Workplace Relations Act 1996

Act No. 86 of 1988 as amended

This compilation was prepared on 31 March 2006
taking into account amendments up to Act No. 153 of 2005
and SLI 2006 Nos. 50, 52 and 68

Volume 1 includes: Table of Contents
Sections 1 – 919

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

Volume 2 includes: Table of Contents
Schedules 1 – 10

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Prepared by the Office of Legislative Drafting and Publishing,
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An Act relating to workplace relations, and for other purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Workplace Relations Act 1996*.

2 Commencement [see Note 1]

This Act commences on a day or days to be fixed by Proclamation.

3 Principal object

The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

(a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and

(b) establishing and maintaining a simplified national system of workplace relations; and

(c) providing an economically sustainable safety net of minimum wages and conditions for those whose employment is regulated by this Act; and

(d) ensuring that, as far as possible, the primary responsibility for determining matters affecting the employment relationship rests with the employer and employees at the workplace or enterprise level; and

(e) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances; and

(f) ensuring compliance with minimum standards, industrial instruments and bargaining processes by providing effective means for the investigation and enforcement of:

(i) employee entitlements; and
(ii) the rights and obligations of employers and employees, and their organisations; and

(g) ensuring that awards provide minimum safety net entitlements for award-reliant employees which are consistent with Australian Fair Pay Commission decisions and which avoid creating disincentives to bargain at the workplace level; and

(h) supporting harmonious and productive workplace relations by providing flexible mechanisms for the voluntary settlement of disputes; and

(i) balancing the right to take industrial action for the purposes of collective bargaining at the workplace level with the need to protect the public interest and appropriately deal with illegitimate and unprotected industrial action; and

(j) ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association; and

(k) protecting the competitive position of young people in the labour market, promoting youth employment, youth skills and community standards and assisting in reducing youth unemployment; and

(l) assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and

(m) respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination 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; and

(n) assisting in giving effect to Australia’s international obligations in relation to labour standards.

4 Definitions

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

**AFPC** has the meaning given by section 19.

**allowable award matters** means the matters referred to in subsection 513(1).

Note: The matters referred to in subsection 513(1) have a meaning that is affected by section 515.

**alternative dispute resolution process** has the meaning given by section 698.

**Anti-Discrimination Conventions** means:

(a) the Equal Remuneration Convention; and

(b) the Convention on the Elimination of all Forms of Discrimination against Women, a copy of the English text of which is set out in the Schedule to the *Sex Discrimination Act 1984*; and

(c) the Convention concerning Discrimination in respect of Employment and Occupation, a copy of the English text of which is set out in Schedule 1 to the *Human Rights and Equal Opportunity Commission Act 1986*; and

(d) Articles 3 and 7 of the International Covenant on Economic, Social and Cultural Rights.

**APCS** has the meaning given by section 178.

**applies to employment generally**: a law of a State or Territory applies to employment generally if it applies (subject to constitutional limitations) to:

(a) all employers and employees in the State or Territory; or

(b) all employers and employees in the State or Territory except those identified (by reference to a class or otherwise) by a law of the State or Territory.

For this purpose, it does not matter whether or not the law also applies to other persons, or whether or not an exercise of a power under the law affects all the persons to whom the law applies.

**arbitration powers** means the powers of the Commission in relation to arbitration.

**Australian-based employee** means:

(a) an employee whose primary place of work is in Australia, in Australia’s exclusive economic zone or in, on, or over Australia’s continental shelf; or
Section 4

(b) an employee who is employed by the Commonwealth or a Commonwealth authority, except an employee engaged outside Australia and the external Territories to perform duties outside Australia and the external Territories; or
(c) an employee who is prescribed by the regulations for the purposes of this definition.

Note: Subsection 5(1) defines employee.

**Australian Capital Territory Government Service** means the service established by the *Public Sector Management Act 1994* of the Australian Capital Territory.

**Australian employer** means:
(a) an employer that is a trading corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
(b) an employer that is a financial corporation formed within the limits of the Commonwealth (within the meaning of paragraph 51(xx) of the Constitution); or
(c) an employer that is the Commonwealth; or
(d) an employer that is a Commonwealth authority; or
(e) an employer that is a body corporate incorporated in a Territory; or
(f) an employer that carries on in Australia, in Australia’s exclusive economic zone or in, on, or over Australia’s continental shelf an activity (whether of a commercial, governmental or other nature) whose central management and control is in Australia; or
(g) an employer that is prescribed by the regulations for the purposes of this definition.

Note: Subsection 6(1) defines employer.

**Australian Fair Pay and Conditions Standard** has the meaning given by subsection 171(3).

**Australian workplace agreement** or **AWA** has the meaning given by section 326.

**Australia’s continental shelf** means the continental shelf (as defined in the *Seas and Submerged Lands Act 1973*) of Australia.
Australia’s exclusive economic zone means the exclusive economic zone (as defined in the Seas and Submerged Lands Act 1973) of Australia.

AWA: see Australian workplace agreement.

award means:
(a) an award made by the Commission under section 539; or
(b) a pre-reform award.

award rationalisation process means a process of award rationalisation conducted as a result of an award rationalisation request.

award rationalisation request has the meaning given by section 534.

award-related order means an order varying, revoking or suspending an award.

award simplification process means a process of reviewing and simplifying awards under section 547.

bargaining agent means:
(a) in relation to an AWA—a person who has been duly appointed as a bargaining agent in relation to the AWA in accordance with section 334; or
(b) in relation to an employee collective agreement—a person who has been requested to be a bargaining agent in relation to the agreement in accordance with section 335.


breach includes non-observance.

Chief Justice means the Chief Justice of the Court.

civil remedy provision has the meaning given by section 727.

collective agreement means:
(a) an employee collective agreement; or
(b) a union collective agreement; or
(c) an employer greenfields agreement; or
(d) a union greenfields agreement; or
(e) a multiple-business agreement.

Commission means the Australian Industrial Relations Commission.

Commissioner means a Commissioner of the Commission.

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.

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.

conciliation powers means the powers of the Commission in relation to conciliation.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means trade or commerce:
(a) between Australia and a place outside Australia; or
(b) among the States; or
(c) between a State and a Territory; or
(d) between 2 Territories; or
(e) within a Territory.

contingency fee agreement means an agreement between a legal practitioner and a person under which:
(a) the legal practitioner agrees to provide legal services; and
(b) the payment of all, or a substantial proportion, of the legal practitioner’s costs is contingent on the outcome of the matter in which the practitioner provides the legal services for the person.

Court means the Federal Court of Australia.
Note: For the purposes of various provisions of this Act, *Court* means the Federal Court of Australia or the Federal Magistrates Court. This is indicated by definitions that apply for the purposes of those provisions.

*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 Act, or the Registration and Accountability of Organisations Schedule, of the industrial interests of employees by an organisation of employees.

*Deputy President* means a Deputy President of the Commission.

*employee* has a meaning affected by section 5.

*employee collective agreement* has the meaning given by section 327.

*employer* has a meaning affected by section 6.

*employer greenfields agreement* has the meaning given by section 330.

*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.

*employment* has a meaning affected by section 7.

*Employment Advocate* means the Employment Advocate referred to in Part 5.

*Equal Remuneration Convention* means the Equal Remuneration Convention, 1951.
Family Responsibilities Convention means the Workers with Family Responsibilities Convention, 1981, a copy of the English text of which is set out in Schedule 5.

flight crew officer has the meaning given by clause 1 of Schedule 2.

Full Bench means a Full Bench of the Commission.

Full Court means a Full Court of the Court.

greenfields agreement means a union greenfields agreement or an employer greenfields agreement.

industrial action has the meaning given by section 420.

Industrial Registrar means the Industrial Registrar appointed under section 133.

Industrial Registry means the Australian Industrial Registry.

industry includes:
(a) any business, trade, manufacture, undertaking or calling of employers; and
(b) any calling, service, employment, handicraft, industrial occupation or vocation of employees; and
(c) a branch of an industry and a group of industries.

inspector means a workplace inspector.

Judge means:
(a) in the case of a reference to the Court or a Judge—a Judge (including the Chief Justice) sitting in Chambers; or
(b) otherwise—a Judge of the Court (including the Chief Justice).

judgment means a judgment, decree or order, whether final or interlocutory, or a sentence.

legal practitioner means a legal practitioner (however described) of the High Court or of a Supreme Court of a State or Territory.

magistrate’s court means:
(a) a court constituted by a police, stipendiary or special magistrate; or
(b) a court constituted by an industrial magistrate who is also a police, stipendiary or special magistrate.

**maritime employee** has the meaning given by clause 1 of Schedule 2.

**model dispute resolution process** means the process set out in Division 2 of Part 13.

**multiple-business agreement** has the meaning given by section 331.

**new APCS** has the meaning given by subsection 214(1).

**nominal expiry date** of a workplace agreement has the meaning given by section 352.

**Northern Territory authority** means:
(a) a body corporate established for a public purpose by or under a law of the Northern Territory; or
(b) a body corporate:
   (i) incorporated under a law of the Northern Territory; and
   (ii) in which the Northern Territory has a controlling interest;
other than a prescribed body.

**notional agreement preserving State awards** has the meaning given by clause 1 of Schedule 8.

**occupier**, in relation to premises, includes a person in charge of the premises.

**office**, in relation to an organisation or a branch of an organisation, has the same meaning as in the Registration and Accountability of Organisations Schedule.

**officer**, in relation to an organisation or a branch of an organisation, means a person who holds an office in the organisation or branch.

**organisation** means an organisation registered under the Registration and Accountability of Organisations Schedule.

Note: An organisation that was registered under the *Workplace Relations Act 1996* immediately before the commencement of item 1 of...
Part 1 Preliminary

Section 4

Schedule 2 to the Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 (the Consequential Provisions Act) is taken to have been registered under the Registration and Accountability of Organisations Schedule (see item 15 of Schedule 1 to the Consequential Provisions Act).

**panel** means a panel to which an industry has been assigned under section 95.

**peak council** means a national or State council or federation that is effectively representative of a significant number of organisations representing employers or employees in a range of industries.

**penalty unit** has the meaning given by section 4AA of the Crimes Act 1914.

**person** includes an organisation.

**pilot** has the meaning given by clause 1 of Schedule 2.

**premises** includes any land, building, structure, mine, mine working, ship, aircraft, vessel, vehicle or place.

**pre-reform AWA** has the meaning given by clause 1 of Schedule 7.

**pre-reform award** means an instrument that has effect after the reform commencement under item 4 of Schedule 4 to the Workplace Relations Amendment (Work Choices) Act 2005.

**prescribed** includes prescribed by Rules of the Commission made under section 124.

**preserved APCS** has the meaning given by subsection 208(1).

**preserved award entitlement**, in relation to an employee, has the meaning given by section 529.

**preserved award term** has the meaning given by section 527.

**preserved State agreement** has the meaning given by clause 1 of Schedule 8.

**President** means the President of the Commission.

**Presidential Member** means the President, a Vice President, a Senior Deputy President or a Deputy President.
previous Act means the Conciliation and Arbitration Act 1904, and includes any other Act so far as the other Act affects the operation of that Act.

proceeding includes a proceeding relating to the following:
(a) an award rationalisation process;
(b) an award simplification process.

protected action has the meaning given by section 435.

protected action ballot means a ballot under Division 4 of Part 9.

public sector employment means employment of, or service by, a person in any capacity (whether permanently or temporarily and whether full-time or part-time):
(a) under the Public Service Act 1999 or the Parliamentary Service Act 1999; or
(b) by or in the service of a Commonwealth authority; or
(c) under a law of the Australian Capital Territory relating to employment by that Territory, including a law relating to the Australian Capital Territory Government Service; or
(d) by or in the service of:
   (i) an enactment authority as defined by section 3 of the A.C.T. Consequential Provisions Act; or
   (ii) a body corporate incorporated under a law of the Australian Capital Territory and in which the Australian Capital Territory has a controlling interest;
   other than a prescribed authority or body; or
(e) under a law of the Northern Territory relating to the Public Service of the Northern Territory; or
(f) by or in the service of a Northern Territory authority; or
(g) by or in the service of a prescribed person or under a prescribed law;
but, other than in section 116, does not include:
(h) employment of, or service by, a person included in a prescribed class of persons; or
(i) employment or service under a prescribed law.

reform commencement means the commencement of Schedule 1 to the Workplace Relations Amendment (Work Choices) Act 2005.
Registrar means the Industrial Registrar or a Deputy Industrial Registrar.

Registration and Accountability of Organisations Schedule means Schedule 1.

registry means the Principal Registry or another registry established under section 130.

regular part-time employee means an employee who:
(a) works less than full-time ordinary hours; and
(b) has reasonably predictable hours of work; and
(c) receives, on a pro-rata basis, equivalent pay and conditions to those specified in an award or awards for full-time employees who do the same kind of work.

secondary office, in relation to a person who holds an office of member of the Commission and an office of member of a prescribed State industrial authority, means the office to which the person was most recently appointed.

Senior Deputy President means a Senior Deputy President of the Commission.

ship has the meaning given by clause 1 of Schedule 2.

single business has the meaning given by section 322.

special magistrate means a magistrate appointed as a special magistrate under a law of a State or Territory.

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 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 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** means:

(a) any of the following State Acts:
   (i) the *Industrial Relations Act 1996* of New South Wales;
   (ii) the *Industrial Relations Act 1999* of Queensland;
   (iii) the *Industrial Relations Act 1979* of Western Australia;
   (iv) the *Fair Work Act 1994* of South Australia;
   (v) the *Industrial Relations Act 1984* of Tasmania; or
(b) an Act of a State or Territory that applies to employment generally and has one or more of the following as its main purpose or one or more of its main purposes:
   (i) regulating workplace relations (including industrial matters, industrial disputes and industrial action, within the ordinary meaning of those expressions);
   (ii) providing for the determination of terms and conditions of employment;
   (iii) providing for the making and enforcement of agreements determining terms and conditions of employment;
   (iv) providing for rights and remedies connected with the termination of employment;
   (v) prohibiting conduct that relates to the fact that a person either is, or is not, a member of an industrial association (as defined in section 779); or
(c) an instrument made under an Act described in paragraph (a) or (b), so far as the instrument is of a legislative character; or
(d) a law that:
   (i) is a law of a State or Territory; and
   (ii) is prescribed by regulations for the purposes of this paragraph.
State or Territory training authority means a body authorised by a law or award of a State or Territory for the purpose of overseeing arrangements for the training of employees.

stevedoring operations has the meaning given by clause 1 of Schedule 2.

Termination of Employment Convention means the Termination of Employment Convention, 1982, a copy of the English text of which is set out in Schedule 4.

this Act includes the regulations but does not include Schedule 1 or regulations made under that Schedule.

trade union means:
(a) an organisation of employees; or
(b) an association of employees that is registered or recognised as a trade union (however described) under the law of a State or Territory; or
(c) an association of employees a principal purpose of which is the protection and promotion of the employees’ interests in matters concerning their employment.

training arrangement means a combination of work and training that is subject to a training agreement or a training contract between the employee and employer that is registered:
(a) with the relevant State or Territory training authority; or
(b) under a law of a State or Territory relating to the training of employees.

union collective agreement has the meaning given by section 328.

union greenfields agreement has the meaning given by section 329.

Vice President means a Vice President of the Commission.

vocational placement means a placement that is:
(a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and
(b) undertaken as a requirement of an education or training course; and
(c) authorised under a law or an administrative arrangement of
the Commonwealth, a State or a Territory.

waterside worker has the meaning given by clause 1 of Schedule 2.

wharf has the meaning given by clause 1 of Schedule 2.

working day means a day that is not a Saturday, a Sunday or a
public holiday.

workplace agreement means:
(a) an AWA; or
(b) a collective agreement.

Note: Section 324 affects the meaning of workplace agreement.

workplace determination means a determination under Division 8
of Part 9.

workplace inspector means a person appointed as a workplace
inspector under section 167.

(2) To avoid doubt, it is declared that a reference in this Act (except in
Parts 10 and 16, and in regulations made for the purposes of
section 356) to an independent contractor is confined to a natural
person.

(3) In this Act, 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) of the Registration and Accountability of
Organisations Schedule.

(4) In this Act, a reference to a person making a statement that is to the
person’s knowledge false or misleading in a material particular
includes a reference to a person making a statement where the
person is reckless as to whether the statement is false or misleading
in a material particular.

(5) In this Act, a reference to engaging in conduct includes a reference
to being, whether directly or indirectly, a party to or concerned in
the conduct.
Section 5

(6) A reference in this Act to a term of an award includes a reference to a provision of an award.

Note: Section 69B of the Australian Federal Police Act 1979 provides that this Act does not apply to certain matters relating to AFP employees.

5 Employee

Basic definition

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

employee means an individual so far as he or she is employed, or usually employed, as described in the definition of employer in subsection 6(1), by an employer, except on a vocational placement.

Note: See also Part 21 (employees and employers in Victoria).

References to employee with ordinary meaning

(2) However, a reference to employee has its ordinary meaning (subject to subsections (3) and (4)) if the reference is listed in clause 2 of Schedule 2. This does not limit the circumstances in which a contrary intention may appear for the purposes of subsection (1).

Note: The regulations may amend clause 2 of Schedule 2. See clause 5 of Schedule 2.

(3) In this Act, unless the contrary intention appears, a reference to employee with its ordinary meaning includes a reference to an individual who is usually an employee with that meaning.

(4) In this Act, unless the contrary intention appears, a reference to employee with its ordinary meaning does not include a reference to an individual on a vocational placement.

6 Employer

Basic definition

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

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 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.

Note 1: In this context, Australia includes the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands. See paragraph 17(a) of the Acts Interpretation Act 1901.

Note 2: See also Part 21 (employees and employers in Victoria).

References to employer with ordinary meaning

(2) However, a reference to employer has its ordinary meaning (subject to subsection (3)) if the reference is listed in clause 3 of Schedule 2. This does not limit the circumstances in which a contrary intention may appear for the purposes of subsection (1).

Note: The regulations may amend clause 3 of Schedule 2. See clause 5 of Schedule 2.

(3) In this Act, unless the contrary intention appears, a reference to employer with its ordinary meaning includes a reference to a person or entity that is usually an employer with that meaning.

7 Employment

(1) In this Act, unless the contrary intention appears:
employment means the employment of an employee by an employer.

Note: Subsections 5(1) and 6(1) define employee and employer.

References to employment with ordinary meaning

(2) However, a reference to employment has its ordinary meaning if the reference is listed in clause 4 of Schedule 2. This does not limit the circumstances in which a contrary intention may appear for the purposes of subsection (1).

Note: The regulations may amend clause 4 of Schedule 2. See clause 5 of Schedule 2.

8 Schedules 1, 6, 7, 8 and 9 have effect

Schedules 1, 6, 7, 8 and 9 have effect.

Note 1: Schedule 1 is about registration and accountability of organisations.

Note 2: Schedule 6 is about transitional arrangements for parties bound by federal awards.

Note 3: Schedule 7 is about transitional arrangements for existing pre-reform certified agreements.

Note 4: Schedule 8 is about transitional treatment of State employment agreements and State awards.

Note 5: Schedule 9 is about transitional instruments and transmission of business.

9 Schedule 10 has effect

Schedule 10 has effect.

Note: Schedule 10 is about transitionally registered associations.

10 Act binds Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.
11 Modifications for Christmas Island and Cocos (Keeling) Islands

(1) If the regulations prescribe modifications of this Act for its application in relation to the Territory of Christmas Island, this Act has effect as modified in relation to the Territory.

(2) If the regulations prescribe modifications of this Act for its application in relation to the Territory of Cocos (Keeling) Islands, this Act has effect as modified in relation to the Territory.

(3) In this section:

modifications includes additions, omissions and substitutions.

12 Exclusion of persons insufficiently connected with Australia

(1) A provision of this Act prescribed by the regulations does not apply to a person or entity in Australia prescribed by the regulations as a person to whom, or an entity to which, the provision does not apply.

Note 1: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

Note 2: The regulations may prescribe the person or entity by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

(2) Before the Governor-General makes regulations for the purposes of subsection (1) prescribing either or both of the following:

(a) a provision of this Act that is not to apply to a person or entity;

(b) a person to whom, or an entity to which, a provision of this Act is not to apply;

the Minister must be satisfied that the provision should not apply to the person or entity in Australia because there is not a sufficient connection between the person or entity and Australia.

(3) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
13 Extraterritorial application

(1) Each Part or Division listed in the table, and the rest of this Act so far as it relates to the Part or Division, extends to persons, acts, omissions, matters and things outside Australia as described in the relevant section listed in the table.

<table>
<thead>
<tr>
<th>Item</th>
<th>This Part or Division:</th>
<th>Which is about this topic:</th>
<th>Extends to persons, acts, omissions, matters and things outside Australia as described in this section:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Part 7</td>
<td>The Australian Fair Pay and Conditions Standard</td>
<td>Section 174</td>
</tr>
<tr>
<td>2</td>
<td>Part 8</td>
<td>Workplace agreements</td>
<td>Section 325</td>
</tr>
<tr>
<td>3</td>
<td>Part 10</td>
<td>Awards</td>
<td>Section 512</td>
</tr>
<tr>
<td>4</td>
<td>Division 1 of Part 12</td>
<td>Meal breaks</td>
<td>Section 610</td>
</tr>
<tr>
<td>4A</td>
<td>Division 2 of Part 12</td>
<td>Public holidays</td>
<td>Section 619</td>
</tr>
<tr>
<td>5</td>
<td>Division 3 of Part 12</td>
<td>Equal remuneration for work of equal value</td>
<td>Section 634</td>
</tr>
<tr>
<td>6</td>
<td>Division 4 of Part 12</td>
<td>Termination of employment</td>
<td>Section 641</td>
</tr>
<tr>
<td>7</td>
<td>Part 15</td>
<td>Right of entry</td>
<td>Section 739</td>
</tr>
<tr>
<td>8</td>
<td>Part 16</td>
<td>Freedom of association</td>
<td>Section 788</td>
</tr>
</tbody>
</table>

Note 1: In this context, *Australia* includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the *Acts Interpretation Act 1901*.

Note 2: Provisions of section 169 giving inspectors power to enter certain premises and places and do certain things there also extend to some premises and places outside Australia, subject to Australia’s international obligations relating to foreign-flagged ships and foreign-registered aircraft.

Note 3: Part 9 (Industrial action) and related provisions of this Act may extend in relation to Australia’s exclusive economic zone, and in relation to Australia’s continental shelf, as prescribed by the regulations. See section 422.
Modified application in Australia’s exclusive economic zone

(2) If the regulations prescribe modifications of this Act for its operation in relation to all or part of Australia’s exclusive economic zone, then, so far as this Act extends to the zone or part apart from this subsection, it has effect as modified in relation to the zone or part.

(3) For the purposes of subsection (2), the regulations may prescribe different modifications in relation to different parts of Australia’s exclusive economic zone.

Modified application in relation to Australia’s continental shelf

(4) If the regulations prescribe modifications of this Act for its operation in relation to all or part of Australia’s continental shelf, then, so far as this Act extends in relation to the continental shelf or part apart from this subsection, it has effect as modified in relation to the continental shelf or part.

(5) For the purposes of subsection (4), the regulations may prescribe different modifications in relation to different parts of Australia’s continental shelf.

Definitions

(6) In this section:

*modifications* includes additions, omissions and substitutions.

*this Act* includes the Registration and Accountability of Organisations Schedule and regulations made under it.

14 Act not to apply so as to exceed Commonwealth power

(1) Unless the contrary intention appears, if a provision of this Act:

(a) would, apart from this section, have an invalid application;

(b) also has at least one valid application;

it is the Parliament’s intention that the provision is not to have the invalid application, but is to have every valid application.

(2) Despite subsection (1), the provision is not to have a particular valid application if:
Section 15

(a) apart from this section, it is clear, taking into account the provision’s context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth’s legislative power; or
(b) the provision’s operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth’s legislative power.

(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

(4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.

(5) In this section:

application means an application in relation to:
(a) one or more particular persons, things, matters, places, circumstances or cases; or
(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth’s legislative power.

valid application, in relation to a provision, means an application that, if it were the provision’s only application, would be within the Commonwealth’s legislative power.

15 Application of Criminal Code

(1) Chapter 2 of the Criminal Code (except Part 2.5) applies to all offences against this Act.

Note 1: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.

Note 2: For the purposes of this Act, corporate criminal responsibility is dealt with by section 826, rather than by Part 2.5 of the Criminal Code.
(2) However, so far as Part 2.7 of the *Criminal Code* is relevant to this Act, it has effect subject to the following sections of this Act:

(a) section 13;
(b) the sections mentioned in section 13;
(c) section 169;
(d) section 422.

Note: Part 2.7 of the *Criminal Code* is about geographical jurisdiction in connection with offences. Section 13, the sections mentioned there and sections 169 and 422 deal with extraterritorial operation of this Act.

16 Act excludes some State and Territory laws

(1) This Act is intended to apply to the exclusion of all the following laws of a State or Territory so far as they would otherwise apply in relation to an employee or employer:

(a) a State or Territory industrial law;
(b) a law that applies to employment generally and deals with leave other than long service leave;
(c) a law providing for a court or tribunal constituted by a law of the State or Territory to make an order in relation to equal remuneration for work of equal value (as defined in section 623);
(d) a law providing for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
(e) a law that entitles a representative of a trade union to enter premises.

Note: Subsection 4(1) defines *applies to employment generally.*

State and Territory laws that are not excluded

(2) However, subsection (1) does not apply to a law of a State or Territory so far as:

(a) the law deals with the prevention of discrimination, the promotion of EEO or both, and is neither a State or Territory industrial law nor contained in such a law; or
(b) the law is prescribed by the regulations as a law to which subsection (1) does not apply; or
(c) the law deals with any of the matters (the non-excluded matters) described in subsection (3).

(3) The non-excluded matters are as follows:
(a) superannuation;
(b) workers compensation;
(c) occupational health and safety (including entry of a representative of a trade union to premises for a purpose connected with occupational health and safety);
(d) matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers);
(e) child labour;
(f) long service leave;
(g) the observance of a public holiday, except the rate of payment of an employee for the public holiday;
(h) the method of payment of wages or salaries;
(i) the frequency of payment of wages or salaries;
(j) deductions from wages or salaries;
(k) industrial action (within the ordinary meaning of the expression) affecting essential services;
(l) attendance for service on a jury;
(m) regulation of any of the following:
   (i) associations of employees;
   (ii) associations of employers;
   (iii) members of associations of employees or of associations of employers.

Note: Part 15 (Right of entry) sets prerequisites for a trade union representative to enter certain premises under a right given by a prescribed law of a State or Territory. The prerequisites apply even though the law deals with such entry for a purpose connected with occupational health and safety and paragraph (2)(c) says this Act is not to apply to the exclusion of a law dealing with that.

This Act excludes prescribed State and Territory laws

(4) This Act is intended to apply to the exclusion of a law of a State or Territory that is prescribed by the regulations for the purposes of this subsection.

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(5) To avoid doubt, subsection (4) has effect even if the law is covered by subsection (2) (so that subsection (1) does not apply to the law). This subsection does not limit subsection (4).

Definition

(6) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

17 Awards, agreements and Commission orders prevail over State and Territory law etc.

(1) An award or workplace agreement prevails over a law of a State or Territory, a State award or a State employment agreement, to the extent of any inconsistency.

(2) However, a term of an award or workplace agreement dealing with any of the following matters has effect subject to a law of a State or Territory dealing with the matter, except a law that is prescribed by the regulations as a law to which awards and workplace agreements are not subject:
   (a) occupational health and safety;
   (b) workers compensation;
   (c) training arrangements;
   (d) a matter prescribed by the regulations for the purposes of this paragraph.

(3) An order of the Commission under Part 12 prevails over a law of a State or Territory, a State award or a State employment agreement, to the extent of any inconsistency.

Note: Part 12 is about minimum entitlements of employees.

18 Act may exclude State and Territory laws in other cases

(1) Sections 16 and 17 are not a complete statement of the circumstances in which this Act and instruments made under it are intended to apply to the exclusion of, or prevail over, laws of the States and Territories or instruments made under those laws.

Note: Other provisions of this Act deal with its relationship with laws of the States and Territories. For example, see clause 87 of Schedule 6,
Part 1 Preliminary

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which is about not excluding or limiting Victorian law that can operate concurrently with certain provisions of that Schedule.

(2) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Part 2—Australian Fair Pay Commission

Division 1—Preliminary

19 Definitions

In this Part:

AFPC means the Australian Fair Pay Commission established by section 20.

AFPC Chair means the AFPC Chair appointed under section 29.

AFPC Commissioner means an AFPC Commissioner appointed under section 38.

AFPC Secretariat means the AFPC Secretariat established under section 46.

Director of the Secretariat means the Director of the Secretariat appointed under section 50.

wage review means a review conducted by the AFPC to determine whether it should exercise any of its wage-setting powers.

wage-setting decision means a decision made by the AFPC in the exercise of its wage-setting powers.

wage-setting function has the meaning given by subsection 22(1).

wage-setting powers means the powers of the AFPC under Division 2 of Part 7.
Division 2—Australian Fair Pay Commission

Subdivision A—Establishment and functions

20 Establishment

(1) The Australian Fair Pay Commission is established by this section.

(2) The AFPC is to consist of:
   (a) the AFPC Chair; and
   (b) 4 AFPC Commissioners.

21 Functions of the AFPC

The functions of the AFPC are as follows:
   (a) its wage-setting function as set out in subsection 22(1);
   (b) any other functions conferred on the AFPC under this Act or any other Act;
   (c) any other functions conferred on the AFPC by regulations made under this Act or any other Act;
   (d) to undertake activities to promote public understanding of matters relevant to its wage-setting and other functions.

Subdivision B—AFPC’s wage-setting function

22 AFPC’s wage-setting function

The AFPC’s wage-setting function

(1) The AFPC’s wage-setting function is to:
   (a) conduct wage reviews; and
   (b) exercise its wage-setting powers as necessary depending on the outcomes of wage reviews.

Note: The main wage-setting powers of the AFPC cover the following matters (within the meaning of Division 2 of Part 7):
   (a) adjusting the standard FMW (short for Federal Minimum Wage);
   (b) determining or adjusting special FMWs for junior employees, employees with disabilities or employees to whom training arrangements apply;
(c) determining or adjusting basic periodic rates of pay and basic piece rates of pay payable to employees or employees of particular classifications;

(d) determining or adjusting casual loadings.

(2) During the period (the *interim period*) from the commencement of this Part to the commencement of Division 2 of Part 7, the AFPC has the function of gathering information (including by undertaking or commissioning research, or consulting with any person or body) for the purpose of assisting it to perform its wage-setting function after that Division has commenced. When performing its wage-setting function, the AFPC may have regard to any information so gathered during the interim period.

### 23 AFPC’s wage-setting parameters

The objective of the AFPC in performing its wage-setting function is to promote the economic prosperity of the people of Australia having regard to the following:

(a) the capacity for the unemployed and low paid to obtain and remain in employment;

(b) employment and competitiveness across the economy;

(c) providing a safety net for the low paid;

(d) providing minimum wages for junior employees, employees to whom training arrangements apply and employees with disabilities that ensure those employees are competitive in the labour market.

### 24 Wage reviews and wage-setting decisions

(1) The AFPC may determine the following:

(a) the timing and frequency of wage reviews;

(b) the scope of particular wage reviews;

(c) the manner in which wage reviews are to be conducted;

(d) when wage-setting decisions are to come into effect.

(2) For the purposes of performing its wage-setting function, the AFPC may inform itself in any way it thinks appropriate, including by:

(a) undertaking or commissioning research; or

(b) consulting with any other person, body or organisation; or
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(c) monitoring and evaluating the impact of its wage-setting decisions.

(3) Subsections (1) and (2) have effect subject to this Act and any regulations made under this Act.

(4) The AFPC’s wage-setting decisions must:
   (a) be in writing; and
   (b) be expressed as decisions of the AFPC as a body; and
   (c) include reasons for the decisions, expressed as reasons of the AFPC as a body.

A wage-setting decision is not a legislative instrument.

25 Constitution of the AFPC for wage-setting powers

(1) For the purposes of exercising its wage-setting powers, the AFPC must be constituted by:
   (a) the AFPC Chair; and
   (b) the 4 AFPC Commissioners.

(2) However, if the AFPC Chair considers it necessary in circumstances where AFPC Commissioners are unavailable, the AFPC Chair may determine that, for the purposes of exercising its wage-setting powers in those circumstances, the AFPC is to be constituted by:
   (a) the AFPC Chair; and
   (b) no fewer than 2 AFPC Commissioners.

26 Publishing wage-setting decisions etc.

(1) The AFPC must publish its wage-setting decisions.

(2) The AFPC may, as it thinks appropriate, publish other information about wages or its wage-setting function.

(3) Publishing under subsection (1) or (2) may be done in any way the AFPC thinks appropriate.
Subdivision C—Operation of the AFPC

27 AFPC to determine its own procedures

(1) The AFPC may determine the procedures it will use in performing its functions.

(2) Subsection (1) has effect subject to Subdivision B and any regulations made under subsection (3).

(3) The regulations may prescribe procedures to be used by the AFPC for all or for specified purposes.

28 Annual report

The AFPC must, as soon as practicable after the end of each financial year, give to the Minister a report on the operation of the AFPC for presentation to the Parliament.

Subdivision D—AFPC Chair

29 Appointment

(1) The AFPC Chair is to be appointed by the Governor-General by written instrument.

(2) The AFPC Chair may be appointed on a full-time or part-time basis and holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

(3) To be appointed as AFPC Chair, a person must have a high level of skills and experience in business or economics.

30 Remuneration

(1) The AFPC Chair is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the AFPC Chair is to be paid the remuneration that is prescribed.

(2) The AFPC Chair is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
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31 Leave of absence

(1) If the AFPC Chair is appointed on a full-time basis:
   (a) the AFPC Chair has the recreation leave entitlements that are determined by the Remuneration Tribunal; and
   (b) the Minister may grant the AFPC Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(2) If the AFPC Chair is appointed on a part-time basis, the Minister may grant leave of absence to the AFPC Chair on the terms and conditions that the Minister determines.

32 Engaging in other paid employment

If the AFPC Chair is appointed on a full-time basis, the AFPC Chair must not engage in paid employment outside the duties of his or her office without the Minister’s approval.

33 Disclosure of interests

The AFPC Chair must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Chair has or acquires and that could conflict with the proper performance of his or her duties.

34 Resignation

(1) The AFPC Chair may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

35 Termination of appointment

(1) The Governor-General may terminate the appointment of the AFPC Chair if:
   (a) the AFPC Chair:
      (i) becomes bankrupt; or

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(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(iii) compounds with his or her creditors; or
(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the AFPC Chair fails, without reasonable excuse, to comply with section 33; or

(c) the AFPC Chair has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Chair’s duties; or

(d) if the AFPC Chair is appointed on a full-time basis:
   (i) the AFPC Chair engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or
   (ii) the AFPC Chair is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(e) if the AFPC Chair is appointed on a part-time basis—the AFPC Chair is absent, except on leave of absence, to an extent that the Minister considers excessive.

(2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of the AFPC Chair for misbehaviour or physical or mental incapacity.

(3) If the AFPC Chair:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;

his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(4) If the AFPC Chair:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;
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his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

(5) If the AFPC Chair:
   (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the Superannuation Act 2005; and
   (b) is under 60 years of age;
his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

36 Other terms and conditions

The AFPC Chair holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

37 Acting AFPC Chair

(1) The Minister may appoint a person who meets the requirements set out in subsection 29(3) to act as the AFPC Chair:
   (a) during a vacancy in the office of the AFPC Chair (whether or not an appointment has previously been made to the office); or
   (b) during any period, or during all periods, when the AFPC Chair is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.
Subdivision E—AFPC Commissioners

38 Appointment

(1) An AFPC Commissioner is to be appointed by the Governor-General by written instrument.

(2) An AFPC Commissioner holds office on a part-time basis for the period specified in his or her instrument of appointment. The period must not exceed 4 years.

(3) To be appointed as an AFPC Commissioner, a person must have experience in one or more of the following areas:
   (a) business;
   (b) economics;
   (c) community organisations;
   (d) workplace relations.

39 Remuneration

(1) An AFPC Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, an AFPC Commissioner is to be paid the remuneration that is prescribed.

(2) An AFPC Commissioner is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

40 Leave of absence

The AFPC Chair may grant leave of absence to an AFPC Commissioner on the terms and conditions that the AFPC Chair determines.

41 Disclosure of interests

An AFPC Commissioner must give written notice to the Minister of all interests (financial or otherwise) that the AFPC Commissioner has or acquires and that could conflict with the proper performance of his or her duties.
42 Resignation

(1) An AFPC Commissioner may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

43 Termination of appointment

(1) The Governor-General may terminate the appointment of an AFPC Commissioner if:

(a) the AFPC Commissioner:
   (i) becomes bankrupt; or
   (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
   (iii) compounds with his or her creditors; or
   (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the AFPC Commissioner fails, without reasonable excuse, to comply with section 41; or

(c) the AFPC Commissioner has or acquires interests (including by being an employer or employee) that the Minister considers conflict unacceptably with the proper performance of the AFPC Commissioner’s duties; or

(d) the AFPC Commissioner is absent, except on leave of absence, to an extent that the Minister considers excessive.

(2) Subject to subsections (3), (4) and (5), the Governor-General may terminate the appointment of an AFPC Commissioner for misbehaviour or physical or mental incapacity.

(3) If an AFPC Commissioner:

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her maximum retiring age within the meaning of that Act;

his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.
(4) If an AFPC Commissioner:
   (a) is a member of the superannuation scheme established by
       deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;
   his or her appointment cannot be terminated for physical or mental
   incapacity unless the PSS Board has given a certificate under
   section 13 of that Act.

(5) If an AFPC Commissioner:
   (a) is an ordinary employer-sponsored member of PSSAP,
       within the meaning of the Superannuation Act 2005; and
   (b) is under 60 years of age;
   his or her appointment cannot be terminated on the ground of
   physical or mental incapacity unless the Board (within the meaning
   of that Act) has given an approval and certificate under section 43
   of that Act.

44 Other terms and conditions

An AFPC Commissioner holds office on the terms and conditions
(if any) in relation to matters not covered by this Act that are
determined by the Minister.

45 Acting AFPC Commissioners

(1) The Minister may appoint a person who meets the requirement set
    out in subsection 38(3) to act as an AFPC Commissioner:
    (a) during a vacancy in the office of an AFPC Commissioner
        (whether or not an appointment has previously been made to
        the office); or
    (b) during any period, or during all periods, when an AFPC
        Commissioner is acting as AFPC Chair, is absent from duty
        or from Australia, or is, for any reason, unable to perform the
        duties of the office.

(2) Anything done by or in relation to a person purporting to act under
    an appointment is not invalid merely because:
    (a) the occasion for the appointment had not arisen; or
    (b) there was a defect or irregularity in connection with the
        appointment; or
    (c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.
Division 3—AFPC Secretariat

Subdivision A—Establishment and function

46 Establishment

(1) The AFPC Secretariat is established by this section.

(2) The AFPC Secretariat is to consist of:
   (a) the Director of the Secretariat; and
   (b) the staff of the Secretariat.

47 Function

The function of the AFPC Secretariat is to assist the AFPC in the performance of the AFPC's functions.

Subdivision B—Operation of the AFPC Secretariat

48 AFPC Chair may give directions

(1) The AFPC Chair may give directions to the Director of the Secretariat about the performance of the function of the AFPC Secretariat.

(2) The Director of the Secretariat must ensure that a direction given under subsection (1) is complied with.

(3) To avoid doubt, the AFPC Chair must not give directions under subsection (1) in relation to the performance of functions, or exercise of powers, under the Financial Management and Accountability Act 1997 or the Public Service Act 1999.

49 Annual report

The Director of the Secretariat must, as soon as practicable after the end of each financial year, give to the Minister a report on the operation of the AFPC Secretariat for presentation to the Parliament.
Subdivision C—The Director of the Secretariat

50 Appointment

(1) The Director of the Secretariat is to be appointed by the Minister by written instrument.

(2) The Director of the Secretariat holds office on a full-time basis for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

51 Remuneration

(1) The Director of the Secretariat is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Director of the Secretariat is to be paid the remuneration that is prescribed.

(2) The Director of the Secretariat is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

52 Leave of absence

(1) The Director of the Secretariat has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Director of the Secretariat leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

53 Engaging in other paid employment

The Director of the Secretariat must not engage in paid employment outside the duties of his or her office without the Minister’s approval.

54 Disclosure of interests

The Director of the Secretariat must give written notice to the Minister of all interests (financial or otherwise) that the Director of

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the Secretariat has or acquires and that could conflict with the proper performance of his or her duties.

55 Resignation

(1) The Director of the Secretariat may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

56 Termination of appointment

(1) The Minister may terminate the appointment of the Director of the Secretariat if:

(a) the Director of the Secretariat:
   (i) becomes bankrupt; or
   (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
   (iii) compounds with his or her creditors; or
   (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Director of the Secretariat fails, without reasonable excuse, to comply with section 54; or

(c) the Director of the Secretariat has or acquires interests that the Minister considers conflict unacceptably with the proper performance of the Director of the Secretariat’s duties; or

(d) the Director of the Secretariat engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or

(e) the Director of the Secretariat is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

(2) The Minister must terminate the appointment of the Director of the Secretariat if the Minister is of the opinion that the performance of the Director of the Secretariat has been unsatisfactory for a significant period of time.

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(3) Subject to subsections (4), (5) and (6), the Minister may terminate the appointment of the Director of the Secretariat for misbehaviour or physical or mental incapacity.

(4) If the Director of the Secretariat:
   (a) is an eligible employee for the purposes of the Superannuation Act 1976; and
   (b) has not reached his or her maximum retiring age within the meaning of that Act;

   his or her appointment cannot be terminated for physical or mental incapacity unless the CSS Board has given a certificate under section 54C of that Act.

(5) If the Director of the Secretariat:
   (a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
   (b) is under 60 years of age;

   his or her appointment cannot be terminated for physical or mental incapacity unless the PSS Board has given a certificate under section 13 of that Act.

(6) If the Director of the Secretariat:
   (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the Superannuation Act 2005; and
   (b) is under 60 years of age;

   his or her appointment cannot be terminated on the ground of physical or mental incapacity unless the Board (within the meaning of that Act) has given an approval and certificate under section 43 of that Act.

57 Other terms and conditions

The Director of the Secretariat holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

58 Acting Director of the Secretariat

(1) The Minister may appoint a person to act as the Director of the Secretariat:
(a) during a vacancy in the office of the Director of the Secretariat (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Director of the Secretariat is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion to act had not arisen or had ceased.

Subdivision D—Staff and consultants

59 Staff

(1) The staff of the AFPC Secretariat are to be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
(a) the Director of the Secretariat and the staff of the AFPC Secretariat together constitute a Statutory Agency; and
(b) the Director of the Secretariat is the Head of that Statutory Agency.

60 Consultants

The Director of the Secretariat may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the AFPC or the AFPC Secretariat. The terms and conditions of the engagement of a person are those determined by the Director of the Secretariat in writing.
Part 3—Australian Industrial Relations Commission

Division 1—Establishment of Commission

61 Establishment of Commission

(1) There is established a commission by the name of the Australian Industrial Relations Commission.

(2) The Commission consists of:
   (a) a President;
   (b) 2 Vice Presidents;
   (c) such number of Senior Deputy Presidents as, from time to time, hold office under this Act;
   (d) such number of Deputy Presidents as, from time to time, hold office under this Act; and
   (e) such number of Commissioners as, from time to time, hold office under this Act.

62 Functions of Commission

The functions of the Commission are the functions conferred on the Commission by this Act, the Registration and Accountability of Organisations Schedule or otherwise.

63 Appointment of Commission members etc.

(1) The President, Vice Presidents, Senior Deputy Presidents, Deputy Presidents and Commissioners shall be appointed by the Governor-General by commission and hold office as provided by this Act.

(2) Each Presidential Member has the same rank, status and precedence as a Judge of the Court.

(3) A Presidential Member or former Presidential Member is entitled to be styled “The Honourable”.

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(4) A person is not entitled to be styled “The Honourable” merely because the person is acting, or has acted, as a Presidential Member.

64 Qualifications for appointment

(1) The Governor-General may only appoint a person as the President if:

(a) the person:

   (i) is or has been a Judge of a court created by the Parliament; or
   (ii) has been a Judge of a court of a State or Territory; or
   (iii) has been enrolled as a legal practitioner of the High Court, or the Supreme Court of a State or Territory, for at least 5 years; and

(b) in the opinion of the Governor-General, the person is, because of skills and experience in the field of industrial relations, a suitable person to be appointed as President.

(2) The Governor-General may only appoint a person as a Vice President, a Senior Deputy President or a Deputy President if:

(a) the person has been a Judge of a court created by the Parliament or a court of a State or Territory, or has been enrolled as a legal practitioner of the High Court, or the Supreme Court of a State or Territory, for at least 5 years;

(b) the person has had experience at a high level in industry or commerce or in the service of:

   (i) a peak council or another association representing the interests of employers or employees; or
   (ii) a government or an authority of a government; or

(c) the person has, at least 5 years previously, obtained a degree of a university or an educational qualification of a similar standard after studies in the field of law, economics or industrial relations, or some other field of study considered by the Governor-General to have substantial relevance to the duties of a Vice President, a Senior Deputy President or a Deputy President;

and, in the opinion of the Governor-General, the person is, because of skills and experience in the field of industrial relations, a suitable person to be appointed as a Vice President, a Senior Deputy President or a Deputy President (as the case may be).
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(3) The Governor-General may only appoint a person as a Commissioner if the person has, in the opinion of the Governor-General, appropriate skills and experience in the field of industrial relations.

65 Seniority

The members of the Commission have seniority according to the following order of precedence:

(a) the President;
(b) the Vice Presidents, according to the days on which their commissions took effect, or, if their commissions took effect on the same day, according to the precedence assigned to them by their commissions;
(c) the Senior Deputy Presidents, according to the days on which their commissions took effect, or, where the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions;
(d) the Deputy Presidents, according to the days on which their commissions took effect, or, where the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions;
(e) the Commissioners, according to the days on which their commissions took effect, or, where the commissions of 2 or more of them took effect on the same day, according to the precedence assigned to them by their commissions.

66 Performance of duties on part-time basis

(1) A member of the Commission may, with the consent of the President, perform his or her duties on a part-time basis.

(2) If the President consents to a member performing his or her duties on a part-time basis, the President and the member are to enter into an agreement specifying the proportion of full-time duties to be worked by the member from and including a specified date.

(3) The proportion may be varied by an agreement entered into between the President and the member.

(4) The proportion in force in relation to a particular period is in this section called the agreed proportion.
(5) If the President consents to a member performing his or her duties on a part-time basis, the member is to be paid:

(a) salary at an annual rate equal to the agreed proportion of the annual rate of salary that would be payable to the member if the member were performing his or her duties on a full-time basis instead of on a part-time basis; and

(b) such travelling allowances as are determined from time to time by the Remuneration Tribunal for travel within Australia; and

(c) such other allowances as are prescribed by the regulations.

(6) If the annual rate of salary of a member mentioned in subsection (5) is not an amount of whole dollars, it is to be rounded to the nearest dollar (with 50 cents being rounded up).

(7) If, assuming that a member or former member mentioned in subsection (5) had performed his or her duties on a full-time basis instead of on a part-time basis, the member or former member would be entitled to a payment under subsection 79(9), (10) or (11) or 81(3), the member or former member is to be paid an amount equal to the agreed proportion of that payment.

(8) If there are different agreed proportions applicable to different periods, paragraph (5)(a) and subsection (7) apply separately to each of those periods.

(9) In this section:

*member of the Commission* does not include:

(a) the President; or

(b) a person who also holds office as a member of a prescribed State industrial authority.

### 67 Dual federal and State appointments

A person who is a member of the Commission may be appointed as a member of a prescribed State industrial authority, and a person who is a member of a prescribed State industrial authority may, subject to section 64, be appointed as a member of the Commission, and, subject to any law of the State, a person so appointed may, at the same time, hold the offices of member of the Commission and member of the prescribed State industrial authority.
Section 68

68 Performance of duties by dual federal and State appointees

As agreed from time to time by the President and the head of the prescribed State industrial authority, a person who holds an office of member of the Commission and an office of member of a prescribed State industrial authority:

(a) may perform the duties of the secondary office; and
(b) may exercise, in relation to a particular matter:

(i) any powers that the person has in relation to the matter as a member of the Commission; and
(ii) any powers that the person has in relation to the matter as a member of the State industrial authority.

69 Dual federal appointments

(1) Nothing in this Act prevents a person who holds office as a member of the Commission from holding at the same time:

(a) an office as member of a prescribed Commonwealth tribunal or prescribed Territory tribunal; or
(b) an office under a Commonwealth or Territory law that provides for the office to be held by a member of the Commission.

(2) A person who is a member of the Commission may, in accordance with and subject to the directions of the President, perform functions as a member of a prescribed Territory tribunal.

(3) In this section:

tribunal does not include a court created by the Parliament.

70 Appointment of a Judge as President not to affect tenure etc.

(1) The appointment of a Judge of a court created by the Parliament as the President, or service by such a Judge as President, does not affect:

(a) the Judge’s tenure of office as a Judge; or
(b) the Judge’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge.

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(2) For all purposes, the Judge’s service as the President is taken to be service as a Judge.

71 Tenure of Commission members

(1) A member of the Commission holds office until the member resigns, is removed from office or attains the age of 65 years.

(2) The first President of the Commission appointed after the commencement of this subsection may be appointed for a fixed term and, in that case, the person holds office as President until:
   (a) the term ends; or
   (b) the person dies, resigns or is removed from office;
whichever first happens.

(3) The appointment of a person who is a member of a prescribed State industrial authority as a member of the Commission may be for a fixed term and, in that case, the person holds office as a member of the Commission until:
   (a) the term ends;
   (b) the person ceases to be a member of the prescribed State industrial authority; or
   (c) the person resigns or is removed from office;
whichever first happens.

72 Acting President

(1) During any period when:
   (a) the President is absent from duty or from Australia, or is for any other reason unable to perform the duties of the office of President; or
   (b) there is a vacancy in the office of President (whether or not an appointment has previously been made to the office);
the Governor-General may appoint a person who is qualified to be appointed as the President to act in that office.

(2) Anything done by or in relation to a person purporting to act under subsection (1), (1A) or (1B) is not invalid because:
   (a) the occasion for the appointment had not arisen;
   (b) there was a defect or irregularity in connection with the appointment;
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

(3) For the purpose of subsection (1) only, a person is not disqualified from appointment as the President merely because the person has reached the age of 65.

73 Acting Vice President

(1) The Governor-General may appoint a person who is qualified to be appointed as a Vice President to act in an office of Vice President:
(a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the holder of the office is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

(3) For the purpose of subsection (1) only, a person is not disqualified from appointment as a Vice President merely because the person has reached the age of 65.

74 Acting Senior Deputy President

(1) The Governor-General may appoint a person qualified to be appointed as a Senior Deputy President to act as Senior Deputy President for a specified period (including a period that exceeds 12 months) if the Governor-General is satisfied that the appointment is necessary to enable the Commission to perform its functions effectively.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
(a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment; or
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

(3) For the purpose of subsection (1) only, a person is not disqualified from appointment as a Senior Deputy President merely because the person has reached 65.

75 Acting Deputy Presidents

(1) The Governor-General may appoint a person qualified to be appointed as a Deputy President to act as Deputy President for a specified period (including a period that exceeds 12 months) if the Governor-General is satisfied that the appointment is necessary to enable the Commission to perform its functions effectively.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid because:
   (a) the occasion for the appointment had not arisen;
   (b) there was a defect or irregularity in connection with the appointment;
   (c) the appointment had ceased to have effect; or
   (d) the occasion for the person to act had not arisen or had ceased.

(3) For the purposes of subsection (1) only, a person is not disqualified from appointment as a Deputy President merely because the person has attained the age of 65.

76 Oath or affirmation of office

A member of the Commission shall, before proceeding to discharge the duties of the office, take before the Governor-General, a Justice of the High Court, a Judge of the Court or a Judge of the Supreme Court of a State or Territory an oath or affirmation in accordance with the form in Schedule 3.
Part 3  Australian Industrial Relations Commission
Division 1  Establishment of Commission

Section 77

77  Discharge of Commission’s business
The President is to be assisted by the Vice President in ensuring the orderly and quick discharge of the business of the Commission.

78  Duty of Commission members
Each member of the Commission shall keep acquainted with industrial affairs and conditions.

79  Remuneration and allowances of Presidential Members etc.

(1) The President is to be paid:
   (a) salary at an annual rate equal to the annual rate of salary payable to the Chief Justice of the Court; and
   (b) such travelling allowances as are determined from time to time by the Remuneration Tribunal for travel within Australia; and
   (c) such other allowances as are prescribed by the regulations.

(2) If a person holds office as the President and as a Judge of a court created by the Parliament, he or she is not to be paid remuneration as President except as provided by subsection (3).

(3) If the salary payable to the person as a Judge is less than the salary that would be payable to the President under subsection (1), the person is to be paid an allowance equal to the difference between the Judge’s salary and the salary that would be payable to the President.

(4) A Vice President is to be paid:
   (a) salary at an annual rate equal to 103% of the annual rate of salary payable to a Judge of the Court; and
   (b) such travelling allowances as are determined from time to time by the Remuneration Tribunal for travel within Australia; and
   (c) such other allowances as are prescribed by the regulations.

(5) A Senior Deputy President is to be paid:
   (a) salary at an annual rate equal to the annual rate of salary payable to a Judge of the Court; and

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(b) such travelling allowances as are determined from time to
time by the Remuneration Tribunal for travel within
Australia; and
(c) such other allowances as are prescribed by the regulations.

(6) A Deputy President is to be paid:
(a) salary at an annual rate equal to 95% of the annual rate of
salary payable to a Judge of the Court; and
(b) such travelling allowances as are determined from time to
time by the Remuneration Tribunal for travel within
Australia; and
(c) such other allowances as are prescribed by the regulations.

(7) If the annual rate of salary of a Presidential Member is not an
amount of whole dollars, it is to be rounded to the nearest dollar
(with 50 cents being rounded up).

(8) If, assuming that the President or a former President had held the
office of Chief Justice of the Court instead of the office of
President, the President or former President would be entitled to a
payment under subsection 7(5E) of the Remuneration Tribunal Act
1973, the President or former President is to be paid an amount
equal to that payment.

(9) If, assuming that a Vice President or former Vice President had
held an office of Judge of the Court instead of an office of Vice
President, the Vice President or former Vice President would be
entitled to a payment under subsection 7(5E) of the Remuneration
Tribunal Act 1973, the Vice President or former Vice President is
to be paid an amount equal to 103% of that payment.

(10) If, assuming that a Senior Deputy President or former Senior
Deputy President had held an office of Judge of the Court instead
of the office of Senior Deputy President, the Senior Deputy
President or former Senior Deputy President would be entitled to a
payment under subsection 7(5E) of the Remuneration Tribunal Act
1973, the Senior Deputy President or former Senior Deputy
President is to be paid an amount equal to that payment.

(11) If, assuming that a Deputy President or former Deputy President
had held an office of Judge of the Court instead of the office of
Deputy President, the Deputy President or former Deputy President
would be entitled to a payment under subsection 7(5E) of the

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Remuneration Tribunal Act 1973, the Deputy President or former
Deputy President is to be paid an amount equal to 95% of that
payment.

(12) The salary of the Presidential Members accrue from day to day and
are payable monthly.

(13) Where a person who is a member of a prescribed State industrial
authority is appointed as a member of the Commission, the person
shall not be remunerated in relation to the office of member of the
Commission, but the person may be paid, in relation to expenses in
travelling to discharge the duties of the office, such sums (if any)
as the Governor-General considers reasonable.

(14) A person who, at the same time, holds the offices of member of the
Commission and member of a prescribed Commonwealth tribunal
or prescribed Territory tribunal as permitted by section 69:
(a) shall be remunerated in relation to the office of member of
the tribunal only in accordance with another law of the
Commonwealth or Territory relating to the remuneration of
persons holding at the same time offices of member of the
Commission and member of the tribunal; but
(b) may be paid, in relation to expenses in travelling to discharge
the duties of the office of member of the tribunal, such sums
(if any) as the Governor-General considers reasonable.

(15) This section has effect subject to:
(a) section 66; and
(b) any Commonwealth or Territory law making provision as
mentioned in paragraph 69(1)(b).

(16) In this section:
Judge does not include the Chief Justice of the Court.

80 Application of Judges’ Pensions Act

(1) The Judges’ Pensions Act 1968 does not apply in relation to a
Presidential Member if:
(a) immediately before being appointed as a Presidential
Member, he or she was:
(i) an eligible employee for the purposes of the
Superannuation Act 1976; or
(ii) a member of the superannuation scheme established by deed under the Superannuation Act 1990; and
(b) he or she does not make an election under subsection (2).

(2) A Presidential Member may elect to cease to be:
(a) an eligible employee for the purposes of the Superannuation Act 1976; or
(b) a member of the superannuation scheme established by deed under the Superannuation Act 1990.

(3) The election must be made:
(a) within 3 months of the Presidential Member’s appointment; and
(b) by notice in writing to the Minister.

(4) If a Presidential Member makes the election:
(a) the Judges’ Pensions Act 1968 applies in relation to him or her and is taken to have so applied immediately after he or she was appointed as a Presidential Member; and
(b) he or she is taken to have ceased to be:
   (i) an eligible employee for the purposes of the Superannuation Act 1976; or
   (ii) a member of the superannuation scheme established by deed under the Superannuation Act 1990;
   immediately before being appointed as a Presidential Member.

81 Remuneration and allowances of Commissioners

(1) A Commissioner is to be paid:
(a) salary at an annual rate equal to 70% of the annual rate of salary payable to a Deputy President; and
(b) such travelling allowances as are determined from time to time by the Remuneration Tribunal for travel within Australia; and
(c) such other allowances as are prescribed by the regulations.

(2) If the annual rate of salary of a Commissioner is not an amount of whole dollars, it is to be rounded to the nearest dollar (with 50 cents being rounded up).
(3) If, assuming that a Commissioner or former Commissioner had held an office of Deputy President instead of the office of Commissioner, the Commissioner or former Commissioner would be entitled to a payment under subsection 79(11), the Commissioner or former Commissioner is to be paid an amount equal to 70% of that payment.

(4) This section has effect subject to section 66.

82 Removal of Presidential Member from office

The Governor-General may remove a Presidential Member from office on an address praying for removal on the grounds of proved misbehaviour or incapacity being presented to the Governor-General by both Houses of the Parliament in the same session.

83 Outside employment of Commissioner

(1) Subject to subsection (2), a Commissioner shall not, except with the consent of the Minister, engage in paid employment outside the duties of the office.

(2) Subsection (1) does not apply in relation to the holding by a member of an office or appointment in the Defence Force.

84 Leave of absence of Commissioner

(1) A Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The President may grant a Commissioner leave of absence, other than recreation leave, on such terms and conditions as to Remuneration or otherwise as the President determines.

(3) In determining the recreation leave entitlements of a Commissioner under the Remuneration Tribunal Act 1973, the Remuneration Tribunal must have regard to:

(a) any past employment of the Commissioner in the service of a State or an authority of a State; or

(b) any past service of the Commissioner as a member of an authority of a State.

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(4) In determining the terms and conditions on which leave of absence is granted to a Commissioner under subsection (2), the President must have regard to:

(a) any past employment of the Commissioner in the service of a State or an authority of a State; or

(b) any past service of the Commissioner as a member of an authority of a State.

85 Disclosure of interest by Commission members

(1) Where, for the purposes of a proceeding, the Commission is constituted by, or includes, a member of the Commission who has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member’s functions in relation to the proceeding:

(a) the member shall disclose the interest to the parties to the proceeding; and

(b) unless all the parties consent—the member shall not take part in the proceeding or exercise any powers in relation to the proceeding.

(2) Where the President becomes aware that, for the purposes of a proceeding, the Commission is constituted by, or includes, a member of the Commission who has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member’s functions in relation to the proceeding:

(a) if the President considers that the member should not take part, or should not continue to take part, in the proceeding—the President shall give a direction to the member accordingly; or

(b) in any other case—the President shall cause the interest of the member to be disclosed to the parties to the proceeding and the member shall not take part in the proceeding or exercise any powers in relation to the proceeding unless all the parties to the proceeding consent.

(3) In this section:

*proceeding* includes a proceeding under the Registration and Accountability of Organisations Schedule.
86 Termination of appointment of Commissioner

(1) The Governor-General may remove a Commissioner from office on an address praying for removal on the grounds of proved misbehaviour or incapacity being presented to the Governor-General by both Houses of the Parliament in the same session.

(2) The Governor-General shall terminate the appointment of a Commissioner who:

(a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) engages in paid employment outside the duties of the office in contravention of section 83.

87 Resignation by Commission member

A member of the Commission may resign by signed instrument delivered to the Governor-General.
Division 2—Organisation of Commission

88 Manner in which Commission may be constituted

(1) Subject to this Act and the Registration and Accountability of Organisations Schedule, the Commission may be constituted by:
   (a) a single member, or 2 or more members, of the Commission; or
   (b) a Full Bench.

(2) A Full Bench consists of at least 3 members of the Commission, including at least 2 Presidential Members, established by the President as a Full Bench for the purposes of a proceeding.

(3) The Commission constituted by a member or members of the Commission may exercise its powers (whether under this Act, the Registration and Accountability of Organisations Schedule or otherwise) even though the Commission constituted by another member or other members of the Commission is at the same time exercising the powers of the Commission (whether under this Act, the Registration and Accountability of Organisations Schedule or otherwise).

89 Powers exercisable by single member of Commission

Subject to this Act and the Registration and Accountability of Organisations Schedule, a function or power of the Commission may be performed or exercised by a single member of the Commission.

90 Functions and powers conferred on members

A function or power conferred by this Act or the Registration and Accountability of Organisations Schedule on a member or members of the Commission, however described, shall, where the context admits, be taken to be a function or power conferred on the Commission to be performed or exercised by the member or members.
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91 Exercise of Commission powers

(1) The Commission may perform a function or exercise a power on its own initiative.

(2) Despite subsection (1), the Commission must not perform a function or exercise a power under a provision of this Act on its own initiative if:
   (a) the function is to be performed, or the power exercised, on application by a specified person or class of persons; and
   (b) the function is not also expressed to be able to be performed, or the power exercised, on the Commission’s own initiative.

92 Continuation of hearing by Commission

(1) Where:
   (a) the hearing of a matter has been commenced before the Commission constituted by a single member; and
   (b) before the matter has been determined, the member becomes unavailable;

   the President shall appoint another member of the Commission to constitute the Commission for the purposes of the matter.

(2) Where the hearing of a matter has been commenced before the Commission constituted by 2 or more members and, before the matter has been determined, one of the members becomes unavailable, the President:
   (a) shall if it is necessary for the purpose of establishing a Full Bench of the Commission under section 88; and
   (b) may in any other case;

   appoint a member to participate as a member of the Commission for the purposes of the matter.

(3) A member of the Commission becomes unavailable where the member is unable to continue dealing with a matter, whether because the member has ceased to be a member of the Commission or is prevented from taking part in the proceeding by section 85 or for any other reason.

(4) Where the Commission is reconstituted under this section for the purposes of a matter, the Commission as reconstituted shall have regard to the evidence given, the arguments adduced and any
award, order or determination made in relation to the matter before the Commission was reconstituted.

93 Commission divided in opinion

If the persons constituting the Commission for the purposes of any proceeding are divided in opinion as to the decision to be given, the decision shall be given, if there is a majority, according to the opinion of the majority, but, if the members are equally divided in opinion, the opinion that shall prevail is:

(a) where the President is a member—the opinion of the President; and
(b) where the President is not a member and the Vice President is a member—the opinion of the Vice President; and
(c) where neither the President nor the Vice President is a member and only one Senior Deputy President is a member—the opinion of the Senior Deputy President; and
(d) where neither the President nor the Vice President is a member and 2 or more Senior Deputy Presidents are members—the opinion of the Senior Deputy President who has seniority under section 65; and
(e) where the President, the Vice President and any Senior Deputy President are not members, and only one Deputy President is a member—the opinion of the Deputy President; and
(f) where the President, Vice President and any Senior Deputy President are not members and 2 or more Deputy Presidents are members—the opinion of the Deputy President who has seniority under section 65; and
(g) in any other case—the opinion of the Commissioner who is a member and who has seniority under section 65.

94 Arrangement of business of Commission

(1) The President shall direct the business of the Commission.

(2) When exercising powers under this section and section 95, the President must have regard to the improved:

(a) efficiency of the Commission; and
(b) cooperation between the Commission and State industrial authorities;
that may be achieved by the Commission’s powers and functions being exercised and performed, in relation to a particular matter, by members of State industrial authorities who hold secondary offices as members of the Commission.

95 Panels of Commission for particular industries

(1) The President may assign an industry or group of industries to a panel of members of the Commission consisting of at least one Presidential Member and at least one Commissioner and, subject to this Act and any direction of the President, the powers of the Commission in relation to that industry (other than powers exercisable by a Full Bench) shall, as far as practicable, be exercised by a member or members of the panel.

(2) Even though an industry has been assigned to a panel, the President may direct that the powers of the Commission in relation to a particular matter relating to that industry are to be exercised by:
   (a) a member of the Commission who is not a member of that panel; or
   (b) members of the Commission, some or all of whom are not members of that panel.

(3) If more than one Presidential Member is assigned to a panel, the President must nominate one of the Presidential Members to organise and allocate the work of the panel.

(4) A member of the Commission may be a member of more than one panel mentioned in subsection (1).

(5) A member of the Commission may be a member of the panel established under section 14 of the Registration and Accountability of Organisations Schedule.

96 Delegation by President

(1) The President may, by signed instrument, delegate to a Vice President all or any of the President’s powers under this Act or the Registration and Accountability of Organisations Schedule.

(2) If the President delegates a power to only one of the Vice Presidents, he or she may, in addition, delegate that power to a
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Senior Deputy President to be exercised when that Vice President is unable, for any reason, to exercise that power personally.

(3) If the President delegates the same power to both Vice Presidents, he or she may, in addition, delegate that power to a Senior Deputy President to be exercised when, for any reason, neither Vice President is able to exercise that power personally.

97 Protection of Commission members

A member of the Commission has, in the performance of functions as a member of the Commission, the same protection and immunity as a Judge of the Court.

98 Co-operation with the States by President

The President may invite the heads of State industrial authorities to meet with the President to exchange information and discuss matters of mutual interest in relation to workplace relations.

99 Co-operation with the States by Registrar

The Industrial Registrar may invite the principal registrars of State industrial authorities to meet with the Industrial Registrar to exchange information and discuss matters of mutual interest in relation to workplace relations.
Part 3 Australian Industrial Relations Commission
Division 3 Representation and intervention

Section 100

Division 3—Representation and intervention

100 Representation of parties before Commission

(1) A party to a proceeding before the Commission may appear in person.

(2) Subject to this and any other Act, a party to a proceeding before the Commission may be represented only as provided by this section.

(3) A party (including an employing authority) may be represented by counsel, solicitor or agent if:
   (a) all parties have given express consent to that representation; and
   (b) the Commission grants leave for the party to be so represented.

(4) A party (including an employing authority) may be represented by counsel, solicitor or agent if:
   (a) the party applies to the Commission to be so represented; and
   (b) the Commission grants leave for the party to be so represented.

(5) In deciding whether or not to grant leave under subsection (3), the Commission must have regard to the following matters:
   (a) whether being represented by counsel, solicitor or agent would assist the party concerned to bring the best case possible;
   (b) the capacity of the particular counsel, solicitor or agent to represent the party concerned;
   (c) the capacity of the particular counsel, solicitor or agent to assist the Commission in performing the Commission’s functions under this Act.

(6) In deciding whether or not to grant leave under subsection (4), the Commission must have regard to the following matters:
   (a) the matters referred to in paragraphs (5)(a), (b) and (c);
   (b) the complexity of the factual and legal issues relating to the proceeding;

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(c) whether there are special circumstances that make it desirable that the party concerned be represented by counsel, solicitor or agent;
(d) if the party applies to be represented by an agent—whether the agent is a person or body, or an officer or employee of a person or body, that is able to represent the interests of the party under a State or Territory industrial relations law.

(7) An appeal to a Full Bench under section 120 may not be made in relation to a decision under subsection (3) or (4) to grant leave or not to grant leave.

(8) A party that is an organisation may be represented by:
(a) a member, officer or employee of the organisation; or
(b) an officer or employee of a peak council to which the organisation is affiliated.

(9) An employing authority may be represented by a prescribed person.

(10) Regulations made for the purposes of subsection (9) may prescribe different classes of persons in relation to different classes of proceedings.

