

## AIRCREW INDUSTRIAL TRIBUNAL BILL

### EXPLANATORY NOTE

THE purpose of the Bill is to establish an Aircrew Industrial Tribunal and machinery for determining the conditions of employment of pilots, navigators, and flight engineers employed by airlines operating wholly within New Zealand or whose principal place of business is within New Zealand.

*Clause 1* relates to the Short Title of the Bill.

*Clause 2* defines various terms used in the Bill.

*Clause 3* provides that the Bill is to apply to every airline employer and union of airline employers as defined in *clause 2* of the Bill and to every aircrew officer and every union of aircrew officers as so defined.

*Clause 4* provides that, except as expressly provided in the Bill, the Industrial Conciliation and Arbitration Act 1954 is not to apply to the employment of aircrew officers.

*Clause 5, subclause (1)* provides that any society, association, or organisation representing the interests of airline employers or aircrew officers may be registered or continue to be registered as an industrial union of employers or, as the case may be, an industrial union of workers under the Industrial Conciliation and Arbitration Act 1954. The provisions of Parts III and IV of that Act are, with certain modifications, to apply to unions so registered.

*Subclause (2)* provides that, in any proceedings before the Tribunal, or a conciliation council, any organisation of aircrew officers or any airline employer or organisation of airline employers, not being parties to the proceedings, shall be entitled to make written submissions if the Tribunal or Council considers that they may be affected by the result of the proceedings.

### *Aircrew Industrial Tribunal*

*Clause 6* provides for the establishment of a Tribunal to be known as the Aircrew Industrial Tribunal. The Tribunal is to consist of one person who is to be appointed by the Governor-General in Council on the recommendation of the Minister of Labour after consultation with any union or unions of aircrew officers and with any union or unions of airline employers.

*Clause 7* provides that the person constituting the Tribunal is to hold office for a term of 3 years, but may from time to time be reappointed.

*Clause 8* prescribes the persons who are disqualified from being appointed to the Tribunal.

*Clause 9* sets out the circumstances in which the office of the person constituting the Tribunal is to be vacated, and provides for the filling of vacancies.

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*Clause 10* authorises the Minister of Labour to grant leave of absence to the person constituting the Tribunal.

*Clause 11* requires the person constituting the Tribunal to take before a Judge of the Supreme Court an oath or affirmation that he will faithfully and impartially perform the duties of his office.

*Clause 12* grants the person constituting the Tribunal the same protection and immunity as a Judge of the Court of Arbitration.

*Clause 13* declares the Tribunal to be a Commission of Inquiry for the purposes of the Commissions of Inquiry Act 1908.

*Clause 14* provides for the payment of remuneration and travelling allowances to the person constituting the Tribunal.

*Clause 15* provides for the appointment of a deputy to carry out the duties of the person constituting the Tribunal in certain circumstances.

*Clause 16* provides for the Secretary of Labour to designate an officer of the Department of Labour to be Registrar of the Tribunal.

*Clause 17* requires the Secretary of Labour to provide such secretarial, recording, and clerical services as may be necessary to enable the Tribunal to discharge its functions.

*Clause 18* requires the Tribunal to have a seal.

*Clause 19* sets out the functions of the Tribunal. The main functions are to make awards determining the conditions of employment of aircrew officers and to settle disputes between aircrew officers and their employers.

*Clause 20* empowers the Tribunal to extend the time within which anything is required or authorised to be done, and to validate anything done informally.

The clause is based on section 221 of the Industrial Conciliation and Arbitration Act 1954.

*Clause 21* provides for documents under the seal of the Tribunal and for the signatures of the person constituting the Tribunal and the Registrar to be judicially noticed.

The clause is based on section 222 of the Industrial Conciliation and Arbitration Act 1954.

#### *Tribunal Proceedings and Conciliation*

*Clause 22* provides that, subject to the Bill, the Tribunal may exercise any of its functions and powers of its own motion or on the application of an airline employer or a union of airline employers or a union of aircrew officers.

*Clause 23* provides that any airline employer, union of airline employers, or union of aircrew officers who or which is a party to an industrial question may apply to the Tribunal for the hearing and determination of the question.

*Clause 24* provides for the compulsory reference of an industrial question to the Tribunal.

*Clause 25* enables the Tribunal to appoint a conciliation council on being requested to do so by an airline employer, union of airline employers, or a union of aircrew officers, who or which is concerned in an industrial question, if the Tribunal thinks that the appointment of such a council is likely to lead to a settlement of the question.

*Clause 26* provides for the constitution of conciliation councils. A council is to consist of the person constituting the Tribunal and equal numbers of persons representing the parties to the industrial question. The person constituting the Tribunal is to be chairman of the council.

*Clause 27* provides for the payment of remuneration and travelling allowances to members of conciliation councils.

*Clause 28* provides that it is the function of a conciliation council to endeavour to bring about a settlement of the industrial question before it.

*Clause 29* provides for the procedure to be followed by a conciliation council.

*Clause 30* provides that if the members of a conciliation council, other than the chairman, agree unanimously on terms for a settlement of the industrial question, the chairman is to cause a record of the settlement to be made. The record is then to be certified by the chairman, unless he considers that the settlement contains provisions which the Tribunal has no power to include in an award, or that it is not in the public interest that the record should be so certified. A record so certified is to have the same effect as and deemed to be an award of the Tribunal. If at any time the chairman is satisfied that further proceedings of the council are not likely to produce a settlement within a reasonable time, he may terminate the proceedings of the council. In that event the Tribunal, after any further proceedings that the Tribunal thinks necessary, may make an award in relation to the industrial question.

