal or presiding member of the authority or, if the authority comprises a single person, that person;

***private employee*** means an employee other than –

- (a) a State employee; or
- (b) an employee who is appointed under section 25 or 31 of the *State Service Act 2000*; or
- (c) an employee whose remuneration is specified in any Act, determined under the *Statutory Salaries Act 1979* or determined by the Governor under any Act;
- (d) . . . . .

***private employer*** means an employer of a private employee, and includes every managing director or manager of any body corporate, partnership, firm, or association and, in the case of an unincorporated association, includes its secretary and every member of its governing body by whatever name called;

***probationary employment***, unless prescribed otherwise in an Act, award or agreement,

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

means employment of an employee for a probationary or trial period;

***probationary or trial period*** means a period of employment, for the purpose of determining an employee's suitability for continuing employment, which –

- (a) unless prescribed otherwise in an Act, award or agreement, does not exceed 6 months from the date of commencement of employment; and
- (b) is stipulated in writing at the time of engagement; and
- (c) is relevant to the work to be performed; and
- (d) is reasonable and appropriate in the context of acquiring the skills and experience necessary to satisfactorily perform the duties of the job;

***proclaimed day*** means the day fixed by proclamation under section 2(2);

***registered agreement*** means –

- (a) an industrial agreement registered under Part IV; or
- (b) an enterprise agreement registered under Part IVA;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 3

---

**Registrar** means the person appointed and holding office pursuant to section 18(1) as Registrar of the Commission;

**regulations** means regulations made and in force under this Act;

**RSA** means a Retirement Savings Account within the meaning of the *Retirement Savings Accounts Act 1997* of the Commonwealth;

**Secretary**, in relation to a provision, means the Head of the Agency within the meaning of the *State Service Act 2000* within which the provision is administered;

**State authority** means a body or authority, whether incorporated or not, which is established or constituted by or under an Act or under the royal prerogative, being a body or authority which, or of which, the governing authority, wholly or partly, comprises a person or persons appointed by the Governor, a Minister, or another State authority, but does not include a Government department;

**State employee** means a person who is employed in an Agency or by a State authority that is not an Agency other than a person –

- (a) who is appointed under section 25 or 31 of the *State Service Act 2000*; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 3

Part I – Preliminary

---

(b) whose remuneration is specified in any Act, determined under the *Statutory Salaries Act 1979* or determined by the Governor under any Act;

(c) . . . . .

*wages* includes salary.

(2) . . . . .

(3) For the purposes of this Act, unless the contrary intention appears, an organization has an interest in –

(a) an award if, in its certificate of registration issued and in force under section 64, that award is specified as one in which a Commissioner has determined, under section 63(10)(c) or 65A(3), that that organization has an interest; and

(b) a matter referred to in section 35(6) if –

(i) the membership of that organization consists of or includes members who are employers or employees in an industry or occupation to which that matter relates or who are State employees to whom that matter relates; and

(ii) that membership is consistent with the organization's rules or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part I – Preliminary

s. 4

---

constitution lodged with the Registrar pursuant to section 63(1) or consistent with those rules or that constitution as altered, in the case of an organization to which subsection (1) of section 67 applies, with the approval of the Registrar required under that subsection.

(4) . . . . .

(5) If a question arises as to whether a body or an authority is or is not a State authority for the purposes of this Act, that question shall be determined by the Governor, and the Governor may accordingly, by order, declare that body or authority to be or not to be a State authority for the purposes of this Act.

(6) An order under subsection (5), on being published in the *Gazette*, is conclusive evidence of what is declared in it.

**4. Crown bound by Act**

This Act binds the Crown not only in right of Tasmania but also, so far as the legislative power of Parliament permits, binds the Crown in all of its other capacities.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 5

Part II – Tasmanian Industrial Commission

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**PART II – TASMANIAN INDUSTRIAL COMMISSION**

*Division 1 – Constitution, &c., of the Commission*

**5. Constitution of the Commission**

- (1) There is constituted by this Act a body to be known as the “Tasmanian Industrial Commission”.
- (2) Subject to this section, the Commission consists of –
  - (a) the President of the Commission appointed under subsection (2A)(a); and
  - (b) the Deputy President of the Commission appointed under subsection (2A)(b); and
  - (c) the other Commissioners appointed under subsection (2A)(c).
- (2A) The Governor is to appoint –
  - (a) a person to be a Commissioner and to be the President of the Commission; and
  - (b) a person to be a Commissioner and to be the Deputy President of the Commission; and
  - (c) one or more persons to be Commissioners.
- (2B) The Governor is to appoint under subsection (2A)(c) at least one person to be a Commissioner but may, under that subsection,



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

s. 5

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appoint the number, of persons, that the Governor thinks fit.

- (3) The Minister shall, before a person is appointed or re-appointed as a Commissioner, consult officers of such associations or organizations as he considers appropriate with regard to the proposed appointment or re-appointment.
- (4) A person shall not be appointed or re-appointed as a Commissioner unless—
  - (a) he is a person who, in the opinion of the Governor, has had extensive experience in industrial relations;
  - (b) he is a person who—
    - (i) is or has been an Australian legal practitioner, of not less than 5 years' standing;
    - (ii) has served at a high level in a position or office in an industry or the trade union movement or in the service of a government or an authority of a government; or
    - (iii) has obtained a degree of a university or an educational qualification of a similar standard, after studies in the field of law, economics, or industrial relations or some other field of study considered by the Governor to have substantial relevance to

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 6

Part II – Tasmanian Industrial Commission

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the functions of a Commissioner;  
or

(iv) has demonstrated understanding  
of public sector administration;  
and

(c) he is, in the opinion of the Governor, by  
reason of his qualifications, experience,  
and standing in the Australian  
community, a fit and proper person to  
discharge the functions of a  
Commissioner.

(5) . . . . .

**6. Provisions relating to appointment of  
Commissioners**

(1) Subject to sections 11 and 12, a person –

(a) who is appointed under section 5(2A) –

(i) as a Commissioner and as the  
President of the Commission  
holds office for the period, of not  
more than 7 years, specified in  
the person's instrument of  
appointment; or

(ii) as a Commissioner and as the  
Deputy President of the  
Commission holds office for the  
period, of not more than 7 years,  
specified in the person's  
instrument of appointment; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

s. 6

- 
- (iii) as a Commissioner but not as the President, or the Deputy President, of the Commission holds office for the period, of not more than 3 years, specified in the person's instrument of appointment; and
  - (b) is to be appointed on the terms and conditions that are specified in the person's instrument of appointment; and
  - (c) may be re-appointed as a Commissioner, as the President, or as the Deputy President, of the Commission.
- (2 - 2A) . . . . .
- (3) A Commissioner is entitled to such remuneration and allowances, and such other terms and conditions of employment not inconsistent with subsection (1), as the Governor may from time to time determine in respect of him.
  - (4) A Commissioner shall not –
    - (a) without the permission of the Governor, hold any other office of profit or engage in any paid employment outside the functions of his office; or
    - (b) hold any other office or any position the holding of which, in the opinion of the Governor, is inconsistent with the functions of his office.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 6

Part II – Tasmanian Industrial Commission

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- (5) A Commissioner is an employee for the purposes of –
- (a) the *Public Sector Superannuation Reform Act 2016*; and
  - (b) the *Long Service Leave (State Employees) Act 1994*; and
  - (ba) the *Asbestos-Related Diseases (Occupational Exposure) Compensation Act 2011*; and
  - (c) the *Workers Rehabilitation and Compensation Act 1988*.
- (6) If a State employee is appointed to the office of a Commissioner, he is entitled to retain all his existing and accruing rights as if his service in that office were a continuation of his service as such an employee.
- (7) Where a person referred to in subsection (6) ceases to be a Commissioner and becomes a State employee, his service as a Commissioner shall be regarded as service as a State employee for the purposes of determining his rights as such an employee.
- (8) Despite subsection (4), a person who holds –
- (a) office as a member, other than the President, of the Fair Work Commission established under the *Fair Work Act 2009* of the Commonwealth may, with the prior agreement of the Minister for the time being administering that Act, be

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 6A**

---

appointed under section 5(2A) as a Commissioner, the President, or the Deputy President, of the Commission; or

- (b) a similar office in a commission or similar body with jurisdiction in relation to industrial matters that is constituted under an enactment of another State or of a Territory of the Commonwealth may, with the prior agreement of the Minister for the time being administering that enactment, be appointed under section 5(2A) as a Commissioner, the President, or the Deputy President, of the Commission.

6A. . . . .

**7. Oath or affirmation of office**

- (1) A Commissioner shall, before proceeding to discharge the functions of his office, take before a judge an oath or affirmation in accordance with the form in Schedule 1.
- (2) A person appointed under section 10(2) to act in the office of a Commissioner shall, before proceeding to act in that office, take before a judge an oath or affirmation, being an oath or affirmation that, subject to any necessary modifications, is in accordance with the form in Schedule 1.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 8

Part II – Tasmanian Industrial Commission

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**8. Judicial notice of official signatures of Commissioners**

All courts, judges, and persons acting judicially shall take judicial notice of the official signature of a Commissioner on a document and shall, unless the contrary is established, presume that the document was duly signed by the Commissioner.

**9. Protection of Commissioners**

A Commissioner has, in the performance of his functions as a Commissioner, the same protection and immunity as a judge.

**10. Substitute to act during absence of certain Commissioners**

- (1) Where the Deputy President is unable to act in his office, whether on account of illness or for any other cause, the Governor may appoint another Commissioner to act in that office for the period that the Deputy President is unable to so act.
- (2) Subject to subsections (3) and (6), where a Commissioner, other than the President or the Deputy President, is unable to act in his office, whether on account of illness or for any other cause, the Governor may appoint a person who has the experience and qualifications prescribed by section 5(4) to act in that office for the period that that Commissioner is unable to act.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 10**

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- (3) The Minister shall, before a person is appointed under subsection (2) to act in the office of a Commissioner, consult officers of such associations or organizations as he considers appropriate with regard to the proposed appointment.
- (4) The Deputy President shall, for the purposes of subsection (1), be deemed to be unable to act in his office if he is acting in the office of the President pursuant to section 15(4).
- (5) A Commissioner shall, for the purposes of subsection (2), be deemed to be unable to act in his office if there is a vacancy in that office which has not been filled.
- (6) . . . . .
- (7) Subject to subsection (8), the provisions of sections 6(3) and (4), 9, and 12 apply to a person appointed under subsection (2) as if he were a Commissioner.
- (8) Notwithstanding the provisions of section 6(4), as applied by subsection (7), a person who holds —
- (a) office as a member, other than the President, of the Australian Commission may, with the prior agreement of the Minister for the time being administering the Commonwealth Act, be appointed under subsection (2); or
  - (b) a similar office in a commission or similar body with jurisdiction in relation

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 10A**

Part II – Tasmanian Industrial Commission

---

to industrial matters that is constituted under an enactment of another State or of a Territory of the Commonwealth may, with the prior agreement of the Minister for the time being administering that enactment, be appointed under that last-mentioned subsection.

- (9) A person, while acting in the office of the Deputy President or any other Commissioner pursuant to this section, has, and may exercise, all the powers of the Deputy President or that other Commissioner, as the case may be, under this Act and shall perform all the functions of the Deputy President or that other Commissioner under this Act.
- (10) Anything done or omitted to be done by a person while acting under this section in the office of Deputy President or any other Commissioner is as valid as if done or omitted to be done by the Deputy President or other Commissioner.
- (11) A person is not required to inquire whether or not any occasion has arisen requiring or authorising a person to act in the office of the Deputy President or any other Commissioner.

10A. . . . .

**11. Removal and suspension of Commissioners**

- (1) Except on resolutions presented to the Governor by both Houses of Parliament praying for his



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

---

removal from office on the ground of incompetence or misbehaviour, the Governor shall not remove a Commissioner from office unless he –

- (a) holds another office of profit, or engages in paid employment outside the functions of his office, without the permission of the Governor;
- (b) holds another office or a position the holding of which, in the opinion of the Governor, is inconsistent with the functions of his office;
- (ba) . . . . .
- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration or estate for their benefit;
- (d) is convicted in Tasmania of a crime or an offence which is punishable by imprisonment for 6 months or upwards, or unless he is convicted elsewhere than in Tasmania of an offence which, if committed in Tasmania, would be a crime or an offence so punishable or unless he has been convicted, whether in Tasmania or elsewhere, of a crime or an offence for which he has been sentenced to imprisonment;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 11

Part II – Tasmanian Industrial Commission

---

- (e) absents himself from the functions of his office, except on leave granted by the Governor; or
  - (f) becomes, in the opinion of the Governor, permanently incapable of performing the functions of his office.
- (2) The Governor may suspend a Commissioner from office on the grounds of incompetence or misbehaviour.
- (3) . . . . .
- (4) Where a Commissioner has been suspended by the Governor, the Commissioner shall be restored to his office unless –
  - (a) a statement of the grounds of the suspension is laid before each House of Parliament during the first 7 sitting days of that House following the suspension; and
  - (b) each House of Parliament, within 30 sitting days after the statement is so laid before it, passes a resolution requesting the Governor to remove him from office on the grounds of incompetence or misbehaviour.
- (5) Where a Commissioner is suspended from office under subsection (2) and each House of Parliament does not pass a resolution, within the period referred to in subsection (4)(b), requesting the Governor to remove that person from office, the Commissioner shall be entitled

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

to receive his full salary and allowances in respect of the period during which he was suspended.

(6) . . . . .

**12. Resignation from office**

- (1) Subject to subsection (2), a Commissioner may resign his office by writing under his hand addressed to the Governor.
- (2) A resignation under subsection (1) takes effect on the day on which it is received by the Governor or on such later day as is specified in the writing containing the resignation.

**13. Exercise of powers and jurisdiction of the President and the Commission**

- (1) The President has the jurisdiction expressly conferred on him by this Act and, in the exercise of that jurisdiction, he constitutes the Commission and he has, and may exercise, such powers of the Commission as may be necessary or appropriate for that purpose.
- (2) A Commissioner, other than the President, sitting or acting alone, constitutes the Commission and, except as otherwise provided in this Act, he has, and may exercise, while so sitting or acting, all the powers and jurisdiction of the Commission.
- (3) Where more than one Commissioner is sitting or acting at the same time in the exercise of the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 14**

Part II – Tasmanian Industrial Commission

---

jurisdiction of the Commission, each such Commissioner constitutes the Commission.

**14. Constitution of Full Bench of Commission**

- (1) A Full Bench of the Commission is constituted by at least 3 members of the Commission one of whom, wherever practicable, must be the President or the Deputy President.
- (2) In a proceeding before a Full Bench, the decision of a majority of the members shall be the decision of the Full Bench.

**15. General functions and powers of President**

- (1) Subject to this section, the President shall –
  - (a) allocate for hearing and determination by a Commissioner sitting alone applications for awards or for the variation of awards;
  - (ab) refer to a Commissioner sitting alone –
    - (i) applications under section 63(1) for the purpose of his making a determination referred to in section 63(10)(b); and
    - (ii) applications under section 65A(1) for the purpose of his making a determination referred to in section 65A(2);

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- (b) determine whether matters arising under this Act should be referred to a Full Bench;
- (c) appoint Commissioners to constitute Full Benches and refer to those Benches –
  - (i) matters that he has determined, under paragraph (b), to be matters that should be referred to those Benches; and
  - (ii) applications made to him under section 67(7) and under section 68;
- (d) allocate for hearing and determination by a Commissioner applications in respect of industrial disputes;
- (da) allocate for hearing by a Commissioner an agreement filed under section 55 or lodged under section 61H; and
- (e) refer disputes with respect to long service leave as provided by or under the relevant Act to a Commissioner for determination by him under the provisions of the *Long Service Leave Act 1976* or the *Long Service Leave (State Employees) Act 1994*;
- (f) appoint Commissioners to constitute Full Benches to hear –
  - (i) applications for awards or for the variation of awards;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 15

Part II – Tasmanian Industrial Commission

---

- (ii) appeals under sections 70(1) and 82; and
- (iii) as provided under the relevant Act, appeals against determinations of a Commissioner concerning disputes with respect to long service leave under the provisions of the *Long Service Leave Act 1976* or the *Long Service Leave (State Employees) Act 1994*;
- (g) appoint Commissioners to conduct arbitrations under section 61;
- (h) make declarations pursuant to section 43;
- (i) appoint Commissioners to hear applications under sections 79 and 81; and
- (j) appoint a Commissioner to hear an application for an order under section 75(7A); and
- (k) appoint a Commissioner to hear an application for review under section 50 of the *State Service Act 2000*; and
- (l) appoint 2 Commissioners to constitute, together with the President, a Full Bench to perform the functions, and exercise the powers, conferred on the Commission under the *Parliamentary Salaries, Superannuation and Allowances Act 2012*.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

---

(2) The President is not precluded from –

- (a) allocating to himself or herself for hearing and determination an application of a type referred to in subsection (1); or
- (b) subject to section 70(2), appointing himself or herself to a Full Bench.

(2A) . . . . .

(3) The President may –

- (a) give directions to the Registrar for the purposes of this Act; and
- (b) do all things necessary or convenient to be done, other than employ persons, for or in connection with, or as incidental to, the performance of his functions under subsection (1).

(4) Where the President is unable to act in his office, whether on account of illness or for any other cause, or where there is a vacancy in the office of President, the Deputy President shall act in the office of the President.

(5) The Deputy President, while acting in the office of President pursuant to subsection (4), has, and may exercise, all the powers of the President under this Act and shall perform the functions of the President under this Act.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 16

Part II – Tasmanian Industrial Commission

---

**16. Reference of industrial matters to Australian Commission for determination under this Act**

- (1) In respect of an industrial matter within the jurisdiction of a Commissioner sitting or acting alone, the President may, where in his opinion it is appropriate to do so, request the President of the Australian Commission to nominate a member of the Australian Commission to deal with the whole or any part of that matter.
- (2) Where, in accordance with a request under subsection (1), the President of the Australian Commission nominates a member of the Australian Commission, the President of the Commission may refer the whole or part of the industrial matter in respect of which the request was made to the member to be inquired into and to be dealt with under this Act by conciliation, by arbitration, or by conciliation and, if necessary, by arbitration, and, after affording the parties an opportunity to be heard, may, at any time before a decision is made by the member in relation to the industrial matter, revoke the reference.
- (3) For the purposes of inquiring into and dealing with the whole or part of an industrial matter that has been referred to him under subsection (2), the member of the Australian Commission may exercise all the powers of the Commission under this Act that are exercisable by a Commissioner sitting alone and in the exercise of those powers shall be deemed to be the Commission.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- 
- (4) Without limiting subsection (3), a decision made by a member of the Australian Commission in relation to an industrial matter referred to him under subsection (2) shall, for the purposes of this Act, be deemed to be an award or order, as the case may require, made by the Commission under this Act.
  - (5) For the purposes of sections 8, 9, and 13, a member of the Australian Commission appointed pursuant to this section is a Commissioner.

**17. Power of Commission to sit in joint proceedings**

- (1) In respect of a matter within the jurisdiction of a Commissioner sitting or acting alone, where proceedings on the same or a similar matter have been commenced, or are likely to commence, before the Australian Commission, if the President and the President of the Australian Commission agree that the matter should be dealt with in joint proceedings, the President shall nominate a Commissioner to sit in those proceedings.
- (2) Notwithstanding that a Commissioner sits in joint proceedings in respect of a matter, the Commissioner shall continue to be, and shall continue to exercise and perform the powers and functions of, a Commissioner sitting or acting alone in respect of that matter.
- (3) After consultation with the President of the Australian Commission and affording the parties an opportunity to be heard, the President may, at

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 18

Part II – Tasmanian Industrial Commission

---

any time and on such terms as he thinks fit, determine that a matter should not be dealt with in joint proceedings.

- (4) Where the President makes a determination under subsection (3) after joint proceedings have commenced, the Commissioner concerned –
  - (a) shall cease to sit in those joint proceedings; and
  - (b) may continue to deal with that matter in proceedings other than joint proceedings.

**18. Staff of Commission**

- (1) The Minister administering the *State Service Act 2000* is to appoint a State Service officer or State Service employee to be Registrar of the Commission and that officer or employee is to hold that office in conjunction with State Service employment.
- (1A) Subject to and in accordance with the *State Service Act 2000*, there may be appointed persons for the purposes of assisting the Commission in the carrying out of its powers and functions under this Act.
- (2) Subject to this Act, the Registrar is responsible to the President for the organization of the work of persons appointed under subsection (1A).
- (3) . . . . .
- (4) Subject to the directions of the President, the Registrar –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- (a) has and may exercise such powers as are conferred, and shall perform such functions as are imposed, on him by this Act;
- (b) shall cause to be kept such records of the proceedings of the Commission as are prescribed in the regulations; and
- (c) has and may exercise such powers, and shall perform such other functions, as are prescribed in the regulations.

***Division 2 – Jurisdiction, functions and powers of the Commission***

**19. Jurisdiction of Commission**

- (1) Subject to this Act, the Commission has jurisdiction to hear and determine any matter arising from, or relating to, an industrial matter.
- (2) For the purposes of subsection (1), the Commission may –
  - (a) make, vary, rescind or correct an award or order;
  - (aa) conduct dispute resolutions in accordance with section 19A;
  - (b) make a declaration for the purposes of section 43;
  - (c) conduct hearings for settling industrial disputes;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 19AA**

Part II – Tasmanian Industrial Commission

---

- (ca) hear and determine an application for approval of an agreement made under section 55 or section 61H; and
- (d) conduct arbitrations under section 61;
- (da) hear and determine applications under Part V;
- (e) hear and determine appeals under Part VI and Part VIII;
- (f) sit in joint proceedings;
- (g) cancel, under section 68, the registration of an organization; and
- (h) hear and determine applications under sections 79 and 81.

**19AA. Commission to review matters under section 50 of the *State Service Act 2000***

- (1) The Commission is to review a matter in respect of which an application for review has been made to it under section 50(1) of the *State Service Act 2000*.
- (2) The Commission may refer any matter in respect of which an application for review has been made to it under section 50(1) of the *State Service Act 2000* to the Ombudsman, the Integrity Commission or the Anti-Discrimination Commissioner or any other person or body that may be prescribed in the regulations.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 19AB**

- (3) A person is not entitled to make application to the Full Bench of the Commission in respect of a matter referred to in section 50(1) of the *State Service Act 2000*.