(11) A party other than an organisation or employing authority may be represented by:
(a) an officer or employee of the party; or
(b) a member, officer or employee of an organisation of which the party is a member; or
(c) an officer or employee of a peak council to which the party is affiliated; or
(d) an officer or employee of a peak council to which an organisation or association of which the party is a member is affiliated; or
(e) a bargaining agent.

(12) Where the Minister is a party (other than in the capacity of employing authority), the Minister may be represented by counsel or solicitor or by another person authorised for the purpose by the Minister.

(13) Where the Minister is a party (other than in the capacity of employing authority), another party (including an employing
authority) may, with the leave of the Commission, be represented by counsel, solicitor or agent.

(14) In this section (other than paragraph (3)(a)):

\textit{party} includes an intervener.

101 Intervention generally

Where the Commission is of the opinion that an organisation, a person (including the Minister) or a body should be heard in a matter before the Commission, the Commission may grant leave to the organisation, person or body to intervene in the matter.

102 Particular rights of intervention of Minister

(1) The Minister may, on behalf of the Commonwealth, by giving written notice to the Industrial Registrar, intervene in the public interest in a matter before a Full Bench.

(2) The Minister may, on behalf of the Commonwealth, by giving written notice to the Industrial Registrar, intervene in the public interest in a matter before the Commission so far as the matter involves public sector employment.
Division 4—General matters relating to the powers and procedures of the Commission

Subdivision A—General matters Commission to take into account

103 Commission to take into account the public interest

(1) In the performance of its functions, the Commission must take into account the public interest, and for that purpose must have regard to:
   (a) the objects of this Act; and
   (b) the state of the national economy and the likely effects on the national economy of any order that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.

(2) To the extent that the Commission is performing its functions in relation to matters arising under the Registration and Accountability of Organisations Schedule, the Commission must take into account the public interest, and for that purpose must have regard to:
   (a) Parliament’s intention in enacting that Schedule; and
   (b) the state of the national economy and the likely effects on the national economy of any order that the Commission is considering, or is proposing to make, with special reference to likely effects on the level of employment and on inflation.

(3) This section does not apply to the performance of a function under Part 9 or Part 10.

104 Commission to take into account discrimination issues

In the performance of its functions, the Commission must take into account the following:
   (a) the need to apply the principle of equal pay for work of equal value;
   (b) the need to prevent and eliminate discrimination 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.

105 Commission to take account of Racial Discrimination Act, Sex Discrimination Act, Disability Discrimination Act and Age Discrimination Act

In the performance of its functions, the Commission must 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.

106 Commission to take account of Family Responsibilities Convention

(1) In performing its functions, the Commission must take account of the principles embodied in the Family Responsibilities Convention, in particular those relating to:
   (a) preventing discrimination against workers who have family responsibilities; and
   (b) helping workers to reconcile their employment and family responsibilities.

(2) This section does not apply to the performance of a function under Part 9.

107 Safety, health and welfare of employees

(1) In performing its functions, the Commission must take into account the provisions of any law of a State or Territory relating to the safety, health and welfare of employees in relation to their employment.

(2) This section does not apply to the performance of a function under Division 3 of Part 12.

108 Commission to act quickly

The Commission must perform its functions as quickly as practicable.

68 Workplace Relations Act 1996
109 Commission to avoid technicalities and facilitate fair conduct of proceedings

The Commission must perform its functions in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of any proceedings under this Act or the Registration and Accountability of Organisations Schedule.

Subdivision B—Particular powers and procedures of the Commission

110 Procedure of Commission

(1) In a proceeding under this Act or the Registration and Accountability of Organisations Schedule:
   (a) the procedure of the Commission is, subject to this Act, the Registration and Accountability of Organisations Schedule 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.

(2) The Commission may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to the proceeding and require that the cases be presented within the respective periods.

(3) 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.

111 Particular powers of Commission

(1) The Commission may do any of the following in relation to a proceeding under this Act or the Registration and Accountability of Organisations Schedule:
   (a) inform itself in any manner that it thinks 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 proceeding;
(d) vary or revoke an order, direction or decision of the Commission;
(e) dismiss a matter or part of a matter on the ground:
   (i) that the matter, or the part of the matter, is trivial; or
   (ii) that further proceedings in relation to the matter are not necessary or desirable in the public interest;
(f) determine the proceeding in the absence of a person who has been summoned or served with a notice to appear;
(g) sit at any place;
(h) conduct the proceeding, or any part of the proceeding, in private;
(i) adjourn the proceeding to any time and place;
(j) refer any matter to an expert and accept the expert’s report as evidence;
(k) direct a member of the Commission to consider a particular matter that is before the Full Bench and prepare a report for the Full Bench on that matter;
(l) allow the amendment, on any terms that it thinks appropriate, of any application or other document relating to the proceeding;
(m) correct, amend or waive any error, defect or irregularity whether in substance or form;
(n) summon before it any persons whose presence the Commission considers would assist in relation to the proceeding;
(o) compel the production before it of documents and other things for the purpose of reference to such entries or matters as relate to the proceeding;
(p) make interim decisions;
(q) make a final decision in respect of the matter to which the proceeding relates.

(2) The Commission may, in writing, authorise a person (including a member of the Commission) to take evidence on its behalf, with any limitations as the Commission directs, in relation to the proceeding, 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.

(3) The following provisions do not apply to the performance of a function under Part 9:
   (a) paragraph (1)(e);
   (b) paragraph (1)(j);
   (c) paragraph (1)(k).

(4) The following provisions do not apply to the performance of a function under Division 3, 4 or 5 of Part 12:
   (a) paragraph (1)(a);
   (b) paragraph (1)(e);
   (c) paragraph (1)(k);
   (d) paragraph (1)(p);
   (e) paragraph (1)(q);
   (f) subsection (2).

(5) Paragraph (1)(j) does not apply to the performance of a function under Division 4 of Part 12.

(6) If a provision of this Act specifies a time or a period in respect of any matter or thing, the Commission must not extend the time or the period specified unless this Act expressly permits the Commission to do so.

(7) If a provision of the Registration and Accountability of Organisations Schedule specifies a time or a period in respect of any matter or thing, the Commission must not extend the time or the period specified unless the Registration and Accountability of Organisations Schedule expressly permits the Commission to do so.

(8) For the purposes of paragraph (1)(d), order does not include an award or an award-related order.

112 Reference of proceedings to Full Bench

(1) If a proceeding is before a member of the Commission, a party to the proceeding or the Minister may apply to the member 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.

(2) If an application is made under subsection (1) 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.

(3) If the President is of the opinion 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, the President must grant the application.

(4) If the President grants an application under subsection (1), the Full Bench must (subject to subsection (5)) hear and determine the proceeding to which the application relates.

(5) If the President grants an application under subsection (1), the Full Bench may do either or both of the following:
   (a) have regard to any evidence given, and any arguments adduced, in the proceeding before the Full Bench began to deal with it;
   (b) refer a part of the proceeding to a member of the Commission to hear and determine.

(6) The President may, before a Full Bench has been established for the purpose of dealing with a proceeding under this section, authorise a member of the Commission to take evidence for the purposes of the proceeding, and the Full Bench must have regard to the evidence.

(7) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.

(8) The member must, after making such investigation (if any) as is necessary, provide a report to the President or the Full Bench, as required.

(9) In this section:

   *proceeding* includes a part of a proceeding.
113 President may deal with certain proceedings

(1) The President may, whether or not another member of the Commission has begun to deal with a particular proceeding, decide to deal with the proceeding.

(2) If the President decides to deal with the proceeding, the President must:
   (a) hear and determine the proceeding; or
   (b) refer the proceeding to a Full Bench.

(3) If the President refers an application to a Full Bench, the Full Bench must (subject to subsection (4)) hear and determine the proceeding.

(4) If the President refers the proceeding to a Full Bench, the Full Bench may refer a part of the proceeding to a member of the Commission to hear and determine.

(5) The President or the Full Bench may, in dealing with the proceeding, have regard to any evidence given, and any arguments adduced, in the proceeding before the President or the Full Bench, as the case may be, began to deal with it.

(6) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.

(7) The member must, after making such investigation (if any) as is necessary, provide a report to the President or a Full Bench, as the case may be.

(8) In this section:

   proceeding includes a part of a proceeding.

114 Review on application by Minister

(1) The Minister may apply to the President for a review by a Full Bench of an award or order, or a decision relating to the making of an award or order, made by a member of the Commission (whether under this Act, the Registration and Accountability of Organisations Schedule or otherwise) if it appears to the Minister that the award, order or decision is contrary to the public interest.
(2) If an application is made to the President under subsection (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 award, order or decision should be reviewed, make such review of the award, order or decision as appears to it to be desirable having regard to the matters referred to in the application.

(4) Subject to subsection (5) of this section, subsections 120(4) to (8) apply in relation to a review under this section in the same manner as they apply in relation to an appeal under section 120.

(5) Subsections 121(4) to (8) apply in relation to a review under this section in relation to a matter arising under the Registration and Accountability of Organisations Schedule in the same manner as they apply in relation to an appeal under section 121.

(6) In a review under this section:
   (a) the Commission must take such steps as it thinks appropriate to ensure that each person and organisation bound by the award or otherwise with an interest in the review is made aware of the review; and
   (b) the Minister may intervene in the proceeding.

(7) Each provision of this Act relating to the performance of the Commission's functions in relation to awards extends to a review under this section.

(8) Nothing in this section 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 section may, if the Full Bench thinks appropriate, be dealt with together.

(9) Nothing in this section affects any right of appeal or any power of a Full Bench under section 121, and an appeal under that section and a review under this section may, if the Full Bench thinks appropriate, be dealt with together.

115 Compulsory conferences

(1) For the purpose of the performance of a function, or the exercise of a power, of the Commission under this Act or the Registration and
Accountability of Organisations Schedule, a member of the Commission may, on the initiative of the member or on application made by a party to, or intervener in, the proceeding, direct a person to attend, at a specified time and place, a conference to be presided over by a member of the Commission or another person nominated by the President.

Note: Contravening a direction may be an offence under section 815.

(2) A direction may be given to anyone whose presence at the conference the member considers would help in the performance of a function under this Act or the Registration and Accountability of Organisations Schedule.

(3) The conference must be held in private except to the extent that the person presiding over the conference directs that it be held in public.

(4) This section does not apply to the performance of a function under Part 9.

116 Power to override certain laws affecting public sector employment

(1) In so far as the performance of its functions under this Act or the Registration and Accountability of Organisations Schedule involves public sector employment, the Commission may, where it considers it proper to do so, make an award or order that is not, or in its opinion may not be, consistent with a relevant law of the Commonwealth or of an internal Territory.

(2) In this section:

*enactment* means an ordinance made under the *Northern Territory (Administration) Act 1910* and continued in force by the *Northern Territory (Self-Government) Act 1978*.

*relevant law* means a law of the Commonwealth or an internal Territory relating to matters pertaining to the relationship between employers and employees in public sector employment, other than:

(a) the *Safety, Rehabilitation and Compensation Act 1988*, the *Long Service Leave (Commonwealth Employees) Act 1976*, the *Superannuation Act 1976* or the *Superannuation Act 1990*; or
(b) a prescribed Act or enactment, or prescribed provisions of an Act or enactment.

(3) This section does not apply to the performance of a function under Part 12.

117 State authorities may be restrained from dealing with matter that is before the Commission

(1) If it appears to a Full Bench that a State industrial authority is dealing or is about to deal with a matter that is the subject of a proceeding before the Commission under this Act or the Registration and Accountability of Organisations Schedule, the Full Bench may make an order restraining the State industrial authority from dealing with the matter.

(2) The State industrial authority must, in accordance with the order, cease dealing or not deal, as the case may be, with the matter.

(3) An order, award, decision or determination of a State industrial authority made in contravention of the order of a Full Bench under this section is, to the extent of the contravention, void.

118 Joint sessions of Commission

If:

(a) the President considers that a question is common to 2 or more proceedings before the Commission; and

(b) the Commission is not constituted by the same person or persons for the purposes of each proceeding;

the President may direct that the Commission constituted by all the persons who constitute the Commission for the purposes of the proceedings may take evidence or hear argument, or take evidence and hear argument, as to the question for the purposes of both or all of the proceedings.

119 Revocation and suspension of awards and orders

(1) An organisation, a person interested or the Minister may apply to the President, and a member of the Commission or a Registrar may refer a matter to the President, for action by a Full Bench under this section.
(2) If an application is made to the President under subsection (1), the President must establish a Full Bench to hear and determine the application.

(3) If a matter is referred to the President under subsection (1), the President may establish a Full Bench to hear and determine the matter.

(4) If it appears to the Full Bench:
   (a) that an organisation has contravened this Act, the Registration and Accountability of Organisations Schedule or an award or order of the Commission; or
   (b) that a substantial number of the members of an organisation refuse to accept employment either at all or in accordance with existing awards or orders; or
   (c) that for any other reason an award or order should be suspended or revoked in whole or part;
the Full Bench may, subject to such conditions as it thinks appropriate, make an order revoking, or suspending for such period as it thinks appropriate, the award or order or any of the terms of the award or an order.

(5) The Full Bench may also make such other orders as it thinks appropriate in relation to the operation of:
   (a) if the Full Bench revokes or suspends an award or order on a ground referred to in paragraph (4)(a) or (b)—any other award or order that binds the organisation; or
   (b) in any other case—any other award or order that applies in relation to the employment of:
      (i) members of an organisation that is bound by the revoked or suspended award or order; or
      (ii) persons eligible to be members of such an organisation.

(6) The revocation or suspension of all or any of the terms of an award or order may be expressed to apply only in relation to:
   (a) a particular organisation or person bound by the award or order; or
   (b) a particular branch of an organisation; or
   (c) a particular class of members of an organisation; or
   (d) a particular locality.
Division 5—Appeals to Full Bench and references to Court

120 Appeals to Full Bench relating to matters arising other than under the Registration and Accountability of Organisations Schedule

(1) Subject to this Act, an appeal lies to a Full Bench, with the leave of the Full Bench, against:
   (a) an award or order made by a member of the Commission; and
   (b) a decision of a member of the Commission not to make an award or order; and
   (c) a decision of a member of the Commission under paragraph 111(1)(e); and
   (d) a decision of a member of the Commission to vary, or not to vary, an award under section 812; and
   (e) a decision of the Commission to vary, or not to vary, an award or workplace agreement that has been referred to the Commission under section 46PW of the Human Rights and Equal Opportunity Commission Act 1986; and
   (f) a decision of a member of the Commission that the member has jurisdiction, or a refusal or failure of a member of the Commission to exercise jurisdiction, in a matter arising under this Act.

(2) A Full Bench shall grant leave to appeal under subsection (1) if, in its opinion, the matter is of such importance that, in the public interest, leave should be granted.

(3) An appeal under subsection (1) may be instituted:
   (a) in the case of an appeal under paragraph (1)(a) that is not covered by paragraph (b) or (c) of this subsection—by an organisation or person bound by the award or order;
   (b) in the case of an appeal under paragraph (1)(a) against an order under Part 12—by a person entitled under section 685 to institute the appeal; and
   (c) in the case of an appeal under paragraph (1)(a) against an order that was made under subsection 590(1) or subclause 14(1) or 23(1) of Schedule 9—by the person who applied for
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the order or any person who made submissions to the Commission on whether the order should be made; and

(d) in the case of an appeal under paragraph (1)(b) against a decision not to make an order under subsection 590(1) or subclause 14(1) or 23(1) of Schedule 9—by the person who applied for the order;

(e) in the case of an appeal under paragraph (1)(d) in relation to an award:
   (i) an employer, employee or organisation bound by the award; or
   (ii) the Employment Advocate; and

(f) in the case of an appeal under paragraph (1)(e)—by a party to the review of the award or workplace agreement; and

(g) in any other case—by an organisation or person aggrieved by the decision or act concerned.

(4) Where an appeal has been instituted under this section, a Full Bench or Presidential Member may, on such terms and conditions as the Full Bench or Presidential Member considers appropriate, order that the operation of the whole or a part of the decision or act concerned be stayed pending the determination of the appeal or until further order of a Full Bench or Presidential Member.

(5) A Full Bench may direct that 2 or more appeals be heard together, but an organisation or person who has a right to be heard in relation to one of the appeals may be heard in relation to a matter raised in another of the appeals only with the leave of the Full Bench.

(6) For the purposes of an appeal under this section, a Full Bench:
   (a) may admit further evidence; and
   (b) may direct a member of the Commission to provide a report in relation to a specified matter.

(7) On the hearing of the appeal, the Full Bench may do one or more of the following:
   (a) confirm, quash or vary the decision or act concerned;
   (b) make an award, order or decision dealing with the subject-matter of the decision or act concerned;
   (c) direct the member of the Commission whose decision or act is under appeal, or another member of the Commission, to
take further action to deal with the subject-matter of the decision or act in accordance with the directions of the Full Bench;
(d) in the case of an appeal under paragraph (1)(c)—take any action (including making an award or order) that could have been taken if the decision under paragraph 111(1)(e) had not been made.

(8) Where, under paragraph (6)(b), a Full Bench directs a member of the Commission to provide a report, the member shall, after making such investigation (if any) as is necessary, provide the report to the Full Bench.

121 Appeals to Full Bench relating to matters arising under the Registration and Accountability of Organisations Schedule etc.

(1) Subject to the Registration and Accountability of Organisations Schedule and this Act, an appeal lies to a Full Bench, with the leave of the Full Bench, against:
(a) a decision of a member of the Commission by way of a finding in relation to a matter arising under the Registration and Accountability of Organisations Schedule; and
(b) an order made by a member of the Commission in proceedings under that Schedule, other than an order made by consent of the parties to the proceeding; and
(c) a decision of a member of the Commission under that Schedule not to make an order; and
(d) a decision of a member of the Commission under paragraph 111(1)(e) of this Act; and
(e) a decision of a member of the Commission that the member has jurisdiction, or a refusal or failure of a member of the Commission to exercise jurisdiction, in a matter arising under the Registration and Accountability of Organisations Schedule.

(2) A Full Bench must grant leave to appeal under subsection (1) if, in its opinion, the matter is of such importance that, in the public interest, leave should be granted.

(3) An appeal under subsection (1) may be instituted by:
(a) a party to the proceeding; or
(b) a person bound by an order; or
(c) a person aggrieved by the decision.

(4) Where an appeal has been instituted under this section, a Full Bench or Presidential Member may, on such terms and conditions as the Full Bench or Presidential Member considers appropriate, order that the operation of the whole or a part of the decision or act concerned be stayed pending the determination of the appeal or until further order of a Full Bench or Presidential Member.

(5) A Full Bench may direct that 2 or more appeals be heard together, but an organisation or person who has a right to be heard in relation to one of the appeals may be heard in relation to a matter raised in another of the appeals only with the leave of the Full Bench.

(6) For the purposes of an appeal under this section, a Full Bench:
   (a) may admit further evidence; and
   (b) may direct a member of the Commission to provide a report in relation to a specified matter.

(7) On the hearing of the appeal, the Full Bench may do one or more of the following:
   (a) confirm, quash or vary the decision or act concerned;
   (b) make an order or decision dealing with the subject-matter of the decision or act concerned;
   (c) direct the member of the Commission whose decision or act is under appeal, or another member of the Commission, to take further action to deal with the subject-matter of the decision or act in accordance with the directions of the Full Bench;
   (d) in the case of an appeal under paragraph (1)(d)—take any action (including making an order) that could have been taken if the decision under paragraph 111(1)(e) had not been made.

(8) If, under paragraph (6)(b), a Full Bench directs a member of the Commission to provide a report, the member must, after making such investigation (if any) as is necessary, provide the report to the Full Bench.

(9) Each provision of this Act and the Registration and Accountability of Organisations Schedule relating to the hearing or determination
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of a matter mentioned in subsection (1) of this section extends to
the hearing or determination of an appeal under this section.

122 References to Court by Commission on question of law

(1) The Commission may refer a question of law arising in a matter
before the Commission for the opinion of the Court.

(2) If the question referred to the Court is not whether the Commission
may exercise powers in relation to the matter, the Commission
may, in spite of the reference, make an award, order or decision in
the matter.

(3) On the determination of the question by the Court:

(a) if the Commission has not made an award, order or decision
in the matter—the Commission may make an award, order or
decision not inconsistent with the opinion of the Court; or

(b) if the Commission has made an award, order or decision in
the matter—the Commission shall vary the award, order or
decision in such a way as will make it consistent with the
opinion of the Court.
Divison 6—Miscellaneous

123 Seals of Commission

(1) The Commission shall have a seal on which are inscribed the words “The Seal of the Australian Industrial Relations Commission”.

(2) A duplicate of the seal shall be kept at each registry.

(3) Such other seals as are required for the business of the Commission shall be kept and used at each registry, and shall be in such form and kept in such custody, as the President directs.

(4) A document, or a copy of a document, purporting to be sealed with the seal of the Commission or a duplicate of the seal, or with a seal referred to in subsection (3), is receivable in evidence without further proof of the seal.

124 Rules of Commission

(1) The President, after consultation with members of the Commission, may, by signed instrument, make rules, not inconsistent with this Act or the Registration and Accountability of Organisations Schedule, with respect to:
   (a) the practice and procedure to be followed in the Commission; or
   (b) the conduct of business in the Commission;

and, in particular:
   (c) the manner in which, and the time within which, applications, submissions and objections may be made to the Commission; and
   (d) the manner in which applications, submissions and objections may be dealt with by the Commission; and
   (e) the furnishing of security for the payment of costs in respect of an application made under section 643.

(2) A Rule of the Commission:
   (a) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901; and
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(b) is a statutory rule within the meaning of the Statutory Rules Publication Act 1903.

(3) If Rules of the Commission have not been made under this section with respect to the practice and procedure of the Commission, and the regulations do not make provision with respect to the matter, the regulations made under the previous Act (as in force immediately before the commencement of this section) apply, so far as practicable and with all necessary modifications, with respect to the practice and procedure of the Commission in the same manner as they applied immediately before that commencement to the practice and procedure of the Australian Conciliation and Arbitration Commission.

125 President must provide certain information etc. to the Minister

(1) The President must provide to the Minister information, and copies of documents, of the kinds that are prescribed by the regulations, being:
   (a) information that is publicly available, or derived from information that is publicly available, relating to:
      (i) the Commission’s orders, decisions or actions under this Act; or
      (ii) notifications or applications made or given to the Commission under this Act; or
   (b) copies of such orders, decisions, notifications or applications.

(2) The President must provide the information or the copies by the time, and in the form, prescribed by the regulations.

126 Annual report of Commission

(1) The President shall, as soon as practicable after the end of each financial year, prepare and provide to the Minister a report of the operations of the Commission during that year.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
Part 4—Australian Industrial Registry

Division 1—Interpretation

127 Definition of State industrial body

In this Part:

State industrial body means a court, tribunal, board, authority or other body of a State.
Division 2—Establishment and functions of Australian Industrial Registry

128 Australian Industrial Registry

(1) There is established a registry to be known as the Australian Industrial Registry.

(2) There shall be an Industrial Registrar, and such Deputy Industrial Registrars as are necessary from time to time.

(3) The Industrial Registry shall consist of the Industrial Registrar, the Deputy Industrial Registrars and the other staff referred to in section 149.

(4) The Industrial Registrar shall direct the business of the Industrial Registry.

129 Functions of the Industrial Registry

(1) The functions of the Industrial Registry are:
   (a) to act as the registry for the Commission and to provide administrative support to the Commission;
   (b) to provide advice and assistance to organisations in relation to their rights and obligations under this Act; and
   (c) such other functions as are conferred on the Industrial Registry by this Act, the BCII Act or the Registration and Accountability of Organisations Schedule.

(2) If an agreement made by the Minister, after consulting the President, with an appropriate authority of a State:
   (a) provides for the Industrial Registrar or a Deputy Industrial Registrar to be appointed under an Act of the State to be the Registrar of a State industrial body; or
   (b) provides for the Industrial Registrar or a Deputy Industrial Registrar to perform or exercise any functions, duties or powers of the Registrar of a State industrial body;
   subsections (3) and (4) apply subject to the agreement.

(3) The Industrial Registry has the following functions:

86 Workplace Relations Act 1996
(a) acting as the registry for the State industrial body;
(b) providing administrative support to the State industrial body.

(4) If:
   (a) either of the following subparagraphs applies:
      (i) the Industrial Registrar or the Deputy Industrial Registrar is appointed under an Act of the State to be the Registrar of another State industrial body that has replaced the State industrial body referred to in the agreement;
      (ii) an Act of the State, or the agreement, authorises the Industrial Registrar or the Deputy Industrial Registrar to perform or exercise any functions, duties or powers of another State industrial body that has replaced the State industrial body referred to in the agreement; and
   (b) the Minister, after consulting the President, has agreed to the Industrial Registry having the following functions:
      (i) acting as the registry for the other State industrial body;
      (ii) providing administrative support to the other State industrial body;
the Industrial Registry has those functions.

(5) If, after consulting the President, the Minister has made an agreement with an appropriate authority of a State for the Industrial Registry to perform the functions (State Registry functions) of acting as the registry for, and providing administrative support to, a State industrial body referred to in the agreement and:
   (a) State Registry functions in relation to the State industrial body referred to in the agreement are expressed to be conferred on the Industrial Registry by or under an Act of the State or the agreement; or
   (b) State Registry functions in relation to another State industrial body that has replaced the State industrial body referred to in the agreement are expressed to be conferred on the Industrial Registry by or under an Act of the State or the agreement and the Minister, after consulting the President, has agreed to the Industrial Registry performing those functions in relation to the other State industrial body;
then, subject to the agreement, the Industrial Registry has the State Registry functions in relation to the State industrial body referred
to in the agreement or the other State industrial body, as the case may be.

130 Registries

(1) The Governor-General shall cause a Principal Registry of the Industrial Registry to be established.

(2) The Governor-General may cause other registries of the Industrial Registry to be established, but shall cause at least one registry to be established in each State, the Australian Capital Territory and the Northern Territory.

131 Seals of the Registry

(1) The Industrial Registry shall have a seal on which are inscribed the words “The Seal of the Australian Industrial Registry”.

(2) A duplicate of the seal shall be kept at each registry.

(3) Such other seals as are required for the business of the Industrial Registry shall be kept and used at each registry, and shall be in such form and kept in such custody, as the Industrial Registrar directs.

(4) A document, or a copy of a document, purporting to be sealed with the seal of the Industrial Registry or a duplicate of that seal, or with a seal referred to in subsection (3), is receivable in evidence without further proof of the seal.

132 Annual report of Industrial Registry

(1) The Industrial Registrar shall, as soon as practicable after the end of each financial year, prepare and provide to the Minister a report of the operations of the Industrial Registry under this Act, the BCII Act and the Registration and Accountability of Organisations Schedule during that year.

(2) The Minister shall cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
Division 3—Registrars

133 Industrial Registrar

(1) The Governor-General shall appoint a person to be the Industrial Registrar.

(2) The Industrial Registrar:

(a) has the powers and functions conferred on the Industrial Registrar, or on a Registrar, by or under this Act, the BCII Act, the Registration and Accountability of Organisations Schedule or an award; and

(b) shall perform the functions conferred on the Industrial Registry by this Act, the BCII Act or the Registration and Accountability of Organisations Schedule, and has such powers as are necessary for the performance of those functions.

(3) If an agreement is made between the Minister and the appropriate authority of a State as mentioned in subsection 129(2), then, subject to the agreement:

(a) if the Industrial Registrar is appointed under an Act of the State to be the Registrar of a State industrial body referred to in the agreement, or to be the Registrar of another State industrial body as mentioned in subparagraph 129(4)(a)(i)—the Industrial Registrar has, and must perform, any functions or duties, and may exercise any powers, of the Registrar of the body concerned, whether the functions, duties or powers are conferred by or under that Act or another Act of the State; or

(b) if an Act of the State, or the agreement, is expressed to authorise the Industrial Registrar to perform or exercise any functions, duties or powers of the Registrar of a State industrial body referred to in the agreement or any functions, duties or powers of the Registrar of another State industrial body as mentioned in subparagraph 129(4)(a)(ii)—the Industrial Registrar has, and must perform, those functions or duties, or may exercise those powers, as the case may be.

(4) If:
(a) under subsection 129(5) the Industrial Registry has the functions of acting as the registry for, and providing administrative support to, a State industrial body; and
(b) a law of the State is expressed to authorise the Industrial Registrar, or a Registrar, to perform or exercise any functions, duties or powers relevant to the performance of the functions referred to in paragraph (a);

then, subject to the agreement referred to in subsection 129(5), the Industrial Registrar has, and must perform, those functions or duties, or may exercise those powers, as the case may be.

(5) The Principal Registry shall be directly controlled by the Industrial Registrar.

(6) In exercising the powers and performing the functions of his or her office in relation to the Commission, the Industrial Registrar shall comply with any directions given by the President.

(7) In performing or exercising any functions, duties or powers in relation to a State industrial body as mentioned in subsection (3) or (4), the Industrial Registrar must comply with any directions lawfully given by the body.

(8) In allocating and managing the resources of the Industrial Registry, the Industrial Registrar shall have regard to the needs of the Commission and the needs of any State industrial body in respect of which the Industrial Registrar or a Deputy Industrial Registrar performs or exercises functions, duties or powers.

134 Tenure of office of Industrial Registrar

(1) Subject to this Part, the Industrial Registrar holds office for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) The Industrial Registrar holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the Governor-General.

135 Remuneration and allowances of Industrial Registrar

Subject to the Remuneration Tribunal Act 1973, the Industrial Registrar shall be paid:
(a) such remuneration as is determined by the Remuneration Tribunal; and
(b) such allowances as are prescribed.

136 Outside employment of Industrial Registrar

(1) Subject to subsection (2), the Industrial Registrar shall not, except with the consent of the Minister, engage in paid employment outside the duties of the office.

(2) Subsection (1) does not apply in relation to the holding by the Industrial Registrar of an office or appointment in the Defence Force.

137 Disclosure of interests by Industrial Registrar

(1) The Industrial Registrar shall give written notice to the Minister of all direct or indirect pecuniary interests that the Industrial Registrar has or acquires in any business or in any body corporate carrying on any business.

(2) Where the Industrial Registrar has or acquires any interest (whether pecuniary or otherwise) that could conflict with the proper exercise of a power, or the proper performance of a function, in relation to a proceeding before the Industrial Registrar:
   (a) the Industrial Registrar shall disclose the interest to the parties to the proceeding; and
   (b) unless all the parties consent to the Industrial Registrar exercising the power or performing the function in relation to the proceeding—the Industrial Registrar shall nominate a Deputy Industrial Registrar to exercise the power or perform the function.

138 Leave of absence of Industrial Registrar

(1) The Industrial Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant the Industrial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
139 Resignation by Industrial Registrar

The Industrial Registrar may resign by signed instrument delivered to the Governor-General.

140 Termination of appointment of Industrial Registrar

(1) The Governor-General may terminate the appointment of the Industrial Registrar for misbehaviour or physical or mental incapacity.

(2) The Governor-General shall terminate the appointment of the Industrial Registrar if the Industrial Registrar:
   (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit;
   (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;
   (c) engages in paid employment outside the duties of the office in contravention of section 136; or
   (d) fails, without reasonable excuse, to comply with section 137.

141 Deputy Industrial Registrars

(1) The Governor-General shall appoint such number of persons to be Deputy Industrial Registrars as are necessary from time to time.

(2) Each Deputy Industrial Registrar:
   (a) has the powers and functions conferred on a Registrar by or under this Act, the BCII Act, the Registration and Accountability of Organisations Schedule or an award; and
   (b) subject to the directions of the Industrial Registrar, shall perform the functions conferred on the Industrial Registry by this Act or the Registration and Accountability of Organisations Schedule, and has such powers as are necessary for the performance of those functions.

(3) If an agreement is made between the Minister and the appropriate authority of a State as mentioned in subsection 129(2), then, subject to the agreement:
(a) if a Deputy Industrial Registrar is appointed under an Act of the State to be the Registrar or a Deputy Registrar of a State industrial body referred to in the agreement, or to be the Registrar or a Deputy Registrar of another State industrial body as mentioned in subparagraph 129(4)(a)(i)—the Deputy Industrial Registrar has, and must perform, any functions or duties, and may exercise any powers, of the Registrar or Deputy Registrar, as the case may be, of the body concerned, whether the functions, duties or powers are conferred by or under that Act or another Act of the State; or

(b) if an Act of the State, or the agreement, is expressed to authorise a Deputy Industrial Registrar or a Deputy Registrar to perform or exercise any functions, duties or powers of the Registrar or a Deputy Registrar of a State industrial body referred to in the agreement or any functions, duties or powers of the Registrar or a Deputy Registrar of another State industrial body as mentioned in subparagraph 129(4)(a)(ii)—the Deputy Industrial Registrar has, and must perform, those functions or duties, or may exercise those powers, as the case may be.

(4) If:

(a) under subsection 129(5) the Industrial Registry has the functions of acting as the registry for, and providing administrative support to, a State industrial body; and

(b) a law of the State is expressed to authorise the Industrial Registrar, or a Registrar, to perform or exercise any functions, duties or powers relevant to the performance of the functions referred to in paragraph (a);

then, subject to the agreement referred to in subsection 129(5), each Deputy Industrial Registrar:

(c) has the functions, duties or powers referred to in paragraph (b); and

(d) must perform those functions or duties or may exercise those powers, as the case may be, subject to the directions of the Industrial Registrar.

142 Acting Industrial Registrar

(1) The Minister may appoint a person to act in the office of Industrial Registrar:
Section 143

(a) during any vacancy in the office (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Industrial Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid because:
(a) the occasion for the appointment had not arisen;
(b) there was a defect or irregularity in connection with the appointment;
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

143 Acting Deputy Industrial Registrars

(1) The Industrial Registrar may appoint a person to act in the office of a Deputy Industrial Registrar:
(a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
(b) during any period, or during all periods, when the Deputy Industrial Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid because:
(a) the occasion for the appointment had not arisen;
(b) there was a defect or irregularity in connection with the appointment;
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

144 Oath or affirmation of office of Registrar

A Registrar shall, before proceeding to discharge the duties of the office, take before the Governor-General, a Justice of the High Court, a Judge of the Court or a Judge of the Supreme Court of a
State or Territory an oath or affirmation in accordance with the form in Schedule 3.
Section 145

Division 4—References and appeals

145 References by Registrar to Commission

(1) A Registrar may refer a matter, or a question (other than a question of law) arising in a matter, before the Registrar to the President for decision by the Commission.

(2) The Commission may:
   (a) hear and determine the matter or question; or
   (b) refer the matter or question back to the Registrar, with such directions or suggestions as the Commission considers appropriate.

(3) The powers of the Commission under this section are exercisable by:
   (a) the President;
   (b) a Presidential Member assigned by the President for the purposes of the matter or question concerned; or
   (c) if the President directs—a Full Bench.

146 Removal of matters before Registrar

(1) Where a matter is before a Registrar, the President may order that the matter be heard and determined by the Commission.

(2) The powers of the Commission under this section are exercisable by:
   (a) the President;
   (b) a Presidential Member assigned by the President for the purposes of the matter concerned; or
   (c) if the President directs—a Full Bench.

147 Appeals from Registrar to Commission

(1) Subject to this and any other Act, an appeal lies to the Commission, with the leave of the Commission, against:
   (a) the making of any decision, or the doing of any act, by a Registrar in a matter arising under this Act, the Registration
and Accountability of Organisations Schedule (to the extent permitted by that Schedule) or any other Act; or
(b) the refusal or failure of a Registrar to make any decision or do any act in a matter arising under this Act, the Registration and Accountability of Organisations Schedule (to the extent permitted by that Schedule) or any other Act.

(2) Where an appeal has been instituted under this section, the Commission may, on such terms and conditions as it considers appropriate, order that the operation of the whole or part of the decision or act concerned be stayed pending the determination of the appeal or until further order of the Commission.

(3) For the purposes of the appeal, the Commission may take evidence.

(4) On the hearing of the appeal, the Commission may do one or more of the following:
(a) confirm, quash or vary the decision or act concerned;
(b) make a decision dealing with the subject-matter of the decision or act concerned;
(c) direct the Registrar whose decision or act is under appeal, or another Registrar, to take further action to deal with the subject-matter of the decision or act in accordance with the directions of the Commission.

(5) The powers of the Commission under this section are exercisable by:
(a) the President;
(b) a Presidential Member assigned by the President for the purposes of the appeal concerned; or
(c) if the President directs—a Full Bench.

(6) An appeal does not lie to a Full Bench against a decision under this section.

148 References to Court by Registrar on question of law

(1) A Registrar may refer a question of law arising in a matter before the Registrar under this Act or the Registration and Accountability of Organisations Schedule for the opinion of the Court.
Section 148

(2) On the determination of the question by the Court, the Registrar shall not give a decision or do anything in the matter that is inconsistent with the opinion of the Court.
Division 5—Staff

149 Staff

(1) The staff of the Industrial Registry, including the Deputy Industrial Registrars, shall be persons engaged under the Public Service Act 1999.

(2) For the purposes of the Public Service Act 1999:
   (a) the Industrial Registrar and the APS employees assisting the Industrial Registrar together constitute a Statutory Agency; and
   (b) the Industrial Registrar is the Head of that Statutory Agency.
Part 5—The Employment Advocate

Division 1—Functions, powers etc. of the Employment Advocate

150 The Employment Advocate

There is to be an Employment Advocate.

151 Functions of the Employment Advocate

(1) The functions of the Employment Advocate are:

(a) to promote the making of workplace agreements; and
(b) to provide assistance and advice to employees and employers (especially employers in small business) and organisations in relation to workplace agreements; and
(c) to provide education and information to employees, employers and organisations in relation to workplace agreements; and
(d) to promote better work and management practices through workplace agreements; and
(e) to accept lodgment of:
   (i) workplace agreements; and
   (ii) notices about transmission of instruments; and
(f) to provide advice to employees, employers and organisations about awards and the Australian Fair Pay and Conditions Standard; and
(g) to provide aggregated statistical information to the Minister; and
(h) to authorise multiple-business agreements in accordance with the regulations; and
(i) to give to the Minister, in accordance with the regulations, information and copies of documents; and
(j) to disclose information that relates to the functions of workplace inspectors to workplace inspectors in response to requests from workplace inspectors; and
(k) to disclose information to workplace inspectors that the Employment Advocate considers on reasonable grounds is
likely to assist the inspectors in performing their functions; and
(1) to analyse workplace agreements; and
(m) to perform any other function conferred on the Employment Advocate by this Act, another Act, the regulations or the Registration and Accountability of Organisations Schedule.

(2) In performing his or her functions relating to workplace agreements, the Employment Advocate must encourage parties to agreement-making to take account of the needs of workers in disadvantaged bargaining positions (for example: women, people from a non-English speaking background, young people, apprentices, trainees and outworkers).

(3) In performing his or her functions, the Employment Advocate must have particular regard to:
(a) assisting workers to balance work and family responsibilities; and
(b) the need to prevent and eliminate discrimination 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.

(4) Regulations made for the purposes of paragraph (1)(i) may require that documents given to the Minister are given with such deletions as are necessary to prevent the identification of individuals to whom the documents refer.

152 Minister’s directions to Employment Advocate

(1) The Minister may, by legislative instrument, give directions specifying the manner in which the Employment Advocate must exercise or perform the powers or functions of the Employment Advocate.

(2) The directions must not be about a particular workplace agreement.

(3) The Employment Advocate must comply with the directions.
Part 5  The Employment Advocate
Division 1  Functions, powers etc. of the Employment Advocate

Section 153

153  Staff

The staff necessary to assist the Employment Advocate are to be persons engaged under the Public Service Act 1999 and made available for the purpose by the Secretary to the Department.

154  Delegation by Employment Advocate

(1) The Employment Advocate may, by instrument in writing, delegate any of the Employment Advocate’s powers or functions to:
   (a) a person who is appointed or employed by the Commonwealth; or
   (b) a person who is appointed or employed by a State or Territory.

(2) The Employment Advocate’s functions relating to the authorisation of multiple-business agreements can only be delegated to a member of the staff referred to in section 153.

(3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Employment Advocate.

155  Annual report

(1) As soon as practicable after the end of each financial year, the Employment Advocate must prepare and give to the Minister a report on the operations of the Employment Advocate during that year.

(2) The report must include details of directions given by the Minister during the financial year under section 152.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament.

102  Workplace Relations Act 1996
Division 2—Appointment, conditions of appointment etc. of Employment Advocate

156 Appointment of Employment Advocate

(1) The Employment Advocate is to be appointed by the Governor-General for a term of up to 5 years.

(2) The Employment Advocate holds office on a full-time basis.

157 Remuneration and allowances

(1) The Employment Advocate is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the Employment Advocate is to be paid the remuneration that is prescribed by the regulations.

(2) The Employment Advocate is to be paid such allowances as are prescribed by the regulations.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

158 Outside employment

The Employment Advocate must not engage in any paid employment outside the duties of the office without the Minister’s written approval.

159 Recreation leave etc.

(1) The Employment Advocate has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant the Employment Advocate other leave of absence on such terms and conditions as the Minister determines. The terms and conditions may include terms and conditions relating to remuneration.
160 Resignation

The Employment Advocate may resign by giving the Governor-General a signed resignation notice.

161 Disclosure of interests

The Employment Advocate must give written notice to the Minister of all interests, pecuniary or otherwise, that the Employment Advocate has or acquires and that could conflict with the proper performance of the Employment Advocate’s functions.

162 Termination of appointment

(1) The Governor-General may terminate the appointment of the Employment Advocate for physical or mental incapacity, misbehaviour, incompetence or inefficiency.

(2) The Governor-General must terminate the appointment of the Employment Advocate if the Employment Advocate does any of the following:

(a) is absent from duty (except on leave of absence) for 14 consecutive days, or for 28 days in any period of 12 months;
(b) becomes bankrupt;
(c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
(d) compounds with his or her creditors;
(e) assigns his or her remuneration for the benefit of his or her creditors;
(f) contravenes section 161, without a reasonable excuse;
(g) engages in paid employment outside the duties of the office, without the Minister’s written approval.

(3) If the Employment Advocate is:

(a) an eligible employee for the purposes of the Superannuation Act 1976; or
(b) a member of the superannuation scheme established by deed under the Superannuation Act 1990;

the Governor-General may, with the consent of the Employment Advocate, retire the Employment Advocate from office on the ground of physical or mental incapacity.

104 Workplace Relations Act 1996
(4) For the purposes of the *Superannuation Act 1976*, the Employment Advocate is taken to have been retired from office on the ground of invalidity if:

(a) the Employment Advocate is removed or retired from office on the ground of physical or mental incapacity; and

(b) the Commonwealth Superannuation Board of Trustees No. 2 gives a certificate under section 54C of the *Superannuation Act 1976*.

(5) For the purposes of the *Superannuation Act 1990*, the Employment Advocate is taken to have been retired from office on the ground of invalidity if:

(a) the Employment Advocate is removed or retired from office on the ground of physical or mental incapacity; and

(b) the Commonwealth Superannuation Board of Trustees No. 1 gives a certificate under section 13 of the *Superannuation Act 1990*.

163 Acting appointment

(1) The Minister may appoint a person to act as Employment Advocate:

(a) if there is a vacancy in the office of Employment Advocate, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Employment Advocate is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

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

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.
Section 164

164 Other terms and conditions of appointment

The Employment Advocate holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General in writing.
Division 3—Miscellaneous

165 Identity of parties to AWAs not to be disclosed

(1) A person commits an offence if:
   (a) the person discloses information; and
   (b) the information is protected information; and
   (c) the discloser has reasonable grounds to believe that the
       information will identify another person as being, or having
       been, a party to an AWA; and
   (d) the disclosure is not made by the discloser in the course of
       performing functions or duties as a workplace agreement
       official; and
   (e) the disclosure is not required or permitted by this Act, by
       another Act, by regulations made for the purposes of another
       provision of this Act or by regulations made for the purposes
       of another Act; and
   (f) the person whose identity is disclosed has not, in writing,
       authorised the disclosure.

Penalty: Imprisonment for 6 months.

(2) In this section:

   protected information, in relation to a person, means information
   that the person acquired:
   (a) in the course of performing functions or duties, or exercising
       powers, as a workplace agreement official; or
   (b) from a workplace agreement official who acquired the
       information as mentioned in paragraph (a).

   workplace agreement official means:
   (a) the Employment Advocate; or
   (b) a delegate of the Employment Advocate; or
   (c) a member of the staff assisting the Employment Advocate
       under section 153.
Section 166

166 Publication of AWAs etc. by Employment Advocate

Subject to section 165, the Employment Advocate may publish or make available copies of, or extracts from, workplace agreements.
Part 6—Workplace inspectors

167 Inspectors

(1) There shall be such workplace inspectors as are necessary from time to time.

(2) The Minister may, by instrument, appoint as a workplace inspector:
   (a) a person who has been appointed, or who is employed, by the Commonwealth; or
   (b) a person, other than a person mentioned in paragraph (a).

(3) A person appointed under paragraph (2)(a) is appointed for the period specified in regulations made for the purposes of this subsection.

(4) A person appointed under paragraph (2)(b) is appointed for the period specified in the person’s instrument of appointment, which must not be longer than the period specified in regulations made for the purposes of this subsection.

(5) Subject to subsection (6), a workplace inspector has the powers and functions conferred on a workplace inspector by this Act or by the regulations or by another Act.

(6) A person appointed under paragraph (2)(b) to be a workplace inspector has only such of the powers and functions mentioned in subsection (5) as are specified in his or her instrument of appointment.

(7) The Minister may, by legislative instrument, give directions specifying the manner in which, and any conditions and qualifications subject to which, powers or functions conferred on inspectors are to be exercised or performed.

(8) A workplace inspector must comply with directions given under subsection (7).
Part 6 Workplace inspectors

Section 168

168 Identity cards

(1) The Minister may issue to an inspector an identity card in a prescribed form.

(2) An inspector must carry the identity card at all times when exercising powers or performing functions as an inspector.

(3) A person commits an offence if:
   (a) the person ceases to be a workplace inspector; and
   (b) the person does not return the person’s identity card to the Secretary of the Department within 14 days of so ceasing.

Penalty: 1 penalty unit.

(4) Subsection (3) is an offence of strict liability.

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

169 Powers of inspectors

Purpose for which powers of inspectors can be exercised

(1) The powers of a workplace inspector under this section may be exercised:
   (a) for the purpose of determining whether any of the following are being, or have been, observed:
      (i) workplace agreements;
      (ii) awards;
      (iii) the Australian Fair Pay and Conditions Standard;
      (iv) minimum entitlements and orders under Part 12;
      (v) the requirements of this Act (other than section 905) and the regulations; or
   (b) for the purposes of a provision of the regulations that confers powers or functions on inspectors.

Note: Workplace determinations are treated for the purposes of the Act as if they were collective agreements (see section 506). Undertakings are treated the same way (see section 394). This means that inspectors also have powers in relation to those instruments.

Powers of inspectors

(2) The powers of an inspector are:
(a) to, without force, enter:
   (i) premises on which the inspector has reasonable cause to believe that work to which an instrument or entitlement mentioned in subparagraphs (1)(a)(i) to (iv) applies is being or has been performed; or
   (ii) a place of business in which the inspector has reasonable cause to believe that there are documents relevant to the purpose set out in subsection (1); and
(b) on premises or in a place referred to in paragraph (a):
   (i) to inspect any work, material, machinery, appliance, article or facility; and
   (ii) as prescribed, to take samples of any goods or substances; and
   (iii) to interview any person; and
   (iv) to require a person having the custody of, or access to, a document relevant to that purpose to produce the document to the inspector within a specified period; and
   (v) to inspect, and make copies of or take extracts from, a document produced to him or her; and
   (vi) to require a person to tell the inspector who has custody of a document; and
(c) to require a person, by notice, to produce a document to the inspector.

Note: Contravening a requirement under subparagraph (b)(iv) or paragraph (c) may be an offence under section 819.

When may the powers be exercised?

(3) An inspector may exercise the powers in subsection (2) at any time during ordinary working hours or at any other time at which it is necessary to do so for the purpose set out in subsection (1).

(4) If a person who is required under subparagraph (2)(b)(iv) to produce a document contravenes the requirement, an inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).

Note: Contravening a requirement under this section to produce a document may be an offence under section 819.
(5) Where a document is produced to an inspector under paragraph (2)(c) or subsection (4), the inspector may:
   (a) inspect, and make copies of or take extracts from, the document; and
   (b) retain the document for such period as is necessary for the purpose of exercising powers or performing functions as an inspector.

(6) During the period for which an inspector retains a document, the inspector shall permit the person otherwise entitled to possession of the document, or a person authorised by the person, to inspect, and make copies of or take extracts from, the document at all reasonable times.

Notices under paragraph (2)(c)

(7) The notice referred to in paragraph (2)(c) must:
   (a) be in writing; and
   (b) be served on the person; and
   (c) require the person to produce the document at a specified place within a specified period of not less than 14 days.

Service may be effected by sending the notice to the person’s fax number.

Person must produce document even if it may incriminate them

(8) A person is not excused from producing a document under this section on the ground that the production of the document may tend to incriminate the person.

Limited use immunity for documents produced

(9) If an individual produces a document under this section, the document produced and any information or thing (including any document) obtained as a direct or indirect consequence of the production of the document is not admissible in evidence against the individual in any criminal proceedings unless it is proceedings for an offence against section 819.

(10) If an inspector proposing to enter, or being on, premises is required by the occupier to produce evidence of authority, the inspector is not entitled to enter or remain on the premises without producing to the occupier the inspector’s identity card.
In Australia’s exclusive economic zone

(11) Subsection (2) extends to premises, and places of business, that:
(a) are in Australia’s exclusive economic zone; and
(b) are owned or occupied by an Australian employer.

This subsection has effect subject to Australia’s obligations under international law concerning jurisdiction over ships that fly the flag of a foreign country and aircraft registered under the law of a foreign country.

On Australia’s continental shelf outside exclusive economic zone

(12) Subsection (2) also extends to premises, and places of business, that:
(a) are outside the outer limits of Australia’s exclusive economic zone, but in, on or over a part of Australia’s continental shelf that is prescribed by the regulations for the purposes of this subsection; and
(b) are connected with the exploration of the continental shelf or the exploitation of its natural resources; and
(c) meet the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

170 Disclosure of information by inspectors

(1) A workplace inspector may disclose information acquired by the inspector in the course of exercising powers, or performing functions, as a workplace inspector, if the inspector considers on reasonable grounds that it is necessary or appropriate to do so in the course of exercising his or her powers, or performing his or her functions, as an inspector.

(2) A workplace inspector may disclose information to an officer of the Department administered by the Minister who administers the Migration Act 1958 if the inspector considers on reasonable grounds that the disclosure of the information is likely to assist the officer in the administration of that Act.
(3) The regulations may authorise workplace inspectors to disclose information of the prescribed kind, to officers of the Commonwealth of the prescribed kind, for prescribed purposes.

(4) A workplace inspector may disclose information to an officer of a State who has powers, duties or functions that relate to the administration of a workplace relations or other system relating to terms and conditions, or incidents, of employment, if the inspector considers on reasonable grounds that the disclosure of the information is likely to assist the officer in the administration of that system.
Part 7—The Australian Fair Pay and Conditions Standard

Division 1—Preliminary

171 Purpose of Part

(1) The purpose of this Part is to set out key minimum entitlements of employment.

(2) The key minimum entitlements relate to the following matters:
   (a) basic rates of pay and casual loadings (see Division 2);
   (b) maximum ordinary hours of work (see Division 3);
   (c) annual leave (see Division 4);
   (d) personal leave (see Division 5);
   (e) parental leave and related entitlements (see Division 6).

(3) The provisions of Divisions 2 to 6 constitute the Australian Fair Pay and Conditions Standard.

172 Operation of the Australian Fair Pay and Conditions Standard

(1) The Australian Fair Pay and Conditions Standard provides key minimum entitlements of employment for the employees to whom it applies.

(2) The Australian Fair Pay and Conditions Standard prevails over a workplace agreement or a contract of employment that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.

(3) A dispute about:
   (a) whether the Australian Fair Pay and Conditions Standard provides a more favourable outcome for an employee in a particular respect than a workplace agreement that operates in relation to that employee; or
   (b) what the outcome is for an employee in a particular respect under the Australian Fair Pay and Conditions Standard,
where a workplace agreement operates in relation to that employee; is to be resolved using the dispute settlement procedure included (or taken to be included) in the agreement.

(4) The regulations may prescribe:
   (a) what a particular respect is or is not for the purposes of subsection (2) or (3); or
   (b) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.

Example 1: The way in which particular amounts of annual leave are accrued could be prescribed as a particular respect under paragraph (4)(a).

Example 2: Both the Standard and a workplace agreement require an employee to attest to certain matters in a statutory declaration made for the purposes of maternity leave. The matters required by the agreement are different in some respects from those set out in the Standard. Regulations made for the purposes of paragraph (4)(b) could prescribe the matters to be attested in a statutory declaration as a circumstance in which the Standard is not taken to provide a more favourable outcome.

173 Australian Fair Pay and Conditions Standard cannot be excluded

A term of a workplace agreement or a contract has no effect to the extent to which it purports to exclude the Australian Fair Pay and Conditions Standard or any part of it.

174 Extraterritorial extension

(1) This Part, and the rest of this Act so far as it relates to this Part, extend:
   (a) to an employee outside Australia who meets any of the conditions in this section; and
   (b) to the employee’s employer (whether the employer is in or outside Australia); and
   (c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.
(2) One condition is that the employee is in Australia’s exclusive economic zone and either:
   (a) is an employee of an Australian employer and is not prescribed by the regulations as an employee to whom this subsection does not apply; or
   (b) is an employee prescribed by the regulations as an employee to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

(3) Another condition is that the employee:
   (a) is outside the outer limits of Australia’s exclusive economic zone, but is in, on or over a part of Australia’s continental shelf that is prescribed by the regulations for the purposes of this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
   (b) meets the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

(4) Another condition is that the employee:
   (a) is neither in Australia’s exclusive economic zone nor in, on or over a part of Australia’s continental shelf described in paragraph (3)(a); and
   (b) is an employee of an Australian employer; and
   (c) is an Australian-based employee or bound by a workplace agreement that binds the employer too; and
   (d) is not prescribed by the regulations as an employee to whom this subsection does not apply.

(5) Another condition is that the employee:
(a) is neither in Australia’s exclusive economic zone nor in, on or over a part of Australia’s continental shelf described in paragraph (3)(a); and
(b) is an Australian-based employee of an employer that is not an Australian employer; and
(c) is bound by a workplace agreement that binds the employer too; and
(d) is not prescribed by the regulations as an employee to whom this subsection does not apply.

Definition

(6) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

175 Model dispute resolution process

The model dispute resolution process applies to a dispute about entitlements under Divisions 3 to 6.

Note: The model dispute resolution process is set out in Part 13.
Division 2—Wages

Subdivision A—Preliminary

176  AFPC’s wage-setting parameters etc.

In exercising any of its powers under this Division, the AFPC must act in accordance with section 23 (AFPC’s wage-setting parameters).

Note 1: Any additional considerations or limitations on the exercise of the AFPC’s powers are set out in the various sections of this Division (including sections 177 and 222).

Note 2: The AFPC must ensure that APCSs do not (after 3 years) continue to contain coverage rules that are described by reference to State or Territory boundaries—see section 206.

177  AFPC to have regard to recommendations of Award Review Taskforce

In exercising any of its powers under this Division, the AFPC is to have regard to any relevant recommendations made by the Award Review Taskforce.

178  Definitions

In this Division:

*APCS* means a preserved APCS or a new APCS.

Note: APCS is short for Australian Pay and Classification Scale.

*APCS piece rate employee* means an employee in relation to whom the following paragraphs are satisfied:

(a) the employee’s employment is covered by an APCS;

(b) the rate provisions of the APCS determine one or more basic piece rates of pay that apply to the employment of the employee.

*basic periodic rate of pay* means a rate of pay for a period worked (however the rate is described) that does not include incentive-based payments and bonuses, loadings, monetary allowances, penalty rates or any other similar separately
identifiable entitlements. The meaning of basic periodic rate of pay is also affected by section 210.

Note: Most of the kinds of entitlement excluded from this definition are allowable award matters (see section 513).

basic piece rate of pay means a piece rate of pay, other than a piece rate of pay that is payable, as an incentive-based payment or bonus, in addition to a basic periodic rate of pay.

Note: Incentive-based payments and bonuses are allowable award matters.

casual loading: the meaning of casual loading is affected by section 210.

casual loading provisions has the meaning given by section 179.

classification has the meaning given by section 180.

coverage provisions means:
(a) for a pre-reform wage instrument—all provisions (whether of that instrument or of another instrument or law), as in force on the reform comparison day, that would have affected the determination of whether the employment of any particular employee was covered by the instrument on that day; or
(b) for an APCS—provisions of the APCS that determine whether the employment of a particular employee is covered by the APCS.

Note: For a preserved APCS, the coverage provisions will (at least initially) be the coverage provisions for the pre-reform wage instrument from which the APCS is derived (see paragraph 208(1)(g)).

covered: for when the employment of a particular employee is covered by a particular APCS, see sections 204 and 205.

current circumstances of employment, in relation to an employee, includes any current circumstance of or relating to the employee’s employment.

default casual loading percentage has the meaning given by subsection 186(1).

derived from: for when a preserved APCS is derived from a particular pre-reform wage instrument, see subsection 208(2).
**employee with a disability** means an employee who is qualified for a disability support pension as set out in section 94 or 95 of the *Social Security Act 1991*, or who would be so qualified but for paragraph 94(1)(e) or 95(1)(c) of that Act.

**FMW for an employee:** for when there is an FMW for an employee, see section 194.

Note: FMW is short for Federal Minimum Wage.

**frequency of payment provisions** means:
(a) for a pre-reform wage instrument—provisions (whether of that instrument or of another instrument or law), as in force on the reform comparison day, that would have determined the frequency with which an employee covered by the instrument had to be paid; or
(b) for an APCS, a workplace agreement or a contract of employment—provisions of the APCS, workplace agreement or contract that determine the frequency with which an employee covered by the APCS, workplace agreement or contract must be paid.

Note: For a preserved APCS, the frequency of payment provisions will (at least initially) be the frequency of payment provisions (if any) for the pre-reform wage instrument from which the APCS is derived (see paragraph 208(1)(f)).

**junior employee** means an employee who is under the age of 21.

**new APCS** has the meaning given by subsection 214(1).

**piece rate of pay** means a rate of pay that is expressed as a rate for a quantifiable output or task (as opposed to being expressed as a rate for a period worked).

Note: The following are examples of piece rates of pay:
(a) a rate of pay calculated by reference to number of articles produced;
(b) a rate of pay calculated by reference to number of kilometres travelled;
(c) a rate of pay calculated by reference to number of articles delivered;
(d) a rate of pay calculated by reference to number of articles sold;
(e) a rate of pay calculated by reference to number of tasks performed.
pre-reform federal wage instrument means:

(a) an award (as defined in subsection 4(1) of this Act as in force immediately before the reform commencement) as in force immediately before the reform commencement, but not including:
   (i) an order under section 120A of this Act as then in force; or
   (ii) an award under section 170MX of this Act as then in force; or
(b) sections 552 and 555 of this Act as in force immediately before the reform commencement; or
(c) a law, or a provision of a law, of the Commonwealth, being a law or provision:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or
(d) an instrument made under a law, or a provision of a law, of the Commonwealth, being an instrument:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph.

Note: For when regulations made for the purpose of paragraph (c) or (d) may be expressed to take effect, see section 213.

pre-reform non-federal wage instrument means a pre-reform State wage instrument or a pre-reform Territory wage instrument.

pre-reform State wage instrument means:

(a) a State award (as defined in subsection 4(1) of this Act as in force immediately before the reform commencement) as in force immediately before the reform commencement; or
(b) a law, or a provision of a law, of a State, being a law or provision:
   (i) as in force immediately before the reform commencement; and
   (ii) that entitled employees, or a particular class of employees, to payment of a particular rate of pay; or
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(c) a law, or a provision of a law, of a State, being a law or provision:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or

(d) an instrument made under a law, or a provision of a law, of a State, being an instrument:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph.

Note: For when regulations made for the purpose of paragraph (c) or (d) may be expressed to take effect, see section 213.

**pre-reform Territory wage instrument** means:

(a) a law, or a provision of a law, of a Territory, being a law or provision:
   (i) as in force immediately before the reform commencement; and
   (ii) that entitled employees, or a particular class of employees, to payment of a particular rate of pay; or

(b) a law, or a provision of a law, of a Territory, being a law or provision:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph; or

(c) an instrument made under a law, or a provision of a law, of a Territory, being an instrument:
   (i) as in force immediately before the reform commencement; and
   (ii) that is specified, or is of a kind specified, in regulations made for the purposes of this paragraph.

Note: For when regulations made for the purpose of paragraph (b) or (c) may be expressed to take effect, see section 213.

**pre-reform wage instrument** means a pre-reform federal wage instrument or a pre-reform non-federal wage instrument.
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*preserved APCS* has the meaning given by subsection 208(1).

*pro-rata disability pay method* means a method for determining a rate of pay for employees with a disability, being a method that determines the rate by reference to the relative capacities of those employees.

*rate provisions* has the meaning given by section 181.

*reform comparison day* means the day before the day on which the reform commencement occurs.

*special FMW* has the meaning given by section 197.

*standard FMW* has the meaning given by section 195.

### 179 Meaning of casual loading provisions

(1) For the purposes of this Division, *casual loading provisions*, of a pre-reform wage instrument or an APCS, are provisions of the instrument or APCS that determine a casual loading payable to an employee, or an employee of a particular classification, in addition to a basic periodic rate of pay.

(2) The means by which such provisions may determine a casual loading include the following, or any combination of any of the following:

   (a) direct specification of the loading;

   (b) identification of the loading by reference to other provisions (whether or not of the same instrument or APCS);

   (c) direct specification, or identification by reference to other provisions (whether or not of the same instrument or APCS), of a method for calculating the loading.

(3) Subject to the regulations, a method referred to in subsection (2) may provide for a person or body to determine a loading in a particular way. For the purposes of this Division, a loading determined by the person or body in that way is taken to be a loading determined by the provisions that specify or identify the method.
180 Meaning of classification

(1) For the purposes of this Division, a classification of employees is a classification or category of employees, however described in the pre-reform wage instrument or APCS concerned.

(2) A classification or category of employees may be described by reference to matters including (but not limited to) any of the following, or any combination of any of the following:
   (a) the nature of work performed by employees;
   (b) the skills or qualifications or employees;
   (c) the level of responsibility or experience of employees;
   (d) whether employees are junior employees, or a particular class of junior employees;
   (e) whether employees are employees with a disability, or are a particular class of employees with a disability;
   (f) whether employees are employees to whom training arrangements, or are a particular class of employees to whom training arrangements, apply.

181 Meaning of rate provisions

(1) For the purposes of this Division, rate provisions, of a pre-reform wage instrument or an APCS, are provisions of the instrument or APCS that determine a basic periodic rate of pay, or basic piece rates of pay, payable to an employee, or an employee of a particular classification.

(2) The means by which such provisions may determine a basic periodic rate of pay, or a basic piece rate of pay, include the following, or any combination of any of the following:
   (a) direct specification of a rate;
   (b) identification of a rate by reference to other provisions (whether or not of the same instrument or APCS);
   (c) direct specification, or identification by reference to other provisions (whether or not of the same instrument or APCS), of a method for calculating a rate.

(3) Subject to the regulations, a method referred to in subsection (2) may provide for a person or body to determine a rate in a particular way. For the purposes of this Division, a rate determined by the
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person or body in that way is taken to be a rate determined by the provisions that specify or identify the method.

Subdivision B—Guarantee of basic rates of pay

182 The guarantee

Guarantee of APCS basic periodic rates of pay

(1) If:
   (a) the employment of an employee is covered by an APCS; and
   (b) the employee is not an APCS piece rate employee;
the employee must be paid a basic periodic rate of pay for each of the employee’s guaranteed hours (pro-rated for part hours) that is at least equal to the basic periodic rate of pay (the guaranteed basic periodic rate of pay) that is payable to the employee under the APCS.

Note: For what are the employee’s guaranteed hours, see section 183.

Guarantee of APCS piece rates of pay

(2) If:
   (a) the employment of an employee is covered by an APCS; and
   (b) the employee is an APCS piece rate employee;
the employee must be paid basic piece rates of pay for his or her work that are at least equal to the basic piece rates of pay (the guaranteed basic piece rates of pay) that are payable to the employee under the APCS.

Guarantee of standard FMW

(3) If:
   (a) the employment of an employee is not covered by an APCS; and
   (b) the employee is not a junior employee, an employee with a disability, or an employee to whom a training arrangement applies;
the employee must be paid a basic periodic rate of pay for each of the employee’s guaranteed hours (pro-rated for part hours) that is at least equal to the standard FMW (the guaranteed basic periodic rate of pay).
Note: For what are the employee’s guaranteed hours, see section 183.

**Guarantee of special FMW**

(4) If:

(a) the employment of an employee is not covered by an APCS; and

(b) the employee is a junior employee, an employee with a disability, or an employee to whom a training arrangement applies; and

(c) there is a special FMW for the employee;

the employee must be paid a basic periodic rate of pay for each of the employee’s guaranteed hours (pro-rated for part hours) that is at least equal to that special FMW (the **guaranteed basic periodic rate of pay**).

Note: For what are the employee’s guaranteed hours, see section 183.

### 183 An employee’s guaranteed hours for the purpose of section 182

**Employees employed to work a specified number of hours**

(1) For the purposes of section 182, if an employee is employed to work a specified number of hours per week, the **guaranteed hours** for the employee, for each week, are to be worked out as follows:

(a) start with that specified number of hours (subject to subsection (4));

(b) deduct all of the following:

(i) any hours in the week when the employee is absent from work on deductible authorised leave (as defined in subsection (6));

(ii) any hours in the week in relation to which the employer is prohibited by section 507 from making a payment to the employee;

(iii) any other hours of unauthorised absence from work by the employee in the week;

(c) if, during the week, the employee works, and is required or requested to work, additional hours that are, under the terms and conditions of the employee’s employment, not counted towards the specified number of hours—add on those additional hours.
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Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 226 or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a period that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours per period (the non-week period), but that period is not a week (for example, it is a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}
\]

(4) If:

(a) subsection (1) applies to the employment of an employee to whom a training arrangement applies; and

(b) an APCS includes provisions that determine, in relation to the employee’s employment, that hours attending off-the-job training (including hours attending an educational institution) are hours for which a basic periodic rate of pay is payable; and

(c) the hours that would otherwise be the specified number of hours referred to in subsection (1) for the employee for a week do not include all the hours (the paid training hours) in the week that the APCS so determines are hours for which a basic periodic rate of pay is payable;

subsection (1) applies as if the specified number of hours were increased to such number of hours as includes all the paid training hours.
Employees not employed to work a specified number of hours

(5) For the purpose of section 182, if subsection (1) of this section does not apply to the employment of an employee, the guaranteed hours for the employee are the hours that the employee both is required or requested to work, and does work, for the employer, less any period in relation to which the employer is prohibited by section 507 from making a payment to the employee.

Definitions

(6) In this section:

deductible authorised leave means leave, or an absence, whether paid or unpaid, that is authorised:
(a) by an employee’s employer; or
(b) by or under a term or condition of an employee’s employment; or
(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory;
but not including any leave or absence:
(d) that is on a public holiday and that is so authorised because the day is a public holiday; or
(e) any leave or absence that is authorised in order for the employee to attend paid training hours (within the meaning of paragraph (4)(c)) of off-the-job training.

hour includes a part of an hour.

Note: An employee’s guaranteed hours may therefore be a number of hours and part of an hour.

public holiday means:
(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
(i) a union picnic day; or
(ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or
(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace...
184 Modified operation of section 182 to continue effect of Supported Wage System for certain employees with a disability

(1) This section applies to the employment of an employee with a disability if:
   (a) subsection 182(1) applies (disregarding this section) to the employment of the employee; and
   (b) the APCS that covers the employee’s employment does not determine the basic periodic rate of pay for the employee as a rate that is specific to employees with disabilities; and
   (c) the employee is eligible for the Supported Wage System; and
   (d) the employee’s employment is covered by a workplace agreement; and
   (e) the workplace agreement provides for the payment of a basic periodic rate of pay to the employee at a rate that is not less than the rate (the SWS-compliant rate of pay) set in accordance with the Supported Wage System.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

(2) If this section applies to the employment of the employee, subsection 182(1) has effect as if the guaranteed basic periodic rate of pay under that subsection for the employment of the employee were instead a rate equal to the SWS-compliant rate of pay.