*Clause 31* provides for the setting down of an industrial question for hearing by the Tribunal.

*Clauses 32 and 33* set out the procedure to be followed by the Tribunal in dealing with an industrial question. Proceedings will normally take place in public. Every party may be represented at their own expense by an agent or, with the consent of every other party, by a barrister or solicitor.

*Clause 34* sets out the particular powers of the Tribunal in dealing with an industrial question. These powers include the power to take evidence on oath, to make an award, to hear and determine a matter in the absence of a party who has been summoned to appear before the Tribunal, to sit at any place, to adjourn from time to time and from place to place, to summon parties to attend any proceedings of the Tribunal, and generally to give such directions as the Tribunal thinks necessary or expedient for the determination of an industrial question.

*Clause 35* gives the Tribunal certain powers of inspection. Under *clause 48 (3)* it will be an offence punishable by a fine not exceeding \$50 to hinder or obstruct any person exercising a power conferred by the clause, or to make a false or misleading statement or representation to any such person.

*Clause 36* empowers the Tribunal to order a secret ballot of a union of aircrew officers to be held in certain cases.

#### *Tribunal Awards, Etc.*

*Clause 37* provides that, in making an award in relation to an industrial question, the Tribunal is not restricted to the specific relief claimed by the parties to the question.

*Clause 38* provides for the form of Tribunal awards and the matters that are to be specified in awards.

*Clause 39* makes further provisions in respect of Tribunal awards. A copy of an award is to be forwarded to each party to it. A statement of the Tribunal's reasons is to be included in the award. An award is to prevail over a contract of service to the extent that the contract is inconsistent with the award.

*Clause 40* specifies the persons on whom, and the unions on which, awards are to be binding.

*Clause 41* relates to the commencement of awards.

*Clause 42* provides for an award to continue for a period to be specified in the award not exceeding 3 years after the date on which the award comes into force. If an award expires before a new award is made, the old award is to continue in force.

*Clause 43* provides for the setting aside and variation of awards in certain cases.

*Clause 44* provides that a decision of the Tribunal as to the existence of an industrial question is to be final and conclusive for all purposes.

*Clause 45* empowers the Minister of Labour, by notice in the *Gazette*, to cancel the registration of a union, or cancel any award in so far as it relates to any union, or cancel the membership of any class of members of any union, if he is satisfied that any discontinuance of employment brought about by the union or its members has caused or is likely to cause serious loss or inconvenience.

The clause is based on section 198 of the Industrial Conciliation and Arbitration Act 1954.

*Clause 46* provides that an award is to be enforceable in the same manner as an award made under the Industrial Conciliation and Arbitration Act 1954.

#### *Miscellaneous Provisions*

*Clause 47* sets out a standard procedure for the settlement of personal grievances as defined in *subclause (1)* of the clause. Such a grievance must be either a claim by an aircrew officer of wrongful dismissal or a claim that other action has been taken by an airline employer, against that officer personally, that affects his employment to his disadvantage.

The procedure is, generally speaking, similar to that contained in section 4 of the Industrial Conciliation and Arbitration Amendment Act 1970.

*Clause 48* prescribes certain offences and penalties.

*Clause 49* provides that all books, papers, documents, and things produced in evidence before the Tribunal may be inspected by the Tribunal or by such of the parties as the Tribunal allows.

*Clause 50* provides for the making of regulations for the purposes of the Bill.

*Clause 51* provides for the Bill to be administered in the Department of Labour, and makes a consequential amendment to the Labour Department Act 1954.

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*Rt. Hon. Mr Marshall*

## AIRCREW INDUSTRIAL TRIBUNAL

### ANALYSIS

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## A BILL INTITULED

**An Act to provide for the determination of the conditions of employment of aircrew employed by New Zealand airlines**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows: 5

**1. Short Title**—This Act may be cited as the Aircrew Industrial Tribunal Act 1971.

**2. Interpretation**—In this Act, unless the context otherwise requires,— 10

“Aircrew officer” means a person employed by an airline employer under a contract of service as a pilot, navigator, or flight engineer of aircraft; and includes a person being trained as an aircrew officer:

“Airline employer” or “employer” means a person, company, or corporation who or which carries on air passenger transport or air freight transport services wholly or principally within New Zealand or whose principal place of control is within New Zealand and who or which employs aircrew officers; but does not include any aero club carrying on any such service: 20

“Award” means an award made by the Tribunal under this Act:

“Conciliation council” or “council” means a conciliation council appointed under section 25 of this Act: 25

“Conditions of employment” means all matters pertaining to the remuneration or other terms or conditions of service or employment of, or affecting or relating to work done or to be done by, aircrew officers employed or to be employed by airline employers: 30

“Employment” means employment by an airline employer:

“Industrial question” means a dispute or question relating to the conditions of employment of aircrew officers that cannot be resolved by informal proceedings; and includes— 35

(a) A threatened or probable dispute;

(b) Part of a dispute;

(c) A dispute so far as it relates to a matter in dispute; and 40

(d) A question arising in relation to a dispute:

“Minister” means the Minister of Labour:

“Registrar” means the Registrar of the Aircrew Industrial Tribunal:

5 “Tribunal” means the Aircrew Industrial Tribunal established under this Act:

10 “Union of aircrew officers” or “union” means any society, association, or other organisation representing the interests of aircrew officers which is registered as an industrial union of workers under the Industrial Conciliation and Arbitration Act 1954; and includes the New Zealand Institute of Marine and Power Engineers Incorporated, and every branch of that Institute which is incorporated under the Marine and Power Engineers’ Institute Incorporation Act 1925:

15 “Union of airline employers” or “union” means any society, association, or other organisation representing the interests of airline employers which is registered as an industrial union of employers under the Industrial Conciliation and Arbitration Act 1954.

