

Workplace Relations Act 1996

Act No. 86 of 1988 as amended

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taking into account amendments up to Act No. 8 of 2008

Volume 2 includes: Table of Contents
Schedules 1 – 10

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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Schedule 1—Registration and Accountability of Organisations

Note: See section 8

Chapter 1—Objects of Schedule and general provisions

1 Simplified outline of Chapter

This Chapter sets out Parliament’s intention in enacting this Schedule and contains other provisions that are relevant to the Schedule as a whole.

It includes definitions of terms that are used throughout the Schedule. However, not all definitions are in this Chapter. Definitions of terms that are used only in a particular area of the Schedule, or only in one section of the Schedule, are generally defined in that area or section.

5 Parliament’s intention in enacting this Schedule

- (1) It is Parliament’s intention in enacting this Schedule to enhance relations within workplaces between federal system employers and federal system employees and to reduce the adverse effects of industrial disputation.
- (2) Parliament considers that those relations will be enhanced and those adverse effects will be reduced, if associations of employers and employees are required to meet the standards set out in this Schedule in order to gain the rights and privileges accorded to associations under this Schedule and the Workplace Relations Act.
- (3) The standards set out in this Schedule:
 - (a) ensure that employer and employee organisations registered under this Schedule are representative of and accountable to their members, and are able to operate effectively; and
 - (b) encourage members to participate in the affairs of organisations to which they belong; and

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- (c) encourage the efficient management of organisations and high standards of accountability of organisations to their members; and
 - (d) provide for the democratic functioning and control of organisations; and
 - (e) facilitate the registration of a diverse range of employer and employee organisations.
- (4) It is also Parliament's intention in enacting this Schedule to assist employers and employees to promote and protect their economic and social interests through the formation of employer and employee organisations, by providing for the registration of those associations and according rights and privileges to them once registered.

Note: The Workplace Relations Act contains many provisions that affect the operation of this Schedule. For example, provisions of the Workplace Relations Act deal with some powers and functions of the Commission and of Registrars. Decisions made under this Schedule may be subject to procedures and rules (for example, about appeals) that are set out in the Workplace Relations Act.

5A Schedule binds Crown

- (1) This Schedule binds the Crown in each of its capacities.
- (2) However, this Schedule does not make the Crown liable to be prosecuted for an offence.

6 Definitions

In this Schedule, unless the contrary intention appears:

AEC means the Australian Electoral Commission.

Note: Section 11 is also relevant to this definition.

approved auditor has the meaning given by the regulations.

auditor, in relation to a reporting unit, means:

- (a) the person who is the holder of the position of auditor of the reporting unit under section 256; or
- (b) where a firm is the holder of the position—each person who is, from time to time, a member of the firm and is an approved auditor.

Australian Accounting Standards means the accounting standards:

- (a) issued by the Australian Accounting Standards Board; or
- (b) issued by CPA Australia and by The Institute of Chartered Accountants in Australia and adopted by the Australian Accounting Standards Board;

as in force, or applicable, from time to time, as modified by regulations made for the purpose of this definition.

Australian Auditing Standards means the auditing and assurance standards issued by CPA Australia and The Institute of Chartered Accountants in Australia as in force, or applicable, from time to time.

Australian Building and Construction Commissioner has the same meaning as in the *Building and Construction Industry Improvement Act 2005*.

Australian Building and Construction Inspector has the same meaning as in the *Building and Construction Industry Improvement Act 2005*.

award means:

- (a) an award within the meaning of the Workplace Relations Act; and
- (b) a transitional award within the meaning of Schedule 6 to the Workplace Relations Act.

breach includes non-observance.

civil penalty provision has the meaning given by subsection 305(2).

collective agreement has the same meaning as in the Workplace Relations Act.

collective body means:

- (a) in relation to an organisation—the committee of management or a conference, council, committee, panel or other body of or within the organisation; and
- (b) in relation to a branch of an organisation—the committee of management or a conference, council, committee, panel or other body of or within the branch.

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collegiate electoral system, in relation to an election for an office in an organisation, means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and a subsequent stage or subsequent stages at which persons are elected by and from a body of persons consisting only of:

- (a) persons elected at the last preceding stage; or
- (b) persons elected at the last preceding stage and other persons (being in number not more than 15% of the number of persons comprising the body) holding offices in the organisation (including the office to which the election relates), not including any person holding such an office merely because of having filled a casual vacancy in the office within the last 12 months, or the last quarter, of the term of the office.

Commission means the Australian Industrial Relations Commission established under section 61 of the Workplace Relations Act.

committee of management:

- (a) in relation to an organisation, association or branch of an organisation or association, means the group or body of persons (however described) that manages the affairs of the organisation, association or branch; and
- (b) in relation to a reporting unit, means the group or body of persons (however described) that, under the rules of the reporting unit, is responsible for undertaking the functions necessary to enable the reporting unit to comply with Part 3 of Chapter 8.

Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth or the Australian Capital Territory; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest.

conduct includes being (whether directly or indirectly) a party to, or concerned in, the conduct.

constitutional corporation means:

- (a) a foreign corporation within the meaning of paragraph 51(xx) of the Constitution; or
- (b) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a financial corporation formed within the limits of the Commonwealth; or
- (c) a body corporate that is, for the purposes of paragraph 51(xx) of the Constitution, a trading corporation formed within the limits of the Commonwealth; or
- (d) a body corporate that is incorporated in a Territory; or
- (e) a Commonwealth authority.

constitutional trade or commerce has the same meaning as in the Workplace Relations Act.

declaration envelope means an envelope in the form prescribed by the regulations on which a voter is required to make a declaration containing the prescribed information.

demarcation dispute includes:

- (a) a dispute arising between 2 or more organisations, or within an organisation, as to the rights, status or functions of members of the organisations or organisation in relation to the employment of those members; or
- (b) a dispute arising between employers and employees, or between members of different organisations, as to the demarcation of functions of employees or classes of employees; or
- (c) a dispute about the representation under this Schedule or the Workplace Relations Act of the industrial interests of employees by an organisation of employees.

Deputy Industrial Registrar means a Deputy Industrial Registrar appointed under section 141 of the Workplace Relations Act.

designated Commonwealth authority means:

- (a) a body corporate established for a public purpose by or under a law of the Commonwealth; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State or Territory; and
 - (ii) in which the Commonwealth has a controlling interest.

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direct voting system, in relation to an election for an office in an organisation, means a method of election at which:

- (a) all financial members; or
 - (b) all financial members included in the branch, section, class or other division of the members of the organisation that is appropriate having regard to the nature of the office;
- are, subject to reasonable provisions in relation to enrolment, eligible to vote.

Electoral Commissioner has the same meaning as in the *Commonwealth Electoral Act 1918*.

electoral official means an Australian Electoral Officer or a member of the staff of the AEC.

eligibility rules, in relation to an organisation or association, means the rules of the organisation or association that relate to the conditions of eligibility for membership or the description of the industry or enterprise (if any) in connection with which the organisation is, or the association is proposed to be, registered.

employee includes any person whose usual occupation is that of employee, but does not include a person who is undertaking a vocational placement within the meaning of section 4 of the Workplace Relations Act.

employer includes:

- (a) a person who is usually an employer; and
- (b) an unincorporated club.

employing authority, in relation to a class of employees, means the person or body, or each of the persons or bodies, prescribed as the employing authority in relation to the class of employees.

enterprise means:

- (a) a business that is carried on by a single employer; or
- (b) a business that is carried on by related bodies corporate, at least one of which is an employer; or
- (c) an operationally distinct part of a business mentioned in paragraph (a) or (b); or
- (d) a grouping of 2 or more operationally distinct parts of a business mentioned in paragraph (a) or (b).

Whether bodies corporate are related is to be determined in accordance with the principles set out in section 50 of the *Corporations Act 2001*.

enterprise association has the meaning given by subsection 18C(1).

excluded auditor, in relation to a reporting unit, means:

- (a) an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (b) a partner, employer or employee of an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (c) a liquidator in respect of property of the reporting unit or the organisation of which the reporting unit is a part; or
- (d) a person who owes more than \$5,000 to the reporting unit or the organisation of which the reporting unit is a part.

For the purposes of this definition, **employee** has the same meaning as in Part 3 of Chapter 8.

exempt public sector superannuation scheme has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

Federal Court means the Federal Court of Australia.

federally registrable:

- (a) in relation to an association of employers—has the meaning given by section 18A; and
- (b) in relation to an association of employees—has the meaning given by section 18B; and
- (c) in relation to an enterprise association—has the meaning given by section 18C.

federal system employee means:

- (a) an individual so far as he or she is employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of **federal system employer**, by a federal system employer, except on a vocational placement; or
- (b) an individual who is employed in Victoria, so long as the provisions of this Schedule that would apply to:
 - (i) the individual as a federal system employee; or
 - (ii) an association of which the individual is a member;

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fall within the legislative power referred to the Commonwealth under the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria; or

- (c) an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b).

federal system employer means:

- (a) a constitutional corporation, so far as it employs, or usually employs, an individual; or
- (b) the Commonwealth, so far as it employs, or usually employs, an individual; or
- (c) a designated Commonwealth authority, so far as it employs, or usually employs, an individual; or
- (d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
- (i) a flight crew officer; or
 - (ii) a maritime employee; or
 - (iii) a waterside worker; or
- (e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or
- (f) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory; or
- (g) an employer in Victoria, so long as the provisions of this Schedule that would apply to:
- (i) the employer as a federal system employer; or
 - (ii) an association of which the employer is a member;
- fall within the legislative power referred to the Commonwealth under the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

Note: In the context of paragraph (f), *Australia* includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. See paragraph 17(a) of the *Acts Interpretation Act 1901*.

financial records includes the following to the extent that they relate to finances or financial administration:

- (a) a register;
- (b) any other record of information;
- (c) financial reports or financial records, however compiled, recorded or stored;
- (d) a document.

financial year, in relation to an organisation, means:

- (a) the period of 12 months commencing on 1 July in any year;
or
- (b) if the rules of the organisation provide for another period of 12 months as the financial year of the organisation—the other period of 12 months.

Note: Section 240 provides for a different financial year in special circumstances.

flight crew officer has the same meaning as in the Workplace Relations Act.

Full Bench means a Full Bench of the Commission.

general purpose financial report means the report prepared in accordance with section 253.

independent contractor is confined to a natural person.

industrial action has the meaning given by section 7.

Industrial Registrar means the Industrial Registrar appointed under section 133 of the Workplace Relations Act.

Industrial Registry means the Australian Industrial Registry established under section 128 of the Workplace Relations Act.

irregularity, in relation to an election or ballot, includes:

- (a) a breach of the rules of an organisation or branch of an organisation; and
- (b) an act or omission by means of which:

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- (i) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
 - (ii) a correct ascertainment or declaration of the results of the voting;
- is, or is attempted to be, prevented or hindered; and
- (c) a contravention of section 190.

maritime employee has the same meaning as in the Workplace Relations Act.

office has the meaning given by section 9.

officer, in relation to an organisation, or a branch of an organisation, means a person who holds an office in the organisation or branch (including such a person when performing duties as a designated officer under Part 3 of Chapter 8).

one-tier collegiate electoral system means a collegiate electoral system comprising only one stage after the first stage.

operating report means the report prepared under section 254.

organisation means an organisation registered under this Schedule.

Note: Organisations registered under the Workplace Relations Act immediately before this Schedule commenced are taken to be registered under this Schedule (see the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*).

postal ballot means a ballot for the purposes of which:

- (a) a ballot paper, a declaration envelope, and another envelope in the form prescribed by the regulations, are sent by prepaid post to each person entitled to vote; and
- (b) facilities are provided for the return of the completed ballot paper by post by the voter without expense to the voter.

prescribed includes prescribed by Rules of the Commission made under section 124 of the Workplace Relations Act.

President means the President of the Commission.

Presidential Member means the President, a Vice President, a Senior Deputy President or a Deputy President, of the Commission.

public sector employment has the same meaning as in the Workplace Relations Act.

Registrar means the Industrial Registrar or a Deputy Industrial Registrar.

registry means the Principal Registry or another registry established under section 130 of the Workplace Relations Act.

Registry official means:

- (a) a Registrar; or
- (b) a member of the staff of the Industrial Registry.

reporting guidelines mean the guidelines issued under section 255.

reporting unit has the meaning given by section 242.

State award has the same meaning as in the Workplace Relations Act.

State demarcation order means a State award, to the extent that it relates to the rights of a State-registered association to represent the interests under a State or Territory industrial law of a particular class or group of employees.

State industrial authority means:

- (a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a State Act to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or
- (b) a special board constituted under a State Act relating to factories; or
- (c) any other State board, court, tribunal, body or official prescribed for the purposes of this definition.

State or Territory industrial law has the same meaning as in the Workplace Relations Act.

State-registered association has the meaning given by clause 1 of Schedule 10 to the Workplace Relations Act.

superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

this Schedule includes regulations made under this Schedule.

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transitionally registered association has the meaning given by clause 1 of Schedule 10 to the Workplace Relations Act.

vocational placement has the same meaning as in the Workplace Relations Act.

waterside worker has the same meaning as in the Workplace Relations Act.

workplace inspector means a person appointed as a workplace inspector under section 167 of the Workplace Relations Act.

Workplace Relations Act means the *Workplace Relations Act 1996* and regulations made under section 846 of that Act but does not include this Schedule or regulations made under section 359 of this Schedule.

6A References to provisions in this Schedule

In this Schedule, a reference to a provision is a reference to a provision of this Schedule, unless the contrary intention appears.

7 Meaning of *industrial action*

- (1) For the purposes of this Schedule, *industrial action* means any action of the following kinds:
- (a) the performance of work by an employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by an employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
 - (b) a ban, limitation or restriction on the performance of work by an employee or on acceptance of or offering for work by an employee;
 - (c) a failure or refusal by employees to attend for work or a failure or refusal to perform any work at all by employees who attend for work;
 - (d) the lockout of employees from their employment by the employer of the employees;
- but does not include the following:
- (e) action by employees that is authorised or agreed to by the employer of the employees;

- (f) action by an employer that is authorised or agreed to by or on behalf of employees of the employer;
- (g) action by an employee if:
 - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
 - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

Note 1: See also subsection (4), which deals with the burden of proof of the exception in subparagraph (g)(i) of this definition.

Note 2: The issue of whether action that is not industrial in character is industrial action was considered by the Commission in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union v The Age Company Limited*, PR946290. In that case, the Full Bench of the Commission drew a distinction between an employee who does not attend for work in support of a collective demand that the employer agree to alteration of the conditions of employment as being clearly engaged in industrial action and an employee who does not attend for work on account of illness.

- (2) For the purposes of this Schedule:
 - (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that employees are required to perform in the course of their employment; and
 - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

*Meaning of **lockout***

- (3) For the purposes of this section, an employer **locks out** employees from their employment if the employer prevents the employees from performing work under their contracts of employment without terminating those contracts (except to the extent that this would be an expansion of the ordinary meaning of that expression).

Burden of proof

- (4) Whenever a person seeks to rely on subparagraph (g)(i) of the definition of **industrial action** in subsection (1), that person has the burden of proving that subparagraph (g)(i) applies.

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9 Meaning of *office*

- (1) In this Schedule, *office*, in relation to an organisation or a branch of an organisation means:
- (a) an office of president, vice president, secretary or assistant secretary of the organisation or branch; or
 - (b) the office of a voting member of a collective body of the organisation or branch, being a collective body that has power in relation to any of the following functions:
 - (i) the management of the affairs of the organisation or branch;
 - (ii) the determination of policy for the organisation or branch;
 - (iii) the making, alteration or rescission of rules of the organisation or branch;
 - (iv) the enforcement of rules of the organisation or branch, or the performance of functions in relation to the enforcement of such rules; or
 - (c) an office the holder of which is, under the rules of the organisation or branch, entitled to participate directly in any of the functions referred to in subparagraphs (b)(i) and (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing:
 - (i) existing policy of the organisation or branch; or
 - (ii) decisions concerning the organisation or branch; or
 - (d) an office the holder of which is, under the rules of the organisation or branch, entitled to participate directly in any of the functions referred to in subparagraphs (b)(ii) and (iii); or
 - (e) the office of a person holding (whether as trustee or otherwise) property:
 - (i) of the organisation or branch; or
 - (ii) in which the organisation or branch has a beneficial interest.
- (2) In this Schedule, a reference to an *office* in an association or organisation includes a reference to an office in a branch of the association or organisation.

10 Forging and uttering

Forging

- (1) For the purposes of this Schedule, a person is taken to have *forged* a document if the person:
- (a) makes a document which is false, knowing it to be false; or
 - (b) without authority, alters a genuine document in a material particular;
- with intent that:
- (c) the false or altered document may be used, acted on, or accepted, as genuine, to the prejudice of another person; or
 - (d) another person may, in the belief that it is genuine, be induced to do or refrain from doing an act.
- (2) For the purposes of this Schedule, if a person:
- (a) makes a document which is false, knowing it to be false; or
 - (b) without authority, alters a genuine document in a material particular;
- with intent that a computer, a machine or other device should respond to the false or altered document as if it were genuine:
- (c) to the prejudice of another person; or
 - (d) with the result that another person would be induced to do or refrain from doing an act;
- the first-mentioned person is taken to have *forged* the document.

Uttering

- (3) For the purposes of this Schedule, a person is taken to *utter* a forged document if the person:
- (a) uses or deals with it; or
 - (b) attempts to use or deal with it; or
 - (c) attempts to induce another person to use, deal with, act upon, or accept it.

11 Actions and opinions of AEC

- (1) In this Schedule, a reference to a ballot or election being conducted, or a step in a ballot or election being taken, by the *AEC* is a reference to the ballot or election being conducted, or the step being taken, by:
-

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- (a) an electoral official; or
 - (b) a person authorised on behalf of the AEC to do so.
- (2) In this Schedule, a reference to the opinion or other state of mind of the *AEC*, in relation to the exercise of a function, is a reference to the opinion or other state of mind of a person authorised to carry out the function on behalf of the AEC.

12 Membership of organisations

In this Schedule, unless the contrary intention appears, a reference to:

- (a) a person who is eligible to become a member of an organisation; or
 - (b) a person who is eligible for membership of an organisation;
- includes a reference to a person who is eligible merely because of an agreement made under rules of the organisation made under subsection 151(1).

13 Functions of the Industrial Registry

- (1) The functions of the Industrial Registry include:
- (a) keeping a register of organisations; and
 - (b) providing advice and assistance to organisations in relation to their rights and obligations under this Schedule.

Note: Other functions of the Industrial Registry are set out in section 129 of the Workplace Relations Act.

- (2) Subject to this Schedule, the register of organisations is to be kept in whatever form the Industrial Registrar considers appropriate.

14 President may establish Organisations Panel

- (1) The President may establish a panel (the *Organisations Panel*) of members of the Commission to exercise the powers of the Commission under this Schedule.
- (2) The Organisations Panel is to consist of:
- (a) a Presidential Member whose duties include organising and allocating the work of the Panel; and
 - (b) one or more other members of the Commission assigned to the Panel by the President.

- (3) A member of the Organisations Panel may be a member of one or more panels referred to in section 95 of the Workplace Relations Act.

Note: Section 95 of the Workplace Relations Act provides for the setting up of Commission panels for particular industries.

- (4) The fact that a person is a member of the Organisations Panel does not affect any powers, function or duties that have been, or may be, given to the person by or under any other provision of this Schedule or the Workplace Relations Act.
- (5) Even if the President establishes an Organisations Panel, he or she may direct that the powers of the Commission in relation to a particular matter arising under this Schedule are to be exercised by:
- (a) a member of the Commission who is not a member of the Panel; or
 - (b) members of the Commission, some or all of whom are not members of the Panel.

15 Disapplication of Part 2.5 of *Criminal Code*

Part 2.5 of the *Criminal Code* does not apply to offences against this Schedule.

Note 1: Section 6 of this Schedule defines *this Schedule* to include the regulations.

Note 2: For the purposes of this Schedule (and the regulations), corporate responsibility is dealt with by section 344, rather than by Part 2.5 of the *Criminal Code*.

16 Operation of offence provisions

If a maximum penalty is specified:

- (a) at the foot of a section of this Schedule (other than a section that is divided into subsections); or
- (b) at the foot of a subsection of this Schedule;

then:

- (c) a person who contravenes the section or subsection is guilty of an offence punishable, on conviction, by a penalty not exceeding the specified penalty; or
- (d) the offence referred to in the section or subsection is punishable, on conviction, by a penalty not exceeding the specified penalty.

Chapter 2—Registration and cancellation of registration

Part 1—Simplified outline of Chapter

17 Simplified outline

This Chapter deals with the types of employer and employee associations that can be registered and the conditions for their registration (see Part 2). Part 2 also prohibits certain kinds of discriminatory conduct by employers and organisations in relation to the formation and registration of employee associations.

This Chapter also provides that an organisation's registration can be cancelled by the Federal Court or by the Commission. It sets out the grounds and procedures for cancellation, and the consequences of cancellation (see Part 3).

Part 2—Registration

Division 1—Types of associations that may apply for registration

18 Employer and employee associations may apply

Any of the following associations may apply for registration as an organisation:

- (a) a federally registrable association of employers;
- (b) a federally registrable association of employees;
- (c) a federally registrable enterprise association.

18A Federally registrable employer associations

- (1) An association of employers is *federally registrable* if:
 - (a) it is a constitutional corporation; or
 - (b) some or all of its members are federal system employers.
- (3) An association of employers is not *federally registrable* if it has a member who is not one of the following:
 - (a) an employer;
 - (b) a person who was an employer when admitted to membership, but who has not resigned or whose membership has not been terminated;
 - (c) a person (other than an employee) who carries on business;
 - (d) an officer of the association.
- (4) An association of employers is not *federally registrable* if:
 - (a) it is only a body corporate because it is or has been registered under this Schedule (whether before or after the commencement of this subsection); and
 - (b) it is not the case that some or all of the association's members are federal system employers.

18B Federally registrable employee associations

- (1) An association of employees is *federally registrable* if:
 - (a) it is a constitutional corporation; or

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- (b) some or all of its members are federal system employees.
- (3) An association of employees is not *federally registrable* if it has a member who is not one of the following:
 - (a) an employee;
 - (b) a person specified in subsection (4);
 - (c) an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee eligible for membership of the association;
 - (d) an officer of the association.
- (4) The persons specified for the purpose of paragraph (3)(b) are persons (other than employees) who:
 - (a) are, or are able to become, members of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* of New South Wales; or
 - (b) are employees for the purposes of the *Industrial Relations Act 1999* of Queensland; or
 - (c) are employees for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
 - (d) are employees for the purposes of the *Industrial and Employee Relations Act 1994* of South Australia.
- (5) An association of employees is not *federally registrable* if:
 - (a) it is only a body corporate because it is or has been registered under this Schedule (whether before or after the commencement of this subsection); and
 - (b) it is not the case that some or all of the association's members are federal system employees.

18C Federally registrable enterprise associations

- (1) An *enterprise association* is an association the majority of the members of which are employees performing work in the same enterprise.
- (2) An enterprise association is *federally registrable* if:
 - (a) it is a constitutional corporation; or
 - (b) some or all of its members are federal system employees; or

- (c) the employer or employers in relation to the relevant enterprise are constitutional corporations; or
 - (d) the relevant enterprise operates principally within or from a Territory; or
 - (e) the relevant enterprise is engaged principally in trade or commerce between Australia and a place outside Australia; or
 - (f) the relevant enterprise is engaged principally in trade or commerce among the States; or
 - (g) the relevant enterprise is engaged principally in trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (h) the relevant enterprise is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
 - (i) the relevant enterprise is engaged principally in banking (other than State banking not extending beyond the limits of a State); or
 - (j) the relevant enterprise is engaged principally in insurance (other than State insurance not extending beyond the limits of a State); or
 - (k) the relevant enterprise is in Victoria, and the provisions of this Schedule that would apply to the association (both before and after registration), fall within the legislative power referred to the Commonwealth under the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.
- (3) An enterprise association is not **federally registrable** if it has a member who is not one of the following:
- (a) an employee performing work in the relevant enterprise;
 - (b) a person specified in subsection (4) performing work in the enterprise;
 - (c) an independent contractor performing work in the relevant enterprise who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be:
 - (i) an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b) of the definition of **federal system employee** in section 6; and

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- (ii) an employee who would be eligible for membership of the association;
 - (d) an officer of the association.
- (4) The persons specified for the purpose of paragraph (3)(b) are persons (other than employees) who:
- (a) are, or are able to become, members of an industrial organisation of employees within the meaning of the *Industrial Relations Act 1996* of New South Wales; or
 - (b) are employees for the purposes of the *Industrial Relations Act 1999* of Queensland; or
 - (c) are employees for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
 - (d) are employees for the purposes of the *Industrial and Employee Relations Act 1994* of South Australia.
- (5) An enterprise association is not **federally registrable** if:
- (a) it is only a body corporate because it is or has been registered under this Schedule (whether before or after the commencement of this subsection); and
 - (b) it does not satisfy paragraphs (b) to (k) of subsection (2).

18D Constitutional validity

Associations of employers

- (1) If the Parliament would not have sufficient legislative power to provide for the registration of a particular association of employers if:
- (a) a particular class of employers mentioned in paragraphs (a) to (g) of the definition of **federal system employer** in section 6 were included when working out whether some or all of the association's members are federal system employers;
- that definition applies as if it did not include a reference to that class of employers.
- (2) If the Parliament would only have sufficient legislative power to provide for the registration of a particular association of employers if the membership of the association were entirely made up of one or more of the following:
-

- (a) federal system employers;
- (b) persons (other than employees) who carry on business and who would, if they were employers, be federal system employers;
- (c) officers of the association;

then, despite subsection 18A(1), the association is not ***federally registrable*** unless it is either a constitutional corporation or made up in that way.

Associations of employees

- (3) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:
 - (a) a particular class of individuals so far as they are employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of ***federal system employer*** in section 6, by a federal system employer were included when working out whether some or all of the association's members are federal system employees;the definition of ***federal system employee*** in section 6 applies as if it did not include a reference to that class of employees.
- (3A) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:
 - (a) a particular class of individuals mentioned in paragraph (b) or (c) of the definition of ***federal system employee*** in section 6 were included in working out whether some or all of the association's members are federal system employees;that definition applies as if it did not include a reference to that class of employees.
- (4) If the Parliament would only have sufficient legislative power to provide for the registration of a particular association of employees if the membership of the association were entirely made up of one or more of the following:
 - (a) federal system employees;
 - (b) persons specified in subsection 18B(4);
 - (c) officers of the association;then, despite subsection 18B(1), the association is not ***federally registrable*** unless it is either a constitutional corporation or made up in that way.

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Enterprise associations

- (5) If the Parliament would only have sufficient legislative power to provide for the registration of an enterprise association if the membership of the association were entirely made up of one or more of the following:
- (a) federal system employees performing work in the relevant enterprise;
 - (b) persons specified in subsection 18C(4);
 - (c) officers of the association;
- then, despite subsection 18C(2), the association is not *federally registrable* unless it is either a constitutional corporation or made up in that way.

Division 2—Registration criteria

19 Criteria for registration of associations other than enterprise associations

- (1) The Commission must grant an application for registration made by an association (other than an enterprise association) that, under section 18, may apply for registration as an organisation if, and only if:
 - (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 18(a) or (b); and
 - (ii) is an association for furthering or protecting the interests of its members; and
 - (b) in the case of an association of employees—the association is free from control by, or improper influence from, an employer or by an association or organisation of employers; and
 - (c) in the case of an association of employers—the members who are employers have, in the aggregate, throughout the 6 months before the application, employed on an average taken per month at least 50 employees; and
 - (d) in the case of an association of employees—the association has at least 50 members who are employees; and
 - (e) the Commission is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Schedule and the Workplace Relations Act; and
 - (f) the rules of the association make provision as required by this Schedule to be made by the rules of organisations; and
 - (g) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
 - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and

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- (i) the registration of the association would further Parliament's intention in enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act; and
 - (j) subject to subsection (2), there is no organisation to which members of the association might belong or, if there is such an organisation, it is not an organisation:
 - (i) to which the members of the association could more conveniently belong; and
 - (ii) that would more effectively represent those members.
- (2) If:
- (a) there is an organisation to which the members of the association might belong; and
 - (b) the members of the association could more conveniently belong to the organisation; and
 - (c) the organisation would more effectively represent those members than the association would;
- the requirements of paragraph (1)(j) are taken to have been met if the Commission accepts an undertaking from the association that the Commission considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of the organisation and the eligibility rules of the association.
- (3) Without limiting the matters that the Commission may take into account in considering, under subparagraph (1)(j)(ii), the effectiveness of the representation of an organisation or association, the Commission must take into account whether the representation would be consistent with Parliament's intention in enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act.
 - (4) In applying paragraph (1)(e), the Commission must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 28 had the association been registered when the conduct occurred.

20 Criteria for registration of enterprise associations

- (1) The Commission must grant an application for registration made by an enterprise association that, under section 18, may apply for registration as an organisation if, and only if:
 - (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 18(c); and
 - (ii) is an association for furthering or protecting the interests of its members; and
 - (b) the association is free from control by, or improper influence from:
 - (i) any employer, whether at the enterprise in question or otherwise; or
 - (ii) any person or body with an interest in that enterprise; or
 - (iii) any organisation, or any other association of employers or employees; and
 - (c) the association has at least 20 members who are employees; and
 - (d) the Commission is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Schedule and the Workplace Relations Act; and
 - (e) the rules of the association make provision as required by this Schedule to be made by the rules of organisations; and
 - (f) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
 - (g) the Commission is satisfied that a majority of the persons eligible to be members of the association support its registration as an organisation; and
 - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and
 - (i) the registration of the association would further Parliament's intention in enacting this Schedule (see section 5) and the object set out in section 3 of the Workplace Relations Act.

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- (1A) For the purposes of paragraph (1)(b), if a person or body has an interest in the enterprise in question, the Commission may decide that, despite the interest, the association is free from control by, or improper influence from, the person or body.

Note: The Commission could conclude that the association was free from control etc. by the person if, for example, the nature of the person's interest was not such as to give the person a major say in the conduct of the enterprise or if the person did not have a significant management role in the association.

- (2) In applying paragraph (1)(d), the Commission must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 28 had the association been registered when the conduct occurred.

Division 3—Prohibited conduct in relation to formation or registration of employee associations

21 Prohibited conduct—employers

- (1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
 - (a) dismiss an employee;
 - (b) injure an employee in his or her employment;
 - (c) alter the position of an employee to the employee's prejudice;
 - (d) discriminate against an employee.
- (2) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
 - (a) terminate a contract for services that he or she has entered into with an independent contractor;
 - (b) injure an independent contractor in relation to the terms and conditions of the contract for services;
 - (c) alter the position of an independent contractor to the independent contractor's prejudice;
 - (d) discriminate against an independent contractor.
- (3) Conduct referred to in subsection (1) or (2) is for a ***prohibited reason*** if it is carried out because the employee or independent contractor has done, or has omitted to do, any act:
 - (a) under this Schedule that relates to the formation or registration of an association referred to in paragraph 18(b) or (c); or
 - (b) in connection with, or in preparation for, such an act or omission.
- (4) The following are examples of acts or omissions to which subsection (3) applies:
 - (a) making an application for registration of an employee association under paragraph 18(b) or (c);

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- (b) supporting the registration of an employee association (for example, by supporting, or supporting the making of, an application for its registration);
- (c) participating, or encouraging a person to participate, in proceedings before the Commission in relation to such an application;
- (d) not participating, or encouraging a person not to participate, in such proceedings;
- (e) becoming a member, or encouraging a person to become a member, of an employee association.

22 Prohibited conduct—organisations

- (1) An organisation, or an officer or member of an organisation, must not take, or threaten to take, industrial action whose aim, or one of whose aims, is to coerce a person to breach section 21.
- (2) An organisation, or an officer or member of an organisation, must not, for a prohibited reason, or for reasons that include a prohibited reason, take or threaten to take, any action whose aim, or one of whose aims, is to prejudice a person in the person's employment, or an independent contractor in the contractor's engagement.
- (3) Conduct referred to in subsection (2) is for a *prohibited reason* if it is carried out because the person has done, or has omitted to do, any act:
 - (a) under this Schedule that relates to the formation or registration of an association referred to in paragraph 18(b) or (c); or
 - (b) in connection with, or in preparation for, such an act or omission.
- (4) The examples set out in subsection 21(4) are examples of acts or omissions to which subsection (3) of this section applies.
- (5) An organisation, or an officer or member of an organisation, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the organisation because the member concerned does or proposes to do, for a prohibited reason, an act or omission referred to in subsection 21(3).

23 Powers of Federal Court in relation to prohibited conduct

- (1) The Federal Court may, if the Court considers it appropriate in all the circumstances, make one or more of the following orders in respect of conduct that contravenes section 21 or 22:
 - (a) an order imposing on a person whose conduct contravenes that section a penalty of not more than:
 - (i) in the case of a body corporate—100 penalty units; or
 - (ii) in any other case—20 penalty units;
 - (b) an order requiring the person not to carry out a threat made by the person, or not to make any further threat;
 - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the conduct or remedy its effects;
 - (d) any other consequential orders.
- (2) An application for an order under subsection (1) may be made by:
 - (a) a person against whom the conduct is being, has been, or is threatened to be, taken; or
 - (b) any other person prescribed by the regulations.

24 Certain actions considered to be done by organisation or employer

- (1) For the purposes of this Division:
 - (a) action done by one of the following bodies or persons is taken to have been done by an organisation:
 - (i) the committee of management of the organisation;
 - (ii) an officer or agent of the organisation acting in that capacity;
 - (iii) a member or group of members of the organisation acting under the rules of the organisation;
 - (iv) a member of the organisation, who performs the function of dealing with an employer on behalf of other members of the organisation, acting in that capacity; and
 - (b) action done by an agent of an employer acting in that capacity is taken to have been done by the employer.
 - (2) Subparagraphs (1)(a)(iii) and (iv) and paragraph (1)(b) do not apply if:
-

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- (a) in relation to subparagraphs (1)(a)(iii) and (iv):
 - (i) a committee of management of the organisation; or
 - (ii) a person authorised by the committee; or
 - (iii) an officer of the organisation;has taken reasonable steps to prevent the action; or
 - (b) in relation to paragraph (1)(b), the employer has taken reasonable steps to prevent the action.
- (3) In this section:
- officer*, in relation to an organisation, includes:
- (a) a delegate or other representative of the organisation; and
 - (b) an employee of the organisation.

Division 4—Registration process

25 Applicant for registration may change its name or alter its rules

- (1) The Commission may, on the application of an association applying to be registered as an organisation, grant leave to the association, on such terms and conditions as the Commission considers appropriate, to change its name or to alter its rules:
 - (a) to enable it to comply with this Schedule; or
 - (b) to remove a ground of objection taken by an objector under the regulations or by the Commission; or
 - (c) to correct a formal error in its rules (for example, to remove an ambiguity, to correct spelling or grammar, or to correct an incorrect reference to an organisation or person).

Note: Paragraph (a)—in order for an organisation to comply with this Schedule, its rules must not be contrary to the Workplace Relations Act (see paragraph 142(1)(a) of this Schedule).

- (2) An association granted leave under subsection (1) may change its name, or alter its rules, even though the application for registration is pending.
- (3) Rules of an association as altered in accordance with leave granted under subsection (1) are binding on the members of the association:
 - (a) in spite of anything in the other rules of the association; and
 - (b) subject to any further alterations lawfully made.

26 Registration

- (1) When the Commission grants an application by an association for registration as an organisation, the Industrial Registrar must immediately enter, in the register kept under paragraph 13(1)(a), such particulars in relation to the association as are prescribed and the date of the entry.
- (2) An association is to be taken to be registered under this Schedule when the Industrial Registrar enters the prescribed particulars in the register under subsection (1).
- (3) On registration, an association becomes an organisation.

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- (4) The Industrial Registrar must issue to each organisation registered under this Schedule a certificate of registration in the prescribed form.

Note: Certificates of registration issued under the Workplace Relations Act continue in force (see the *Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002*).

- (5) The certificate is, until proof of cancellation, conclusive evidence of the registration of the organisation specified in the certificate.
- (6) The Industrial Registrar may, as prescribed, issue to an organisation a copy of, or a certificate replacing, the certificate of registration issued under subsection (4) or that certificate as amended under section 160.

27 Incorporation

An organisation:

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property; and
- (d) must have a common seal; and
- (e) may sue or be sued in its registered name.

Part 3—Cancellation of registration

28 Application for cancellation of registration

- (1) An organisation or person interested, or the Minister, may apply to the Federal Court for an order cancelling the registration of an organisation on the ground that:
 - (a) the conduct of:
 - (i) the organisation (in relation to its continued breach of an award, an order of the Commission or a collective agreement, or its continued failure to ensure that its members comply with and observe an award, an order of the Commission or a collective agreement, or in any other respect); or
 - (ii) a substantial number of the members of the organisation (in relation to their continued breach of an award, an order of the Commission or a collective agreement, or in any other respect);has prevented or hindered the achievement of Parliament's intention in enacting this Schedule (see section 5) or of an object of this Schedule or the Workplace Relations Act; or
 - (b) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has engaged in industrial action that has prevented, hindered or interfered with:
 - (i) the activities of a federal system employer; or
 - (ii) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or
 - (c) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have been, or is or are, engaged in industrial action that has had, is having or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community; or
 - (d) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have failed to comply with:

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- (i) an injunction granted under subsection 496(12) of the Workplace Relations Act (which deals with orders to stop industrial action); or
 - (ii) an order made under section 508 or 509 of the Workplace Relations Act (which deals with contraventions of the strike pay provisions); or
 - (iii) an order made under section 807 of the Workplace Relations Act (which deals with contraventions of the freedom of association provisions); or
 - (iv) an interim injunction granted under section 838 of the Workplace Relations Act so far as it relates to conduct or proposed conduct that could be the subject of an injunction or order under a provision of the Workplace Relations Act mentioned in subparagraphs (i) to (iii); or
 - (v) an order made under section 23 (which deals with contraventions of the employee associations provisions); or
 - (vi) an order made under subsection 131(2) (which deals with contraventions of the withdrawal from amalgamation provisions).
- (1A) The Industrial Registrar may apply to the Federal Court for an order cancelling the registration of an organisation on the ground that the organisation has failed to comply with an order of the Federal Court made under subsection 336(5) in relation to the organisation.
- Note: Section 336 deals with the situation where a Registrar is satisfied, after an investigation, that a reporting unit of an organisation has contravened Part 3 of Chapter 8, or guidelines or rules relating to financial matters.
- (2) An organisation in relation to which an application is made under subsection (1) or (1A) must be given an opportunity of being heard by the Court.
- (3) If the Court:
- (a) finds that a ground for cancellation set out in the application has been established; and
 - (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the organisation in relation to the matters;

the Court must, subject to subsection (4) and section 29, cancel the registration of the organisation.

(4) If:

- (a) the Court finds that a ground for cancellation set out in the application has been established; and
- (b) that finding is made, wholly or mainly, because of the conduct of a particular section or class of members of the organisation;

the Court may, if it considers it just to do so, instead of cancelling the registration of the organisation under subsection (3), by order:

- (c) determine alterations of the eligibility rules of the organisation so as to exclude from eligibility for membership of the organisation persons belonging to the section or class; or
 - (d) where persons belonging to the section or class are eligible for membership under an agreement of the kind referred to in section 151—declare that the persons are excluded from eligibility for membership in spite of anything in the agreement.
- (5) If the Court cancels the registration of an organisation, the Court may direct that an application by the former organisation to be registered as an organisation is not to be dealt with under this Schedule before the end of a specified period.
- (6) An alteration of rules determined by order under subsection (4) takes effect on the date of the order or on such other day as is specified in the order.
- (7) A finding of fact in proceedings under section 23 or subsection 131(2) of this Schedule, or section 496, 508, 509 or 807 of the Workplace Relations Act, is admissible as prima facie evidence of that fact in an application made on a ground specified in paragraph (1)(d).

29 Orders where cancellation of registration deferred

- (1) If the Federal Court finds that a ground of an application under subsection 28(1) or (1A) has been established, the Court may, if it considers it just to do so, instead of cancelling the registration of the organisation concerned under subsection 28(3) or making an

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order under subsection 28(4), exercise one or more of the powers set out in subsection (2) of this section.

- (2) The powers that may be exercised by the Court, by order, under subsection (1) are as follows:
- (a) the power to suspend, to the extent specified in the order, any of the rights, privileges or capacities of the organisation or of all or any of its members, as such members, under this Schedule, the Workplace Relations Act or any other Act, under awards or orders made under this Schedule, the Workplace Relations Act or any other Act or under collective agreements;
 - (b) the power to give directions as to the exercise of any rights, privileges or capacities that have been suspended;
 - (c) the power to make provision restricting the use of the funds or property of the organisation or a branch of the organisation, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.
- (3) If the Court exercises a power set out in subsection (2), it must defer the determination of the question whether to cancel the registration of the organisation concerned until:
- (a) the orders made in the exercise of the power cease to be in force; or
 - (b) on application by a party to the proceeding, the Court considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant circumstance;
- whichever is earlier.
- (4) An order made in the exercise of a power set out in subsection (2) has effect in spite of anything in the rules of the organisation concerned or a branch of the organisation.
- (5) An order made in the exercise of a power set out in subsection (2):
- (a) may be revoked by the Court, by order, on application by a party to the proceeding concerned; and
 - (b) unless sooner revoked, ceases to be in force:
 - (i) 6 months after it came into force; or

- (ii) such longer period after it came into force as is ordered by the Court on application by a party to the proceeding made while the order remains in force.

30 Cancellation of registration on technical grounds etc.

- (1) The Commission may cancel the registration of an organisation:
 - (a) on application by the organisation made under the regulations; or
 - (b) on application by an organisation or person interested or by the Minister, if the Commission has satisfied itself, as prescribed, that the organisation:
 - (i) was registered by mistake; or
 - (ii) is no longer effectively representative of the members who are employers or employees, as the case requires; or
 - (iii) is not free from control by, or improper influence from, a person or body referred to in paragraph 19(1)(b) or 20(1)(b), as the case requires; or
 - (iv) subject to subsection (6), if the organisation is an enterprise association—the enterprise to which it relates has ceased to exist; or
 - (c) on the Commission's own motion, if:
 - (i) the Commission has satisfied itself, as prescribed, that the organisation is defunct; or
 - (ii) the organisation is an organisation of employees, other than an enterprise association, and has fewer than 50 members who are employees; or
 - (iii) the organisation is an enterprise association and has fewer than 20 members who are employees; or
 - (iv) the organisation is an organisation of employers and the members who are employers have, in the aggregate, throughout the 6 months before the application, not employed on an average taken per month at least 50 employees; or
 - (v) the organisation is not, or is no longer, a federally registrable association.
- (2) Before the Commission cancels the registration of an organisation under:

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- (a) paragraph (1)(b) on application by a person interested or by the Minister; or
 - (b) paragraph (1)(c);
- the Commission must give the organisation an opportunity to be heard.
- (3) The Commission may also cancel the registration of an organisation if:
 - (a) the Commission is satisfied that the organisation has breached an undertaking referred to in subsection 19(2); and
 - (b) the Commission does not consider it appropriate to amend the eligibility rules of the organisation under section 157.
 - (4) A cancellation under subsection (3) may be made:
 - (a) on application by an organisation or person interested; or
 - (b) on application by the Minister; or
 - (c) on the Commission's own motion.
 - (5) For the purposes of subparagraph (1)(b)(iv), the enterprise to which an organisation relates has ceased to exist if:
 - (a) in the case of an organisation that relates only to an operationally distinct part or parts of the business that constitutes the enterprise—that part or those parts have ceased to exist, or the whole of the business has ceased to exist; or
 - (b) in the case of an organisation that relates to the whole of the business that constitutes the enterprise—the whole of the business has ceased to exist.
 - (6) Subparagraph (1)(b)(iv) does not apply if:
 - (a) some or all of the business of the enterprise in question is now conducted by another enterprise; and
 - (b) all the alterations that are necessary to enable the organisation to operate as an enterprise association in relation to the other enterprise have been made; and
 - (c) the Commission is satisfied that the organisation still meets the requirements of subsection 20(1).

The Commission must give the organisation a reasonable opportunity to alter its rules as provided in paragraph (b) before the Commission considers cancelling the registration of the organisation on the ground referred to in subparagraph (1)(b)(iv).

31 Cancellation to be recorded

If the registration of an organisation under this Schedule is cancelled, the Industrial Registrar must enter the cancellation, and the date of cancellation, in the register kept under paragraph 13(1)(a).

32 Consequences of cancellation of registration

The cancellation of the registration of an organisation under this Schedule has the following consequences:

- (a) the organisation ceases to be an organisation and a body corporate under this Schedule, but does not because of the cancellation cease to be an association;
- (b) the cancellation does not relieve the association or any of its members from any penalty or liability incurred by the organisation or its members before the cancellation;
- (c) from the cancellation, the association and its members are not entitled to the benefits of any award, order of the Commission or collective agreement that bound the organisation or its members;
- (d) the Commission may, on application by an organisation or person interested, make such order as the Commission considers appropriate about the other effects (if any) of such an award, order or agreement on the association and its members;
- (e) 21 days after the cancellation, such an award, order or agreement ceases, subject to any order made under paragraph (d), in all other respects to have effect in relation to the association and its members;
- (f) the Federal Court may, on application by a person interested, make such order as it considers appropriate in relation to the satisfaction of the debts and obligations of the organisation out of the property of the organisation;
- (g) the property of the organisation is, subject to any order made under paragraph (f), the property of the association and must be held and applied for the purposes of the association under the rules of the organisation so far as they can still be carried out or observed.

Schedule 1 Registration and Accountability of Organisations

Chapter 2 Registration and cancellation of registration

Part 4 Commission's powers under this Chapter

Section 33

Part 4—Commission's powers under this Chapter

33 Powers exercisable by Presidential Member

The powers of the Commission under this Chapter are exercisable only by a Presidential Member.

Chapter 3—Amalgamation and withdrawal from amalgamation

Part 1—Simplified outline of Chapter

34 Simplified outline

The procedure for the amalgamation of 2 or more organisations is set out in Part 2 of this Chapter.

The 2 main elements of the amalgamation procedure are an application to the Commission seeking approval for a ballot to be held on the question of amalgamation, and the holding of a ballot conducted by the Australian Electoral Commission.

Part 2 also sets out the consequences of an amalgamation (for example, in relation to assets and liabilities of the organisations forming the new amalgamated organisation). It also enables the validation of certain acts done for the purposes of an amalgamation.

The procedure that enables part of an amalgamated organisation to withdraw from it is set out in Part 3 of this Chapter.

The main elements of the procedure to withdraw are an application to the Federal Court for approval to hold a ballot on the question, and the holding of the ballot.

Part 3 also sets out the consequences of a withdrawal from amalgamation (for example, in relation to assets and liabilities of the amalgamated organisation and the constituent part). It also enables the validation of certain acts done for the purposes of a withdrawal from amalgamation.

Part 2—Amalgamation of organisations

Division 1—General

35 Definitions

In this Part:

alternative provision means a provision of the kind mentioned in subsection 41(1).

amalgamated organisation, in relation to a completed amalgamation, means the organisation of which members of the de-registered organisations have become members under paragraph 73(3)(d).

amalgamation day, in relation to a completed amalgamation, means the day fixed under subsection 73(2) in relation to the amalgamation.

asset means property of any kind, and includes:

- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind in, or in relation to, property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

authorised person, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation.

charge means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

closing day, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 58 as the closing day of the ballot.

commencing day, in relation to a ballot for a proposed amalgamation, means the day, from time to time, fixed under section 58 as the commencing day of the ballot.

completed amalgamation means a proposed amalgamation that has taken effect.

debenture has the same meaning as in section 9 of the *Corporations Act 2001*.

defect includes a nullity, omission, error or irregularity.

de-registered organisation, in relation to a completed amalgamation, means an organisation that has been de-registered under this Part.

de-registration, in relation to an organisation, means the cancellation of its registration.

holder, in relation to a charge, includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement.

instrument means an instrument of any kind, and includes:

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing.

instrument to which this Part applies, in relation to a completed amalgamation, means an instrument:

- (a) to which a de-registered organisation is a party; or
- (b) that was given to, by, or in favour of, a de-registered organisation; or
- (c) in which a reference is made to a de-registered organisation; or

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- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a de-registered organisation.

interest:

- (a) in relation to a company—includes an interest in a managed investment scheme, within the meaning of the *Corporations Act 2001*, made available by the company; and
- (b) in relation to land—means:
- (i) a legal or equitable estate or interest in the land; or
 - (ii) a right, power or privilege over, or in relation to, the land.

invalidity includes a defect.

irregularity includes a breach of the rules of an organisation, but in Division 7 does not include an irregularity in relation to a ballot.

liability means a liability of any kind, and includes an obligation of any kind (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

proceeding to which this Part applies, in relation to a completed amalgamation, means a proceeding to which a de-registered organisation was a party immediately before the amalgamation day.

proposed alternative amalgamation, in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision.

proposed amalgamated organisation, in relation to a proposed amalgamation, means the organisation or proposed organisation of which members of the proposed de-registering organisations are proposed to become members under this Part.

proposed amalgamation means the proposed carrying out of arrangements in relation to 2 or more organisations under which:

- (a) an organisation is, or 2 or more organisations are, to be de-registered under this Part; and

- (b) members of the organisation or organisations to be de-registered are to become members of another organisation (whether existing or proposed).

proposed de-registering organisation, in relation to a proposed amalgamation, means an organisation that is to be de-registered under this Part.

proposed principal amalgamation, in relation to a proposed amalgamation, means:

- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

36 Procedure to be followed for proposed amalgamation etc.

- (1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Part is to be followed.
- (2) Where it appears to the Commission that the performance of an act, including:
 - (a) the de-registration of an organisation; and
 - (b) the registration of an organisation; and
 - (c) the giving of consent to:
 - (i) a change in the name of an organisation; or
 - (ii) an alteration of the eligibility rules of an organisation;is sought for the purposes of a proposed amalgamation, the Commission may perform the act only in accordance with this Part.
- (3) If any difficulty arises, or appears likely to arise, in the application of this Schedule for the purpose of implementing the scheme for a proposed amalgamation, the Commission may give directions and make orders to resolve the difficulty.
- (4) Directions and orders under subsection (3):
 - (a) have effect subject to any order of the Federal Court; and
 - (b) have effect despite anything in:
 - (i) the regulations or the Rules of the Commission; or
 - (ii) the rules of an organisation or any association proposed to be registered as an organisation.

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37 Exercise of Commission's powers under this Part

The powers of the Commission under this Part are exercisable only by a Presidential Member.

Division 2—Preliminary matters

38 Federations

Application for recognition as federation

- (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for recognition as a federation.
- (2) The application must:
 - (a) be lodged before an application is lodged under section 44 in relation to the amalgamation; and
 - (b) include such particulars as are prescribed.

Grant of application

- (3) If the Commission is satisfied that the organisations intend to lodge an application under section 44 in relation to the amalgamation within the prescribed period, the Commission must grant the application for recognition as a federation.

Registration of federation

- (4) If the application is granted, the Industrial Registrar must enter in the register kept under paragraph 13(1)(a) such details in relation to the federation as are prescribed.

Representation rights of federation

- (5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Schedule and the Workplace Relations Act.
- (6) Subsection (5) does not authorise the federation to become a party to an award or to become bound by a collective agreement.

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Federation may vary its composition

- (7) After the federation is registered, it may vary its composition by:
- (a) including, with the approval of the Commission, another organisation within the federation if the other organisation intends to become concerned in the amalgamation; or
 - (b) releasing, with the approval of the Commission, an organisation from the federation.

When federation ceases to exist

- (8) The federation ceases to exist:
- (a) on the day on which the amalgamation takes effect; or
 - (b) if an application under section 44 is not lodged in relation to the amalgamation within the prescribed period—on the day after the end of the period; or
 - (c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an organisation belonging to the federation, is preventing or hindering the attainment of Parliament's intention in enacting this Schedule (see section 5) or an object of this Schedule or the Workplace Relations Act—on the day the Full Bench so determines.

Federation does not limit representation rights of organisations

- (9) Nothing in this section limits the right of an organisation belonging to a federation to represent itself or its members.

39 Use of resources to support proposed amalgamation

- (1) An existing organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if:
- (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
 - (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

- (2) Subsection (1) does not limit by implication any power that the existing organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

Division 3—Commencement of amalgamation procedure

40 Scheme for amalgamation

- (1) There is to be a scheme for every proposed amalgamation.
- (2) The scheme must contain the following matters:
 - (a) a general statement of the nature of the amalgamation, identifying the existing organisations concerned and indicating:
 - (i) if one of the existing organisations is the proposed amalgamated organisation—that fact; and
 - (ii) if an association proposed to be registered as an organisation is the proposed amalgamated organisation—that fact and the name of the association; and
 - (iii) the proposed de-registering organisations;
 - (b) if it is proposed to change the name of an existing organisation—particulars of the proposed change;
 - (c) if it is proposed to alter the eligibility rules of an existing organisation—particulars of the proposed alterations;
 - (d) if it is proposed to alter any other rules of an existing organisation—particulars of the proposed alterations;
 - (e) if an association is proposed to be registered as an organisation—the eligibility and other rules of the association;
 - (f) such other matters as are prescribed.
- (3) Subsection (2) does not limit by implication the matters that the scheme may contain.

41 Alternative scheme for amalgamation

- (1) Where 3 or more existing organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:
 - (a) the members of one or more of the organisations do not approve the amalgamation; and

- (b) the members of 2 or more of the organisations (in this subsection called the *approving organisations*) approve, in the alternative, the amalgamation so far as it involves:
 - (i) the other of the approving organisations; or
 - (ii) 2 or more of the other approving organisations; and
 - (c) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;
there is to be an amalgamation involving the approving organisations.
- (2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of:
- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and
 - (b) the differences between the rules of any association proposed to be registered as an organisation, and any proposed alterations of the rules of the existing organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

42 Approval by committee of management

- (1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing organisation concerned in the amalgamation.
- (2) Despite anything in the rules of an existing organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

43 Community of interest declaration

Existing organisations may apply for declaration

- (1) The existing organisations concerned in a proposed amalgamation may jointly lodge in the Industrial Registry an application for a declaration under this section in relation to the amalgamation.

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- (2) The application must be lodged:
 - (a) before an application has been lodged under section 44 in relation to the amalgamation; or
 - (b) with the application that is lodged under section 44 in relation to the amalgamation.
- (3) If the application is lodged before an application has been lodged under section 44 in relation to the amalgamation, the Commission:
 - (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and
 - (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
 - (c) may inform any other person who is likely to be interested of the time and place of the hearing.

Making of declaration

- (4) If, at the conclusion of the hearing arranged under subsection (3) or section 53 in relation to the proposed amalgamation, the Commission is satisfied that there is a community of interest between the existing organisations in relation to their industrial interests, the Commission must declare that it is so satisfied.

Pre-conditions to making of declaration

- (5) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employees in relation to their industrial interests if the Commission is satisfied that a substantial number of members of one of the organisations are:
 - (a) eligible to become members of the other organisation or each of the other organisations; or
 - (b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or
 - (c) bound by the same awards as members of the other organisation or each of the other organisations; or
 - (d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or

- (e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.
- (6) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations of employers in relation to their industrial interests if the Commission is satisfied that a substantial number of members of one of the organisations are:
 - (a) eligible to become members of the other organisation or each of the other organisations; or
 - (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
 - (c) bound by the same awards as members of the other organisation or each of the other organisations; or
 - (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.
- (7) Subsections (5) and (6) do not limit by implication the circumstances in which the Commission may be satisfied, for the purposes of subsection (4), that there is a community of interest between organisations in relation to their industrial interests.

Circumstances in which declaration ceases to be in force

- (8) If:
 - (a) an application for a declaration under this section in relation to a proposed amalgamation is lodged before an application has been lodged under section 44 in relation to the amalgamation; and
 - (b) a declaration is made under this section in relation to the amalgamation; and
 - (c) an application is not lodged under section 44 in relation to the amalgamation within 6 months after the declaration is made;the declaration ceases to be in force.
 - (9) The Commission may revoke a declaration under this section if the Commission is satisfied that there is no longer a community of
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Section 44

interest between the organisations concerned in relation to their industrial interests.

- (10) However, before the Commission revokes the declaration, it must:
- (a) give reasonable notice of its intention to revoke to each of the organisations that applied for the declaration; and
 - (b) give each of those organisations an opportunity to be heard.

44 Application for approval for submission of amalgamation to ballot

- (1) The existing organisations concerned in a proposed amalgamation, and any association proposed to be registered as an organisation under the amalgamation, must jointly lodge in the Industrial Registry an application for approval for the submission of the amalgamation to ballot.
- (2) The application must be accompanied by:
 - (a) a copy of the scheme for the amalgamation; and
 - (b) a written outline of the scheme.
- (3) Subject to section 62, the outline must, in no more than 3,000 words, provide sufficient information on the scheme to enable members of the existing organisations to make informed decisions in relation to the scheme.

45 Holding office after amalgamation

- (1) The rules of:
 - (a) an association proposed to be registered as an organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
 - (b) an existing organisation that is the proposed amalgamated organisation under a proposed amalgamation;may, despite section 143, make provision in relation to:
 - (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed de-registering organisations immediately before the amalgamation takes effect; and
 - (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the

proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under paragraph (c) or (d) for longer than:

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

(2) Where:

(a) a person holds an office in an organisation, being an office held under rules made under subsection (1); and

(b) that organisation is involved in a proposed amalgamation; the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

(3) The rules of an organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under paragraph (1)(c) with elections for other offices in the organisation.

(4) Section 145 does not apply to an office held under rules made under subsection (1).

(5) Section 146 applies to an office held under rules made under paragraph (1)(c).

(6) In this section:

ordinary election means an election held under rules that comply with section 143.

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46 Application for exemption from ballot

- (1) The proposed amalgamated organisation under a proposed amalgamation may lodge in the Industrial Registry an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.
- (2) The application must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

47 Application for ballot not conducted under section 65

- (1) An existing organisation concerned in a proposed amalgamation may lodge in the Industrial Registry an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 65.
- (2) The application must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

48 Lodging “yes” case

- (1) Subject to section 60, an existing organisation concerned in a proposed amalgamation may lodge a written statement of not more than 2,000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.
- (2) The statement must be lodged with the application that is lodged under section 44 in relation to the amalgamation.

Division 4—Role of AEC

49 Ballots to be conducted by AEC

All ballots under this Part are to be conducted by the AEC.

50 Notification of AEC

- (1) Where an application is lodged under section 44 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the AEC of the application.
- (2) On being notified of the application, the AEC must immediately take such action as it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

51 Providing information etc. to electoral officials

- (1) An electoral official who is authorised, in writing, by the AEC for the purposes of a proposed amalgamation may, where it is reasonably necessary for the purposes of any ballot that may be required or is required in relation to the amalgamation, by written notice, require an officer or employee of the organisation concerned or a branch of the organisation concerned:
 - (a) to give to the electoral official, within the period (being a period of not less than 7 days after the notice is given), and in the manner, specified in the notice, any information within the knowledge or in the possession of the person; and
 - (b) to produce or make available to the electoral official, at a reasonable time (being a time not less than 7 days after the notice is given) and place specified in the notice, any documents:
 - (i) in the custody or under the control of the person; or
 - (ii) to which the person has access.
- (2) An officer or employee of an organisation or branch of an organisation commits an offence if he or she fails to comply with a requirement made under subsection (1).

Maximum penalty: 30 penalty units.

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- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A person is not excused from giving information or producing or making available a document under this section on the ground that the information or the production or making available of the document might tend to incriminate the person or expose the person to a penalty.

- (6) However:

- (a) giving the information or producing or making available the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing or making available the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, subsection 52(3).

- (7) If any information or document specified in a notice under subsection (1) is kept in electronic form, the electoral official may require it to be made available in that form.

52 Declaration by secretary etc. of organisation

- (1) If a requirement is made under subsection 51(1) in relation to the register, or part of the register, kept by an organisation under section 230, the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:

- (a) signed by the person making it; and

- (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

Division 5—Procedure for approval of amalgamation

53 Fixing hearing in relation to amalgamation etc.

Where an application is lodged under section 44 in relation to a proposed amalgamation, the Commission:

- (a) must immediately fix a time and place for hearing submissions in relation to:
 - (i) the granting of an approval for the submission of the amalgamation to ballot; and
 - (ii) if an application for a declaration under section 43 was lodged with the application—the making of a declaration under section 43 in relation to the amalgamation; and
 - (iii) if an application was lodged under section 46 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
 - (iv) if an application was lodged under section 47 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 65—the granting of the approval; and
- (b) must ensure that all organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

54 Submissions at amalgamation hearings

- (1) Submissions at a hearing arranged under subsection 43(3) or section 53 may only be made under this section.
- (2) Submissions may be made by the applicants.
- (3) Submissions may be made by another person only with the leave of the Commission and may be made by the person only in relation to a prescribed matter.

55 Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.

Approval must be given if certain conditions satisfied

- (1) If, at the conclusion of the hearing arranged under section 53 in relation to a proposed amalgamation, the Commission is satisfied that:
- (a) the amalgamation does not involve the registration of an association as an organisation; and
 - (b) a person who is not eligible for membership of an existing organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
 - (c) any proposed alteration of the name of an existing organisation concerned in the amalgamation will not result in the organisation having a name that is the same as the name of another organisation or is so similar to the name of another organisation as to be likely to cause confusion; and
 - (d) any proposed alterations of the rules of an existing organisation comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards or collective agreements, and are not contrary to law; and
 - (e) any proposed de-registration of an existing organisation complies with this Schedule and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot.

Approval generally refused if conditions not satisfied

- (2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

Approval may be given if conditions will be satisfied later

- (3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may:

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- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

Permission to alter amalgamation scheme

- (4) A permission under paragraph (3)(a):
 - (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation) by resolution of its committee of management; and
 - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
 - (c) may be given subject to conditions.

Powers of Commission if conditions or undertakings breached

- (5) If:
 - (a) the Commission:
 - (i) gives a permission under paragraph (3)(a) subject to conditions; or
 - (ii) accepts an undertaking under paragraph (3)(b); and
 - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;the Commission may:
 - (c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing organisations concerned in the proposed amalgamation; or
 - (d) give directions and orders:

- (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (6) Subsection (5) does not limit by implication the powers that the Commission has apart from that subsection.

Powers of Commission to adjourn proceeding

- (7) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.
- (8) Subsection (7) does not limit by implication the power of the Commission to adjourn the proceeding at any stage.

56 Objections in relation to amalgamation involving extension of eligibility rules etc.

- (1) Objection to a matter involved in a proposed amalgamation may only be made to the Commission under this section.
- (2) Objection may be made to the Commission in relation to the amalgamation only if the Commission has refused to approve, under section 55, the submission of the amalgamation to ballot.
- (3) Objection may be made by a prescribed person on a prescribed ground.
- (4) The Commission is to hear, as prescribed, all objections duly made to the amalgamation.

57 Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.

Approval must be given if certain conditions satisfied

- (1) If, after the prescribed time allowed for making objections under section 56 in relation to a proposed amalgamation and after hearing any objections duly made to the amalgamation, the Commission:
 - (a) finds that no duly made objection is justified; and
 - (b) is satisfied that, so far as the amalgamation involves:

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- (i) the registration of an association; or
 - (ii) a change in the name of an organisation; or
 - (iii) an alteration of the rules of an organisation; or
 - (iv) the de-registration of an organisation under this Part;
- it complies with, and is not contrary to, this Schedule, the Workplace Relations Act, awards and collective agreements and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot.

Approval generally refused if conditions not satisfied

- (2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

Approval may be given if conditions will be satisfied later

- (3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may:
- (a) permit the applicants to alter the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
 - (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation;
- and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

Permission to alter amalgamation scheme

- (4) A permission under subparagraph (3)(a)(i):

- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
 - (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
 - (c) may be given subject to conditions.
- (5) A permission under subparagraph (3)(a)(ii):
- (a) may, despite anything in the rules of an existing organisation concerned in the proposed amalgamation, authorise the organisation to alter the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
 - (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
 - (c) may be given subject to conditions.

Powers of Commission if conditions or undertakings breached

- (6) If:
- (a) the Commission:
 - (i) gives a permission under paragraph (3)(a) subject to conditions; or
 - (ii) accepts an undertaking under paragraph (3)(b); and
 - (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;
- the Commission may:
- (c) amend the scheme for the amalgamation, including:
 - (i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

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- (ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or
- (d) give directions and orders:
 - (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.
- (7) Subsection (6) does not limit by implication the powers that the Commission has apart from that subsection.

Powers of Commission to adjourn proceeding

- (8) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.
- (9) Subsection (8) does not limit by implication the power of the Commission to adjourn the proceeding at any stage.

58 Fixing commencing and closing days of ballot

- (1) If the Commission approves, under section 55 or 57, the submission of a proposed amalgamation to ballot, the Commission must, after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.
- (2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless:
 - (a) the Commission is satisfied that the AEC requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or
 - (b) the existing organisations concerned in the amalgamation request the Commission to fix a later day.
- (3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.
- (4) The Commission may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

- (5) Subsection (4) does not limit by implication the powers of the person conducting a ballot under this Part.

59 Roll of voters for ballot

The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Commission fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later):

- (a) have the right under the rules of the existing organisation concerned to vote at such a ballot; or
- (b) if the rules of the existing organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

60 “Yes” case and “no” case for amalgamation

“Yes” statement may be altered

- (1) If an existing organisation concerned in a proposed amalgamation lodges a statement under section 48 in relation to the amalgamation, the Commission may permit the organisation to alter the statement.

Members of organisation may lodge “no” statement

- (2) Not later than 7 days before the day fixed under section 53 for hearing submissions in relation to the amalgamation, members of the organisation (being members whose number is at least the required minimum number) may lodge in the Industrial Registry a written statement of not more than 2,000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

“No” statement may be altered

- (3) The Commission may permit a statement lodged under subsection (2) to be altered.

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“Yes” and “no” statements to be sent to voters

- (4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if those statements have been altered or amended, those statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

2 or more “no” statements must be combined

- (5) If 2 or more statements in opposition to the amalgamation are duly lodged in the Industrial Registry under subsection (2):
- (a) the Commission must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2,000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and
 - (b) the statement prepared by the Commission must accompany the ballot paper for the amalgamation as if it had been the sole statement lodged under subsection (2).

Commission may correct factual errors in statements

- (6) The Commission may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Schedule.

Statements may include photos etc. if Commission approves

- (7) A statement mentioned in subsection (1) or (2) may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

Certain statements not required to be sent to voters

- (9) Subsection (4) and paragraph (5)(b) do not apply to a ballot that is not conducted under section 65.

Note: Ballots conducted under section 65 are secret postal ballots.

Definition

- (10) In this section:

required minimum number, in relation to an organisation, means:

- (a) 5% of the total number of members of the organisation on the day on which the application was lodged under section 44 in relation to the proposed amalgamation concerned; or
- (b) 1,000;

whichever is the lesser.

61 Alteration and amendment of scheme

Permission to alter amalgamation scheme

- (1) The Commission may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing organisations concerned in the amalgamation to alter the scheme for the amalgamation, including:
- (a) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or
 - (b) any proposed alterations of the rules of the existing organisations concerned in the amalgamation.

Permission relating to rules of new organisations

- (2) A permission under paragraph (1)(a):
- (a) may, despite anything in the rules of any association proposed to be registered as an organisation in relation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
 - (b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules

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of the association, may be followed, or is to be followed, by the committees of management in that regard; and

(c) may be given subject to conditions.

Permission relating to rules of existing organisations

(3) A permission under paragraph (1)(b):

(a) may, despite anything in the rules of an existing organisation concerned in a proposed amalgamation, authorise the organisation to amend the scheme (including any proposed alterations of the rules of the organisation, but not including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

Powers of Commission if conditions breached

(4) If:

(a) the Commission gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the Commission may:

(c) amend the scheme for the amalgamation, including:

(i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or

(d) give directions and orders:

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

(5) Subsection (4) does not limit by implication the powers that the Commission has apart from that subsection.

Outline of scheme must change if scheme changes

- (6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

62 Outline of scheme for amalgamation

- (1) The outline of the scheme for a proposed amalgamation may, if the Commission approves, consist of more than 3,000 words.
- (2) The outline may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (3) The Commission:
- (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing organisations concerned in the amalgamation to alter the outline; and
 - (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Schedule.

63 Exemption from ballot

- (1) If:
- (a) an application was lodged under section 46 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
 - (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant organisation on the day on which the application was lodged;
- the Commission must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.
- (2) If the exemption is granted, the members of the applicant organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

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64 Approval for ballot not conducted under section 65

If:

- (a) an application was lodged under section 47 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 65; and
- (b) the proposal provides for:
 - (i) the ballot to be by secret ballot of the members of the organisation; and
 - (ii) the ballot to be held at duly constituted meetings of the members; and
 - (iii) the ballot to be conducted by the AEC; and
 - (iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
 - (v) the distribution or publication of:
 - (A) the outline of the scheme for the amalgamation; and
 - (B) the statements mentioned in subsections 60(1) and (2); and
 - (vi) absent voting; and
 - (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the Commission is satisfied, after consulting with the Electoral Commissioner:
 - (i) that the proposal is practicable; and
 - (ii) that approval of the proposal is likely:
 - (A) to result in participation by members of the organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 65; and
 - (B) to give the members of the organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Commission must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, approve the proposal.

65 Secret postal ballot of members

Ballot on proposed principal amalgamation

- (1) If the Commission approves, under section 55 or 57, the submission of a proposed amalgamation to ballot, the AEC must, in relation to each of the existing organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the organisation on the question whether they approve the proposed principal amalgamation.

Ballot at same time on proposed alternative amalgamation

- (2) If the scheme for the amalgamation contains a proposed alternative provision, the AEC must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

Same ballot paper to be used for both ballots

- (3) If, under subsection (2), the AEC is required to conduct 2 or more ballots of the members of an organisation at the same time, the same ballot paper is to be used for both or all the ballots.

Counting of votes in alternative amalgamation ballot

- (4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Schedule.