Subdivision C—Guarantee of casual loadings

185 The guarantee

(1) This section applies to a casual employee for whom, under section 182, there is a guaranteed basic periodic rate of pay, other than a casual employee in relation to whom the following paragraphs are satisfied:
   (a) subsection 182(1) applies to the employee;
   (b) the APCS that covers the employment of the employee does not contain casual loading provisions under which a casual loading is payable to the employee;
(c) the employee’s employment is not covered by a workplace agreement.

(2) The casual employee must be paid, in addition to his or her actual basic periodic rate of pay, a casual loading that is at least equal to the guaranteed casual loading percentage of that actual basic periodic rate of pay.

Note: The employee’s actual basic periodic rate of pay should at least equal the guaranteed basic periodic rate of pay under section 182.

(3) The **guaranteed casual loading percentage** is as set out in the following table:

<table>
<thead>
<tr>
<th>Item</th>
<th>In this situation …</th>
<th>the guaranteed casual loading percentage is …</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>if:</td>
<td>the percentage that is the casual loading payable to the employee under casual loading provisions of the APCS referred to in subsection 182(1).</td>
</tr>
<tr>
<td></td>
<td>(a) subsection 182(1) applies to the employment of the employee; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the employee’s employment is not covered by a workplace agreement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) subsection 399(1) is not operating in relation to the employee’s employment;</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>if:</td>
<td>the higher of:</td>
</tr>
<tr>
<td></td>
<td>(a) subsection 182(1) applies to the employment of the employee; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the employee’s employment is not covered by a workplace agreement; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) subsection 399(1) is operating in relation to the employee’s employment;</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>if:</td>
<td>the default casual loading percentage.</td>
</tr>
<tr>
<td></td>
<td>(a) subsection 182(1) applies to the employment of the employee; and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) the employee’s employment is covered by a workplace agreement;</td>
<td></td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Item</th>
<th>In this situation …</th>
<th>the guaranteed casual loading percentage is …</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>if subsection 182(3) or (4) applies to the employment of the employee</td>
<td>the default casual loading percentage.</td>
</tr>
</tbody>
</table>

186 Default casual loading percentage

(1) The default casual loading percentage is 20%, subject to the power of the AFPC to adjust the percentage.

(2) Any adjustment of the default casual loading percentage must be such that the adjusted rate is still expressed as a percentage.

187 Adjustment of default casual loading percentage

(1) The AFPC may adjust the default casual loading percentage.

(2) The power to adjust the default casual loading percentage is subject to:

   (a) sections 176 and 177; and
   (b) subsection 186(2); and
   (c) section 188; and
   (d) section 192; and
   (e) section 222.

188 Only one default casual loading percentage

The AFPC must ensure that there is only ever one default casual loading percentage at any one time.

Subdivision D—Guarantee of frequency of payment

189 The guarantee

APCS applies and contains frequency of payment provisions

(1) If:

   (a) the employment of an employee is covered by an APCS; and
   (b) the APCS contains frequency of payment provisions that apply in relation to the employee’s employment;

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the employer must comply with those provisions in relation to the employee.

APCS applies but does not contain frequency of payment provisions

(2) If:
   (a) the employment of an employee is covered by an APCS; but
   (b) the APCS does not contain frequency of payment provisions that apply in relation to the employee’s employment;
then:
   (c) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
   (d) if paragraph (c) does not apply, and the employee’s contract of employment contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
   (e) if neither paragraph (c) nor (d) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

Other situations

(3) If the employment of an employee is not covered by an APCS, then:
   (a) if a workplace agreement that covers the employment of the employee contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
   (b) if paragraph (a) does not apply, and the employee’s contract of employment contains frequency of payment provisions that apply in relation to the employee’s employment—the employer must comply with those provisions in relation to the employee; or
(c) if neither paragraph (a) nor (b) applies—the employer must pay the employee on the basis of fortnightly payments in arrears.

Subdivision E—Guarantee against reductions below pre-reform commencement rates

190 The guarantee where only basic periodic rates of pay are involved

(1) This section applies if:
(a) the AFPC proposes to exercise any of the following powers (subject to subsection (4)):
   (i) adjusting the standard FMW;
   (ii) adjusting a preserved APCS;
   (iii) determining or adjusting a new APCS;
   (iv) revoking a preserved or new APCS; and
(b) immediately after the exercise of the power takes effect, there will, under section 182, be a guaranteed basic periodic rate of pay (the resulting guaranteed basic periodic rate) for a particular employee affected by the exercise of the power; and
(c) immediately after the reform commencement (and after any relevant adjustments mentioned in sections 209 to 212 took effect), there would, under section 182, have been a guaranteed basic periodic rate of pay (the commencement guaranteed basic periodic rate) for the employee if the employee had at that time been in his or her current circumstances of employment.

(2) The AFPC must ensure that the result of the exercise of the power, so far as it affects the employee, is such that the resulting guaranteed basic periodic rate of pay for the employee will not be less than the commencement guaranteed basic periodic rate of pay for the employee.

(3) In applying this section in relation to a particular exercise of a power by the AFPC, the effect of any other exercise of a power by the AFPC that takes effect at the same time must also be taken into account.
(4) This section does not limit the AFPC’s power to make APCSs for the purpose of section 220 or 221, or to adjust APCSs made for the purpose of either of those sections.

191 The guarantee where basic piece rates of pay are involved

(1) This section applies if:

(a) the AFPC proposes to exercise any of the following powers (subject to subsection (4)):

(i) adjusting the standard FMW;

(ii) adjusting a preserved APCS;

(iii) determining or adjusting a new APCS;

(iv) revoking a preserved or new APCS; and

(b) either or both of the following subparagraphs apply in relation to a particular employee who will be affected by the exercise of the power:

(i) immediately after the exercise of the power takes effect, there will, under section 182, be guaranteed basic piece rates of pay for the employee;

(ii) immediately after the reform commencement (and after any relevant adjustments mentioned in sections 209 to 212 took effect), there would, under section 182, have been guaranteed basic piece rates of pay for the employee if the employee had at that time been in his or her current circumstances of employment.

(2) The AFPC must exercise the power in a way that it considers will not result in an employee of average capacity, after the exercise of the power takes effect, being entitled to less basic pay per week than he or she would have been entitled to because of this Division immediately after the reform commencement if the employee had at that time been in his or her current circumstances of employment.

(3) In applying this section in relation to a particular exercise of a power by the AFPC, the effect of any other exercise of a power by the AFPC that takes effect at the same time must also be taken into account.

(4) This section does not limit the AFPC’s power to make APCSs for the purpose of section 220 or 221, or to adjust APCSs made for the purpose of either of those sections.
192 The guarantee for casual loadings that apply to basic periodic rates of pay

(1) This section applies in relation to the exercise by the AFPC of any of the following powers:
   (a) adjusting a preserved APCS;
   (b) determining or adjusting a new APCS;
   (c) revoking a preserved or new APCS;
   (d) adjusting the default casual loading percentage.

(2) The AFPC must ensure that the result of the exercise of the power, so far as it affects any particular employee to whom this Division applies (other than an employee who will, after the exercise of the power, be an APCS piece rate employee), is such that the resulting guaranteed casual loading percentage for the employee will not be less than the commencement guaranteed casual loading percentage for the employee.

(3) For the purposes of subsection (2):
   (a) the resulting guaranteed casual loading percentage for the employee is the guaranteed casual loading percentage referred to in section 185 for the employee, as it will be immediately after the exercise of the power takes effect; and
   (b) subject to subsection (4), the commencement guaranteed casual loading percentage for the employee is the percentage that, immediately after the reform commencement (and after any relevant adjustments mentioned in sections 209 to 212 took effect), would have been the guaranteed casual loading percentage referred to in section 185 for the employee if the employee had, at that time, been in his or her current circumstances of employment.

(4) If:
   (a) the employee is a casual employee; and
   (b) the resulting guaranteed casual loading percentage is the default casual loading percentage because of item 3 of the table in subsection 185(3);

   the commencement guaranteed casual loading percentage for the employee is taken to be the default casual loading percentage, as it was immediately after the reform commencement.
(5) In applying this section in relation to a particular exercise of a power by the AFPC, the effect of any other exercise of a power by the AFPC that takes effect at the same time must also be taken into account.

Subdivision F—The guarantee against reductions below Federal Minimum Wages (FMWs)

193 The guarantee

(1) Subject to subsection (3), when exercising its power to make an APCS, or to adjust an APCS, the AFPC must ensure that the rate provisions in the APCS are such that the resulting APCS basic periodic rate of pay for each employee:
   (a) whose employment will be covered by the APCS immediately after the exercise of the power; and
   (b) for whom there will be an FMW immediately after the exercise of the power; and
   (c) who will not be an APCS piece rate employee immediately after the exercise of the power;

is not less than that FMW.

Note 1: This section does not apply to rates determined by rate provisions as initially included in a preserved APCS from a pre-reform wage instrument as mentioned paragraph 208(1)(a). However, this section does apply to any subsequent adjustment of those rate provisions, or to any new APCS that replaces the preserved APCS.

Note 2: See also section 207 (deeming APCS rates to at least equal FMW rates after first exercise of powers under this Division by the AFPC).

(2) For the purposes of subsection (1), the resulting APCS basic periodic rate of pay for an employee is the basic periodic rate of pay that will be payable to the employee under the APCS immediately after the exercise of the power by the AFPC takes effect.

(3) The requirement in subsection (1) does not apply in relation to a special FMW unless the determination of the special FMW includes a statement to the effect that the special FMW is a minimum standard for all APCSs, for a class of APCSs that includes the APCS or for the particular APCS (see section 198).

(4) In applying this section in relation to a particular exercise of a power by the AFPC, the effect of any other exercise of a power by
Section 194

the AFPC that takes effect at the same time must also be taken into account.

Subdivision G—Federal Minimum Wages (FMWs)

194 When is there an FMW for an employee?

(1) There is an FMW for an employee if the employee is not:
   (a) a junior employee; or
   (b) an employee with a disability; or
   (c) an employee to whom a training arrangement applies; or
   (d) an APCS piece rate employee.
   The FMW for the employee is the standard FMW.

(2) There is an FMW for a junior employee (other than an APCS piece rate employee) if the AFPC has determined a special FMW that applies to all junior employees, or to a class of junior employees that includes the employee. The FMW for the employee is that special FMW.

(3) There is an FMW for an employee with a disability (other than an APCS piece rate employee) if the AFPC has determined a special FMW that applies to all employees with a disability, or to a class of employees with a disability that includes the employee. The FMW for the employee is that special FMW.

(4) There is an FMW for an employee to whom a training arrangement applies (other than an APCS piece rate employee) if the AFPC has determined a special FMW that applies to all employees to whom training arrangements apply, or to a class of employees to whom training arrangements apply that includes the employee. The FMW for the employee is that special FMW.

195 Standard FMW

(1) The standard FMW is $12.75 per hour, subject to the power of the AFPC to adjust the standard FMW.

(2) Any adjustment of the standard FMW must be such that the adjusted rate is still expressed as a monetary amount per hour.
196 Adjustment of standard FMW

(1) The AFPC may adjust the standard FMW.

(2) The power to adjust the standard FMW is subject to:
   (a) sections 176 and 177; and
   (b) section 190; and
   (c) section 191; and
   (d) subsection 195(2); and
   (e) section 222.

197 Determination of special FMWs

The AFPC may determine a special FMW for any of the following:
   (a) all junior employees, or a class of junior employees;
   (b) all employees with a disability, or a class of employees with a disability;
   (c) all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply.

198 AFPC to state whether special FMW is a minimum standard for APCSs

(1) When determining a special FMW, the AFPC must consider whether the FMW is to operate as a minimum standard for all, or one or more, APCSs.

(2) If the AFPC considers that the special FMW should operate as a minimum standard for all APCSs, the AFPC must, in the instrument determining the special FMW, include a statement to that effect.

(3) If the AFPC considers that the special FMW should operate as a minimum standard for one or more (but not all) APCSs, the AFPC must, in the instrument determining the special FMW, include a statement to that effect that identifies those APCSs, whether by description of a class or identification of the particular APCS or APCSs.

(4) If the AFPC considers that the special FMW should not operate as a minimum standard for any APCS, the AFPC must, in the
instrument determining the special FMW, include a statement to that effect.

199 How a special FMW is to be expressed

(1) A special FMW is to be expressed in a way that produces a monetary amount per hour.

(2) The means by which a special FMW may be expressed to produce a monetary amount per hour include:
   (a) specification of a monetary amount per hour; or
   (b) specification of a method for calculating a monetary amount per hour.

(3) Any adjustment of a special FMW must be such that the adjusted special FMW still complies with this section.

200 Adjustment of a special FMW

(1) The AFPC may adjust a special FMW.

(2) The power to adjust a special FMW is subject to:
   (a) sections 176 and 177; and
   (b) section 199; and
   (c) section 222.

(3) The AFPC may adjust statements of a kind mentioned in section 198 that are included in the instrument determining the special FMW.

Subdivision H—Australian Pay and Classification Scales (APCSs): general provisions

201 What is an APCS?

(1) An APCS is a set of provisions relating to pay and loadings for particular employees that complies with this Subdivision.

(2) An APCS is either:
   (a) a preserved APCS (see section 208); or
   (b) a new APCS (see section 214).
202 What must or may be in an APCS?

(1) An APCS must contain:
   (a) either or both of the following:
      (i) rate provisions determining basic periodic rates of pay for employees whose employment is covered by the APCS;
      (ii) rate provisions determining basic piece rates of pay for employees whose employment is covered by the APCS; and
   (b) if the rate provisions determine different rates of pay for employees of different classifications—provisions describing those classifications; and
   (c) coverage provisions.

(2) An APCS may also contain:
   (a) casual loading provisions determining casual loadings for employees whose employment is covered by the APCS and for whom there are not basic piece rates of pay; and
   (b) if the casual loading provisions determine different casual loadings for employees of different classifications—provisions describing those classifications; and
   (c) provisions that determine, in relation to employees to whom training arrangements apply, whether hours attending off-the-job training (including hours attending an educational institution) are hours for which a basic periodic rate of pay is payable; and
   (d) frequency of payment provisions; and
   (e) other incidental provisions.

(3) Subject to subsection 208(4), rate provisions or casual loading provisions in an APCS must not include provisions under which a rate or casual loading provided for by the APCS will or may be increased by operation of the provisions and without anyone having to take any other action.

Note: This does not prevent an APCS, or an adjustment of an APCS, from being expressed to take effect at a future date. However, it does prevent an APCS from containing provisions under which (for example):

(a) there will be one or more specified increases of a rate or loading at a specified future time or times; or
(b) rates of pay or loading are indexed periodically.

(4) The AFPC must not include in a new APCS, or adjust a preserved or new APCS so that it includes, provisions that:
   (a) determine whether an employer who acquires a business (whether by transfer or in some other way) is covered by the APCS; or
   (b) give a person or body a power to make a decision that affects whether a person is covered by the APCS; or
   (c) give the Commission a direct or indirect role in determining a rate of pay or loading.

Note: A preserved APCS may contain provisions referred to in subsection (4) that were contained in the pre-reform wage instrument from which the APCS is derived, but the effect of those provisions is limited by sections 204 and 209.

(5) An APCS must not contain any provisions that purport to limit the duration of the APCS.

(6) Subject to the regulations, an APCS must not contain any other provisions.

203 How pay rates and loadings are to be expressed in an APCS

(1) Rate provisions in an APCS must be such that basic periodic rates of pay determined by the provisions are expressed as a monetary amount per hour.

(2) Rate provisions in an APCS must be such that basic piece rates of pay determined by the provisions are expressed as a monetary amount.

(3) Casual loading provisions in an APCS must be such that casual loadings determined by the provisions are expressed as percentages to be applied to basic periodic rates of pay.

(4) The AFPC must ensure these rules are complied with in exercising its powers to adjust a preserved APCS or make or adjust a new APCS.
204 When is employment covered by an APCS?

(1) The question whether the employment of a particular employee is covered by a particular APCS is to be determined by reference to the coverage provisions of the APCS.

(2) If coverage provisions of a preserved APCS include provisions that determine whether an employer who acquires a business (whether by transfer or in some other way) is covered by the APCS, those provisions only have effect, for the purpose of determining whether the employment of a particular employee is covered by the APCS, in relation to acquisitions of businesses that occurred before the reform commencement.

(3) If coverage provisions of a preserved APCS include provisions that give a person or body a power to make a decision that affects whether a person is covered by the APCS, those provisions only have effect, for the purpose of determining whether the employment of a particular employee is covered by the APCS, in relation to decisions made by the person or body before the reform commencement.

205 What if 2 or more APCSs would otherwise cover an employee?

(1) If, but for this section, 2 or more APCSs would cover the employment of the same employee, the employment of the employee is taken to be covered only by the APCS that prevails.

(2) Apply the following rules to work out which APCS prevails:
   (a) the preserved APCS derived from the pre-reform federal wage instrument referred to in paragraph (b) of the definition of *pre-reform federal wage instrument* in section 178 (as that preserved APCS is adjusted from time to time) prevails over any other APCS;
   (b) subject to paragraph (a), an APCS made in accordance with Subdivision M (as that APCS is adjusted from time to time) prevails over any other APCS;
   (c) subject to paragraphs (a) and (b):
      (i) a new APCS prevails over a preserved APCS; and
      (ii) a preserved APCS that is derived from a pre-reform federal wage instrument prevails over a preserved...
APCS that is derived from a pre-reform non-federal wage instrument;

(d) subject to paragraphs (a), (b) and (c):

(i) as between 2 or more APCSs that are made or adjusted on different days, the APCS that is made or adjusted on the more recent day prevails; and

(ii) as between 2 or more APCSs that are made or adjusted on the same day, the APCS that is more generous to the employee prevails.

(3) For the purpose of this section, all preserved APCSs are taken to have been made on the day on which the reform commencement occurs.

206 AFPC to remove coverage rules described by reference to State or Territory boundaries

(1) The AFPC must (through exercise of its powers to adjust, revoke and make APCSs) ensure that, by the end of the period of 3 years starting on the reform commencement, all APCSs comply with the following rules:

(a) the question whether the employment of a particular employee is covered by an APCS must not be determined by reference to State or Territory boundaries;

(b) the question whether a particular employee is entitled to a particular basic periodic rate of pay, basic piece rate of pay, or casual loading provided for by an APCS must not be determined by reference to State or Territory boundaries.

(2) In complying with this obligation, the AFPC must do so in a way that also complies with the rest of this Division, including (in particular) sections 190, 191, 192 and 193.

207 Deeming APCS rates to at least equal FMW rates after first exercise of AFPC’s powers takes effect

(1) This section applies at all times after the first exercise of powers by the AFPC under this Division takes effect. If the first exercise of powers involves the exercise of powers taking effect at different times, this section applies at all times after the earliest of those times.
(2) Subject to subsection (3), if:
   (a) there is an FMW for an employee at a particular time when this section applies; and
   (b) an APCS that covers the employment of the employee determines a basic periodic rate of pay for the employee at that time that is less than that FMW;

the basic periodic rate of pay determined by the APCS for the employee at that time is taken to be equal to the rate that is the FMW for the employee at that time.

Note: This subsection ensures that the employee will, under subsection 182(1), be guaranteed a rate that equals the FMW rate, rather than the lower APCS rate.

(3) Subsection (2) does not apply in relation to a special FMW and a particular APCS unless the determination of the special FMW includes a statement to the effect that the special FMW is a minimum standard for all APCSs, for a class of APCSs that includes the APCS or for the particular APCS (see section 198).

Subdivision I—Australian Pay and Classification Scales: preserved APCSs

208 Deriving preserved APCSs from pre-reform wage instruments

(1) If a pre-reform wage instrument contains rate provisions determining one or more basic periodic rates of pay, or basic piece rates of pay, payable to employees, then, from the reform commencement, there is taken to be a preserved APCS that includes (subject to this Subdivision):
   (a) those rate provisions; and
   (b) if those rate provisions determine different basic periodic rates of pay, or different basic piece rates of pay, for employees of different classifications—the provisions of the instrument that describe those classifications; and
   (c) any casual loading provisions of the instrument that determine casual loadings payable to employees, other than employees for whom the instrument provides basic piece rates of pay; and
   (d) if the casual loading provisions determine different casual loadings for employees of different classifications—the
provisions of the instrument that describe those classifications; and
(e) any provisions of the instrument that determine, in relation to employees to whom training arrangements apply, whether hours attending off-the-job training (including hours attending an educational institution) count as hours for which a basic periodic rate of pay is payable; and
(f) any frequency of payment provisions for the instrument; and
(g) the coverage provisions for the instrument.

(2) The preserved APCS is derived from the pre-reform wage instrument.

(3) Subject to subsection (4) and the regulations, the preserved APCS is taken not to include any provision of the pre-reform wage instrument which, after the adjustments referred to in sections 209 to 212 take effect, will not comply with the requirements of sections 202 and 203.

Note: For when regulations made for the purpose of subsection (3) may be expressed to take effect, see section 213.

(4) If:
(a) the rate provisions referred to in paragraph (1)(a) include pay increases for particular employees, determined before the reform commencement, that are expressed to take effect at a time or times after the reform commencement; and
(b) those increases were determined by the Commission, or by a State industrial authority, wholly or partly on the ground of work value change or pay equity;
then (despite subsection 202(3)), the preserved APCS is taken to include provisions under which those increases will take effect for those employees at that time or those times.

(5) The adjustments referred to in sections 209 to 212 are, subject to the regulations, to be made in the following order:
(a) adjustments referred to in section 209;
(b) adjustments referred to in section 210;
(c) adjustments referred to in section 211;
(d) adjustments referred to in subsection 212(1).

Note: For when regulations made for the purpose of subsection (5) may be expressed to take effect, see section 213.
209 Notional adjustment: rates and loadings determined as for reform comparison day

Rate provisions

(1) Subject to subsections (2) and (3), if rate provisions included in a preserved APCS as mentioned in section 208 would, apart from this subsection, determine a basic periodic rate of pay otherwise than by direct specification of the monetary amount of the rate, then the APCS is taken to be adjusted as necessary immediately after the reform commencement so that those rate provisions instead directly specify, as that rate of pay, the rate as determined by the provisions for the reform comparison day.

(2) Subsection (1) does not apply to the rate provisions included in the preserved APCS derived from the pre-reform federal wage instrument referred to in paragraph (b) of the definition of pre-reform federal wage instrument in section 178.

(3) If the rate provisions included in a preserved APCS as mentioned in section 208 determine a basic periodic rate of pay by (or by referring to) a pro-rata disability pay method, subsection (1) applies to any other rate of pay that the method refers to, but does not otherwise apply to the method.

(4) If the rate provisions included in a preserved APCS as mentioned in section 208 determine a basic piece rate of pay by (or by referring to) a method, subsection (1) does not apply to the rate provisions that determine that rate.

(5) The regulations may provide for other situations in which subsection (1) is not to apply to rate provisions, or is to apply with specified modifications.

Note: For when regulations made for the purpose of subsection (5) may be expressed to take effect, see section 213.

Casual loading provisions

(6) If casual loading provisions included in a preserved APCS as mentioned in section 208 would, apart from this subsection, determine a loading otherwise than by direct specification of the loading, then the APCS is taken to be adjusted as necessary immediately after the reform commencement so that those loading
provisions instead directly specify, as that loading, the loading as determined by the provisions for the reform comparison day.

210 Notional adjustment: deducing basic periodic rate of pay and casual loading from composite rate

If:

(a) a particular rate of pay determined by rate provisions included in a preserved APCS as mentioned in section 208 would, apart from this subsection, be a basic periodic rate of pay for a casual employee; and

(b) the rate of pay is, by an amount (the \textit{inbuilt casual loading amount}), higher than it would have been if the employee had not been a casual employee; and

(c) apart from this subsection, the preserved APCS does not contain casual loading provisions that determine a casual loading for the employee;

the APCS is taken to be adjusted as necessary immediately after the reform commencement so that:

(d) the rate provisions instead determine a basic periodic rate of pay for the employee that equals the rate referred to in paragraph (a), reduced by the inbuilt casual loading amount; and

(e) the preserved APCS contains casual loading provisions that determine a casual loading for the employee that equals the inbuilt casual loading amount.

211 Notional adjustment: how basic periodic rates and loadings are expressed

(1) If a particular basic periodic rate of pay determined by rate provisions included in a preserved APCS as mentioned in section 208 would, apart from this subsection, be expressed as a monetary amount for a period other than an hour (for example, it would be expressed as a rate for a week), the rate provisions are taken to be adjusted as necessary immediately after the reform commencement so that they produce the result that the rate is expressed as the equivalent monetary hourly rate.

(2) If a particular casual loading determined by casual loading provisions included in a preserved APCS as mentioned in
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Wages  Division 2  

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section 208 would, apart from this subsection, be expressed as an amount of money that is to be added to a basic periodic rate of pay, the loading provisions are taken to be adjusted as necessary immediately after the reform commencement so that they produce the result that the loading is expressed as the equivalent percentage of the basic periodic rate of pay.

212 Regulations dealing with notional adjustments

(1) The regulations may provide for other adjustments (including by determining methods for working out adjustments) that are to be taken to be made to a preserved APCS.

(2) The regulations may determine methods for working out the adjustments mentioned in any of sections 209 to 211, or may otherwise clarify the operation of any aspect of those sections. Those sections have effect accordingly.

Note: For when regulations made for the purpose of this section may be expressed to take effect, see section 213.

213 Certain regulations relating to preserved APCSs may take effect before registration

(1) This section applies to regulations made for the purpose of any of the following provisions:
   (a) paragraph (c) or (d) of the definition of pre-reform federal wage instrument in section 178;
   (b) paragraph (c) or (d) of the definition of pre-reform State wage instrument in section 178;
   (c) paragraph (b) or (c) of the definition of pre-reform Territory wage instrument in section 178;
   (d) subsection 208(3) or (5);
   (e) subsection 209(5);
   (f) section 212.

(2) Despite subsection 12(2) of the Legislative Instruments Act 2003, regulations to which this section applies may be expressed to take effect from a date before the regulations are registered under that Act.

(3) If regulations to which this section applies take effect before their registration under the Legislative Instruments Act 2003, those

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Subdivision J—Australian Pay and Classification Scales: new APCSs

214 AFPC may determine new APCSs

(1) The AFPC may determine an APCS (a new APCS).

(2) The power to determine a new APCS is subject to:
   (a) sections 176 and 177; and
   (b) section 190; and
   (c) section 191; and
   (d) section 192; and
   (e) section 193; and
   (f) section 202; and
   (g) section 203; and
   (h) Subdivision M; and
   (i) section 222.

Subdivision K—Australian Pay and Classification Scales: duration, adjustment and revocation of APCSs (preserved or new)

215 Duration of APCSs

An APCS continues to have effect indefinitely (subject to revocation or adjustment by the AFPC under this Subdivision, and to the rules in section 205 about when one APCS prevails over another).

216 Adjustment of APCSs

(1) The AFPC may adjust an APCS.

(2) The power to adjust an APCS is subject to:
   (a) sections 176 and 177; and
   (b) section 190; and
(c) section 191; and
(d) section 192; and
(e) section 193; and
(f) section 202; and
(g) section 203; and
(h) Subdivision L; and
(i) section 222.

217 Revocation of APCSs

(1) The AFPC may revoke an APCS.

(2) The power to revoke an APCS is subject to:
   (a) sections 176 and 177; and
   (b) section 190; and
   (c) section 191; and
   (d) section 192; and
   (e) section 222.

Subdivision L—Adjustments to incorporate 2005 Safety Net Review etc.

218 Adjustments to incorporate 2005 Safety Net Review

(1) This section applies in relation to a preserved APCS if:
   (a) the APCS is derived from a pre-reform federal wage instrument referred to in paragraph (a) of the definition of pre-reform federal wage instrument in section 178; and
   (b) either:
      (i) in accordance with the Commission’s wage fixing principles that applied at that time, the Commission (before the reform commencement) adjusted the instrument in accordance with the Commission’s 2004 Safety Net Review decision; or
      (ii) the instrument took effect after the Commission’s 2004 Safety Net Review decision; and
   (c) the Commission did not, before the reform commencement, adjust the instrument in accordance with the Commission’s 2005 Safety Net Review decision.
(2) The AFPC must adjust the rate provisions of the preserved APCS to increase rates in accordance with the Commission’s 2005 Safety Net Review decision (if applicable), except to the extent that the AFPC is satisfied it is not appropriate to do so because of the effect of subsection 208(4).

(3) The adjustment must be made as part of the first exercise of the powers of the AFPC under this Division.

(4) After the adjustment has been made, section 190 has effect in relation to an employee as if the adjustment had been made to the pre-reform federal wage instrument immediately before the reform commencement.

Note: This subsection ensures that the post-adjustment rate is the rate against which compliance with the guarantee in section 190 is measured.

219 Regulations may require adjustments to incorporate other decisions

(1) The regulations may require the AFPC to adjust rate provisions in a class of preserved APCSs that are derived from non-federal pre-reform wage instruments to increase rates to take account of decisions that were made before the reform commencement but that were not given effect to in those instruments before the reform commencement.

(2) Regulations made for the purposes of subsection (1) may also modify how section 190 applies in relation to any APCSs that are so adjusted.

Subdivision M—Special provisions relating to APCSs for employees with disabilities and employees to whom training arrangements apply

220 Employees with disabilities

(1) If the AFPC considers that there should be an APCS that applies to all, or a class of, employees with a disability that determines basic periodic rates of pay for those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay for those employees, and that so determines those rates as rates specific to employees with disabilities.
Workplace Relations Act 1996

Section 221

(2) The determination of the APCS must include a statement to the effect that it is determined for the purpose of this section.

Note: APCSs determined for the purpose of this section generally prevail over all other APCSs—see section 205.

(3) The APCS (the special APCS) is taken not to cover the employment of a particular employee if:

(a) there is another APCS that covers the employment of the employee (disregarding the effect that paragraph 205(2)(b) would otherwise have because of the special APCS); and

(b) that other APCS determines a basic periodic rate of pay specifically for a particular class of employees with disabilities; and

(c) the employee’s employment is covered by that other APCS because the employee is a member of that class; and

(d) that class is the same as, or is a subclass of, the employees whose employment would otherwise be covered by the special APCS.

(4) This section does not limit the powers of the AFPC to determine APCSs, or to revoke or adjust APCSs (including APCSs determined for the purpose of this section).

221 Employees to whom training arrangements apply

(1) If the AFPC considers that there should be an APCS that applies to all, or a class of, employees to whom training arrangements apply that determines basic periodic rates of pay that are payable to those employees, the AFPC must determine an APCS containing rate provisions that determine basic periodic rates of pay to be payable to those employees, and that so determines those rates as rates specific to employees to whom training arrangements apply.

Note: The usual provisions relating to the content of an APCS apply (see Subdivision H).

(2) The determination of the APCS must include a statement to the effect that it is determined for the purpose of this section.

Note: APCSs determined for the purpose of this section generally prevail over all other APCSs—see section 205.
(3) The APCS (the *special APCS*) is taken not to cover the employment of a particular employee if:
   (a) there is another APCS that covers the employment of the employee (disregarding the effect that paragraph 205(2)(b) would otherwise have because of the special APCS); and
   (b) that other APCS determines a basic periodic rate of pay specifically for a particular class of employees to whom training arrangements apply; and
   (c) the employee’s employment is covered by that other APCS because the employee is a member of that class; and
   (d) that class is the same as, or is a subclass of, the employees whose employment would otherwise be covered by the special APCS.

(4) The AFPC must, as part of the first exercise of the powers of the AFPC under this Division, consider whether it should determine APCSs for the purpose of this section. This does not limit the AFPC’s power to consider whether it should determine APCSs for the purpose of this section at other times.

(5) This section does not limit the powers of the AFPC to determine APCSs, or to revoke or adjust APCSs (including APCSs determined for the purpose of this section).

Subdivision N—Miscellaneous

222 Anti-discrimination considerations

(1) Without limiting sections 176 and 177, in exercising any of its powers under this Division, the AFPC is to:
   (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 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 of paragraph (1)(e), the AFPC does not discriminate against an employee or employees by (in accordance with this Division) determining or adjusting rate provisions in an APCS that determine a basic periodic rate of pay, or by (in accordance with this Division) determining or adjusting a special FMW, for:
(a) all junior employees, or a class of junior employees; or
(b) all employees with a disability, or a class of employees with a disability; or
(c) all employees to whom training arrangements apply, or a class of employees to whom training arrangements apply.
Division 3—Maximum ordinary hours of work

Subdivision A—Preliminary

223 Employees to whom Division applies

This Division applies to all employees.

224 Definitions

In this Division:

authorized leave means leave, or an absence, whether paid or unpaid, that is authorised:

(a) by an employee’s employer; or
(b) by or under a term or condition of an employee’s employment; or
(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

employee means an employee to whom this Division applies under section 223.

225 Agreement between employees and employers

Via a workplace agreement

(1) For the purposes of this Division, an employee and an employer are taken to agree about a particular matter in a particular way if a provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.

Via an award

(2) For the purposes of this Division, an employee and an employer are taken to agree about a particular matter in a particular way if a term of an award that binds the employee and the employer specifies that the matter is to be dealt with in that way.
Via other means

(3) To avoid doubt, nothing in this section prevents employees and employers agreeing about matters by other means.

Subdivision B—Guarantee of maximum ordinary hours of work

226 The guarantee

(1) An employee must not be required or requested by an employer to work more than:

(a) either:
   (i) 38 hours per week; or
   (ii) subject to subsection (3), if the employee and the employer agree in writing that the employee’s hours of work are to be averaged over a specified averaging period that is no longer than 12 months—an average of 38 hours per week over that averaging period; and
(b) reasonable additional hours.

Note 1: An employee and an employer may agree that the employee is to work less than 38 hours per week, or less than an average of 38 hours per week over the employee’s averaging period.

Note 2: A requirement for an employee to work a particular number of hours may come, for example, from an award or a workplace agreement.

Calculating the number of hours worked

(2) For the purposes of paragraph (1)(a), in calculating the number of hours that an employee has worked in a particular week, or the average number of hours that an employee has worked per week over an averaging period, the hours worked by the employee are taken to include any hours of authorised leave taken by the employee during the week, or during that period.

Start of averaging period

(3) For the purpose of subparagraph (1)(a)(ii), if an employee starts to work for an employer after the start of a particular averaging period that applies to the employee, that averaging period is taken, in relation to the employee, not to include the period before the employee started to work for the employer.
Reasonable additional hours

(4) For the purposes of paragraph (1)(b), in determining whether additional hours that an employee is required or requested by an employer to work are reasonable additional hours, all relevant factors must be taken into account. Those factors may include, but are not limited to, the following:

(a) any risk to the employee’s health and safety that might reasonably be expected to arise if the employee worked the additional hours;
(b) the employee’s personal circumstances (including family responsibilities);
(c) the operational requirements of the workplace, or enterprise, in relation to which the employee is required or requested to work the additional hours;
(d) any notice given by the employer of the requirement or request that the employee work the additional hours;
(e) any notice given by the employee of the employee’s intention to refuse to work the additional hours;
(f) whether any of the additional hours are on a public holiday;
(g) the employee’s hours of work over the 4 weeks ending immediately before the employee is required or requested to work the additional hours.

Note: An employee and an employer may agree that the employee may take breaks during any additional hours worked by the employee.

Definition

(5) In this section:

public holiday means:

(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
   (i) a union picnic day; or
   (ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or
(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace
agreement, is substituted for a day referred to in paragraph (a).
Part 7  The Australian Fair Pay and Conditions Standard
Division 4  Annual leave

Section 227

Division 4—Annual leave

Subdivision A—Preliminary

227  Employees to whom Division applies

This Division applies to all employees other than casual employees.

228  Definitions

In this Division:

*annual leave* has the meaning given by subsection 232(1).

*authorised leave* means leave, or an absence, whether paid or unpaid, that is authorised:

(a) by an employee’s employer; or

(b) by or under a term or condition of an employee’s employment; or

(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

*basic periodic rate of pay* has the meaning given by section 178.

Note:  See also section 231.

*continuous service*, in relation to a period of an employee’s service with an employer, means service with the employer as an employee (other than a casual employee) during the whole of the period, including (as a part of the period) any period of authorised leave.

*employee* means an employee to whom this Division applies under section 227.

*nominal hours worked* has the meaning given by section 229.

Note:  See also section 231.

*piece rate employee* means an employee who is paid a piece rate of pay within the meaning of section 178.

*public holiday* means:
(a) a day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
   (i) a union picnic day; or
   (ii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday; or
(b) a day that, under (or in accordance with a procedure under) a law of a State or Territory, or an award or workplace agreement, is substituted for a day referred to in paragraph (a).

*shift worker* means:
(a) an employee who:
   (i) is employed in a business in which shifts are continuously rostered 24 hours a day for 7 days a week; and
   (ii) is regularly rostered to work those shifts; and
   (iii) regularly works on Sundays and public holidays; or
(b) an employee of a type that is prescribed by regulations made for the purposes of this paragraph.

### 229 Meaning of nominal hours worked

*Employees employed to work a specified number of hours*

(1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of nominal hours worked, by the employee for the employer during a week, is to be worked out as follows:
(a) start with that specified number of hours;
(b) deduct all of the following:
   (i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;
   (ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 507 from making a payment to the employee.
Section 229

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 226 or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours over a period (the non-week period) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\frac{\text{Number of non-week specified hours}}{\text{Number of days in non-week period}} \times 7
\]

Employees not employed to work a specified number of hours

(4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of nominal hours worked, by the employee for the employer during a week, is the lesser of the following:

(a) the number worked out as follows:

(i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;

(ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;

(iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 507 from making a payment to the employee;

(b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if the employee were employed to work 38 hours per week.
Definition

(5) In this section:

*hour* includes a part of an hour.

Note 1: The regulations may prescribe a different definition of *nominal hours worked* for piece rate employees (see section 231).

Note 2: An employee’s hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.

Note 3: For whether leave guaranteed under this Part counts as service, see subsections 238(2) (annual leave), 260(2) (paid personal leave), 261(2) (unpaid carer’s leave) and 316(2) (parental leave).

Note 4: Because of the definition of *hour* in subsection (5), an employee’s nominal hours worked may be a number of hours and part of an hour.

230 Agreement between employees and employers

*Via a workplace agreement*

(1) For the purposes of this Division, an employee and an employer are taken to agree about a particular matter in a particular way if a provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.

*Via other means*

(2) To avoid doubt, nothing in this section prevents employees and employers agreeing about matters by other means.

231 Regulations may prescribe different definitions for piece rate employees

The regulations may prescribe:

(a) a different definition of *basic periodic rate of pay* for the purpose of the application of this Division in relation to piece rate employees; and

(b) a different definition of *nominal hours worked* for the purpose of the application of this Division in relation to piece rate employees.
Subdivision B—Guarantee of annual leave

232 The guarantee

(1) For the purposes of this Division, *annual leave* means leave to which an employee is entitled under this Subdivision.

*All employees to whom this Division applies*

(2) An employee is entitled to accrue an amount of paid annual leave, for each completed 4 week period of continuous service with an employer, of \(\frac{1}{13}\) of the number of nominal hours worked by the employee for the employer during that 4 week period.

Example: An employee whose nominal hours worked for a 12 month period were 38 hours per week would be entitled under this subsection to 152 hours of annual leave (which would be the equivalent of 4 weeks of annual leave if his or her nominal hours worked remained unchanged).

*Additional leave entitlement for shift workers*

(3) An employee is also entitled to accrue an amount of paid annual leave, for each completed 12 month period of continuous service with an employer, of \(\frac{1}{52}\) of the number of nominal hours worked by the employee, for the employer, as a shift worker during that 12 month period.

Example: A shift worker whose nominal hours worked for a 12 month period were 38 hours per week, and who worked as a shift worker throughout that period, would be entitled under this subsection to an additional 38 hours of annual leave (which would be the equivalent of one week of annual leave if his or her nominal hours worked remained unchanged).

233 Entitlement to cash out annual leave

(1) An employee is entitled to forgo an entitlement to take an amount of annual leave credited to the employee by an employer if:

(a) a provision in a workplace agreement binding the employee and the employer entitles the employee to forgo the entitlement to the amount of annual leave; and

(b) the employee gives the employer a written election to forgo the amount of annual leave; and

(c) a provision in a workplace agreement binding the employee and the employer entitles the employee to receive pay in lieu of the amount of annual leave at a rate that is no less than the
employee’s basic periodic rate of pay at the time that the
election is made; and

(d) the employer authorises the employee to forgo the amount of
annual leave.

Note: If, under this section, an employee forgoes an entitlement to take an
amount of annual leave, the employee’s employer may deduct that
amount from the amount of accrued annual leave credited to the
employee.

(2) However, during each 12 month period, an employee is not entitled
to forgo an amount of annual leave credited to the employee by an
employer that is equal to more than $\frac{1}{26}$ of the nominal hours
worked by the employee for the employer during the period.

(3) An employer must not:

(a) require an employee to forgo an entitlement to take an
amount of annual leave; or

(b) exert undue influence or undue pressure on an employee in
relation to the making of a decision by the employee whether
or not to forgo an entitlement to take an amount of annual
leave.

(4) If, under this section, an employee forgoes an entitlement to take
an amount of annual leave, the employer must, within a reasonable
period, give the employee the amount of pay that the employee is
entitled to receive in lieu of the amount of annual leave.

Subdivision C—Annual leave rules

234 Annual leave—accrual, crediting and accumulation rules

Accrual

(1) Annual leave accrues on a pro-rata basis.

Credit

(2) Each month an employer must credit to an employee of the
employer the amount (if any) of annual leave accrued by the
employee under subsection 232(2) since the employer last credited
to the employee an amount of annual leave accrued under that
subsection.
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(3) Each year an employer must credit to an employee of the employer the amount (if any) of annual leave accrued by the employee under subsection 232(3) since the employer last credited to the employee an amount of annual leave accrued under that subsection.

*Accumulation*

(4) Annual leave is cumulative.

235 **Annual leave—payment rules**

(1) If an employee takes annual leave during a period, the annual leave must be paid at a rate that is no less than the employee’s basic periodic rate of pay immediately before the period begins.

(2) If the employment of an employee who has not taken an amount of accrued annual leave ends at a particular time, the employee’s untaken accrued annual leave must be paid at a rate that is no less than the employee’s basic periodic rate of pay at that time.

236 **Rules about taking annual leave**

*General rules*

(1) Subject to this section and section 233, an employee is entitled to take an amount of annual leave during a particular period if:
   (a) at least that amount of annual leave is credited to the employee; and
   (b) the employee’s employer has authorised the employee to take the annual leave during that period.

(2) To avoid doubt, there is no maximum or minimum limit on the amount of annual leave that an employer may authorise an employee to take.

(3) Any authorisation given by an employer enabling an employee to take annual leave during a particular period is subject to the operational requirements of the workplace or enterprise in respect of which the employee is employed.

(4) An employer must not unreasonably:
   (a) refuse to authorise an employee to take an amount of annual leave that is credited to the employee; or
(b) revoke an authorisation enabling an employee to take annual leave during a particular period.

_Shut downs_

(5) An employee must take an amount of annual leave during a particular period if:
   (a) the employee is directed to do so by the employee’s employer because, during that period, the employer shuts down the business, or any part of the business, in which the employee works; and
   (b) at least that amount of annual leave is credited to the employee.

_Extensive accumulated annual leave_

(6) An employee must take an amount of annual leave during a particular period if:
   (a) the employee is directed to do so by his or her employer; and
   (b) at the time that the direction is given, the employee has annual leave credited to him or her of more than $\frac{1}{13}$ of the number of nominal hours worked by the employee for the employer during the period of 104 weeks ending at the time that the direction is given; and
   (c) the amount of annual leave that the employee is directed to take is less than, or equal to, $\frac{1}{4}$ of the amount of credited annual leave of the employee at the time that the direction is given.

237 Annual leave and workers’ compensation

This Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers’ compensation if the provision would (apart from this Division):
   (a) prevent an employee from taking or accruing annual leave during a period while the employee is receiving compensation under such a law; or
   (b) restrict the amount of annual leave an employee may take or accrue during such a period.
Subdivision D—Service: annual leave

238 Annual leave—service

(1) A period of annual leave does not break an employee’s continuity of service.

(2) Annual leave counts as service for all purposes except as prescribed by the regulations.
Division 5—Personal leave

Subdivision A—Preliminary

239 Employees to whom Division applies

(1) Subject to this section, this Division applies to all employees other than casual employees.

(2) This Subdivision, Subdivision C and sections 255 and 256 apply to all employees.

240 Definitions

In this Division:

authorised leave means leave, or an absence, whether paid or unpaid, that is authorised:

(a) by an employee’s employer; or
(b) by or under a term or condition of an employee’s employment; or
(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

carer’s leave has the meaning given by paragraph 244(b).

child includes the following:

(a) an adopted child;
(b) a stepchild;
(c) an exnuptial child;
(d) an adult child.

compassionate leave has the meaning given by subsection 257(1).

continuous service, in relation to a period of an employee’s service with an employer, means service with the employer as an employee (other than a casual employee) during the whole of the period, including (as a part of the period) any period of authorised leave.
de facto spouse, of an employee, means a person of the opposite sex to the employee who lives with the employee as the employee’s husband or wife on a genuine domestic basis although not legally married to the employee.

employee, when used in a provision of this Division, means an employee to whom the provision applies under section 239.

immediate family: the following are members of an employee’s immediate family:
(a) a spouse, child, parent, grandparent, grandchild or sibling of the employee;
(b) a child, parent, grandparent, grandchild or sibling of a spouse of the employee.

medical certificate means a certificate signed by a registered health practitioner.

nominal hours worked has the meaning given by section 241.
Note: See also section 243.

permissible occasion, for unpaid carer’s leave, has the meaning given by subsection 250(1).

personal/carer’s leave has the meaning given by section 244.

piece rate employee means an employee who is paid a piece rate of pay within the meaning of section 178.

registered health practitioner means a health practitioner registered, or licensed, as a health practitioner (or as a health practitioner of a particular type) under a law of a State or Territory that provides for the registration or licensing of health practitioners (or health practitioners of that type).

sick leave has the meaning given by paragraph 244(a).

spouse includes the following:
(a) a former spouse;
(b) a de facto spouse;
(c) a former de facto spouse.
241 Meaning of nominal hours worked

Employees employed to work a specified number of hours

(1) For the purposes of this Division, if an employee is employed by an employer to work a specified number of hours per week, the number of nominal hours worked, by the employee for the employer during a week, is to be worked out as follows:

(a) start with that specified number of hours;
(b) deduct all of the following:
   (i) the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave which does not count as service;
   (ii) the number of hours (if any) in the week (other than hours mentioned in subparagraph (i)) in relation to which the employer is prohibited by section 507 from making a payment to the employee.

Note: The actual hours worked from week to week by an employee who is employed to work a specified number of hours per week may vary, due to averaging as mentioned in section 226 or to some other kind of flexible working hours scheme that applies to the employee’s employment.

(2) If an employee is employed on a full-time basis, but the terms and conditions of the employee’s employment do not determine the number of hours in a week that is to constitute employment on a full-time basis for the employee, the employee is, for the purpose of subsection (1), taken to be employed to work 38 hours per week.

(3) If an employee is employed to work a specified number (the number of non-week specified hours) of hours over a period (the non-week period) that is not a week (for example, a fortnight), then, for the purpose of subsection (1), the employee is taken to be employed to work the number of hours per week determined, subject to the regulations (if any), in accordance with the formula:

\[
\text{Number of non-week specified hours} \times \frac{7}{\text{Number of days in non-week period}}
\]

Employees not employed to work a specified number of hours

(4) For the purposes of this Division, if subsection (1) does not apply to the employment of an employee by an employer, the number of
nominal hours worked, by the employee for the employer during a week, is the lesser of the following:

(a) the number worked out as follows:
   (i) start with the number of hours (if any) in the week that the employee both works, and is required or requested to work, for the employer;
   (ii) add the number of hours (if any) in the week when the employee is absent from his or her work for the employer on leave that counts as service;
   (iii) deduct the number of hours (if any) in the week in relation to which the employer is prohibited by section 507 from making a payment to the employee;

(b) the number of nominal hours the employee would be taken to have worked for the employer under subsection (1) during the week if the employee were employed to work 38 hours per week.

Definition

(5) In this section:

hour includes a part of an hour.

Note 1: The regulations may prescribe a different definition of nominal hours worked for piece rate employees (see section 243).

Note 2: An employee’s hours of work may be varied (by number or time) in accordance with a workplace agreement, award or contract of employment that binds the employee and his or her employer.

Note 3: For whether leave guaranteed under this Part counts as service, see subsections 238(2) (annual leave), 260(2) (paid personal leave), 261(2) (unpaid carer’s leave) and 316(2) (parental leave).

Note 4: Because of the definition of hour in subsection (5), an employee’s nominal hours worked may be a number of hours and part of an hour.

242 Agreement between employees and employers

Via a workplace agreement

(1) For the purposes of this Division, an employee and an employer are taken to agree about a particular matter in a particular way if a provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.
243 Regulations may prescribe different definitions for piece rate employees

The regulations may prescribe a different definition of _nominal hours worked_ for the purpose of the application of this Division in relation to piece rate employees.

244 Meaning of personal/carer’s leave

For the purposes of this Division, _personal/carer’s leave_ is:

(a) paid leave (_sick leave_) taken by an employee because of a personal illness, or injury, of the employee; or

(b) paid or unpaid leave (_carer’s leave_) taken by an employee to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires care or support because of:

(i) a personal illness, or injury, of the member; or

(ii) an unexpected emergency affecting the member.

Subdivision B—Guarantee of paid personal/carer’s leave

245 The guarantee

(1) Subject to this Subdivision, an employee is entitled to paid personal/carer’s leave if the employee complies with the notice and documentation requirements under Subdivision D, to the extent to which they apply to the employee.

Note: The entitlement is subject to the restrictions in sections 246, 248 and 249.

(2) An employee is taken not to have been entitled to a period of paid personal/carer’s leave at any time after the start of the period if:

(a) Subdivision D:

(i) required the employee to give notice or a document (the _required notice or document_) to his or her employer; and
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(ii) allowed the employee to give the required notice or document to his or her employer after the start of the leave; and

(b) when the employee started the leave, the employee had not given his or her employer the required notice or document; and

(c) the employee did not later give the required notice or document to his or her employer within the period required under Subdivision D.

Note: Under Subdivision D, an employee may be required to give his or her employer notice, a medical certificate or a statutory declaration (depending on the circumstances).

246 Paid personal/carer’s leave—accrual, crediting and accumulation rules

Entitlement to take credited leave

(1) Subject to this Subdivision, an employee is entitled to take an amount of paid personal/carer’s leave if, under this section, that amount of leave is credited to the employee.

Accrual

(2) An employee is entitled to accrue an amount of paid personal/carer’s leave, for each completed 4 week period of continuous service with an employer, of $\frac{1}{26}$ of the number of nominal hours worked by the employee for the employer during that 4 week period.

Example: An employee whose nominal hours worked for an employer each week over a 12 month period are 38 hours would be entitled to accrue 76 hours paid personal/carer’s leave (which would amount to 10 days of paid personal/carer’s leave for that employee) over the period.

(3) Paid personal/carer’s leave accrues on a pro-rata basis.

Crediting

(4) Each month, an employer must credit to an employee of the employer the amount (if any) of paid personal/carer’s leave accrued by the employee since the employer last credited to the employee an amount of paid personal/carer’s leave accrued under this section.
Accumulation

(5) Paid personal/carer’s leave is cumulative.

247 Paid personal/carer’s leave—payment rule

If an employee takes paid personal/carer’s leave during a period, the employer must pay the employee for that period the amount the employee would reasonably have expected to be paid by the employer if the employee had worked during that period.

248 Paid personal/carer’s leave—workers’ compensation

(1) An employee is not entitled to take paid sick leave for a period during which the employee is absent from work because of a personal illness, or injury, for which the employee is receiving compensation payable under a law of the Commonwealth, a State or a Territory relating to workers’ compensation.

(2) Subject to subsection (1), this Division does not apply to the extent that it is inconsistent with a provision of a law of the Commonwealth, a State or a Territory relating to workers’ compensation if the provision would (apart from this Division):

(a) prevent an employee from taking or accruing paid personal/carer’s leave during a period while the employee is receiving compensation under such a law; or

(b) restrict the amount of paid personal/carer’s leave an employee may take or accrue during such a period.

249 Paid carer’s leave—annual limit

(1) This section applies to an employee if, at a particular time, the employee:

(a) is employed by an employer; and

(b) for a continuous period of at least 12 months immediately before the time, has been in continuous service with the employer.

(2) The employee is not entitled to take paid carer’s leave from his or her employment with the employer at the time if, during the period of 12 months ending at the time, the employee has already taken a total amount of paid carer’s leave from that employment of $ \frac{1}{26}$ of work.
Subdivision C—Guarantee of unpaid carer’s leave

250 The guarantee

(1) Subject to this Subdivision, an employee is entitled to a period of up to 2 days unpaid carer’s leave for each occasion (a permissible occasion) when a member of the employee’s immediate family, or a member of the employee’s household, requires care or support during such a period because of:
   (a) a personal illness, or injury, of the member; or
   (b) an unexpected emergency affecting the member.

Note 1: This entitlement extends to casual employees (see section 239).
Note 2: The entitlement is subject to the restrictions in sections 251 and 252.

(2) An employee is entitled to unpaid carer’s leave only if the employee complies with the notice and documentation requirements under Subdivision D, to the extent to which they apply to the employee.

(3) An employee is taken not to have been entitled to a period of unpaid carer’s leave at any time after the start of the period if:
   (a) Subdivision D:
      (i) required the employee to give notice or a document (the required notice or document) to his or her employer; and
      (ii) allowed the employee to give the required notice or document to his or her employer after the start of the leave; and
   (b) when the employee started the leave, the employee had not given his or her employer the required notice or document; and
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(c) the employee did not later give the required notice or document to his or her employer within the period required under Subdivision D.

Note: Under Subdivision D, an employee may be required to give his or her employer notice, a medical certificate or a statutory declaration (depending on the circumstances).

251 Unpaid carer’s leave—how taken

An employee who is entitled to a period of unpaid carer’s leave under section 250 for a particular permissible occasion is entitled to take the unpaid carer’s leave as:

(a) a single, unbroken, period of up to 2 days; or
(b) any separate periods to which the employee and his or her employer agree.

252 Unpaid carer’s leave—paid personal leave exhausted

An employee is entitled to unpaid carer’s leave for a particular permissible occasion during a particular period only if the employee cannot take an amount of any of the following types of paid leave during the period:

(a) paid personal/carer’s leave;
(b) any other authorised leave of the same type as personal/carer’s leave.

Subdivision D—Notice and evidence requirements:
personal/carer’s leave

253 Sick leave—notice

(1) To be entitled to sick leave during a period, an employee must give his or her employer notice in accordance with this section that the employee is (or will be) absent from his or her employment during the period because of a personal illness, or injury, of the employee.

(2) The notice must be given to the employer as soon as reasonably practicable (which may be at a time before or after the sick leave has started).
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Division 5  Personal leave  

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(3) The notice must be to the effect that the employee requires (or required) leave during the period because of a personal illness, or injury, of the employee.

(4) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

254 Sick leave—documentary evidence

(1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of sick leave taken (or to be taken) by the employee.

(2) To be entitled to sick leave during the period, the employee must, in accordance with this section, give the employer a document (the required document) of whichever of the following types applies:
   (a) if it is reasonably practicable to do so—a medical certificate from a registered health practitioner;
   (b) if it is not reasonably practicable for the employee to give the employer a medical certificate—a statutory declaration made by the employee.

(3) The required document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the sick leave has started).

(4) The required document must include a statement to the effect that:
   (a) if the required document is a medical certificate—in the registered health practitioner’s opinion, the employee was, is, or will be unfit for work during the period because of a personal illness or injury; or
   (b) if the required document is a statutory declaration—the employee was, is, or will be unfit for work during the period because of a personal illness or injury.

(5) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.
255 Carer’s leave—notice

(1) To be entitled to carer’s leave during a period, an employee must give his or her employer notice in accordance with this section.

(2) The notice must be given to the employer as soon as reasonably practicable (which may be at a time before or after the carer’s leave has started).

(3) The notice must be to the effect that the employee requires (or required) leave during the period to provide care or support to a member of the employee’s immediate family, or a member of the employee’s household, who requires (or required) care or support because of:

(a) a personal illness, or injury, of the member; or
(b) an unexpected emergency affecting the member.

(4) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

256 Carer’s leave—documentary evidence

(1) This section applies if an employer requires an employee of the employer to give the employer documentary evidence in relation to a period of carer’s leave taken (or to be taken) by the employee to provide care or support to a member of the employee’s immediate family or a member of the employee’s household.

(2) To be entitled to carer’s leave during the period, the employee must, in accordance with this section, give the employer a document (the relevant document) that is:

(a) if the care or support is required because of a personal illness, or injury, of the member—a medical certificate from a registered health practitioner, or a statutory declaration made by the employee; or

(b) if the care or support is required because of an unexpected emergency affecting the member—a statutory declaration made by the employee.
Section 257

(3) The relevant document must be given to the employer as soon as reasonably practicable (which may be at a time before or after the carer’s leave has started).

(4) If the relevant document is a medical certificate, it must include a statement to the effect that, in the opinion of the registered health practitioner, the member had, has, or will have a personal illness or injury during the period.

(5) If the relevant document is a statutory declaration, it must include a statement to the effect that the employee requires (or required) leave during the period to provide care or support to the member because the member requires (or required) care or support during the period because of:
(a) a personal illness, or injury, of the member; or
(b) an unexpected emergency affecting the member.

(6) This section does not apply to an employee who could not comply with it because of circumstances beyond the employee’s control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

Subdivision E—Guarantee of compassionate leave

257 The guarantee

(1) For the purposes of this Division, compassionate leave is paid leave taken by an employee:
(a) for the purposes of spending time with a person who:
   (i) is a member of the employee’s immediate family or a member of the employee’s household; and
   (ii) has a personal illness, or injury, that poses a serious threat to his or her life; or
(b) after the death of a member of the employee’s immediate family or a member of the employee’s household.

(2) Subject to this Subdivision, an employee is entitled to a period of 2 days of compassionate leave for each occasion (a permissible occasion) when a member of the employee’s immediate family or a member of the employee’s household:
(a) contracts or develops a personal illness that poses a serious threat to his or her life; or
(b) sustains a personal injury that poses a serious threat to his or her life; or
(c) dies.

(3) However, the employee is entitled to compassionate leave only if the employee gives his or her employer any evidence that the employer reasonably requires of the illness, injury or death.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

258 Taking compassionate leave

(1) An employee who is entitled to a period of compassionate leave under section 257 for a particular permissible occasion is entitled to take the compassionate leave as:
(a) a single, unbroken period of 2 days; or
(b) 2 separate periods of 1 day each; or
(c) any separate periods to which the employee and his or her employer agree.

(2) An employee who is entitled to a period of compassionate leave under section 257 because a member of the employee’s immediate family or a member of the employee’s household has contracted or developed a personal illness, or sustained a personal injury, is entitled to start to take the compassionate leave at any time while the illness or injury persists.

259 Compassionate leave—payment rule

If an employee takes compassionate leave during a period, the employer must pay the employee for that period the amount the employee would reasonably have expected to be paid by the employer if the employee had worked during that period.

Subdivision F—Personal leave: service

260 Paid personal leave—service

(1) A period of paid personal leave does not break an employee’s continuity of service.
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Division 5 Personal leave

Section 261

(2) Paid personal leave counts as service for all purposes except as prescribed by the regulations.

(3) In this section:

paid personal leave means paid personal/carer’s leave or compassionate leave.

261 Unpaid carer’s leave—service

(1) A period of unpaid carer’s leave does not break an employee’s continuity of service.

(2) However, a period of unpaid carer’s leave does not otherwise count as service except:

(a) as expressly provided by or under:

(i) a term or condition of the employee’s employment; or

(ii) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or

(b) as prescribed by the regulations.
Division 6—Parental leave

Subdivision A—Preliminary

262 Employees to whom Division applies

This Division applies to all employees, other than casual employees who are not eligible casual employees.

263 Definitions

In this Division:

*adoption agency* means an agency, office, court or other entity that is authorised under a law of the Commonwealth, a State, a Territory or a foreign country to perform functions in relation to adoption.

*adoption leave* has the meaning given by subsection 300(1).

*authorised leave* means leave, or an absence, whether paid or unpaid, that is authorised:

(a) by an employee’s employer; or

(b) by or under a term or condition of an employee’s employment; or

(c) by or under a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

*continuous service*, in relation to a period of an employee’s service with an employer, means service with the employer as an employee during the whole of the period, including (as a part of the period) any of the following periods:

(a) a period of authorised leave;

(b) a period (the *casual period*) during which the employee was a casual employee, if:

(i) during the casual period, the employee was engaged on a regular and systematic basis by the employer; and

(ii) during the casual period, the employee had a reasonable expectation of continuing employment by the employer.
day of placement: the day of placement of a child with an employee for an adoption is:
  (a) subject to paragraph (b), the earlier of the following days:
      (i) the day on which the employee first takes custody of the child for the adoption;
      (ii) the day on which the employee starts any travel that is reasonably necessary to take custody of the child for the adoption; or
  (b) if the child’s adoption by an employee is authorised by an adoption agency after the child has started living with the employee (unless the employee has travelled overseas to take custody of the child for an adoption intended to occur in Australia)—the day on which the adoption is authorised by the agency.

dea facto spouse, of an employee, means a person of the opposite sex to the employee who lives with the employee as the employee’s husband or wife on a genuine domestic basis although not legally married to the employee.

eligible casual employee has the meaning given by section 264.

eligible child has the meaning given by section 298.

employee means an employee to whom this Division applies under section 262.

expected date of birth, of a child of an employee who is or was pregnant, means:
  (a) if, to comply with a requirement under Subdivision C, the employee has given her employer a medical certificate stating the expected date of birth of the child or a date that would be, or would have been, the expected date of birth of the child—the stated date; or
  (b) if the employee could not comply with a requirement mentioned in paragraph (a) because of circumstances beyond her control—the date of birth of the child that could reasonably be expected if the pregnancy were to go to full term.

long adoption leave has the meaning given by paragraph 300(1)(b).
long paternity leave has the meaning given by paragraph 282(1)(b).

maternity leave has the meaning given by subsection 265(1).

medical certificate means a certificate signed by a medical practitioner.

medical practitioner means a person registered, or licensed, as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners.

ordinary maternity leave has the meaning given by paragraph 265(1)(b).

paternity leave has the meaning given by subsection 282(1).

placement, of a child, means:
(a) subject to paragraph (b)—the placement, by an adoption agency, of the child into the custody of an employee for adoption; or
(b) if the child’s adoption by an employee is authorised by an adoption agency after the child has started living with the employee—the authorisation of the adoption by the adoption agency.

Note: Day of placement is also defined in this section.

pre-adoption leave has the meaning given by subsection 299(2).

pregnancy-related illness means an illness related to pregnancy.

primary care-giver, of a child, means a person who assumes the principal role of providing care and attention to the child.

short adoption leave has the meaning given by paragraph 300(1)(a).

short paternity leave has the meaning given by paragraph 282(1)(a).

special maternity leave has the meaning given by paragraph 265(1)(a).

spouse includes the following:
(a) a former spouse;
(b) a de facto spouse;
(c) a former de facto spouse.

264 Meaning of eligible casual employee

(1) For the purposes of this Division, an eligible casual employee is a casual employee:
(a) who has been engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
(b) who, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

(2) Without limiting subsection (1), for the purposes of this Division, a casual employee is also an eligible casual employee if:
(a) the employee was engaged by a particular employer on a regular and systematic basis for a sequence of periods during a period (the first period of employment) of less than 12 months; and
(b) at the end of the first period of employment, the employee ceased, on the employer’s initiative, to be so engaged by the employer; and
(c) the employer later again engaged the employee on a regular and systematic basis for a further sequence of periods during a period (the second period of employment) that started not more than 3 months after the end of the first period of employment; and
(d) the combined length of the first period of employment and the second period of employment is at least 12 months; and
(e) the employee, but for an expected birth or an expected placement of a child, would have a reasonable expectation of continuing engagement by the employer on a regular and systematic basis.

Subdivision B—Guarantee of maternity leave

265 The guarantee

(1) For the purposes of this Division, maternity leave is:
(a) unpaid leave (special maternity leave) taken by an employee because:
   (i) she is pregnant, and has a pregnancy-related illness; or
   (ii) she has been pregnant, and the pregnancy has ended within 28 weeks before the expected date of birth of the child otherwise than by the birth of a living child; or
(b) a single, unbroken period of unpaid leave (ordinary maternity leave) taken in respect of the birth, or the expected birth, of a child of an employee (other than leave taken as special maternity leave).

(2) Subject to this Subdivision and Subdivision D, an employee is entitled to maternity leave if:
   (a) she complies with the documentation requirements under Subdivision C, to the extent to which they apply to her; and
   (b) immediately before the expected date of birth of the child:
      (i) she has, or will have, completed at least 12 months continuous service with her employer; or
      (ii) she is, or will be, an eligible casual employee.

Note: Entitlement to maternity leave is subject to the restrictions in sections 266 and 267 and Subdivision D.

(3) An employee is taken not to have been entitled to a period of maternity leave at any time after the start of the period if:
   (a) Subdivision C:
      (i) required the employee to give a document (the required document) to her employer; and
      (ii) allowed the employee to give the required document to her employer after the start of the leave; and
   (b) when the employee started the leave, the employee had not given her employer the required document; and
   (c) the employee did not later give the required document to her employer within the period required under Subdivision C.

Note: Under Subdivision C, an employee may be required to give her employer a medical certificate, an application or a statutory declaration (depending on the circumstances).

(4) Subject to this Division, an employee may take special maternity leave, ordinary maternity leave, or both.
266  Period of maternity leave

(1) In this section:

related authorised leave, in relation to maternity leave taken (or to be taken) by an employee, means any of the following types of authorised leave other than the maternity leave:

(a) authorised leave (other than paid leave under subparagraph 268(2)(b)(i) or (ii)) taken by the employee because of any of the following:
   (i) her pregnancy;
   (ii) the birth of the child;
   (iii) the end of her pregnancy otherwise than by the birth of a living child;
   (iv) the death of the child;
(b) paternity leave, or any other authorised leave of the same type as paternity leave, taken by the employee’s spouse because of the birth of the child.

(2) An employee may take a period of maternity leave as part of a continuous period including any other authorised leave.

(3) The maximum total amount of maternity leave (including special maternity leave and ordinary maternity leave) to which an employee is entitled in relation to the birth of a child is 52 weeks, less an amount equal to the total amount of related authorised leave taken:

(a) by the employee before or after the maternity leave; and
(b) by the employee’s spouse before, during or after the maternity leave.

Example: Rosa is a pregnant employee entitled to maternity leave. She has taken 2 weeks of special maternity leave, but no other authorised leave. Rosa intends to take authorised leave because of the birth consisting of 4 weeks of annual leave and 12 weeks of long service leave, and a period of ordinary maternity leave.

Rosa’s spouse Jim intends to take 1 week of short paternity leave.

The maximum amount of ordinary maternity leave to which Rosa is entitled is 33 weeks, worked out as follows:

(a) the maximum entitlement of any employee to maternity leave is 52 weeks;
(b) the maximum amount of ordinary maternity leave available to Rosa must be reduced by 2 weeks for her special maternity leave;
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(c) the maximum amount must also be reduced by 16 weeks for Rosa’s annual leave and long service leave;
(d) the maximum amount must be further reduced by 1 week for Jim’s short paternity leave.

267 Period of special maternity leave

(1) An employee is not entitled to a period of special maternity leave longer than the period stated in a medical certificate given to the employer for the purposes of section 269.

Note: Section 269 requires an employee to give her employer a medical certificate (and other documents) in order to be entitled to special maternity leave. However, the section does not apply to an employee who could not comply with the section because of circumstances beyond her control (see subsection 269(5)).

(2) In addition, a period of special maternity leave must end before the employee starts any continuous period of leave including (or constituted by) ordinary maternity leave.

268 Transfer to a safe job

(1) This section applies to an employee if:
   (a) she is entitled to ordinary maternity leave; and
   (b) she has already complied with the documentation requirements under sections 270 and 271; and
   (c) the employee gives her employer a medical certificate from a medical practitioner containing a statement to the effect that, in the medical practitioner’s opinion, the employee is fit to work, but that it is inadvisable for her to continue in her present position for a stated period because of:
       (i) illness, or risks, arising out of her pregnancy; or
       (ii) hazards connected with that position.

(2) If this section applies to an employee:
   (a) if the employee’s employer thinks it to be reasonably practicable to transfer the employee to a safe job—the employer must transfer the employee to the safe job, with no other change to the employee’s terms and conditions of employment; or
   (b) if the employee’s employer does not think it to be reasonably practicable to transfer the employee to a safe job:
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(i) the employee may take paid leave immediately for a period ending at the time mentioned in paragraph (4)(b); or
(ii) the employer may require the employee to take paid leave immediately for a period ending at the time mentioned in paragraph (4)(b).

