

**IN THE HIGH COURT OF AUSTRALIA
ADELAIDE OFFICE OF THE REGISTRY**

No: A7 of 2011

BETWEEN

**PUBLIC SERVICE ASSOCIATION OF
SOUTH AUSTRALIA INCORPORATED**

Applicant

10

and

**INDUSTRIAL RELATIONS COMMISSION
OF SOUTH AUSTRALIA**

First Respondent

**CHIEF EXECUTIVE, DEPARTMENT FOR
PREMIER AND CABINET**

20

Second Respondent

**SUPPLEMENTARY WRITTEN SUBMISSIONS OF THE SECOND RESPONDENT
AND THE ATTORNEY-GENERAL FOR SOUTH AUSTRALIA (INTERVENING)**

PART I: CERTIFICATION

- 30 1. This submission is in a form suitable for publication on the Internet.

PART II: LEAVE REQUESTED

2. The Attorney-General for South Australia seeks leave to make supplementary submissions in this proceeding.

Filed by:
Crown Solicitor's Office
Level 9, 45 Pirie Street
ADELAIDE SA 5000
Solicitor for the Second Respondent
and Attorney-General of South Australia
Ref: 0113860

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PART III: BASIS UPON WHICH SPECIAL LEAVE SHOULD BE REFUSED

3. The Attorney-General for the State of South Australia submits that the underlying factual circumstances giving rise to the original dispute in the Full Commission have been affected by subsequent events so as to render the present matter hypothetical.
- 10 4. The Public Service Association (**PSA**) notified two disputes to the Industrial Relations Commission of South Australia (Commission). The letters identifying the dispute are annexed to this submission (**annexure 1**).
- 20 5. The first dispute concerned an announcement by the then Treasurer that the Government would consider forced redundancies from the public sector. The PSA claimed that that announcement amounted to a breach of the 'no forced redundancy' clause in the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2010 (Agreement). On 9 June 2011, the Treasurer announced that the Government would not be pursuing forced redundancies for the duration of the Parliament, which extends beyond the nominal expiry date of the Agreement by two years. Accordingly, there is no longer any factual basis for the first dispute.
6. The second dispute concerned changes to (a) annual leave loading entitlements and (b) long service leave entitlements.

Annual leave loading

- 30 7. Items 16 and 17 of Part 4 of the *Statutes Amendment (Budget 2011) Act 2011 (SA) (2011 Act)* repealed items 60, 61 and 63 of the *Statutes Amendment (Budget 2010) Act 2010 (SA) (2010 Act)*. The effect of the 2011 Act was to reverse the change to annual leave loading entitlements brought about by the 2010 Act so as to revert to the pre-dispute position. Consequently, there is no longer any dispute about annual leave loading entitlements. An extract of the 2010 Act and the 2011 Act are annexed to these submissions (**annexure 2**).

Long service leave entitlements

- 40 8. The 2011 Act did not repeal the legislative amendment reducing long service leave entitlements brought about by item 62 of the 2010 Act. However, in the Attorney-General's view, the enactment of item 62 of the 2010 Act has altered the factual substratum of the dispute between the parties so as to render the dispute as agitated before the Commission moot.
9. In light of the above changes, the present application that special leave be refused.

Date: 28 November 2011



.....
Martin Hinton QC
Solicitor General for the State of South Australia

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.....

Damian O'Leary
Crown Solicitor's Office of South Australia

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First Respondent

**CHIEF EXECUTIVE, DEPARTMENT FOR
PREMIER AND CABINET**

Second Respondent

Annexure 1



Public Service Association of SA Inc
Community and Public Sector Union • SA Branch • SPSF Group

5 October 2010

President Judge Hannon
 Industrial Relations Commission of SA
 Riverside Building
 North Terrace
 ADELAIDE SA 5000

Rec'd	7 / 10 / 10
Reg No.	DP/10/05/2060
File No.	
Action Officer	S. Eccles
Response Due By	21 / 10 / 10

Dear Sir,

Re: Security of Employment for Public Sector Employees Dispute

The Dispute

The PSA is in dispute with the Government on the issue of security of employment for Public Sector employees.

The Relevant Industrial Instruments

The relevant industrial instruments are the SA Public Sector Salaried Employees Interim Award (an Award made by Deputy President P Hampton being matter no. 273 of 1994) ("the Award") and the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2010 (being an Enterprise Agreement approved by Commissioner McMahon in the Commission on 14 January 2010 being Commission file no. 07613 of 2009) ("the Enterprise Agreement").