**3. Application of this Act**—This Act shall apply to—

- 20 (a) Every airline employer, whether or not he is a member of a union of airline employers:
- 25 (b) Every aircrew officer employed by any such employer, whether he is a member of a union of aircrew officers or not:
- (c) Every union of aircrew officers and every union of airline employers.

**4. Application of Industrial Conciliation and Arbitration Act**—Except as expressly provided in this Act, the Industrial Conciliation and Arbitration Act 1954 shall not apply to aircrew officers or to the employment of aircrew officers.

**5. Industrial unions of airline employers and aircrew officers**—(1) Any society, association, or other organisation  
35 existing or carried on for the purpose, or for purposes that include the purpose, of furthering the interests of airline employers or of aircrew officers who are members of the society, association, or organisation may be registered or, if already registered, continue to be registered under the  
40 Industrial Conciliation and Arbitration Act 1954 as an industrial union of employers or workers under that Act, as

the case may require; and the provisions of Parts III and IV of that Act, so far as they are applicable, shall apply to the society, association, or organisation accordingly, subject to the following modifications:

- (a) Section 57 shall be read as if the following proviso were added: 5  
 “Provided that in relation to any matter within the jurisdiction of the Aircrew Industrial Tribunal, or of any conciliation council, constituted under the Aircrew Industrial Tribunal Act 1971, every union of airline employers or union of aircrew officers, and all persons who are members thereof, or who after registration become members thereof, shall be subject to the jurisdiction conferred by that Act on the Tribunal and on any such council, and be liable to the provisions of that Act.”: 10 15
- (b) Section 66 shall be read as if there were omitted from paragraph (d) the words “industrial agreements and”, and as if there were substituted for the words “a Council or the Court” the words “the Aircrew Industrial Tribunal, or a conciliation council, constituted under the Aircrew Industrial Tribunal Act 1971”: 20
- (c) Section 84 (as substituted by section 6 of the Industrial Conciliation and Arbitration Amendment Act 1962) shall be read as if there were substituted for the word “Court” in subsection (10) the words “Aircrew Industrial Tribunal”: 25
- (d) Section 85 shall be read as if there were substituted for the word “Court” in subsection (3) the words “Aircrew Industrial Tribunal”, and as if subsections (5) and (6) were repealed. 30
- (2) In any proceedings before the Tribunal or a council, any organisation of aircrew officers or airline employers and any airline employer, not being a party to the proceedings, shall be entitled to make written submissions to the Tribunal or council if, in the opinion of the Tribunal or the Chairman of the council, as the case may be, any such organisation or its members or any such airline employer may in any manner be affected by the outcome of the proceedings. 35 40

*Aircrew Industrial Tribunal*

**6. Establishment of Tribunal—**(1) There is hereby established a tribunal to be known as the Aircrew Industrial Tribunal.

(2) The Tribunal shall consist of one person who shall be appointed by the Governor-General in Council, on the recommendation of the Minister after consultation with any union or unions of aircrew officers and with any union or  
5 unions of airline employers.

**7. Term of office**—The person constituting the Tribunal shall hold office for a term of 3 years, but may from time to time be reappointed.

**8. Incapacity for appointment**—The following persons shall  
10 be incapable of being appointed or of holding office as the person constituting the Tribunal:

- (a) A bankrupt who has not obtained his final order of discharge or whose order of discharge has been suspended for a term not yet fulfilled:
- 15 (b) A person convicted of any offence punishable by imprisonment, unless he has received a free pardon or has served his sentence or otherwise suffered the penalty imposed on him:
- 20 (c) A mentally disordered person within the meaning of the Mental Health Act 1969.

**9. Vacation of office**—(1) The person constituting the Tribunal shall cease to hold office if he—

- (a) Is adjudged bankrupt; or
- 25 (b) Is convicted of any offence punishable by imprisonment;  
or
- (c) Becomes a mentally disordered person within the meaning of the Mental Health Act 1969.

(2) The Governor-General may remove from office any person constituting the Tribunal who is proved to the satisfaction of the Governor-General to be guilty of inciting any  
30 person to commit a breach of an award under this Act, or to have absented himself without the consent of the Governor-General from two or more sittings of the Tribunal.

(3) The person constituting the Tribunal may at any time  
35 resign his office by notice in writing addressed to the Minister.

(4) If the person constituting the Tribunal dies, or is removed from office, or resigns, or ceases to hold office by virtue of subsection (1) or subsection (2) of this section,  
40 the vacancy so created shall be filled by the appointment, in the manner prescribed by section 6 of this Act, of some person

qualified for the office. Every person so appointed shall hold office for the residue of the term for which his predecessor would have held office if the vacancy had not occurred.

(5) Notwithstanding the provisions of section 7 of this Act, the person constituting the Tribunal shall, unless he sooner vacates his office under subsection (4) of this section, continue in office until his successor comes into office.

**10. Leave of absence**—The Minister may grant leave of absence to the person constituting the Tribunal on such conditions, including conditions as to remuneration, as the Minister thinks fit.