(3) If the employee takes paid leave under subparagraph (2)(b)(i) or (ii) during a period, the employer must pay the employee for that period the amount the employee would reasonably have expected to be paid by the employer if the employee had worked during that period.

(4) If the employee takes paid leave under subparagraph (2)(b)(i) or (ii):

(a) the entitlement to leave is in addition to any other leave entitlement she has; and
(b) the period of leave ends at the earliest of whichever of the following times is applicable:

(i) the end of the period stated in the medical certificate;
(ii) if the employee’s pregnancy results in the birth of a living child—the end of the day before the date of birth;
(iii) if the employee’s pregnancy ends otherwise than with the birth of a living child—the end of the day before the end of the pregnancy.

(5) To avoid doubt, this section applies whether the employee gives the medical certificate to the employer because of a request under subsection 274(2) or otherwise.

Subdivision C—Maternity leave: documentation

269  Special maternity leave—documentation

Requirement for application

(1) To be entitled to special maternity leave during a period, an employee must give her employer a written application for special maternity leave, in accordance with this section, stating the first and last days of the period.

190  Workplace Relations Act 1996
Pregnancy-related illness—medical certificate

(2) An application for special maternity leave required because of a pregnancy-related illness must be accompanied by a medical certificate from a medical practitioner containing the following statements of the medical practitioner’s opinion:

(a) a statement that the employee is pregnant;
(b) a statement of the expected date of birth;
(c) a statement to the effect that the employee is, was, or will be unfit to work for a stated period because of a pregnancy-related illness.

End of pregnancy—medical certificate and statutory declaration

(3) An application for special maternity leave required because of the end of the employee’s pregnancy otherwise than by the birth of a living child must be accompanied by:

(a) a medical certificate from a medical practitioner containing the following statements of the medical practitioner’s opinion:
    (i) a statement that the employee was pregnant, but that the pregnancy has ended otherwise than by the birth of a living child;
    (ii) a statement of what the expected date of birth would have been if the pregnancy had gone to full term;
    (iii) a statement that the pregnancy ended on a stated day within 28 weeks before the expected date of birth;
    (iv) a statement to the effect that the employee is, was, or will be unfit for work during a stated period; and
(b) a statutory declaration made by the employee stating the following:
    (i) the first and last days of the period (or periods) of any other authorised leave taken by the employee because of a pregnancy-related illness or the end of the pregnancy;
    (ii) that the employee will not engage in any conduct inconsistent with her contract of employment while on maternity leave.
Time for giving application to employer

(4) The application, medical certificate and statutory declaration (if required) must be given to the employer before, or as soon as reasonably practicable after, starting a continuous period of leave including (or constituted by) the special maternity leave.

Section does not apply if could not be complied with

(5) This section does not apply to an employee who could not comply with the section because of circumstances beyond her control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

270 Ordinary maternity leave—medical certificate

Requirement for medical certificate

(1) To be entitled to ordinary maternity leave, an employee must give her employer a medical certificate from a medical practitioner in accordance with this section.

General rules

(2) The medical certificate must contain the following statements of the medical practitioner’s opinion:
   (a) a statement that the employee is pregnant;
   (b) a statement of the expected date of birth.

(3) The medical certificate mentioned in subsection (2) must be given to the employer no later than 10 weeks before the expected date of birth (as stated in the certificate).

Premature birth or other compelling reason

(4) However, subsections (2) and (3) do not apply if it was not reasonably practicable for a medical certificate mentioned in subsection (2) to be given to the employer by the time required by subsection (3) because of:
   (a) the premature birth of the employee’s child; or
   (b) any other compelling reason.

(5) If subsections (2) and (3) do not apply:
(a) subject to paragraph (b), as soon as reasonably practicable before the birth of the child (which may be at a time before or after the maternity leave has started) the employee must give the employer a medical certificate from a medical practitioner containing the following statements of the medical practitioner’s opinion:
   (i) a statement that the employee is pregnant;
   (ii) a statement of the expected date of birth if the pregnancy were to go to full term; or
(b) if it was not reasonably practicable for the employee to comply with paragraph (a) before the birth of the child—as soon as reasonably practicable after the birth of the child (which may be at a time before or after the maternity leave has started) the employee must give the employer a medical certificate from a medical practitioner containing the following statements of the medical practitioner’s opinion (or knowledge):
   (i) a statement of the actual date of birth;
   (ii) a statement of the expected date of birth as at the 70th day before the actual date of birth.

Section does not apply if could not be complied with

(6) This section does not apply to an employee who could not comply with the section because of circumstances beyond her control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

271 Ordinary maternity leave—application

Requirement for application

(1) To be entitled to ordinary maternity leave during a period, an employee must give her employer a written application for ordinary maternity leave in accordance with this section stating the first and last days of the period.

General rule

(2) The application must be given to the employer no later than 4 weeks before the first day of the intended continuous period of leave including (or constituted by) ordinary maternity leave.
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Premature birth or other compelling reason

(3) However, subsection (2) does not apply if it was not reasonably practicable for the employee to comply with it because of:
   (a) the premature birth of the employee’s child; or
   (b) any other compelling reason.

(4) If subsection (2) does not apply, the application must be made as soon as reasonably practicable (which may be at a time before or after the maternity leave has started).

Statutory declaration with application

(5) The application must be accompanied by a statutory declaration made by the employee stating the following:
   (a) the first and last days of the period (or periods) of any other authorised leave (other than paid leave under subparagraph 268(2)(b)(i) or (ii)) intended to be taken (or already taken) by the employee because of her pregnancy or the expected birth;
   (b) the first and last days of the period (or periods) of any paternity leave, or any other authorised leave of the same type as paternity leave, intended to be taken (or already taken) by the employee’s spouse because of the expected birth;
   (c) that the employee intends to be the child’s primary care-giver at all times while on maternity leave;
   (d) that the employee will not engage in any conduct inconsistent with her contract of employment while on maternity leave.

Section does not apply if could not be complied with

(6) This section does not apply to an employee who could not comply with the section because of circumstances beyond her control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

Subdivision D—Maternity leave: from start to finish

272 Maternity leave—start of leave

Subject to section 274, an employee may start a continuous period of leave including (or constituted by) ordinary maternity leave to
which she is entitled at any time within 6 weeks before the expected date of birth of the child.

273 Requirement to take leave—for 6 weeks after birth

A continuous period of leave including (or constituted by) ordinary maternity leave must include a period of leave of at least 6 weeks starting from the date of birth of the child.

274 Requirement to take leave—within 6 weeks before birth

(1) This section applies to an employee if:
   (a) she is entitled to ordinary maternity leave; and
   (b) she has already complied with the documentation requirements under sections 270 and 271.

(2) If the employee continues to work, during the period of 6 weeks before the expected date of birth, the employer may ask the employee to give the employer a medical certificate from a medical practitioner containing the following statement or statements of the medical practitioner’s opinion:
   (a) a statement of whether the employee is fit to work;
   (b) if, in the opinion of the medical practitioner, the employee is fit to work—a statement of whether it is inadvisable for the employee to continue in her present position for a stated period because of:
       (i) illness, or risks, arising out of the pregnancy; or
       (ii) hazards connected with the position.

Note: Under section 268, the employee is entitled to be transferred to a safe job or to paid leave (depending on the circumstances) if the employee gives the employer a medical certificate stating that the employee is fit to work, but that illness or risks arising out of the employee’s pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present position.

(3) The employer may require the employee to start a continuous period of leave including (or constituted by) maternity leave as soon as reasonably practicable, if the employee:
   (a) does not give the employer the requested certificate within 7 days after the request; or
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(b) within 7 days after the request for the certificate, gives the employer a medical certificate stating that the employee is unfit to work.

275 End of pregnancy—effect on ordinary maternity leave entitlement

(1) This section applies if the pregnancy of an employee ends otherwise than by the birth of a living child.

(2) If, when the pregnancy ended, the employee had not yet started a period of ordinary maternity leave, the employee is not, or is no longer, entitled to ordinary maternity leave in relation to the previously expected birth.

Note: However, the employee may be entitled to take special maternity leave because of the end of the pregnancy. An application for special maternity leave may be made after the leave has started (see section 269).

(3) If, when the pregnancy ended, the employee had started a period of ordinary maternity leave, the employee’s entitlement to ordinary maternity leave in relation to the previously expected birth is not affected by the end of the pregnancy.

Note: The employee may shorten the period of ordinary maternity leave by agreement with the employer under section 278. However, to take advantage of the return to work guarantee under section 280, the employee must also give the employer at least 4 weeks written notice of the proposed day of her return to work.

276 Death of child—effect on ordinary maternity leave entitlement

(1) This section applies if:

(a) an employee gives birth to a living child, but the child later dies; and

(b) when the child died, the employee had started a period of ordinary maternity leave in relation to the child’s birth.

(2) Subject to subsections (3) and (4), the employee’s entitlement to the ordinary maternity leave is not affected by the death of the child.

Note: The employee may shorten the period of ordinary maternity leave by agreement with the employer under section 278. However, to take advantage of the return to work guarantee under section 280, the
employee must also give the employer at least 4 weeks written notice of the proposed day of her return to work.

(3) The employee’s employer may give the employee written notice that, from a stated day, any untaken ordinary maternity leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

(4) The day stated in the notice must be no earlier than the later of the following days:
   (a) the day that is 4 weeks after the day the notice was given;
   (b) the day that is 6 weeks after the date of birth.

(5) The employee’s entitlement to any untaken ordinary maternity leave in relation to the birth ends with effect from the day stated in the notice.

277 End of ordinary maternity leave if employee stops being primary care-giver

(1) This section applies if:
   (a) during a substantial period while an employee is on ordinary maternity leave after the birth of a living child, the employee is not the child’s primary care-giver; and
   (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child’s primary care-giver within a reasonable period.

(2) The employee’s employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken ordinary maternity leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

(3) The employee’s entitlement to any untaken ordinary maternity leave in relation to the birth ends with effect from the day stated in the notice.
278 Variation of period of ordinary maternity leave

(1) This section applies after an employee has started a continuous period of leave including (or constituted by) ordinary maternity leave.

(2) Subject to Subdivision B and sections 276 and 277:
   (a) the employee may extend the period of maternity leave once by giving her employer 14 days written notice before the end of the period stating the period by which the leave is extended; and
   (b) the period of maternity leave may be further extended by agreement between the employee and her employer.

(3) Subject to section 273, the period of maternity leave may be shortened by written agreement between the employee and her employer.

Note: However, to take advantage of the return to work guarantee under section 280, the employee must also give her employer at least 4 weeks written notice of the proposed day for her return to work.

279 Employee’s right to terminate employment during maternity leave

(1) An employee may terminate her employment at any time during a period of maternity leave or leave under subparagraph 268(2)(b)(i) or (ii).

(2) The employee’s right to terminate her employment is subject to any notice required to be given by the employee by or under:
   (a) a term or condition of her employment; or
   (b) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

280 Return to work guarantee—maternity leave

(1) This section applies to an employee who returns to work after a period of leave including (or constituted by) maternity leave (the *maternity-related leave period*) if:
   (a) the employee gives her employer written notice of the proposed day of her return to work no later than 4 weeks before that day; or
(b) the period of leave includes (or is constituted by) special maternity leave, and does not include any ordinary maternity leave; or  
(c) the employee’s entitlement to ordinary maternity leave ends under section 276 or 277.

(2) This section also applies if an employee returns to work after a period of leave under subparagraph 268(2)(b)(i) or (ii).

(3) Subject to subsections (4) and (5), the employee is entitled to return:
(a) unless paragraph (b) or (c) applies—to the position she held immediately before the start of the maternity-related leave period; or  
(b) if she was promoted or voluntarily transferred to a new position (other than to a safe job under paragraph 268(2)(a)) during the maternity-related leave period—to the new position; or  
(c) if paragraph (b) does not apply, and she began working part-time because of her pregnancy—to the position she held immediately before starting to work part-time.

(4) If subsection (3) would, apart from this subsection, entitle the employee to return to a position that the employee had been transferred to under paragraph 268(2)(a), the employee is instead entitled to return to the position she held immediately before the transfer.

(5) If the position (the former position) no longer exists, and the employee is qualified and able to work for her employer in another position, the employee is entitled to return to:
(a) that position; or  
(b) if there are 2 or more such positions—whichever position is nearest in status and remuneration to the former position.

281 Replacement employees—maternity leave

(1) Before an employer engages an employee (a primary replacement) to do the work of another employee because the other employee is taking a continuous period of leave including (or constituted by) maternity leave, the employer must tell the primary replacement:
(a) that the engagement to do that work is temporary; and
(b) what the rights of the employee taking maternity leave are under section 280 when she returns to work after the period of leave.

(2) Before an employer engages an employee (a secondary replacement) to do the work of another employee (the primary replacement) because the primary replacement has been temporarily promoted or transferred to do the work of a third employee while the third employee is taking a continuous period of leave including (or constituted by) maternity leave, the employer must tell the secondary replacement:

(a) that the engagement to do that work is temporary; and
(b) what the rights of the employee taking maternity leave are under section 280 when she returns to work after the period of leave.

(3) In this section:

employee has the meaning given by subsection 5(1).

Subdivision E—Guarantee of paternity leave

282 The guarantee

(1) For the purposes of this Division, paternity leave is:

(a) a single, unbroken period of unpaid leave (short paternity leave) of up to one week taken by a male employee within the week starting on the day his spouse begins to give birth; or

(b) a single, unbroken period of unpaid leave (long paternity leave), other than short paternity leave, taken by a male employee after his spouse gives birth to a living child so that the employee can be the child’s primary care-giver.

(2) Subject to this Subdivision and Subdivision G, an employee is entitled to paternity leave if:

(a) he complies with the documentation requirements under Subdivision F, to the extent to which they apply to him; and

(b) immediately before the first day on which the paternity leave is, or is to be, taken:

(i) he has, or will have, completed at least 12 months continuous service with his employer; or
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(ii) he is, or will be, an eligible casual employee.

Note: Entitlement to paternity leave is subject to the restrictions in sections 283 and 285 and Subdivision G.

(3) An employee is taken not to have been entitled to a period of paternity leave at any time after the start of the period if:

(a) Subdivision F:
   
   (i) required the employee to give a document (the \textit{required document}) to his employer; and
   
   (ii) allowed the employee to give the required document to his employer after the start of the leave; and

(b) when the employee started the leave, the employee had not given his employer the required document; and

(c) the employee did not later give the required document to his employer within the period required under Subdivision F.

Note: Under Subdivision F, an employee may be required to give his employer a medical certificate, an application or a statutory declaration (depending on the circumstances).

(4) Subject to this Division, an employee may take short paternity leave, long paternity leave, or both.

283 Period of paternity leave

(1) In this section:

\textit{related authorised leave}, in relation to paternity leave taken (or to be taken) by an employee because his spouse has given birth to a living child, means any of the following types of authorised leave other than the paternity leave:

(a) authorised leave taken by the employee because of any of the following:
   
   (i) the birth of the child;
   
   (ii) the death of the child;

(b) maternity leave, or any other authorised leave of the same type as maternity leave, taken by the employee’s spouse because of the birth of the child or the pregnancy.

(2) An employee may take a period of paternity leave as part of a continuous period including any other authorised leave.
(3) The maximum total amount of paternity leave (including short paternity leave and long paternity leave) to which an employee is entitled in relation to the birth of a child by his spouse is 52 weeks, less an amount equal to the total amount of related authorised leave taken:

(a) by the employee before or after the paternity leave; and

(b) by the spouse before, during or after the paternity leave.

Example: Max’s spouse Rachel is pregnant, and Max is an employee entitled to paternity leave. He intends to take 2 periods of authorised leave because of the birth of the child. The first is to consist of 5 weeks: 1 week of short paternity leave and 4 weeks of annual leave. The second is to consist of a later period of long paternity leave starting 20 weeks after the birth, when Max is to be the primary care-giver for the child after Rachel returns to work.

Rachel has not taken any special maternity leave or other authorised leave during her pregnancy. She intends to take 20 weeks of maternity leave because of the birth of the child.

The maximum amount of long paternity leave to which Max is entitled is 27 weeks, worked out as follows:

(a) the maximum entitlement of any employee to paternity leave is 52 weeks;

(b) the maximum amount of long paternity leave available to Max must be reduced by 1 week for his short paternity leave;

(c) the maximum amount must also be reduced by 4 weeks for Max’s annual leave;

(d) the maximum amount must be further reduced by 20 weeks for Rachel’s maternity leave.

Note: A period of long paternity leave must end within 12 months after the date of birth of the child (see section 290).

284 Short paternity leave—concurrent leave taken by spouse

An employee may take short paternity leave in relation to the birth of a child by his spouse while the spouse is taking any authorised leave, including maternity leave (if any), in relation to the birth.

285 Long paternity leave—not to be concurrent with maternity leave taken by spouse

A period of long paternity leave taken by an employee in relation to the birth of a child by his spouse must not include any period during which the spouse is taking maternity leave, or any other
authorised leave of the same type as maternity leave, because of the birth.

Subdivision F—Paternity leave: documentation

286 Paternity leave—medical certificate

Requirement for medical certificate

(1) To be entitled to paternity leave, an employee must give his employer a medical certificate from a medical practitioner in accordance with this section.

(2) The medical certificate must contain the following statements of the medical practitioner’s opinion (or knowledge):

(a) if the child has not yet been born:
   (i) the name of the employee’s spouse; and
   (ii) that the employee’s spouse is pregnant; and
   (iii) the date on which the birth is expected;
(b) if the child has been born:
   (i) the name of the employee’s spouse; and
   (ii) the actual date of birth of the child.

General rule

(3) The medical certificate must be given to the employer no later than 10 weeks before the date stated in the certificate.

Premature birth or other compelling reason

(4) However, the medical certificate must be given to the employer as soon as reasonably practicable (which may be at a time before or after the paternity leave has started) if it was not reasonably practicable for the employee to comply with subsection (3) because of:

(a) the premature birth of the child; or
(b) any other compelling reason.

Section does not apply if could not be complied with

(5) This section does not apply to an employee who could not comply with the section because of circumstances beyond his control.
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Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

287 Short paternity leave—application

(1) To be entitled to short paternity leave during a period, an employee must give his employer a written application for short paternity leave, in accordance with this section, stating the first and last days of the period.

(2) The application must be given to the employer as soon as reasonably practicable on or after the first day of the period of leave.

(3) This section does not apply to an employee who could not comply with the section because of circumstances beyond his control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

288 Long paternity leave—documentation

Requirement for application

(1) To be entitled to long paternity leave during a period, an employee must give his employer a written application for long paternity leave in accordance with this section stating the first and last days of the period.

General rule

(2) The application must be given to the employer no later than 10 weeks before the first day of the intended continuous period of leave including (or constituted by) the long paternity leave.

Premature birth or other compelling reason

(3) However, the application must be made as soon as reasonably practicable (which may be at a time before or after the long paternity leave has started) if it was not reasonably practicable for the employee to comply with subsection (2) because of:
   (a) the premature birth of the child; or
   (b) any other compelling reason.
Statutory declaration with application

(4) The application must be accompanied by a statutory declaration made by the employee stating the following:

(a) the first and last days of the period (or periods) of any other authorised leave intended to be taken (or already taken) by the employee because of the birth or the expected birth;
(b) the first and last days of the period (or periods) of any maternity leave, or any other authorised leave of the same type as maternity leave, intended to be taken (or already taken) by the employee’s spouse because of the pregnancy, the birth or the expected birth;
(c) that the employee intends to be the child’s primary care-giver at all times while on long paternity leave;
(d) that the employee will not engage in any conduct inconsistent with his contract of employment while on long paternity leave.

Section does not apply if could not be complied with

(5) This section does not apply to an employee who could not comply with the section because of circumstances beyond his control.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

Subdivision G—Paternity leave: from start to finish

289 Short paternity leave—when taken

An employee may take short paternity leave to which he is entitled at any time within the week starting on the day his spouse begins to give birth.

Note: Short paternity leave must be taken in a single, unbroken period (see section 282). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 283). Short paternity leave may be taken concurrently with any authorised leave taken by the employee’s spouse in relation to the birth of the child (see section 284).

290 Long paternity leave—when taken

An employee may take long paternity leave to which he is entitled at any time within 12 months after the date of birth of the child.
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Note: Long paternity leave must be taken in a single, unbroken period (see section 282). The combined total of paternity leave and related authorised leave taken by the employee and his spouse must be no more than 52 weeks (see section 283). Long paternity leave must not be taken concurrently with any maternity leave, or any other authorised leave of the same type as maternity leave, taken by the employee’s spouse because of the birth of the child (see section 285).

291 End of pregnancy—effect on paternity leave

(1) This section applies if the pregnancy of an employee’s spouse ends otherwise than by the birth of a living child.

(2) The employee is not, or is no longer, entitled to paternity leave in relation to the pregnancy.

(3) To avoid doubt, this section does not affect any entitlement of an employee to short paternity leave that was taken by the employee in expectation of the birth.

292 Death of child—effect on paternity leave

(1) This section applies if an employee’s spouse gives birth to a living child, but the child later dies.

(2) If, when the child died, the employee had not yet started a period of paternity leave in relation to the birth, the employee is not, or is no longer, entitled to that leave.

(3) Subject to subsections (4) and (5), if, when the child died, the employee had started a period of paternity leave in relation to the birth, the employee’s entitlement to the leave is not affected by the death of the child.

Note: The employee may shorten a period of long paternity leave by agreement with the employer under section 294. However, if the period of leave including (or constituted by) long paternity leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 296, the employee must also give the employer at least 4 weeks written notice of the proposed day of his return to work.

(4) The employee’s employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken long paternity leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

206  Workplace Relations Act 1996
(5) The employee’s entitlement to any untaken long paternity leave in relation to the birth ends with effect from the day stated in the notice.

293 End of long paternity leave if employee stops being primary care-giver

(1) This section applies if:
   (a) during a substantial period while an employee is on long paternity leave after the birth of a living child, the employee is not the child’s primary care-giver; and
   (b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child’s primary care-giver within a reasonable period.

(2) The employee’s employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken long paternity leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

(3) The employee’s entitlement to any untaken long paternity leave in relation to the birth ends with effect from the day stated in the notice.

294 Variation of period of long paternity leave

(1) This section applies after an employee has started a continuous period of leave including (or constituted by) long paternity leave.

(2) Subject to Subdivision E and sections 290, 292 and 293:
   (a) the employee may extend the period of long paternity leave once by giving his employer 14 days written notice before the end of the period stating the period by which the leave is extended; and
   (b) the period of long paternity leave may be further extended by agreement between the employee and his employer.

(3) The period of long paternity leave may be shortened by written agreement between the employee and his employer.
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Note: However, if the period of leave including (or constituted by) long paternity leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 296, the employee must also give his employer at least 4 weeks written notice of the proposed day of his return to work.

295  Employee’s right to terminate employment during paternity leave

(1) An employee may terminate his employment at any time during a period of paternity leave.

(2) The employee’s right to terminate his employment is subject to any notice required to be given by the employee by or under:
   (a) a term or condition of his employment; or
   (b) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

296  Return to work guarantee—paternity leave

(1) This section applies to an employee who returns to work after a period of leave including (or constituted by) paternity leave (the paternity-related leave period) if:
   (a) the paternity-related leave period is 4 weeks or less; or
   (b) if the paternity-related leave period is longer than 4 weeks—the employee has given his employer written notice of the proposed day of his return to work no later than 4 weeks before that day; or
   (c) the employee’s entitlement to long paternity leave ends under section 292 or 293.

(2) The employee is entitled to return:
   (a) unless paragraph (b) or (c) applies—to the position he held immediately before the start of the paternity-related leave period; or
   (b) if he was promoted or voluntarily transferred to a new position during the paternity-related leave period—to the new position; or
   (c) if paragraph (b) does not apply, and he began working part-time because of his spouse’s pregnancy—to the position he held immediately before starting to work part-time.

208  Workplace Relations Act 1996
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(3) However, if the position (the former position) no longer exists, and the employee is qualified and able to work for his employer in another position, the employee is entitled to return to:
   (a) that position; or
   (b) if there are 2 or more such positions—whichever position is nearest in status and remuneration to the former position.

297 Replacement employees—long paternity leave

(1) Before an employer engages an employee (a primary replacement) to do the work of another employee because the other employee is taking a continuous period of leave including (or constituted by) paternity leave, the employer must tell the primary replacement:
   (a) that the engagement to do that work is temporary; and
   (b) what the rights of the employee taking paternity leave are under section 296 when he returns to work after the period of leave.

(2) Before an employer engages an employee (a secondary replacement) to do the work of another employee (the primary replacement) because the primary replacement has been temporarily promoted or transferred to do the work of a third employee while the third employee is taking a continuous period of leave including (or constituted by) paternity leave, the employer must tell the secondary replacement:
   (a) that the engagement to do that work is temporary; and
   (b) what the rights of the employee taking paternity leave are under section 296 when he returns to work after the period of leave.

(3) In this section:

employee has the meaning given by subsection 5(1).

Subdivision H—Guarantee of adoption leave

298 Meaning of eligible child

For the purposes of this Division, a child is an eligible child in relation to an employee with whom the child is, or is to be, placed for adoption, if the child:
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(a) is (or will be) under the age of 5 years as at the day of placement or the proposed day of placement; and
(b) has not (or will have not) previously lived continuously with the employee for a period of 6 months or more as at the day of placement or the proposed day of placement; and
(c) is not a child or step-child of the employee or the employee’s spouse.

299 The guarantee—pre-adoption leave

(1) This section applies if an employee is seeking to obtain approval to adopt an eligible child.

Entitlement to leave

(2) The employee is entitled to a period of up to 2 days unpaid leave (pre-adoption leave) to attend any interviews or examinations required to obtain the approval.

(3) However, the employee is not entitled to take a period of pre-adoption leave if:
   (a) the employee could take other authorised leave instead for the same period for the purpose mentioned in subsection (2); and
   (b) the employee’s employer directs the employee to take such leave for the period.

(4) An employee who is entitled to a period of pre-adoption leave is entitled to take the leave as:
   (a) a single, unbroken, period of up to 2 days; or
   (b) any separate periods to which the employee and his or her employer agree.

Agreement between employees and employers

(5) For the purposes of paragraph (4)(b), an employee and an employer are taken to agree about a particular matter in a particular way if a provision of a workplace agreement binding the employee and the employer specifies that the matter is to be dealt with in that way.

(6) To avoid doubt, subsection (5) does not prevent employees and employers agreeing about matters by other means.

210  Workplace Relations Act 1996
300  The guarantee—adoption leave

(1) For the purposes of this Division, adoption leave is:
   (a) a single, unbroken period of unpaid leave (short adoption leave) of up to 3 weeks taken by an employee within the 3 weeks starting on the day of placement of an eligible child with the employee for adoption; or
   (b) a single, unbroken period of unpaid leave (long adoption leave), other than short adoption leave, taken by an employee after the day of placement of an eligible child with the employee for adoption so that the employee can be the child’s primary care-giver.

(2) Subject to this Subdivision and Subdivision J, an employee is entitled to adoption leave if:
   (a) the employee complies with the applicable documentation requirements under Subdivision I; and
   (b) immediately before the first day on which the adoption leave is, or is to be, taken:
      (i) the employee has, or will have, completed at least 12 months continuous service with his or her employer; or
      (ii) the employee is, or will be, an eligible casual employee.

Note: Entitlement to adoption leave is subject to the restrictions in sections 301 and 303 and Subdivision J.

(3) Subject to this Division, an employee may take short adoption leave, long adoption leave, or both.

301  Period of adoption leave

(1) In this section:

related authorised leave, in relation to adoption leave taken (or to be taken) by an employee because of the placement of a child with the employee and the employee’s spouse, means any of the following types of authorised leave other than pre-adoption leave:
   (a) authorised leave, other than adoption leave, taken by the employee because of the placement of the child with the employee;
   (b) adoption leave, or any other authorised leave of the same type as adoption leave, taken by the spouse because of the placement of the child with the employee.
(2) An employee may take a period of adoption leave as part of a continuous period including any other authorised leave.

(3) The maximum total amount of adoption leave (including short adoption leave and long adoption leave) that an employee is entitled to in relation to a placement is 52 weeks, less an amount equal to the total amount of related authorised leave taken:
   (a) by the employee before or after the adoption leave; and
   (b) by the employee’s spouse before or after the adoption leave.

Example: Susan and her spouse Ali propose to adopt a child, and both are employees entitled to adoption leave. Because of the placement of the child, Susan intends to take authorised leave consisting of 3 weeks of short adoption leave, 4 weeks of annual leave, 12 weeks of long service leave and a period of long adoption leave.

Because of the placement of the child, Ali intends to take 3 weeks of short adoption leave.

The maximum amount of long adoption leave to which Susan is entitled is 30 weeks, worked out as follows:

(a) the maximum entitlement of any employee to adoption leave is 52 weeks;
(b) the maximum amount of long adoption leave available to Susan must be reduced by 3 weeks for her short adoption leave;
(c) the maximum amount must also be reduced by 16 weeks for Susan’s annual leave and long service leave;
(d) the maximum amount must also be further reduced by 3 weeks for Ali’s short adoption leave.

Note: A period of long adoption leave must end within 12 months after the day of placement of the child (see section 309).

302 Short adoption leave—concurrent leave taken by spouse

An employee may take short adoption leave in relation to the placement of a child while his or her spouse is taking any authorised leave, including adoption leave (if any), in relation to the placement.

303 Long adoption leave—not to be concurrent with adoption leave taken by spouse

A period of long adoption leave taken by an employee in relation to the placement of a child with the employee and the employee’s spouse must not include any period during which the spouse is
taking adoption leave, or any other authorised leave of the same type as adoption leave, because of the placement.

Subdivision I—Adoption leave: documentation

304 Adoption leave—notice

Requirement for notice

(1) To be entitled to adoption leave, an employee must give his or her employer notice in accordance with this section.

Note: After an employee has given his or her employer notice in accordance with this section, the employee will have satisfied the notice requirement in relation to the employee’s entitlement to both short adoption leave and long adoption leave.

Notices to be given to the employer

(2) An employee must give written notice to his or her employer of the employee’s intention to apply for adoption leave as soon as reasonably practicable after receiving notice (a placement approval notice) of the approval of the placement of an eligible child with the employee.

(3) An employee must give written notice to his or her employer of the day when the placement of an eligible child with the employee is expected to start as soon as reasonably practicable after receiving notice (a placement notice) of the expected day.

(4) An employee must give written notice to his or her employer of the first and last days of the periods of short and long adoption leave (or of either type of leave) the employee intends to apply for because of the placement:

(a) if the employee receives a placement notice about the placement within the period of 8 weeks after receiving the placement approval notice—before the end of that 8 week period; or

(b) if the employee receives a placement notice about the placement after the end of the period of 8 weeks after receiving the placement approval notice—as soon as reasonably practicable after receiving the placement notice.
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Adoption of a relative of the employee

(5) If an eligible child who is to be adopted by an employee is a relative of the employee, and the employee decides to take the child into custody pending the authorisation of the placement of the child with the employee, the employee must:

(a) give notice to his or her employer of the employee’s decision as soon as reasonably practicable after the decision is made; and

(b) give the notices required by subsections (2), (3) and (4) in accordance with those subsections.

Note: The employee’s entitlement to adoption leave after taking the child into custody starts when the adoption is authorised (this is the day of placement of the child—see definition of day of placement in section 263).

Adoption process started before engagement with the employer

(6) If, before starting an employee’s current period of engagement with his or her employer, the employee had already received a placement approval notice or a placement notice, or had made a decision to take a child into custody as mentioned in subsection (5), the employee must give the notices required by this section to the employer as soon as reasonable practicable after starting the period of engagement.

Note: However, the employee is only entitled to take either short or long adoption leave if the employee will have completed 12 months continuous service with the employer immediately before the first day on which the leave is to be taken, or if the employee is an eligible casual employee (see section 300).

If employee cannot comply

(7) A notice under this section must be given to the employee’s employer as soon as reasonably practicable before the first day of adoption leave taken by the employee, if the employee cannot comply with subsection (2), (3), (4), (5) or (6) because of:

(a) the day when the placement is expected to start; or

(b) any other compelling reason.

(8) In this section:

relative, of an employee, means:

(a) a grandchild, nephew, niece or sibling of the employee; or
305 Short adoption leave—application

Requirement for application

(1) To be entitled to short adoption leave during a period, an employee must give his or her employer a written application for short adoption leave, in accordance with this section, stating the first and last days of the period.

General rule

(2) The application must be given to the employer no later than 14 days before the proposed day of placement of the child.

If employee cannot comply with general rule

(3) The application must be given to the employer as soon as reasonably practicable before the first day of the short adoption leave applied for if the employee cannot comply with subsection (2) because of:
   (a) the day when the placement is expected to start; or
   (b) any other compelling reason.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

306 Long adoption leave—application

Requirement for application

(1) To be entitled to long adoption leave during a period, an employee must give his or her employer a written application for long adoption leave, in accordance with this section, stating the first and last days of the period.

General rule

(2) The application must be given to the employer no later than 10 weeks before the first day of the proposed continuous period of
leaves including (or constituted by) the long adoption leave applied for.

If employee cannot comply with general rule

(3) The application must be given to the employer as soon as reasonably practicable before the first day of the long adoption leave applied for if the employee cannot comply with subsection (2) because of:

(a) the day when the placement is expected to start; or
(b) any other compelling reason.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

307 Adoption leave—additional documents

(1) To be entitled to adoption leave, an employee must give his or her employer documents as required by this section.

(2) The documents required by this section must be given to the employer:

(a) before the employee begins the period of adoption leave; or
(b) if the employee is taking both short and long adoption leave—before the employee begins the period of short adoption leave.

(3) The employee must give his or her employer the following documents:

(a) a statement from an adoption agency of the day when the placement is expected to start;
(b) a statutory declaration in accordance with subsection (4) made by the employee.

(4) The statutory declaration must state the following:

(a) whether the employee is taking short adoption leave, long adoption leave, or both;
(b) the first and last days of the period (or periods) of any other authorised leave taken, or intended to be taken, by the employee because of the placement of the child;
(c) the first and last days of the period (or periods) of adoption leave, or any other authorised leave of the same type as
adoption leave, taken, or intended to be taken, by the employee’s spouse because of the placement of the child;
(d) that the child is an eligible child;
(e) for any period of long adoption leave to be taken by the employee—that the employee intends to be the child’s primary care-giver at all times while on the long adoption leave;
(f) that the employee will not engage in any conduct inconsistent with his or her contract of employment while on adoption leave.

Note: The use of personal information given to an employer under this section may be regulated under the Privacy Act 1988.

Subdivision J—Adoption leave: from start to finish

308 Short adoption leave—when taken
An employee may take short adoption leave to which he or she is entitled at any time within the period of 3 weeks starting on the day of placement of the child.

Note: Short adoption leave must be taken in a single, unbroken period (see section 300). The combined total of adoption leave and related authorised leave taken by the employee and his or her spouse must be no more than 52 weeks (see section 301). Short adoption leave may be taken concurrently with any authorised leave taken by the employee’s spouse (see section 302).

309 Long adoption leave—when taken
An employee may take long adoption leave to which he or she is entitled at any time within 12 months after the day of placement of the child.

Note: Long adoption leave must be taken in a single, unbroken period (see section 300). The combined total of adoption and authorised leave taken by the employee and his or her spouse must be no more than 52 weeks (see section 301). Long adoption leave must not be taken concurrently with any adoption leave, or any other authorised leave of the same type as adoption leave, taken by the employee’s spouse because of the placement (see section 303).
**Part 7** The Australian Fair Pay and Conditions Standard  
**Division 6** Parental leave

### Section 310

**310 Placement does not proceed—effect on adoption leave**

1. This section applies if a proposed placement of a child with an employee:
   a. is cancelled before it starts, whether at the initiative of an adoption agency, another body, or the employee; or
   b. starts but is later discontinued for any reason (including the death of the child).

2. If, when this section first applies, the employee had not yet started a period of adoption leave in relation to the placement, the employee is not, or is no longer, entitled to the leave.

3. Subject to subsections (4) and (5), if, when this section applies, the employee had started a period of adoption leave in relation to the placement, the employee’s entitlement to the adoption leave is not affected by the cancellation or discontinuation of the placement.

   **Note:** The employee may shorten a period of long adoption leave by agreement with the employer under section 312. However, if the period of leave including (or constituted by) long adoption leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 314, the employee must also give the employer at least 4 weeks written notice of the proposed day of his or her return to work.

4. The employee’s employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken long adoption leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

5. The employee’s entitlement to any untaken long adoption leave in relation to the placement ends with effect from the day stated in the notice.

### Section 311

**311 End of long adoption leave if employee stops being primary care-giver**

1. This section applies if:
   a. during a substantial period while an employee is on long adoption leave after the placement of a child with the employee, the employee is not the child’s primary care-giver; and
(b) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child’s primary care-giver within a reasonable period.

(2) The employee’s employer may give the employee written notice that, from a stated day no earlier than 4 weeks after the day the notice is given, any untaken long adoption leave that the employee remains entitled to at the stated day is cancelled with effect from that day.

(3) The employee’s entitlement to any untaken long adoption leave in relation to the placement ends with effect from the day stated in the notice.

312 Variation of period of long adoption leave

(1) This section applies after an employee has started a continuous period of leave including (or constituted by) long adoption leave.

(2) Subject to Subdivision H and sections 309, 310 and 311:
   (a) the employee may extend the period of long adoption leave once by giving his or her employer 14 days written notice before the end of the period stating the period by which the leave is extended; and
   (b) the period of long adoption leave may be further extended by agreement between the employee and his or her employer.

(3) The period of long adoption leave may be shortened by written agreement between the employee and his or her employer.

Note: However, if the period of leave including (or constituted by) long adoption leave is longer than 4 weeks, to take advantage of the return to work guarantee under section 314, the employee must also give his or her employer at least 4 weeks written notice of the proposed day for his or her return to work.

313 Employee’s right to terminate employment during adoption leave

(1) An employee may terminate his or her employment at any time during a period of adoption leave.

(2) The employee’s right to terminate his or her employment is subject to any notice required to be given by the employee by or under:

Workplace Relations Act 1996
Section 314

(a) a term or condition of his or her employment; or
(b) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory.

314 Return to work guarantee—adoption leave

(1) This section applies to an employee who returns to work after a period of leave including (or constituted by) adoption leave (the adoption-related leave period) if:
   (a) the adoption-related leave period is 4 weeks or less; or
   (b) if the adoption-related leave period is longer than 4 weeks—
       the employee has given his or her employer written notice of
       the proposed day of his or her return to work no later than 4
       weeks before that day; or
   (c) the employee’s entitlement to long adoption leave ends under
       section 310 or 311.

(2) The employee is entitled to return:
   (a) unless paragraph (b) applies—to the position he or she held
       immediately before the start of the adoption-related leave
       period; or
   (b) if he or she was promoted or voluntarily transferred to a new
       position during the adoption-related leave period—to the new
       position.

(3) However, if the position (the former position) no longer exists, and
the employee is qualified and able to work for his or her employer
in another position, the employer must employ the employee in:
   (a) that position; or
   (b) if there are 2 or more such positions—whichever position is
       nearest in status and remuneration to the former position.

315 Replacement employees—long adoption leave

(1) Before an employer engages an employee (a primary replacement) to do the work of another employee because the other employee is taking a continuous period of leave including (or constituted by) adoption leave, the employer must tell the primary replacement:
   (a) that the engagement to do that work is temporary; and
(b) what the rights of the employee taking adoption leave are under section 314 when he or she returns to work after the period of leave.

(2) Before an employer engages an employee (a secondary replacement) to do the work of another employee (the primary replacement) because the primary replacement has been temporarily promoted or transferred to do the work of a third employee while the third employee is taking a continuous period of leave including (or constituted by) adoption leave, the employer must tell the secondary replacement:
(a) that the engagement to do that work is temporary; and
(b) what the rights of the employee taking adoption leave are under section 314 when he or she returns to work after the period of leave.

(3) In this section:

employee has the meaning given by subsection 5(1).

Subdivision K—Parental leave: service

316 Parental leave and service

(1) A period of parental leave does not break an employee’s continuity of service.

(2) However, a period of parental leave does not otherwise count as service except:
(a) for the purpose of determining the employee’s entitlement to a later period of leave under this Division; or
(b) as expressly provided by or under:
   (i) a term or condition of the employee’s employment; or
   (ii) a law, or an instrument in force under a law, of the Commonwealth, a State or a Territory; or
(c) as prescribed by the regulations.

(3) In this section:

parental leave means any of the following:
(a) maternity leave;
(b) paid leave under subparagraph 268(2)(b)(i) or (ii);
(c) paternity leave;
(d) pre-adoption leave;
(e) adoption leave.
Division 7—Civil remedies

317 Definition

In this Division:

Court means the Federal Court of Australia or the Federal Magistrates Court.

318 Civil remedies

(1) An employer must not contravene a term of the Australian Fair Pay and Conditions Standard contained in Division 3, 4, 5 or 6 of this Part in relation to an employee of the employer to whom that term applies.

(2) Subsection (1) is a civil remedy provision.

(3) The reference in subsection (1) to Division 6 of this Part includes a reference to that Division as it applies because of section 689.

319 Standing for civil remedies

(1) Any of the following persons may apply to the Court for an order under this Division in relation to a contravention referred to in subsection 318(1):

(a) the employee concerned;
(b) an organisation of employees (subject to subsection (2));
(c) a workplace inspector.

(2) An organisation of employees must not apply on behalf of an employee for a remedy under this Division in relation to a contravention unless:

(a) a member of the organisation is employed by the respondent employer; and
(b) the contravention relates to, or affects, the member of the organisation or work carried on by the member for the employer.
Section 320

320 Court orders

The Court may, on application by a person in accordance with section 319, make one or more of the following orders in relation to an employer who has contravened a relevant term of the Australian Fair Pay and Conditions Standard:

(a) an order requiring the employer to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;

(b) any other orders (including injunctions) that the Court considers necessary to stop the contravention or rectify its effects.
Part 8—Workplace agreements

Division 1—Preliminary

321 Definitions

In this Part:

Court means the Federal Court of Australia or the Federal Magistrates Court.

new business has the meaning given by section 323.

prohibited content has the meaning given by section 356.

undertakings means undertakings mentioned in section 394.

verified copy, in relation to a document, means a copy that is certified as being a true copy of the document.

322 Single business and single employer

(1) For the purposes of this Part, a single business is:

(a) a business, project or undertaking that is carried on by an employer; or

(b) the activities carried on by:

(i) the Commonwealth, a State or a Territory; or

(ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or

(iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.

(2) For the purposes of this Part:

(a) if 2 or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be one employer; and

(b) if 2 or more corporations that are related to each other for the purposes of the Corporations Act 2001 each carry on a single business:
Section 323

(i) the corporations may be treated as one employer; and  
(ii) the single businesses may be treated as one single business.

(3) For the purposes of this Part, a part of a single business includes, for example:

(a) a geographically distinct part of the single business; or
(b) a distinct operational or organisational unit within the single business.

323 New business

For the purposes of sections 329 and 330, an agreement relates to a new business if:

(a) the agreement relates to:

(i) a new business, new project or new undertaking that the employer in relation to the agreement is proposing to establish; or

(ii) if the employer in relation to the agreement is an entity mentioned in paragraph 322(1)(b)—new activities proposed to be carried on by the employer; and

(b) the business, project or undertaking is, or the activities are, a single business (or a part of a single business).

324 Extended operation of Part in relation to proposed workplace agreements

So far as the context permits:

(a) a reference in this Part to a workplace agreement includes a reference to a proposed workplace agreement; and

(b) a reference in this Part to an employer, in relation to a workplace agreement, includes a reference to a person who will be an employer in relation to a proposed agreement when it comes into operation; and

(c) a reference in this Part to an employee, in relation to a workplace agreement, includes a reference to a person who will be an employee in relation to a proposed agreement when it comes into operation.
325 Extraterritorial extension

(1) This Part, and the rest of this Act so far as it relates to this Part, extends to persons, acts, omissions, matters and things outside Australia that are connected with a workplace agreement relating to an Australian-based employee or an Australian employer.

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

(2) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 2—Types of workplace agreements

326 Australian workplace agreements (AWAs)

(1) An employer may make an agreement (an Australian workplace agreement or AWA) in writing with a person whose employment will be subject to the agreement.

(2) An AWA may be made before commencement of the employment.

327 Employee collective agreements

An employer may make an agreement (an employee collective agreement) in writing with persons employed at the time in a single business (or part of a single business) of the employer whose employment will be subject to the agreement.

328 Union collective agreements

An employer may make an agreement (a union collective agreement) in writing with one or more organisations of employees if, when the agreement is made, each organisation:

(a) has at least one member whose employment in a single business (or part of a single business) of the employer will be subject to the agreement; and

(b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.

329 Union greenfields agreements

(1) An employer may make an agreement (a union greenfields agreement) in writing with one or more organisations of employees if:

(a) the agreement relates to a new business that the employer proposes to establish, or is establishing, when the agreement is made; and

(b) the agreement is made before the employment of any of the persons:

(i) who will be necessary for the normal operation of the business; and
(ii) whose employment will be subject to the agreement; and
(c) each organisation meets the requirements of subsection (2).

(2) When the agreement is made, each organisation must be entitled to represent the industrial interests of one or more of the persons, whose employment is likely to be subject to the agreement, in relation to work that will be subject to the agreement.

### 330 Employer greenfields agreements

An employer may make an agreement (an employer greenfields agreement) in writing if:

(a) the agreement relates to a new business that the employer proposes to establish, or is establishing, when the agreement is made; and

(b) the agreement is made before the employment of any of the persons:

(i) who will be necessary for the normal operation of the business; and

(ii) whose employment will be subject to the agreement.

### 331 Multiple-business agreements

(1) A multiple-business agreement is an agreement that:

(a) relates to any combination or combinations of the following:

(i) one or more single businesses;

(ii) one or more parts of single businesses; carried on by one or more employers; and

(b) would be a collective agreement of a type mentioned in section 327, 328, 329 or 330 but for the matter in paragraph (a).

Note: For civil remedy provisions dealing with the making or variation of a multiple-business agreement, see sections 343 and 376.

(2) So far as the context permits, this Part (apart from this Division) has effect in relation to a multiple-business agreement of a particular type as if the agreement were a collective agreement (other than a multiple-business agreement) of that type.
(3) So far as the context permits, this Part (apart from this Division) has effect in relation to a multiple-business agreement with more than one employer as if a reference to the employer in relation to an agreement were a reference to an employer in relation to the agreement.

332 Authorisation of multiple-business agreements

(1) An employer may apply to the Employment Advocate for an authorisation to make or vary a multiple-business agreement.

(2) The regulations may set out a procedure for applying to the Employment Advocate for the authorisation. The Employment Advocate need not consider an application if it is not made in accordance with the procedure.

(3) The Employment Advocate must not grant the authorisation unless he or she is satisfied that it is in the public interest to do so, having regard to:

(a) whether the matters dealt with by the agreement (or the agreement as varied) could be more appropriately dealt with by a collective agreement other than a multiple-business agreement; and

(b) any other matter specified in regulations made for the purposes of this subsection.

333 When a workplace agreement is made

For the purposes of this Act, a workplace agreement is made at whichever of the following times is applicable:

(a) for an AWA—the time when the AWA is approved in accordance with section 340;

(b) for an employee collective agreement—the time when the agreement is approved in accordance with section 340;

(c) for a union collective agreement—the time when the employer and the organisation or organisations agree to the terms of the agreement;

(d) for a union greenfields agreement—the time when the employer and the organisation or organisations agree to the terms of the agreement;

(e) for an employer greenfields agreement—the time when the employer lodges the agreement (see section 344).
Division 3—Bargaining agents

334 Bargaining agents—AWAs

(1) An employer or employee may appoint a person to be his or her bargaining agent in relation to the making, variation or termination of an AWA. The appointment must be made in writing.

Note: Subsection 400(3) provides a civil remedy for coercion in relation to appointments under this subsection.

(2) Subject to subsection (3), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1).

(3) Subsection (2) does not apply if the person refusing has not been given a copy of the bargaining agent’s instrument of appointment before the refusal.

(4) Subsection (2) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

335 Bargaining agents—employee collective agreements

(1) An employee whose employment is or will be subject to an employee collective agreement may request another person (the bargaining agent) to represent the employee in meeting and conferring with the employer about the making or variation of the agreement.

Note: Subsection 400(4) provides a civil remedy for coercion in relation to requests under this subsection.

(2) An employee whose employment is or will be subject to an employer greenfields agreement may request another person (the bargaining agent) to represent the employee in meeting and conferring with the employer about the variation of the agreement.

Note: Subsection 400(4) provides a civil remedy for coercion in relation to requests under this subsection.

(3) The employer must give the bargaining agent a reasonable opportunity to meet and confer with the employer about the agreement during the period:
(a) beginning 7 days before the agreement or variation is approved in accordance with section 340 or section 373; and
(b) ending when the agreement or variation is approved.

(4) Subsection (3) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

(5) The requirement in subsection (3) ceases to apply to the employer if at any time after the request is made the employee withdraws the request.

(6) The Employment Advocate may issue a certificate that he or she is satisfied of one of the following matters if he or she is so satisfied:

(a) on application by a bargaining agent—that the employee has made a request in accordance with subsection (1) or (2) for the bargaining agent to represent the employee in meeting and conferring with the employer;

(b) on application by the employer—that, after the making of the request, the requirement in subsection (3) for the employer to give a reasonable opportunity to the bargaining agent to meet and confer, has, because of subsection (5), ceased to apply to the employer.

(7) The certificate must not identify any of the employees concerned. However, it must identify the bargaining agent, the employer and the agreement.

(8) The certificate is, for all purposes of this Act, prima facie evidence that the employee or employees made the request or that the requirement has ceased to apply.
Division 4—Pre-lodgment procedure

336 Eligible employee

For the purposes of this Division, an eligible employee in relation to a workplace agreement is:

(a) in the case of an AWA—the person whose employment will be subject to the AWA; or

(b) in the case of a collective agreement—a person employed by the employer whose employment will be subject to the agreement.

337 Providing employees with ready access and information statement

(1) If an employer intends to have a workplace agreement (other than a greenfields agreement) approved under section 340, the employer must take reasonable steps to ensure that all eligible employees in relation to the agreement either have, or have ready access to, the agreement in writing during the period:

(a) beginning 7 days before the agreement is approved; and

(b) ending when the agreement is approved.

(2) The employer must take reasonable steps to ensure that all eligible employees in relation to the agreement are given an information statement at least 7 days before the agreement is approved.

(3) Despite subsections (1) and (2), if the agreement is a collective agreement and a person becomes an eligible employee at a time during the period mentioned in subsection (1), the employer must take reasonable steps to ensure that:

(a) the person is given an information statement at or before that time; and

(b) the person either has, or has ready access to, the agreement in writing during the period:

(i) beginning at that time; and

(ii) ending when the agreement is approved under section 340.
(4) The information statement mentioned in subsection (2) and paragraph (3)(a) must contain:
   (a) information about the time at which and the manner in which the approval will be sought under section 340; and
   (b) if the agreement is an AWA—information about the effect of section 334 (which deals with bargaining agents); and
   (c) if the agreement is an employee collective agreement—information about the effect of section 335 (which deals with bargaining agents); and
   (d) any other information that the Employment Advocate requires by notice published in the Gazette.

(5) If a waiver has been made under section 338 in relation to the workplace agreement, subsection (1) and paragraph (3)(b) do not apply in relation to a time after the waiver takes effect.

(6) For the purposes of this section, if the workplace agreement incorporates terms from an industrial instrument mentioned in subsection 355(2), the eligible employees have ready access to the workplace agreement only if they have ready access to that instrument in writing.

(7) To avoid doubt, if the content of the workplace agreement is changed during the period mentioned in subsection (1), the change results in a separate workplace agreement for the purposes of this section.

Note: If the content of an agreement for which the employer intends to seek approval is changed, the procedural steps set out in subsections (1), (2) and (3) must be repeated for the resulting separate agreement.

Contravention—ready access

(8) An employer contravenes this subsection if:
   (a) the employer lodges a workplace agreement; and
   (b) the employer failed to comply with subsection (1) or (if applicable) paragraph (3)(b) in relation to the agreement.

Contravention—information statement

(9) An employer contravenes this subsection if:
   (a) the employer lodges a workplace agreement; and
(b) the employer failed to comply with subsection (2) or (if applicable) paragraph (3)(a) in relation to the agreement.

(10) Subsections (8) and (9) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.

(11) An employer cannot contravene subsection (8) or (9) more than once in relation to the lodgment of a particular workplace agreement.

338 Employees may waive ready access

(1) The persons mentioned in subsection (2) may make a waiver under this section in relation to a workplace agreement.

(2) The persons are all the eligible employees at the time the waiver is made.

(3) The waiver must be in writing and dated.

(4) The waiver is made when all the persons mentioned in subsection (2) sign the waiver.

(5) The waiver takes effect when it is made.

339 Prohibition on withdrawal from union collective agreement

(1) An employer that has made a union collective agreement must take reasonable steps to seek approval for the agreement under section 340, within a reasonable period after the agreement was made.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

340 Approval of a workplace agreement

(1) An AWA is approved if:

(a) the AWA is signed and dated by the employee and the employer; and

(b) those signatures are witnessed; and

(c) if the employee is under the age of 18 years:
(i) the AWA is signed and dated by an appropriate person (such as a parent or guardian of the employee, but not the employer) on behalf of the employee, for the purpose of indicating that person’s consent to the employee making the AWA; and
(ii) that person is aged at least 18 years; and
(iii) that person’s signature is witnessed.

(2) An employee collective agreement or union collective agreement is approved if:
   (a) the employer has given all of the persons employed at the time whose employment will be subject to the agreement a reasonable opportunity to decide whether they want to approve the agreement; and
   (b) either:
      (i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to approve the agreement; or
      (ii) otherwise—a majority of those persons decide that they want to approve the agreement.

341 Employer must not lodge unapproved agreement

(1) An employer contravenes this subsection if:
   (a) the employer lodges a workplace agreement (other than a greenfields agreement); and
   (b) the agreement has not been approved in accordance with section 340.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
Division 5—Lodgment

342 Employer must lodge certain workplace agreements with the Employment Advocate

(1) If an AWA, an employee collective agreement or a union collective agreement has been approved in accordance with section 340, the employer must lodge the agreement, in accordance with section 344, within 14 days after the approval.

(2) If a union greenfields agreement has been made, the employer must lodge the agreement, in accordance with section 344, within 14 days after the agreement was made.

(3) Subsections (1) and (2) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.

343 Lodging multiple-business agreement without authorisation

(1) An employer contravenes this section if:
   (a) the employer lodges a multiple-business agreement; and
   (b) the agreement has not been authorised under section 332.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

344 Lodging of workplace agreement documents with the Employment Advocate

(1) The employer in relation to a workplace agreement lodges the workplace agreement with the Employment Advocate if:
   (a) the employer lodges a declaration under subsection (2); and
   (b) a copy of the workplace agreement is annexed to the declaration.

(2) An employer lodges a declaration with the Employment Advocate if:
   (a) the employer gives it to the Employment Advocate; and
   (b) it meets the form requirements mentioned in subsection (3).
Section 345

Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(3) The Employment Advocate may, by notice published in the Gazette, set out requirements for the form of a declaration for the purposes of paragraph (2)(b).

(4) A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually received by the Employment Advocate.

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) and section 160 of the Evidence Act 1995 do not apply to lodgment of a declaration.

(5) The Employment Advocate is not required to consider or determine whether any of the requirements of this Part have been met in relation to the making or content of anything annexed to a declaration lodged in accordance with subsection (2).

345 Employment Advocate must issue receipt for lodgment of declaration for workplace agreement

(1) If a declaration is lodged under subsection 344(2), the Employment Advocate must issue a receipt for the lodgment.

(2) The Employment Advocate must give a copy of the receipt to:
   (a) the employer in relation to the workplace agreement; and
   (b) if the workplace agreement is an AWA—the employee; and
   (c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

346 Employer must notify employees after lodging workplace agreement

(1) An employer that has received a receipt under section 345 in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the receipt are given a copy of the receipt within 21 days.

(2) Subsection (1) is a civil remedy provision.
Note: See Division 11 for provisions on enforcement.

(3) This section does not apply in relation to a greenfields agreement.
Division 6—Operation of workplace agreements and persons bound

347 When a workplace agreement is in operation

(1) A workplace agreement comes into operation on the day the agreement is lodged.

(2) A workplace agreement comes into operation even if the requirements in Divisions 3 and 4 and section 342 have not been met in relation to the agreement.

(3) A multiple-business agreement comes into operation only if it has been authorised under section 332.

(4) A workplace agreement ceases to be in operation if:
   (a) it is terminated in accordance with Division 9; or
   (b) in the case of an AWA—it is replaced by another AWA; or
   (c) the Court declares it to be void under paragraph 409(a).

(5) A collective agreement ceases to be in operation in relation to an employee if it has:
   (a) passed its nominal expiry date; and
   (b) been replaced by another collective agreement in relation to that employee.

Note: Part 11 sets out the circumstances in which a workplace agreement binding an employer because of transmission of business will cease to operate.

(6) A multiple-business agreement ceases to operate in relation to a single business (or a part of a single business) if:
   (a) the multiple-business agreement came into operation on a particular day; and
   (b) a collective agreement (other than a multiple-business agreement) was lodged on a later day; and
   (c) the multiple-business agreement and the collective agreement apply in relation to the same single business (or the same part of the single business).

Example: Employers A, B and C lodge a multiple-business agreement which has a nominal expiry date 5 years after it is lodged. Six months later employer B lodges a collective agreement that applies in relation to its
single business. This means that the multiple-business agreement ceases to operate in relation to that single business.

(7) If a workplace agreement has ceased operating under subsection (4), it can never operate again.

(8) If a workplace agreement has ceased operating in relation to an employee because of subsection (5), the agreement can never operate again in relation to that employee.

(9) If a multiple-business agreement has ceased operating in relation to a single business (or a part of a single business), the agreement can never operate again in relation to that single business (or part of a business).

(10) If:

(a) a person or entity is the employer bound by a workplace agreement; and

(b) the person or entity ceases to be an employer within the meaning of subsection 6(1);

the agreement ceases to be in operation.

(11) Despite subsection (10), if the agreement mentioned in that subsection is a multiple-business agreement, it ceases to be in operation only in relation to a single business or part of a single business carried on by the person or entity.

348 Relationship between overlapping workplace agreements

(1) Only one workplace agreement can have effect at a particular time in relation to a particular employee.

(2) A collective agreement has no effect in relation to an employee while an AWA operates in relation to the employee.

(3) If:

(a) a collective agreement (the first agreement) binding an employee is in operation; and

(b) another collective agreement (the later agreement) binding the employee is lodged before the nominal expiry date of the first agreement;

the later agreement has no effect in relation to the employee until the nominal expiry date of the first agreement.
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Note: After that date, the first agreement ceases operating in relation to the employee (see subsection 347(5)), and the later agreement takes effect in relation to the employee.

349 Effect of awards while workplace agreement is in operation

An award has no effect in relation to an employee while a workplace agreement operates in relation to the employee.

350 Workplace agreement displaces certain Commonwealth laws

(1) To the extent of any inconsistency, a workplace agreement displaces prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations.

(2) In this section:

Commonwealth law means an Act or any regulations or other instrument made under an Act.

prescribed conditions means conditions that are identified by the regulations.

351 Persons bound by workplace agreements

A workplace agreement that is in operation binds:

(a) the employer in relation to the agreement; and

(b) all persons whose employment is, at any time when the agreement is in operation, subject to the agreement; and

(c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations of employees with which the employer made the agreement.

Note: A person can be bound by a workplace agreement because of Part 11 (which deals with transmission of business).
Division 7—Content of workplace agreements

Subdivision A—Required content

Note: For the operation of the Australian Fair Pay and Conditions Standard, see Part 7.

352 Nominal expiry date

(1) The *nominal expiry date* of a workplace agreement is:
   (a) in the case of an employer greenfields agreement:
      (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the first anniversary of the date on which the agreement was lodged—that specified date; or
      (ii) otherwise—the first anniversary of the date on which the agreement was lodged; or
   (b) otherwise:
      (i) if a date is specified in the agreement as its nominal expiry date, and that date is no later than the fifth anniversary of the date on which the agreement was lodged—that specified date; or
      (ii) otherwise—the fifth anniversary of the date on which the agreement was lodged.

(2) However, if the agreement has been varied to extend its nominal expiry date, the *nominal expiry date* of the agreement is:
   (a) in the case of an employer greenfields agreement—the earlier of the following dates:
      (i) the date specified in the agreement as varied as its nominal expiry date;
      (ii) the first anniversary of the date on which the agreement was lodged; or
   (b) otherwise—the earlier of the following dates:
      (i) the date specified in the agreement as varied as its nominal expiry date;
      (ii) the fifth anniversary of the date on which the agreement was lodged.
353 Workplace agreement to include dispute settlement procedures

(1) A workplace agreement must include procedures for settling disputes (dispute settlement procedures) about matters arising under the agreement between:
   (a) the employer; and
   (b) the employees whose employment will be subject to the agreement.

(2) If a workplace agreement does not include dispute settlement procedures, the agreement is taken to include the model dispute resolution process mentioned in Part 13.

354 Protected award conditions

(1) This section applies if:
   (a) a person’s employment is subject to a workplace agreement; and
   (b) protected award conditions would have effect (but for the agreement) in relation to the employment of the person.

(2) Those protected award conditions:
   (a) are taken to be included in the 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 workplace agreement that expressly exclude or modify all or part of them.

(3) Despite paragraph (2)(c), those protected award conditions have effect in relation to the employment of that person to the extent that those protected award conditions are about outworker conditions, despite any terms of the workplace agreement that provide, in a particular respect, a less favourable outcome for that person.

(4) In this section:

   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;
(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 award conditions** means the terms of an award, as in force from time to time, to the extent that those terms:

(a) are:
   (i) about protected allowable award matters; or
   (ii) terms that are incidental to protected allowable award matters and that 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 that may be included in an award as permitted by section 522; and
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(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.

355 Calling up content of other documents

(1) A workplace agreement may incorporate by reference terms from an industrial instrument mentioned in subsection (2) only if the requirements in subsection (3) are satisfied.

(2) The industrial instruments are as follows:
   (a) a workplace agreement;
   (b) an award.

Note: For pre-reform certified agreements, see clause 9 in Schedule 7.

(3) The requirements are as follows:
   (a) if the industrial instrument is an award:
      (i) just before the agreement is made the award regulates any term or condition of employment of persons engaged in a particular kind of work; and
      (ii) the employment of a person engaged in that kind of work will be subject to the agreement when the agreement comes into operation; and
      (iii) the award is binding on the employer in relation to the agreement just before the agreement is made;
   (b) if the industrial instrument is a workplace agreement—the instrument is binding on the employer in relation to the agreement mentioned in subsection (1) just before that agreement is made.

(4) If those requirements are satisfied, the workplace agreement may incorporate terms by reference from the industrial instrument:
   (a) as in operation just before the agreement is made; or
   (b) as varied from time to time.

(5) A term of a workplace agreement is void to the extent that:
   (a) it incorporates by reference terms from an industrial instrument mentioned in subsection (2); and
   (b) the requirements in subsection (3) are not satisfied.
(6) A term of a workplace agreement is void to the extent that it incorporates by reference terms from any of the following instruments (other than an instrument mentioned in subsection (2)):
   (a) an award or agreement regulating terms and conditions of employment that is in force under a law of a State (other than a contract of employment);
   (b) an agreement, arrangement, deed or memorandum of understanding, that:
       (i) regulates terms and conditions of employment; and
       (ii) was created by a process of collective negotiation;
   (c) an industrial instrument specified in the regulations.

(7) A term of a workplace agreement is void to the extent that it applies or adopts terms from an instrument mentioned in subsection (2) or (6), without incorporating those terms by reference in accordance with this section.

Subdivision B—Prohibited content

356 Prohibited content

The regulations may specify matters that are prohibited content for the purposes of this Act.

357 Employer must not lodge agreement containing prohibited content

(1) An employer contravenes this subsection if:
   (a) the employer lodges a workplace agreement (or a variation to a workplace agreement); and
   (b) the agreement (or the agreement as varied) contains prohibited content; and
   (c) the employer was reckless as to whether the agreement (or the agreement as varied) contains prohibited content.

(2) Subsection (1) does not apply if:
   (a) before the agreement (or variation) was lodged, the Employment Advocate advised the employer that the agreement (or the agreement as varied) did not contain prohibited content; and
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(b) that advice was in the form specified in regulations made for the purposes of this subsection.

(3) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

358 Prohibited content in workplace agreement is void

A term of a workplace agreement is void to the extent that it contains prohibited content.

Note 1: The Employment Advocate can vary the workplace agreement to remove prohibited content (see section 363).

Note 2: For civil remedy provisions relating to including prohibited content in a workplace agreement, see sections 357, 365 and 366.

359 Initiating consideration of removal of prohibited content

(1) The Employment Advocate may exercise his or her power under section 363 to vary a workplace agreement to remove prohibited content:

(a) on his or her own initiative; or

(b) on application by any person.

(2) This section and sections 360, 361 and 363 are taken to be an exhaustive statement of the requirements of the natural justice hearing rule in relation to the Employment Advocate’s decision whether to make a variation under section 363.

360 Employment Advocate must give notice that he or she is considering variation

(1) If the Employment Advocate is considering making a variation to a workplace agreement under section 363, the Employment Advocate must give the persons mentioned in subsection (2) a written notice meeting the requirements in subsection 361(1).

(2) The persons are:

(a) the employer in relation to the workplace agreement; and

(b) if the workplace agreement is an AWA—the employee; and

(c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.
361 Matters to be contained in notice

(1) The requirements mentioned in subsection 360(1) are that the notice must:
   (a) be dated; and
   (b) state that the Employment Advocate is considering making the variation; and
   (c) state the reasons why the Employment Advocate is considering making the variation; and
   (d) set out the terms of the variation; and
   (e) invite each person mentioned in subsection (2) to make a written submission to the Employment Advocate about whether the Employment Advocate 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.

(2) The persons are:
   (a) the employer in relation to the workplace agreement; and
   (b) each person whose employment is subject to the agreement at the date of the notice; and
   (c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

362 Employer must ensure employees have ready access to notice

(1) An employer that has received a notice under section 360 in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement at a time during the objection period are given a copy of the notice as soon as practicable.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
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363 Employment Advocate must remove prohibited content from agreement

(1) If the Employment Advocate is satisfied that a term of the workplace agreement contains prohibited content, the Employment Advocate must vary the agreement so as to remove that content.

(2) In making a decision under subsection (1), the Employment Advocate must consider all written submissions (if any) received within the objection period from persons mentioned in subsection 361(2).

(3) The Employment Advocate must not make the variation before the end of the objection period.

(4) If the Employment Advocate decides to make the variation, he or she must:
   (a) give the persons mentioned in subsection 360(2) written notice of the decision, including the terms of the variation; and
   (b) if the workplace agreement is a collective agreement—publish a notice in the Gazette stating that the variation has been made and setting out particulars of the variation.

364 Employer must give employees notice of removal of prohibited content

(1) An employer that has received a notice under subsection 363(4) in relation to a collective 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.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

365 Seeking to include prohibited content in an agreement

(1) A person contravenes this subsection if:
   (a) the person seeks to include a term:
      (i) in a workplace agreement in the course of negotiations for the agreement; or

250 Workplace Relations Act 1996
(ii) in a variation to a workplace agreement in the course of negotiations for the variation; and
(b) that term contains prohibited content; and
(c) the person is reckless as to whether the term contains prohibited content.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

366 Misrepresentations about prohibited content

(1) A person contravenes this subsection if:
(a) the person makes a misrepresentation in relation to a workplace agreement (or a variation to a workplace agreement) that a particular term does not contain prohibited content; and
(b) the person is reckless as to whether the term contains prohibited content.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
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Division 8 Varying a workplace agreement

Section 367

Division 8—Varying a workplace agreement

Subdivision A—General

367 Varying a workplace agreement

(1) The following persons may make a variation, in writing, to a workplace agreement that is in operation:
   (a) in the case of an AWA—the employer and the employee;
   (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the persons whose employment will be subject to the agreement as varied;
   (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more organisations of employees that are bound by the agreement.

Example: A workplace agreement may be varied to provide additional pay.

(2) A workplace agreement cannot be varied except in accordance with:
   (a) this Division; or
   (b) section 363 (which deals with prohibited content); or
   (c) section 831 (which deals with discriminatory agreements); or
   (d) an order of the Court under section 410.

Note: Subsection (2) would not apply where the obligations under the agreement can change because of the terms of the agreement itself.

