

1987

THE PARLIAMENT OF THE
COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

INDUSTRIAL RELATIONS (CONSEQUENTIAL PROVISIONS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Employment and
Industrial Relations, the Hon Ralph Willis MP)

INDUSTRIAL RELATIONS (CONSEQUENTIAL PROVISIONS) BILL 1987

OUTLINE

The Bill has two main purposes:

- (i) to make consequential amendments arising from provisions contained in the Industrial Relations Bill, including the repeal of the Conciliation and Arbitration Act 1904, which is to be replaced by the Industrial Relations Bill 1987; and
- (ii) to provide transitional and savings provisions that will be necessary to deal with institutional arrangements and proceedings pending at the commencement of the Industrial Relations Bill 1987 under arrangements established by the Conciliation and Arbitration Act 1904 and certain other legislation.

The Bill contains the following Parts:

- Part I - Preliminary
- Part II - Savings and Transitional Provisions
- Part III - Amendments to other Acts
- Part IV - Labour Court may resolve difficulties.

Part I contains the provision which repeals the Conciliation and Arbitration Act 1904 and definitions of terms used in the Bill.

Part II of the Bill contains a number of savings and transitional provisions. Important provisions in this Part include:

- . continuation of organisations registered under the previous Act;
- . continued application of awards made under the previous Act;
- . procedures for dealing with proceedings pending in the Federal court at the commencement of the new Act, including proceedings instituted under Part VI of the Trade Practices Act 1974.
- . procedures for dealing with proceedings or matters pending before the former Commission and the Federal Police Arbitral Tribunal at the commencement of the new Act;
- . continuation of notifications and findings of industrial disputes and industrial questions under the previous Act and related legislation;
- . provisions for the continuation of certain appointments made under the previous Act;

- procedures concerning offences under the previous Act; and a provision that the Australian Industrial Court is to continue in existence.

Part III amends a number of other Acts to take account of changes made by the Industrial Relations Bill 1987. The amendments to these Acts are set out in the Schedule.

The most important amendments made by this Part are:

- the repeal of those provisions of the Remuneration Tribunals Act which establish the Academic Salaries Tribunal - the powers and functions of that tribunal are to be divided between the Remunerations Tribunal and the new Commission;
- the repeal of those sections of the Federal Police Act which establish the Federal Police Arbitral Tribunal, the majority of the powers and function of which are to be transferred to the new Commission.
- Consequential changes are made to the Coal Industry Act 1946, including giving it the power to make enforceable directions about industrial conduct and making remedies against organisations, their officers or members under the Act exclusive of certain remedies in tort or under State or Territory legislation.

In addition, this Part makes special transitional arrangements for the operation of certain of the amendments made in the Schedule:

- incumbent chairpersons of the Pathology Services Advisory Committee and the Pharmaceutical Benefits Remuneration Tribunal do not, at the commencement, cease to hold those positions if those persons are not appointed as Deputy Presidents of the new Commission, as required by the relevant Acts.
- arrangements are made for the transfer of the functions of the Academic Salaries Tribunal to the new Commission and to the Remuneration Tribunal as a consequence of the repeal of the Academic Salaries Tribunal by operation of the Bill.

Part IV contains a provision which allows the Labour Court on the application of an interested person to make orders to resolve any difficulty which might arise in the application of the Bill to a particular matter or in the application of the new Act to a particular matter.

Financial Impact Statement

The overall financial impact of changes proposed in the Bill needs to be considered in the context of new industrial relations institutional arrangements proposed in the new Act. Some minor savings are anticipated as a result of the proposed abolition of the Academic Salaries Tribunal and the Federal Police Arbitral Tribunal.

NOTES ON CLAUSES

NOTE:

In order to contribute to clarity of meaning in these notes, the following terms are used:

- . "Bill" is the Industrial Relations (Consequential Provisions) Bill
- . "commencement" refers to the commencement of the Industrial Relations Act
- . "Commission" means the Industrial Relations Commission which will be established by the new Act
- . "Federal Court" refers to the Federal Court of Australia
- . "former Commission" means the Australian Conciliation and Arbitration Commission
- . "former Presidential member" refers to a Presidential Member of the Australian Conciliation and Arbitration Commission
- . "former Registrar" means a Registrar appointed under the Conciliation and Arbitration Act 1904
- . "Labour Court" refers to the Australian Labour Court to be established by the new Act
- . "new Act" refers to the Industrial Relations Bill 1987
- . "Presidential Member" refers to a Presidential Member of the New Commission
- . "previous Act" is the Conciliation and Arbitration Act 1904
- . "Registrar" means a Registrar appointed under the new Act.

Part 1 - PreliminaryClause 1: Short Title

This clause give's' the short title of the Act.