Copy of outline to be sent to voters

- (5) A copy of the outline of the scheme for the amalgamation as lodged under this Part, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

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Conduct of ballot

- (6) In a ballot conducted under this section, each completed ballot paper must be returned to the AEC as follows:
- (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
 - (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.
- (8) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

Organisation may be exempt from requirements of this section

- (9) This section does not apply to an existing organisation concerned in the amalgamation if:
- (a) the Commission has granted the organisation an exemption under section 63 from the requirement that a ballot be held in relation to the proposed amalgamation; or
 - (b) the Commission has approved under section 64 a proposal by the organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

66 Determination of approval of amalgamation by members

Where the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation concerned in the amalgamation, the members of the organisation approve the amalgamation if, and only if:

- (a) where a declaration under section 43 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case:
 - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
 - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

67 Further ballot if amalgamation not approved

- (1) If:
 - (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation; and
 - (b) the members of the organisation do not approve the amalgamation;the existing organisations concerned in the amalgamation may jointly lodge in the Industrial Registry a further application under section 44 for approval for the submission of the amalgamation to ballot.
- (2) If the application is lodged within 12 months after the result of the ballot is declared, the Commission may order:
 - (a) that any step in the procedure provided by this Part be dispensed with in relation to the proposed amalgamation; or
 - (b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;and the Commission may give such directions and make such further orders as the Commission considers necessary or desirable.
- (3) Subsection (2) does not by implication require a further application under section 44 to be lodged within the 12 month period mentioned in that subsection.

68 Post-ballot report by AEC

- (1) After the completion of a ballot under this Part, the AEC must give a report on the conduct of the ballot to:
 - (a) the Federal Court; and
 - (b) the Industrial Registrar; and
 - (c) each applicant under section 44.
- (2) The report must include details of the prescribed matters.
- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the ballot contained, at the time of the ballot:
 - (a) an unduly large proportion of members' addresses that were not current; or
 - (b) an unduly large proportion of members' addresses that were workplace addresses;

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this fact must be included in the report.

- (4) Subsection (3) applies only in relation to postal ballots.

69 Inquiries into irregularities

- (1) Not later than 30 days after the result of a ballot under this Part is declared, application may be made to the Federal Court, as prescribed, for an inquiry by the Court into alleged irregularities in relation to the ballot.
- (2) If the Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Court may:
- (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
 - (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;
- and may make such further orders as it considers necessary or desirable.
- (3) The regulations may make provision with respect to the procedure for inquiries by the Court into alleged irregularities in relation to ballots under this Part, and for matters relating to, or arising out of, inquiries.

70 Approval of amalgamation

- (1) If the members of each of the existing organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Part.
- (2) If:
- (a) the scheme for a proposed amalgamation contains an alternative provision; and
 - (b) the members of one or more of the existing organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
 - (c) the members of 2 or more of the organisations (in paragraph (d) called the **approving organisations**) approve a proposed alternative amalgamation; and

- (d) where one of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;
the proposed alternative amalgamation is approved for the purposes of this Part.

71 Expenses of ballot

The expenses of a ballot under this Part are to be borne by the Commonwealth.

72 Offences in relation to ballot

Interference with ballot papers

- (1) A person commits an offence in relation to a ballot if the person:
- (a) impersonates another person with the intention of:
 - (i) securing a ballot paper to which the impersonator is not entitled; or
 - (ii) casting a vote; or
 - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
 - (c) fraudulently puts a ballot paper or other paper:
 - (i) into a ballot box or other ballot receptacle; or
 - (ii) into the post; or
 - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
 - (e) records a vote that the person is not entitled to record; or
 - (f) records more than one vote; or
 - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
 - (h) provides a ballot paper without authority; or
 - (i) obtains a ballot paper which the person is not entitled to obtain; or
 - (j) has possession of a ballot paper which the person is not entitled to possess; or

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- (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

Hindering the ballot, threats and bribes etc.

- (2) A person commits an offence in relation to a ballot if the person:
 - (a) hinders or obstructs the taking of the ballot; or
 - (b) uses any form of intimidation or inducement to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; or
 - (c) threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
 - (i) any vote or omission to vote; or
 - (ii) any support of, or opposition to, voting in a particular manner; or
 - (iii) any promise of any vote, omission, support or opposition; or
 - (d) gives, or promises or offers to give, any property or benefit of any kind with the intention of influencing or affecting anything referred to in subparagraph (c)(i), (ii) or (iii); or
 - (e) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that anything referred to in subparagraph (c)(i), (ii) or (iii) will be influenced or affected in any way; or
 - (f) counsels or advises a person entitled to vote to refrain from voting.

Maximum penalty: 30 penalty units.

Secrecy of vote

- (3) A person (the **relevant person**) commits an offence in relation to a ballot if:
 - (a) the relevant person requests, requires or induces another person:
 - (i) to show a ballot paper to the relevant person; or

- (ii) to permit the relevant person to see a ballot paper; in such a manner that the relevant person can see the vote while the ballot paper is being marked or after it has been marked; or
- (b) in the case where the relevant person is a person performing duties for the purposes of the ballot—the relevant person shows another person, or permits another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

Division 6—Amalgamation taking effect

73 Action to be taken after ballot

- (1) The scheme of a proposed amalgamation that is approved for the purposes of this Part takes effect in accordance with this section.
- (2) If the Commission is satisfied that:
 - (a) the period, or the latest of the periods, within which application may be made to the Federal Court under section 69 in relation to the amalgamation has ended; and
 - (b) any application to the Federal Court under section 69 has been disposed of, and the result of any fresh ballot ordered by the Court has been declared; and
 - (c) there are no proceedings (other than civil proceedings) pending against any of the existing organisations concerned in the amalgamation in relation to:
 - (i) contraventions of this Schedule, the Workplace Relations Act or other Commonwealth laws; or
 - (ii) breaches of:
 - (A) awards or collective agreements; or
 - (B) orders made under this Schedule, the Workplace Relations Act or other Commonwealth laws; and
 - (d) any obligation that an existing organisation has under a law of the Commonwealth that is not fulfilled by the time the amalgamation takes effect will be regarded by the proposed amalgamated organisation as an obligation it is bound to fulfil under the law concerned;the Commission must, after consultation with the existing organisations, by notice published as prescribed, fix a day (in this Division called the *amalgamation day*) as the day on which the amalgamation is to take effect.
- (3) On the amalgamation day:
 - (a) if the proposed amalgamated organisation is not already registered—the Industrial Registrar must enter, in the register kept under paragraph 13(1)(a), such particulars in relation to

the organisation as are prescribed, and the date of the entry;
and

- (b) any proposed alteration of the rules of an existing organisation concerned in the amalgamation takes effect; and
- (c) the Commission must de-register the proposed de-registering organisations; and
- (d) the persons who, immediately before that day, were members of a proposed de-registering organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

(4) If:

- (a) the Commission has been given an undertaking, for the purposes of paragraph (2)(d), that an amalgamated organisation will fulfil an obligation; and
- (b) after giving the amalgamated organisation an opportunity to be heard, the Commission determines that the organisation has not complied with the undertaking;

the Commission may make any order it considers appropriate to require the organisation to comply with the undertaking.

74 Assets and liabilities of de-registered organisation become assets and liabilities of amalgamated organisation

- (1) On the amalgamation day, all assets and liabilities of a de-registered organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.
- (2) For all purposes and in all proceedings, an asset or liability of a de-registered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

75 Resignation from membership

When the day on which the proposed amalgamation is to take effect is fixed, section 174 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in subsection 174(2) to 2 weeks were a reference to one week or such lesser period as the Commission directs.

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76 Effect of amalgamation on awards, orders and collective agreements

On and from the amalgamation day:

- (a) an award, an order of the Commission or a collective agreement that was, immediately before that day, binding on a proposed de-registering organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and
- (b) the award, order or agreement has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award, order or agreement to a de-registered organisation included references to the amalgamated organisation.

77 Effect of amalgamation on agreement under section 151

- (1) Unless the scheme of a proposed amalgamation otherwise provides, an agreement in force under section 151 to which a de-registered organisation was a party continues in force on and from the amalgamation day as if references in the agreement to the de-registered organisation were references to the amalgamated organisation.
- (2) The Industrial Registrar must enter in the register kept under paragraph 13(1)(a) particulars of the effect of the amalgamation on the agreement.

78 Instruments

- (1) On and after the amalgamation day, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect.
- (2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to a de-registered organisation were a reference to the amalgamated organisation.

79 Pending proceedings

Where, immediately before the amalgamation day, a proceeding to which this Part applies was pending in a court or before the Commission:

- (a) the amalgamated organisation is, on that day, substituted for each de-registered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated organisation were, and had always been, the de-registered organisation.

80 Division applies despite laws and agreements prohibiting transfer etc.

- (1) This Division applies, and must be given effect to, despite anything in:
 - (a) the Workplace Relations Act or any other Commonwealth, State or Territory law; or
 - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Division, and nothing done by a person because of, or for a purpose connected with or arising out of, this Division:
 - (a) is to be regarded as:
 - (i) placing an organisation or other person in breach of contract or confidence; or
 - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
 - (b) is to be regarded as placing an organisation or other person in breach of:
 - (i) any Commonwealth, State or Territory law; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
 - (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), where, but for this section, the consent of a person would be necessary in order to give effect to

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this Division in a particular respect, the consent is taken to have been given.

81 Amalgamated organisation to take steps necessary to carry out amalgamation

- (1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Division in relation to the amalgamation, are fully effective.
- (2) The Federal Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

82 Certificates in relation to land and interests in land

Where:

- (a) land or an interest in land becomes, under this Division, land or an interest in land of the amalgamated organisation; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
 - (iii) states that the land or interest has, under this Division, become land or an interest in land of the amalgamated organisation;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) deal with, and give effect to, the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory; and
- (d) register the matter in the same way as dealings in land or interests in land of that kind are registered.

83 Certificates in relation to charges

Where:

- (a) the amalgamated organisation under an amalgamation becomes, under this Division, the holder of a charge; and
 - (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the charge; and
 - (iii) states that the amalgamated organisation has, under this Division, become the holder of the charge;
- is lodged with the Australian Securities and Investments Commission;

that Commission may:

- (c) register the matter in the same way as assignments of charges are registered; and
- (d) deal with, and give effect to, the certificate as if it were a notice of assignment of the charge that had been properly lodged with that Commission.

84 Certificates in relation to shares etc.

Where:

- (a) the amalgamated organisation becomes, under this Division, the holder of a share, debenture or interest in a company; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the share, debenture or interest; and
 - (iii) states that the amalgamated organisation has become, under this Division, the holder of the share, debenture or interest;

is delivered to the company;

the company must take all steps necessary to register or record the matter in the same way as transfers of shares, debentures or interests in the company are registered or recorded.

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85 Certificates in relation to other assets

Where:

- (a) an asset (other than an asset to which section 82, 83 or 84 applies) becomes, under this Division, an asset of the amalgamated organisation; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Division, become an asset of the amalgamated organisation;

is given to the person or authority who has, under Commonwealth, State or Territory law, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (d) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

86 Other matters

The regulations may provide for any other matters relating to giving effect to an amalgamation.

87 Federal Court may resolve difficulties

- (1) Where any difficulty arises in relation to the application of this Division to a particular matter, the Federal Court may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite anything contained in this Schedule, the Workplace Relations Act or in any other Commonwealth law or any State or Territory law.

Division 7—Validation

88 Validation of certain acts done in good faith

- (1) Subject to this section and to section 90, an act done in good faith for the purposes of a proposed or completed amalgamation by:
 - (a) an organisation or association concerned in the amalgamation; or
 - (b) the committee of management of such an organisation or association; or
 - (c) an officer of such an organisation or association;is valid despite any invalidity that may later be discovered in or in connection with the act.
- (2) For the purposes of this section:
 - (a) an act is treated as done in good faith until the contrary is proved; and
 - (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
 - (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
 - (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.
- (3) This section applies:
 - (a) to an act whenever done (including an act done before the commencement of this section); and
 - (b) to an act done to or by an association before it became an organisation.
- (4) Nothing in this section affects:
 - (a) the operation of an order of the Federal Court made before the commencement of this section; or

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- (b) the operation of section 69, 81 or 87 or Part 2 of Chapter 11 (validation provisions for organisations).

89 Validation of certain acts after 4 years

- (1) Subject to subsection (2) and section 90, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by:
 - (a) an organisation or association concerned in the amalgamation; or
 - (b) the committee of management of such an organisation or association; or
 - (c) an officer of such an organisation or association;the act is taken to have complied with this Part and the rules of the organisation or association.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of that 4 years.
- (3) This section applies:
 - (a) to an act whenever done (including an act done before the commencement of this section); or
 - (b) to an act done to or by an association before it became an organisation.

90 Orders affecting application of section 88 or 89

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 88 or 89 in relation to an act would do substantial injustice, having regard to the interests of:
 - (a) the organisation or association concerned; or
 - (b) members or creditors of the organisation or association concerned; or
 - (c) persons having dealings with the organisation or association concerned;the Court must, by order, declare accordingly.

- (2) Where a declaration is made, section 88 or 89, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
- (3) The Court may make an order under subsection (1) on the application of the organisation or association concerned, a member of the organisation or association concerned or any other person having a sufficient interest in relation to the organisation or association concerned.

91 Federal Court may make orders in relation to consequences of invalidity

- (1) An organisation or association, a member of an organisation or association or any other person having a sufficient interest in relation to an organisation or association may apply to the Federal Court for a determination of the question whether an invalidity has occurred in a proposed or completed amalgamation concerning the organisation or association.
- (2) On an application under subsection (1), the Court may make such determination as it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Court may make such orders as it considers appropriate:
 - (a) to rectify the invalidity or cause it to be rectified; or
 - (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
 - (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:
 - (a) the organisation or association concerned; or
 - (b) any member or creditor of the organisation or association concerned; or

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- (c) any person having dealings with the organisation or association concerned.
- (6) This section applies:
 - (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
 - (b) to an invalidity occurring in relation to an association before it became an organisation.

Part 3—Withdrawal from amalgamations

Division 1—General

92 Object of Part

The object of this Part is to provide for:

- (a) certain organisations that have taken part in amalgamations (either under this Schedule or the Workplace Relations Act as in force before the commencement of this Part) to be reconstituted and re-registered; and
- (b) branches of organisations of that kind to be formed into organisations and registered;

in a way that is fair to the members of the organisations concerned and the creditors of those organisations.

93 Definitions etc.

- (1) In this Part, unless the contrary intention appears:

amalgamated organisation, in relation to an amalgamation, means the organisation of which members of a de-registered organisation became members under paragraph 73(3)(d) but does not include any such organisation that was subsequently de-registered under Part 2.

asset has the same meaning as in Part 2.

authorised person, in relation to a completed withdrawal from amalgamation, means a person authorised by the rules or the committee of management of the newly registered organisation.

ballot means a ballot conducted under Division 2.

charge has the same meaning as in Part 2.

completed withdrawal from amalgamation means a proposed withdrawal from amalgamation that has taken effect.

constituent member, in relation to a constituent part of an amalgamated organisation, means:

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- (a) in the case of a separately identifiable constituent part—a member of the amalgamated organisation who is included in that part; or
- (b) in any other case—a member of the amalgamated organisation who would be eligible for membership of the constituent part if:
 - (i) the constituent part; or
 - (ii) the organisation of which the constituent part was a branch;as the case requires, were still registered as an organisation with the same rules as it had when it was de-registered under Part 2.

constituent part, in relation to an amalgamated organisation, means:

- (a) a separately identifiable constituent part; or
- (b) a part of the membership of the amalgamated organisation that would have been eligible for membership of:
 - (i) an organisation de-registered under Part 2 in connection with the formation of the amalgamated organisation; or
 - (ii) a State or Territory branch of such a de-registered organisation;if the de-registration had not occurred.

debenture has the same meaning as in Part 2.

holder, in relation to a charge, has the same meaning as in Part 2.

instrument has the same meaning as in Part 2.

instrument to which this Part applies, in relation to a completed withdrawal from amalgamation, means an instrument that immediately before the withdrawal day is an instrument:

- (a) to which the amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation is a party; or
- (b) that was given to, by, or in favour of, the amalgamated organisation; or
- (c) in which a reference is made to the amalgamated organisation; or

- (d) under which any right or liability accrues or may accrue to the amalgamated organisation in relation to the constituent part of the organisation and its members.

interest has the same meaning as in Part 2.

invalidity has the same meaning as in Part 2.

irregularity includes a breach of the rules of an organisation, but in Division 4 does not include an irregularity in relation to a ballot.

liability has the same meaning as in Part 2.

newly registered organisation means an organisation registered under section 110.

proceeding to which this Part applies, in relation to a completed withdrawal from amalgamation, means a proceeding to which an amalgamated organisation was a party immediately before the withdrawal day.

proposed withdrawal from amalgamation means the proposed carrying out of arrangements in relation to an amalgamated organisation under which a separately identifiable constituent part of the organisation is to withdraw from the organisation.

separately identifiable constituent part, in relation to an amalgamated organisation, means:

- (a) if an organisation de-registered under Part 2 in connection with the formation of the amalgamated organisation remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part; or
 - (b) if a State or Territory branch of such a de-registered organisation under its rules as in force immediately before its de-registration remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part.
- withdrawal day*, in relation to a completed withdrawal from amalgamation, means the day fixed under paragraph 109(1)(a) in relation to the withdrawal from amalgamation.
- (2) For the purposes of this Part, an organisation is taken to have been de-registered under Part 2 in connection with the formation of an

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amalgamated organisation if the de-registration occurred in connection with the formation of:

- (a) the amalgamated organisation; or
- (b) another organisation that was subsequently de-registered under Part 2 in connection with the formation of:
 - (i) the amalgamated organisation; or
 - (ii) an organisation that, through one or more previous applications of this subsection, is taken to have been de-registered under Part 2 in connection with the formation of the amalgamated organisation.

Division 2—Ballots for withdrawal from amalgamated organisations

94 Applications to the Commission for ballots

- (1) An application may be made to the Commission for a secret postal ballot to be held, to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation, if:
 - (a) the constituent part became part of the organisation as a result of an amalgamation under:
 - (i) Division 7 of Part 15 of the Workplace Relations Act (as in force before the commencement of this Part) after 1 February 1991; or
 - (ii) Part 2 of this Chapter; and
 - (b) the amalgamation occurred no less than 2 years prior to the date of the application; and
 - (c) the application is made:
 - (i) if the amalgamation occurred before 31 December 1996—before the period of 3 years after the commencement of this subparagraph has elapsed or, if a longer period is prescribed, before that longer period has elapsed; or
 - (ii) if the amalgamation occurred after 31 December 1996—before the period of 5 years after the amalgamation occurred has elapsed.
- (2) However, an application cannot be made if:
 - (a) during the last 12 months, the Commission has rejected an application for a ballot to be held in relation to the constituent part of the organisation; or
 - (b) a ballot was held that rejected the withdrawal of the constituent part.
- (3) The application may be made by:
 - (a) the prescribed number of constituent members; or
 - (aa) a person authorised to make the application by the prescribed number of constituent members; or

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- (b) a committee of management elected entirely or substantially by the constituent members, whether by a direct voting system or a collegiate electoral system; or
 - (c) if the application relates to a separately identifiable constituent part—the committee of management of that part; or
 - (d) a person who is:
 - (i) either a constituent member or a member of a committee of management referred to in paragraph (b) or (c); and
 - (ii) authorised to make the application by a committee of management referred to in paragraph (b) or (c).
- (4) The application must be in the prescribed form and must contain such information as is prescribed.
- (5) A constituent member of an amalgamated organisation who is not a financial member is taken not to be a constituent member for the purposes of subsection (3).
- (6) The regulations may prescribe the manner in which an authorisation for the purposes of paragraph (3)(aa) and subparagraph (3)(d)(ii) must be made.

95 Outline of proposed withdrawal

- (1) The application must be accompanied by a written outline of the proposal for the constituent part to withdraw from the amalgamated organisation. Subject to subsection (2), the outline must:
- (a) provide, in no more than 3,000 words, sufficient information on the proposal to enable the constituent members to make informed decisions in relation to the proposed withdrawal; and
 - (b) address particulars of any proposal by the applicant for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part; and
 - (c) address such other matters as are prescribed.
- (2) The outline may, if the Commission allows, consist of more than 3,000 words.

- (3) The outline must be a fair and accurate representation of the proposed withdrawal and must address any matters prescribed for the purposes of paragraph (1)(b) in a fair and accurate manner.
- (3A) If the applicant has insufficient information to prepare an outline that complies with subsection (3), the applicant may request the Industrial Registrar to:
 - (a) give the applicant all information in the possession of the Industrial Registrar that may be relevant in the preparation of the outline; or
 - (b) direct the amalgamated organisation to give the applicant all information in the possession of the organisation that may be relevant in the preparation of the outline.
- (3B) The Industrial Registrar may provide that information, or direct the amalgamated organisation to provide that information.
- (3C) The amalgamated organisation must comply with a direction of the Industrial Registrar under subsection (3B).
- (4) If the Commission is not satisfied that the outline complies with subsection (3), the Commission must order the making of such amendments to the outline as it considers are needed for the outline to comply with that subsection.

96 Filing the “yes” case

- (1) The applicant or applicants may file with the Commission a written statement of no more than 2,000 words in support of the proposal for the constituent part to withdraw from the amalgamated organisation.
- (2) The statement must either:
 - (a) accompany the application; or
 - (b) be filed within such later time as the Commission allows.
- (3) The Commission may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Schedule.

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97 Filing the “no” case

- (1) The amalgamated organisation may file with the Commission a written statement of no more than 2,000 words in opposition to the proposal for the constituent part to withdraw from the organisation.
- (2) The statement must be filed either:
 - (a) not later than 7 days before the day set down for the hearing of the application in question by the Commission; or
 - (b) within such later time as the Commission allows.
- (3) The Commission may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Schedule.

98 Provisions relating to outlines and statements of “yes” and “no” cases

- (1) An outline under section 95 or a statement under section 96 or 97 may, if the Commission allows, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (2) The Commission may allow an outline under section 95, or a statement under section 96 or 97, to be amended by whoever filed the outline or statement with the Commission.

99 Notifying of applications for ballots

- (1) If an application is made under section 94, the Industrial Registrar must immediately notify the AEC of the application.
- (2) On being notified of the application, the AEC must immediately take such action as it considers necessary or desirable to enable it to conduct, as quickly as possible, any ballot that may be required as a result of the application.

100 Orders for ballots

- (1) The Commission must order that a vote of the constituent members be taken by secret postal ballot, to decide whether the constituent part of the amalgamated organisation should withdraw from the organisation, if the Commission is satisfied that:

- (a) the application for the ballot is validly made under section 94; and
 - (b) the outline under section 95 relating to the application:
 - (i) is a fair and accurate representation of the proposal for withdrawal from the organisation; and
 - (ii) addresses any matters mentioned in paragraph 95(1)(b) or prescribed for the purposes of paragraph 95(1)(c) in a fair and accurate manner; and
 - (c) the proposal for withdrawal from the organisation complies with any requirements specified in the regulations.
- (2) In considering whether to order that a ballot be held, the Commission may hear from:
- (a) an applicant for the ballot; and
 - (b) the amalgamated organisation; and
 - (c) a creditor of the amalgamated organisation; and
 - (d) any other person who would be affected by the withdrawal of the constituent part from the amalgamated organisation.
- (3) If the Commission orders that a ballot be held, it may make such orders as it thinks fit in relation to the conduct of the ballot.

101 Financial members only eligible to vote

A constituent member of an amalgamated organisation is not eligible to vote in a ballot under this Division unless the person:

- (a) is a financial member of the organisation; or
- (b) is in a class of members prescribed for the purposes of this section.

102 Conduct of ballots

- (1) All ballots are to be conducted by the AEC in accordance with the regulations. The expenses of conducting such a ballot are to be borne by the Commonwealth.
- (2) The ballot paper sent to the constituent members of a constituent part of an amalgamated organisation in connection with a proposal for the constituent part to withdraw from the amalgamated organisation must be accompanied by:

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- (a) a copy of the outline under section 95 relating to the proposed withdrawal; and
 - (b) if there is a statement under section 96 in support of the proposed withdrawal—a copy of that statement; and
 - (c) if there is a statement under section 97 in opposition to the proposed withdrawal—a copy of that statement; and
 - (d) the declaration envelope and other envelope required for the purposes of the postal ballot.
- (3) In a ballot conducted under this section, each completed ballot paper must be returned to the AEC as follows:
- (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
 - (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.

103 Providing information etc. to electoral officials

- (1) An electoral official may, if:
- (a) it is reasonably necessary for the purposes of a ballot that may be, or is, required to be held; and
 - (b) the official is authorised by the AEC under this section for the purposes of the ballot;
- require (by written notice) an officer or employee of the amalgamated organisation concerned or of a branch of the organisation:
- (c) to give to the official, within the period (of not less than 7 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
 - (d) to produce or make available to the official, at a reasonable time (being a time not less than 7 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access.
- (2) An officer or employee of an organisation or branch of an organisation commits an offence if he or she fails to comply with a requirement made under subsection (1).
- (3) An offence against subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

Maximum penalty: 30 penalty units.

- (5) A person is not excused from giving information or producing or making available a document under this section on the ground that the information or the production or making available of the document might tend to incriminate the person or expose the person to a penalty.

- (6) However:

- (a) giving the information or producing or making available the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing or making available the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, subsection 104(3).

- (7) If any information or document specified in a notice under subsection (1) is kept in electronic form, the electoral official may require it to be made available in that form.

104 Declaration by secretary etc. of organisation

- (1) If a requirement is made under subsection 103(1) in relation to the register, or part of the register, kept by an organisation under section 230, the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:
- (a) signed by the person making it; and

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- (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

105 Offences in relation to ballots

Interference with ballot papers

- (1) A person commits an offence in relation to a ballot if the person:
 - (a) impersonates another person with the intention of:
 - (i) securing a ballot paper to which the impersonator is not entitled; or
 - (ii) casting a vote; or
 - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
 - (c) fraudulently puts a ballot paper or other paper:
 - (i) into a ballot box or other ballot receptacle; or
 - (ii) into the post; or
 - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
 - (e) records a vote that the person is not entitled to record; or
 - (f) records more than one vote; or
 - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
 - (h) provides a ballot paper without authority; or
 - (i) obtains a ballot paper which the person is not entitled to obtain; or
 - (j) has possession of a ballot paper which the person is not entitled to possess; or
 - (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

Hindering the ballot, threats and bribes etc.

- (2) A person commits an offence in relation to a ballot if the person:
- (a) hinders or obstructs the taking of the ballot; or
 - (b) uses any form of intimidation or inducement to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; or
 - (c) threatens, offers or suggests, or uses, causes or inflicts any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
 - (i) any vote or omission to vote; or
 - (ii) any support of, or opposition to, voting in a particular manner; or
 - (iii) any promise of any vote, omission, support or opposition; or
 - (d) gives, or promises or offers to give, any property or benefit of any kind with the intention of influencing or affecting anything referred to in subparagraph (c)(i), (ii) or (iii); or
 - (e) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that anything referred to in subparagraph (c)(i), (ii) or (iii) will be influenced or affected in any way; or
 - (f) counsels or advises a person entitled to vote to refrain from voting.

Maximum penalty: 30 penalty units.

Secrecy of vote

- (3) A person (the **relevant person**) commits an offence in relation to a ballot if:
- (a) the relevant person requests, requires or induces another person:
 - (i) to show a ballot paper to the relevant person; or
 - (ii) to permit the relevant person to see a ballot paper;in such a manner that the relevant person can see the vote while the ballot paper is being marked or after it has been marked; or

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- (b) in the case where the relevant person is a person performing duties for the purposes of the ballot—the relevant person shows another person, or permits another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

106 Certificate showing particulars of the ballot

- (1) Within 14 days after the closing day of a ballot, the electoral official conducting the ballot must prepare, date and sign a certificate showing, in relation to the ballot:
 - (a) the total number of persons on the roll of voters; and
 - (b) the total number of ballot papers issued; and
 - (c) the total number of ballot papers received by the electoral official; and
 - (d) the total number of votes in favour of the question set out on the ballot paper; and
 - (e) the total number of votes not in favour of the question set out on the ballot paper; and
 - (f) the total number of informal ballot papers.
- (2) Immediately after signing a certificate referred to in subsection (1), the electoral official must give a copy of the certificate to:
 - (b) the Industrial Registrar; and
 - (c) if the applicant was a person mentioned in paragraph 94(3)(aa), (b), (c) or (d)—each applicant; and
 - (d) the amalgamated organisation from which the constituent part withdrew or sought to withdraw.
- (3) Immediately after signing a certificate referred to in subsection (1), the electoral official must make a copy of the certificate available in any way that it considers appropriate to each applicant under paragraph 94(3)(a).

107 Post-ballot report by AEC

- (1) After the completion of the ballot, the AEC must give a report on the conduct of the ballot to:
 - (b) the Industrial Registrar; and

- (c) if the applicant was a person mentioned in paragraph 94(3)(aa), (b), (c) or (d)—each applicant; and
 - (d) the amalgamated organisation from which the constituent part withdrew or sought to withdraw.
- (2) After the completion of the ballot, the AEC must make a report on the conduct of the ballot available in any way that it considers appropriate to each applicant under paragraph 94(3)(a).
 - (3) The report must include details of the prescribed matters.
 - (4) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the ballot, contained at the time of the ballot:
 - (a) an unduly large proportion of members' addresses that were not current; or
 - (b) an unduly large proportion of members' addresses that were workplace addresses;this fact must be included in the report.

108 Inquiries into irregularities

- (1) Not later than 30 days after the result of a ballot under this Part is declared, application may be made to the Commission, as prescribed, for an inquiry by the Commission into alleged irregularities in relation to the ballot.
- (2) If the Commission finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Commission may:
 - (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
 - (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;and may make such further orders as it considers necessary or desirable.
- (3) The regulations may make provision with respect to the procedure for inquiries by the Commission into alleged irregularities in relation to ballots under this Part, and for matters relating to, or arising out of, inquiries.

Section 108A

108A Powers of the Commission to be exercised by President or Full Bench

The powers of the Commission under this Division are exercisable by:

- (a) the President; or
- (b) if the President directs—a Full Bench of which the President is a member.

Division 3—Giving effect to ballots

109 Determining the day of withdrawal

- (1) If more than 50% of the formal votes cast in a ballot are in favour of a constituent part of an amalgamated organisation withdrawing from the organisation, the Federal Court must, on application:
 - (a) determine the day on which the withdrawal is to take effect; and
 - (b) make such orders as are necessary to apportion the assets and liabilities of the amalgamated organisation between the amalgamated organisation and the constituent part; and
 - (c) make such other orders as it thinks fit in connection with giving effect to the withdrawal.
- (2) In making an order under paragraph (1)(b), the Court must have regard to:
 - (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a State or Territory branch, was de-registered under Part 2 in connection with the formation of the amalgamated organisation; and
 - (b) any change in the net value of those assets or liabilities that has occurred since the amalgamation; and
 - (c) any proposal for the apportionment of the assets and liabilities of the amalgamated organisation and the constituent part contained in the outline under section 95 relating to the application for the ballot; and
 - (d) if the constituent part is a separately identifiable constituent part—the proportion of the members of the amalgamated organisation that are included in the constituent part; and
 - (e) the interests of the creditors of the amalgamated organisation.
- (3) An application to the Court under subsection (1) may be made by:
 - (a) the prescribed number of constituent members; or
 - (b) a person authorised to make the application by the prescribed number of constituent members; or
 - (c) a committee of management elected entirely or substantially by the constituent members, whether by a direct voting system or a collegiate electoral system; or

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- (d) if the application relates to a separately identifiable constituent part—the committee of management of that part; or
 - (e) a person who is:
 - (i) either a constituent member or a member of a committee of management referred to in paragraph (c) or (d); and
 - (ii) authorised to make the application by a committee of management referred to in paragraph (c) or (d).
- (4) A constituent member of an amalgamated organisation who is not a financial member is taken not to be a constituent member for the purposes of subsection (3).
- (5) The application must be in the prescribed form and must contain such information as is prescribed.
- (6) The regulations may prescribe the manner in which an authorisation for the purposes of paragraph (3)(b) and subparagraph (e)(ii) must be made.

110 Registration of constituent part

The Industrial Registrar must, with effect from the day determined under paragraph 109(1)(a):

- (a) register the constituent part as an organisation in the register kept under paragraph 13(1)(a); and
- (b) enter in the register such other particulars in relation to the organisation as are prescribed.

111 Choice of organisation following withdrawal of separately identifiable constituent part

- (1) This section applies in the case of a withdrawal from amalgamation under this Part by a separately identifiable constituent part of an amalgamated organisation.
- (2) As soon as practicable after the constituent part is registered as an organisation under section 110, a Registrar must send a written statement in accordance with subsection (3) to each person who, immediately before that registration, was a constituent member of the constituent part.

- (3) The statement must:
 - (a) inform the person of the withdrawal from amalgamation of the constituent part; and
 - (b) invite the person to give written notice, within a period of 28 days after being sent the statement (the *notice period*), to the amalgamated organisation or to the newly registered organisation that:
 - (i) the person wants to remain a member of the amalgamated organisation; or
 - (ii) the person wants to become a member of the newly registered organisation; and
 - (c) explain the effect of responding, or failing to respond, to the invitation.
- (4) As soon as practicable after the amalgamated organisation receives a notice under paragraph (3)(b), it must notify the newly registered organisation of the receipt.
- (5) As soon as practicable after the newly registered organisation receives a notice under paragraph (3)(b), it must notify the amalgamated organisation of the receipt.
- (6) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to become a member of the newly registered organisation, he or she:
 - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day on which the notice is received by the amalgamated organisation or the newly registered organisation (as the case may be); and
 - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (7) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to remain a member of the amalgamated organisation, he or she remains a member of the amalgamated organisation.

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- (7A) If a person referred to in subsection (2) fails to give written notice in accordance with paragraph (3)(b), he or she:
- (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day after the end of the notice period; and
 - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (8) A person who ceases to be a member of the amalgamated organisation because of the operation of subsection (6):
- (a) is not liable to make any payment because the person gave no notice, or insufficient notice, of ceasing to be such a member under the rules of the organisation; and
 - (b) otherwise, remains liable for such payments as are due in accordance with those rules.
- (9) Despite subsection (7A), if a person to whom that subsection would apply, at any time before the day upon which the constituent part is registered as an organisation under section 110, gives notice in writing to the amalgamated organisation or to the applicant for a ballot under section 94 that he or she wishes to remain a member of the amalgamated organisation after the registration of the constituent part as an organisation under section 110, that person remains a member of the amalgamated organisation.
- (10) As soon as practicable after the end of the notice period, the amalgamated organisation must notify the newly registered organisation of any notices under subsection (9) it has received.
- (11) As soon as practicable after the end of the notice period, the newly registered organisation must notify the amalgamated organisation of any notices under subsection (9) the applicant under section 94 has received.

112 Members of amalgamated organisation may join newly registered organisation

A person who is a member of the amalgamated organisation from which the constituent part withdrew to form a newly registered organisation may become a member of the newly registered

organisation without payment of entrance fee if the person is eligible for membership of it.

113 Orders of the Commission, awards etc. made before withdrawal

- (1) This section applies to an order of the Commission, an award or a collective agreement that was, immediately before the day the registration takes effect, binding on the amalgamated organisation in relation to the constituent part of the organisation and its members.
- (2) On and from the day the registration takes effect, the order, award or collective agreement:
 - (a) becomes binding on the newly registered organisation and its members; and
 - (b) has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the order, award or agreement to the amalgamated organisation included references to the newly registered organisation.

113A Collective agreements made after withdrawal

- (1) This section applies to a collective agreement that:
 - (a) is made on or after the day the registration takes effect; and
 - (b) is binding on the amalgamated organisation; and
 - (c) covers employees who are eligible to be members of the newly registered organisation.
- (2) On and from the day the agreement becomes binding on the amalgamated organisation, it also:
 - (a) becomes binding on the newly registered organisation and its members; and
 - (b) has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the agreement to the amalgamated organisation included references to the newly registered organisation.
- (3) Subsection (2) ceases to have effect on the day occurring 5 years after the day on which the registration of the newly registered organisation takes effect.

114 Effect of withdrawal on agreement under section 151

- (1) An agreement:
 - (a) in force under section 151 immediately before the day on which registration of a newly registered organisation takes effect; and
 - (b) to which the amalgamated organisation from which a constituent part has withdrawn to form the newly registered organisation is a party;continues in force on and from that day as if references in the agreement to the amalgamated organisation included a reference to the newly registered organisation.
- (2) The Industrial Registrar must enter in the register kept under paragraph 13(1)(a) particulars of the effect of the withdrawal from amalgamation on the agreement.

115 Instruments

- (1) On and after the withdrawal day, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect.
- (2) Subject to section 109, the instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to the amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation included a reference to the newly registered organisation.

116 Pending proceedings

If an amalgamated organisation from which a constituent part has withdrawn to form a newly registered organisation was, immediately before the withdrawal day, a party to a proceeding that:

- (a) was pending at that day; and
- (b) concerns, wholly or in part, the interests of the constituent members of the constituent part;

then, on and after that day, the newly registered organisation:

- (c) in the case of proceedings that concern wholly the interests of the constituent members—is substituted for the amalgamated organisation in those proceedings and has the same rights and

obligations in the proceedings as the amalgamated organisation had; and

- (d) in the case of proceedings that concern in part the interests of the constituent members—becomes a party to the proceedings and has the same rights and obligations in the proceedings as the amalgamated organisation has.

117 Division applies despite laws and agreements prohibiting transfer etc.

- (1) This Division applies, and must be given effect to, despite anything in:
- (a) the Workplace Relations Act or any other Commonwealth, State or Territory law; or
 - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Division, and nothing done by a person because of, or for a purpose connected with or arising out of, this Division:
- (a) is to be regarded as:
 - (i) placing an organisation or other person in breach of contract or confidence; or
 - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
 - (b) is to be regarded as placing an organisation or other person in breach of:
 - (i) any Commonwealth, State or Territory law; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
 - (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Division in a particular respect, the consent is taken to have been given.

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118 Amalgamated organisation, constituent part and newly registered organisation to take necessary steps

- (1) The following must take such steps as are necessary to ensure that the withdrawal from amalgamation, and the operation of this Division in relation to the withdrawal from amalgamation, are fully effective:
 - (a) the amalgamated organisation concerned;
 - (b) the constituent part concerned;
 - (c) the newly registered organisation concerned.
- (2) The Federal Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

119 Certificates in relation to land and interests in land

Where:

- (a) land or an interest in land becomes, under this Division, land or an interest in land of a newly registered organisation; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the land or interest, whether by reference to a map or otherwise; and
 - (iii) states that the land or interest has, under this Division, become land or an interest in land of the newly registered organisation;

is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated;

the officer with whom the certificate is lodged may:

- (c) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the newly registered organisation that had been properly executed under the law of the State or Territory.

120 Certificates in relation to charges

Where:

- (a) a newly registered organisation becomes, under this Division, the holder of a charge; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the charge; and
 - (iii) states that the newly registered organisation has, under this Division, become the holder of the charge;is lodged with the Australian Securities and Investments Commission;

that Commission may:

- (c) register the matter in the same way as assignments of charges are registered; and
- (d) deal with, and give effect to, the certificate as if it were a notice of assignment of the charge that had been properly lodged with that Commission.

121 Certificates in relation to shares etc.

Where:

- (a) a newly registered organisation becomes, under this Division, the holder of a share, debenture or interest in a company; and
- (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the share, debenture or interest; and
 - (iii) states that the newly registered organisation has become, under this Division, the holder of the share, debenture or interest;

is delivered to the company;

the company must take all steps necessary to register or record the matter in the same way as transfers of shares, debentures or interests in the company are registered or recorded.

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122 Certificates in relation to other assets

Where:

- (a) an asset (other than an asset to which section 119, 120 or 121 applies) becomes, under this Division, an asset of a newly registered organisation; and
 - (b) a certificate that:
 - (i) is signed by an authorised person; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has, under this Division, become an asset of the newly registered organisation;
- is given to the person or authority who has, under Commonwealth, State or Territory law, responsibility for keeping a register in relation to assets of that kind;

the person or authority may:

- (c) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (d) deal with, and give effect to, the certificate as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

123 Holding office after withdrawal

- (1) The rules of a newly registered organisation may provide that a person who:
 - (a) was elected to office (the *constituent office*) in the constituent part that withdrew from an amalgamated organisation to form the new registered organisation; and
 - (b) held that office immediately before withdrawal day;holds the equivalent office in the newly registered organisation as if he or she were elected under the rules of the newly registered organisation.
- (2) However, the rules may not permit a person to hold office after the later of:
 - (a) the day that would have been the person's last day of term in the constituent office if the withdrawal had not occurred; and
 - (b) the first anniversary of the withdrawal day.

124 Other matters

The regulations may provide for any other matters relating to giving effect to the withdrawal of constituent parts from amalgamated organisations.

125 Federal Court may resolve difficulties

- (1) If any difficulty arises in relation to the application of this Part to a particular matter, the Federal Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite any Commonwealth, State or Territory law.

Division 4—Validation

126 Validation of certain acts done in good faith

(1) Subject to this section and to section 128, an act done in good faith for the purposes of a proposed or completed withdrawal from amalgamation by:

- (a) the amalgamated organisation concerned; or
- (b) the committee of management, or an officer, of that organisation; or
- (c) the constituent part concerned; or
- (d) the committee of management, or an officer, of that part; or
- (e) the newly registered organisation concerned; or
- (f) the committee of management, or an officer, of that organisation;

is valid despite any invalidity that may later be discovered in or in connection with the act.

(2) For the purposes of this section:

- (a) an act is treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
- (c) an invalidity in the making or altering of the outline of the proposed withdrawal from amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
- (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

(3) This section applies to an act whenever done (including an act done before the commencement of this section).

- (4) Nothing in this section affects:
- (a) the operation of an order of the Federal Court made before the commencement of this section; or
 - (b) the operation of section 108, 118 or 125 or Part 2 of Chapter 11 (validation provisions for organisations).

127 Validation of certain acts after 4 years

- (1) Subject to subsection (2) and section 128, after the end of 4 years from the day an act is done for the purposes of a proposed or completed withdrawal from amalgamation by:
- (a) the amalgamated organisation concerned; or
 - (b) the committee of management, or an officer, of that organisation; or
 - (c) the constituent part concerned; or
 - (d) the committee of management, or an officer, of that part; or
 - (e) the newly registered organisation concerned; or
 - (f) the committee of management, or an officer, of that organisation;
- the act is taken to have complied with this Part and the rules of the organisation.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of that 4 years.
- (3) This section applies to an act whenever done (including an act done before the commencement of this section).

128 Orders affecting application of section 126 or 127

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 126 or 127 in relation to an act would do substantial injustice, having regard to the interests of:
- (a) the amalgamated organisation from which a constituent part withdrew to form a newly registered organisation, or the constituent part; or
 - (b) members or creditors of the amalgamated organisation or the constituent part; or

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- (c) persons having dealings with the amalgamated organisation or the constituent part; or
 - (d) the newly registered organisation; or
 - (e) members or creditors of the newly registered organisation; or
 - (f) persons having dealings with the newly registered organisation;
- the Court must, by order, declare accordingly.
- (2) Where a declaration is made, section 126 or 127, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
 - (3) The Court may make an order under subsection (1) on the application of:
 - (a) the amalgamated organisation; or
 - (b) the constituent part; or
 - (c) the newly registered organisation; or
 - (d) a member of, or any other person having a sufficient interest in relation to, a body referred to in paragraph (a), (b) or (c).

129 Federal Court may make orders in relation to consequences of invalidity

- (1) Any of the following may apply to the Federal Court for a determination of the question whether an invalidity has occurred in a proposed withdrawal from amalgamation or completed withdrawal from amalgamation:
 - (a) the amalgamated organisation concerned;
 - (b) the constituent part concerned;
 - (c) the newly registered organisation concerned;
 - (d) a member of, or any other person having a sufficient interest in relation to, a body referred to in paragraph (a), (b) or (c).
- (2) On an application under subsection (1), the Court may make such determination as it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind mentioned in that subsection has occurred, the Court may make such orders as it considers appropriate:
 - (a) to rectify the invalidity or cause it to be rectified; or

- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
 - (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:
- (a) the amalgamated organisation; or
 - (b) a member or creditor of the amalgamated organisation; or
 - (c) the constituent part; or
 - (d) a constituent member of the constituent part; or
 - (e) the newly registered organisation; or
 - (f) a member or creditor of the newly registered organisation; or
 - (g) any other person having dealings with the amalgamated organisation, the constituent part or the newly registered organisation.
- (6) This section applies to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section).

Division 5—Miscellaneous

130 Certain actions etc. not to constitute breach of rules of amalgamated organisation

- (1) Neither of the following constitutes a breach of the rules of an amalgamated organisation:
 - (a) an act done, or omitted to be done, under or for the purposes of this Part, or regulations made for the purposes of this Part;
 - (b) an act done, or omitted to be done, in connection with the proposal of, or preparation for, an act or omission of a kind referred to in paragraph (a).

- (2) The following are examples of acts and omissions to which subsection (1) applies:
 - (a) making an application under section 94;
 - (b) supporting, or supporting the making of, an application under section 94;
 - (c) participating in, or encouraging a person to participate in, a ballot under Division 2;
 - (d) not participating in a ballot under Division 2;
 - (e) encouraging a person not to participate in a ballot under Division 2;
 - (f) casting a vote in a particular way in a ballot under Division 2;
 - (g) encouraging a person to cast a vote in a particular way in a ballot under Division 2;
 - (h) complying with an order or requirement made under this Part or regulations made for the purposes of this Part; or
 - (i) encouraging a person to resign his or her membership of the amalgamated organisation from which the constituent part withdrew to form the newly registered organisation so that the person can become a member of the newly registered organisation.

131 Amalgamated organisation not to penalise members etc.

- (1) The amalgamated organisation, or an officer or member of the organisation, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on:

- (a) a member or officer of the organisation; or
 - (b) a branch, or other part, of the organisation;
- because the member, officer, branch or part concerned does, or proposes to do, an act or omission referred to in section 130.
- (2) The Federal Court may, if the Court considers it appropriate in all the circumstances, make one or more of the following orders in respect of conduct that contravenes subsection (1):
 - (a) an order imposing on a person whose conduct contravenes that subsection a penalty of not more than:
 - (i) in the case of a body corporate—100 penalty units; or
 - (ii) in any other case—20 penalty units;
 - (b) an order requiring the person not to carry out a threat made by the person, or not to make any further threat;
 - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the conduct or remedy its effects;
 - (d) any other consequential orders.
 - (3) An application for an order under subsection (2) may be made by:
 - (a) a person against whom the conduct is being, has been, or is threatened to be, taken; or
 - (b) any other person prescribed by the regulations.
 - (4) For the purposes of this section, action done by one of the following bodies or persons is taken to have been done by an amalgamated organisation:
 - (a) the committee of management of the amalgamated organisation;
 - (b) an officer or agent of the amalgamated organisation acting in that capacity;
 - (c) a member or group of members of the amalgamated organisation acting under the rules of the organisation;
 - (d) a member of the amalgamated organisation, who performs the function of dealing with an employer on behalf of other members of the organisation, acting in that capacity.
 - (5) Paragraphs (4)(c) and (d) do not apply if:
 - (a) a committee of management of the amalgamated organisation; or
 - (b) a person authorised by the committee; or
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(c) an officer of the amalgamated organisation;
has taken reasonable steps to prevent the action.

(6) In this section:

amalgamated organisation includes a branch of an amalgamated organisation.

officer, in relation to an amalgamated organisation, includes:

- (a) a delegate or other representative of the organisation; and
- (b) an employee of the organisation.

Chapter 4—Representation orders

Part 1—Simplified outline

132 Simplified outline

This Chapter enables the Commission to make orders, in the context of demarcation disputes, about the representation rights of organisations of employees.

The Commission must take certain factors into account before making a representation order (see section 135).

Part 2—Representation orders

133 Orders about representation rights of organisations of employees

- (1) Subject to this Chapter and subsection 151(6), the Commission may, on the application of an organisation, an employer or the Minister, make the following orders in relation to a demarcation dispute:
 - (a) an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;
 - (b) an order that an organisation of employees that does not have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees is to have that right;
 - (c) an order that an organisation of employees is not to have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.

Note: Section 151 deals with agreements between organisations of employees and State unions.

- (2) The Commission may, on application by an organisation, an employer or the Minister, vary an order made under subsection (1).

134 Preconditions for making of orders

The Commission must not make an order unless the Commission is satisfied that:

- (a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, member or employee of the organisation:
 - (i) is preventing, obstructing or restricting the performance of work; or

- (ii) is harming the business of an employer; or
- (b) the consequences referred to in subparagraph (a)(i) or (ii):
 - (i) have ceased, but are likely to recur; or
 - (ii) are imminent;as a result of such conduct or threatened conduct.

135 Factors to be taken into account by Commission

In considering whether to make an order under section 133, the Commission must have regard to the wishes of the employees who are affected by the dispute and, where the Commission considers it appropriate, is also to have regard to:

- (a) the effect of any order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is a party to the dispute or who is a member of an organisation that is a party to the dispute; and
- (b) any agreement or understanding of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees; and
- (c) the consequences of not making an order for any employer, employees or organisation involved in the dispute; and
- (d) any other order made by the Commission, in relation to another demarcation dispute involving the organisation to which the order under this section would relate, that the Commission considers to be relevant.

136 Order may be subject to limits

The order may be subject to conditions or limitations.

137 Organisation must comply with order

- (1) An organisation to which the order applies must comply with the order.
- (2) The Federal Court may, on application by the Minister or a person or organisation affected by an order made under section 133, make such orders as it thinks fit to ensure compliance with that order.

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138 Exercise of Commission's powers under this Chapter

The powers of the Commission under this Chapter are exercisable only by a Full Bench or Presidential Member.

138A Representation rights of former State-registered associations

- (1) Regulations made for the purposes of this subsection may modify the way in which this Chapter applies in relation to an organisation that, before becoming registered under this Schedule, was a State-registered association or a transitionally registered association.
- (2) Without limiting subsection (1), the regulations may specify the weight that the Commission is to give, in making an order in relation to the rights of such an organisation to represent the interests under this Schedule or the Workplace Relations Act of a particular class or group of employees, to a State demarcation order.

Chapter 5—Rules of organisations

Part 1—Simplified outline of Chapter

139 Simplified outline

This Chapter sets out the requirements that organisations' rules must comply with (see Part 2).

Part 3 sets out processes available to members who think that their organisation's rules do not comply with this Chapter, or are not being followed.

Part 2—Rules of organisations

Division 1—General

140 Organisations to have rules

- (1) An organisation must have rules that make provision as required by this Schedule.
- (2) A rule of an organisation making provision required by this Schedule to be made may be mandatory or directory.

141 Rules of organisations

- (1) The rules of an organisation:
 - (a) must specify the purposes for which the organisation is formed and the conditions of eligibility for membership; and
 - (b) must provide for:
 - (i) the powers and duties of the committees of the organisation and its branches, and the powers and duties of holders of offices in the organisation and its branches; and
 - (ii) the manner of summoning meetings of members of the organisation and its branches, and meetings of the committees of the organisation and its branches; and
 - (iii) the removal of holders of offices in the organisation and its branches; and
 - (iv) the control of committees of the organisation and its branches respectively by the members of the organisation and branches; and
 - (v) the manner in which documents may be executed by or on behalf of the organisation; and
 - (vi) the manner of notifying the Commission of industrial disputes; and
 - (vii) the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
 - (viii) the resignation of members under section 174; and

- (ix) the manner in which the property of the organisation is to be controlled and its funds invested; and
 - (x) the yearly or other more frequent audit of the accounts; and
 - (xi) the conditions under which funds may be spent; and
 - (xii) the keeping of a register of the members, arranged, where there are branches of the organisation, according to branches; and
 - (xiii) the manner in which its rules may be altered; and
- (c) may provide for the removal from office of a person elected to an office in the organisation only where the person has been found guilty, under the rules of the organisation, of:
- (i) misappropriation of the funds of the organisation; or
 - (ii) a substantial breach of the rules of the organisation; or
 - (iii) gross misbehaviour or gross neglect of duty;
- or has ceased, under the rules of the organisation, to be eligible to hold the office; and
- (d) must require the organisation to inform applicants for membership, in writing, of:
- (i) the financial obligations arising from membership; and
 - (ii) the circumstances, and the manner, in which a member may resign from the organisation.

Note 1: Section 166 deals with entitlement to membership of organisations.

Note 2: See also section 179 (liability for arrears).

- (2) The rules of an organisation of employees may include provision for the eligibility for membership of the organisation of independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the organisation.
- (3) The rules of an organisation may also provide for any other matter.
- (4) In this section:

committee, in relation to an organisation or branch of an organisation, means a collective body of the organisation or branch that has powers of the kind mentioned in paragraph (1)(b) of the definition of ***office*** in section 9.

142 General requirements for rules

- (1) The rules of an organisation:
 - (a) must not be contrary to, or fail to make a provision required by this Schedule, the Workplace Relations Act, an award or a collective agreement, or otherwise be contrary to law; and
 - (b) must not be such as to prevent or hinder members of the organisation from:
 - (i) observing the law or the provisions of an award, an order of the Commission or a collective agreement; or
 - (ii) entering into written agreements under an award, an order of the Commission or a collective agreement; and
 - (c) must not impose on applicants for membership, or members, of the organisation, conditions, obligations or restrictions that, having regard to Parliament's intention in enacting this Schedule (see section 5) and the objects of this Schedule and the Workplace Relations Act, are oppressive, unreasonable or unjust; and
 - (d) must not discriminate between applicants for membership, or members, of the organisation on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) For the purposes of paragraph (1)(d), rules of an organisation are taken not to discriminate on the basis of age if the rules do not prevent the organisation setting its membership dues by reference to rates of pay even where those rates are set by reference to a person's age.

Division 2—Rules relating to elections for office

143 Rules to provide for elections for offices

- (1) The rules of an organisation:
 - (a) must provide for the election of the holder of each office in the organisation by:
 - (i) a direct voting system; or
 - (ii) a collegiate electoral system that, in the case of a full-time office, is a one-tier collegiate electoral system; and
 - (b) must provide for the conduct of every such election (including the acceptance or rejection of nominations) by a returning officer who is not the holder of any office in, or an employee of, the organisation or a branch, section or division of the organisation; and
 - (c) must provide that, if the returning officer conducting an election finds a nomination to be defective, the returning officer must, before rejecting the nomination, notify the person concerned of the defect and, where practicable, give the person the opportunity of remedying the defect within such period as is applicable under the rules, which must, where practicable, be not less than 7 days after the person is notified; and
 - (d) must make provision for:
 - (i) the manner in which persons may become candidates for election; and
 - (ii) the duties of returning officers; and
 - (iii) the declaration of the result of an election; and
 - (e) must provide that, where a ballot is required, it must be a secret ballot, and must make provision for:
 - (i) in relation to a direct voting system ballot (including a direct voting system ballot that is a stage of an election under a collegiate electoral system)—the day on which the roll of voters for the ballot is to be closed; and
 - (ii) absent voting; and
 - (iii) the conduct of the ballot; and

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- (iv) the appointment, conduct and duties of scrutineers to represent the candidates at the ballot; and
 - (f) must be such as to ensure, as far as practicable, that no irregularities can occur in relation to an election.
- (2) Without limiting section 142, the rules of an organisation relating to elections may provide for compulsory voting.
 - (3) The day provided for in the rules of an organisation as the day on which the roll of voters is to be closed (see paragraph (1)(e)) must be a day no earlier than 30 days, and no later than 7 days, before the day on which nominations for the election open.
 - (4) A reference in this section to the rules of an organisation includes a reference to the rules of a branch of the organisation.
 - (5) The reference in paragraph (1)(c) to a nomination being defective does not include a reference to a nomination of a person that is defective because the person is not qualified to hold the office to which the nomination relates.
 - (6) The rules providing for the day on which the roll of voters for a ballot is to be closed are not to be taken to prevent the correction of errors in the roll after that day.

144 Rules to provide for elections for office by secret postal ballot

- (1) Where the rules of an organisation provide for election for an office to be by a direct voting system, the rules must also provide that, where a ballot is required for such an election, it must be a secret postal ballot.
- (2) An organisation may lodge in the Industrial Registry an application for an exemption from subsection (1), accompanied by particulars of proposed alterations of the rules of the organisation, to provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot.
- (3) If the Industrial Registrar is satisfied, on application by an organisation under subsection (2):
 - (a) that the proposed alterations of the rules:
 - (i) comply with and are not contrary to this Schedule (other than subsection (1)), the Workplace Relations Act, awards or collective agreements; and

- (ii) are not otherwise contrary to law; and
 - (iii) have been decided on under the rules of the organisation; and
 - (b) that the conduct of a ballot under the rules of the organisation as proposed to be altered:
 - (i) is likely to result in a fuller participation by members of the organisation in the ballot than would result from a postal ballot; and
 - (ii) will afford to members entitled to vote an adequate opportunity of voting without intimidation;
- the Industrial Registrar may grant to the organisation an exemption from subsection (1).
- (4) Proposed alterations of the rules of an organisation referred to in subsection (2) take effect if and when the Industrial Registrar grants to the organisation an exemption from subsection (1).
 - (5) An exemption under subsection (3) remains in force until revoked under subsection (6).
 - (6) The Industrial Registrar may revoke an exemption granted to an organisation under subsection (3):
 - (a) on application by the organisation, if the Industrial Registrar is satisfied that the rules of the organisation comply with subsection (1); or
 - (b) if the Industrial Registrar is no longer satisfied:
 - (i) that the rules of the organisation provide for the conduct of elections of the kind referred to in subsection (1) by a secret ballot other than a postal ballot; or
 - (ii) of a matter referred to in paragraph (3)(b);and the Industrial Registrar has given the organisation an opportunity, as prescribed, to show cause why the exemption should not be revoked.
 - (7) Where the Industrial Registrar revokes an exemption granted to an organisation on the ground specified in paragraph (6)(b), the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the organisation as are, in the Industrial Registrar's opinion, necessary to bring them into conformity with subsection (1).
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- (8) An alteration of the rules of an organisation determined under subsection (7) takes effect on the date of the instrument.
- (9) Subsection 147(1) of the Workplace Relations Act does not apply in relation to a decision of the Industrial Registrar to grant an exemption under subsection (3).

Note: Subsection 147(1) of the Workplace Relations Act provides for appeals from certain decisions of the Industrial Registrar.
- (10) This section applies in relation to elections for offices in branches of organisations as if references to an organisation were references to a branch of an organisation.

145 Rules to provide for terms of office

- (1) The rules of an organisation must, subject to subsection (2), provide terms of office for officers in the organisation of no longer than 4 years without re-election.
- (2) The rules of an organisation, or a branch of an organisation, may provide that a particular term of office is extended for a specified period, where the extension is for the purpose of synchronising elections for offices in the organisation or branch, as the case may be.
- (3) The term of an office must not be extended under subsection (2) so that the term exceeds 5 years.
- (4) A reference in this section (other than subsection (2)) to the *rules of an organisation* includes a reference to the rules of a branch of the organisation.

146 Rules may provide for filling of casual vacancies

- (1) The rules of an organisation may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this section, in any other manner provided in the rules.
- (2) Rules made under subsection (1) must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds:
 - (a) 12 months; or
 - (b) three-quarters of the term of the office;

whichever is the greater.

- (3) Where, under rules made under subsection (1), a vacancy in an office in an organisation is filled otherwise than by an ordinary election, the person filling the vacancy must be taken, for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.
- (4) A reference in this section to the rules of an organisation includes a reference to the rules of a branch of the organisation.
- (5) In this section:

ordinary election means an election held under rules that comply with section 143.

relevant provisions, in relation to an organisation, means:

- (a) the provisions of this Schedule (other than this section); and
- (b) the rules of the organisation (other than rules made under subsection (1)) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election.

term, in relation to an office, means the total period for which the last person elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (having regard to any rule made under subsection 145(2)) to hold the office without being re-elected.

147 Model rules for conduct of elections

- (1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules for the conduct of elections for office. An organisation may adopt model rules in whole or in part, and with or without modification.
- (2) The Minister may, by signed instrument, delegate the power under subsection (1) to the Electoral Commissioner.

Note: The Minister may also delegate this power under section 343.

Division 3—Rules relating to conduct of officers and employees

148 Model rules about conduct of officers and employees

The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules about the conduct of officers and employees. An organisation may adopt the model rules in whole or in part, and with or without modification.

Note: Part 4 of Chapter 8 deals with the conduct of officers and employees.

Division 4—Other rules

Subdivision A—Loans, grants and donations

149 Rules to provide conditions for loans, grants and donations by organisations

- (1) The rules of an organisation must provide that a loan, grant or donation of an amount exceeding \$1,000 must not be made by the organisation unless the committee of management:
 - (a) has satisfied itself:
 - (i) that the making of the loan, grant or donation would be in accordance with the other rules of the organisation; and
 - (ii) in the case of a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
 - (b) has approved the making of the loan, grant or donation.
- (2) In spite of subsection (1), the rules of an organisation may provide for a person authorised by the rules to make a loan, grant or donation of an amount not exceeding \$3,000 to a member of the organisation if the loan, grant or donation:
 - (a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and
 - (b) is subject to a condition to the effect that, if the committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it must be repaid as determined by the committee.
- (3) In considering whether to approve a loan, grant or donation made under subsection (2), the committee of management must have regard to:
 - (a) whether the loan, grant or donation was made under the rules of the organisation; and
 - (b) in the case of a loan:
 - (i) whether the security (if any) given for the repayment of the loan is adequate; and

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- (ii) whether the arrangements for the repayment of the loan are satisfactory.
- (4) Nothing in subsection (1) requires the rules of an organisation to make provision of the kind referred to in that subsection in relation to payments made by the organisation by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the organisation.
- (5) In this section, a reference to an *organisation* includes a reference to a branch of an organisation.
- (6) For the purposes of the application of this Division to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

Subdivision B—Agreements between organisations and State unions

150 Definitions

In this Subdivision:

ineligible State members, in relation to an organisation, means the members of a State union who, under the eligibility rules of the organisation, are not eligible to be members of the organisation.

State Act means:

- (a) the *Industrial Relations Act 1996* of New South Wales; or
- (b) the *Industrial Relations Act 1999* of Queensland; or
- (c) the *Industrial Relations Act 1979* of Western Australia; or
- (d) the *Industrial and Employee Relations Act 1994* of South Australia; or
- (e) an Act of a State that is prescribed for the purposes of this Subdivision.

State union, in relation to an organisation, means:

- (a) an association of employees which is registered under a State Act; or
- (b) an association of employees in Tasmania which is neither registered under this Schedule nor part of an organisation registered under this Schedule;

and which is composed substantially of persons who, under the eligibility rules of the organisation, are eligible to be members of the organisation.

151 Membership agreements

- (1) The rules of an organisation of employees may authorise the organisation to enter into agreements in the prescribed form with State unions to the effect that members of the State union concerned who are ineligible State members are eligible to become members of the organisation under the agreement.
- (2) If, under rules made under subsection (1), an organisation enters into an agreement with a State union, the organisation must lodge a copy of the agreement in the Industrial Registry.

Note: This subsection is a civil penalty provision (see section 305).

- (3) The agreement does not come into force unless and until the Industrial Registrar enters particulars of the agreement in the register kept under paragraph 13(1)(a).
- (4) The Industrial Registrar must not enter particulars of the agreement in that register unless he or she has been directed by the Commission to do so.
- (5) The Commission must not give such a direction to the Industrial Registrar unless the Commission is satisfied that the agreement:
 - (a) is not contrary to:
 - (ia) Parliament's intention in enacting this Schedule (see section 5); or
 - (i) any object of this Schedule or the Workplace Relations Act; or
 - (ii) any subsisting order made by the Commission relating to the organisation's eligibility rules; or
 - (iii) any subsisting agreement or understanding of which the Commission is aware that deals with the organisation's entitlement to represent under this Schedule, or the Workplace Relations Act, the industrial interests of a particular class or group of employees; and
 - (b) was entered into only for the purpose of:
 - (i) overcoming any legal or practical difficulty that might arise in connection with the participation, or possible

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- participation, of ineligible State members in the administration of the organisation or in the conduct of its affairs; or
- (ii) encouraging and facilitating an amalgamation between the organisation and another organisation of employees.
- (6) An organisation is not entitled to represent under this Schedule, or the Workplace Relations Act, the industrial interests of persons who are eligible for membership of the organisation only under an agreement entered into under rules made under subsection (1).
- (7) If a person who became a member of an organisation under an agreement entered into under rules made under subsection (1) later becomes eligible for membership of the organisation under its eligibility rules, the organisation is not entitled to represent the industrial interests of the person until a record of the person's eligibility is entered in the register kept under paragraph 230(1)(a).
- (8) If it appears to the Commission:
- (a) of its own motion; or
- (b) on application by an interested person;
- that an agreement entered into under rules made under subsection (1) may no longer be operating for a purpose mentioned in subparagraph (5)(b)(i) or (ii), the Commission must give to the parties to the agreement an opportunity to make oral or written submissions as to whether the agreement is still operating for such a purpose.
- (9) If, after considering any such submissions and, in the case of an application under paragraph (8)(b), the matters raised by the applicant, the Commission is satisfied that the agreement is no longer operating for such a purpose, the Commission may, by order, terminate the agreement.
- (10) The Industrial Registrar must as soon as practicable:
- (a) give notice of the termination to each party to the agreement; and
- (b) enter particulars of the termination in the register kept under paragraph 13(1)(a).
- (11) If an organisation and a State union agree, in writing, to terminate an agreement entered into under rules made under subsection (1):

- (a) the organisation must lodge in the Industrial Registry a copy of the agreement to terminate; and
- (b) the Industrial Registrar must as soon as practicable enter particulars of the termination in the register kept under paragraph 13(1)(a).

Note: Paragraph (a) is a civil penalty provision (see section 305).

- (12) The termination of an agreement takes effect when particulars of the termination are entered in the register as mentioned in paragraph (10)(b) or (11)(b) and, when the termination takes effect, persons who became members of the organisation under the agreement (other than a person whose eligibility for membership of the organisation under its eligibility rules is recorded as mentioned in subsection (7)) cease to be members of the organisation.

152 Assets and liabilities agreements

- (1) The rules of an organisation of employees may authorise the organisation to enter into agreements with State unions setting out arrangements for the management and control of the assets and liabilities of the organisation and the State union concerned.
- (2) The agreements must be in the prescribed form.
- (3) If, under rules made under subsection (1), an organisation enters into an agreement with a State union, the organisation must lodge a copy of the agreement in the Industrial Registry.

Note: This subsection is a civil penalty provision (see section 305).

- (4) The agreement does not come into force unless and until the Industrial Registrar enters particulars of the agreement in the register kept under paragraph 13(1)(a).
- (5) The Industrial Registrar must not enter particulars of the agreement in that register unless he or she has been directed by the Commission to do so.
- (6) The Commission must not give such a direction to the Industrial Registrar unless the Commission is satisfied that the agreement:
 - (a) is not contrary to Parliament's intention in enacting this Schedule (see section 5) or any object of this Schedule or the Workplace Relations Act; and

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- (b) does not adversely affect the interests of any lessor, lessee or creditor of the organisation or State union.

153 Party to section 152 agreement may apply to Federal Court for orders

- (1) An organisation or a State union who is a party to an agreement made under section 152 (a *section 152 agreement*) may apply to the Federal Court for orders:
 - (a) requiring the other party to comply with the agreement; or
 - (b) resolving any difficulty in the operation or interpretation of the agreement;and the Court may make such orders as it thinks fit.
- (2) In making an order under subsection (1), the Court must have regard to the interests of any lessor, lessee or creditor of the organisation or State union.
- (3) An order made under subsection (1) has effect despite anything in the rules of the organisation or State union who are the parties to the agreement.

154 Termination of section 152 agreement

- (1) If an organisation and a State union agree, in writing, to terminate an agreement made under section 152 (a *section 152 agreement*), the termination has no effect unless the parties apply to the Federal Court for approval under this section and the Court gives its approval.
- (2) The Court must not approve the termination unless:
 - (a) the parties have made an agreement (a *termination agreement*) that makes appropriate provision for the management and control of the assets and liabilities of the organisation and State union after termination of the section 152 agreement; or
 - (b) the Court makes orders that will, in the Court's opinion, make appropriate provision for the management and control of the assets and liabilities of the organisation and State union after termination of the section 152 agreement.

- (3) In determining whether a termination agreement, or orders, make appropriate provision as required by subsection (2), the Court must have regard to the following factors:
 - (a) the positions of the organisation and State union in relation to their respective assets and liabilities before the section 152 agreement took effect;
 - (b) the fairness, in all the circumstances, of the manner in which relevant assets and liabilities acquired after the section 152 agreement took effect will be dealt with after termination of the agreement;
 - (c) how the interests of lessors, lessees or creditors of the organisation and the State union will be affected by the termination and subsequent arrangements;
 - (d) any other factor that the Court considers relevant.
- (4) If the Court approves a termination agreement, the Court must direct the Industrial Registrar to enter particulars of the agreement in the register kept under paragraph 13(1)(a), and particulars of any orders made by the Court that relate to the agreement.
- (5) A termination agreement takes effect on the day specified by the Court. The day specified by the Court must not be a day earlier than the day on which the Court approves the agreement.

Subdivision C—Miscellaneous

155 Exercise of Commission's powers under this Division

The powers of the Commission under this Division are exercisable only by a Presidential Member.

Division 5—Alteration of rules and evidence of rules

156 Industrial Registrar may determine alterations of rules

- (1) Where the rules of an organisation do not, in the Industrial Registrar's opinion, make provision required by this Schedule, the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Industrial Registrar's opinion, necessary to bring them into conformity with this Schedule.
- (2) Alterations determined under subsection (1) take effect on the date of the instrument.

157 Commission may determine alteration of rules where there has been a breach of an undertaking

- (1) If:
 - (a) in the course of an organisation being registered under section 19, an undertaking was given under subsection 19(2) to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and the eligibility rules of another organisation; and
 - (b) the first-mentioned organisation has breached the undertaking;the Commission may, by instrument, determine such alterations of the rules of the organisation as are, in the Commission's opinion, necessary to remove the overlap.
- (2) The Commission must give the organisation and the other organisation an opportunity, as prescribed, to be heard on the matter.
- (3) Alterations determined under subsection (1) take effect on the date of the instrument.