**19AB. Commission to determine remuneration, &c., of members of Parliament**

A Full Bench of the Commission constituted in accordance with section 15(1)(l) is to perform the functions, and exercise the powers, conferred on the Commission under the *Parliamentary Salaries, Superannuation and Allowances Act 2012*.

**19A. Commission may conduct dispute resolutions**

- (1) A person may apply to the Commission to have a dispute resolution process conducted by the Commission in relation to a matter or matters in dispute if –
- (a) the parties to the dispute are bound by a federal workplace agreement; and
  - (b) the Commission is authorised or permitted to conduct the dispute resolution process –
    - (i) under dispute settlement procedures (within the meaning of section 353 of the Commonwealth Act) set out in the agreement; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 19A**

Part II – Tasmanian Industrial Commission

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- (ii) if no such dispute settlement procedures are set out in the agreement, under the federal model dispute resolution process.
- (2) On any such application, the Commission may perform such functions and may exercise such powers with respect to the resolution of the dispute as are imposed or conferred on it by or under –
  - (a) the federal workplace agreement concerned or federal model dispute resolution process (as the case may be); and
  - (b) the Commonwealth Act.
- (3) The Commission is to be constituted by a single member of the Commission unless the federal workplace agreement concerned, federal model dispute resolution process or Commonwealth Act (as the case may be) requires otherwise.
- (4) Subject to subsection (5), the performance of a function or the exercise of a power imposed or conferred on the Commission as referred to in subsection (2) is, for the purposes of any other provision of this Act, taken not to have been performed or exercised under this Act.
- (5) The functions or powers that the Commission is authorised or permitted to perform or exercise as referred to in this section are in addition to, and do not derogate from, any other function or power of the Commission.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

s. 20

---

(6) Nothing in this section –

- (a) makes any order, determination or other decision of the Commission, in respect of the dispute, binding on the parties to the dispute unless the federal workplace agreement concerned, federal model dispute resolution process or Commonwealth Act (as the case may be) operates to make any such order, determination or decision binding on the parties; or
- (b) limits the operation of section 61.

(7) In this section –

*federal model dispute resolution process*  
means the model dispute resolution process within the meaning of the Commonwealth Act;

*federal workplace agreement* means a workplace agreement within the meaning of the Commonwealth Act.

**20. Commission to act according to equity and good conscience**

- (1) In the exercise of its jurisdiction under this Act, the Commission –
  - (a) shall act according to equity, good conscience, and the merits of the case without regard to technicalities or legal forms;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 21

Part II – Tasmanian Industrial Commission

---

- (b) shall do such things as appear to it to be right and proper for effecting conciliation between parties, for preventing and settling industrial disputes, and for settling claims by agreement between parties;
  - (c) is not bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just; and
  - (d) shall have regard to the public interest.
- (2) The Commission has the power to deal with an industrial dispute referred to it in accordance with the Commonwealth Act.
- (3) In the exercise of its jurisdiction under this Act, the Commission is not restricted to the specific claim made or to the subject-matter of the claim.
- (4) Where the Commission, in deciding any matter before it, proposes or intends to take into account any matter or information that was not raised before it on the hearing of the matter, the Commission shall, before deciding the matter, notify the parties concerned and afford them the opportunity of being heard in relation to that matter or information.

**21. Procedure of Commission and associated matters**

- (1) Subject to this Act, the Commission may regulate its own procedure.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- 
- (2) Without prejudice to the generality of subsection (1), the Commission may, in relation to a matter before it –
- (a) at or before the commencement of proceedings before the Commission, ascertain whether all private employers referred to in section 66(1) who, and all organizations the members of which, in the opinion of the Commission, may be subject to an award made by the Commission, have been summoned to attend the proceedings, or have been given notice of those proceedings;
  - (b) direct that organisations or persons be summoned to attend those proceedings;
  - (c) at any stage of those proceedings, dismiss a matter or a part of a matter, or refrain from further hearing, or determining, the matter or part if the Commission is satisfied –
    - (i) that the matter or part is trivial;
    - (ii) that further proceedings are not necessary or desirable in the public interest; or
    - (iii) . . . . .
    - (iv) that, for any other reason, the matter or part should be dismissed or the hearing of those proceedings should be discontinued, as the case may be;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 21

Part II – Tasmanian Industrial Commission

---

- (d) take evidence on oath or affirmation;
- (e) proceed to hear and determine the matter or any part of the matter in the absence of any party to it who has been duly summoned to appear or been duly served with notice of those proceedings;
- (f) sit at any place;
- (g) adjourn to any time and place;
- (h) direct any person, whether a witness or intending witness or not, to leave the place in which those proceedings are being conducted;
- (i) refer any matter to an expert and accept his report as evidence;
- (j) permit the intervention, on such terms as it thinks fit, of an organization which, in the opinion of the Commission, is sufficiently interested in that matter;
- (k) allow the amendment, on such terms as it thinks fit, of those proceedings or a document relating to that matter;
- (l) correct, amend, or waive any error, defect, or irregularity;
- (m) extend any time –
  - (i) prescribed by or under this Act, except a time prescribed in relation to an appeal; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- (ii) fixed by an order of the Commission; and
- (n) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of that matter.
- (3) Any person, not being a private employer or member of an association referred to in section 66, or an intervener, who attends proceedings before the Commission to give evidence as a witness when so summoned to do so is entitled to be paid such fees, allowances, and sums by way of reimbursement of expenses as are prescribed in the regulations.

**22. Powers of inspection**

- (1) In this section, *inspecting officer* means a Commissioner or an officer authorized as provided in subsection (2).
- (2) Subject to such conditions as may be prescribed in the regulations, a Commissioner, or an officer authorized in writing for that purpose by the Commission, may, at any time during working hours, enter and remain in any place or premises or any vehicle or vessel in or in respect of which an industry is, or is reputed to be, carried on or any work is being, or has been, done or commenced, or a matter or thing is taking place or has taken place, in relation to which an industrial matter exists or an award or a registered agreement has been made or is being sought.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 22

Part II – Tasmanian Industrial Commission

---

- (3) Where an inspecting officer enters any place or premises, or any vehicle or vessel, referred to in subsection (2) in the exercise of the power conferred on him by that subsection, he may –
- (a) inspect or view any work, material, machinery, appliance, article, book, paper, document, or other thing in the place, premises, vehicle, or vessel; and
  - (b) question any person in or on the place, premises, vehicle, or vessel in respect of, or in relation to, any matter or thing that is taking place or has taken place there in relation to which an industrial matter exists or an award or a registered agreement has been made or is being sought.
- (4) A person who –
- (a) obstructs, hinders, delays, threatens, or assaults an inspecting officer in the exercise of his powers under this section;
  - (b) fails to comply with a request of an inspecting officer, or to answer questions asked by an inspecting officer, made under any such power when it is within his power to comply with the request;
  - (c) gives an answer to such a question which, to his knowledge, is false or misleading in a material particular; or
  - (d) intentionally conceals a person from an inspecting officer or prevents a person

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 23**

from appearing before or being  
questioned by an inspecting officer for  
the purposes of this Act or attempts so to  
conceal or prevent a person –

is guilty of an offence and is liable on summary  
conviction to a fine not exceeding 10 penalty  
units.

***Division 3 – Proceedings before the Commission***

**23. Applications for awards and variations of awards**

- (1) An application for an award or the variation of an award made to the Commission shall –
  - (a) be in accordance with the form prescribed in the regulations;
  - (b) contain the name of the award sought to be made or varied;
  - (c) contain the name or names of the applicant or applicants; and
  - (d) contain a statement giving –
    - (i) full particulars of the award sought to be made or varied; and
    - (ii) in the case of an application by an organization referred to in section 24(2) or 25(2) – particulars of the interest that the applicant has in the making of the award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 24

Part II – Tasmanian Industrial Commission

---

- (2) Where an application for an award or the variation of an award is made to the Commission in accordance with this Act, the Commission shall –
  - (a) immediately cause a copy of the application to be given to all other organizations which have an interest in the application;
  - (b) fix a time and place for the hearing; and
  - (c) cause to be given written notice of that time and place to an organization which has an interest in the application.
- (3) An organization that does not have an interest in an application referred to in subsection (1) may, on payment of the prescribed fee, obtain a copy of the application from the Commission.

**24. Award hearings before Commissioner sitting alone**

- (1) The hearing of an application made as provided by section 23, other than an application in respect of a matter to which section 35(1) relates, shall be conducted by the Commission constituted by a Commissioner sitting alone.
- (2) An application referred to in subsection (1) may be made to the Commission by –
  - (a) an organization of private employers with an interest in the award to which the application relates;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- (b) an employee organization with an interest in the award to which the application relates;
  - (c) the Tasmanian Trades and Labor Council;
  - (d) a controlling authority of State employees subject to the award to which the application relates; or
  - (e) the Minister, if, in his opinion, the application is one that, in the public interest, is appropriate to be dealt with by the Commission.
- (3) Proceedings before the Commission, constituted as mentioned in subsection (1), with respect to an industrial matter may, if the President or a Full Bench so directs, be commenced on the motion of the Commission.
- (4) A Commissioner who conducts the hearing of an application in relation to an award may refer the application to the President if the Commissioner considers that the application –
  - (a) directly affects another award; or
  - (b) is so important that it is in the public interest to have the matter dealt with by a Full Bench.
- (4A) A party to the hearing of an application may request the Commissioner to refer the application to the President.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 25

Part II – Tasmanian Industrial Commission

---

- (4B) A party to the hearing of an application intending to request the Commissioner to refer the application to the President is to notify the Commissioner and the other parties to the hearing of that intention before the day on which the hearing is scheduled to commence.
- (4C) Subject to subsection (4D), the Commissioner must refer an application to the President if requested to do so by a party to the hearing of the application.
- (4D) The Commissioner may refer an application to the President after the commencement of the hearing of the application only if, in the Commissioner's opinion, issues have emerged during the hearing which –
  - (a) could not reasonably have been foreseen at the commencement of the hearing; and
  - (b) satisfy the criteria set out in subsection (4).
- (5) After conducting a hearing into an application made to him under this section, a Commissioner may, subject to section 36, make or refuse to make an award in relation to the subject-matter of the application.

**25. Award hearings before Full Bench**

- (1) The hearing of an application, made as provided by section 23, in respect of a matter to which section 35(1) applies shall be conducted by the Commission constituted by a Full Bench.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- 
- (2) An application referred to in subsection (1) may be made to the Commission by –
- (a) an organization of private employers that has an interest in the award to which the application relates;
  - (b) subject to subsection (3), an employee organization that has an interest in the award to which the application relates;
  - (c) the Tasmanian Trades and Labor Council;
  - (d) a controlling authority of State employees subject to the award to which the application relates; or
  - (e) the Minister, if, in his opinion, the application is one that, in the public interest, is appropriate to be dealt with by the Commission.
- (3) An application under subsection (2)(b) shall not be heard unless –
- (a) the organization that made the application is the only organization that has members subject to the award to which the application relates; or
  - (b) notwithstanding that another organization has an interest in the award to which the application relates, the President, having regard to the subject-matter of the application and its likely effect on the members of any other

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 26

Part II – Tasmanian Industrial Commission

---

employee organization, considers the hearing of the application and the making of an award in relation to that subject-matter would not prejudice the orderly conduct of industrial relations in Tasmania.

- (4) Proceedings before the Commission constituted by a Full Bench with respect to an industrial matter may, if the President so directs, be commenced on the motion of the Commission.
- (5) The Commission shall cause notice of an application to which this section applies to be published in a newspaper published at Hobart, a newspaper published at Launceston, and a newspaper published at Burnie, and any such notice shall –
  - (a) state the matter to which the application relates; and
  - (b) state the time and place at which the Commission will conduct a hearing on the application.
- (6) After conducting a hearing on an application to which this section applies, the Commission may, subject to section 36, make an award in relation to the subject-matter of the application.

**26. Proceedings may be in public or private**

- (1) The proceedings of the Commission shall be conducted in public unless, at any stage of the proceedings, the Commission, of its own motion

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

---

or on the application of any of the parties, directs that the proceedings be conducted in private.

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

**27. Intervention and appearances**

- (1) The Minister may intervene in the public interest or otherwise in any proceedings before the Commission.
- (2) An organization may, with the leave of the Commission, intervene in any proceedings before the Commission.
- (3) The Minister for the time being administering the Commonwealth Act may, on behalf of the Commonwealth, by giving to the Registrar written notice of his intention to do so, and with the leave of the Commission, intervene on behalf of the Commonwealth in any proceedings before the Commission in which that Minister considers that the Commonwealth has a sufficient interest to warrant intervention.
- (4) Subsections (2) and (3) do not apply to proceedings under Part IVA.
- (5) A person having a direct interest in any proceedings before the Commission may apply

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 28

Part II – Tasmanian Industrial Commission

---

to the Commission for leave to appear and be heard in those proceedings.

- (6) The Commission, if satisfied that the person has a direct interest in the proceedings before it, must grant an application under subsection (5).

**28. Representation**

- (1) Subject to this section, a party to any proceedings before the Commission, or before the Registrar under Part V, may appear in person or by his agent.
- (2) In subsection (1), *party* includes an intervener.
- (3) An association referred to in section 63(1) or an organization shall be deemed to have appeared in person in proceedings before the Commission or the Registrar if it is represented by an officer or employee of the association or organization.
- (4) A party appearing by an agent in any proceedings before the Commission or the Registrar is bound by the acts of that agent.
- (5) The following persons are not entitled to be agents for the purposes of subsection (1) except with the leave of the Commission or the Registrar:
- (a) a barrister or practitioner;
  - (b) an interstate legal practitioner and an Australian-registered foreign lawyer.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

(6) Where a State employee or an officer or employee of an organization is a barrister or practitioner, nothing in subsection (5) prevents that State employee, officer, or employee from appearing as the agent for a party to any proceedings before the Commission or the Registrar –

- (a) if he is employed to perform functions that may be performed by persons other than barristers or practitioners; or
- (b) those proceedings relate to the determination of an industrial matter that affects his own salary or other conditions of employment.

(7) In this section –

***Australian-registered foreign lawyer*** means an Australian-registered foreign lawyer within the meaning of the *Legal Profession Act 2007*;

***barrister*** means a barrister within the meaning of the *Legal Profession Act 2007*;

***interstate legal practitioner*** means an interstate legal practitioner within the meaning of the *Legal Profession Act 2007*;

***practitioner*** means an Australian legal practitioner.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 29

Part II – Tasmanian Industrial Commission

---

***Division 4 – Hearings for settling disputes***

**29. Hearings for settling disputes**

- (1) An organization, employer, employee or the Minister may apply to the President for a hearing before a Commissioner in respect of an industrial dispute.
- (1AA) For the purpose of this section, a referral of a matter to the Commission by the Employer under section 16(2)(b) of the *State Service Act 2000* is taken to be an application to the President for a hearing by the State Service employee named in that referral.
- (1A) A former employee may apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to –
  - (a) the termination of employment of the former employee; or
  - (b) severance pay in respect of employment of the former employee terminated as a result of redundancy; or
  - (c) a breach of an award or a registered agreement involving the former employee; or
  - (d) a dispute over the entitlement to long service leave, or payment instead of any such leave, or the rate of ordinary pay at which any such leave or payment is to be paid in respect of the former employee.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

s. 29

- 
- (1B) An application for a hearing before a Commissioner in respect of an industrial dispute relating to termination of employment or severance pay relating to redundancy is to be made within 21 days after the date of termination or, if the Commissioner considers there to be exceptional circumstances, such further period as the Commissioner considers appropriate.
- (1C) The Minister responsible for the Workplace Standards Authority may apply to the President for a hearing before a Commissioner in respect of an industrial dispute relating to a breach of an award or a registered agreement.
- (1D) An application for a hearing in respect of a dispute, including a dispute relating to –
- (a) termination of employment; or
  - (b) severance pay; or
  - (c) breach of an award or a registered agreement; or
  - (d) long service leave –
- must contain full particulars of –
- (e) the circumstances giving rise to the dispute; and
  - (f) the nature of the claim; and
  - (g) the remedy being sought by the applicant.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 29

Part II – Tasmanian Industrial Commission

---

(1E) At any time before setting a date for a hearing, or before the date of the hearing, the Commission, of its own motion or at the request of a party to the dispute, may require the applicant to provide further and better particulars of –

- (a) the nature and circumstances of the dispute; and
- (b) the nature of the claim; and
- (c) the remedy sought –

if the Commission considers it necessary to ensure that the Commission and the parties to the dispute are properly informed.

(2) The President must –

- (a) allocate to a Commissioner for hearing an application made under this section; and
- (b) cause notice of the time and place of the hearing to be given to a person who, or an organisation which, the President considers is able to assist in the settlement or prevention of the industrial dispute.

(3) At any stage of proceedings relating to a hearing under subsection (2), the Commission, of its own motion or at the request of one or more of the parties to the proceedings, may attempt to conciliate the dispute.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

s. 30

---

**30. Criteria applying to disputes relating to termination of employment**

(1) In this section –

*continuing employment* means employment that is of a continuing or indefinite nature or for which there is no expressed or implied end date to the contract of employment;

*employee* means a person who is or was engaged to work casual employment, part-time employment, full-time employment or probationary employment and includes a former employee;

*relationship status* means the status of being, or having been, in a personal relationship, within the meaning of the *Relationships Act 2003*.

(2) In considering an application in respect of termination of employment, the Commission must ensure that fair consideration is accorded to both the employer and employee concerned and that all of the circumstances of the case are fully taken into account.

(3) The employment of an employee who has a reasonable expectation of continuing employment must not be terminated unless there is a valid reason for the termination connected with –

(a) the capacity, performance or conduct of the employee; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 30

Part II – Tasmanian Industrial Commission

---

- (b) the operational requirements of the employer's business.
- (4) Without limitation, the following are not valid reasons for termination of employment:
- (a) membership of a trade union or participation, or involvement, in trade union activities;
  - (b) seeking office as, acting as, or having acted as, a representative of employees;
  - (c) non-membership of a trade union;
  - (d) race, colour, gender, sexual preference, age, physical or intellectual disability, marital status, relationship status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, except where the inherent nature of the work precludes employment for any of those reasons;
  - (e) absence from work during maternity or parental leave;
  - (f) temporary absence from work because of illness or injury, provided that nothing in this paragraph is to be construed as removing an employer's right to terminate an employee's employment on account of persistent or unjustified absenteeism;
  - (g) the filing of a complaint, or the participation in proceedings, against an

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

---

employer involving alleged violation of laws or regulations or recourse to competent administrative authorities.

- (5) Where an employer terminates an employee's employment, the onus of proving the existence of a valid reason for the termination rests with the employer.
- (6) Where an applicant alleges that his or her employment has been unfairly terminated, the onus of proving that the termination was unfair rests with the applicant.
- (7) The employment of an employee must not be terminated for reasons related to the employee's conduct, capacity or performance unless he or she is informed of those reasons and given an opportunity to respond to them, unless in all the circumstances the employer cannot reasonably be expected to provide such an opportunity.
- (8) An employee responding to an employer under subsection (7) is to be offered the opportunity to be assisted by another person of the employee's choice.
- (9) The principal remedy in a dispute in which the Commission finds that an employee's employment has been unfairly terminated is an order for reinstatement of the employee to the job he or she held immediately before the termination of employment or, if the Commission is of the opinion that it is appropriate in all the circumstances of the case,

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 30

Part II – Tasmanian Industrial Commission

---

an order for re-employment of the employee to that job.

- (10) The Commission may order compensation, instead of reinstatement or re-employment, to be paid to an employee who the Commission finds to have been unfairly dismissed only if, in the Commission's opinion, reinstatement or re-employment is impracticable.
- (11) In determining the amount of compensation under subsection (10), the Commission must have regard to all the circumstances of the case, including the following:
  - (a) the length of the employee's service with the employer;
  - (b) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated;
  - (c) any other matter the Commission considers relevant.
- (12) Where the Commission finds that an employee's employment has been unfairly terminated and has determined that reinstatement or re-employment is impracticable, any amount of compensation must not exceed an amount equivalent to 6 months' ordinary pay for that employee.
- (13) The Commission is to take into account any efforts of the employee to mitigate the loss

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 30A**

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suffered as a result of the termination of his or her employment.

**30A. Employees under federal award**

A person –

- (a) who is employed, or was employed, under a federal award but who is, or was, excluded from, or for any other reason does not have, or did not have at the relevant time, access to a remedy for termination of employment; or
- (b) to whom the termination provisions contained in Division 3 of Part IVA of the Commonwealth Act do not, or did not at the relevant time, apply –

may apply to the Commission for the hearing of a dispute specified in section 29(1A)(a) or (b).

**31. Orders arising from hearings**

- (1) Subject to this section, where the Commissioner presiding at a hearing under section 29 is of the opinion, after affording the parties at the hearing a reasonable opportunity to make any relevant submissions and considering the views expressed at the hearing, that anything should be required to be done, or that any action should be required to be taken, for the purpose of preventing or settling the industrial dispute in respect of which the hearing was convened, that Commissioner may, by order in writing, direct

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 31

Part II – Tasmanian Industrial Commission

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that that thing is to be done or that action is to be taken.

- (1A) Before deciding whether or not to make an order in respect of an industrial dispute relating to termination of employment, a Commissioner is to give effect to the provisions of section 30.
- (1B) If a Commissioner, in hearing an industrial dispute relating to termination of employment, finds that an employee or a former employee has been unfairly dismissed, the Commissioner may –
  - (a) if he or she believes it to be appropriate, order reinstatement or re-employment of the employee or former employee; or
  - (b) if in the Commissioner's opinion reinstatement or re-employment is impracticable, order that the employer pay the employee or former employee an amount of compensation, instead of reinstatement or re-employment, that the Commissioner considers appropriate in the circumstances, subject to section 30(12).
- (1C) A Commissioner, in hearing an industrial dispute relating to termination of employment resulting from redundancy, may make an order in respect of severance pay for an employee or former employee whose employment is to be, or has been, terminated.
- (2) A Commissioner shall not make an order under this section –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 31**

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- (a) that is inconsistent with the provisions of any Act dealing with the same subject-matter; or
    - (b) that makes an award or that varies or creates a provision of an award.
  - (3) Notwithstanding subsection (2)(b), a Commissioner may make an order requiring that an application be made under section 23 or 43.
  - (4) An order under this section does not have effect so as to require any person to contravene, or fail to comply with, an award or to commit an offence, or to do an act which, if the order had not been made, would render that person liable to any legal proceedings.
  - (4A) The Registrar must cause a copy of an order made by the Commission to be served on –
    - (a) any person to whom the order applies; and
    - (b) any party to the hearing of the industrial dispute.
  - (5) A person shall not contravene, or fail to comply with, a direction contained in an order under this section.