Background

Security of employment has long been a feature of the employment conditions of Public Sector employees.

Prior to the March 2006 State Election the then Premier Mike Rann wrote to the PSA giving a commitment on behalf of the Government that, if re-elected "there will be no forced redundancies". A copy of the Premier's letter dated 27 February 2006 is attached. The PSA and its members proceeded for the life of that Government's term to deal with it upon the basis of the "no forced redundancies" industrial commitment. In particular, the PSA negotiated the Enterprise Agreement in the knowledge and upon the basis of this commitment. The PSA and its members also negotiated the Enterprise Agreement upon the basis that this commitment would be enshrined in the Enterprise Agreement.

The PSA and its members therefore relied upon this industrial commitment, given by the Premier.

Furthermore, the negotiations for the Enterprise Agreement were conducted in circumstances where the Treasurer had announced in the 2009 Budget that Public Sector salaries would have to be contained to no more than 2.5% per annum, otherwise Public Sector jobs would be cut. Particularly given the importance of job security for our members, this consideration was paramount in their (and the PSA's) mind in conducting the negotiations which culminated in the Enterprise Agreement.

The Enterprise Agreement provides in clause 2.2 as follows:

2.2 *"In making and applying this Enterprise Agreement, the parties are committed to:*

...

2.2.4 *Employment security for employees bound by this Enterprise Agreement for the life of this Enterprise Agreement.*

...

2.2.6 *Existing conditions of employment applying to a party not being reduced, ..."*

The life of the Enterprise Agreement was expressed in clause 1 as follows:

"1. ENTERPRISE AGREEMENT

...

1.1 [should be 1.4] *The term of this Enterprise Agreement shall be from 14 January 2010 until 30 June 2012"*

The term of the Enterprise Agreement is of course subject to section 83 of the Fair Work Act 1994 ("the Fair Work Act") which relevantly provides as follows:

"83-Duration of enterprise agreement

...

(4) *despite the expiration of the term stated in the enterprise agreement, the agreement continues in force until superseded or rescinded."*

Additionally, clause 9 of the Enterprise Agreement provides:

"9. MEMORANDUM OF UNDERSTANDING

...

9.1.1 *The operation of the MOU shall be extended for the life of this enterprise agreement, ...*

9.1.2 *There will be no forced redundancy for employees bound by this agreement for the period during which the MOU has been extended; and*

9.1.3 *The terms of the MOU do not form part of this agreement."*

A copy of the Memorandum of Understanding referred to above is also *attached*ⁱⁱ. It is dated 20 December 1996. The Commission's particular attention is invited to clause 6 on page 2 thereof which relevantly reads as follows:

"6 ...

The parties agree that the current position on no-retrenchment in the South Australian Public Sector will be maintained for the duration of this Memorandum of Understanding."

Against the above background the Premier again wrote to me on 1 February 2010 stating, *inter alia*, that:

"The Government recommence for the duration of its next term to no forced redundancies for tenured employees." [Our highlighting but the Premier's underlining.]

A copy of this letter is also *attached*ⁱⁱⁱ.

When delivering the 2010 Budget on 16 September 2010 the Treasurer stated on page 5 (second paragraph) as follows:

"Madam Speaker, following the introduction of separation packages, if the required reduction in employee numbers is not achieved in 12 months through redeployment and voluntary separation packages the Government will reconsider its 'no forced redundancy' policy." [Our highlighting but the Treasurer's underlining.]

A copy of the Treasurer's Budget speech (12 pages) is also *attached*^{iv}.

Given what the PSA sees as a clear breach of the Enterprise Agreement and of the industrial commitment given by the Premier to the PSA and its members the PSA wrote to the Premier. A copy of my 20 September 2010 letter to the Premier is *attached*^v. I have not received a response. Hence the notification of this dispute.

Action Sought

What the PSA requests of you is that you refer this matter to a member of the Commission if and as considered appropriate by you and that a voluntary conference be convened pursuant to section 200 of the *Fair Work Act*.

Recommendations Sought

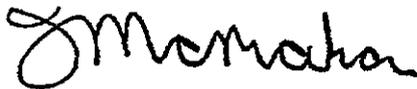
The PSA will at such voluntary conference seek a recommendation from the Commission that the Government withdraw its threatened breach of the Enterprise Agreement by withdrawing the threat to reconsider its 'no forced redundancy' policy in 12 months.