**11. Oath or affirmation of office**—The person constituting the Tribunal shall, before proceeding to discharge the duties of his office, take before a Judge of the Supreme Court an oath or affirmation that he will faithfully and impartially perform the duties of his office, and also that, except in the discharge of his duties, he will not disclose to any person any evidence or other matter brought before the Tribunal.

**12. Protection of Tribunal**—The person constituting the Tribunal shall have, in the performance of his functions and duties, the same protection and immunity as a Judge of the Court of Arbitration.

**13. Tribunal to be Commission of Inquiry**—For the purposes of carrying out its functions under this Act, the Tribunal shall, subject to the provisions of this Act, be a commission of inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act, except sections 11, 12, and 14, shall, so far as they are applicable, apply to the Tribunal accordingly.

**14. Remuneration and travelling allowances**—There may be paid, from the Consolidated Revenue Account out of money appropriated by Parliament for the purpose, to the person constituting the Tribunal remuneration by way of fees, salary or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly as if that person was a member of a statutory Board within the meaning of that Act.

**15. Deputies**—(1) If, in relation to a particular industrial question—

(a) The person constituting the Tribunal is not available to deal with that question; or

5 (b) There is a vacancy in the office of that person; or

(c) The person constituting the Tribunal has requested the Governor-General to make an appointment under this section in the interests of the expeditious discharge of the business of the Tribunal—

10 the Governor-General may, on the recommendation of the Minister after consultation with any union or unions of aircrew officers and with any union or unions of airline employers, appoint a person to perform the functions of the Tribunal in relation to that application or industrial dispute; and the person so appointed shall be deemed to constitute the Tribunal in relation to that question.

15 (2) Anything done by the Tribunal as constituted by a person appointed under this section, or by a person so appointed in his capacity as a person so appointed, shall not be challenged or called in question on the ground that—

(a) The occasion for the appointment had not arisen or had ceased; or

25 (b) The thing done related or extended to an industrial dispute other than that in relation to which the person was appointed.

(3) The provisions of sections 10 to 14 of this Act shall apply in relation to a person appointed under this section in the same manner as they apply to a person appointed under section 6 of this Act.

30 **16. Registrar of the Tribunal**—The Secretary of Labour shall designate an officer of the Department of Labour to be the Registrar of the Tribunal.

35 **17. Services for Tribunal, etc.**—The Secretary of Labour shall cause the Department of Labour to provide such secretarial, recording, and clerical services as may be necessary to enable the Tribunal and any conciliation council to discharge its functions.

**18. Tribunal to have seal**—The Tribunal shall have a seal, which shall be judicially noticed by all courts for all purposes.

**19. Functions of Tribunal—**(1) The Tribunal shall have the following functions:

- (a) To make all such suggestions and do all such things as appear to it to be right and proper to encourage and assist the prevention or settlement by amicable agreement of industrial questions to which the functions of the Tribunal extend under paragraphs (b) and (c) of this subsection: 5
  - (b) To consider and determine industrial questions so far as the conditions of employment concerned relate to the employment of aircrew officers by an airline employer: 10
  - (c) To prevent or settle, by conciliation or arbitration, industrial questions.
- (2) In prescribing salary rates for aircrew officers in accordance with this Act the object shall be to set for each occupational group of aircrew officers a salary scale which will— 15
- (a) Enable airline employers to recruit and retain an efficient staff of aircrew officers: 20
  - (b) Take account of special responsibilities or conditions applying to employment as an aircrew officer:
  - (c) Be fair to airline employers and aircrew officers on the one hand and the users of air passenger and air freight transport services on the other. 25

**20. Validation of informal proceedings, etc.—**(1) If anything which is required or authorised to be done under this Act is not done within the time limited for the doing thereof, or is done informally, the Tribunal may, if it thinks fit in its discretion, on the application of any person interested, make an order extending the time within which the thing may be done, or validating the thing informally done. 30

(2) Nothing in this section shall authorise the Tribunal to make any such order in respect of judicial proceedings theretofore already instituted in any Court. 35

**21. Documents under seal of Tribunal and certain signatures to be judicially noticed—**(1) Every document bearing the seal of the Tribunal shall be received in evidence without further proof, and the signature of the person constituting the Tribunal and of the Registrar shall be judicially noticed in or before any Court or before any person or officer acting judicially or under any power or authority contained in this or any other Act, if the signature is attached to some award, order, certificate, or other official document made or purporting to be made under this Act. 40 45

(2) No proof shall be required of the handwriting or official position of any person acting pursuant to this section.

*Tribunal Proceedings and Conciliation*

5 **22. Initiation of proceedings**—Subject to this Act, the Tribunal may exercise any of its functions and powers—

(a) Of its own motion; or

10 (b) On the application of an airline employer or a union of airline employers or a union of aircrew officers which is a party to, or directly concerned in, an industrial question.

**23. Action to be taken in respect of industrial questions**—

15 (1) Any airline employer, union of airline employers, or union of aircrew officers, who or which is a party to an industrial question, may apply in writing to the Registrar for the question to be heard and determined by the Tribunal.

(2) On receipt of such an application, the Registrar shall forthwith notify the Tribunal of the application; and on receiving such notification the Tribunal may exercise and perform its powers and functions under this Act.

20 **24. Compulsory references**—(1) The Tribunal may, whenever in its opinion it is desirable for the purpose of preventing or settling an industrial question, or on application by a party to an industrial question, direct a person to attend and to continue to attend, at a time and place specified in the direction, before the Tribunal.

25 (2) A direction under subsection (1) of this section may be given orally, in writing signed by the person constituting the Tribunal, or by telegram sent by that person.