Clause 2: Commencement

The substantive parts of the Bill are to come into operation on the commencement of the Industrial Relations Act 1987. The commencement of some sections is related to the commencement of other specified legislation.

Clause 3: Repeal

By this clause the Conciliation and Arbitration Act 1904 is repealed.

Clause 4: Interpretation

Unless otherwise stated the terms that are common to both the Bill and the Industrial Relations Act 1987 have the same meaning as they have in the Industrial Relations Act. Other terms used in the Bill are defined.

Part II - Savings and Transitional ProvisionsDivision 1 - Organisations and awardsClause 5: Organisation registered under previous Act

This clause deems organisations registered immediately before the commencement of the new Act to be registered under the new Act and to have continuing corporate status.

Clause 6: Cancellation of registration under previous Act

This clause preserves the consequences under the previous Act of the cancellation of registration of an organisation.

Clause 7: Awards in force under previous Act

This clause provides that awards, determinations and agreements, made under the previous Act and under other legislation, which are in force immediately before the commencement continue in force after the commencement as if made under the new Act.

Sub-section (2) is included to ensure that all those persons bound by awards of the Flight Crew Officers Industrial Tribunal under Part IIIA of the previous Act (continued in force by this clause), including members of a "declared body", remain bound by those awards, even though such a body is not continued under the new Act.

Division 2 - Jurisdiction of Federal Court and Labour CourtClause 8: Transfer of certain proceedings to Labour Court

This clause transfers to the Labour Court certain proceedings under the previous Act and the Trade Practices Act 1974 which were pending in the Federal Court at the commencement.

Under sub-clause (1) if the hearing of the proceeding, other than any interlocutory proceedings, has not started, the matter is transferred to the Labour Court. Sub-clause (2) provides for the transfer of relevant documents, etc. and vests in the Labour Court all necessary jurisdiction to deal with proceedings transferred by sub-clause (1). Sub-clause 3 describes the application of provisions of the new Act to proceedings transferred to the Labour Court under sub-clause (1).

Under sub-clause (4), the Labour Court can enforce, and deal with contempts of, orders of the Federal Court, as if they were orders of the Labour Court.

Clause 9: Certain proceedings to be dealt with by Federal Court

Where the hearing of a matter, other than an interlocutory proceeding, in the Federal Court is not completed at the commencement, the Federal Court may complete the hearing and determine the matter. The Federal Court is to retain the jurisdiction it had under the previous Act and under Part VI of the Trade Practices Act 1974 for purposes of completing proceedings under this clause.

Under sub-clause (2) where a proceeding related to a proceeding referred to in sub-clause (1) is instituted in the Labour Court, the Federal Court has the discretion, if it considers it is in the interests of justice, to transfer the related proceeding to the Labour Court.

Clause 10 - Appeals from Federal Court

This clause provides that appeals in matters completed in the Federal Court under clause 9 are to be dealt with as if the provisions of the previous Act still apply. The law to be applied in such appeals will be determined by reference to clause 21.

Division 3 - Proceedings to be dealt with by the new Commission

Clause 11: Uncompleted proceedings before former Commission etc.

All matters before the former Commission and the Flight Crew Officers Industrial Tribunal, including matters referred by the Registrar under section 88E of the previous Act, that are uncompleted at the commencement are to be transferred by operation of this clause, to the new Commission. Sub-clause (2) sets out certain procedural and administrative arrangements that are to apply in relation to matters transferred to the new Commission.

Clause 12: Federal Police Arbitral Tribunal.

This clause provides for the transfer and continuation of proceedings before the Federal Police Arbitral Tribunal at the commencement. Sub-clauses (2) and (3) specify the procedural and administrative arrangements that are to apply in relation to matters transferred to the new Commission.

Clause 13: References to proceedings and matters

This is a technical provision.

Clause 14: Industrial disputes notified under previous Act

This clause provides that an industrial dispute notified under the previous Act but not finally dealt with on the commencement is to be dealt with under the new Act in accordance with clause 11 of the Bill as if all prior proceedings (including notification and findings) in the dispute had been made under the new Act by the new Commission.

Clause 15: References to industrial disputes

This clause ensures that the provisions of the new Act are capable of application to all proceedings transferred from the former Commission, including matters to which the previous Act applied by virtue of other legislation. Under this clause the new Commission will have the jurisdiction to deal with all matters transferred to it, even though certain expressions used in previous legislation may differ from those used in the new Act.

Clause 16: Presidential member may refer certain matters to Registrar

The purpose of this clause is to allow a Presidential Member who is dealing with certain matters transferred from a former Registrar, a discretion to direct such a matter to a Registrar for completion. A decision made by the Registrar in such a matter is deemed to be a decision of the Presidential Member.

Clause 17: President may resolve difficulties

This clause allows the President to give directions to solve difficulties which arise in the application of this Division to a particular proceeding. Such directions may not be inconsistent with the provisions of the new Act and are subject to any order the Labour Court might make under clause 96.