Undue Influence and Unfair Coercion

The PSA also says that the actions of the Treasurer, given the clear purpose of his threat (i.e. to pressure Public Sector employees into taking TVSP's) constitutes undue influence upon and unfair coercion of Public Sector employees and that the Commission should therefore intervene. That is, irrespective of the fact that the threat is contrary to the Premier's industrial commitment as outlined and contrary to the Enterprise Agreement as also outlined.

Simon Johnson of my office can be contacted on 0417 832 977 or email spj@cpsu.asn.au to clarify any queries you may have.

Yours sincerely,



JAN McMAHON
GENERAL SECRETARY

4932/200



Public Service Association of SA Inc
Community and Public Sector Union - SA Branch - SPSF Group

8 October 2010

President Judge Hannon
Industrial Relations Commission of SA
Riverside Building
North Terrace
ADELAIDE SA 5000

Dear Sir,

Re: Recreation Leave Loading and Long Service Leave Dispute

The Dispute

The PSA is in dispute with the Government in relation to entitlements for Public Sector employees in respect of both recreation leave loading and long service leave entitlements.

The Relevant Industrial Instruments and Legislative Provisions

The relevant industrial instruments and legislation are the SA Public Sector Salaried Employees Interim Award (an Award made by Deputy President P Hampton being matter no. 273 of 1994) ("the Award"), the South Australian Government Wages Parity (Salaried) Enterprise Agreement 2010 (being an Enterprise Agreement approved by Commissioner McMahon in the Commission on 14 January 2010 being Commission file no. 07613 of 2009) ("the Enterprise Agreement"), Public Service (Recreation Leave Loading) Award.

Background

Please find enclosed¹ herewith a copy of my letter to the Premier dated 5 October 2010. You will find the content of it to be self-explanatory.

We also enclose² herewith a copy of the Treasurer's Budget Speech delivered 16 September 2010.

I have not received a response from the Premier to my letter I therefore now notify you of an industrial dispute accordingly.

Action Sought

What the PSA requests of you is that you refer this matter to a member of the Commission if and as considered appropriate by you and that a voluntary conference be convened pursuant to section 200 of the Fair Work Act.



Recommendations Sought

The PSA will at such voluntary conference seek a recommendation that the Government not proceed with its proposed legislation to reduce recreation leave loading and long service leave entitlements for public servants.

Simon Johnson from my office can be contacted on 0417 832 977 or email sj@cpsu.asn.au to clarify any queries you may have.

Yours sincerely,

IAN McMAHON
GENERAL SECRETARY

c.c. Chief Executive, Department of the Premier & Cabinet



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Applicant

and

**INDUSTRIAL RELATIONS COMMISSION OF
SOUTH AUSTRALIA**

First Respondent

**CHIEF EXECUTIVE, DEPARTMENT FOR
PREMIER AND CABINET**

Second Respondent

Annexure 2

South Australia

Statutes Amendment (Budget 2010) Act 2010

An Act to amend the *Education Act 1972*, the *Environment Protection Act 1993*, the *First Home Owner Grant Act 2000*, the *Motor Vehicles Act 1959*, the *Parliament (Joint Services) Act 1985*, the *Passenger Transport Act 1994*, the *Payroll Tax Act 2009*, the *Petroleum Products Regulation Act 1995*, the *Private Parking Areas Act 1986*, the *Public Sector Act 2009*, the *Radiation Protection and Control Act 1982*, the *Road Traffic Act 1961* and the *Technical and Further Education Act 1975*.

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- 6 Amendment of section 11—Establishment of Authority
- 7 Insertion of Part 6A

Part 6A—Sustainability licence endorsements

- 57A Requirement for endorsement of licence
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- 14 Amendment of section 18B—Bonus grant for transactions before 17 September 2010
- 15 Insertion of sections 18BA and 18BB
 - 18BA Bonus grant for transactions on or after 17 September 2010
 - 18BB Market value of homes

58—Transitional provision

The amendments made by this Act to the *Petroleum Products Regulation Act 1995* (the *principal Act*) do not affect—

- (a) an entitlement to a subsidy that arose under Part 2A of the principal Act in relation to petroleum products sold or purchased before the repeal of that Part by this Act (and a claim for any such subsidy that has not been made or determined before that repeal is to be made or determined (as the case requires) as if Part 2A were still in force); or
- (b) the Commissioner's right to require the payment or repayment of an amount under section 23 of the principal Act (as if that section were still in force); or
- (c) the right of—
 - (i) a claimant for a subsidy under the principal Act to appeal to the Administrative and Disciplinary Division of the District Court against a decision by the Commissioner on the claim; or
 - (ii) a person to whom the Commissioner has given a notice under section 23 of the principal Act requiring the payment or repayment of an amount to appeal to the Administrative and Disciplinary Division of the District Court against the decision to issue the notice,(as if section 47 of the principal Act had not been amended by this Act).