368 When a variation to a workplace agreement is made

For the purposes of this Act, a variation to a workplace agreement is made at whichever of the following times is applicable:

(a) for an AWA—the time when the variation is approved in accordance with section 373;
(b) for an employee collective agreement—the time when the variation is approved in accordance with section 373;
(c) for a union collective agreement—the time when the employer and the organisation or organisations agree to the terms of the variation;

252 Workplace Relations Act 1996
Subdivision B—Pre-lodgment procedure for variations

369 Eligible employee in relation to variation of workplace agreement

For the purposes of this Subdivision, an eligible employee in relation to a variation to a workplace agreement is:

(a) in the case of an AWA—the employee; or
(b) in the case of a collective agreement:
   (i) a person whose employment is subject to the agreement; or
   (ii) a person employed by the employer whose employment will be subject to the agreement as varied.

370 Providing employees with ready access and information statement

(1) If an employer intends to have a variation to a workplace agreement approved under section 373, the employer must take reasonable steps to ensure that all eligible employees in relation to the variation either have, or have ready access to, the variation in writing during the period:
   (a) beginning 7 days before the variation is approved; and
   (b) ending when the variation is approved.

(2) The employer must take reasonable steps to ensure that all eligible employees in relation to the variation are given an information statement at least 7 days before the variation is approved.

(3) Despite subsections (1) and (2), if the variation is to a collective agreement and a person becomes an eligible employee at a time during the period mentioned in subsection (1), the employer must take reasonable steps to ensure that:
   (a) the person is given an information statement at or before that time; and
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(b) the person either has, or has ready access to, the variation in writing during the period:
   (i) beginning at that time; and
   (ii) ending when the variation is approved under section 373.

(4) The information statement mentioned in subsection (2) and paragraph (3)(a) must contain:
   (a) information about the time at which and the manner in which the approval will be sought under section 373; and
   (b) if the relevant workplace agreement is an AWA—information about the effect of section 334 (which deals with bargaining agents); and
   (c) if the relevant workplace agreement is an employee collective agreement or employer greenfields agreement—information about the effect of section 335 (which deals with bargaining agents); and
   (d) any other information that the Employment Advocate requires by notice published in the Gazette.

(5) If a waiver has been made under section 371 in relation to the variation, subsection (1) and paragraph (3)(b) do not apply in relation to a time after the waiver takes effect.

(6) For the purposes of this section, if because of the variation, the agreement as varied would incorporate terms from an industrial instrument mentioned in subsection 355(2), the eligible employees have ready access to the variation only if they have ready access to that instrument in writing.

(7) To avoid doubt, if the content of the variation is changed during the period mentioned in subsection (1), the change results in a separate variation for the purposes of this section.

Note: If the content of a variation for which the employer intends to seek approval is changed, the procedural steps set out in subsections (1), (2) and (3) must be repeated for the resulting separate variation.

Contravention—ready access

(8) An employer contravenes this subsection if:
   (a) the employer lodges a variation to a workplace agreement; and

254  Workplace Relations Act 1996
(b) the employer failed to comply with subsection (1) or (if applicable) paragraph (3)(b) in relation to the variation.

Contravention—information statement

(9) An employer contravenes this subsection if:
   (a) the employer lodges a variation to a workplace agreement; and
   (b) the employer failed to comply with subsection (2) or (if applicable) paragraph (3)(a) in relation to the variation.

(10) Subsections (8) and (9) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.

(11) An employer cannot contravene subsection (8) or (9) more than once in relation to the lodgment of a particular variation.

371 Employees may waive ready access

(1) The persons mentioned in subsection (2) may make a waiver under this section in relation to a variation to a workplace agreement.

(2) The persons are all the eligible employees at the time the waiver is made.

(3) The waiver must be in writing and dated.

(4) The waiver is made when all the persons mentioned in subsection (2) sign the waiver.

(5) The waiver takes effect when it is made.

372 Prohibition on withdrawal from variation to union collective agreement or union greenfields agreement

(1) An employer that has made a variation to a union collective agreement or a union greenfields agreement must take reasonable steps to seek approval for the variation under section 373, within a reasonable period after the variation was made.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
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373 Approval of a variation to a workplace agreement

(1) A variation to an AWA is approved if:

(a) the variation is signed and dated by the employee and the employer; and
(b) those signatures are witnessed; and
(c) if the employee is under the age of 18 years:
   (i) the variation is signed and dated by an appropriate person (such as a parent or guardian of the employee, but not the employer) on behalf of the employee, for the purpose of indicating that person’s consent to the employee making the variation; and
   (ii) that person is aged at least 18 years; and
   (iii) that person’s signature is witnessed.

(2) A variation to a collective agreement is approved if:

(a) the employer has given all of the persons employed at the time whose employment:
   (i) is subject to the agreement; or
   (ii) will be subject to the agreement as varied;
   a reasonable opportunity to decide whether they want to approve the variation; and
(b) either:
   (i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to approve the variation; or
   (ii) otherwise—a majority of those persons decide that they want to approve the variation.

374 Employer must not lodge unapproved variation

(1) An employer contravenes this section if:

(a) the employer lodges a variation to a workplace agreement; and
(b) the variation has not been approved in accordance with section 373.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
Subdivision C—Lodgment of variations

375 Employer must lodge variations with the Employment Advocate

(1) If a variation has been approved in accordance with section 373, the employer must lodge the variation, in accordance with section 377, within 14 days after the variation was approved.

(2) Subsection (1) is a civil remedy provision.
Note: See Division 11 for provisions on enforcement.

376 Lodging variation to multiple-business agreement without authorisation

(1) An employer contravenes this subsection if:
   (a) the employer lodges a variation to a multiple-business agreement; and
   (b) the variation has not been authorised under section 332.

(2) Subsection (1) is a civil remedy provision.
Note: See Division 11 for provisions on enforcement.

377 Lodging of variation documents with the Employment Advocate

(1) The employer in relation to a variation to a workplace agreement lodges the variation with the Employment Advocate if:
   (a) the employer lodges a declaration under subsection (2); and
   (b) a copy of the variation is annexed to the declaration.

(2) An employer lodges a declaration with the Employment Advocate if:
   (a) the employer gives it to the Employment Advocate; and
   (b) it meets the form requirements mentioned in subsection (3).
Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(3) The Employment Advocate may, by notice published in the Gazette, set out requirements for the form of a declaration for the purposes of paragraph (2)(b).
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(4) A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually received by the Employment Advocate.

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) and section 160 of the Evidence Act 1995 do not apply to lodgment of a declaration.

(5) The Employment Advocate is not required to consider or determine whether any of the requirements of this Part have been met in relation to the making or content of anything annexed to a declaration lodged in accordance with subsection (2).

378 Employment Advocate must issue receipt for lodgment of declaration for variation

(1) If a declaration is lodged under subsection 377(2), the Employment Advocate must issue a receipt for the lodgment.

(2) The Employment Advocate must give a copy of the receipt to:
   (a) the employer in relation to the relevant workplace agreement; and
   (b) if the relevant workplace agreement is an AWA—the employee; and
   (c) if the relevant workplace agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

379 Employer must notify employees after lodging variation

(1) An employer that has received a receipt under section 378 in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the receipt are given a copy of the receipt within 21 days.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
Subdivision D—When a variation comes into operation

380 When a variation comes into operation

(1) A variation to a workplace agreement comes into operation when the variation is lodged with the Employment Advocate in accordance with section 377.

(2) The variation comes into operation even if the requirements in Division 3, Subdivision B of this Division and section 375 have not been met in relation to the variation.

(3) A variation to a multiple-business agreement comes into operation only if the variation has been authorised under section 332.
Division 9—Terminating a workplace agreement

Subdivision A—General

381 Types of termination

(1) A workplace agreement may be terminated:
   (a) by approval (see Subdivisions B and C); or
   (b) unilaterally (see Subdivision D).

(2) A workplace agreement is terminated when:
   (a) a termination of the agreement is lodged with the Employment Advocate in accordance with section 389; or
   (b) a declaration to terminate the agreement in accordance with subsection 392(2) is lodged with the Employment Advocate in accordance with section 395; or
   (c) a declaration to terminate the agreement in accordance with subsection 393(2) is lodged with the Employment Advocate in accordance with section 395.

Subdivision B—Termination by approval (pre-lodgment procedure)

382 Terminating a workplace agreement by approval

A workplace agreement may be terminated in accordance with this Subdivision by the following:
   (a) in the case of an AWA—the employer and the employee;
   (b) in the case of an employee collective agreement or an employer greenfields agreement—the employer and the employees whose employment is subject to the agreement;
   (c) in the case of a union collective agreement or a union greenfields agreement—the employer and the one or more organisations of employees that are bound by the agreement.
383 Eligible employee in relation to termination of workplace agreement

For the purposes of this Subdivision, an eligible employee in relation to a termination of a workplace agreement in accordance with this Subdivision is:

(a) in the case of an AWA—the employee; or
(b) in the case of a collective agreement—a person employed at the time whose employment is subject to the agreement.

384 Providing employees with information statement

(1) If an employer intends to have the termination of a workplace agreement approved under section 386, the employer must take reasonable steps to ensure that all eligible employees in relation to the termination are given an information statement at or before the start of the period of 7 days ending when the termination is approved.

(2) Despite subsection (1), if the relevant workplace agreement is a collective agreement and a person becomes an eligible employee at a time during the period mentioned in subsection (1), the employer must take reasonable steps to ensure that the person is given an information statement at or before that time.

(3) The information statement mentioned in subsections (1) and (2) must contain:

(a) information about the time at which and the manner in which the approval will be sought under section 386; and
(b) if the relevant workplace agreement is an AWA—information about the effect of section 334 (which deals with bargaining agents); and
(c) any other information that the Employment Advocate requires by notice published in the Gazette.

Contravention—information statement

(4) An employer contravenes this subsection if:

(a) the employer lodges a declaration to terminate a workplace agreement; and
(b) the employer failed to comply with subsection (1) or (if applicable) subsection (2) in relation to the termination.
(5) Subsection (4) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

(6) An employer cannot contravene subsection (4) more than once in relation to the lodgment of a particular termination.

385 Prohibition on withdrawal from termination of union collective agreement or union greenfields agreement

(1) An employer that has agreed to terminate a union collective agreement or a union greenfields agreement with the organisation or organisations bound by the agreement must take reasonable steps to seek approval for the termination under section 386, within a reasonable period after agreeing to do so.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

386 Approval of a termination

(1) A termination of an AWA is approved if:

(a) the employer and employee make a written termination agreement to terminate the AWA; and

(b) the termination agreement is signed and dated by the employee and the employer; and

(c) those signatures are witnessed; and

(d) if the employee is under the age of 18 years:

(i) the termination agreement is signed and dated by an appropriate person (such as a parent or guardian of the employee, but not the employer) on behalf of the employee, for the purpose of indicating that person’s consent to the employee terminating the AWA; and

(ii) that person is aged at least 18 years; and

(iii) that person’s signature is witnessed.

(2) A termination of a collective agreement is approved if:

(a) the employer has given all of the persons employed at the time whose employment is subject to the agreement a reasonable opportunity to decide whether they want to approve the termination; and

(b) either:
(i) if the decision is made by a vote—a majority of those persons who cast a valid vote decide that they want to approve the termination; or
(ii) otherwise—a majority of those persons decide that they want to approve the termination.

387 Employer must not lodge unapproved termination

(1) An employer contravenes this subsection if:
(a) the employer lodges a termination of a workplace agreement; and
(b) the termination has not been approved in accordance with section 386.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

Subdivision C—Termination by approval (lodgment)

388 Employer must lodge termination with the Employment Advocate

(1) If a termination has been approved in accordance with section 386, the employer must lodge the termination, in accordance with section 389, within 14 days after the termination was approved.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

389 Lodging termination documents with the Employment Advocate

(1) The employer in relation to a workplace agreement to be terminated lodges the termination with the Employment Advocate if:
(a) the employer lodges a declaration under subsection (2) for the termination of the workplace agreement; and
(b) if the workplace agreement is an AWA—a copy of the termination agreement is annexed to the declaration.

(2) An employer lodges a declaration with the Employment Advocate if:
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(a) the employer gives it to the Employment Advocate; and
(b) it meets the form requirements mentioned in subsection (3).

Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(3) The Employment Advocate may, by notice published in the Gazette, set out requirements for the form of a declaration for the purposes of paragraph (2)(b).

(4) A declaration is given to the Employment Advocate for the purposes of subsection (2) only if the declaration is actually received by the Employment Advocate.

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) and section 160 of the Evidence Act 1995 do not apply to lodgment of a declaration.

(5) The Employment Advocate is not required to consider or determine whether any of the requirements of this Division (other than this section) have been met in relation to the termination.

390 Employment Advocate must issue receipt for lodgment of declaration for termination

(1) If a declaration is lodged under subsection 389(2), the Employment Advocate must issue a receipt for the lodgment.

(2) The Employment Advocate must give a copy of the receipt to:
(a) the employer in relation to the relevant workplace agreement; and
(b) if the relevant workplace agreement is an AWA—the employee; and
(c) if the relevant workplace agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

391 Employer must notify employees after lodging termination

(1) An employer that has received a receipt under section 390 in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment was subject to the agreement just before the declaration was lodged are given a copy of the receipt within 21 days.
Subdivision D—Unilateral termination after nominal expiry date

392 Unilateral termination in a manner provided for in workplace agreement

(1) This section applies if a workplace agreement provides for a manner of terminating the agreement after its nominal expiry date.

(2) Any of the following persons may terminate the agreement by lodging a declaration in accordance with section 395:
   (a) the employer in relation to the agreement;
   (b) a majority of the employees whose employment is subject to the agreement when the notice mentioned in subsection (4) is given;
   (c) in the case of an AWA—a bargaining agent at the request of the employer or the employee;
   (d) an organisation of employees that is bound by the agreement.

(3) However, this may be done only if:
   (a) the nominal expiry date of the workplace agreement has passed; and
   (b) all the requirements in the agreement for terminating the agreement are met.

(4) At least 14 days before the lodgment, and after the nominal expiry date of the agreement has passed, the person or persons intending to lodge the declaration must take reasonable steps to ensure that the following are given written notice of the termination:
   (a) the employer in relation to the agreement;
   (b) each employee whose employment is subject to the agreement when the notice is given;
   (c) an organisation of employees that is bound by the agreement.

(5) The notice must:
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(a) state that the workplace agreement is to be terminated in the manner provided for by the agreement; and
(b) be in the form (if any) that the Employment Advocate requires by notice published in the Gazette; and
(c) contain the information (if any) that the Employment Advocate requires by notice published in the Gazette.

(6) A person contravenes this subsection if:
(a) the person lodges a declaration to terminate a workplace agreement under subsection (2); and
(b) the person failed to comply with subsection (4) or (5).

(7) Subsection (6) is a civil remedy provision.

Note:  See Division 11 for provisions on enforcement.

(8) This section does not apply in relation to a multiple-business agreement.

393  Unilateral termination with 90 days written notice

(1) This section applies whether or not a workplace agreement provides for a manner of terminating the agreement after its nominal expiry date.

(2) Any of the following persons may terminate the agreement by lodging a declaration in accordance with section 395:
(a) the employer in relation to the agreement;
(b) a majority of the employees whose employment is subject to the agreement when the notice mentioned in subsection (4) is given;
(c) in the case of an AWA—a bargaining agent at the request of the employer or the employee;
(d) an organisation of employees that is bound by the agreement.

Note:  Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(3) However, this may be done only if the nominal expiry date of the workplace agreement has passed.

(4) At least 90 days before the lodgment, and after the nominal expiry date of the agreement has passed, the person or persons intending to lodge the declaration must take reasonable steps to ensure that:
(a) the following are given written notice of the termination:
   (i) the employer in relation to the agreement;
   (ii) each employee whose employment is subject to the agreement when the notice is given;
   (iii) an organisation of employees that is bound by the agreement; and

(b) if the person giving the notice is the employer bound by the agreement—a written copy of the undertakings (if any) made by the employer under section 394.

(5) The notice must:
   (a) state that the workplace agreement is to be terminated; and
   (b) specify the day on which the person or persons propose to lodge the notice; and
   (c) be in the form (if any) that the Employment Advocate requires by notice published in the Gazette; and
   (d) contain the information (if any) that the Employment Advocate requires by notice published in the Gazette.

(6) A person contravenes this subsection if:
   (a) the person lodges a declaration to terminate a workplace agreement under subsection (2); and
   (b) the person failed to comply with subsection (4) or (5).

Note: See Division 11 for provisions on enforcement.

(7) Subsection (6) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

(8) This section does not apply in relation to a multiple-business agreement.

394 Undertakings about post-termination conditions

(1) An employer intending to terminate a workplace agreement under subsection 393(2) may make undertakings as to the terms and conditions of employment of employees who were bound by the workplace agreement just before it was terminated.

(2) The undertakings come into operation on the day that the workplace agreement is terminated.
(3) The undertakings cease to operate in relation to an employee when the employee’s employment becomes subject to a later workplace agreement.

(4) Subject to this section, the following provisions apply to the undertakings as if they were a workplace agreement in operation:
   (a) Part 14;
   (b) Part 6;
   (c) any other provision of this Act specified in the regulations.

(5) An employer contravenes this subsection if:
   (a) the employer lodges a declaration to terminate a workplace agreement under subsection (2); and
   (b) the employer has made undertakings in relation to that termination; and
   (c) the employer did not annex a copy of the undertakings to the declaration.

(6) Subsection (5) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

(7) If undertakings have ceased operating in relation to an employee because of subsection (3), they can never operate again in relation to that employee.

395 Lodging unilateral termination documents with the Employment Advocate

(1) A person lodges a declaration to terminate a workplace agreement under section 392 or 393 with the Employment Advocate if:
   (a) the person gives it to the Employment Advocate; and
   (b) it meets the form requirements mentioned in subsection (3).

Note: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.

(2) If the person is the employer in relation to the agreement, the employer lodges undertakings in relation to the termination if:
   (a) the employer lodges a declaration under subsection (1); and
   (b) a copy of the undertakings is annexed to the declaration.
(3) The Employment Advocate may, by notice published in the *Gazette*, set out requirements for the form of a declaration for the purposes of paragraph (1)(b).

(4) A declaration is given to the Employment Advocate for the purposes of subsection (1) only if the declaration is actually received by the Employment Advocate.

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) and section 160 of the *Evidence Act 1995* do not apply to lodgment of a declaration.

(5) The Employment Advocate is not required to consider or determine whether any of the requirements of this Subdivision (apart from this section) have been met in relation to the termination.

**396 Employment Advocate must issue receipt for lodgment of declaration for notice of termination**

(1) If a declaration is lodged under subsection 395(1) the Employment Advocate must issue a receipt for the lodgment.

(2) The Employment Advocate must give a copy of the receipt to:
   (a) the person that lodged the declaration; and
   (b) the employer in relation to the relevant workplace agreement; and
   (c) if the relevant workplace agreement is an AWA—the employee; and
   (d) if the relevant workplace agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

**397 Employer must notify employees after lodging notice of termination**

(1) An employer that has received a receipt under section 396 in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment was subject to the agreement just before the declaration was lodged are given a copy of the receipt within 21 days.

(2) Subsection (1) is a civil remedy provision.
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Note: See Division 11 for provisions on enforcement.

Subdivision E—Effect of termination

398 When a termination takes effect

A termination takes effect even if:
(a) the requirements in Division 3 have not been met in relation to the termination; or
(b) in the case of a termination mentioned in paragraph 381(1)(a)—the requirements in Subdivision B and section 388 have not been met in relation to the termination; or
(c) in the case of a termination mentioned in paragraph 381(1)(b)—the requirements in subsections 392(4) and (5) and 393(4) and (5) have not been met in relation to the termination.

399 Consequence of termination of agreement—application of other industrial instruments

(1) An industrial instrument mentioned in subsection (3) has no effect in relation to an employee if:
(a) a workplace agreement operated in relation to the employee; and
(b) the workplace agreement was terminated.

Note 1: See Part 7 for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.

Note 2: See subsections 394(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.

(2) Subsection (1) operates in relation to the period:
(a) starting when the agreement is terminated; and
(b) ending when another workplace agreement comes into operation in relation to the employee.

(3) The industrial instruments are as follows:
(a) a workplace agreement;
(b) an award, except to the extent to which it contains protected award conditions as defined in section 354 (disregarding any
exclusion or modification of those conditions made by the agreement that was terminated).
Division 10—Prohibited conduct

400 Coercion and duress

(1) A person must not:
   (a) engage in or organise, or threaten to engage in or organise,
       any industrial action; or
   (b) take, or threaten to take, other action; or
   (c) refrain, or threaten to refrain, from taking any action;
   with intent to coerce another person to agree, or not to agree, to
   make, approve, lodge, vary or terminate a collective agreement.

(2) Subsection (1) does not apply to protected action (within the
    meaning of section 435).

(3) A person must not coerce, or attempt to coerce, an employer or
    employee in relation to an AWA:
    (a) to appoint, or not to appoint, a particular person as a
        bargaining agent under subsection 334(1); or
    (b) to terminate the appointment of a bargaining agent appointed
        under subsection 334(1).

(4) A person must not coerce, or attempt to coerce, an employee of an
    employer:
    (a) not to make a request mentioned in subsection 335(1) or (2)
        in relation to a collective agreement; or
    (b) to withdraw such a request.

(5) A person must not apply duress to an employer or employee in
    connection with an AWA.

(6) To avoid doubt, a person does not apply duress for the purposes of
    subsection (5) merely because the person requires another person
    to make an AWA as a condition of engagement.

(7) Subsections (1), (3), (4) and (5) are civil remedy provisions.

Note: See Division 11 for provisions on enforcement.

401 False or misleading statements

(1) A person contravenes this section if:
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(a) the person makes a false or misleading statement to another person; and
(b) the person is reckless as to whether the statement is false or misleading; and
(c) the making of that statement causes the other person:
   (i) to make, approve, lodge, vary or terminate a workplace agreement; or
   (ii) not to make, approve, lodge, vary or terminate a workplace agreement.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

402  Employers not to discriminate between unionist and non-unionist

(1) An employer must not, in negotiating a collective agreement, or a variation to a collective agreement, discriminate between employees of the employer:
   (a) because some of those employees are members of an organisation of employees while others are not members of such an organisation; or
   (b) because some of those employees are members of a particular organisation of employees, while others are not members of that organisation or are members of a different organisation of employees.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.
Division 11—Contravention of civil remedy provisions

Note: For other rules about civil remedy provisions, see Division 3 of Part 14.

Subdivision A—General

403 General powers of Court not affected by this Division

This Division does not affect the following:
(a) the powers of the Court under Part 20;
(b) any other powers of the Court.

404 Workplace inspector may take over proceeding

(1) A workplace inspector may take over a proceeding that was instituted or is being carried on by another person for an order under this Division.

(2) If a workplace inspector takes over such a proceeding, he or she may:
(a) carry it on further; or
(b) decline to carry it on further (whether immediately or at a later stage of the proceeding).

405 Standing for civil remedies

(1) Any of the following persons may apply to the Court for an order under this Division in relation to a workplace agreement:
(a) an employee who is or will be bound by the agreement;
(b) if the person who contravened the civil remedy provision was not the employer in relation to the agreement, and the provision is mentioned in subsection (2)—the employer;
(c) an organisation of employees that is or will be bound by the agreement;
(d) an organisation of employees that represents an employee who is or will be bound by the agreement (subject to subsection (3));
(e) if the agreement is an AWA—a bargaining agent of the employee or of the employer;
(f) a workplace inspector;
(g) a person specified in regulations made for the purposes of this paragraph.

(2) The provisions are as follows:
   (a) subsection 334(2);
   (b) subsection 365(1);
   (c) subsection 366(1);
   (d) subsection 392(6);
   (e) subsection 393(6);
   (f) subsection 400(1);
   (g) subsection 400(3);
   (h) subsection 400(5);
   (i) subsection 401(1).

(3) An organisation of employees that represents an employee (as mentioned in paragraph (1)(d)) must not apply on behalf of an employee for a penalty or other remedy under this Division in relation to a contravention of a civil remedy provision unless:
   (a) the employee has requested the organisation to apply on the employee’s behalf; and
   (b) a member of the organisation is employed by the employee’s employer; and
   (c) the organisation is entitled, under its eligibility rules, to represent the industrial interests of the employee.

Subdivision B—Pecuniary penalty for contravention of civil remedy provisions

406 Application of Subdivision

This Subdivision applies to a contravention by a person of a civil remedy provision in this Part.

407 Court may order pecuniary penalty

(1) The Court may order the person who contravened the civil remedy provision to pay a pecuniary penalty of up to:
   (a) if the person is an individual—the maximum number of penalty units specified in subsection (2); or
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(b) if the person is a body corporate—5 times the maximum number of penalty units specified in subsection (2).

(2) The maximum number of penalty units is as follows:
(a) for subsection 334(2)—30 penalty units;
(b) for subsection 335(3)—30 penalty units;
(c) for subsection 337(8)—30 penalty units;
(d) for subsection 337(9)—30 penalty units;
(e) for subsection 339(1)—30 penalty units;
(f) for subsection 341(1)—60 penalty units;
(g) for subsection 342(1)—30 penalty units;
(h) for subsection 342(2)—30 penalty units;
(i) for subsection 343(1)—60 penalty units;
(j) for subsection 346(1)—30 penalty units;
(k) for subsection 357(1)—60 penalty units;
(l) for subsection 362(1)—30 penalty units;
(m) for subsection 364(1)—30 penalty units;
(n) for subsection 365(1)—60 penalty units;
(o) for subsection 366(1)—60 penalty units;
p for subsection 370(8)—30 penalty units;
(q) for subsection 370(9)—30 penalty units;
(r) for subsection 372(1)—30 penalty units;
s for subsection 374(1)—60 penalty units;
t for subsection 375(1)—30 penalty units;
u for subsection 376(1)—60 penalty units;
v for subsection 379(1)—30 penalty units;
w for subsection 384(4)—30 penalty units;
x for subsection 385(1)—30 penalty units;
y for subsection 387(1)—60 penalty units;
z for subsection 388(1)—30 penalty units;
za for subsection 391(1)—30 penalty units;
zb for subsection 392(6)—60 penalty units;
zc for subsection 393(6)—60 penalty units;
zd for subsection 394(5)—30 penalty units;
ze for subsection 397(1)—30 penalty units;
zf for subsection 400(1)—60 penalty units;
zg for subsection 400(3)—60 penalty units;

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(zh) for subsection 400(4)—60 penalty units;
(zi) for subsection 400(5)—60 penalty units;
(zj) for subsection 401(1)—60 penalty units;
(zk) for subsection 402(1)—60 penalty units.

Subdivision C—Other remedies for contravention of certain civil remedy provisions

408 Application of Subdivision

This Subdivision applies to a contravention by a person of any of the following civil remedy provisions in relation to a workplace agreement:

(a) subsection 341(1);
(b) subsection 374(1);
(c) subsection 387(1);
(d) subsection 392(6);
(e) subsection 393(6);
(f) subsection 400(1);
(g) subsection 400(5);
(h) subsection 401(1).

409 Court may declare workplace agreement or part of workplace agreement void

The Court may make an order:

(a) declaring that the workplace agreement is void; or
(b) declaring that specified terms of the workplace agreement are void.

410 Court may vary terms of workplace agreement

The Court may make an order varying the terms of the workplace agreement.
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411 Court may order that workplace agreement continues to operate despite termination

(1) This section applies if the workplace agreement has been terminated as a result of the contravention mentioned in section 408.

(2) The Court may make an order declaring that the workplace agreement continues to operate despite the termination.

412 Date of effect and preconditions for orders under sections 409, 410 and 411

(1) An order under section 409, 410 or 411 takes effect from the date of the order or a later date specified in the order.

(2) The Court may make an order under section 409, 410 or 411 only to the extent that the Court considers appropriate to remedy the following:

   (a) all or part of any loss or damage resulting from the contravention mentioned in section 408;
   (b) prevention or reduction of all or part of that loss or damage.

413 Court may order compensation

The Court may make an order that the person mentioned in section 408 pay compensation of such amount as the Court considers appropriate for any loss or damage resulting from the contravention suffered by an employee whose employment is subject to the agreement.

414 Court may order injunction

(1) The Court may grant an injunction requiring the person mentioned in section 408 to cease contravening (or not to contravene) the civil remedy provision.

(2) Subsection (1) also applies in relation to a contravention of subsection 402(1).
Division 12—Miscellaneous

415 AWAs with Commonwealth employees

(1) An Agency Head (within the meaning of the Public Service Act 1999) may act on behalf of the Commonwealth in relation to AWAs with persons in the Agency who are engaged under the Public Service Act 1999.

(2) A Secretary of a Department (within the meaning of the Parliamentary Service Act 1999) may act on behalf of the Commonwealth in relation to AWAs with persons in the Department who are engaged under the Parliamentary Service Act 1999.

416 Evidence—verified copies

(1) The Employment Advocate may issue a verified copy of any of the following:
   (a) a declaration lodged under subsection 344(2), 377(2), 389(2) or 395(1) in relation to a workplace agreement;
   (b) a document annexed to a declaration mentioned in paragraph (a);
   (c) a receipt issued by the Employment Advocate under section 345, 378, 390 or 396 in relation to a workplace agreement;
   (d) a written notice given by the Employment Advocate under subsection 360(1) or paragraph 363(4)(a) in relation to a workplace agreement;
   (e) an authorisation granted by the Employment Advocate under section 332 for a workplace agreement that is a multiple-business agreement;
   (f) a written advice in relation to a workplace agreement given by the Employment Advocate to an employer for the purposes of paragraph 357(2)(a).

Note: For the definition of verified copy, see section 321.

(2) The verified copy may only be issued to a person who is or was bound by the workplace agreement to which the verified copy relates.
(3) In the Court and in proceedings in the Court, a verified copy issued by the Employment Advocate under subsection (1) is prima facie evidence of the document of which it is a verified copy.

(4) A document that purports to be a verified copy issued by the Employment Advocate under subsection (1) is taken to be such a copy, unless evidence to the contrary is adduced.

417 Evidence—certificates

(1) The Employment Advocate may issue a certificate stating any one or more of the following in relation to one or more workplace agreements:

(a) that a particular person lodged a particular declaration under subsection 344(2), 377(2), 389(2) or 395(1) with the Employment Advocate on a particular day;

(b) if the certificate states that a declaration was lodged with the Employment Advocate as mentioned in paragraph (a)—that a particular document was annexed to the declaration;

(c) that particular declarations lodged with the Employment Advocate as mentioned in paragraph (a) in relation to a particular workplace agreement are the only such declarations that were so lodged in relation to that workplace agreement before a particular day;

(d) if the certificate states that particular documents were annexed to declarations lodged with the Employment Advocate as mentioned in paragraph (b)—that those documents were the only documents annexed to those declarations;

(e) that the Employment Advocate issued a receipt under section 345, 378, 390 or 396 to a particular person on a particular day for such a lodgment;

(f) if the certificate states that particular receipts were issued by the Employment Advocate as mentioned in paragraph (e) in relation to a particular workplace agreement—that those receipts were the only receipts so issued in relation to the workplace agreement before a particular day;

(g) that the Employment Advocate gave a particular advice for the purposes of paragraph 357(2)(a) to a particular person on a particular day;
(h) if the certificate states that particular advices were given by
the Employment Advocate as mentioned in paragraph (g) in
relation to a particular workplace agreement—that those
advices were the only advices so given in relation to the
workplace agreement before a particular day;

(i) that the Employment Advocate granted an authorisation
under section 332 on a particular day for a particular
employer to make or vary a particular multiple-business
agreement;

(j) if the certificate states that particular authorisations were
granted by the Employment Advocate as mentioned in
paragraph (i) in relation to a particular multiple-business
agreement—that those authorisations were the only
authorisations so granted in relation to the multiple-business
agreement before a particular day;

(k) that the Employment Advocate gave a particular notice under
subsection 360(1) or paragraph 363(4)(a) on a particular day
to a particular employer;

(l) if the certificate states that particular notices were given by
the Employment Advocate as mentioned in paragraph (k) in
relation to a particular workplace agreement—that those
notices were the only notices so given in relation to that
workplace agreement before a particular day.

(2) The certificate may only be issued to a person who is or was bound
by the workplace agreement or all of the workplace agreements to
which the certificate relates.

(3) In the Court and in proceedings in the Court, a certificate issued by
the Employment Advocate under subsection (1) is prima facie
evidence of the matters stated in the certificate.

(4) A document that purports to be a certificate issued by the
Employment Advocate under subsection (1) is taken to be such a
certificate, unless evidence to the contrary is adduced.

418 Regulations relating to workplace agreements

The regulations may make provision in relation to the following
matters:
(a) requiring an employer who is bound by a workplace agreement to supply copies of prescribed documents to the employee or employees bound by the workplace agreement;
(b) the qualifications and appointment of bargaining agents;
(c) the required form of workplace agreements (including a requirement that documents be in the English language);
(d) the witnessing of signatures on AWAs;
(e) the signing of workplace agreements by persons bound by those agreements, or representatives of those persons;
(f) the retention by employers of signed workplace agreements (including the manner and period of retention);
(g) prescribing fees for the issue by the Employment Advocate of certificates and verified copies.

Note: See section 846 for the types of sanctions that the regulations may provide for a breach of the regulations.
Part 9—Industrial action

Division 1—Preliminary

419 Definitions

(1) In this Part:

*authorised ballot agent* means an authorised ballot agent as defined in section 450 for the purpose of Division 4.

*bargaining period* has the meaning given by section 423.

*Court* means the Federal Court of Australia or the Federal Magistrates Court.

*industrial action* has the meaning given by section 420.

*initiating notice* has the meaning given by section 423.

*initiating party* has the meaning given by section 423.

*negotiating party* has the meaning given by section 423.

*pattern bargaining* has the meaning given by section 421.

*proposed collective agreement* has the meaning given by section 423.

*protected action* has the meaning given by section 435.

*protected action ballot* means a ballot under Division 4.

(2) Expressions used in this Part that are also used in Part 8 have the same meanings in this Part as they have in that Part.

420 Meaning of *industrial action*

(1) For the purposes of this Act, *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 the 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 Act:

(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.

421 Meaning of pattern bargaining

What is pattern bargaining?

(1) For the purposes of this Part, a course of conduct by a person is *pattern bargaining* if:
   (a) the person is a negotiating party to 2 or more proposed collective agreements; and
   (b) the course of conduct involves seeking common wages or conditions of employment for 2 or more of those proposed collective agreements; and
   (c) the course of conduct extends beyond a single business.

Exception: terms or conditions determined as national standards

(2) The course of conduct is not pattern bargaining to the extent that the negotiating party is seeking, for 2 or more of the proposed collective agreements, terms or conditions of employment determined by the Full Bench in a decision establishing national standards.

   Exception: genuinely trying to reach an agreement for a single business or part of a single business

(3) The course of conduct, to the extent that it relates to a particular single business or part of a single business, is not pattern bargaining if the negotiating party is genuinely trying to reach an agreement for the business or part.
(4) For the purposes of subsection (3), factors relevant to working out whether the negotiating party is genuinely trying to reach an agreement for a single business or part of a single business include (but are not limited to) the following:

(a) demonstrating a preparedness to negotiate an agreement which takes into account the individual circumstances of the business or part;

(b) demonstrating a preparedness to negotiate a workplace agreement with a nominal expiry date which takes into account the individual circumstances of the business or part;

(c) negotiating in a manner consistent with wages and conditions of employment being determined as far as possible by agreement between the employer and its employees at the level of the single business or part;

(d) agreeing to meet face-to-face at reasonable times proposed by another negotiating party;

(e) considering and responding to proposals made by another negotiating party within a reasonable time;

(f) not capriciously adding or withdrawing items for bargaining.

(5) Whenever a person seeks to rely on subsection (3), the person has the burden of proving that subsection (3) applies.

(6) This section does not affect, and is not affected by, the meaning of the term “genuinely trying to reach an agreement”, or any variant of the term, as used elsewhere in this Act.

422 Extraterritorial extension

Australia’s exclusive economic zone

(1) This Part, and the rest of this Act so far as it relates to this Part, extend in relation to Australia’s exclusive economic zone in the way prescribed by the regulations (if any).

(2) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to Australia’s exclusive economic zone under subsection (1), this Act has effect (in accordance with that subsection) as modified in relation to Australia’s exclusive economic zone.
Australia’s continental shelf

(3) This Part, and the rest of this Act so far as it relates to this Part, extend, in the way prescribed by the regulations (if any), in relation to a part of Australia’s continental shelf that is prescribed by the regulations.

(4) If the regulations prescribe modifications of this Act (other than this section) for its operation in relation to a prescribed part of Australia’s continental shelf under subsection (3), this Act has effect (in accordance with that subsection) as modified in relation to that part.

Note: The regulations may prescribe different modifications relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

Definitions

(5) In this section:

*modifications* includes additions, omissions and substitutions.

*this Act* includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 2—Bargaining periods

423 Initiation of bargaining period

(1) This section applies in relation to a collective agreement that a person referred to in subsection (2) wants to try to make if the agreement, if made:
   (a) will be made under section 327 or 328; and
   (b) will not be:
       (i) a multiple-business agreement; or
       (ii) an agreement with 2 or more corporations that are treated as one employer because of paragraph 322(2)(b).

(2) If:
   (a) an employer; or
   (b) an organisation of employees; or
   (c) an employee acting on his or her own behalf and on behalf of other employees;

wants to try to make a collective agreement to which this section applies in relation to employees who are employed in a single business or a part of a single business, the employer, organisation or employee (the initiating party) may initiate a period (the bargaining period) for negotiating the agreement.

Note: This subsection has effect subject to subsections 429(2), 430(12) and (13), 431(6) and (7) and 498(6).

(3) The bargaining period is initiated by the initiating party giving written notice (the initiating notice) to each other negotiating party and to the Commission stating that the initiating party intends to try to make a collective agreement to which this section applies (the proposed collective agreement) with the other negotiating parties under section 327 or 328.

(4) Each of the following is a negotiating party in relation to the proposed collective agreement:
   (a) the initiating party;
   (b) if the initiating party is an employer who intends to try to make the proposed collective agreement under section 327—the employees at the time whose employment will be subject to the proposed collective agreement;
(c) if the initiating party is an employer who intends to try to make the proposed collective agreement under section 328—the organisation or organisations who are proposed to be bound by the proposed collective agreement;

(d) if the initiating party is an organisation of employees—the employer who is proposed to be bound by the proposed collective agreement;

(e) if the initiating party is an employee acting on his or her own behalf and on behalf of other employees—the employer who is proposed to be bound by the proposed collective agreement and the employees whose employment will be subject to the proposed collective agreement.

424 Employee may appoint agent to initiate bargaining period

(1) A person referred to in paragraph 423(2)(c) who wishes to initiate a bargaining period under section 423, without disclosing the person’s identity to the person’s employer, may appoint an agent to initiate the bargaining period on the person’s behalf.

(2) If a person has appointed an agent under subsection (1), the notice to the Commission under subsection 423(3) must be accompanied by a document containing the person’s name.

(3) The regulations may make provision in relation to the qualifications and appointment of agents appointed under this section.

425 Identity of person who has appointed agent not to be disclosed

Disclosure by Commission prohibited

(1) The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a person who has appointed an agent under section 424 as a person who has initiated a bargaining period under section 423.

(2) Each of the following is an exception to subsection (1):

(a) the disclosure is required or authorised by this Act or by another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes of another Act;
Disclosure by person prohibited

(3) A person commits an offence if:
   (a) the person discloses information; and
   (b) the information is protected information; and
   (c) the person has reasonable grounds to believe that the information will identify another person as a person referred to in subsection (1); and
   (d) the disclosure is not made by the person in the course of performing functions or duties:
      (i) as a Registry official; or
      (ii) as, or on behalf of, an authorised ballot agent; and
   (e) the disclosure is not required or authorised by this Act or by another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes of another Act; and
   (f) the person whose identity is disclosed has not, in writing, authorised the disclosure.

Penalty: Imprisonment for 6 months.

(4) In this section:

protected information, in relation to a person, means information that the person acquired:
   (a) in the course of performing functions or duties as a Registry official; or
   (b) in the course of performing functions or duties as, or on behalf of, an authorised ballot agent; or
   (c) from a person referred to in paragraph (a) or (b) who acquired the information as mentioned in paragraph (a) or (b).

Registry official means:
   (a) the Industrial Registrar; or
   (b) a member of the staff of the Industrial Registry (including a Deputy Industrial Registrar).
426 Particulars to accompany notice

An initiating notice is to be accompanied by particulars of:
(a) the single business or part of the single business to be covered by the proposed collective agreement; and
(b) the types of employees whose employment will be subject to the proposed collective agreement and the other persons who will be bound by the proposed collective agreement; and
(c) the matters that the initiating party proposes should be dealt with by the proposed collective agreement; and
(d) the proposed nominal expiry date of the proposed collective agreement; and
(e) any other matters prescribed by the regulations.

427 When bargaining period begins

A bargaining period begins at the end of 7 days after:
(a) the day on which the initiating notice was given; or
(b) if the notice was given to different persons on different days—the later or latest of those days.

428 When bargaining period ends

A bargaining period ends if any of the following events occurs:
(a) a collective agreement under section 327 or 328 is made by the employer and any one or more of the other negotiating parties;
(b) the initiating party tells the other negotiating party or each of the other negotiating parties in writing that the initiating party no longer wants to reach a collective agreement under section 327 or 328 with that other party or those other parties;
(c) the bargaining period is terminated under section 430, 431 or 498.

429 Power of Commission to restrict initiation of new bargaining periods

(1) This section applies if a bargaining period (the former bargaining period) in relation to a proposed collective agreement has ended
because a negotiating party (the former negotiating party) has given a notice under paragraph 428(b).

(2) Subject to this section, the Commission may, by order, declare that, during a specified period, a specified former negotiating party, or a specified employee of the employer:
   (a) is not allowed to initiate a new bargaining period in relation to specified matters that were dealt with by the proposed collective agreement; or
   (b) may initiate a bargaining period only on conditions specified in the order.

(3) The Commission must not make an order under subsection (2) unless:
   (a) the Commission has given the former negotiating parties an opportunity to be heard; and
   (b) the Commission considers that it is in the public interest to make the order; and
   (c) either subsection (4) or (5) applies.

(4) The Commission may make an order under subsection (2):
   (a) on application by a former negotiating party; and
   (b) if, assuming the former bargaining period had not ended, the Commission could make an order under subsection 430(1) because a circumstance set out in subsection 430(2), (7) or (8) exists or existed.

(5) The Commission may make an order under subsection (2):
   (a) on its own initiative, or on application by a former negotiating party; and
   (b) if, assuming the former bargaining period had not ended, the Commission could make an order under subsection 430(1) because a circumstance set out in subsection 430(3) exists or existed.
parties an opportunity to be heard, it is satisfied that any of the circumstances set out in subsections (2), (3) (7) and (8) exists or existed.

**Circumstance—failing to genuinely try to reach agreement etc.**

(2) A circumstance for the purposes of subsection (1) is that a negotiating party (not being the applicant for the order) that, before or during the bargaining period, has organised or taken, or is organising or taking, industrial action to support or advance claims in respect of the proposed collective agreement:

(a) did not genuinely try to reach an agreement with the other negotiating parties before organising or taking the industrial action; or

(b) is not genuinely trying to reach an agreement with the other negotiating parties; or

(c) has failed to comply with any orders or directions of the Commission made during the bargaining period that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement.

Note: The issue of whether or not a negotiating party is genuinely trying to reach agreement with the other negotiating parties was considered by Justice Munro in *Australian Industry Group v Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union*, Print T1982.

**Circumstance—industrial action endangering life etc.**

(3) A circumstance for the purposes of subsection (1) is that:

(a) industrial action to support or advance claims in respect of the proposed collective agreement is being taken, or is threatened, impending or probable; and

(b) that industrial action is adversely affecting, or would adversely affect, the employer or employees of the employer; and

(c) that industrial action is threatening, or would threaten:

(i) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or

(ii) to cause significant damage to the Australian economy or an important part of it.
Note: See also Division 8 (about workplace determinations once a bargaining period has been terminated).

(4) If an application is made to the Commission for an order under subsection (1) on the grounds of or including a circumstance set out in subsection (3), the Commission must, as far as practicable, hear and determine the application within 5 days after the application is made.

(5) If subsection (4) applies to an application and the Commission is unable to determine the application within the period referred to in that subsection, the Commission must, within that period, make an interim order suspending the bargaining period until the application is determined.

(6) If the Commission makes an order under subsection (1) terminating a bargaining period in a circumstance set out in subsection (3), the Commission must send each of the negotiating parties a notice:
   (a) setting out the effect of Division 8; and
   (b) informing the negotiating parties that they may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Divisions 4 and 6 of Part 13).

Circumstance—organisations and employees who are not members

(7) A circumstance for the purposes of subsection (1) is that industrial action is being organised or taken by:
   (a) an organisation that is a negotiating party; or
   (b) a member of such an organisation who is employed by the employer; or
   (c) an officer or employee of such an organisation acting in that capacity;
against an employer to support or advance claims in respect of employees:
   (d) whose employment will be subject to the agreement; and
   (e) who are neither members, nor eligible to become members, of the organisation.
Circumstance—demarcation disputes

(8) A circumstance for the purposes of subsection (1) is that industrial action that is being organised or taken by an organisation that is a negotiating party:
   (a) relates, to a significant extent, to a demarcation dispute; or
   (b) contravenes an order of the Commission that relates, to a significant extent, to a demarcation dispute.

Orders on application or Commission’s initiative

(9) The Commission:
   (a) may not make an order under subsection (1), in a circumstance set out in subsection (2), (7) or (8), except on application by a negotiating party; but
   (b) may make an order under subsection (1), in a circumstance set out in subsection (3):
      (i) on its own initiative; or
      (ii) on application by a negotiating party or the Minister.

Application does not have to identify bargaining periods

(10) An application may be made to the Commission for an order under subsection (1) for the suspension or termination of whatever bargaining periods apply to:
   (a) a specified business, or any part of that business; or
   (b) a specified part of a specified business;
without specifically identifying the bargaining periods. The application has effect as if it were an application for the suspension or termination of the bargaining period, or each of the bargaining periods, that applies to the specified business (or any part of it), or to the specified part of the business, as the case requires.

Note: The other requirements of this section must still be complied with in relation to the application.

(11) If subsection (10) applies to an application, the Commission must satisfy itself as to which bargaining periods the application has effect in relation to.
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Restrictions on initiating new bargaining periods

(12) An order under subsection (1) suspending a bargaining period may, if the Commission considers it to be appropriate, contain a declaration that, during some or all of the period while the suspension has effect, a specified negotiating party or employee of the employer:

(a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed collective agreement; or

(b) may initiate such a bargaining period only on conditions specified in the declaration.

(13) An order under subsection (1) terminating a bargaining period may, if the Commission considers it to be appropriate, contain a declaration that, during a specified period beginning at the time of the termination, a specified negotiating party or employee of the employer:

(a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed collective agreement; or

(b) may initiate such a bargaining period only on conditions specified in the declaration.

Extension of notice period required by subsection 434(3)

(14) In an order under subsection (1), the Commission may, if it is satisfied, in relation to any industrial action that might be taken (by virtue of section 434) after the end of the period of suspension, that there are exceptional circumstances justifying the period of written notice required by subsection 434(3) being longer than 3 days, specify a longer period, of up to 7 days.

431 Suspension and termination of bargaining periods—pattern bargaining

Suspension or termination required for pattern bargaining

(1) The Commission must, by order, suspend a bargaining period for a period specified in the order, or terminate the bargaining period, if:

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(a) a negotiating party, or a person prescribed by the regulations, applies to the Commission for an order under this section; and

(b) another negotiating party is engaged in pattern bargaining in relation to the proposed collective agreement.

Note: For other provisions relating to pattern bargaining, see:

(a) section 439; and
(b) section 461; and
(c) section 497.

Negotiating parties must be given the opportunity to be heard

(2) The Commission must not make an order under subsection (1) unless it has given the negotiating parties the opportunity to be heard.

Commission may suspend or terminate as it considers appropriate

(3) If the Commission is required by subsection (1) to make an order under that subsection, then regardless of the order applied for:

(a) the order may be for the suspension or termination of the bargaining period, as the Commission considers appropriate; and

(b) any period of suspension specified in the order must be such a period as the Commission considers appropriate.

Application does not have to identify bargaining periods

(4) An application may be made to the Commission for an order under subsection (1) for the suspension or termination of whatever bargaining periods apply to:

(a) a specified business, or any part of that business; or
(b) a specified part of a specified business;

without specifically identifying the bargaining periods. The application has effect as if it were an application for the suspension or termination of the bargaining period, or each of the bargaining periods, that applies to the specified business (or any part of it), or to the specified part of the business, as the case requires.

Note: The other requirements of this section must still be complied with in relation to the application.
(5) If subsection (4) applies to an application, the Commission must satisfy itself as to which bargaining periods the application has effect in relation to.

Restrictions on initiating new bargaining periods

(6) An order under subsection (1) suspending a bargaining period may, if the Commission considers it to be appropriate, contain a declaration that, during some or all of the period while the suspension has effect, a specified negotiating party or employee of the employer:
   (a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed collective agreement; or
   (b) may initiate such a bargaining period only on conditions specified in the declaration.

(7) An order under subsection (1) terminating a bargaining period may, if the Commission considers it to be appropriate, contain a declaration that, during a specified period beginning at the time of the termination, a specified negotiating party or employee of the employer:
   (a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed collective agreement; or
   (b) may initiate such a bargaining period only on conditions specified in the declaration.

Extension of notice period required by subsection 434(3)

(8) In an order under subsection (1) suspending a bargaining period, the Commission may, if it is satisfied, in relation to any industrial action that might be taken (by virtue of section 434) after the end of the period of suspension, that there are exceptional circumstances justifying the period of written notice required by subsection 434(3) being longer than 3 days, specify a longer period, of up to 7 days.
Suspension of bargaining periods—cooling off

Suspension if would assist in resolving matters at issue

(1) The Commission must, by order, suspend a bargaining period for a period specified in the order if:
   (a) a negotiating party applies to the Commission for the bargaining period to be suspended under this section; and
   (b) protected action is being taken in respect of the proposed collective agreement; and
   (c) the Commission considers that the suspension is appropriate, having regard to:
       (i) whether suspending the bargaining period would be beneficial to the negotiating parties because it would assist in resolving the matters at issue; and
       (ii) the duration of the action; and
       (iii) whether suspending the bargaining period would be contrary to the public interest or inconsistent with the objects of this Act; and
       (iv) any other matters that the Commission considers relevant.

Period of suspension

(2) The period of suspension specified in the order must be a period that the Commission considers appropriate.

Extension of suspension

(3) The Commission must, by order, extend the period of suspension by a specified period that the Commission considers appropriate if:
   (a) a negotiating party applies to the Commission for the period of suspension to be extended; and
   (b) the Commission considers that the extension is appropriate, having regard to:
       (i) the matters referred to in paragraph (1)(c); and
       (ii) whether the negotiating parties, during the period of suspension, genuinely tried to reach an agreement.
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(4) The Commission must not make an order under subsection (3) extending the period of suspension if that period has previously been extended.

Negotiating parties must be given opportunity to be heard

(5) The Commission must not make an order under subsection (1) or (3) unless it has given the negotiating parties the opportunity to be heard.

Commission to inform negotiating parties that they may submit matters at issue for alternative dispute resolution

(6) If the Commission makes an order under subsection (1) or (3), the Commission must send each of the negotiating parties a notice informing the negotiating parties that they may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Part 13).

Extension of notice period required by subsection 434(3)

(7) In an order under subsection (1) or (3), the Commission may, if it is satisfied, in relation to any industrial action that might be taken (by virtue of section 434) after the end of the period of suspension, that there are exceptional circumstances justifying the period of written notice required by subsection 434(3) being longer than 3 days, specify a longer period, of up to 7 days.

433 Suspension of bargaining periods—significant harm to third party

Suspension if industrial action threatens significant harm to a person

(1) The Commission must, by order, suspend a bargaining period for a period specified in the order if:

(a) industrial action is being taken in respect of the proposed collective agreement; and

(b) an application for the bargaining period to be suspended under this section is made to the Commission by or on behalf of:

(i) an organisation, person or body directly affected by the action (other than a negotiating party); or
(ii) the Minister; and
(c) the Commission considers that the action is adversely affecting the employer or employees of the employer; and
(d) the Commission considers that the action is threatening to cause significant harm to any person (other than a negotiating party); and
(e) the Commission considers that the suspension is appropriate, having regard to:
   (i) whether suspending the bargaining period would be contrary to the public interest or inconsistent with the objects of this Act; and
   (ii) any other matters that the Commission considers relevant.

(2) For the purposes of paragraph (1)(d), in considering whether the action is threatening to cause significant harm to a person, the Commission may have regard to the following:
   (a) if the person is an employee—the extent to which the action affects the interests of the person as an employee;
   (b) the extent to which the person is particularly vulnerable to the effects of the action;
   (c) the extent to which the action threatens to:
      (i) damage the ongoing viability of a business carried on by the person; or
      (ii) disrupt the supply of goods or services to a business carried on by the person; or
      (iii) reduce the person’s capacity to fulfil a contractual obligation; or
      (iv) cause other economic loss to the person;
   (d) any other matters that the Commission considers relevant.

Period of suspension

(3) The period of suspension specified in the order must be a period that the Commission considers appropriate. The period of suspension (as extended under subsection (4), if applicable) must not exceed 3 months.
Extension of suspension

(4) The Commission must, by order, extend the period of suspension by a specified period that the Commission considers appropriate if:

(a) an application for the period of suspension to be extended is made to the Commission by or on behalf of:

(i) an organisation, person or body directly affected by the action (other than a negotiating party); or

(ii) the Minister; and

(b) the Commission considers that the extension is appropriate, having regard to the matters referred to in paragraphs (1)(c), (d) and (e).

(5) The Commission must not make an order under subsection (4) extending the period of suspension if that period has previously been extended.

Negotiating parties must be given opportunity to be heard

(6) The Commission must not make an order under subsection (1) or (4) unless it has given the negotiating parties the opportunity to be heard.

Commission to inform negotiating parties that they may submit matters at issue for alternative dispute resolution

(7) If the Commission makes an order under subsection (1) or (4), the Commission must send each of the negotiating parties a notice informing the negotiating parties that they may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Part 13).

Extension of notice period required by subsection 434(3)

(8) In an order under subsection (1) or (4), the Commission may, if it is satisfied, in relation to any industrial action that might be taken (by virtue of section 434) after the end of the period of suspension, that there are exceptional circumstances justifying the period of written notice required by subsection 434(3) being longer than 3 days, specify a longer period, of up to 7 days.
434 Industrial action without further protected action ballot after end of suspension of bargaining period

(1) This section applies if:
   (a) before a bargaining period was suspended under subsection 430(1), 431(1), 432(1) or 433(1), industrial action was authorised by a protected action ballot; and
   (b) the ballot authorised industrial action:
       (i) some or all of which had not been taken before the period of suspension began; or
       (ii) that had not ended before the period of suspension began; or
       (iii) beyond the period of suspension.

(2) After the period of suspension, as extended under subsection 432(3) or 433(4) (if applicable), has ceased (whether because the period ended or was revoked):
   (a) a relevant employee (within the meaning of Division 4) may organise, or engage in, that industrial action without another protected action ballot; and
   (b) a negotiating party that is an organisation of employees may organise, or engage in, that industrial action without another protected action ballot.

   For the purposes of working out when that industrial action may be organised, or engaged in, the period of suspension (including any dates authorised by a protected action ballot as dates on which action is to be taken) is to be ignored.

(3) However, that industrial action is not protected action unless, after the period of suspension, the organisation, or the employee, gives the employer at least the required written notice of the intention to take the action. The notice must state the nature of the intended action and the day when it will begin.

(4) For the purposes of subsection (3), the required written notice is:
   (a) 3 working days’ written notice; or
   (b) if the Commission, in the order under subsection 430(1), 431(1), 432(1) or 433(1) suspending the bargaining period, or an order under subsection 432(3) or 433(4) extending the period of suspension, specifies a higher number of days—that number of days’ written notice.
Note: For the maximum number of days the suspension order can specify, see subsection 430(14), 431(8), 432(7) or 433(8).

(5) Nothing in this section authorises industrial action after the end of the period of suspension that is different in type or duration from the industrial action that was authorised by the protected action ballot.

Example 1: A protected action ballot authorised strike action for 20 consecutive working days from a specified date. Fourteen working days into the strike, the bargaining period was suspended for one month.

Under this section, once the period of suspension ends, the initiating party could give the required written notice, without another protected action ballot, of 6 further consecutive working days of strike action (the balance of the strike action authorised).

Example 2: A protected action ballot authorised the imposition of certain work bans every Monday, for a period of 8 consecutive weeks starting from a specified date. After 3 weeks, the bargaining period was suspended for a period of 2 weeks.

Under this section, once the period of suspension ends, the initiating party could give the required written notice, without another protected action ballot, that the work bans authorised by the ballot will be imposed for 5 further consecutive Mondays (the balance of the industrial action authorised).
Division 3—Protected action

Subdivision A—What is protected action?

435 Protected action

General

(1) Action by a person is protected action if:
   (a) the action is protected action under subsection (2) or (3); and
   (b) no provision of Subdivision B excludes the action from being protected action; and
   (c) subsection 434(3) does not exclude the action from being protected action.

Employee and employee organisation actions

(2) During a bargaining period:
   (a) an organisation of employees that is a negotiating party; or
   (b) a member of such an organisation who is employed by the employer; or
   (c) an officer or employee of such an organisation acting in that capacity; or
   (d) an employee who is a negotiating party;
   is entitled, for the purpose of:
   (e) supporting or advancing claims made in respect of the proposed collective agreement; or
   (f) responding to industrial action by the employer against employees whose employment will be subject to the proposed collective agreement;

Employer actions

(3) Subject to subsection (5), during a bargaining period, the employer is entitled, for the purpose of:
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(a) supporting or advancing claims made by the employer in respect of the proposed collective agreement; or
(b) responding to industrial action by any of the employees whose employment will be subject to the proposed collective agreement;

to engage in industrial action against all or any of the employees whose employment will be subject to the agreement and, if the employer does so, the organising of, or engaging in, that industrial action is protected action.

Note 1: The existence of this entitlement does not affect any right of the employer to refuse to pay the employee where, under the common law, the employer is permitted to do so because the employee has not performed work as directed.

Note 2: The existence of this entitlement also does not affect any authorisation of the employer to stand-down the employee under an award.

(4) If the employer engages in industrial action against employees in accordance with subsection (3), the employer is entitled to refuse to pay any remuneration to the employees in respect of the period of the industrial action.

(5) The employer is not entitled to engage in industrial action against employees under subsection (3) (and so the industrial action will not be protected action) unless the continuity of the employees’ employment, for such purposes as are prescribed by the regulations, is not affected by the industrial action.

Subdivision B—Exclusions from protected action

436 Exclusion—claims in support of inclusion of prohibited content

Engaging in industrial action in relation to a proposed collective agreement is not protected action if it is to support or advance claims to include prohibited content in the agreement.

437 Exclusion—industrial action while bargaining period is suspended

Engaging in industrial action in relation to a proposed collective agreement is not protected action if it is engaged in while the bargaining period is suspended.
438 Exclusion—industrial action must not involve persons who are not protected for that industrial action

(1) Engaging in industrial action in relation to a proposed collective agreement is not protected action if:
   (a) it is engaged in in concert with one or more persons who are not protected persons for the industrial action; or
   (b) it is organised other than solely by one or more protected persons for the industrial action.

(2) Organising industrial action in relation to a proposed collective agreement is not protected action if:
   (a) it is organised in concert with one or more persons who are not protected persons for the industrial action; or
   (b) it is intended to be engaged in other than solely by one or more protected persons for the industrial action.

(3) In this section:

   protected person, for industrial action in relation to a proposed collective agreement, means:
   (a) an organisation of employees that is a negotiating party to the proposed collective agreement; or
   (b) a member of such an organisation who is employed by the employer and whose employment will be subject to the proposed collective agreement; or
   (c) an officer or employee of such an organisation acting in that capacity; or
   (d) an employee who is a negotiating party to the proposed collective agreement; or
   (e) an employer who is a negotiating party to the proposed collective agreement.

439 Exclusion—industrial action must not be in support of pattern bargaining claims

Engaging in or organising industrial action is not protected action if:
   (a) the industrial action is for the purpose of supporting or advancing claims made by a negotiating party to a proposed collective agreement; and
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(b) the party is engaged in pattern bargaining in relation to the proposed collective agreement.

Note: For other provisions relating to pattern bargaining, see:
(a) section 431; and
(b) section 461; and
(c) section 497.

440 Exclusion—industrial action must not be taken until after nominal expiry date of workplace agreements or workplace determinations

Engaging in or organising industrial action in contravention of section 494 or 495 is not protected action.

441 Exclusion—notice of action to be given

Notice of employee and employee organisation actions

(1) Any action taken as mentioned in subsection 435(2) by:
(a) an organisation of employees; or
(b) a member of such an organisation; or
(c) an officer or employee of such an organisation acting in that capacity; or
(d) an employee who is a negotiating party;
is not protected action unless the requirements set out in subsection (2) are met.

(2) The requirements are that:
(a) if the action is in response to, and is taken after the start of, industrial action against employees by the employer in respect of the proposed collective agreement—the organisation, or the employee who is a negotiating party, has given the employer written notice of the intention to take the action; or
(b) in any other case—the organisation, or the employee who is a negotiating party, has given the employer at least the required written notice of the intention to take the action.

(3) For the purposes of paragraph (2)(b), the required written notice is:

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(a) 3 working days’ written notice; or
(b) if a ballot order made under section 462 in respect of the action specifies a higher number of days—that number of days’ written notice.

Note: For the maximum number of days the ballot order can specify, see subsection 463(5).

Notice of employer actions

(4) If one or more of the negotiating parties is an organisation of employees, any action taken as mentioned in subsection 435(3) by the employer:

(a) is not protected action unless the employer has given the other negotiating party or each of the other negotiating parties:

(i) if the industrial action is in response to, and takes place after the start of, industrial action organised or engaged in by an organisation that is a negotiating party in respect of the proposed collective agreement—written notice of the intended industrial action; or

(ii) in any other case—at least 3 working days’ written notice of the intended industrial action; and

(b) is not protected action in so far as it relates to a particular employee unless:

(i) if subparagraph (a)(i) applies—before the industrial action begins; or

(ii) in any other case—at least 3 working days before the industrial action begins;

the employer has given written notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended industrial action.

(5) If one or more of the negotiating parties is an employee whose employment will be subject to the proposed collective agreement, any action taken as mentioned in subsection 435(3) by the employer is not protected action in so far as it relates to a particular employee unless:

(a) if the industrial action is in response to, and takes place after the start of, industrial action organised or engaged in by any of the employees who are negotiating parties in respect of the
proposed collective agreement—before the industrial action begins; or
(b) in any other case—at least 3 working days before the industrial action begins;
the employer has given written notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended industrial action.

Notice to state nature of intended action and start day

(6) A written notice or other notification under this section must state the nature of the intended action and the day when it will begin.

Limitations on when notice may be given

(7) A written notice or other notification under this section cannot be given:
(a) if the notification relates to action that must, in order to be protected action, be authorised by a protected action ballot—before the declaration of the results of the ballot (see section 476); or
(b) if the notification relates to industrial action by an employer (whether the notification is to be given by the employer, an organisation of employees or an employee)—before the start of the bargaining period.

442 Employee may appoint agent to give notice under section 441

If:
(a) a person referred to in paragraph 441(1)(d) has appointed an agent under section 424 to initiate a bargaining period in relation to a proposed collective agreement; and
(b) the person wishes to give notice to an employer under section 441 of intention to take industrial action relating to the proposed collective agreement without disclosing the person’s identity to the person’s employer;
the notice may be given by the agent on the person’s behalf.

443 Exclusion—requirement that employee organisation or employee comply with Commission orders and directions

(1) If:

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(a) an organisation of employees is a negotiating party to a proposed collective agreement; and
(b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement;

industrial action engaged in by a person who is a member of the organisation is not protected action unless, before the person begins to engage in the industrial action, the organisation has complied with the order or direction so far as it applies to the organisation.

(2) If:
(a) an employee is a negotiating party to a proposed collective agreement; and
(b) the Commission has, during the bargaining period, made or given orders or directions that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen in the negotiations for the proposed collective agreement;

industrial action engaged in by the employee is not protected action unless, before the employee begins to engage in the industrial action, the employee has complied with the order or direction so far as it applies to the employee.

444 Exclusion—requirement that employer genuinely try to reach agreement etc.

Industrial action engaged in by an employer against employees is not protected action unless the employer has, before the employer begins to engage in the industrial action:
(a) if the employees are members of an organisation or organisations that are negotiating parties—genuinely tried to reach agreement with the organisation or organisations; and
(b) if the employees are negotiating parties—genuinely tried to reach agreement with the employees; and
(c) complied with all orders or directions made or given by the Commission during the bargaining period that relate to, or that relate to industrial action relating to, the making of the proposed collective agreement or to a matter that has arisen

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in the negotiations for the proposed collective agreement, so far as the orders or directions apply to the employer.

445 Exclusion—employee and employee organisation action to be authorised by secret ballot or be in response to employer action

Any action taken as mentioned in subsection 435(2) by:
(a) an organisation of employees; or
(b) a member of such an organisation; or
(c) an officer or employee of such an organisation acting in that capacity; or
(d) an employee who is a negotiating party;
is not protected action unless:
(e) the action is in response to industrial action by the employer against employees whose employment will be subject to the proposed collective agreement; or
(f) the action has been authorised by a protected action ballot (see section 478).

Note: The question whether industrial action is authorised by a protected action ballot is also affected by section 434.

446 Exclusion—employee organisation action must be duly authorised

(1) Engaging in industrial action by members of an organisation of employees that is a negotiating party is not protected action unless, before the industrial action begins:
(a) the industrial action is duly authorised by a committee of management of the organisation or by someone authorised by such a committee to authorise the industrial action; and
(b) if the rules of the organisation provide for the way in which the industrial action is to be authorised—the industrial action is duly authorised under those rules; and
(c) written notice of the giving of the authorisation is given to a Registrar.

(2) Industrial action is taken, for the purposes of this section, to be duly authorised under the rules of an organisation of employees even though a technical breach has occurred in authorising the
industrial action, so long as the person or persons who committed the breach acted in good faith.

(3) Examples of a technical breach in authorising industrial action are as follows:
   (a) a contravention of the rules of the organisation;
   (b) an error or omission in complying with the requirements of this Act;
   (c) participation, by a person not eligible to do so, in the making of a decision by a committee of management, or by members, of the organisation.

(4) Industrial action is taken, for the purposes of this section, to have been duly authorised under the rules of an organisation of employees, and to have been so authorised before the industrial action began, unless:
   (a) the Court declares in a proceeding that the industrial action was not duly authorised under those rules; and
   (b) the proceeding was brought in the Court within 6 months after the notification in relation to the industrial action was given to a Registrar under paragraph (1)(c).

(5) In so far as the rules of an organisation of employees provide for the way in which industrial action that section 435 entitles the organisation to organise or engage in is to be authorised, the rules do not contravene section 159 of the Registration and Accountability of Organisations Schedule unless the manner provided for contravenes that section.

Subdivision C—Significance of action being protected action

447 Immunity provisions

(1) Subject to subsection (2), no action lies under any law (whether written or unwritten) in force in a State or Territory in respect of any industrial action that is protected action unless the industrial action has involved or is likely to involve:
   (a) personal injury; or
   (b) wilful or reckless destruction of, or damage to, property; or
   (c) the unlawful taking, keeping or use of property.
(2) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.

Note: Subsection 496(13) provides that an order under subsection 496(1) or (6) directing that industrial action stop or not occur does not apply to protected action.

448 Employer not to dismiss employee etc. for engaging in protected action

(1) An employer must not:
(a) dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee’s prejudice; or
(b) threaten to dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee’s prejudice;
wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected action.

(2) Subsection (1) does not apply to any of the following actions taken by the employer:
(a) standing-down the employee;
(b) refusing to pay the employee, if:
   (i) the refusal is in accordance with section 507; or
   (ii) under the common law, the employer is permitted to do so because the employee has not performed work as directed;
(c) action that is itself protected action.

Civil remedy provisions

(3) Subsection (1) is a civil remedy provision.

(4) The Court may make one or more of the following orders in relation to a person who has contravened subsection (1):
(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) Other orders the Court may make under paragraph (4)(b) include
(but are not limited to):

(a) if the contravention was constituted by dismissing an
employee—an order to reinstate the person dismissed to the
position that the person occupied immediately before the
dismissal or to a position no less favourable than that
position; and

(b) in any case—to pay, to the person dismissed, injured or
prejudiced, compensation for loss suffered as a result of the
dismissal, injury or prejudice.