Penalty: Fine not exceeding 50 penalty units.
  - (6) A person is not guilty of an offence under subsection (5) in respect of a direction made under this section unless a notice containing a copy of that direction has been served on him.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 31A**

Part II – Tasmanian Industrial Commission

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- (7) An order under this section shall be deemed to have been served on the person to whom it applies if –
- (a) where that person is a member of an organization – the order has been served on those office bearers of the organization who attended the relevant hearing; or
  - (b) where that person is not a member of an organization – a copy of the order has been published in a newspaper circulating in the locality in which that person is employed.

***Division 5 – Cooperation between State industrial tribunals***

**31A. Interpretation of Division**

In this Division –

***industrial law*** of another State means –

- (a) a law of that State corresponding, or substantially corresponding, to this Act; or
- (b) a law of that State that is declared by the regulations to be a corresponding law (whether or not the law corresponds, or substantially corresponds, to this Act);

***industrial tribunal*** of another State means –



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part II – Tasmanian Industrial Commission

**s. 31B**

- (a) a tribunal established under a law of that State that has functions or powers corresponding, or substantially corresponding, to functions or powers imposed or conferred on the Commission by this Act, or
- (b) a tribunal established under a law of that State that is declared by the regulations to be the industrial tribunal of that State (whether or not the tribunal has functions or powers corresponding, or substantially corresponding, to functions or powers imposed or conferred on the Commission by this Act).

**31B. Joint proceedings**

- (1) A member of the Commission may perform or exercise, in the presence of –
  - (a) a member of an industrial tribunal of another State; and
  - (b) the parties to any proceedings before an industrial tribunal of another State; and
  - (c) any witness summoned by an industrial tribunal of another State –

any of the functions or powers that may be performed or exercised by the member of the Commission in relation to a matter.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 31C**

Part II – Tasmanian Industrial Commission

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- (2) Evidence may be given, and submissions made, jointly for the purposes of the proceedings before the Commission and the industrial tribunal of another State.

**31C. Commission may perform functions and exercise powers imposed and conferred under industrial law of another State**

- (1) Subject to subsection (3), the Commission may perform such functions and exercise such powers as may be imposed or conferred on it under the industrial law of another State.
- (2) However, the performance of any such function or the exercise of any such power by the Commission is taken, for the purposes of this Act, not to be the performance of a function or the exercise of a power under this Act.
- (3) Subsection (1) does not extend to any function or power, or class of functions or powers, imposed or conferred under the industrial law of another State, that is excluded by the regulations.

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**PART III – AWARDS**

***Division 1 – Power to make awards and related matters***

**32. Subject-matter of awards**

- (1) Subject to subsections (1A) and (2), an award under this Act may contain provisions with respect to any industrial matter.
- (1A) An award may contain provisions for or with respect to the payment of contributions, whether by an employer or employee or both, to a superannuation fund, but may not contain provisions for or with respect to –
  - (a) the entitlement of employees to a payment or other benefit under a superannuation fund;
  - (b) the investment of contributions, whether paid by an employer or employee or both, to a superannuation fund; or
  - (c) the management of a superannuation fund.
- (1B) In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must not refuse to make or vary that award if the superannuation fund –
  - (a) is a complying superannuation fund; and
  - (b) is one which the Commission is satisfied meets the wishes of employees.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 32

Part III – Awards

---

- (1C) In making or varying an award in relation to payment of contributions to a superannuation fund, the Commission must ensure that the provisions of the award do not require payment of any amount greater than an amount prescribed by wage fixing principles adopted by the Commission.
- (1D) For the purpose of subsection (1B), ***complying superannuation fund*** means a fund –
- (a) that is in receipt of a current notice under the *Superannuation Entities (Taxation) Act 1987* of the Commonwealth or the *Superannuation Industry (Supervision) Act 1939* of the Commonwealth stating that the fund has satisfied the superannuation fund conditions in relation to the most recent completed year of income; or
  - (b) the trustees of which certify that they propose to take the required action under that Act to obtain a notice of compliance in relation to the current year of income.
- (2) Without prejudice to the generality of subsection (1), an award may make provision specifying the manner in which any rates of remuneration are to be fixed.
- (3) An award may –
- (a) provide for the settling of disputes as to questions of fact, but not as to questions of law, arising under it or arising in

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 32

---

respect of matters to which the award relates, by the Commission; and

- (b) in respect of any matter to which the award relates, require anything to be done to the satisfaction of the Commission or prohibit anything being done without the consent of the Commission.

(4) The Commission shall –

- (a) in making an award in respect of private employees, have regard to an agreement or arrangement made by a private employer with respect to any of the following matters:
  - (i) the payment to him of rent in respect of housing provided by him for his employees (being private employees in respect of which the award is made);
  - (ii) the provision by him of accommodation or meals or both for those employees;
  - (iii) the payment by him of the removal expenses of those employees; and
- (b) if it is satisfied that the agreement or arrangement provides adequately or appropriately for such a matter, determine not to include provisions in the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 33

Part III – Awards

---

award in respect of that matter in relation  
to those employees.

(5) . . . . .

(6) References in this Act to a rate of remuneration fixed by an award shall be construed as including references to a rate of remuneration determined in accordance with the provisions of an award.

(7) An award may amend or may replace or rescind an existing award, and an award amended by a subsequent award continues to have effect as so amended, and an award ceases to have effect if it is replaced or rescinded by a subsequent award.

(7A) The Commission may, of its own motion or upon application by an organization and after consultation with such organizations as it considers appropriate, by notice in the *Gazette*, rescind an award it considers no longer serves any useful purpose.

(8 - 12) . . . . .

**33. Power of Commission to make awards in respect of private sector employment**

(1) The Commission may make an award in respect of –

(a) all or any private employees employed in an industry; or

(b) all or any private employees employed in an enterprise.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 34**

(2) . . . . .

(3) The Commission, in making an award under this section, shall specify the industry to which the award applies.

**34. Power of Commission to make awards in respect of public sector employment**

The Commission may make an award in respect of –

- (a) all State employees employed in one or more Agencies; or
- (b) all employees employed in a State authority that is not an Agency; or
- (c) classes of State employees employed in one or more Agencies; or
- (d) classes of employees employed in one or more State authorities that are not Agencies; or
- (e) all or any employees employed in an enterprise; or
- (f) any combination of the categories of employees referred to in paragraphs (a) to (e).

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 35

Part III – Awards

---

**35. Certain matters to be dealt with by Full Bench of Commission**

- (1) The powers of the Commission to make an award or to approve an industrial agreement is exercisable only by a Full Bench in respect of the following matters:
  - (a) making provision for, or altering, the ordinary hours of work;
  - (b) making provision for, or altering, a minimum wage that is to be payable to adults without regard to the work performed;
  - (c) making provision for, or altering a provision for –
    - (i) the amount of annual leave; and
    - (ii) the payment of wages or allowances during annual leave;
  - (d) making provision for, or altering, rates of wages generally or the manner in which rates of wages generally are to be ascertained;
  - (e) modifying or affecting not less than 5 awards;
  - (f) dealing with any other matter referred by the President under section 15(1)(c).
- (2) Subsection (1) does not apply where a provision of, or an alteration in, an award or industrial agreement gives effect to matters, or is in



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 35

---

accordance with principles, determined by a Full Bench.

- (3) An award of a Full Bench in respect of a matter to which subsection (1)(a) or (c) relates may be applied to only one industry or only some State employees.
- (4) An award of a Full Bench in respect of a matter to which subsection (1)(b) relates may be applied to all awards containing a provision for a minimum wage or to such other awards as are specified by the Full Bench.
- (5) An award of a Full Bench in respect of a matter to which subsection (1)(d) or (e) relates shall be applied to such awards as are specified by the Full Bench.
- (6) For the purpose of determining whether a matter mentioned in subsection (1)(f) should be referred by him to a Full Bench, the President may conduct a preliminary hearing to ascertain the views of organizations having an interest in the matter.
- (7) Subject to this section, where a Full Bench is satisfied that, having regard to a decision of the Australian Commission that is applicable to the wages payable generally to employees who are subject to awards of the Australian Commission in Tasmania, a variation should be made to the wages payable generally to employees under awards of the Commission, the Full Bench may order that any such variation be made.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 35

Part III – Awards

---

- (8) An order under subsection (7) by a Full Bench may be subject to such conditions as the Full Bench considers appropriate and as are specified in the order.
- (9) Subject to subsection (10), a Full Bench may make an order under subsection (7) only –
  - (a) on the application of the Tasmanian Chamber of Commerce and Industry Ltd., the Tasmanian Trades and Labor Council, an organization that has an interest in 5 or more awards, or the Minister; and
  - (b) after it has given the Minister, the organizations referred to in paragraph (a), and any other organization that, in the opinion of the Full Bench, has a sufficient interest in the matter, an opportunity to be heard in relation to the matter.
- (10) An application under paragraph (a) of subsection (9) made by an organization lastly referred to in that paragraph shall not be heard unless the President, having regard to the subject-matter of the application, considers that the hearing of that application would not prejudice the orderly conduct of industrial relations in Tasmania.
- (10A) A Full Bench of the Commission must convene and conduct a hearing annually to determine the Tasmanian minimum wage specified in section 47AB.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 36**

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**36. Commission to be satisfied of public interest**

- (1) Before the Commission makes an award under this Act or before the Commission approves an industrial agreement, the Commission shall be satisfied that that award or that agreement is consistent with the public interest.
- (2) In deciding whether a proposed award or a proposed industrial agreement would be consistent with the public interest, the Commission shall –
  - (a) consider the economic position of any industry likely to be affected by the proposed award or proposed agreement;
  - (b) consider the economy of Tasmania and the likely effect of the proposed award or proposed agreement on the economy of Tasmania with particular reference to the level of employment; and
  - (c) take into account any other matter considered by the Commission to be relevant to the public interest.

**37. Signature, operation and lodging of awards, &c.**

- (1) An award shall be made by the Commission when it is signed by one of the Commissioners, or the Commissioner, constituting the Commission who heard and determined the proceedings to which the award relates.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 37

Part III – Awards

---

- (2) Where an award is made by the Commission, it shall immediately be lodged by the Commission in the office of the Registrar, and the Registrar shall cause –
- (a) the organizations who were parties to the proceedings to which the award relates, the Minister, and the Secretary to be given notice in writing that the award has been made and each of them to be provided with a copy of the award; and
  - (b) a notice of the making of the award to be notified in the *Gazette* and the award to be printed and published by the Government Printer.
- (3) The Commission shall –
- (a) make a written statement of the reasons for its decision in respect of the provisions contained in an award or for its refusal to make an award; and
  - (b) lodge that statement in the office of the Registrar at the same time as it lodges in that office the award to which the statement relates or, if it is not practicable to lodge the statement at that time, within 7 days after the award is so lodged.
- (4) Subject to this section, the provisions of an award have effect on and from the date on which the award is made or on such later date or dates as the Commission determines and as is or are respectively specified in the award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 38**

- 
- (5) The Commission may, in an award, give retrospective effect to the whole or any part of the award –
- (a) if and to the extent that the parties to the award so agree; or
  - (b) if, in the opinion of the Commission, there are special circumstances that make it fair and right to do so.
- (6) . . . . .
- (7) An award lodged in the office of the Registrar may, during office hours, be inspected, free of charge, by a person who is interested in, or affected by, the award.
- (8) A statement of reasons referred to in subsection (3) lodged in the office of the Registrar may, during office hours, be inspected, free of charge, by a person who is interested in, or affected by, the award to which the statement relates and such a person may obtain a copy of the statement free of charge.
- (9) Where the Commission refuses to make an award, it shall cause notice in writing of its refusal to be served on the applicant for the award.

**38. Effect of awards**

An award has effect according to its terms and, unless and to the extent that those terms

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 39

Part III – Awards

---

expressly provide otherwise, the award extends to and binds –

- (a) in the case of an award referred to in section 33(1) –
  - (i) all private employees employed in positions or classifications mentioned in the award in the industry or occupation to which the award applies; and
  - (ii) all private employers employing those private employees; or
- (b) in the case of an award referred to in section 34 –
  - (i) all State employees employed in positions or classifications mentioned in the award; and
  - (ii) all controlling authorities employing those State employees–

and operates throughout Tasmania.

**39. Validity of awards, &c.**

- (1) An award shall not be void or in any way vitiated by reason merely of any informality or error of form, or the failure to comply with any of the matters required by this Act as preliminary to the making of the award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 40

- 
- (2) The Commissioners or a Commissioner shall not sign an award unless it appears to them or him that the provisions of the award are in accordance with this Act.
  - (3) A person who wishes to challenge or dispute an award on account of the illegality of the award may apply to the Supreme Court, by motion supported by affidavit, for an order *nisi* calling on the Commission to show cause why the award should not be quashed, in whole or in part.
  - (4) On the return of an order *nisi* referred to in subsection (3), the Supreme Court may discharge the order or make it absolute with or without costs.
  - (5) An award shall not be challenged or disputed for illegality otherwise than in accordance with this section.

**40. Extension of awards by regulation**

- (1) Subject to this section, regulations under this Act made for the purposes of this section may extend the operation of an award or any provisions of an award to any work not otherwise subject to the award, and any such regulations may provide for the extension of that operation for a period specified in the regulations.
- (2) Regulations made for the purposes of this section have no effect in relation to any work that, apart from the operation of those regulations, is subject to some other award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 41

Part III – Awards

---

- (3) Where the operation of an award is extended by regulations made for the purposes of this section, that award operates as so extended and references in this Act to an award shall be construed as including references to an award as so extended.

**41. Formulation of grievance or dispute settling procedures**

- (1) Where it is agreed by the parties concerned, there may be formulated, in relation to any project, undertaking, establishment, or workplace, a procedure to be followed with a view to settlement, without strike action or other industrial action, of any grievance or dispute that arises between any 2 or more of the parties.
- (2) A procedure referred to in subsection (1) is in this section referred to as a grievance or dispute settling procedure.
- (3) A grievance or dispute settling procedure shall be set out in an agreement made in writing between the parties.
- (4) The parties to a grievance or dispute settling agreement shall be the organization or organizations representing the employees concerned and the employer or an organization of employers concerned.
- (5) The Commission may encourage the parties to an award or industrial agreement or any of them to enter into consultation with a view to formulating a grievance or dispute settling



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 42

---

procedure in relation to any project, undertaking, establishment or workplace.

- (6) With the consent of the parties to an award or an industrial agreement, a grievance or dispute settling procedure may be inserted by the Commission in that award or, as the case may be, that industrial agreement.

**42. Award subject to Acts dealing with same subject-matter**

An award has effect subject to the provisions of any Act dealing with the same subject-matter.

**43. Interpretation of awards**

- (1) The Secretary, an employer or an organization with members subject to an award may apply to the President for a declaration on how any provision of that award is to be interpreted.
- (1A) On receipt of an application under subsection (1), the President must –
- (a) declare, retrospectively or prospectively, how the provision of the award is to be interpreted and, if the declaration so requires, by order, vary any provision of the award to remedy any defect in it or give full effect to it; or
  - (b) if satisfied that a declaration under paragraph (a) would be inappropriate, by order, direct that an application to vary the award be made to clarify the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 43

Part III – Awards

---

provision of the award in respect of  
which the application was made.

- (2) The President shall cause notice of an application made to him under this section –
  - (a) by the Secretary to be served on every organization with members subject to the relevant award; or
  - (b) by an organization or employer to be served on every other organization with members subject to the relevant award and on the Secretary.
- (2A) A notice under subsection (2) with respect to an application shall state –
  - (a) the matter to which the application relates; and
  - (b) the time and place at which the President will conduct a hearing on the application.
- (3) The President shall conduct a hearing on an application made to him under this section and there are entitled to be heard –
  - (a) the Secretary and every organization with members subject to the relevant award, in the case of an application made by the Secretary; or
  - (b) the organization or employer making the application, every other organization with members subject to the relevant

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 44

---

award, and the Secretary, in the case of  
any other application.

- (4) A declaration under this section may be made of the President's reasons for his decision but shall be made in the form of an order if, within 7 days of the handing down of the President's reasons for his decision, an organization with members subject to the relevant award or the Secretary so requests.
- (5) A declaration under this section shall be lodged in the office of the Registrar and shall be filed by the Registrar with the award to which it relates.
- (6) The provisions of section 37(2)(a) and (b) and (7) apply, with the necessary modifications, to a declaration under this section as if it were an award.
- (7) Subject to this Act, a declaration made under this section is binding on all courts and all persons with respect to the matter the subject of the declaration.

**44. Evidence of awards, order, &c.**

Evidence of an award, an order under section 31, 43 or 75(7E) or a declaration under section 43 may be given in any legal proceeding by the production of a document purporting to be a copy of that award, order, or declaration and purporting to be printed by the Government Printer or by the authority of the Government.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 45

Part III – Awards

---

**45. Disclosure of trade secrets**

Where evidence is given in any proceedings before the Commission relating to a trade secret, a person shall not disclose or publish that evidence without the consent of the person entitled to the trade secret.

Penalty: Fine not exceeding 50 penalty units.

***Division 2 – Provisions in respect of industries or  
employment not otherwise subject to award or registered  
agreement***

**46. Application of Division**

This Division applies to the employment of a person whose terms and conditions of employment are not –

- (a) prescribed by or under any Act or Act of the Commonwealth; or
- (b) regulated by an order, award, determination or agreement having effect under any Act or Act of the Commonwealth.

**47. General provisions as to employment**

- (1) Unless otherwise expressly agreed by the employer and employee, the wages payable in respect of employment to which this Division applies shall be deemed to be due and payable weekly.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 47

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- (1A) Where the wages of an employee are, pursuant to subsection (1), payable weekly or as otherwise expressly agreed by his employer, that employer is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units if he fails to pay to that employee those wages when they become payable.
- (1B) Where an employer is convicted of an offence under subsection (1A), the court by which he is convicted shall, in addition to imposing a penalty for the offence, order the employer to pay to the employee in respect of whom the offence was committed the amount of the wages that the employer has failed to pay to the employee.
- (2) Subject to subsection (3), a term or period of service of employment to which this Division applies that is of indefinite duration is terminable by either party by –
- (a) a week's notice, if the wages are payable weekly;
  - (b) a fortnight's notice, if the wages are payable fortnightly; or
  - (c) a month's notice in any other case.
- (3) Subsection (2) does not apply in relation to the termination of a term or period of service of employment of an employee on account of his serious and wilful misconduct.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 47AA

Part III – Awards

---

***Division 2A – Minimum conditions of employment relating  
to all employees***

**47AA. Purpose and application of Division**

- (1) The purpose of this Division is to establish a safety net of fair minimum conditions of employment.
- (2) The Commission may make an award or approve an agreement in excess of the minimum conditions prescribed by this Division, but must not make an award or approve an agreement that is less than those minimum conditions.
- (3) This Division does not apply in respect of a person granted an authority to work under section 79 or 81 or in respect of whom an order is made under section 80.

**47AB. Minimum weekly wage**

The minimum weekly wage for an adult full-time employee is the Tasmanian minimum wage as determined annually by the Commission under section 35(10A).

**47AC. Maximum ordinary working hours**

Unless prescribed otherwise in an Act, award or agreement, an employee's maximum number of ordinary working hours per week is not to exceed 38.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 47AD

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**47AD. Meal break**

Unless prescribed otherwise in an Act, award or agreement, an employee is entitled to an unpaid meal break of at least 30 minutes after each period of 5 hours' continuous work.

**47AE. Annual leave**

- (1) Unless prescribed otherwise in an Act, award or agreement, an employee, other than a casual employee or a part-time employee receiving a loading in lieu of annual leave, is entitled to a minimum of 4 weeks' paid annual leave, excluding statutory holidays within the meaning of the *Statutory Holidays Act 2000*, for each completed year of continuous employment.
- (2) Where an employee's length of employment is less than one year, the employee is entitled to *pro rata* paid annual leave upon termination of employment, provided that the employee has given the required period of notice.
- (3) After each completed year of continuous employment, a part-time employee is entitled to be paid annual leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.
- (4) An employer must permit an employee to take annual leave due under subsection (1) or (3) within 6 months after the leave falls due.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 47AF**

Part III – Awards

---

- (5) Where an employee applies for leave, the employee must give the employer not less than 4 weeks' notice, or such other period of notice as may be agreed, of the employee's intention to take leave.
- (6) An employer must not unreasonably withhold approval of an application to take leave.
- (7) Where an employer requires an employee to take leave, the employer must give the employee not less than 4 weeks' notice, or such other period of notice as may be agreed, of the requirement to take leave.
- (8) Untaken annual leave accrues without limit.

**47AF. Personal leave**

- (1) Unless prescribed otherwise in an Act, award or agreement, an employee, other than a casual employee or a part-time employee receiving a loading in lieu of sick leave, is entitled to a minimum of 10 days of paid personal leave for each completed year of employment.
- (2) In the first year of employment, an employee's entitlement to paid personal leave accrues at the rate of five-sixths of a day for each completed month of employment.
- (3) In the second year of employment and each subsequent year, an employee's entitlement to paid personal leave falls due on the day on which the second or subsequent year of employment commences.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 47AG**

- 
- (4) A part-time employee is entitled to be paid personal leave calculated in the same proportion that his or her part-time hours bears to the ordinary hours of an equivalent full-time employee.
  - (5) Unless prescribed otherwise in an Act, award or agreement, or by mutual consent between an employer and an employee, paid personal sick leave is subject to the employee providing adequate proof of illness to the employer in respect of each period of absence.
  - (6) Untaken paid personal leave accrues without limit.
  - (7) In this section, “**paid personal leave**” means personal sick leave, carer’s leave and bereavement leave.

**47AG. Parental leave**

The minimum entitlements to unpaid parental leave are set out in Schedule 2.