30 (3) A direction under subsection (1) of this section may be given not only to a person engaged in or connected with the industrial question, but also to—

(a) A person engaged in or connected with a dispute relating to conditions of employment and related in any way to an industrial question; and

35 (b) A person, whether connected with the industrial question or not, whose presence before the Tribunal is, in the opinion of the Tribunal, likely to be conducive to preventing the industrial question from arising or to settling the question, as the case may be.

40 (4) Except to such extent as the Tribunal directs that it be held in public, proceedings of the Tribunal held under this section shall be held in private.

**25. Tribunal to appoint a conciliation council on request—**

If an airline employer or union of airline employers or a union of aircrew officers directly concerned in an industrial question requests the Tribunal to appoint a conciliation council to discuss and negotiate the question, and it appears to the Tribunal that the appointment of such a council is practicable and is reasonably likely to lead to a settlement of the question, in whole or in part, the Tribunal may appoint a conciliation council to discuss and negotiate the question.

**26. Constitution of council—**(1) Every conciliation council shall consist of—

(a) The person constituting the Tribunal:

(b) Such number of persons as the Tribunal determines, being persons nominated by the airline employer or union of airline employers involved in the industrial question to be its representatives:

(c) A number of persons, equal to that determined under paragraph (b) of this subsection, nominated by any union of aircrew officers involved in the industrial question to be its representatives.

(2) The person constituting the Tribunal shall be chairman of the council.

(3) The chairman shall, after consulting the parties to the industrial question before the council, fix a date and time when, and a place where, the council shall meet to discuss and negotiate the question, and shall notify the parties accordingly.

(4) If any member of a council, other than the chairman, dies, resigns, or is otherwise unable to act, the party which nominated that member may appoint some other person to fill the vacancy.

(5) The functions and powers of a council shall not be affected by any vacancy in its membership; and during any such vacancy the council may, if it thinks fit, exercise its functions and powers in the same manner as if it were fully constituted.

**27. Remuneration and travelling allowances—**There may be paid, from the Consolidated Revenue Account out of money appropriated by Parliament for the purpose, to members of a council remuneration by way of fees, salary or allowances, and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951; and

the provisions of that Act shall apply accordingly as if every such member was a member of a statutory Board within the meaning of that Act.

28. **Function of conciliation councils**—It shall be the  
5 function of a conciliation council to endeavour, by negotiation and discussion, to bring about a settlement of the industrial question before it.

29. **Procedure of conciliation councils**—(1) Except as  
10 specifically provided in this Act and in any regulations for the time being in force under this Act, the procedure of a conciliation council shall in all respects be absolutely in the discretion of the council; and the council shall not be bound to deal with an industrial question in any formal manner, or to sit formally as a tribunal, or to hear any address or  
15 evidence except that which it thinks necessary or desirable.

(2) The chairman shall have neither a deliberative nor a casting vote.

(3) Meetings of a council shall be held from time to time  
20 at such times and places as may be agreed until a settlement of the industrial question before it is reached, or until it appears to the chairman that no such settlement is likely to be reached by further discussions and negotiations.

30. **Settlement of industrial questions**—(1) If the members  
25 of a conciliation council, other than the chairman, agree unanimously on terms for a settlement of the industrial question or a part of the industrial question, the chairman shall cause a record in writing of the settlement to be made.

(2) The chairman shall certify the record as being a true record of the settlement.

30 (3) The chairman shall not certify such a record if he considers that—

(a) The terms of the settlement contain provisions which the Tribunal has no power to include in an award;  
or

35 (b) It is not in the public interest that the record should be so certified.

(4) A record certified under this section shall have the same effect as, and shall be deemed to be, an award of the Tribunal.

(5) The certificate of the chairman in respect of a record made under this section shall specify, either individually or by reference to classes, the persons who, and the unions which, were represented by members of the council; and every such certificate shall be conclusive evidence that those persons and unions were so represented, that the settlement was reached, and that the record was made, in accordance with this section. 5

(6) Every record certified by the chairman under this section shall be filed with the Registrar. 10

(7) If at any time the chairman is satisfied that further proceedings of the council are not likely to produce a settlement within a reasonable time, he may terminate the proceedings of the council; and in that event the Tribunal, after any further proceedings before the Tribunal that the Tribunal thinks necessary, may make an award in relation to the industrial question in accordance with the provisions of this Act. 15

**31. Setting down industrial question for hearing**—As soon as practicable after an industrial question arises or, where a conciliation council has been established under section 25 of this Act, as soon as practicable after the chairman of the council has terminated the proceedings of the council under subsection (7) of section 30 of this Act, the person constituting the Tribunal shall, after consulting the parties to the industrial question, fix a date, time, and place for the Tribunal to determine the question. 20 25

**32. Procedure in relation to industrial questions**—In relation to an industrial question with which the Tribunal is dealing, the Tribunal shall, in such manner as it thinks fit, carefully and expeditiously hear, inquire into, and investigate the question and all matters affecting the merits of the question and the right settlement of the question. 30

**33. Procedure of Tribunal**—(1) In the hearing and determining of an industrial question or in any other proceedings before the Tribunal— 35

(a) The procedure of the Tribunal shall, subject to this Act and to any regulations for the time being in force under this Act, be within the discretion of the Tribunal:

(b) Except as otherwise expressly provided in this Act, the proceedings of the Tribunal shall take place in 40

public unless the Tribunal, in any particular case, having due regard to the parties to the proceedings and to the public interest, considers that the proceedings should take place in private:

5 (c) The Tribunal shall not be bound to act in a formal manner and shall not be bound by any rules of evidence and may receive any evidence that it considers relevant to the question before it:

10 (d) The Tribunal shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities and legal forms.