Part 10—Amendment of *Private Parking Areas Act 1986*

59—Amendment of section 8—Offences—driver and owner to be guilty

Section 8(8)—delete subsection (8) and substitute:

- (8) For the purposes of this section a permit is exhibited in a vehicle if, and only if, the permit is exhibited—
 - (a) in the case of a disabled person's parking permit—in accordance with any requirements of the *Motor Vehicles Act 1959*; or
 - (b) in any other case—so that it is easily legible by a person standing beside the vehicle and otherwise in accordance with any conditions of the permit.

Part 11—Amendment of *Public Sector Act 2009*

60—Amendment of section 51—Hours of duty and leave

Section 51—after "Schedule 1" insert:

(and, insofar as is relevant, Schedule 1A)

61—Insertion of section 73A

After section 73 insert:

73A—Additional provision relating to recreation leave for public sector employees

The rights of a public sector employee to recreation leave are subject to the operation of Schedule 1A (as well as, insofar as is relevant, Schedule 1).

62—Amendment of Schedule 1—Leave and working arrangements

Schedule 1, clause 7(1)—delete subclause (1) and substitute:

- (1) Subject to this Schedule, the regulations and any determinations of the Commissioner, an employee will accrue an entitlement to long service leave at the rate of 9 calendar days for each completed year of effective service.

63—Insertion of Schedule 1A

After Schedule 1 insert:

Schedule 1A—Additional provision relating to recreation leave

1—Application of Schedule

- (1) Subject to this clause, this Schedule applies to all public sector employees.
- (2) Subject to subclauses (3) and (4) (and, as relevant, clause 2), this Schedule does not apply to any of the following employees:
 - (a) an executive employee;
 - (b) a person appointed or employed under the *Police Act 1998*;
 - (c) a person appointed or employed under the *Protective Security Act 2007*;
 - (d) a person appointed or employed under the *Children's Services Act 1985*;
 - (e) a person appointed or employed under the *Education Act 1972*;
 - (f) a person appointed or employed under the *Technical and Further Education Act 1975*;
 - (g) a person appointed or employed under the *Fire and Emergency Services Act 2005*;
 - (h) a registered health practitioner;
 - (i) an employee classified as a *Disability Services Officer*;
 - (j) an employee classified as a *Health Ancillary Employee*;

- (k) a prescribed employee (but this paragraph applies subject to clause 2(2)).
- (3) The Governor may, by proclamation—
 - (a) apply this Schedule to any class of employees otherwise excluded from its operation under subclause (2) or to any class of employees employed under the *Parliament (Joint Services) Act 1985*;
 - (b) exclude from the operation of this Schedule any class of employees in addition to those excluded from its operation under subclause (2).
- (4) The Governor may, by subsequent proclamation, vary or revoke a proclamation under subclause (3).
- (5) The Governor may, in a proclamation under subclause (3) or (4), make transitional or ancillary provisions that may be necessary or expedient in the circumstances.
- (6) In this clause—

prescribed employee means—

- (a) a shift worker; or
- (b) a seven-day week worker;

registered health practitioner means—

- (a) a person registered under the Health Practitioner Regulation National Law; or
- (b) a person registered under the *Occupational Therapy Practice Act 2005*;

seven-day week worker means an employee who works rotating shifts on 7 days a week, or who is rostered to work regularly on active duty on Saturdays, Sundays and public holidays.

2—Leave loading allowances for recreation leave

- (1) Subject to this clause, an employee to whom this Schedule applies—
 - (a) is not entitled to any leave loading allowance for recreation leave—
 - (i) that is taken on or after the prescribed date in respect of recreation leave accruing on or after that date; or
 - (ii) that is taken before the prescribed date in anticipation of recreation leave accruing on or after that date; but
 - (b) is entitled, in addition to a general entitlement to recreation leave, to $\frac{1}{6}$ days recreation leave for each completed month of the employee's service occurring on or after the prescribed date.