**47AH. Redundancy**

- (1) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, an employee with more than one year’s employment with an employer must be given not less than 4 weeks’ notice of the employer’s intention to terminate the employee’s employment on account of redundancy or 4 weeks’ pay in lieu of such notice.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 47AI**

Part III – Awards

---

- (2) Unless prescribed otherwise in an Act, award or agreement or determined otherwise by the Commission, if an employee's employment is terminated on account of redundancy, the employee is entitled to a redundancy severance payment calculated on the basis of 2 weeks' wages for each completed year of employment with the employer, up to a maximum of 12 weeks.

**47AI. Payments to be based on ordinary pay**

For the purposes of this Division, a payment to an employee is to be based on his or her ordinary hourly or weekly rate of pay.

**47AJ. Offence provision**

A person who contravenes or fails to comply with a provision of this Division is guilty of an offence and is liable on summary conviction to a fine not exceeding 50 penalty units.

***Division 3 – Enforcement of awards and registered agreements***

**47A. Enforcement of awards and registered agreements after transfer of business**

- (1) In this section –

***business*** includes –

- (a) undertaking and establishment;  
and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 47A

---

- (b) part of a business;

***former employer*** means an employer –

- (a) who transfers a business to another employer; and
- (b) who, while still an employer in respect of that business, was bound by an award or registered agreement;

***new employer*** means a person –

- (a) to whom a business is transferred from a former employer; and
- (b) who, as a result of that transfer, employs for the purposes of the transferred business an employee who, before that transfer, was employed by the former employer in respect of that business;

***transfer***, in relation to a business, means the transfer, transmission, conveyance, assignment or succession, whether by agreement or by operation of law, of the whole or any part of the business;

***transferred employee*** means a person who was an employee of a former employer and who becomes an employee of a new employer due to the transfer of a business to the new employer from the former employer.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 47A**

Part III – Awards

---

- (2) If a business is transferred to a new employer from a former employer and an award or registered agreement was binding on the former employer in respect of that business immediately before the transfer –
  - (a) the new employer is bound by that award or registered agreement to the extent that it relates to the business transferred; and
  - (b) the former employer stops being bound by that award or registered agreement to the extent that it relates to the business transferred; and
  - (c) where relevant, a reference in this Act to an employer includes a reference to the new employer and ceases to refer to the former employer.
- (3) Subsection (2)(a) does not apply –
  - (a) if a Full Bench of the Commission orders otherwise under subsection (5); and
  - (b) to the extent specified in that order.
- (4) A new employer, or a person who is negotiating the transfer of a business and would become a new employer on the transfer of that business, may apply to the Commission for an order under subsection (5).
- (5) On receipt by the Commission of an application under subsection (4), a Full Bench of the Commission may order that the applicant is not, or is not to be, bound by the whole or any part of

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

s. 48

---

an award or registered agreement that relates to the whole or part of the business transferred or to be transferred.

- (6) For the purposes of making an order under subsection (5), this Act applies, with necessary modifications and adaptations, as if the application were an application under section 29 in respect of an industrial dispute.

**48. Breach of awards and registered agreements**

A person or organisation subject to any provision of an award or a registered agreement must comply with that provision.

Penalty: Fine not exceeding 50 penalty units.

**49. Remuneration fixed by award or registered agreement**

- (1) Subject to this section, where an employee is employed by an employer in work for which a rate of remuneration is fixed by an award or a registered agreement, he is entitled to be paid by his employer in respect of that work remuneration at the rate so fixed.
- (2) Subject to the provisions of an award, a registered agreement or the *State Service Act 2000* and any Commissioner's Directions or Ministerial Directions issued under that Act, where an employee performs 2 or more classes of work for which differing rates of remuneration are fixed by an award or a

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 49

Part III – Awards

---

registered agreement, he is entitled to be paid in respect of the time occupied in each class of work at the rate so fixed for that class.

- (3) Except as provided in subsection (2), where an employee is, during any part of a day, employed by an employer in work for which a wages rate is fixed by an award or a registered agreement, he is entitled to be paid at that rate for any other work done by him in the employment of that employer during any other part of that day.
- (4) An employee who is subject to an award or a registered agreement is entitled to be paid in respect of any week if—
  - (a) the employee does not work in any week for his or her normal ordinary weekly hours because of action taken by the employer; and
  - (b) the employee was ready and willing to work during those ordinary working hours in that week.
- (5) An employee referred to in subsection (4) is entitled to be paid –
  - (a) wages at the rate fixed by the award or registered agreement; and
  - (b) overtime payments for any overtime worked in accordance with the award or registered agreement at the rate fixed by the award or registered agreement.
- (6) Subsections (4) and (5) do not apply –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 50**

---

- (a) if the employee is employed on a casual basis; or
- (b) if the award or registered agreement or the disciplinary provisions of an Act otherwise provide.

**50. Piecework rates**

- (1) Subject to subsection (2), where, in respect of any work, wages rates are fixed by an award or a registered agreement and no piecework rates are so fixed, a person shall not, directly or indirectly, pay piecework rates, or authorize or permit piecework rates to be paid, in respect of that work.
- (2) Where, by an award or a registered agreement, piecework rates only are fixed in respect of any work, a person shall not, directly or indirectly, pay wages rates, or authorize or permit wages rates to be paid, in respect of that work.
- (3) If an award or a registered agreement fixes wages rates in respect of any work but permits piecework rates to be fixed for that work, an employee employed at piecework rates on that work is entitled to receive remuneration for that work at piecework rates based on the earnings of an average worker working at that work at the wages rates so fixed.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 50A**

Part III – Awards

---

**50A. Power to stand down without pay**

Notwithstanding any other provision of this Act, an employer may stand down, without pay, any employee who refuses to perform any or all of the duties that the employee normally carries out and could reasonably be expected to carry out for such period as the employee continues to so refuse.

**51. Offences relating to remuneration**

- (1) An employer who does not pay an employee the remuneration to which the employee is entitled to be paid under –

- (a) section 49 or 50; or
- (b) an authority granted under section 79 or 81 –

is guilty of an offence.

- (2) A person who contravenes –

- (a) any of the provisions of section 50(1) or (2); or
- (b) the terms of an authority, relating to remuneration, granted under section 79 or 81 –

is guilty of an offence.

- (3) If, under an award or a registered agreement, an employee is entitled to be paid any sum by his employer, that employer is guilty of an offence if



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 52**

---

that sum is paid otherwise than in money without any deductions other than those that may be authorized by the employee.

- (4) Subject to a provision of an award or a registered agreement, nothing in subsection (3) shall be construed as preventing a payment referred to in that subsection being made by cheque.
- (5) . . . . .
- (6) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding 50 penalty units.

**52. Remedy of employees**

- (1) Where a person is convicted of an offence under any of the foregoing provisions of this Division or section 31(5), the court by which he is convicted shall, in addition to imposing a penalty for the offence, order the person convicted to pay to any person in respect of whom the offence was committed –
  - (a) any sums due to that person in connection with his employment with the person convicted for the 2 years preceding the institution of proceedings for the offence; and
  - (b) such further sum by way of compensation for the failure to pay those sums as the court considers reasonable.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 52

Part III – Awards

---

- (2) For the purposes of subsection (1)(a), there shall be deemed to be due to any person in respect of his employment the amount by which the remuneration to which he is entitled pursuant to section 49, 50, 79 or 81 in respect of that employment exceeds the amount actually paid to him by his employer in respect of that employment.
- (3) Where an employee is, pursuant to section 49, 50, 79 or 81, entitled to any remuneration in respect of his employment, he may, notwithstanding any agreement to the contrary, recover that remuneration, to the extent that it has not been paid to him, or ordered to be paid to him under this section, as remuneration due to him under his contract of employment.
- (4) If a person is convicted of an offence under this Division in respect of the non-payment by that person of any sum payable into a superannuation fund on behalf of a person in accordance with an award or a registered agreement, the court by which that person is convicted must, in addition to imposing a penalty for the offence, order the person convicted to pay to or on behalf of the person in respect of whom the offence was committed –
  - (a) any sum payable in respect of superannuation; and
  - (b) any such further sum by way of compensation for interest foregone or financial loss incurred as a result of the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part III – Awards

**s. 53**

---

failure to pay that sum as the court considers reasonable.

**53. Employment subject to more than one award**

Where an employee performs 2 or more classes of work to which different awards apply, he shall, in respect of all matters (other than wages rates or piecework rates) in respect of which different provisions are contained in those awards, be deemed to be employed under such of those provisions as confer on him the greatest benefits.

**54. Lock-outs and strikes**

- (1) An organization of employers, any members of such an organization, or an employer shall not counsel, take part in, support, or assist, directly or indirectly, any lock-out on account of any matter for which provision is made in an award.

Penalty: Fine not exceeding 50 penalty units in the case of an organization; fine not exceeding 5 penalty units in the case of an individual.

- (2) An organization of employees, any members of such an organization, or an employee shall not counsel, take part in, support, or assist, directly or indirectly, a strike or the imposition of work bans or limitations on account of a matter for which provision is made in an award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 54**

Part III – Awards

---

Penalty: Fine not exceeding 50 penalty units in the case of an organization; fine not exceeding 5 penalty units in the case of an individual.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

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**PART IV – INDUSTRIAL AGREEMENTS AND  
PRIVATE ARBITRATION**

**55. Making of industrial agreements**

- (1) An employee organization may enter into an industrial agreement with an employer organization or any employer or group of employers with respect to an industrial matter.
- (2) An agreement made pursuant to subsection (1) may be filed with the Registrar if the parties agree.
- (3) The Registrar is to refer an agreement filed under subsection (2) to the President who is to refer the agreement to a Commissioner for a hearing into the matter.
- (3A) In conducting a hearing, a Commissioner is to give the parties to the agreement an opportunity to be heard.
- (4) After conducting a hearing a Commissioner may –
  - (a) approve the agreement; or
  - (b) refuse to approve the agreement.
- (4A) The Commission must ensure that an industrial agreement does not disadvantage the employees to be covered by the agreement.
- (4B) An industrial agreement is taken to disadvantage employees if its approval would result, on balance, in a reduction in the overall terms and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 55

Part IV – Industrial Agreements and Private Arbitration

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conditions of employment of those employees compared with the award or agreement that would otherwise apply to those employees.

- (4C) Notwithstanding subsection (4A), the Commission may approve an industrial agreement if it is satisfied that it is appropriate to approve the agreement, having taken into account all of the circumstances including –
- (a) whether or not the genuine consent of the parties to the agreement has been given; and
  - (b) the public interest; and
  - (c) any other matter the Commission considers relevant.
- (5) An industrial agreement shall be in a form approved by the Commission and operative for a term to be specified in it not exceeding 5 years from the making of the agreement.
- (5A) The Commission must cause notice of its decision to be served on the parties to the industrial agreement.
- (6) An industrial agreement has effect from –
- (a) the date it is approved by the Commission; or
  - (b) such other date agreed by the parties to the agreement and approved by the Commission.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- 
- (7) Notwithstanding the expiry of the term of an industrial agreement, it continues in force in respect of all parties to the agreement except those who, pursuant to subsection (8) or (9), retire from the agreement.
  - (7A) Not less than 30 days nor more than 60 days before the expiry of an industrial agreement the Registrar must serve on each party to the agreement a written notice reminding that party of the expiry date of the agreement.
  - (8) Not more than 30 days before the expiry of an industrial agreement, a party to the agreement may file in the office of the Registrar a notice in the prescribed form signifying his intention to retire from the agreement on the day on which the agreement expires and that party shall, on that day, cease to be a party to the agreement.
  - (9) At any time after the expiry of an industrial agreement, a party to the agreement may file in the office of the Registrar a notice in the prescribed form signifying his intention to retire from the agreement at the expiration of the period of 30 days from the filing of the notice and that party shall, on the expiration of that period, cease to be a party to the agreement.
  - (10) If all parties to an industrial agreement agree to enter into an enterprise agreement, they may, by mutual consent, retire from that industrial agreement by filing in the office of the Registrar a notice in the prescribed form signifying their intention to retire on the day on which the enterprise agreement is to commence and on that

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 56**

Part IV – Industrial Agreements and Private Arbitration

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day the industrial agreement ceases to have effect.

**56. Registration and evidence of agreement**

- (1) The Registrar shall register an industrial agreement that is approved by the Commission.
- (1A) The Registrar must revoke the registration of an industrial agreement if the Full Bench revokes approval of the agreement under section 71.
- (1B) The revocation of the registration of an industrial agreement under subsection (1A) takes effect on the day on which the approval is revoked.
- (2) A document purporting to be a copy of a registered industrial agreement and certified to be a true copy by the Registrar is admissible in evidence in any legal proceedings.
- (3) The production of a copy of a registered industrial agreement, certified as mentioned in subsection (2), is evidence that the original agreement was duly executed in accordance with this Act and that the agreement has been filed with the Registrar.
- (4) An industrial agreement has no effect unless it is registered.

**57. Addition of parties to industrial agreements**

While an industrial agreement is in force, an employer or a controlling authority or other organization may, with the consent of the



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

---

Commission and of the original parties to the agreement or their respective representatives, become a party to the agreement by filing in the office of the Registrar a notice in the prescribed form concurring with the agreement.

**58. Persons bound by agreement**

- (1) An industrial agreement duly registered extends to and is binding on –
  - (a) the parties who execute the agreement or concur with the agreement;
  - (b) the members for the time being of an employee organization on whose behalf that organization has entered into the agreement;
  - (c) every employee who is, at any time while the agreement is in force, employed at a work site or place to which the agreement applies by an employer on whom the agreement is binding; and
  - (d) the members for the time being of an employer organization on whose behalf the organization has entered into the agreement.
- (2) An industrial agreement registered under section 56 is enforceable in all respects as if it were an award.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 59

Part IV – Industrial Agreements and Private Arbitration

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**59. Variation, &c., of agreement**

- (1) An industrial agreement may be varied, renewed, or cancelled by a subsequent industrial agreement made by and between all the parties to the agreement, but so that no party is deprived of the benefit of an agreement by a subsequent industrial agreement to which he is not a party.
- (2) Without prejudice to subsection (1), the Commission may, by order, vary an industrial agreement on receipt of an application by the parties to the agreement.

**60. Award not to apply while agreement is in force**

While an industrial agreement remains in force with respect to an employer, its provisions prevail over any provisions of an award that relate to the same subject-matter as those first-mentioned provisions and that apply to persons in his employment.

**61. Private conciliation and arbitration**

- (1) Where the President is of the opinion that it is desirable to do so for the purpose of resolving an industrial matter concerning 2 or more parties, he may, at the written request of all those parties, appoint a Commissioner to conduct a conciliation or an arbitration in respect of that industrial matter, subject to the parties agreeing to accept the Commissioner's decision on the conciliation or arbitration as final.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

- 
- (2) All proceedings relating to a conciliation or an arbitration pursuant to this section shall be conducted in private and any record of those proceedings shall be supplied by the Commission only to the parties to that conciliation or arbitration.
  - (3) In conducting a conciliation or an arbitration pursuant to this section, a Commissioner shall have regard to the matters specified in section 20(1) and to any principles previously determined by a Full Bench and which still have application.
  - (4) The decision of a Commissioner acting pursuant to this section shall not be applied as an award or order of the Commission, but may be incorporated in, or form, an agreement made pursuant to section 55(1).

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 61A

Part IVA – Enterprise Agreements

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**PART IVA – ENTERPRISE AGREEMENTS**

*Division 1 – Enterprise agreements*

**61A. Interpretation**

In this Part –

*enterprise agreement* includes an agreement to extend or vary a registered enterprise agreement;

*register* means the register kept under section 61ZE;

*trainee* means an employee who is a party to a training contract within the meaning of the *Training and Workforce Development Act 2013*.

**61B. Purpose of enterprise agreement**

The purpose of an enterprise agreement is to regulate the conditions of employment for any or all of the persons employed in an enterprise.

**61C. Single or separate enterprises**

- (1) Enterprises carried on by corporations that are related to each other for the purposes of the Corporations Act may, for the purposes of this Act, be regarded as either one enterprise or separate enterprises.
- (2) For the purposes of this Act, enterprises carried on –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61D**

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- (a) by different Agencies; or
- (b) by different State authorities that are not Agencies; or
- (c) by an Agency and a State authority that is not an Agency or part of an Agency and part of such a State authority –

may be regarded as either one enterprise or separate enterprises.

**61D. Parties to enterprise agreement**

- (1) An enterprise agreement may be made between any employer and any one of the following:
  - (a) one or more employee organizations representing persons employed in the enterprise;
  - (b) each of at least 60% of the individuals employed in one or more classes of employment in the enterprise;
  - (c) an employee committee formed under this Part to represent persons employed in the enterprise;
  - (d) any other person employed in the enterprise who is not included in paragraph (a), (b) or (c).
- (2) Subject to section 61ZD(1A), before employees or an employee committee can become a party to an enterprise agreement, the proposed agreement must be approved in a secret ballot by at least

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61E**

Part IVA – Enterprise Agreements

---

60% of the persons employed in the enterprise in the one or more classes of employment to which the agreement is to apply.

**61E. Content of enterprise agreement**

An enterprise agreement is to include provisions

—

- (a) identifying the parties to the agreement, the enterprise for which it is made and the classes of employment to which it relates; and
- (b) fixing the conditions of employment to which employment under the agreement is to be subject; and
- (c) setting out the procedures to be followed by the parties to, and persons covered by, the agreement for resolving grievances and disputes; and
- (d) specifying the period for which the agreement remains in force.

**61F. Minimum conditions of employment**

- (1) For an employee not otherwise covered by an award or a registered agreement, conditions of employment fixed by an enterprise agreement in respect of rates of wages must not be less than —
  - (a) subject to paragraph (c), in the case of a person other than an adult —

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61F**

---

- (i) who is 18 years of age or under, 50% of the hourly rate referred to in paragraph (b); or
    - (ii) who is 19 years of age, 65% of the hourly rate referred to in paragraph (b); or
    - (iii) who is 20 years of age, 80% of the hourly rate referred to in paragraph (b); and
  - (b) in the case of a person who is an adult, an hourly rate calculated by reference to the minimum wage as established by the Commission under section 35(1)(b) and to the ordinary weekly hours of work for which that person is employed; and
  - (c) in the case of an apprentice or trainee, the appropriate rate specified in a relevant award.
- (2) For an employee not otherwise covered by an award or a registered agreement, conditions other than wages must not be less than –
- (a) in the case of annual leave the lowest amount of paid annual leave specified in any award; and
  - (b) in the case of sick leave, the lowest amount of paid sick leave specified in any award; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61G**

Part IVA – Enterprise Agreements

---

- (c) in the case of parental leave, the lowest amount of parental leave specified in any award.

**61G. Formal considerations**

An enterprise agreement is required to be in writing and signed by or on behalf of all persons who are expressed to be parties to it.

**61H. Lodgement of enterprise agreement**

Parties to an enterprise agreement wishing to have the agreement approved and registered must lodge the agreement with the Registrar.

**61I. Hearing**

- (1) The Registrar is to refer an agreement lodged under section 61H to the President who is to refer the agreement to a Commissioner who must—
  - (a) set a hearing date and notify the Minister and the parties to the agreement accordingly; and
  - (b) forward a copy of the agreement to the Minister and the parties to the agreement.
- (2) At the hearing, the Commissioner must satisfy himself or herself that the parties to the agreement are aware of—



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61I**

- 
- (a) their entitlements and obligations under the agreement and this Part; and
    - (b) any changes to existing conditions of employment which will result from the agreement taking effect.
  - (2A) At the hearing, the Commissioner must be satisfied that any secret ballot required to be conducted in relation to the agreement has been conducted in accordance with section 61ZD(1).
  - (2B) For the purpose of subsection (2), the Commissioner must be satisfied that the parties to the agreement were provided with a written statement at least 2 weeks before the ballot to approve the agreement that specifies –
    - (a) any changes to their entitlements and obligations resulting from the agreement taking effect; and
    - (b) the nature of any changes to existing conditions of employment.
  - (3) The Commissioner may summon any person to attend a hearing.
  - (4) A person who is summoned to attend a hearing must not, without reasonable excuse, fail or refuse to attend the hearing as required by the summons.

Penalty: Fine not exceeding 10 penalty units.

- (5) A hearing is to be conducted in such manner as the Commissioner may determine.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61J**

Part IVA – Enterprise Agreements

---

- (6) A party to the enterprise agreement may appear before the Commissioner in person or by an agent.
- (7) At the hearing, the Commissioner may–
  - (a) with the consent of the parties, correct or amend any error, defect or irregularity relating to the agreement; and
  - (b) with the consent of a person, add or delete the person as a party to the agreement; and
  - (c) give any direction or do any thing necessary or convenient for the just and expeditious determination of the hearing; and
  - (d) inform himself or herself on any matter in any way he or she thinks fit.
- (8) The Commissioner is not bound by the rules of evidence in informing himself or herself on any matter at a hearing.

**61J. Approval of enterprise agreement**

- (1) Subject to subsections (1A) and (1C), the Commissioner must approve an enterprise agreement unless satisfied that–
  - (a) the conditions of employment specified in the agreement do not comply with the minimum conditions of employment specified in section 61F; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61J**

- 
- (b) . . . . .
- (c) the matters referred to in section 61E are not contained in the agreement; or
- (ca) the bargaining process adopted by the parties to the agreement was not appropriate and fair; or
- (d) the agreement was made under duress; or
- (e) any matter raised during a hearing convened under section 61I by the Minister, or by an organization intervening under section 27, justifies refusal of the approval of the agreement; or
- (f) the agreement is not fair in all the circumstances; or
- (g) the requirements referred to in section 61I(2), (2A) and (2B) have not been met.
- (1A) The Commissioner must ensure that an enterprise agreement does not disadvantage the employees to be covered by the agreement.
- (1B) An enterprise agreement is taken to disadvantage employees if its approval would result, on balance, in a reduction in the overall terms and conditions of employment of those employees compared with the award or agreement that would otherwise apply to those employees.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61K**

Part IVA – Enterprise Agreements

---

- (1C) Notwithstanding subsection (1A), the Commissioner may approve an enterprise agreement if he or she is satisfied that it is appropriate to approve the agreement having taken into account all of the circumstances including –
- (a) whether or not the genuine consent of the parties to the agreement has been given; and
  - (b) the public interest; and
  - (c) any other matter the Commissioner considers relevant.
- (2) If the Commissioner approves an enterprise agreement, the Commissioner must–
- (a) by notice in writing advise the parties to the agreement and the Minister of the approval and their right to withdraw from the agreement under section 61K; and
  - (b) forward a copy of the agreement to the Minister.
- (3) If the Commissioner refuses to approve an enterprise agreement, the Commissioner, by notice in writing, must advise the parties to the agreement and the Minister of the reasons for the refusal.