(2) The Tribunal may determine the periods which are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the industrial question  
15 or other proceedings and require that those cases be presented within the respective periods so determined.

(3) The Tribunal may require evidence or argument to be presented in writing and may decide the matters on which  
20 the Tribunal will hear oral evidence or argument.

(4) Any party to proceedings before the Tribunal may appear personally or may be represented by an agent or, with the consent of every other party to the proceedings, by a barrister or solicitor:

25 Provided that, subject to any regulations for the time being in force under this Act relating to costs, the cost of representation shall be borne by the party so represented.

(5) Any party to proceedings before the Tribunal may call witnesses to the proceedings and produce before the Tribunal such books, papers, or other documents as he thinks fit.

30 **34. Particular powers of Tribunal**—The Tribunal may, in relation to an industrial question—

(a) Take evidence on oath or affirmation:

35 (b) Make an award (including a provisional or interim award relating to any or all of the matters in question) or give a direction in pursuance of the hearing or determination:

(c) Dismiss a matter or part of a matter or refrain from further hearing or from determining the question or part of the question if it appears—

40 (i) That the question or part is trivial; or

- (ii) That the question or part is not within the Tribunal's jurisdiction; or
- (iii) That further proceedings are not necessary or desirable in the public interest:
- (d) Hear and determine the question in the absence of a party who has been summoned or served with a notice to appear: 5
- (e) Sit at any place:
- (f) Adjourn from time to time or from place to place:
- (g) Refer any matter to an expert and accept his report as evidence: 10
- (h) Direct parties to be joined or struck out:
- (i) Allow the amendment, on such terms as it thinks fit, of any proceedings:
- (j) Correct, amend, or waive any error, defect, or irregularity, whether in substance or in form: 15
- (k) Summon before it the parties to the question, and witnesses, and compel the production before it of books, papers, documents and things for the purpose of reference to such entries or matters only as relate to the question: 20
- (l) Generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the question.

**35. Powers of inspection**—The Tribunal may at any time during ordinary working hours enter any airport, building, place, or premises of any kind in which or in respect of which a matter or thing has taken place in relation to which an industrial question is pending, or an award has been made, or an offence against this Act is suspected, and may, to the extent and for the purposes named in the authority, inspect or view any work, aircraft, machinery, appliance, article, book, paper, document or thing therein and may interview any aircrew officers engaged therein. 25 30

**36. Secret ballot may be ordered**—(1) Where— 35

- (a) A union of aircrew officers is a party to or concerned in an industrial question with which the Tribunal is empowered to deal; and

(b) The Tribunal thinks that the view of the members, or of a section or class of the members, of the union or of a branch of the union on a matter ought to be ascertained with a view to preventing an industrial question from arising or to settling any such question,—

the Tribunal may order that that matter be submitted to a vote of those members, or of the members of that section or class.

(2) Every such vote shall be taken by secret ballot (with or without provision for absent voting) in accordance with directions given by the Tribunal.

*Tribunal Awards, Etc.*

**37. Relief not limited to claim**—In making an award in relation to an industrial question, the Tribunal shall not be restricted to the specific relief claimed by the parties to the question, or to the demands made by the parties in the course of the question, but may include in the award any matter or thing which the Tribunal thinks necessary or expedient for the purpose of settling the question or of preventing the question from arising or of preventing further industrial questions from arising.

**38. Form of awards**—An award shall be framed in such a manner as will best express the decision of the Tribunal, and shall specify—

- (a) Each party on which the award is binding:
- (b) The occupational group or groups of aircrew officers to which the award relates:
- (c) The currency of the award and the date of its commencement:
- (d) Any other matter that is for the time being required by this or any other Act to be included in the award.

**39. Further provisions relating to awards**—(1) An award shall state in clear terms what is or is not to be done by each party on whom it is binding, and may provide for an alternative course to be taken by any party.

(2) An award shall not contain any provision that is inconsistent with this Act or with any other Act that makes provision for any matters before the Tribunal.

(3) Every award shall be signed by the person constituting the Tribunal and have the Tribunal's seal affixed to it, and shall be deposited in the office of the Registrar, where it shall be open to inspection without charge during office hours by all persons interested in it. 5

(4) The Registrar shall forward a copy of every award to each party to it.

(5) Every award determined by the Tribunal shall include a statement of the reasons for the determination.

(6) In all court proceedings in respect of an award— 10

(a) A copy of the award under the seal of the Tribunal; or

(b) A copy of the award signed by the Registrar; or

(c) Any official printed copy of the award purporting to be printed under the authority of the Minister— 15

shall, in the absence of proof to the contrary, be sufficient evidence of the award and of its contents.