158 Change of name or alteration of eligibility rules of organisation

- (1) A change in the name of an organisation, or an alteration of the eligibility rules of an organisation, does not take effect unless the Commission consents to the change or alteration.
- (2) The Commission may consent to a change or alteration in whole or part, but must not consent unless the Commission is satisfied that the change or alteration has been made under the rules of the organisation.
- (3) The Commission must not consent to a change in the name of an organisation unless the Commission is satisfied that the proposed new name of the organisation:
 - (a) is not the same as the name of another organisation; and
 - (b) is not so similar to the name of another organisation as to be likely to cause confusion.
- (4) The Commission must not consent to an alteration of the eligibility rules of an organisation if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the Commission, another organisation:
 - (a) to which those persons could more conveniently belong; and
 - (b) that would more effectively represent those members.
- (5) However, subsection (4) does not apply if the Commission accepts an undertaking from the organisation seeking the alteration that the Commission considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of that organisation and the eligibility rules of the other organisation.
- (6) The Commission may refuse to consent to an alteration of the eligibility rules of an organisation if satisfied that the alteration would contravene an agreement or understanding to which the organisation is a party and that deals with the organisation's right to represent under this Schedule and the Workplace Relations Act the industrial interests of a particular class or group of persons.
- (7) The Commission may also refuse to consent to an alteration of the eligibility rules of an organisation if it:
 - (a) is satisfied that the alteration would change the effect of any order made by the Commission under section 133 about the

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right of the organisation to represent under this Schedule and the Workplace Relations Act the industrial interests of a particular class or group of employees; and

- (b) considers that such a change would give rise to a serious risk of a demarcation dispute which would prevent, obstruct or restrict the performance of work in an industry, or harm the business of an employer.
- (8) Subsections (6) and (7) do not limit the grounds on which the Commission may refuse to consent to an alteration of the eligibility rules of an organisation.
 - (9) Where the Commission consents, under subsection (1), to a change or alteration, the change or alteration takes effect on:
 - (a) where a date is specified in the consent—that date; or
 - (b) in any other case—the day of the consent.
 - (10) This section does not apply to a change in the name, or an alteration of the eligibility rules, of an organisation that is:
 - (a) determined by the Commission under subsection 163(7); or
 - (b) proposed to be made for the purposes of an amalgamation under Part 2 of Chapter 3 or Division 4 of Part 7 of Chapter 11; or
 - (c) proposed to be made for the purposes of a withdrawal from amalgamation under Part 3 of Chapter 3.

159 Alteration of other rules of organisation

- (1) An alteration of the rules (other than the eligibility rules) of an organisation does not take effect unless particulars of the alteration have been lodged in the Industrial Registry and a Registrar has certified that, in his or her opinion, the alteration:
 - (a) complies with, and is not contrary to, this Schedule, the Workplace Relations Act, awards and collective agreements; and
 - (b) is not otherwise contrary to law; and
 - (c) has been made under the rules of the organisation.
- (2) Where particulars of an alteration of the rules (other than the eligibility rules) of an organisation have been lodged in the Industrial Registry, a Registrar may, with the consent of the

organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

- (3) An alteration of rules that has been certified under subsection (1) takes effect on the day of certification.
- (4) This section does not apply in relation to an alteration of the rules of an organisation that is:
 - (a) proposed to be made in relation to an application for an exemption from subsection 144(1); or
 - (b) determined or certified by the Industrial Registrar under subsection 144(7) or section 156, 163, 246, 247 or 249; or
 - (c) proposed to be made for the purpose of an amalgamation under Part 2 of Chapter 3 or Division 4 of Part 7 of Chapter 11; or
 - (d) proposed to be made for the purposes of a withdrawal from amalgamation under Part 3 of Chapter 3.

160 Certain alterations of rules to be recorded

Where there has been a change in the name of an organisation, or an alteration of the eligibility rules of an organisation, under this Schedule, the Industrial Registrar must:

- (a) immediately enter, in the register kept under paragraph 13(1)(a), particulars of the change or alteration, and the date of effect of the change or alteration; and
- (b) as soon as practicable after the organisation produces its certificate of registration to the Industrial Registrar, amend the certificate accordingly and return it to the organisation.

161 Evidence of rules

In proceedings under this Schedule or the Workplace Relations Act, a copy of the rules of an organisation certified by a Registrar to be a true and correct copy is evidence of the rules of the organisation.

162 Powers of Commission

The powers of the Commission under this Division are exercisable only by a Presidential Member.

Part 3—Validity and performance of rules etc

163 Rules contravening section 142

Application for order declaring rules contravene section 142

- (1) A member, or an applicant for membership, of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.
- (2) If the application is made by a member, the order under this section may declare that the whole or a part of a rule of an organisation contravenes section 142 or that the rules of an organisation contravene section 142 in a particular respect.
- (3) If the application is made by an applicant for membership, the order under this section may declare that the whole or a part of a rule of an organisation contravenes paragraph 142(1)(c) or (d) or that the rules of an organisation contravene paragraph 142(1)(c) or (d) in a particular respect.
- (4) An organisation in relation to which an application is made under this section must be given an opportunity of being heard by the Court.
- (5) The Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the organisation an opportunity to alter its rules.

Effect of order

- (6) Where an order under this section declares that the whole or a part of a rule contravenes section 142, the rule or that part of the rule, as the case may be, is taken to be void from the date of the order.

Appropriate authority may alter organisation's rules

(7) Where:

- (a) the Court makes an order declaring as mentioned in subsection (2) or (3) in relation to the rules of an organisation; and
- (b) at the end of 3 months from the making of the order, the rules of the organisation have not been altered in a manner that, in the opinion of the appropriate authority, brings them into conformity with section 142 in relation to the matters that gave rise to the order;

the appropriate authority must, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine, by instrument, such alterations of the rules as will, in the appropriate authority's opinion, bring the rules into conformity with that section in relation to those matters.

Note: For the meaning of *appropriate authority* see subsection (12).

- (8) The appropriate authority may, on the application of the organisation made within the period of 3 months referred to in subsection (7) or within any extension of the period, extend, or further extend, the period.
- (9) Alterations determined under subsection (7) take effect on the date of the instrument.

Court may make interim orders

- (10) At any time after a proceeding under this section has been instituted, the Court may make any interim orders that it considers appropriate in relation to a matter relevant to the proceeding.
- (11) An order under subsection (10) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

Definitions

(12) In this section:

appropriate authority means:

- (a) in relation to the eligibility rules of an organisation—a Presidential Member of the Commission; or

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(b) in relation to the other rules of an organisation—the Industrial Registrar.

- (13) In this section, a reference to ***a rule, or the rules, of an organisation*** includes a reference to a rule, or the rules, of a branch of an organisation.

164 Directions for performance of rules

Application for order directing performance of rules

- (1) A member of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.

Note: For the meaning of ***order under this section***, see subsection (9).

- (2) Before making an order under this section, the Court must give any person against whom the order is sought an opportunity of being heard.
- (3) The Court may refuse to deal with an application for an order under this section unless it is satisfied that the applicant has taken all reasonable steps to try to have the matter that is the subject of the application resolved within the organisation.

Court may make interim orders

- (4) At any time after the making of an application for an order under this section, the Court may make any interim orders that it considers appropriate and, in particular, orders intended to further the resolution within the organisation concerned of the matter that is the subject of the application.
- (5) An order under subsection (4) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

Definition

- (9) In this section:

order under this section means an order giving directions for the performance or observance of any of the rules of an organisation by any person who is under an obligation to perform or observe those rules.

164A Directions to rectify breach of rule of organisation

Application for order

- (1) A member of an organisation may apply to the Federal Court for an order under subsection (4) in relation to the organisation.
- (2) Before making the order, the Court must give any person against whom the order is sought an opportunity of being heard.

Conditions for making order

- (3) The Court may make an order under subsection (4) in relation to an organisation if the Court is satisfied that:
 - (a) a person was under an obligation to perform or observe a rule or rules of the organisation; and
 - (b) the person breached the rule or rules; and
 - (c) the person acted unreasonably in so breaching the rule or rules.

Nature of order

- (4) Subject to section 164B, the Court may make an order directing one or more persons (who may be, or include, the person who breached the rule or rules) to do specified things that will, in the opinion of the Court, as far as is reasonably practicable, place the organisation in the position in which it would have been if the breach of the rule or rules had not occurred.
- (5) The Court may make the order whether or not, at the time of making the order, the person is a member or officer of the organisation.

164B Orders under sections 164 and 164A

Order must not invalidate election etc.

- (1) An order must not be made under section 164 or 164A that would have the effect of treating as invalid an election to an office in an organisation or a step in relation to such an election.

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Order must not require compensation

- (2) An order under section 164A does not include an order directing one or more persons to compensate an organisation for any loss or damage suffered by the organisation caused by the breach of the rule or rules.

Note: An application for a compensation order may be made under Part 2 of Chapter 10 of this Schedule.

Court may declare that rules contravene section 142

- (3) Where the Court, in considering an application under section 164 or 164A, finds that the whole or a part of a rule of the organisation concerned contravenes section 142 or that the rules of the organisation concerned contravene that section in a particular respect, the Court may, by order, make a declaration to that effect.
- (4) Section 163 (other than subsections (1) to (5) (inclusive)) applies in relation to an order made under subsection (3) of this section as if the order had been made under section 163.

Definition

- (5) In this section:

election includes a purported election that is a nullity.

Chapter 6—Membership of organisations

Part 1—Simplified outline of Chapter

165 Simplified outline

This Chapter sets out rules about membership of organisations. It covers entitlement to membership, circumstances in which a person may cease to be a member, recovery of money from members by organisations, and conscientious objection to membership.

This Chapter also gives the Federal Court a role in deciding a person's membership status.

Part 2—Entitlement to membership

166 Entitlement to become and to remain a member

Employee organisations

- (1) Subject to any award or order of the Commission, a person who is eligible to become a member of an organisation of employees under the eligibility rules of the organisation that relate to the occupations in which, or the industry or enterprise in relation to which, members are to be employed is, unless of general bad character, entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the organisation; and
- (b) to remain a member so long as the person complies with the rules of the organisation.

Note 1: Rules of an organisation must provide for the circumstances in which a person ceases to be a member of an organisation (see subparagraph 141(1)(b)(vii)).

Note 2: If a member fails to pay his or her membership dues for 24 months, this may result in the person ceasing to be a member, regardless of the rules of the organisation (see section 172).

Note 3: See also section 168, which deals with a special case of entitlement to membership (person treated as having been a member).

- (2) Subsection (1) does not entitle a person to remain a member of an organisation if the person ceases to be eligible to become a member and the rules of the organisation do not permit the person to remain a member.
- (3) A person who is qualified to be employed in a particular occupation, and seeks to be employed in the occupation:
- (a) is taken to be an employee for the purposes of this section; and
 - (b) in spite of anything in the rules of the organisation, is not to be treated as not being eligible for membership of an organisation merely because the person has never been employed in the occupation.

Employer organisations

- (4) Subject to subsection (5) and to any award or order of the Commission, an employer who is eligible to become a member of an organisation of employers is entitled, subject to payment of any amount properly payable in relation to membership:
- (a) to be admitted as a member of the organisation; and
 - (b) to remain a member so long as the employer complies with the rules of the organisation.
- (5) Subsection (4) does not entitle an employer:
- (a) to become a member of an organisation if the employer is:
 - (i) a natural person who is of general bad character; or
 - (ii) a body corporate whose constituent documents make provisions inconsistent with the purposes for which the organisation was formed; or
 - (b) to remain a member of an organisation if the employer ceases to be eligible to become a member and the rules of the organisation do not permit the employer to remain a member.

This section overrides inconsistent rules

- (6) Subsections (1) and (4) have effect in spite of anything in the rules of the organisation concerned, except to the extent that they expressly require compliance with those rules.

167 Federal Court may declare on person's entitlement to membership

Who may apply to Federal Court

- (1) Where a question arises as to the entitlement under section 166 of a person:
- (a) to be admitted as a member of an organisation (whether for the first time or after having resigned, or been removed, as a member of the organisation); or
 - (b) to remain a member of an organisation;
- application may be made to the Federal Court for a declaration as to the entitlement of the person under this section by either of the following:
- (c) the person;

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(d) the organisation concerned.

Court may make orders relating to its declaration

- (2) On the hearing of an application under subsection (1), the Court may, in spite of anything in the rules of the organisation concerned, make such order to give effect to its declaration as it considers appropriate.
- (3) The orders which the Court may make under subsection (2) include:
- (a) an order requiring the organisation concerned to treat a person to whom subsection 166(1) or (4) applies as being a member of the organisation; and
 - (b) in the case of a question as to the entitlement under this section of a person to be admitted as a member of an organisation, where the person has previously been removed from membership of the organisation—an order that the person be taken to have been a member of the organisation in the period between the removal of the person from membership and the making of the order.

Effect of orders

- (4) On the making of an order as mentioned in paragraph (3)(a), or as otherwise specified in the order, the person specified in the order becomes, by force of this section, a member of the organisation concerned.
- (5) Where:
- (a) an order is made as mentioned in paragraph (3)(b); and
 - (b) the person specified in the order pays to the organisation concerned any amount that the person would have been liable to pay to the organisation if the person had been a member of the organisation during the period specified in the order;
- the person is taken to have been a member of the organisation during the period specified in the order.

Court to give certain people opportunity to be heard

- (6) Where an application is made to the Court under this section:

- (a) if the application is made by an organisation—the person whose entitlement is in question must be given an opportunity of being heard by the Court; and
- (b) if the application is made by the person whose entitlement is in question—the organisation concerned must be given an opportunity of being heard by the Court.

168 Application for membership of organisation by person treated as having been a member

- (1) Where:
 - (a) a person who is eligible for membership of an organisation (other than a member of the organisation or a person who has been expelled from the organisation) applies to be admitted as a member of the organisation; and
 - (b) the person has, up to a time within one month before the application, acted in good faith as, and been treated by the organisation as, a member;the person is entitled to be admitted to membership and treated by the organisation and its members as though the person had been a member during the whole of the time when the person acted as, and was treated by the organisation as, a member and during the whole of the time from the time of the person's application to the time of the person's admission.
- (2) Where a question arises as to the entitlement under this section of a person to be admitted as a member and to be treated as though the person had been a member during the times referred to in subsection (1):
 - (a) the person; or
 - (b) the organisation;may apply to the Federal Court for a declaration as to the entitlement of the person under this section.
- (3) Subject to subsection (5), the Court may, in spite of anything in the rules of the organisation concerned, make such orders (including mandatory injunctions) to give effect to its determination as it considers appropriate.
- (4) The orders that the Court may make under subsection (3) include an order requiring the organisation concerned to treat a person to whom subsection (1) applies as being a member of the organisation

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and as having been a member during the times referred to in subsection (1).

- (5) Where an application is made to the Court under this section:
- (a) if the application is made by an organisation—the person whose entitlement is in question must be given an opportunity to be heard by the Court; and
 - (b) if the application is made by the person whose entitlement is in question—the organisation concerned must be given an opportunity to be heard by the Court.

169 Request by member for statement of membership

An organisation must, at the request of a person who is a member, give to the person, within 28 days after the request is made, a statement showing:

- (a) that the person is a member of the organisation; and
- (b) where there are categories of membership of the organisation—the category of the person's membership; and
- (c) if the person expressly requests—whether the person is a financial member of the organisation.

Note: This section is a civil penalty provision (see section 305).

170 Rectification of register of members

The Federal Court may at any time, in a proceeding under this Schedule or the Workplace Relations Act, order such rectifications of the register of members of an organisation as it considers necessary.

Part 3—Termination of membership

171 Federal Court may order that persons cease to be members of organisations

The Federal Court may, on the application of an organisation, order that a person's membership of that organisation or another organisation is to cease from a day, and for a period, specified in the order.

172 Non-financial members to be removed from the register

(1) If:

- (a) the rules of an organisation require a member to pay dues in relation to the person's membership of the organisation; and
- (b) the member has not paid the amount; and
- (c) a continuous period of 24 months has elapsed since the amount became payable; and
- (d) the member's name has not been removed from the register kept by the organisation under paragraph 230(1)(a);

the organisation must remove the name and postal address of the member from the register within 12 months after the end of the 24 month period.

Note: This subsection is a civil penalty provision (see section 305).

- (2) In calculating a period for the purposes of paragraph (1)(c), any period in relation to which the member was not required by the rules of the organisation to pay the dues is to be disregarded.
- (3) A person whose name is removed from the register under this section ceases to be a member of the organisation on the day his or her name is removed. This subsection has effect in spite of anything in the rules of the organisation.

Note: A non-financial member's membership might cease and his or her name be removed from the register earlier than is provided for by this section if the organisation's own rules provide for this to happen.

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173 No entrance fee if person re-joins within 6 months

- (1) If:
 - (a) a person applies for membership of an organisation within 6 months after the person's membership has ceased under section 172; and
 - (b) the application is accepted by the organisation;
the organisation must not require the person to pay any fee associated with a new membership (other than membership dues) in relation to the membership for which the person has applied.
- (2) This section is not to be taken to prevent an organisation requiring (whether by means of its rules or otherwise) payment of outstanding dues in order for a person to maintain continuity of financial membership.

174 Resignation from membership

- (1) A member of an organisation may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the organisation or a branch of the organisation.

Note: The notice of resignation can be given electronically if the organisation's rules allow for this (see section 9 of the *Electronic Transactions Act 1999*).
- (2) A notice of resignation from membership of an organisation takes effect:
 - (a) where the member ceases to be eligible to become a member of the organisation:
 - (i) on the day on which the notice is received by the organisation; or
 - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;whichever is later; or
 - (b) in any other case:
 - (i) at the end of 2 weeks, or such shorter period as is specified in the rules of the organisation, after the notice is received by the organisation; or
 - (ii) on the day specified in the notice;

whichever is later.

- (3) Any dues payable but not paid by a former member of an organisation, in relation to a period before the member's resignation from the organisation took effect, may be sued for and recovered in the name of the organisation, in a court of competent jurisdiction, as a debt due to the organisation.
- (4) A notice delivered to the person mentioned in subsection (1) is taken to have been received by the organisation when it was delivered.
- (5) A notice of resignation that has been received by the organisation is not invalid because it was not addressed and delivered in accordance with subsection (1).
- (6) A resignation from membership of an organisation is valid even if it is not effected in accordance with this section if the member is informed in writing by or on behalf of the organisation that the resignation has been accepted.

Note: Regulations may require employers who offer payroll deduction facilities to inform employees that cessation of payroll deduction by an employee does not constitute resignation (see section 359).

Part 4—False information, disputes and arrears of dues

175 False representation as to membership of organisation

A person must not, in an application made under this Schedule or the Workplace Relations Act, make a statement about the person's membership of an organisation if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

176 False representation about resignation from organisation

A person (the *first person*) must not provide information about resignation from an organisation to a member, or a person eligible to become a member, of the organisation if the person knows, or is reckless as to whether, the information is false or misleading.

Note: This section is a civil penalty provision (see section 305).

177 Disputes between organisations and members

- (1) A dispute between an organisation and any of its members is to be decided under the rules of the organisation.
- (2) Any fine, fee, levy or dues payable to an organisation by a member in relation to a period after the organisation was registered may be sued for and recovered, in the name of the organisation, as a debt due to the organisation, in a court of competent jurisdiction.
- (3) A court of competent jurisdiction may, on application brought in the name of an organisation, order the payment by a member of any contribution (not exceeding \$20) to a penalty incurred or money payable by the organisation under an award, order or collective agreement.

178 Recovery of arrears

- (1) In spite of subsection 177(2), legal proceedings for the recovery of an amount payable by a person in relation to the person's membership of an organisation must not be commenced after the

end of the period of 12 months starting on the day on which the amount became payable.

- (2) The amount ceases to be payable at the end of the period if legal proceedings to recover the amount have not been commenced by then.

179 Liability for arrears

- (1) Where a person has ceased to be eligible to become a member of an organisation and that person has not actively participated in the affairs of the organisation since that time, those circumstances are a defence to an action by the organisation for arrears of dues payable from the time when the person ceased to be so eligible.
- (2) Where such a defence is successful, that person is taken to have ceased to be a member from the time that the person ceased to be so eligible.

Part 5—Conscientious objection to membership

180 Conscientious objection to membership of organisations

- (1) Where a natural person:
 - (a) on application made to a Registrar, satisfies the Registrar:
 - (i) in the case of a person who is an employer or is otherwise eligible to join an organisation of employers—that the person’s conscientious beliefs do not allow the person to be a member of an association of the kind described in paragraph 18(a); or
 - (ii) in the case of a person who is an employee or is otherwise eligible to join an organisation of employees—that the person’s conscientious beliefs do not allow the person to be a member of an association of the kind described in paragraph 18(b) or (c); and
 - (b) pays the prescribed fee to the Registrar;

the Registrar must issue to the person a certificate to that effect in the prescribed form.
- (2) An appeal does not lie to the Commission under section 147 of the Workplace Relations Act against a decision of a Registrar to issue a certificate under subsection (1).
- (3) Subject to subsection (4), a certificate under subsection (1) remains in force for the period (not exceeding 12 months) specified in the certificate, but may, as prescribed, be renewed from time to time by a Registrar for such period (not exceeding 12 months) as the Registrar considers appropriate.
- (4) Where:
 - (a) a Registrar becomes aware of a matter that was not known to the Registrar when a certificate was issued by the Registrar to a person under subsection (1); and
 - (b) if the Registrar had been aware of the matter when the application for the certificate was being considered, the Registrar would not have issued the certificate;

the Registrar may, after giving the person an opportunity, as prescribed, to show cause why the certificate should not be revoked, revoke the certificate.

(6) In this section:

appropriate organisation, in relation to a person who has made an application under subsection (1), means the organisation that, in the opinion of the Registrar dealing with the application, would, but for the person's conscientious beliefs, be the appropriate organisation for the person to join having regard to:

- (a) in the case of a person who is an employer—the industry in relation to which the person is an employer; or
- (b) in the case of a person who is otherwise eligible to join an organisation of employers—the business carried on by the person; or
- (c) in the case of a person who is an employee—the past employment (if any), and the future prospects of employment, of the person; or
- (d) in the case of a person who is otherwise eligible to join an organisation of employees—the work done by the person or the enterprise in which the person works.

conscientious beliefs means any conscientious beliefs, whether the grounds for the beliefs are or are not of a religious character and whether the beliefs are or are not part of the doctrine of any religion.

prescribed fee, in relation to a person who has made an application under subsection (1), means a fee equal to the annual subscription that would be payable by the person if the person were a member of the appropriate organisation.

Chapter 7—Democratic control

Part 1—Simplified outline of Chapter

181 Simplified outline

This Chapter deals with elections for positions in organisations. It does not deal with other kinds of ballots (for example, amalgamation and disamalgamation ballots, which are dealt with in Chapter 3).

Part 2 sets out the rules for the conduct of elections. Elections for office must generally be conducted by the AEC. This Part also requires the AEC to conduct elections for some positions that are not offices, if the organisation concerned requests the AEC to do so.

Part 3 provides for inquiries by the Federal Court into elections for office.

Part 4 sets out the circumstances in which people are disqualified from holding, or being elected to hold, office in organisations.

Part 2—Conduct of elections for office and other positions

182 Conduct by AEC

Elections for office

- (1) Each election for an office in an organisation, or branch of an organisation, must be conducted by the AEC. The expenses of conducting such an election are to be borne by the Commonwealth.

Note: For the meaning of *office*, see section 9.

- (2) Subsection (1) does not apply in relation to an election for an office in an organisation or branch while an exemption granted to the organisation or branch, as the case may be, under section 186 is in force in relation to elections in the organisation or branch or an election for the particular office.

Elections for other positions

- (3) If an organisation or branch of an organisation has made a request under section 187 in relation to an election for a position other than an office, the AEC must conduct the election.

183 Application for organisation or branch to conduct its elections for office

- (1) A committee of management of an organisation or branch of an organisation may lodge in the Industrial Registry an application for the organisation or branch, as the case may be, to be exempted from subsection 182(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.
- (2) An application may not be made by a committee of management of an organisation or branch of an organisation unless the committee of management:
 - (a) has resolved to make the application; and
 - (b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.

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- (3) An application under subsection (1) must be accompanied by a declaration by a member of the committee of management concerned stating that subsection (2) has been complied with.
- (4) Where an application has been made under subsection (1), the Industrial Registrar must cause a notice setting out details of the application to be published, as prescribed, for the purpose of bringing the notice to the attention of members of the organisation or branch concerned.
- (5) Where the rules of an organisation require an office to be filled by an election by the members, or by some of the members, of a single branch of the organisation, an election to fill the office is taken to be an election for the branch.

184 Objections to application to conduct elections for office

- (1) Objection may be made to an application under subsection 183(1) by a member of the organisation or branch of the organisation in relation to which the application was made.
- (2) The Industrial Registrar or, if the Industrial Registrar directs, another Registrar must, as prescribed, hear the application and any objections duly made.

185 Threats etc. in relation to section 184 objections

- (1) A person commits an offence if the person uses, causes or inflicts any violence, injury, punishment, damage, loss or disadvantage to another person because the other person has lodged an objection under subsection 184(1).

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if the person:
 - (a) gives, or offers or promises to give, any property or benefit of any kind with the intention of influencing or affecting another person because the other person proposes to lodge, or has lodged, an objection under subsection 184(1); or
 - (b) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that the lodging of

an objection under subsection 184(1) will be influenced or affected in any way.

Maximum penalty: 30 penalty units.

186 Registrar may permit organisation or branch to conduct its elections for office

- (1) Where an application in relation to an organisation or branch has been lodged under subsection 183(1) and, after any objections duly made have been heard, a Registrar is satisfied:
- (a) that the rules of the organisation or branch comply with the requirements of this Schedule relating to the conduct of elections for office; and
 - (b) that, if the organisation or branch is exempted from subsection 182(1), the elections for the organisation or branch, or the election for the particular office, as the case may be, will be conducted:
 - (i) under the rules of the organisation or branch, as the case may be, and this Schedule; and
 - (ii) in a manner that will afford members entitled to vote at such elections or election an adequate opportunity of voting without intimidation;
- the Registrar may exempt the organisation or branch from subsection 182(1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.
- (2) A Registrar may revoke an exemption granted to an organisation or branch under subsection (1):
- (a) on application by the committee of management of the organisation or branch; or
 - (b) if the Registrar:
 - (i) is no longer satisfied as mentioned in subsection (1); and
 - (ii) has given the committee of management of the organisation or branch an opportunity, as prescribed, to show cause why the exemption should not be revoked.

Section 187

187 Organisation may ask AEC to conduct elections for positions other than offices

- (1) If the rules of an organisation or branch of an organisation require an election to be held for a position other than an office in the organisation or branch, the organisation or branch, as the case may be, may request the AEC to conduct the election.

Note: For the meaning of *office*, see section 9.

- (2) The request must be:
 - (a) in writing; and
 - (b) signed by an officer of the organisation or branch who is authorised to do so by the committee of management of the organisation or branch; and
 - (c) given to the AEC.
- (3) A copy of the request must also be lodged in the Industrial Registry at the same time as the prescribed information in relation to the election is lodged (see section 189).

188 Declaration envelopes etc. to be used for postal ballots

If the rules of an organisation provide for elections for office by postal ballot, a vote in the election cannot be counted unless the ballot paper on which it is recorded is returned as follows:

- (a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;
- (b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.

189 Registrar to arrange for conduct of elections

- (1) An organisation or branch of an organisation must lodge in the Industrial Registry the prescribed information in relation to an election that is to be conducted by the AEC.
- (2) The prescribed information must be lodged before the prescribed day or such later day as a Registrar allows.

Note: This subsection is a civil penalty provision (see section 305).

- (3) If:
- (a) the prescribed information is lodged in the Industrial Registry by the organisation or branch (whether or not before the prescribed day or the later day allowed by a Registrar); and
 - (b) a Registrar is satisfied that an election is required to be held under the rules of the organisation or branch; and
 - (c) if the election is not an election for an office—the organisation or branch has made a request under section 187;
- a Registrar must arrange for the conduct of the election by the AEC.

190 Organisation or branch must not assist one candidate over another

An organisation or branch commits an offence if it uses, or allows to be used, its property or resources to help a candidate against another candidate in an election under this Part for an office or other position.

Maximum penalty: 100 penalty units.

191 Organisation to provide returning officer with copy of register

- (1) A person (the *returning officer*) conducting an election under this Part for an office or other position in an organisation, or branch of an organisation, may give a written request to an officer or employee of the organisation or branch to make available the register of members, or part of the register, kept by the organisation under section 230, to the returning officer for the purposes of the ballot.
- (2) An officer or employee of the organisation or branch commits an offence if he or she fails to comply with a request under subsection (1).

Maximum penalty: 30 penalty units.

- (3) Subsection (2) does not apply if the officer or employee complied with the request as promptly as he or she was capable.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (3).

- (4) An offence against subsection (2) is an offence of strict liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) If the register, or the relevant part of the register, is kept in electronic form, the returning officer may require the register to be made available in that form.
- (6) A request under subsection (1) must specify the period within which the register must be made available. The period must not be less than 7 days after the request is given.

192 Declaration by secretary etc. of organisation

- (1) If:
 - (a) a returning officer makes a request under section 191 in relation to the organisation's register; and
 - (b) the returning officer gives written notice of the request to the secretary or other prescribed officer of the organisation or branch concerned;

the secretary or other prescribed officer of the organisation must make a declaration, in accordance with subsection (2), that the register has been maintained as required by subsection 230(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) The declaration must be:
 - (a) signed by the person making it; and
 - (b) given to the returning officer, and lodged in the Industrial Registry, as soon as practicable but no later than the day before the first day of voting in the relevant election.
- (3) A person must not, in a declaration for the purposes of subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

193 Provisions applicable to elections conducted by AEC

- (1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office or other position in an organisation, or branch of an organisation, the electoral official:
 - (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and

- (b) may, in spite of anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary:
- (i) to ensure that no irregularities occur in or in relation to the election; or
 - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules; or
 - (iii) to ensure the security of ballot papers and envelopes that are for use, or used, in the election.
- (2) A person commits an offence if the person does not comply with a direction under subsection (1).
- Maximum penalty: 30 penalty units.
- (3) Subsection (2) does not apply so far as the person is not capable of complying.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).
- (4) Subsection (2) does not apply if the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.
- (5) An offence against subsection (2) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) An election for an office or other position conducted by an electoral official, or step taken in relation to such an election, is not invalid merely because of a breach of the rules of the organisation or branch because of:
- (a) action taken under subsection (1); or
 - (b) an act done in compliance with a direction under subsection (1).
- (7) If an electoral official conducting, or taking a step in connection with, an election for an office or other position:
- (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
 - (b) ceases to be qualified to conduct the election or to take the step;

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the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

194 Hindering or obstructing electoral official or other person

A person commits an offence if the person hinders or obstructs:

- (a) an electoral official in the performance of functions in relation to an election for an office or other position in an organisation or branch of an organisation; or
- (b) any other person in complying with a direction under subsection 193(1).

Maximum penalty: 30 penalty units.

195 Improper interference with election process

- (1) This section applies in relation to an election for an office or other position in an organisation or branch of an organisation.

Interference with ballot papers

- (2) A person commits an offence if the person:
 - (a) impersonates another person with the intention of:
 - (i) securing a ballot paper to which the impersonator is not entitled; or
 - (ii) casting a vote; or
 - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
 - (c) fraudulently puts a ballot paper or other paper:
 - (i) into a ballot box or other ballot receptacle; or
 - (ii) into the post; or
 - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
 - (e) records a vote that the person is not entitled to record; or
 - (f) records more than one vote; or
 - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
 - (h) provides a ballot paper without authority; or

- (i) obtains a ballot paper which the person is not entitled to obtain; or
- (j) has possession of a ballot paper which the person is not entitled to possess; or
- (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

Threats in relation to votes, candidature etc.

- (3) A person commits an offence if the person threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:
 - (a) any candidature or withdrawal of candidature; or
 - (b) any vote or omission to vote; or
 - (c) any support or opposition to any candidate; or
 - (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

Offers of bribes

- (4) A person commits an offence if the person gives, or promises or offers to give, any property or benefit of any kind to a person with the intention of influencing or affecting any of the following:
 - (a) any candidature or withdrawal of candidature;
 - (b) any vote or omission to vote;
 - (c) any support or opposition to any candidate;
 - (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

Acceptance of bribes

- (5) A person commits an offence if the person asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that any of the following will be influenced or affected in any way:

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- (a) any candidature or withdrawal of candidature;
- (b) any vote or omission to vote;
- (c) any support or opposition to any candidate;
- (d) any promise of any vote, omission, support or opposition.

Maximum penalty: 30 penalty units.

Secrecy of vote

- (6) A person (the *relevant person*) commits an offence:
 - (a) if the relevant person requests, requires or induces another person to show a ballot paper to the relevant person, or permits the relevant person to see a ballot paper, in such a manner that the relevant person can see the vote, while the ballot paper is being marked or after it has been marked; or
 - (b) if the relevant person is a person performing duties for the purposes of the election—if the relevant person shows to another person, or permits another person to have access to, a ballot paper used in the election, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

196 Death of candidate

In spite of anything in the rules of an organisation or branch of an organisation, where:

- (a) 2 or more candidates are nominated for an election in relation to an office in the organisation or branch; and
 - (b) one of those candidates dies before the close of the ballot;
- the election must be discontinued and a new election held.

197 Post-election report by AEC

Requirement for AEC to make report

- (1) After the completion of an election conducted under this Part by the AEC, the AEC must give a written report on the conduct of the election to:
 - (a) the Industrial Registrar; and
 - (b) the organisation or branch for whom the election was conducted.

Note: The AEC may be able, in the same report, to report on more than one election it has conducted for an organisation. However, regulations made under paragraph 359(2)(c) may impose requirements about the manner and timing of reports.

- (2) The report must include details of the prescribed matters.

Contents of report—register of members

- (3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the election contained, at the time of the election:
- (a) an unusually large proportion of members' addresses that were not current; or
 - (b) in the case of a register kept by an organisation of employees—an unusually large proportion of members' addresses that were workplace addresses;

this fact must be included in the report, together with a reference to any relevant model rules which, in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: Model rules are relevant only to the conduct of elections for office, not for elections for other positions (see section 147).

Contents of report—difficult rules

- (4) If the report identifies a rule of the organisation or branch that, in the AEC's opinion, was difficult to interpret or apply in relation to the conduct of the election, the report must also refer to any relevant model rules, which in the opinion of the AEC, could assist the organisation or branch to address this matter.

Note: For model rules, see section 147.

Subsection (3) relevant only for postal ballots

- (5) Subsection (3) applies only in relation to elections conducted by postal ballot.

Note: An organisation can obtain an exemption from the requirement to hold elections for office by postal ballot (see section 144).

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198 Organisation to respond to adverse report on rules

Organisation must respond to “difficult rules” report

- (1) If an organisation or branch is given a post-election report under section 197 that identifies a rule that was difficult to interpret or apply, the organisation or branch must, within 30 days, give a written response to the AEC on that aspect of the report.

Note: This subsection is a civil penalty provision (see section 305).

- (2) The response must specify whether the organisation or branch intends to take any action in relation to the rule, and if so, what action it intends to take.

Organisation must make its response available to members

- (3) The organisation or branch must also make available to its members the part of the report dealing with the difficult rule or rules (the *relevant extract*) and the organisation’s or branch’s response to it.
- (4) The relevant extract must be made available to members no later than the day on which the response is to be made available by the organisation or branch to members.

Note: This subsection is a civil penalty provision (see section 305).

- (5) The response must be made available to members:
 - (a) if the response is not to be published in the next edition of the organisation or branch journal—within 30 days after it is given to the AEC; and
 - (b) if the response is to be so published—in the next edition.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Without limiting the ways in which an organisation or branch may comply with subsection (3), it complies if it does all of the following:
 - (a) publishes, in the next edition of the organisation or branch journal, a copy of the relevant extract of the report and the organisation’s response;
 - (b) within 30 days after the day on which it gives its response to the AEC:

- (i) lodges in the Industrial Registry a copy of the relevant extract of the report and a copy of the response given to the AEC under subsection (1), together with a declaration that the organisation or branch will provide a copy of the extract and the organisation's response to any member who so requests; and
 - (ii) gives notice in the next edition of the organisation or branch journal, or in an appropriate newspaper, that a copy of the relevant extract of the report and the organisation's response is available, upon request, from the organisation or branch to each member free of charge;
- (c) meets the requirements of any regulations made for the purposes of this subsection.

Declaration that report and response will be available

- (7) A declaration under paragraph (6)(b) must be signed by the secretary or other prescribed officer of the organisation or branch (as the case requires).
- (8) A person must not, in a declaration for the purposes of paragraph (6)(b), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

Definitions

- (9) In this section:

appropriate newspaper, in relation to an organisation or branch, means a newspaper, or newspapers, whose circulation covers the main geographical areas where members of the organisation or branch reside.

next edition, in relation to publishing a relevant extract of a post-election report or response in a journal, means the first edition of the journal in which it is reasonably practicable for the report or the response (as the case may be) to be published.

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199 Ballot papers etc. to be preserved

- (1) In spite of anything in the rules of an organisation or a branch of an organisation, where an election for an office in the organisation or branch is conducted by the AEC, the organisation or branch, and every officer and employee of the organisation or branch who is able to do so, and the AEC, must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept by the AEC for one year after the completion of the election.
- (2) In spite of anything in the rules of an organisation or a branch of an organisation, where an election for an office in the organisation or branch is conducted by the organisation or branch, the organisation or branch, and every officer and employee of the organisation or branch who is able to do so, must take such steps as are necessary to ensure that all ballot papers, envelopes, lists and other documents relevant to the election are preserved and kept at the office of the organisation or branch, as the case may be, for one year after the completion of the election.
- (3) An organisation or branch of an organisation commits an offence if the organisation or branch contravenes subsection (1) or (2).

Maximum penalty: 100 penalty units.

- (4) Subsection (3) does not apply if the organisation has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) An officer or employee of an organisation or branch commits an offence if the officer or employee contravenes subsection (1) or (2).

Maximum penalty: 20 penalty units.

- (6) Subsection (5) does not apply if the officer or employee has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (6), see subsection 13.3(3) of the *Criminal Code*.

- (7) Offences against subsections (3) and (5) are offences of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Part 3—Inquiries into elections for office

200 Application for inquiry

When member of organisation may apply for inquiry

- (1) If a person who is, or within the preceding period of 12 months has been, a member of an organisation claims that there has been an irregularity in relation to an election for an office in the organisation or a branch of the organisation, the person may make an application for an inquiry by the Federal Court into the matter.

Note: For the meaning of *irregularity*, see section 6.

When Electoral Commissioner must apply for an inquiry

- (2) If the Electoral Commissioner believes that the result of an election for an office has been affected by an irregularity in relation to the election, the Electoral Commissioner must make an application for an inquiry by the Federal Court into the matter.

When Electoral Commissioner may apply for an inquiry

- (3) If the Electoral Commissioner believes that there has been an irregularity in relation to an election for an office, the Electoral Commissioner may make an application for an inquiry by the Federal Court into the matter.

Note: This section relates only to elections for office. It does not apply to elections for positions other than offices (which can also be conducted under Part 2).

201 Instituting of inquiry

Where:

- (a) an application for an inquiry has been lodged with the Federal Court under section 200; and
- (b) the Court is satisfied that there are reasonable grounds for the application;

the Court must fix a time and place for conducting the inquiry, and may give such directions as it considers necessary to ensure that all persons who are or may be justly entitled to appear at the inquiry

are notified of the time and place fixed and, where the Court fixes a time and place, the inquiry is taken to have been instituted.

202 Federal Court may authorise Industrial Registrar to take certain action

- (1) Where an application for an inquiry has been lodged with the Federal Court under section 200, the Court may authorise the Industrial Registrar to arrange, for the purposes of the inquiry, for a designated Registry official to take any action referred to in subsection (2).
- (2) If a Registry official is designated by the Industrial Registrar for the purposes of subsection (1), the actions that the official may take are as follows:
 - (a) inspecting election documents;
 - (b) for the purposes of any such inspection, entering, with such assistance as he or she considers necessary, any premises used or occupied by the organisation, or a branch of the organisation, concerned in which he or she believes election documents to be;
 - (c) giving a written notice to a person requiring the person to deliver to him or her, within the period and in the manner specified in the notice, any election documents in the possession or under the control of the person;
 - (d) taking possession of any election documents;
 - (e) retaining any election documents delivered to him or her, or of which he or she has taken possession, for such period as is necessary for the purposes of the application and, if proceedings under this Part arise out of the application, until the completion of the proceedings or such earlier time as the Court orders.
- (3) Before authorising any action under subsection (1), the Court must, if it considers that, having regard to all the circumstances, a person should be given an opportunity of objecting to the proposed action, give such an opportunity to the person.
- (4) The period specified in a notice given under paragraph (2)(c) must specify a period of at least 14 days after the notice is given.
- (5) A person commits an offence if the person:

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- (a) contravenes a requirement made under paragraph (2)(c); or
- (b) hinders or obstructs the Industrial Registrar, or a person acting on his or her behalf, in the exercise of powers under subsection (2).

Maximum penalty: 30 penalty units.

- (6) Strict liability applies to paragraph (5)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) Paragraph (5)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (7), see subsection 13.3(3) of the *Criminal Code*.

- (8) A person is not excused from producing an election document under this section on the ground that the production of the document might tend to incriminate the person or expose the person to a penalty.

- (9) However:

- (a) producing the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of producing the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty.

- (10) In this section:

election documents, in relation to an election, means ballot papers, envelopes, lists or other documents that have been used in, or are relevant to, the election.

203 Designated Registry officials must have identity cards

Issue of identity card

- (1) The Industrial Registrar must issue an identity card to each designated Registry official.
 - (2) The identity card must:
 - (a) be in the prescribed form; and
-

- (b) include a recent photograph of the official.

Use of identity card

- (3) A designated Registry official must carry the identity card at all times when taking action under section 202.
- (4) Before the official takes action under paragraph 202(2)(b) (entering premises), the official must:
- (a) inform the occupier of the premises that the official is authorised to enter the premises; and
 - (b) show the identity card to the occupier.
- (5) The official is not entitled to enter premises under paragraph 202(2)(b) if he or she has not complied with subsection (4).

Offence: failing to return identity card

- (6) A person commits an offence if:
- (a) the person holds or held an identity card; and
 - (b) the person ceases to be a Registry official; and
 - (c) the person does not, as soon as is practicable after so ceasing, return the identity card to the Industrial Registrar.

Maximum penalty: 1 penalty unit.

- (7) An offence against subsection (6) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) Subsection (6) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter mentioned in subsection (8), see subsection 13.3(3) of the *Criminal Code*.

204 Interim orders

- (1) Where an inquiry into an election has been instituted, the Federal Court may make one or more of the following orders:
- (a) an order that no further steps are to be taken in the conduct of the election or in carrying into effect the result of the election;

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- (b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates may act, or continue to act, in the office;
 - (c) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates must not act in the office;
 - (d) an order that a person who holds, or last held before the election, an office to which the inquiry relates may act, or continue to act, in the office;
 - (e) where it considers that an order under paragraph (b) or (d) would not be practicable, would be prejudicial to the efficient conduct of the affairs of the organisation or would be inappropriate having regard to the nature of the inquiry, an order that a member of the organisation or another person specified in the order may act in an office to which the inquiry relates;
 - (f) an order incidental or supplementary to an order under this subsection;
 - (g) an order varying or discharging an order under this subsection.
- (2) Where the Court orders that a person may act, or continue to act, in an office, the person is, while the order remains in force and in spite of anything in the rules of the organisation or a branch of the organisation, to be taken to hold the office.
- (3) An order under this section continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of:
- (a) the proceeding concerned in the Court in relation to the election; and
 - (b) all matters ordered by the Court (otherwise than under this section) in the proceeding.

205 Procedure at hearing

- (1) The Federal Court must allow to appear at an inquiry all persons who apply to the Court for leave to appear and who appear to the Court to have an interest in the inquiry, and the Court may order any other person to appear.

- (2) The persons appearing, or ordered under subsection (1) to appear, at an inquiry are taken to be parties to the proceeding.
- (3) For the purposes of this Part:
 - (a) the procedure of the Court is, subject to this Schedule and the Rules of Court, within the discretion of the Court; and
 - (b) the Court is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it considers just.

206 Action by Federal Court

- (1) At an inquiry, the Federal Court must inquire into and determine the question whether an irregularity has happened in relation to the election, and such further questions concerning the conduct and results of the election as the Court considers necessary.
- (2) For the purposes of subsection (1), the Court must determine whether an irregularity has happened on the balance of probabilities.
- (3) In the course of conducting an inquiry, the Court may make such orders (including an order for the recounting of votes) as the Court considers necessary.
- (4) If the Court finds that an irregularity has happened, the Court may, subject to subsection (5), make one or more of the following orders:
 - (a) an order declaring the election, or any step in relation to the election, to be void;
 - (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;
 - (c) an order directing the Industrial Registrar to make arrangements:
 - (i) in the case of an uncompleted election—for a step in relation to the election (including the calling for nominations) to be taken again and for the uncompleted steps in the election to be taken; or
 - (ii) in the case of a completed election—for a step in relation to the election (including the calling for

Section 207

nominations) to be taken again or a new election to be held;

- (d) an order (including an order modifying the operation of the rules of the organisation to the extent necessary to enable a new election to be held, a step in relation to an election to be taken again or an uncompleted step in an election to be taken) incidental or supplementary to, or consequential on, any other order under this section.
- (5) The Court must not declare an election, or any step taken in relation to an election, to be void, or declare that a person was not elected, unless the Court is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have happened or may happen, the result of the election may have been affected, or may be affected, by irregularities.
- (6) Without limiting the power of the Court to terminate a proceeding before it, the Court may, at any time after it begins an inquiry into an election, terminate the inquiry or the inquiry to the extent that it relates to specified matters.

207 Industrial Registrar to make arrangements for conduct of elections etc.

Where the Federal Court makes an order under paragraph 206(4)(c) in relation to an election, the Industrial Registrar must arrange for the taking of the necessary steps in relation to the election, or for the conduct of the new election, as the case requires, by the AEC.

208 Enforcement of orders

The Federal Court may grant such injunctions (including mandatory injunctions) as it considers necessary for the effective performance of its functions and the enforcement of its orders under this Part.

209 Validity of certain acts etc. where election declared void

- (1) Where the Federal Court declares void the election of a person who has, since the election, purported to act in the office to which the

person purported to have been elected, or declares such a person not to have been elected:

- (a) subject to a declaration under paragraph (b), all acts done by or in relation to the person that could validly have been done by or in relation to the person if the person had been duly elected are valid; and
 - (b) the Court may declare an act referred to in paragraph (a) to have been void, and, if the Court does so, the act is taken not to have been validly done.
- (2) Where an election is held, or a step in relation to an election is taken, under an order of the Court, the election or step is not invalid merely because of a departure from the rules of the organisation or branch concerned that was required by the order of the Court.

Part 4—Disqualification from office

Division 1—Simplified outline of Part

210 Simplified outline

This Part imposes certain limitations and requirements on people who hold, or wish to hold, office in an organisation and who have been convicted of a prescribed offence (see Division 2).

Division 2—Persons who have been convicted of a prescribed offence

211 Simplified outline of Division

This Division imposes certain limitations and requirements on people who hold, or wish to hold, office in an organisation and who have been convicted of a prescribed offence.

Section 215 sets out the basic limitation for people convicted of a prescribed offence. The remaining sections in this Division deal with the ways the rule in section 215 operates and may be modified.

212 Meaning of *prescribed offence*

In this Division, a *prescribed offence* is:

- (a) an offence under a law of the Commonwealth, a State or Territory, or another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more; or
- (b) an offence against section 51, 72, 105, 185, 191, subsection 193(2), section 194, 195, 199 or subsection 202(5); or
- (c) any other offence in relation to the formation, registration or management of an association or organisation; or
- (d) any other offence under a law of the Commonwealth, a State or Territory, or another country, involving the intentional use of violence towards another person, the intentional causing of death or injury to another person or the intentional damaging or destruction of property.

213 Meaning of *convicted of a prescribed offence*

For the purposes of this Division, a person:

- (a) is convicted of a prescribed offence whether the person is convicted before or after the commencement of this Part; and

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- (b) is not convicted of a prescribed offence merely because the person is convicted, otherwise than on indictment, of an offence referred to in paragraph 212(c); and
- (c) is not convicted of a prescribed offence referred to in paragraph 212(d) unless the person was sentenced to a term of imprisonment for the offence and either:
 - (i) the person has served, or is serving, a term of imprisonment for the offence; or
 - (ii) the sentence is suspended for a period.

Note: Other terms used in this Part may be defined in section 6.

213A Meaning of *exclusion period* and *reduced exclusion period*

- (1) For the purposes of this Division, the *exclusion period* in relation to a person who has been convicted of a prescribed offence means a period of 5 years beginning on the latest of the following days:
 - (a) the day on which the person was convicted of the prescribed offence;
 - (b) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
 - (c) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
- (2) For the purposes of this Division, a *reduced exclusion period* means a period specified by the Federal Court for the purposes of subparagraph 215(1)(a)(ii) under paragraph 216(2)(b) or 217(2)(b).

214 Certificate of registrar etc. is evidence of facts

- (1) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was convicted by the court of a specified offence on a specified day is, for the purpose of an application made under section 215, 216 or 217, evidence that the person was convicted of the offence on that day.
- (2) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was acquitted by the court of a specified offence, or that a specified charge against the

person was dismissed by the court, is, for the purpose of an application made under section 215, 216 or 217, evidence of the facts stated in the certificate.

- (3) A certificate purporting to be signed by the officer in charge of a prison stating that a person was released from the prison on a specified day is, for the purpose of an application made under section 215, 216 or 217, evidence that the person was released from the prison on that day.
- (4) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that the sentence of a person who was convicted of a specified offence has been suspended for a specified period is, for the purpose of an application made under section 215, 216 or 217, evidence that the sentence was suspended for that period.

215 Certain persons disqualified from holding office in organisations

- (1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation unless:
 - (a) on an application made under section 216 or 217 in relation to the conviction of the person for the prescribed offence:
 - (i) the person was granted leave to hold office in organisations; or
 - (ii) the person was refused leave to hold office in organisations but, under paragraph 216(2)(b) or 217(2)(b), the Federal Court specified a reduced exclusion period, and that period has elapsed; or
 - (b) in any other case—the exclusion period has elapsed.
- (2) Where a person who holds an office in an organisation is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days after the conviction unless, within the period, the person makes an application to the Federal Court under section 216 or 217.

Section 216

- (3) If a person who holds an office in an organisation makes an application to the Federal Court under section 216 or 217 and the application is not determined:
 - (a) except in a case to which paragraph (b) applies—within the period of 3 months after the date of the application; or
 - (b) if the Court, on application by the person, has extended the period—within that period as extended;the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.
- (4) The Court must not, under paragraph (3)(b), extend a period for the purposes of subsection (3) unless:
 - (a) the application for the extension is made before the end of the period of 3 months referred to in paragraph (3)(a); or
 - (b) if the Court has previously extended the period under paragraph (3)(b)—the application for the further extension is made before the end of the period as extended.
- (5) An organisation, a member of an organisation or the Industrial Registrar may apply to the Federal Court for a declaration whether, because of the operation of this section or section 216 or 217:
 - (a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the organisation; or
 - (b) a person has ceased to hold an office in the organisation.
- (6) The granting to a person, on an application made under section 216 or 217 in relation to a conviction of the person for a prescribed offence, of leave to hold offices in organisations does not affect the operation of this section or section 216 or 217 in relation to another conviction of the person for a prescribed offence.

216 Application for leave to hold office in organisations by prospective candidate for office

- (1) A person who:
 - (a) wants to be a candidate for election, or to be appointed, to an office in an organisation; and
 - (b) within the immediately preceding 5 years:
 - (i) has been convicted of a prescribed offence; or

- (ii) has been released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence; or
 - (iii) has completed a suspended sentence in relation to a conviction for a prescribed offence;
- may, subject to subsection (4), apply to the Federal Court for leave to hold office in organisations.
- (2) Where a person makes an application under subsection (1), the Court may:
- (a) grant the person leave to hold office in organisations; or
 - (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
 - (i) the day on which the person was convicted of the prescribed offence;
 - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
 - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
 - (c) refuse a person leave to hold office in organisations.
- (3) A person who:
- (a) holds an office in an organisation; and
 - (b) is convicted of a prescribed offence; and
 - (c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is, under paragraph (2)(b) or (c), refused leave to hold office in organisations;
- ceases to hold the office in the organisation.
- (4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under section 217 in relation to the conviction.

Section 217

217 Application for leave to hold office in organisations by office holder

- (1) Where a person who holds an office in an organisation is convicted of a prescribed offence, the person may, subject to subsection (4), within 28 days after the conviction, apply to the Federal Court for leave to hold office in organisations.
- (2) Where a person makes an application under subsection (1) for leave to hold office in organisations, the Court may:
 - (a) grant the person leave to hold office in organisations; or
 - (b) refuse the person leave to hold office in organisations and specify, for the purposes of subsection 215(1), a period of less than 5 years beginning on the latest of the following days:
 - (i) the day on which the person was convicted of the prescribed offence;
 - (ii) if the person was sentenced to a term of imprisonment for the offence, the sentence was suspended for a period, and the person is not imprisoned for the offence during the period—the day immediately after the end of the period;
 - (iii) if the person serves a term of imprisonment for the offence—the day on which the person is released from prison.
 - (c) refuse the person leave to hold office in organisations.
- (3) A person who, on an application made under subsection (1), is, under paragraph (2)(b) or (c), refused leave to hold office in organisations ceases to hold the office concerned.
- (4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or section 216 in relation to the conviction.

218 Federal Court to have regard to certain matters

For the purposes of exercising the power under section 216 or 217 to grant or refuse leave, to a person who has been convicted of a prescribed offence, to hold office in organisations, the Federal Court must have regard to:

- (a) the nature of the prescribed offence; and
- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence; and
- (c) the general character of the person; and
- (d) the fitness of the person to be involved in the management of organisations, having regard to the conviction for the prescribed offence; and
- (e) any other matter that, in the Court's opinion, is relevant.

219 Action by Federal Court

- (1) The Federal Court may, in spite of anything in the rules of any organisation concerned, make such order to give effect to a declaration made under subsection 215(5) as it considers appropriate.
- (2) Where an application is made to the Court under subsection 215(5):
 - (a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity of being heard by the Court; and
 - (b) if the application is made otherwise than by the organisation concerned—the organisation must be given an opportunity of being heard by the Court.
- (3) Where an application is made to the Court under section 216 or 217, the organisation concerned must be given an opportunity of being heard by the Court.

220 Part not to affect spent convictions scheme

Nothing in this Part affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

Chapter 8—Records and accounts

Part 1—Simplified outline of Chapter

229 Simplified outline

This Chapter deals with records that must be kept by organisations, and imposes obligations in relation to organisations' financial affairs.

Part 2 requires an organisation to keep membership records and lists of office-holders. Copies of these must be lodged with the Industrial Registrar. Details of some types of loans, grants and donations made by the organisation must also be lodged with the Industrial Registrar.

Part 3 sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

Part 4 deals with access to organisations' books.

Part 2—Records to be kept and lodged by organisations

230 Records to be kept and lodged by organisations

- (1) An organisation must keep the following records:
- (a) a register of its members, showing the name and postal address of each member and showing whether the member became a member under an agreement entered into under rules made under subsection 151(1);
 - (b) a list of the offices in the organisation and each branch of the organisation;
 - (c) a list of the names, postal addresses and occupations of the persons holding the offices;
 - (d) such other records as are prescribed.

Note: This subsection is a civil penalty provision (see section 305).

- (2) An organisation must:
- (a) enter in the register of its members the name and postal address of each person who becomes a member, within 28 days after the person becomes a member;
 - (b) remove from that register the name and postal address of each person who ceases to be a member under the rules of the organisation, within 28 days after the person ceases to be a member; and
 - (c) enter in that register any change in the particulars shown on the register, within 28 days after the matters necessitating the change become known to the organisation.

Note 1: This subsection is a civil penalty provision (see section 305).

Note 2: An organisation may also be required to make alterations to the register of its members under other provisions of the Schedule (see, for example, sections 170 and 172).

231 Certain records to be held for 7 years

- (1) An organisation must keep a copy of its register of members as it stood on 31 December in each year. The organisation must keep the copy for the period of 7 years after the 31 December concerned.

Section 232

- (2) The regulations may provide that an organisation must also keep a copy of the register, or a part of the register, as it stood on a prescribed day. The organisation must keep the copy for the period of 7 years after the prescribed day.

Note: This section is a civil penalty provision (see section 305).

232 Offence to interfere with register or copy

- (1) A person commits an offence if:
- (a) the person does an act; and
 - (b) the act results in the destruction or defacement of, or other interference with, a register of members or a copy of such a register; and
 - (c) either:
 - (i) the register of members is required to be kept by an organisation under paragraph 230(1)(a); or
 - (ii) the copy is required to be kept by an organisation under section 231.

Maximum penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

233 Obligation to lodge information in Industrial Registry

- (1) An organisation must lodge in the Industrial Registry once in each year, at such time as is prescribed:
- (a) a declaration signed by the secretary or other prescribed officer of the organisation certifying that the register of its members has, during the immediately preceding calendar year, been kept and maintained as required by paragraph 230(1)(a) and subsection 230(2); and
 - (b) a copy of the records required to be kept under paragraphs 230(1)(b), (c) and (d), certified by declaration by the secretary or other prescribed officer of the organisation to be a correct statement of the information contained in those records.
- (2) An organisation must, within the prescribed period, lodge in the Industrial Registry notification of any change made to the records

required to be kept under paragraphs 230(1)(b), (c) and (d), certified by declaration signed by the secretary or other prescribed officer of the organisation to be a correct statement of the changes made.

- (3) A person must not, in a declaration for the purposes of this section, make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

234 Storage of records

- (1) Subject to subsections (2) and (5), the records kept by an organisation under sections 230 and 231 must be kept at the office of the organisation.
- (2) A record referred to in subsection (1) may, so far as it relates to a branch of the organisation, be kept in a separate part or section at the office of the branch.
- (3) An organisation may apply to a Registrar for permission to keep the whole or a specified part of a record referred to in subsection (1) at specified premises instead of at the office of the organisation or branch.
- (4) A Registrar may, by signed instrument, grant the permission if the Registrar is satisfied that the record or the specified part of the record:
- (a) will be under the effective control of the organisation or branch; and
 - (b) will, in the case of a register of members, be available for inspection in accordance with section 235.
- (5) While a permission under subsection (4) is in force, a record referred to in the permission may, to the extent specified in the permission, be kept at the premises specified in the permission.

235 Registrar may authorise access to certain records

- (1) A person (the *authorised person*) authorised by a Registrar may inspect, and make copies of, or take extracts from, the records kept by an organisation under sections 230 and 231 (the *records*) at such times as the Registrar specifies.

Section 236

- (2) An organisation must cause its records to be available, at all relevant times, for the purposes of subsection (1) to the authorised person.

Note: This subsection is a civil penalty provision (see section 305).

- (3) Without limiting the ways in which an organisation can comply with subsection (2), it complies if it makes the records available to the authorised person in a form agreed to by the authorised person.

Note: For example, the authorised person could agree to the organisation providing him or her with a hard copy or with a floppy disk, or to transmitting a copy of the register (or the relevant part) to a specified e-mail address.

236 Registrar may direct organisation to deliver copy of records

Register kept under section 230

- (1) Where:

(a) a member of an organisation requests a Registrar to give a direction under this subsection; and

(b) the Registrar is satisfied:

- (i) that the member has been refused access to the register required to be kept under section 230, or part of it, at the office or premises where the register or part is kept; or
(ii) that there are other grounds for giving a direction under this subsection;

the Registrar may direct the organisation to deliver to the Registrar a copy of the relevant records certified by declaration by the secretary or other prescribed officer of the organisation to be, as at a day specified in the certificate that is not more than 28 days before the first-mentioned day, a correct statement of the information contained in the register, for the member to inspect at a specified registry, and the organisation must comply with the direction.

Note: This subsection is a civil penalty provision (see section 305).

Copy kept under section 231

- (2) Where:

(a) a member of an organisation requests a Registrar to give a direction under this subsection; and

(b) the Registrar is satisfied that:

- (i) the member has been refused access to the copy of the register required to be kept under section 231; and
- (ii) the member has reasonable grounds for seeking access to the copy;

the Registrar may direct the organisation to deliver to the Registrar a copy of the copy, and the organisation must comply with the direction.

Note: This subsection is a civil penalty provision (see section 305).

- (3) A direction of the Registrar given under this section must be in writing and must specify the period within which the relevant copy must be delivered to the Registrar. The period must not be less than 14 days after the direction is given.
- (4) A copy of a record delivered under subsection (1) or (2) may be in the form of a hard copy or, if the Registrar agrees, in electronic form.
- (5) Where a Registrar receives a copy of a document from an organisation under this section, the Registrar may, if the Registrar considers it appropriate in the circumstances, provide a copy of that document to a member of the organisation.

237 Organisations to notify particulars of loans, grants and donations

- (1) An organisation must, within 90 days after the end of each financial year (or such longer period as the Registrar allows), lodge in the Industrial Registry a statement showing the relevant particulars in relation to each loan, grant or donation of an amount exceeding \$1,000 made by the organisation during the financial year.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A statement lodged in the Industrial Registry under subsection (1) must be signed by an officer of the organisation.
- (3) An organisation must not, in a statement under subsection (1), make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

Section 237

- (4) A statement lodged in the Industrial Registry under subsection (1) may be inspected at any registry, during office hours, by a member of the organisation concerned.
- (5) The relevant particulars, in relation to a loan made by an organisation, are:
 - (a) the amount of the loan; and
 - (b) the purpose for which the loan was required; and
 - (c) the security given in relation to the loan; and
 - (d) except where the loan was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.
- (6) The relevant particulars, in relation to a grant or donation made by an organisation, are:
 - (a) the amount of the grant or donation; and
 - (b) the purpose for which the grant or donation was made; and
 - (c) except where the grant or donation was made to relieve a member of the organisation, or a dependant of a member of the organisation, from severe financial hardship—the name and address of the person to whom the grant or donation was made.
- (7) Where an organisation is divided into branches:
 - (a) this section applies in relation to the organisation as if loans, grants or donations made by a branch of the organisation were not made by the organisation; and
 - (b) this section applies in relation to each of the branches as if the branch were itself an organisation.
- (8) For the purposes of the application of this section in accordance with subsection (7) in relation to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch.

Part 3—Accounts and audit

Division 1—Preliminary

238 Simplified outline

This Part sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

It provides for reports to be provided on the basis of reporting units. A reporting unit may be the whole of an organisation or one or more branches of an organisation.

Division 2 provides for the reporting units.

Division 3 sets out the accounting obligations for reporting units.

Division 4 provides for auditors to be appointed and sets out the powers and duties of the auditors and the duties that others have in relation to auditors.

Division 5 sets out the reporting requirements that reporting units must comply with.

Division 6 provides for reduced reporting requirements to apply in particular cases.

Division 7 provides for members' access to the financial records of reporting units.

239 Part only applies to financial years starting after registration

This Part does not apply, in relation to an association that becomes registered as an organisation under this Schedule, in relation to any financial year before the first financial year of the organisation that begins after the date of registration.

Section 240

240 Financial years—change in financial year

Where the rules of an organisation change the period constituting the financial year of the organisation, the period between:

- (a) the commencement of the first financial year after the change; and
- (b) the end of the preceding financial year;

is to be taken, for the purposes of this Part, to be a financial year.

241 Exemptions from certain Australian Accounting Standards

- (1) The Industrial Registrar may, by written notice, determine that particular Australian Accounting Standards do not apply in relation to an organisation or to a class of organisations.
- (2) In deciding whether to determine that a particular Australian Accounting Standard does not apply in relation to an organisation or organisations, the Registrar is to have regard to the cost to the organisation or organisations of complying with the standard and the information needs of the members of the organisation or organisations.

Division 2—Reporting units

242 What is a reporting unit?

- (1) The requirements of this Part apply in relation to reporting units. A reporting unit may be the whole of an organisation or a part of an organisation.

Organisations not divided into branches

- (2) Where an organisation is not divided into branches, the **reporting unit** is the whole of the organisation.

Organisations divided into branches

- (3) Where an organisation is divided into branches, each branch will be a **reporting unit** unless a certificate issued by the Industrial Registrar stating that the organisation is, for the purpose of compliance with this Part, divided into reporting units on an alternative basis (see section 245) is in force.
- (4) The alternative reporting units are:
- (a) the whole of the organisation; or
 - (b) a combination of 2 or more branches of the organisation.
- Each branch of an organisation must be in one, and only one, reporting unit.
- (5) For the purposes of this Part, so much of an organisation that is divided into branches as would not, apart from this subsection, be included in any branch, is taken to be a branch of the organisation.

243 Designated officers

A **designated officer** is an officer of:

- (a) in the case of a reporting unit that is the whole of an organisation—the organisation; or
- (b) in any other case—a branch, or one of the branches, that constitutes the reporting unit;

who, under the rules of the reporting unit, is responsible (whether alone or with others) for undertaking the functions necessary to enable the reporting unit to comply with this Part.

244 Members, staff and journals etc. of reporting units

- (1) For the purposes of the application of this Part in relation to a reporting unit that is the whole of an organisation:
 - (a) the members of the organisation are taken to be members of the reporting unit; and
 - (b) employees of the organisation are taken to be employees of the reporting unit; and
 - (c) the rules of the organisation are taken to be the rules of the reporting unit; and
 - (d) the financial affairs and records of the organisation are taken to be the financial affairs and records of the reporting unit; and
 - (e) conduct and activities of the organisation are taken to be conduct and activities of the reporting unit; and
 - (f) a journal published by the organisation is taken to be a journal published by the reporting unit.

- (2) For the purposes of the application of this Part in relation to a reporting unit that is not the whole of an organisation:
 - (a) the members of the organisation constituting the branch or branches that make up the reporting unit are taken to be members of the reporting unit; and
 - (b) employees of the organisation employed in relation to the branch or branches that make up the reporting unit (whether or not they are also employed in relation to any other branch) are taken to be employees of the reporting unit; and
 - (c) if the reporting unit consists of one branch—the rules of the branch are taken to be the rules of the reporting unit; and
 - (d) if the reporting unit consists of more than one branch—the rules of the branches (including any rules certified under section 246, or determined under section 247, for the purpose of giving effect to the establishment of the reporting unit) are taken to be the rules of the reporting unit; and
 - (e) the financial affairs and records of the branch or branches that make up the reporting unit are taken to be the financial affairs and records of the reporting unit; and
 - (f) conduct and activities of the branch or branches that make up the reporting unit are taken to be conduct and activities of the reporting unit; and

- (g) if the reporting unit consists of one branch—a journal published by the branch is taken to be a journal published by the reporting unit; and
- (h) a journal published by the organisation is taken to be a journal published by the reporting unit.

245 Determination of reporting units

- (1) The Industrial Registrar may issue to an organisation that is divided into branches a certificate stating that the organisation is, for the purpose of compliance with this Part, to be divided into reporting units on an alternative basis (as mentioned in subsection 242(3)).
- (2) A certificate may be issued on application by an organisation or at the initiative of the Registrar.

246 Determination of reporting units—application by organisation

- (1) An application by an organisation for a certificate under section 245 must:
 - (a) be in accordance with the regulations; and
 - (b) include an application for the Industrial Registrar to certify such alterations to the rules of the organisation as are required to give effect to the establishment of the proposed reporting units.

Note: Examples of the alterations that may be required are:

- (a) alterations to designate officers from the branches to be the committee of management for the reporting unit for the purpose of complying with this Part; and
 - (b) alterations to designate officers from the branches to undertake such duties as are necessary for the purpose of enabling the reporting unit to comply with this Part.
- (2) Where an organisation applies for a certificate, the Industrial Registrar must issue the certificate and certify the rule alterations if the Registrar is satisfied that:
 - (a) the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to them; and
 - (b) the alterations to the rules:

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- (i) comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards or collective agreements; and
- (ii) are not otherwise contrary to law; and
- (iii) have been made under the rules of the organisation.

247 Determination of reporting units—Industrial Registrar initiative

- (1) The Industrial Registrar may only issue a certificate under section 245 on his or her initiative if the Registrar:
 - (a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this Part, it is most appropriate for the organisation to be divided into reporting units on the basis set out in the certificate; and
 - (b) is satisfied that the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to them; and
 - (c) has complied with the prescribed procedure.
- (2) Where, in the Industrial Registrar's opinion, the rules of an organisation need to be altered to give effect to the establishment of the proposed reporting units under subsection (1), the Industrial Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Industrial Registrar's opinion, necessary to give effect to the establishment of the proposed reporting units.

248 Determination of reporting units—years certificate applies to

A certificate issued under section 245 is in force, and has effect according to its terms, in relation to:

- (a) the first financial year starting after the certificate is issued; and
- (b) each subsequent financial year unless, before the start of the financial year, the certificate is revoked under section 249.

249 Determination of reporting units—revocation of certificates

- (1) The Industrial Registrar may at any time, by written notice, revoke a certificate issued to an organisation under section 245.
- (2) If a certificate is revoked, each branch will be a reporting unit.
- (3) A certificate may be revoked on application by an organisation or at the initiative of the Registrar.
- (4) An application by an organisation for the revocation of a certificate must:
 - (a) be in accordance with the regulations; and
 - (b) include an application for the Industrial Registrar to certify such alterations to the rules of the organisation as are required to give effect to each branch being a reporting unit.
- (5) Where an organisation applies for a revocation, the Industrial Registrar must revoke the certificate and certify the rule alterations if the Registrar is satisfied that:
 - (a) the level of financial information that would be available to members with each branch being a reporting unit would be adequate and would be relevant to them; and
 - (b) the alterations to the rules:
 - (i) comply with, and are not contrary to, this Schedule, the Workplace Relations Act, awards or collective agreements; and
 - (ii) are not otherwise contrary to law; and
 - (iii) have been made under the rules of the organisation.
- (6) The Industrial Registrar may only revoke a certificate on his or her initiative if the Registrar:
 - (a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this Part, it is most appropriate for each branch to be a reporting unit; and
 - (b) has complied with the prescribed procedure.
- (7) Where:
 - (a) the Industrial Registrar intends to revoke a certificate on his or her own initiative; and

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(b) in the Registrar's opinion, the rules of an organisation need to be altered to give effect to each branch being a reporting unit;

the Registrar may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the Registrar's opinion, necessary to give effect to each branch being a reporting unit.