**61K. Withdrawal from enterprise agreement**

- (1) A party to an enterprise agreement, within 14 days after receipt of a notice under section 61J,

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61L**

---

may give written notice to the other parties of the intention to withdraw from the agreement.

- (2) A copy of the withdrawal notice is to be lodged with the Registrar within the period referred to in subsection (1).
- (3) If the parties to the enterprise agreement (other than the employer) include individuals or an employee committee, notice of withdrawal from the agreement by those parties may only be given if at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the agreement is to apply agree to it.

**61L. Registration of enterprise agreement**

- (1) Subject to subsection (2), the Registrar is to register an enterprise agreement approved under section 61J(1).
- (2) The Registrar is not to register an enterprise agreement if a withdrawal notice has been lodged under section 61K.
- (3) An enterprise agreement has no effect unless it is registered.

**61M. Effect of registered enterprise agreement**

- (1) A registered enterprise agreement is enforceable as if it were an award.
- (2) The provisions of a registered enterprise agreement prevail over the provisions of any

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61N**

Part IVA – Enterprise Agreements

---

award, industrial agreement or order of the Commission that deal with the same matters in so far as they purport to apply to any person bound by the enterprise agreement.

**61N. Persons bound by registered enterprise agreement**

A registered enterprise agreement is binding on —

- (a) the parties to the agreement; and
- (b) each person employed in the enterprise for which the agreement was made who is employed in a class of employment to which the agreement relates.
- (c) . . . . .

**61O. Duration of registered enterprise agreement**

- (1) A registered enterprise agreement remains in force for the period specified in the agreement, being a period not exceeding 5 years.
- (2) The parties to a registered enterprise agreement, by mutual consent, may make a further agreement to extend the registered enterprise agreement.
- (3) If the parties to the registered enterprise agreement (other than the enterprise employer) include individuals or an employee committee, a further agreement may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61P**

---

enterprise in the one or more classes of employment to which the enterprise agreement applies agree to it by secret ballot.

**61P. Variation of registered enterprise agreement**

- (1) The parties to a registered enterprise agreement, by mutual consent, may make a further agreement to vary the registered enterprise agreement.
- (2) If the parties to the registered enterprise agreement (other than the enterprise employer) include individuals or an employee committee, a further agreement to vary may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the enterprise in the one or more classes of employment to which the enterprise agreement applies agree to it by secret ballot.
- (3) A further agreement to vary a registered enterprise agreement remains in force for the remainder of the period during which the registered enterprise agreement remains in force.
- (4) On the registration of a further agreement under this Part, a registered enterprise agreement as varied by that further agreement has effect as so varied.

**61Q. Notice to be given of working conditions**

- (1) An employer of employees whose conditions of employment are affected by a registered

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61R**

Part IVA – Enterprise Agreements

---

enterprise agreement must cause a copy of the agreement to be displayed in a conspicuous place in all premises to which the agreement applies so as to be easily accessible to the employees in those premises.

Penalty: Fine not exceeding 10 penalty units.

- (2) Before an employer bound by a registered enterprise agreement engages the services of a person as an employee who will be bound by conditions of employment specified in a registered enterprise agreement, the employer must give the person notice of the existence of the agreement and access to a copy, or to an accurate (but simply expressed) summary, of the agreement.

Penalty: Fine not exceeding 10 penalty units.

**61R. Termination of registered enterprise agreement**

- (1) A registered enterprise agreement may be terminated before the end of the period for which it remains in force with the mutual consent of the parties to the agreement.
- (2) If the parties to a registered enterprise agreement (other than the employer) include individuals or an employee committee, an agreement to terminate the enterprise agreement during its duration may be entered into by those individuals or that employee committee only after at least 60% of the persons employed in the enterprise in the one or more classes of



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61R**

---

employment to which the enterprise agreement applies agree to it by secret ballot.

- (3) The parties to a registered enterprise agreement, by notice in writing, must notify the Registrar of their intention to terminate the enterprise agreement.
- (4) On receipt of a notice under subsection (3), the Registrar must approve the termination of the registered enterprise agreement if satisfied that—
  - (a) the agreement to terminate the agreement is by mutual consent of the parties; and
  - (b) the agreement to terminate the agreement is not a result of any duress applied to any party; and
  - (c) the parties are aware of any changes to existing conditions of employment which will result from the termination of the agreement.
- (5) If the Registrar approves the termination of a registered enterprise agreement, the Registrar must—
  - (a) remove the agreement from the register; and
  - (b) notify the parties to the agreement accordingly.
- (6) The termination of a registered enterprise agreement takes effect on the date on which it is removed from the register.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 61S

Part IVA – Enterprise Agreements

---

**61S. New enterprises**

(1) In this section –

*intending employee* means a person who intends to be employed in a new enterprise;

*intending employer* means a person who intends to be an employer in a new enterprise;

*new enterprise* means an enterprise which is not in existence but in which persons are proposed to be employed at the commencement of its operations.

(2) An enterprise agreement in relation to a new enterprise may be made between an intending employer and any one of the following:

(a) one or more organizations of employees representing intending employees;

(b) each of at least 60% of the intending employees if the Commissioner is satisfied that those intending employees have, by declaration in writing, specified a willingness to be employed under the conditions specified in the enterprise agreement.

(3) The provisions of sections 61E, 61F, 61G, 61H, 61I, 61J, 61K, 61L, 61M, 61N and 61Q apply with the necessary modifications to the making of an enterprise agreement under this section as

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61S**

---

if it were an enterprise agreement made in respect of an existing enterprise.

- (4) If, at the end of 30 days after the commencement of the operation of the new enterprise, the Commissioner is satisfied –
- (a) that the individuals who declared in writing a willingness to be employed under the conditions specified in the enterprise agreement constitute at least 60% of the employees of the enterprise; or
  - (b) that at least 60% of the persons employed in the enterprise to which the enterprise agreement applies agree to it by secret ballot –

the enterprise agreement remains in force and the provisions of sections 61O, 61P and 61R apply to the agreement.

- (5) If the Commissioner is not satisfied as required under subsection (4), the Commissioner must terminate the enterprise agreement.
- (6) If the Commissioner terminates an enterprise agreement, the Commissioner must serve notice of the termination on all parties to the agreement.
- (7) If the Commissioner terminates an enterprise agreement, the relevant award conditions apply to employees employed in the enterprise.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61T**

Part IVA – Enterprise Agreements

---

***Division 2 – Employee committees***

**61T. Decision to form employee committee**

- (1) Employees in a single enterprise in any one or more classes of employment who intend to enter into an enterprise agreement may, at a meeting held for the purpose, decide whether to form an employee committee to represent employees in the enterprise in those classes of employment.
- (2) A decision to form an employee committee must be supported in a secret ballot by at least 60% of the employees in the enterprise in those classes of employment.

**61U. Election of members of employee committee**

- (1) If employees decide to form an employee committee under section 61T, they are to elect, by secret ballot, not more than 8 of their number as members of that employee committee.
- (2) If the employer consents, the committee may consist of more than 8 persons.
- (3) The members of an employee committee hold office for the duration of the enterprise agreement or for any lesser period the relevant employees determine.

**61V. Periodic elections**

If the members of an employee committee hold office for a period less than the duration of the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61W**

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enterprise agreement, at the end of that period employees in a single enterprise in any one or more classes of employment must elect, by secret ballot, not more than 8 of their number as members of an employee committee.

**61W. Function of employee committee**

The function of an employee committee is to represent employees in an enterprise in any one or more classes of employment –

- (a) in the negotiating, making, extending, varying and terminating of an enterprise agreement; and
- (b) in relation to any other matter relating to an enterprise agreement.

**61X. Decisions and procedure**

- (1) A decision supported by the majority of the members of an employee committee is the decision of the committee.
- (2) An employee committee must elect a chairperson from among its members who is to have a deliberative vote and, in the event of an equality of votes, a second or casting vote.
- (3) Except as provided by this section, an employee committee may determine its own procedure.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61Y**

Part IVA – Enterprise Agreements

---

**61Y. Casual vacancy**

- (1) If a vacancy occurs in the office of a member of an employee committee, the employees being represented by the committee, by secret ballot, may elect one of their number to fill the vacancy.
- (2) Pending the election, the chairperson may appoint an employee referred to in subsection (1) to fill the vacant position.
- (3) A person elected under this section as a member of an employee committee holds office for the remainder of the term of office of his or her predecessor.

**61Z. Dissolution**

- (1) An employee committee may be dissolved at any time by a decision made by secret ballot by at least 60% of the persons employed in the enterprise who are or would be bound by an enterprise agreement entered into by the committee.
- (2) If an employee committee is dissolved while an enterprise agreement is in force, any employee committee formed in accordance with this Part within 30 days after the dissolution to represent the employees represented by the former committee is taken to be a party to the agreement instead of the former committee.
- (3) If an employee committee is dissolved while an enterprise agreement is in force and a further employee committee is not so elected, the former

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61ZA**

---

committee ceases to be a party to the agreement but persons from time to time employed in the enterprise who would have been bound by the agreement if the employee committee had not been dissolved continue to be bound by the agreement as if each such person were a party to the agreement.

***Division 3 – . . . . .***

61ZA - 61ZC. . . . .

***Division 4 – Miscellaneous***

**61ZD. Secret ballots under this Part**

- (1) A secret ballot under this Part must be conducted in a manner determined by the Registrar.
- (1A) The Registrar, at the request of all relevant persons, may waive the necessity to hold a secret ballot under section 61D(2) if—
  - (a) the number of employees involved is 5 or less; and
  - (b) all the employees attend the hearing to approve the agreement.
- (2) If, within 14 days after a ballot has been held, the Registrar receives a written complaint from any person entitled to vote in the ballot alleging specified irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, and the Registrar is satisfied that such irregularities

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 61ZE**

Part IVA – Enterprise Agreements

---

exist, the Registrar may arrange for the conduct of a further secret ballot.

(3) . . . . .

(4) The Registrar must not register an enterprise agreement –

(a) within 14 days after the holding of a secret ballot (or a further secret ballot) under this Part; or

(b) if a written complaint has been received under this section, until the complaint is resolved to the Registrar's satisfaction.

**61ZE. Register**

(1) The Enterprise Commissioner is to keep a register of all registered enterprise agreements, notices of termination of such agreements and any other particulars the Enterprise Commissioner considers appropriate.

(2) The Enterprise Commissioner is to permit the Secretary to inspect, and to make copies of, any document kept in the register.

(3) The Enterprise Commissioner is to permit parties to an enterprise agreement to inspect, and to make copies of, their enterprise agreement kept in the register.

(4) For the purposes of subsection (3), parties to an enterprise agreement include –



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part IVA – Enterprise Agreements

**s. 61ZE**

---

- (a) if an employee organization is a party to an enterprise agreement, members of the employee organization who are affected by the enterprise agreement; and
- (b) if an employee committee is a party to an enterprise agreement, employees who are represented by the enterprise committee.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 62

Part V – Registration of Organizations

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**PART V – REGISTRATION OF ORGANIZATIONS**

**62. Qualifications for registration**

- (1) Subject to the provisions of this Part, an association consisting –
  - (a) in the case of private employers, of 15 or more employers carrying on business in Tasmania or of 5 or more employers, employing in the aggregate, not less than 2 000 employees in Tasmania; or
  - (b) in the case of employees, of not less than 20 employees employed in Tasmania –

at the date of the application for registration by the association, may be registered as an organization under this Part.

- (2) The Tasmanian Chamber of Commerce and Industry Ltd. shall be deemed to be an employer organization registered under this Part and to have an interest in every award relating to private employers.
- (3) The Tasmanian Trades and Labor Council shall be deemed to be an employee organization registered under this Part and to have an interest in every award.
- (4) A controlling authority shall be deemed to be an organization of employers of State employees registered under this Part and to have an interest in those awards that have application to employees employed by it.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 63**

---

**63. Registration of associations**

- (1) An association seeking registration under this Part shall lodge in the office of the Registrar –
- (a) an application stating –
    - (i) the name of the association;
    - (ii) the eligibility for membership of the association;
    - (iii) the occupational groups constituting its membership;
    - (iv) the number of its members in Tasmania;
    - (v) the address of the office of the association;
    - (vi) the office bearers of the association;
    - (vii) the awards or registered agreements, or both, which apply to its members; and
    - (viii) the name of the person who is empowered by the association to submit claims to the Commission for an award, and, if applicable, to apply to the Commission for the approval of an industrial agreement or enterprise agreement, and to appear before the Commission; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 63

Part V – Registration of Organizations

---

- (b) a copy of its rules or constitution.
- (2) . . . . .
- (3) Subject to subsections (4) and (9) the Registrar –
  - (a) shall, if he is satisfied that the following requirements for the registration of an association as an organization have been complied with:
    - (i) that an application received by him under subsection (1) is made in accordance with that subsection and the rules or constitution of the applicant;
    - (ii) that the applicant is an association that complies with section 62(1)(a) or (b), as the case requires;
    - (iii) by the rules or constitution of the applicant that it is an association of employers or employees with power to represent the interests of those employers, or those employees, in Tasmania with respect to industrial matters;
    - (iv) that the awards or registered agreements, or both, stated in its application pursuant to subsection (1)(a)(vii) apply to members of the applicant or that its membership consists of or includes members who are

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

s. 63

---

employers or employees in an industry or occupation in respect of which an award could be made or an industrial agreement or enterprise agreement could be entered into, or who are State employees to whom an award could relate, and that membership is consistent with the rules or constitution of the applicant submitted to the Registrar under subsection (1)(b)–

grant that application and register the applicant as an organization under this Part; or

- (b) shall, if he is not so satisfied, refuse to grant that application.
- (4) Notwithstanding that the Registrar is satisfied that the requirements specified in subsection (3)(a) for the registration of an association as an organization have been complied with, the Registrar shall, unless in all the circumstances he thinks it undesirable so to do, refuse to register the association as an organization if an organization to which the members of the association might conveniently belong already exists.
- (5) Where an applicant for registration under this Part is an association registered as an organization under the Commonwealth Act, or the State branch of such an association, the applicant shall be deemed to have satisfied the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 63

Part V – Registration of Organizations

---

Registrar with regard to the matter referred to in subsection (3)(a)(iii).

(6 - 8) . . . . .

(9) An association shall not be registered as an organization under this Part –

(a) if its name is identical with that of an organization so registered or of another association registered as an organization under the Commonwealth Act or of a State branch of such an association or if its name so nearly resembles any such name as to be likely to confuse or mislead members of an organization registered under this Part or of an association registered under the Commonwealth Act or of a State branch of such an association or the public; or

(b) . . . . .

(10) After the Registrar registers an organization under this Part –

(a) the Registrar shall forward to the President the application for registration that was lodged with him by the organization and a record of his findings in relation to that application;

(b) the President shall, on receipt of the application and record, refer them to a Commissioner sitting alone for the purpose of his making a determination under paragraph (c); and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 63**

- 
- (c) that Commissioner shall determine which awards the organization has an interest in by satisfying himself that –
- (i) the membership of the organization consists of or includes members who are employers or employees in the industry or occupation to which the awards stated in its application pursuant to subsection (1)(a)(vii) relate or who are State employees to whom those awards relate;
  - (ii) that membership is consistent with the organization's rules or constitution a copy of which has been lodged with the Registrar pursuant to subsection (1); and
  - (iii) the organization being granted an interest in an award or awards would not prejudice the orderly conduct of industrial relations in Tasmania.
- (11) Before making a determination under subsection (10)(c), a Commissioner shall notify in writing –
- (a) in the case of a determination of the awards which an employee organization has an interest in, all other employee organizations which have an interest in the awards stated in the application lodged by that employee organization

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 63

Part V – Registration of Organizations

---

with the Registrar pursuant to subsection (1)(a); or

- (b) in the case of a determination of the awards which an employer organization has an interest in, all other employer organizations which have an interest in the awards stated in the application lodged by that employer organization with the Registrar pursuant to subsection (1)(a) –

and shall give them an opportunity to be heard in respect of the determination.

- (12) A Commissioner must, after making a determination under subsection (10)(c), forward a copy of the determination to the Registrar who must serve a written notice giving particulars of the determination on –

- (a) the organization to which the determination relates; and
- (b) any other organization having a registered interest in the award or awards to which the determination relates.

- (12A) After making a determination under subsection (10)(c), the Commissioner must vary the award to which the determination relates to reflect the determination.

- (13) Where the Registrar refuses to grant an application under subsection (1), he shall, by notice in writing served on the applicant, inform it of the refusal and the reason for the refusal.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 63A**

- 
- (14) In this section, *State branch*, in relation to an association referred to in subsection (5) or (9)(a), means the Tasmanian branch, or the Tasmanian branches, of the association the constitution or rules of which provide for the establishment and operation of any such branch or branches.

63A. . . . .

**64. Certificate of registration**

- (1) The Registrar shall issue to an organization registered under this Part a certificate of registration in the prescribed form and specifying the awards in which a Commissioner has determined, under section 63(10)(c), that the organization has an interest.
- (2) A certificate of registration is, until proof of its cancellation, conclusive evidence of the registration under this Part of the organization to which it applies.

**65. Effect of registration**

Subject to this Act, registration under this Part entitles an organization to the following rights:

- (a) to make applications to the Commission pursuant to this Act;
- (b) to be notified of the hearing of an application in respect of an award in

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 65A**

Part V – Registration of Organizations

---

relation to which it has satisfied the Registrar that it has an interest;

- (c) to appear in proceedings before the Commission with respect to an industrial matter affecting the members of the organization;
- (d) to lodge an appeal as provided in Part VI and Part VIII;
- (e) to intervene as provided in section 27(2);
- (f) . . . . .
- (g) to enter into an industrial agreement or enterprise agreement;
- (h) for its officers to enter premises as mentioned in section 77.

**65A. Recall and re-issue of certificate of registration**

- (1) After the Registrar has issued a certificate of registration to an organization, the organization or another organization may apply to the President to have its interest in an award specified in the certificate –
  - (a) deleted from the certificate; or
  - (b) added to the certificate.
- (2) The President shall, on receipt of an application under subsection (1), refer it to a Commissioner sitting alone for the purpose of his making a determination under subsection (3).

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 65A**

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- (3) Where, pursuant to subsection (2), an application is referred to a Commissioner, the Commissioner shall, subject to subsection (4), determine, as the case requires, whether the organization to which the application relates no longer has an interest in an award specified in its certificate of registration or has an interest in an award not so specified.
- (4) Before making a determination under subsection (3), a Commissioner shall give the applicant for the determination and the organizations having an interest in the award concerned an opportunity to be heard on the matter.
- (5) A Commissioner shall take into account such matters specified in section 63(10)(c) as are relevant to the making of a determination by him under subsection (3).
- (6) A Commissioner shall, after making a determination under subsection (3), forward a copy of the determination to the Registrar who thereupon shall serve on –
- (a) the organization to which the determination relates; and
  - (b) any other organization which has made a request under subsection (1) in relation to that first-mentioned organization –
- a notice in writing giving particulars of the determination.
- (6A) After making a determination under subsection (3), the Commissioner must vary the award to

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 65A**

Part V – Registration of Organizations

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which the determination relates to reflect the determination.

- (7) Where a Commissioner makes a determination under subsection (3) with respect to an organization, the Registrar is, by virtue of the determination, given leave to recall the certificate of registration of that organization and to re-issue it with the necessary amendments if such a recall and re-issue are required as a consequence of the determination.
- (8) Where, as mentioned in subsection (7), the Registrar is given leave to recall and re-issue the certificate of registration of an organization, he shall, in the notice served under subsection (6) on the organization, recall the certificate by requiring it to be delivered to him, subject to subsection (9), by such date as is specified in the notice, being a date not earlier than 21 days after the service of the notice on the organization.
- (9) Where an organization makes an appeal under section 70(1) in respect of a determination under subsection (3), the organization is not required to deliver its certificate of registration to the Registrar as required by a notice served on it under subsection (6).
- (10) Where an organization delivers its certificate of registration to the Registrar as required by a notice under subsection (6), the Registrar shall re-issue the certificate with the necessary amendments and return it to the organization.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 66**

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- (11) An organization which fails to deliver to the Registrar its certificate of registration as required by a notice under subsection (6) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

**66. Extension of entitlement of rights specified in section 65 to certain private employers and certain associations**

- (1) A private employer who is the only employer subject to an award is, subject to the modifications of section 65 specified in subsection (2), entitled to the rights specified in that section as if he were an organization.
- (2) For the purposes of subsection (1), section 65 is modified as if –
- (a) paragraph (b) were omitted and the following paragraph were substituted:
    - (b) to be notified of the hearing of an application in respect of an award that is applicable to him;
  - (b) the reference in paragraph (c) to the members of the organization were a reference to a private employer referred to in section 66(1); and
  - (c) paragraph (h) were omitted.
- (3) An association which is a party to an agreement with the Minister for the time being administering the *Health Act 1997* concerning

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 66

Part V – Registration of Organizations

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the provision of services for a hospital maintained and operated by or on behalf of the State by health practitioners visiting such a hospital is, subject to –

- (a) the modifications of section 65 specified in subsection (4); and
- (b) the approval of the President –

entitled to the rights specified in that section as if the association were an organization.

- (4) For the purposes of subsection (3), section 65 is modified as if –

- (a) paragraphs (b) and (c) were omitted and the following paragraphs were substituted:

- (b) to be notified of the hearing of an application in respect of an award relating to or giving effect to an agreement referred to in section 66 (3);

- (c) to appear in proceedings before the Commission in relation to an application referred to in paragraph (b); and

- (b) paragraphs (e) and (h) were omitted.

- (5) For the purposes of subsection (3),

***health practitioners*** means –

- (a) medical practitioners; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 67**

- (b) persons registered under the Health Practitioner Regulation National Law (Tasmania) in the dental profession as dentists; and
- (c) persons registered under the Health Practitioner Regulation National Law (Tasmania) in the optometry profession; and
- (d) persons registered under the Health Practitioner Regulation National Law (Tasmania) in the physiotherapy profession; and
- (e) persons registered under the Health Practitioner Regulation National Law (Tasmania) in the podiatry profession.