Division 4 - General provisionsClause 18: References to persons and bodies appointed or established under Industrial Relations Act

This is a technical provision that is necessary in order to apply provisions of the new Act to particular proceedings which commenced under the previous Act.

Clause 19: Provisions of previous Act imposing obligations for specified periods etc

This clause provides that time limits imposed under the previous Act which have not expired at the time the Act is repealed are to continue in force. If an obligation under the previous Act, continued by operation of this clause, is not satisfied, the relevant penalty for non-compliance under the new Act will apply.

Clause 20: Continued operation of provisions of previous Act

This clause ensures the continuation after the commencement of provisions of the previous Act which are necessary to complete proceedings which will continue under that Act.

Sub-clause (2) provides that a contravention of a provision of the previous Act continued by operation of the Bill is deemed to be an offence against the new Act.

Clause 21: Law to be applied in appeals

Under this clause the law to be applied to an appeal a in proceeding commenced under the previous Act is that law which, by operation of the Bill, would have applied to the original proceedings.

Clause 22: Presidential member dealing with applications under previous Act

This clause provides that where a Presidential Member takes over the hearing of matters that were before a Registrar under the previous Act, things done in relation to that matter before the Registrar are deemed to have been done in the proceeding before the Presidential Member. The Presidential Member is to have regard to any evidence etc. before the Registrar.

Clause 23: Documents or money filed or lodged under previous Act

This clause deals with the transfer of documents or money filed or lodged with a previous Registrar.

Clause 24: Appeals to Full Bench of Commission

Under this clause specified decisions of the former Commission made in the 21 days before the commencement may, with leave, be appealed to a Full Bench. Sub-clause (3) specifies the parties who may institute the appeals in certain matters. Sub-clause (4) indicates that provisions of the new Act apply in relation to appeals instituted under this clause. Sub-clause (5) allows the President to give directions to resolve any difficulty which might arise from the application of this clause.

Division 5 - Operation of particular provisions of previous Act and Industrial Relations ActClause 25: Questions referred to Court by Commission

This clause applies the provisions of clause 43 of the new Act to questions that were referred to the Federal Court under section 107 of the previous Act by the former Commission and also to references made to the Federal Court by the former Registrar under section 112 of the previous Act, where such references relate to a matter which, by operation of the Bill, will be dealt with by a Presidential Member after the commencement.

Clause 26: Register of organisations

This clause deems the register of organisations kept under the previous Act to be part of the register required to be kept under the new Act under clause 95.

Clause 27: Questions referred to Commission

By operation of this clause, clause 111 of the new Act is applied to matters or questions referred by the former Registrar to the former Commission, which are transferred by operation of Clause 11 of the Bill to the new Commission. The new Commission may refer the matter or question to the Presidential Member or the Registrar, who by operation of the Bill is dealing with the matter after the commencement.

Clause 28: Appeals from act or decision of Registrar under previous Act

This clause empowers the new Commission to deal with an appeal, in a matter before the former Registrar made to the former Commission, not determined at the commencement. It also enables appeals to be made to the new Commission under the new Act from acts or decisions of the previous Registrar, where the appeals are within the time limit set by the previous Act.

Clause 29: Questions referred to Court by Registrar

This clause applies the provisions of clause 113 of the new Act to questions referred to the Federal Court by a former Registrar in matters which, after commencement, are to be dealt with by a Registrar.

Clause 30: Inspector appointed under previous Act

By this clause persons who were inspectors under the previous Act immediately before the commencement are deemed to have been appointed as inspectors under the new Act.

Clause 31: Certain matters to be dealt with by Full Bench

The purpose of this clause is to provide that determinations of, or principles determined by, a Full Bench of the former Commission apply to proceedings under clause 135 of the new Act.

Clause 32: Review of awards or decisions

This clause allows the Minister to apply for a review, after the commencement, of awards, etc. made by the former Commission, or the Flight Crew Officers Industrial Tribunal, in the 21 day period before the commencement. The time limit laid down by the previous Act applies to such applications.

Under sub-clause (2), applications for review made by the Minister but not completed before the commencement are to be dealt with by the new Commission under clause 138 of the new Act.

Clause 33: Exercise of conciliation powers before commencement

The purpose of this clause is to apply the provisions of clause 140 to a member of the Conciliation and Arbitration Commission having exercised conciliation powers under the previous Act.

Clause 34: Demarcation orders

Applications under sub-section 142A(1) of the previous Act not finally dealt with are to be dealt with by the new Commission under the provisions of the previous Act.

Clause 35: Certified memorandums

This clause provides that requests for certification of section 28 agreements made under the previous Act and not completed before the commencement will, after the commencement, continue to be dealt with under the provisions of the previous Act.