(7) Every award shall prevail over any contract of service in force on the coming into force of the award, to the extent that there is any inconsistency between the award and the contract; and the contract shall subsequently be construed and have effect as if it had been modified, so far as may be necessary, in order to conform to the award. 20

**40. On whom awards binding—**(1) An award of the Tribunal shall be binding on— 25

(a) The unions, persons, and persons included in classes of persons, specified by the Tribunal in the award, or to which or to whom the Tribunal declares the award to extend by a declaration made after the making of the award: 30

(b) All members of any union bound by the award:

(c) Where an airline employer is bound by the award, any successor to, or any assignee or transferee of, the business of the employer, including a corporation that has acquired or taken over the business of the employer. 35

(2) An award shall not be expressed to bind, or be declared to extend to, a union, or a person, or persons included in a class of persons, other than—

(a) A union which, or a person who, appeared or was represented as a party to the proceedings in which the award or the declaration was made; or 40

5 (b) A union which, or a person who, was required, by notice given either personally or as directed by the Tribunal, to appear or be represented in proceedings referred to in paragraph (a) of this subsection, whether the employer or union appeared or not;

10 (c) A union, person, or persons included in a class of persons, whose interests are, to the Tribunal's satisfaction, substantially the same in relation to the award as those of a union or person referred to in paragraph (a) or paragraph (b) of this subsection.

15 (3) Subject to subsection (2) of this section, a class of persons specified in an award or declaration in accordance with subsection (1) of this section may be so specified as to include the persons who, from time to time, come within a specified description.

20 **41. Commencement of awards**—An award of the Tribunal shall not, unless all parties to the industrial question who appeared or who were represented before the Tribunal consent or the Tribunal otherwise directs, have effect until the expiry of a period of 21 days after the date of the award.

25 **42. Continuance of awards**—(1) An award determining an industrial question shall, subject to section 43 of this Act, continue in force for a period to be specified in the award, being a period of not more than 3 years after the date on which the award comes into force.

30 (2) After the expiry of the period so specified, the award shall, subject to section 43 of this Act and unless the Tribunal otherwise directs, continue in force until a new award has been made.

35 (3) If, pursuant to subsection (2) of this section, an award is continued in force after the expiry of the period specified in the award, any award made by the Tribunal for the settlement of a new industrial question arising between the parties after the expiry of that period may be made to operate on and after such date as the Tribunal determines, being a date not earlier than the date on which the question arose.

40 (4) The fact that an award determining an industrial question has been made and is in force shall not prevent an award being made for the settlement of a further industrial

question arising between all or any of the parties to the first-mentioned award, with or without additional parties, and whether or not the subject-matter of the further industrial question is the same in whole or in part as the subject-matter of the industrial question determined by the first-mentioned award. 5

**43. Setting aside and variation of awards—**(1) The Tribunal may, if for any reason it considers it desirable to do so, set aside an award or any of the terms of an award.

(2) The Tribunal may, if for any reason it considers it desirable to do so, and shall if it considers it desirable for the purpose of removing ambiguity or uncertainty, vary any of the terms of an award. 10

**44. Effect of decisions of Tribunal—**A determination or finding of the Tribunal as to the existence of an industrial question shall be, in all Courts and for all purposes, conclusive and binding on all persons affected by that question. 15

**45. Cancellation of registration of union, etc.—**(1) If the Minister is satisfied that any discontinuance of employment has caused or is likely to cause serious loss or inconvenience, and that the discontinuance has been brought about in whole or in part by a union of airline employers or by a union of aircrew officers or by any member or members of such a union, he may by notice in the *Gazette*— 20

- (a) Cancel the registration of the union; or 25
- (b) Cancel any award so far as it relates to the union; or
- (c) Cancel the membership of any specified class of members of the union.

(2) Any such notice may be general or may be limited to any specified locality. 30

(3) Every such notice shall—

- (a) Come into force on the date of its publication in the *Gazette* or on such later date as may be specified in the notice in that behalf; and
- (b) Have effect according to its tenor. 35

(4) On the cancellation of the registration of a union under this section, all awards, so far as they relate to that union, shall be deemed to be cancelled; and thereafter no other union of airline employers or union of aircrew officers, as the case may be, shall be registered without the written consent of the Minister. 40

(5) On the cancellation of the registration of a union under this section in respect of any locality (whether that locality is the whole or part of the area in respect of which the union is registered), all awards, so far as they  
5 relate to that union and to that locality or any part of it, shall be deemed to be cancelled; and thereafter no other union of airline employers or union of aircrew officers, as the case may be, shall be registered in respect of that locality or any part of it, and the scope of any other registered union of airline  
10 employers or registered union of aircrew officers, as the case may be, shall not be extended to that locality or any part of it, without the written consent of the Minister.

(6) On the cancellation of the membership of a specified class of members of any union by a notice made under this  
15 section the following provisions shall apply:

(a) The membership rule of the union shall be deemed to be amended so as to exclude members of that class from membership of the union or, if the notice is limited to a specified locality, to exclude them  
20 from membership in respect of that locality or any part of it; and the members of that class shall thereupon cease to be members accordingly:

(b) Any award, so far as it relates to the union, shall not apply to members of that class or, if the notice is  
25 limited to a specified locality, to members of that class in respect of that locality or any part of it:

(c) Without the written consent of the Minister, members of that class shall not be eligible to belong to any union within the meaning of this Act or, if the notice is limited to a specified locality, to any such union  
30 that is registered in respect of that locality or any part of it.

(7) For the purposes of this section, "discontinuance of employment" includes—

35 (a) The refusal by an airline employer to engage aircrew officers for any work for which he usually employs aircrew officers;

(b) The refusal of any aircrew officers to accept engagement for any work in which they are usually  
40 employed; and

(c) Any act, omission, or method, in the course of employment, that has or is likely to have the effect of interrupting or impeding the work in any industry.

**46. Enforcement of awards**—Every award made by the Tribunal under this Act shall be enforceable in the same manner as an award made under the Industrial Conciliation and Arbitration Act 1954; and all the provisions of Parts X and XI of that Act, so far as they are applicable, shall apply to the award of the Tribunal as if, in those Parts,— 5

- (a) References to awards were read as references to awards made by the Tribunal:
- (b) References to workers were read as references to air-crew officers: 10
- (c) References to employers were read as references to airline employers.