**67. Alteration of rules or constitutions of organizations**

- (1) Before altering its rules or constitution so as to effect a change in the persons eligible to be members of the organization, an organization, other than one that is also registered under the Commonwealth Act, shall obtain the approval of the Registrar to the alteration.
- (2) An application by an organization to which subsection (1) applies for an approval under that subsection shall be made as prescribed in the regulations.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 67

Part V – Registration of Organizations

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- (3) Except as provided in subsection (4), the Registrar shall grant an application made to him under subsection (2).
- (4) Where, after considering an application made to him under subsection (2), the Registrar is of the opinion that the alteration to which the application relates would be likely to permit the recruitment of members of the relevant organization from occupational or employee groups the members of which, or the majority of the members of which, are members of another organization, he shall, on the ground that an organization exists to which members of those occupational or employee groups could conveniently belong, refuse to grant the application.
- (5) Where the Registrar refuses to grant an application under subsection (2), he shall, by notice in writing served on the applicant, inform it of the refusal and of the reason for the refusal.
- (6) Where –
  - (a) an organization that is also registered under the Commonwealth Act alters its rules or constitution, in accordance with that Act, so as to effect a change in the persons eligible to be members of the organization; or
  - (b) an organization alters its rules or constitution otherwise than to effect a change referred to in paragraph (a) –



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 67A**

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the organization shall, within 30 days after the alteration is made, forward a copy of the altered rules or constitution to the Registrar.

- (7) Where, after considering a copy of the altered rules or constitution of an organization forwarded to him pursuant to subsection (6), the Registrar is of the opinion that the organization, by virtue of the alteration to its rules or constitution, has no longer power to represent the interests of its members in Tasmania with respect to industrial matters, the Registrar shall apply to the President for the cancellation of the registration of the organization.

**67A. Amalgamation of organizations**

- (1) If 2 or more organizations wish to amalgamate they must lodge in the office of the Registrar –
- (a) an application, signed on behalf of each organization, confirming that they have agreed to amalgamate; and
  - (b) a notice specifying the proposed name and address of the amalgamated organization; and
  - (c) a copy of the rules or constitution of the proposed amalgamated organization; and
  - (d) the certificates of registration of each of the organizations proposing to amalgamate.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 67A**

Part V – Registration of Organizations

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- (2) If, after receiving an application, the Registrar is satisfied that were the application to amalgamate in the form of an application to register the amalgamated organization –
- (a) the application would comply with the requirements for the registration of an association that are specified in section 63(3)(a); and
  - (b) section 63(9) would not prevent the organization being registered by the name chosen for the amalgamated organization –
- the Registrar must register the amalgamated organization.
- (3) If the Registrar registers an organization under subsection (2), the Registrar must at the same time –
- (a) cancel the registration of each of the organizations that amalgamated to form that organization; and
  - (b) issue a certificate of registration to the organization in accordance with section 64.
- (4) A new organization formed by the amalgamation of organizations and registered under subsection (2) has all the rights including interest in awards and industrial agreements and is subject to all the obligations that each of those organizations had or was subject to immediately before its registration was cancelled.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 68**

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- (5) An amalgamation of organizations is of no effect until the amalgamated organization is registered under subsection (2).
  - (6) If the Registrar is not satisfied as required under this section, the Registrar must –
    - (a) refuse to register an amalgamated organization; and
    - (b) by notice in writing served on each of the organizations seeking to amalgamate, inform the organizations of the refusal and the reason for the refusal.

**68. Cancellation of registration**

- (1) Where it appears to the President on application –
  - (a) made by the Registrar –
    - (i) under section 67(7) that an organization, by virtue of an alteration to its rules or constitution, has no longer power to represent the interests of its members in Tasmania with respect to industrial matters; or
    - (ii) . . . . .
    - (iii) that an organization has not complied with section 67(1) or (6);

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 68

Part V – Registration of Organizations

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- (b) made by the Minister that any members or officers of an organization, or made by an organization that any members or officers of another organization –
  - (i) have contravened or failed to comply with an order that is applicable to that organization or them; or
  - (ii) have repeatedly engaged in conduct that contravenes a provision of this Act; or
- (c) made by the Registrar that an organization, or made by an organization that another organization –
  - (i) is no longer an association that complies with section 62(1)(a) or (b), as the case requires; or
  - (ii) is defunct –

the President shall refer the application to a Full Bench and the Full Bench may, subject to subsection (2), cancel the registration of the organization.

- (1A) If an organization requests that its registration be cancelled, the Registrar may cancel its registration.
- (2) A Full Bench shall not exercise its powers under subsection (1) in relation to the members or officers of an organization, or in respect of an organization, that is not defunct, unless it has

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part V – Registration of Organizations

**s. 68**

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first afforded the members or officers of the organization, as the case may be, an opportunity to make submissions to it in relation to the matter.

- (3) Where the registration of an organization has been cancelled under subsection (1), a Full Bench shall, unless the organization is defunct, by notice in writing served on the organization, inform it of the cancellation, and the cancellation shall take effect on such date as the Full Bench specifies in that notice, being a date not earlier than 14 days after the service of the notice on the organization.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 69

Part VI – Appeals

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**PART VI – APPEALS**

**69. Interpretation of Part**

- (1) For the purposes of this Part, a reference to an organization, a registered organization, an employer organization and an employer includes a reference to a controlling authority and a State authority.
- (2) For the purposes of sections 70 and 71, *decision* includes a declaration, an order, a determination, an approval, a refusal, a dismissal, an award or any other finding made by a Commissioner or the Registrar.

**70. Rights of appeal**

- (1) An appeal may be made to the Full Bench against –
  - (a) a decision of a Commissioner to make, vary or rescind an award, or refuse to make, vary or rescind an award, by –
    - (i) an organisation which appeared at the hearing; or
    - (ii) an organisation granted, or deemed under Part V to have, an interest in the award; or
    - (iii) the Minister; and
  - (b) an order made by a Commissioner under section 31(1) after a hearing relating to

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VI – Appeals

s. 70

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an industrial dispute in respect of the mode, terms or conditions of employment or any termination of employment, including termination resulting from redundancy, or long service leave, or breach of an award or a registered agreement by –

- (i) the party who applied for the hearing; or
  - (ii) the party to whom the order relates; or
  - (iii) the Minister; and
- (c) a decision made by a Commissioner or the Registrar under section 43, 55, 59, 61J, 61R, 61S, 63(10), 65A, 67(4), 67A or 75(7E) by –
- (i) any party who appeared at the hearing to which the decision relates; or
  - (ii) any organisation granted, or deemed under Part V to have, an interest in the award to which the decision relates; or
  - (iii) the Minister.

- (1A) A Full Bench is not to uphold an appeal under subsection (1) unless in its opinion –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 71

Part VI – Appeals

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- (a) the Commissioner against whose decision the appeal is made, in reaching that decision –
    - (i) made a legal error; or
    - (ii) acted on a wrong principle; or
    - (iii) gave weight to an irrelevant matter; or
    - (iv) gave insufficient weight to a relevant matter; or
    - (v) made a mistake as to the facts; or
  - (b) the decision was plainly unreasonable or unjust.
- (2) The Full Bench hearing an appeal under subsection (1) is not to include the Commissioner who made the decision to which the appeal relates.
- (3) . . . . .

**71. Procedure on appeals**

- (1) An appeal under section 70 must be made by lodging a notice of appeal with the Registrar within 21 days after the date of service of the notice relating to the decision being appealed against.
- (2) A notice of appeal for the purposes of subsection (1) shall specify –



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VI – Appeals

s. 71

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- (a) the award or decision against which the appeal is brought;
  - (b) the organization, association, or person bringing the appeal; and
  - (c) the grounds of the appeal.
- (2A) At any time before setting a date for a hearing, or before the date of the hearing, the Full Bench may require the appellant to provide, to the Full Bench and the other parties to the appeal, further and better particulars of the grounds for appeal.
- (3) Where a notice of appeal is lodged under subsection (1), the Registrar shall give to the appellant and such organizations and persons as the President directs notice of the time and place at which the appeal will be held.
- (4) If a notice of appeal is lodged under subsection (1), the Full Bench may suspend the operation of the award or decision being appealed against.
- (4A) A suspension of the operation of an award or decision –
- (a) may be given on any conditions the Full Bench considers appropriate; and
  - (b) operates for a period determined by the Full Bench, not extending beyond the determination of the appeal; and
  - (c) may be amended or revoked by the Full Bench.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 71

Part VI – Appeals

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- (5) Where an appeal is made to a Full Bench, an organization or any person may apply to the Full Bench for leave to appear on the hearing of the appeal.
- (6) A Full Bench may –
  - (a) grant an application under subsection (5) either unconditionally or subject to such conditions as it determines; or
  - (b) refuse to grant the application.
- (7) . . . . .
- (8) On the hearing of an appeal, evidence and matters, other than evidence and matters raised in the proceedings in respect of the matter appealed against, shall be admitted only by leave of the Full Bench hearing the appeal.
- (9) Subject to subsection (8), a Full Bench may, in respect of an appeal, determine whether, in respect of any matter in dispute before it, it will hear argument only or hear both evidence and argument.
- (10) On the hearing of an appeal, a Full Bench shall act according to equity, good conscience, and the merits of the matter without regard to technicalities or legal forms, and may direct itself by the best evidence it can procure, whether that evidence would be admissible in a court or not.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VI – Appeals

**s. 71**

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- (11) Section 8 and Part 3 of the *Commissions of Inquiry Act 1995* apply to the proceedings in any appeal before a Full Bench as if –
- (a) the Full Bench were a Commission established under section 4 of that Act; and
  - (b) the matter the ground of the appeal were the matter into which that Commission had been directed to inquire under that Act.
- (12) A person who is present at the hearing of an appeal before a Full Bench for the purpose of giving evidence when summoned so to do is entitled to be paid such fees, allowances, and sums by way of reimbursement of expenses as are prescribed in the regulations.
- (13) On the hearing of an appeal, a Full Bench may do one or more of the following:
- (a) confirm, revoke or vary the award or decision appealed against;
  - (b) make an award or decision dealing with the subject-matter of the award or decision appealed against;
  - (c) direct the Commissioner who made the award or the Commissioner or Registrar whose decision is appealed against, or another Commissioner, to take further action to deal with the subject-matter of the award or decision in accordance with the directions of the Full Bench.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 71

Part VI – Appeals

---

(14 - 16B) . . . . .

- (17) A Full Bench shall give its decision in respect of an appeal in writing.
- (18) A decision of a Full Bench in respect of an appeal shall contain the reasons for the appeal.
- (19) A Full Bench is to cause a copy of its decision in respect of an appeal to be served on –
  - (a) each of the parties to the appeal; and
  - (b) in the case of an appeal relating to an award or an interpretation, on any organization which under section 63(10) was determined by a Commissioner to have an interest in the award or interpretation.
- (20) Where the Full Bench gives a direction under subsection (13)(c) to recall the certificate of registration of an organization, the Registrar shall, by notice in writing served on the organization to which the direction relates, recall the certificate of registration of the organization by requiring it to be delivered to him by such date as is specified in the notice.
- (21) Where an organization delivers its certificate of registration to the Registrar as required by a notice under subsection (20), the Registrar shall re-issue the certificate with the necessary amendments and return it to the organization.
- (22) An organization which fails to deliver to the Registrar its certificate of registration as required

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VI – Appeals

**s. 72**

---

by a notice under subsection (20) is guilty of an offence and is liable on summary conviction to a fine not exceeding 5 penalty units.

**72. Provisions relating to finality of decisions of Full Bench**

- (1) Where a Full Bench makes a decision in respect of an appeal, that decision is, subject to this section, final.
- (2) A person who wishes to challenge a decision of a Full Bench in respect of an appeal may apply to the Supreme Court, by motion supported by affidavit, for an order *nisi* calling on the Full Bench to show cause why the decision should not be quashed in whole or in part.
- (3) On the return of an order *nisi* referred to in subsection (2), the Supreme Court may discharge the order or make it absolute with or without costs.
- (4) A decision of a Full Bench in respect of an appeal shall not be challenged otherwise than under this section.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 73

Part VII – Records and Inspection

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**PART VII – RECORDS AND INSPECTION**

73. . . . .

**74. Functions of Secretary**

- (1) The Secretary is, subject to directions of the Minister, responsible for the administration of this Part.
- (2) The Secretary may appoint a State Service officer or State Service employee employed in the Department to be an inspector and that officer or employee may hold that office in conjunction with State Service employment.
- (3) The Governor may enter into an agreement with the Governor-General of the Commonwealth with respect to the exercise and performance by a Commonwealth inspector of the powers and functions of an inspector within the meaning of this Act.
- (4) In an agreement pursuant to subsection (3), the Governor may make such arrangements as may be required –
  - (a) for determining the rate of payment to be made by the State in respect of; and
  - (b) for the adjustment of any matters requiring adjustment in relation to –  
the exercise and performance by a Commonwealth inspector of the powers and functions referred to in that subsection.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

**s. 75**

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- (5) Where the Governor enters into an agreement pursuant to subsection (3), a Commonwealth inspector to whom the agreement relates shall be deemed to be an inspector appointed by the Secretary under subsection (2).
- (6) In this section *Commonwealth inspector* means –
- (a) a person appointed as an inspector under section 84 (2) of the Commonwealth Act; or
  - (b) a person to whom an arrangement referred to in section 84 (3) of the Commonwealth Act applies.

**75. Records of employment and advice of pay details**

- (1) An employer must make and maintain a true record of employment in such form, and containing such information, as may be prescribed.
- (1A) On the request of an employee, an employer must –
- (a) make available to the employee –
    - (i) his or her record of employment made under subsection (1); and
    - (ii) any other record kept by the employer relating to the employee's employment; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 75

Part VII – Records and Inspection

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- (b) allow the employee to inspect and take copies of those records.

- (1B) An employer must provide each employee with written advice of pay details for each pay period.

Penalty: Fine not exceeding 20 penalty units.

- (1C) The pay advice provided to the employee by the employer must include, as a minimum, the following:

- (a) the name of the employer;
- (b) the name of the employee;
- (c) the date and period for which payment is being made;
- (d) the employee's classification;
- (e) the employee's weekly wage or hourly rate;
- (f) the number of ordinary hours the employee worked in the relevant pay period;
- (g) the number of additional or overtime hours worked in the pay period and the rate at which those hours have been paid;
- (h) the amount of any paid leave, including holidays;
- (i) any amount paid as an allowance;



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

s. 75

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- (j) any other amount included in the gross wage;
  - (k) all deductions from the gross wage, including tax;
  - (l) the net wage paid.
- (1D) Where employer-paid superannuation instalments are made on behalf of an employee, the amount paid and the fund into which it is paid is to be specified on the employee's pay advice.
- (2) Where a person ceases to be an employee, the person who was his employer shall cause the record made by him under subsection (1) to be kept for a period of 12 months after the termination of the employment of that first-mentioned person.
- (3) Where a business or part of a business is sold, transferred, conveyed, or assigned by an employer to another employer, the first-mentioned employer shall forward to the other employer all records made by him under subsection (1).
- (4) If a person ceases to be an employer otherwise than for a reason referred to in subsection (3), he shall, notwithstanding that he has ceased to be an employer, cause the record made by him under subsection (1) to be kept for a period of 12 months after he ceases to be an employer so that it is readily available for production or inspection in accordance with this Act.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 75

Part VII – Records and Inspection

---

- (5) On a notice served on him by an inspector, an employer who is required to keep a record under this section shall, in accordance with the notice, forward to an inspector a true copy of the record or such information contained in the record as is specified in the notice.
- (6) An employer or other person who fails to comply with this section is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.
- (7) The court by which a person is convicted of an offence against subsection (5) may order that person to forward to an inspector a true copy of the record, or, as the case may be, the information contained in the record, that he failed to produce in response to a notice under that subsection.
- (7A) If an employer who is required to keep a record under this section has failed to comply with a notice served on the employer in accordance with subsection (5), the Secretary may apply to the President for an order by a Commissioner requiring the employer to forward to the Secretary a true copy of the record or such information contained in the record as is specified in the application.
- (7B) On receipt of an application under subsection (7A), the President must cause notice of the application to be served on the employer.
- (7C) A notice under subsection (7B) must state –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

**s. 75**

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- (a) the matter to which the application relates; and
    - (b) the time and place where a hearing is to be conducted before a Commissioner.
  - (7D) The Secretary and the employer are entitled to be heard at a hearing held for the purposes of considering an application under subsection (7A).
  - (7E) After a hearing in respect of an application for an order referred to in subsection (7A), the Commissioner before whom the application was heard may –
    - (a) make or refuse to make the order applied for; or
    - (b) make such other order as the Commissioner in the circumstances considers appropriate.
  - (7F) The Registrar must serve on the relevant employer –
    - (a) if the Commissioner makes an order under subsection (7E), a copy of that order; or
    - (b) if the Commissioner refuses to make an order under that subsection, a notice in writing of that refusal.
  - (8) A person who fails to comply with an order under subsection (7) or (7E) within such time as is specified in the order is guilty of an offence

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**s. 76**

Part VII – Records and Inspection

---

and is liable on summary conviction to a fine not exceeding 20 penalty units.

- (9) Proceedings in relation to an offence against this section must be brought within 12 months of the date of the alleged offence.

**76. Powers of inspectors**

- (1) An inspector may require a person who is, or has been, an employer –
- (a) to produce any record required to be kept by that person under this Act; and
  - (b) to produce all pay-sheets or other documents in which an account is kept of the remuneration paid to an employee of that employer whose rate of remuneration (whether as wages rates or piecework rates) is or was fixed by an award or a registered agreement.
- (2) Without prejudice to the making of a requirement in any other manner, a requirement made of a person under subsection (1) may be made by notice in writing served on him.
- (3) An inspector, as regards any premises or place at which employees are employed, may –
- (a) inspect and examine those premises or that place at any time when he has reasonable cause to believe that any person is employed there;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

**s. 76**

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- (b) question, either alone or in the presence of any other person, as he thinks fit, with respect to matters under this Act, any person whom he finds in or about those premises or that place, and whom he believes to be employed there, and require that person to answer the questions put by the inspector, and sign a declaration as to the truth of his answers; and
    - (c) exercise such other powers as may be prescribed in the regulations.
  - (4) For the purposes of the exercise of his powers under this section, an inspector may enter and remain in any such premises or place as is referred to in subsection (3).
  - (5) An inspector who is exercising his powers under this section may take with him an interpreter and, when he does so –
    - (a) any question put, or requirement made, by the interpreter on behalf of the inspector shall be deemed to have been put or made by the inspector; and
    - (b) a reply to a question or requirement made to the interpreter shall be deemed to have been made to the inspector.
  - (6) An employer or a person who has been an employer shall, at all reasonable times, provide the means required by an inspector that are necessary for the exercise of his powers under this section.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 77

Part VII – Records and Inspection

---

(7) A person who –

- (a) obstructs, hinders, wilfully delays, threatens, or assaults an inspector or interpreter in the exercise of his powers under this section;
- (b) fails to comply with a request of an inspector, or to answer questions asked by an inspector, made under any such power when it is within his power to comply with the request;
- (c) gives an answer to such a question which, to his knowledge, is false or misleading in a material particular; or
- (d) intentionally conceals a person from an inspector or prevents a person from appearing before or being questioned by an inspector for the purposes of this Act or attempts so to conceal or prevent a person –

is guilty of an offence and is liable on summary conviction to a fine not exceeding 20 penalty units.

**77. Right of entry of union officials**

- (1) An officer of an organization of employees, subject to any conditions prescribed in the regulations, may –
  - (a) during working hours, enter any premises where members of that organization are

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

s. 77

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- employed for the purpose of talking with or interviewing the employees at the premises; and
- (b) during working hours, enter any premises where members of that organization are or were employed for the purpose of investigating any alleged breach of this Act, any award or registered agreement in relation to the industry or enterprise in which those members are or were employed; and
  - (c) for the purpose of investigating any alleged breach referred to in paragraph (b) and with the approval of the employee or former employee, require the employer to produce for inspection during the usual office hours at the employer's office the record kept under section 75 in respect of that employee or former employee; and
  - (d) make copies of the entries in any record kept under section 75 related to any alleged breach referred to in paragraph (b).
- (2) Before exercising any power under subsection (1)(c) or (d), an officer referred to in that subsection must give the relevant employer notice of at least two working days not being a Saturday, Sunday or public holiday.
- (2A) Notwithstanding subsection (2), an officer referred to in subsection (1) may exercise any of

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 77

Part VII – Records and Inspection

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the powers referred to in paragraphs (c) or (d) of that subsection before the expiration of the period of notice referred to in subsection (2) if the relevant employer agrees to the exercise of those powers before that expiration.

- (3) An officer referred to in subsection (1) is not entitled to inspect a record referred to in that subsection until the officer has made before a justice the declaration of secrecy prescribed in the regulations.
- (4) A person who has made a declaration of secrecy in accordance with subsection (3) shall not disclose, contrary to that declaration, any information obtained by him from an inspection of a record referred to in that subsection.

Penalty: Fine not exceeding 20 penalty units.

- (5) Where an officer of an organization of employees to which subsection (1) applies is entitled under this section to inspect a record required by this Act to be kept by an employer, that employer shall, on a written notice served on him by the officer, produce the record for inspection by the officer.
- (6) An employer who fails to comply with subsection (5) is guilty of an offence and is liable on summary conviction to a fine not exceeding 10 penalty units.