Clause 36: Stand-down applications

This clause provides that a stand-down application transferred from the former Commission by operation of the Bill is to be dealt with, after the commencement, under clause 156 of the new Act.

Clause 37: Reference to Local Industrial Board

This clause provides that where a matter was referred to a Local Industrial Board for report under section 44 of the previous Act and the report has not been made at the commencement, the Commission may either revoke the reference to the Local Industrial Board or accept the report under the terms of clause 159 of the new Act.

Clause 38: Inspection

This is a procedural clause concerning inspections.

Clause 39: Ballots relating to industrial action

Sub-clause (1) provides that applications for secret ballots made under section 45 of the previous Act, but not completed at the commencement are to be dealt with under the relevant clause of the new Act.

Sub-clause (2) provides that ballots partially completed under the previous Act are to be completed under the relevant provisions of the previous Act.

Sub-clause (3) describes the manner in which the provisions of the new Act are to be applied to such ballots.

Clause 40: Common rules

This clause continues in effect common rules made under the previous Act. Sub-clauses (2) and (3) describe the manner in which provisions of the new Act are to be applied to proceedings relating to common rules transferred to the new Commission by operation of the Bill.

Clause 41: Employers bound by awards

This clause provides that an employer, bound by an award made under the previous Act by virtue of being the successor, assignor, or transmittee of the business of a party bound by the award, remains bound by that award even though an employer in a similar position may not be bound by an award made under the new Act.

Clause 42: Disputes relating to boycotts

Division 5A of Part III of the previous Act empowers the former Commission to deal, by conciliation with disputes relating to a contravention, or a threatened, impending or probably contravention, of section 45D or 45E of the Trade Practices Act where a federally registered union, or a member or officer, is involved or work relating to work under an award is concerned.

This clause enables the new Commission to deal with any uncompleted proceedings under Division 5A by conciliation, and the provisions of section 88DE of the former Act relating to parties apply. The general powers and procedures of the new Commission which are available under clause 198 of the new Act will apply to such conciliation proceedings (but it is not intended that there be any power to make awards).

Clause 43: Port Conciliators

This clause continues the appointments of Port Conciliators made under section 85A of the previous Act, as if made under the new Act.

Clause 44: Registration of organisations

This clause provides for undetermined applications for registration before a former Registrar to be transferred to a designated Presidential Member, who may deal with them under the new Act or refer them to a Registrar for completion under the new Act - see clause 16.

Clause 45: Certificates of registration

This clause gives the Industrial Registrar the same power to issue replacements of certificates of registration in relation to organisations registered under the previous Act as the Industrial Registrar has in relation to organisations registered under the new Act.

Clause 46: Secret postal ballot

By operation of this clause an exemption from the requirement to have elections conducted by postal ballot, granted to an organisation under the previous Act, is continued in force for a period of 3 months after the commencement. The organisation may apply for a grant of a similar exemption under the new Act.

An organisation which did not have an exemption under the previous Act, and does not have rules which provide for elections by postal ballot, must, under sub-clause (5), conduct elections by postal ballot, notwithstanding its rules, unless granted an exemption under the new Act.

Clause 47: Change of name or alteration of eligibility rules

Undetermined applications for change of name or alteration to industry or eligibility rules before a former Registrar are to be transferred by operation of this clause to a designated Presidential Member, who may deal with them under the new Act or refer them to a Registrar for completion under the new Act- see clause 16.

Clause 48: Alterations of rules other than eligibility rules

This clause provides that particulars of alterations to rules of organisations lodged for certification with a former Registrar, but not certified or otherwise dealt with at the commencement, are to be dealt with under sub-clause 235(1) of the new Act.

Clause 49: Recording of change of name or alteration of rules

This clause deals with procedures to be followed for recording name changes or rule changes.

Clause 50: Period within which rules must be made consistent with Industrial Relations Act

This clause provides that, until the expiration of 12 months after the commencement, rules of organisations are not capable of challenge in the Labour Court as contrary to the new Act, by reason only that they fail to make a provision required by the new Act, except where the Registrar has certified alterations to those rules made within that 12

months. Challenges may be made within that 12 month period to rules which fail to meet requirements of the new Act which are identical to requirements of the previous Act.

The purpose of this clause is to provide a moratorium period of up to 12 months from the commencement of the new Act for organisations to amend their rules to meet the new requirements.

Clause 51: Orders in relation to rules

The effect of this clause is that applications for orders that rules of an organisation contravene the previous Act, made in the Federal Court but not determined at the commencement are to continue to be dealt with under the provisions of the previous Act, except that, where the Court has declared rules to be void and the organisation has not altered its rules within the time allowed by the provision, the new Industrial Registrar is empowered to determine alterations to rules and such determination is deemed to take effect under the new Act.