250 Determination of reporting units—rule alterations

- (1) An alteration to rules under section 246, 247 or 249 takes effect on the day that it is certified or determined.
- (2) To avoid doubt, changes in rules under those sections may include changes to the duties of an office (even if during a particular term of office).

251 Determination of reporting units—later certificate revokes earlier certificate

A certificate issued to an organisation under section 245 is taken to be revoked if a later certificate is issued to the organisation under section 245.

Division 3—Accounting obligations

Subdivision A—General obligations

252 Reporting unit to keep proper financial records

- (1) A reporting unit must:
 - (a) keep such financial records as correctly record and explain the transactions and financial position of the reporting unit, including such records as are prescribed; and
 - (b) keep its financial records in such a manner as will enable a general purpose financial report to be prepared from them under section 253; and
 - (c) keep its financial records in such a manner as will enable the accounts of the reporting unit to be conveniently and properly audited under this Part.
- (2) Where an organisation consists of 2 or more reporting units, the financial records for each of the reporting units must, as far as practicable, be kept in a consistent manner.

Note 1: This would involve, for example, the adoption of consistent accounting policies and a common chart of accounts for all reporting units in the organisation.

Note 2: This requirement is subject to subsection (4) which allows reporting units to keep some records on a cash basis.
- (3) Financial records of an organisation may, so far as they relate to the income and expenditure of the organisation, be kept on a cash basis or accrual basis, at the option of the organisation.
- (4) If an organisation keeps the financial records referred to in subsection (1) on an accrual basis, it may keep the financial records for its membership subscriptions separately on a cash basis.
- (5) An organisation must retain the financial records kept under subsection (1) for a period of 7 years after the completion of the transactions to which they relate.

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253 Reporting unit to prepare general purpose financial report

- (1) As soon as practicable after the end of each financial year, a reporting unit must cause a general purpose financial report to be prepared, in accordance with the Australian Accounting Standards, from the financial records kept under subsection 252(1) in relation to the financial year.
- (2) The general purpose financial report must consist of:
 - (a) financial statements containing:
 - (i) a profit and loss statement, or other operating statement; and
 - (ii) a balance sheet; and
 - (iii) a statement of cash flows; and
 - (iv) any other statements required by the Australian Accounting Standards; and
 - (b) notes to the financial statements containing:
 - (i) notes required by the Australian Accounting Standards; and
 - (ii) information required by the reporting guidelines (see section 255); and
 - (c) any other reports or statements required by the reporting guidelines (see section 255).
- (3) The financial statements and notes for a financial year must give a true and fair view of the financial position and performance of the reporting unit. This subsection does not affect the obligation for a financial report to comply with the Australian Accounting Standards.

Note 1: This section is a civil penalty provision (see section 305).

Note 2: The Australian Accounting Standards may be modified for the purposes of this Schedule by the regulations.

Note 3: If the financial statements and notes prepared in compliance with the Australian Accounting Standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph (2)(b).

254 Reporting unit to prepare operating report

- (1) As soon as practicable after the end of each financial year, the committee of management of a reporting unit must cause an operating report to be prepared in relation to the financial year.
- (2) The operating report must:
 - (a) contain a review of the reporting unit's principal activities during the year, the results of those activities and any significant changes in the nature of those activities during the year; and
 - (b) give details of any significant changes in the reporting unit's financial affairs during the year; and
 - (c) give details of the right of members to resign from the reporting unit under section 174; and
 - (d) give details (including details of the position held) of any officer or member of the reporting unit who is:
 - (i) a trustee of a superannuation entity or an exempt public sector superannuation scheme; or
 - (ii) a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme; andwhere a criterion for the officer or member being the trustee or director is that the officer or member is an officer or member of a registered organisation; and
 - (e) contain any other information that the reporting unit considers is relevant; and
 - (f) contain any prescribed information.
- (3) To avoid doubt, the operating report may be prepared by the committee of management or a designated officer.

Note: This section is a civil penalty provision (see section 305).

Subdivision B—Reporting guidelines

255 Reporting guidelines

- (1) The Industrial Registrar must, by written determination published in the *Gazette*, issue reporting guidelines for the purposes of sections 253 and 270.

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- (2) The reporting guidelines for the purposes of section 253 must provide:
 - (a) the manner in which reporting units must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deductions of membership subscriptions; and
 - (b) the manner in which reporting units must disclose the total amount of legal costs and other expenses related to litigation or other legal matters paid by the reporting unit during a financial year; and
 - (c) details of any information required for the purposes of subparagraph 253(2)(b)(ii) (information in notes to general purpose financial reports); and
 - (d) the form and content of any reports or statements that are required for the purposes of paragraph 253(2)(c) (other reports or statements forming part of the general purpose financial reports).
- (3) The reporting guidelines for the purposes of section 270 must provide:
 - (a) the manner in which reporting units must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deductions of membership subscriptions; and
 - (b) details of the form and content of the general purpose financial report to be prepared under subsection 270(4).
- (4) Reporting guidelines may also contain such other requirements in relation to the disclosure of information by reporting units as the Industrial Registrar considers appropriate.
- (5) Section 147 of the Workplace Relations Act does not apply in relation to reporting guidelines or the issuing of reporting guidelines.

Division 4—Auditors

256 Auditors of reporting units

- (1) A reporting unit must ensure that there is an auditor of the reporting unit at any time when an auditor is required for the purposes of the operation of this Part in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (2) The position of auditor of a reporting unit is to be held by:
- (a) a person who is an approved auditor; or
 - (b) a firm, at least one of whose members is an approved auditor.

- (3) A person must not accept appointment as auditor of a reporting unit unless:

- (a) the person is an approved auditor; and
- (b) the person is not an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (4) A member of a firm must not accept appointment of the firm as auditor of a reporting unit unless:

- (a) at least one member of the firm is an approved auditor; and
- (b) no member of the firm is an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (5) A person who holds the position of auditor of a reporting unit must resign the appointment if the person:

- (a) ceases to be an approved auditor; or
- (b) becomes an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (6) A member of a firm that holds the position of auditor of a reporting unit must take whatever steps are open to the member to ensure that the firm resigns the appointment if the member:

- (a) ceases to be an approved auditor and is or becomes aware that no other member of the firm is an approved auditor; or

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- (b) becomes an excluded auditor in relation to the reporting unit;
or
- (c) becomes aware that another member of the firm is an excluded auditor in relation to the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (7) The auditor of a reporting unit must use his or her best endeavours to comply with each requirement of this Schedule that is applicable to the auditor in that capacity.

257 Powers and duties of auditors

- (1) An auditor of a reporting unit must audit the financial report of the reporting unit for each financial year and must make a report in relation to the year to the reporting unit.
- (2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is:
 - (a) entitled at all reasonable times to full and free access to all records and other documents of the reporting unit relating directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the reporting unit; and
 - (b) entitled to seek from any designated officer, or employee of the reporting unit, such information and explanations as the auditor or authorised person wants for the purposes of the audit.
- (3) If an auditor requests an officer, employee or member of an organisation to produce records or other documents under paragraph (2)(a), the request must:
 - (a) be in writing; and
 - (b) specify the nature of the records or other documents to be produced; and
 - (c) specify how and where the records or other documents are to be produced; and
 - (d) specify a period (of not less than 14 days after the notice is given) within which the records or other documents are to be produced.

- (4) If an auditor authorises a person for the purposes of subsection (2), the auditor must serve on the reporting unit a notification that sets out the name and address of the person.
- (5) An auditor must, in his or her report, state whether in the auditor's opinion the general purpose financial report is presented fairly in accordance with any of the following that apply in relation to the reporting unit:
 - (a) the Australian Accounting Standards;
 - (b) any other requirements imposed by this Part.If not of that opinion, the auditor's report must say why.
- (6) If the auditor is of the opinion that the general purpose financial report does not so comply, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the general purpose financial report. If it is not practicable to quantify the effect fully, the report must say why.
- (7) The auditor's report must describe:
 - (a) any defect or irregularity in the general purpose financial report; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in subsection (2) or section 252.
- (8) The form and content of the auditor's report must be in accordance with the Australian Auditing Standards.
- (9) The auditor's report must be dated as at the date that the auditor signs the report and must be given to the reporting unit within a reasonable time of the auditor having received the general purpose financial report.
- (10) An auditor must not, in a report under this section, make a statement if the auditor knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).
- (11) If:
 - (a) the auditor suspects on reasonable grounds that there has been a breach of this Schedule or reporting guidelines; and
 - (b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report or by reporting

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the matter to the committee of management of the reporting unit;

the auditor must immediately report the matter, in writing, to the Industrial Registrar.

Note: This subsection is a civil penalty provision (see section 305).

258 Obstruction etc. of auditors

- (1) An officer, employee or member of an organisation or branch commits an offence if he or she:
 - (a) hinders or obstructs the auditor of a reporting unit from taking action under paragraph 257(2)(a); or
 - (b) does not comply with a request under paragraph 257(2)(a) by an auditor of a reporting unit to produce a record or other document in the custody or under the control of the officer, employee or member.

Maximum penalty: 30 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) It is a defence to an offence against paragraph (1)(b) if the officer, employee or member had a reasonable excuse for not complying.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (3).

- (4) However, a person is not excused from producing a record or other document under this section on the ground that the production might tend to incriminate the person or expose the person to a penalty.

- (5) However:

- (a) producing the record or other document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the record or other document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty.

- (6) It is a defence to an offence against subsection (1) if the officer, employee or member did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom that subsection applied.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (6).

- (7) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the auditor was an auditor.

- (8) In this section:

auditor includes a person authorised by the auditor for the purposes of subsection 257(2).

259 Reporting unit to forward notices etc. to auditor

A reporting unit must forward to the auditor of the reporting unit any notice of, and any other communication relating to, a meeting of the reporting unit, or the committee of management of the reporting unit, at which the report of the auditor, or any general purpose financial report to which the report relates, are to be presented, being a notice or other communication that a member of the reporting unit, or the committee of management of the reporting unit, as the case may be, would be entitled to receive.

Note: This section is a civil penalty provision (see section 305).

260 Auditor entitled to attend meetings at which report presented

- (1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of a reporting unit, or the committee of management of a reporting unit, at which:
- (a) the report of the auditor, or any general purpose financial report to which the report relates, is to be presented or considered; or
 - (b) there is to be conducted any business of the meeting that relates to:
 - (i) the auditor in that capacity; or

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(ii) a person authorised by the auditor, in the capacity of a person so authorised.

- (2) Where an auditor authorises a person for the purposes of this section, the auditor must serve on the reporting unit a notification, which sets out the name and address of the person.
- (3) An officer, employee or member of an organisation or branch commits an offence if he or she hinders or obstructs the auditor of a reporting unit from attending a part of the meeting that the auditor is entitled to attend.

Maximum penalty: 30 penalty units.

- (4) A person commits an offence if:
- (a) an auditor of a reporting unit attends a part of a meeting that the auditor is entitled to attend; and
 - (b) the person chairs the meeting; and
 - (c) in the course of the part of the meeting, the auditor indicates to the person chairing the meeting that the auditor wishes to be heard; and
 - (d) the person fails, as soon as practicable after having received the indication, to afford to the auditor an opportunity to be heard.

Maximum penalty: 20 penalty units.

- (5) It is a defence to an offence against a subsection of this section if the person did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (5).

- (6) In a prosecution for an offence against this section, it is not necessary to prove that the defendant knew that the auditor was an auditor.
- (7) In subsections (3) and (4):

auditor includes a person authorised by the auditor for the purposes of this section.

261 Auditors and other persons to enjoy qualified privilege in certain circumstances

- (1) An auditor of a reporting unit is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to a statement that the auditor makes in the course of duties as auditor, whether the statement is made orally or in writing.
- (2) A person is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to the publishing of a document prepared by an auditor of a reporting unit in the course of duties as auditor and required by or under this Schedule to be lodged with the Industrial Registry.
- (3) This section does not limit or affect any right, privilege or immunity that a defendant has in an action for defamation.

262 Fees and expenses of auditors

A reporting unit must pay the reasonable fees and expenses of an auditor of the reporting unit.

263 Removal of auditor

- (1) An auditor of a reporting unit may only be removed during the term of appointment of the auditor:
 - (a) where the auditor was appointed by the committee of management of the reporting unit—by resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or
 - (b) where the auditor was appointed by a general meeting of the members of the reporting unit—by resolution passed at a general meeting by a majority of the members of the reporting unit voting at the meeting.
- (2) Written notice of the intention to remove the auditor must be given to each member of the reporting unit. The notice must be provided in accordance with any time limits provided by the rules of the reporting unit, or within a reasonable time before the resolution is moved if no such time limits are provided.

Note: This subsection is a civil penalty provision (see section 305).

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- (3) The auditor must be given reasonable notice of the resolution to remove the auditor and must be given the opportunity to:
 - (a) in the case of removal under paragraph (1)(a)—make oral representations to the committee of management; and
 - (b) in any case—make written representations.

Note: This subsection is a civil penalty provision (see section 305).

- (4) If it is proposed to remove the auditor under paragraph (1)(b) and the auditor makes written representations, the auditor may require the reporting unit to provide a copy of the written representations to each member of the reporting unit.
- (5) The reporting unit must comply with a requirement under subsection (4) unless the written representations exceed any limits as to length that are prescribed.

Note: This subsection is a civil penalty provision (see section 305).

264 Resignation of auditor

- (1) An auditor of a reporting unit may resign by giving written notice to the reporting unit.
- (2) The resignation takes effect on the day specified in the notice or, if no day is specified, the day that the notice is given to the reporting unit.
- (3) If the auditor requests the reporting unit to allow the auditor to explain his or her reasons for resigning, the reporting unit must either:
 - (a) distribute to the members of the reporting unit written reasons for resignation prepared by the auditor; or
 - (b) give the auditor the opportunity to explain his or her reasons to a general meeting of the reporting unit.

The committee of management of the reporting unit may choose which method is used.

Note: This subsection is a civil penalty provision (see section 305).

Division 5—Reporting requirements

265 Copies of full report or concise report to be provided to members

- (1) A reporting unit must provide free of charge to its members either:
 - (a) a full report consisting of:
 - (i) a copy of the report of the auditor in relation to the inspection and audit of the financial records of the reporting unit in relation to a financial year; and
 - (ii) a copy of the general purpose financial report to which the report relates; and
 - (iii) a copy of the operating report to which the report relates; or
 - (b) a concise report for the financial year that complies with subsection (3).

Note: This subsection is a civil penalty provision (see section 305).

- (2) A concise report may only be provided if, under the rules of the reporting unit, the committee of management of the reporting unit resolves that a concise report is to be provided.
- (3) A concise report for a financial year consists of:
 - (a) a concise financial report for the year drawn up in accordance with the regulations; and
 - (b) the operating report for the year; and
 - (c) a statement by the auditor:
 - (i) that the concise financial report has been audited; and
 - (ii) whether, in the auditor's opinion, the concise financial report complies with the relevant Australian Accounting Standards; and
 - (d) a copy of anything included under subsection 257(5), (6) or (7) in the auditor's report on the full report; and
 - (e) a statement that the report is a concise report and that a copy of the full report and auditor's report will be sent to the member free of charge if the member asks for them.
- (4) If a member requests a copy of the full report and auditor's report, as mentioned in paragraph (3)(e), the reporting unit must send

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those reports to the person within 28 days of the request being made.

Note: This subsection is a civil penalty provision (see section 305).

- (5) The copies referred to in subsection (1) must be provided within:
- (a) if a general meeting of members of the reporting unit to consider the reports is held within 6 months after the end of the financial year—the period starting at the end of the financial year and ending 21 days before that meeting; or
 - (b) in any other case—the period of 5 months starting at the end of the financial year.

A Registrar may, upon application by the reporting unit, extend the period during which the meeting referred to in paragraph (a) may be held, or the period set out in paragraph (b), by no more than one month.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Where a reporting unit publishes a journal of the reporting unit that is available to the members of the reporting unit free of charge, the reporting unit may comply with subsection (1):
- (a) by publishing in the journal the full report; or
 - (b) by preparing a concise report as described in subsection (3) and publishing the concise report in the journal.
- (7) Where a reporting unit consists of 2 or more branches of an organisation and one of those branches publishes a journal of the branch that is available to the members of the branch free of charge, the reporting unit may comply with subsection (1) in relation to those members:
- (a) by publishing in the journal the full report; or
 - (b) by preparing a concise report as described in subsection (3) and publishing the concise report in the journal.

266 Full report to be presented to meetings

- (1) Subject to subsection (2), the reporting unit must cause the full report to be presented to a general meeting of the members of the reporting unit within the period of 6 months starting at the end of the financial year (or such longer period as is allowed by a Registrar under subsection 265(5)).

Note: This subsection is a civil penalty provision (see section 305).

- (2) If the rules of the reporting unit permit a general meeting to be a series of meetings at different locations, the presenting of the full report to such a series of meetings is taken to be the presenting of the report to a general meeting. The general meeting is taken to have occurred at the time of the last of the meetings in the series.
- (3) If the rules of the reporting unit provide for a specified percentage (not exceeding 5%) of members to be able to call a general meeting of the reporting unit for the purpose of considering the auditor's report, the general purpose financial report and the operating report, the full report may instead be presented to a meeting of the committee of management of the reporting unit that is held within the period mentioned in subsection (1).

267 Comments by committee members not to be false or misleading

Where a member of the committee of management of a reporting unit:

- (a) provides to members of the reporting unit; or
- (b) publishes in a journal; or
- (c) presents to a general meeting of the members of the reporting unit or a meeting of the committee of management of the reporting unit;

comments on a matter dealt with in a report, accounts or statements of the kind referred to in subsection 265(1), or in a concise report as described in subsection 265(3), the member must not, in the comments, make a statement if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This section is a civil penalty provision (see section 305).

268 Reports etc. to be lodged in Industrial Registry

A reporting unit must, within 14 days (or such longer period as a Registrar allows) after the general meeting referred to in section 266, lodge in the Industrial Registry:

- (a) a copy of the full report; and
- (b) if a concise report was provided to members—a copy of the concise report; and
- (c) a certificate by a prescribed designated officer that the documents lodged are copies of the documents provided to

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members and presented to a meeting in accordance with section 266.

Note: This section is a civil penalty provision (see section 305).

Division 6—Reduced reporting requirements for particular reporting units

269 Reporting units with substantial common membership with State registered bodies

- (1) This section applies to a reporting unit if there is an industrial association (the *associated State body*) that:
 - (a) is registered or recognised as such an association (however described) under a prescribed State Act; and
 - (b) is, or purports to be, composed of substantially the same members as the reporting unit; and
 - (c) has, or purports to have, officers who are substantially the same as designated officers in relation to the reporting unit.
- (2) A reporting unit is taken to have satisfied this Part if this section applies to the reporting unit and:
 - (a) a Registrar, on the application of the reporting unit, issues a certificate stating that the financial affairs of the reporting unit are encompassed by the financial affairs of the associated State body; and
 - (b) the associated State body has, in accordance with prescribed State legislation, prepared accounts, had those accounts audited, provided a copy of the audited accounts to its members and lodged the audited accounts with the relevant State authority; and
 - (c) the reporting unit has lodged a copy of the audited accounts with the Industrial Registry; and
 - (d) any members of the reporting unit who are not also members of the associated State body have been provided with copies of the accounts at substantially the same time as the members of the reporting unit who are members of the associated State body; and
 - (e) a report under section 254 has been prepared in respect of the activities of the reporting unit and has been provided to members of the reporting unit with the copies of the accounts.

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270 Organisations with income of less than certain amount

- (1) If, on the application of a reporting unit that is the whole of an organisation made after the end of a financial year, a Registrar is satisfied that the reporting unit's income for the year did not exceed:
 - (a) in the case of a financial year that, because of section 240, is a period other than 12 months—such amount as the Registrar considers appropriate in the circumstances; or
 - (b) in any other case—\$100,000 or such higher amount as is prescribed;the Registrar must issue to the reporting unit a certificate to that effect.
- (2) Where a certificate is issued under subsection (1) in relation to a reporting unit in relation to a financial year:
 - (a) the following provisions of this section apply in relation to the reporting unit in relation to the year; and
 - (b) except as provided in paragraph (c), this Part continues to apply in relation to the reporting unit in relation to the year; and
 - (c) sections 253, 265, 266 and 268 do not apply in relation to the reporting unit in relation to the year.
- (3) This Part (other than this section) applies to the reporting unit in relation to the year as if:
 - (a) a reference to a general purpose financial report prepared or to be prepared under section 253 were a reference to a general purpose financial report prepared under subsection (4) of this section; and
 - (b) the reference in subsection 272(5) to a general purpose financial report prepared under section 253 were a reference to a general purpose financial report prepared under subsection (4) of this section; and
 - (c) the reference in sections 332 and 333 to documents lodged in the Industrial Registry under section 268 were a reference to documents lodged with the Industrial Registry in accordance with subsection (7) of this section.
- (4) Within the prescribed period after the end of the financial year, the reporting unit must cause to be prepared, in accordance with the reporting guidelines, from the financial records kept under

subsection 252(1) in relation to the year, the general purpose financial report required by those reporting guidelines.

Note: This subsection is a civil penalty provision (see section 305).

- (5) After the making to the reporting unit of the report of the auditor under section 257 in relation to the auditor's inspection and audit of the financial records kept by the reporting unit in relation to the year, and before the end of the financial year immediately following the year, the reporting unit must cause a copy of the report, together with copies of the general purpose financial report to which the auditor's report relates, to be presented to a meeting of the members of the reporting unit.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Where a member of a reporting unit requests the reporting unit to provide to the member a copy of the auditor's report and the general purpose financial report, the reporting unit must provide a copy of each of the documents to the member, free of charge, within 14 days after receiving the request.

Note: This subsection is a civil penalty provision (see section 305).

- (7) The reporting unit must, within 90 days (or such longer period as a Registrar allows) after the making to the reporting unit of the report under section 257, lodge with the Registrar copies of the auditor's report and the general purpose financial report together with a certificate by a prescribed designated officer that the information contained in the general purpose financial report is correct.

Note: This subsection is a civil penalty provision (see section 305).

271 Exemption from this Part of certain reporting units

- (1) If, on the application of a reporting unit, a Registrar is satisfied, after considering such circumstances (if any) as are prescribed, that the reporting unit did not have any financial affairs in a financial year, the Registrar may issue to the reporting unit a certificate to that effect in respect of the financial year.
- (2) The certificate exempts the reporting unit from the requirements of this Part in respect of the financial year.

Schedule 1 Registration and Accountability of Organisations

Chapter 8 Records and accounts

Part 3 Accounts and audit

Section 271

- (3) The application must be made to a Registrar within 90 days, or such longer period as the Registrar allows, after the end of the financial year.

Division 7—Members’ access to financial records

272 Information to be provided to members or Registrar

- (1) A member of a reporting unit, or a Registrar, may apply to the reporting unit for specified prescribed information in relation to the reporting unit to be made available to the person making the application.
- (2) The application must be in writing and must specify the period within which, and the manner in which, the information is to be made available. The period must not be less than 14 days after the application is given to the reporting unit.
- (3) A reporting unit must comply with an application made under subsection (1).

Note: This subsection is a civil penalty provision (see section 305).

- (4) A Registrar may only make an application under subsection (1) at the request of a member of the reporting unit concerned, and the Registrar must provide to a member information received because of an application made at the request of the member.
- (5) A general purpose financial report prepared under section 253, a concise report prepared under section 265 and a report prepared under subsection 270(4) must include a notice drawing attention to subsections (1), (2) and (3) of this section and setting out those subsections.

Note: This subsection is a civil penalty provision (see section 305).

- (6) Without limiting the information that may be prescribed under subsection (1), the information prescribed must include details (including the amount) of any fees paid by the reporting unit for payroll deduction services provided by a person who is an employer of:
 - (a) the member making the application for information; or
 - (b) the member at whose request the application was made.

Section 273

273 Order for inspection of financial records

- (1) On application by a member of a reporting unit, the Commission may make an order:
 - (a) authorising the applicant to inspect the financial records of the reporting unit specified in the order; or
 - (b) authorising another person (whether a member or not) to inspect the financial records of the reporting unit specified in the order on the applicant's behalf.

This subsection is subject to subsections (2) and (3).

- (2) The Commission may only make the order if it is satisfied:
 - (a) that the applicant is acting in good faith; and
 - (b) there are reasonable grounds for suspecting a breach of:
 - (i) a provision of this Part; or
 - (ii) the reporting guidelines; or
 - (iii) a regulation made for the purposes of this Part; or
 - (iv) a rule of a reporting unit relating to its finances or financial administration; and
 - (c) it is reasonable to expect that an examination of the financial records will assist in determining if there is such a breach.
- (3) The Commission may only make an order authorising the inspection of financial records that relate to the suspected breach mentioned in paragraph (2)(b).
- (4) A person authorised to inspect the financial records may make copies of the financial records unless the Commission orders otherwise.

274 Frivolous or vexatious applications

- (1) A person must not make an application under section 273 that is vexatious or without reasonable cause.

Note: This subsection is a civil penalty provision (see section 305).

- (2) If the Commission considers an application under section 273 to be vexatious or without reasonable cause, the Commission must dismiss the application as soon as possible.

275 Ancillary orders

If the Commission makes an order under section 273, the Commission may make any other orders it considers appropriate, including any or all of the following:

- (a) an order limiting the use that a person who inspects the financial records may make of information obtained during the inspection;
- (b) an order limiting the right of a person who inspects the financial records to make copies in accordance with subsection 273(4);
- (c) an order that the reporting unit is not required to provide the names and addresses of its members.

276 Disclosure of information acquired in inspection

- (1) An applicant who inspects the financial records under section 273, or a person who inspects the financial records on behalf of an applicant, must not disclose information obtained during the inspection unless the disclosure is to:
 - (a) a Registry official; or
 - (b) the applicant.
- (2) A person who receives information under paragraph (1)(a) or (b) must not disclose the information other than to another person covered by one of those paragraphs.

Note: This section is a civil penalty provision (see section 305).

277 Reporting unit or committee of management may allow member to inspect books

The committee of management of a reporting unit, or the reporting unit by a resolution passed at a general meeting, may authorise a member to inspect financial records of the reporting unit.

Section 278

278 Commission to be advised of breaches of Part or rules etc. found during inspection

- (1) If, as a result of inspecting the financial records of a reporting unit, a person reasonably believes that a breach of:
- (a) a provision of this Part; or
 - (b) the reporting guidelines; or
 - (c) a regulation made for the purposes of this Part; or
 - (d) a rule of a reporting unit relating to its finances or financial administration;

may have occurred, the person must give the Industrial Registry written notice to that effect and give to the Industrial Registry any relevant information obtained during the inspection.

- (2) If the Industrial Registry receives notice under subsection (1) and the Commission is satisfied that there are reasonable grounds for believing that there has been a breach of:
- (a) a provision of this Part; or
 - (b) the reporting guidelines; or
 - (c) a regulation made for the purposes of this Part; or
 - (d) a rule of a reporting unit relating to its finances or financial administration;

the Commission must refer the matter to the Industrial Registrar.

Note: Where a matter is referred, it will be investigated under section 334.

279 Constitution of Commission

For the purposes of this Division, the Commission must be constituted by a Presidential Member.

Part 4—Access to organisations' books

280 Right of access to organisation's books

Right while officer

- (1) An officer of an organisation or a branch may inspect the books of the organisation at all reasonable times for the purposes of a legal proceeding:
 - (a) to which the officer is a party; or
 - (b) that the officer proposes in good faith to bring; or
 - (c) that the officer has reason to believe will be brought against him or her;

where the officer reasonably believes that the books contain information that is relevant to the proceedings.

Right during 7 years after ceasing to be officer

- (2) A person who has ceased to be an officer of an organisation or a branch may inspect the books of the organisation at all reasonable times for the purposes of a legal proceeding:
 - (a) to which the person is a party; or
 - (b) that the person proposes in good faith to bring; or
 - (c) that the person has reason to believe will be brought against him or her;

where the person reasonably believes that the books contain information that is relevant to the proceedings. This right continues for 7 years after the person ceased to be an officer of the organisation or the branch.

Right to take copies

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.
- (4) Where a person obtains copies under subsection (3), the organisation is entitled to recover from the person any costs incurred by the organisation in providing the copies.

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Organisation or branch not to refuse access

- (5) An organisation or branch must allow a person to exercise his or her rights to inspect or take copies of the books under this section.

*Meaning of **books***

- (6) In this section:

books includes:

- (a) a register; and
- (b) any other record of information; and
- (c) financial reports or financial records, however compiled, recorded or stored; and
- (d) a document.

Chapter 9—Conduct of officers and employees

Part 1—Simplified outline of Chapter

281 Simplified outline

This Chapter sets out some of the most significant duties of officers and employees of organisations and branches of organisations. Other duties are imposed by other provisions of this Schedule and other laws (including the general law).

Part 2 sets out the general duties of officers and employees in relation to the financial management of an organisation or a branch of an organisation.

Part 3 sets out the general duties of officers and employees in relation to orders or directions of the Federal Court or the Commission.

Part 2—General duties in relation to the financial management of organisations

Division 1—Preliminary

282 Simplified outline

This Part sets out some of the most significant duties of officers and employees of organisations and branches of organisations in relation to the financial management of an organisation or a branch of an organisation.

283 Part only applies in relation to financial management

This Part only applies in relation to officers and employees of an organisation or a branch of an organisation to the extent that it relates to the exercise of powers or duties of those officers and employees related to the financial management of the organisation or branch.

284 Meaning of *involved*

For the purposes of this Part, a person is *involved* in a contravention if, and only if, the person has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced, whether by threats or promises or otherwise, the contravention; or
- (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) conspired with others to effect the contravention.

Division 2—General duties in relation to the financial management of organisations

285 Care and diligence—civil obligation only

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable person would exercise if he or she:
 - (a) were an officer of an organisation or a branch in the organisation's circumstances; and
 - (b) occupied the office held by, and had the same responsibilities within the organisation or a branch as, the officer.

Note: This subsection is a civil penalty provision (see section 305).

- (2) An officer of an organisation or a branch who makes a judgment to take or not take action in respect of a matter relevant to the operations of the organisation or branch is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if he or she:
 - (a) makes the judgment in good faith for a proper purpose; and
 - (b) does not have a material personal interest in the subject matter of the judgment; and
 - (c) informs himself or herself about the subject matter of the judgment to the extent he or she reasonably believes to be appropriate; and
 - (d) rationally believes that the judgment is in the best interests of the organisation.

The officer's belief that the judgment is in the best interests of the organisation is a rational one unless the belief is one that no reasonable person in his or her position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalents at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Schedule or under any other laws.

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286 Good faith—civil obligations

- (1) An officer of an organisation or a branch must exercise his or her powers and discharge his or her duties:
 - (a) in good faith in what he or she believes to be the best interests of the organisation; and
 - (b) for a proper purpose.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

287 Use of position—civil obligations

- (1) An officer or employee of an organisation or a branch must not improperly use his or her position to:
 - (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the organisation or to another person.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

288 Use of information—civil obligations

- (1) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch must not improperly use the information to:
 - (a) gain an advantage for himself or herself or someone else; or
 - (b) cause detriment to the organisation or to another person.

Note 1: This duty continues after the person stops being an officer or employee of the organisation or branch.

Note 2: This subsection is a civil penalty provision (see section 305).

- (2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

289 Effect of ratification by members

- (1) If the members of an organisation ratify or approve a contravention of section 285, 286, 287 or 288, the ratification or approval:
 - (a) does not prevent the commencement of proceedings for a contravention of the section; and
 - (b) does not have the effect that proceedings brought for a contravention of the section must be determined in favour of the defendant.

- (2) If members of an organisation ratify or approve a contravention of section 285, 286, 287 or 288, the Federal Court may take the ratification or approval into account in deciding what order or orders to make under section 306, 307 or 308 in proceedings brought for a contravention of the section. In doing this, it must have regard to:
 - (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the contravention; and
 - (b) whether the members who ratified or approved the contravention were acting for proper purposes.

290 Compliance with statutory duties

An officer or employee does not contravene section 286, 287 or 288 by doing an act that another provision of this Schedule or the Workplace Relations Act requires the officer or employee to do.

291 Interaction of sections 285 to 289 with other laws etc.

Sections 285 to 289:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of his or her office or employment in relation to an organisation or a branch; and
- (b) do not prevent the commencement of proceedings for a breach of duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsection 285(2) to the extent to which it operates on the duties at common law and in equity that are equivalent to the requirements of subsection 285(1).

Section 292

292 Reliance on information or advice provided by others

If:

- (a) an officer relies on information, or professional or expert advice, given or prepared by:
 - (i) an employee of the organisation or the branch whom the officer believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
 - (ii) a professional adviser or expert in relation to matters that the officer believes on reasonable grounds to be within the person's professional or expert competence; or
 - (iii) another officer in relation to matters within the officer's authority; or
 - (iv) a collective body on which the officer did not serve in relation to matters within the collective body's authority; and
 - (b) the reliance was made:
 - (i) in good faith; and
 - (ii) after making proper inquiry if the circumstances indicated the need for inquiry; and
 - (c) the reasonableness of the officer's reliance on the information or advice arises in proceedings brought to determine whether an officer has performed a duty under this Part or an equivalent duty at common law or in equity;
- the officer's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

293 Responsibility for actions of other person

- (1) If the officers of an organisation or a branch delegate a power under its rules, each of those officers is responsible for the exercise of the power by the person to whom the power was delegated as if the power had been exercised by the officer.
- (2) An officer is not responsible under subsection (1) if:
 - (a) the officer believed on reasonable grounds at all times that the person to whom the power was delegated would exercise the power in conformity with the duties imposed on officers of the organisation or the branch by this Schedule or the Workplace Relations Act; and

- (b) the officer believed:
- (i) on reasonable grounds; and
 - (ii) in good faith; and
 - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;
- that the person to whom the power was delegated was reliable and competent in relation to the power delegated.

Part 3—General duties in relation to orders and directions

Division 1—Preliminary

294 Simplified outline

<p>This Part sets out the general duties of officers and employees in relation to orders or directions of the Federal Court or the Commission.</p>
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295 Meaning of *involved*

For the purposes of this Part, a person is *involved* in a contravention if, and only if, the person has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced, whether by threats or promises or otherwise, the contravention; or
- (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) conspired with others to effect the contravention.

296 Application to officers and employees of branches

In this Part:

- (a) a reference to an officer of an organisation includes a reference to an officer of a branch of an organisation; and
- (b) a reference to an employee of an organisation includes a reference to an employee of a branch of an organisation.

Division 2—General duties in relation to orders and directions

297 Order or direction applying to organisation—civil obligation

- (1) This section applies if:
 - (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an organisation.
- (2) An officer or employee of the organisation must not do anything that would cause the organisation to contravene the order or direction, knowing, or reckless as to whether, the doing of the thing would result in the contravention.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of the order or direction, or of subsection (2), contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

298 Prohibition order or direction applying to organisation—civil obligation

- (1) This section applies if:
 - (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an organisation; and
 - (d) the order or direction prohibits the organisation from doing something.
- (2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or direction had applied to him or her, knowing, or reckless as to

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whether, the doing of the thing would result in such a contravention.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

299 Order or direction applying to officer—civil obligation

- (1) This section applies if:
- (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an officer of an organisation.

- (2) The officer must not knowingly or recklessly contravene the order or direction.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

300 Prohibition order or direction applying to officer—civil obligation

- (1) This section applies if:
- (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an officer of an organisation; and
 - (d) the order or direction prohibits the officer from doing something.

- (2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or direction had applied to him or her, knowing, or reckless as to

whether, the doing of the thing would result in such a contravention.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

301 Order or direction applying to employee—civil obligation

- (1) This section applies if:
- (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an employee of an organisation.
- (2) The employee must not knowingly or recklessly contravene the order or direction.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

302 Prohibition order or direction applying to employee—civil obligation

- (1) This section applies if:
- (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to an employee of an organisation; and
 - (d) the order or direction prohibits the employee from doing something.
- (2) An officer or employee of the organisation must not do anything that would contravene the order or direction if the order or

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direction had applied to him or her, knowing, or reckless as to whether, the doing of the thing would result in such a contravention.

Note: This subsection is a civil penalty provision (see section 305).

- (3) An officer or employee of the organisation who is involved in a contravention of subsection (2) contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

303 Order or direction applying to member of organisation—civil obligation

- (1) This section applies if:
- (a) the Federal Court or the Commission has made an order or a direction under this Schedule or the Workplace Relations Act; and
 - (b) the order or direction is in force; and
 - (c) the order or direction applies to a member of an organisation.
- (2) An officer or employee of the organisation who is involved in a contravention of the order or direction contravenes this subsection.

Note: This subsection is a civil penalty provision (see section 305).

303A Application of this Division

This Division applies in relation to:

- (a) orders and directions made by the Federal Court or the Commission before, on or after the commencement of this Division; and
- (b) acts done or omissions made on or after that commencement.

Chapter 10—Civil penalties

Part 1—Simplified outline of Chapter

304 Simplified outline

This Chapter provides for civil penalties where specified provisions are contravened.

It sets out the orders that may be made where a contravention has occurred.

It also sets out the relationship with criminal proceedings arising out of the same conduct.

Part 2—Civil consequences of contravening civil penalty provisions

305 Civil penalty provisions

- (1) Subject to this Part, an application may be made to the Federal Court for orders under sections 306, 307 and 308 in respect of conduct in contravention of a civil penalty provision.
- (2) These provisions are the *civil penalty provisions*:
 - (a) subsection 52(1) (declaration about register);
 - (b) subsection 52(3) (false statement);
 - (ba) subsection 95(3C) (direction to provide information);
 - (c) subsection 104(1) (declaration about register);
 - (d) subsection 104(3) (false statement);
 - (e) subsection 151(2) and paragraph 151(11)(a) (lodging membership agreements);
 - (f) subsection 152(3) (lodging assets and liabilities agreements);
 - (g) section 169 (request for statement of membership);
 - (h) subsection 172(1) (removal of non-financial members from register);
 - (i) section 175 (false representation as to membership);
 - (j) section 176 (false representation about resignation);
 - (k) subsection 189(2) (lodging election information);
 - (l) subsection 192(1) (declaration about register);
 - (m) subsection 192(3) (false statement in declaration);
 - (n) subsections 198(1), (4), (5) and (8) (response to post-election report);
 - (o) subsections 230(1) and (2) (records to be kept and lodged by organisations);
 - (p) subsections 231(1) and (2) (records to be held for 7 years);
 - (q) subsections 233(1) and (2) (lodging of information in Registry);
 - (r) subsection 233(3) (false statement about records);
 - (s) subsection 235(2) (access to records);
 - (t) subsections 236(1) and (2) (delivery of records);

- (u) subsection 237(1) (particulars of loans, grants and donations);
 - (v) subsection 237(3) (false statement about loans, grants and donations);
 - (w) sections 253 and 254 (keeping and preparation of accounts);
 - (x) subsection 256(1) (appointment of auditors);
 - (y) subsections 256(3), (4), (5) and (6) (persons not to be auditors);
 - (z) subsections 257(10) and (11) (auditor's report);
 - (za) section 259 (forwarding notices to auditors);
 - (zb) subsections 263(2), (3) and (5) (removal of auditor);
 - (zc) subsection 264(3) (distribution of auditor's reasons for resignation);
 - (zd) subsections 265(1), (4) and (5) and 266(1) and section 267 (accounts, reports etc.);
 - (ze) section 268 (failure to lodge accounts etc.);
 - (zf) subsections 270(4), (5), (6) and (7) (accounts of low income organisations);
 - (zg) subsections 272(3) and (5) (providing information to members);
 - (zh) subsection 274(1) (frivolous or vexatious applications);
 - (zi) section 276 (disclosure of information);
 - (zj) subsections 285(1), 286(1) and (2), 287(1) and (2), and 288(1) and (2) (officers' duties);
 - (zk) subsections 297(2) and (3), 298(2) and (3), 299(2) and (3), 300(2) and (3), 301(2) and (3), 302(2) and (3), and 303(2) (officers' duties);
 - (zl) subsection 347(1) (provision of rules to members).
- (3) For the purposes of this Part, any contravention of a civil penalty provision by a branch or reporting unit is taken to be a contravention by the organisation of which the branch or reporting unit is part.

306 Pecuniary penalty orders that the Federal Court may make

- (1) In respect of conduct in contravention of a civil penalty provision, the Federal Court may make an order imposing on the person or organisation whose conduct contravened the civil penalty provision a pecuniary penalty of not more than:

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- (a) in the case of a body corporate—100 penalty units; or
 - (b) in any other case—20 penalty units.
- (2) A penalty payable under this section is a civil debt payable to the Commonwealth. The Commonwealth may enforce the order as if it were an order made in civil proceedings against the person, reporting unit or organisation to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

307 Compensation orders

Compensation for damage suffered—contravention of Part 2 of Chapter 9

- (1) The Federal Court may order a person to compensate an organisation for damage suffered by the organisation if:
- (a) the person has contravened a civil penalty provision in Part 2 of Chapter 9 in relation to the organisation; and
 - (b) the damage resulted from the contravention.
- The order must specify the amount of the compensation.

Compensation for damage suffered—contravention of Part 3 of Chapter 9

- (1A) The Federal Court may order a person to compensate an organisation for damage suffered by the organisation if:
- (a) the person has contravened a civil penalty provision in Part 3 of Chapter 9 in relation to the organisation; and
 - (b) the Court is satisfied that the organisation took reasonable steps to prevent the contravention of the provision; and
 - (c) the damage resulted from the contravention.
- The order must specify the amount of the compensation.

Damage includes profits

- (2) In determining the damage suffered by the organisation for the purposes of making a compensation order, the Court is to have regard to any profits made by any person resulting from the contravention.

Recovery of damage

- (3) A compensation order may be enforced as if it were a judgment of the Court.

308 Other orders

- (1) The Federal Court may make such other orders as the Court considers appropriate in all the circumstances of the case.
- (2) Without limiting subsection (1), the orders may include injunctions (including interim injunctions), and any other orders, that the Court thinks necessary to stop the conduct or remedy its effects.
- (3) Orders may be made under this section whether or not orders are also made under section 306 or 307.

309 Effect of section 307

Section 307:

- (a) has effect in addition to, and not in derogation of, any rule of law about the duty or liability of a person because of the person's office or employment in relation to an organisation; and
- (b) does not prevent proceedings from being instituted in respect of such a duty or in respect of such a liability.

310 Who may apply for an order

Application by Industrial Registrar

- (1) The Industrial Registrar, or some other person authorised in writing by the Industrial Registrar under this subsection to make the application, may apply for an order under this Part (other than an order in relation to a contravention of a provision covered by paragraph 305(2)(zk)).

Application by Minister

- (2) The Minister, or some other person authorised in writing by the Minister under this subsection to make the application, may apply for an order under this Part in relation to a contravention of a provision covered by paragraph 305(2)(zk).

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Application by organisation

- (3) An organisation may apply for a compensation order.
- (4) An organisation may intervene in an application for a pecuniary penalty order or an order under section 308 in relation to the organisation. The organisation is entitled to be heard on all matters other than whether the order should be made.

311 Civil proceedings after criminal proceedings

The Federal Court must not make a pecuniary penalty order against a person or organisation for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

312 Criminal proceedings during civil proceedings

- (1) Proceedings for a pecuniary penalty order against a person or organisation are stayed if:
 - (a) criminal proceedings are started or have already been started against the person or organisation for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person or organisation is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

313 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person or organisation for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether an order under this Part has been made against the person or organisation.

314 Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

315 Relief from liability for contravention of civil penalty provision

- (1) In this section:

eligible proceedings:

- (a) means proceedings for a contravention of a civil penalty provision; and
- (b) does not include proceedings for an offence.

- (2) If:

- (a) eligible proceedings are brought against a person or organisation; and
- (b) in the proceedings it appears to the Federal Court that the person or organisation has, or may have, contravened a civil penalty provision but that:
 - (i) the person or organisation has acted honestly; and
 - (ii) having regard to all the circumstances of the case, the person or organisation ought fairly to be excused for the contravention;

the Court may relieve the person or organisation either wholly or partly from a liability to which the person or organisation would otherwise be subject, or that might otherwise be imposed on the person or organisation, because of the contravention.

- (3) If a person or organisation thinks that eligible proceedings will or may be begun against them, they may apply to the Federal Court for relief.
- (4) On an application under subsection (3), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.

Section 316

316 Power to grant relief

- (1) If:
- (a) civil proceedings are brought against an officer of an organisation for negligence, default, breach of trust or breach of duty in a capacity as such an officer; and
 - (b) in the proceedings it appears to the court before which the proceedings are taken that:
 - (i) the officer is or may be liable in respect of the negligence, default or breach; and
 - (ii) the officer has acted honestly; and
 - (iii) having regard to all the circumstances of the case (including those connected with the officer's appointment), the officer ought fairly to be excused for the negligence, default or breach;
- the court may relieve the officer either wholly or partly from liability on the terms that the court thinks appropriate.
- (2) An officer of an organisation who has reason to apprehend that a claim will or might be made against him or her for negligence, default, breach of trust or breach of duty in a capacity as such an officer may apply to the Federal Court for relief. On the application, the Court has the same power to relieve the officer as it would have had under subsection (1) if it had been a court before which proceedings against the officer for negligence, default, breach of trust or breach of duty had been brought.

Chapter 11—Miscellaneous

Part 1—Simplified outline of Chapter

317 Simplified outline

This Chapter deals with a variety of topics.

Part 2 contains provisions validating certain invalidities in relation to registered organisations.

Part 3 provides that if a person is a party to certain kinds of proceedings under the Schedule, the Commonwealth may, in some circumstances, give the person financial assistance. Division 2 of Part 3 contains a rule about the ordering of costs by a court.

Part 4 provides for a Registrar to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Registrar may also conduct investigations.

Part 4A provides protection for officers, employees and members of organisations who disclose information about contraventions of this Schedule or this Act.

Part 4B confers functions and powers on the Commission in relation to matters arising under this Schedule, in addition to those conferred by Division 4 of Part 3 of the Workplace Relations Act.

Part 5 confers jurisdiction on the Federal Court in relation to matters arising under this Schedule.

Part 6 deals with various procedural and administrative matters. It also contains some offence provisions and provisions dealing with certain rights of members of organisations (sections 345, 346 and 347).

Part 7 deals with complementary registration systems.

Part 2—Validating provisions for organisations

318 Definition

In this Part:

invalidity includes nullity and also includes but is not limited to any invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that:

- (a) a member, or each of 2 or more of the members, of a collective body of an organisation or branch of an organisation, or one of the persons, or each of 2 or more of the persons, purporting to act as the members of such a collective body, or a person, or each of 2 or more persons, holding or purporting to hold an office or position in an organisation or branch:
 - (i) has not been elected or appointed or duly elected or appointed; or
 - (ii) has purported to be elected or appointed by an election or appointment that was a nullity; or
 - (iii) was not entitled to be elected or appointed or to hold office; or
 - (iv) was not a member of the organisation; or
 - (v) was elected or appointed or purported to be elected or appointed, in a case where one or more of the persons who took part in the election or appointment or the purported election or appointment was or were not entitled to do so or was or were not members of the organisation; or
- (b) persons who were not entitled to do so, or were not members of the organisation, took part in the making or purported making or the alteration or purported alteration of the rules of an organisation or branch, as officers or voters or otherwise.

319 Validation of certain acts done in good faith

Acts relating to elections, appointments, organisation's rules

- (1) Subject to this section and section 321, all acts done in good faith by a collective body of an organisation or branch of an organisation, or by persons purporting to act as such a collective body, are valid in spite of any invalidity that may later be discovered in:
- (a) the election or appointment of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or
 - (b) the making or alteration of a rule of the organisation or branch.

Acts done by person holding or purporting to hold office

- (2) Subject to this section and section 321, all acts done in good faith by a person holding or purporting to hold an office or position in an organisation or branch are valid in spite of any invalidity that may later be discovered in:
- (a) the election or appointment of the person; or
 - (b) the making or alteration of a rule of the organisation or branch.

Meaning of purporting to be member or office holder

- (3) For the purposes of this section:
- (a) a person is not to be treated as purporting to act as a member of a collective body of an organisation or as the holder of an office or position in an organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the organisation as being, such a member or the holder of the office or position; and
 - (b) a person is not to be treated as purporting to act as a member of a collective body of a branch of an organisation or as the holder of an office or position in the branch unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as being, such a member or the holder of the office or position.

Section 319

Meaning of good faith

(4) For the purposes of this section:

- (a) an act is to be treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of a collective body of an organisation or branch is to be treated as having done so in good faith until the contrary is proved; and
- (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
- (d) an invalidity in:
 - (i) the election or appointment of a collective body of a branch of an organisation or any member of such a collective body; or
 - (ii) the election or appointment of the persons or any of the persons purporting to act as a collective body of a branch; or
 - (iii) the election or appointment of a person holding or purporting to hold an office or position in a branch; or
 - (iv) the making or alteration of a rule of a branch;is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the branch or to a majority of the persons purporting to act as the committee of management; and
- (e) an invalidity in any other election or appointment or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the organisation or to a majority of the persons purporting to act as that committee of management.

Actions to which this section applies

(5) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done in relation to an association before it became an organisation.

Certain invalid actions not validated by this section

- (6) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty on, a member of an organisation that would not have been valid if this section had not been enacted.

Relationship between this section and Part 3 of Chapter 7

- (7) Nothing in this section affects the operation of Part 3 of Chapter 7 (Inquiries into elections).

320 Validation of certain acts after 4 years

- (1) Subject to this section and section 321, after the end of 4 years from:
- (a) the doing of an act:
 - (i) by, or by persons purporting to act as, a collective body of an organisation or branch of an organisation and purporting to exercise power conferred by or under the rules of the organisation or branch; or
 - (ii) by a person holding or purporting to hold an office or position in an organisation or branch and purporting to exercise power conferred by or under the rules of the organisation or branch; or
 - (b) the election or purported election, or the appointment or purported appointment of a person, to an office or position in an organisation or branch; or
 - (c) the making or purported making, or the alteration or purported alteration, of a rule of an organisation or branch;
- the act, election or purported election, appointment or purported appointment, or the making or purported making or alteration or purported alteration of the rule, is taken to have been done in compliance with the rules of the organisation or branch.
- (2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of the 4 years referred to in subsection (1).

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- (3) This section extends to an act, election or purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule:
 - (a) done or occurring before the commencement of this section; or
 - (b) done or occurring in relation to an association before it became an organisation.

321 Order affecting application of section 319 or 320

- (1) Where, on an application for an order under this section, the Federal Court is satisfied that the application of section 319 or 320 in relation to an act would do substantial injustice, having regard to the interests of:
 - (a) the organisation; or
 - (b) members or creditors of the organisation; or
 - (c) persons having dealings with the organisation;the Court must, by order, declare accordingly.
- (2) Where a declaration is made under subsection (1), section 319 or 320, as the case requires, does not apply, and is taken never to have applied, in relation to the act specified in the declaration.
- (3) The Court may make an order under subsection (1) on the application of the organisation, a member of the organisation or any other person having a sufficient interest in relation to the organisation.
- (4) The Court may determine:
 - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
 - (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (5) In this section:

act includes an election or purported election, appointment or purported appointment, and the making or purported making or alteration or purported alteration of a rule.

322 Federal Court may make orders in relation to consequences of invalidity

- (1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Federal Court for a determination of the question whether an invalidity has occurred in:
 - (a) the management or administration of the organisation or a branch of the organisation; or
 - (b) an election or appointment in the organisation or a branch of the organisation; or
 - (c) the making or alteration of the rules of the organisation or a branch of the organisation.
- (2) On an application under subsection (1), the Court may make any declaration it considers proper.
- (3) Where, in a proceeding under subsection (1), the Court finds that an invalidity of the kind referred to in that subsection has occurred, the Court may make any order it considers appropriate:
 - (a) to rectify the invalidity or cause it to be rectified; or
 - (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
 - (c) to validate any act, matter or thing rendered invalid by or because of the invalidity.
- (4) Where an order is made under subsection (3), the Court may give such ancillary or consequential directions as it considers appropriate.
- (5) The Court must not make an order under subsection (3) unless it is satisfied that the order would not do substantial injustice to:
 - (a) the organisation; or
 - (b) any member or creditor of the organisation; or
 - (c) any person having dealings with the organisation.
- (6) The Court may determine:
 - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and

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- (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (7) This section applies:
 - (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
 - (b) to an invalidity occurring in relation to an association before it became an organisation.

323 Federal Court may order reconstitution of branch etc.

- (1) An organisation, a member of an organisation or any other person having a sufficient interest in relation to an organisation may apply to the Federal Court for a declaration that:
 - (a) a part of the organisation, including:
 - (i) a branch or part of a branch of the organisation; or
 - (ii) a collective body of the organisation or a branch of the organisation;has ceased to exist or function effectively and there are no effective means under the rules of the organisation or branch by which it can be reconstituted or enabled to function effectively; or
 - (b) an office or position in the organisation or a branch of the organisation is vacant and there are no effective means under the rules of the organisation or branch to fill the office or position;and the Court may make a declaration accordingly.
- (2) Where the Court makes a declaration under subsection (1), the Court may, by order, approve a scheme for the taking of action by a collective body of the organisation or a branch of the organisation, or by an officer or officers of the organisation or a branch of the organisation:
 - (a) for the reconstitution of the branch, the part of the branch or the collective body; or
 - (b) to enable the branch, the part of the branch or the collective body to function effectively; or
 - (c) for the filling of the office or position.

- (3) Where an order is made under this section, the Court may give any ancillary or consequential directions it considers appropriate.
- (4) The Court must not make an order under this section unless it is satisfied that the order would not do substantial injustice to the organisation or any member of the organisation.
- (5) The Court may determine:
 - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
 - (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (6) An order or direction of the Court under this section, and any action taken in accordance with the order or direction, has effect in spite of anything in the rules of the organisation or a branch of the organisation.
- (7) The Court must not under this section approve a scheme involving provision for an election for an office unless the scheme provides for the election to be held by a direct voting system or a collegiate electoral system.

Part 3—Financial assistance and costs

Division 1—Financial assistance

324 Authorisation of financial assistance

- (1) Subject to this Division, the Minister may, on application made by a person under subsection (2), authorise payment by the Commonwealth to the person of financial assistance in relation to the whole or part of the person's relevant costs, if the Minister is satisfied:
 - (a) that hardship is likely to be caused to the person if the application is refused; and
 - (b) that in all the circumstances it is reasonable that the application should be granted.
- (2) An application may be made to the Minister for financial assistance under this Division by the following persons (other than organisations) in the following circumstances:
 - (a) a person who made an application under section 163, 164 or 164A, where the Federal Court granted a rule calling on another person, or an organisation, to show cause why an order should not be made under section 163, 164 or 164A in relation to the other person or organisation;
 - (b) a person who was a party, otherwise than as an applicant, to a proceeding under section 163, 164 or 164A;
 - (c) a person who made an application under section 164, where the Federal Court made an interim order under subsection 164(4);
 - (d) a person who applied for an inquiry into an election, where the Federal Court found that an irregularity happened;
 - (e) a person who applied for an inquiry into an election, where the Federal Court certified under subsection 325(1) that the person acted reasonably in applying;
 - (f) a person who incurred costs in relation to an inquiry into an election, other than a person who applied for the inquiry;
 - (g) a member of an organisation who made an application under subsection 215(5), where the Federal Court declared that the person the subject of the application was not eligible to be a

candidate for election or to be elected or appointed or had ceased to hold office;

- (h) a member of an organisation who made an application under subsection 215(5), where the Federal Court certified under subsection 325(2) that the member acted reasonably in making the application;
- (j) a person who incurred costs in relation to an application made under subsection 215(5), other than the person who made the application;
- (k) a person who made an application to the Federal Court under section 216 or 217, where, on the application, the Federal Court granted the person leave under paragraph 216(2)(a) or 217(2)(a) or refused the person leave under paragraph 216(2)(b) or 217(2)(b);
- (m) a person who applied for an inquiry into a ballot under Part 2 of Chapter 3, where the Federal Court found that an irregularity happened;
- (n) a person who applied for an inquiry into a ballot under Part 2 of Chapter 3, where the Federal Court certified under subsection 325(3) that the person acted reasonably in applying;
- (o) a person who incurred costs in relation to an inquiry into a ballot under Part 2 of Chapter 3, other than the person who applied for the inquiry;
- (oa) a person who was a party to a proceeding under Part 3 of Chapter 3;
- (p) a person who was a party to a proceeding under Part 2 of Chapter 11;
- (q) a person who made an application under section 167, where the Federal Court granted a rule calling on another person, or an organisation, to show cause why an order should not be made under subsection 167(2) in relation to the other person or organisation.

(3) In subsection (1), **relevant costs** means:

- (a) in the case of a person referred to in paragraph (2)(a), (c), (k) or (q)—the costs incurred by the person in relation to the application concerned; or
 - (b) in the case of a person referred to in paragraph (2)(b) or (p)—the costs incurred by the person in relation to the proceeding concerned; or
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- (c) in the case of a person referred to in paragraph (2)(d), (e), (m) or (n)—the costs incurred by the person in relation to the inquiry concerned; or
- (d) in the case of a person referred to in paragraph (2)(f), (j) or (o)—the costs referred to in that paragraph; or
- (e) in the case of a member of an organisation referred to in paragraph (2)(g) or (h)—the costs incurred by the member in relation to the application concerned.

325 Federal Court may certify that application was reasonable

- (1) Where a person has applied for an inquiry into an election but the Federal Court does not find that an irregularity happened, the Court may certify for the purposes of this Division that the person acted reasonably in applying.
- (2) Where a member of an organisation has made an application under subsection 215(5) but the Federal Court does not declare that the person who is the subject of the application was not eligible to be a candidate or to be elected or appointed or had ceased to hold office, the Court may certify for the purposes of this Division that the member acted reasonably in making the application.
- (3) Where a person has applied for an inquiry into a ballot under Part 2 (amalgamation) or Part 3 (withdrawal from amalgamation) of Chapter 3 but the Federal Court does not find that an irregularity happened, the Court may certify that the person acted reasonably in applying.

326 Applications under sections 163, 164, 164A and 167

- (1) The Minister may refuse an application made by a person referred to in paragraph 324(2)(a), (b), (c) or (q) if satisfied that:
 - (a) the order sought in the proceeding concerned is the same or substantially the same as an order obtained or sought in another relevant proceeding and the proceeding involves the determination of the same or substantially the same questions of fact or law or mixed fact and law as were or are involved in the determination of the other relevant proceeding; or
 - (b) it would be contrary to the interests of justice to grant financial assistance to the applicant in relation to the proceeding concerned.

(2) In subsection (1):

other relevant proceeding means a proceeding that:

- (a) was instituted, whether before or after the commencement of this section, before the institution of the proceeding in relation to which the application referred to in that subsection was made; and
 - (b) has been heard and determined by, or is pending before, the Federal Court.
- (3) Where the Minister authorises the payment of financial assistance on application made by a person referred to in paragraph 324(2)(a), (b), (c), or (q), subsections (4) and (5) of this section apply.
- (4) The Minister may:
- (a) specify the amount, or determine from time to time the amounts, to be paid; or
 - (b) authorise the payment of such amount as is determined, or such amounts as are determined from time to time, under directions of the Minister.
- (5) The Minister may authorise payment to be made by the Commonwealth before or after the hearing or determination by the Federal Court of the proceeding concerned.

327 Fees for 2 counsel not normally to be paid

Nothing in this Division authorises a payment in relation to fees of more than one counsel appearing for the person applying for financial assistance unless 2 or more counsel appeared, or are to appear, for any other person at the hearing concerned.

328 Powers of Federal Court not affected

Nothing in this Division limits the power of the Federal Court to make an order as to the costs of proceedings before the Court.

Division 2—Costs

329 Costs only where proceeding instituted vexatiously etc.

- (1) A person who is a party to a proceeding (including an appeal) in a matter arising under this Schedule must not be ordered to pay costs incurred by any other party to the proceeding unless the person instituted the proceeding vexatiously or without reasonable cause.
- (2) In subsection (1):
costs includes all legal and professional costs and disbursements and expenses of witnesses.

Part 4—Inquiries and investigations

330 Registrar or staff may make inquiries

- (1) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether the following are being complied with:
 - (a) Part 3 of Chapter 8;
 - (b) the reporting guidelines made under that Part;
 - (c) regulations made for the purposes of that Part;
 - (d) rules of a reporting unit relating to its finances or financial administration.
- (2) A Registrar, or another Registry official on behalf of a Registrar, may make inquiries as to whether a civil penalty provision (see section 305) has been contravened.
- (3) The person making the inquiries may take such action as he or she considers necessary for the purposes of making the inquiries. However, he or she cannot compel a person to assist with the inquiries under this section.

331 Registrar may conduct investigations

- (1) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether:
 - (a) a provision of Part 3 of Chapter 8 has been contravened; or
 - (b) the reporting guidelines made under that Part have been contravened; or
 - (c) a regulation made for the purposes of that Part has been contravened; or
 - (d) a rule of a reporting unit relating to its finances or financial administration has been contravened.
- (2) If a Registrar is satisfied that there are reasonable grounds for doing so, the Registrar may conduct an investigation as to whether a civil penalty provision (see section 305) has been contravened.
- (3) A Registrar may also conduct an investigation in the circumstances set out in the regulations.

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- (4) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1) or (2), a Registrar forms the opinion that there are grounds for investigating the finances or financial administration of the reporting unit, the Registrar may make the further investigation.
- (5) An investigation may, but does not have to, follow inquiries under section 330.

332 Investigations arising from auditor's report

- (1) Subject to subsection (2), a Registrar must:
 - (a) where the documents lodged in the Industrial Registry under section 268 include a report of an auditor setting out any:
 - (i) defect or irregularity; or
 - (ii) deficiency, failure or shortcoming; and
 - (b) where for any other reason the Registrar considers that a matter revealed in the documents should be investigated—investigate the matter.
- (2) The Registrar is not required to investigate the matters raised in the report of the auditor if:
 - (a) the defect, irregularity, deficiency, failure or shortcoming consists solely of the fact that the organisation concerned has kept financial records for its membership subscriptions separately on a cash basis as provided in subsection 252(4); or
 - (b) after consultation with the reporting unit and the auditor, the Registrar is satisfied that the matters are trivial or will be remedied in the following financial year.
- (3) Where, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (1), a Registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the reporting unit, the Registrar may make the further investigation.

333 Investigations arising from request from members

- (1) Where documents have been lodged in the Industrial Registry under section 268, at least:

- (a) if the reporting unit has more than 5,000 members—250 members; or
 - (b) in any other case—5% of the members of the reporting unit; may request a Registrar to investigate the finances and the financial administration of the reporting unit.
- (2) On receipt of a request under subsection (1), a Registrar must investigate the finances and the financial administration of the reporting unit concerned. The Registrar, in conducting the investigation, is not limited to the most recent financial year for which documents have been lodged and may investigate years for which documents are yet to be lodged.
- (3) Where the Registrar receives more than one request in relation to a reporting unit during a financial year, the Registrar is only required to conduct one investigation but may conduct more than one investigation.

334 Investigations arising from referral under section 278

If a matter is referred to the Industrial Registrar under section 278, the Industrial Registrar must ensure that a Registrar conducts an investigation.

335 Conduct of investigations

- (1) This section applies to:
- (a) a designated officer or employee of the reporting unit concerned; and
 - (b) a former designated officer or employee of the reporting unit; and
 - (c) a person who held the position of auditor of the reporting unit during the period that is the subject of the investigation;
- if a Registrar has reason to believe that the person:
- (d) has information or a document that is relevant to the investigation; or
 - (e) is capable of giving evidence which the Registrar has reason to believe is relevant to the investigation.
- (2) For the purpose of making an investigation, the Registrar may, by written notice, require the person:

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- (a) to give to the Registrar, within the period (being a period of not less than 14 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the person; and
 - (b) to produce or make available to the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access; and
 - (c) to attend before the Registrar, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, to answer questions relating to matters relevant to the investigation, and to produce to the Registrar all records and other documents in the custody or under the control of the person relating to those matters.
- (3) A notice requiring a person to attend must state that the person may be accompanied by another person. The other person may be, but does not have to be, a lawyer.

336 Action following an investigation

- (1) If, at the conclusion of an investigation, the Registrar who conducted the investigation is satisfied that the reporting unit concerned has contravened:
 - (a) a provision of Part 3 of Chapter 8; or
 - (b) the reporting guidelines; or
 - (c) a provision of the regulations; or
 - (d) a rule of the reporting unit relating to the finances or financial administration of the reporting unit;the Registrar must notify the reporting unit accordingly.
- (2) In addition to taking action under subsection (1), the Industrial Registrar may do all or any of the following:
 - (a) issue a notice to the reporting unit requesting that the reporting unit take specified action, within a specified period, to rectify the matter;
 - (b) apply to the Federal Court for an order under Part 2 of Chapter 10 (civil penalty provisions);
 - (c) refer the matter to the Director of Public Prosecutions for action in relation to possible criminal offences.

Note: In appropriate circumstances, the Registrar may also make a determination in accordance with section 247 (determination of reporting units).

- (3) The Registrar may, on application by the reporting unit, extend any periods specified in the notice issued under subsection (2).
- (4) The reporting unit must comply with the request made in the notice issued under subsection (2).
- (5) The Federal Court may, on application by the Registrar, make such orders as the Court thinks fit to ensure that the reporting unit complies with subsection (4).

337 Offences in relation to investigation by Registrar

- (1) A person commits an offence if:
 - (a) the person does not comply with:
 - (i) a requirement under subsection 335(2) to attend before a Registrar; or
 - (ii) a requirement under subsection 335(2) to give information or produce a document; or
 - (b) the person gives information, or produces a document, in purported compliance with a requirement under subsection 335(2), and the person knows, or is reckless as to whether, the information or document is false or misleading; or
 - (c) when attending before a Registrar in accordance with a requirement under subsection 335(2), the person makes a statement, whether orally or in writing, and the person knows, or is reckless as to whether, the statement is false or misleading.

Maximum penalty: 30 penalty units.

- (2) Strict liability applies to paragraph (1)(a).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Paragraph (1)(a) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person is not excused from giving information, or producing a document, that the person is required to give or produce under

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subsection 335(2) on the ground that the information, or the production of the document, might tend to incriminate the person or expose the person to a penalty.

(5) However:

- (a) giving the information or producing the document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;

is not admissible in evidence against the person in criminal proceedings or proceedings that may expose the person to a penalty, other than proceedings under, or arising out of, paragraph (1)(b) or (c).

Part 4A—Protection for whistleblowers

337A Disclosures qualifying for protection under this Part

A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:

- (a) the discloser is one of the following:
 - (i) an officer of an organisation, or of a branch of an organisation;
 - (ii) an employee of an organisation, or of a branch of an organisation;
 - (iii) a member of an organisation, or of a branch of an organisation; and
- (b) the disclosure is made to one of the following:
 - (i) a Registrar;
 - (ii) a workplace agreement official (as defined in the Workplace Relations Act);
 - (iii) the Australian Building and Construction Commissioner;
 - (iv) an Australian Building and Construction Inspector;
 - (v) a member of the Office of the Workplace Ombudsman (as defined in the Workplace Relations Act); and
- (c) the discloser informs the person to whom the disclosure is made of the discloser's name before making the disclosure; and
- (d) the discloser has reasonable grounds to suspect that the information indicates that:
 - (i) the organisation, or a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; or
 - (ii) an officer or employee of the organisation, or of a branch of the organisation, has, or may have, contravened a provision of this Schedule or this Act; and
- (e) the discloser makes the disclosure in good faith.

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337B Disclosure that qualifies for protection not actionable etc.

- (1) If a person makes a disclosure that qualifies for protection under this Part:
- (a) the person is not subject to any civil or criminal liability for making the disclosure; and
 - (b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

- (2) Without limiting subsection (1):
- (a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and
 - (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.
- (3) For the purpose of paragraph (2)(a), *qualified privilege*, in respect of the disclosure, means that the person:
- (a) has qualified privilege in proceedings for defamation; and
 - (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;
- in respect of the disclosure.
- (4) For the purpose of paragraph (3)(b), *malice* includes ill will to the person concerned or any other improper motive.
- (5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

337C Victimisation prohibited

Actually causing detriment to another person

- (1) A person (the *first person*) contravenes this subsection if:
- (a) the first person engages in conduct; and
 - (b) the first person's conduct causes any detriment to another person (the *second person*); and

- (c) the first person intends that his or her conduct cause detriment to the second person; and
- (d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Part.

Threatening to cause detriment to another person

- (2) A person (the **first person**) contravenes this subsection if:
 - (a) the first person makes to another person (the **second person**) a threat to cause any detriment to the second person or to a third person; and
 - (b) the first person:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the first person makes the threat because a person:
 - (i) makes a disclosure that qualifies for protection under this Part; or
 - (ii) may make a disclosure that would qualify for protection under this Part.

Officers and employees involved in contravention

- (3) If an organisation, or a branch of an organisation, contravenes subsection (1) or (2), any officer or employee of the organisation, or a branch of the organisation, who is involved in that contravention contravenes this subsection.

Threats

- (4) For the purpose of subsection (2), a threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.

Involvement in a contravention

- (5) For the purpose of subsection (3), a person is **involved** in a contravention if, and only if, the person:
 - (a) has aided, abetted, counselled or procured the contravention;or

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- (b) has induced, whether by threats or promises, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

Offence for contravening subsection (1), (2) or (3)

- (6) A person commits an offence if the person contravenes subsection (1), (2) or (3).

Maximum penalty: 25 penalty units or imprisonment for 6 months, or both.

- (7) In a prosecution for an offence that relates to a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

337D Right to compensation

If:

- (a) a person (the *person in contravention*) contravenes subsection 337C(1), (2) or (3); and
- (b) a person (the *victim*) suffers damage because of the contravention;

the person in contravention is liable to compensate the victim for the damage.

Part 4B—Functions and powers of the Commission

337E Additional functions and powers

The functions and powers conferred on the Commission by a provision of this Part or this Schedule are in addition to those conferred on the Commission by Division 4 of Part 3 of the Workplace Relations Act.

337F Powers of inspection

- (1) For the purpose of, or in relation to, the exercise of another power, or the performance of a function, conferred by this Schedule, a member of the Commission may at any time during working hours:
 - (a) enter prescribed premises; and
 - (b) inspect or view any work, material, machinery, appliance, article, document or other thing on the prescribed premises; and
 - (c) interview, on the prescribed premises, any employee who is usually engaged in work on the prescribed premises.