*Miscellaneous Provisions*

**47. Settlement of personal grievances**—(1) For the purposes of this section, “personal grievance” means any grievance that an aircrew officer may have against his employer because of a claim that he has been wrongfully dismissed, or that other action by the employer (not being an action of a kind applicable generally to aircrew officers employed by the employer) affects his employment to his disadvantage. 15 20

(2) Nothing in this section shall be construed to prevent an aircrew officer from first directly approaching his employer, or his employer’s manager, about his personal grievance, the intent being that it is desirable, if the circumstances permit it, for the aircrew officer to do so. 25

(3) If at any time an aircrew officer has a personal grievance, the following provisions shall apply:

- (a) As soon as practicable after the personal grievance arises, the aircrew officer shall notify the branch secretary or secretary or a duly authorised representative of his union who, if he considers that there is some substance in the personal grievance, shall forthwith take the matter up with the employer or his representative: 30
- (b) If the matter is not settled by those means, it shall be referred to the Tribunal for settlement: 35
- (c) The reference to the Tribunal may be made by the employer or his representative or by the aircrew officer’s union or its representative, or by both:

- (d) The Tribunal, after enquiring fully into the matter and considering all representations made by or on behalf of the parties, shall make a decision or award by way of final settlement, which shall be binding on all the parties:
- 5 (e) Subject to the provisions of this section, the Tribunal may regulate its own procedure.
- (4) In the case of all alleged wrongful dismissals, any final settlement, decision, or award made under this section may, 10 if it includes a finding that the officer was wrongfully dismissed, provide for one or more of the following:
  - (a) The reimbursement to him of a sum equal to the whole or any part of the wages lost by him:
  - 15 (b) His reinstatement in his former position or in a position not less advantageous to him:
  - (c) At the option of the aircrew officer, after consultation with the duly authorised representative of his union, the payment to him of compensation by his employer.

- 20 **48. Offences—**(1) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$500, or to both, who—
- 25 (a) Wilfully insults or disturbs the person constituting the Tribunal, or any person who is a member of a council, when exercising his powers or functions under this Act:
  - (b) Interrupts the proceedings of the Tribunal or of any council:
  - 30 (c) Uses insulting language towards the person constituting the Tribunal, or any person who is a member of a council:
  - (d) By writing or speech uses words likely—
    - 35 (i) To influence improperly the person constituting the Tribunal, or any person who is a member of a council, or any witness before the Tribunal or a council; or
    - (ii) To bring the Tribunal or any council into into disrepute:
  - 40 (e) Wilfully obstructs the taking of a ballot under section 36 of this Act:

- (f) Uses any form of intimidation to prevent a person entitled to vote at a ballot under the said section 36 from so voting:
- (g) Being an officer of a union of aircrew officers, refuses to assist in the taking of a ballot under the said section 36 by failing to provide for the use of the Returning Officer or his assistants such registers and lists of members of the union as the Returning Officer requires. 5
- (2) Every person commits an offence, and is liable on 10 summary conviction to a fine not exceeding \$500, who—
- (a) Having been summoned to appear or who has appeared before the Tribunal as a witness, without lawful excuse (the proof of which shall lie on him),— 15
- (i) Disobeys the summons; or
- (ii) Refuses to be sworn as a witness; or
- (iii) Refuses to answer any question which he is required by the Tribunal to answer; or
- (iv) Refuses to produce any books or documents 20 which he is required by the Tribunal to produce:
- (b) Having been directed under subsection (1) of section 24 of this Act to attend before the Tribunal and continue his attendance as directed by the Tribunal, without lawful excuse (the proof of which shall 25 lie on him), fails to comply with any such direction:
- (c) Acts in contravention of or fails to comply in any respect with any provision of any regulations for the time being in force under this Act.
- (3) Every person commits an offence and is liable on 30 summary conviction to a fine not exceeding \$50 who—
- (a) Wilfully hinders or obstructs any person in the exercise of any of the powers conferred by section 35 of this Act:
- (b) Makes to any person exercising any such power a 35 written or oral statement, or makes to any such person any express or implied representation, which he knows to be false or misleading in any material particular.

**49. Inspection of books, etc.**—All books, papers, documents, 40 and things produced in evidence before the Tribunal may be inspected by the Tribunal or by such of the parties as the Tribunal allows.

**50. Regulations**—The Governor-General may from time to time, by Order in Council, make regulations, not inconsistent with this Act, for all or any of the following purposes:

- 5 (a) Prescribing forms to be used for the purposes of this Act:
- (b) Prescribing the duties of the Registrar:
- (c) Prescribing the procedure to be followed by conciliation councils:
- 10 (d) Prescribing the procedure for the conduct of hearings by the Tribunal:
- (e) Authorising the Tribunal to order the payment of the costs of any party to an industrial question dealt with by the Tribunal by another party thereto:
- 15 (f) Providing for the exhibiting of copies of awards on premises of airline employers:
- (g) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

**51. Act to be administered in the Department of Labour—**

20 (1) This Act shall be administered in the Department of Labour.

(2) The First Schedule to the Labour Department Act 1954 (as substituted by section 3 (1) of the Labour Department Amendment Act 1970) is hereby amended by inserting, 25 in their appropriate alphabetical order, the words "The Aircrew Industrial Tribunal Act 1971."