- (2) From the prescribed date, if an employee who has been a prescribed employee works under another employment arrangement to which this Schedule applies for a period of 1 month (or more), subclause (1) will apply in relation to that employee (in respect of each completed month of service) while he or she works under that other arrangement (rather than as a prescribed employee).
- (3) To avoid doubt, an entitlement to recreation leave under this Schedule is subject to the operation of clause 5(3) to (7) (inclusive) of Schedule 1 (to the extent that Schedule 1 applies to employees to whom this Schedule applies).
- (4) In the event of an inconsistency between this clause and the terms or conditions of any award, determination or enterprise agreement under the *Fair Work Act 1994*, or the terms or conditions of any contract of employment, this clause will prevail to the extent of the inconsistency.
- (5) The regulations may modify this clause insofar as it applies to a specified group or class of public sector employees.
- (6) For the purposes of the application of this clause to an employee in employment to which this Schedule applies on the prescribed date, leave will accrue from the first month of service completed on or after that date (including with respect to any part of that month occurring before that date).
- (7) In this clause—
prescribed date means 1 July 2012;
prescribed employee has the same meaning as in clause 1.

64—Transitional provisions

- (1) The amendment to Schedule 1 of the *Public Sector Act 2009* made by this Part does not affect an entitlement to long service leave or payment in lieu of long service leave that accrues before 1 July 2011 and, in relation to an employee who has, before that date, completed at least 15 years of service, any completed month of effective service occurring before that date for which long service leave has not yet accrued will be taken to give rise to an entitlement to 1.25 days of long service leave for each such month (but, subject to that entitlement and from that date, long service leave for the balance of that particular year of effective service will accrue at the rate of 0.75 days for each completed month of service).
- (2) The Governor may, by proclamation, declare that a specified provision of an enterprise agreement that relates to a particular class of public sector employees and provides for an entitlement to long service leave or payment in lieu of long service leave that is inconsistent with the standard set by subclause (1) of clause 7 of Schedule 1 of the *Public Sector Act 2009* (as enacted by this Act) no longer applies from 1 July 2011.
- (3) A proclamation under subsection (2)—
 - (a) may make transitional or ancillary provisions that may be necessary or expedient in the circumstances; and

- (b) will have effect according to its terms.

Part 12—Amendment of *Radiation Protection and Control Act 1982*

65—Amendment of section 5—Interpretation

- (1) Section 5—before the definition of *authority* insert:

accreditation means an accreditation under Part 3 Division 3B;

- (2) Section 5—after the definition of *Department* insert:

developmental testing operations means pilot operations for the extraction or processing of ores or minerals for the purposes of evaluating future mining or mineral processing operations;

- (3) Section 5—definition of *milling*—delete the definition and substitute:

mineral processing means operations for the concentration or processing of ores or minerals, or operations for processing fluids from *in-situ* or other leaching operations conducted on ores or minerals, and includes incidental operations for the management of radioactive process materials, residues and wastes;

- (4) Section 5, definition of *mining*—delete the definition and substitute:

mining means operations for the recovery, handling or storage of ores or minerals and includes—

- (a) construction activities to establish any mine facilities; and
- (b) incidental operations for the recovery, handling or storage of ores or minerals; and
- (c) incidental operations for the management or disposal of waste or residues; and
- (d) rehabilitation activities to restore land disturbed by mining operations; and
- (e) *in-situ* leaching and operations by means of which minerals are recovered from an ore or a natural body of water; and
- (f) other operations brought within the ambit of this definition by the regulations,

but does not include—

- (g) surface excavating that does not intersect with any such ores or minerals; or
- (h) surface drilling for the purposes of excavation; or
- (i) geophysical prospecting; or
- (j) other operations excluded from the ambit of this definition by the regulations;

South Australia

Statutes Amendment (Budget 2011) Act 2011

An Act to amend the *First Home Owner Grant Act 2000*, the *Liquor Licensing Act 1997*, the *Statutes Amendment (Budget 2010) Act 2010* and the *Summary Procedure Act 1921*.