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VII – Records and Inspection

**s. 78**

---

**78. Service of requisitions on employers, &c.**

For the purposes of this Part, service of a notice on, or the making of a requirement of, the agent of an employer or the manager, foreman, or other person apparently in charge of a place at which any employees are employed by the employer shall be deemed for the purposes of this Act to be service on, or the making of a requirement of, that employer.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 79

Part VIII – Miscellaneous

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**PART VIII – MISCELLANEOUS**

**79. Employment of infirm persons**

- (1) The Commission may, on application by an infirm person, grant that person an authority to work at a wage less than that fixed by any relevant award or relevant registered agreement.
- (2) The Commission must not grant an authority under subsection (1) unless, after consulting officers of such employee organizations as the Commission considers appropriate, the Commission is satisfied that the applicant is, by reason of infirmity, unable to obtain employment at the wage fixed by any relevant award or relevant registered agreement.
- (3) If the Commission refuses to grant an authority under subsection (1), the Commission must immediately serve a written notice on the applicant informing the applicant of the refusal and the reason for the refusal.
- (4) An authority –
  - (a) must specify the terms on which it is granted including the minimum wage rate at which the person to whom the authority is granted is authorized to work; and
  - (b) may specify the period for which it is to remain in force.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 80**

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- (5) The Commission may revoke an authority at any time by giving the person to whom it was granted at least 7 days written notice of the revocation and the reason for the revocation.
- (6) Subject to subsection (7), an employer in an industry or occupation within the jurisdiction of the Commission must not employ a number of persons authorized under this section that exceeds 20% of the whole number of persons employed by the employer in that industry or occupation.
- Penalty: Fine not exceeding 20 penalty units.
- (7) Subsection (6) does not apply to the employment in an industry or occupation of one person authorized under this section.

**80. Employment of persons with disabilities in sheltered workshops, &c.**

- (1) Subject to subsection (2), an award does not apply to a person with a disability employed, or engaged in work, in a sheltered workshop or in an institution.
- (2) Where, on application by the Registrar, the Commission is satisfied, after due inquiry, that any institution or sheltered workshop is unfairly competing with persons carrying on a business in which there is performed work similar to that performed by an inmate of the institution or a person with a disability employed or engaged in the sheltered workshop, the Commission may, by order, apply as from a day specified in the

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 80

Part VIII – Miscellaneous

---

order a relevant award to any inmate or class of inmates of the institution or to any person with a disability or class of persons with disabilities employed or engaged in the sheltered workshop.

(3) In this section –

***disability*** means a disability –

- (a) which is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) which is permanent or likely to be permanent; and
- (c) which results in –
  - (i) a substantially reduced capacity of a person for communication, learning or mobility; and
  - (ii) the need for continuing support services; and
- (d) which may or may not be of a chronic episodic nature;

***institution*** means an institution conducted in good faith for religious or charitable purposes;

***sheltered workshop*** means premises where persons with disabilities are able to carry

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 81**

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out work that benefits them, whether or not the work ordinarily yields a profit.

**81. Employment of students**

(1) In this section –

*prescribed period* means –

- (a) in the case of a person undergoing a full-time course of training at a college of technical and further education in Tasmania for a diploma as a trade teacher, 30 months; and
- (b) in any other case, 18 months;

*tertiary education* means –

- (a) a course at a university within the Commonwealth; or
  - (b) a full-time course at a college of technical and further education in Tasmania.
- (2) The Commission may, on application by a person who is undergoing a course of tertiary education, grant that person an authority to work in accordance with the terms of the authority for a specified employer for any periods, not exceeding in the aggregate the prescribed period, to gain practical experience in specified subjects in that course of tertiary education if the gaining of the practical experience is a requirement of the course.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 82

Part VIII – Miscellaneous

---

- (3) If the Commission refuses to grant an authority under subsection (2), the Commission must immediately serve a written notice on the applicant informing the applicant of the refusal and the reason for the refusal.
- (4) The Commission may revoke an authority at any time by giving the holder of the authority at least 7 days written notice of revocation and the reason for the revocation.
- (5) Nothing in this Act prevents a person to whom an authority has been granted under subsection (2) from being employed by the employer specified in the authority in accordance with the terms of that authority at a remuneration not less than that specified in the authority.

**82. Appeals in respect of matters under sections 79, 80 and 81**

- (1) A person who is aggrieved by –
  - (a) a refusal by a Commissioner sitting alone to grant an authority under section 79 or 81; or
  - (b) the terms specified in an authority granted under either of those sections; or
  - (c) the revocation of such an authority; or
  - (d) an order made by the Commission under section 80(2) –

may appeal to a Full Bench.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 82**

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- (2) An appeal must be instituted by giving written notice of appeal to the Registrar within a period of 21 days after –
- (a) the service of a notice under section 79(3) or 81(3), in the case of a refusal to grant an authority; or
  - (b) the receipt of an authority, in the case of an appeal against the terms specified in the authority; or
  - (c) the service of a notice under section 79(5) or 81(4), in the case of an appeal against the revocation of an authority; or
  - (d) the date of the order of the Commission under section 80(2).
- (3) The membership of a Full Bench for the purpose of hearing an appeal is not to include the Commissioner whose decision is appealed against.
- (4) An appeal must be heard and determined by a Full Bench in such manner as the Full Bench determines.
- (5) At the hearing of an appeal a Full Bench may –
- (a) dismiss the appeal; or
  - (b) quash the decision appealed against and direct the Commissioner who made the decision or some other Commissioner to take such action as the Full Bench

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 83

Part VIII – Miscellaneous

---

considers necessary in the matter to which the appeal relates.

- (6) If an appeal is in respect of the revocation of an authority, the revocation has no effect until –
  - (a) the determination or abandonment of the appeal; or
  - (b) such later date as the Full Bench determines.
- (7) A Full Bench must cause a copy of its decision in relation to an appeal to be served on the parties to the appeal.
- (8) The decision of a Full Bench on an appeal is final.

**83. Requirements as to secrecy of officers, &c.**

- (1) A Commissioner, a person appointed under section 10(2) to act in the office of a Commissioner, or an officer or inspector shall, before acting in the execution of his office, make and subscribe before a justice a declaration of secrecy in accordance with the form prescribed by the regulations.
- (2) A person to whom subsection (1) applies who fails to comply with that subsection is guilty of an offence and, in the case of –
  - (a) a Commissioner, that offence constitutes misbehaviour for the purposes of section 11(2);



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 84**

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- (b) a person appointed as mentioned in subsection (1), that person is liable on summary conviction to a fine not exceeding 20 penalty units; or
  - (c) an officer or inspector, the officer or inspector shall be proceeded against in accordance with section 10 of the *State Service Act 2000* as if he or she had committed a breach of the Code of Conduct within the meaning of that Act.
- (3) A person who has made a declaration of secrecy pursuant to subsection (1) shall not, whether or not he has ceased to hold the office by virtue of which he was required to make the declaration, disclose any information contrary to his declaration.

Penalty: Fine not exceeding 20 penalty units.

**84. Copies of awards and registered agreements**

An employer of employees subject to an award or a registered agreement must ensure that a copy of the award or registered agreement, as currently in force—

- (a) is readily available for inspection and perusal by those employees; and
- (b) is displayed in a conspicuous place in the premises in which the employees are employed so as to be easily accessible to those employees.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 85

Part VIII – Miscellaneous

---

Penalty: Fine not exceeding 10 penalty units.

**85. Awards and registered agreements prevail**

- (1) Any provision of an award or a registered agreement that is inconsistent with a provision of a contract of service prevails over the latter provision to the extent of that inconsistency.
- (2) Any provision of a contract of service that is inconsistent with a provision of an award or a registered agreement is to be construed and has effect as if it were modified to conform to the provision of that award or registered agreement.
- (3) Any provision of a contract of service that provides for any conditions of employment that are more favourable than those provided by an award or a registered agreement is not inconsistent only because of that fact.

**86. Prohibition on victimisation**

- (1) An employer shall not dismiss or threaten with dismissal an employee from his employment, or injure him in his employment, or alter his position to his prejudice, because the employee –
  - (a) has given information with regard to matters under this Act to an inspecting officer within the meaning of section 22 or to an inspector;
  - (b) has given information with regard to the conditions under which he is employed to an officer of an organization or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 87**

---

association of employees to which he belongs;

- (c) is entitled to the benefits of an award or a registered agreement;
- (d) has appeared as a witness or has given any evidence in a proceeding under this Act or had intended so to appear or to give such evidence; or
- (e) is, or proposes to become, an officer, delegate, or member of an organization, or of an association that has applied to be registered as an organization.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not exert any duress on any other person in relation to the negotiating or making of an enterprise agreement.

Penalty: Fine not exceeding 20 penalty units.

**87. Freedom of association**

- (1) It is not compulsory for any person to be or not to be a member of, or to join or not to join, any organization or association.
- (2) A person, organization or association must not take or threaten to take any action against a person –
  - (a) which directly has the effect of making the person join or not join, or remain or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 87A

Part VIII – Miscellaneous

---

not remain a member of, an organization or association; or

- (b) with the intention of coercing the person to join or not to join, or remain or not remain a member of, an organization or association.

Penalty: Fine not exceeding 30 penalty units in the case of a person or 250 penalty units in the case of an organization or association.

**87A. Responsibility of Secretary and Registrar for enforcement of certain provisions of Act**

- (1) Subject to subsection (2), if an obligation is placed on an organization or person to comply with, or not to contravene, a provision of Division 2 or 3 of Part III, Part IV, Part IVA, Part VII or this Part, the Secretary must institute or cause to be instituted proceedings for enforcing compliance with, or non-contravention of, that provision by that organization or person.
- (2) If an obligation is placed on an organization or person by any provision of an order or notice made under section 31, 43, 65A(8), 71(20) or 75(7E), the Registrar must institute or cause to be instituted proceedings for enforcing compliance with, or non-contravention of, that provision by that organization or person.
- (3) The Secretary may delegate the Secretary's responsibility under subsection (1).

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 88**

---

**88. Service of documents**

- (1) Where under this Act a notice or other document is required or authorized to be served on or given to a person, the notice or other document may, without prejudice to any other method of serving or giving the notice or other document provided by this Act, be served or given –
- (a) in the case of a person who is neither a body corporate nor a firm –
    - (i) by delivering it to him personally;
    - (ii) by leaving it at that person's place of residence last known to the person required or authorized to serve the notice or other document with someone who apparently resides there, or at that person's place of business or employment last known to the person required or authorized to serve the notice or other document with someone who is apparently employed there, being in either case a person who has or apparently has attained the age of 16 years; or
    - (iii) by sending it by post to that person's place of residence, business, or employment last known to the person required or authorized to serve the notice or other document;

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 88

Part VIII – Miscellaneous

---

- (b) in the case of a body corporate –
  - (i) by delivering it to the secretary of the body corporate personally;
  - (ii) by leaving it at the registered office of the body corporate or at the place or principal place of business of the body corporate in Tasmania with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or
  - (iii) by sending it by post to the registered office of the body corporate or to the place or principal place of business of the body corporate; or
- (c) in the case of a firm –
  - (i) by delivering it to a member of the firm personally;
  - (ii) by leaving it at the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document with a person apparently employed there, being a person who has or apparently has attained the age of 16 years; or

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 89**

- 
- (iii) by sending it by post to the place or principal place of business of the firm in Tasmania last known to the person required or authorized to serve the notice or other document.
  - (2) A reference in paragraph (a) of subsection (1) to a person's place of business includes, in the case of an organization to which that paragraph applies, a reference to the office of that organization.
  - (3) A reference in subsection (1)(b) to the registered office of a body corporate includes a reference to a registered office that is outside Tasmania.
  - (4) The provisions of this section are in addition to the provisions of sections 109X and 601CX of the Corporations Act.

**89. Protection from liability**

- (1) Subject to subsection (2), any matter or thing done, or omitted to be done, in good faith by the Secretary, an inspecting officer within the meaning of section 22, or an inspector for the purpose or purported purpose of the exercise by him of the powers conferred on him by this Act shall not subject him personally to any action, liability, claim, or demand.
- (2) Subsection (1) does not preclude the Crown from being subject to any action, liability, claim, or demand to which the Crown would, but for that subsection, have been subject.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 90

Part VIII – Miscellaneous

---

**90. Provision for change of names of certain bodies**

If the Tasmanian Chamber of Commerce and Industry Ltd. or the Tasmanian Trades and Labor Council (being the Tasmanian branch of the Australian Council of Trades Unions) changes its name to another name or ceases to exist under that name, the Governor may, by order, amend a section of this Act in which there is a reference to that body –

- (a) by substituting for the name of that body that other name; or
- (b) by substituting for the name of that body the name of some other association or body that he is satisfied represents substantially the same interests as those represented by the first-mentioned body.

91. . . . .

**92. Proceedings for offences**

Proceedings for an offence against this Act shall be heard and determined by a magistrate.

**93. Offences by bodies corporate**

- (1) Where an offence against this Act is committed by a body corporate, every person concerned in the management of that body corporate shall be deemed also to have committed the offence and may be convicted of the offence, unless he



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 94**

---

proves that the act or omission constituting the offence took place without his knowledge.

- (2) A person referred to in subsection (1) may be convicted of an offence under that subsection whether or not the body corporate is charged with, or convicted of, the offence.

**94. Costs of administration**

The costs and expenses incurred in the administration of this Act or in performing the functions of the Commission under the *Parliamentary Salaries, Superannuation and Allowances Act 2012* shall be paid out of money to be provided by Parliament for that purpose.

**95. Application of penalties, &c.**

All penalties imposed, and all fees received, under this Act shall be paid into and form part of the Public Account.

**96. Regulations**

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the Governor may make regulations for or with respect to the following matters:
- (a) the powers and functions of the Registrar, including the keeping by him

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 96

Part VIII – Miscellaneous

---

- of the records mentioned in section 18(4)(b);
- (b) the making of applications for the commencement of proceedings before the Commission;
  - (c) any fees, allowances, and sums by way of reimbursement of expenses required to be prescribed for the purposes of this Act;
  - (d) the registration of organizations under Part V;
  - (e) any fees that are payable in respect of any proceedings before the Commission and the party by whom those fees are payable;
  - (f) requiring in cases prescribed in those regulations the verification by affidavit of documents required for the purposes of this Act;
  - (g) any matters authorized or required to be prescribed by the regulations that are not specifically mentioned in the foregoing paragraphs of this subsection;
  - (h) such other matters as may be necessary or convenient for carrying out or giving effect to this Act.
- (3) Regulations under this section may be made subject to such conditions, or be made so as to apply differently according to such factors, as

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

s. 97

---

may be specified in the regulations or according to such limitations or restrictions, whether as to time or circumstance or otherwise, as may be so specified.

- (4) Regulations under this section may provide that it is an offence, punishable on summary conviction, for a person to contravene or fail to comply with any of the regulations and may provide in respect of any such offence for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding one penalty unit for each day during which the offence continues.
- (5) A regulation under this section may authorize any matter or thing to be from time to time determined, applied, or regulated by any person specified in the regulation.

**97. Power of Governor to make orders altering amounts in relation to penalties in Act**

- (1) Where in this Act there is a reference to an amount in relation to a penalty for a contravention of, or failure to comply with, a provision of this Act, the Governor may, by order, amend that amount by substituting for it the amount specified in the order.
- (2) In subsection (1), *this Act* does not include the regulations made under this Act.
- (3) The provisions of section 47 (3), (3A), (4), (5), (6), and (7) of the *Acts Interpretation Act 1931*

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 98

Part VIII – Miscellaneous

---

apply to an order made under subsection (1) in the same manner as they apply to regulations.

**98. Savings provision**

An enterprise agreement that is in force immediately before the commencement of the *Industrial Relations Amendment Act 2000* continues in force for the period specified in it unless it is terminated in accordance with section 61R.

**99. Registered agreements and awards to remain in force**

- (1) A registered agreement in force on the day on which the *Industrial Relations Amendment (Fair Conditions) Act 2005* commences continues in force for the period specified in it unless it is sooner terminated notwithstanding that the conditions of employment set out in the agreement are less than the minimum conditions provided for in this Act.
- (2) An award in force on the day on which the *Industrial Relations Amendment (Fair Conditions) Act 2005* commences continues in force notwithstanding that the conditions of employment set out in the award are less than the minimum conditions provided for in this Act.

**100. Validation and transitional**

- (1) In this section –

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

s. 100

---

***amending Act*** means the *Validation Act 2021*;

***relevant office*** means any of the following offices:

- (a) the office of Commissioner under this Act as in force immediately before the validation day;
- (b) the office of President under this Act as in force immediately before the validation day;
- (c) the office of Deputy President under this Act as in force immediately before the validation day;

***relevant previous office*** means the office of additional Commissioner under section 10A of this Act as in force immediately before the validation day;

***the 2012 amendment day*** means the day on which section 37 of the *State Service Amendment Act 2012* commenced;

***validation day*** means the day on which the amending Act commences.

- (2) If a person was, immediately before the 2012 amendment day, the holder of a relevant office –
  - (a) the substitution, by section 37 of the *State Service Amendment Act 2012*, of section 5(2) of this Act, as in force immediately before the 2012 amendment

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 100

Part VIII – Miscellaneous

---

- day, is not to be taken to have caused, or to ever have caused, the person to cease, or to have ceased, being the holder of the relevant office; and
- (b) the purported performance, or purported exercise, by the person, after that day, of a function or power as the holder of the relevant office or as a member of a Full Bench of the Commission, is not to be taken to be, or to ever have been, invalid by reason of the commencement of section 37 of the *State Service Amendment Act 2012*; and
  - (c) the Commission, and a Full Bench of the Commission, is not to be taken to be, or to ever have been, invalidly constituted, after the 2012 amendment day, by reason of the commencement of section 37 of the *State Service Amendment Act 2012*.
- (3) If a person was, on a day (*the relevant day*) before the validation day, purportedly appointed, by the Minister or the Governor, to a relevant office, then, despite any other provision of this Act –
- (a) the purported appointment of the person to the office is to be taken to be, and to have always been, a valid appointment of the person to the office; and
  - (b) the performance or exercise by the person, on or after the relevant day, of a function or power is not to be taken to

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

s. 100

---

be, or to ever have been, invalid by reason only that the purported appointment of the person to the office would, but for this subsection, have been invalid; and

- (c) the Commission, and a Full Bench of the Commission, as purportedly constituted in whole or in part by the person, is not to be taken to be, or to ever have been, invalidly constituted by reason only that the appointment of the person to the office would, but for this subsection, have been invalid.
- (4) If a person was, on a day (*the relevant day*) before the validation day, purportedly appointed, by the Minister or the Governor, to the relevant previous office, then, despite any other provision of this Act –
- (a) the purported appointment of the person to the relevant previous office is to be taken to be, and to have always been, a valid appointment of the person to the office of Commissioner; and
  - (b) the performance or exercise by the person, on or after the relevant day, of a function or power is not to be taken to be, or to ever have been, invalid by reason only that, but for this subsection, the person would not have been validly appointed to the office of Commissioner; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 100

Part VIII – Miscellaneous

---

- (c) the Commission, and a Full Bench of the Commission, as purportedly constituted in whole or in part by the person, is not to be taken to be, or to ever have been, invalidly constituted by reason only that, but for this subsection, the person would not have been validly appointed to the office of Commissioner.

(5) If –

- (a) a person was, before the validation day, appointed, or purportedly appointed, to a relevant office or a relevant previous office; and
- (b) during all or part of the period –
  - (i) beginning on the day on which the appointment, or purported appointment, referred to in paragraph (a), expired; and
  - (ii) ending immediately before the validation day –

the person purported to be authorised, under a provision of this Act or the *Acts Interpretation Act 1931*, to perform or exercise a function or power that a holder of the relevant office, or a holder of the relevant previous office, respectively, may perform or exercise –

then, despite any provision of this Act or of the *Acts Interpretation Act 1931*, the person is to be taken to have held, and to always have held, the



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

s. 100

---

relevant office, or the relevant previous office, respectively, during the period.

- (6) If, in accordance with subsection (5), a person is taken to have held the relevant office, or the relevant previous office, during a period, then, despite any other provision of this Act or of the *Acts Interpretation Act 1931* –

- (a) the purported performance or purported exercise, by the person, during the period, of a function or power is not to be taken to be, or to ever have been, invalid; and
- (b) the Commission, and a Full Bench of the Commission, is not to be taken to have been, or to ever have been, during the period, invalidly constituted –

by reason only that the person did not, but for this section, hold the relevant office, or the relevant previous office, respectively, during all or part of the period.

- (7) A person who was, immediately before the validation day –
- (a) the holder of the office of President under this Act as in force before the validation day is to be taken to have been, and to always have been, appointed under section 5(2A)(a) to be a Commissioner and the President of the Commission on and from that day; and

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

s. 100

Part VIII – Miscellaneous

---

- (b) the holder of the office of Deputy President under this Act as in force before the validation day is to be taken to have been, and to always have been, appointed under section 5(2A)(b) to be a Commissioner and the Deputy President of the Commission on and from that day; and
  - (c) the holder of the office of Commissioner under this Act as in force before the validation day, but not of the office of President, or Deputy President, under this Act as in force before the validation day, is to be taken to have been, and to always have been, appointed under section 5(2A)(c) to be a Commissioner on and from that day.
- (8) If a person is taken under subsection (7) to have been appointed to an office under this Act as in force after the validation day –
  - (a) an instrument of appointment, of the person to an office under this Act before that day, that was in effect immediately before the validation day, remains in effect after that day as if a reference in that instrument to the office that the person held before the validation day were a reference to the office held by the person, by virtue of that subsection, after that day; and
  - (b) a period of appointment that is specified in the instrument of appointment by

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

Part VIII – Miscellaneous

**s. 100**

---

reference to a period calculated from the day on which the person was appointed to an office under this Act as in force before the validation day, is to continue to be calculated from the day on which the person was appointed to an office under this Act as in force before the validation day.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 1**

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**SCHEDULE 1 – FORM OF OATH AND FORM OF  
AFFIRMATION**

Section 7

**1. Form of oath**

The form of the oath is as follows:

“I [*insert name*] do swear that I will faithfully execute the office of a Commissioner of the Tasmanian Industrial Commission and that I will faithfully and impartially perform the duties of that office. So help me God.”

**2. Form of affirmation**

The form of the affirmation is as follows:

“I [*insert name*] do affirm that I will faithfully execute the office of a Commissioner of the Tasmanian Industrial Commission and that I will faithfully and impartially perform the duties of that office.”