(7) An application for an order under subsection (4) may be made by:

(a) the employee concerned; or

(b) an organisation of employees of which that employee is a
member; or

(c) a workplace inspector; or

(d) any other person prescribed by the regulations.

(8) In proceedings for an order under subsection (4), it is to be
presumed, unless the employer proves otherwise, that the alleged
conduct of the employer was carried out wholly or partly because
the employee was proposing to engage, was engaging, or had
engaged, in protected action.

Note: For other provisions about civil remedy provisions, see Division 3 of
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Section 449

Division 4—Secret ballots on proposed protected action

Subdivision A—General

449 Object of Division and overview of Division

Object

(1) The object of this Division is to establish a transparent process which allows employees directly concerned to choose, by means of a fair and democratic secret ballot, whether to authorise industrial action supporting or advancing claims by organisations of employees, or by employees.

Overview of Division

(2) Under Division 3, industrial action by employees is not protected action unless it has been authorised in advance by a secret ballot held under this Division (a protected action ballot). This Division establishes the steps that organisations of employees, or employees, who wish to organise or engage in protected action must take in order to:

(a) obtain an order from the Commission that will authorise a protected action ballot to be held; and

(b) hold a protected action ballot that may authorise the industrial action.

(3) The rule that industrial action by employees is not protected action unless it has been authorised by a protected action ballot does not apply to action in response to an employer engaging in industrial action against the employees (see section 445).

450 Definitions

In this Division:

applicant means an applicant for a ballot order.

applicant’s agent means an agent appointed by an employee, or by a group of employees, under subsection 451(5).
authorised ballot agent, in relation to a protected action ballot, means the person authorised by the Commission in the ballot order to conduct the ballot.

authorised independent adviser, in relation to a protected action ballot, means the person authorised by the Commission in the ballot order to be the independent adviser for the ballot.

ballot order means an order made under section 462 requiring a protected action ballot to be held.

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

joint applicant means a person who is participating, or has participated, in making a joint application under section 455.

party, in relation to an application for a ballot order, means either of the following:
(a) the applicant;
(b) the employer of the relevant employees.

prescribed number, in relation to relevant employees, means:
(a) if there are fewer than 80 relevant employees—4; or
(b) if there are at least 80, but not more than 5,000, relevant employees—5% of the number of such employees; or
(c) if there are more than 5,000 relevant employees—250.

protected action ballot means a ballot under this Division.

relevant employee, in relation to proposed industrial action against an employer in respect of a proposed collective agreement, means:
(a) if an organisation of employees is a negotiating party to the agreement—any member of the organisation who is employed by the employer and whose employment will be subject to the agreement; and
(b) if an employee is a negotiating party to the agreement—any employee who is a negotiating party to the agreement; but does not include an employee who is bound by an AWA whose nominal expiry date has not passed.

roll of voters means a list compiled:
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(a) by the Commission under section 466; or
(b) by an authorised ballot agent in compliance with an order of
the Commission under section 466.

Subdivision B—Application for order for protected action
ballot to be held

451 Who may apply for a ballot order etc.

When application can be made

(1) A person referred to in subsection (3) may, during a bargaining
period, apply to the Commission for an order for a ballot to be held
to determine whether proposed industrial action has the support of
relevant employees.

Note: For the duration of a bargaining period, see sections 427 (when it
begins) and 428 (when it ends).

(2) However, if there are one or more existing collective agreements
binding on relevant employees, the application must not be made
before:

(a) if there is only one existing collective agreement—the
nominal expiry date of the existing collective agreement; or
(b) if there are 2 or more existing collective agreements—
whichever is the last occurring of the nominal expiry dates of
those existing collective agreements.

Who can apply

(3) The following people may apply:

(a) if the bargaining period was initiated by an organisation of
employees—that organisation;
(b) if the bargaining period was initiated by an employee or
employees—any employee who is a negotiating party to the
proposed collective agreement, or a group of such employees
acting jointly.

Note: For joint applications, see section 455.
Employee applications need support of prescribed number of employees

(4) An employee, or a group of such employees acting jointly, cannot make an application unless the application has the support of at least the prescribed number of relevant employees.

Note: Prescribed number is defined in section 450.

Employee applicants can appoint agent

(5) A person or persons referred to in paragraph (3)(b) who wish to make an application under this section without disclosing their identities to their employer may appoint an agent to represent them for all purposes connected with the application.

452 Contents of application

(1) The application must include the following:
   (a) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;
   (b) details of the types of employees who are to be balloted;
   (c) any details required by Rules of the Commission (see subsection (3)).

(2) The application may include the name of a person nominated by the applicant to conduct the ballot.

Note: The question of who conducts the ballot is ultimately decided by the Commission—see paragraph 463(1)(e) and section 480.

(3) Without limiting the generality of section 124, Rules of the Commission made under that section may deal with:
   (a) the matters to be included in an application for a ballot order; and
   (b) the form in which the application is to be made.

453 Material to accompany application

(1) The application must be accompanied by:
   (a) a copy of the notice given under subsection 423(3) to initiate the relevant bargaining period; and
(b) a copy of the particulars that accompanied that notice as required by section 426; and
(c) a declaration by the applicant under subsection (4) of this section.

(2) If the applicant is an organisation of employees, the application must be accompanied by a written notice showing that the application has been duly authorised by a committee of management of the organisation or by someone authorised by such a committee to authorise the application.

(3) If the applicant is an employee, or a group of employees, represented by an applicant’s agent, the application must be accompanied by a document containing the name of the employee, or each of those employees.

(4) The applicant’s declaration must state that the industrial action to which the application relates is not for the purpose of supporting or advancing claims to include in the proposed collective agreement any prohibited content.

(5) The declaration must be in the form prescribed by the regulations.

(6) A person commits an offence if:
   (a) the person makes, or joins in making, a declaration under subsection (4); and
   (b) the declaration contains a statement that is false or misleading in a material particular.

Penalty for contravention of this subsection: 30 penalty units.

454 Notice of application

The applicant must give a copy of the application (but not the material referred to in section 453) to:
(a) the other party; and
(b) any person nominated in the application to conduct the ballot;
within 24 hours after lodging the application with the Commission.
455 Joint applications

(1) If the bargaining period for the proposed collective agreement was initiated by an employee, 2 or more employees who are negotiating parties may make a joint application for a ballot order.

(2) An employee who has participated in making a joint application may withdraw his or her name from the application before the application is determined but cannot do so after the application is determined by the Commission.

(3) If employees have made a joint application, the name of another employee who is a negotiating party may, before the application is determined, be joined to the application if the other applicants consent.

(4) Without limiting the generality of section 124, Rules of the Commission made under that section may deal with:
   (a) in the case of a provision of this Act permitting an applicant for a ballot order to do any thing—how the provision is to apply to joint applicants; and
   (b) in the case of a provision of this Act requiring an applicant for a ballot order to be given notice, or otherwise informed, of any thing—how the requirement is to be fulfilled in relation to joint applicants.

Subdivision C—Determination of application and order for ballot to be held

456 Commission may notify parties etc. of procedure

If:
   (a) an application for a ballot order is lodged with the Commission; and
   (b) the Commission considers that notifying the parties, or a person who may become the authorised ballot agent, of the procedure to be followed by the Commission in dealing with that application will not delay, and may expedite, the determination of the application;

the Commission may notify the parties or person concerned accordingly.
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457 Commission to act quickly in relation to application etc.

(1) In exercising its powers under this Division, the Commission:
(a) must act as quickly as is practicable; and
(b) must, as far as is reasonably possible, determine all applications made under this Division within 2 working days after the application is made.

Note: In exercising its powers, the Commission is also required to act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms (see paragraph 110(1)(c)). It is not bound by the rules of evidence, and may inform itself in any manner it considers just (see paragraph 110(1)(b)).

(2) However, the Commission must not determine an application for a ballot order until it is satisfied that:
(a) the applicant has complied with section 454; and
(b) the persons referred to in subsections 458(1) and (2) have had a reasonable opportunity to make submissions in relation to the application.

458 Parties and relevant employees may make submissions and apply for directions

(1) A party or a relevant employee may make submissions, and may apply for directions, relating to:
(a) an application for a ballot order; or
(b) any aspect of the conduct of a protected action ballot.

(2) A person nominated in an application to conduct a ballot may make submissions, and apply for directions, relating to the application.

(3) An authorised ballot agent may make submissions, and apply for directions, relating to any aspect of a protected action ballot.

(4) The Commission may decline to consider a person’s submission if the Commission is satisfied that the submission is vexatious, frivolous, misconceived or lacking in substance.

459 Commission may make orders or give directions

(1) The Commission may make orders, or give directions, in connection with:
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(a) an application for a ballot order; or
(b) any aspect of the conduct of a protected action ballot.

(2) Without limiting subsection (1), the Commission may make orders, or give directions, aimed at ensuring that a protected action ballot is conducted expeditiously.

(3) In deciding whether to make an order, or give a direction, under this section, and in deciding the content of any such order or direction, the Commission must have regard to the desirability of the ballot results being available to the parties within 10 days after the ballot order is made.

460 Commission procedure regarding multiple applications

(1) If:

(a) more than one application for a ballot order is before the Commission for determination; and
(b) the applications relate to industrial action by employees of the same employer or by employees at the same place of work; and
(c) the Commission considers that determining the applications at the same time will not unreasonably delay the determination of any of the applications;

the Commission may determine the applications at the same time.

(2) If:

(a) the Commission has made an order requiring a ballot to be held in relation to industrial action by employees of an employer, or by employees at a place of work; and
(b) the Commission proposes to make another order requiring a ballot to be held in relation to industrial action against that employer, or at the same place of work; and
(c) the Commission considers that the level of disruption of the employer’s business, or at the place of work (as the case requires), could be reduced if the ballots were held at the same time; and
(d) the Commission considers that requiring the ballots to be held at the same time will not unreasonably delay the conduct of either ballot;

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the Commission may make, or vary, the relevant orders so as to require the ballots to be held at the same time.

461 Application not to be granted unless certain conditions are met

Commission must be satisfied of various matters

(1) The Commission must grant an application for a ballot order if, and must not grant the application unless, it is satisfied that:
   (a) during the bargaining period, the applicant genuinely tried to reach agreement with the employer of the relevant employees; and
   (b) the applicant is genuinely trying to reach agreement with the employer; and
   (c) the applicant is not engaged in pattern bargaining.

Note 1: An application for a ballot order must comply with the requirements set out in Subdivision B.

Note 2: To work out when a bargaining period began, see section 427.

Note 3: For other provisions relating to pattern bargaining, see:
   (a) section 431; and
   (b) section 439; and
   (c) section 497.

When Commission has discretion to refuse application

(2) Despite subsection (1), the Commission may refuse the application if it is satisfied:
   (a) that granting the application would be inconsistent with the object of this Division (see section 449); or
   (b) that the applicant, or a relevant employee, has at any time contravened a provision of this Division or an order made, or direction given, under this Division.

462 Grant of application—order for ballot to be held

If the Commission grants the application, the Commission must order the applicant to hold a protected action ballot.
463 Matters to be included in order

(1) An order for a protected action ballot to be held must specify the following:

(a) the name of:

(i) if the applicant is an organisation of employees—the organisation; or
(ii) if the applicant is an employee, or a group of employees, represented by an applicant’s agent—the applicant’s agent; or
(iii) if the applicant is an employee, or a group of employees, not represented by an applicant’s agent—the employee or employees;

(b) the types of employees who are to be balloted;

(c) the voting method;

(d) the timetable for the ballot, including:

(i) the day on which the roll of voters is to close, which must be a day at least 2 working days before the day on which the ballot is to be held, or is to start to be held; and

(ii) the day on which the ballot is to close, and the time (the voting closing time) on that day by which votes must be received (if the order specifies a postal ballot) or by which votes must be cast (if the order specifies an attendance ballot);

(e) the name of the person authorised by the Commission to conduct the ballot;

(f) the name of the person (if any) authorised by the Commission to be the independent adviser for the ballot;

(g) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action.

Note 1: Section 480 specifies who may be authorised by the Commission to conduct protected action ballots.

Note 2: Section 481 specifies who may be authorised by the Commission to be the independent adviser for a protected action ballot.

(2) The order must specify a postal ballot as the voting method unless:

(a) the order specifies another voting method; and
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(b) the Commission is satisfied that the other voting method is more efficient and expeditious than a postal ballot.

(3) If the order specifies a postal ballot as the voting method, it must specify that the voting must take place by way of declaration voting. For this purpose, a person votes by way of declaration voting if the person:
   (a) marks his or her vote on a ballot paper; and
   (b) places the ballot paper in a declaration envelope; and
   (c) seals that envelope and signs his or her name in the space provided on the back flap of that envelope; and
   (d) places that envelope in an outer envelope that is addressed to the authorised ballot agent; and
   (e) posts the outer envelope so that it reaches the authorised ballot agent before the voting closing time on the day on which the ballot is to close.

(4) If the order specifies an attendance ballot as the voting method, then:
   (a) votes must be cast before the voting closing time on the day on which the ballot is to close; and
   (b) subject to paragraph (a):
      (i) the order must specify that the voting must take place during the voters’ meal-time or other breaks, or outside their hours of employment; and
      (ii) the order may also specify other rules about the times when voters may vote.

(5) If the Commission is satisfied, in relation to the proposed industrial action that is the subject of the order, that there are exceptional circumstances justifying the period of written notice referred to in paragraph 441(2)(b) being longer than 3 days, the order may specify a longer period, of up to 7 days.

464 Guidelines for ballot timetables

(1) The President may develop guidelines in relation to appropriate timetables for the conduct of protected action ballots. The President may consult the Australian Electoral Commission, and any other person, in developing guidelines.
(2) Guidelines developed under this section are not legislative instruments.

465 Power of Commission to require information relevant to roll of voters

(1) The Commission may order the employer of the relevant employees, or the applicant, or both, to provide:
   (a) a list of employees of the type described in the application; and
   (b) any other information that it is reasonable for the Commission to require in order to assist in the compilation of a roll of voters for the proposed ballot.

(2) The order may require the list, or other information, to be provided to the Commission or to the authorised ballot agent.

(3) The order may require the list, or other information, to be provided in whatever form the Commission considers appropriate.

466 Roll to be compiled by Commission or ballot agent

If the Commission makes a ballot order, it must:
   (a) compile a list of the names of the persons who are eligible to be included on the roll of voters for the ballot and provide that list, as the roll of voters, to the authorised ballot agent; or
   (b) order, by separate order, the authorised ballot agent to compile the roll of voters for the ballot.

467 Eligibility to be included on the roll

(1) A person is eligible to be included on the roll of voters for the ballot if, and only if:
   (a) if the applicant is an organisation of employees—the person:
      (i) was a member of the organisation on the day the ballot order was made; and
      (ii) was employed by the employer on the day the ballot order was made; and
      (iii) will be subject to the proposed collective agreement; or
   (b) if the applicant is an employee, or a group of employees—the person:
(i) was employed by the employer on the day the ballot order was made; and
(ii) will be subject to the proposed collective agreement.

(2) A person is not eligible to be included on the roll of voters for the ballot if, on the day the ballot order was made, the person was bound by an AWA whose nominal expiry date had not passed.

468 Adding or removing names from the roll

(1) If:
(a) a person requests the authorised ballot agent to include the person’s name on the roll of voters for a protected action ballot; and
(b) the ballot agent is satisfied that the person is eligible to be included on the roll; and
(c) the request is made before the day on which the roll of voters is to close;
the ballot agent must add the person’s name to the roll.

(2) If:
(a) a person applies to the Commission for a declaration that the person is eligible to be included on the roll of voters for the ballot; and
(b) the Commission is satisfied that the person is eligible to be included on the roll; and
(c) the application is made before the day on which the roll of voters is to close;
the Commission must make the declaration and direct the authorised ballot agent to include the person’s name on the roll.

(3) If:
(a) a party, the authorised ballot agent, or a person whose name is on the roll of voters for a protected action ballot, applies to the Commission for a declaration that a person whose name has been included on the roll of voters for the ballot is not eligible to be so included; and
(b) the application is made before the day on which the roll of voters is to close; and
(c) the Commission is satisfied that the person is not eligible to be so included;
the Commission must make the declaration and direct the
authorised ballot agent to remove the person’s name from the roll.

(4) A person’s name cannot be added to, or removed from, the roll of
voters for a protected action ballot after the day on which the roll
of voters is to close.

469 Variation of order

Variation sought by applicant

(1) An applicant for a ballot order may apply to the Commission, at
any time before the order expires, to vary the ballot order.

Variation sought by ballot agent

(2) The authorised ballot agent for a particular ballot may apply to the
Commission, at any time before the ballot has closed, to vary:
(a) the voting method specified in the ballot order; or
(b) the timetable for the ballot specified in the ballot order.

470 Expiry and revocation of order

(1) If a ballot has not been held within the period specified in the
ballot order, the order expires at the end of that period.

(2) An applicant for a ballot order may apply to the Commission, at
any time before the order expires, to revoke the ballot order.

(3) If the applicant makes an application under subsection (2), the
Commission must revoke the order.

471 Compliance with orders and directions

(1) A person to whom an order or a direction under this Division is
expressed to apply must comply with the order or direction.

Civil remedy provisions

(2) Subsection (1) is a civil remedy provision.

(3) The Court may order a person who has contravened subsection (1)
to pay a pecuniary penalty.
(4) The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.

(5) An application for an order under subsection (3) may be made by:
   (a) an employee who is eligible to be included on the roll of voters for the protected action ballot concerned; or
   (b) an employer of employees referred to in paragraph (a); or
   (c) an applicant for the order for the protected action ballot concerned to be held; or
   (d) a workplace inspector; or
   (e) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

472 Commission to notify parties and authorised ballot agent

(1) As soon as practicable after making a ballot order, the Commission must ensure that a copy of the order is given to each party and to the authorised ballot agent.

(2) As soon as practicable after varying a ballot order, the Commission must ensure that a copy of the variation is given to each party and to the authorised ballot agent.

(3) As soon as practicable after revoking a ballot order, the Commission must ensure that a copy of the revocation is given to each party and to the authorised ballot agent.

Subdivision D—Conduct and results of protected action ballot

473 Conduct of ballot

A ballot is not a protected action ballot unless it is conducted by the authorised ballot agent for the ballot.

474 Form of ballot paper

The ballot paper must be in the prescribed form and must include the following:
   (a) the name of the applicant or the applicant’s agent (as the case requires);
   (b) the types of employees who are to be balloted;
(c) the name of the ballot agent authorised to conduct the ballot;
(d) the question or questions to be put to the relevant employees in the ballot, including the nature of the proposed industrial action;
(e) a statement that the voter’s vote is secret and that the voter is free to choose whether or not to support the proposed industrial action;
(f) instructions to the voter on how to complete the ballot paper;
(g) the day on which the ballot is to close.

475 Who can vote

A person cannot vote in a protected action ballot unless the person’s name is on the roll of voters for the ballot.

476 Declaration of ballot results

As soon as practicable after the day on which the ballot closes, the authorised ballot agent must, in writing:
(a) make a declaration of the results of the ballot; and
(b) inform the parties and the Industrial Registrar of the result.

477 Ballot reports

Report by authorised ballot agent

(1) As soon as practicable after the day on which the ballot closes, the authorised ballot agent must give the Industrial Registrar a written report about the conduct of the ballot.

Note: This subsection is a civil remedy provision: see subsection (7).

(2) A report under subsection (1) must set out details of:
(a) any complaints made to the authorised ballot agent about the conduct of the ballot; and
(b) any irregularities in relation to the conduct of the ballot that have come to the attention of the authorised ballot agent.

(3) Subsection (2) does not limit subsection (1).
Report by authorised independent adviser

(4) As soon as practicable after the end of the voting, the authorised independent adviser (if any) must give the Industrial Registrar a written report about the conduct of the ballot.

Note: This subsection is a civil remedy provision: see subsection (7).

(5) A report under subsection (4) must set out details of:
   (a) any complaints made to the authorised independent adviser about the conduct of the ballot; and
   (b) any irregularities in relation to the conduct of the ballot that have come to the attention of the authorised independent adviser.

(6) Subsection (5) does not limit subsection (4).

Civil remedy provisions

(7) Subsections (1) and (4) are civil remedy provisions.

(8) The Court may order a person who has contravened subsection (1) or (4) to pay a pecuniary penalty.

(9) The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.

(10) An application for an order under subsection (8) may be made by:
   (a) an employee who is eligible to be included on the roll of voters for the protected action ballot concerned; or
   (b) an employer of employees referred to in paragraph (a); or
   (c) an applicant for the order for the protected action ballot concerned to be held; or
   (d) a workplace inspector; or
   (e) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

Definitions

(11) In this section:

   conduct, in relation to a protected action ballot, includes, but is not limited to, the compilation of the roll of voters for the ballot.
irregularity, in relation to the conduct of a protected action ballot, includes, but is not limited to, an act or omission by means of which the full and free recording of votes by all persons entitled to record votes and by no other persons is, or is attempted to be, prevented or hindered.

478 Effect of ballot

(1) Industrial action is authorised by a protected action ballot if:
   (a) the action was the subject of a protected action ballot; and
   (b) at least 50% of persons on the roll of voters for the ballot voted in the ballot; and
   (c) more than 50% of the votes validly cast were votes approving the action; and
   (d) the action commences during the 30-day period beginning on the date of the declaration of the results of the ballot.

   Note: Industrial action must be authorised under this Division if it is to be protected action under Division 3 (unless the action is in response to industrial action by the employer)—see section 445.

(2) However, the action is not authorised to the extent that it occurs after the end of the bargaining period referred to in section 451.

   Note: If another bargaining period is initiated later, and industrial action is proposed for that later period, it can only be authorised if a fresh application for a ballot order is granted, and the other steps required by this Division are completed, during that later period.

(3) The Commission may, by order, extend the 30-day period mentioned in paragraph (1)(d) by up to 30 days if the employer and the applicant for the ballot order jointly apply to the Commission for the period to be extended.

(4) The Commission must not make an order under subsection (3) extending the 30-day period if that period has previously been extended.

479 Registrar to record questions put in ballot, and to publish results of ballot

(1) The Industrial Registrar must, in relation to each protected action ballot that has been held, keep a record of:
   (a) the questions put to voters in the ballot; and
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(b) the results of the ballot declared by the authorised ballot agent under section 476.

(2) The Industrial Registrar must, as soon as practicable after being informed of the results of a ballot by the authorised ballot agent under section 476, publish the results.

Subdivision E—Authorised ballot agents and authorised independent advisers

480 Who may be an authorised ballot agent?

(1) In a ballot order, the Commission may name as the authorised ballot agent:
   (a) the Australian Electoral Commission; or
   (b) another person.

(2) The Commission must not name a person other than the Australian Electoral Commission as the authorised ballot agent for the ballot unless the Commission is satisfied that the person:
   (a) is capable of ensuring the secrecy and security of votes cast in the ballot; and
   (b) is capable of ensuring that the ballot will be fair and democratic; and
   (c) will conduct the ballot expeditiously; and
   (d) is otherwise a fit and proper person to conduct the ballot.

(3) The Commission must not name the applicant as the authorised ballot agent for the ballot unless:
   (a) the applicant nominates another person to be the authorised independent adviser for the ballot; and
   (b) the Commission names the other person as the authorised independent adviser for the ballot.

Note: Section 481 specifies who may be authorised by the Commission to be the independent adviser for a protected action ballot.

(4) If the Commission is satisfied that a person is not sufficiently independent of the applicant, the Commission must not name the person as the authorised ballot agent for the ballot unless:
   (a) the applicant nominates a third person as the authorised independent adviser for the ballot; and
(b) the Commission names the third person as the authorised independent adviser for the ballot.

Note: Section 481 specifies who may be authorised by the Commission to be the independent adviser for a protected action ballot.

(5) The regulations may prescribe:
   (a) conditions that a person must meet in order to satisfy the Commission that the person is a fit and proper person to conduct a ballot; and
   (b) factors to be taken into account by the Commission in determining whether a person is a fit and proper person to conduct a ballot.

481 Who may be an authorised independent adviser?

(1) In a ballot order, the Commission may name a person nominated by the applicant as the authorised independent adviser.

(2) The Commission must not name a person as the authorised independent adviser for the ballot unless the Commission is satisfied that the person:
   (a) is sufficiently independent of the applicant; and
   (b) is capable of giving the authorised ballot agent:
      (i) advice that is; and
      (ii) recommendations that are; directed towards ensuring that the ballot will be fair and democratic; and
   (c) has consented to be so named.

(3) The regulations may prescribe factors to be taken into account by the Commission in determining whether a person is capable of giving an authorised ballot agent:
   (a) advice that is; and
   (b) recommendations that are; directed towards ensuring that a protected action ballot will be fair and democratic.
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Subdivision F—Funding of ballots

482 Liability for cost of ballot

(1) The applicant for a ballot order is liable for the cost of holding the ballot.

(2) If the application for the ballot order was made by joint applicants, each applicant is jointly and severally liable for the cost of holding the ballot.

(3) Subsections (1) and (2) have effect subject to subsections 483(3) and (6).

(4) In this section:

cost of holding the ballot means:

(a) if the applicant, or one of the applicants, is the authorised ballot agent—the costs incurred by the authorised ballot agent in relation to the holding of the ballot; or

(b) otherwise—the amount the authorised ballot agent charges to the applicant or applicants in relation to the holding of the ballot.

483 Commonwealth has partial liability for cost of ballot

Authorised ballot agent someone other than the Australian Electoral Commission

(1) If:

(a) the authorised ballot agent for the ballot is not the Australian Electoral Commission; and

(b) the applicant notifies the Industrial Registrar of the cost of holding the ballot; and

(c) the applicant does so within a reasonable time after the day on which the ballot closed;

the Industrial Registrar must determine how much (if any) of that cost was reasonably and genuinely incurred in relation to the holding of the ballot.

336 Workplace Relations Act 1996
(2) If subsection (1) applies, the Commonwealth is liable to pay to the authorised ballot agent 80% of the amount determined under that subsection.

(3) The applicant is, to the extent of the Commonwealth’s liability under subsection (2), discharged from liability under section 482 for the cost of holding the ballot.

(4) The regulations may prescribe matters to be taken into account by the Industrial Registrar in determining whether costs are reasonably and genuinely incurred in relation to the holding of the ballot.

Authorised ballot agent the Australian Electoral Commission

(5) If the authorised ballot agent for the ballot is the Australian Electoral Commission, the Australian Electoral Commission must certify, within a reasonable time after the completion of the ballot, the amount of the reasonable costs charged by the Australian Electoral Commission to the applicant in relation to holding the ballot.

(6) The applicant is, to the extent of 80% of the amount certified under subsection (5), discharged from liability under section 482 for the cost of holding the ballot.

Definition

(7) In this section:

cost of holding the ballot has the same meaning as in section 482.

484 Liability for cost of legal challenges

(1) The regulations may make provision for who is liable for costs incurred in relation to legal challenges to matters connected with protected action ballots.

(2) The regulations may also make provision for a person who is liable for costs referred to in subsection (1) to be indemnified by another person for some or all of those costs.
(3) For the purposes of sections 482 and 483, costs of holding the ballot do not include costs referred to in subsection (1) of this section.

Subdivision G—Miscellaneous

485 Identity of certain persons not to be disclosed by Commission

(1) The Commission must not disclose information that the Commission has reasonable grounds to believe will identify a person as:

(a) an applicant who is represented by an applicant’s agent; or
(b) a relevant employee who was one of the prescribed number of employees supporting an application for a ballot order (as required by subsection 451(4)); or
(c) a person whose name appears on the roll of voters for a protected action ballot; or
(d) a person who is a party to an AWA.

(2) Each of the following is an exception to subsection (1):

(a) the disclosure is required or authorised by this Act or by another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes of another Act;
(b) the person whose identity is disclosed has, in writing, authorised the disclosure.

486 Persons not to disclose identity of certain persons

(1) A person commits an offence if:

(a) the person discloses information; and
(b) the information is protected information; and
(c) the person has reasonable grounds to believe that the information will identify another person as a person referred to in paragraph 485(1)(a), (b), (c) or (d); and
(d) the disclosure is not made by the person in the course of performing functions or duties:

(i) as a Registry official; or
(ii) as, or on behalf of, an authorised ballot agent; or
(iii) as an authorised independent adviser; and
(e) the disclosure is not required or authorised by this Act or by another Act, by regulations made for the purposes of another provision of this Act, or by regulations made for the purposes of another Act; and

(f) the person whose identity is disclosed has not, in writing, authorised the disclosure.

Penalty: Imprisonment for 6 months.

(2) In this section:

protected information, in relation to a person, means information that the person acquired:

(a) in the course of performing functions or duties as a Registry official; or

(b) in the course of performing functions or duties as, or on behalf of, an authorised ballot agent; or

(c) from a person referred to in paragraph (a) or (b) who acquired the information as mentioned in paragraph (a) or (b).

Registry official means:

(a) the Industrial Registrar; or

(b) a member of the staff of the Industrial Registry (including a Deputy Industrial Registrar).

487 Immunity if person acted in good faith on ballot results

(1) If:

(a) the results of a protected action ballot, as declared by the authorised ballot agent, purported to authorise particular industrial action; and

(b) an organisation or person, acting in good faith on the declared ballot results, organised or engaged in that industrial action; and

(c) it is subsequently determined that the action was not authorised by the ballot;

no action lies against the organisation or person under any law (whether written or unwritten) in force in a State or Territory in respect of the action unless the action involved:

(d) personal injury; or
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(e) wilful or reckless destruction of, or damage to, property; or
(f) the unlawful taking, keeping or use of property.

(2) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.

488 Limits on challenges etc. to ballot orders etc.

(1) An order of the Commission that a person hold a protected action ballot, and any order, direction or decision of the Commission in connection with the order:

(a) is final and conclusive; and
(b) must not be challenged, appealed against, reviewed, quashed, set aside or called in question in any court on any ground; and
(c) is not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, in any court on any ground;

unless subsection (2) applies to the order or decision.

(2) This subsection applies to an order for a protected action ballot, or to an order, direction or decision of the Commission in connection with the order, if:

(a) in proceedings relating to the order, direction or decision, as the case requires, a person claims that another person or persons:

(i) contravened this Division, or an order or direction of the Commission under this Division, if the contravention is not merely a technical breach; or
(ii) misled the Commission (whether by a false statement or by an omission) in such a way as to affect the order, direction or decision; and

(b) the court is satisfied that there are reasonable grounds for the claim.

489 Limits on challenges etc. to ballots

(1) If a protected action ballot has been conducted, or has purportedly been conducted:
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(a) the declaration of the results of the ballot is final and conclusive; and
(b) the declaration of the results of the ballot must not be quashed or set aside by any court on any ground; and
(c) the conduct of the ballot, and the declaration of the results of the ballot, must not be challenged, appealed against, reviewed or called in question, as applicable, in any court on any ground; and
(d) the conduct of the ballot, and the declaration of the results of the ballot, are not subject to mandamus, prohibition, certiorari or injunction, or the making of a declaratory or other order, as applicable, in any court on any ground; unless subsection (2) applies to the conduct or declaration.

(2) This subsection applies to the conduct of a protected action ballot, and to the declaration of the results of a ballot, if:

(a) in proceedings relating to the conduct or declaration, as the case requires, a person claims that another person or persons:
   (i) contravened this Division, or an order or direction of the Commission under this Division, if the contravention is not merely a technical breach; or
   (ii) acted fraudulently in relation to the conduct or declaration; or
   (iii) acted in such a way as to cause an irregularity in relation to the conduct or declaration, being an irregularity that affected the outcome of the ballot; and
(b) the court is satisfied that there are reasonable grounds for the claim.

(3) In this section:

  conduct, in relation to a protected action ballot, includes, but is not limited to, the compilation of the roll of voters for the ballot.

  irregularity, in relation to the conduct or declaration of a protected action ballot, includes, but is not limited to, an act or omission by means of which:

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

490 Penalties not affected

Nothing in section 488 or 489 is to be taken to prevent a penalty being imposed upon a person for a contravention of this Act.

491 Preservation of roll of voters, ballot papers etc.

A person commits an offence if:
(a) the person has conducted a protected action ballot; and
(b) the person was the authorised ballot agent for the ballot; and
(c) the person fails to keep the following for a period of one year after the day on which the ballot closed:
   (i) the roll of voters;
   (ii) all the ballot papers, envelopes and other documents and records relevant to the ballot.

Penalty: Imprisonment for 6 months.

492 Conferral of function on Australian Electoral Commission

(1) If the Australian Electoral Commission is the authorised ballot agent for a protected action ballot, it is a function of the Australian Electoral Commission to conduct the ballot.

(2) If the Australian Electoral Commission is:
   (a) the ballot agent nominated in an application for a ballot order; or
   (b) the authorised ballot agent for such a ballot;
the Australian Electoral Commission cannot make a submission or an application to the Commission seeking to cease having that status in relation to the ballot.

493 Regulations

The regulations may make provision in relation to the following matters:
(a) the qualifications and appointment of applicants’ agents;
(b) procedures to be followed in relation to the conduct of a ballot, or class of ballot, under this Division;

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(c) the qualifications, appointment, powers and duties of scrutineers;
(d) the powers and duties of authorised independent advisers;
(e) the manner in which ballot results are to be published under section 479.
Division 5—Industrial action not to be engaged in before nominal expiry date of workplace agreement or workplace determination

494 Industrial action etc. must not be taken before nominal expiry date of collective agreement or workplace determinations

(1) From the day when:
   (a) a collective agreement; or
   (b) a workplace determination;
comes into operation until its nominal expiry date has passed, an employee, organisation or officer covered by subsection (2) must not organise or engage in industrial action (whether or not that action relates to a matter dealt with in the agreement or determination).

Note 1: This subsection is a civil remedy provision: see subsection (4).

Note 2: Action that contravenes this subsection is not protected action (see section 440).

(2) For the purposes of subsection (1), the following are covered by this subsection:
   (a) an employee who is bound by the agreement or determination;
   (b) an organisation of employees that is bound by the agreement or determination;
   (c) an officer or employee of such an organisation acting in that capacity.

(3) From the time when:
   (a) a collective agreement; or
   (b) a workplace determination;
is made until its nominal expiry date has passed, the employer must not engage in industrial action against an employee whose employment is subject to the agreement or determination (whether or not that industrial action relates to a matter dealt with in the agreement or determination).

Note 1: This subsection is a civil remedy provision: see subsection (4).
Note 2: Action that contravenes this subsection is not protected action (see section 440).

Civil remedy provisions

(4) Subsections (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 subsection (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.

(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 subsection (5), in relation to a contravention of subsection (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 subsection (5), in relation to a contravention of subsection (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.
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Division 5  Industrial action not to be engaged in before nominal expiry date of workplace agreement or workplace determination

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495  Industrial action must not be taken before nominal expiry date of AWA

(1) From the day when an AWA comes into operation until its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.

Note 1: This subsection is a civil remedy provision: see subsection (3).
Note 2: Action that contravenes this subsection is not protected action: see section 440.

(2) From the day when an AWA comes into operation until its nominal expiry date, the employer must not engage in industrial action against the employee.

Note 1: This subsection is a civil remedy provision: see subsection (3).
Note 2: Action that contravenes this subsection is not protected action (see section 440).

Civil remedy provisions

(3) Subsections (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 subsection (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 subsection (4), in relation to a contravention of subsection (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 subsection (4), in relation to a contravention of subsection (2), may be made by:

(a) the employee concerned; or
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(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
   (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.
Division 6—Orders and injunctions against industrial action

496 Orders and injunctions against industrial action—general

Orders relating to action by federal-system employees and employers

(1) If it appears to the Commission that industrial action by an employee or employees, or by an employer, that is not, or would not be, protected action:
   (a) is happening; or
   (b) is threatened, impending or probable; or
   (c) is being organised;
the Commission must make an order that the industrial action stop, not occur and not be organised.

Orders relating to action by non-federal system employees and employers

(2) If it appears to the Commission that industrial action by a non-federal system employee or non-federal system employees, or by a non-federal system employer:
   (a) is:
      (i) happening; or
      (ii) threatened, impending or probable; or
      (iii) being organised; and
   (b) will, or would, be likely to have the effect of causing substantial loss or damage to the business of a constitutional corporation;
the Commission must make an order that the relevant industrial action stop, not occur and not be organised.

(3) For the purposes of subsection (2), and other provisions of this Act as they relate to orders under that subsection:
   (a) non-federal system employee means a person who is an employee, within the ordinary meaning of that word, but who is not covered by the definition of employee in subsection 5(1); and
(b) **non-federal system employer** means a person who is an employer, within the ordinary meaning of that word, but who is not covered by the definition of *employer* in subsection 6(1); and

(c) section 420 (which defines *industrial action*) applies as if references in that section to employees and employers were instead references to non-federal system employees and non-federal system employers.

**Order may be made on application or on Commission’s own initiative**

(4) The Commission may make an order under subsection (1) or (2) on its own initiative, or on the application of:

(a) a person who is affected (whether directly or indirectly), or who is likely to be affected (whether directly or indirectly), by the industrial action; or

(b) an organisation of which a person referred to in paragraph (a) is a member.

**Applications generally to be heard and determined within 48 hours**

(5) As far as practicable, the Commission must hear and determine an application for an order under subsection (1) or (2) within 48 hours after the application is made.

**Interim orders if applications cannot be heard and determined within 48 hours**

(6) If the Commission is unable to determine an application for an order under subsection (1) or (2) within the period referred to in subsection (5), the Commission must (within that period) make an interim order to stop and prevent engagement in, and organisation of, the industrial action referred to in subsection (1) or (2).

(7) However, the Commission must not make such an interim order if the Commission is satisfied that it would be contrary to the public interest to do so.

(8) An interim order is to have effect until the application is determined.
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Commission does not have to specify the industrial action

(9) In ordering under subsection (1), (2) or (6) that industrial action stop, not occur and not be organised, the Commission does not have to specify the particular industrial action.

Obligation to comply with orders

(10) A person to whom an order under subsection (1), (2) or (6) is expressed to apply must comply with the order.

(11) Subsection (10) is a civil remedy provision.

(12) The Court may, on application by a person affected by an order of the Commission under subsection (1), (2) or (6), grant an injunction on such terms as the Court considers appropriate if it is satisfied that another person:

(a) has engaged in conduct that constitutes a contravention of subsection (10); or

(b) is proposing to engage in conduct that would constitute such a contravention.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

Orders do not apply to protected action

(13) An order under subsection (1), or under subsection (6) that relates to an application for an order under subsection (1), does not apply to protected action.

497 Injunction against industrial action if pattern bargaining engaged in in relation to proposed collective agreement

The Court may grant an injunction in such terms as the Court considers appropriate if, on application by any person, the Court is satisfied that:

(a) industrial action in relation to a proposed collective agreement is being engaged in, or is threatened, impending or probable; and

(b) the industrial action is or would be for the purpose of supporting or advancing claims made by a negotiating party to the proposed collective agreement; and

350 Workplace Relations Act 1996
(c) the party is engaged in pattern bargaining in relation to the proposed collective agreement.

Note: For other provisions relating to pattern bargaining, see:
(a) section 431; and
(b) section 439; and
(c) section 461.
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Division 7  Ministerial declarations terminating bargaining periods

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Division 7—Ministerial declarations terminating bargaining periods

498  Minister’s declaration

Making of declaration

(1) The Minister may make a written declaration terminating a specified bargaining period, or specified bargaining periods, if the Minister is satisfied that:

(a) industrial action is being taken, or is threatened, impending or probable; and

(b) the industrial action is adversely affecting, or would adversely affect, the employer or employers who are negotiating parties, or employees of the employer or employers; and

(c) the industrial action is threatening, or would threaten:

(i) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or

(ii) to cause significant damage to the Australian economy or an important part of it.

Note: See also Division 8 (about workplace determinations once a bargaining period has been terminated).

(2) The declaration takes effect on the day that it is made.

Making persons aware of the declaration

(3) The Minister must publish the declaration in the Gazette.

(4) The Minister must inform the Commission of the making of the declaration.

(5) The Minister must, as soon as reasonably practicable, take all reasonable steps to make the negotiating parties to the proposed collective agreement or agreements concerned aware:

(a) of the making of the declaration; and

(b) of the effect of Division 8 (about workplace determinations once a bargaining period has been terminated); and

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(c) that the negotiating parties may agree to submit the matters at issue to an alternative dispute resolution process conducted by the Commission or another provider (see Divisions 4 and 6 of Part 13).

**Restriction on initiating new bargaining period**

(6) The Minister may specify in the declaration that, during a specified period beginning on the day that the declaration is made, a specified person:

(a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed collective agreement or agreements concerned; or

(b) may initiate such a bargaining period only on specified conditions.

**Declaration not a legislative instrument**

(7) A declaration made under subsection (1) is not a legislative instrument.

### 499 Minister’s directions to remove or reduce the threat

(1) If the Minister makes a declaration under 498, the Minister may make the following kinds of written directions if the Minister is satisfied that they are reasonably directed to removing or reducing the threat referred to in paragraph 498(1)(c):

(a) directions requiring specified negotiating parties, or specified employees of an employer who is a negotiating party, to take specified actions;

(b) directions requiring specified negotiating parties, or specified employees of an employer who is a negotiating party, to refrain from taking specified actions.

**Making persons aware of the directions**

(2) The Minister must, as soon as reasonably practicable, take all reasonable steps to make the specified persons concerned aware of the directions.
Part 9 Industrial action
Division 7 Ministerial declarations terminating bargaining periods

Section 499

*Directions not legislative instruments*

(3) Directions made under subsection (1) are not legislative instruments.

*Compliance with directions*

(4) A person must comply with a direction under this section.

*Civil remedy provisions*

(5) Subsection (4) is a civil remedy provision.

(6) The Court may order a person who has contravened subsection (4) to pay a pecuniary penalty.

(7) The pecuniary penalty cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.

(8) An application for an order under subsection (6) may be made by a workplace inspector.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.
Division 8—Workplace determinations

500 Application of Division

This Division applies if a bargaining period has been terminated:

(a) on the ground set out in subsection 430(3); or

(b) because a declaration has been made under Division 7.

501 Definitions

In this Division:

*matters at issue* means the matters that were at issue during the bargaining period.

*negotiating period* has the meaning given by section 502.

502 Negotiating period

(1) The *negotiating period* is the period that:

(a) starts on the day on which the bargaining period was terminated; and

(b) ends:

(i) if the Commission has not extended the period under subsection (2)—21 days after that day; or

(ii) if the Commission has so extended the period—42 days after that day.

(2) The Commission must extend the period if:

(a) all of the negotiating parties apply to the Commission for an extension under this subsection within 21 days after the day on which the bargaining period was terminated; and

(b) the negotiating parties have not settled the matters at issue (whether or not by making a workplace agreement).

503 When Full Bench must make workplace determination

(1) The Commission must make a determination (a *workplace determination*) under this section if:

(a) the negotiating period has ended; and
Section 504

(b) the negotiating parties have not settled the matters at issue (whether or not by making a workplace agreement).

(2) The workplace determination can be made only by a Full Bench.

(3) The Full Bench must make the workplace determination as quickly as practicable after the end of the negotiating period.

(4) For the purposes of paragraph (1)(b), the negotiating parties are taken not to have settled the matters at issue if:
   (a) the negotiating parties make a workplace agreement purporting to settle the matters at issue; and
   (b) the workplace agreement is not approved in accordance with section 340.

(5) Workplace determinations are not legislative instruments.

504 Content of workplace determination

(1) The workplace determination must contain terms that, in the opinion of the Full Bench, deal with the matters at issue.

(2) The workplace determination comes into operation on the day on which it is made.

(3) The workplace determination must contain a term specifying a nominal expiry date for the determination that is no later than 5 years after the date on which the determination commences operating.

(4) The workplace determination must not contain prohibited content.

(5) In deciding which terms to include in the workplace determination, the Full Bench must have regard to the following factors only:
   (a) the matters at issue;
   (b) the merits of the case;
   (c) the interests of the negotiating parties and the public interest;
   (d) how productivity might be improved in the business or part of the business concerned;
   (e) the extent to which the conduct of the negotiating parties during the bargaining period was reasonable;
   (f) incentives to encourage parties to pursue negotiated outcomes at a later stage;
(g) the employer’s capacity to pay;
(h) decisions of the AFPC;
(i) any other factors specified in the regulations.

(6) The workplace determination must require disputes about matters arising under the determination to be dealt with in accordance with the model dispute resolution process (see Part 13).

(7) The workplace determination must not contain any terms other than those required by this section.

505 Who is bound by a workplace determination?

A workplace determination binds:

(a) the negotiating parties referred to in subsection 503(1)(b);

and

(b) all employees whose employment is subject to the determination.

506 Act applies to workplace determination as if it were a collective agreement

(1) Subject to this section, this Act applies to the workplace determination as if it were a collective agreement in operation.

(2) The following provisions do not apply to the workplace determination:

(a) section 351 (persons bound by workplace agreements);

(b) Subdivision A of Division 7 of Part 8 (content of workplace agreements);

(c) Division 8 of Part 8 (varying workplace agreements).

(3) Subdivision B of Division 9 of Part 8 (termination by approval (pre-lodgment procedures)) applies in relation to the workplace determination, but only after the determination has passed its nominal expiry date.

(4) Despite sections 347(5), the workplace determination ceases to be in operation in relation to an employee if a collective agreement that binds the employee is lodged, even if this happens before the nominal expiry date of the determination.
Part 9  Industrial action
Division 9  Payments in relation to periods of industrial action

Section 507

Division 9—Payments in relation to periods of industrial action

507  Payments not to be made or accepted in relation to periods of industrial action

(1) This section applies if an employee engaged, or engages, in industrial action (whether or not protected action) in relation to an employer on a day.

(2) The employer must not make a payment to an employee in relation to:

(a) if the total duration of the industrial action on that day is less than 4 hours—4 hours of that day; or

(b) otherwise—the total duration of the industrial action on that day.

Note: This subsection is a civil remedy provision: see subsection (6).

(3) If:

(a) the industrial action is during a shift (or other period of work); and

(b) the shift (or other period of work) occurs partly on 1 day and partly on the next day;

then, for the purposes of this section, the shift is taken to be a day and the remaining parts of the days are taken not to be part of that day.

Example: An employee, who is working a shift from 10 pm on Tuesday until 7 am on Wednesday, engages in industrial action from 11 pm on Tuesday until 1 am on Wednesday. That industrial action would prevent the employer making a payment to the employee in relation to 4 hours of the shift, but would not prevent the employer from making a payment in relation to the remaining 5 hours of the shift.

(4) For the purposes of subsection (3), overtime is taken not to be a separate shift.

(5) An employee must not accept a payment from an employer if the employer would contravene subsection (2) by making the payment.

Note: This subsection is a civil remedy provision: see subsection (6).
Civil remedy provisions

(6) Subsections (2) and (5) are civil remedy provisions.

(7) The Court may make one or more of the following orders in relation to a person who has contravened subsection (2) or (5):
   (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;
   (c) any other consequential orders.

(8) The pecuniary penalty under paragraph (7)(a) cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.

(9) An application for an order under subsection (7) may be made by:
   (a) a workplace inspector; or
   (b) a person who has an interest in the matter; or
   (c) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

(10) A regulation prescribing persons for the purposes of paragraph (9)(c) may limit its application to specified circumstances.

508 Organisations not to take action for payments in relation to periods of industrial action

(1) An organisation, or an officer, member or employee of an organisation, must not:
   (a) make a claim for an employer to make a payment to an employee in relation to a day during which the employee engaged, or engages, in industrial action; or
   (b) organise or engage in, or threaten to organise or engage in, industrial action against an employer with intent to coerce the employer to make such a payment.

Note: This subsection is a civil remedy provision: see subsection (4).

(2) For the purposes of subsection (1), action done by one of the following bodies or persons is taken to have been done by an organisation:
(a) the committee of management of the organisation;
(b) an officer, employee or agent of the organisation acting in that capacity;
(c) a member or group of members of the organisation acting under the rules of the organisation;
(d) a member of the organisation, who performs the function of dealing with an employer on behalf of the member and other members of the organisation, acting in that capacity.

(3) Paragraphs (2)(c) and (d) do not apply if:
   (a) a committee of management of the organisation; or
   (b) a person authorised by the committee; or
   (c) an officer of the organisation;
has taken reasonable steps to prevent the action.

Civil remedy provisions

(4) Subsection (1) is a civil remedy provision.

(5) The Court may make one or more of the following orders in relation to a person who has contravened subsection (1):
   (a) an order imposing a pecuniary penalty on the person;
   (b) an order requiring the person to pay to the employer concerned compensation of such amount as the Court thinks appropriate;
   (c) injunctions, and any other orders, that the Court considers necessary to stop the contravention or remedy its effects;
   (d) any other consequential orders.

(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) The Court must not make an order under paragraph (5)(b) if the employer concerned has contravened subsection 507(2) in connection with the contravention of subsection (1) of this section.

(8) An application for an order under subsection (5) may be made by:
   (a) the employer concerned; or
   (b) a workplace inspector; or
   (c) a person who has an interest in the matter; or
(d) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.

(9) A regulation prescribing persons for the purposes of paragraph (8)(d) may limit its application to specified circumstances.

509 Persons not to coerce people for payments in relation to periods of industrial action

(1) A person must not take, or threaten to take, action that would have the effect of directly or indirectly prejudicing the engagement, or possible engagement, of another person as an independent contractor with the intention of coercing the other person to make a payment to an employee of the other person in relation to a day on which the employee engaged or engages in industrial action (whether or not protected action).

Civil remedy provisions

(2) Subsection (1) is a civil remedy provision.

(3) The Court may make one or more of the following orders in relation to a person who has contravened subsection (1):
   (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;
   (c) any other consequential orders.

(4) The pecuniary penalty under paragraph (3)(a) cannot be more than 300 penalty units for a body corporate or 60 penalty units in any other case.

(5) An application for an order under subsection (3) may be made by:
   (a) the other person referred to in subsection (1); or
   (b) a workplace inspector; or
   (c) a person who has an interest in the matter; or
   (d) any other person prescribed by the regulations.

Note: For other provisions about civil remedy provisions, see Division 3 of Part 14.
Section 509

(6) A regulation prescribing persons for the purposes of paragraph (5)(d) may limit its application to specified circumstances.

*Interpretation*

(7) In this section, a reference to an independent contractor is not confined to a natural person.
Part 10—Awards

Division 1—Preliminary

510 Objects of Part

The objects of this Part are:

(a) to ensure that minimum safety net entitlements are protected through a system of enforceable awards maintained by the Commission; and

(b) to ensure that awards are rationalised and simplified so they are less complex and are more conducive to the efficient performance of work; and

(c) to ensure that the Commission performs its functions under this Part in a way that:

(i) encourages the making of agreements between employers and employees at the workplace or enterprise level; and

(ii) protects the competitive position of young people in the labour market, promotes youth employment, youth skills and community standards, and assists in reducing youth unemployment.

511 Performance of functions by the Commission

(1) The Commission must perform its functions under this Part in a way that furthers the objects of this Act and, in particular, the objects of this Part.

(2) In performing its functions under this Part, the Commission must have regard to:

(a) the desirability of high levels of productivity, low inflation, creation of jobs and high levels of employment; and

(b) decisions of the AFPC, and, in particular, the need to ensure that Commission decisions are not inconsistent with AFPC decisions; and

(c) the importance of providing minimum safety net entitlements that do not act as a disincentive to bargaining at the workplace level.
512 Extraterritorial extension

(1) This Part, and the rest of this Act so far as it relates to this Part, extend:
   (a) to an employee outside Australia who meets any of the conditions in this section; and
   (b) to the employee’s employer (whether the employer is in or outside Australia); and
   (c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

In Australia’s exclusive economic zone

(2) One condition is that the employee is in Australia’s exclusive economic zone and either:
   (a) is an employee of an Australian employer and is not prescribed by the regulations as an employee to whom this subsection does not apply; or
   (b) is an employee prescribed by the regulations as an employee to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

On Australia’s continental shelf outside exclusive economic zone

(3) Another condition is that the employee:
   (a) is outside the outer limits of Australia’s exclusive economic zone, but is in, on or over a part of Australia’s continental shelf prescribed by the regulations for the purposes of this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
   (b) meets the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.
Outside Australia’s exclusive economic zone and continental shelf

(4) Another condition is that the employee:
   (a) is neither in Australia’s exclusive economic zone nor in, on or over a part of Australia’s continental shelf described in paragraph (3)(a); and
   (b) is an Australian-based employee of an Australian employer; and
   (c) is not prescribed by the regulations as an employee to whom this subsection does not apply.

Definition

(5) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 2—Terms that may be included in awards

Subdivision A—Allowable award matters

513 Allowable award matters

(1) Subject to this Part, an award may include terms about the following matters (allowable award matters) only:

(a) ordinary time hours of work and the time within which they are performed, rest breaks, notice periods and variations to working hours;

(b) incentive-based payments and bonuses;

(c) annual leave loadings;

(d) ceremonial leave;

(e) leave for the purpose of seeking other employment after the giving of a notice of termination by an employer to an employee;

(f) 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;

(g) days to be substituted for, or a procedure for substituting, days referred to in paragraph (f);

(h) 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;

(i) loadings for working overtime or for shift work;

(j) penalty rates;

(k) redundancy pay, within the meaning of subsection (4);

(l) stand-down provisions;

(m) dispute settling procedures, but only as provided by section 514;
(n) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;

(o) conditions 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.

Note 1: The matters referred to in subsection 513(1) have a meaning that is affected by section 515.

Note 2: Entitlements relating to certain matters that were allowable award matters immediately before the reform commencement are preserved under Division 3.

Note 3: Certain allowable award matters are protected in workplace agreements as protected award conditions—see section 354.

(2) A matter referred to in subsection (1) is an allowable award matter only to the extent that the matter pertains to the relationship between employers bound by the award and employees of those employers.

(3) An award may include terms about the matters referred to in subsection (1) only to the extent that the terms provide minimum safety net entitlements.

(4) For the purposes of paragraph (1)(k), redundancy pay means redundancy pay in relation to a termination of employment that is:

(a) by an employer of 15 or more employees; and

(b) either:

(i) at the initiative of the employer and on the grounds of operational requirements; or

(ii) because the employer is insolvent.

(5) For the purposes of paragraph (4)(a):

(a) whether an employer employs 15 or more employees, or fewer than 15 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 employees includes a reference to:
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(i) the employee who becomes redundant and any other employee who becomes redundant at the relevant time; and  
(ii) any casual employee who, at the relevant time, has been engaged by the employer on a regular and systematic basis for at least 12 months (but not including any other casual employee).  

(6) For the purposes of paragraph (1)(o):  

*conditions* does not include pay.  

*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.  

514 Dispute settling procedures  

(1) Each award is taken to include a term that specifies a model dispute resolution process in the same terms as the model dispute resolution process set out in Division 1 of Part 13, and a term providing for any other dispute settling process or procedure is taken not to be about an allowable award matter for the purposes of paragraph 513(1)(m).  

(2) The dispute settling process included in an award may only be used to resolve disputes:  

(a) about matters arising under the award; and  
(b) between persons bound by the award.  

515 Matters that are not allowable award matters  

(1) For the purposes of subsection 513(1), matters that are not allowable award matters within the meaning of that subsection include, but are not limited to, the following:  

(a) rights of an organisation of employers or employees to participate in, or represent an employer or 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;  

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(b) conversion from casual employment to another type of employment;
(c) the number or proportion of employees that an employer may employ in a particular type of employment;
(d) prohibitions (whether direct or indirect) on an employer employing employees in a particular type of employment;
(e) the maximum or minimum hours of work for regular part-time 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 an award:
   (a) terms setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work;
   (b) terms facilitating a regular pattern in the hours worked by regular part-time employees.

(3) Paragraph (1)(g) does not limit the operation of paragraph 513(1)(o).

(4) In this section:

   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:
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(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 Part, references to independent contractors are not confined to natural persons (see subsection 4(2)).  

516 Matters provided for by the Australian Fair Pay and Conditions Standard  

(1) A matter for which provision is made by the Australian Fair Pay and Conditions Standard is not an allowable award matter, except as mentioned in subsection (2).  

(2) Despite subsection (1), an award may include a term about ordinary time hours of work.  

Note: An award may also include preserved award terms (see section 520).  

517 Awards may not include terms involving discrimination and preference  

To the extent that a term of an 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 award matters.  

518 Awards may not include certain terms about rights of entry  

To the extent that a term of an award requires or authorises an officer or employee of an organisation:  

(a) to enter premises:  
   (i) occupied by an employer that 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 an employee on such premises;  

it is taken not to be about allowable award matters.
519 Awards may not include enterprise flexibility provisions

To the extent that a term of an award is an enterprise flexibility provision within the meaning of section 113A of this Act as in force immediately before the reform commencement, it is taken not to be about allowable award matters.

Subdivision B—Other terms that are permitted to be in awards

520 Preserved award terms

An award may include preserved award terms (see Division 3).

521 Facilitative provisions

(1) An award may include a facilitative provision that allows agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how a term in the award about an allowable award matter or a preserved award term is to operate.

(2) A facilitative provision must not require agreement between a majority of employees and an employer, but must permit agreement between an individual employee and an employer, on how a term in an award about an allowable award matter or a preserved award term is to operate.

(3) A facilitative provision may only operate in respect of an allowable award matter or a preserved award term.

(4) A facilitative provision is of no effect to the extent that it does not comply with subsections (2) and (3).

522 Incidental and machinery terms

(1) An award may include terms that are:
   (a) incidental to an allowable 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 section, to the extent that a term of an award is about a matter that is not an allowable award matter...
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because of the operation of section 515, 517, 518 or 519, the term is not, and cannot be, incidental to an allowable award matter, and is of no effect to that extent.

(3) However, to avoid doubt, paragraph 515(1)(g) does not limit the operation of subsections (1) and (4) to the extent that those subsections relate to the matter referred to in paragraph 513(1)(o).

(4) An award may include machinery provisions including, but not limited to, provisions about the following:
   (a) commencement;
   (b) definitions;
   (c) titles;
   (d) arrangement;
   (e) employers, employees and organisations;
   (f) term of the award.

523 Anti-discrimination clauses

An award may include a model anti-discrimination clause.

524 Boards of reference

(1) An award may include, in accordance with subsection (2) or (3), 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 subsection (4).

(2) A term of a pre-reform 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 subsection (4); and
   (b) to cease to have effect after the reform commencement, to the extent that it does not comply with subsection (4).

(3) An award (the rationalised award) made under section 539 or varied under section 544 may include a term that appoints, or gives power to appoint, a board of reference, but the term has effect only to the extent that:

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Section 524

(a) the term was included in one or more of the following awards (the replaced award):
   (i) any award that the rationalised award has the effect of replacing;
   (ii) if the rationalised award is an award varied under section 544—the award as in force immediately before the variation; and
(b) the functions of the board of reference that relate to preserved award terms relate only to preserved award terms that were included in the replaced award immediately before the making or variation of the rationalised award; and
(c) the term complies with subsection (4).

(4) A term of an 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.

(5) A function conferred under subsection (4) may relate only to allowable award matters or terms permitted by this Subdivision to be included in the award.

(6) A board of reference may consist of or include a Commissioner.

(7) Subject to this section, 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.
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Section 525

Subdivision C—Terms in awards that cease to have effect

525 Terms in awards that cease to have effect after the reform commencement

(1) Immediately after the reform commencement, a term of an award ceases to have effect to the extent that it is about matters that are not allowable award matters, except to the extent (if any) that the term is permitted by Subdivision B to be included in the award.

(2) This section does not affect the operation of preserved award terms.

Subdivision D—Regulations relating to part-time employees

526 Award conditions for part-time employees

(1) The regulations may do either or both of the following in relation to an award:

   (a) provide for the award to have effect so that a part-time employee is entitled to conditions to which a full-time employee is entitled under the award;

   (b) provide for the award to have effect so that conditions to which a part-time employee is otherwise entitled under the award (including because of paragraph (a)) are adjusted (in accordance with the regulations or a method set out in the regulations) in proportion to the hours worked by the part-time employee.

(2) The award has effect accordingly.
Division 3—Preserved award entitlements

527 Preservation of certain award terms

(1) A preserved award term is a term, or more than one term, of an award that is about a matter referred to in subsection (2), and:
   (a) if the award is a pre-reform award that has not been varied under section 544—was in effect immediately before the reform commencement; or
   (b) in any other case—is taken to be included in the award because of the operation of section 528.

Note: Section 525, which provides for certain terms of awards to cease immediately after the reform commencement, does not affect the operation of preserved award terms—see subsection 525(2).

(2) For the purposes of subsection (1), the matters are as follows:
   (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.

(3) If a term of an award referred to in subsection (1) is about both matters referred to in subsection (2) and other matters, it is taken to be a preserved award term only to the extent that it is about the matters referred to in subsection (2).

(4) If more than one term of an award is about a matter referred to in subsection (2), then those terms, taken together, constitute the preserved award term of that award about that matter.

(5) A preserved award term about the matter referred to in paragraph (2)(g) (superannuation) ceases to have effect at the end of 30 June 2008.

(6) A preserved award term continues to have effect for the purposes of this Act.

Note: Preserved award terms may not be varied.
Part 10  Awards  
Division 3  Preserved award entitlements

Section 528

(7) In this section:

personal/carer’s leave includes war service sick leave, infectious diseases sick leave and other like forms of sick leave.

(8) The regulations may provide that for the purposes of subsection (2):

(a) the matter referred to in paragraph (2)(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:
   (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.

(9) Regulations under subsection (8) 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.

528 Preserved award terms of rationalised awards

(1) This section applies to an award (the rationalised award) if:

(a) the award is made under section 539 or is varied under section 544; and

(b) immediately before the making or variation, a preserved award term was included in one or more of the following awards (the replaced award):
   (i) any award that the rationalised award has the effect of replacing;

376 Workplace Relations Act 1996
(ii) if the rationalised award is an award varied under section 544—the award as in force immediately before the variation.

Note: A replaced award may be either an award made under section 539 or a pre-reform award (which may subsequently have been varied).

(2) The preserved award term of the replaced award is taken to be included in the rationalised award.

(3) The preserved award term is taken to have the effect that:
   (a) employees belonging to the class of employees that had entitlements under the preserved award term of the replaced award have corresponding entitlements under the rationalised award; and
   (b) employees belonging to any class of employees that did not have entitlements under the preserved award term of the replaced award do not gain entitlements under the rationalised award.

Note: This means that the class of employees who had preserved award entitlements under replaced awards retain those preserved award entitlements after award rationalisation, but the class of employees who have such entitlements is not expanded.

(4) The preserved award term is taken to have the effect that:
   (a) only an employer bound by the preserved award term of the replaced award is bound by the corresponding preserved award term of the rationalised award; and
   (b) other employers are not so bound.

Note 1: This means that the class of employers bound by preserved award terms is not expanded as a result of award rationalisation.

Note 2: The operation of this subsection is affected by Part 11, which deals with transmission of business.

(5) For the purposes of subsection (3), whether an employee belongs to a class of employees that had entitlements under a preserved award term of a replaced award is to be determined without reference to whether the employee was employed before or after the making of the rationalised award.

529 When preserved award entitlements have effect

(1) This section applies to an employee if:
(a) the employee’s employment is regulated by an award that includes a preserved award term about a matter; and
(b) the employee has an entitlement (the preserved award entitlement) in relation to that matter under the preserved award term.

(2) If:
(a) the preserved award term is about a matter referred to in paragraph 527(2)(a), (b) or (c); and
(b) the employee’s preserved 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 award entitlement has effect in accordance with the preserved award term. Otherwise, the employee’s entitlement under the Australian Fair Pay and Conditions Standard has effect.

Note: See section 530 for the meaning of more generous.

(3) If:
(a) the preserved award term is about a matter referred to in paragraph 527(2)(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 award term is about a matter referred to in paragraph 527(2)(d), (e), (f) or (g);
the employee’s preserved award entitlement has effect in accordance with the preserved award term.

Note 1: Preserved award terms relating to matters referred to in paragraph 527(2)(g) cease to have effect at the end of 30 June 2008—see subsection 527(5).

Note 2: Subsection 16(2) provides that State laws dealing with long service leave, jury service or superannuation (among other things) are not excluded by this Act, but section 17 provides that awards prevail over State laws to the extent of any inconsistency.

530 Meaning of more generous

(1) Whether an employee’s entitlement under a preserved 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 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 Division.

531 Modifications that may be prescribed—personal/carer’s leave

(1) The regulations may provide that a preserved award term about personal/carer’s leave is to be treated as a separate preserved award term about separate matters, to the extent that the preserved 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.

(2) If the regulations so provide, sections 527, 528, 529 and 530 have effect 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 subsection 529(3).

532 Modifications that may be prescribed—parental leave

(1) The regulations may provide that a preserved award 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 award 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) sections 527, 528 and 529 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 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 subsection 529(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.

533 Preserved award terms—employers bound after reform commencement

An employer that was not bound by a particular award immediately before the reform commencement, but is subsequently bound by the award under section 557, is not bound by any preserved award terms included in the award.
Division 4—Award rationalisation and award simplification

Subdivision A—Award rationalisation

534 Commission’s award rationalisation function

(1) It is a function of the Commission to undertake award rationalisation.

(2) Award rationalisation is to be carried out in accordance with a written request (an award rationalisation request) made to the President by the Minister.

(3) Each award rationalisation request must specify:
   (a) the award rationalisation process that is to be undertaken under this section; and
   (b) the principles to be applied by the Commission in undertaking the award rationalisation process; and
   (c) the time by which the award rationalisation process must be completed, which must not be later than 3 years after the making of the request.

(4) Principles under paragraph (3)(b) relating to an award rationalisation request may include, but are not limited to the following:
   (a) the awards to which the award rationalisation process relates;
   (b) the nature of, and the extent of the coverage of, awards that may be made as a result of the award rationalisation process;
   (c) subject to this Act, the matters that may be included in such awards and limits on the matters that may be included in such awards.

(5) An award rationalisation request may be varied or revoked by the Minister by written instrument.

(6) The following are not legislative instruments:
   (a) an award rationalisation request;
   (b) an instrument under subsection (5).
535 Commission must deal with State-based differences

(1) In undertaking the first award rationalisation process requested under subsection 534(2), the Commission must ensure that:
   (a) terms and conditions of employment included in awards are not determined by reference to State or Territory boundaries; and
   (b) awards have effect in each State and Territory.

(2) If the award rationalisation request under which the first award rationalisation process is undertaken is not expressed to relate to all awards, the Commission must nevertheless review all awards as part of that award rationalisation process to the extent necessary to satisfy the requirements of subsection (1).

(3) In undertaking subsequent award rationalisation processes, the Commission must ensure that:
   (a) terms and conditions of employment included in awards made or varied as a result of the subsequent award rationalisation process are not determined by reference to State or Territory boundaries; and
   (b) an award made or varied as a result of the subsequent award rationalisation process has effect in each State and Territory.

(4) This section does not affect the operation of Division 3.

536 Award rationalisation to be undertaken by Full Bench

As soon as practicable after receiving an award rationalisation request, the President must establish one or more Full Benches to undertake the award rationalisation process requested.

537 Award rationalisation request to be published

(1) As soon as practicable after receiving an award rationalisation request, the President must give a copy of the request to a Registrar.

(2) The Registrar must publish the request as follows:
   (a) if requirements relating to publication are prescribed by the regulations—in accordance with those requirements;
   (b) if no such requirements are prescribed—in such manner as the Registrar thinks appropriate.
538 Minister may intervene

The Minister may intervene in a proceeding that relates to an award rationalisation process.

539 Making awards as a result of award rationalisation

A Full Bench may make one or more awards to give effect to the outcome of an award rationalisation process.

540 Making awards as a result of award rationalisation

The Commission must not make an award other than under section 539.

541 Awards may not include certain terms

A Full Bench must not include a term in an award made under section 539 if the term may not be included in the award because of the operation of Division 2.

542 Awards must include term about regular part-time employment

A Full Bench must include in an award made under section 539 a term providing for regular part-time employment.

Note: Clauses 15.3.1 to 15.3.5 of the Hospitality Industry—Accommodation, Hotels, Resorts and Gaming Award 1998 provide a model (see the Award Simplification Decision at P7500).

543 Who is bound by awards

(1) An award made under section 539 binds the employers, employees and organisations that it is expressed to bind.

Note: An award may be expressed to bind additional employers, employees and organisations under Division 6 and may bind eligible entities under Division 7.

(2) An award must be expressed to bind the following:

(a) specified employers;

(b) specified employees of employers bound by the award, in respect of work that is expressed to be regulated by the award.
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(3) An award may be expressed to bind one or more specified organisations.

(4) For the purposes of subsections (2) and (3):
   (a) employers may be specified by name or by inclusion in a specified class or specified classes; and
   (b) employees must be specified by inclusion in a specified class or specified classes; and
   (c) organisations must be specified by name.