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- 6 Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012
- 7 Insertion of section 18BAB
18BAB Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013
- 8 Amendment of section 18BB—Market value of homes
- 9 Amendment of section 18C—Amount of grant must not exceed consideration
- 10 Transitional provision

Part 3—Amendment of *Liquor Licensing Act 1997*

- 11 Insertion of section 50A
50A Annual fees
- 12 Amendment of section 53—Discretionary powers of licensing authority
- 13 Insertion of section 59A
59A Licence fee payable on grant of licence
- 14 Amendment of section 138—Regulations
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Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

- 16 Repeal of sections 60 and 61
- 17 Repeal of section 63

Part 5—Amendment of *Summary Procedure Act 1921*

- 18 Substitution of section 189
189 Costs generally
189A Costs payable by defendant in certain criminal proceedings
189B Costs in preliminary examination
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189D Costs—delay or obstruction of proceedings

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Budget 2011) Act 2011*.

2—Commencement

- (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.
- (2) Part 2 will be taken to have come into operation on 10 June 2011.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *First Home Owner Grant Act 2000*

4—Amendment of section 3—Definitions

Section 3—after the definition of *consideration* insert:

contract for an "off-the-plan" purchase, of a new home, means a contract for the purchase of the home on a proposed lot in an unregistered plan of a subdivision of land;

5—Amendment of section 13A—Special eligible transactions

Section 13A(8)—delete subsection (8)

6—Amendment of section 18BA—Bonus grant for transactions on or after 17 September 2010 but before 1 July 2012

- (1) Section 18BA(1)—after "17 September 2010" insert:
but before 1 July 2012
- (2) Section 18BA(1)—after paragraph (c) insert:
and
 - (d) in the case of an eligible transaction with a commencement date that is on or after 10 June 2011—
 - (i) if the eligible transaction is a comprehensive home building contract for a new home—
 - (A) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and

- (B) the contract states that the eligible transaction must be completed within 18 months after the laying of the foundations for the home is commenced or, in any other case, the eligible transaction is completed within 18 months after the laying of the foundations for the home is commenced; and
 - (ii) if the eligible transaction is the building of a new home by an owner-builder—the transaction is completed within 18 months after its commencement date; and
 - (iii) if the eligible transaction is a contract for an "off-the-plan" purchase of a new home—
 - (A) the contract states that the eligible transaction must be completed on or before 31 December 2013; or
 - (B) in any other case, the eligible transaction is completed on or before that date.
- (3) Section 18BA—after subsection (2) insert:
- (2a) The Commissioner may, in a particular case, if he or she considers there are proper reasons for doing so, extend the time within which an eligible transaction must be completed under this section.

7—Insertion of section 18BAB

After section 18BA insert:

18BAB—Bonus grant for transactions on or after 1 July 2012 but before 1 July 2013

- (1) Subject to this section, the amount of a first home owner grant under section 18 will be increased by an amount under this section (the *first home bonus grant*) if—
 - (a) the commencement date of the eligible transaction is on or after 1 July 2012 but before 1 July 2013; and
 - (b) the eligible transaction is—
 - (i) a contract for the purchase of a new home; or
 - (ii) a comprehensive home building contract for a new home; or
 - (iii) the building of a new home by an owner builder; and
 - (c) the market value of the home to which the eligible transaction relates is less than \$450 000; and
 - (d) in the case of an eligible transaction that is a comprehensive home building contract for a new home—

- (i) the laying of the foundations for the home commences within 26 weeks after the contract is made, or any longer period the Commissioner may, in particular circumstances, allow; and
 - (ii) the contract states that the eligible transaction must be completed within 18 months after the laying of the foundations for the home is commenced or, in any other case, the eligible transaction is completed within 18 months after the laying of the foundations for the home is commenced; and
 - (e) in the case of an eligible transaction that is the building of a new home by an owner-builder—the transaction is completed within 18 months after its commencement date; and
 - (f) in the case of an eligible transaction that is a contract for an "off-the-plan" purchase of a new home—
 - (i) the contract states that the eligible transaction must be completed on or before 31 December 2014; or
 - (ii) in any other case, the eligible transaction is completed on or before that date.
- (2) The amount of the first home bonus grant under this section is as follows:
- (a) if the market value of the home to which the eligible transaction relates does not exceed \$400 000—\$4 000;
 - (b) if the market value of the home to which the eligible transaction relates exceeds \$400 000 (but is less than \$450 000)—an amount calculated in accordance with the following formula:
- $$A = B - \left(\frac{C (D - E)}{100} \right)$$
- where—
- A* is the amount of the first home bonus grant
 - B* is \$4 000
 - C* is 8
 - D* is the market value of the home to which the eligible transaction relates, rounded down to the nearest \$100
 - E* is \$400 000.
- (3) The Commissioner may, in a particular case, if he or she considers there are proper reasons for doing so, extend the time within which an eligible transaction must be completed under this section.