Clause 52: Order directing performance of rules

The effect of this clause is to provide that applications for directions for the performance or observance of the rules of an organisation, made to the Federal Court, but not determined at the commencement, are to be dealt with under the new Act, in accordance with Division 2 of Part II of the Bill.

Clause 53: Elections under previous Act

This clause provides that elections for offices in organisations which are not completed at the commencement are to be completed under the provisions of the previous Act.

Clause 54: Elections after commencement

This clause provides that the requirements of the new Act that all elections for offices in organisations be officially conducted (subject to an exemption being granted) and that organisations notify the Industrial Registrar of forthcoming elections, do not apply for a period of 12 months after commencement, or until an application for exemption lodged within that 12 months period has been determined, whichever is the later.

Sub-clause (2) provides that during that period, requests may continue to be made under the provisions of the previous Act for elections to be officially conducted and such requests are to be dealt with by the new Registrar.

Clause 55: Applications for inquiries for elections

Under sub-clause (1) where an application for an inquiry into an election has not been refused or referred to the Federal Court at the commencement, it shall be referred to the Labour Court and dealt with as if it had been lodged under clause 248 of the new Act.

Clause 56: Prescribed Offences

By operation of this clause, clause 257 of the new Act, which specifies those offences for which on conviction a person may be disqualified from holding office in an organisation, includes a number of offences against the previous Act.

Clause 57: Disqualifications from office

The effect of this clause is to provide that clause 258 of the new Act regarding disqualification for holding office in an organisation applies to a person convicted of a prescribed offence before the commencement of the new Act unless:

- . the person was granted leave to hold office by the Federal Court under the previous Act;
- . the period of disqualification imposed by the Federal Court has elapsed; or
- . a period of 5 years has elapsed since the person was convicted of the offence.

Clause 58: Amalgamations

Sub-clause (1) provides that an amalgamation which was started under the previous Act which has not taken effect or been rejected immediately before the commencement is to continue to be dealt with under the provisions of the previous Act unless sub-clause (2) applies.

Sub-clause (2) provides that where none of the ballots in an amalgamation under the previous Act have started at the commencement, then the amalgamation is to continue as if it had begun under the provisions of the new Act, and all things done in relation to the amalgamation before the commencement had been done under the provisions of the new Act.

A ballot is taken to have started when a notice of the ballot is published in the Gazette (sub-clause (3)).

Clause 59: Validating provisions

This clause provides for applications under the validating provisions of the previous Act, made to the Federal Court but not completed at the commencement, to be dealt with in accordance with Division 2 of Part II of the Bill, and under the provisions of the new Act.

Clause 60: Entitlement to membership of organisations

This clause provides for uncompleted matters concerning the entitlement of persons to be, or to remain, members of an organisation before the Federal Court at the commencement to be dealt with in accordance with Division 2 of Part II of the Bill under the relevant provisions of the new Act.

Clause 61 Resignation from organisation before commencement

This clause provides that a resignation properly made under the previous Act before the commencement, which has not taken effect at the commencement, shall take effect on the day it would have taken effect under the previous Act.

Clause 62: Certificate of conscientious beliefs

By operation of this clause certificates of conscientious beliefs granted under the previous Act and in operation at the commencement, continue until expiration. Applications for such certificates made to a former Registrar and not granted or refused at the commencement are to be dealt with under the new Act (sub-clause (2)).

Clause 63: Records to be kept etc by organisations

By operation of this clause the register of members of an organisation required to be kept under the new Act includes the register of members required to be kept under the previous Act. Documents lodged under clause 294 of the new Act include documents filed with a Registrar under section 152 of the previous Act (sub-clause (2)). Permission granted to an organisation to keep documents at a specified place if current at the commencement, is to be treated as permission granted under the new Act (sub-clause (3)).

Clause 64: Accounts and audit

This clause provides that the provisions of Division 11 of Part IX of the new Act do not apply to any organisation until the first financial year which begins after the commencement. The provisions of Part VIIIAA of the previous Act continue to apply to the financial year current at the commencement.

Clause 65: Disputes referred to Local Industrial Boards

This clause applies clause 205 of the new Act to industrial disputes referred to Local Industrial Boards under section 44B of the previous Act and not finally dealt with at the commencement.

Clause 66: Cancellation of Registration

Sub-clause (1) provides that applications under section 143 of the previous Act for cancellation of registration of an organisation, lodged but not finally dealt with at commencement, are to be completed in accordance with Division 2 of Part II of the Bill, under the provisions of the previous Act. By virtue of paragraph (2)(c) and sub-clause (3) the consequences of a cancellation of registration which occurs by operation of this clause will be determined by clauses 323 and 324 of the new Act.

Clause 67: Enforcement of awards

This clause provides that proceedings for enforcement of awards under section 119 of the previous Act which had not been completed at the commencement are to be completed under the provisions of the previous Act, in accordance with Division 2 of Part II of the Bill.