(5) Without limiting the way in which a class may be described for the purposes of subsection (4), the class may be described by reference to a particular industry or particular kinds of work.

(6) The power of the Commission under subsections (2) and (3) must be exercised in accordance with the terms of the award rationalisation request to which the making of the award relates.

544 Variation of awards as part of award rationalisation

(1) The Commission may make an order varying an award to give effect to the outcome of an award rationalisation process.

(2) The Commission must not vary an award under this section in such a way that the award includes a term that may not be included in the award because of the operation of Division 2.

(3) If the Commission varies an award under this section, the Commission must include in the award a term providing for regular part-time employment, unless such a term is already included in the award.

Note: Clauses 15.3.1 to 15.3.5 of the Hospitality Industry—Accommodation, Hotels, Resorts and Gaming Award 1998 provide a model (see the Award Simplification Decision at P7500).

(4) If the Commission varies an award under this section, it must specify the additional employers, employees and organisations (if any) bound by the award.

Note: An award may also be varied to bind eligible entities and employers under Division 7.

(5) For the purposes of subsection (4), employers, employees and organisations must be specified in the same manner, and subject to
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the same limitations, as provided in subsections 543(2) to (6) in relation to awards made under section 539.

545 Revocation of awards as part of award rationalisation

The Commission may make an order revoking an award to give effect to the outcome of an award rationalisation process.

546 Preserved award terms

To avoid doubt, the Commission’s power under this Division to make or vary an award is subject to, and must not be exercised in a manner that is inconsistent with, Division 3.

Subdivision B—Award simplification

547 Review and simplification of awards

(1) The Commission must review all awards for the purpose of determining whether the awards include terms that may not be included in awards under this Part.

Note: Division 2 deals with terms that may be included in awards.

(2) The Commission may review awards for this purpose at the same time as reviewing them for other purposes.

(3) The Commission must carry out the review:

(a) within the period prescribed by the regulations; and

(b) in accordance with any directions prescribed by the regulations.

(4) After reviewing an award, the Commission must make an order varying the award to the extent (if any) necessary to ensure that the award includes only terms that may be included under this Part.

(5) After reviewing an award, the Commission must make an order revoking the award if the Commission is satisfied that the award is obsolete or no longer capable of operating.

548 Principles for award simplification

(1) A Full Bench may (subject to section 547) establish principles for the review and simplification of awards under section 547.
(2) Principles under subsection (1) may relate to the following:
   (a) the making or varying of awards in relation to each of the allowable award matters;
   (b) terms that may be included in awards (including, subject to Division 2, about allowable award matters).

(3) After principles (if any) have been established under subsection (1), the power of the Commission to vary an award is exercisable only in a manner consistent with those principles.

(4) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.

(5) After making such investigation (if any) as is necessary, a member given a direction under subsection (4) must provide a report to the President or Full Bench.

(6) To avoid doubt, principles under subsection (1) must be consistent with, and cannot be such as to override, a provision of this Act that relates to the variation of awards.

549 Minister may intervene

The Minister may intervene in a proceeding that relates to an award simplification process.

Subdivision C—Special technical requirements

550 Inclusion of preserved award terms in written awards

(1) This section applies if a preserved award term is taken under Division 3 to be included in an award (a rationalised award) made under section 539 or varied under section 544.

(2) In reducing the rationalised award to writing as required by section 567, the Commission must:
   (a) include the preserved award term in the rationalised award;
   (b) identify it as a preserved award term; and
   (c) identify the employers bound by the preserved award term; and
   (d) identify the employees bound by the preserved award term.
(3) If more than one preserved award term to the same substantive effect is taken under Division 3 to be included in the rationalised award:

(a) paragraph (2)(a) requires that the preserved award term be included only once in the rationalised award; and

(b) to avoid doubt, paragraphs (2)(b), (c) and (d) have effect according to their terms in relation to the preserved award term.

(4) For the purposes of paragraphs (2)(c) and (d) respectively:

(a) employers may be identified by name or by inclusion in a specified class or specified classes; and

(b) employees must be identified by inclusion in a specified class or specified classes.

(5) Without limiting the way in which a class may be described for the purposes of this section, the class may be described by reference to a particular industry or particular kinds of work.

551 Reprints of varied awards

(1) If an award is varied under this Division, the Registrar must, as soon as practicable after receiving a copy of the order varying the award under subsection 567(2), publish a consolidated reprint of the award as varied.

(2) To avoid doubt, this requirement is in addition to, and not instead of, the requirements of Division 8.
Division 5—Variation and revocation of awards

Subdivision A—Variation of awards

552 Variation of awards—general

(1) The Commission must not make an order varying an award except:
   (a) as a result of an award rationalisation process; or
   (b) as a result of an award simplification process; or
   (c) if the variation is essential to the maintenance of minimum safety net entitlements (see section 553); or
   (d) on a ground set out in section 554; or
   (e) to bind additional employers, employees or organisations in accordance with section 557; or
   (f) under section 812; or
   (g) in circumstances prescribed by the regulations for the purposes of this paragraph.

Note: The variation that the Commission can make as a result of an award rationalisation process is affected by sections 533 and 550.

(2) The Commission must not vary a preserved award term.

(3) The Commission must not vary a facilitative provision within the meaning of section 521 except:
   (a) as a result of an award rationalisation process; or
   (b) as a result of an award simplification process; or
   (c) on a ground set out in section 554.

(4) The Commission must not vary a term taken to be included in an award by section 514 (which deals with dispute settling procedures).

553 Variation of awards if essential to maintain minimum safety net entitlements

(1) An employer, employee or organisation bound by an award may apply to the Commission for an order varying the award on the ground that that the variation is essential to the maintenance of minimum safety net entitlements.
(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award, and any other interested persons and bodies, are made aware of the application.

(3) The Minister may intervene in relation to the application.

(4) The Commission may make an order under this subsection varying the award only if the Commission is satisfied that:
- the variation is essential to the maintenance of minimum safety net entitlements; and
- all of the following conditions are met:
  - the award as varied would not be inconsistent with decisions of the AFPC;
  - the award as varied would provide only minimum safety net entitlements for employees bound by the award;
  - the award as varied would not be inconsistent with the outcomes (if any) of award simplification and award rationalisation;
  - the making of the variation would not operate as a disincentive to agreement-making at the workplace level;
  - such other requirements prescribed by the regulations (if any) for the purposes of this paragraph have been satisfied.

554 Variation of awards—other grounds

(1) The Commission may, if it considers that an award or a term of an award is ambiguous or uncertain, make an order varying the award so as to remove the ambiguity or uncertainty.

(2) If an 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 subsection (2):
- the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award is made aware of the hearing; and
(b) the Sex Discrimination Commissioner may intervene in the proceeding.

(4) If the Commission considers that an award reviewed under subsection (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 an employer or organisation bound by an award, make an order varying a term of the award referring by name to an employer or organisation bound by the award:

(a) to reflect a change in the name of the employer or organisation; or

(b) if:

   (i) the registration of the organisation has been cancelled;
   or
   
   (ii) the employer or organisation has ceased to exist;
   to omit the reference to its name.

(6) The onus of demonstrating that an award should be varied as set out in an application under subsection (5) rests with the applicant.

(7) In this section:

   *discriminatory award* means an 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.
Subdivision B—Revocation of awards

555 Revocation of awards—general

The Commission must not make an order revoking an award except:

(a) as a result of an award rationalisation process; or
(b) as a result of an award simplification process; or
(c) if the award is obsolete or no longer capable of operating (see section 556).

556 Revocation of awards—award obsolete or no longer capable of operating

(1) An employer, employee or organisation bound by an award may apply to the Commission to have the award revoked on the ground that the award is obsolete or is no longer capable of operating.

(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award is made aware of the application.

(3) The Commission must make an order revoking the award if it is satisfied that:
(a) the award is obsolete or is no longer capable of operating; and
(b) revocation of the award would not be contrary to the public interest.
Division 6—Binding additional employers, employees and organisations to awards

557 Binding additional employers, employees and organisations to an award

(1) The Commission may make an order varying an award to bind an employer, employee or organisation to the award.

Note 1: Section 539 enables the Commission to make awards binding specified employers, employees and organisations.

Note 2: Pre-reform awards are taken to bind certain employers, employees and organisations. A pre-reform award may be varied under section 544 in a manner that affects who is bound.

Note 3: An award may also be varied to bind eligible entities and employers under Division 7.

(2) The Commission may make an order varying an award under subsection (1) only in accordance with this Division.

558 Application to be bound by an award—agreement between employer and employees

(1) An employer may apply to the Commission for an order varying a specified award to bind the employer and a specified class or specified classes of employees of the employer.

(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award is made aware of the application.

(3) The Commission may make an order varying the award as specified in the application if it is satisfied that:

(a) a valid majority of the employees of the employer who would be bound by the award support the application; and

(b) the award is appropriate to regulate the terms and conditions of employment of those employees; and

(c) the employer is not already bound by an award that regulates the terms and conditions of employment of those employees.
(4) The Commission may make the order without holding a hearing unless the Commission considers that it cannot be satisfied of the matters referred to in paragraphs (3)(a) and (b) based on the information provided.

559 Application to be bound by an award—no agreement between employer and employees

(1) An employer, or an employee or employees of an employer, may apply to the Commission for an order varying an award specified in the application to bind the employer and a specified class or specified classes of employees of the employer.

(2) An employer may make an application under subsection (1) even if a valid majority of the employees of the employer who would be bound by the award do not support the application.

(3) An employee or employees of an employer may make an application under subsection (1) even if the employer does not support the application.

(4) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award is made aware of the application.

(5) The Commission may make an order varying the award as specified in the application only if the Commission is satisfied:
   (a) that the employer, and the employees of the employer who would be bound by the award, have been unable to make a workplace agreement, despite having made reasonable efforts to do so; and
   (b) the award is appropriate to govern the terms and conditions of employment of those employees; and
   (c) the employer is not already bound by an award that regulates the terms and conditions of employment of those employees.

(6) An organisation may make an application under subsection (1) on behalf of an employee or employees, and may represent the employee or employees in proceedings relating to the application, if:
   (a) the employee or employees have requested that the organisation do so; and
(b) the organisation is entitled (under its eligibility rules) to represent the interests of the employee or employees.

(7) In this section:

*protected action* has the meaning given by section 435.

*reasonable efforts* does not require the taking of protected action.

### 560 Application to be bound by an award—new organisations

(1) A new organisation may apply to the Commission for an order varying an award to bind the organisation.

(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award, and any other interested persons and bodies, are made aware of the application.

(3) The Minister may intervene in relation to the application.

(4) The Commission may make the order if the Commission is satisfied that:

(a) the new organisation has at least one member bound by the award whose industrial interests the new organisation is entitled (under its eligibility rules) to represent; and

(b) the making of the order is necessary to enable the new organisation to represent properly the industrial interests of those of its members who are bound by the award; and

(c) the award regulates an industry in respect of which the new organisation has traditionally been entitled to represent the industrial interests of its members.

(5) In this section:

*new organisation* means:

(a) an association granted registration as an organisation under the Registration and Accountability of Organisations Schedule on or after the reform commencement; or

(b) a transitionally registered association registered under clause 2 of Schedule 10.
561 Application by new organisation to be bound by an award—additional matters

(1) An application under subsection 560(1) must be made within the period of one year commencing on the day on which the new organisation was registered under the Registration and Accountability of Organisations Schedule or Schedule 10.

(2) If an application under subsection 560(1) relates to an award made under section 539 or an award that has been varied under section 544, a Full Bench must consider the application.

562 Process for valid majority of employees

The regulations may prescribe the meaning of, or the method for establishing what constitutes, a valid majority of the employees of an employer or of a class of employees of an employer, for the purposes of this Division.

563 General provisions

(1) Without limiting the way in which a class of employees may be described for the purposes of this Division, the class may be described by reference to a particular industry or particular kinds of work.

(2) For the purposes of making an order binding an employer, employee or organisation to an award:

(a) employers may be specified by name or by inclusion in a specified class or specified classes; and

(b) employees must be specified by inclusion in a specified class or specified classes; and

(c) organisations must be specified by name.
Division 7—Outworkers

564 Definitions

In this Division:

- **eligible entity** means any of the following entities, other than in the entity’s capacity as an employer:
  - (a) a constitutional corporation;
  - (b) the Commonwealth;
  - (c) a Commonwealth authority;
  - (d) a body corporate incorporated in a Territory;
  - (e) 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, in connection with the activity carried on in the Territory.

- **outworker term** means a term of an award that is:
  - (a) about the matter referred to in paragraph 513(1)(o); or
  - (b) incidental to such a matter, and included in the award as permitted by section 522; or
  - (c) a machinery provision in respect of such a matter included in the award as permitted by section 522.

565 Outworker terms may bind eligible entities and employers

(1) This section applies to an award made under section 539 or varied under section 544 if the award includes outworker terms.

(2) In addition to the employers, organisations and persons that the award is expressed to bind under section 543 or 544, as the case requires, the award may be expressed to bind, but only in relation to the outworker terms, an eligible entity or an employer that operates in an industry:
  - (a) to which the award relates; or
  - (b) in respect of which the outworker terms are applicable.
566 Binding additional eligible entities and employers

(1) An organisation, an eligible entity or an employer may apply to the Commission for an order varying an award that includes outworker terms to bind an eligible entity or an employer to the award, but only in relation to the outworker terms.

(2) If an application is made under subsection (1), the Commission must take such steps as it thinks appropriate to ensure that each employer, employee and organisation bound by the award, and any other interested persons and bodies, are made aware of the application.

(3) The Minister may intervene in relation to the application.

(4) If an application is made under subsection (1), the Commission may make the order if it is satisfied that:
   (a) the eligible entity or employer operates in an industry to which the award relates; and
   (b) the eligible entity or employer is not already bound by an award that includes outworker terms in respect of such an industry in relation to those terms; and
   (c) making the order is consistent with the objective of protecting the overall conditions of employment of outworkers.
Division 8—Technical matters

567 Making and publication of awards and award-related orders

(1) An award or award-related order must:
   (a) be reduced to writing; and
   (b) be signed by:
      (i) in the case of an award or order made by a Full Bench—
           at least one member of the Full Bench; or
      (ii) in the case of any other order—at least one member of
           the Commission; and
   (c) show the day on which it is signed.

(2) If the Commission makes an award or an award-related order, the
    Commission must promptly give to a Registrar:
    (a) a copy of the award or order; and
    (b) written reasons for the award or order; and
    (c) a list specifying the employers, employees and organisations
        bound by the award or order.

(3) A Registrar who receives a copy of an award or an award-related
    order under subsection (2) must promptly:
    (a) make available a copy of the award or order and the written
        reasons received by a Registrar in respect of the making of
        the award or order to each employer, employee and
        organisation shown on the list given to the Registrar under
        paragraph (2)(c); and
    (b) ensure that a copy of the award or order and the written
        reasons received by the Registrar in respect of the making of
        the award or order are available for inspection at each
        registry; and
    (c) ensure that the award or order and any written reasons
        received by the Registrar in respect of the making of the
        award or order are published as soon as practicable.
Section 568

Awards and award-related orders must meet certain requirements

(1) The Commission must, when making an award or an award-related order, if it considers it appropriate, ensure that the award or order:

(a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and

(b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and

(c) does not include terms that have the effect of restricting or hindering productivity, having regard to fairness to employees.

(2) The Commission must, when making an award or an award-related order, ensure that the award or order:

(a) where appropriate, includes facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award terms are to apply; and

(b) includes terms providing for the employment of regular part-time employees; and

Note: Clauses 15.3.1 to 15.3.5 of the Hospitality Industry—Accommodation, Hotels, Resorts and Gaming Award 1998 provide a model (see the Award Simplification Decision at P7500).

(c) is expressed in plain English and is easy to understand in structure and content; and

(d) does not include terms that are obsolete or that need updating; and

(e) does not include terms that discriminate against an employee 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.

(3) An award or an award-related order does not discriminate against an employee for the purposes of paragraph (2)(e) merely because:

(a) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
Section 569

(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.

569 Registrar’s powers if member ceases to be a member

If:

(a) a member of the Commission ceases to be a member at a time after an award or an award-related order has been made by the Commission constituted by the member; and

(b) at that time, the award or order has not yet been reduced to writing or has been reduced to writing but has not yet been signed by the member;

the Registrar must reduce the award or order to writing, sign it and seal it with the seal of the Commission, and the award or order has effect as if it had been signed by the member of the Commission.

570 Form of awards

An award or an award-related order is to be framed so as best to express the decision of the Commission and to avoid unnecessary technicalities.

571 Date of awards

The date of an award or an award-related order is the day on which the award or order was signed under section 567.

572 Commencement of awards

(1) An award or an award-related order is to 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 an award or an award-related order for the purposes of subsection (1) must not be earlier than the date of the award or order.
573 Continuation of awards

An award continues in force until it is revoked under a provision referred to in section 555.

574 Awards of Commission are final

(1) Subject to this Act, an award or an award-related order (including an award or order made on appeal):

(a) is final and conclusive; and

(b) must 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) An award or an award-related order is not invalid because it was made by the Commission constituted otherwise than as provided by this Act.

575 Reprints of awards as varied

A document purporting to be a copy of a reprint of an award as varied, and purporting to have been printed by the Government Printer, is in all courts evidence of the award as varied.

576 Expressions used in awards

Unless the contrary intention appears in an award or an award-related order, an expression used in the award or order has the same meaning as it has in an Act because of the Acts Interpretation Act 1901 or as it has in this Act.
Part 11—Transmission of business rules

Division 1—Introductory

577 Object

The object of this Part is to provide for the transfer of employer obligations under certain instruments when the whole, or a part, of a person’s business is transmitted to another person.

578 Simplified outline

(1) Division 2 describes the transmission of business situation this Part 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) Divisions 3 to 6 deal with the transmission of particular instruments as follows:
   (a) Division 3 deals with the transmission of AWAs;
   (b) Division 4 deals with the transmission of collective agreements;
   (c) Division 5 deals with the transmission of awards;
   (d) Division 6 deals with the transmission of APCSs.

(3) Division 7 deals with what happens with entitlements under the Australian Fair Pay and Conditions Standard when there is a transmission of business.

(4) Division 8 deals with notification requirements, the lodgment of notices with the Employment Advocate and the enforcement of employer obligations by pecuniary penalties.

(5) Division 9 allows regulations to be made to deal with other transmission of business issues.
579 Definitions

In this Part:

*business being transferred* has the meaning given by subsection 580(2).

*Court* means the Federal Court of Australia or the Federal Magistrates Court.

*instrument* means:
(a) an AWA; or
(b) a collective agreement; or
(c) an award; or
(d) an APCS.

*new employer* has the meaning given by subsection 580(1).

*old employer* has the meaning given by subsection 580(1).

*operational reasons* has the meaning given by subsection 643(9).

*parental leave* has the same meaning as in subsection 316(3).

*time of transmission* has the meaning given by subsection 580(3).

*transferring employee* has the meaning given by sections 581 and 582.

*transmission period* has the meaning given by subsection 580(4).
Division 2—Application of Part

580 Application of Part

(1) This Part 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 Part.

(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 Part.

(4) The period of 12 months after the time of transmission is the **transmission period** for the purposes of this Part.

581 Transferring employees

(1) A person is a **transferring employee** for the purposes of this Part if:
   - (a) the person is employed by the old employer immediately before the time of transmission; and
   - (b) the person:
     - (i) ceases to be 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.

(2) A person is also a **transferring employee** for the purposes of this Part 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
Transmission of business rules  Part 11
Application of Part  Division 2

Section 582

(c) the person becomes employed by the new employer in the business being transferred within 2 months after the time of transmission.

(3) In applying section 582 and Divisions 3 to 7 in relation to a person who is a transferring employee under subsection (2) of this section, 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.

582 Transferring employees in relation to particular instrument

(1) A transferring employee is a transferring employee in relation to a particular instrument if:
   (a) the instrument applied to the transferring employee’s employment with the old employer immediately before the time of transmission; and
   (b) when the transferring employee becomes employed by the new employer, the nature of the transferring employee’s employment with the new employer is such that the instrument is capable of applying to employment of that nature.

(2) The transferring employee ceases to be a transferring employee in relation to the instrument if:
   (a) the transferring employee ceases to be employed by the new employer after the time of transmission; or
   (b) the nature of the transferring employee’s employment with the new employer changes so that the instrument is no longer capable of applying to employment of that nature; or
   (c) the transmission period ends.

Paragraph (c) does not apply if the instrument is an APCS.

(3) This section applies to a preserved APCS as if it were an instrument.
Division 3—Transmission of AWA

583 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 Employment Advocate (see sections 602
       and 603).

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 as modified
    by section 584);
(b) the AWA ceases to be in operation because it is replaced by
    another AWA between the new employer and the transferring
    employee (see paragraph 347(4)(b));
(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.
584 Termination of transmitted AWA

*Modified operation of subsections 392(2) and 393(2)*

(1) The AWA cannot be terminated under subsection 392(2) or 393(2) during the transmission period (even if the AWA has passed its nominal expiry date).

*Subsection 399(1) does not apply*

(2) Despite subsection 399(1), a workplace agreement or an award may have effect in relation to the transferring employee’s employment with the new employer even if:

(a) the AWA is terminated during the transmission period; or

(b) the new employer ceases to be bound by the AWA because the transmission period ends.

Note: Paragraph (2)(b) is included for the avoidance of doubt. Subsection 399(1) only applies if a workplace agreement is terminated. Technically, the end of the transmission period does not terminate the transmitted AWA. The new employer merely ceases to be bound by it.
408 Workplace Relations Act 1996

Part 11  Transmission of business rules
Division 4  Transmission of collective agreement

Section 585

Division 4—Transmission of collective agreement

Subdivision A—General

585  Transmission of collective agreement

New employer bound by collective 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 collective agreement; and
   (b) there is at least one transferring employee in relation to the
       collective agreement;

the new employer is bound by the collective agreement by force of
this section.

Note 1: The new employer must notify transferring employees and lodge a
       copy of a notice with the Employment Advocate (see sections 602 and
       603).

Note 2: See also section 586 for the interaction between the collective
       agreement and other industrial instruments.

Period for which new employer remains bound

(2) The new employer remains bound by the collective agreement, by
force of this section, until whichever of the following first occurs:
   (a) the collective agreement is terminated (see Division 9 of
       Part 8 as modified by section 588);
   (b) there cease to be any transferring employees in relation to the
       collective agreement;
   (c) the new employer ceases to be bound by the collective
       agreement in relation to all the transferring employees in
       relation to the collective agreement;
   (d) the transmission period ends.

Note: Paragraph (c)—see subsection (3).
Period for which new employer remains bound in relation to particular transferring employee

(3) The new employer remains bound by the collective agreement in relation to a particular transferring employee, by force of this section, until whichever of the following first occurs:

(a) the collective agreement ceases to be in operation in relation to the transferring employee’s employment with the new employer because the new employer makes an AWA with the transferring employee (see subsection 587(2));

(b) the collective agreement ceases to be in operation in relation to the transferring employee’s employment with the new employer because it has been replaced by another collective agreement in relation to the transferring employee’s employment with the new employer (see subsection 347(5) as modified by subsection 587(3));

(c) the employer ceases to be bound by the collective agreement under subsection (2).

New employer bound only in relation to employment of transferring employees in the business being transferred

(4) The new employer is bound by the collective agreement, by force of this section, only in relation to the employment, in the business being transferred, of employees who are transferring employees in relation to the collective agreement.

New employer bound subject to Commission order

(5) Subsections (1), (2) and (3) have effect subject to any order of the Commission under section 590.

Old employer’s rights and obligations that arose before time of transmission not affected

(6) This section does not affect the rights and obligations of the old employer that arose before the time of transmission.
586 Interaction rules

Transmitted agreement

(1) This section applies if subsection 585(1) applies to a collective agreement (the transmitted collective agreement).

Existing collective agreement

(2) If:
   (a) the new employer is bound by a collective agreement (the existing collective agreement) immediately before the time of transmission; and
   (b) a person is a transferring employee in relation to the transmitted collective agreement; and
   (c) the existing collective agreement would, but for this subsection, apply, according to its terms, to the transferring employee when the transferring employee becomes employed by the new employer;
then the existing collective agreement does not apply to the transferring employee.

(3) Subsection (2) ceases to apply at the end of the transmission period.

587 Transmitted collective agreement ceasing in relation to transferring employee

Transmitted agreement

(1) This section applies if subsection 585(1) applies to a collective agreement (the transmitted collective agreement).

AWA

(2) Despite subsection 348(2), the transmitted collective agreement ceases to be in operation in relation to a transferring employee’s employment with the new employer if the new employer makes an AWA with the transferring employee after the time of transmission.

Note: Subsection 348(2) provides that a collective agreement is normally only suspended while an AWA is in operation. The effect of subsection (2) of this section is to terminate the operation of the
transmitted collective agreement in relation to the transferring employee’s employment when the AWA is made.

Replacement collective agreement

(3) Despite subsection 347(5), the transmitted collective agreement ceases to be in operation in relation to a transferring employee if the transmitted collective agreement has been replaced by another collective agreement in relation to the employee (even if the transmitted collective agreement has not passed its nominal expiry date).

588 Termination of transmitted collective agreement

Transmitted agreement

(1) This section applies if subsection 585(1) applies to a collective agreement (the transmitted collective agreement).

Modified operation of subsections 392(2) and 393(2)

(2) The transmitted collective agreement cannot be terminated under subsection 392(2) or 393(2) during the transmission period (even if the transmitted collective agreement has passed its nominal expiry date).

Subsection 399(1) does not apply

(3) Despite subsection 399(1), a workplace agreement or an award may have effect in relation to a transferring employee’s employment with the new employer if:

(a) the transmitted collective agreement is terminated during the transmission period; or

(b) the new employer ceases to be bound by the transmitted collective agreement because the transmission period ends.

Note: Paragraph (3)(b) is included for the avoidance of doubt. Subsection 399(1) only applies if a workplace agreement is terminated. Technically, the end of the transmission period does not terminate the transmitted collective agreement. The new employer merely ceases to be bound by it.
Part 11 Transmission of business rules
Division 4 Transmission of collective agreement

Section 589

Special rule for transmitted workplace determination

(4) If the transmitted collective agreement is a workplace determination, subsection 506(3) ceases to apply to the transmitted collective agreement at the time of transmission.

Note 1: Subsection 506(1) provides that this Act generally applies to a workplace determination as if it were a collective agreement.

Note 2: Subsection 506(3) would otherwise prevent the transmitted workplace determination from being terminated under Subdivision B of Division 9 of Part 8 before it had passed its nominal expiry date.

Subdivision B—Commission’s powers

589 Application and terminology

(1) The Subdivision applies if:
   (a) a person is bound by a collective agreement; and
   (b) another person:
       (i) becomes at a later time; or
       (ii) is likely to become at a later time;
       the successor, transmitee 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 Subdivision:
   (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, transmitee or assignee; and
   (d) the transfer time is the time at which the incoming employer becomes, or is likely to become, the successor, transmitee or assignee of the business concerned.

590 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 collective agreement; or
   (b) is, or will be, bound by the collective 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 collective agreement but only for the period specified in the order.

(3) To avoid doubt, the Commission cannot make an order under subsection (1) that would have the effect of extending the transmission period.

591 When application for order can be made

An application for an order under subsection 590(1) may be made before, at or after the transfer time.

592 Who may apply for order

(1) Before the transfer time, an application for an order under subsection 590(1) may be made only by the outgoing employer.

(2) At or after the transfer time, an application for an order under subsection 590(1) may be made only by:
   (a) the incoming employer; or
   (b) a transferring employee in relation to the collective agreement; or
   (c) an organisation of employees that is bound by the collective agreement; or
   (d) an organisation of employees that:
       (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; and
       (ii) has been requested by the transferring employee to apply for the order on the transferring employee’s behalf.

593 Applicant to give notice of application

The applicant for an order under subsection 590(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 section 594).

594 Submissions in relation to application

(1) Before deciding whether to make an order under subsection 590(1) in relation to the collective agreement, the Commission must give the following an opportunity to make submissions:
   (a) the applicant;
   (b) before the transfer time—the persons covered by subsection (2);
   (c) at and after the transfer time—the persons covered by subsection (3).

(2) For the purposes of paragraph (1)(b), this subsection covers:
   (a) an employee of the outgoing employer:
      (i) who is bound by the collective 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 collective 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 subsection 590(1).

(3) For the purposes of paragraph (1)(c), this subsection covers:
   (a) the incoming employer; and
   (b) a transferring employee in relation to the collective agreement; and
   (c) an organisation of employees that is bound by the collective agreement; and
   (d) an organisation of employees that:
      (i) is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; 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 subsection 590(1).
Division 5—Transmission of award

595 Transmission of award

New employer bound by award

(1) If:

(a) the old employer was, immediately before the time of
transmission, bound by an award that regulated the
employment of employees of the old employer; and

(b) there is at least one transferring employee in relation to the
award; and

(c) but for this section, the new employer would not be bound by
the award in relation to the transferring employees in relation
to the award;

the new employer is bound by the award by force of this section.

Note 1: Paragraph (c)—the award might already bind the new employer, for
example, because the new employer happens to be a respondent to the
award.

Note 2: The new employer must notify transferring employees and lodge a
copy of a notice with the Employment Advocate (see sections 602 and
603).

Note 3: See also section 596 for the interaction between the award and other
industrial instruments.

Period for which new employer remains bound

(2) The new employer remains bound by the award, by force of this
section, until whichever of the following first occurs:

(a) the award is revoked;

(b) there cease to be any transferring employees in relation to the
award;

(c) the new employer ceases to be bound by the award in relation
to all the transferring employees in relation to the award;

(d) the transmission period ends.

Note: Paragraph (c)—see subsection (3).
Period for which new employer remains bound in relation to particular transferring employee

(3) The new employer remains bound by the award in relation to a particular transferring employee, by force of this section, until whichever of the following first occurs:

(a) the award ceases to be in operation in relation to the transferring employee’s employment with the new employer because the new employer makes an AWA with the transferring employee after the time of transmission (see subsection 597(2));

(b) the award ceases to be in operation in relation to the transferring employee’s employment with the new employer because a collective agreement comes into operation, after the time of transmission, in relation to the transferring employee’s employment with the new employer (see subsection 597(3));

(c) the employer ceases to be bound by the award under subsection (2).

New employer bound only in relation to employment of transferring employees

(4) The new employer is bound by the award, by force of this section, only in relation to the employment of employees who are transferring employees in relation to the award.

Commission order

(5) Subsections (1), (2) and (3) have effect subject to any order of the Commission.

(6) To avoid doubt, the Commission cannot make an order under subsection (5) that would have the effect of extending the transmission period.

Old employer’s rights and obligations that arose before time of transmission not affected

(7) This section does not affect the rights and obligations of the old employer that arose before the time of transmission.
Part 11  Transmission of business rules  
Division 5  Transmission of award  

Section 596

596 Interaction rules

Transmitted award

(1) This section applies if subsection 595(1) applies to an award (the transmitted award).

Collective agreement

(2) Despite section 349 but subject to subsection (3), a collective agreement that is in operation at the time of transmission does not have effect in relation to an employee’s employment while the transmitted award operates, in accordance with subsection 595(1), in relation to that employment.

Note 1: But for subsection (2), section 349 would have the effect that the transmitted award would not have effect in relation to the employee’s employment while a collective agreement operates in relation to that employment.

Note 2: Section 597 modifies the operation of section 349 in relation to AWAs and collective agreements that come into operation after the time of transmission.

(3) Despite subsection 595(1), if the employee agrees that the collective agreement is to operate in relation to that employment:

(a) the collective agreement comes into operation in relation to that employment; and

(b) the transmitted award ceases to be in operation in relation to that employment in accordance with subsection 597(3).

597 Transmitted award ceasing in relation to transferring employee

Transmitted award

(1) This section applies if subsection 595(1) applies to an award (the transmitted award).

AWA

(2) Despite section 349, the transmitted award ceases to be in operation in relation to a transferring employee’s employment with the new employer if the new employer makes an AWA with the transferring employee after the time of transmission.

418  Workplace Relations Act 1996
Note: Section 349 provides that an award is normally only suspended while an AWA is in operation. The effect of subsection (2) of this section is to terminate the operation of the transmitted award in relation to the transferring employee when the AWA is made.

*Collective agreement*

(3) Despite section 349, the transmitted award ceases to be in operation in relation to a transferring employee’s employment with the new employer if a collective agreement comes into operation in relation to the transferring employee’s employment with the new employer after the time of transmission.

Note: Section 349 provides that an award is normally only suspended while a collective agreement is in operation. The effect of subsection (3) of this section is to terminate the operation of the transmitted award in relation to the transferring employee when the collective agreement is made.
Division 6—Transmission of APCS

598 Transmission of APCS

New employer bound by APCS

(1) If:
  (a) immediately before the time of transmission, an employee’s employment with the old employer was covered by an APCS; and
  (b) the employee is a transferring employee in relation to the APCS; and
  (c) but for this section, the transferring employee’s employment with the new employer would not be covered by the APCS; the transferring employee’s employment with the new employer is covered by the APCS by force of this section.

Employee ceasing to be transferring employee

(2) The transferring employee’s employment with the new employer ceases to be covered by the APCS, by force of this section, if the employee ceases to be a transferring employee in relation to the APCS.

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.
Division 7—Entitlements under the Australian Fair Pay and Conditions Standard

599 Parental leave entitlements

(1) At the time of transmission:
   (a) the new employer becomes liable for a transferring employee’s entitlements (if any) in relation to parental leave that are:
      (i) entitlements under the Australian Fair Pay and Conditions Standard; and
      (ii) entitlements for which the old employer was liable immediately before the time of transmission; and
   (b) the old employer ceases to be liable for those entitlements.

(2) The following count as service with the new employer for the purpose of working out a transferring employee’s entitlement to parental leave under the Australian Fair Pay and Conditions Standard:
   (a) the transferring employee’s service with the old employer that counted for the purposes of working out the transferring employee’s entitlement to parental leave;
   (b) any service with a previous employer that the old employer recognised as service with the old employer for the purposes of working out the transferring employee’s entitlement to parental leave.

(3) If:
   (a) documentation for parental leave, required under Division 6 of Part 7, is given to the old employer by a transferring employee before the time of transmission; and
   (b) the leave applied for has not started before the time of transmission; and
   (c) the entitlement to that leave arises under the Australian Fair Pay and Conditions Standard; and
   (d) the old employer notifies the new employer of the documentation under subsection (4);
   the documentation is treated as if it had been given to the new employer.
(4) The old employer must notify the new employer of:
   (a) any person who:
      (i) is, or who is likely to be, a transferring employee; and
      (ii) is on parental leave at the time of transmission on the
           basis of an entitlement under the Australian Fair Pay
           and Conditions Standard; and
   (b) documentation for parental leave that is given to the old
       employer before the time of transmission by a person who is,
       or is likely to be, a transferring employee if the
       documentation was given to the old employer on the basis of
       an entitlement under the Australian Fair Pay and Conditions
       Standard.

The notification must be given in writing within 14 days after the
time of transmission.

Note: This is a civil remedy provision, see section 605.

600 New employer assuming liability for particular entitlements

(1) This section applies if the new employer agrees, in writing, before
the time of transmission:
   (a) to assume liability for; or
   (b) to recognise continuity of service in relation to;
   a transferring employee’s entitlements in relation to a particular
   matter.

(2) At the time of transmission:
   (a) the new employer becomes liable for the transferring
       employee’s entitlements (if any):
      (i) that accrued under the Australian Fair Pay and
          Conditions Standard in relation to that matter before the
          time of transmission; and
      (ii) that are not entitlements in relation to parental leave;
          and
      (iii) for which the old employer was liable immediately
           before the time of transmission; and
   (b) the old employer ceases to be liable for those accrued
       entitlements.

(3) The following count as service with the new employer for the
purpose of working out the transferring employee’s entitlements
under the Australian Fair Pay and Conditions Standard in relation to that matter:
(a) the transferring employee’s service with the old employer that counted for the purposes of working out the transferring employee’s entitlements in relation to that matter;
(b) any service with a previous employer that the old employer recognised as service with the old employer for the purposes of working out the transferring employee’s entitlements in relation to that matter.

601 New employer assuming entitlements generally

(1) This section also applies if the new employer agrees in writing before the time of transmission:
(a) to assume liability for a transferring employee’s entitlements generally; or
(b) to recognise continuity of service in relation to a transferring employee generally.

(2) At the time of transmission:
(a) the new employer becomes liable for the transferring employee’s entitlements (if any):
   (i) that accrued under the Australian Fair Pay and Conditions Standard before the time of transmission; and
   (ii) that are not entitlements in relation to parental leave; and
   (iii) for which the old employer was liable immediately before the time of transmission; and
(b) the old employer ceases to be liable for those accrued entitlements.

(3) The following count as service with the new employer for the purpose of working out the transferring employee’s entitlements under the Australian Fair Pay and Conditions Standard in relation to a particular matter:
(a) the transferring employee’s service with the old employer that counted for the purposes of working out the transferring employee’s entitlements in relation to that matter;
(b) any service with a previous employer that the old employer recognised as service with the old employer for the purposes
of working out the transferring employee’s entitlements in relation to that matter.
Division 8—Notice requirements and enforcement

602 Informing transferring employees about transmission of instrument

(1) This section applies if:
   (a) an employer is bound by an instrument (the transmitted instrument) in relation to a transferring employee by force of:
       (i) section 583 (AWA); or
       (ii) section 585 (collective agreement); or
       (iii) section 595 (award); 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 subsection (3).

   Note: This is a civil remedy provision, see section 605.

(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:
       (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 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 instrument;
   and that would bind the transferring employee but for the
   transmission provision.

(4) Subject to subsection (5), if the notice under subsection (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 section 605.

(5) Subsection (4) 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 subsection (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.

(6) Subsection (2) does not apply if:
   (a) the transmitted instrument is an award and the new employer
       and the transferring employee become bound by an AWA or
       a collective agreement at the time of transmission or within
       14 days after the time of transmission; or
   (b) the transmitted instrument is a workplace agreement and the
       new employer and the transferring employee become bound
       by an AWA within 14 days after the time of transmission.

603 Lodging copy of notice with Employment Advocate

Only one transferring employee

(1) If an employer:

Workplace Relations Act 1996
(a) gives a notice under subsection 602(2) to a transferring employee in relation to an AWA; or

(b) gives a notice under subsection 602(2) to the only person who is a transferring employee in relation to a collective agreement or award;

the employer must lodge a copy of the notice with the Employment Advocate within 14 days after the notice is given to the transferring employee. The copy must be lodged in accordance with subsection (4).

Note 1: This is a civil remedy provision, see section 605.

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 subsection 602(2) to people who are transferring employees in relation to a collective agreement or award; 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 Employment Advocate within 14 days after that notice is given. The copy must be lodged in accordance with subsection (4).

Note 1: This is a civil remedy provision, see section 605.

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 subsection 602(2) to people who are transferring employees in relation to a collective agreement or award; 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 Employment Advocate within 14 days after that notice is given. The copy must be lodged in accordance with subsection (4).
Part 11  Transmission of business rules  
Division 8  Notice requirements and enforcement  

Section 604  

Note 1: This is a civil remedy provision, see section 605.  
Note 2: Sections 137.1 and 137.2 of the Criminal Code create offences for providing false or misleading information or documents.  

Lodgment with Employment Advocate  

(4) A notice is lodged with the Employment Advocate in accordance with this subsection only if it is actually received by the Employment Advocate.  

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.  

604 Employment Advocate must issue receipt for lodgment  

(1) If a notice is lodged under section 603, the Employment Advocate must issue a receipt for the lodgment.  

(2) The receipt must state that the notice was lodged under section 603 on a particular day.  

(3) The Employment Advocate must give a copy of the receipt to the person who lodged the notice under section 603.  

605 Civil penalties  

(1) The following are civil remedy provisions for the purposes of this section:  
   (a) subsection 599(4);  
   (b) subsections 602(2) and (4);  
   (c) subsections 603(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 subsection (2) in relation to subsection 599(4) (parental leave entitlements) may be made by:  
   (a) a transferring employee mentioned in that subsection; or  

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(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee mentioned in that subsection and has been requested by the transferring employee to apply for the order on the transferring employee’s behalf; or

(c) a workplace inspector; or

(d) the new employer mentioned in that subsection.

(5) An application for an order under subsection (2) in relation to 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:

<table>
<thead>
<tr>
<th>Item</th>
<th>Instrument</th>
<th>People with standing to apply for order</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>AWA</td>
<td>(a) the transferring employee; or&lt;br&gt;(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&lt;br&gt;(c) a workplace inspector</td>
</tr>
<tr>
<td>2</td>
<td>collective agreement</td>
<td>(a) the transferring employee; or&lt;br&gt;(b) an organisation of employees that is bound by the agreement; or&lt;br&gt;(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&lt;br&gt;(d) a workplace inspector</td>
</tr>
</tbody>
</table>
Part 11  Transmission of business rules  
Division 8  Notice requirements and enforcement

Section 605

<table>
<thead>
<tr>
<th>Item</th>
<th>Instrument</th>
<th>People with standing to apply for order</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>award</td>
<td>(a) a transferring employee; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an organisation of employees that is entitled, under its eligibility rules, to represent the industrial interests of a transferring employee; or</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) a workplace inspector</td>
</tr>
</tbody>
</table>
Division 9—Miscellaneous

606 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 employers and the terms and conditions of employees.
Part 12—Minimum entitlements of employees

Division 1—Entitlement to meal breaks

607  Meal breaks

An employer must not require an employee to work for more than 5 hours continuously without an unpaid interval of at least 30 minutes for a meal.

Note: Compliance with this section is dealt with in Part 14.

608  Displacement of entitlement to meal breaks

Section 607 does not apply in relation to particular employment of an employee while any of the following operates in relation to the employee in relation to the employment:

(a) an award;
(b) a workplace agreement;
(c) an industrial instrument prescribed by the regulations.

609  Model dispute resolution process

The model dispute resolution process applies to a dispute under this Division.

Note: The model dispute resolution process is set out in Part 13.

610  Extraterritorial extension

(1) This Division, and the rest of this Act so far as it relates to this Division, extend:

(a) to an employee outside Australia who meets any of the conditions in this section; and
(b) to the employee’s employer (whether the employer is in or outside Australia); and
(c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.
Minimum entitlements of employees  Part 12
Entitlement to meal breaks  Division 1

Employee in Australia’s exclusive economic zone

(2) One condition is that the employee is in Australia’s exclusive economic zone and either:
   (a) is an employee of an Australian employer and is not
        prescribed by the regulations as an employee to whom this
        subsection does not apply; or
   (b) is an employee prescribed by the regulations as an employee
        to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the Legislative Instruments Act 2003.

On Australia’s continental shelf outside exclusive economic zone

(3) Another condition is that the employee:
   (a) is outside the outer limits of Australia’s exclusive economic
       zone, but is in, on or over a part of Australia’s continental
       shelf prescribed by the regulations for the purposes of this
       subsection, in connection with the exploration of the
       continental shelf or the exploitation of its natural resources; and
   (b) meets the requirements that are prescribed by the regulations
       for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

Outside Australia’s exclusive economic zone and continental shelf

(4) Another condition is that the employee:
   (a) is neither in Australia’s exclusive economic zone nor in, on
       or over a part of Australia’s continental shelf described in
       paragraph (3)(a); and
   (b) is an Australian-based employee of an Australian employer;
       and
   (c) is not prescribed by the regulations as an employee to whom
       this subsection does not apply.

Definition

(5) In this section:

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Part 12  Minimum entitlements of employees
Division 1  Entitlement to meal breaks

Section 610

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 2—Entitlement to public holidays

611 Definition of public holiday

In this Division:

public holiday means:
(a) each of these days:
   (i) 1 January (New Year’s Day);
   (ii) 26 January (Australia Day);
   (iii) Good Friday;
   (iv) Easter Monday;
   (v) 25 April (Anzac Day);
   (vi) 25 December (Christmas Day);
   (vii) 26 December (Boxing Day); and
(b) any other day declared by or under a law of a State or Territory to be observed generally within the State or Territory, or a region of that State or Territory, as a public holiday by people who work in that State, Territory or region, other than:
   (i) a day declared by or under (or determined in accordance with a procedure under) the law of the State or Territory to be observed as a public holiday in substitution for a day named in paragraph (a); or
   (ii) a union picnic day; or
   (iii) a day, or kind of day, that is excluded by regulations made for the purposes of this paragraph from counting as a public holiday.

612 Entitlement to public holidays

(1) An employee is entitled to a day off on a public holiday, subject to subsections (2) and (3).

(2) An employer may request an employee to work on a particular public holiday.

(3) The employee may refuse the request (and take the day off) if the employee has reasonable grounds for doing so.
Part 12 Minimum entitlements of employees
Division 2 Entitlement to public holidays

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(4) A term to the contrary in:
(a) a workplace agreement; or
(b) an award;
has no effect.

Note: Compliance with this section is dealt with in Part 14.

613 Reasonableness of refusal

In determining whether an employee has reasonable grounds for refusing a request to work on a public holiday, regard must be had to:
(a) the nature of the work performed by the employee; and
(b) the type of employment (for example, whether full-time, part-time, casual or shift work); and
(c) the nature of the employer’s workplace or enterprise (including its operational requirements); and
(d) the employee’s reasons for refusing the request; and
(e) the employee’s personal circumstances (including family responsibilities); and
(f) whether the employee is entitled to additional remuneration or other benefits as a consequence of working on the public holiday; and
(g) whether a workplace agreement, award, other industrial instrument, contract of employment or written guideline or policy that regulates the employee’s employment contemplates that the employer might require work on public holidays, or particular public holidays; and
(h) whether the employee has acknowledged or could reasonably expect that the employer might require work on public holidays, or particular public holidays; and
(i) the amount of notice in advance of the public holiday given by the employer when making the request; and
(j) the amount of notice in advance of the public holiday given by the employee in refusing the request; and
(k) whether an emergency or other unforeseen circumstances are involved; and
(l) any other relevant factors.
614 Model dispute resolution process

The model dispute resolution process applies to a dispute under this Division.

Note: The model dispute resolution process is set out in Part 13.

615 Employer not to prejudice employee for reasonable refusal

(1) An employer must not, for the reason, or for reasons including the reason, that an employee has refused on reasonable grounds to work on a particular public holiday, 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.

(2) Subsection (1) is a civil remedy provision.

616 Penalties etc. for contravention of section 615

(1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in relation to an employer who has contravened section 615:
   (a) an order imposing a pecuniary penalty on the employer;
   (b) an order requiring the employer to pay a specified amount to the employee as compensation for damage suffered by the employee as a result of the contravention;
   (c) any other order that the court considers appropriate.

(2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the employer is a body corporate and otherwise 60 penalty units.

(3) The orders that may be made under paragraph (1)(c) include:
   (a) injunctions; and
   (b) any other orders that the court considers necessary to stop the conduct or remedy its effects.

(4) In this section:

   eligible person means any of the following:
   (a) a workplace inspector;

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Section 617

(b) an employee affected by the contravention;
(c) an organisation of employees that:
   (i) has been requested in writing, by the employee concerned, to apply on the employee’s behalf; and
   (ii) has a member employed by the employee’s employer; and
   (iii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;
(d) a person prescribed by the regulations for the purposes of this paragraph.

(5) A regulation prescribing persons for the purposes of paragraph (d) of the definition of eligible person may provide that a person is prescribed only in relation to circumstances specified in the regulation.

617 Burden of proof in relation to reasonableness of refusal

In establishing, for the purposes of an application under section 616, whether an employee’s refusal to work on a particular public holiday was on reasonable grounds, the burden of proof lies on the applicant.

618 Proof not required of the reason for conduct

(1) If:
   (a) in an application under section 616 relating to a person’s conduct, it is alleged that the conduct was, or is being, carried out for a particular reason; and
   (b) for the person to carry out the conduct for that reason would constitute a contravention of section 615;

it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason, unless the person proves otherwise.

(2) This section does not apply in relation to the granting of an interim injunction.

Note: See section 838 for interim injunctions.

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619 Extraterritorial extension

(1) This Division, and the rest of this Act so far as it relates to this Division, extend:

(a) to an employee outside Australia who meets any of the conditions in this section; and
(b) to the employee’s employer (whether the employer is in or outside Australia); and
(c) to acts, omissions, matters and things relating to the employee (whether they are in or outside Australia).

Note: In this context, *Australia* includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the *Acts Interpretation Act 1901*.

In Australia’s exclusive economic zone

(2) One condition is that the employee is in Australia’s exclusive economic zone and either:

(a) is an employee of an Australian employer and is not prescribed by the regulations as an employee to whom this subsection does not apply; or
(b) is an employee prescribed by the regulations as an employee to whom this subsection applies.

Note: The regulations may prescribe the employee by reference to a class. See subsection 13(3) of the *Legislative Instruments Act 2003*.

On Australia’s continental shelf outside exclusive economic zone

(3) Another condition is that the employee:

(a) is outside the outer limits of Australia’s exclusive economic zone, but is in, on or over a part of Australia’s continental shelf that is prescribed by the regulations for the purposes of this subsection, in connection with the exploration of the continental shelf or the exploitation of its natural resources; and
(b) meets the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.
Definition

(4) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 3—Equal remuneration for work of equal value

620 Object

The object of this Division is to give effect, or further effect, to:
(a) the Anti-Discrimination Conventions; and
(b) the Equal Remuneration Recommendation, 1951, which the General Conference of the International Labour Organisation adopted on 29 June 1951 and is also known as Recommendation No. 90; and
(c) the Discrimination (Employment and Occupation) Recommendation, 1958, which the General Conference of the International Labour Organisation adopted on 25 June 1958 and is also known as Recommendation No. 111.

Note: Employer, employee and employment have their ordinary meaning in this Division. See sections 5, 6 and 7 and Schedule 2.

621 Relationship of this Division to other laws providing alternative remedies

(1) The Commission must not deal with an application under this Division if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an adequate alternative remedy that:
(a) exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and
(b) will ensure, for the employees concerned, equal remuneration for work of equal value.

(2) The Commission must not deal with an application under this Division for an order to secure equal remuneration for work of equal value for an employee if proceedings for an alternative remedy:
(a) to secure such remuneration for the employee; or
(b) against unequal remuneration for work of equal value for the employee; have begun:
(c) under another provision of this Act; or
(d) under another law of the Commonwealth; or
Section 622

(e) under a law of a State or Territory.

(3) Subsection (2) does not prevent the Commission from dealing with an application under this Division if the proceedings for the alternative remedy:
   (a) have been discontinued by the party who initiated the proceedings; or
   (b) have failed for want of jurisdiction.

(4) If an application has been made for an order under this Division to secure equal remuneration for work of equal value for an employee, a person is not entitled to take proceedings for an alternative remedy under a provision or law of a kind referred to in subsection (2):
   (a) to secure such remuneration for the employee; or
   (b) against unequal remuneration for work of equal value for the employee.

(5) Subsection (4) does not prevent the taking of proceedings for an alternative remedy if the proceedings under this Division:
   (a) have been discontinued by the party who initiated the proceedings; or
   (b) have failed for want of jurisdiction.

(6) A remedy under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment, that consists solely of compensation for past actions, is not an alternative remedy, or an adequate alternative remedy, for the purposes of this section.

622 Relationship of this Division to AFPC decisions and the Australian Fair Pay and Conditions Standard

(1) The Commission is to have regard to decisions of the AFPC in making orders under this Division.

(2) The Commission must not deal with an application for an order under this Division, to the extent to which the application is for an order relating to a basic periodic rate of pay, a basic piece rate of pay or casual loading, if:
   (a) the group of employees who would be covered by the order applied for, and

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Minimum entitlements of employees  Part 12
Equal remuneration for work of equal value  Division 3

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(b) the comparator group of employees;
are both entitled to a rate of pay that is equal to the applicable
guaranteed rate of pay under the provisions of the Australian Fair
Pay and Conditions Standard contained in Division 2 of Part 7.

(3) To avoid doubt, subsection (2) does not apply if employees in one
or both of the groups are entitled to a rate of pay higher than the
applicable guaranteed rate.

(4) The Commission must not deal with an application for an order
under this Division, to the extent to which the application is for an
order relating to a basic periodic rate of pay, a basic piece rate of
pay or casual loading, if:
(a) the group of employees who would be covered by the order
applied for is entitled to a rate of pay that is higher than the
rate of pay the group would be entitled to under the
provisions of the Australian Fair Pay and Conditions
Standard contained in Division 2 of Part 7; and
(b) the comparator group of employees is entitled to a rate of pay
that is equal to the applicable guaranteed rate of pay under
the provisions of the Australian Fair Pay and Conditions
Standard contained in Division 2 of Part 7.

(5) To avoid doubt, subsection (4) does not apply if the comparator
group of employees is entitled to a rate of pay higher than the
applicable guaranteed rate.

(6) To avoid doubt, subsections (2) and (4) apply regardless of the
source of the employee’s entitlement to be paid the rate of pay.

(7) In this section:

basic periodic rate of pay has the same meaning as in Division 2 of
Part 7.

basic piece rate of pay has the same meaning as in Division 2 of
Part 7.

casual loading has the same meaning as in Division 2 of Part 7.

comparator group of employees means employees whom the
applicant contends are performing work of equal value to the work
performed by the employees to whom the application relates.
Part 12  Minimum entitlements of employees  
Division 3  Equal remuneration for work of equal value

Section 623

623  Equal remuneration for work of equal value

(1) A reference in this Division to equal remuneration for work of equal value is a reference to equal remuneration for men and women workers for work of equal value.

(2) An expression has in subsection (1) the same meaning as in the Equal Remuneration Convention.

Note: Article 1 of the Convention provides that the term “equal remuneration for men and women workers for work of equal value” refers to rates of remuneration established without discrimination based on sex.

624  Orders requiring equal remuneration

(1) Subject to this Division, the Commission may make such orders as it considers appropriate to ensure that, for employees covered by the orders, there will be equal remuneration for work of equal value.

(2) Without limiting subsection (1), an order under this Division may provide for such increases in rates (other than those set by the AFPC) of remuneration (within the meaning of the Equal Remuneration Convention) as the Commission considers appropriate to ensure that, for employees covered by the order, there will be equal remuneration for work of equal value.

(3) However, the Commission may make an order under this Division only if:

(a) the Commission is satisfied that, for the employees to be covered by the order, there is not equal remuneration for work of equal value; and

(b) the order can reasonably be regarded as appropriate and adapted to giving effect to one or more of the following:

(i) the Anti-Discrimination Conventions;

(ii) the provisions of Recommendations referred to in paragraphs 620(b) and (c).

625  Orders only on application

The Commission must only make such an order if it has received an application for the making of an order under this Division from:

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(a) an employee, or a trade union whose rules entitle it to represent the industrial interests of employees, to be covered by the order; or

(b) the Sex Discrimination Commissioner.

626 Conciliation or mediation

(1) If an application is made for an order under this Division, the Commission must, before starting to hear and determine the matter to which the application relates:

(a) attempt to settle the matter by conciliation; or

(b) at the request or with the consent of both the applicant and any employer of employees who, if the order applied for were made, would be covered by it—refer the matter for mediation by an independent person specified in the request or consent.

(2) The Commission may order:

(a) the applicant, or a representative of the applicant; and

(b) each employer of employees who, if the order applied for were made, would be covered by it, or a representative of those employers;

to attend the conciliation or mediation.

(3) The Commission may order that the employees who, if the order applied for were made, would be covered by it, or a representative of those employees, be allowed to attend the conciliation or mediation.

(4) The Commission may order that:

(a) the applicant; or

(b) each employer of employees who, if the order applied for were made, would be covered by it;

inform the employees concerned of:

(c) the making of the application for an order under this Division; and

(d) the details of the application and the order applied for; and

(e) the time and place at which conciliation or mediation will take place.
627 If conciliation or mediation is unsuccessful

(1) If:

(a) the Commission forms the view that all reasonable attempts to settle the matter, or part of the matter, to which the application relates by conciliation have been unsuccessful; or

(b) if the Commission referred the matter to an independent person for mediation—the independent person informs the Commission that all reasonable attempts to settle the matter, or part of the matter, by mediation have been unsuccessful;

the Commission must advise accordingly the applicant and each employer of employees who, if the order applied for were made, would be covered by it.

(2) The Commission may order that:

(a) the applicant; or

(b) each employer of employees who, if the order applied for were made, would be covered by it;

inform the employees concerned of the Commission’s advice under subsection (1).

(3) If the Commission advises persons under subsection (1), the Commission is to proceed to hear and determine the matter, or part, that was not settled.

628 Hearing of matter by member who conducted conciliation

(1) If a member of the Commission has exercised conciliation powers under section 626 in relation to a matter, the member must not hear or determine, or take part in the hearing or determination of, the matter if a person who was present at the conciliation objects.

(2) The member is not taken to have exercised conciliation powers in relation to the matter merely because:

(a) the member arranged for a conference of the parties or their representatives to be presided over by the member, but the conference did not take place or was not presided over by the member; or

(b) the member arranged for the parties or their representatives to confer among themselves at a conference at which the member was not present.
629 Immediate or progressive introduction of equal remuneration

The order may implement equal remuneration for work of equal value when the order takes effect. However, if it is not deemed feasible to implement it immediately, the order may implement it in stages (as provided in the order).

630 Employer not to reduce remuneration

(1) An employer must not reduce an employee’s remuneration (within the meaning of the Equal Remuneration Convention) for the reason, or for reasons including the reason, that an application or order has been made under this Division.

(2) If subsection (1) is contravened, the purported reduction is of no effect.

631 Employer not to prejudice employee

(1) An employer must not, for the reason, or for reasons including the reason, that an application or order has been made under this Division, 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.

(2) Subsection (1) is a civil remedy provision.

632 Penalties etc. for contravention of section 631

(1) The Court, or the Federal Magistrates Court, on application by an eligible person, may make one or more of the following orders in relation to a person (the defendant) who has contravened section 631:
   (a) an order imposing a pecuniary penalty on the defendant;
   (b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;
   (c) any other order that the court considers appropriate.
Section 633

(2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the defendant is a body corporate and otherwise 60 penalty units.

(3) The orders that may be made under paragraph (1)(c) include:
(a) injunctions; and
(b) any other orders that the court considers necessary to stop the conduct or remedy its effects.

(4) In this section:

eligible person means any of the following:
(a) a workplace inspector;
(b) a person affected by the contravention;
(c) an organisation of employees that:
   (i) has been requested in writing, by the employee concerned, to apply on the employee’s behalf; and
   (ii) has a member employed by the employee’s employer; and
   (iii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;
(d) the Sex Discrimination Commissioner;
(e) a person prescribed by the regulations for the purposes of this paragraph.

(5) A regulation prescribing persons for the purposes of paragraph (e) of the definition of eligible person may provide that a person is prescribed only in relation to circumstances specified in the regulation.

633 Proof not required of the reason for conduct

(1) If:
(a) in an application under section 632 relating to a person’s conduct, it is alleged that the conduct was, or is being, carried out for a particular reason; and
(b) for the person to carry out the conduct for that reason would constitute a contravention of section 631;
it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason, unless the person proves otherwise.

(2) This section does not apply in relation to the granting of an interim injunction.

Note: See section 838 for interim injunctions.

634 Extraterritorial extension

(1) This Division, and the rest of this Act so far as it relates to this Division, extends to an employee whose remuneration is determined by or under this Act, a law of a State or Territory or a contract of employment made in Australia, even though one or both of the following apply:

(a) the employee is employed wholly or partly in work outside Australia;

(b) the employee’s employer operates, exists, is incorporated, or is otherwise established, outside Australia.

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

(2) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 4—Termination of employment

Subdivision A—Object, application and definitions

635 Object

(1) The principal object of this Division is:
(a) to establish procedures for conciliation in relation to certain matters relating to the termination or proposed termination of an employee’s employment in certain circumstances; and
(b) to provide, if the conciliation process is unsuccessful, for recourse to arbitration or to a court depending on the grounds on which the conciliation was sought; and
(c) to provide for remedies appropriate to a case where, on arbitration, a termination is found to be harsh, unjust or unreasonable; and
(d) to provide for sanctions where, on recourse to a court, a termination or proposed termination is found to be unlawful; and
(e) by those procedures, remedies and sanctions, and by orders made in the circumstances set out in Subdivision D, to assist in giving effect to the Termination of Employment Convention.

(2) The procedures and remedies referred to in paragraphs (1)(a) and (b), and the manner of deciding on and working out such remedies, are intended to ensure that, in the consideration of an application in respect of a termination of employment, a “fair go all round” is accorded to both the employer and employee concerned.

Note: The expression “fair go all round” was used by Sheldon J in in re Loty and Holloway v Australian Workers’ Union [1971] AR (NSW) 95.

636 Meaning of employee, employer and employment

In this Division, unless the contrary intention appears:

employee means:
(a) to the extent that a provision applies to, or in relation to, the termination of employment of an employee within the
meaning of subsection 5(1)—an employee within the meaning of that subsection; or
(b) otherwise—an employee within the ordinary meaning of the expression.

employer means:
(a) to the extent that a provision applies to, or in relation to, the termination of employment of an employee within the meaning of subsection 5(1)—an employer within the meaning of subsection 6(1); or
(b) otherwise—an employer within the ordinary meaning of the expression.

employment means:
(a) to the extent that a provision applies to, or in relation to, the termination of employment of an employee within the meaning of subsection 5(1)—employment within the meaning of subsection 7(1); or
(b) otherwise—the employment of an employee (within the ordinary meaning of the expression) by an employer (within the ordinary meaning of the expression).

637 Application

(1) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground that that termination was harsh, unjust or unreasonable, if the employee concerned was, before the termination, an employee within the meaning of subsection 5(1).

(2) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground of a contravention of all or any of sections 659, 660 and 661, if the employee concerned is an employee in relation to whose termination of employment Subdivision C applies in accordance with this section.

(3) Subdivisions C and D apply in relation to the termination of employment of an employee.

(4) Without prejudice to their effect apart from this subsection, Subdivisions C and D also apply in relation to the termination of
employment of an employee within the meaning of subsection 5(1).

(5) Without prejudice to their effect apart from this subsection, Subdivisions C and D also apply in relation to the termination of employment of an employee for the purpose of assisting in giving effect to the Termination of Employment Convention.

(6) Without prejudice to its effect apart from this subsection, section 659 also applies in relation to the termination of employment of an employee for the purpose of giving effect to the conventions and recommendation referred to in that section.

638 Exclusions

Exclusions from Subdivisions B, D and E and sections 660 and 661

(1) The following kinds of employee are excluded from the operation of Subdivisions B, D and E and sections 660 and 661:

(a) an employee engaged under a contract of employment for a specified period of time;

(b) an employee engaged under a contract of employment for a specified task;

(c) an employee serving a period of probation, if the duration of the period or the maximum duration of the period, as the case may be, is determined in advance and, either:
   (i) the period, or the maximum duration, is 3 months or less; or
   (ii) the period, or the maximum duration:
      (A) is more than 3 months; and
      (B) is reasonable, having regard to the nature and circumstances of the employment;

(d) a casual employee engaged for a short period, within the meaning of subsection (4);

(e) a trainee whose employment under a traineeship agreement or an approved traineeship:
   (i) is for a specified period; or
   (ii) is, for any other reason, limited to the duration of the agreement;

(f) an employee:
(i) who is not employed under award-derived conditions (see subsection 642(6)); and
(ii) to whom subsection (6) or (7) applies;
(g) an employee engaged on a seasonal basis, within the meaning of subsection (8).

Note 1: The expression **employee engaged under a contract of employment for a specified period of time** (used in paragraph (a)) has been addressed in a number of cases before the Industrial Relations Court of Australia, including, in particular, *Cooper v Darwin Rugby League Inc* (1994) 57 IR 238, *Andersen v Umbakumba Community Council* (1994) 126 ALR 121, *D’Lima v Board of Management, Princess Margaret Hospital for Children* (1995-1996) 64 IR 19 and *Fisher v Edith Cowan University* (unreported judgment of Madgwick J, 12 November 1996, No. WI 1061 of 1996).

Note 2: An employee who is excluded from the provisions of the Act specified in this subsection may still be eligible to apply for a remedy in relation to the termination of employment under a provision of a State law that is not excluded under section 16.

Note 3: The definitions in section 642 apply for the purposes of this section.

(2) Despite the exclusion of an employee from the operation of Subdivisions B and E because of subsection (1):
(a) the employee may make an application under section 643 for relief in respect of the termination of his or her employment on the ground of an alleged contravention of section 659; and
(b) if the employee does so, those Subdivisions have effect, in so far as they relate to that application, as if the employee had not been excluded from their operation.

(3) Subsection (1) does not apply to an employee engaged under a contract of a kind mentioned in paragraph (1)(a) or (b) if a substantial purpose of the engagement of the employee under a contract of that kind is, or was at the time of the employee’s engagement, to avoid the employer’s obligations under Subdivision B or D or section 660 or 661.

(4) For the purpose of paragraph (1)(d), a casual employee is taken to be engaged for a short period unless:
(a) subject to subsection (5)—the employee is engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment during a period of at least 12 months; and
(b) the employee has, or but for a decision by the employer to terminate the employee’s employment, would have had, a reasonable expectation of continuing employment by the employer.

(5) If:
(a) a casual employee was engaged by a particular employer on a regular and systematic basis for a sequence of periods during a period (the first period of employment) of less than 12 months; and
(b) at the end of the first period of employment, the casual employee ceased, on the employer’s initiative, to be so engaged by the employer; and
(c) the employer subsequently again engages the employee on a regular and systematic basis for a further sequence of periods during a period (the second period of employment) that starts not more than 3 months after the end of the first period of employment; and
(d) the total length of the first period of employment and the second period of employment is at least 12 months;
paragraph (4)(a) is taken to be satisfied in relation to the employment of the employee.

(6) For the purposes of subparagraph (1)(f)(ii), this subsection applies to an employee if:
(a) the employee’s remuneration immediately before the termination of employment was not wholly or partly determined on the basis of commission or piece rates; and
(b) the rate of remuneration applicable to the employee immediately before the termination exceeds a rate specified, or worked out in a manner specified, in the regulations (the specified rate).

(7) For the purposes of subparagraph (1)(f)(ii), this subsection applies to an employee if:
(a) the employee’s remuneration immediately before the termination of employment was wholly or partly determined on the basis of commission or piece rates; and
(b) in accordance with the regulations, the rate of remuneration that is taken to be applicable to the employee immediately before the termination exceeds the specified rate.
(8) For the purposes of paragraph (1)(g), an employee is engaged on a seasonal basis if the employee is engaged to perform work for the duration of a specified season.

(9) For the purposes of subsection (8), a **season** is a period that:

(a) is determined at the commencement of the employee’s engagement (the **commencement time**); and

(b) begins at the commencement time; and

(c) ends at a time in the future that:

(i) is uncertain at the commencement time; and

(ii) is related to the nature of the work to be performed by the employee; and

(iii) is objectively ascertainable when it occurs.

Note: Examples of seasons are:

(a) the part of a year characterised by particular conditions of weather or temperature;

(b) the part of a year when a product is best or available;

(c) the part of a year marked by certain conditions, festivities or other activities.

(10) The regulations may provide that a particular period is, or is not, a **season** for the purposes of subsection (8).

**Exclusions from sections 660 and 661 and Subdivision D**

(11) The following kinds of employee are excluded from the operation of sections 660 and 661 and Subdivision D:

(a) a casual employee, except a casual employee engaged for a short period within the meaning of subsection (4);

(b) a daily hire employee:

(i) who is performing work in the building and construction industry (including work in, or in connection with, the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures); or

(ii) who is performing work in the meat industry in, or in connection with, the slaughter of livestock;

(c) a weekly hire employee who is performing work in, or in connection with, the meat industry and whose termination of employment is determined solely by seasonal factors.

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Part 12 Minimum entitlements of employees
Division 4 Termination of employment

Section 639

Note 1: An employee who is excluded from the provisions of the Act specified in this subsection may still be eligible to apply for a remedy in relation to the termination of employment under a provision of a State law that is not excluded under section 16.

Note 2: The definitions in section 642 apply for the purposes of this section.

Relationship between subsections (1) and (11)

(12) If, but for this subsection, an employee would be covered by both subsections (1) and (11), the employee is taken only to be covered by subsection (1) (and so is subject to the broader range of exclusions provided for by that subsection).

639 Regulations may provide for additional exclusions

(1) The regulations may exclude from the operation of specified provisions of this Division specified classes of employees included in any of the following classes:
   (a) employees whose terms and conditions of employment are governed by special arrangements providing particular protection in respect of termination of employment either generally or in particular circumstances;
   (b) employees in relation to whom the operation of the provisions causes or would cause substantial problems because of:
      (i) their particular conditions of employment; or
      (ii) the size or nature of the undertakings in which they are employed.