- (2) In this section:

prescribed premises means premises on which or in relation to which:

- (a) an industry is carried on; or
- (b) work is being, or has been done, or commenced; or
- (c) an award or an order of the Commission has been made; or
- (d) a collective agreement is in operation.

337G Parties to proceedings

The Commission may direct that parties be joined or struck out as parties to proceedings under this Schedule.

337H Kinds of orders

The orders that the Commission may make under this Schedule include the following:

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- (a) orders by consent of the parties to the proceedings;
- (b) provisional or interim orders;
- (c) orders including, or varying orders to include, a provision to the effect that engaging in conduct in breach of a specified term of the order is to be taken to constitute the commission of a separate breach of the term on each day on which the conduct continues.

337J Relief not limited to claim

In making an order in proceedings under this Schedule, the Commission is not restricted to the specific relief claimed by the parties concerned, but may include in the order anything which the Commission considers necessary or expedient for the purposes of dealing with the proceedings.

337K Publishing orders

- (1) If the Commission makes an order under this Schedule, the Commission must promptly:
 - (a) reduce the order to writing that:
 - (i) is signed by at least one member of the Commission; and
 - (ii) shows the day on which it is signed; and
 - (b) give to a Registrar:
 - (i) a copy of the order; and
 - (ii) a list specifying each party who appeared at the hearing of the proceeding concerned.
- (2) The Commission must ensure that an order under this Schedule is expressed in plain English and is easy to understand in structure and content.
- (3) A Registrar who receives a copy of an order under subsection (1) must promptly:
 - (a) provide a copy of:
 - (i) the order; and
 - (ii) any written reasons received by the Registrar for the order;to each party shown on the list given to the Registrar under subparagraph (1)(b)(ii); and

- (b) ensure that copies of each of the following are available for inspection at each registry:
 - (i) the order;
 - (ii) any written reasons received by the Registrar for the order.

- (4) The Industrial Registrar must ensure that the following are published as soon as practicable:
 - (a) an order under this Schedule;
 - (b) any written reasons for the order that are received by the Registrar.

- (5) If a member of the Commission ceases to be a member:
 - (a) after an order under this Schedule has been made by the Commission constituted by the member; but
 - (b) before the order has been reduced to writing or before it has been signed by the member;a Registrar must reduce the order to writing, sign it and seal it with the seal of the Commission, and the order has effect as if it had been signed by the member of the Commission.

Part 5—Jurisdiction of the Federal Court of Australia

338 Jurisdiction of Federal Court

- (1) The Federal Court has jurisdiction with respect to matters arising under this Schedule in relation to which:
 - (a) applications may be made to it under this Schedule; or
 - (b) actions may be brought in it under this Schedule; or
 - (c) questions may be referred to it under this Schedule or the Workplace Relations Act; or
 - (d) penalties may be sued for and recovered under this Schedule; or
 - (e) prosecutions may be instituted for offences against this Schedule.
- (2) For the purposes of section 44 of the *Judiciary Act 1903*, the Federal Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under the Workplace Relations Act and exercising powers or functions in relation to matters arising under this Schedule.

Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.
- (3) The Federal Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.

339 Exclusive jurisdiction

- (1) Subject to this Schedule, the jurisdiction of the Federal Court in relation to an act or omission for which an organisation or member of an organisation is liable to be sued, or to be proceeded against for a pecuniary penalty, is exclusive of the jurisdiction of any other court created by the Parliament or any court of a State or Territory.
- (2) The jurisdiction of the Federal Court in relation to matters arising under section 163, 164, 164A, 164B or 167 or Part 3 of Chapter 7

is exclusive of the jurisdiction, or any similar jurisdiction, of a State industrial authority.

340 Exercise of Court's original jurisdiction

- (1) The jurisdiction of the Federal Court under this Schedule is to be exercised by a Full Court in relation to:
 - (a) matters in relation to which applications are made to the Court under section 28 (cancellation of registration); and
 - (aa) matters in relation to which applications are made to the Court under subsection 109(1) (giving effect to withdrawal of constituent part from amalgamated organisation); and
 - (ab) matters in relation to which applications are made to the Court under subsection 118(2) (giving effect to requirement to take necessary steps in relation to withdrawal from amalgamation); and
 - (ac) matters in relation to which applications are made to the Court under subsection 125(1) (resolving difficulties in relation to application of Part 3 of Chapter 3 to a matter); and
 - (ad) matters in relation to which applications are made to the Court under subsection 128(1) (validation of certain acts done for purposes of proposed or completed withdrawal from amalgamation); and
 - (ae) matters in relation to which applications are made to the Court under subsection 129(1) (invalidity in proposed or completed withdrawal from amalgamation); and
 - (b) matters in which a writ of mandamus or prohibition or an injunction is sought against:
 - (i) a Presidential member; or
 - (ii) officers of the Commonwealth at least one of whom is a Presidential member.
- (2) Subsection (1) does not require the jurisdiction of the Court to be exercised by a Full Court in relation to a prosecution for an offence merely because the offence relates to a matter to which that subsection applies.
- (3) Subsection (1) does not, in relation to matters referred to in that subsection, require the jurisdiction of the Court to be exercised by a Full Court to:
 - (a) join or remove a party; or

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- (b) make an order (including an order for costs) by consent disposing of a matter; or
 - (c) make an order that a matter be dismissed for want of prosecution; or
 - (d) make an order that a matter be dismissed for:
 - (i) failure to comply with a direction of the Court; or
 - (ii) failure of the applicant to attend a hearing relating to the matter; or
 - (e) vary or set aside an order under paragraph (c) or (d); or
 - (f) give directions about the conduct of a matter, including directions about:
 - (i) the use of written submissions; and
 - (ii) limiting the time for oral argument.
- (4) The Rules of Court may make provision enabling the powers mentioned in subsection (3) to be exercised, subject to conditions prescribed by the Rules, without an oral hearing.

341 Reference of proceedings to Full Court

- (1) At any stage of a proceeding in a matter arising under this Schedule, a single Judge exercising the jurisdiction of the Federal Court:
- (a) may refer a question of law for the opinion of a Full Court; and
 - (b) may, of the Judge's own motion or on the application of a party, refer the matter to a Full Court to be heard and determined.
- (2) If a Judge refers a matter to a Full Court under subsection (1), the Full Court may have regard to any evidence given, or arguments adduced, in the proceeding before the Judge.

342 Appeal to the Court from certain judgments

In spite of section 24 of the *Federal Court Act 1976*, an appeal does not lie to a Full Court from a judgment by a single Judge in an inquiry referred to in section 69, 108 or 201 except in accordance with leave given by the Court.

Part 6—Other

343 Delegation by Minister

The Minister may, in writing, delegate to:

- (a) the Secretary of the Department; or
 - (b) an SES employee or acting SES employee;
- all or any of the Minister's powers under this Schedule.

344 Conduct by officers, directors, employees or agents

- (1) Where it is necessary to establish, for the purposes of this Schedule, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
 - (a) that the conduct was engaged in by an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
 - (b) that the officer, director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by:
 - (a) an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent;is taken, for the purposes of this Schedule, to have been engaged in also by the body corporate.
- (3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

Note: Section 6 of this Schedule defines *this Schedule* to include the regulations.

345 Right to participate in ballots

- (1) Subject to reasonable provisions in the rules of an organisation in relation to enrolment, every financial member of the organisation has a right to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the organisation, or of a branch, section or other division of the organisation in which the member is included.
- (2) This section does not apply to protected action ballots ordered under Division 4 of Part 9 of the Workplace Relations Act.

346 Requests by members for information concerning elections and certain ballots

- (1) A financial member of an organisation may, by notice in writing, request the returning officer:
 - (a) in relation to an election for an office or other position in the organisation or a branch of the organisation; or
 - (b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an organisation or a branch of the organisation;to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot, and the returning officer must not unreasonably withhold the information.
- (2) This section does not apply to protected action ballots ordered under Division 4 of Part 9 of the Workplace Relations Act.

347 Providing copy of rules or list of offices etc. on request by member

- (1) If a member of an organisation requests the organisation, or a branch of the organisation, to provide to the member:
 - (a) a copy of the rules of the organisation or branch; or
 - (b) a copy of any amendments of the rules made since a specified time; or
 - (c) a copy of the list of the offices, or of the persons holding the offices, of an organisation or branch lodged in the Industrial Registry on behalf of the organisation under subsection 233(1);
-

the organisation or branch (as the case requires) must provide a copy to the member and, subject to the regulations, must provide the copy free of charge.

Note: This subsection is a civil penalty provision (see section 305).

- (2) A request under this section:
- (a) must be made to the secretary, or a person performing (in whole or part) the duties of secretary, of the organisation or branch concerned; and
 - (b) must be in writing; and
 - (c) must specify the period (of not less than 14 days) within which the relevant copy must be provided.
- (3) An organisation or branch whose rules or list of offices, or of the persons holding the offices, are available on the Internet must inform a member seeking a copy of that fact. However, informing the member of that fact does not affect the organisation's or branch's other obligations under this section and the regulations.
- (4) The regulations may:
- (a) prescribe the manner in which a request under this section must be made; and
 - (b) prescribe the time within which the organisation or branch must respond to the request; and
 - (c) prescribe the form or forms in which a copy of the rules, amendments or list of offices, or of the persons holding the offices, may be provided; and
 - (d) prescribe fees that may be charged by an organisation or branch for providing a copy of the rules or amendments to a member if that member has been provided with a copy of the same rules or amendments free of charge within the past 3 years; and
 - (e) prescribe fees that may be charged by an organisation or branch for providing a copy of a list of offices to a member if that member has already been provided with a copy of the same list free of charge.

348 Certificate as to membership of organisation

A certificate of a Registrar stating that a specified person was at a specified time a member or officer of a specified organisation or a

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specified branch of a specified organisation is, in all courts and proceedings, evidence that the facts are as stated.

349 List of officers to be evidence

A list of the officers of an organisation or a branch of an organisation lodged in the Industrial Registry on behalf of the organisation, or a copy of any such list certified by a Registrar, is evidence that the persons named in the list were, on the day when the list was lodged, officers of the organisation or branch.

350 Unauthorised collection of money

- (1) A person commits an offence if:
- (a) the person makes a representation that the person is authorised to collect money on behalf of an organisation; and
 - (b) the person knows the representation is false.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person collects money on behalf of an organisation; and
 - (b) the person knows that he or she does not have authority to do so.

Maximum penalty: 20 penalty units.

351 No imprisonment in default

In spite of the provisions of any other law, a court may not direct that a person is to serve a sentence of imprisonment in default of the payment of a fine or other pecuniary penalty imposed under this Schedule.

352 Jurisdiction of courts limited as to area

- (1) For the purposes of this Schedule, a court of a State or Territory whose jurisdiction is limited, as to subject matter or parties, to any part of a State or Territory is taken to have jurisdiction throughout the State or Territory.
- (2) On the hearing of a proceeding in a court for the recovery of a penalty, fine, fee, levy or due, the court may, if in the interests of

justice it considers appropriate, adjourn the hearing to a court of competent jurisdiction to be held at some other place in the same State or Territory.

353 Public sector employer to act through employing authority

In spite of anything to the contrary in this Schedule, the Workplace Relations Act or any other law, the employer of an employee engaged in public sector employment must, for the purposes of this Schedule and the Rules of the Commission, act only by an employing authority of the employee acting on behalf of the employer and, in particular:

- (a) anything done by an employing authority of an employee has effect, for those purposes, as if it had been done by the employer of the employee; and
- (b) anything served on, or otherwise given or notified to, an employing authority of an employee has effect, for those purposes, as if it had been served on, or given or notified to, the employer of the employee.

354 Proceedings by and against unincorporated clubs

- (1) For the purposes of this Schedule, the treasurer of a club is taken to be the employer of a person employed for the purposes or on behalf of the club, and any proceeding that may be taken under this Schedule by or against the club may be taken by or against the treasurer on behalf of the club.
- (2) The treasurer is authorised to retain out of the funds of the club sufficient money to meet payments made by the treasurer on behalf of the club under this section.
- (3) In this section:

club means an unincorporated club.

treasurer includes a person having possession or control of any funds of a club.

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355 Inspection of documents etc.

All documents and other things produced in evidence before the Commission may be inspected by the Commission or by such other parties as the Commission allows.

356 Trade secrets etc. tendered as evidence

- (1) In a proceeding before the Federal Court or the Commission:
 - (a) the person entitled to a trade secret may object that information tendered as evidence relates to the trade secret;
or
 - (b) a witness or party may object that information tendered as evidence relates to the profits or financial position of the witness or party.
- (2) Where an objection is made under subsection (1) to information tendered as evidence, the information may only be given as evidence under a direction of the Federal Court or Commission.
- (3) If information is given as evidence under subsection (2), it must not be published in any newspaper, or otherwise, unless the Federal Court or Commission, by order, permits the publication.
- (4) Where the Federal Court or Commission directs that information relating to a trade secret or to the profits or financial position of a witness or party is to be given in evidence, the evidence must be taken in private if the person entitled to the trade secret, or the witness or party, requests.
- (5) The Federal Court or Commission may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, must not be published.
- (6) A person commits an offence if the person gives as evidence, or publishes, any information in contravention of this section or a direction given under this section.

Maximum penalty: 20 penalty units.

357 Application of penalty

A court that imposes a pecuniary penalty under this Schedule (other than a penalty for an offence) may order that the penalty, or a part of the penalty, be paid to:

- (a) the Commonwealth; or
- (b) an organisation; or
- (c) another person.

358 Enforcement of penalties etc.

- (1) Where a court has:
 - (a) imposed a pecuniary penalty under this Schedule (other than a penalty for an offence); or
 - (b) ordered the payment of costs or expenses;a certificate signed by a Registrar, specifying the amount payable and by whom and to whom respectively it is payable, may be filed in the Federal Court or in any other court of competent jurisdiction.
- (2) A certificate filed in a court under subsection (1) is enforceable in all respects as a final judgment of the court in which it is filed.
- (3) Where there are 2 or more creditors under a certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate judgments.

359 Regulations*General power*

- (1) The Governor-General may make regulations prescribing all matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

Specific matters on which regulations may be made

- (2) The matters in relation to which the Governor-General may make regulations include, but are not limited to:

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- (a) the manner in which, and the time within which, applications, submissions and objections under this Schedule may be made and dealt with; and
- (b) the fees to be charged in relation to proceedings under this Schedule; and
- (c) the manner in which, and the time within which, the AEC must give post-election and post-ballot reports; and
- (d) requiring, or authorising a particular person to require, the providing by all or any organisations of information relating to matters relevant to the conduct of elections for offices in organisations and branches of organisations; and
- (e) requiring the exhibiting, on the premises of an employer bound by an order of the Commission under this Schedule, of any of the terms of the order; and
- (f) penalties not exceeding a fine of 10 penalty units for offences against the regulations; and
- (g) pecuniary penalties not exceeding:
 - (i) in the case of a body corporate—25 penalty units; or
 - (ii) in any other case—5 penalty units;for contravening civil penalty provisions in the regulations.

Note: Regulations made under the Workplace Relations Act may also be relevant to the operation of this Schedule. For example, regulations about the Commission's practice and procedure may be made under section 846 of the Workplace Relations Act.

Regulations relating to payroll deduction facilities

- (3) The Governor-General may also make regulations imposing requirements relating to payroll deduction facilities on:
 - (a) the Commonwealth in its capacity as an employer; and
 - (b) employers who are constitutional corporations.

Note: For the meaning of *constitutional corporation*, see section 6.

- (4) Regulations referred to in subsection (3) may include, but are not limited to:
 - (a) requirements that employers give employees information about money received by the employer in relation to the provision by the employer of payroll deduction facilities for an organisation; and

- (b) requirements that employers who provide payroll deduction facilities inform employees who use or have used the facilities in relation to their membership of an organisation that ceasing to use the facilities does not constitute resignation from the organisation.

Part 7—Complementary registration systems

Division 1—Application of this Part

360 Complementary registration systems

If:

- (a) an organisation is divided into branches; and
- (b) the operations of one of the branches is confined to a prescribed State or the operations of 2 or more of the branches are each confined to a prescribed State; and
- (c) the organisation proposes in accordance with this Part to amalgamate with an associated body as defined by this Part for the purpose of seeking the non-corporate registration of the branch, or of any of the branches, referred to in paragraph (b) under an Act of the State concerned that is, or under Acts of the States concerned each of which is, a prescribed State Act for the purposes of this Part;

then, in addition to the other provisions of this Schedule, this Part applies to the organisation but so applies only in relation to the branch or branches referred to in paragraph (c).

Division 2—Preliminary

361 Definitions

In this Part, unless the contrary intention appears:

amalgamation means the carrying out of arrangements in relation to an organisation and an associated body under which it is intended that:

- (a) a branch of the organisation is to obtain non-corporate registration under a prescribed State Act; and
- (b) the associated body is to be de-registered under a prescribed State Act; and
- (c) members of the associated body who are not already members of the organisation are to become members of the organisation; and
- (d) the property of the associated body is to become the property of the organisation forming part of the branch fund of the branch; and
- (e) the liabilities of the associated body are to be satisfied from the branch fund of the branch.

associated body, in relation to an organisation, means an association registered under a prescribed State Act that is or purports to be composed of substantially the same members, and has or purports to have substantially the same officers, as a branch of the organisation in the same State, including such an association that has purported to function as a branch of the organisation.

State means a prescribed State.

Division 3—Branch rules

362 Branch funds

- (1) The rules of a branch of an organisation must provide for a fund of the branch that is to be managed and controlled under rules of the branch, and must make provision in relation to the fund in accordance with subsection (2).
- (2) The branch fund is to consist of:
 - (a) real or personal property of which the branch of the organisation, by the rules or by any established practice not inconsistent with the rules, has, or in the absence of a limited term lease, bailment or arrangement, would have, the right of custody, control or management; and
 - (b) the amounts of entrance fees, subscriptions, fines, fees or levies received by a branch, less so much of the amounts as is payable by the branch to the organisation; and
 - (c) interest, rents, dividends or other income derived from the investment or use of the fund; and
 - (d) a superannuation or long service leave or other fund operated or controlled by the branch for the benefit of its officers or employees; and
 - (e) a sick pay fund, accident pay fund, funeral fund, tool benefit fund or similar fund operated or controlled by the branch for the benefit of its members; and
 - (f) property acquired wholly or mainly by expenditure of the money of the fund or derived from other assets of the fund; and
 - (g) the proceeds of a disposal of parts of the fund.
- (3) The Commission may grant to a branch of an organisation exemption from this section or any provision of this section on the ground that the branch's rules make adequate and reasonable provision for its funds, having regard to the organisation's functioning under this Schedule and the Workplace Relations Act and its participation in any State workplace relations system.

363 Obligations of Commission in relation to application under section 158

- (1) Subsections (2) and (3) apply in relation to the consideration by the Commission of an application under section 158 for consent to a change in the name, or an alteration of the eligibility rules, of an organisation.
- (2) The Commission must, in addition to any other relevant matters, have regard to:
 - (a) whether there is, in relation to the organisation, an associated body registered under a prescribed State Act; and
 - (b) whether the reason the change is sought is to enable the organisation, in addition to representing members or staff members under this Schedule or the Workplace Relations Act, to represent under the State Act a class of persons who would, if the change were consented to, become eligible for membership.
- (3) In the case of an alteration to a rule that may effect a change in the class of persons eligible for membership of a branch of the organisation that is registered under the law of a State, the Commission must, before consenting, give notice of the proposed change to the industrial registrar or similar officer appointed under the law of the State in which the branch operates and, if so requested, consult with the industrial registrar or officer.

364 Branch autonomy

The rules of an organisation must provide for the autonomy of a branch in matters affecting members of the branch only and matters concerning the participation of the branch in a State workplace relations system.

365 Organisation may participate in State systems

- (1) Where it is not contrary to the rules of an organisation to do so, the organisation may participate in workplace relations systems.
- (2) For the purpose of participating, a branch of an organisation may become registered under a law of a State so long as that registration does not involve the branch in becoming incorporated, or otherwise becoming a legal entity, under the law of the State.

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- (3) Where an organisation participates, its rules may provide that the secretary of the branch of the organisation in the State is the person to sue or to be sued under the law of the State in relation to any acts or omissions arising from its participation.

Division 4—Amalgamation of organisation and associated body

366 Organisation and associated body may amalgamate

An organisation and an associated body may amalgamate in the manner set out in this Division.

367 Procedure for amalgamation

- (1) The committee of management of an organisation and the committee of management of the associated body must each pass a resolution proposing amalgamation and specifying particulars of the proposed amalgamation.
- (2) Application must be made to the Commission by the organisation for approval of the amalgamation.
- (3) The application must be accompanied by a copy of any proposed alterations of the rules of the organisation.
- (4) If the rules of the organisation do not comply, subject to subsection 362(3), with Division 3 in respect of each branch for which the organisation proposes to seek non-corporate registration under a prescribed State Act, the proposed alterations must include alterations necessary for the rules so to comply.
- (5) The Commission must:
 - (a) determine what notice is to be given to other persons of the application; and
 - (b) determine whether, on whom and how notice should be served and whether it should be advertised in any newspaper; and
 - (c) fix a period during which objections may be lodged.
- (6) Objection may be made to the amalgamation, so far as it involves an alteration of the eligibility rules of the organisation, by:
 - (a) another organisation; or
 - (b) a member of the associated body; or
 - (c) a registered association in the State in which the associated body functions;

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because there is another organisation to which the members of the associated body, whose eligibility for membership would depend on the alteration, could more conveniently belong.

- (7) Objection may be made to the amalgamation by a member of the organisation or of the associated body on the ground that:
- (a) the provisions of this section have not been complied with; or
 - (b) the amalgamation would do substantial injustice to the members of the organisation or associated body.
- (8) If any objections are duly lodged or if the Commission otherwise deems it advisable to do so, the Commission must:
- (a) fix a day and place of hearing; and
 - (b) determine to whom and in what manner notice of the day and place of the hearing shall be given.
- (9) If the Commission:
- (a) finds that no duly made objection is justified; and
 - (b) is satisfied that the provisions of this section have been complied with; and
 - (c) is satisfied that the amalgamation would not do substantial injustice to the members of the organisation or of the associated body; and
 - (d) is satisfied that any proposed alterations of the rules of the organisation:
 - (i) comply with and are not contrary to this Schedule and applicable awards; and
 - (ii) are not otherwise contrary to law; and
 - (iii) have been decided on under the rules of the organisation;
- the Commission must, subject to subsection (10), approve the amalgamation and fix the day on which the amalgamation is to take effect, but otherwise the Commission must refuse to approve the amalgamation.
- (10) The Commission must not approve an amalgamation unless the Commission is satisfied as to arrangements made relating to property and liabilities of the associated body.
- (11) On the day on which the amalgamation takes effect, any alteration of the rules of the organisation takes effect.

- (12) On the day on which the amalgamation takes effect, all members of the associated body who are not already members of the organisation but are or become, on that day, eligible for membership of the organisation:
- (a) become members of the organisation; and
 - (b) are to be taken to have been members for the period ending on that day during which they were members of the associated body.

Division 5—Exercise of Commission’s powers

368 Exercise of Commission’s powers under this Part

The powers of the Commission under this Part are exercisable only by a Presidential Member.

Schedule 2—Extra provisions relating to definitions

Note: See sections 4, 5, 6 and 7.

1 Additional definitions

In the Act, unless the contrary intention appears:

flight crew officer means a person who performs (whether with or without other duties) duties as a pilot, navigator or flight engineer of aircraft, and includes a person being trained for the performance of such duties.

maritime employee means a person who is, or whose occupation is that of, a master as defined in section 6 of the *Navigation Act 1912*, a seaman as so defined or a pilot as so defined.

pilot, in relation to an aircraft, includes a pilot in command, co-pilot or pilot of any other description.

ship includes a barge, lighter, hulk or other vessel.

stevedoring operations means:

- (a) the loading or unloading of cargo into or from ships;
- (b) the loading or unloading, into or from ships, of ships' stores, coal or fuel oil (whether for bunkers or not), passengers' luggage or mails;
- (c) the handling or storage of cargo or other goods at or adjacent to a wharf;
- (d) the driving or operation of mechanical appliances used in relation to the loading or unloading of ships or with the handling or storage of cargo or other goods at or adjacent to a wharf; or
- (e) haulage or trucking from ship to shed or shed to ship;

and includes:

- (f) the removal or replacing of beams or hatches;
- (g) the handling of dunnage or ballast;
- (h) the preparing or cleaning of holds; and

Clause 1

- (j) the preparation of gear for use in relation to the loading or unloading of ships;

when that work is performed by a person who is a member, or has applied for membership, of the Waterside Workers Federation of Australia.

waterside worker means a person who accepts, or offers to accept, employment for work in the loading or unloading of cargo into or from ships, and includes a person who is a member, or has applied for membership, of the Waterside Workers Federation of Australia who accepts, or offers to accept, employment for work in:

- (a) the loading or unloading, into or from ships, of ships' stores, coal or fuel oil (whether for bunkers or not), passengers' luggage or mails;
- (b) the handling or storage of cargo or other goods at or adjacent to a wharf;
- (c) the driving or operation of mechanical appliances used in relation to the loading or unloading of ships or with the handling or storage of cargo or other goods at or adjacent to a wharf;
- (d) haulage or trucking from ship to shed or shed to ship;
- (e) the removal or replacing of beams or hatches;
- (f) the handling of dunnage or ballast;
- (g) the preparing or cleaning of holds; or
- (h) the preparation of gear for use in relation to the loading or unloading of ships;

but does not include:

- (j) persons working in or alongside a ship in relation to the direction or checking of the work of waterside workers;
- (k) members of the crew of a ship on the ship's articles;
- (m) members of the crew of a lighter;
- (n) members of the Sydney Coal Lumpers' Union while loading or unloading coal in the port of Sydney;
- (o) persons employed, directly or indirectly, at a port in or in relation to stevedoring operations that consist of the loading or unloading, into or from ships, of loose bulk cargo by means of equipment based on the shore, other than persons employed, in relation to a particular class of loose bulk cargo, in operations that, before 14 August 1956, were ordinarily performed at the port by members of the Waterside Workers

Federation of Australia or North Australian Workers Union in relation to the loading or unloading by those means of loose bulk cargo of that class; or

- (p) persons in the regular employment of a person engaged in an industrial undertaking, being persons whose duties include the performance of stevedoring operations in relation to that undertaking.

wharf includes a pier, jetty or shed adjacent to a wharf.

2 References to employee with its ordinary meaning

- (1) Each of the following references to employee has its ordinary meaning (subject to subsections 5(3) and (4)):
- (a) a reference in section 3;
 - (b) a reference in any of the following definitions in subsection 4(1):
 - (i) *applies to employment generally*;
 - (ii) *industry*;
 - (iii) *State employment agreement*;
 - (iv) *State or Territory training authority*;
 - (v) *training arrangement*;
 - (vi) *trade union*;
 - (c) a reference in paragraph 16(3)(g) or (m);
 - (d) a reference in section 107;
 - (g) the first reference in subsection 208(1);
 - (ga) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.
 - (h) a reference in Division 3 or 6 of Part 12;
 - (i) a reference in Part 15;
 - (j) a reference in Part 16;
 - (k) a reference in Part 4, 5 or 6 of Schedule 7.

Note 1: Subsection 5(3) provides that a reference to an employee with its ordinary meaning includes a reference to a person who is usually an employee.

Note 2: Subsection 5(4) provides that a reference to an employee with its ordinary meaning does not include a reference to a person on a vocational placement.

Note 3: The regulations may amend this clause. See clause 5.

Clause 3

- (2) Each of the references to employee in the following provisions has its ordinary meaning (subject to subsections 5(3) and (4)):
- (a) subsection 4(1), definition of *demarcation dispute*;
 - (b) subsection 4(1), definition of *peak council*;
 - (c) paragraph 35(1)(c);
 - (d) paragraph 43(1)(c);
 - (e) subparagraph 64(2)(b)(i);
 - (f) paragraph 100(6)(d);
 - (g) paragraph 100(8)(a);
 - (h) paragraph 100(8)(b);
 - (i) paragraph 100(11)(a);
 - (j) paragraph 100(11)(b);
 - (k) paragraph 100(11)(c);
 - (l) paragraph 100(11)(d);
 - (m) paragraph 150B(1)(b);
 - (n) paragraph 150B(1)(d);
 - (oa) paragraph 166B(a);
 - (ob) paragraph 166B(j);
 - (p) section 178, definition of *pre-reform State wage instrument*, subparagraph (b)(ii);
 - (q) section 178, definition of *pre-reform Territory wage instrument*, subparagraph (a)(ii);
 - (r) paragraph 513(1)(e);
 - (s) section 518;
 - (sa) subsection 576K(1), definition of *outworker*;
 - (t) Schedule 8, paragraph 3(b), the second reference to *employee*, but not the first reference to *employee*;
 - (u) Schedule 8, paragraph 10(b), the reference to *employees* but not the reference to *employee*.

3 References to employer with its ordinary meaning

- (1) Each of the following references to employer has its ordinary meaning (subject to subsection 6(3)):
- (a) a reference in section 3;
 - (b) a reference in any of the following definitions in subsection 4(1):
 - (i) *applies to employment generally*;

- (ii) *industry*;
- (iii) *State employment agreement*;
- (iv) *training arrangement*;
- (v) *vocational placement*;
- (c) a reference in paragraph 16(3)(m);
- (ca) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.
- (e) a reference in Division 3 or 6 of Part 12;
- (f) a reference in Part 15;
- (g) a reference in Part 16;
- (h) a reference in Division 2 of Part 2 of Schedule 7;
- (ha) a reference in Division 2 of Part 4 of Schedule 7.

Note 1: Subsection 6(3) provides that a reference to employer with its ordinary meaning includes a reference to a person who is usually an employer.

Note 2: The regulations may amend this clause. See clause 5.

- (2) Each of the references to employer in the following provisions has its ordinary meaning (subject to subsections 5(3) and (4)):
 - (a) subsection 4(1), definition of *demarcation dispute*;
 - (b) subsection 4(1), definition of *peak council*;
 - (c) paragraph 35(1)(c);
 - (d) paragraph 43(1)(c);
 - (e) subparagraph 64(2)(b)(i);
 - (f) paragraph 150B(1)(b);
 - (g) paragraph 150B(1)(d);
 - (ha) paragraph 166B(a);
 - (i) section 518;
 - (j) subsection 576K(1), definition of *outworker*.

4 References to employment with its ordinary meaning

- (1) Each of the following references to employment has its ordinary meaning:
 - (a) a reference in section 3;
 - (b) a reference in any of the following definitions in subsection 4(1), except a reference forming part of the defined term itself:
 - (i) *applies to employment generally*;

Clause 4

- (ii) **public sector employment;**
- (iii) **State employment agreement;**
- (iv) **State or Territory industrial law;**
- (v) **trade union;**
- (c) a reference in section 103, 106 or 107;
- (ca) a reference in Division 7 of Part 7 so far as the reference relates to Division 6 of Part 7 as applied by section 689.
- (e) a reference in Division 3 or 6 of Part 12;
- (f) a reference in Part 15;
- (g) a reference in Part 16.

Note: The regulations may amend this clause. See clause 5.

- (2) Each of the references to employment in the following provisions has its ordinary meaning (subject to subsections 5(3) and (4)):
 - (a) subsection 4(1), definition of **demarcation dispute**;
 - (b) paragraph 16(1)(d);
 - (c) paragraph 23(a);
 - (d) section 32;
 - (e) subparagraph 35(1)(d)(i);
 - (f) section 53;
 - (g) paragraph 56(1)(d);
 - (h) subsection 83(1);
 - (i) paragraph 84(3)(a);
 - (j) paragraph 84(4)(a);
 - (k) paragraph 86(2)(c);
 - (l) section 105;
 - (m) section 151E;
 - (ma) paragraph 151J(2)(c);
 - (n) subsections 152F(1) and (2);
 - (na) paragraph 152J(2)(c);
 - (nb) paragraph 152J(2)(d);
 - (o) section 166H;
 - (oa) paragraph 166M(2)(c);
 - (ob) subsection 166U(4);
 - (p) subsection 515(4), definition of **labour hire agency**;
 - (pa) subsection 900(2);
 - (pb) subsection 901(2);

- (q) Schedule 8, paragraph 3(1)(b);
- (r) Schedule 8, paragraph 10(1)(b);
- (s) Schedule 8, clause 31.

5 Regulations may amend clauses 2, 3 and 4

- (1) The regulations may amend clauses 2, 3 and 4.
- (2) For the purposes of the *Amendments Incorporation Act 1905*, amendments of any of clauses 2, 3 and 4 made by regulations are to be treated as if they had been made by an Act.

Note: Subclause (2) ensures that the amendments can be incorporated into a reprint of this Act.

Schedule 3—Oath or affirmation of office

Sections 76 and 144

I, _____, do swear that I will bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of (*insert name of office*) and that I will faithfully and impartially perform the duties of the office. So help me God!

or

I, _____, do solemnly and sincerely promise and declare that [*as above, omitting the words "So help me God!"*]

Schedule 4—Convention concerning termination of employment at the initiative of the employer

Section 4

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International
Labour Office, and having met in its Sixty-eighth Session on 2 June 1982,
and

Noting the existing international standards contained in the Termination of
Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment
Recommendation, 1963, significant developments have occurred in the law
and practice of many member States on the questions covered by that
Recommendation, and

Considering that these developments have made it appropriate to adopt new
international standards on the subject, particularly having regard to the
serious problems in this field resulting from the economic difficulties and
technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to
termination of employment at the initiative of the employer, which is the
fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international
Convention;

adopts this twenty-second day of June of the year one thousand nine hundred
and eighty-two the following Convention, which may be cited as the
Termination of Employment Convention, 1982:

PART I. METHODS OF IMPLEMENTATION, SCOPE AND DEFINITIONS

Article 1

The provisions of this Convention shall, in so far as they are not otherwise
made effective by means of collective agreements, arbitration awards or court
decisions or in such other manner as may be consistent with national practice,
be given effect by laws or regulations.

Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some of the provisions of this Convention:

- (a) workers engaged under a contract of employment for a specified period of time or a specified task;
- (b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;
- (c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

Article 3

For the purpose of this Convention the terms “termination” and “termination of employment” mean termination of employment at the initiative of the employer.

PART II. STANDARDS OF GENERAL APPLICATION
DIVISION A. JUSTIFICATION FOR TERMINATION

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination:

- (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
- (d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- (e) absence from work during maternity leave.

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

DIVISION B. PROCEDURE PRIOR TO OR AT THE TIME OF
TERMINATION

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

DIVISION C. PROCEDURE OF APPEAL AGAINST TERMINATION

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

- (a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;
- (b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to

determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

DIVISION D. PERIOD OF NOTICE

Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

DIVISION E. SEVERANCE ALLOWANCE AND OTHER INCOME PROTECTION

Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to—

- (a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or
- (b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or
- (c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

PART III. SUPPLEMENTARY PROVISIONS CONCERNING
TERMINATIONS OF EMPLOYMENT FOR ECONOMIC,
TECHNOLOGICAL, STRUCTURAL OR SIMILAR REASONS

DIVISION A. CONSULTATION OF WORKERS' REPRESENTATIVES

Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

- (a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;
- (b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term "the workers' representatives concerned" means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

DIVISION B. NOTIFICATION TO THE COMPETENT AUTHORITY

Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to

be affected and the period over which the terminations are intended to be carried out.

2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

PART IV. FINAL PROVISIONS

Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides—

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-eighth Session which was held at Geneva and declared closed the twenty-third day of June 1982.

IN FAITH WHEREOF we have appended our signatures this twenty-third day of June 1982.

Schedule 5—Convention concerning equal opportunities and equal treatment for men and women workers: workers with family responsibilities

Section 4

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Sixty-seventh Session on 3 June 1981, and

Noting the Declaration of Philadelphia concerning the Aims and Purposes of the International Labour Organisation which recognises that “all human beings, irrespective of race, creed or sex, have the right to pursue their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”, and

Noting the terms of the Declaration on Equality of Opportunity and Treatment for Women Workers and of the resolution concerning a plan of action with a view to promoting equality of opportunity and treatment for women workers, adopted by the International Labour Conference in 1975, and

Noting the provisions of international labour Conventions and Recommendations aimed at ensuring equality of opportunity and treatment for men and women workers, namely the Equal Remuneration Convention and Recommendation, 1951, the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, and Part VIII of the Human Resources Development Recommendation, 1975, and

Recalling that the Discrimination (Employment and Occupation) Convention, 1958, does not expressly cover distinctions made on the basis of family responsibilities, and considering that supplementary standards are necessary in this respect, and

Noting the terms of the Employment (Women with Family Responsibilities) Recommendation, 1965, and considering the changes which have taken place since its adoption, and

Noting that instruments on equality of opportunity and treatment for men and women have also been adopted by the United Nations and other specialised agencies, and recalling, in particular, the fourteenth paragraph of the Preamble of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, to the effect that States Parties are

“aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”, and

Recognising that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and

Recognising the need to create effective equality of opportunity and treatment as between men and women workers with family responsibilities and between such workers and other workers, and

Considering that many of the problems facing all workers are aggravated in the case of workers with family responsibilities and recognising the need to improve the conditions of the latter both by measures responding to their special needs and by measures designed to improve the conditions of workers in general, and

Having decided upon the adoption of certain proposals with regard to equal opportunities and equal treatment for men and women workers: workers with family responsibilities, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-third day of June of the year one thousand nine hundred and eighty-one the following Convention, which may be cited as the Workers with Family Responsibilities Convention, 1981:

Article 1

1. This Convention applies to men and women workers with responsibilities in relation to their dependent children, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

2. The provisions of this Convention shall also be applied to men and women workers with responsibilities in relation to other members of their immediate family who clearly need their care or support, where such responsibilities restrict their possibilities of preparing for, entering, participating in or advancing in economic activity.

3. For the purposes of this Convention, the terms “dependent child” and “other member of the immediate family who clearly needs care or support” mean persons defined as such in each country by one of the means referred to in Article 9 of this Convention.

4. The workers covered by virtue of paragraphs 1 and 2 of this Article are hereinafter referred to as “workers with family responsibilities”.

Article 2

This Convention applies to all branches of economic activity and all categories of workers.

Article 3

1. With a view to creating effective equality of opportunity and treatment for men and women workers, each Member shall make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities.

2. For the purposes of paragraph 1 of this Article, the term “discrimination” means discrimination in employment and occupation as defined by Articles 1 and 5 of the Discrimination (Employment and Occupation) Convention, 1958.

Article 4

With a view to creating effective equality of opportunity and treatment for men and women workers, all measures compatible with national conditions and possibilities shall be taken—

- (a) to enable workers with family responsibilities to exercise their right to free choice of employment; and
- (b) to take account of their needs in terms and conditions of employment and in social security.

Article 5

All measures compatible with national conditions and possibilities shall further be taken—

- (a) to take account of the needs of workers with family responsibilities in community planning; and
- (b) to develop or promote community services, public or private, such as childcare and family services and facilities.

Article 6

The competent authorities and bodies in each country shall take appropriate measures to promote information and education which engender broader public understanding of the principle of equality of opportunity and treatment for men and women workers and of the problems of workers with family

responsibilities, as well as a climate of opinion conducive to overcoming these problems.

Article 7

All measures compatible with national conditions and possibilities, including measures in the field of vocational guidance and training, shall be taken to enable workers with family responsibilities to become and remain integrated in the labour force, as well as to re-enter the labour force after an absence due to those responsibilities.

Article 8

Family responsibilities shall not, as such, constitute a valid reason for termination of employment.

Article 9

The provisions of this Convention may be applied by laws or regulations, collective agreements, works rules, arbitration awards, court decisions or a combination of these methods, or in any other manner consistent with national practice which may be appropriate, account being taken of national conditions.

Article 10

1. The provisions of this Convention may be applied by stages if necessary, account being taken of national conditions: Provided that such measures of implementation as are taken shall apply in any case to all the workers covered by Article 1, paragraph 1.

2. Each Member which ratifies this Convention shall indicate in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation in what respect, if any, it intends to make use of the faculty given by paragraph 1 of this Article, and shall state in subsequent reports the extent to which effect has been given or is proposed to be given to the Convention in that respect.

Article 11

Employers' and workers' organisations shall have the right to participate, in a manner appropriate to national conditions and practice, in devising and applying measures designed to give effect to the provisions of this Convention.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 15

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 16

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 17

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the conference the question of its revision in whole or in part.

Article 18

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 14 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 19

The English and French versions of the text of this Convention are equally authoritative.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Sixty-seventh Session which was held at Geneva and declared closed the twenty-fourth day of June 1981.

IN FAITH WHEREOF we have appended our signatures this twenty-fifth day of June 1981.

Schedule 6—Transitional arrangements for parties bound by federal awards

Note: See section 8.

Part 1—Preliminary

Division 1—Objects of Schedule

1 Objects of Schedule

- (1) This Schedule provides transitional arrangements for certain employers (*transitional employers*) that were bound immediately before the reform commencement by an award (a *transitional award*), and their employees (*transitional employees*).
- (2) The objects of this Schedule are to ensure that, during the transitional period:
 - (a) transitional awards continue in operation and are maintained by the Commission, within the limits specified in this Schedule; and
 - (b) transitional employers and their employees are able to cease to be bound by a transitional award in appropriate circumstances, including by making agreements under State laws; and
 - (c) the Commission's functions and powers to vary transitional awards are exercised so that wages and other monetary entitlements are not inconsistent with wage-setting decisions of the AFPC; and
 - (d) appropriate compliance and enforcement mechanisms remain available.

Division 2—Interpretation

2 Definitions

(1) In this Schedule:

allowable transitional award matters means the matters covered by subclause 17(1).

Note: The matters referred to in subclause 17(1) have a meaning that is affected by clause 18.

arbitration powers means the powers of the Commission in relation to arbitration.

award means an award within the meaning of subsection 4(1) of this Act as in force immediately before the reform commencement.

breach includes non-observance.

cease dealing, in relation to an industrial dispute, means:

- (a) to dismiss the whole or a part of a matter to which the industrial dispute relates; or
- (b) to refrain from further hearing or from determining the industrial dispute or part of the industrial dispute.

committee of management, in relation to an organisation, association or branch of an organisation or association, means the group or body of persons (however described) that manages the affairs of the organisation, association or branch.

conciliation powers means the powers of the Commission in relation to conciliation.

Court means the Federal Court of Australia or the Federal Magistrates Court.

employee means an individual so far as:

- (a) he or she is employed by an excluded employer, except on a vocational placement; or
- (b) his or her usual occupation involves being employed by an excluded employer, except on a vocational placement.

employer means an excluded employer.

Clause 2

employment means employment of an employee within the meaning of this Schedule.

excluded employer means an employer (within the ordinary meaning of the term) so far as the definition of employer in subsection 6(1) does not cover the employer.

fairness test means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA within the meaning of Schedule 7A and to a pre-transition collective agreement within the meaning of Schedule 7B.

industrial action has the meaning given by clause 3.

industrial dispute means:

- (a) an industrial dispute (including a threatened, impending or probable industrial dispute):
 - (i) extending beyond the limits of any one State; and
 - (ii) that is about allowable transitional award matters pertaining to the relationship between transitional employers and transitional employees; or
- (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a).

outworker means a transitional employee who, for the purposes of the business of a transitional employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

preserved transitional award term has the meaning given by subclause 22(2).

pre-transition Act means this Act as in force immediately before the commencement of Schedule 7A.

reform commencement means the time at which this Schedule commences.

relevant Presidential Member, in relation to an industrial dispute, means the Presidential Member who has been given the responsibility by the President for organising and allocating the work of the panel to which the industry concerned has been

assigned or, if the industry concerned has not been assigned to a panel, the President.

State award means an award, order, decision or determination of a State industrial authority.

State employment agreement means an agreement:

- (a) between an employer and either or both of the following:
 - (i) one or more employees of the employer;
 - (ii) one or more trade unions; and
- (b) that regulates wages and conditions of employment of one or more employees; and
- (c) that is made under a law of a State that provides for such agreements; and
- (d) that prevails over an inconsistent State award.

State industrial authority means:

- (a) a board or court of conciliation or arbitration, or tribunal, body or persons, having authority under a State Act to exercise any power of conciliation or arbitration in relation to industrial disputes within the limits of the State; or
- (b) a special board constituted under a State Act relating to factories; or
- (c) any other State board, court, tribunal, body or official prescribed for the purposes of this definition.

transitional award means an award as continued in force on and from the reform commencement by subclause 4(2), and, to avoid doubt, includes any variations made under this Schedule.

transitional award-related order means an order varying, revoking or suspending a transitional award under this Schedule.

transitional employee means an employee of a transitional employer.

transitional employer means an excluded employer that is bound by a transitional award.

transitional period means the period of 5 years beginning on the reform commencement.

Clause 3

Victorian reference award means an award made under this Act in its operation in accordance with repealed subsection 493(1).

workplace agreement includes an AWA within the meaning of Schedule 7A.

- (2) In this Schedule, a reference to an industrial dispute includes a reference to:
 - (a) a part of an industrial dispute; and
 - (b) an industrial dispute so far as it relates to a matter in dispute; and
 - (c) a question arising in relation to an industrial dispute.
- (3) In this Schedule, a reference to engaging in conduct includes a reference to being, whether directly or indirectly, a party to or concerned in the conduct.
- (4) A reference in this Schedule to a term of a transitional award includes a reference to a provision of a transitional award.
- (5) A reference in this Schedule to an independent contractor is not confined to a natural person.

3 Meaning of *industrial action*

- (1) For the purposes of this Schedule, **industrial action** means any action of the following kinds:
 - (a) the performance of work by a transitional employee in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by a transitional employee, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
 - (i) the terms and conditions of the work are prescribed, wholly or partly, by a transitional award; or
 - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute;
 - (b) a ban, limitation or restriction on the performance of work by a transitional employee, or on acceptance of or offering for work by a transitional employee, in accordance with the terms and conditions prescribed by a transitional award;

- (c) a ban, limitation or restriction on the performance of work by a transitional employee, or on acceptance of or offering for work by a transitional employee, that is adopted in connection with an industrial dispute;
 - (d) a failure or refusal by transitional employees to attend for work or a failure or refusal to perform any work at all by transitional employees who attend for work, if:
 - (i) the transitional employees are members of an organisation and the failure or refusal is in accordance with a decision made, or direction given, by an organisation, the committee of management of the organisation, or an officer or a group of members of the organisation acting in that capacity; or
 - (ii) the failure or refusal is in connection with an industrial dispute;
 - (e) the lockout of transitional employees from their employment by the transitional employer of the employees if:
 - (i) the terms and conditions of the employment are prescribed, wholly or partly, by a transitional award; or
 - (ii) the lockout is in connection with an industrial dispute;
- but does not include any of the following:
- (f) action by transitional employees that is authorised or agreed to by the transitional employer of the employees;
 - (g) action by a transitional employer that is authorised or agreed to by or on behalf of transitional employees of the employer;
 - (h) action by a transitional employee if:
 - (i) the action was based on a reasonable concern by the transitional employee about an imminent risk to his or her health or safety; and
 - (ii) the transitional employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

Note 1: See also subclause (4) which deals with the burden of proof of the exception in subparagraph (h)(i) of this definition.

Note 2: The issue of whether action that is not industrial in character is industrial action was considered by the Commission in *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union and Others v The Age Company Limited*, PR946290. In that case, the Full Bench of the Commission drew a distinction between an

Schedule 6 Transitional arrangements for parties bound by federal awards

Part 1 Preliminary

Division 2 Interpretation

Clause 3

employee who does not attend for work in support of a collective demand that the employer agree to alteration of the conditions of employment as being clearly engaged in industrial action and an employee who does not attend for work on account of illness.

- (2) For the purposes of this Schedule:
 - (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that transitional employees are required to perform in the course of their employment; and
 - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.
- (3) For the purposes of this clause, a transitional employer ***locks out*** transitional employees from their employment if the transitional employer prevents the transitional employees from performing work under their contracts of employment without terminating those contracts (except to the extent that this would be an expansion of the ordinary meaning of that expression).
- (4) Whenever a person seeks to rely on subparagraph (1)(h)(i), that person has the burden of proving that subparagraph (1)(h)(i) applies.

Division 3—Continuing operation of awards

4 Continuing operation of awards in force before reform commencement

- (1) Despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*, an award in force immediately before the reform commencement continues in force, on and from the reform commencement, in accordance with this clause.
- (2) An award that is continued in force by this clause binds the following:
 - (a) all excluded employers that were bound by the award immediately before the reform commencement;
 - (b) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);
 - (c) all organisations that were bound by the award immediately before the reform commencement;
 - (d) all employees who, immediately before the reform commencement, were members of organisations that were bound by the award;
 - (e) each other entity that:
 - (i) is not an employer within the meaning of subsection 6(1) or an eligible entity within the meaning of Division 7 of Part 10; and
 - (ii) was bound by the award immediately before the reform commencement;but only in relation to outworker terms.
- (3) To avoid doubt, an award that is continued in force by this clause binds an excluded employer or other entity that was bound by the award immediately before the reform commencement, whether the employer or other entity was bound:
 - (a) in its own right or as a member of an organisation; or
 - (b) because of the operation of paragraph 149(1)(d), as in force immediately before the reform commencement.

Note: Clause 69 provides for who is bound by an order varying a transitional award.

Clause 5

- (4) An award that is continued in force by this clause is called a *transitional award*.
- (5) In this clause:
 - outworker term* means a term of a transitional award that is:
 - (a) about the matter referred to in paragraph 17(1)(q); or
 - (b) incidental to such a matter, and included in the award as permitted by clause 24; or
 - (c) a machinery provision in respect of such a matter included in the award as permitted by clause 24.

5 Particular rules about transitional awards

- (1) If an excluded employer was, immediately before the reform commencement, regulated by a State employment agreement in respect of the employment of an employee, the employer is not bound by a transitional award in respect of the employment of that employee at any time after the reform commencement.
- (2) If a transitional employer that is bound by a transitional award as a member of an organisation ceases to be a member of that organisation, the transitional employer ceases to be bound by the transitional award at the time the transitional employer ceases to be a member of the organisation, unless the transitional employer is otherwise bound by the transitional award.
- (3) If a transitional employee who is bound by a transitional award as a member of an organisation ceases to be a member of that organisation, the transitional employee ceases to be bound by the transitional award at the time the transitional employee ceases to be a member of the organisation.

6 Cessation of transitional awards

- (1) A transitional award that has not ceased to be in force during the transitional period ceases to be in force at the end of that period.
- (2) To avoid doubt, this clause does not affect any rights accrued or liabilities incurred under a transitional award before it ceases to be in force.

Part 2—Performance of Commission's functions

7 General functions of Commission

- (1) The functions of the Commission under this Schedule are to prevent and settle industrial disputes:
 - (a) so far as possible, by conciliation; and
 - (b) as a last resort and within the limits of the Commission's powers under this Schedule, by arbitration.
- (2) In performing its functions under paragraph (1)(b), the Commission may vary a transitional award as permitted by clause 29.
- (3) However, the Commission must not make any new awards.

8 Performance of Commission's functions under this Schedule

- (1) The Commission must perform its functions under this Schedule in a way that furthers the objects of this Schedule.
- (2) In performing its functions under this Schedule, the Commission must ensure that minimum safety net entitlements are maintained for wages and other specified monetary entitlements, having regard to:
 - (a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and
 - (b) the principle that the wages and other monetary entitlements of transitional employees should not place them at a disadvantage compared with the entitlements of employees (within the meaning of subsection 5(1)); and
 - (c) the principle that the costs to transitional employers of wages and other monetary entitlements should not place them at a competitive disadvantage in relation to employers (within the meaning of subsection 6(1)).
- (3) In having regard to the factors referred to in paragraph (2)(a), the Commission must have regard to:
 - (a) wage-setting decisions of the AFPC; and

Clause 9

- (b) in particular, any statements by the AFPC about the effect of wage increases on productivity, inflation and levels of employment.
- (4) In performing its functions under this Schedule, the Commission must have regard to:
 - (a) the desirability of its decisions being consistent with wage-setting decisions of the AFPC; and
 - (b) the importance of providing minimum safety net entitlements that act as an incentive to bargaining at the workplace level.

9 Anti-discrimination considerations

- (1) Without limiting clause 8, in exercising any of its powers under this Schedule, the Commission must:
 - (a) apply the principle that men and women should receive equal remuneration for work of equal value; and
 - (b) have regard to the need to provide pro-rata disability pay methods for transitional employees with disabilities; and
 - (c) take account of the principles embodied in the *Racial Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004* relating to discrimination in relation to employment; and
 - (d) take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
 - (i) preventing discrimination against workers who have family responsibilities; or
 - (ii) helping workers to reconcile their employment and family responsibilities; and
 - (e) ensure that its decisions do not contain provisions that discriminate because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (2) For the purposes of the Acts referred to in paragraph (1)(c) and paragraph (1)(e), the Commission does not discriminate against a transitional employee or transitional employees by (in accordance with this Schedule) determining or adjusting terms in a transitional award that determine a basic periodic rate of pay for:

- (a) all junior transitional employees, or a class of junior transitional employees; or
- (b) all transitional employees with a disability, or a class of transitional employees with a disability; or
- (c) all transitional employees to whom training arrangements apply, or a class of transitional employees to whom training arrangements apply.

10 Commission to have regard to operation of Superannuation Guarantee legislation

In varying a term dealing with rates of pay in a transitional award, the Commission must have regard to the operation of:

- (a) the *Superannuation Guarantee Charge Act 1992*; and
- (b) the *Superannuation Guarantee (Administration) Act 1992*.

11 Commission to encourage agreement on procedures for preventing and settling disputes

In dealing with an industrial dispute, the Commission must, if it appears practicable and appropriate, encourage the parties to agree on procedures for preventing and settling, by discussion and agreement, further disputes between the parties or any of them.

12 Commission to have regard to compliance with disputes procedures

If the parties to an industrial dispute are bound by a transitional award that provides for procedures for preventing or settling industrial disputes between them, the Commission must, in considering whether or when it will exercise its powers in relation to the industrial dispute, have regard to the extent to which the procedures (if applicable to the industrial dispute) have been complied with by the parties and the circumstances of any compliance or non-compliance with the procedures.

13 No automatic flow-on of terms of certain agreements

- (1) The Commission does not have power to vary a transitional award to include in it terms that are based on the terms of a workplace agreement, a pre-reform certified agreement or a section 170MX

Clause 14

award unless the Commission is satisfied that including the terms in the award:

- (a) would not be inconsistent with the objects of this Schedule set out in clause 1; and
 - (b) would not be inconsistent with wage-setting decisions of the AFPC; and
 - (c) would not be otherwise contrary to the public interest.
- (2) In this clause:

pre-reform certified agreement has the same meaning as in Schedule 7.

section 170MX award has the same meaning as in Schedule 7.

14 Commission to act quickly

- (1) The Commission must perform its functions under this Schedule as quickly as practicable.
- (2) However, the Commission must give a higher priority to performing its other functions under this Act than it gives to performing its functions under this Schedule.

15 Commission not required to have regard to certain matters

Section 103 does not apply to the performance of a function by the Commission under this Schedule.

Part 3—Powers and procedures of Commission for dealing with industrial disputes

Division 1—Settlement of industrial disputes

Subdivision A—Scope of industrial disputes

16 Scope of industrial disputes

- (1) For the purposes of dealing with an industrial dispute by conciliation, an industrial dispute may be about any allowable transitional award matter.
- (2) An industrial dispute is taken to be only about the allowable transitional award matters referred to in subclause 29(2) for the following purposes:
 - (a) dealing with an industrial dispute by arbitration;
 - (b) preventing or settling an industrial dispute, and maintaining the settlement of an industrial dispute, by varying a transitional award.

Note: For the purposes of this Schedule, an industrial dispute can only be about allowable transitional award matters—see the definition of *industrial dispute* in subclause 2(1).

Subdivision B—Allowable transitional award matters

17 Allowable transitional award matters

- (1) Subject to this Division, a transitional award may include terms about the following matters (*allowable transitional award matters*) only:
 - (a) classifications of transitional employees and skill-based career paths;
 - (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
 - (c) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors and transitional employees

Clause 17

- to whom training arrangements apply, and rates of pay for transitional employees under the supported wage system;
- (d) incentive-based payments, piece rates and bonuses;
 - (e) annual leave and annual leave loadings;
 - (f) personal/carer's leave;
 - (g) ceremonial leave;
 - (ga) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;
 - (h) parental leave, including maternity and adoption leave;
 - (i) observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of transitional employees to payment in respect of those days;
 - (ia) days to be substituted for, or a procedure for substituting, days referred to in paragraph (i);
 - (j) monetary allowances for:
 - (i) expenses incurred in the course of employment; or
 - (ii) responsibilities or skills that are not taken into account in rates of pay for transitional employees; or
 - (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
 - (k) loadings for working overtime or for casual or shift work;
 - (l) penalty rates;
 - (m) redundancy pay, within the meaning of subclause (3);
 - (n) stand-down provisions;
 - (o) dispute settling procedures;
 - (p) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;
 - (q) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant transitional award or transitional awards for transitional employees who perform the same kind of work at a transitional employer's business or commercial premises.

Note 1: The matters referred to in subclause (1) have a meaning that is affected by clause 18.

Note 2: Entitlements relating to certain matters that were allowable award matters immediately before the reform commencement are preserved under clause 22.

- (2) For the purposes of paragraph (1)(f), *personal/carer's leave* includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
- (3) For the purposes of paragraph (1)(m), *redundancy pay* means redundancy pay in relation to a termination of employment that is:
- (a) by a transitional employer of 15 or more transitional employees; and
 - (b) either:
 - (i) at the initiative of the transitional employer and on the grounds of operational requirements; or
 - (ii) because the transitional employer is insolvent.
- (4) For the purposes of paragraph (3)(a):
- (a) whether a transitional employer employs 15 or more transitional employees, or fewer than 15 transitional employees, is to be worked out as at the time (the *relevant time*):
 - (i) when notice of the redundancy is given; or
 - (ii) when the redundancy occurs;whichever happens first; and
 - (b) a reference to transitional employees includes a reference to:
 - (i) the transitional employee who becomes redundant and any other transitional employee who becomes redundant at the relevant time; and
 - (ii) any casual transitional employee who, at the relevant time, has been engaged by the transitional employer on a regular and systematic basis for at least 12 months (but not including any other casual transitional employee).

18 Matters that are not allowable transitional award matters

- (1) For the purposes of subclause 17(1), matters that are not allowable transitional award matters within the meaning of that subclause include, but are not limited to, the following:

Clause 18

- (a) rights of an organisation to participate in, or represent a transitional employer or transitional employee in, the whole or part of a dispute settling procedure, unless the organisation is the representative of the employer's or employee's choice;
 - (b) conversion from casual employment to another type of employment;
 - (c) the number or proportion of transitional employees that a transitional employer may employ in a particular type of employment or in a particular classification;
 - (d) prohibitions (whether direct or indirect) on a transitional employer employing transitional employees in a particular type of employment or in a particular classification;
 - (e) the maximum or minimum hours of work for regular part-time transitional employees;
 - (f) restrictions on the range or duration of training arrangements;
 - (g) restrictions on the engagement of independent contractors and requirements relating to the conditions of their engagement;
 - (h) restrictions on the engagement of labour hire workers, and requirements relating to the conditions of their engagement, imposed on an entity or person for whom the labour hire worker performs work under a contract with a labour hire agency;
 - (i) union picnic days;
 - (j) tallies in the meat industry;
 - (k) dispute resolution training leave;
 - (l) trade union training leave.
- (2) Paragraph (1)(e) does not prevent any of the following being included in a transitional award:
- (a) terms setting a minimum number of consecutive hours that a transitional employer may require a regular part-time transitional employee to work;
 - (b) terms facilitating a regular pattern in the hours worked by regular part-time transitional employees.
- (2A) Paragraph (1)(g) does not limit the operation of paragraph 17(1)(q).
- (3) In this clause:
-

labour hire agency means an entity or a person who conducts a business that includes the employment or engagement of workers for the purpose of supplying those workers to another entity or person under a contract with that other entity or person.

labour hire worker means a person:

- (a) who:
 - (i) is employed by a labour hire agency; or
 - (ii) is engaged by a labour hire agency as an independent contractor; and
- (b) who performs work for another entity or person under a contract between that entity or person and the labour hire agency.

Note: In this Schedule, references to independent contractors are not confined to natural persons (see subclause 2(5)).

19 Terms involving discrimination and preference not to be included

To the extent that a term of a transitional award requires or permits, or has the effect of requiring or permitting, any conduct that would contravene Part 16, it is taken not to be about allowable transitional award matters.

20 Terms about rights of entry not to be included

To the extent that a term of a transitional award requires or authorises an officer or employee of an organisation:

- (a) to enter premises:
 - (i) occupied by a transitional employer who is bound by the award; or
 - (ii) in which work to which the award applies is being carried on; or
 - (b) to inspect or view any work, material, machinery, appliance, article, document or other thing on such premises; or
 - (c) to interview a transitional employee on such premises;
- it is taken not to be about allowable transitional award matters.

21 Enterprise flexibility provisions not to be included

To the extent that a term of a transitional award is an enterprise flexibility provision within the meaning of section 113A as in force

Clause 22

immediately before the reform commencement, it is taken not to be about an allowable transitional award matter.

Subdivision C—Other terms that may be included in transitional awards

22 Preserved transitional award terms

- (1) A transitional award may include preserved transitional award terms.
- (2) A *preserved transitional award term* is a term, or more than one term, of a transitional award that:
 - (a) is about a matter referred to in subclause (3); and
 - (b) had effect under the transitional award on the reform commencement.
- (3) For the purposes of subclause (2), the matters are as follows:
 - (a) long service leave;
 - (b) notice of termination;
 - (c) jury service;
 - (d) superannuation.
- (4) If a term of a transitional award is about both matters referred to in subclause (3) and other matters, it is taken to be a preserved transitional award term only to the extent that it is about the matters referred to in subclause (3).
- (4A) If more than one term of a transitional award is about a matter referred to in subclause (3), then those terms, taken together, constitute the preserved transitional award term of that transitional award about that matter.
- (5) A preserved transitional award term continues to have effect for the purposes of this Schedule.

Note: Preserved transitional award terms may not be varied.

23 Facilitative provisions

- (1) A transitional award may include a facilitative provision that allows agreement at the workplace or enterprise level, between transitional employers and transitional employees (including

individual transitional employees), on how a term in the award about an allowable transitional award matter or a preserved transitional award term is to operate.

- (2) A facilitative provision must not require agreement between a majority of transitional employees and a transitional employer, but must permit agreement between an individual transitional employee and a transitional employer, on how a term in an award about an allowable transitional award matter or a preserved transitional award term is to operate.
- (3) A facilitative provision may only operate in respect of an allowable transitional award matter or a preserved transitional award term.
- (4) A facilitative provision is of no effect to the extent that it does not comply with subclause (2) or (3).

24 Incidental and machinery terms

- (1) A transitional award may include terms that are:
 - (a) incidental to an allowable transitional award matter about which there is a term in the award; and
 - (b) essential for the purpose of making a particular term operate in a practical way.
- (2) For the purposes of this clause, to the extent that a term of a transitional award provides for a matter that is not an allowable transitional award matter because of the operation of clause 18, 19, 20 or 21, the term is not, and cannot be, incidental to a term in the award providing for an allowable transitional award matter, and is of no effect to that extent.
- (2A) However, to avoid doubt, paragraph 18(1)(g) does not limit the operation of subclauses (1) and (3) to the extent that those subclauses relate to the matter referred to in paragraph 17(1)(q).
- (3) A transitional award may include machinery provisions including, but not limited to, provisions providing for the following:
 - (a) commencement;
 - (b) definitions;
 - (c) titles;
 - (d) arrangement;

Clause 25

- (e) transitional employers, transitional employees and organisations bound;
- (f) term of the award.

25 Anti-discrimination clauses

A transitional award may include a model anti-discrimination clause.

26 Boards of reference

- (1) A transitional award may include, in accordance with subclause (2), a term:
 - (a) appointing, or giving power to appoint, for the purposes of the award, a board of reference consisting of a person or 2 or more persons; and
 - (b) assigning to the board of reference functions as described in subclause (3).
- (2) A term of a transitional award that appoints, or gives power to appoint, a board of reference is taken:
 - (a) to continue in effect after the reform commencement, to the extent that it complies with subclause (3); and
 - (b) to cease to have effect after the reform commencement, to the extent that it does not comply with subclause (3).
- (3) A term of a transitional award that appoints, or gives power to appoint, a board of reference:
 - (a) may confer upon the board of reference an administrative function in respect of allowing, approving, fixing, or dealing with, in the manner and subject to the conditions specified in the award, a matter or thing that, under the award, may from time to time be required to be allowed, approved, fixed, or dealt with; and
 - (b) must not confer upon the board of reference a function of settling or determining disputes about any matter arising under the award.
- (4) A function conferred under subclause (3) may relate only to allowable transitional award matters or terms permitted by this Subdivision to be included in the transitional award.

- (5) A board of reference may consist of or include a Commissioner.
- (6) Subject to subclauses (3) and (4), the regulations may make provision in relation to:
 - (a) a particular board of reference; or
 - (b) boards of reference in general;including, but not limited to, the functions and powers of the board or boards.

Subdivision D—Terms in transitional awards that cease to have effect

27 Terms in transitional awards that cease to have effect after the reform commencement

- (1) Immediately after the reform commencement, a term of a transitional award ceases to have effect to the extent that it is about matters that are not allowable transitional award matters, except to the extent (if any) that the term is permitted by Subdivision C to be included in the award.
- (2) This clause does not affect the operation of preserved transitional award terms.

Division 2—Variation and revocation of transitional awards

28 Variation of transitional awards—general

- (1) The Commission may make an order varying a transitional award only:
 - (a) as permitted by clause 29; or
 - (b) on a ground set out in clause 30.
- (2) The Commission must not vary a preserved transitional award term.
- (3) The Commission must not vary a facilitative provision within the meaning of clause 23 except on a ground set out in clause 30.

29 Variation of transitional awards—dealing with industrial dispute

- (1) In preventing or settling an industrial dispute, or maintaining the settlement of an industrial dispute, the Commission's power to vary a transitional award is limited to varying the award:
 - (a) to provide minimum safety net entitlements about the matters referred to in subclause (2); and
 - (b) to do anything that the Commission is permitted to do by regulations made under subclause (3); and
 - (c) to include incidental and machinery terms, as permitted by clause 24, relating to the matters that may be varied.
- (2) For the purposes of subclause (1), the matters are:
 - (a) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors and transitional employees to whom training arrangements apply, and rates of pay for transitional employees under the supported wage system;
 - (b) incentive-based payments, piece rates and bonuses;
 - (c) annual leave loadings;
 - (d) monetary allowances described in paragraph 17(1)(j);
 - (e) loadings for working overtime or for casual or shift work;
 - (f) penalty rates;
 - (g) pay for outworkers;

- (h) any other allowable transitional award matter prescribed by the regulations.

Note: The Commission must have regard to the matters referred to in clauses 8 and 9 in exercising its functions under this clause.

- (3) If the Commission considers it appropriate to vary a transitional award in respect of rates of pay for part-time transitional employees, junior transitional employees or transitional employees to whom training arrangements apply, the Commission may, if it considers it appropriate, also vary the application of the terms of the award to those employees in accordance with the regulations.
- (4) Regulations under subclause (3) may specify:
 - (a) the matters in respect of which a transitional award may be varied as mentioned in that subclause, which must be matters referred to in subclause 17(1); and
 - (b) the circumstances in which a transitional award may be varied as mentioned in that subclause.

Example: For example, regulations under subclause (4) could permit the Commission to vary a transitional award, if it considers it appropriate, to ensure that certain conditions to which a part-time transitional employee is entitled are determined in proportion to the hours worked by the part-time employee.

30 Variation of transitional awards—discrimination, etc.

- (1) If the Commission considers that a term of a transitional award about a matter referred to in subclause 29(2) is ambiguous or uncertain, the Commission may make an order varying the award so as to remove the ambiguity or uncertainty.
- (2) If a transitional award is referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*, the Commission must convene a hearing to review the award.
- (3) In a review under subclause (2):
 - (a) the Commission must take such steps as it considers appropriate to ensure that each transitional employer and organisation bound by the transitional award is made aware of the hearing; and
 - (b) the Sex Discrimination Commissioner may intervene in the proceeding.

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- (4) If the Commission considers that a transitional award reviewed under subclause (2) is a discriminatory award, the Commission must take the necessary action to remove the discrimination, by making an order varying the award.
- (5) The Commission may, on application by a transitional employer or organisation bound by a transitional award, vary a term of the award referring by name to a transitional employer or organisation bound by the award:
 - (a) to reflect a change in the name of the transitional employer or organisation; or
 - (b) if:
 - (i) the registration of the organisation has been cancelled; or
 - (ii) the transitional employer or organisation has ceased to exist;to omit the reference to its name.
- (6) The onus of demonstrating that a transitional award should be varied as set out in an application under subclause (5) rests with the applicant.
- (7) In this clause:

discriminatory award means a transitional award that:

- (a) has been referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*; and
- (b) requires a person to do any act that would be unlawful under Part II of the *Sex Discrimination Act 1984*, except for the fact that the act would be done in direct compliance with the award.

For the purposes of this definition, the fact that an act is done in direct compliance with the award does not of itself mean that the act is reasonable.

31 Revocation of transitional awards

- (1) The Commission may make an order revoking a transitional award only if:
 - (a) it is satisfied that the award is obsolete or is no longer operating; and
-

- (b) it would not be contrary to the public interest to revoke the award.
- (2) If an application for an order under subclause (1) is made, the Commission must take such steps as it considers appropriate to ensure that each transitional employer and organisation bound by the transitional award is made aware of the application.
- (3) The Commission must not make an order revoking a transitional award if one or more transitional employees have an entitlement in relation to a matter under a preserved transitional award term included in the transitional award.

32 Applications for variation, suspension or revocation of transitional awards

This Schedule applies in relation to applications, and proceedings in relation to applications, for the variation, suspension or revocation of transitional awards in the same manner, as far as possible, as it applies in relation to industrial disputes and proceedings in relation to industrial disputes, and for that purpose such an application is to be treated as if it were the notification of an industrial dispute.

Division 3—Procedure for dealing with industrial disputes

33 Notification of industrial disputes

- (1) If an entitled organisation or a transitional employer becomes aware of the existence of an alleged industrial dispute affecting the organisation or its members or affecting the employer, as the case may be, the organisation or employer may notify the relevant Presidential Member or a Registrar.

Note: For the purposes of this Schedule, an industrial dispute may only be about allowable transitional award matters—see the definition of *industrial dispute* in subclause 2(1).