8—Amendment of section 18BB—Market value of homes

Section 18BB(1)—delete "and 18BA" and substitute:
, 18BA and 18BAB

9—Amendment of section 18C—Amount of grant must not exceed consideration

Section 18C—delete "or 18BA" and substitute:
, 18BA or 18BAB

10—Transitional provision

- (1) If—
- (a) a person has, before the day on which this Act is assented to by the Governor, received a payment under section 18BA of the *First Home Owner Grant Act 2000* in respect of an eligible transaction with a commencement date that is on or after 10 June 2011; and
 - (b) the person is not entitled to the payment under section 18BA as amended by section 6 of this Act,
- the Commissioner may recover the amount of the payment from the person as a debt due to the Crown.
- (2) Terms used in subsection (1) that are defined in the *First Home Owner Grant Act 2000* have the same respective meanings as in that Act.

Part 3—Amendment of *Liquor Licensing Act 1997*

11—Insertion of section 50A

After section 50 insert:

50A—Annual fees

- (1) A licensee (including the holder of a licence that has been suspended) must, in each year, pay to the Commissioner an annual fee in accordance with the regulations.
- (2) Without limiting the matters that may be dealt with in the regulations, the regulations may—
 - (a) fix the day of the month on or before which the fee is to be paid in each year; and
 - (b) fix the period of 12 months (the *annual fee period*) in respect of which the fee is to be paid; and
 - (c) provide for the fee to be determined by reference to the class of licence or business conducted under the licence, the trading hours authorised by the licence or any other factor and for a matter to be determined according to the discretion of the Commissioner; and

- (d) provide for transitional arrangements if the date for payment or the annual fee period is to be varied, including by providing for the payment of 2 fees within the same year for the purposes of the transition to a different date for payment and for an annual fee period that is longer or shorter than 12 months for the purposes of the transition to a different annual fee period.
- (3) If the trading hours or conditions of a licence are varied, or circumstances vary, in respect of trade in liquor during an annual fee period such that the annual fee paid in respect of the period is less than the annual fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the annual fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice.
- (4) If a licensee fails to pay the annual fee in accordance with the regulations or to pay an amount in accordance with subsection (3), the Commissioner may, by written notice, require the person to make good the default as specified in the notice and, in addition, pay to the Commissioner the amount prescribed as a penalty for default.
- (5) If a licensee fails to comply with a notice under subsection (4), the Commissioner may, by further written notice, suspend the licence until the notice has been complied with.
- (6) This section does not apply in relation to a limited licence.

12—Amendment of section 53—Discretionary powers of licensing authority

Section 53(3)—after "application" insert:

or the payment of fees relating to the grant of the application

13—Insertion of section 59A

After section 59 insert:

59A—Licence fee payable on grant of licence

- (1) On the grant of a licence, a licence fee becomes payable to the Commissioner by the licensee.
- (2) In the case of a limited licence—
 - (a) the amount of the licence fee is to be determined in accordance with the regulations; and
 - (b) the licence fee is payable before the commencement of the special occasion or the first in the series of special occasions to which the licence relates; and
 - (c) the regulations may provide for the licence fee to be determined by reference to the class of special occasion or the series of special occasions to which the licence relates or any other factor and for a matter to be determined according to the discretion of the Commissioner; and

- (d) if the holder of the licence fails to pay the licence fee before the commencement of the special occasion or the first in the series of special occasions to which the licence relates, the licence is cancelled.
- (3) In the case of a licence other than a limited licence—
- (a) the amount of the licence fee is a proportion of the annual fee for the licence, being the proportion that the number of months in the period from the grant of the licence until the end of the current annual fee period bears to 12 months (with part of a month being counted as a full month); and
 - (b) the licence fee is payable within 28 days after the grant of the licence; and
 - (c) if the trading hours or conditions of the licence are varied, or circumstances vary, in respect of trade during the current annual fee period such that the licence fee paid is less than the licence fee that would have been payable had the variations been taken into account in the calculation of the fee, the Commissioner may recalculate the licence fee and, by written notice, require the licensee to pay the difference on or before a date specified in the notice; and
 - (d) if the licensee fails to pay the licence fee, or an amount under paragraph (c), within the period allowed, the licence is suspended until the fee or amount is paid; and
 - (e) the Commissioner must notify the licensee in writing of the suspension of the licence.
- (4) In this section—
- annual fee period*—see section 50A.