Sub-clauses (2) and (3) describe the manner in which the provisions of the previous Act are to be applied in proceedings referred to in sub-section (1).

Clause 68: Enforcement of judgments

This clause provides that if, under section 121 of the previous Act, a Registrar has given a certificate to allow a judgment of the Court to be enforced that judgment may be enforced after commencement as if the previous Act was still in existence.

Sub-clause (2) applies clause 211 of the new Act to the enforcement of an order or penalty that has not been enforced, in circumstances where no section 121 certificate has been given by the former Registrar.

Clause 69: Recovery of wages etc

This clause provides that a proceeding under section 123 of the previous Act is to be dealt with in accordance with Division 2 of Part II of the Bill, under the provisions of the previous Act.

Clause 70: Unclaimed moneys

This clause provides that clause 213 of the new Act applies where, at the commencement, money (wages, etc) is owing in respect of employment which ceased prior to the commencement, but in respect of which no application for recovery of that money has been made.

Clause 71: Cancellation etc. of award

This clause provides that an application for cancellation of an award not finally dealt with at the commencement is to be completed by a Full Bench of the new Commission in accordance with section 62 of the previous Act.

Clause 72: Offences relating to members of organisations

This clause ensures that a person entitled to the benefits of an industrial agreement continued by operation of clause 77 has the same protection as provided to a person entitled to the benefit of an award.

Clause 73: Offences by organisations in relation to industrial action

This clause extends the protection afforded to persons under clause 359 of the new Act to persons who engaged in conduct specified in that clause before the commencement.

Clause 74: Bans clause

This clause provides that sections 33 and 119 of the previous Act continue to apply to bans clauses inserted in awards under the previous Act.

Sub-clause (2) modifies the provisions of sections 33 and 119 of the previous Act to enable the new Commission and the Labour Court to deal with any proceedings arising by operation of this clause.

Clause 75: Financial Assistance

By operation of this clause the provisions of the previous Act relating to the granting of financial assistance continue to have effect in proceedings started, but not completed, before the commencement of the new Act.

Clause 76: Certificates etc. as to membership, members, rules etc. of organisations

This clause deals with the status of certain certificates given under the previous Act.

Clause 77: Industrial Agreements

Under this clause, agreements in force under Part X of the previous Act continue in effect in accordance with the provisions of Part X of the previous Act, as modified by sub-clause (2).

Clause 78: Regulations

The purpose of this clause is to provide for the making of regulations in respect of applications and proceedings under this Bill.

Division 6 - MiscellaneousClause 79: Australian Industrial Court remains in existence

The purpose of this clause is to continue the existence of the Australian Industrial Court under relevant provisions of the previous Act.

Clause 80: Certain Deputy Presidents may hold office until age 70

This clause provides that those persons who were Deputy Presidents of the former Commission and entitled, by operation of section 60 of the Conciliation and Arbitration Act 1972 to hold office until age 70, and who are appointed to the position of Deputy President under the new Act may continue in that position until age 70.

Clause 81: Former Presidential members entitled to pension

This is a procedural clause which provides that former Presidential Members not appointed to the new Commission are not disadvantaged in respect of entitlements under the Judges' Pension's Act 1968. The clause applies only to a former Presidential Member who meets all other requirements under the Judges' Pension's Act 1968, apart from having reached the age of 60 years and having retired.

Clause 82: Continuation of exemption from qualifications for membership of organisation

Under sub-section 132(5) of the previous Act, certain persons, not being employees, who were admitted to membership of organisations under eligibility rules that were valid under the previous Act prior to 1977 are permitted to continue their membership even though their eligibility for continuing membership was put in doubt as a result of amendments in 1977 to the previous Act.

The arrangements under sub-section 132(5) were put in place by retrospectively operating amendments to the previous Act in 1983 and are continued in force by this Act. The provision will, like the relevant provisions of the previous Act, only operate in relation to a person for so long as the person has uninterrupted membership of the organisation concerned.

Clause 83: Institution of proceedings

This clause empowers an inspector under the new Act to institute proceedings for an offence committed against the previous Act or for a breach of a term of an award which occurred before the commencement.

Clause 84: Commission to take possession of certain documents

Sub-clause (1) provides that, for purposes of the Freedom of Information Act 1982, the new Commission has custody of all documents, as defined by that Act, that were, immediately before commencement, under the control of the former Commission or the Flight Crew Officers Industrial Tribunal.

Documents in the possession of the new Commission by virtue of sub-clause (1) which before the commencement would have been regarded for the purposes of the Freedom of Information Act 1982 as documents that related to matters of an administrative nature, are to continue to be so regarded for the purposes of that Act (sub-clause (2)).

Clause 85: Commission to take possession of Federal Police Arbitral Tribunal documents

This clause provides for the transfer to the new Commission of all documents under the control of the Federal Police Arbitral Tribunal immediately before the commencement.