- (2) A Minister who is aware of the existence of an alleged industrial dispute may notify the relevant Presidential Member or a Registrar.
- (3) If a Registrar is notified of an alleged industrial dispute, or a member of the Commission who is not the relevant Presidential Member becomes aware of the existence of an alleged industrial dispute, the Registrar or member must inform the relevant Presidential Member.
- (4) For the purposes of this clause, an organisation is an *entitled organisation* if:
 - (a) the organisation is bound by a transitional award; and
 - (b) at least one member of the organisation is a transitional employer or a transitional employee that is bound by the transitional award; and
 - (c) the organisation is entitled under its eligibility rules to represent the industrial interests of that member.

34 Disputes to be dealt with by conciliation where possible

- (1) If an alleged industrial dispute is notified under clause 33 or the relevant Presidential Member otherwise becomes aware of the existence of an alleged industrial dispute, the relevant Presidential Member must, unless satisfied that it would not assist the prevention or settlement of the alleged industrial dispute, refer it for conciliation by himself or herself or by another member of the Commission.

- (2) If the Presidential Member does not refer the alleged industrial dispute for conciliation:
 - (a) the Presidential Member must publish reasons for not doing so; and
 - (b) the Commission must deal with the alleged industrial dispute by arbitration.

35 Findings as to industrial disputes

- (1) Subject to subclause (2), if a proceeding in relation to an alleged industrial dispute comes before the Commission, it must, if it considers that the alleged industrial dispute is an industrial dispute:
 - (a) determine the parties to the industrial dispute and the matters in dispute; and
 - (b) record its findings;but the Commission may vary or revoke any of the findings.
- (2) If the Commission constituted in any manner has made findings in relation to an industrial dispute, the Commission (however constituted) may, for the purpose of exercising powers in subsequent proceedings in relation to the same industrial dispute (other than powers on an appeal in relation to the finding), proceed on the basis of the findings or any of them.
- (3) A determination or finding of the Commission on a question as to the existence of an industrial dispute is, in all courts and for all purposes, conclusive and binding on all persons affected by the question.

36 Action to be taken where dispute referred for conciliation

- (1) If an industrial dispute is referred for conciliation, a member of the Commission must do everything that appears to the member to be right and proper to assist the parties to agree on terms for the prevention or settlement of the industrial dispute.
- (2) The action that may be taken by a member of the Commission under this clause includes:
 - (a) arranging conferences of the parties or their representatives presided over by the member; and

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- (b) arranging for the parties or their representatives to confer among themselves at conferences at which the member is not present.

37 Completion of conciliation proceeding

- (1) A conciliation proceeding before a member of the Commission is to be regarded as completed when:
 - (a) the parties have reached agreement for the settlement of the whole of the industrial dispute; or
 - (b) whether or not the parties have reached agreement for the settlement of part of the industrial dispute, the member of the Commission is satisfied that there is no likelihood that, within a reasonable period, conciliation, or further conciliation, will result in agreement, or further agreement, by the parties on terms for the settlement of the industrial dispute or any matter in dispute.
- (2) Nothing in this Schedule prevents the exercise of conciliation powers in relation to an industrial dispute merely because arbitration powers have been exercised in relation to the industrial dispute.

38 Arbitration

- (1) When a conciliation proceeding before a member of the Commission in relation to the industrial dispute is completed but the industrial dispute has not been fully settled, the Commission must, to the extent that the industrial dispute is about matters referred to in subclause 29(2), or the matters remaining in dispute are matters referred to in that clause, proceed to deal with the industrial dispute, or the matters remaining in dispute, by arbitration.
- (2) The Commission must not proceed to deal with the industrial dispute, or any matters remaining in dispute, by arbitration to the extent that the industrial dispute is not about matters referred to in subclause 29(2), or the matters remaining in dispute are not matters referred to in that clause.

- (3) Unless the member of the Commission who conducted the conciliation proceeding is competent, having regard to clause 39, to exercise arbitration powers in relation to the industrial dispute and proposes to do so, the member must make a report under subclause (4).
- (4) The member must, for the purpose of enabling arrangements to be made for arbitration in relation to the industrial dispute, report to the relevant Presidential Member or, if the member is a Presidential Member, to the President, as to:
 - (a) the matters in dispute; and
 - (b) the extent to which those matters are matters referred to in subclause 29(2); and
 - (c) the parties to the dispute; and
 - (d) the extent to which the dispute has been settled.
- (5) The member must not disclose anything said or done in the conciliation proceeding in relation to matters in dispute that remain unsettled.
- (6) In an arbitration proceeding under this Schedule, unless all the parties agree, evidence must not be given, or statements made, that would disclose anything said or done in a conciliation proceeding under this Schedule (whether before a member of the Commission or at a conference arranged by a member of the Commission) in relation to matters in dispute that remain unsettled.

39 Exercise of arbitration powers by member who has exercised conciliation powers

- (1) If a member of the Commission has exercised conciliation powers in relation to an industrial dispute, the member must not exercise, or take part in the exercise of, arbitration powers in relation to the industrial dispute if a party to the arbitration proceeding objects.
- (2) The member is not taken to have exercised conciliation powers in relation to the industrial dispute merely because:
 - (a) after having begun to exercise arbitration powers in relation to the industrial dispute, the member exercised conciliation powers; or
 - (b) the member arranged for a conference of the parties or their representatives to be presided over by the member, but the

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conference did not take place or was not presided over by the member; or

- (c) the member arranged for the parties or their representatives to confer among themselves at a conference at which the member was not present.

40 Principles for varying transitional awards

- (1) A Full Bench of the Commission may establish principles about varying transitional awards in relation to each allowable transitional award matter referred to in subclause 29(2).
- (2) After such principles (if any) have been established under subclause (1), the power of the Commission to vary a transitional award in relation to a matter referred to in subclause 29(2) is exercisable only by a Full Bench unless the variation:
 - (a) gives effect to orders of a Full Bench made after the reform commencement; or
 - (b) is consistent with principles established by a Full Bench after that day.
- (3) The President or a Full Bench may, in relation to the exercise of powers under this clause, direct a member of the Commission to provide a report in relation to a specified matter.
- (4) After making such investigation (if any) as is necessary, the member must provide a report to the President or Full Bench, as the case may be.
- (5) To avoid doubt, principles established under subclause (1) must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of transitional awards.

41 Reference of disputes to Full Bench

- (1) A reference in this clause to a part of an industrial dispute includes a reference to:
 - (a) an industrial dispute so far as it relates to a matter in dispute; or
 - (b) a question arising in relation to an industrial dispute.

- (2) If a proceeding in relation to an industrial dispute or an alleged industrial dispute is before a member of the Commission, a party to the proceeding or the Minister may apply to the member:
- (a) in the case of a proceeding in relation to an alleged industrial dispute—to have the proceeding dealt with by a Full Bench because the subject matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench; or
 - (b) in the case of a proceeding by way of conciliation or arbitration—to have the industrial dispute or a part of the industrial dispute dealt with by a Full Bench because the industrial dispute or the part of the industrial dispute is of such importance that, in the public interest, it should be dealt with by a Full Bench.

Note: An industrial dispute must not be dealt with by arbitration unless it is about a matter referred to in subclause 29(2)—see clause 38.

- (3) An application under paragraph (2)(a) may be accompanied by an application under paragraph (2)(b), to be dealt with if the application under paragraph (2)(a) is granted and there is a finding that there is an industrial dispute.
- (4) If an application is made under subclause (2) to a member of the Commission other than the President:
- (a) the member must refer the application to the President to be dealt with; and
 - (b) the President must confer with the member about whether the application should be granted.
- (5) If the President is of the opinion:
- (a) in the case of an application under paragraph (2)(a)—that the subject matter of the proceeding is of such importance that, in the public interest, the proceeding should be dealt with by a Full Bench; or
 - (b) in the case of an application under paragraph (2)(b)—that the industrial dispute or the part of the industrial dispute is of such importance that, in the public interest, it should be dealt with by a Full Bench;
- the President must grant the application.

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- (6) If the President grants an application under paragraph (2)(a):
 - (a) the Full Bench must, if it considers that there is an industrial dispute, record findings under clause 35; and
 - (b) if the application was accompanied by an application under paragraph (2)(b) that was granted—the Full Bench must, subject to subclause (9), hear and determine the industrial dispute or the part of the industrial dispute.
- (7) If the President grants an application under paragraph (2)(b), the Full Bench must, subject to subclause (8), hear and determine the industrial dispute or the part of the industrial dispute and, in the hearing, may have regard to any evidence given, and any arguments adduced, in arbitration proceedings in relation to the industrial dispute, or the part of the industrial dispute, before the Full Bench commenced the hearing.
- (8) If the President grants an application under paragraph (2)(b) in relation to an industrial dispute:
 - (a) the Full Bench may refer a part of the industrial dispute to a member of the Commission to hear and determine; and
 - (b) the Full Bench must hear and determine the rest of the industrial dispute.
- (9) The President or a Full Bench may, in relation to the exercise of powers under this clause, direct a member of the Commission to provide a report in relation to a specified matter.
- (10) The member must, after making such investigation (if any) as is necessary, provide a report to the President or Full Bench, as the case may be.
- (11) The President may before a Full Bench has been established for the purpose of hearing and determining, under this clause, an industrial dispute or part of an industrial dispute, authorise a member of the Commission to take evidence for the purposes of the hearing and determination, and:
 - (a) the member has the powers of a person authorised to take evidence under subclause 46(3); and
 - (b) the Full Bench must have regard to the evidence.

42 President may deal with certain proceedings

- (1) A reference in this clause to a part of an industrial dispute includes a reference to:
 - (a) an industrial dispute so far as it relates to a matter in dispute;
or
 - (b) a question arising in relation to an industrial dispute.
 - (2) The President may, whether or not another member of the Commission has begun to deal with a particular proceeding in relation to an alleged industrial dispute or an industrial dispute, decide to deal with the proceeding.
 - (3) If the President decides to deal with the proceeding, then, unless the President considers that the proceeding does not relate to an industrial dispute:
 - (a) the President must make such findings (if any) in relation to the proceeding as are required to be made by clause 35 and have not already been made by another member of the Commission; and
 - (b) the President must:
 - (i) if the President is of the opinion that it would assist the settlement of the industrial dispute or a part of the industrial dispute—endeavour to settle the industrial dispute or the part of the industrial dispute by conciliation; and
 - (ii) if the President is not of that opinion, or has not been able to settle the industrial dispute or a part of the industrial dispute by conciliation:
 - (A) hear and determine the industrial dispute or the part of the industrial dispute; or
 - (B) refer the industrial dispute or the part of the industrial dispute to a Full Bench.
- Note: An industrial dispute must not be dealt with by arbitration unless it is about a matter referred to in subclause 29(2)—see clause 38.
- (4) If the President refers the industrial dispute or the part of the industrial dispute to a Full Bench, the Full Bench must hear and determine the industrial dispute or the part of the industrial dispute.
 - (5) In the hearing of an industrial dispute or a part of an industrial dispute by the President under subclause (3) or by a Full Bench

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under subclause (4), the President or Full Bench may have regard to any evidence given, and any arguments adduced, in arbitration proceedings in relation to the industrial dispute, or the part of the industrial dispute, before the President or Full Bench commenced to deal with the proceeding concerned.

- (6) If the President has under subclause (3) referred an industrial dispute to a Full Bench:
 - (a) the Full Bench may refer a part of the industrial dispute to a member of the Commission to hear and determine; and
 - (b) the Full Bench must hear and determine the rest of the industrial dispute.
- (7) If, before an industrial dispute is dealt with by the President under this clause or while an industrial dispute is being dealt with by the President under this clause, the parties to the industrial dispute, or any of them, reach agreement on terms for the settlement of all or any of the matters in dispute, the President must cease dealing with the industrial dispute.
- (8) The President or a Full Bench may, in relation to the exercise of powers under this clause, direct a member of the Commission to provide a report in relation to a specified matter.
- (9) The member must, after making such investigation (if any) as is necessary, provide a report to the President or Full Bench, as the case may be.

43 Review on application by Minister

- (1) The Minister may apply to the President for a review by a Full Bench of an order made for the purposes of this Schedule, or a decision relating to the making of such an order, made by a member of the Commission under this Schedule if it appears to the Minister that the order or decision is contrary to the public interest.
- (2) If an application is made to the President under subclause (1), the President must establish a Full Bench to hear and determine the application.
- (3) The Full Bench must, if in its opinion the matter is of such importance that, in the public interest, the order or decision should be reviewed, make such review of the order or decision as appears

to it to be desirable having regard to the matters referred to in the application.

- (4) Subsections 120(4) to (8) apply in relation to a review under this clause in the same manner as they apply in relation to an appeal under section 120.
- (5) In a review under this clause:
 - (a) the parties to the proceeding in which the order or decision was made are parties to the proceeding on the review and are entitled to notice of the hearing; and
 - (b) the Minister is a party to the proceeding.
- (6) Each provision of this Schedule relating to the hearing and determination of an industrial dispute extends to a review under this clause.
- (7) Nothing in this clause affects any right of appeal or any power of a Full Bench under section 120, and an appeal under that section and a review under this clause may, if the Full Bench considers it appropriate, be dealt with together.

44 Procedure of Commission

- (1) If the Commission is dealing with an industrial dispute, it must, in such manner as it considers appropriate, carefully and quickly inquire into and investigate the industrial dispute and all matters affecting the merits, and right settlement, of the industrial dispute.
- (2) In the hearing and determination of an industrial dispute or in any other proceeding before the Commission under this Schedule:
 - (a) the procedure of the Commission is, subject to this Act and the Rules of the Commission, within the discretion of the Commission; and
 - (b) the Commission is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it considers just; and
 - (c) the Commission must act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.
- (3) The Commission may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective

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cases of the parties to an industrial dispute or other proceeding and require that the cases be presented within the respective periods.

- (4) The Commission may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

45 Provisions in Part 3 that do not apply to performance of Commission's functions under this Schedule

Sections 104, 105, 106, 108, 110, 111, 112, 113 and 114 do not apply to the performance of a function by the Commission under this Schedule.

Division 4—Powers of Commission for dealing with industrial disputes

46 Particular powers of Commission

- (1) Subject to this Schedule, the Commission may do any of the following things in relation to an industrial dispute arising under this Schedule:
 - (a) inform itself in any manner it considers appropriate;
 - (b) take evidence on oath or affirmation;
 - (c) give directions orally or in writing in the course of, or for the purposes of, procedural matters relating to the hearing or determination of the industrial dispute;
 - (d) within the limits of the Commission's powers under this Schedule, vary or revoke a transitional award, order, direction, recommendation or other decision of the Commission made for the purposes of this Schedule;
 - (e) dismiss a matter or part of a matter, or refrain from further hearing or from determining the industrial dispute or part of the industrial dispute, if it appears:
 - (i) that the industrial dispute or part is trivial; or
 - (ii) that the industrial dispute or part has been dealt with, is being dealt with or is proper to be dealt with by a State industrial authority; or
 - (iii) that further proceedings are not necessary or desirable in the public interest; or
 - (iv) that a party to the industrial dispute is engaging in conduct that, in the Commission's opinion, is hindering the settlement of the industrial dispute or another industrial dispute; or
 - (v) that a party to the industrial dispute:
 - (A) has breached a transitional award or order of the Commission or a Division 3 pre-reform certified agreement (within the meaning of Schedule 7); or
 - (B) has contravened a direction or recommendation of the Commission to stop industrial action; or

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- (C) has contravened a recommendation of the Commission under clause 47;
- (f) hear and determine the industrial dispute in the absence of a party who has been summoned or served with a notice to appear;
 - (g) sit at any place;
 - (h) conduct the hearing of the industrial dispute, or any part of the hearing, in private;
 - (i) adjourn the hearing of the industrial dispute to any time and place;
 - (j) refer any matter to an expert and accept the expert's report as evidence;
 - (k) if the industrial dispute is being dealt with by a Full Bench—direct a member of the Commission to consider a particular matter and prepare a report for the Full Bench on that matter;
 - (l) allow the amendment, on such terms as it considers appropriate, of any application or other document relating to the industrial dispute;
 - (m) correct, amend or waive any error, defect or irregularity, whether in substance or form;
 - (n) summon before it the parties to the industrial dispute, the witnesses, and any other persons whose presence the Commission considers would help in the hearing or determination of the industrial dispute;
 - (o) compel the production before it of documents and other things for the purpose of reference to such entries or matters only as relate to the industrial dispute.
- (2) The Commission must not, in relation to an industrial dispute, dismiss or refrain as mentioned in paragraph (1)(e) because of subparagraph (1)(e)(i), (ii) or (iii) unless it has made a determination and findings under clause 35 in relation to the dispute.
- (3) The Commission may, in writing, authorise a person (including a member of the Commission) to take evidence on its behalf, with such limitations (if any) as the Commission directs, in relation to an industrial dispute, and the person has all the powers of the Commission to secure:
- (a) the attendance of witnesses; and
 - (b) the production of documents and things; and
-

- (c) the taking of evidence on oath or affirmation.

47 Recommendations by consent

- (1) If:
 - (a) the Commission is exercising powers of conciliation in relation to a particular allowable transitional award matter; and
 - (b) all the parties request the Commission to conduct a hearing and make recommendations about particular aspects of the matter on which they are unable to reach agreement (which may be all aspects of the matter); and
 - (c) the Commission is satisfied that all the parties:
 - (i) have made a genuine attempt to agree about those aspects of the matter; and
 - (ii) have agreed to comply with the Commission's recommendations;the Commission must conduct a hearing and make recommendations about those aspects of the matter.
- (2) This clause does not prevent the Commission from making recommendations in other circumstances.

Division 5—Other powers of the Commission

48 Power to make further orders in settlement of industrial dispute etc.

- (1) The fact that a transitional award-related order has been made for the settlement of an industrial dispute, or that a transitional award or order made for the settlement of an industrial dispute is in force, does not prevent:
 - (a) a further order being made for the settlement of the industrial dispute; or
 - (b) an order being made for the settlement of a further industrial dispute between all or any of the parties to the earlier award or order, and whether or not the subject matter of the further industrial dispute is the same (in whole or part) as the subject matter of the earlier industrial dispute.
- (2) The Commission's power to make a further order under this clause is limited to making an order that is permitted under this Schedule.

49 Relief not limited to claim

Subject to clauses 17, 18 and 29, in making an order to vary a transitional award, the Commission is not restricted to the specific relief claimed by the parties to the industrial dispute concerned, or to the demands made by the parties in the course of the industrial dispute, but may include in the order anything:

- (a) that the Commission considers necessary or expedient for the purpose of preventing or settling the industrial dispute or preventing further industrial disputes; and
- (b) that is within the Commission's powers under this Schedule.

50 Power to provide special rates of wages

If a transitional award prescribes a minimum rate of wages, the Commission may vary the award to provide:

- (a) for the payment of wages at a lower rate to transitional employees who are unable to earn a wage at the minimum rate; and

- (b) that the lower rate must not be paid to a transitional employee unless a particular person or authority has certified that the transitional employee is unable to earn a wage at the minimum rate.

51 Orders to stop or prevent industrial action

- (1) If it appears to the Commission that industrial action is happening, or is threatened, impending or probable, in relation to an industrial dispute about a matter referred to in subclause 29(2), the Commission may, by order, give directions that the industrial action stop or not occur.
- (2) The Commission may make such an order on its own initiative, or on the application of:
 - (a) a party to the industrial dispute (if any); or
 - (b) a person who is directly affected, or who is likely to be directly affected, by the industrial action; or
 - (c) an organisation of which a person referred to in paragraph (b) is a member.
- (3) The Commission must hear and determine an application for an order under this clause as quickly as practicable.
- (4) The Commission may make an interim order under this clause.
- (5) An interim order made under subclause (4) ceases to have effect if the application is determined.
- (6) The powers conferred on the Commission by subclauses (1) and (4) are in addition to, and not in derogation of, the powers conferred on the Commission by the rest of this Schedule.
- (7) A person or organisation to whom an order under subclause (1) or (4) is expressed to apply must comply with the order.
- (8) The Court may, on the application of a person or organisation affected by an order under subclause (1) or (4), grant an injunction on such terms as the Court considers appropriate if it is satisfied that another person or organisation:
 - (a) has engaged in conduct that constitutes a contravention of subclause (7); or

Clause 51

- (b) is proposing to engage in conduct that would constitute such a contravention.
- (9) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subclause (8).

Part 4—Ballots ordered by Commission

52 Commission may order secret ballot

- (1) If:
 - (a) an organisation is concerned in an industrial dispute with which the Commission is empowered to deal under this Schedule (whether or not proceedings in relation to the dispute are before the Commission); and
 - (b) the Commission considers that the prevention or settlement of the industrial dispute might be helped by finding out the attitudes of the members, or the members of a section or class of the members, of the organisation or a branch of the organisation in relation to a matter;the Commission may order that a vote of the members be taken by secret ballot (with or without provision for absent voting), in accordance with directions given by the Commission, for the purpose of finding out their attitudes to the matter.
- (2) The powers of the Commission to make an order under subclause (1), and to revoke such an order, are exercisable only by a Presidential Member or a Full Bench.

53 Scope of directions for secret ballots

- (1) Directions given by the Commission under subclause 52(1) must provide for all matters relating to the ballot concerned, including the following matters:
 - (a) the questions to be put to the vote;
 - (b) the eligibility of persons to vote;
 - (c) the conduct of the ballot generally.
- (2) Before giving a direction relating to the conduct of the ballot, the Commission must consult with the Industrial Registrar or, if the ballot is to be conducted by the Australian Electoral Commission, with the Electoral Commissioner.

Clause 54

54 Conduct of ballot

- (1) If, under this Part, the Commission orders the holding of a secret ballot, the Commission must, by order:
 - (a) direct the organisation concerned to make arrangements for the conduct of the ballot by a person approved by the Industrial Registrar; or
 - (b) direct the Industrial Registrar to make arrangements for the conduct of the ballot;and may give any further directions that it considers necessary for ensuring the secrecy of votes and otherwise for the purposes of the conduct of the ballot or the communication of the result to the Commission.
- (2) An organisation or person (other than the Industrial Registrar) to whom a direction has been given under subclause (1) must comply with the direction.

Penalty: 30 penalty units.
- (3) Subclause (2) is an offence of strict liability.
- (4) If a direction is given under paragraph (1)(a), the Commonwealth is liable to pay to the organisation the reasonable costs of the conduct of the ballot concerned as assessed by a Registrar.
- (5) If a direction is given under paragraph (1)(b), the Industrial Registrar must conduct the ballot concerned, or make arrangements for its conduct, in accordance with the direction.
- (6) If the result of a ballot conducted under an order under this Part is communicated to the Commission, the Commission must cause the Industrial Registrar to inform each of the following persons, by written notice, of the result:
 - (a) the persons who were eligible to vote in the ballot;
 - (b) the organisation (if any) to which those persons belonged, and the transitional employers by whom those persons were employed, when those persons became eligible to vote in the ballot.

55 Commission to have regard to result of ballot

In any conciliation or arbitration proceeding before the Commission in relation to a matter in relation to which the attitudes of persons have been expressed in a ballot conducted under an order under this Part, the Commission must have regard to the result of the ballot.

56 Offences in relation to ballots

For the purposes of this Part, section 821 applies to a ballot ordered under this Part in the same way as it applies to a ballot ordered under Division 4 of Part 9 of this Act.

Part 5—Circumstances in which transitional awards cease to be binding

57 Ceasing to be bound by transitional award—making a State employment agreement

- (1) If a transitional employer that is bound by a transitional award in respect of the employment of a transitional employee makes a State employment agreement with the transitional employee:
 - (a) the transitional employer ceases to be bound by that award in respect of that employment; and
 - (b) the transitional employer cannot subsequently be bound by the transitional award in respect of that employment.

Note: A State employment agreement may be made with one or more transitional employees employed by the transitional employer.

- (2) To avoid doubt, the transitional award does not prevent the State employment agreement from coming into force and regulating the wages and conditions of employment of the transitional employee.

58 Ceasing to be bound by transitional award—inability to make a State employment agreement

- (1) If a transitional employer has made genuine efforts to make a State employment agreement with one or more transitional employees employed by the transitional employer, but has been unable to do so, the transitional employer, or any of the transitional employees, may apply to the Commission for an order that the transitional award cease to bind the transitional employer in respect of the employment of the transitional employees.
- (2) The Commission must make the order sought if it is satisfied that the transitional employer has made genuine efforts to make a State employment agreement with one or more of the transitional employees, but has been unable to do so.

59 Ceasing to be bound by transitional award—inability to resolve industrial dispute under this Schedule

- (1) This clause applies if an industrial dispute has not been able to be resolved under this Schedule, despite genuine efforts having been made to do so.
- (2) A party to the industrial dispute may apply to the Commission for an order that the transitional award to which the industrial dispute relates cease to bind a transitional employer affected by the industrial dispute in respect of the employment of transitional employees employed by the transitional employer.
- (3) The Commission must make the order sought if it is satisfied that genuine efforts were made to resolve the industrial dispute.

60 Interaction between transitional awards, State laws and State awards

Subject to this clause, if a State law or a State award is inconsistent with, or deals with a matter dealt with in, a transitional award:

- (a) the transitional award prevails; and
- (b) the State law or State award, to the extent of the inconsistency or in relation to the matter dealt with, is invalid.

Part 6—Technical matters relating to transitional awards

61 Making and publication of orders

- (1) An order made by the Commission for the purposes of this Schedule must:
 - (a) be reduced to writing; and
 - (b) be signed by:
 - (i) in the case of an order made by a Full Bench—at least one member of the Full Bench; and
 - (ii) in any other case—at least one member of the Commission; and
 - (c) show the day on which it is signed.
- (2) If the Commission makes an order for the purposes of this Schedule, the Commission must promptly give to a Registrar:
 - (a) a copy of the order; and
 - (b) written reasons for the order; and
 - (c) a list specifying each party who appeared at the hearing of the proceeding concerned.
- (3) A Registrar who receives a copy of an order under subclause (2) must promptly ensure that a copy of the order and the written reasons received by the Registrar in respect of the making of the order:
 - (a) are made available to each party shown on the list given to the Registrar under paragraph (2)(c); and
 - (b) are available for inspection at each registry; and
 - (c) are published as soon as practicable.

62 Requirement for transitional award-related orders

- (1) The Commission must, when making a transitional award-related order, if it considers it appropriate, ensure that the order:
 - (a) is expressed in plain English and is easy to understand in structure and content; and

- (b) does not contain terms that are obsolete or that need updating; and
- (c) if appropriate, provides for the employment of workers with disabilities in general employment by including terms for the Supported Wage System; and

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (Print L5723).

- (d) includes wage arrangements for the full range of apprenticeships, traineeships and other training arrangements that are relevant to the work covered by the transitional award to which the order relates, including for part-time and school-based apprenticeships and traineeships.
- (2) A transitional award-related order does not discriminate against a transitional employee for the purposes of paragraph 9(1)(e) merely because:
- (a) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (b) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.

63 Registrar's powers if member ceases to be member after making an order

If:

- (a) a member of the Commission ceases to be a member after an order has been made for the purposes of this Schedule by the Commission constituted by the member; and
- (b) at that time, the order has not been reduced to writing or has been reduced to writing but has not yet been signed by the member;

a Registrar must reduce the order to writing, sign it and seal it with the seal of the Commission, and the order has effect as if it had been signed by the member of the Commission.

Clause 64

64 Form of orders

An order made by the Commission for the purposes of this Schedule must be framed so as best to express the decision of the Commission and to avoid unnecessary technicalities.

65 Date of orders

The date of an order made by the Commission for the purposes of this Schedule is the day when the order was signed under subclause 61(1).

66 Date of effect of orders

- (1) An order made by the Commission for the purposes of this Schedule must be expressed to come into force on a specified day.
- (2) Unless the Commission is satisfied that there are exceptional circumstances, the day specified in the order must not be earlier than the date of the order.

67 Term of orders

- (1) An order made by the Commission for the purposes of this Schedule must specify the period for which the order is to continue in force.
- (2) In determining the period to be specified under subclause (1), the Commission must have regard to:
 - (a) the wishes of the parties to the industrial dispute concerned as to the period for which the order should continue in force; and
 - (b) the desirability of stability in workplace relations.

68 Continuation of transitional awards

- (1) Subject to clause 31 and any order of the Commission, a transitional award and an order varying a transitional award continue in force until the end of the transitional period.
- (2) A term of a transitional award about:
 - (a) long service leave with pay; or
 - (b) sick leave with pay;

is not taken to be ineffective merely because the term is so expressed as not to be capable of operating, or of operating fully, during the period for which the award is to continue in force.

Note: A term in a transitional award about long service leave is preserved under clause 22.

- (3) If, under subclause (1), a transitional award has continued in force after the end of the period specified in the award as the period for which the award is to continue in force, an order made by the Commission for the settlement of a further industrial dispute between the parties may be expressed to operate from a day not earlier than the day on which the industrial dispute arose.

69 Persons bound by orders varying transitional awards

- (1) Subject to subclause (2) and any order of the Commission, an order that determines an industrial dispute by varying a transitional award is binding on:
- (a) all parties to the industrial dispute who appeared or were represented before the Commission; and
 - (b) all parties to the industrial dispute who were summoned or notified (either personally or as prescribed) to appear as parties to the industrial dispute (whether or not they appeared); and
 - (c) all parties who, having been notified (either personally or as prescribed) of the industrial dispute and of the fact that they were alleged to be parties to the industrial dispute, did not, within the time prescribed, satisfy the Commission that they were not parties to the industrial dispute; and
 - (d) any transitional employer bound by the award under Part 6A of this Schedule (transmission of business);
 - (e) all transitional employers and transitional employees who, on the reform commencement and on the date of the order varying the transitional award, were members of an organisation that is a party to the industrial dispute.
- (2) An order that determines an industrial dispute by varying a transitional award must not bind any transitional employer, transitional employee or organisation that was not bound by the transitional award on the reform commencement.

Note 1: Clause 4 provides for who is bound by a transitional award on and from the reform commencement.

Clause 70

Note 2: The term *transitional award* includes the award as varied.

70 Transitional awards and transitional award-related orders of Commission are final

- (1) Subject to this Act, a transitional award or a transitional award-related order (including a transitional award-related order made on appeal):
 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed or called in question in any court; and
 - (c) is not subject to prohibition, mandamus or injunction in any court on any account.
- (2) A transitional award or transitional award-related order is not invalid because it was made by the Commission constituted otherwise than as provided by this Act.

71 Reprints of transitional awards as varied

A document purporting to be a copy of a reprint of a transitional award as varied, and purporting to have been printed by the Government Printer, is in all courts evidence of the transitional award as varied.

72 Expressions used in transitional awards

Unless the contrary intention appears in a transitional award, an expression used in the award has the same meaning as it has in an Act by virtue of the *Acts Interpretation Act 1901* or as it has in this Act.

Part 6A—Transmission of transitional awards

Division 1—Introductory

72A Object

The object of this Part is to provide for the transfer of obligations under transitional awards when the whole, or a part, of a transitional employer's business is transmitted to another transitional employer.

72B Simplified outline

- (1) Division 2 describes the transmission of business situation this Part is designed to deal with. It identifies the *old transitional employer*, the *new transitional employer*, the *business being transferred*, the *time of transmission* and the *transferring transitional employees*.
- (2) Division 3 deals with the transmission of certain transitional awards.
- (3) Division 4 deals with notification requirements, the lodgment of notices with the Workplace Authority Director and the enforcement of the new transitional employer's obligations by pecuniary penalties.
- (4) Division 5 allows regulations to be made to deal with other transmission of business issues in relation to transitional awards.

72C Definitions

In this Part:

business being transferred has the meaning given by subclause 72D(2).

Court means the Federal Court of Australia or the Federal Magistrates Court.

new transitional employer has the meaning given by subclause 72D(1).

Schedule 6 Transitional arrangements for parties bound by federal awards

Part 6A Transmission of transitional awards

Division 1 Introductory

Clause 72C

old transitional employer has the meaning given by subclause 72D(1).

operational reasons has the meaning given by subsection 643(9).

time of transmission has the meaning given by subclause 72D(3).

transferring transitional employee has the meaning given by clauses 72E and 72F.

transmission period has the meaning given by subclause 72D(4).

Division 2—Application of Part

72D Application of Part

- (1) This Part applies if a person (the *new transitional employer*) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old transitional employer*).
- (2) The business, or the part of the business, to which the new transitional employer is successor, transmittee or assignee is the *business being transferred* for the purposes of this Part.
- (3) The time at which the new transitional employer becomes the successor, transmittee or assignee of the business being transferred is the *time of transmission* for the purposes of this Part.
- (4) The period of 12 months after the time of transmission is the *transmission period* for the purposes of this Part.

72E Transferring transitional employees

- (1) A person is a *transferring transitional employee* for the purposes of this Part if:
 - (a) the person is employed by the old transitional employer immediately before the time of transmission; and
 - (b) the person:
 - (i) ceases to be employed by the old transitional employer; and
 - (ii) becomes employed by the new transitional employer in the business being transferred; within 2 months after the time of transmission.
- (2) A person is also a *transferring transitional employee* for the purposes of this Part if:
 - (a) the person is employed by the old transitional employer at any time within the period of 1 month before the time of transmission; and
 - (b) the person's employment with the old transitional employer is terminated by the old transitional employer before the time

Clause 72F

of transmission for genuine operational reasons or for reasons that include genuine operational reasons; and

- (c) the person becomes employed by the new transitional employer in the business being transferred within 2 months after the time of transmission.
- (3) In applying clause 72F and Division 3 in relation to a person who is a transferring transitional employee under subclause (2) of this clause, a reference in those provisions to a particular state of affairs existing immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old transitional employer.

72F Transferring transitional employees in relation to particular transitional award

- (1) A transferring transitional employee is a *transferring transitional employee* in relation to a particular transitional award if:
 - (a) the transitional award applied to the transferring transitional employee's employment with the old transitional employer immediately before the time of transmission; and
 - (b) when the transferring transitional employee becomes employed by the new transitional employer, the nature of the transferring transitional employee's employment with the new transitional employer is such that the transitional award is capable of applying to employment of that nature.
- (2) The transferring transitional employee ceases to be a *transferring transitional employee* in relation to the transitional award if:
 - (a) the transferring transitional employee ceases to be employed by the new transitional employer after the time of transmission; or
 - (b) the nature of the transferring transitional employee's employment with the new transitional employer changes so that the transitional award is no longer capable of applying to employment of that nature; or
 - (c) the transmission period ends.

Division 3—Transmission of transitional award

72G Transmission of transitional award

New transitional employer bound by transitional award

- (1) If:
- (a) the old transitional employer was, immediately before the time of transmission, bound by a transitional award that regulated the employment of employees of the old transitional employer; and
 - (b) there is at least one transferring transitional employee in relation to the transitional award; and
 - (c) but for this clause, the new transitional employer would not be bound by the transitional award in relation to the transferring transitional employees in relation to the transitional award; and
 - (d) the new transitional employer is a transitional employer at the time of transmission;

the new transitional employer is bound by the transitional award by force of this clause.

Note 1: Paragraph (c)—the transitional award might already bind the new transitional employer, for example, because the new transitional employer happens to be a respondent to the transitional award.

Note 2: The new transitional employer must notify transferring transitional employees and lodge a copy of a notice with the Workplace Authority Director (see clauses 72J and 72K).

Period for which new transitional employer remains bound

- (2) The new transitional employer remains bound by the transitional award, by force of this clause, until whichever of the following first occurs:
- (a) the transitional award is revoked;
 - (b) there cease to be any transferring transitional employees in relation to the transitional award;
 - (c) the new transitional employer ceases to be bound by the transitional award under Part 5;
 - (d) the transmission period ends;
 - (e) the transitional period ends.

Schedule 6 Transitional arrangements for parties bound by federal awards

Part 6A Transmission of transitional awards

Division 3 Transmission of transitional award

Clause 72H

New transitional employer bound only in relation to employment of transferring transitional employees

- (3) The new transitional employer is bound by the transitional award, by force of this clause, only in relation to the employment of employees who are transferring transitional employees in relation to the transitional award.

Commission order

- (4) Subclauses (1) and (2) have effect subject to any order of the Commission.
- (5) To avoid doubt, the Commission cannot make an order under subclause (4) that would have the effect of extending the transmission period.

Old transitional employer's rights and obligations that arose before time of transmission not affected

- (6) This clause does not affect the rights and obligations of the old transitional employer that arose before the time of transmission.

72H Interaction rules

Transmitted award

- (1) This clause applies if subclause 72G(1) applies to a transitional award (the ***transmitted award***).

Division 3 pre-reform certified agreement

- (2) If:
- (a) the new transitional employer is bound by a Division 3 pre-reform certified agreement (within the meaning of Schedule 7); and
 - (b) a transferring transitional employee in relation to the transmitted award was not bound by that certified agreement immediately before the time of transmission; and
 - (c) that certified agreement would, but for this subclause, apply according to its terms, to the transferring transitional employee's employment with the new transitional employer;

the certified agreement does not apply to the transferring transitional employee.

- (3) Subclause (2) has effect despite section 170LY of the pre-reform Act (as applied by clause 2 of Schedule 7).

Division 4—Notice requirements and enforcement

72J Informing transferring transitional employees about transmitted award

- (1) This clause applies if:
 - (a) a transitional employer is bound by a transitional award (the *transmitted award*) in relation to a transferring transitional employee by force of clause 72G; and
 - (b) a person is a transferring transitional employee in relation to the transmitted award.
- (2) Within 28 days after the transferring transitional employee starts being employed by the transitional employer, the transitional employer must take reasonable steps to give the transferring transitional employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 72M.

- (3) The notice must:
 - (a) identify the transmitted award; and
 - (b) state that the transitional employer is bound by the transmitted award; and
 - (c) specify the date on which the transmission period for the transmitted award ends; and
 - (d) state that the transitional employer will remain bound by the transmitted award until the end of the transmission period unless the transmitted award is revoked, or otherwise ceases to be in operation, before the end of that period.

72K Lodging copy of notice with Workplace Authority Director

Only one transferring transitional employee

- (1) If a transitional employer gives a notice under subclause 72J(2) to the only person who is a transferring transitional employee in relation to a transitional award, the transitional employer must lodge a copy of the notice with the Workplace Authority Director within 14 days after the notice is given to the transferring

transitional employee. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring transitional employees and notices all given on the one day

(2) If:

(a) a transitional employer gives a number of notices under subclause 72J(2) to people who are transferring transitional employees in relation to a transitional award; and

(b) all of those notices are given on the one day;

the transitional employer must lodge a copy of one of those notices with the Workplace Authority Director within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring transitional employees and notices given on different days

(3) If:

(a) a transitional employer gives a number of notices under subclause 72J(2) to people who are transferring transitional employees in relation to a transitional award; and

(b) the notices are given on different days;

the transitional employer must lodge a copy of the notice, or one of the notices that was given on the earliest of those days, with the Workplace Authority Director within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 72M.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Clause 72L

Lodgment with Workplace Authority Director

- (4) A notice is lodged with the Workplace Authority Director in accordance with this subclause only if it is actually received by the Workplace Authority Director.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

72L Workplace Authority Director must issue receipt for lodgment

- (1) If a notice is lodged under clause 72K, the Workplace Authority Director must issue a receipt for the lodgment.
- (2) The receipt must state that the notice was lodged under clause 72K on a particular day.
- (3) The Workplace Authority Director must give a copy of the receipt to the person who lodged the notice under clause 72K.

72M Civil penalties

- (1) The following are *civil remedy provisions* for the purposes of this section:
- (a) subclause 72J(2);
- (b) subclauses 72K(1), (2) and (3).

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

- (2) The Court may order a person who has contravened a civil remedy provision to pay a pecuniary penalty.
- (3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (4) An application for an order under subclause (2) in relation to a transitional award may be made by:
- (a) a transferring transitional employee; or
- (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring transitional employee; or
- (c) a workplace inspector.

Division 5—Miscellaneous

72N Regulations

The regulations may make provision in relation to the effects that the succession, transmission or assignment of a business, or a part of a business, have on the obligations of transitional employers, and the terms and conditions of transitional employees, under transitional awards.

Part 7—Matters relating to Victoria

Division 1—Matters referred by Victoria

Subdivision A—Introduction

73 Definitions

In this Division:

employee has the same meaning as in Division 1 of Part 21 of this Act.

employer has the same meaning as in Division 1 of Part 21 of this Act.

employment has the same meaning as in Division 1 of Part 21 of this Act.

transitional employee means an employee of a transitional employer.

transitional employer means an employer that:

- (a) is an excluded employer (within the meaning of clause 2);
and
- (b) is bound by a transitional award.

transitional Victorian reference award means a transitional award that is a Victorian reference award.

underlying award, in relation to a common rule, means the award to which the common rule relates.

Victorian public sector has the same meaning as the expression *public sector* has in section 3 of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

74 Division only has effect if supported by reference

- (1) Either of the following:
 - (a) a clause of this Division;

- (b) a clause of this Schedule (other than this Division), to the extent to which it relates to a Victorian reference award; has effect only for so long, and in so far, as the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the clause so to have effect.
- (2) Paragraph (1)(a) does not apply to a clause to the extent to which it relates to so much of the Australian Fair Pay and Conditions Standard as consists of the provisions of Division 6 of Part 7 of this Act as they apply to an employee because of section 689.

Subdivision B—Industrial disputes

75 Industrial disputes

- (1) Without affecting its operation apart from this clause, this Schedule also has effect, subject to this clause, as if the definition of *industrial dispute* in clause 2 were replaced by the following:
- industrial dispute* means:
- (a) an industrial dispute (including a threatened, impending or probable industrial dispute):
 - (i) within the limits of Victoria; and
 - (ii) that is about allowable transitional award matters pertaining to the relationship between transitional employers and transitional employees; or
 - (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a).
- (2) A law of Victoria prescribed for the purposes of this clause prevails to the extent of any inconsistency over a transitional Victorian reference award that regulates matters pertaining to the relationship between:
- (a) employers; and
 - (b) employees in the Victorian public sector.

Clause 76

Subdivision C—Allowable transitional award matters

76 Allowable transitional award matters

Subclause 17(1) has effect, in relation to a transitional Victorian reference award, as if:

- (a) “annual leave and” were omitted from paragraph 17(1)(e);
and
- (b) paragraphs 17(1)(f) and (h) had not been enacted.

Subdivision D—Preserved transitional award terms

77 Preserved transitional award terms

- (1) Clause 22 has effect, in relation to a transitional Victorian reference award, as if the following paragraphs were added at the end of subclause 22(3):
 - (e) annual leave;
 - (f) personal/carer’s leave;
 - (g) parental leave, including maternity and adoption leave.
- (2) In this clause:

personal/carer’s leave includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
- (3) The regulations may provide that for the purposes of subclause (1):
 - (a) the matter referred to in paragraph (1)(g) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 265);
 - (ii) the entitlement under section 268 to transfer to a safe job or to take paid leave; and
 - (b) *personal/carer’s leave* does not include one or both of the following:
 - (i) compassionate leave (within the meaning of section 257 (as that section applies to an employee in Victoria because of section 861));
 - (ii) unpaid carer’s leave (within the meaning of section 244 (as that section applies to an employee in Victoria because of section 861)).

- (4) Regulations under subclause (3) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

78 When preserved transitional award entitlements have effect

- (1) This clause applies to an employee if:
- (a) the employee's employment is regulated by a transitional Victorian reference award that includes a preserved transitional award term about a matter; and
 - (b) the employee has an entitlement (the *preserved transitional award entitlement*) in relation to that matter under the preserved transitional award term.

- (2) If:
- (a) the preserved transitional award term is about a matter referred to in paragraph 22(3)(e), (f) or (g); and
 - (b) the employee's preserved transitional award entitlement in relation to the matter is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard;
- the employee's entitlement under the Australian Fair Pay and Conditions Standard is excluded, and the employee's preserved transitional award entitlement has effect in accordance with the preserved transitional award term. Otherwise, the employee's entitlement under the Australian Fair Pay and Conditions Standard has effect.

Note: See clause 79 for the meaning of *more generous*.

- (3) If:
- (a) the preserved transitional award term is about a matter referred to in paragraph 22(3)(e), (f) or (g); and
 - (b) the employee has no entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard;
- the employee's preserved transitional award entitlement has effect in accordance with the preserved transitional award term.

Clause 79

79 Meaning of *more generous*

- (1) For the purposes of this Subdivision, whether an employee's entitlement under a preserved transitional award term in relation to a matter is *more generous* than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
 - (a) is as specified in, or as worked out in accordance with a method specified in, regulations made under this paragraph; or
 - (b) to the extent that regulations made under paragraph (a) do not so specify—is to be ascertained in accordance with the ordinary meaning of the term *more generous*.
- (2) If a matter to which an entitlement under a preserved transitional award term relates does not correspond directly to a matter to which the Australian Fair Pay and Conditions Standard relates, regulations made under paragraph (1)(a) may nevertheless specify that the matters correspond for the purposes of this Subdivision.

80 Modifications that may be prescribed—personal/carer's leave

- (1) This clause applies to a transitional Victorian reference award.
- (2) The regulations may provide that a preserved transitional award term about personal/carer's leave is to be treated, for the purposes of the application of this Schedule to the award, as a separate preserved transitional award term about separate matters, to the extent that the preserved transitional award term is about any of the following:
 - (a) war service sick leave;
 - (b) infectious diseases sick leave;
 - (c) any other like form of sick leave.
- (3) If the regulations so provide, clauses 22, 78 and 79 have effect, for the purposes of the application of this Schedule to the award, in relation to each separate matter.

Note: There is no entitlement in relation to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 78(3).

81 Modifications that may be prescribed—parental leave

- (1) This clause applies to a transitional Victorian reference award.
- (2) The regulations may provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave.
- (3) If the regulations provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave:
 - (a) clauses 22, 78 and 79 have effect, for the purposes of the application of this Schedule to the award, in relation to each separate matter; and
 - (b) in accordance with section 266, the entitlement that an employee would have to unpaid parental leave under the Australian Fair Pay and Conditions Standard is reduced by any amount of paid parental leave to which the employee is entitled under the preserved transitional award term.

Note 1: There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 78(3).

Note 2: Paragraph (b) does not have the effect of reducing entitlements. It simply ensures that the operation of section 266 is not affected by treating paid and unpaid parental leave separately under the regulations.

Subdivision E—Common rules

82 Common rules continue to have effect during the transitional period

- (1) Despite the repeal of sections 141, 142 and 493A by the *Workplace Relations Amendment (Work Choices) Act 2005*, if, immediately before the reform commencement, a common rule had effect because of repealed section 493A, the common rule continues to have effect, to the extent to which it regulates employers in respect of the employment of their employees, until:
 - (a) the revocation of the underlying award; or

Clause 83

- (b) the revocation of the relevant declaration that was made under repealed subsection 141(1) (as that subsection had effect because of repealed section 493A); or
 - (c) the end of the transitional period;whichever comes first, as if those repeals had not happened.
- (2) For this purpose:
 - (a) the underlying award is taken to be the relevant transitional award; and
 - (b) the relevant declaration under repealed subsection 141(1) (as that subsection had effect because of repealed section 493A) is to be construed accordingly.
- (3) Subclause (1) has effect subject to:
 - (a) clause 85; and
 - (b) subsection 120(7) (including that subsection as applied by subsection 114(4)).
- (4) Paragraph 46(1)(d) applies to a declaration under repealed subsection 141(1) (as that subsection had effect because of repealed section 493A), to the extent to which the declaration relates to a common rule that continues to have effect because of this Subdivision, as if the declaration were a decision of the Commission made under this Schedule.

83 Certain declarations continue to have effect during the transitional period

- (1) Despite the repeal of sections 142 and 493A by the *Workplace Relations Amendment (Work Choices) Act 2005*, if, immediately before the reform commencement, a declaration had effect under repealed subsection 142(5) (as applied by repealed section 493A), the declaration continues to have effect, to the extent to which it relates to a common rule that continues to have effect because of this Subdivision, until:
 - (a) the revocation of the declaration; or
 - (b) the end of the transitional period;whichever comes first, as if those repeals had not happened.
- (2) Subclause (1) has effect subject to subsection 120(7) (including that subsection as applied by subsection 114(4)).

- (3) Paragraph 46(1)(d) applies to a declaration under repealed subsection 142(5) (as that subsection had effect because of repealed section 493A), to the extent to which the declaration relates to a common rule that continues to have effect because of this Subdivision, as if the declaration were a decision of the Commission made under this Schedule.

84 Variation of common rules before the reform commencement

- (1) Despite the repeal of sections 142 and 493A by the *Workplace Relations Amendment (Work Choices) Act 2005*, if:
- (a) before the reform commencement, the Commission varied a term of an award that was a common rule in Victoria for an industry; and
 - (b) before the reform commencement, a Registrar published a notice under repealed subsection 142(4) (as applied by repealed section 493A) inviting any organisation or person interested and wanting to be heard to lodge notice of objection to the variation binding the organisation or person; and
 - (c) either:
 - (i) the prescribed time (as defined by repealed subsection 142(8)) had not expired before the reform commencement; or
 - (ii) a notice of objection was lodged before the reform commencement, but the hearing of the objection had not been finally disposed of before the reform commencement;

then, to the extent to which the variation relates to a common rule that continues to have effect because of this Subdivision, repealed subsections 142(4) to (8) and repealed section 493A continue to apply, in relation to the variation, as if those repeals had not happened.

- (2) Despite the repeal of sections 142 and 493A by the *Workplace Relations Amendment (Work Choices) Act 2005*, if, after the reform commencement, the Commission makes a declaration under repealed subsection 142(5) (as it continues to apply because of subclause (1) of this clause), the declaration continues to have effect, until:
- (a) the revocation of the declaration; or

Clause 85

- (b) the end of the transitional period;
whichever comes first, as if those repeals had not happened.
- (3) Paragraph 46(1)(d) applies to a declaration under repealed subsection 142(5) (as it continues to apply because of subclause (1) of this clause) as if the declaration were a decision of the Commission made under this Schedule.

85 Variation of common rules during the transitional period

- (1) Subject to this clause, if, during the transitional period, the Commission varies a term of a transitional award that is the underlying award for a common rule in Victoria for an industry, the variation is, by force of this subclause, a common rule in Victoria for the industry, to the extent to which the variation regulates employers in respect of the employment of their employees, during the period:
 - (a) beginning on the date of effect of the variation; and
 - (b) ending:
 - (i) on the revocation of the underlying award; or
 - (ii) on the revocation of the variation; or
 - (iii) at the end of the transitional period;whichever comes first.
- (2) Before the Commission varies a term of a kind referred to in subclause (1), a Registrar must, as prescribed, give notice of the place where, and the time when, it is proposed to hear the matter involving the term.
- (3) If the Commission varies a term of a kind referred to in subclause (1), a Registrar must immediately publish, as prescribed, a notice inviting any organisation or person interested and wanting to be heard to lodge notice of objection to the variation binding the organisation or person.
- (4) If a notice of objection in relation to a variation is lodged within the prescribed time by an organisation or person under subclause (3), the Commission:
 - (a) must hear the objection; and
 - (b) may declare that the variation is not binding on the organisation or person.

- (5) If the Commission makes a declaration under subclause (4), a Registrar must give notice of the declaration as prescribed.
- (6) A variation that is a common rule under this clause:
 - (a) is not enforceable before the end of 28 days after the date of effect of the variation; and
 - (b) if a notice of objection in relation to the variation is lodged within the prescribed time by an organisation or person under subclause (3)—is not enforceable against the organisation or person before the hearing of the objection is finally disposed of.
- (7) In this clause:

the prescribed time means the period, after the publication of the notice under subclause (3), prescribed by Rules of the Commission made under section 124.

86 Intervention by Minister of Victoria

The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings in which it is proposed to make a declaration under:

- (a) subclause 85(4); or
- (b) repealed subsection 142(5) (as it continues to apply because of clause 84).

87 Concurrent operation of laws of Victoria

- (1) Despite any other provision of this Act, this Subdivision is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Subdivision.
- (2) In particular, a common rule as it has effect, or continues to have effect, because of this Subdivision is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with the common rule.

88 Pre-commencement applications for review

- (1) This clause applies if, before the reform commencement, an application (the *review application*) had been made under repealed

Clause 89

subsection 109(1) (as applied by repealed section 142B) for review of:

- (a) a declaration under repealed Division 5 of Part VI (as that provision had effect because of repealed subsection 493A(2)); or
 - (b) a decision not to make such a declaration.
- (2) Despite the repeal of sections 142B and 493A by the *Workplace Relations Amendment (Work Choices) Act 2005*, this Act continues to apply, in relation to:
- (a) the review application; and
 - (b) any review made as a result of the review application;
- as if those repeals had not happened.

89 Common rule taken to be award

- (1) A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be an award for the purposes of:
 - (a) sections 349, 865 and 897; and
 - (aa) section 691A (as applied by section 880A); and
 - (b) clauses 5, 15 and 19 of Schedule 7; and
 - (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and
 - (d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.
- (2) A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of clause 60.
- (3) If:
 - (a) an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B) binds an employer and employees; and
 - (b) immediately before the day on which the agreement was lodged, a common rule had the effect of regulating employers in respect of the employment of their employees;then, Division 5A of Part 8 of the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement as if:

- (c) a reference in that Division to a relevant award included a reference to a common rule that has effect, or continues to have effect, because of this Subdivision; and
- (d) the definition of *instrument* in subsection 346Y(5) of the pre-transition Act included a reference to a common rule that has effect, or continues to have effect, because of this Subdivision.

90 Meaning of *industrial action*

A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of clause 3.

91 Right of entry

A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of:

- (a) clause 105; and
- (b) the definitions of *transitional employee* and *transitional employer* in subclause 2(1), so far as those definitions apply to clause 105.

92 Application of provisions of Act relating to workplace inspectors

A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of clause 106.

93 Application of provisions of Act relating to compliance

A common rule that has effect, or continues to have effect, because of this Subdivision is taken to be a transitional award for the purposes of paragraph 107(a).

Clause 94

Subdivision F—Transmission of business

94 Transmission of business

Subclause 72J(3) has effect, in relation to a transitional Victorian reference award, as if the following paragraphs were added at the end:

- (e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted award; and
- (f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with by the transmitted award when the transmitted award ceases to bind the employer; and
- (g) identify any collective agreement or award that binds:
 - (i) the employer; and
 - (ii) employees of the employer who are not transferring employees in relation to the transmitted award.

Subdivision G—Modification of certain provisions of this Act

95 Modification of certain provisions of this Act

- (1) A transitional Victorian reference award is taken to be an award for the purposes of:
 - (a) sections 349, 865 and 897; and
 - (aa) section 691A (as applied by section 880A); and
 - (b) clauses 5, 15 and 19 of Schedule 7; and
 - (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and
 - (d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.
- (2) If:
 - (a) an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B) binds an employer and an employee or employees; and
 - (b) immediately before the day on which the agreement was lodged, the employer and employee or employees were

bound by a transitional Victorian reference award in respect of the employee's or employees' employment;
then, Division 5A of Part 8 of the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement as if:

- (c) a reference in that Division to a relevant award included a reference to a transitional Victorian reference award; and
- (d) the definition of *instrument* in subsections 346Y(5) and 346YA(5) of the pre-transition Act included a reference to a transitional Victorian reference award.

Subdivision H—Ceasing to be bound by transitional Victorian reference award

95A Ceasing to be bound by transitional Victorian reference award—inability to resolve industrial dispute under this Schedule

Clause 59 has effect, in relation to a transitional Victorian reference award, as if the reference in subclause 59(3) to must were read as a reference to may.

Division 2—Other matters

Subdivision A—Allowable transitional award matters

96 Allowable transitional award matters

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Subclause 17(1) has effect, in relation to the award, as if:
 - (a) “annual leave and” were omitted from paragraph 17(1)(e); and
 - (b) paragraphs 17(1)(f) and (h) had not been enacted.

Subdivision B—Preserved transitional award terms

97 Preserved transitional award terms

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Clause 22 has effect, in relation to the award, as if the following paragraphs were inserted before paragraph 22(3)(a):
 - (aa) annual leave;
 - (ab) personal/carer’s leave;
 - (ac) parental leave, including maternity and adoption leave.
- (3) In this clause:

personal/carer’s leave includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
- (4) The regulations may provide that for the purposes of subclause (2):
 - (a) the matter referred to in paragraph (2)(ac) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 265);
 - (ii) the entitlement under section 268 to transfer to a safe job or to take paid leave; and

- (b) *personal/carer's leave* does not include one or both of the following:
- (i) compassionate leave (within the meaning of section 257);
 - (ii) unpaid carer's leave (within the meaning of section 244).
- (5) Regulations under subclause (4) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

98 When preserved transitional award entitlements have effect

- (1) This clause applies to an employee if:
- (a) the employee's employment is regulated by a transitional award (other than a Victorian reference award) that includes a preserved transitional award term dealing with a matter; and
 - (b) the employee has an entitlement (the *preserved transitional award entitlement*) in relation to that matter under the preserved transitional award term.
- (2) If:
- (a) the preserved transitional award term is about a matter referred to in paragraph 22(3)(aa), (ab) or (ac); and
 - (b) the employee's preserved transitional award entitlement in relation to the matter is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard;
- the employee's entitlement under the Australian Fair Pay and Conditions Standard is excluded, and the employee's preserved transitional award entitlement has effect in accordance with the preserved transitional award term. Otherwise, the employee's entitlement under the Australian Fair Pay and Conditions Standard has effect.

Note: See clause 99 for the meaning of *more generous*.

- (3) If:

Clause 99

- (a) the preserved transitional award term is about a matter referred to in paragraph 22(3)(aa), (ab) or (ac); and
- (b) the employee has no entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard;

the employee's preserved transitional award entitlement has effect in accordance with the preserved transitional award term.

99 Meaning of *more generous*

- (1) For the purposes of this Subdivision, whether an employee's entitlement under a preserved transitional award term in relation to a matter is *more generous* than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
 - (a) is as specified in, or as worked out in accordance with a method specified in, regulations made under this paragraph; or
 - (b) to the extent that regulations made under paragraph (a) do not so specify—is to be ascertained in accordance with the ordinary meaning of the term *more generous*.
- (2) If a matter to which an entitlement under a preserved transitional award term relates does not correspond directly to a matter to which the Australian Fair Pay and Conditions Standard relates, regulations made under paragraph (1)(a) may nevertheless specify that the matters correspond for the purposes of this Subdivision.

100 Modifications that may be prescribed—personal/carer's leave

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) The regulations may provide that a preserved transitional award term about personal/carer's leave is to be treated, for the purposes of the application of this Schedule to the award, as a separate preserved transitional award term about separate matters, to the extent that the preserved transitional award term is about any of the following:
 - (a) war service sick leave;
 - (b) infectious diseases sick leave;

(c) any other like form of sick leave.

- (3) If the regulations so provide, clauses 22, 98 and 99 have effect, for the purposes of the application of this Schedule to the award, in relation to each separate matter.

Note: There is no entitlement in relation to war service sick leave, infectious diseases sick leave or any other like form of sick leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 98(3).

101 Modifications that may be prescribed—parental leave

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) The regulations may provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave.
- (3) If the regulations provide that a preserved transitional award term about parental leave is to be treated, for the purposes of the application of this Schedule to the award, as being about separate matters to the extent that it is about paid and unpaid parental leave:
- (a) clauses 22, 74 and 99 have effect for the purposes of the application of this Schedule to the award, in relation to each separate matter; and
 - (b) in accordance with section 266, the entitlement that an employee would have to unpaid parental leave under the Australian Fair Pay and Conditions Standard is reduced by any amount of paid parental leave to which the employee is entitled under the preserved transitional award term.

Note 1: There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 98(3).

Note 2: Paragraph (b) does not have the effect of reducing entitlements. It simply ensures that the operation of section 266 is not affected by treating paid and unpaid parental leave separately under the regulations.

Clause 101A

Subdivision BA—Transmission of business

101A Transmission of business

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Subclause 72J(3) has effect, in relation to the award, as if the following paragraphs were added at the end:
 - (e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted award; and
 - (f) set out the source for the terms and conditions that the employer intends to apply to the matters that are dealt with by the transmitted award when the transmitted award ceases to bind the employer; and
 - (g) identify any collective agreement or award that binds:
 - (i) the employer; and
 - (ii) employees of the employer who are not transferring employees in relation to the transmitted award.

Subdivision C—Modification of certain provisions of this Act

102 Modification of certain provisions of this Act

- (1) A transitional award (other than a Victorian reference award), to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria, is taken to be an award for the purposes of:
 - (a) sections 349, 865 and 897; and
 - (aa) section 691A (as applied by section 880A); and
 - (b) clauses 5, 15 and 19 of Schedule 7; and
 - (c) section 349 of the pre-transition Act as it applies because of clause 2 of Schedule 7A; and
 - (d) section 354 of the pre-transition Act as it applies because of clause 2 of Schedule 7A and clause 2 of Schedule 7B.
- (2) If:
 - (a) an AWA (within the meaning of Schedule 7A) or a pre-transition collective agreement (within the meaning of Schedule 7B) binds an employer and employees; and

- (b) immediately before the day on which the agreement was lodged, a transitional award (other than a Victorian reference award) regulated the employer, being an excluded employer, in respect of the employment of employees in Victoria; then, Division 5A of Part 8 of the pre-transition Act (which deals with the fairness test) has effect in relation to that agreement as if:
- (c) a reference in that Division to a relevant award included a reference to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria; and
- (d) the definition of *instrument* in subsections 346Y(5) and 346YA(5) of the pre-transition Act included a reference to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

Subdivision D—Ceasing to be bound by transitional award

102A Ceasing to be bound by transitional award—inability to resolve industrial dispute under this Schedule

- (1) This clause applies to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.
- (2) Clause 59 has effect, in relation to the award, as if the reference in subclause 59(3) to must were read as a reference to may.

Part 8—Miscellaneous

102B Continuation of hearing by Commission

For the purposes of this Schedule, subsection 92(4) applies as if the reference to any award were a reference to any transitional award.

103 Revocation and suspension of transitional awards

For the purposes of this Schedule, section 119 applies as if:

- (a) a reference to an award were a reference to a transitional award; and
- (b) a reference to an order were a reference to an order made for the purposes of this Schedule; and
- (c) “award or” were omitted from paragraph (4)(c).

104 Appeals to Full Bench

For the purposes of this Schedule, section 120 applies, to the extent possible, as if:

- (a) paragraph (1)(a) of that section as in force immediately before the reform commencement had not been repealed by the *Workplace Relations Amendment (Work Choices) Act 2005*; and
- (b) the reference in paragraph (1)(a) to an award or order were a reference to an order for the purposes of this Schedule; and
- (c) the reference in paragraph (1)(b) to an award or order were a reference to an order for the purposes of this Schedule; and
- (d) the reference in paragraph (1)(c) to paragraph 111(1)(e) were a reference to paragraph 46(1)(e) of this Schedule; and
- (e) the reference in paragraph (1)(e) to an award were a reference to a transitional award; and
- (f) the reference in paragraph (3)(a) to the award or order were a reference to the order made for the purposes of this Schedule; and
- (g) the reference in paragraph (3)(f) to the award were a reference to the transitional award; and
- (h) “award,” were omitted from paragraph (7)(b); and

- (i) “award or” were omitted from paragraph (7)(d); and
- (j) the reference in paragraph (7)(d) to paragraph 111(1)(e) were a reference to paragraph 46(1)(e) of this Schedule; and
- (k) subsection (9) of that section as in force immediately before the reform commencement had not been repealed by the *Workplace Relations Amendment (Work Choices) Act 2005*.

105 Application of provisions of Act relating to right of entry

For the purposes of this Schedule, Part 15 (Right of entry) applies, to the extent possible, as if:

- (a) a reference to an award were a reference to a transitional award; and
- (b) a reference to an employee were a reference to a transitional employee; and
- (c) a reference to an employer were a reference to a transitional employer; and
- (d) a reference to an affected employee were a reference to an affected transitional employee; and
- (e) a reference to an affected employer were a reference to an affected transitional employer; and
- (f) Division 5 of that Part were omitted and any references to a provision in that Division were omitted.

106 Application of provisions of Act relating to workplace inspectors

For the purposes of this Schedule, Part 6 (Workplace inspectors) applies, to the extent possible, as if a reference to an award were a reference to a transitional award.

107 Application of provisions of Act relating to compliance

For the purposes of this Schedule, Part 14 (Compliance) applies, to the extent possible, as if:

- (a) a reference to an award were a reference to a transitional award; and
- (b) a reference to an employee were a reference to a transitional employee; and
- (c) a reference to an employer were a reference to a transitional employer; and

Clause 107A

- (d) a reference to employment were a reference to employment within the meaning of this Schedule; and
- (e) paragraph (da) of table item 3 of subsection 718(1) were replaced by the following paragraph:
 - (da) if the term is an outworker term (within the meaning of subclause 4(5) of Schedule 6)—a person, or an entity referred to in paragraph 4(2)(e) of that Schedule, that is bound by the transitional award;

107A Application of provisions of Act relating to freedom of association

For the purposes of this Schedule, Part 16 (Freedom of association) applies, to the extent possible, as if:

- (a) a reference to an award were a reference to a transitional award; and
- (b) a reference to an employee were a reference to a transitional employee; and
- (c) a reference to an employer were a reference to a transitional employer; and
- (d) section 780 had not been enacted; and
- (e) the following section were inserted after section 783:

783A Industrial action

This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation in industrial action within the meaning of clause 3 of Schedule 6.

107B Contracts entered into by agents of transitional employees

For the purposes of this Schedule, section 822 applies, to the extent possible, as if:

- (a) a reference to an employee were a reference to a transitional employee; and
- (b) a reference to an employer were a reference to a transitional employer; and
- (c) a reference to an award were a reference to a transitional award.

107C Records relating to transitional employees

For the purposes of this Schedule, section 836 applies, to the extent possible, as if:

- (a) a reference to an employee were a reference to a transitional employee; and
- (b) a reference to an employer were a reference to a transitional employer; and
- (c) a reference to employment were a reference to employment within the meaning of this Schedule.

107D Interpretation of transitional awards

For the purposes of this Schedule, section 848 applies as if a reference to an award were a reference to a transitional award.

108 Application of other Parts of Act

- (1) The regulations may make provision dealing with how this Act applies in relation to matters or persons covered by this Schedule.
- (2) Without limiting the generality of subclause (1), regulations for the purposes of that subclause may provide that this Act applies with specified modifications.
- (3) In this clause:
modifications includes additions, omissions and substitutions.

Schedule 7—Transitional arrangements for existing pre-reform Federal agreements etc.

Note: See section 8.

Part 1—Preliminary

1 Definitions

In this Schedule:

AWA has the same meaning as in Schedule 7A.

Division 3 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act before the reform commencement.

exceptional matters order has the same meaning as in the pre-reform Act.

excluded employer has the same meaning as in Schedule 6.

fairness test means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA and to a pre-transition collective agreement.

old IR agreement means an agreement certified or approved under any of the following provisions of this Act:

- (a) section 115, as in force immediately before the commencement of the Schedule to the *Industrial Relations Legislation Amendment Act 1992*;
- (b) Division 3A of Part VI, as in force immediately before the commencement of Schedule 2 to the *Industrial Relations Reform Act 1993*;
- (c) Division 2 of Part VIB, as in force immediately before the commencement of item 19 of Schedule 8 to the *Workplace Relations and Other Legislation Amendment Act 1996*;

- (d) Division 3 of Part VIB, as in force immediately before the commencement of item 1 of Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

pre-reform Act means this Act as in force just before the reform commencement.

pre-reform AWA means an AWA (within the meaning of the pre-reform Act) that:

- (a) was made before the reform commencement; and
- (b) was approved under Part VID of this Act (whether before the reform commencement, or after the reform commencement because of Part 8 of this Schedule).

pre-reform certified agreement means an agreement that:

- (a) was made under Division 2 or 3 of Part VIB of this Act before the reform commencement; and
- (b) was certified under Division 4 of Part VIB of this Act (whether before the reform commencement, or after the reform commencement because of Part 8 of this Schedule).

pre-transition Act means this Act as in force immediately before the commencement of Schedule 7A.

pre-transition collective agreement has the same meaning as in Schedule 7B.

pre-transition workplace agreement means:

- (a) an AWA; or
- (b) a pre-transition collective agreement.

section 170MX award means an award under subsection 170MX(3) of the pre-reform Act.

transitional award has the same meaning as in Schedule 6.

transitional period means the period of 5 years beginning on the reform commencement.

workplace agreement includes an AWA.

Part 2—Pre-reform certified agreements

Division 1—General

2 Continuing operation of pre-reform certified agreements—under old provisions

- (1) Subject to this Schedule, the following provisions of the pre-reform Act continue to apply in relation to a pre-reform certified agreement, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*:
 - (a) sections 170LA and 170LB;
 - (b) subsections 170LC(1) and (5);
 - (c) sections 170LD and 170LE;
 - (d) subsection 170LV(2);
 - (e) section 170LW;
 - (f) subsections 170LX(1) and (4);
 - (g) sections 170LY and 170LZ;
 - (h) section 170M;
 - (i) paragraph 170MD(6)(a);
 - (j) paragraphs 170MD(7)(a), (b) and (e);
 - (k) sections 170MDA, 170MG, 170MH and 170MHA;
 - (l) paragraph 170ND(a);
 - (m) section 170NE;
 - (n) subsections 170NF(1), (2) and (3);
 - (o) section 170NG;
 - (p) Division 10A of Part VIB;
 - (q) sections 298Y and 298Z;
 - (r) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.
- (2) Regulations made under the pre-reform Act, to the extent that they relate to the provisions mentioned in subclause (1), continue to apply in relation to a pre-reform certified agreement.

Note: Clause 5 of this Schedule, section 16 and Schedule 8 may also affect the terms and conditions of employment of an employee in relation to whom a pre-reform certified agreement is in operation.

2A Commission may extend or vary pre-reform certified agreements

- (1) The Commission may, on application by any person bound by a pre-reform certified agreement, by order:
 - (a) extend the nominal expiry date of the agreement; or
 - (b) vary the terms of the agreement.
 - (2) However, before making the order, the Commission must be satisfied that:
 - (a) all parties bound by the agreement genuinely agree to the extension or variation; and
 - (b) none of the parties have, after the introduction day:
 - (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
 - (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
 - (c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:
 - (i) any transitional award that would regulate any term or condition of employment of the employees if the employer had been an excluded employer immediately before the reform commencement; and
 - (ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.
 - (3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.
 - (4) If the agreement was made under section 170LJ or 170LK of the pre-reform Act, the employees bound by the agreement are taken, for the purposes of paragraph (2)(a), to agree to the extension or variation if a valid majority of the employees bound by the agreement at the time of making the extension or variation agree to it.
 - (5) Section 170LE of the pre-reform Act applies to deciding whether a valid majority of the employees agree to the extension or variation
-

Clause 3

as if references in that section to making an agreement were references to making the extension or variation.