14—Amendment of section 138—Regulations

Section 138—after subsection (4) insert:

- (5) A regulation may provide for the Commissioner to waive, reduce or refund fees payable under this Act.

15—Transitional provision

- (1) The regulations first made under section 50A as inserted in the *Liquor Licensing Act 1997* by this Act may provide—
 - (a) for the first annual fee period to be longer or shorter than 12 months; and
 - (b) for the payment of 2 fees within the first 12 months (so that licensees have a longer period within which to make the first payment); and
 - (c) for the first annual fee period to commence at any time on or after 1 July 2011.

- (2) If, after the day on which this Act is assented to by the Governor and before the day fixed by the Commissioner for the payment of the first annual fee, an application is made under the *Liquor Licensing Act 1997* for a reduction in trading hours authorised by a licence so that, following the reduction, the licence authorises only the hours during which it is proposed the licensed premises will be open for trade—
- (a) no fee is payable for the application; and
 - (b) section 52 of the *Liquor Licensing Act 1997* does not apply to the application.

Part 4—Amendment of *Statutes Amendment (Budget 2010) Act 2010*

16—Repeal of sections 60 and 61

Sections 60 and 61—delete the sections

17—Repeal of section 63

Section 63—delete the section

Part 5—Amendment of *Summary Procedure Act 1921*

18—Substitution of section 189

Section 189—delete section 189 and substitute:

189—Costs generally

Subject to sections sections 189A to 189D (inclusive), the Court may award such costs for or against a party to proceedings as the Court thinks fit.

189A—Costs payable by defendant in certain criminal proceedings

- (1) This section does not apply to—
- (a) a defendant who enters a written plea of guilty in accordance with section 57A; or
 - (b) an enforcement procedure under section 13 of the *Expiation of Offences Act 1996*.
- (2) If the Court finds a defendant guilty in proceedings for an offence prosecuted by a police officer, the Court must, subject to subsection (3), make an order for costs against the defendant for—
- (a) if an amount is prescribed by regulation for the purposes of this subsection—the prescribed amount; or
 - (b) if no such amount is prescribed—\$100.
- (3) If the prosecution agrees that an order under subsection (2) should not be made, the Court may instead make some other order as to costs (or may make no order as to costs).

189B—Costs in preliminary examination

Despite any other provision of this Part, costs will not be awarded against a party to a preliminary examination of an indictable offence unless the Court is satisfied that the party has unreasonably obstructed the proceedings.

189C—Costs against complainant in proceedings for restraining order

- (1) Despite any other provision of this Part, costs will not be awarded against a complainant in proceedings for a restraining order unless the Court is satisfied that the complainant has acted in bad faith or unreasonably in bringing the proceedings.

- (2) In this section—

complainant, in relation to a restraining order, includes an applicant for a restraining order;

restraining order includes a domestic violence restraining order under the *Domestic Violence Act 1994* and an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

189D—Costs—delay or obstruction of proceedings

- (1) If proceedings are delayed through the neglect or incompetence of a legal practitioner, the Court may—
 - (a) disallow the whole or part of the costs as between the legal practitioner and his or her client (and, where appropriate, order the legal practitioner to repay costs already paid);
 - (b) order the legal practitioner to indemnify his or her client or any other party to the proceedings for costs resulting from the delay;
 - (c) order the legal practitioner to pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted.
- (2) If proceedings are delayed through the neglect or incompetence of a prosecutor who is not a legal practitioner, the Court may order the Crown, or, where the prosecution is brought on behalf of a body that does not represent the Crown, that body, to indemnify any party to the proceedings for costs resulting from the delay.
- (3) If proceedings are unreasonably obstructed by a party or a witness, or proceedings are delayed through the failure of a party or a witness to appear before the Court when required to do so, the Court may make either or both of the following orders:
 - (a) an order that the party or witness indemnify any party for costs resulting from the obstruction or delay;

- (b) an order that the party or witness pay to the Principal Registrar for the credit of the Consolidated Account an amount fixed by the Court as compensation for time wasted in consequence of the obstruction or delay.
- (4) Before making an order under subsection (1), (2) or (3), the Court must inform the person against whom the order is proposed of the nature of the proposed order and allow that person a reasonable opportunity to give or call evidence and make representations on the matter.
- (5) A person against whom an order for costs is made under subsection (1), (2) or (3) has the same rights of appeal as a party to a civil action.