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**SCHEDULE 2 – UNPAID PARENTAL LEAVE**

Section 47AG

**1. Interpretation**

In this Schedule –

***adoption*** means the adoption of a child who –

- (a) is not the natural child of the employee or the employee's partner; and
- (b) is less than 5 years of age; and
- (c) has not lived continuously with the employee for 6 months or longer;

***continuous service*** means continuous service under a contract of employment and includes a period of paid leave or absence taken under an Act, award or agreement;

***employee*** does not include a person engaged and paid as a casual employee;

***expected date of birth*** means a date certified by a medical practitioner as the expected date of birth;

***parental leave*** means unpaid leave under this Schedule;

***partner*** means a partner within the meaning of the *Relationships Act 2003*.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 2**

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**2. Entitlement to parental leave**

- (1) An employee is entitled to take parental leave for a period of up to 52 weeks for –
  - (a) the birth of a child to the employee or the employee's partner; or
  - (b) the placement of a child with the employee with a view to the adoption of the child by the employee.
- (2) An employee is not entitled to take parental leave unless the employee –
  - (a) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and
  - (b) has given the employer at least 10 weeks' written notice of the employee's intention to take the leave.
- (3) An employee is not entitled to take parental leave at the same time as the employee's partner apart from one week's parental leave taken by the employee and the employee's partner immediately after the birth of the child or the placement of the child for adoption with the employee and the employee's partner.
- (4) Apart from the period of one week referred to in subclause (3), an employee's entitlement to parental leave is reduced by a period of parental leave taken by the employee's partner for the same child.

**3. Maternity leave to start 6 weeks before birth**

A female employee who has given notice of her intention to take parental leave for the birth of a child must start the leave 6 weeks before the expected date of birth unless a medical practitioner has certified that the employee is fit to work closer to the expected date of birth.

**4. Medical certificate**

An employee who has given notice of intention to take parental leave for the birth of a child must provide the employer with a certificate from a medical practitioner certifying that the employee or the employee's partner is pregnant and the expected date of birth.

**5. Notice of partner's parental leave**

- (1) An employee who has given notice of intention to take parental leave, or who is actually taking parental leave, must give the employer notice of periods of parental leave taken or to be taken by the employee's partner for the same child.
- (2) A notice given under subclause (1) must, if the employer requires, be verified by statutory declaration.

**6. Starting and finishing dates of parental leave**

- (1) Subject to subclause (2), the starting and finishing dates for a period of parental leave are

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 2**

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to be agreed between the employer and the employee.

- (2) Parental leave may not extend more than one year after the date of the birth, or placement for adoption, of the child to whom the leave relates.

**7. Return to work after parental leave**

- (1) Subject to subclauses (2) and (3), on finishing parental leave, an employee is entitled to the position that the employee held immediately before starting parental leave.
- (2) If the employee was temporarily acting in, or performing the duties of, a position immediately before starting parental leave, the entitlement under this section relates to the employee's substantive position.
- (3) If the former position referred to in subclause (1) is no longer available, the employee is entitled to an available position for which the employee is qualified and suited and which is nearest in status and remuneration to the former position.

**8. Effect of parental leave on employment rights**

Absence on parental leave does not break an employee's continuity of service, but is not to be taken into account in calculating the employee's period of service.



**9. Part-time employment in lieu of parental leave**

An employee who is entitled to parental leave may, by agreement with the employer, reduce the employee's hours of employment to an agreed extent in lieu of taking parental leave.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

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**SCHEDULE 3 – . . . . .**

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

sch. 3

## NOTES

The foregoing text of the *Industrial Relations Act 1984* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 5 November 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Industrial Relations Act 1984</i>	No. 21 of 1984	1.1.1985
<i>Industrial Relations Amendment Act 1984</i>	No. 105 of 1984	1.1.1985
<i>Industrial Relations Amendment Act 1985</i>	No. 125 of 1985	28.11.1985
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Industrial Relations Amendment Act 1986</i>	No. 113 of 1986	18.12.1986
<i>Industrial Relations Amendment Act 1987</i>	No. 25 of 1987	29.4.1987
<i>Industrial Relations Order 1987</i>	S.R. 1987, No. 244	2.12.1987
<i>Administrative Arrangements (Miscellaneous Amendments) Act 1990</i>	No. 5 of 1990	1.7.1990
<i>Health (Regional Boards) Act 1991</i>	No. 4 of 1991	1.7.1991
<i>Penalty Units and Other Penalties Amendment Act 1991</i>	No. 43 of 1991	18.12.1991
<i>Industrial Relations Amendment (Enterprise Agreements and Workplace Freedom) Act 1992</i>	No. 59 of 1992	1.3.1993
<i>Industrial Relations Order 1993</i>	S.R. 1993, No. 260	17.5.1993
<i>Retirement Benefits (Consequential and Miscellaneous Amendments) Act 1996</i>	No. 40 of 1996	1.7.1994
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Industrial Relations Amendment Act 1994</i>	No. 90 of 1994	16.12.1994
<i>Optometrists Registration Act 1994</i>	No. 87 of 1994	19.4.1995
<i>Workplace Health and Safety (Consequential Amendments) Act 1995</i>	No. 14 of 1995	16.8.1995

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Act	Number and year	Date of commencement
<i>Workers Rehabilitation and Compensation Reform (Consequential Amendments) Act 1996</i>	No. 42 of 1996	16.8.1995
<i>Commissions of Inquiry (Consequential Amendments) Act 1995</i>	No. 71 of 1995	14.11.1995
<i>Podiatrists Registration Act 1995</i>	No. 81 of 1995	1.7.1996
<i>Medical Practitioners Registration Act 1996</i>	No. 2 of 1996	21.8.1996
<i>Industrial Relations Amendment Act 1997</i>	No. 18 of 1997	28.6.1997
<i>Health Act 1997</i>	No. 13 of 1997	1.7.1997
<i>Public Sector Superannuation (Miscellaneous Amendments) Act (No. 2) 2004</i>	No. 59 of 2004	15.5.1999
<i>Physiotherapists Registration Act 1999</i>	No. 106 of 1999	1.3.2000
<i>Industrial Relations Amendment Act 2000</i>	No. 104 of 2000	1.1.2001
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Corporations (Consequential Amendments) Act 2001</i>	No. 42 of 2001	15.7.2001
<i>Dental Practitioners Registration Act 2001</i>	No. 20 of 2001	3.10.2001
<i>Promissory Oaths Amendment Act 2001</i>	No. 92 of 2001	5.12.2001
<i>Industrial Relations Amendment Act 2001</i>	No. 119 of 2001	17.12.2001
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Police Service (Consequential Amendments) Act 2003</i>	No. 76 of 2003	1.1.2004
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>Industrial Relations Amendment (Fair Conditions) Act 2005</i>	No. 74 of 2005	15.2.2006
<i>Industrial Relations Amendment Act 2007</i>	No. 25 of 2007	1.7.2006 1.8.2007
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Health Practitioner Regulation National Law (Tasmania)</i>	No. 3 of 2010	1.7.2010

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Act	Number and year	Date of commencement
<i>(Consequential Amendments) Act 2010</i>		
<i>Asbestos-Related Diseases (Occupational Exposure) Compensation (Consequential Amendments) Act 2011</i>	No. 28 of 2011	31.10.2011
<i>State Service Amendment Act 2012</i>	No. 42 of 2012	4.2.2013
<i>Training and Workforce Development (Repeals and Consequential Amendments) Act 2013</i>	No. 11 of 2013	1.7.2013
<i>Parliamentary Salaries, Superannuation and Allowances Amendment Act 2015</i>	No. 22 of 2015	1.7.2015
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Validation Act 2021</i>	No. 19 of 2021	5.11.2021

**TABLE OF AMENDMENTS**

Provision affected	How affected
The long title	Amended by No. 22 of 2015, s. 4
Section 3	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 105 of 1984, s. 4, No. 113 of 1986, s. 4, No. 5 of 1990, s. 3 and Sched. 1, No. 59 of 1992, s. 4, No. 90 of 1994, s. 4, No. 18 of 1997, s. 5, No. 86 of 2000, Sched. 1, No. 104 of 2000, s. 4, No. 76 of 2003, Sched. 1, No. 59 of 2004, s. 4, No. 65 of 2005, Sched. 1, No. 74 of 2005, s. 4, No. 11 of 2013, Sched. 1, No. 54 of 2016, s. 45 and No. 19 of 2021, s. 6
Section 5	Amended by No. 59 of 1992, s. 5, No. 104 of 2000, s. 5, No. 66 of 2007, Sched. 1, No. 42 of 2012, s. 37 and No. 19 of 2021, s. 7
Section 6	Amended by No. 59 of 1992, s. 6, No. 90 of 1994, s. 5, No. 59 of 2004, s. 5, No. 17 of 2005, Sched. 1, No. 25 of 2007, s. 4, No. 28 of 2011, s. 31, No. 54 of 2016, s. 46 and No. 19 of 2021, s. 8
Section 6A	Inserted by No. 59 of 2004, s. 6 Amended by No. 65 of 2005, Sched. 1 Subsection (8) omitted by No. 65 of 2005, Sched. 1 Repealed by No. 54 of 2016, s. 47
Section 10	Amended by No. 59 of 1992, s. 7, No. 18 of 1997, s. 6, No.

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Provision affected	How affected
Section 10A	104 of 2000, s. 6 and No. 42 of 2012, s. 38 Repealed by No. 5 of 1990, s. 3 and Sched. 1 Inserted by No. 42 of 2012, s. 39 Repealed by No. 19 of 2021, s. 9
Section 11	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 5 of 1990, s. 3 and Sched. 1, No. 59 of 1992, s. 8, No. 18 of 1997, s. 7 and No. 104 of 2000, s. 7
Section 12	Amended by No. 59 of 1992, s. 9 and No. 104 of 2000, s. 8
Section 14	Amended by No. 59 of 1992, s. 10 and No. 104 of 2000, s. 9
Section 15	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 113 of 1986, s. 5, No. 59 of 1992, s. 11, No. 68 of 1994, s. 3 and Sched. 1, No. 90 of 1994, s. 6, No. 18 of 1997, s. 8, No. 104 of 2000, s. 10, No. 42 of 2012, s. 40 and No. 22 of 2015, s. 5
Section 18	Amended by No. 5 of 1990, s. 3 and Sched. 1, No. 59 of 1992, s. 12 and No. 86 of 2000, Sched. 1
Pt. 2, Div. 2	Amended by No. 59 of 1992, s. 13
Section 19	Amended by No. 59 of 1992, s. 14, No. 18 of 1997, s. 9, No. 104 of 2000, s. 11 and No. 25 of 2007, s. 5
Section 19AA	Inserted by No. 42 of 2012, s. 41
Section 19AB	Inserted by No. 22 of 2015, s. 6
Section 19A	Inserted by No. 25 of 2007, s. 6
Section 20	Amended by No. 59 of 1992, s. 15
Section 21	Amended by No. 105 of 1984, s. 5, No. 113 of 1986, s. 6 and No. 18 of 1997, s. 10
Section 22	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 16, No. 18 of 1997, s. 11 and No. 104 of 2000, s. 12
Section 24	Amended by No. 59 of 1992, s. 17 and No. 90 of 1994, s. 7
Section 27	Amended by No. 59 of 1992, s. 18 and No. 104 of 2000, s. 13
Section 28	Amended by No. 105 of 1984, s. 6, No. 113 of 1986, s. 7, No. 59 of 1992, s. 19, No. 68 of 1994, s. 3 and Sched. 1, No. 18 of 1997, s. 12, No. 104 of 2000, Sched. 1 and No. 66 of 2007
Section 29	Amended by No. 59 of 1992, s. 20, No. 90 of 1994, s. 8, No. 18 of 1997, s. 14, No. 86 of 2000, Sched. 1, No. 104 of 2000, s. 15 and No. 42 of 2012, s. 42
Section 30	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 21 Repealed by No. 18 of 1997, s. 15 Inserted by No. 104 of 2000, s. 16 Amended by No. 45 of 2003, Sched. 1 and No. 74 of 2005, s. 5
Section 30A	Inserted by No. 104 of 2000, s. 16 Substituted by No. 74 of 2005, s. 6
Section 31	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Provision affected	How affected
	1992, s. 22, No. 90 of 1994, s. 9, No. 18 of 1997, s. 16 and No. 104 of 2000, s. 17
Section 31A of Part II	Inserted by No. 25 of 2007, s. 7
Section 31B of Part II	Inserted by No. 25 of 2007, s. 7
Section 31C of Part II	Inserted by No. 25 of 2007, s. 7
Section 32	Amended by No. 113 of 1986, s. 8, No. 59 of 1992, s. 23 and No. 40 of 1996, s. 3 and Sched. 1
Section 33	Amended by No. 113 of 1986, s. 9 and No. 59 of 1992, s. 24
Section 34	Substituted by No. 59 of 1992, s. 25
Section 35	Amended by SR 1987, No. 244, No. 59 of 1992, s. 26, SR 1993, No. 260 and No. 74 of 2005, s. 7
Section 36	Amended by No. 18 of 1997, s. 17
Section 37	Amended by No. 105 of 1984, s. 9 and No. 59 of 1992, s. 27
Section 42	Substituted by No. 59 of 1992, s. 28
Section 43	Amended by No. 113 of 1986, s. 10 and No. 59 of 1992, s. 29
Section 44	Amended by No. 59 of 1992, s. 30
Section 45	Amended by No. 43 of 1991, s. 5 and Sched. 1
Section 46	Substituted by No. 59 of 1992, s. 31
Section 47	Amended by No. 113 of 1986, s. 11 and No. 43 of 1991, s. 5 and Sched. 1
Section 47AA of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AB of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AC of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AD of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AE of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AF of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AG of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AH of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AI of Part III	Inserted by No. 74 of 2005, s. 8
Section 47AJ of Part III	Inserted by No. 74 of 2005, s. 8
Section 47A	Inserted by No. 119 of 2001, s. 4
Section 48	Amended by No. 43 of 1991, s. 5 and Sched. 1

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Provision affected	How affected
Section 49	Substituted by No. 18 of 1997, s. 20 Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 59 of 1992, s. 32, No. 18 of 1997, s. 21 and No. 86 of 2000, Sched. 1
Section 50	Amended by No. 18 of 1997, s. 22
Section 50A	Inserted by No. 59 of 1992, s. 33
Section 51	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 34 and No. 18 of 1997, s. 23
Section 52	Amended by No. 59 of 1992, s. 35, No. 90 of 1994, s. 10 and No. 18 of 1997, s. 24
Section 54	Amended by No. 43 of 1991, s. 5 and Sched. 1
Section 55	Amended by No. 59 of 1992, s. 36, No. 90 of 1994, s. 11, No. 18 of 1997, s. 25, No. 74 of 2005, s. 9 and No. 25 of 2007, s. 8
Section 56	Amended by No. 59 of 1992, s. 37 and No. 18 of 1997, s. 26
Section 57	Amended by No. 59 of 1992, s. 38
Section 59	Amended by No. 59 of 1992, s. 39 and No. 18 of 1997, s. 27
Section 61	Amended by No. 25 of 2007, s. 9
Pt. IVA	Inserted by No. 59 of 1992, s. 40
Section 61A	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 12, No. 74 of 2005, s. 10 and No. 11 of 2013, Sched. 1
Section 61B	Inserted by No. 59 of 1992, s. 40 Amended by No. 18 of 1997, s. 28
Section 61C	Inserted by No. 59 of 1992, s. 40 Amended by No. 42 of 2001, Sched. 1
Section 61D	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 13 and No. 18 of 1997, s. 29
Section 61E	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 14
Section 61F	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 15 and No. 104 of 2000, s. 18
Section 61G	Inserted by No. 59 of 1992, s. 40
Section 61H	Substituted by No. 90 of 1994, s. 16 Amended by No. 104 of 2000, Sched. 3
Section 61I	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 17, No. 18 of 1997, s. 30 and No. 104 of 2000, Sched. 2
Section 61J	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 18, No. 18 of 1997, s. 31, No. 104 of 2000, Sched. 2 and No. 74 of 2005, s. 11
Section 61K	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 19 and No. 104 of 2000, Sched. 3



*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

sch. 3

Provision affected	How affected
Section 61L	Substituted by No. 90 of 1994, s. 20 Amended by No. 104 of 2000, Sched. 3
Section 61M	Inserted by No. 59 of 1992, s. 40
Section 61N	Inserted by No. 59 of 1992, s. 40 Amended by No. 119 of 2001, s. 5
Section 61O	Inserted by No. 59 of 1992, s. 40
Section 61P	Inserted by No. 59 of 1992, s. 40
Section 61Q	Inserted by No. 59 of 1992, s. 40
Section 61R	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 21 and No. 104 of 2000, Sched. 3
Section 61S	Inserted by No. 59 of 1992, s. 40 Amended by No. 104 of 2000, Sched. 2
Section 61T	Inserted by No. 59 of 1992, s. 40
Section 61U	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 22
Section 61V	Inserted by No. 59 of 1992, s. 40
Section 61U	Amended by No. 90 of 1994, s. 23
Section 61W	Inserted by No. 59 of 1992, s. 40
Section 61X	Inserted by No. 59 of 1992, s. 40
Section 61Y	Inserted by No. 59 of 1992, s. 40
Section 61Z	Inserted by No. 59 of 1992, s. 40
Division 3 of Part IVA	Repealed by No. 104 of 2000, s. 21
Section 61ZA	Inserted by No. 59 of 1992, s. 40 Repealed by No. 104 of 2000, s. 21
Section 61ZB	Inserted by No. 59 of 1992, s. 40 Repealed by No. 104 of 2000, s. 21
Section 61ZC	Inserted by No. 59 of 1992, s. 40 Amended by No. 18 of 1997, s. 32 Repealed by No. 104 of 2000, s. 21
Section 61ZD	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 24 and No. 104 of 2000, s. 22
Section 61ZE	Inserted by No. 59 of 1992, s. 40 Amended by No. 90 of 1994, s. 25
Section 62	Amended by SR 1987, No. 244 and SR 1993, No. 260
Section 63	Substituted by No. 113 of 1986, s. 12 Amended by No. 59 of 1992, s. 41, No. 90 of 1994, s. 26, No. 18 of 1997, s. 33 and No. 104 of 2000, s. 23
Section 63A	Repealed by No. 59 of 1992, s. 42
Section 64	Amended by No. 113 of 1986, s. 14
Section 65	Amended by No. 59 of 1992, s. 43, No. 18 of 1997, s. 34 and No. 104 of 2000, s. 24
Section 65A	Inserted by No. 113 of 1986, s. 15 Amended by No. 43 of 1991, s. 5 and Sched.1, No. 59 of 1992, s. 44, No. 90 of 1994, s. 27 and No. 18 of 1997, s. 35

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

Provision affected	How affected
Section 66	Amended by No. 4 of 1991, s. 39 and Sched. 1, No. 87 of 1994, Sched. 4, No. 81 of 1995, Sched. 4, No. 2 of 1996, Sched. 7, No. 13 of 1997, Sched. 4, No. 106 of 1999, Sched. 6, No. 20 of 2001, Sched. 6 and No. 3 of 2010, Sched. 1
Section 67A	Inserted by No. 59 of 1992, s. 45
Section 68	Amended by No. 90 of 1994, s. 28
Section 69	Substituted by No. 59 of 1992, s. 46 Amended by No. 90 of 1994, s. 29 and No. 104 of 2000, Sched. 1
Section 70	Substituted by No. 59 of 1992, s. 47 Amended by No. 90 of 1994, s. 30, No. 18 of 1997, s. 36, No. 104 of 2000, s. 25 and No. 25 of 2007, s. 10
Section 71	Amended by No. 113 of 1986, s. 17, No. 113 of 1987, s. 17, No. 59 of 1992, s. 48, No. 90 of 1994, s. 31, No. 71 of 1995, Sched. 1, No. 104 of 2000, s. 26 and No. 25 of 2007, s. 11
Section 73	Repealed by No. 59 of 1992, s. 49
Section 74	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 113 of 1986, s. 18, No. 113 of 1986, s. 22 and Sched. 1, No. 5 of 1990, s. 3 and Sched. 1, No. 59 of 1992, s. 50 and No. 86 of 2000, Sched. 1
Section 75	Amended by No. 59 of 1992, s. 51, No. 104 of 2000, s. 27 and No. 74 of 2005, s. 12
Section 74	Amended by No. 59 of 1992, s. 51
Section 75	Amended by No. 113 of 1986, s. 19, No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 51 and No. 90 of 1994, s. 32
Section 76	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 52 and No. 18 of 1997, s. 37
Section 77	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 53 and No. 18 of 1997, s. 38
Section 78	Amended by No. 59 of 1992, s. 54
Section 79	Substituted by No. 59 of 1992, s. 55 Amended by No. 18 of 1997, s. 39
Section 80	Substituted by No. 59 of 1992, s. 55
Section 81	Substituted by No. 59 of 1992, s. 55
Section 82	Substituted by No. 59 of 1992, s. 53
Section 83	Amended by No. 29 of 1984, s. 3 and Sched. 1, No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 56, No. 86 of 2000, Sched. 1 and No. 104 of 2000, Sched. 1
Section 84	Substituted by No. 59 of 1992, s. 57 Amended by No. 18 of 1997, s. 40
Section 85	Substituted by No. 18 of 1997, s. 41
Section 86	Amended by No. 43 of 1991, s. 5 and Sched. 1, No. 59 of 1992, s. 58 and No. 18 of 1997, s. 42
Section 87	Substituted by No. 59 of 1992, s. 59
Section 87A	Substituted by No. 59 of 1992, s. 59

*Industrial Relations Act 1984*  
*Act No. 21 of 1984*

**sch. 3**

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Provision affected	How affected
	Amended by No. 90 of 1994, s. 33
Section 88	Amended by No. 42 of 2001, Sched. 1
Section 89	Amended by No. 113 of 1986, s. 22 and Sched. 1, No. 5 of 1990, s. 3 and Sched. 1 and No. 14 of 1995, Sched. 2
Section 90	Amended by SR 1993, No. 260
Section 91	Repealed by No. 59 of 1992, s. 61
Section 94	Amended by No. 22 of 2015, s. 7
Section 95	Amended by No. 68 of 1994, s. 3 and Sched. 1 and No. 4 of 2017, Sched. 1
Section 96	Amended by No. 43 of 1991, s. 5 and Sched. 1
Section 98	Repealed by No. 59 of 1992, s. 62
	Inserted by No. 104 of 2000, s. 28
Section 99	Repealed by No. 59 of 1992, s. 63
	Inserted by No. 74 of 2005, s. 13
Section 100	Inserted by No. 19 of 2021, s. 10
Schedule 1	Substituted by No. 92 of 2001, s. 11
Sched. 2	Repealed by No. 59 of 1992, s. 64
Schedule 2	Inserted by No. 74 of 2005, s. 14
Sched. 3	Repealed by No. 59 of 1992, s. 64

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