- (6) To avoid doubt, the terms and conditions of employment under a transitional award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.
- (7) The provisions of the pre-reform Act apply, in relation to an extension or variation to which this clause applies, to the same extent that they apply, because of clause 2, in relation to a variation under paragraph 170MD(6)(a) of the pre-reform Act.
- (8) In this clause:

introduction day means the day on which the Bill that became the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was introduced into the House of Representatives.

3 Rules replacing subsections 170LX(2) and (3)

- (1) A pre-reform certified agreement ceases to be in operation in relation to an employee if a collective agreement or workplace determination comes into operation in relation to that employee.
- (2) A pre-reform certified agreement has no effect in relation to an employee while an AWA or an ITEA operates in relation to the employee.
- (3) A pre-reform certified agreement:
 - (a) ceases to be in operation if it is terminated under section 170LV, 170MG, 170MH or 170MHA of the pre-reform Act; and
 - (b) does not operate if subsection 170LY(2) of the pre-reform Act applies.
- (4) If a pre-reform certified agreement has ceased operating under paragraph (3)(a), it can never operate again.

Note: However, a redundancy provision that was included in a pre-reform certified agreement that has ceased operating might be preserved for a period of up to 24 months (see clause 6A).

- (5) If a pre-reform certified agreement has ceased operating in relation to an employee because of subclause (1), the agreement can never operate again in relation to that employee.
- (5A) Despite subclause (5), a pre-reform certified agreement that has ceased to operate because of subclause (1) can operate again if:
- (a) the pre-reform certified agreement ceased to operate because it was replaced by a pre-transition collective agreement (the *replacement collective agreement*); and
 - (b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z of the pre-transition Act.

- (6) A pre-reform certified agreement may be set aside under subsection 113(2A) of the pre-reform Act.

4 Rules replacing section 170NC—coercion of persons to terminate certified agreements etc.

- (1) A person must not:
- (a) take or threaten to take any industrial action or other action;
or
 - (b) refrain or threaten to refrain from taking any action;
- with intent to coerce another person to agree, or not to agree, to terminate or approve the termination of a pre-reform certified agreement.
- (1A) A person must not:
- (a) take or threaten to take any industrial action or other action;
or
 - (b) refrain or threaten to refrain from taking any action;
- with intent to coerce another person to agree, or not to agree, to the extension of the nominal expiry date of, or the variation of, a pre-reform certified agreement under clause 2A.
- (2) This clause does not apply to protected action (within the meaning of this Act as in force after the reform commencement).
- (3) The following provisions in Division 10 of Part VIB of the pre-reform Act apply in relation to a contravention of this clause:
- (a) paragraph 170ND(e);
 - (b) section 170NE;

Clause 5

- (c) subsection 170NF(7);
- (d) section 170NG.

5 Interaction of agreement with other instruments

- (1) While a pre-reform certified agreement is in operation, it prevails, to the extent of any inconsistency, over:
 - (a) a preserved State agreement; or
 - (b) a notional agreement preserving State awards.
- (2) While a pre-reform certified agreement is in operation, it prevails over an award to the extent of any inconsistency (subject to section 170LY of the pre-reform Act, as it applies because of clause 2).

6 Continuing operation of pre-reform certified agreements—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform certified agreement as if it were a collective agreement:

- (a) Part 6;
- (b) section 494;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

6A Preservation of redundancy provisions in certain circumstances

- (1) This clause applies if a pre-reform certified agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170MH(3) of the pre-reform Act.

Note: Subsection 170MH(3) of the pre-reform Act continues to apply because of paragraph 2(1)(k) of this Schedule.

- (2) Any party who was bound by the pre-reform certified agreement immediately before it ceased operating continues to be bound, immediately after that time, by any redundancy provision that was included in the pre-reform certified agreement as if the pre-reform certified agreement had continued operating.

- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a pre-reform certified agreement in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) A party continues to be bound by a redundancy provision referred to in subclause (2), in relation to an employee who is bound by the redundancy provision, until the earliest of the following:
- (a) the end of the period of 24 months from the time that the pre-reform certified agreement ceased operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.

- (5) In this clause:

instrument means either of the following:

- (a) a preserved State agreement;
- (b) a notional agreement preserving State awards;
- (c) an award;
- (d) a transitional award (within the meaning of Schedule 6).

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

Clause 6B

6B Notification of preservation of redundancy provisions

- (1) This clause applies if the parties to a pre-reform certified agreement will, under clause 6A, continue to be bound by one or more redundancy provisions included in the agreement.
- (2) The Commission must issue a copy of the order terminating the agreement to:
 - (a) the employer who will be bound by the redundancy provision or the redundancy provisions; and
 - (b) any organisation of employees that will be bound by the redundancy provision or the redundancy provisions.
- (3) The order must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the parties to the agreement will be bound by the provision or provisions; and
 - (c) specify the date that is 24 months after the time that the order terminating the agreement takes effect; and
 - (d) state that the parties will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 6A(4).

6C Employer must notify employees of preserved redundancy provisions

- (1) An employer that has, under clause 6B, received a copy of an order terminating a pre-reform certified agreement must take reasonable steps to ensure that all employees who are bound by the agreement immediately before the agreement ceases operating are, within 21 days of the employer receiving a copy of the order, given a copy of the order.
- (2) Subclause (1) is a *civil remedy provision* for the purpose of this clause.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (3) The Court may order a person who has contravened the civil remedy provision to pay a pecuniary penalty.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

- (4) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (5) An application for an order under subclause (3) in relation to a pre-reform certified agreement may be made by the following persons:
 - (a) an employee who is bound by the agreement immediately before the agreement ceases operating;
 - (b) an organisation of employees that is bound by the agreement immediately before the agreement ceases operating;
 - (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a) and has been requested by the employee to apply for the order on the employee's behalf;
 - (d) a workplace inspector.

8 Anti-AWA terms taken to be prohibited content

- (1) Sections 358, 359, 360, 361, 362, 363 and 364 of this Act apply in relation to an anti-AWA term in a pre-reform certified agreement as if:
 - (a) the term was prohibited content; and
 - (b) the agreement was a workplace agreement.
- (2) In this clause:

anti-AWA term means a term of a pre-reform certified agreement that prevents the employer bound by the agreement from making a pre-reform AWA or an AWA with an employee bound by the agreement.

9 Calling up contents of pre-reform certified agreement in workplace agreement

A pre-transition workplace agreement may incorporate by reference terms from a pre-reform certified agreement under section 355 of the pre-transition Act as if the pre-reform certified agreement were a workplace agreement for the purposes of that Act.

Clause 10

10 Application of Division to certain Division 3 pre-reform certified agreements

- (1) This Division applies to a Division 3 pre-reform certified agreement as if the agreement had been made under section 170LJ of the pre-reform Act, if the employer in relation to the agreement:
 - (a) is an employer (within the meaning of subsection 6(1)) at the reform commencement; or
 - (b) becomes such an employer during the transitional period.
- (2) This Division does not apply in relation to a Division 3 pre-reform certified agreement while Division 2 of this Part applies to the agreement.

Division 2—Special rules for Division 3 pre-reform certified agreements with excluded employers

11 Application of Division

- (1) This Division applies to a Division 3 pre-reform certified agreement if the employer in relation to the agreement is an excluded employer at the reform commencement.
- (2) This Division applies to the agreement while the employer remains an excluded employer during the transitional period.

12 Cessation of Division 3 pre-reform certified agreements

- (1) The agreement ceases to be in operation:
 - (a) at the end of the transitional period; or
 - (b) when both of these conditions are satisfied (before the end of the transitional period):
 - (i) the agreement has passed its nominal expiry date;
 - (ii) it has been replaced by a State employment agreement.
- (2) To avoid doubt, this clause does not affect any rights accrued or liabilities incurred under the agreement before it ceases to be in operation.
- (3) To avoid doubt, if the employer in relation to the agreement becomes an employer (within the meaning of subsection 6(1)) at a time before the end of the transitional period, subclause (1) does not apply after that time.

Note: On and after that time, Division 1 of this Part applies to the agreement.

- (4) Once the agreement has ceased operating, it can never operate again.

13 Continuing operation of pre-reform certified agreements—under old provisions

- (1) Subject to this Schedule, the following provisions of the pre-reform Act continue to apply in relation to the agreement, despite the

Schedule 7 Transitional arrangements for existing pre-reform Federal agreements etc.

Part 2 Pre-reform certified agreements

Division 2 Special rules for Division 3 pre-reform certified agreements with excluded employers

Clause 14

repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*:

- (a) sections 170LA and 170LB;
 - (b) subsections 170LC(1) and (5);
 - (c) sections 170LD and 170LE;
 - (d) subsection 170LV(2);
 - (e) section 170LW;
 - (f) subsections 170LX(1) and (4);
 - (g) paragraph 170LY(1)(b);
 - (h) subsections 170LY(2) and (3);
 - (i) section 170LZ;
 - (j) section 170MA;
 - (k) paragraph 170MD(6)(a);
 - (l) paragraphs 170MD(7)(a), (b) and (e);
 - (m) sections 170MDA;
 - (n) sections 170MG, 170MH and 170MHA;
 - (o) paragraph 170ND(a);
 - (p) section 170NE;
 - (q) subsections 170NF(1), (2) and (3);
 - (r) section 170NG;
 - (s) Division 10A of Part VIB;
 - (t) sections 298Y and 298Z;
 - (u) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.
- (2) Regulations made under the pre-reform Act, to the extent that they relate to the provisions mentioned in subclause (1), continue to apply in relation to the agreement.

14 Rules replacing subsections 170LX(2) and (3)

- (1) The agreement:
 - (a) ceases to be in operation if it is terminated under section 170LV, 170MG, 170MH or 170MHA of the pre-reform Act; and
 - (b) does not operate if subsection 170LY(2) of the pre-reform Act applies.

- (2) If the agreement has ceased operating under paragraph (1)(a), it can never operate again.
- (3) The agreement may also be set aside under subsection 113(2A) of the pre-reform Act.

15 Interaction of agreement with awards

While the agreement is in operation, it prevails over an award to the extent of any inconsistency (subject to section 170LY of the pre-reform Act, as it applies because of clause 13).

16 Continuing operation of pre-reform certified agreements—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to the agreement as if it were a collective agreement:

- (a) Part 6;
- (b) section 494;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

Part 3—Pre-reform AWAs

17 Continuing operation of pre-reform AWAs—under old provisions

- (1) Subject to this Schedule, the following provisions of the pre-reform Act continue to apply in relation to a pre-reform AWA, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*:
 - (a) section 170VG;
 - (b) subsections 170VH(1) and (2);
 - (c) section 170VM;
 - (d) subsections 170VN(1) and (2);
 - (e) subsections 170VO(5) and (6);
 - (f) subsections 170VPA(4) and (5);
 - (g) sections 170VPD, 170VPK, 170VQ, 170VR, 170VV and 170VZ;
 - (h) Division 8A of Part VID;
 - (i) Division 9 of Part VID (except sections 170WHC and 170WHD);
 - (j) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.
- (2) Regulations made under the pre-reform Act, to the extent that they relate to the provisions mentioned in subclause (1), continue to apply in relation to a pre-reform AWA.

Note: Clause 19 of this Schedule, section 16 and Schedule 8 may also affect the terms and conditions of employment of an employee in relation to whom a pre-reform AWA is in operation.

18 Rules replacing section 170VJ—period of operation of AWA

- (1) A pre-reform AWA ceases to be in operation in relation to an employee if an AWA or an ITEA comes into operation in relation to the employee.
- (2) A pre-reform AWA ceases to be in operation when a termination under section 170VM of the pre-reform Act takes effect.

- (3) If a pre-reform AWA has ceased operating under subclause (2), it can never operate again.

Note: However, a redundancy provision that was included in a pre-reform AWA that has ceased operating might be preserved for a period of up to 24 months (see clause 20A).

- (4) If a pre-reform AWA has ceased operating in relation to an employee because of subclause (1), the agreement can never operate again in relation to that employee.
- (5) Despite subclause (4), a pre-reform AWA that has ceased to operate because of subclause (1) can operate again if:
- (a) the pre-reform AWA ceased to operate because it was replaced by an AWA (the *replacement AWA*); and
 - (b) the replacement AWA later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z of the pre-transition Act.

19 Interaction of pre-reform AWAs with other instruments

The following have no effect in relation to an employee while a pre-reform AWA operates in relation to the employee:

- (a) a collective agreement;
- (b) a workplace determination;
- (c) a preserved State agreement;
- (d) to the extent of any inconsistency, a notional agreement preserving State awards;
- (e) an award.

20 Continuing operation of pre-reform AWAs—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to a pre-reform AWA as if it were an ITEA:

- (a) Part 6;
- (aa) section 327;
- (ab) paragraph 336(b);
- (ac) paragraph 340(2)(a);
- (ad) paragraph 367(1)(b);
- (ae) subparagraph 369(b)(ii);

Clause 20A

- (af) subparagraph 373(2)(a)(ii);
- (ag) subparagraph 467(1)(a)(iii);
- (ah) subparagraph 467(1)(b)(ii);
- (b) section 495;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

20A Preservation of redundancy provisions in certain circumstances

- (1) This clause applies if a pre-reform AWA is terminated, on application by the employer in relation to the AWA, by the Commission in accordance with subsection 170VM(3) of the pre-reform Act.

Note: Subsection 170VM(3) of the pre-reform Act continues to apply because of paragraph 17(1)(c) of this Schedule.

- (2) The employer and the employee in relation to the pre-reform AWA continue to be bound, immediately after the pre-reform AWA ceases operating, by any redundancy provision that was included in the pre-reform AWA as if the pre-reform AWA had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a pre-reform AWA in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) The employer continues to be bound by a redundancy provision referred to in subclause (2), in relation to the employee, until the earliest of the following:
- (a) the end of the period of 24 months from the time that the pre-reform AWA ceases operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.
- (5) In this clause:

instrument means any of the following:

- (a) a collective agreement;
- (b) a pre-reform certified agreement;
- (c) a notional agreement preserving State awards;
- (d) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

20B Notification of preservation of redundancy provisions

- (1) This clause applies if the employer and the employee in relation to a pre-reform AWA will, under clause 20A, continue to be bound by one or more redundancy provisions included in the pre-reform AWA.
- (2) The determination issued by the Commission under subsection 170VM(4) of the pre-reform Act must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the employer and the employee in relation to the pre-reform AWA will be bound by the provision or provisions; and
 - (c) specify the date that is 24 months after the time that the determination terminating the pre-reform AWA takes effect; and
 - (d) state that the employer and the employee will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 20A(4).

Clause 21

21 Calling up contents of pre-reform AWA in workplace agreement

A pre-transition workplace agreement may incorporate by reference terms from a pre-reform AWA under section 355 of the pre-transition Act as if the pre-reform AWA were a workplace agreement for the purposes of that Act.

Part 4—Awards under subsection 170MX(3) of the pre-reform Act

Division 1—Continuing operation of section 170MX awards

22 Application of Division

This Division applies to a section 170MX award if:

- (a) the employer in relation to the section 170MX award:
 - (i) is an employer (within the meaning of subsection 6(1)) at the reform commencement; or
 - (ii) becomes such an employer during the transitional period; and
- (b) the section 170MX award:
 - (i) was in force just before the reform commencement; or
 - (ii) was made after the reform commencement because of Part 8 of this Schedule.

23 Continuing operation of section 170MX awards—under old provisions

- (1) Subject to this Schedule, provisions of the pre-reform Act (including regulations made under that Act) relating to section 170MX of the pre-reform Act continue to apply in relation to a section 170MX award to which this Division applies, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*.
- (2) Subclause (1) does not apply in relation to the following provisions of the pre-reform Act:
 - (a) section 170MN;
 - (b) subsections 170MZ(4) and (5);
 - (c) paragraph 170MZ(6)(b);
 - (d) subsections 170MZ(7) and (8).

Schedule 7 Transitional arrangements for existing pre-reform Federal agreements etc.

Part 4 Awards under subsection 170MX(3) of the pre-reform Act

Division 1 Continuing operation of section 170MX awards

Clause 24

24 Continuing operation of section 170MX awards—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to a section 170MX award to which this Division applies as if it were a workplace determination:

- (a) Part 6;
- (b) section 494;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

25 Interaction of section 170MX awards with other instruments

- (1) A section 170MX award to which this Division applies has no effect in relation to an employee while an AWA or an ITEA operates in relation to that employee.
- (2) A section 170MX award to which this Division applies ceases to be in operation in relation to an employee when one of the following comes into operation in relation to the employee:
 - (a) a collective agreement;
 - (b) a workplace determination.
- (3) The following have no effect in relation to an employee to the extent to which they are inconsistent with a section 170MX award to which this Division applies that operates in relation to the employee:
 - (a) an award;
 - (b) a preserved State agreement;
 - (c) a notional agreement preserving State awards.
- (4) To avoid doubt, a section 170MX award that has ceased to operate because of subclause (2) can operate again if:
 - (a) the section 170MX award ceased to operate because it was replaced by a pre-transition collective agreement (the ***replacement collective agreement***); and
 - (b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note 1: See sections 346Y and 346Z of the pre-transition Act.

Note 2: Under subclause (1), a section 170MX award has no effect in relation to an employee while an AWA or ITEA operates in relation to the employee, but once the AWA or ITEA has for any reason ceased to operate, the section 170MX award is capable of operating again.

Schedule 7 Transitional arrangements for existing pre-reform Federal agreements etc.

Part 4 Awards under subsection 170MX(3) of the pre-reform Act

Division 2 Special rules for section 170MX awards that bind excluded employers

Clause 26A

Division 2—Special rules for section 170MX awards that bind excluded employers

26A Application of Division

- (1) This Division applies to a section 170MX award if:
 - (a) the employer in relation to the section 170MX award is an excluded employer at the reform commencement; and
 - (b) the section 170MX award:
 - (i) was in force just before the reform commencement; or
 - (ii) was made after the reform commencement because of Part 8 of this Schedule.
- (2) This Division applies to the section 170MX award while the employer remains an excluded employer during the transitional period.

26B Cessation of section 170MX award

- (1) A section 170MX award to which this Division applies ceases to be in operation:
 - (a) at the end of the transitional period; or
 - (b) when it has been replaced by a State employment agreement.
- (2) To avoid doubt, this clause does not affect any rights accrued or liabilities incurred under a section 170MX award to which this Division applies before it ceases to be in operation.
- (3) To avoid doubt, if the employer in relation to a section 170MX award to which this Division applies becomes an employer (within the meaning of subsection 6(1)) at a time before the end of the transitional period, subclause (1) does not apply after that time.

Note: On and after that time, Division 1 of this Part applies to the section 170MX award.
- (4) Once a section 170MX award to which this Division applies has ceased operating, it can never operate again.

26C Continuing operation of section 170MX awards—under old provisions

- (1) Subject to this Schedule, provisions of the pre-reform Act (including regulations made under that Act) relating to section 170MX of the pre-reform Act continue to apply in relation to a section 170MX award to which this Division applies, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*.
- (2) Subclause (1) does not apply in relation to the following provisions of the pre-reform Act:
 - (a) section 170MN;
 - (b) subsections 170MZ(4) and (5);
 - (c) paragraph 170MZ(6)(b);
 - (d) subsections 170MZ(7) and (8).

26D Continuing operation of section 170MX awards—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to a section 170MX award to which this Division applies as if it were a workplace determination:

- (a) Part 6;
- (b) section 494;
- (c) subsection 451(2);
- (d) Part 14;
- (e) Part 15.

26E Interaction of section 170MX awards with other instruments

While a section 170MX award to which this Division applies is in operation, it prevails over a transitional award to the extent of any inconsistency.

Part 5—Exceptional matters orders

27 Exceptional matters orders

- (1) An exceptional matters order ceases to be in force in relation to an employee at the earlier of the following times:
 - (a) 2 years after it was made;
 - (b) when a workplace agreement or workplace determination comes into operation in relation to that employee.
- (2) To avoid doubt, an exceptional matters order that has ceased to be in force because of subclause (2) can come into force again if:
 - (a) the exceptional matters order ceased to be in force because it was replaced by a pre-transition workplace agreement (the ***replacement workplace agreement***); and
 - (b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z of the pre-transition Act.

Part 6—Old IR agreements

28 Operation of old IR agreement

- (1) An old IR agreement ceases to be in operation if it is terminated under clause 29A.
- (2) An old IR agreement has no effect in relation to an employee if a workplace agreement or workplace determination comes into operation in relation to the employee.
- (3) If an old IR agreement has ceased operating because of subclause (1), the agreement can never operate again.
- (4) If an old IR agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.
- (5) Despite subclause (4), an old IR agreement that has ceased to operate because of subclause (2) can operate again if:
 - (a) the old IR agreement ceased to operate because it was replaced by a pre-transition workplace agreement (the *replacement workplace agreement*); and
 - (b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z of the pre-transition Act.

- (6) Despite subclause (4), an old IR agreement that has ceased to operate because of subclause (2) can operate again if:
 - (a) the old IR agreement ceased to operate because it was replaced by an AWA or an ITEA; and
 - (b) the AWA or ITEA ceased to operate after the commencement of Schedule 7A.

29 Old IR agreement cannot be varied after the reform commencement

An old IR agreement cannot be varied after the reform commencement.

Clause 29A

29A Termination of old IR agreements

- (1) A party to an old IR agreement may apply to the Commission for the agreement to be terminated.
- (2) The Commission may, by order, terminate the agreement if the Commission is satisfied that all of the parties to the agreement agree to the termination.

Part 7—Relationships between pre-reform agreements etc. and Australian Fair Pay and Conditions Standard

30 Relationships between pre-reform agreements etc. and Australian Fair Pay and Conditions Standard

- (1) The Australian Fair Pay and Conditions Standard does not apply to an employee in relation to a matter if the employee's employment is subject to any of the following instruments that deals with that matter in relation to the employee:
 - (a) a pre-reform certified agreement;
 - (b) a pre-reform AWA;
 - (c) a section 170MX award.
- (2) In this clause:

matter means a matter referred to in subsection 171(2).

Note: This means that if a pre-reform certified agreement, a pre-reform AWA or a section 170MX award deals with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will not apply to the employee in respect of that matter.

However, if a pre-reform certified agreement, a pre-reform AWA or a section 170MX award does not deal with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will apply to the employee in respect of that matter.

Schedule 7 Transitional arrangements for existing pre-reform Federal agreements etc.

Part 7A Relationship between pre-reform agreements etc. and public holiday entitlement

Clause 30A

Part 7A—Relationship between pre-reform agreements etc. and public holiday entitlement

30A Relationship between pre-reform agreements etc. and public holiday entitlement

Division 2 of Part 12 (public holidays) does not apply to an employee if the employee's employment is subject to any of the following instruments:

- (a) a pre-reform certified agreement;
- (b) a pre-reform AWA;
- (c) a section 170MX award.

Part 8—Applications for certification etc. before reform commencement

31 Certifications under pre-reform Act after the reform commencement

- (1) This clause applies if an application for certification was made under section 170LM or 170LS of the pre-reform Act before the reform commencement.
- (2) The pre-reform Act continues to apply, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*, in relation to the application and certification.

32 Approvals of pre-reform AWAs under pre-reform Act after the reform commencement

- (1) This clause applies if a pre-reform AWA was filed under section 170VN of the pre-reform Act before the reform commencement.
- (2) The pre-reform Act continues to apply, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*, in relation to the filing and approval of the pre-reform AWA.

32A Approvals of section 170MX awards under pre-reform Act after the reform commencement

- (1) This clause applies if the Commission has started to exercise arbitration powers in accordance with subsection 170MX(3) of the pre-reform Act before the reform commencement to make an award under that subsection.
- (2) The pre-reform Act continues to apply, despite the repeals and amendments made by the *Workplace Relations Amendment (Work Choices) Act 2005*, in relation to the making of the award.

Part 9—Matters relating to Victoria

33 Definitions

In this Part:

employee has the same meaning as in Division 1 of Part 21 of this Act.

employer has the same meaning as in Division 1 of Part 21 of this Act.

employment has the same meaning as in Division 1 of Part 21 of this Act.

this Schedule does not include this Part.

Victorian reference AWA means an AWA (within the meaning of the pre-reform Act) made under this Act in its operation in accordance with repealed section 495.

Victorian reference certified agreement means an agreement that was made under Division 2 or 3 of Part VIB of this Act, in that Division's operation in accordance with repealed Division 2 of Part XV, before the reform commencement.

Victorian reference Division 3 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act, in its operation in accordance with repealed Division 2 of Part XV, before the reform commencement.

Victorian reference section 170MX award means a section 170MX award that:

- (a) was made before the reform commencement under this Act in its operation in accordance with repealed Division 2 of Part XV; or
- (b) was made after the reform commencement because of clause 32A of this Schedule (as that clause applies because of clause 38A of this Schedule).

34 Part only has effect if supported by reference etc.

Any of the following:

- (a) a clause of this Part;
- (b) a clause of this Schedule, to the extent to which it relates to a Victorian reference certified agreement;
- (c) a clause of this Schedule, to the extent to which it relates to a Victorian reference AWA;
- (d) a clause of this Schedule, to the extent to which it relates to a Victorian reference section 170MX award;

has effect only for so long, and in so far, as the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for the clause so to have effect.

35 Continuing operation of pre-reform certified agreements—under old provisions

Clause 2 has effect, in relation to a Victorian reference certified agreement, as if each reference in a paragraph of subclause 2(1) to a provision of the pre-reform Act were read as a reference to the provision as it had effect because of repealed Division 2 of Part XV.

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference certified agreement is in operation.

36 Victorian reference Division 3 pre-reform certified agreements

- (1) Clause 10 and Division 2 of Part 2 of this Schedule do not apply to a Victorian reference Division 3 pre-reform certified agreement.
- (2) Division 1 of Part 2 of this Schedule applies to a Victorian reference Division 3 pre-reform certified agreement as if the agreement had been made under section 170LJ of the pre-reform Act in that section's operation in accordance with repealed Division 2 of Part XV.

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference Division 3 pre-reform certified agreement is in operation.

Clause 37

37 Continuing operation of pre-reform AWAs—under old provisions

Clause 17 has effect, in relation to a Victorian reference AWA, as if each reference in a paragraph of subclause 17(1) to a provision of the pre-reform Act were read as a reference to the provision as it had effect because of repealed section 495.

Note: Section 898 may also affect the terms and conditions of employment of an employee in relation to whom a Victorian reference AWA is in operation.

38 Continuing operation of section 170MX awards—under old provisions

Clause 23 has effect, in relation to a Victorian reference section 170MX award, as if the reference in subclause 23(1) to section 170MX of the pre-reform Act were read as a reference to that section as it had effect because of repealed Division 2 of Part XV.

38A Approvals of section 170MX awards under pre-reform Act after the reform commencement

Clause 32A has effect, in relation to the making of a section 170MX award under this Act in its operation in accordance with repealed Division 2 of Part XV, as if the reference in subclause 32A(1) to subsection 170MX(3) of the pre-reform Act were read as a reference to that subsection as it had effect because of repealed Division 2 of Part XV.

39 Relationship between Victorian employment agreements and designated old IR agreements

- (1) A designated old IR agreement prevails to the extent of any inconsistency with an employment agreement.
- (2) In this clause:

designated old IR agreement means an old IR agreement covered by paragraph (d) of the definition of *old IR agreement* in clause 1.

employment agreement has the same meaning as in Division 12 of Part 21 of this Act.

Schedule 7A—Transitional arrangements for existing AWAs

Note: See section 8

1 Definitions

- (1) In this Schedule:

AWA has the meaning that was given by sections 4 and 326 of the pre-transition Act, but does not include:

- (a) an agreement made after the commencement of this Schedule; or
- (b) a pre-reform AWA within the meaning of Schedule 7.

pre-transition Act means this Act as in force immediately before the commencement of this Schedule.

- (2) For the purposes of this Schedule, an agreement ceases to be an AWA unless:
- (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or
 - (b) it is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after that commencement.
- (3) Paragraph 333(a) and subsection 340(1) of the pre-transition Act apply to working out, for the purposes of the definition of **AWA** in subclause (1), when an agreement was made.

2 Continuing operation of AWAs

- (1) Subject to this Schedule, the pre-transition Act continues to apply in relation to an AWA despite the repeals and amendments made by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*.
- (2) However, subclause (1) does not apply in relation to the following provisions of the pre-transition Act:
- (a) the definition of **Australian workplace agreement**, or the definition of **AWA**, in subsection 4(1);

Clause 3

- (c) section 467;
- (d) section 399;
- (e) Part 11;
- (f) Schedule 6;
- (g) Schedule 7;
- (h) Schedule 8;
- (i) Schedule 9;
- (j) any other provision to the extent that it relates to the operation of the provisions mentioned in the preceding paragraphs.

Note: The application of Schedules 6, 7, 8 and 9 to AWAs is dealt with in those Schedules.

- (3) Regulations made under the pre-transition Act continue to apply in relation to an AWA, except to the extent that they relate to the provisions mentioned in subclause (2).
- (4) To avoid doubt, nothing in this Schedule permits an agreement made after the commencement of this Schedule to be treated as an AWA.

3 Bargaining agents

- (1) Despite the definition of *bargaining agent* in subsection 4(1) of the pre-transition Act, an appointment of a bargaining agent ceases to have effect 14 days after the commencement of this Schedule if the appointment relates to:
 - (a) making an AWA; or
 - (b) varying an AWA (other than varying an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act).
- (1A) However, paragraph 405(1)(e) of the pre-transition Act continues to apply in relation to a person whose appointment has ceased to have effect under subclause (1), as if the person continues to be a bargaining agent.
- (2) Despite subsection 334(1) of the pre-transition Act, an appointment of a bargaining agent made later than 14 days after the commencement of this Schedule is of no effect if the appointment relates to:
 - (a) making an AWA; or

- (b) varying an AWA (other than varying an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act).

4 Effect of late lodgment of AWAs

Despite subsection 347(2) of the pre-transition Act, an AWA comes into operation only if:

- (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or
- (b) it is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after the commencement of this Schedule.

5 Restriction on varying AWAs

- (1) Despite Division 8 of Part 8 of the pre-transition Act, a variation of an AWA cannot be made after the commencement of this Schedule.

Note: Under section 368 of the pre-transition Act, a variation of an AWA was made when it was approved in accordance with section 373 of the pre-transition Act.

- (2) Despite subsection 380(2) of the pre-transition Act, a variation of an AWA comes into operation only if:
 - (a) it was lodged with the Workplace Authority Director before the commencement of this Schedule; or
 - (b) it is lodged, in accordance with section 377 of the pre-transition Act, within 14 days after the commencement of this Schedule.
- (3) However, this clause does not prevent:
 - (a) variation of an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act; or
 - (b) the application of subsection 380(2) of the pre-transition Act in relation to a variation of an AWA in any of those circumstances.

6 Replacement of AWAs

- (1) An AWA ceases to be in operation if it is replaced by an ITEA.
-

Clause 7

- (2) If an AWA has ceased operating because of subclause (1), it can never operate again.
- (3) Subclause (1) does not limit the operation of paragraph 347(4)(a), (ba), (bb) or (c) of the pre-transition Act for the purposes of this Schedule.
- (4) To avoid doubt, despite paragraph 347(4)(b) of the pre-transition Act, an AWA cannot be replaced by another AWA made after the commencement of this Schedule.

7 Workplace Authority Director to notify of ineffective AWAs and variations

- (1) If:
 - (a) a purported AWA made after the commencement of this Schedule is lodged with the Workplace Authority Director; or
 - (b) an AWA is lodged with the Workplace Authority Director after the end of a period of 14 days after the commencement of this Schedule;

the Workplace Authority Director must notify the parties to the agreement that lodgment of the agreement has not been accepted and that the purported AWA or AWA is not in operation.

- (2) If:
 - (a) a purported variation made to an AWA after the commencement of this Schedule is lodged with the Workplace Authority Director; or
 - (b) a variation made to an AWA is lodged with the Workplace Authority Director after the end of a period of 14 days after the commencement of this Schedule;

the Workplace Authority Director must notify the parties to the agreement that lodgment of the variation has not been accepted and that the purported variation or variation is not in operation.

- (3) However, subclause (2) does not apply to a variation of an AWA in circumstances referred to in paragraph 367(2)(aa), (b), (c) or (d) of the pre-transition Act.

8 Effect of AWAs on making and approving collective agreements etc.

- (1) Despite clause 2 of this Schedule, the following provisions of this Act apply as if references in those provisions to an ITEA that has passed its nominal expiry date included references to an AWA that has passed its nominal expiry date:
- (a) section 327;
 - (aa) paragraph 336(b);
 - (b) paragraph 340(2)(a);
 - (c) paragraph 367(1)(b);
 - (d) subparagraph 369(b)(ii);
 - (e) subparagraph 373(2)(a)(ii);
 - (f) subparagraph 467(1)(a)(iii);
 - (g) subparagraph 467(1)(b)(i).
- (2) Despite clause 2 of this Schedule, subsection 467(2) of this Act applies as if the reference in that subsection to an ITEA whose nominal expiry date has not passed included a reference to an AWA whose nominal expiry date has not passed.

Schedule 7B—Transitional arrangements for existing collective agreements

Note: See section 8

1 Definitions

In this Schedule:

fairness test means the test set out in section 346M of the pre-transition Act.

pre-transition Act means this Act as in force immediately before the commencement of this Schedule.

pre-transition collective agreement means a collective agreement made before the commencement of this Schedule that:

- (a) was lodged with the Workplace Authority Director before that commencement; or
- (b) is lodged, in accordance with section 344 of the pre-transition Act, within 14 days after that commencement;

but does not include a collective agreement made after that commencement.

2 Continuing operation of fairness test and protected award conditions to pre-transition collective agreements

- (1) Subject to this Schedule, the following provisions of the pre-transition Act continue to apply in relation to a pre-transition collective agreement, despite the repeals and amendments made by the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008*:
 - (a) paragraph 150B(1)(f);
 - (b) subsection 164A(7);
 - (c) Division 5A of Part 8;
 - (ca) subsections 347(1) and (2);
 - (d) paragraphs 347(4)(ba) and (bb);
 - (e) subsections 347(8A) and (9A);

- (f) section 354;
 - (g) section 355;
 - (h) paragraph 367(2)(aa);
 - (i) paragraphs 407(2)(jb) to (jd);
 - (j) sections 416 to 418;
 - (k) subsection 506(5);
 - (l) any other provision relating to the operation of the provisions mentioned in the preceding paragraphs.
- (2) Regulations made under the pre-transition Act, to the extent that they relate to the provisions mentioned in subclause (1), continue to apply in relation to a pre-transition collective agreement.
 - (3) To the extent that provisions of the pre-transition Act, and the regulations made under the pre-transition Act, continue to apply in relation to a pre-transition collective agreement, the corresponding provisions of this Act do not apply to the agreement.
 - (4) The provisions of this Act (other than the corresponding provisions referred to in subclause (3)) apply in relation to a pre-transition collective agreement as if references in those provisions to the no-disadvantage test were references to the fairness test.

3 Application of this Schedule to variations of pre-transition collective agreements

Clause 2 of this Schedule does not apply in relation to a variation of a pre-transition collective agreement unless the variation:

- (a) was lodged with the Workplace Authority Director before the commencement of this Schedule; or
- (b) is made before that commencement and is lodged, in accordance with section 377 of the pre-transition Act, within 14 days after that commencement.

Schedule 8—Transitional treatment of State employment agreements and State awards

Note: See section 8.

Part 1—Preliminary

1 Definitions

(1) In this Schedule:

discriminatory:

- (a) in relation to a preserved State agreement—has the meaning given by subclause 18(4); and
- (b) in relation to a notional agreement preserving State awards—has the meaning given by subclause 41(4).

fairness test means the test set out in section 346M of the pre-transition Act.

Note: The fairness test continues to apply to an AWA within the meaning of Schedule 7A and to a pre-transition collective agreement within the meaning of Schedule 7B.

notional agreement preserving State awards is an agreement that is taken to come into operation under clause 31.

preserved collective State agreement is an agreement that is taken to come into operation under clause 10.

preserved individual State agreement is an agreement that is taken to come into operation under clause 3.

preserved notional entitlement has the meaning given by subclause 46(1).

preserved notional term has the meaning given by subclause 45(1).

preserved State agreement means:

- (a) a preserved individual State agreement; or

(b) a preserved collective State agreement.

pre-transition Act means this Act as in force immediately before the commencement of Schedule 7A.

pre-transition workplace agreement means:

- (a) an AWA within the meaning of Schedule 7A; or
- (b) a pre-transition collective agreement within the meaning of Schedule 7B.

workplace agreement includes an AWA within the meaning of Schedule 7A.

- (2) A reference in regulations made for the purposes of clause 9, subclause 19(1), clause 37 or subclause 42(1) to an independent contractor is not confined to a natural person.

2 Objects

The objects of this Schedule are:

- (a) to preserve for a time the terms and conditions of employment, as they were immediately before the reform commencement, for those employees:
 - (i) who, but for the reforms commenced at that time, would be bound by a State employment agreement, a State award or a State or Territory industrial law; or
 - (ii) whose employment, but for the reforms commenced at that time, would be subject to a State employment agreement, a State award or a State or Territory industrial law; and
- (b) to encourage employees and employers for whom those terms and conditions have been preserved to enter into workplace agreements during that time.

Part 2—Preserved State agreements

Division 1—Preserved individual State agreements

Subdivision A—What is a preserved individual State agreement?

3 Preserved individual State agreements

If, immediately before the reform commencement:

- (a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the *original individual agreement*); and
- (b) that employee was the only employee who was bound by the agreement, or whose employment was subject to the agreement;

a *preserved individual State agreement* is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved individual State agreement?

4 Who is bound by or subject to a preserved individual State agreement?

- (1) Any person who:
 - (a) immediately before the reform commencement, was bound by, or a party to, the original individual agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and
 - (b) is one of the following:
 - (i) an employer;
 - (ii) an employee;
 - (iii) an organisation;
- is bound by the preserved individual State agreement.

- (2) The employment of a person is subject to the preserved individual State agreement if, immediately before the reform commencement, that employment was subject to the original individual agreement.

Subdivision C—Terms of a preserved individual State agreement

5 Terms of a preserved individual State agreement

- (1) A preserved individual State agreement is taken to include the terms of the original individual agreement, as in force immediately before the reform commencement.
- (2) If, immediately before the reform commencement, a term of another State employment agreement determined, in whole or in part, a term or condition of employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term of the other State employment agreement, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (3) If, immediately before the reform commencement, a term of a State award determined, in whole or in part, a term or condition of the employment of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that term, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (4) If, immediately before the reform commencement, a provision of a State or Territory industrial law determined, in whole or in part, a preserved entitlement of the employee who was bound by, or whose employment was subject to, the original individual agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved individual State agreement.
- (5) In this clause:
- preserved entitlement*** means:
- (a) an entitlement to:
- (i) annual leave and annual leave loadings; or
- (ii) parental leave, including maternity leave and adoption leave; or

Clause 6

- (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or
 - (v) ceremonial leave; or
 - (vi) notice of termination; or
 - (vii) redundancy pay; or
 - (viii) loadings for working overtime or shift work; or
 - (ix) penalty rates, including the rate of payment for work on a public holiday; or
 - (x) rest breaks; or
- (b) another prescribed entitlement.

6 Nominal expiry date of a preserved individual State agreement

The *nominal expiry date* of a preserved individual State agreement is:

- (a) the day on which the original individual agreement would nominally have expired under the relevant State or Territory industrial law; or
- (b) if that day falls after the end of a period of 3 years beginning on the commencement of the original individual agreement—the last day of that 3 year period.

7 Powers of State industrial authorities

- (1) If a preserved individual State agreement confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
- (2) However, the employer and the persons bound by the preserved individual State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

8 Dispute resolution processes

- (1) A preserved individual State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.

- (2) Any term of the preserved individual State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

9 Prohibited content

A term of a preserved individual State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Workplace Authority Director can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Division 2—Preserved collective State agreements

Subdivision A—What is a preserved collective State agreement?

10 Preserved collective State agreements

If, immediately before the reform commencement:

- (a) the terms and conditions of employment of an employee were determined, in whole or in part, under a State employment agreement (the *original collective agreement*); and
- (b) that employee was one of a number of employees who were bound by the agreement, or whose employment was subject to the agreement;

a *preserved collective State agreement* is taken to come into operation on the reform commencement.

Subdivision B—Who is bound by or subject to a preserved collective State agreement?

11 Who is bound by a preserved collective State agreement?

Current employees

- (1) Any person who:
 - (a) immediately before the reform commencement, was bound by, or a party to, the original collective agreement, under the terms of that agreement or a State or Territory industrial law as in force at that time; and
 - (b) is one of the following:
 - (i) an employer;
 - (ii) an employee;
 - (iii) an organisation;

is bound by the preserved collective State agreement.

Future employees

- (2) If:
- (a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and
 - (b) under the terms of the original collective agreement, as in force immediately before the reform commencement, the person would have been bound by that agreement;
- that person is bound by the preserved collective State agreement.

12 Whose employment is subject to a preserved collective State agreement?

Current employees

- (1) The employment of a person is subject to a preserved collective State agreement if that employment was, immediately before the reform commencement, subject to the original collective agreement.

Future employees

- (2) If:
- (a) an employer who is bound by a preserved collective State agreement employs a person after the reform commencement; and
 - (b) under the terms of the original collective agreement, as in force immediately before the reform commencement, that person's employment would have been subject to that agreement;
- that employment is subject to the preserved collective State agreement.

Subdivision C—Terms of a preserved collective State agreement

13 Terms of a preserved collective State agreement

- (1) A preserved collective State agreement is taken to include the terms of the original collective agreement, as in force immediately before the reform commencement.

Clause 14

- (2) If, immediately before the reform commencement, a term of a State award would have determined, in whole or in part, a term or condition of employment of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that term, as in force at that time, is taken to be a term of the preserved collective State agreement.
- (3) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person who would have been bound by, or whose employment would have been subject to, the original collective agreement, then, to that extent, that provision, as in force at that time, is taken to be a term of the preserved collective State agreement.

- (4) In this clause:

preserved entitlement means:

- (a) an entitlement to:
- (i) annual leave and annual leave loadings; or
 - (ii) parental leave, including maternity leave and adoption leave; or
 - (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or
 - (v) ceremonial leave; or
 - (vi) notice of termination; or
 - (vii) redundancy pay; or
 - (viii) loadings for working overtime or shift work; or
 - (ix) penalty rates, including the rate of payment for work on a public holiday; or
 - (x) rest breaks; or
- (b) another prescribed entitlement.

14 Nominal expiry date of a preserved collective State agreement

The ***nominal expiry date*** of a preserved collective State agreement is:

- (a) the day on which the original collective agreement would nominally have expired under the relevant State or Territory industrial law; or

- (b) if that day falls after the end of a period of 3 years beginning on the commencement of the original collective agreement—the last day of that 3 year period.

15 Powers of State industrial authorities

- (1) If a preserved collective State agreement confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
- (2) However, the employer and the persons bound by the preserved collective State agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

15A Dispute resolution processes

- (1) A preserved collective State agreement is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.
- (2) Any term of the preserved collective State agreement that would otherwise deal with the resolution of those disputes is void to that extent.

15B Prohibited content

A term of a preserved collective State agreement is void to the extent that it contains prohibited content of a prescribed kind.

Note: The Workplace Authority Director can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).

Clause 15C

Division 2A—Effect and operation of a preserved State agreement

15C Effect of a preserved State agreement

- (1) Except as provided in or under this Part, or otherwise in or under this Act, a preserved State agreement has effect according to its terms.
- (2) This Part has effect despite the terms of the preserved State agreement itself, or any State award or law of a State or Territory.
- (3) None of the terms and conditions of employment included in the preserved State agreement are enforceable under the law of a State or Territory.

15D Effect of awards while a preserved State agreement in operation

An award has no effect in relation to an employee while the terms of a preserved State agreement operate in relation to the employee.

15E Relationship between preserved State agreements and Australian Fair Pay and Conditions Standard

- (1) The Australian Fair Pay and Conditions Standard does not apply to an employee in relation to a matter if the employee's employment is subject to a preserved State agreement that deals with that matter in relation to the employee.
- (2) In this clause:

matter means a matter referred to in subsection 171(2).

Note: This means that if a preserved State agreement deals with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in respect of an employee, the Australian Fair Pay and Conditions Standard will not apply to the employee in respect of that matter.

However, if a preserved State agreement does not deal with basic rates of pay and casual loadings, maximum ordinary hours of work, annual leave, personal leave or parental leave and related entitlements in

respect of an employee, the Australian Fair Pay and Conditions Standard will apply to the employee in respect of that matter.

15F Relationship between a preserved State agreement and public holiday entitlement

Division 2 of Part 12 (public holidays) does not apply to an employee if the employee is bound by a preserved State agreement, or the employee's employment is subject to a preserved State agreement.

15G When preserved State agreements cease to operate

- (1) A preserved State agreement ceases to be in operation if it is terminated under clause 21.
- (1A) If, after the commencement of this subclause, a preserved individual State agreement ceases to operate in relation to an employee because of subclause (1):
 - (a) any preserved collective State agreement binding the employer; or
 - (b) if there is no such preserved collective State agreement—any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved individual State agreement;
has effect in relation to the employer and employee.
- (1B) If, after the commencement of this subclause, a preserved collective State agreement ceases to operate in relation to an employee because of subclause (1), any notional agreement preserving State awards that would have been taken to come into operation in relation to the employer and employee on the reform commencement but for the preserved collective State agreement has effect in relation to the employer and employee.
- (1C) However, subsection (1A) or (1B) ceases to apply if an award or a workplace agreement comes into operation in relation to the employer and employee.
- (2) A preserved State agreement ceases to be in operation, in relation to an employee, when one of the following comes into operation in relation to the employee:

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Part 2 Preserved State agreements

Division 2A Effect and operation of a preserved State agreement

Clause 15G

- (a) a workplace agreement;
 - (b) a workplace determination;
- even if the nominal expiry date of the preserved State agreement has not passed.
- (3) If a preserved State agreement has ceased operating in relation to an employee because of subclause (2), the agreement can never operate again in relation to that employee.
 - (4) Despite subclause (3), a preserved State agreement that has ceased operating because of subclause (2) can operate again if:
 - (a) the preserved State agreement ceased to operate because it was replaced by a pre-transition workplace agreement (the ***replacement workplace agreement***); and
 - (b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.
- Note: See sections 346Y, 346YA and 346Z of the pre-transition Act.
- (5) Despite subclause (3), a preserved collective State agreement that has ceased operating because of subclause (2) can operate again if:
 - (a) the preserved collective State agreement ceased to operate because it was replaced by an AWA or an ITEA; and
 - (b) the AWA or ITEA ceased to operate after the commencement of Schedule 7A.

Division 3—Varying a preserved State agreement

16 Varying a preserved State agreement

A preserved State agreement may only be varied on or after the reform commencement in accordance with this Division.

16A Commission may extend or vary preserved collective State agreements

- (1) The Commission may, on application by any person bound by a preserved collective State agreement, by order:
 - (a) extend the nominal expiry date of the agreement; or
 - (b) vary the terms of the agreement.
- (2) However, before making the order, the Commission must be satisfied that:
 - (a) all parties bound by the agreement genuinely agree to the extension or variation; and
 - (b) none of the parties have, after the introduction day:
 - (i) organised or engaged in, or threatened to organise or engage in, industrial action in relation to another party to the agreement; or
 - (ii) applied for a protected action ballot under section 451 in relation to proposed industrial action; and
 - (c) in the case of a variation—the agreement as varied would not result, on balance, in a reduction in the overall terms and conditions of employment of the employees bound by the agreement under:
 - (i) any relevant State award in relation to the employees; and
 - (ii) any law of the Commonwealth, or of a State or Territory, that the Commission considers relevant.
- (3) If the Commission extends the nominal expiry date of the agreement, the extended date cannot be more than 3 years after the date on which the order is made.

Clause 16A

- (4) The employees bound by the agreement are taken, for the purposes of paragraph (2)(a), genuinely to agree to the extension or variation if:
- (a) the employer gives all of the employees bound by the agreement at the time of making the extension or variation a reasonable opportunity genuinely to decide whether they agree to the extension or variation; and
 - (b) either:
 - (i) if the decision is made by a vote—a majority of those employees who cast a valid vote; or
 - (ii) otherwise—a majority of those employees; genuinely decide that they agree to the extension or variation.
- (5) To avoid doubt, the terms and conditions of employment under a relevant State award may, for the purposes of paragraph (2)(c), include terms and conditions that did not apply on the reform commencement, or that have been varied since the reform commencement.
- (6) In this clause:

introduction day means the day on which the Bill that became the *Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008* was introduced into the House of Representatives.

relevant State award, in relation to an employee, means:

- (a) if, immediately before the reform commencement, the employee was bound by, or a party to, the original collective agreement to which the preserved collective State agreement referred to in subsection (1) relates, under the terms of that agreement or a State or Territory industrial law as in force at that time—the State award that would have bound the employee at that time but for that agreement; or
- (b) otherwise—the State award that would have bound, or but for the application of a State employment agreement would have bound, the employee at that time if the employee had been employed by the employer at that time.

17 Variation to remove ambiguity or uncertainty

The Commission may, on application by any person bound by a preserved State agreement or whose employment is subject to the agreement, by order, vary the agreement for the purpose of removing ambiguity or uncertainty.

18 Variation to remove discrimination

- (1) If a preserved State agreement is referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*, the Commission must convene a hearing to review the agreement.
- (2) In a review under subclause (1):
 - (a) the Commission must take such steps as it thinks appropriate to ensure that each person bound by the agreement is made aware of the hearing; and
 - (b) the Sex Discrimination Commissioner is entitled to intervene in the proceeding.
- (3) If the Commission considers that a preserved State agreement reviewed under subclause (1) is discriminatory, the Commission must take the necessary action to remove the discrimination by making an order varying the agreement.
- (4) A preserved State agreement is *discriminatory* if:
 - (a) the agreement has been referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (b) the agreement requires a person to do any act that would be unlawful under Part II of the *Sex Discrimination Act 1984*, except for the fact that the act would be done in direct compliance with the agreement.

For the purposes of this definition, the fact that an act is done in direct compliance with the preserved State agreement does not of itself mean that the act is reasonable.

Clause 19

19 Variation to remove prohibited content

Initiating consideration of removal of prohibited content

- (1) The Workplace Authority Director may exercise his or her power under subclause (9) to vary a preserved State agreement to remove prohibited content of a prescribed kind:
 - (a) on his or her own initiative; or
 - (b) on application by any person.
- (2) This subclause and subclauses (3) to (6) and (9) to (12) are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Workplace Authority Director's decision whether to make a variation under subclause (9).

Workplace Authority Director must give notice that considering variation

- (3) If the Workplace Authority Director is considering making a variation to a preserved State agreement under subclause (9), the Workplace Authority Director must give the persons mentioned in subclause (4) a written notice meeting the requirements in subclause (5).
- (4) The persons are:
 - (a) an employer that is bound by the preserved State agreement; and
 - (b) if the agreement is a preserved individual State agreement—the employee; and
 - (c) if an organisation is bound by the agreement—the organisation.

Matters to be contained in notice

- (5) The requirements mentioned in subclause (3) are that the notice must:
 - (a) be dated; and
 - (b) state that the Workplace Authority Director is considering making the variation; and
 - (c) state the reasons why the Workplace Authority Director is considering making the variation; and

- (d) set out the terms of the variation; and
 - (e) invite each person mentioned in subclause (6) to make a written submission to the Workplace Authority Director about whether the Workplace Authority Director should make the variation; and
 - (f) state that any submission must be made within the period (the *objection period*) of 28 days after the date of the notice.
- (6) The persons are:
- (a) an employer that is bound by the preserved State agreement; and
 - (b) each person whose employment is subject to the agreement as at the date of the notice; and
 - (c) if an organisation is bound by the agreement—the organisation.

Employer must ensure employees have ready access to notice

- (7) An employer that has received a notice under subclause (3) in relation to the preserved State agreement must take reasonable steps to ensure that all persons whose employment is subject to the preserved State agreement at a time during the objection period are given a copy of the notice within the period:
- (a) starting on the day the employer received the notice; and
 - (b) ending at the end of the objection period.
- (8) Subclause (7) is a civil remedy provision and may be enforced under Division 11 of Part 8 as if the preserved State agreement were a workplace agreement.

Workplace Authority Director must remove prohibited content from agreement

- (9) If the Workplace Authority Director is satisfied that a term of the preserved State agreement contains prohibited content of the prescribed kind, the Workplace Authority Director must vary the agreement so as to remove that content.
- (10) In making a decision under subclause (9), the Workplace Authority Director must consider all written submissions (if any) received within the objection period from a person mentioned in subclause (6).

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Clause 19

- (11) The Workplace Authority Director must not make the variation before the end of the objection period.
- (12) If the Workplace Authority Director decides to make the variation, he or she must:
 - (a) give the persons mentioned in subclause (4) written notice of the decision, including the terms of the variation; and
 - (b) if the agreement is a preserved collective State agreement—publish a notice in the *Gazette* stating that the variation has been made and setting out particulars of the variation.

Employer must give employees notice of removal of prohibited content

- (13) An employer that has received a notice under subclause (12) in relation to a preserved collective State agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the notice are given a copy of the notice within 21 days.
- (14) Subclause (13) is a civil remedy provision and may be enforced under Division 11 of Part 8 as if the preserved collective State agreement were a collective agreement.

Division 4—Enforcing preserved State agreements

20 Enforcing a preserved State agreement

- (1) A preserved collective State agreement may be enforced as if it were a collective agreement.
- (2) A workplace inspector has the same functions and powers in relation to a preserved collective State agreement as he or she has in relation to a collective agreement.
- (3) A preserved individual State agreement may be enforced as if it were an ITEA.
- (3A) Subclause (3) does not apply, and the pre-transition Act continues to apply, to any enforcement process begun before the commencement of this subclause in relation to a preserved individual State agreement.
- (4) A workplace inspector has the same functions and powers in relation to a preserved individual State agreement as he or she has in relation to an ITEA.
- (5) Subclause (4) does not apply, and the pre-transition Act continues to apply, to any actions taken by a workplace inspector that were begun before the commencement of this subclause in the performance of functions or exercise of powers in relation to a preserved individual State agreement.

Division 5—Terminating a preserved State agreement

21 Terminating a preserved State agreement

- (1) This clause applies to the termination of a preserved State agreement on or after the reform commencement day.
- (2) If the agreement is a preserved collective State agreement, it may only be terminated in the way in which a certified agreement could have been terminated immediately before the reform commencement, and the Commission has the same powers in relation to that termination as it would have had at that time in relation to the termination of a certified agreement.
- (3) If the agreement is a preserved individual State agreement, it may only be terminated in the way in which a pre-reform AWA could have been terminated immediately before the reform commencement, and the Commission has the same powers in relation to that termination as it would have had at that time in relation to the termination of a pre-reform AWA.

21A Preservation of redundancy provisions in preserved collective State agreements in certain circumstances

- (1) This clause applies if a preserved collective State agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170MH(3) of the pre-reform Act.

Note: Subsection 170MH(3) of the pre-reform Act applies because of subclause 21(2) of this Schedule and paragraph 2(1)(k) of Schedule 7.

- (2) Any party who was bound by the preserved collective State agreement immediately before it ceased operating continues to be bound, immediately after that time, by any redundancy provision that was included in the agreement as if the agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a preserved collective State agreement in operation.

- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) A party continues to be bound by a redundancy provision referred to in subclause (2), in relation to an employee who is bound by the redundancy provision, until the earliest of the following:
 - (a) the end of the period of 24 months from the time that the preserved collective State agreement ceased operating;
 - (b) the time when the employee ceases to be employed by the employer;
 - (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.
- (5) In this clause:

instrument means any of the following:

- (a) a pre-reform certified agreement (within the meaning of Schedule 7);
- (b) a notional agreement preserving State awards;
- (c) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

21B Notification of preservation of redundancy provisions in preserved collective State agreements

- (1) This clause applies if the parties to a preserved collective State agreement will, under clause 21A, continue to be bound by one or more redundancy provisions included in the agreement.

Clause 21C

- (2) The Commission must issue a copy of the order terminating the agreement to:
 - (a) the employer who will be bound by the redundancy provision or the redundancy provisions; and
 - (b) any organisation that will be bound by the redundancy provision or the redundancy provisions.
- (3) The order must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the parties to the agreement will be bound by the provision or provisions; and
 - (c) specify the date that is 24 months after the time that the order terminating the agreement takes effect; and
 - (d) state that the parties will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 21A(4).

21C Employer must notify employees of preserved redundancy provisions in preserved collective State agreements

- (1) An employer that has, under clause 21B, received a copy of an order terminating a preserved collective State agreement must take reasonable steps to ensure that all employees who are bound by the agreement immediately before the agreement ceases operating are, within 21 days of the employer receiving a copy of the order, given a copy of the order.
- (2) Subclause (1) is a *civil remedy provision* for the purpose of this clause.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (3) The Court may order a person who has contravened the civil remedy provision to pay a pecuniary penalty.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
- (4) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.

- (5) An application for an order under subclause (3) in relation to a preserved collective State agreement may be made by the following persons:
- (a) an employee who is bound by the agreement immediately before the agreement ceases operating;
 - (b) an organisation of employees that is bound by the agreement immediately before the agreement ceases operating;
 - (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a) and has been requested by the employee to apply for the order on the employee's behalf;
 - (d) a workplace inspector.

21D Preservation of redundancy provisions in preserved individual State agreements in certain circumstances

- (1) This clause applies if a preserved individual State agreement is terminated, on application by the employer in relation to the agreement, by the Commission in accordance with subsection 170VM(3) of the pre-reform Act.

Note: Subsection 170VM(3) of the pre-reform Act applies because of subclause 21(3) of this Schedule and paragraph 17(1)(c) of Schedule 7.

- (2) The employer and the employee in relation to the preserved individual State agreement continue to be bound, immediately after the agreement ceases operating, by any redundancy provision that was included in the agreement as if the agreement had continued operating.
- (2A) Parts 6 and 14 of this Act apply to a redundancy provision referred to in subclause (2) as if the provision was a preserved individual State agreement in operation.
- (3) Subject to subclause (4), a redundancy provision referred to in subclause (2) prevails over any other redundancy provision included in any other instrument that would otherwise have effect.
- (4) The employer continues to be bound by a redundancy provision referred to in subclause (2), in relation to the employee, until the earliest of the following:

Clause 21E

- (a) the end of the period of 24 months from the time that the preserved individual State agreement ceases operating;
- (b) the time when the employee ceases to be employed by the employer;
- (c) the time when a workplace agreement comes into operation in relation to the employee and the employer.

(5) In this clause:

instrument means any of the following:

- (a) a pre-reform certified agreement (within the meaning of Schedule 7);
- (b) a notional agreement preserving State awards;
- (c) an award.

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

21E Notification of preservation of redundancy provisions

- (1) This clause applies if the employer and the employee in relation to a preserved individual State agreement will, under clause 21D, continue to be bound by one or more redundancy provisions included in the agreement.
- (2) The determination issued by the Commission under subsection 170VM(4) of the pre-reform Act must:
 - (a) identify the redundancy provision or the redundancy provisions; and

- (b) state that the employer and the employee in relation to the preserved individual State agreement will be bound by the provision or provisions; and
- (c) specify the date that is 24 months after the time that the determination terminating the agreement takes effect; and
- (d) state that the employer and the employee will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 21D(4).

Division 5A—Coercion

22 Coercion of persons to terminate a preserved State agreement etc.

- (1) A person must not:
 - (a) take or threaten to take any industrial action or other action;
or
 - (b) refrain or threaten to refrain from taking any action;
with intent to coerce another person to agree, or not to agree, to terminate or approve the termination of a preserved State agreement.
- (1A) A person must not:
 - (a) take or threaten to take any industrial action or other action;
or
 - (b) refrain or threaten to refrain from taking any action;
with intent to coerce another person to agree, or not to agree, to the extension of the nominal expiry date of, or the variation of, a preserved collective State agreement under clause 16A.
- (2) This clause does not apply to protected action (within the meaning of this Act as in force after the reform commencement).
- (3) The following provisions in Division 10 of Part VIB of this Act as in force immediately before the reform commencement apply in relation to a contravention of this clause as if it were a contravention of subsection 170NC(1) as in force at that time:
 - (a) paragraph 170ND(e);
 - (b) section 170NE;
 - (c) subsections 170NF(1), (2) and (7);
 - (d) section 170NG.

Division 6—Industrial action

23 Industrial action must not be taken until after nominal expiry date—preserved collective State agreements

- (1) During the period beginning on the reform commencement day and ending on the nominal expiry date of a preserved collective State agreement, an employee, organisation or officer covered by subclause (2) must not organise or engage in industrial action (whether or not that action relates to a matter dealt with in the agreement).

Note 1: This subclause is a civil remedy provision: see subclause (4).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

- (2) For the purposes of subclause (1), the following are covered by this subclause:

- (a) an employee who is bound by the agreement;
- (b) an organisation of employees that is bound by the agreement;
- (c) an officer or employee of such an organisation acting in that capacity.

- (3) An employer that is bound by a preserved collective State agreement must not engage in industrial action against an employee whose employment is subject to the agreement (whether or not that industrial action relates to a matter dealt with in the agreement) during the period beginning on the reform commencement and ending on the agreement's nominal expiry date.

Note 1: This subclause is a civil remedy provision: see subclause (4).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

- (4) Subclauses (1) and (3) are civil remedy provisions.

- (5) The Court may make one or more of the following orders in relation to a person who has contravened subclause (1) or (3):

- (a) an order imposing a pecuniary penalty on the person;
- (b) injunctions, and any other orders, that the Court considers necessary to stop the contravention or remedy its effects.

Clause 24

- (6) The pecuniary penalty under paragraph (5)(a) cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
- (7) An application for an order under subclause (5), in relation to a contravention of subclause (1), may be made by:
 - (a) the employer concerned; or
 - (b) a workplace inspector; or
 - (c) any person affected by the industrial action; or
 - (d) any other person prescribed by the regulations.
- (8) An application for an order under subclause (5), in relation to a contravention of subclause (3), may be made by:
 - (a) the employee concerned; or
 - (b) an organisation of employees if:
 - (i) a member of the organisation is employed by the employer concerned; and
 - (ii) the contravention relates to, or affects, the member of the organisation, or work carried on by the member for that employer; or
 - (c) a workplace inspector; or
 - (d) any person affected by the industrial action; or
 - (e) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

- (9) In this section:

Court means the Federal Court of Australia or the Federal Magistrates Court.

24 Industrial action must not be taken until after nominal expiry date—preserved individual State agreements

- (1) An employee who is bound by a preserved individual State agreement must not engage in industrial action in relation to the employment to which the agreement relates, during the period beginning on the reform commencement and ending on the agreement's nominal expiry date.

Note 1: This subclause is a civil remedy provision: see subclause (3).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

- (2) An employer that is bound by a preserved individual State agreement must not engage in industrial action in relation to the employment to which the agreement relates, during the period beginning on the reform commencement and ending on the agreement's nominal expiry date.

Note 1: This subclause is a civil remedy provision: see subclause (3).

Note 2: Action that contravenes this subclause is not protected action (see clause 25).

Civil remedy provisions

- (3) Subclauses (1) and (2) are civil remedy provisions.
- (4) The Court may make one or more of the following orders in relation to a person who has contravened subclause (1) or (2):
- (a) an order imposing a pecuniary penalty on the person;
 - (b) injunctions, and any other orders, that the Court considers necessary to stop the contravention or remedy its effects.
- (5) The pecuniary penalty under paragraph (4)(a) cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.
- (6) An application for an order under subclause (4), in relation to a contravention of subclause (1), may be made by:
- (a) the employer concerned; or
 - (b) a workplace inspector; or
 - (c) any other person prescribed by the regulations.
- (7) An application for an order under subclause (4), in relation to a contravention of subclause (2), may be made by:
- (a) the employee concerned; or
 - (b) an organisation of employees that represents that employee if:
 - (i) that employee has requested the organisation to apply on that employee's behalf; and
 - (ii) a member of the organisation is employed by that employee's employer; and

Clause 25

(iii) the organisation is entitled, under its eligibility rules, to represent the industrial interests of that employee in relation to work carried on by that employee for the employer; or

(c) a workplace inspector; or

(d) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

(8) In this section:

Court means the Federal Court of Australia or the Federal Magistrates Court.

25 Industrial action taken before nominal expiry date not protected action

Engaging in or organising industrial action in contravention of clause 23 or 24 is not protected action for the purposes of this Act.

Division 6A—Protected conditions

25A Protected conditions where employment was subject to preserved State agreement

- (1) This clause applies if:
 - (a) a person's employment was subject to a preserved State agreement; and
 - (b) the agreement ceased to operate because a pre-transition workplace agreement came into operation in relation to the employee.
- (2) Protected preserved conditions:
 - (a) are taken to be included in the pre-transition workplace agreement; and
 - (b) have effect in relation to the employment of that person; and
 - (c) have that effect subject to any terms of the pre-transition workplace agreement that expressly exclude or modify all or part of them.
- (3) Despite paragraph (2)(c), those protected preserved conditions have effect in relation to the employment of that person to the extent that those protected preserved conditions are about outworker conditions, despite any terms of the pre-transition workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

- (4) In this clause:

outworker means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

outworker conditions means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

Clause 25A

protected allowable award matters means the following matters:

- (a) rest breaks;
- (b) incentive-based payments and bonuses;
- (c) annual leave loadings;
- (d) observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;
- (e) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);
- (f) monetary allowances for:
 - (i) expenses incurred in the course of employment; or
 - (ii) responsibilities or skills that are not taken into account in rates of pay for employees; or
 - (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- (g) loadings for working overtime or for shift work;
- (h) penalty rates;
- (i) outworker conditions;
- (j) any other matter specified in the regulations.

Note: These matters are the same as certain allowable award matters mentioned in section 513.

protected preserved condition, in relation to the employment of a person, means a term of a State award or a provision of a State or Territory industrial law, as in force immediately before the reform commencement, that would have determined a term or condition of that employment, had the person been employed at that time and that employment not been subject to a State employment agreement, to the extent that the term or provision:

- (a) is:
 - (i) about protected allowable award matters; or
 - (ii) incidental to a protected allowable award matter and may be included in an award as permitted by section 522; or
 - (iii) a machinery provision that is in respect of a protected allowable award matter and may be included in an award as permitted by section 522; and

- (b) is not about:
 - (i) matters that are not allowable award matters because of section 515; or
 - (ii) any other matters specified in the regulations.

25B Application of fairness test where employment was subject to preserved State agreement

- (1) If:
 - (a) a pre-transition workplace agreement binds an employer and an employee or employees; and
 - (b) immediately before the day on which the pre-transition workplace agreement was lodged, the employer and employee or employees were bound by a preserved State agreement in respect of the employee's or employees' employment; and
 - (c) the pre-transition workplace agreement contains protected preserved conditions because of paragraph 25A(2)(a) of this Schedule;

then, Division 5A of Part 8 of the pre-transition Act (which deals with the fairness test) has effect in relation to that pre-transition workplace agreement as if:

- (d) a reference in that Division to protected award conditions were a reference to protected preserved conditions; and
- (e) a reference in that Division to a relevant award or a reference to a relevant preserved State agreement; and
- (f) paragraph 346C(1)(a) were substituted with the following paragraph:
 - “(a) if the protected preserved conditions are taken to be included in the pre-transition workplace agreement because of paragraph 25A(2)(a) of Schedule 8.”; and
- (g) paragraph 346C(1)(b) and subsection 346C(2) were omitted; and
- (h) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b) were omitted; and
- (i) sections 346H, 346K and 346L were omitted; and
- (j) paragraphs 346Y(2)(b) and 346YA(2)(b) were substituted with the following paragraph:

Clause 25B

- “(b) if there is no instrument of a kind referred to in paragraph (a) in relation to the employer and one or more of the employees—protected preserved conditions that were taken to be contained in the original agreement as if those conditions were never excluded or modified by the agreement.”; and
- (k) the definition of *instrument* in subsections 346Y(5) and 346YA(5) included a reference to a preserved State agreement; and
- (l) the definition of *designated provision* in subsection 346ZA(4) included a reference to clauses 21A and 21D of Schedule 8; and
- (m) subparagraph 346ZD(2A)(a)(ii) were substituted with the following subparagraph:
“(ii) if there is no such instrument—protected preserved conditions in relation to the employee.”.
- (2) For the purpose of paragraphs 346Y(2)(b) and 346YA(2)(b) of the pre-transition Act (as substituted by paragraph (1)(j) of this clause), Parts 6 and 14 of the pre-transition Act apply to protected preserved conditions as if the conditions were:
- (a) if the workplace agreement was an AWA within the meaning of Schedule 7A—such an AWA in operation; or
- (b) if the workplace agreement was a pre-transition collective agreement within the meaning of Schedule 7B—such a collective agreement in operation.
- (3) In this clause:
- protected preserved condition* has the same meaning as in subclause 25A(4), subject to subclause (4) of this clause.
- relevant preserved State agreement*, in relation to an employee whose employment is subject to a workplace agreement, means a preserved State agreement that was binding on the employee’s employer immediately before the day on which the workplace agreement was lodged.
- (4) For the purposes of the definition of *protected preserved conditions* in subclause (3), the definition of *protected allowable award matters* in subclause 25A(4) has effect as if it did not

include the matter referred to in paragraph (i) of the latter definition.

Note: Paragraph (i) relates to outworker conditions. These conditions cannot be excluded or modified by a workplace agreement to provide a less favourable outcome for an employee in a particular respect—see subclause 25A(3).

Division 7—Miscellaneous

26 Calling up contents of a preserved State agreement in a workplace agreement

- (1) A pre-transition workplace agreement may incorporate by reference under section 355 of the pre-transition Act terms from a preserved State agreement as if the preserved State agreement were a workplace agreement for the purposes of that Act.
- (2) Despite subsection 355(6) of the pre-transition Act, a term of a pre-transition workplace agreement is not void to the extent that it incorporates by reference such terms.