PART III - AMENDMENTS OF OTHER ACTS

Clause 86: Amendments of other Acts

This clause provides for the amendments to the Acts set out in the Schedule.

Clause 87: Certain decisions to be final decisions

This clause provides that despite the repeal by operation of this Bill, of section 57 of the Australian Federal Police Act 1979 the terms of that section continue to apply to things done by the former Commission and the Federal Police Arbitral Tribunal and determinations of the latter tribunal.

Clause 88 - Agreements filed under section 36(2) of the Coal Industry Act

This clause deems agreements filed before the commencement in accordance with section 36(2) of the Coal Industry Act 1946 to have been filed in a registry established by the new Act.

Clause 89 - Pathology Services Advisory Committee

This clause provides that a person holding office as the Chairperson of the Pathology Services Advisory Committee immediately before the commencement may continue to hold that office for the term specified in the instrument of that person's appointment, regardless of whether that person holds an appointment as a Presidential Member of the new

Commission. This clause is necessary as amendments made to the Health Insurance Act 1973 by the Bill require the Chairperson of that Committee to hold an appointment as a Presidential Member of the new Commission. A person holding office as a Judge on the Labour Court cannot hold office as Chairperson of the Committee (sub-clause (5)).

Clause 90 - Pharmaceutical Benefits Remuneration Tribunal

The purpose of this clause is to allow a person who is a Chairperson of the Pharmaceutical Benefits Remuneration Tribunal immediately before the commencement, to remain in that position for the term specified in the instrument of appointment regardless of whether that person is appointed as a Presidential member of the new Commission. This clause is necessary due to amendments made to the National Health Act 1953 by this Bill which require the Chairperson of the Tribunal to be a Presidential Member of the Commission. A person holding office as a Judge on the Labour Court cannot, by virtue of sub-clause (5), hold the position of Chairperson of the Tribunal.

Clause 91: Reports of Academic Salaries Tribunal in relation to Vice Chancellors etc.

The Academic Salaries Tribunal is to be abolished by operation of the Bill and the previous jurisdiction of that Tribunal divided between the Remuneration Tribunal and the new Commission. This clause allows the Remuneration Tribunal to take into account any report made by the Academic Salaries Tribunal in relation to those offices which, after the commencement, will be within the jurisdiction of the Remuneration Tribunal.

Clause 92: Determinations of the Academic Salaries Tribunal in relation to certain academic staff

This clause continues in force determinations made by the Academic Salaries Tribunal in respect of academic staff at Commonwealth tertiary institutions, as if the determinations were awards made under the new Act.

Clause 93: Report of the Academic Salaries Tribunal

This is a procedural clause.

Clause 94: Remuneration Tribunal to take possession of certain documents

This clause allows the Remuneration Tribunal to take possession of all documents under the control of the Academic Salaries Tribunal immediately before the commencement.

Clause 95: Stay of injunctions under Trade Practices Act

Section 80AA of the Trade Practices Act, which expressly gives the Federal Court, in specified circumstances, a discretion to stay an injunction relating to contraventions of sections 45D and 45E and associated conduct, is to be repealed (see notes on amendments to Trade Practices Act under the Schedule to the Bill). This provision takes account of the possibility that such orders may remain in force after the repeal of section 80AA. The Federal Court will be able to vary or rescind such orders after the provision is repealed.

PART IV - LABOUR COURT MAY RESOLVE DIFFICULTIES

Clause 96: Labour Court may resolve difficulties

This clause give the Australian Labour Court powers to make orders to resolve difficulties which might arise in the application of the provisions of this Bill or the application of the provisions of the new Act, by operation of this Bill, to a particular matter.

SCHEDULEAmendment of Other Acts

The Schedule, which is provided for under clause 86, contains proposed amendments to certain other Acts that arise from the enactment of the Industrial Relations Bill 1987. The amendments are largely of a technical nature and deal primarily with either the substitution of references to provisions of the Conciliation and Arbitration Act 1904 with references to provisions in the Industrial Relations Bill 1987 or with the repeal of provisions of other Acts that would be redundant upon the commencement of the Industrial Relations Bill 1987. Significant amendments are discussed below.

Australian Federal Police Act 1979

Amendments to the Act included in the Schedule will repeal those provisions which establish and outline the operation of the Federal Police Arbitral Tribunal. After the commencement, all industrial matters concerning employees who are members of the Australian Federal Police, will be dealt with by the Industrial Relations Commission. Transitional arrangements are made in this Bill for matters before the Federal Police Arbitral Tribunal immediately before the commencement (clause 12) and determinations and agreements made by the Tribunal are to continue, as if awards of the Industrial Relations Commission (clause 7(4)).