27 Application of section 451 in relation to a preserved State agreement

Section 451 (which deals with applications for orders for protected action ballots) applies at a particular time in relation to a preserved collective State agreement that is in operation at that time as if the agreement were an existing collective agreement.

28 Application of Part 15 in relation to a preserved State agreement

Part 15 of this Act (which deals with right of entry) applies:

- (a) in relation to a preserved collective State agreement in the same way as it applies in relation to a collective agreement; and
- (b) in relation to a preserved individual State agreement in the same way as it applies in relation to an ITEA.

29 Application of Part 16 in relation to a preserved State agreement

Part 16 of this Act (which deals with freedom of association) applies in relation to a preserved collective State agreement as if it were a collective agreement.

Division 8—Regulations

30 Regulations may apply, modify or adapt Act

- (1) The Governor-General may make regulations for the purposes of:
 - (a) applying provisions of this Act or the Registration and Accountability of Organisations Schedule to preserved State agreements; and
 - (b) modifying or adapting provisions of this Act or that Schedule that apply to those agreements.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under subclause (1) may be expressed to take effect from a date before the regulations are registered under that Act.

Part 3—Notional agreements preserving State awards

Division 1—What is a notional agreement preserving State awards?

Subdivision A—What is a notional agreement preserving State awards?

31 Notional agreements preserving State awards

If, immediately before the reform commencement, the terms and conditions of employment of one or more employees in a single business or a part of a single business:

- (a) were not determined under a State employment agreement; and
- (b) were determined, in whole or in part, under a State award (the *original State award*) or a State or Territory industrial law (the *original State law*);

a *notional agreement preserving State awards* is taken to come into operation on the reform commencement in respect of the business or that part of the business.

Subdivision B—Who is bound by or subject to a notional agreement preserving State awards?

32 Who is bound by a notional agreement preserving State awards?

Current employees

- (1) Any person who:
 - (a) immediately before the reform commencement, was bound by, or a party to, the original State award or original State law; and
 - (b) is one of the following:
 - (i) an employer in the business, or that part of the business;
 - (ii) an employee who is employed in the business, or that part of the business, who was so employed immediately

before the reform commencement, who was not bound by, or a party to, a State employment agreement at that time and whose employment was not subject to such an agreement at that time;

- (iii) an organisation that has at least one member who is such an employee, and that is entitled to represent the industrial interests of at least one such employee;

is bound by the notional agreement.

Future employees

(2) If:

- (a) a person is employed in the business or that part of the business after the reform commencement; and
 - (b) under the terms of the original State award or the original State law, as in force immediately before the reform commencement, the person would have been bound by that award or law; and
 - (c) the person is not bound by a preserved State agreement;
- the person is bound by the notional agreement.

33 Whose employment is subject to a notional agreement preserving State awards?

Current employees

- (1) The employment of a person in the business or that part of the business is subject to the notional agreement, if:
 - (a) that employment was, immediately before the reform commencement, subject to the original State award or the original State law; and
 - (b) that employment was not subject to a State employment agreement at that time.

Future employees

(2) If:

- (a) a person is employed in the business, or that part of the business, after the reform commencement; and

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- (b) under the terms of the original State award or the original State law, that employment would have been subject to that award or that law; and
 - (c) that employment is not subject to a preserved State agreement;
- that employment is subject to the notional agreement.

Subdivision C—Terms of a notional agreement preserving State awards

34 Terms of a notional agreement preserving State awards

- (1) If, immediately before the reform commencement, a term of the original State award would have determined, in whole or in part, a term or condition of employment in the business or that part of the business of a person who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that term, as in force at that time, is taken to be a term of the notional agreement.
- (2) If, immediately before the reform commencement, a provision of a State or Territory industrial law would have determined, in whole or in part, a preserved entitlement of a person employed in the business or that part of the business who was not bound by or a party to a State employment agreement, or whose employment was not subject to such an agreement, then to that extent, that provision, as in force at that time, is taken to be a term of the notional agreement.
- (3) In this clause:

preserved entitlement means:

- (a) an entitlement to:
 - (i) annual leave and annual leave loadings; or
 - (ii) parental leave, including maternity leave and adoption leave; or
 - (iii) personal/carer's leave; or
 - (iv) leave relating to bereavement; or
 - (v) ceremonial leave; or
 - (vi) notice of termination; or
 - (vii) redundancy pay; or

- (viii) loadings for working overtime or shift work; or
 - (ix) penalty rates, including the rate of payment for work on a public holiday; or
 - (x) rest breaks; or
- (b) another prescribed entitlement.

35 Powers of State industrial authorities

- (1) If a notional agreement preserving State awards confers a function or power on a State industrial authority, that function must not be performed and that power must not be exercised by the State industrial authority on or after the reform commencement.
- (2) However, the employer and the persons bound by the notional agreement may, by agreement, confer such a function or power on the Commission, provided it does not relate to the resolution of a dispute about the application of the agreement.

36 Dispute resolution processes

- (1) A notional agreement preserving State awards is taken to include a term requiring disputes about the application of the agreement to be resolved in accordance with the model dispute resolution process.
- (2) Any term of the notional agreement that would otherwise deal with the resolution of those disputes is void to that extent.

37 Prohibited content

A term of a notional agreement preserving State awards is void to the extent that it contains prohibited content of a prescribed kind.

Division 2—Effect and operation of a notional agreement preserving State awards

38 Effect of a notional agreement preserving State awards

- (1) Except as provided in or under this Part, or otherwise in or under this Act, a notional agreement preserving State awards has effect according to its terms.
- (2) This Part has effect despite the terms of the original State award, the original State law or any other law of a State or Territory.
- (3) None of the terms and conditions of employment included in the notional agreement are enforceable under the law of a State or Territory.

38A Operation of a notional agreement preserving State awards

- (1) A notional agreement preserving State awards ceases to be in operation at the end of:
 - (a) unless paragraph (b) applies, 31 December 2009; or
 - (b) if a later date is prescribed by the regulations—that later date.
- (2) A notional agreement preserving State awards ceases to be in operation in relation to an employee if a workplace agreement or a pre-transition workplace agreement comes into operation in relation to the employee.

Note: The reference in subclause (2) to a workplace agreement includes a reference to a workplace determination (see section 506).

- (3) A notional agreement preserving State awards ceases to be in operation in relation to an employee if the employee becomes bound by an award.
- (4) If the notional agreement has ceased operating in relation to an employee because of subclause (2) or (3), the agreement can never operate again in relation to that employee.
- (5) Despite subclause (4), a notional agreement that has ceased operating because of subclause (2) can operate again if:

- (a) the notional agreement ceased to operate because it was replaced by a pre-transition workplace agreement (the *replacement workplace agreement*); and
- (b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z of the pre-transition Act.

- (6) Despite subclause (4), a notional agreement that has ceased operating because of subclause (2) can operate again if:
 - (a) the notional agreement ceased to operate because it was replaced by a workplace agreement or a pre-transition workplace agreement; and
 - (b) the workplace agreement or pre-transition workplace agreement ceased to operate after the commencement of this subclause.

Division 3—Varying a notional agreement preserving State awards

39 Varying a notional agreement preserving State awards

A notional agreement preserving State awards may only be varied on or after the reform commencement in accordance with this Division.

40 Variation to remove ambiguity or uncertainty

The Commission may, on application by any person bound by a notional agreement preserving State awards or whose employment is subject to such an agreement, by order, vary the notional agreement for the purpose of removing ambiguity or uncertainty.

41 Variation to remove discrimination

- (1) If a notional agreement preserving State awards is referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*, the Commission must convene a hearing to review the agreement.
- (2) In a review under subclause (1):
 - (a) the Commission must take such steps as it thinks appropriate to ensure that each person bound by the agreement is made aware of the hearing; and
 - (b) the Sex Discrimination Commissioner is entitled to intervene in the proceeding.
- (3) If the Commission considers that a notional agreement preserving State awards reviewed under subclause (1) is discriminatory, the Commission must take the necessary action to remove the discrimination by making an order varying the agreement.
- (4) A notional agreement preserving State awards is **discriminatory** if:
 - (a) the agreement has been referred to the Commission under section 46PW of the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (b) the agreement requires a person to do any act that would be unlawful under Part II of the *Sex Discrimination Act 1984*,

except for the fact that the act would be done in direct compliance with the agreement.

For the purposes of this definition, the fact that an act is done in direct compliance with the notional agreement does not of itself mean that the act is reasonable.

42 Variation to remove prohibited content

Initiating consideration of removal of prohibited content

- (1) The Workplace Authority Director may exercise his or her power under subclause (9) to vary a notional agreement preserving State awards to remove prohibited content of a prescribed kind:
 - (a) on his or her own initiative; or
 - (b) on application by any person.
- (2) This subclause and subclauses (3) to (6) and (9) to (12) are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Workplace Authority Director's decision whether to make a variation under subclause (9).

Workplace Authority Director must give notice that considering variation

- (3) If the Workplace Authority Director is considering making a variation to a notional agreement preserving State awards under subclause (9), the Workplace Authority Director must give the persons mentioned in subclause (4) a written notice meeting the requirements in subclause (5).
- (4) The persons are:
 - (a) an employer that is bound by the notional agreement; and
 - (b) if an organisation is bound by the agreement—the organisation.

Matters to be contained in notice

- (5) The requirements mentioned in subclause (3) are that the notice must:
 - (a) be dated; and

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- (b) state that the Workplace Authority Director is considering making the variation; and
 - (c) state the reasons why the Workplace Authority Director is considering making the variation; and
 - (d) set out the terms of the variation; and
 - (e) invite each person mentioned in subclause (6) to make a written submission to the Workplace Authority Director about whether the Workplace Authority Director should make the variation; and
 - (f) state that any submission must be made within the period (the ***objection period***) of 28 days after the date of the notice.
- (6) The persons are:
- (a) an employer that is bound by the notional agreement; and
 - (b) each person whose employment is subject to the notional agreement as at the date of the notice; and
 - (c) if an organisation is a party to the notional agreement—the organisation.

Employer must ensure employees have ready access to notice

- (7) An employer that has received a notice under subclause (3) in relation to the notional agreement must take reasonable steps to ensure that all persons whose employment is subject to the notional agreement at a time during the objection period are given a copy of the notice within the period:
- (a) starting on the day the employer received the notice; and
 - (b) ending at the end of the objection period.
- (8) Subclause (7) is a civil remedy provision and may be enforced under Division 11 of Part 8 as if the notional agreement were a workplace agreement.

Workplace Authority Director must remove prohibited content from agreement

- (9) If the Workplace Authority Director is satisfied that a term of the notional agreement contains prohibited content of the prescribed kind, the Workplace Authority Director must vary the agreement so as to remove that content.

- (10) In making a decision under subclause (9), the Workplace Authority Director must consider all written submissions (if any) received within the objection period from a person mentioned in subclause (6).
- (11) The Workplace Authority Director must not make the variation before the end of the objection period.
- (12) If the Workplace Authority Director decides to make the variation, he or she must:
 - (a) give the persons mentioned in subclause (4) written notice of the decision, including the terms of the variation; and
 - (b) publish a notice in the *Gazette* stating that the variation has been made and setting out particulars of the variation.

Employer must give employees notice of removal of prohibited content

- (13) An employer that has received a notice under subclause (12) must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the notice are given a copy of the notice within 21 days.
- (14) Subclause (13) is a civil remedy provision and may be enforced under Division 11 of Part 8 as if the notional agreement were a collective agreement.

Division 4—Enforcing the notional agreement

43 Enforcing the notional agreement

- (1) A notional agreement preserving State awards may be enforced as if it were a collective agreement.
- (2) A workplace inspector has the same functions and powers in relation to a notional agreement preserving State awards as he or she has in relation to a collective agreement.

44 Matters provided for by the Australian Fair Pay and Conditions Standard

Subject to Division 5 of this Schedule, if the Australian Fair Pay and Conditions Standard makes provision for a matter in relation to an employee, then a term (other than a preserved notional term) of the notional agreement that also deals with that matter in relation to the employee is unenforceable.

Note 1: See section 208 (deeming there to be a preserved APCS if rate provisions are contained in a pre-reform wage instrument).

Note 2: See also section 207 (deeming APCS rates to at least equal FMW rates after the first exercise of powers under Division 2 of Part 7 by the AFPC).

Division 5—Preserved notional terms and preserved notional entitlements

45 Preserved notional terms of notional agreement

- (1) A *preserved notional term* is a term, or more than one term, of a notional agreement preserving State awards that is about any or all of the following matters:
 - (a) annual leave;
 - (b) personal/carer's leave;
 - (c) parental leave, including maternity and adoption leave;
 - (d) long service leave;
 - (e) notice of termination;
 - (f) jury service;
 - (g) superannuation.
- (2) If a term of a notional agreement preserving State awards is about both matters referred to in paragraphs (1)(a) to (g) and other matters, it is taken to be a preserved notional term only to the extent that it is about the matters referred to in those paragraphs.
- (3A) If more than one term of a notional agreement preserving State awards is about a matter referred to in subclause (2), then those terms, taken together, constitute the preserved notional term of that notional agreement about that matter.
- (4) In this clause:

personal/carer's leave includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.
- (5) The regulations may provide that for the purposes of subclause (1):
 - (a) the matter referred to in paragraph (1)(c) does not include one or both of the following:
 - (i) special maternity leave (within the meaning of section 265);
 - (ii) the entitlement under section 268 to transfer to a safe job or to take paid leave; and
 - (b) *personal/carer's leave* does not include one or both of the following:

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- (i) compassionate leave (within the meaning of section 257);
- (ii) unpaid carer's leave (within the meaning of section 244).

Note: The effect of excluding a form of leave or an entitlement in relation to a matter is that the entitlement in relation to that form of leave or matter under the Australian Fair Pay and Conditions Standard will automatically apply.

- (6) Regulations under subclause (5) may be expressed to apply generally or in respect of employees engaged in specified types of employment, such as full-time employment, part-time employment, casual employment, regular part-time employment or shift work.

46 When preserved notional entitlements have effect

- (1) This clause applies to an employee if:
 - (a) the employee is bound by, or the employee's employment is subject to, a notional agreement preserving State awards that includes a preserved notional term about a matter; and
 - (b) the employee has an entitlement (the *preserved notional entitlement*) in relation to that matter under the preserved notional term.

- (2) If:
 - (a) the preserved notional term is about a matter referred to in paragraph 45(1)(a), (b) or (c); and
 - (b) the employee's preserved notional entitlement in relation to the matter is more generous than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard;

the employee's entitlement under the Australian Fair Pay and Conditions Standard is excluded, and the employee's preserved notional entitlement has effect in accordance with the preserved notional term. Otherwise, the employee's entitlement under the Australian Fair Pay and Conditions Standard has effect.

Note: See clause 47 for the meaning of *more generous*.

- (3) If:
 - (a) the preserved notional term is about a matter referred to in paragraph 45(1)(a), (b) or (c) and the employee has no

entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard; or

- (b) the preserved notional term is about a matter referred to in paragraph 45(1)(d), (e), (f) or (g);

the employee's preserved notional entitlement has effect in accordance with the preserved notional term.

47 Meaning of *more generous*

- (1) Whether an employee's entitlement under a preserved notional term in relation to a matter is *more generous* than the employee's entitlement in relation to the corresponding matter under the Australian Fair Pay and Conditions Standard:
- (a) is as specified in, or as worked out in accordance with a method specified in, regulations made under this paragraph; or
- (b) to the extent that regulations made under paragraph (a) do not so specify—is to be ascertained in accordance with the ordinary meaning of the term *more generous*.
- (2) If a matter to which an entitlement under a preserved notional term relates does not correspond directly to a matter to which the Australian Fair Pay and Conditions Standard relates, regulations made under paragraph (1)(a) may nevertheless specify that the matters correspond for the purposes of this Division.

48 Modifications that may be prescribed—personal/carer's leave

- (1) The regulations may provide that a preserved notional term about personal/carer's leave is to be treated as a separate preserved notional term about separate matters, to the extent that the preserved notional term is about any of the following:
- (a) war service sick leave;
- (b) infectious diseases sick leave;
- (c) any other like form of sick leave.
- (2) If the regulations so provide, clauses 45, 46, 47 and 50 have effect in relation to each separate matter.

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49 Modifications that may be prescribed—parental leave

- (1) The regulations may provide that a preserved notional term about parental leave is to be treated as being about separate matters to the extent that it is about paid and unpaid parental leave.
- (2) If the regulations provide that a preserved notional term about parental leave is to be treated as being about separate matters to the extent that it is about paid and unpaid parental leave:
 - (a) clauses 45, 46 and 50 have effect in relation to each separate matter; and
 - (b) in accordance with section 266, the entitlement that an employee would have to unpaid parental leave under the Australian Fair Pay and Conditions Standard is reduced by any amount of paid parental leave to which the employee is entitled under the preserved notional term.

Note 1: There is no entitlement in relation to paid parental leave under the Australian Fair Pay and Conditions Standard, so there is no corresponding matter for the purposes of subclause 46(3).

Note 2: Paragraph (b) does not have the effect of reducing entitlements. It simply ensures that the operation of section 266 is not affected by treating paid and unpaid parental leave separately under the regulations.

50 Preserved notional terms taken to be included in awards

- (1) This clause applies to an award if:
 - (a) the award is varied under section 558 or 559; and
 - (b) the award is binding on:
 - (i) an employer that was bound by a notional agreement preserving State awards immediately before the making or variation of the award; or
 - (ii) an employee who was bound by, or whose employment was subject to, a notional agreement preserving State awards immediately before the making or variation of the award; and
 - (c) the notional agreement contained a preserved notional term.
- (2) The preserved notional term is taken to be included in the award.

- (3) The preserved notional term is taken to have the effect that:
- (a) employees belonging to the class of employees that had entitlements under the preserved notional term of the notional agreement have corresponding entitlements under the award; and
 - (b) employees belonging to any class of employees that did not have entitlements under the preserved notional term of the notional agreement do not gain entitlements under the award.
- (4) The preserved notional term is taken to have the effect that:
- (a) only an employer bound by the preserved notional term of the notional agreement is bound by the corresponding preserved notional term of the award; and
 - (b) other employers are not so bound.
- Note: The operation of this subclause is affected by Part 11, which deals with transmission of business.
- (5) For the purposes of subclause (3), whether an employee belongs to a class of employees that had entitlements under a preserved notional term of a notional agreement preserving State awards is to be determined without reference to whether the employee was employed before or after the making of the award.
- (6) The Commission must not vary a preserved notional term that has been included in an award under this clause.

51 Application of hours of work provision of Australian Fair Pay and Conditions Standard to notional agreements preserving State awards

Division 3 of Part 7 (hours of work) does not apply to the employment of an employee while the employee is bound by, or that employment is subject to, a notional agreement preserving State awards that is in operation.

Division 6—Protected conditions

52 Protected conditions in notional agreements preserving State awards

- (1) This clause applies if:
 - (a) a person's employment is subject to a pre-transition workplace agreement; and
 - (b) protected notional conditions would have effect (but for the agreement) in relation to the employment of the person.
- (2) Those protected notional conditions:
 - (a) are taken to be included in the pre-transition workplace agreement; and
 - (b) have effect in relation to the employment of that person; and
 - (c) have that effect subject to any terms of the pre-transition workplace agreement that expressly exclude or modify all or part of them.
- (2A) Despite paragraph (2)(c), those protected notional conditions have effect in relation to the employment of that person to the extent that those protected notional conditions are about outworker conditions, despite any terms of the pre-transition workplace agreement that provide, in a particular respect, a less favourable outcome for that person.
- (3) In this clause:

outworker means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

outworker conditions means conditions (other than pay) for outworkers, but only to the extent necessary to ensure that their overall conditions of employment are fair and reasonable in comparison with the conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.

protected allowable award matters means the following matters:

- (a) rest breaks;
- (b) incentive-based payments and bonuses;
- (c) annual leave loadings;
- (d) observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements of employees to payment in respect of those days;
- (da) days to be substituted for, or a procedure for substituting, days referred to in paragraph (d);
- (e) monetary allowances for:
 - (i) expenses incurred in the course of employment; or
 - (ii) responsibilities or skills that are not taken into account in rates of pay for employees; or
 - (iii) disabilities associated with the performance of particular tasks or work in particular conditions or locations;
- (f) loadings for working overtime or for shift work;
- (g) penalty rates;
- (h) outworker conditions;
- (i) any other matter specified in the regulations.

Note: These matters are the same as certain allowable award matters mentioned in section 513.

protected notional conditions means the terms of a notional agreement preserving State awards, to the extent that those terms:

- (a) are:
 - (i) about protected allowable award matters; or
 - (ii) incidental to protected allowable award matters and may be included in an award as permitted by section 522; or
 - (iii) machinery provisions that are in respect of protected allowable award matters and may be included in an award as permitted by section 522; and
- (b) are not about:
 - (i) matters that are not allowable award matters because of section 515; or
 - (ii) any other matters specified in the regulations.

Clause 52AAA

52AAA Application of fairness test where employment was subject to notional agreement preserving State awards

(1) If:

- (a) a pre-transition workplace agreement binds an employer and an employee or employees; and
- (b) immediately before the day on which the pre-transition workplace agreement was lodged, the employer and employee or employees were bound by a notional agreement preserving State awards in respect of the employee's or employees' employment; and
- (c) the pre-transition workplace agreement contains protected notional conditions because of paragraph 52(2)(a) of this Schedule;

then, Division 5A of Part 8 of the pre-transition Act (which deals with the fairness test) has effect in relation to that pre-transition workplace agreement as if:

- (d) a reference in that Division to protected award conditions were a reference to protected notional conditions; and
- (e) a reference in that Division to a relevant award or a reference award were a reference to a relevant notional agreement preserving State awards; and
- (f) paragraph 346C(1)(b) and subsection 346C(2) were omitted; and
- (g) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b) were omitted; and
- (h) sections 346H, 346K and 346L were omitted; and
- (i) paragraphs 346Y(2)(b) and 346YA(2)(b) were omitted; and
- (j) the definition of *instrument* in subsections 346Y(5) and 346YA(5) included a reference to a notional agreement preserving State awards; and
- (k) subparagraph 346ZD(2A)(a)(ii) were omitted.

(2) In this clause:

protected notional conditions has the same meaning as in subclause 52(3), subject to subclause (3) of this clause.

relevant notional agreement preserving State awards, in relation to an employee whose employment is subject to a workplace agreement, means a notional agreement preserving State awards

that was binding on the employee's employer immediately before the day on which the workplace agreement was lodged.

- (3) For the purposes of the definition of *protected notional conditions* in subclause (2), the definition of *protected allowable award matters* in subclause 52(3) has effect as if it did not include the matter referred to in paragraph (h) of the definition.

Note: Paragraph (h) relates to outworker conditions. These conditions cannot be excluded or modified by a workplace agreement to provide a less favourable outcome for an employee in a particular respect—see subclause 52(2A).

Division 6A—Industrial action during the life of an enterprise award

52AA Action taken during life of enterprise award not protected

- (1) Engaging in or organising industrial action is not protected action if:
- (a) either:
 - (i) the person engaging in the industrial action is bound by a notional agreement preserving State awards that includes terms and conditions from an enterprise award; or
 - (ii) the employment of the person engaging in the industrial action is subject to such a notional agreement; and
 - (b) a term or condition of the enterprise award included in the notional agreement relates to industrial action; and
 - (c) engaging in the industrial action would breach that term or condition; and
 - (d) the nominal expiry date of the enterprise award has not yet passed.

- (2) In this clause:

enterprise award means a State award:

- (a) that regulates a term or condition of employment of a person or persons by an employer in a single business or a part of a single business specified in the award; and
- (b) that is specified to have effect for a period, either by reference to an actual or nominal expiry date or by reference to an actual or nominal period; and
- (c) a term of which provides that one or more of the parties will not make further claims before the nominal expiry date for the award.

nominal expiry date for an enterprise award, means the last day of the actual or nominal period during which the enterprise award is specified to have effect.

Division 7—Miscellaneous

52A Calling up a notional agreement preserving State awards in a workplace agreement

- (1) A pre-transition workplace agreement may incorporate by reference under section 355 of the pre-transition Act terms from a notional agreement preserving State awards as if the notional agreement were a workplace agreement for the purposes of that Act.
- (2) Despite subsection 355(6) of the pre-transition Act, a term of a pre-transition workplace agreement is not void to the extent that it incorporates by reference such terms.

53 Application of Part 15 in relation to a notional agreement preserving State awards

Part 15 of this Act (which deals with right of entry) applies in relation to a notional agreement preserving State awards in the same way as it applies in relation to a collective agreement.

54 Application of Part 16 in relation to a notional agreement preserving State awards

Part 16 of this Act (which deals with freedom of association) applies in relation to a notional agreement preserving State awards as if it were a collective agreement.

Division 8—Regulations

55 Regulations may apply, modify or adapt Act

- (1) The Governor-General may make regulations for the purposes of:
 - (a) applying provisions of this Act or the Registration and Accountability of Organisations Schedule to notional agreements preserving State awards; and
 - (b) modifying or adapting provisions of this Act or that Schedule that apply to those agreements.
- (2) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations made under subclause (1) may be expressed to take effect from a date before the regulations are registered under that Act.

Schedule 9—Transmission of business rules (transitional instruments)

Note: See section 8.

Part 1—Introductory

1 Object

The object of this Schedule is to provide for the transfer of employer obligations under certain transitional instruments when the whole, or a part, of a person's business is transmitted to another person.

2 Simplified outline

- (1) Part 2 of this Schedule describes the general transmission of business situation this Schedule is designed to deal with. It identifies the *old employer*, the *new employer*, the *business being transferred*, the *time of transmission* and the *transferring employees*.
- (2) Parts 2A to 5 of this Schedule deal with the transmission of particular transitional instruments as follows:
 - (aa) Part 2A deals with the transmission of AWAs;
 - (a) Part 3 deals with the transmission of pre-reform AWAs;
 - (b) Part 4 deals with the transmission of pre-reform certified agreements;
 - (c) Part 5 deals with the transmission of State transitional instruments.
- (3) Part 6 of this Schedule deals with notification requirements, the lodgment of notices with the Workplace Authority Director and the enforcement of employer obligations by pecuniary penalties.
- (4) Part 7 of this Schedule deals with special rules for Victoria.

Clause 3

3 Definitions

In this Schedule:

AWA has the same meaning as in Schedule 7A.

business being transferred has the meaning given by subclause 4(2).

Court means the Federal Court of Australia or the Federal Magistrates Court.

Division 2 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 2 of Part VIB of this Act before the reform commencement.

Division 3 pre-reform certified agreement means a pre-reform certified agreement that was made under Division 3 of Part VIB of this Act before the reform commencement.

exceptional matters order has the same meaning as in Schedule 7.

new employer has the meaning given by subclause 4(1).

notional agreement preserving State awards has the same meaning as in Schedule 8.

old employer has the meaning given by subclause 4(1).

operational reasons has the meaning given by subsection 643(9).

pre-reform Act has the same meaning as in Schedule 7.

pre-reform AWA has the same meaning as in Schedule 7.

pre-reform certified agreement has the same meaning as in Schedule 7.

preserved collective State agreement has the same meaning as in Schedule 8.

preserved individual State agreement has the same meaning as in Schedule 8.

preserved State agreement has the same meaning as in Schedule 8.

pre-transition Act means this Act as in force immediately before the commencement of Schedule 7A.

section 170MX award has the same meaning as in Schedule 7.

State transitional instrument means:

- (a) a notional agreement preserving State awards; or
- (b) a preserved State agreement.

time of transmission has the meaning given by subclause 4(3).

transferring employee has the meaning given by clauses 5 and 6.

transitional instrument means:

- (a) a pre-reform AWA; or
- (b) a pre-reform certified agreement; or
- (ba) an AWA; or
- (c) a notional agreement preserving State awards; or
- (d) a preserved State agreement.

transmission period has the meaning given by subclause 4(4).

workplace agreement includes an AWA.

Part 2—Application of Schedule

4 Application of Schedule

- (1) This Schedule applies if a person (the *new employer*) becomes the successor, transmittee or assignee of the whole, or a part, of a business of another person (the *old employer*).
- (2) The business, or the part of the business, to which the new employer is successor, transmittee or assignee is the *business being transferred* for the purposes of this Schedule.
- (3) The time at which the new employer becomes the successor, transmittee or assignee of the business being transferred is the *time of transmission* for the purposes of this Schedule.
- (4) The period of 12 months after the time of transmission is the *transmission period* for the purposes of this Schedule.

5 Transferring employees

- (1) A person is a *transferring employee* for the purposes of this Schedule if:
 - (a) the person is employed by the old employer immediately before the time of transmission; and
 - (b) the person:
 - (i) ceases being employed by the old employer; and
 - (ii) becomes employed by the new employer in the business being transferred;within 2 months after the time of transmission.

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 6(1)).
- (2) A person is also a *transferring employee* for the purposes of this Schedule if:
 - (a) the person is employed by the old employer at any time within the period of 1 month before the time of transmission; and

- (b) the person's employment with the old employer is terminated by the old employer before the time of transmission for genuine operational reasons or for reasons that include genuine operational reasons; and
- (c) the person becomes employed by the new employer, in the business being transferred, within 2 months after the time of transmission.

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 6(1)).

- (3) In applying clause 6 and Parts 3 to 5 of this Schedule in relation to a person who is a transferring employee under subclause (2) of this clause, a reference in those provisions to a particular state of affairs existing immediately before the time of transmission is to be read as a reference to that state of affairs existing immediately before the person last ceased to be an employee of the old employer.

6 Transferring employees in relation to particular instrument

- (1) A transferring employee is a *transferring employee* in relation to a particular transitional instrument if:
 - (a) the instrument applied to the transferring employee immediately before the time of transmission; and
 - (b) when the transferring employee becomes employed by the new employer, the transferring employee's employment with the new employer is such that the instrument is capable of applying to that employment.

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 6(1)).

- (2) The transferring employee ceases to be a *transferring employee* in relation to the transitional instrument if:
 - (a) the transferring employee ceases to be employed by the new employer after the time of transmission; or
 - (b) the transferring employee's employment with the new employer ceases to be such that the instrument is capable of applying to that employment; or
 - (c) the transmission period ends.

Clause 6A

Note: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to a Division 3 pre-reform certified agreement if the old employer is not an employer (within the meaning of subsection 6(1)).

- (3) This clause applies to a notional agreement preserving State awards as if it were a transitional instrument.

6A Application of Schedule to certain Division 3 pre-reform certified agreements

- (1) This clause applies if the old employer in relation to a Division 3 pre-reform certified agreement is not an employer (within the meaning of subsection 6(1)).
- (2) In applying this Schedule to the Division 3 pre-reform certified agreement, references in this Schedule to:
- (a) an employee; or
 - (b) employment;
- have their ordinary meanings.

Part 2A—Transmission of AWAs

6B Transmission of AWA

New employer bound by AWA

- (1) If:
- (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) an employee;were bound by an AWA; and
 - (b) the employee is a transferring employee in relation to the AWA;
- the new employer is bound by the AWA by force of this section.

Note: The new employer must notify the transferring employee and lodge a copy of the notice with the Workplace Authority Director (see clauses 28 and 29).

Period for which new employer remains bound

- (2) The new employer remains bound by the AWA, by force of this section, until whichever of the following first occurs:
- (a) the AWA is terminated (see Division 9 of Part 8 of the pre-transition Act as modified by clause 6C of this Schedule);
 - (b) the AWA ceases to be in operation because it is replaced by an ITEA between the new employer and the transferring employee (see clause 6 of Schedule 7A);
 - (c) the transferring employee ceases to be a transferring employee in relation to the AWA;
 - (d) the transmission period ends.

Old employer's rights and obligations that arose before time of transmission not affected

- (3) This section does not affect the rights and obligations of the old employer that arose before the time of transmission.

Clause 6C

6C Termination of transmitted AWA

The AWA cannot be terminated under subsection 392(2) or 393(2) of the pre-transition Act during the transmission period (even if the AWA has passed its nominal expiry date).

6D Transferring employee considered an existing employee for the purposes of eligibility to make an ITEA

For the purposes of applying section 326 to a transferring employee in relation to a new employer:

- (a) treat the employee as being in an employment relationship with the employer; and
- (b) assume that subparagraphs 326(2)(b)(i) and (ia) do not apply to the employee.

Part 3—Transmission of pre-reform AWAs

7 Transmission of pre-reform AWA

New employer bound by pre-reform AWA

- (1) If:
- (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) an employee of the old employer;were bound by a pre-reform AWA; and
 - (b) the employee is a transferring employee in relation to the pre-reform AWA;

the new employer is bound by the pre-reform AWA by force of this clause.

Note 1: The new employer must notify the transferring employee and lodge a copy of the notice with the Workplace Authority Director (see clauses 28 and 29).

Note 2: See also clause 8 for the interaction between the pre-reform AWA and other industrial instruments.

Period for which new employer remains bound

- (2) The new employer remains bound by the pre-reform AWA, by force of this clause, until whichever of the following first occurs:
- (a) the pre-reform AWA ceases to be in operation because it is terminated under subsection 170VM(1) of the pre-reform Act (as applied by subclause 18(2) of Schedule 7);
 - (b) the pre-reform AWA ceases to be in operation in relation to the transferring employee's employment with the new employer under subclause 18(1) of Schedule 7 (an AWA or an ITEA between the new employer and the transferring employee coming into operation);
 - (c) the transferring employee ceases to be a transferring employee in relation to the pre-reform AWA;
 - (d) the transmission period ends.

Clause 9

Old employer's rights and obligations that arose before time of transmission not affected

- (3) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

9 Termination of transmitted pre-reform AWA

Transmitted instrument

- (1) This clause applies if subclause 7(1) applies to a pre-reform AWA (the ***transmitted pre-reform AWA***).

Modified operation of subsections 170VM(3) to (7) of the pre-reform Act

- (2) The transmitted pre-reform AWA cannot be terminated under subsection 170VM(3) or (6) of the pre-reform Act during the transmission period (even if the transmitted pre-reform AWA has passed its nominal expiry date).

Part 4—Transmission of pre-reform certified agreements

Division 1—General

10 Transmission of pre-reform certified agreement

New employer bound by Division 2 pre-reform certified agreement

- (1) If:
- (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;were bound by a Division 2 pre-reform certified agreement; and
 - (b) there is at least one transferring employee in relation to the Division 2 pre-reform certified agreement;
- the new employer is bound by the Division 2 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Workplace Authority Director (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 2 pre-reform certified agreement and other industrial instruments.

New employer bound by Division 3 pre-reform certified agreement

- (2) If:
- (a) the old employer is an employer (within the meaning of subsection 6(1)); and
 - (b) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;were bound by a Division 3 pre-reform certified agreement; and
 - (c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement;

Clause 10

the new employer is bound by the Division 3 pre-reform certified agreement by force of this subclause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notices with the Workplace Authority Director (see clauses 28 and 29).

Note 2: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

(3) If:

- (a) the old employer is not an employer (within the meaning of subsection 6(1)); and
- (b) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer;were bound by a Division 3 pre-reform certified agreement; and
- (c) there is at least one transferring employee in relation to the Division 3 pre-reform certified agreement; and
- (d) one or more of the following are satisfied:
 - (i) the new employer is an employer (within the meaning of subsection 6(1)) at the time of transmission;
 - (ii) the new employer is bound by another Division 3 pre-reform certified agreement at the time of transmission;

the new employer is bound by the Division 3 pre-reform certified agreement referred to in paragraph (b) by force of this subclause.

Note 1: Clause 6A of this Schedule provides that references to *employees* and *employment* have their ordinary meanings in relation to the Division 3 pre-reform certified agreement. This is because the old employer is not an employer (within the meaning of subsection 6(1)).

Note 2: The new employer must notify transferring employees and lodge a copy of the notices with the Workplace Authority Director (see clauses 28 and 29).

Note 3: See also clause 11 for the interaction between the Division 3 pre-reform certified agreement and other industrial instruments.

Period for which new employer remains bound

- (4) The new employer remains bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), until whichever of the following first occurs:

- (a) the pre-reform certified agreement ceases to be in operation because it is terminated under section 170MG of the pre-reform Act (as applied by subclause 2(1) of Schedule 7);
- (b) there cease to be any transferring employees in relation to the pre-reform certified agreement;
- (c) the new employer ceases to be bound by the pre-reform certified agreement in relation to all the transferring employees in relation to the agreement;
- (d) the transmission period ends;
- (e) if:
 - (i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (ii) the new employer is an excluded employer (within the meaning of Schedule 6) when the period of 5 years beginning on the reform commencement ends;the period referred to in subparagraph (ii) ends.

Note: Paragraph (c)—see subclause (6).

- (5) Paragraph (4)(d) does not apply if:
 - (a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (b) the old employer is not an employer within the meaning of subsection 6(1) immediately before the time of transmission; and
 - (c) the new employer is an employer within the meaning of subsection 6(1) at the time of transmission; and
 - (d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 6(1).

Period for which new employer remains bound in relation to particular transferring employee

- (6) The new employer remains bound by the pre-reform certified agreement in relation to a particular transferring employee, by force of subclause (1), (2) or (3), until whichever of the following first occurs:
 - (b) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee's employment with the new employer because a collective agreement comes into

Clause 11

operation in relation to the transferring employee in relation to that employment (see subclause 3(1) of Schedule 7);

- (c) the employer ceases to be bound by the pre-reform certified agreement under subclause (4).

New employer bound only in relation to employment of transferring employees in business being transferred

- (7) The new employer is bound by the pre-reform certified agreement, by force of subclause (1), (2) or (3), only in relation to the employment, in the business being transferred, of employees who are transferring employees in relation to the pre-reform certified agreement.

New employer bound subject to Commission order

- (8) Subclauses (1), (2), (3), (4) and (6) have effect subject to any order of the Commission under clause 14.

Old employer's rights and obligations that arose before time of transmission not affected

- (9) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

11 Interaction rules

Transmitted certified agreement

- (1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the ***transmitted certified agreement***).

Existing collective agreements

- (2) If:
- (a) the new employer is bound by a collective agreement (the ***existing collective agreement***); and
 - (b) the existing collective agreement would, but for this subclause, apply, according to its terms, to a transferring employee in relation to the transmitted certified agreement when the transferring employee becomes employed by the new employer;

the existing collective agreement does not apply to the transferring employee.

- (3) Subclause (2) ceases to apply when whichever of the following first occurs:
- (a) the transmission period ends;
 - (b) if:
 - (i) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (ii) the new employer is an excluded employer (within the meaning of Schedule 6) when the period of 5 years beginning on the reform commencement ends;the period referred to in subparagraph (ii) ends.
- (4) Subclause (3) does not apply if:
- (a) the pre-reform certified agreement is a Division 3 pre-reform certified agreement; and
 - (b) the old employer is not an employer within the meaning of subsection 6(1) immediately before the time of transmission; and
 - (c) the new employer is an employer within the meaning of subsection 6(1) at the time of transmission; and
 - (d) the transmission occurs as part of the process of the employer in relation to the business being transferred becoming an employer within the meaning of subsection 6(1).

12 Termination of transmitted pre-reform certified agreement

Transmitted agreement

- (1) This clause applies if subclause 10(1), (2) or (3) applies to a pre-reform certified agreement (the ***transmitted certified agreement***).

AWA

- (2) Despite subclause 3(2) of Schedule 7, the transmitted certified agreement ceases to be in operation in relation to a transferring employee's employment with the new employer if an AWA between the new employer and the transferring employee comes into operation in relation to that employment after the time of transmission.

Schedule 9 Transmission of business rules (transitional instruments)

Part 4 Transmission of pre-reform certified agreements

Division 1 General

Clause 12

Note: Subclause 3(2) of Schedule 7 provides that a pre-reform certified agreement is normally only suspended while an AWA operates. The effect of subclause (2) of this clause is to terminate the operation of the transmitted certified agreement in relation to the transferring employee's employment when the AWA is made.

Modified operation of sections 170MH and 170MHA of the pre-reform Act

- (3) The transmitted certified agreement cannot be terminated under section 170MH or 170MHA of the pre-reform Act during the transmission period (even if the transmitted certified agreement has passed its nominal expiry date).

Division 2—Commission's powers

13 Application and terminology

- (1) This Division applies if:
 - (a) a person is bound by a pre-reform certified agreement; and
 - (b) another person:
 - (i) becomes at a later time; or
 - (ii) is likely to become at a later time;the successor, transmittee or assignee of the whole, or a part, of the business of the person referred to in paragraph (a).
- (2) For the purposes of this Division:
 - (a) the *outgoing employer* is the person referred to in paragraph (1)(a); and
 - (b) the *incoming employer* is the person first referred to in paragraph (1)(b); and
 - (c) the *business concerned* is the business, or the part of the business, to which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee; and
 - (d) the *transfer time* is the time at which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee of the business concerned.

14 Commission may make order

- (1) The Commission may make an order that the incoming employer:
 - (a) is not, or will not be, bound by the pre-reform certified agreement; or
 - (b) is, or will be, bound by the pre-reform certified agreement, but only to the extent specified in the order.The order must specify the day from which the order takes effect. That day must not be before the day on which the order is made or before the transfer time.
- (2) Without limiting paragraph (1)(b), the Commission may make an order under that paragraph that the incoming employer is, or will be, bound by the pre-reform certified agreement but only for the period specified in the order.

Clause 15

- (3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the transmission period.

15 When application for order can be made

An application for an order under subclause 14(1) may be made before, at or after the transfer time.

16 Who may apply for order

- (1) Before the transfer time, an application for an order under subclause 14(1) may be made only by the outgoing employer.
- (2) At or after the transfer time, an application for an order under subclause 14(1) may be made only by:
- (a) the incoming employer; or
 - (b) a transferring employee in relation to the pre-reform certified agreement; or
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; or
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
 - (ii) has been requested by the transferring employee to apply for the order on the transferring employee's behalf.

17 Applicant to give notice of application

The applicant for an order under subclause 14(1) must take reasonable steps to give written notice of the application to the persons who may make submissions in relation to the application (see clause 18).

18 Submissions in relation to application

- (1) Before deciding whether to make an order under subclause 14(1) in relation to the pre-reform certified agreement, the Commission must give the following an opportunity to make submissions:
- (a) the applicant;

- (b) before the transfer time—the persons covered by subclause (2);
 - (c) at and after the transfer time—the persons covered by subclause (3).
- (2) For the purposes of paragraph (1)(b), this subclause covers:
- (a) an employee of the outgoing employer:
 - (i) who is bound by the pre-reform certified agreement; and
 - (ii) who is employed in the business concerned; and
 - (b) the incoming employer; and
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a); and
 - (ii) has been requested by the employee to make submissions on the employee's behalf in relation to the application for the order under subclause 14(1).
- (3) For the purposes of paragraph (1)(c), this subclause covers:
- (a) the incoming employer; and
 - (b) a transferring employee in relation to the pre-reform certified agreement; and
 - (c) an organisation of employees that is bound by the pre-reform certified agreement; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the pre-reform certified agreement; and
 - (ii) has been requested by the transferring employee to make submissions on the transferring employee's behalf in relation to the application for the order under subclause 14(1).

Part 5—Transmission of State transitional instruments

Division 1—General

19 Transmission of State transitional instrument

New employer bound by State transitional instrument

- (1) If:
- (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) employees of the old employer; were bound by a State transitional instrument; and
 - (b) there is at least one transferring employee in relation to the State transitional instrument; and
 - (c) but for this clause, the new employer would not be bound by the State transitional instrument in relation to the transferring employees;

the new employer is bound by the State transitional instrument by force of this clause.

Note 1: The new employer must notify transferring employees and lodge a copy of the notice with the Workplace Authority Director (see clauses 28 and 29).

Note 2: See also clause 20 for the interaction between the State transitional instrument and other industrial instruments.

Period for which new employer remains bound

- (2) The new employer remains bound by the State transitional instrument, by force of this clause, until whichever of the following first occurs:
- (a) if the State transitional instrument is a preserved State agreement—the instrument ceases to be in operation under clauses 15G and 21 of Schedule 8;
 - (b) if the State transitional instrument is a notional agreement preserving State awards—the instrument ceases to be in operation under subclause 38A(1) of Schedule 8;

- (c) there cease to be any transferring employees in relation to the State transitional instrument;
- (d) the new employer ceases to be bound by the State transitional instrument in relation to all the transferring employees in relation to the instrument;
- (e) the transmission period ends.

Note: Paragraph (d)—see subclause (3).

Period for which new employer remains bound in relation to particular transferring employee

- (3) The new employer remains bound by the State transitional instrument in relation to a particular transferring employee, by force of this clause, until whichever of the following first occurs:
 - (a) if the State transitional instrument is a preserved State agreement—the instrument ceases to be in operation in relation to the transferring employee’s employment with the new employer because a workplace agreement comes into operation in relation to that employment (see subclause 15G(2) of Schedule 8);
 - (b) if the State transitional instrument is a notional agreement preserving State awards—the instrument ceases to be in operation in relation to the transferring employee’s employment with the new employer because a workplace agreement comes into operation in relation to that employment (see subclause 38A(2) of Schedule 8);
 - (c) if the State transitional instrument is a notional agreement preserving State awards—the instrument ceases to be in operation in relation to the transferring employee’s employment with the new employer because the employee becomes bound by an award (see subclause 38A(3) of Schedule 8);
 - (d) the employer ceases to be bound by the State transitional instrument under subclause (2).

New employer bound only in relation to employment of transferring employees

- (4) The new employer is bound by the State transitional instrument by force of this clause only in relation to the employment of

Clause 20

employees who are transferring employees in relation to the State transitional instrument.

New employer bound subject to Commission order

- (5) Subclauses (1), (2) and (3) have effect subject to any order of the Commission under clause 23.

Old employer's rights and obligations that arose before time of transmission not affected

- (6) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

20 Interaction rules

Transmitted instrument

- (1) This clause applies if subclause 19(1) applies to a State transitional instrument (the *transmitted State instrument*).

Collective agreement

- (2) If:
- (a) the new employer is bound by a collective agreement (the *pre-transmission agreement*); and
 - (c) the pre-transmission agreement would, but for this subclause, apply, according to its terms, to a transferring employee in relation to the transmitted State instrument when the transferring employee becomes employed by the new employer;
- the pre-transmission agreement does not apply to the transferring employee.
- (3) Subclause (2) ceases to apply at the end of the transmission period.

21 Termination of preserved State agreement

Transmitted instrument

- (1) This clause applies if subclause 19(1) applies to a preserved State agreement (the *transmitted instrument*).

Modified operation of subsections 170VM(3) to (7) of the pre-reform Act

- (2) Subclause (3) applies if:
- (a) the transmitted instrument is a preserved individual State agreement; and
 - (b) section 170VM of the pre-reform Act is applied to the transmitted instrument in accordance with subclause 21(3) of Schedule 8.
- (3) The transmitted instrument cannot be terminated under subsection 170VM(3) or (6) of the pre-reform Act during the transmission period (even if the transmitted instrument has passed its nominal expiry date).

Modified operation of sections 170MH and 170MHA of the pre-reform Act

- (4) Subclause (5) applies if:
- (a) the transmitted instrument is a preserved collective State agreement; and
 - (b) sections 170MH and 170MHA of the pre-reform Act are applied to the transmitted instrument in accordance with subclause 21(2) of Schedule 8.
- (5) The transmitted instrument cannot be terminated under section 170MH or 170MHA of the pre-reform Act during the transmission period (even if the transmitted instrument has passed its nominal expiry date).

Division 2—Commission's powers

22 Application and terminology

- (1) This Division applies if:
 - (a) a person is bound by a State transitional instrument; and
 - (b) another person:
 - (i) becomes at a later time; or
 - (ii) is likely to become at a later time;the successor, transmittee or assignee of the whole, or a part, of the business of the person referred to in paragraph (a).
- (2) For the purposes of this Division:
 - (a) the *outgoing employer* is the person referred to in paragraph (1)(a); and
 - (b) the *incoming employer* is the person first referred to in paragraph (1)(b); and
 - (c) the *business concerned* is the business, or the part of the business, to which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee; and
 - (d) the *transfer time* is the time at which the incoming employer becomes, or is likely to become, the successor, transmittee or assignee of the business concerned.

23 Commission may make order

- (1) The Commission may make an order that the incoming employer:
 - (a) is not, or will not be, bound by the State transitional instrument; or
 - (b) is, or will be, bound by the State transitional instrument, but only to the extent specified in the order.

The order must specify the day from which the order takes effect. That day must not be before the day on which the order is made or before the transfer time.

- (2) Without limiting paragraph (1)(b), the Commission may make an order under that paragraph that the incoming employer is, or will be, bound by the State transitional instrument but only for the period specified in the order.

- (3) To avoid doubt, the Commission cannot make an order under subclause (1) that would have the effect of extending the transmission period.

24 When application for order can be made

An application for an order under subclause 23(1) may be made before, at or after the transfer time.

25 Who may apply for order

- (1) Before the transfer time, an application for an order under subclause 23(1) may be made only by the outgoing employer.
- (2) At or after the transfer time, an application for an order under subclause 23(1) may be made only by:
- (a) the incoming employer; or
 - (b) a transferring employee in relation to the State transitional instrument; or
 - (c) an organisation of employees that is bound by the State transitional instrument; or
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the State transitional instrument; and
 - (ii) has been requested by the transferring employee to apply for the order on the transferring employee's behalf.

26 Applicant to give notice of application

The applicant for an order under subclause 23(1) must take reasonable steps to give written notice of the application to the persons who may make submissions in relation to the application (see clause 27).

27 Submissions in relation to application

- (1) Before deciding whether to make an order under subclause 23(1) in relation to the State transitional instrument, the Commission must give the following an opportunity to make submissions:
- (a) the applicant;

Clause 27

- (b) before the transfer time—the persons covered by subclause (2);
 - (c) at and after the transfer time—the persons covered by subclause (3).
- (2) For the purposes of paragraph (1)(b), this subclause covers:
- (a) an employee of the outgoing employer:
 - (i) who is bound by the State transitional instrument; and
 - (ii) who is employed in the business concerned; and
 - (b) the incoming employer; and
 - (c) an organisation of employees that is bound by the State transitional instrument; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of an employee referred to in paragraph (a); and
 - (ii) has been requested by the employee to make submissions on the employee's behalf in relation to the application for the order under subclause 23(1).
- (3) For the purposes of paragraph (1)(c), this subclause covers:
- (a) the incoming employer; and
 - (b) a transferring employee in relation to the State transitional instrument; and
 - (c) an organisation of employees that is bound by the State transitional instrument; and
 - (d) an organisation of employees that:
 - (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee in relation to the State transitional instrument; and
 - (ii) has been requested by the transferring employee to make submissions on the transferring employee's behalf in relation to the application for the order under subclause 23(1).

Part 5A—Transmission of preserved redundancy provisions

27A Transmission of preserved redundancy provisions

- (1) If:
- (a) immediately before the time of transmission:
 - (i) the old employer; and
 - (ii) an employee;were bound, under clause 6A or 20A of Schedule 7, clause 21A or 21D of Schedule 8, or because of a previous application of this clause, by a redundancy provision that was previously included in an agreement that was terminated; and
 - (b) the employee is a transferring employee;
- the new employer is bound by the redundancy provision in relation to the transferring employee by force of this clause.

Note: The new employer must notify the transferring employee and lodge a copy of the notice with the Workplace Authority Director (see clauses 29A and 29B).

- (2) Subject to subclause (3), the redundancy provision prevails over any other redundancy provision included in any other instrument that would otherwise have effect, to the extent of any inconsistency.

Period for which new employer remains bound

- (3) The new employer remains bound by the redundancy provision in relation to the transferring employee, by force of this clause, until the earliest of the following:
- (a) the end of the period of 24 months from the time that the agreement referred to in paragraph (1)(a) ceased operating;
 - (b) the time when the transferring employee ceases to be employed by the new employer;
 - (c) the time when a workplace agreement comes into operation in relation to the new employer and the transferring employee.

Clause 27A

Old employer's rights and obligations that arose before time of transmission not affected

- (4) This clause does not affect the rights and obligations of the old employer that arose before the time of transmission.

Definitions

- (5) In this clause:

instrument means any of the following:

- (a) a workplace agreement;
- (b) a pre-reform certified agreement (within the meaning of Schedule 7);
- (c) a preserved State agreement;
- (d) a notional agreement preserving State awards;
- (e) an award;
- (f) a transitional award (within the meaning of Schedule 6).

redundancy provision means any of the following kinds of provisions:

- (a) a provision relating to redundancy pay in relation to a termination of employment;
- (b) a provision that is incidental to a provision relating to redundancy pay in relation to a termination of employment;
- (c) a machinery provision that is in respect of a provision relating to redundancy pay in relation to a termination of employment;

where the termination is at the initiative of the employer and on the grounds of operational requirements, or because the employer is insolvent.

Part 6—Notice requirements and enforcement

28 Informing transferring employees about transmission of transitional instrument

- (1) This clause applies if:
- (a) an employer is bound by a transitional instrument (the *transmitted instrument*) in relation to a transferring employee by force of:
 - (ia) clause 6B (AWA); or
 - (i) clause 7 (pre-reform AWA); or
 - (ii) subclause 10(1), (2) or (3) (pre-reform certified agreement); or
 - (iii) clause 19 (State transitional instrument); and
 - (b) a person is a transferring employee in relation to the transmitted instrument.

The provision referred to in paragraph (a) is the *transmission provision*.

- (2) Within 28 days after the transferring employee starts being employed by the employer, the employer must take reasonable steps to give the transferring employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 31.

- (3) The notice must:
- (a) identify the transmitted instrument; and
 - (b) state that the employer is bound by the transmitted instrument; and
 - (c) specify the date on which the transmission period for the transmitted instrument ends; and
 - (d) state that the employer will remain bound by the transmitted instrument until the end of the transmission period unless the transmitted instrument is terminated, or otherwise ceases to be in operation, before the end of that period; and
 - (e) specify the kinds of instruments (if any) that can replace, or exclude the operation of, the transmitted instrument; and
 - (f) identify:

Clause 28

- (i) any provisions of the Australian Fair Pay and Conditions Standard; or
 - (ii) any other instrument;
- that the employer intends to be the source for terms and conditions that will apply to the matters that are dealt with by the transmitted instrument when the transmitted instrument ceases to bind the employer; and
- (g) identify any award or collective agreement that binds:
 - (i) the employer; and
 - (ii) employees of the employer who are not transferring employees in relation to the transmitted instrument;and that would bind the transferring employee but for the transmission provision.

- (3A) Subject to subclause (3B), if the notice under subclause (3) identifies an instrument under paragraph (3)(g), the employer must give the transferring employee a copy of the instrument together with the notice.

Note: This is a civil remedy provision, see clause 31.

- (3B) Subclause (3A) does not apply if:
 - (a) the transferring employee is able to easily access a copy of the instrument in a particular way; and
 - (b) the notice under subclause (3) tells the transferring employee that a copy of the instrument is accessible in that way.

Note: Paragraph (a)—the copy may be available, for example, on the Internet.

- (4) Subclause (2) does not apply if:
 - (a) the transmitted instrument is a pre-reform AWA or an AWA and the new employer and the transferring employee become bound by an AWA or an ITEA within 14 days after the time of transmission; or
 - (b) the transmitted instrument is not a pre-reform AWA or an AWA and the new employer and the transferring employee become bound by an AWA, an ITEA or a collective agreement at the time of transmission or within 14 days after the time of transmission.

29 Lodging copy of notice with Workplace Authority Director

Only one transferring employee

(1) If an employer:

- (a) gives a notice under subclause 28(2) to a transferring employee in relation to a pre-reform AWA or an AWA; or
- (b) gives a notice under subclause 28(2) to the only person who is a transferring employee in relation to a pre-reform certified agreement or State transitional instrument;

the employer must lodge a copy of the notice with the Workplace Authority Director within 14 days after the notice is given to the transferring employee. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 31.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring employees and notices all given on the one day

(2) If:

- (a) an employer gives a number of notices under subclause 28(2) to people who are transferring employees in relation to a pre-reform certified agreement or State transitional instrument; and
- (b) all of those notices are given on the one day;

the employer must lodge a copy of one of those notices with the Workplace Authority Director within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 31.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

Multiple transferring employees and notices given on different days

(3) If:

- (a) an employer gives a number of notices under subclause 28(2) to people who are transferring employees in relation to a

Clause 29A

pre-reform certified agreement or State transitional instrument; and

(b) the notices are given on different days;

the employer must lodge a copy of the notice, or one of the notices that was given on the earliest of those days, with the Workplace Authority Director within 14 days after that notice is given. The copy must be lodged in accordance with subclause (4).

Note 1: This is a civil remedy provision, see clause 31.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

(4) A notice is lodged with the Workplace Authority Director in accordance with this subclause only if it is actually received by the Workplace Authority Director.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

29A Informing transferring employees about transmission of preserved redundancy provisions

- (1) This clause applies if an employer is bound, by force of clause 27A, by one or more redundancy provisions (within the meaning of that clause) in relation to a transferring employee.
- (2) Within 28 days after the transferring employee starts being employed by the employer, the employer must take reasonable steps to give the transferring employee a written notice that complies with subclause (3).

Note: This is a civil remedy provision, see clause 31.

- (3) The notice must:
 - (a) identify the redundancy provision or the redundancy provisions; and
 - (b) state that the employer is bound by the provision or provisions; and
 - (c) specify the date that is 24 months after the time that the agreement that included the provision or provisions ceased operating; and

- (d) state that the employer will remain bound by the provision or provisions until that date, or an earlier date in accordance with subclause 27A(3).
- (4) Subclause (2) does not apply if a workplace agreement comes into operation in relation to the employer and the transferring employee within 14 days of the time of transmission.

29B Lodging copy of notice about preserved redundancy provisions with Workplace Authority Director

- (1) If an employer gives a notice under clause 29A to a transferring employee, the employer must lodge a copy of the notice with the Workplace Authority Director within the period specified in subclause (2). The copy must be lodged in accordance with subclause (3).

Note 1: This is a civil remedy provision, see clause 31.

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) The notice must be lodged within 14 days after the day specified in paragraph (a) or (b):
 - (a) if the employer gives a notice to an employee in respect of a redundancy provision that was included in a pre-reform AWA or a preserved individual State agreement—the day on which that notice is given; or
 - (b) if the employer gives one or more notices to one or more employees in respect of a redundancy provision that was included in a pre-reform certified agreement or a preserved collective State agreement—the earliest day on which a notice was given.

Lodgment with Workplace Authority Director

- (3) A notice is lodged with the Workplace Authority Director in accordance with this subclause only if it is actually received by the Workplace Authority Director.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

Clause 30

30 Workplace Authority Director must issue receipt for lodgment

- (1) If a notice is lodged under clause 29 or 29B, the Workplace Authority Director must issue a receipt for the lodgment.
- (2) The receipt must state that the notice was lodged under clause 29 or 29B (as the case requires) on a particular day.
- (3) The Workplace Authority Director must give a copy of the receipt to the person who lodged the notice under clause 29 or 29B.

31 Civil penalties

- (1) The following are *civil remedy provisions* for the purposes of this clause:
 - (a) subclauses 28(2) and (3A);
 - (b) subclauses 29(1), (2) and (3);
 - (c) subclause 29A(2);
 - (d) subclause 29B(1).

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

- (2) The Court may order a person who has contravened a civil remedy provision to pay a pecuniary penalty.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

- (3) The penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in other cases.
- (4) An application for an order under subclause (2) in relation to an instrument, or in relation to a preserved redundancy provision that was previously included in an instrument, listed in the following table may be made by a person specified in the item of the table relating to that kind of instrument:

Item	Instrument	People with standing to apply for order
1A	AWA	(a) the transferring employee; or (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of the transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or (c) a workplace inspector
1	pre-reform AWA	(a) the transferring employee; or (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of the transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or (c) a workplace inspector
2	pre-reform certified agreement	(a) a transferring employee; or (b) an organisation of employees that is bound by the agreement or the redundancy provision; or (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or (d) a workplace inspector

Schedule 9 Transmission of business rules (transitional instruments)

Part 6 Notice requirements and enforcement

Clause 31

Item	Instrument	People with standing to apply for order
3	notional agreement preserving State awards	(a) a transferring employee; or (b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; or (c) a workplace inspector
4	preserved State Agreement	(a) a transferring employee; or (b) an organisation of employees that is bound by the agreement or the redundancy provision; or (c) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee and has been requested by the transferring employee to apply for the order on the transferring employee's behalf; or (d) a workplace inspector

Part 7—Matters relating to Victoria

32 Definitions

In this Part:

employee has the same meaning as in Division 1 of Part 21 of this Act.

employer has the same meaning as in Division 1 of Part 21 of this Act.

employment has the same meaning as in Division 1 of Part 21 of this Act, and *employed* has a corresponding meaning.

this Schedule does not include this Part.

Victorian reference Division 3 pre-reform certified agreement has the same meaning as in Part 9 of Schedule 7.

33 Additional effect of Schedule

- (1) Without affecting its operation apart from this clause, this Schedule also has the effect it would have if:
 - (a) each reference in this Schedule to an employer (within the meaning of this Schedule) included a reference to an employer (within the meaning of this Part) in Victoria; and
 - (b) each reference in this Schedule to an employee (within the meaning of this Schedule) included a reference to an employee (within the meaning of this Part) in Victoria; and
 - (c) each reference in this Schedule to employment (within the meaning of this Schedule) included a reference to the employment of an employee (within the meaning of this Part) in Victoria by an employer (within the meaning of this Part) in Victoria; and
 - (d) each reference in this Schedule to employed (within the meaning of this Schedule) included a reference to employed (within the meaning of this Part) in Victoria by an employer (within the meaning of this Part) in Victoria; and
 - (e) Part 5 of this Schedule had not been enacted.

Clause 33A

- (2) To the extent to which this Schedule (as it has effect because of subclause (1)) applies if an employer (within the meaning of this Part) in Victoria becomes the successor, transmittee or assignee of the whole, or a part, of a business of:
- (a) another employer (within the meaning of subsection 6(1)); or
 - (b) another employer (within the meaning of this Part) in Victoria;

this Schedule has effect only for so long, and in so far, as the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for this Schedule so to have effect.

- (3) To the extent to which Division 2 of Part 4 of this Schedule (as it has effect because of subclause (1)) applies if an employer (within the meaning of this Part) in Victoria is likely to become the successor, transmittee or assignee of the whole, or a part, of a business of:
- (a) another employer (within the meaning of subsection 6(1)); or
 - (b) another employer (within the meaning of this Part) in Victoria;

that Division has effect only for so long, and in so far, as the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria refers to the Parliament of the Commonwealth a matter or matters that result in the Parliament of the Commonwealth having sufficient legislative power for that Division so to have effect.

33A Victorian reference Division 3 pre-reform certified agreements

- (1) Clause 6A, subclauses 10(2), (3) and (5), paragraph 11(3)(b) and subclause 11(4) do not apply to a Victorian reference Division 3 pre-reform certified agreement.
- (2) Division 1 of Part 4 of this Schedule applies to a Victorian reference Division 3 pre-reform certified agreement as if the agreement had been made under section 170LJ of the pre-reform Act in that section's operation in accordance with repealed Division 2 of Part XV.

Schedule 10—Transitionally registered associations

Note: See section 9.

1 Definitions

(1) In this Schedule:

federal system employer has the same meaning as in the Registration and Accountability of Organisations Schedule.

industrial instrument means:

- (a) an award; or
- (b) a collective agreement; or
- (c) a preserved State agreement; or
- (d) a notional agreement preserving State awards.

notional agreement preserving State awards means an agreement that, on the reform commencement, will be taken to come into operation under clause 31 of Schedule 8 to this Act.

office, in relation to a State-registered association, has its ordinary meaning.

preserved State agreement means an agreement that, on the reform commencement, will be taken to come into operation under clause 3 or 10 of Schedule 8 to this Act.

reform commencement means the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*.

rule, in relation to State-registered association, has its ordinary meaning.

State demarcation order means a State award, to the extent that it relates to the rights of a State-registered association to represent the interests under a State or Territory industrial law of a particular class or group of employees.

Clause 2

State employment agreement means an agreement:

- (a) between an employer and one or more of the following:
 - (i) an employee of the employer;
 - (ii) a trade union; and
- (b) that regulates wages and conditions of employment of one or more of the employees; and
- (c) that is in force under a State or Territory industrial law; and
- (d) that prevails over an inconsistent State award.

State-registered association means a body that is:

- (a) an industrial organisation for the purposes of the *Industrial Relations Act 1996* of New South Wales; or
- (b) an organisation for the purposes of Chapter 12 of the *Industrial Relations Act 1999* of Queensland; or
- (c) an association or organisation for the purposes of the *Industrial Relations Act 1979* of Western Australia; or
- (d) a registered association for the purposes of the *Fair Work Act 1994* of South Australia; or
- (e) an organization for the purposes of the *Industrial Relations Act 1984* of Tasmania.

transitionally registered association means a State-registered association that is registered under this Schedule.

- (2) Unless the contrary intention appears, the following terms have the meaning they would have for the purposes of this Act on the reform commencement:
 - (a) ***employee***;
 - (b) ***employer***;
 - (c) ***employment***;
 - (d) ***State or Territory industrial law***.

2 Application for transitional registration

- (1) A State-registered association may apply to a Registrar for transitional registration under this Schedule if:
 - (b) immediately before the commencement of this Schedule, it had at least one member who was:

- (i) an employee whose employment was subject to a State award, a State employment agreement or a State or Territory industrial law; or
 - (ii) an employer in relation to such an employee; and
 - (c) immediately before the commencement of this Schedule, it was entitled to represent the industrial interests of the member in relation to work that was subject to the State award, the State employment agreement or the State or Territory industrial law; and
 - (d) on the reform commencement, the employee will become bound by, or the employment of the employee will become subject to, a preserved State agreement or a notional agreement preserving State awards if he or she continues in that employment; and
 - (e) it is not also an organisation, or a branch of an organisation.
- (2) The application must be accompanied by:
- (a) evidence to establish the fact that the association satisfies subclause (1); and
 - (b) a copy of the current rules of the association; and
 - (c) a statement setting out:
 - (i) the address of the association; and
 - (ii) each office in the association; and
 - (iii) the name and address of each person holding office in the association.
- (3) If a Registrar is satisfied that the association satisfies subclause (1), the Registrar must, by written instrument, grant the application and record the fact that he or she is so satisfied.
- (4) An instrument under subclause (3) is not a legislative instrument.
- (5) The Registrar must give a copy of the instrument to the association.
- (6) A State-registered association is taken to be registered under this Schedule when the Registrar grants the application.

3 Application of this Act to transitionally registered associations

The provisions of this Act apply, on and after the reform commencement, in relation to a transitionally registered association:

Clause 4

- (a) in the same way as they apply in relation to an organisation;
and
- (b) as if a transitionally registered association were a person.

4 Representation rights of transitionally registered associations of employees

- (1) Regulations made for the purposes of this subclause may make provision for the Commission to make orders in relation to the right of a transitionally registered association to represent the interests under this Act, on or after the reform commencement, of a particular class or group of employees.
- (2) Without limiting subclause (1), the regulations may specify the weight that the Commission is to give, in making such an order, to a State demarcation order.

5 Cancellation of transitional registration

Cancellation by the Federal Court

- (1) A person interested or the Minister may apply, on or after the reform commencement, to the Federal Court for an order cancelling the registration under this Schedule of a transitionally registered association on the ground that:
 - (a) the conduct of:
 - (i) the association (in relation to its continued breach of an order of the Commission or an industrial instrument, or its continued failure to ensure that its members comply with and observe an order of the Commission or an industrial instrument, or in any other respect); or
 - (ii) a substantial number of the members of the association (in relation to their continued breach of an order of the Commission or an industrial instrument, or in any other respect);has, on or after the reform commencement, prevented or hindered the achievement of an object of this Act as in force at that time; or
 - (b) the association, or a substantial number of the members of the association or of a section or class of members of the association, has engaged in industrial action that has, on or

after the reform commencement, prevented, hindered or interfered with:

- (i) the activities of a federal system employer; or
- (ii) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or
- (c) the association, or a substantial number of the members of the association, has or have been, or is or are, engaged, on or after the reform commencement, in industrial action that has had, is having or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community; or
- (d) the association, or a substantial number of the members of the association or of a section or class of members of the association, has or have failed to comply with one of the following made on or after the reform commencement:
 - (i) an injunction granted under subsection 496(12) (which deals with orders to stop industrial action); or
 - (ii) an order made under section 508 or 509 (which deal with contraventions of the strike pay provisions); or
 - (iii) an order under section 807 (which deals with contraventions of the freedom of association provisions); or
 - (iv) an interim injunction granted under section 838 so far as it relates to conduct or proposed conduct that could be the subject of an injunction under a provision mentioned in subparagraphs (i) to (iii); or
 - (v) an order under section 23 of the Registration and Accountability of Organisations Schedule (which deals with contraventions of the employee associations provisions).
- (2) The Court must give the association an opportunity to be heard.
- (3) If the Court:
 - (a) finds that a ground for cancellation set out in the application has been established; and
 - (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the

Clause 6

ground and the action (if any) that has been taken by or against the association in relation to the matters;
the Court must cancel the registration of the association under this Schedule.

- (4) A finding of fact in proceedings under section 496, 508, 509 or 807 commenced on or after the reform commencement, or section 23 of the Registration and Accountability of Organisations Schedule, is admissible as prima facie evidence of that fact in an application made on a ground specified in paragraph (1)(d).

Cancellation by Commission

- (5) The Commission may cancel the registration under this Schedule of a transitionally registered association:
- (a) on application by the association made under the regulations;
or
 - (b) on application by a person interested or by the Minister, if the Commission has satisfied itself, as prescribed, that the association:
 - (i) was registered by mistake; or
 - (ii) is no longer a State-registered association.

Cancellation by Registrar

- (6) A Registrar may, by written instrument, cancel the registration under this Schedule of a transitionally registered association if he or she is satisfied that the association no longer exists.
- (7) An instrument under subclause (6) is not a legislative instrument.

6 End of transitional registration

The registration under this Schedule of a transitionally registered association ends:

- (a) when it is cancelled under clause 5; or
- (b) when the association becomes an organisation; or
- (c) in any other case—at the end of:
 - (i) unless paragraph (b) applies, 31 December 2009; or
 - (ii) if a later date is prescribed by the regulations—that later date.

**7 Modification of Registration and Accountability of Organisations
Schedule**

Regulations made for the purposes of this clause may modify how section 19 of the Registration and Accountability of Organisations Schedule applies in relation to an association that is a transitionally registered association.