Some matters which were excluded from the jurisdiction of the Federal Police Arbitral Tribunal will also be excluded from the jurisdiction of the Industrial Relations Commission - paragraph 3(e) - Industrial Relations Bill 1987.

Australian National Railways Commission Act 1983
Commonwealth Teaching Service Act 1972
Postal Services Act 1975
Telecommunications Act 1975

These Acts contain specific provisions conferring powers and functions on the former Commission.

The Industrial Relations Bill 1987 applies directly to employment covered by these Acts and accordingly the relevant Divisions of these Acts specified in the Schedule are to be repealed as they become redundant at the commencement.

Coal Industry Act

The Coal Industry Tribunal ("CIT") is given the power under the Coal Industry Act 1946 to consider and determine industrial disputes (as defined in the Act) in the coal mining industry. These powers are exercisable by way of conciliation and arbitration for the prevention and settlement of disputes. For the purposes of their exercise, the CIT is clothed with the powers of the Australian Conciliation and Arbitration Commission under the Conciliation and Arbitration Act. The CIT also has powers conferred on it by virtue of complementary New South Wales legislation.

As a consequence of the repeal of the Conciliation and Arbitration Act and the proposed enactment of the Industrial Relations Act, it is necessary to confer the powers of the Australian Industrial Relations Commission on the CIT.

It is also necessary, since the bans clause process under the Conciliation and Arbitration Act will no longer be available (clause 154 of the Industrial Relations Bill) to provide for the CIT to have the same powers as the Industrial Relations Commission to give directions to prevent or stop industrial action or conduct obstructing the observance, or work under, awards. This is achieved by amendments to section 34 of the Coal Industry Act - see new sub-section 34(1A).

Directions will be enforceable before the Australian Labour Court in the same way as directions of the Commission under the Industrial Relations Bill.

Provision is also made in clause 34A, in line with the scheme under the Industrial Relations Bill, to exclude certain remedies under State or Territory legislation or in tort where the processes under the Coal Industry Act for preventing or stopping

industrial action in connection with an industrial dispute or conduct obstructing the observance of, or work under an award, are available.

This reflects the objective that the CIT and Labour Court should be able to ensure adherence by the parties within the jurisdiction of the CIT to the standards established in that jurisdiction.

The unrestricted availability of other legal remedies from State or Territory tribunals remote from the situation which may give rise to action before them for such remedies is considered to be damaging to the achievement of effective dispute prevention and settlement in the area for which the CIT is responsible, and may not effectively prevent the harmful effects of industrial disruption.

The exclusion of relevant actions does not extend to:

- . actions for compensatory damages;
- . action for injunctions to prevent physical harm to persons or property;
- . actions in respect of conversion, detinue or defamation;
- . proceedings for a contravention of an award, order or direction of a State industrial authority (eg the NSW Coal Industry Tribunal); or
- . prosecutions for offences.

Northern Territory (Self-Government) Act 1978

Amendments made by the Schedule to the Northern Territory (Self-Government) Act 1978 are necessary to apply the new Act to industrial disputes in the Northern Territory replacing the application of the Conciliation and Arbitration Act 1904, after the commencement.

Seat of Government (Administration) Act 1910

The provisions of the previous Act apply to industrial disputes in the Australian Capital Territory by virtue of this Act. The amendments made to this Act by the Schedule are necessary to apply the provisions of the new Act to industrial disputes in the ACT, after the commencement.

Remuneration Tribunals Act 1973

By operation of these amendments the Academic Salaries Tribunal is abolished. That part of the Tribunal's jurisdiction which related to the determination of salary rates for academic staff at Commonwealth institutions of tertiary education will be assumed by the Industrial Relations Commission. The Remuneration Tribunal, through other amendments made by the Schedule is to take over the responsibility for reporting to the Minister on the rates of salaries in relation to specified "executive education offices" (a term defined in the Remuneration Tribunals Act).

Trade Practices Act 1974

Section 80AA, which permits the staying of injunctions in certain cases where a matter is before an industrial tribunal, is repealed. It is considered no longer necessary to provide for this in the federal sphere in the light of the conciliation arrangements involving the Industrial Relations Commission under Division 9 of Part VI of the Industrial Relations Bill. As far as the tribunals of States are concerned, no State has enacted the requisite complementary legislation. Moreover, it is considered that the Labour Court has an inherent power to stay injunctions in any circumstances where it thinks it appropriate.

Certain consequential changes are made to section 86 of the Trade Practices Act which deals with the jurisdiction of the Federal Court over proceedings under Part VI of that Act. It is made clear that the Federal Court retains jurisdiction over certain matters relating to contraventions of sections 45D and 45E and associated conduct which is actionable under Part VI of the Trade Practices Act. These matters are those not involving trade unions or their members, officers or employees in that capacity. This complements the Labour Court's jurisdiction over such matters where they involve such persons.