640 People’s rights, liabilities and obligations the same as if certain provisions of the regulations had been valid

(1) In this section:
   
   invalid provisions means paragraph 30B(1)(d), and subregulation 30B(3), of the Workplace Relations Regulations as purportedly amended by the relevant amending regulations.

   relevant amending regulations means the Workplace Relations Regulations (Amendment), Statutory Rules 1996 No. 307.

456 Workplace Relations Act 1996
Subject to subsection (3), the rights and liabilities of all persons
are, by force of this section, declared to be, and always to have
been, the same as if:

(a) section 170CC of this Act, as in force during the period (the
validation period):
   (i) starting immediately before the time when the relevant
      amending regulations purported to commence; and
   (ii) ending on the commencement of this section;
      had authorised the making of regulations containing the
      invalid provisions (in addition to what that section actually
      authorised to be dealt with in regulations); and

(b) a regulation in the same terms as regulation 30B of the
   Workplace Relations Regulations, as purportedly amended
   by the relevant amending regulations:
   (i) had been made, and had commenced, immediately after
      the start of the validation period for the purposes of
      section 170CC as having effect as mentioned in
      paragraph (a); and
   (ii) had been amended by regulations in the same terms as,
      and commencing at the same time as, the provisions of
      the Workplace Relations Regulations (Amendment),
      Statutory Rules 1997 No. 101, that purported to amend
      regulation 30B; and
   (iii) had not subsequently been amended during the
        validation period.

(3) This section does not affect rights or liabilities arising between
parties to proceedings heard and finally determined by the
Commission or a court at or before the commencement of this
section, to the extent that those rights or liabilities arose from, or
were affected by, the invalidity of the invalid provisions.

641 Extraterritorial extension

(1) This Division, and the rest of this Act so far as it relates to this
Division, extend to the termination, or proposed termination, of the
employment of an Australian-based employee even though one or
both of the following apply:
   (a) the employee was employed outside Australia at the time of
      the termination, the proposed time of termination or the time
      of the making of the proposal to terminate;
(b) the act causing termination, or the proposal to terminate, occurred outside Australia.

Note: In this context, Australia includes the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands and the coastal sea. See section 15B and paragraph 17(a) of the Acts Interpretation Act 1901.

(2) However, subsection (1) does not apply in relation to the employee if either:

(a) all the following conditions are met at the time of the termination, the proposed time of termination or the time of the making of the proposal to terminate:
   (i) the employee’s employer is not an Australian employer;
   (ii) the employee’s primary place of work is in Australia’s exclusive economic zone or Australia’s continental shelf;
   (iii) the employee is not prescribed by the regulations as an employee in relation to whom subsection (1) applies despite this subsection; or

(b) the employee is prescribed by the regulations as an employee in relation to whom subsection (1) does not apply.

(3) In this section:

Australian-based employee means a person who would be an Australian-based employee (as defined in subsection 4(1)) if the definition of employee in section 636 applied to the definition of Australian-based employee in that subsection.

Australian employer means a person who would be an Australian employer (as defined in subsection 4(1)) if the definition of employer in section 636 applied to the definition of Australian employer in that subsection.

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.

642 Definitions

(1) In this Division:

Court means the Federal Court of Australia or the Federal Magistrates Court.
**daily hire employee** means an employee:

(a) whose employment:
   (i) is regulated by an award or a workplace agreement; and
   (ii) under the award or workplace agreement is, or is normally, apart from the application to the employee of this Division:
      (A) terminated at the end of each day or shift; or
      (B) able to be terminated by the employer giving to the employee not more than 1 day’s notice; and

(b) who is working in an industry or occupation which, on 16 November 1994, was subject to an award, State award, State employment agreement or old IR agreement which provided for the termination of an employee’s employment in the circumstances referred to in sub-subparagraph (a)(ii)(A) or (B).

**relevant training award**, in relation to an agreement, means:

(a) if the agreement commenced before the commencement of this definition—the award known as the National Training Wage Interim Award 1994, as in force on 16 November 1994; or

(b) if the agreement commences on or after the commencement of this definition—whichever of the following is in force when the agreement commences:
   (i) the award known as the National Training Wage Award 2000; or
   (ii) a later award that covers substantially the same subject matter as is covered by the award referred to in subparagraph (i).

**termination** or **termination of employment** means termination of employment at the initiative of the employer.

**Territory employee** means any person employed in a Territory other than Norfolk Island.

**trainee** means an employee (other than an apprentice) who is bound by a traineeship agreement.

**traineeship agreement** means an agreement between an employer and an employee:

(a) that is consistent with the relevant training award; and

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(b) that is registered:
   (i) with the relevant State or Territory training authority; or
   (ii) under a law of a State or Territory relating to the
        training of employees.

(2) For the purposes of paragraph (b) of the definition of daily hire employee

employee in subsection (1), award, old IR agreement, State award

and State employment agreement have the meanings given by

subsection 4(1) of this Act as in force immediately before the

reform commencement.

(3) For the purposes of this Division, termination or termination of

employment does not include demotion in employment if:

(a) the demotion does not involve a significant reduction in the

    remuneration or duties of the demoted employee; and

(b) the demoted employee remains employed with the employer

    who effected the demotion.

(4) For the purposes of this Division, the resignation of an employee is

taken to constitute the termination of the employment of that

employee at the initiative of the employer if the employee can

prove, on the balance of probabilities, that the employee did not

resign voluntarily but was forced to do so because of conduct, or a

course of conduct, engaged in by the employer.

(5) An expression used in this Subdivision or Subdivision C or D has

the same meaning as in the Termination of Employment

Convention.

(6) For the purposes of this Division, an employee is taken to be

employed under award-derived conditions if the employer is

bound:

(a) in relation to the employee’s wages and conditions of

    employment—by an award or a workplace agreement; or

(b) in relation to:

    (i) the employee’s wages—by an APCS; and
    (ii) in relation to the employee’s conditions of

        employment—by an award or a workplace agreement.

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460 Workplace Relations Act 1996
Section 643

Subdivision B—Application to Commission for relief in respect of termination of employment

643 Application to Commission to deal with termination under this Subdivision

(1) Subject to subsections (5), (6), (8) and (10), an employee whose employment has been terminated by the employer may apply to the Commission for relief in respect of the termination of that employment:
   (a) on the ground that the termination was harsh, unjust or unreasonable; or
   (b) on the ground of an alleged contravention of section 659, 660 or 661; or
   (c) on any combination of grounds in paragraph (b) or on a ground or grounds in paragraph (b) and the ground in paragraph (a).

(2) Subject to subsection (13), an employee whose employment is proposed to be terminated by the employer may apply to the Commission for relief on the ground of an alleged contravention of section 660.

(3) Subject to subsection (13), if:
   (a) an employee’s employment has been terminated by the employer; and
   (b) a trade union’s rules entitle it to represent the industrial interests of the employee;
   the union may, on behalf of the employee, apply to the Commission for relief on the ground or grounds of an alleged contravention of one or more of sections 659 and 661.

(4) Subject to subsection (13), if an employee’s employment has been terminated, or is proposed to be terminated, by the employer:
   (a) an inspector; or
   (b) a trade union:
      (i) whose members include the employee; and
      (ii) whose rules entitle it to represent the industrial interests of the employee; or
   (c) an officer or employee of such a union—if the union’s rules authorise the officer or employee to act on the union’s behalf;
may apply to the Commission for relief on the ground of an alleged contravention of section 660.

(5) An application under subsection (1) may not be made:
(a) on the ground referred to in paragraph (1)(a) or on grounds that include that ground—unless, under subsection 637(1), Subdivision B applies to that application; or
(b) on a ground referred to in paragraph (1)(b)—unless Subdivision C applies to that application.

(6) An application under subsection (1) must not be made on the ground referred to in paragraph (1)(a), or on grounds that include that ground, unless the employee concerned had completed the qualifying period of employment with the employer at the earlier of the following times:
(a) the time when the employer gave the employee the notice of termination;
(b) the time when the employer terminated the employee’s employment.

(7) For the purposes of subsection (6), the qualifying period of employment is:
(a) 6 months; or
(b) a shorter period, or no period, determined by written agreement between the employee and employer before the commencement of the employment; or
(c) a longer period determined by written agreement between the employee and employer before the commencement of the employment, being a reasonable period having regard to the nature and circumstances of the employment.

(8) An application under subsection (1) must not be made on the ground referred to in paragraph (1)(a), or on grounds that include that ground, if the employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons.

(9) For the purposes of subsection (8), operational reasons are reasons of an economic, technological, structural or similar nature relating to the employer’s undertaking, establishment, service or business, or to a part of the employer’s undertaking, establishment, service or business.
(10) An application under subsection (1) must not be made on the
ground referred to in paragraph (1)(a), or on grounds that include
that ground, if, at the relevant time, the employer employed 100
employees or fewer, including:
(a) the employee whose employment was terminated; and
(b) any casual employee who had been engaged by the employer
on a regular and systematic basis for at least 12 months;
but not including any other casual employee.

(11) For the purposes of calculating the number of employees employed
by an employer as mentioned in subsection (10), related bodies
corporate (within the meaning of section 50 of the Corporations
Act 2001) are taken to be one entity.

(12) For the purposes of subsection (10):
(a) the relevant time is the time when the employer gave the
employee the notice of termination, or the time when the
employer terminated the employee’s employment, whichever
happened first; and
(b) for the purposes of calculating the number of employees
employed by the employer, employee has the same meaning
as in paragraph (b) of the definition of that term in
section 636.

(13) An application under subsection (2), (3) or (4) may not be made on
a ground referred to in that subsection unless Subdivision C applies
to that application.

(14) An application under subsection (1) or (3) must be lodged within
21 days after the day on which the termination took effect, or
within such period as the Commission allows on an application
made during or after those 21 days.

(15) An application under subsection (2) or (4) must be lodged within
21 days after the employee is given notice of the decision to
terminate the employee’s employment, or within such period as the
Commission allows on an application made during or after those
21 days.

Note: In Brodie-Hanns v MTV Publishing Ltd (1995) 67 IR 298 the
Industrial Relations Court of Australia set down principles relating to
the exercise of its discretion under a similarly worded provision of the
Industrial Relations Act 1988.
(16) An application under subsection (1), (2), (3) or (4) may be discontinued by the applicant in accordance with rules made under section 124. The applicant may do so whether or not the employer and the employee have agreed to settle the matter.

644 Fees for lodging applications under section 643

Applications in respect of which a fee is payable

(1) A fee is payable for the lodging of an application under subsection 643(1), (2), (3) or (4).

Note: This has effect subject to subsection (7) (which deals with hardship).

Amount of fee if application is lodged in first financial year

(2) If the application is lodged at a time that is:

(a) after the commencement of this section; and

(b) in the first financial year that ends after that commencement;

the amount of the fee is $50.

Amount of fee if application is lodged in later financial year

(3) If the application is lodged in a later financial year (the year of lodgment), the amount of the fee is to be worked out by:

(a) taking the amount of the fee for an application lodged in the previous financial year; and

(b) multiplying that amount by the indexation factor for the year of lodgment (see subsection (4)); and

(c) rounding the result to the nearest multiple of 10 cents (rounding up if the result is exactly half-way in between).

(4) For the purposes of subsection (3), the indexation factor for the year of lodgment is worked out using the following formula (then rounded under subsection (5)):

\[
\text{indexation factor} = \frac{\text{Sum of index numbers for quarters in most recent March year}}{\text{Sum of index numbers for quarters in previous March year}}
\]

where:

index number, for a quarter, means the All Groups Consumer Price Index Number (being the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.
most recent March year means the period of 12 months ending on 31 March in the financial year that occurred immediately before the year of lodgment.

previous March year means the period of 12 months immediately preceding the most recent March year.

quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

(5) The result under subsection (4) must be rounded up or down to 3 decimal places (rounding up if the result is exactly half-way in between).

(6) Calculations under subsection (4):
(a) are to be made using only the index numbers published in terms of the most recently published reference base for the Consumer Price Index; and
(b) are to be made disregarding index numbers that are published in substitution for previously published index numbers (unless the substituted numbers are published to take account of changes in the reference base).

Fee not payable in case of hardship

(7) If a Registrar is satisfied that the person lodging the application will suffer serious hardship if the person is required to pay the fee, no fee is payable for lodging the application.

Refund of fee if application discontinued in certain circumstances

(8) If:
(a) the fee has been paid; and
(b) the application is subsequently discontinued as mentioned in subsection 643(16); and
(c) either:
   (i) at the time the application is discontinued, the application has not yet been listed for attention by the Commission; or
   (ii) if the application has, at or before that time, been listed for attention by the Commission on a specified date or dates—the discontinuance occurs at least 2 days before that date or the earlier of those dates;
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an amount equal to the fee is to be repaid by the Commonwealth to the person who paid it.

645 Motions for dismissal of application for want of jurisdiction

(1) A respondent may move for the dismissal of an application under section 643 on the ground that the application is outside the jurisdiction of the Commission at any time, including a time before the Commission has begun dealing with the application.

(2) If:
   (a) the respondent moves for the dismissal of an application on such a ground and has not previously so moved; and
   (b) the respondent so moves before the matter is referred for conciliation by the Commission;

the Commission must deal with the motion before taking any action, or any further action, on that application, unless the respondent indicates that the matter may be dealt with at a later time.

(3) If the respondent moves for the dismissal of an application on such a ground, having already so moved on a previous occasion, the Commission must deal with the motion but may do so at any time it considers appropriate.

(4) If a respondent has moved for the dismissal of an application made, or purported to have been made, under subsection 643(1):
   (a) on the ground referred to in paragraph 643(1)(a); or
   (b) on grounds that include that ground;

subsection (5) applies to the application.

(5) If the Commission is satisfied that an application to which this subsection applies cannot be made under subsection 643(1) on the ground referred to in paragraph 643(1)(a):
   (a) because the employee is excluded from the operation of Subdivision B by section 638; or
   (b) because of the operation of subsection 643(6) (which relates to qualifying periods); or
   (c) because of the operation of subsection 643(10) (which relates to employers of 100 employees or fewer);

the Commission must:

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(d) if paragraph (4)(a) applies—make an order dismissing the application; or
(e) if paragraph (4)(b) applies—make an order dismissing the application to the extent that it is made on the ground referred to in paragraph 643(1)(a).

(6) If:
(a) a respondent has moved for the dismissal of an application to which subsection (5) applies; and
(b) the Commission is not satisfied as mentioned in paragraph (5)(a), (b) or (c) in relation to the application;
the Commission must make an order refusing the motion for dismissal.

(7) The Commission is not required to hold a hearing in relation to the making of an order under subsection (5) or (6).

646 Applications that are frivolous, vexatious or lacking in substance

(1) If:
(a) an application is made, or purported to have been made, under subsection 643(1):
   (i) on the ground referred to in paragraph 643(1)(a); or
   (ii) on grounds that include that ground; and
(b) the respondent moves for dismissal of the application on the ground that it is frivolous, vexatious or lacking in substance;
and
(c) the Commission is satisfied that the application is frivolous, vexatious or lacking in substance, in relation to the ground referred to in paragraph 643(1)(a);
the Commission must:
(d) if subparagraph (a)(i) applies—make an order dismissing the application; or
(e) if subparagraph (a)(ii) applies—make an order dismissing the application to the extent that it is made on the ground referred to in paragraph 643(1)(a).

(2) If:
(a) an application is made, or purported to have been made, under subsection 643(1):
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(i) on the ground referred to in paragraph 643(1)(a); or
(ii) on grounds that include that ground; and
(b) the respondent moves for dismissal of the application on the
ground that it is frivolous, vexatious or lacking in substance; and
(c) the Commission is not satisfied that the application is
frivolous, vexatious or lacking in substance, in relation to the
ground referred to in paragraph 643(1)(a);
the Commission must:
(d) if subparagraph (a)(i) applies—make an order refusing the
motion for dismissal; or
(e) if subparagraph (a)(ii) applies—make an order refusing the
motion for dismissal, to the extent that the application is
made on the ground referred to in paragraph 643(1)(a).

(3) The Commission is not required to hold a hearing in relation to the
making of an order under subsection (1) or (2).

647 Extension of time applications may be decided without a
hearing

If:
(a) an employee whose employment has been terminated by an
employer makes an application (the 'extension of time
application') under subsection 643(14) requesting the
Commission to allow an application to be lodged under
subsection 643(1) after the period of 21 days after the
termination took effect; and
(b) the proposed application under subsection 643(1) is an
application:
(i) on the ground referred to in paragraph 643(1)(a); or
(ii) on grounds that include that ground;
the Commission is not required to hold a hearing in relation to the
extension of time application.

648 Matters that do not require a hearing

(1) The Commission must, in deciding whether or not to hold a
hearing for the purposes of deciding:

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(a) whether to make an order under subsection 645(5) or (6) or 646(1) or (2); or
(b) whether to grant an extension of time application within the meaning of section 647; take into account the cost that would be caused to the business of the employer concerned by requiring the employer to attend a hearing.

(2) If the Commission decides not to hold a hearing, the Commission must, before making a decision:
(a) invite the employee and the employer concerned to provide further information that relates to whether the order should be made or the extension of time granted; and
(b) take account of any such information.

(3) If, as a result of information provided as mentioned in subsection (2), the Commission considers that it would be desirable to hold a hearing, the Commission may do so.

(4) An invitation under paragraph (2)(a) must:
(a) be given by notice in writing to the employee and the employer concerned; and
(b) specify the time by which the information referred to in the invitation is to be provided.

649 Dismissal of application relating to termination for operational reasons

(1) If:
(a) an application is made, or is purported to have been made, under subsection 643(1):
   (i) on the ground referred to in paragraph 643(1)(a); or
   (ii) on grounds that include that ground; and
(b) either:
   (i) the respondent has moved for the dismissal of the application on the ground that the application is outside the jurisdiction of the Commission because the employee’s employment was terminated for genuine operational reasons or for reasons that include genuine operational reasons; or
(ii) it appears to the Commission, on the face of all the materials before it, that the employee’s employment may have been terminated for genuine operational reasons or for reasons that include genuine operational reasons;

the Commission must hold a hearing to deal with the operational reasons issue before taking any further action in relation to the application, other than dealing with a matter on the papers as provided by section 645, 646, 647 or 648.

(2) If, as a result of the hearing, the Commission is satisfied that the operational reasons relied on by the respondent were genuine, the Commission must:

(a) if subparagraph (1)(a)(i) applies—make an order dismissing the application; or

(b) if subparagraph (1)(a)(ii) applies—make an order dismissing the application to the extent that it is made on the ground referred to in paragraph 643(1)(a).

(3) Subject to any right of appeal to a Full Bench of the Commission, a finding by the Commission that it is not satisfied that the operational reasons relied on by the respondent were genuine is final and binding between the parties in any proceedings before the Commission.

(4) To avoid doubt, this section does not require the Commission to hold a hearing in relation to an application that has been dismissed under subsection 645(5) or 646(1).

(5) In this section:

operational reasons has the meaning given by subsection 643(9).

650 Conciliation

(1) When an application is lodged with the Commission, the Commission must attempt to settle the matter to which the application relates by conciliation.

(2) If the Commission is satisfied that all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as concerns at least one ground of the application, the Commission:

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(a) must issue a certificate in writing stating that it is so satisfied in respect of that ground or each such ground; and
(b) must indicate to the parties the Commission’s assessment of the merits of the application in so far as it relates to that ground or to each such ground; and
(c) if the Commission thinks fit, may recommend that the applicant elect not to pursue a ground or grounds of the application (whether or not also recommending other means of resolving the matter); and
(d) if the Commission considers, having regard to all the materials before the Commission, that the application has no reasonable prospect of success, it must advise the parties accordingly.

(3) If:

(a) the ground or one of the grounds of the application is the ground referred to in paragraph 643(1)(a); and
(b) the Commission has indicated that the applicant’s claim in respect of the ground so referred has no reasonable prospect of success;

the Commission must invite the applicant to provide further information in support of that ground within a period specified by the Commission.

(4) If, in relation to an application to which subsection (3) applies:

(a) the applicant does not provide further information regarding the applicant’s claim in respect of the ground referred to in paragraph 643(1)(a); or
(b) after consideration of the original application and the further material provided by the applicant in support of that ground;

the Commission concludes that the application has no reasonable prospect of success at arbitration, it must issue a certificate to that effect.

(5) If the Commission issues a certificate under subsection (4) in respect of an applicant’s claim in respect of the ground referred to in paragraph 643(1)(a), the application is dismissed, insofar as it relates to that ground, with effect from the date of issue of the certificate.
651 Elections to proceed to arbitration or to begin court proceedings

(1) If the certificate given by the Commission under subsection 650(2) identifies only the ground referred to in paragraph 643(1)(a) as a ground where conciliation is, or is likely to be, unsuccessful, the applicant must elect either to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable or not to proceed.

Note: If a certificate under subsection 650(2) identifies both the ground in paragraph 643(1)(a) and a ground or grounds of an alleged contravention of Subdivision C, and the Commission has issued a certificate under subsection 650(4) in relation to the ground in paragraph 643(1)(a), an applicant must make an election as if the certificate under subsection 650(2) identified only the ground or grounds in Subdivision C.

(2) If the certificate given by the Commission under subsection 650(2) identifies only:
   (a) the ground referred to in paragraph 643(1)(a); and
   (b) the ground of an alleged contravention of section 661;
  as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both, or neither of the following:
   (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
   (d) to begin proceedings in a court of competent jurisdiction for an order under section 665 in respect of the alleged contravention of section 661.

(3) If the certificate given by the Commission under subsection 650(2) identifies:
   (a) the ground referred to in paragraph 643(1)(a); and
   (b) a ground or grounds of an alleged contravention of one or more of sections 659 and 660;
  as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either or neither of the following:
   (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
   (d) to begin proceedings in the Court for an order under section 665 in respect of the alleged contravention, or of any one or more of the alleged contraventions.
(4) If the certificate given by the Commission under subsection 650(2) identifies only a ground or grounds of an alleged contravention of one or more of sections 659, 660 and 661 as the ground or grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both or neither of the following:

(a) so far as concerns an alleged contravention of a section or sections other than section 661—to begin proceedings in the Court for an order under section 665 in respect of the alleged contravention, or of any one or more of the alleged contraventions;

(b) so far as concerns an alleged contravention of section 661—to begin proceedings in a court of competent jurisdiction for an order under section 665 in respect of the alleged contravention.

(5) If the certificate given by the Commission under subsection 650(2) identifies:

(a) the ground referred to in paragraph 643(1)(a); and

(b) the ground of an alleged contravention of section 661; and

(c) a ground or grounds of an alleged contravention of one or more of sections 659 and 660;

as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect:

(d) to do either or both of the things permitted in subsection (2); or

(e) to do either or both of the things permitted in subsection (4); or

(f) to do none of those things.

(6) An election under subsection (1), (2), (3), (4) or (5) must:

(a) be made in writing; and

(b) be lodged with the Commission:

(i) if the certificate given by the Commission under subsection 650(2) identifies the ground of an alleged contravention of section 659 as a ground on which conciliation is, or is likely to be, unsuccessful (whether or not one or more other grounds are so identified)—not later than 28 days after the day of issue of the certificate; or
(ii) in any other case—not later than 7 days after the day of issue of the certificate.

(7) If an applicant fails to lodge with the Commission an election under subsection (1), (2), (3), (4) or (5) within the period required under subsection (6), the application concerned is taken to have been discontinued by the applicant at the end of that period.

(8) The Commission must not, under any provision of this Act, extend the period within which an election is required by subsection (6) to be lodged, other than as mentioned in subsection (9).

(9) The Commission may accept an election referred to in subparagraph (6)(b)(i) that is lodged out of time if the Commission considers that it would be unfair not to do so, and, if the Commission accepts such an election, the original application is taken not to have been discontinued in spite of subsection (7).

(10) An appeal to a Full Bench under section 120 may not be made in relation to the discontinuance of an application under subsection (7).

652 Arbitration

(1) If:

(a) the Commission has issued a certificate under subsection 650(2) regarding conciliation of an application relating to a termination of employment; and

(b) the applicant has made an election under subsection 651(1), (2), (3) or (5) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;

the Commission may so proceed to arbitrate the matter.

(2) Neither the making of an election under subsection 651(1), (2), (3) or (5) to proceed to arbitration nor the commencement of that arbitration prevents further conciliation of the matter being attempted, or the parties from settling the matter, at any time before an order is made under section 654.

(3) In determining, for the purposes of the arbitration, whether a termination was harsh, unjust or unreasonable, the Commission must have regard to:
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(a) whether there was a valid reason for the termination related to the employee’s capacity or conduct (including its effect on the safety and welfare of other employees); and
(b) whether the employee was notified of that reason; and
(c) whether the employee was given an opportunity to respond to any reason related to the capacity or conduct of the employee; and
(d) if the termination related to unsatisfactory performance by the employee—whether the employee had been warned about that unsatisfactory performance before the termination; and
(e) the degree to which the size of the employer’s undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
(f) the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and
(g) any other matters that the Commission considers relevant.

653 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 application under this Division, the member must not exercise, or take part in the exercise of, arbitration powers in relation to the application if a party to the arbitration proceeding objects.

(2) The member is not taken to have exercised conciliation powers in relation to the application merely because:
   (a) the member arranged for a conference of the parties or their representatives to be presided over by the member, but the conference did not take place or was not presided over by the member; or
   (b) the member arranged for the parties or their representatives to confer among themselves at a conference at which the member was not present.
654 Remedies on arbitration

(1) Subject to this section, the Commission may, on completion of the arbitration, make an order that provides for a remedy of a kind referred to in subsection (3), (4) or (7) if it has determined that the termination was harsh, unjust or unreasonable.

(2) The Commission must not make an order under subsection (1) unless the Commission is satisfied, having regard to all the circumstances of the case including:
   (a) the effect of the order on the viability of the employer’s undertaking, establishment or service; and
   (b) the length of the employee’s service with the employer; and
   (c) the remuneration that the employee would have received, or would have been likely to receive, if the employee’s employment had not been terminated; and
   (d) the efforts of the employee (if any) to mitigate the loss suffered by the employee as a result of the termination; and
   (e) any other matter that the Commission considers relevant; that the remedy ordered is appropriate.

(3) If the Commission considers it appropriate, the Commission may make an order requiring the employer to reinstate the employee by:
   (a) reappointing the employee to the position in which the employee was employed immediately before the termination.
   (b) appointing the employee to another position on terms and conditions no less favourable than those on which the employee was employed immediately before the termination.

(4) If the Commission makes an order under subsection (3) and considers it appropriate to do so, the Commission may also make:
   (a) any order that the Commission thinks appropriate to maintain the continuity of the employee’s employment; and
   (b) subject to subsections (5) and (6)—any order that the Commission thinks appropriate to cause the employer to pay to the employee an amount in respect of the remuneration lost, or likely to have been lost, by the employee because of the termination.

(5) In determining an amount for the purposes of an order under paragraph (4)(b), the Commission must have regard to:
(a) the amount of any income earned by the employee from employment or other work during the period between the termination and the making of the order for reinstatement; and

(b) the amount of any income reasonably likely to be so earned by the employee during the period between the making of the order for reinstatement and the actual reinstatement.

(6) If, as a result of an application under section 663, a court has awarded an amount of damages for a failure to give notice of a termination as required by section 661, any amount ordered to be paid by the Commission under paragraph (4)(b) in respect of the termination is to be reduced accordingly.

(7) If the Commission thinks that the reinstatement of the employee is inappropriate, the Commission may, if the Commission considers it appropriate in all the circumstances of the case, make an order requiring the employer to pay the employee an amount ordered by the Commission in lieu of reinstatement.

(8) Subject to subsections (9), (10), (11) and (12), in determining an amount for the purposes of an order under subsection (7), the Commission must have regard to all the circumstances of the case including:

(a) the effect of the order on the viability of the employer’s undertaking, establishment or service; and

(b) the length of the employee’s service with the employer; and

(c) the remuneration that the employee would have received, or would have been likely to receive, if the employee’s employment had not been terminated; and

(d) the efforts of the employee (if any) to mitigate the loss suffered by the employee as a result of the termination; and

(e) any misconduct of the employee that contributed to the employer’s decision to terminate the employee’s employment; and

(f) any other matter that the Commission considers relevant.

(9) An amount ordered by the Commission under subsection (4) or (7) to be paid to an employee may not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the employee by the manner of terminating the employee’s employment.

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(10) If the Commission is satisfied that misconduct of the employee contributed to the employer’s decision to terminate the employee’s employment, the Commission must reduce the amount it would otherwise fix under subsection (7) by an appropriate amount on account of the misconduct.

(11) In fixing an amount under subsection (7) for an employee who was employed under award-derived conditions (see subsection 642(6)) immediately before the termination, the Commission must not fix an amount that exceeds the total of the following amounts:

(a) the total amount of remuneration:
   (i) received by the employee; or
   (ii) to which the employee was entitled;
   (whichever is higher) for any period of employment with the employer during the period of 6 months immediately before the termination (other than any period of leave without full pay); and

(b) if the employee was on leave without pay or without full pay while so employed during any part of that period—the amount of remuneration taken to have been received by the employee for the period of leave in accordance with the regulations.

(12) In fixing an amount under subsection (7) for an employee who was not employed under award-derived conditions (see subsection 642(6)) immediately before the termination, the Commission must not fix an amount that exceeds:

(a) the total of the amounts determined under subsection (11) if the employee were an employee covered by the subsection; or

(b) the amount of $32,000, as indexed from time to time in accordance with a formula prescribed by the regulations; whichever is the lower amount.

(13) For the avoidance of doubt, an order by the Commission under paragraph (4)(b) or under subsection (7) may permit the employer concerned to pay the amount required in instalments specified in the order.
655 Orders made on arbitration are binding

Subject to any right of appeal to a Full Bench of the Commission, an order made by the Commission under section 654 is final and binding between the parties.

656 Representatives to disclose contingency fee agreements

Representatives other than legal practitioners

(1) In a proceeding before the Commission, the Commission must ask a representative appearing on behalf of a party to the proceeding if the representative has been retained by the party under a costs arrangement as to the representative’s costs.

Legal practitioners

(2) In a proceeding before the Commission, the Commission must ask a legal practitioner appearing on behalf of a party to the proceeding if the practitioner has been retained by the party under a contingency fee agreement as to the practitioner’s costs.

Obligation of representative or practitioner

(3) If the representative or legal practitioner has been retained under a costs arrangement or contingency fee agreement (as the case may be), the representative or practitioner must inform the Commission of that fact.

No effect on law relating to legal professional privilege

(4) This section does not affect the law relating to legal professional privilege.

Definitions in this section

(5) In this section:

costs arrangement means an arrangement between people under which:

(a) a person agrees to provide representation for another person before the Commission; and

(b) the payment of all, or a substantial proportion, of the representative’s costs is contingent on the outcome of the...
proceeding before the Commission in which the representative represents the person.

**proceeding before the Commission** means one of the following proceedings in respect of an application under section 643 by an employee whose employment has been terminated on the ground, or on grounds that include the ground, that the termination was harsh, unjust or unreasonable:

(a) a proceeding for dismissal of the application on the ground that the application is outside jurisdiction;
(b) conciliation proceedings under section 650;
(c) arbitration proceedings under section 652.

**representative** means a person, other than a legal practitioner, appearing on behalf of a party to a proceeding before the Commission.

### 657 Commission may dismiss application if applicant fails to attend

If an applicant in a proceeding relating to an application under section 643 fails to attend the proceeding, the Commission, after giving the applicant reasonable notice and a reasonable opportunity to be heard, may dismiss the application under section 643.

### 658 Commission may order payment of costs

(1) If the Commission is satisfied:
(a) that a person (first party):
   (i) made an application under section 643; or
   (ii) began proceedings relating to an application; and
(b) the first party did so in circumstances where it should have been reasonably apparent to the first party that he or she had no reasonable prospect of success in relation to the application or proceeding:

the Commission may, on application under this section by the other party to the application or proceeding, make an order for costs against the first party.

(2) If the Commission is satisfied that a party (first party) to a proceeding relating to an application under section 643 has acted unreasonably in failing:
(a) to discontinue the proceeding; or
(b) to agree to terms of settlement that could lead to the discontinuance of the application;

the Commission may, on an application under this section by the other party to the proceeding, make an order for costs against the first party.

(3) If the Commission is satisfied:

(a) that a party (first party) to a proceeding relating to an application made under section 643 caused costs to be incurred by the other party to the proceeding; and

(b) that the first party caused the costs to be incurred because of the first party’s unreasonable act or omission in connection with the conduct of the proceeding;

the Commission may, on an application by the other party under this section, make an order for costs against the first party.

(4) If the Commission is satisfied:

(a) that a person (the representative) representing a party to a proceeding relating to an application made under section 643 caused costs to be incurred by the other party to the proceeding; and

(b) that the representative caused the costs to be incurred because of the representative’s unreasonable act or omission in connection with the conduct of the proceeding;

the Commission may, on an application by the other party, make an order for costs against the representative.

(5) In making a decision under this section, the Commission may have regard to any certificate issued or advice given under section 650 and whether a party pursued a course of action contrary to any such certificate or advice.

(6) An application for an order for costs under this section must be made within 14 days after the determination, discontinuance, settlement or dismissal of the application under section 643 or proceeding relating to an application under section 643 (as the case may be).

(7) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in respect of:

(a) an application to the Commission under section 643; and

(b) a proceeding in respect of an application under section 643.
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(8) Without limiting, by implication, the generality of the items of expenditure for which the schedule may provide, those items may include:
   (a) legal and professional costs and disbursements; and
   (b) expenses arising from the representation of a party by a person or organisation other than on a legal professional basis; and
   (c) expenses of witnesses.

(9) If a schedule of costs is prescribed for the purposes of subsection (7), then, in awarding costs under this section, the Commission:
   (a) is not limited to the items of expenditure appearing in the schedule; but
   (b) if an item does appear in the schedule—must not award costs in respect of that item at a rate or of an amount in excess of the rate or amount appearing in the schedule.

(10) For the purposes of this section, the following proceedings are examples of proceedings relating to an application under section 643 in respect of which the Commission may make an order for costs:
   (a) a proceeding for dismissal of an application under section 643 on the ground that the application is outside jurisdiction;
   (b) conciliation proceedings under section 650;
   (c) arbitration proceedings under section 652;
   (d) an appeal to the Full Bench from an order of the Commission under section 654 or a costs order under section 658;
   (e) a proceeding concerning an application for costs by one party in respect of another party’s application for costs.

Subdivision C—Unlawful termination of employment by employer

659 Employment not to be terminated on certain grounds

(1) In addition to the principal object of this Division set out in section 635, the additional object of this section is to make provisions that are intended to assist in giving effect to:
(a) the Convention concerning Discrimination in respect of Employment and Occupation, a copy of the English text of which is set out in Schedule 1 to the Human Rights and Equal Opportunity Commission Act 1986; and
(b) the Family Responsibilities Convention; and
(c) the Termination of Employment Recommendation, 1982, which the General Conference of the International Labour Organisation adopted on 22 June 1982 and is also known as Recommendation No. 166.

(2) Except as provided by subsection (3) or (4), an employer must not terminate an employee’s employment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:

(a) temporary absence from work because of illness or injury within the meaning of the regulations;
(b) trade union membership or participation in trade union activities outside working hours or, with the employer’s consent, during working hours;
(c) non-membership of a trade union;
(d) seeking office as, or acting or having acted in the capacity of, a representative of employees;
(e) 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;
(f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
(g) refusing to negotiate in connection with, make, sign, extend, vary or terminate an AWA;
(h) absence from work during maternity leave or other parental leave;
(i) temporary absence from work because of the carrying out of a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances.

(3) Subsection (2) does not prevent a matter referred to in paragraph (2)(f) from being a reason for terminating employment if
the reason is based on the inherent requirements of the particular position concerned.

(4) Subsection (2) does not prevent a matter referred to in paragraph (2)(f) from being a reason for terminating a person’s employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.

(5) To avoid doubt, if:
(a) an employer terminates an employee’s employment; and
(b) the reason, or a reason, for the termination is that the position held by the employee no longer exists, or will no longer exist; and
(c) the reason, or a reason, that the position held by the employee no longer exists, or will no longer exist, is the employee’s absence, or proposed or probable absence, during maternity leave or other parental leave;
the employee’s employment is taken, for the purposes of paragraph (2)(h), to have been terminated for the reason, or for reasons including the reason, of absence from work during maternity leave or other parental leave.

(6) For the purposes of this section, an employee carries out a voluntary emergency management activity if, and only if:
(a) the employee carries out an activity that involves dealing with an emergency or natural disaster; and
(b) the employee carries out the activity on a voluntary basis; and
(c) the employee is a member of, or has a member-like association with, a recognised emergency management body; and
(d) either:
(i) the employee was requested by or on behalf of the body to carry out the activity; or
(ii) no such request was made, but it would be reasonable to expect that, if the circumstances had permitted the making of such a request, it is likely that such a request would have been made.
(7) For the purposes of paragraph (6)(b), an employee carries out an activity on a voluntary basis even if the employee directly or indirectly takes or agrees to take:
   (a) an honorarium; or
   (b) a gratuity; or
   (c) a similar payment;
wholly or partly for carrying out the activity.

(8) In this section:

   body includes a part of a body.

   designated disaster plan means a plan that:
   (a) is for coping with emergencies and/or disasters; and
   (b) is prepared by the Commonwealth, a State or a Territory.

   recognised emergency management body means:
   (a) a body that has a role or function under a designated disaster plan; or
   (b) a fire-fighting, civil defence or rescue body; or
   (c) any other body a substantial purpose of which involves:
      (i) securing the safety of persons or animals in an emergency or natural disaster; or
      (ii) protecting property in an emergency or natural disaster; or
      (iii) otherwise responding to an emergency or natural disaster; or
   (d) a body specified in the regulations;
but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of enabling one or more employees to obtain the protection of subsection (2).

660 Employer to notify CES of proposed terminations in certain cases

(1) This section applies if an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons.
Section 661

(2) As soon as practicable after so deciding and before terminating an employee’s employment because of the decision, the employer must give to the body (if any) prescribed by regulations made for the purposes of this subsection or, failing the prescription of such a body, to the Secretary of the Department, a written notice of the intended terminations, in a form prescribed by the regulations, that sets out:

(a) the reasons for the terminations; and
(b) the number and categories of employees likely to be affected; and
(c) the time when, or the period over which, the employer intends to carry out the terminations.

(3) The employer must not terminate an employee’s employment pursuant to the decision unless the employer has complied with subsection (2).

661 Employer to give notice of termination

(1) Subject to subsection (8), an employer must not terminate an employee’s employment unless:

(a) the employee has been given the required period of notice (see subsections (2) and (3)); or
(b) the employee has been paid the required amount of compensation instead of notice (see subsections (4) and (5)); or
(c) the employee is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue the employment of the employee concerned during the required period of notice (see subsection (7)).

(2) The required period of notice is to be worked out as follows:

(a) first work out the period of notice using the table at the end of this subsection; and
(b) then increase the period of notice by 1 week if the employee:

(i) is over 45 years old; and
(ii) has completed at least 2 years of continuous service with the employer.
Section 661

<table>
<thead>
<tr>
<th>Employee’s period of continuous service with the employer</th>
<th>Period of notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not more than 1 year</td>
<td>At least 1 week</td>
</tr>
<tr>
<td>More than 1 year but not more than 3 years</td>
<td>At least 2 weeks</td>
</tr>
<tr>
<td>More than 3 years but not more than 5 years</td>
<td>At least 3 weeks</td>
</tr>
<tr>
<td>More than 5 years</td>
<td>At least 4 weeks</td>
</tr>
</tbody>
</table>

(3) For the purposes of subsection (2), the regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service.

(4) The required amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee’s employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

(5) That total must be worked out on the basis of:
   (a) the employee’s ordinary hours of work (even if they are not standard hours); and
   (b) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
   (c) any other amounts payable under the employee’s contract of employment.

(6) The regulations may make provision for or in relation to amounts that are taken to be payable under a contract of employment for the purposes of paragraph (5)(c) in relation to an employee whose remuneration before the termination was determined wholly or partly on the basis of commission or piece rates.

(7) Without limiting the generality of the reference to serious misconduct in paragraph (1)(c), the regulations may identify:
   (a) particular conduct; or
   (b) conduct in particular circumstances;
that falls within that reference.
Part 12  Minimum entitlements of employees
Division 4  Termination of employment

Section 662

(8) The regulations may exclude from the operation of this section terminations of employment occurring in specified circumstances that relate to the succession, assignment or transmission of the business of the employer concerned.

662  Contravention of this Subdivision not an offence

A contravention of section 659, 660 or 661 is not an offence.

663  Application to courts in relation to alleged contravention of section 659, 660 or 661

(1) Subject to subsection (5), an employee may apply under this section to the Court for an order under section 665 in respect of an alleged contravention of one or more of sections 659 and 660 by his or her employer.

(2) Subject to subsection (5), an employee may apply under this section to the Court or to an eligible court as defined in section 717 for an order under section 665 in respect of an alleged contravention of section 661 by his or her employer.

(3) Subject to subsection (5), a trade union that has made an application under section 643 on behalf of an employee on the ground of an alleged contravention of one or more of sections 659 and 661 may apply to a court under this section for an order under section 665 in respect of that alleged contravention or each of those alleged contraventions.

(4) Subject to subsection (5), an inspector, a trade union, or a trade union officer or employee who has made an application under section 643 in respect of an alleged contravention of section 660 may apply to the Court under this section for an order under section 665 in respect of that alleged contravention.

(5) An application under subsection (1), (2), (3) or (4) in respect of an alleged contravention of section 659, 660 or 661 may not be made to a court unless the applicant:

(a) has received a certificate under subsection 650(2) regarding conciliation of an application made wholly or partly on the ground of the alleged contravention; and
(b) has elected under section 651 to begin proceedings in that
court for an order under section 665 in respect of the alleged
contravention.

(6) The application must be made within 14 days after the lodgment of
an election under subsection 651(6), or within such period as a
court allows on an application made during or after those 14 days.

Note: In Brodie-Hanns v MTV Publishing Ltd (1995) 67 IR 298, the
Industrial Relations Court of Australia set down principles relating to
the exercise of its discretion under a similarly worded provision of the
Industrial Relations Act 1988.

### 664 Proof of issues in relation to alleged contravention of section 659

In any proceedings under section 663 relating to a termination of
employment in contravention of section 659 for a reason (a
proscribed reason) set out in a paragraph of subsection (2) of that
section:

(a) it is not necessary for the employee to prove that the
termination was for a proscribed reason; but

(b) it is a defence in the proceedings if the employer proves that
the termination was for a reason or reasons that do not
include a proscribed reason (other than a proscribed reason to
which subsection 659(3) or (4) applies).

### 665 Orders available to courts

(1) If the Court is satisfied that an employer has contravened
section 659 in relation to the termination of employment of an
employee, the Court may make one or more of the following
orders:

(a) an order imposing on the employer a penalty of not more
than $10,000;

(b) an order requiring the employer to reinstate the employee;

(c) subject to subsections (2), (3), (4) and (5), an order requiring
the employer to pay to the employee compensation of such
amount as the Court thinks appropriate;

(d) any other order that the Court thinks necessary to remedy the
effect of such a termination;

(e) any other consequential orders.
(2) An amount of compensation ordered by the Court under paragraph (1)(c) or (d) to be paid to an employee may not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the employee by the manner of terminating the employee’s employment.

(3) In fixing an amount under paragraph (1)(c) for an employee who was employed under award-derived conditions immediately before the termination, the Court must not fix an amount that exceeds the total of the following amounts:
   (a) the total amount of remuneration:
       (i) received by the employee; or
       (ii) to which the employee was entitled;
       (whichever is higher) for any period of employment with the employer during the period of 6 months immediately before the termination (other than any period of leave without full pay); and
   (b) if the employee was on leave without pay or without full pay while so employed during any part of that period—the amount of remuneration taken to have been received by the employee for the period of leave in accordance with the regulations.

(4) In fixing an amount under paragraph (1)(c) for an employee who was not employed under award-derived conditions immediately before the termination, the Court must not fix an amount that exceeds:
   (a) the total of the amounts determined under subsection (3) if the employee were an employee covered by the subsection; or
   (b) the amount of $32,000, as indexed from time to time in accordance with a formula prescribed by the regulations; whichever is the lower amount.

(5) For the avoidance of doubt, an order by the Court under paragraph (1)(c) or (d) may permit the employer concerned to pay the amount required in instalments specified in the order.

(6) If the Court is satisfied that an employer has contravened section 660 in relation to a decision to terminate the employment of employees, the Court may make either or both of the following orders:

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490 Workplace Relations Act 1996
(a) an order imposing on the employer a penalty of not more than $1,000;
(b) an order requiring the employer not to terminate the employment of employees pursuant to the decision, except as permitted by the order.

(7) Subject to subsection (8), if a court to which an application is made under subsection 663(2) or (3) is satisfied that an employer has contravened section 661 in relation to the termination of the employment of an employee, that court may make an order requiring the employer to pay to the employee an amount of damages equal to the amount which, if it had been paid by the employer to the employee when the employment was terminated, would have resulted in the employer not contravening that section.

(8) If the Commission has made an order under subsection 654(4) requiring the employer to pay to the employee an amount in respect of the remuneration lost, or likely to have been lost, by the employee because of the termination, an order under subsection (7) of this section must not be made.

(9) A court to which an application is made under section 663 must not grant an injunction in respect of a proposed contravention of section 659, 660 or 661.

Note: As well as the remedies provided in this Subdivision for contravention of section 659, 660 or 661, there are provisions in other parts of the Act that relate, in part, to termination of employment. See, in particular, sections 448 and 792.

**666 Costs**

(1) Subject to this section, a party to a proceeding under section 663 must not be ordered to pay costs incurred by any other party to the proceeding unless the court hearing the matter is satisfied that the first-mentioned party:

(a) instituted the proceeding vexatiously or without reasonable cause; or

(b) caused the costs to be incurred by that other party because of an unreasonable act or omission of the first-mentioned party in connection with the conduct of the proceeding.
(2) Subsection (1) does not empower a court to award costs in circumstances specified in that subsection if the court does not have the power to do so.

(3) In this section:

costs includes all legal and professional costs and disbursements and expenses of witnesses.

667 Small claims procedure

Section 724 applies to a proceeding under section 663 in respect of an alleged contravention of section 661 that is started by a person or a trade union in a magistrate’s court in the same way as section 724 applies to an action under section 720 that is started in a magistrate’s court.

Subdivision D—Commission orders after employer fails to consult trade union about terminations

668 Orders by Commission where employer fails to consult trade union about terminations

(1) Subsection (2) applies if the Commission is satisfied that an employer has, on or after 26 February 1994, decided to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons, and that:

(a) the employer did not, as soon as practicable after so deciding and in any event before terminating an employee’s employment pursuant to the decision, inform each trade union of which any of the employees was a member, and which represented the industrial interests of such of those employees as were members, about:

(i) the terminations and the reasons for them; and

(ii) the number and categories of employees likely to be affected; and

(iii) the time when, or the period over which, the employer intended to carry out the terminations; or

(b) the employer did not, as soon as practicable after so deciding and in any event before terminating an employee’s...
employment pursuant to the decision, give each such trade union an opportunity to consult with the employer on:

(i) measures to avert the termination, or avert or minimise the terminations; and

(ii) measures (such as finding alternative employment) to mitigate the adverse effects of the termination or terminations.

(2) Subject to subsection (3), the Commission may make whatever orders it thinks appropriate, in the public interest, in order to put the employees whose employment was terminated pursuant to the decision, and each such trade union, in the same position (as nearly as can be done) as if:

(a) if paragraph (1)(a) applies—the employer had so informed the trade union; and

(b) if paragraph (1)(b) applies—the employer had so given the trade union such an opportunity.

(3) The power to make orders under subsection (2) does not include the power to make orders for any of the following:

(a) reinstatement of an employee;

(b) withdrawal of a notice of termination if the notice period has not expired;

(c) payment of an amount in lieu of reinstatement;

(d) payment of severance pay;

(e) disclosure of confidential information or commercially sensitive information relating to the employer, unless the recipient of such information gives an enforceable undertaking not to disclose the information to any other person;

(f) disclosure of personal information relating to a particular employee, unless the employee has given written consent to the disclosure of the information and the disclosure is in accordance with that consent.

(4) Subsections (1) and (2) do not apply in relation to a trade union if the employer could not reasonably be expected to have known at the time of the decision that one or more of the employees were members of the trade union.
Section 669

(5) For the purposes of subsection (3), **commercially sensitive information, confidential information** and **personal information** have their ordinary meanings unless the regulations provide otherwise.

669 Orders only on application

The Commission must not make an order under section 668 unless it has received an application for the making of the order from:

(a) an employee or trade union whose position is to be affected by the order as mentioned in subsection 668(2); or
(b) a trade union whose rules entitle it to represent the industrial interests of such employees.

670 Powers and procedures of Commission for dealing with applications

The Commission may, in relation to an application for an order under section 668, attempt to settle the matter to which the application relates by conciliation.

671 No order if alternative remedy exists

The Commission must refrain from considering an application, or from determining it, if the Commission is satisfied that there is available to the applicant, or to the employees whom the applicant represents, an alternative remedy under machinery:

(a) that exists under a law of the Commonwealth (other than this Division) or under a law of a State or Territory; and

(b) by which effect will be given to the requirements of Article 13 of the Termination of Employment Convention in relation to the employees and trade unions concerned.

Subdivision E—Rights relating to termination of employment

672 Limitation on applications alleging termination on paragraph 643(1)(a) grounds

(1) An application under subsection 643(1) alleging termination of employment on the ground referred to in paragraph 643(1)(a), or grounds that include that ground, must not be made if other
termination proceedings have already been commenced in respect of the termination of employment, unless the other termination proceedings:

(a) have been discontinued by the employee who commenced the proceedings; or
(b) have failed for want of jurisdiction.

Note: Subsection (3) defines other termination proceedings.

(2) An employee must not commence other termination proceedings in respect of a termination of employment if an application under subsection 643(1) alleging termination of employment on the ground referred to in paragraph 643(1)(a), or on grounds that include that ground, has already been made, unless the application:

(a) has been discontinued by the employee; or
(b) has failed for want of jurisdiction.

(3) In this section:

other termination proceedings means proceedings, in respect of a termination of the employment of an employee:

(a) for a remedy in respect of the termination:

(i) under a provision of this Act other than section 643; or
(ii) under another law of the Commonwealth; or
(iii) under a provision of a law of a State or Territory that is not excluded by section 16; and

(b) that allege that the termination was unlawful for any reason (other than a failure by the employer to provide a benefit to which the employee was entitled on the termination).

Note: Section 16 provides for the exclusion of certain State and Territory laws.

(4) Without limiting subsection (3), other termination proceedings includes an inquiry in respect of a complaint (the HREOC complaint):

(a) made under the Human Rights and Equal Opportunity Commission Act 1986; and
(b) that relates to the termination of employment of an employee (whether or not as a result of an amendment of the complaint).
Section 673

(5) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (4):
   (a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or
   (b) if the HREOC complaint constitutes, or would constitute, other termination proceedings only as a result of an amendment of the complaint—when the complaint is amended.

(6) For the avoidance of doubt, a proceeding seeking compensation, or the imposition of a penalty, because an employer has failed, in relation to a termination of employment, to meet an obligation:
   (a) to give adequate notice of the termination; or
   (b) to provide a severance payment as a result of the termination; or
   (c) to provide any other entitlement payable as a result of the termination;
   is taken to be a proceeding alleging that the termination was unlawful because of a failure to provide a benefit to which the employee was entitled on the termination.

673 No second applications under section 643 concerning same termination to be made

An application must not be made under section 643 in relation to a termination of employment of an employee where a previous application under section 643 was made in respect of the same termination unless the second application corrects an error in the previous application, or the Commission considers that it would be fair to accept the second application.

674 Limitation on applications alleging unlawful termination

(1) An application alleging unlawful termination of employment must not be made by an employee if other termination proceedings have already been commenced in respect of the termination of employment, unless the other termination proceedings:
   (a) have been discontinued by the employee; or
   (b) have failed for want of jurisdiction.

Note: Subsection (3) defines an application alleging unlawful termination and other termination proceedings.

496 Workplace Relations Act 1996
(2) An employee must not commence other termination proceedings in respect of a termination of employment if an application alleging unlawful termination of the employment has already been made, unless the application:
   (a) has been discontinued by the employee; or
   (b) has failed for want of jurisdiction.

(3) In this section:

application alleging unlawful termination means an application under section 643, in respect of a termination of employment, on the ground that the termination constitutes a contravention of section 659 because it was done for a reason set out in subsection 659(2).

other termination proceedings means proceedings, in respect of a termination of employment:
   (a) for a remedy in respect of the termination:
      (i) under a provision of this Act other than section 643; or
      (ii) under another law of the Commonwealth; or
      (iii) under a provision of a law of a State or Territory that is not excluded by section 16; and
   (b) that allege that the termination was:
      (i) harsh, unjust or unreasonable (however described); or
      (ii) unlawful;
      for any reason (other than a failure by the employer to provide a benefit to which the employee was entitled on the termination).

Note: Section 16 provides for the exclusion of certain State or Territory laws.

(4) Without limiting subsection (3), other termination proceedings includes an inquiry in respect of a complaint (the HREOC complaint):
   (a) made under the Human Rights and Equal Opportunity Commission Act 1986; and
   (b) that relates to the termination of employment of an employee (whether or not as a result of an amendment of the complaint).
(5) For the purposes of this section, an employee commences other termination proceedings of a kind referred to in subsection (4):

(a) unless paragraph (b) applies—when the employee makes the HREOC complaint; or

(b) if the HREOC complaint constitutes, or would constitute, other termination proceedings as a result of an amendment of the complaint—when the complaint is amended.

Subdivision F—Unmeritorious or speculative proceedings

675 Definitions

In this Subdivision:

adviser means:

(a) a person or body engaged for fee or reward to represent an applicant or a respondent in an unfair termination application, including a person or body so engaged under a contingency fee agreement, or under a costs arrangement within the meaning of subsection 656(5); or

(b) a person who is an employee, official or agent of a registered organisation of employees and who represents an applicant or a respondent in an unfair termination application in that capacity.

encourage, in relation to a course of action, means the promotion of that course of action as distinct from a failure to dissuade from that course of action.

unfair termination application means an application for relief under section 643 by an employee whose employment has been terminated, on the ground, or on grounds that include the ground, that the termination was harsh, unjust or unreasonable.

676 Advisers not to encourage applicants to make, or to pursue, certain applications

(1) An adviser must not encourage an employee to make or pursue an unfair termination application if, on the facts that have been disclosed or that ought reasonably to have been apparent to the adviser, the adviser should have been, or should have become,
aware that there was no reasonable prospect of success in respect of the application.

(2) An adviser must not encourage an employer to continue to oppose an unfair termination application if, on the facts that have been disclosed or that ought reasonably to have been apparent to the adviser, the adviser should have been, or should have become, aware that there was no reasonable prospect of the respondent defending the action.

677 Applications to the Court

(1) An application may be made to the Court for an order under section 679 in respect of a contravention of section 676.

(2) The application may be made by:
   (a) the applicant in respect of an unfair termination application; or
   (b) a respondent to such an application; or
   (c) the Minister; or
   (d) the Registrar; or
   (e) an organisation of employees or employers that represented a party in proceedings at first instance in respect of the unfair termination application.

(3) An application under this section for an order in respect of a contravention of section 676 may only be made after the relevant unfair termination application has been determined, dismissed or discontinued.

(4) Nothing in this Subdivision implies that, for the purposes of an application under this section, the law relating to legal professional privilege is abrogated, or in any way affected.

678 Evidentiary matters

In any proceeding for an order in respect of a contravention of section 676 in respect of an unfair termination application, the Court must not determine that there was no reasonable prospect of success in respect of the application or no reasonable prospect of the respondent defending the action unless it has had regard:
(a) to the outcome of the application before the Commission; and
(b) to the contents of any certificate issued by the Commission under subsection 650(2) and, where applicable, subsection (4).

679 Order that the Court may make

In respect of contraventions of section 676, the Court may, if the Court considers it appropriate in all the circumstances of the case, make an order imposing on the adviser who contravened that section a penalty:
(a) if the adviser is a body corporate—of not more than $10,000; or
(b) if the adviser is not a body corporate—of not more than $2,000.
Division 5—Orders and proceedings

680 Orders to be in writing
An order of the Commission under this Part must be in writing.

681 When orders take effect
An order of the Commission under this Part takes effect from the date of the order or a later date specified in the order.

682 Compliance with orders
(1) An order under this Part is, unless the order provides otherwise, taken to bind all employers and employees of the kind covered by the order (whether or not named or described in the order).

(2) In addition to any other right that an employee covered by an order under this Part may have under Part 14:
   (a) the employee may apply to the Court or the Federal Magistrates Court to enforce the order by injunction or otherwise as the Court or the Federal Magistrates Court thinks fit; and
   (b) if the order is an order under Subdivision B of Division 4—the employee may apply to an eligible court as defined in section 717 to enforce the order by injunction.

683 Variation and revocation of orders
(1) The Commission may vary or revoke an order under this Part on application by:
   (a) any employer, or representative of an employer, covered by the order (whether or not named or described in the order); or
   (b) any employee, or representative of any employee, to whom the order relates (whether or not named or described in the order).

(2) If the Commission is satisfied, on an application under this section, that an order under Division 3 should be varied or revoked because of a change in circumstances, the Commission must vary or revoke the order accordingly.
(3) Subsection (2) does not limit the Commission’s powers under subsection (1).

(4) This section does not apply to an order under subsection 645(5) or section 646 or to a decision on an extension of time application within the meaning of section 647.

684 Representation of employers

Without limiting the operation of paragraphs 100(11)(b) and 854(10)(b), an employer that is a party to a proceeding under this Part before the Commission, the Court or the Federal Magistrates Court may be represented by a member, officer or employee of an association of employers of which the employer is a member.

685 Appeals to Full Bench

(1) An appeal to a Full Bench under section 120 may be instituted by any person who is entitled under section 683 to apply for the variation or revocation of an order under this Part.

(2) For the avoidance of doubt, an appeal to a Full Bench under section 120 in relation to an order made by the Commission under Subdivision B of Division 4 may be made only on the grounds that the Commission was in error in deciding to make the order.

(3) An appeal to a Full Bench under section 120 may not be made in relation to an order under subsection 645(5) or section 646 or in relation to a decision on an extension of time application within the meaning of section 647.

686 Inconsistency with awards or other orders of Commission

Any award or order of the Commission or workplace agreement that is inconsistent with an order under this Part does not have effect to the extent of the inconsistency.

687 Meaning of employee and employer

To avoid doubt, the expression employee or employer, when used in a provision of this Division, is taken to have the same meaning as in the provision of this Act to which the provision of this Division relates.

502 Workplace Relations Act 1996
Division 6—Parental leave

688 Object and application of Division

The object of this Division is to give effect, or further effect, to:

(a) the Family Responsibilities Convention; and

(b) the Workers with Family Responsibilities Recommendation, 1981, which the General Conference of the International Labour Organisation adopted on 23 June 1981 and is also known as Recommendation No. 165;

by providing for a system of unpaid parental leave, and a system of unpaid adoption leave, that will help men and women workers who have responsibilities in relation to their dependent children:

(c) to prepare for, enter, participate in or advance in economic activity; and

(d) to reconcile their employment and family responsibilities.

Note: Employer, employee and employment have their ordinary meaning in this Division. See sections 5, 6 and 7 and Schedule 2.

689 Entitlement to parental leave

The provisions of Division 6 of Part 7 are taken to apply in relation to an employee:

(a) who is not an employee within the meaning of subsection 5(1); and

(b) if the employee is a casual employee—who would be an eligible casual employee within the meaning of Division 6 of Part 7, if he or she were an employee within the meaning of subsection 5(1);

as if he or she were an employee to whom Division 6 of Part 7 applied.

Note 1: Employees within the meaning of subsection 5(1) are entitled to the key minimum entitlements of employment provided by the Australian Fair Pay and Conditions Standard. These include an entitlement to parental leave (see Division 6 of Part 7).

Note 2: Compliance with this section is dealt with in Part 14.
Section 690

690 Division supplements other laws

This Division is intended to supplement, not to override, entitlements under other Commonwealth, State and Territory legislation and awards.

691 Model dispute resolution process

The model dispute resolution process applies to a dispute under this Division.

Note: The model dispute resolution process is set out in Part 13.
Part 13—Dispute resolution processes

Division 1—Preliminary

692 Object

The objects of this Part are:
(a) to encourage employers and employees who are parties to a dispute to resolve it at the workplace level; and
(b) to introduce greater flexibility for the resolution of disputes by allowing the parties to determine the best forum in which to resolve them.

693 Court process

The fact that the model dispute resolution process, an alternative dispute resolution process or any other dispute resolution process applies in relation to a dispute does not affect any right of a party to the dispute to take court action to resolve it.
Part 13  Dispute resolution processes
Division 2  Model dispute resolution process

Section 694

Division 2—Model dispute resolution process

694  Model dispute resolution process

(1) This Division sets out the model dispute resolution process.

(2) The model dispute resolution process does not apply in relation to a particular dispute, unless it applies in relation to that dispute because of a provision of this Act, other than one contained in this Division, or a term of an award, a workplace agreement or a workplace determination.

Note: The model dispute resolution process applies in relation to a variety of disputes, including:

(a) disputes about entitlements under the Australian Fair Pay and Conditions Standard (see section 175); and

(b) disputes about the terms of a workplace agreement, where the agreement itself includes the model dispute resolution process or is taken to include that process (see section 353); and

(c) disputes about the application of a workplace determination (see section 504); and

(d) disputes about the application of awards (see section 514); and

(e) disputes under Division 1 of Part 12, which deals with meal breaks (see section 609); and

(f) disputes under Division 2 of Part 12, which deals with public holidays (see section 614); and

(g) disputes under Division 6 of Part 12, which deals with parental leave (see section 691).

695 Resolving dispute at workplace level

The parties to a dispute must genuinely attempt to resolve the dispute at the workplace level.

Note: This may involve an affected employee first discussing the matter in dispute with his or her supervisor, then with more senior management.

506  Workplace Relations Act 1996
696 Where dispute cannot be resolved at workplace level

Alternative dispute resolution process using an agreed provider

(1) If a matter in dispute cannot be resolved at the workplace level, a party to the dispute may elect to use an alternative dispute resolution process in an attempt to resolve the matter.

(2) The alternative dispute resolution process is to be conducted by a person agreed between the parties in dispute on the matter.

Where parties cannot agree on a provider

(3) If the parties cannot reach agreement on who is to conduct the alternative dispute resolution process, a party to the dispute on the matter may notify the Industrial Registrar of that fact.

(4) On receiving notification under subsection (3), the Industrial Registrar must provide the parties with the prescribed information.

(5) If the parties cannot agree on who is to conduct the alternative dispute resolution process within the consideration period, a party to the dispute on the matter may apply to the Commission to have the alternative dispute resolution process conducted by the Commission.

(6) If an alternative dispute resolution process is used to resolve a dispute on a matter, the parties to the dispute must genuinely attempt to resolve the dispute using that process.

(7) In this section:

consideration period is a period beginning on the last day on which the Industrial Registrar gives the prescribed information to a party to the dispute on the matter and ending 14 days later.

697 Conduct during dispute

(1) An employee who is a party to a dispute must, while the dispute is being resolved:

(a) continue to work in accordance with his or her contract of employment, unless the employee has a reasonable concern about an imminent risk to his or her health or safety; and
(b) comply with any reasonable direction given by his or her employer to perform other available work, either at the same workplace or at another workplace.

(2) In directing an employee to perform other available work, an employer must have regard to:
   (a) the provisions (if any) of the law of the Commonwealth or of a State or Territory dealing with occupational health and safety that apply to that employee or that other work; and
   (b) whether that work is appropriate for the employee to perform.
Division 3—Alternative dispute resolution process conducted by Commission under model dispute resolution process

698 Alternative dispute resolution process

An alternative dispute resolution process is a procedure for the resolution of disputes, and includes:

(a) conferencing; and
(b) mediation; and
(c) assisted negotiation; and
(d) neutral evaluation; and
(e) case appraisal; and
(f) conciliation; and
(g) arbitration, or other determination of the rights and obligations of the parties in dispute; and
(h) a procedure or service specified in the regulations.

699 Application

(1) A person may apply to the Commission to have an alternative dispute resolution process conducted by the Commission under this Division in relation to a matter or matters in dispute if:

(a) the dispute is one that may (whether under an award, a workplace determination, a workplace agreement, a provision of this Act or otherwise) be resolved using the model dispute resolution process; and
(b) the parties to the dispute on the matter or matters have been unable to resolve the dispute at the workplace level.

(2) An application to have an alternative dispute resolution process conducted by the Commission under this Division must:

(a) be in the form (if any) prescribed by the regulations; and
(b) describe the matter, or matters, in dispute in relation to which the alternative dispute resolution process is to be conducted; and
Part 13  Dispute resolution processes

Division 3  Alternative dispute resolution process conducted by Commission under model dispute resolution process

Section 700

(c) be signed by the party to the dispute on that matter or those matters who is making the application; and
(d) specify that the alternative dispute resolution process is to be conducted under the model dispute resolution process.

(3) The Commission may request the parties to provide further information about:
(a) the matter or matters in dispute; and
(b) the steps taken to resolve the matter at the workplace level.

(4) The Commission may do either of the following in relation to an application under this section:
(a) allow the amendment, on any terms that it thinks appropriate, of the application;
(b) correct, amend or waive any error, defect or irregularity whether in substance or form in the application.

700 Refusing application

(1) The Commission must refuse to conduct an alternative dispute resolution process under this Division in relation to a matter if:
(a) the dispute is not one that may be resolved using the model dispute resolution process; or
(b) the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.

(2) The Commission may refuse to conduct an alternative dispute resolution process under this Division if the parties in dispute on the matter have not made a genuine attempt:
(a) to resolve the dispute at the workplace level; or
(b) to reach agreement on who would conduct the alternative dispute resolution process.

701 Commission’s powers

(1) If the Commission conducts an alternative dispute resolution process under this Division, the Commission must take such action as is appropriate to assist the parties to resolve the matter.

510  Workplace Relations Act 1996
(2) The action that the Commission may take includes:
(a) arranging conferences of the parties or their representatives at which the Commission is present; and
(b) arranging for the parties or their representatives to confer among themselves at conferences at which the Commission is not present.

(3) The Commission must, as far as is practicable, act:
(a) quickly; and
(b) in a way that avoids unnecessary technicalities and legal forms; and
(c) if the parties have agreed that an aspect of the process is to be conducted in a particular way—subject to subsection (4), in accordance with that agreement.

(4) The Commission does not have power:
(a) to compel a person to do anything; or
(b) to arbitrate the matter, or matters, in dispute; or
(c) to otherwise determine the rights or obligations of a party to the dispute; or
(d) to make an award in relation to the matter, or matters, in dispute; or
(e) to make an order in relation to the matter, or matters, in dispute; or
(f) to appoint a board of reference.

(5) The Commission does not have the power to do any of the things mentioned in paragraph (4)(a), (d), (e) or (f), even if the parties agree that the Commission should do it.

(6) The Commission may, subject to any reasonable limitations imposed by the Commission, permit a party to the dispute on the matter to be represented in the alternative dispute resolution process.

(7) If the parties request the Commission to make recommendations about particular aspects of a matter about which they are unable to reach agreement, then the Commission may make recommendations about those aspects of the matter.
Part 13  Dispute resolution processes
Division 3  Alternative dispute resolution process conducted by Commission under model dispute resolution process

Section 702

(8) Subdivision B of Division 4 of Part 3 of this Act does not apply in relation to the conduct of the alternative dispute resolution process by the Commission under this Division.

702  Privacy

(1) The Commission must conduct the alternative dispute resolution process in private.

(2) The Commission must not disclose or use any information or document that is given to the Commission in the course of conducting the alternative dispute resolution process to any person, unless:
   (a) the information or document is disclosed or used for the purpose of conducting the process; or
   (b) the parties to the process consent to the disclosure or use; or
   (c) the information or document is disclosed or used in circumstances specified in regulations made for the purposes of this paragraph; or
   (d) the disclosure or use is otherwise required or authorised by law.

(3) Evidence of anything said, or any act done, in the alternative dispute resolution process is not admissible in proceedings relating to the dispute:
   (a) in any court; or
   (b) before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
   (c) before a person authorised by the consent of the parties to hear evidence;
   unless:
   (d) the parties agree to the evidence being admissible; or
   (e) the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.

703  When alternative dispute resolution process complete

The alternative dispute resolution process is completed when:
   (a) the parties agree that the matters in dispute are resolved; or
(b) the party who elected to use the alternative dispute resolution process has informed the Commission that the party no longer wishes to continue with the process.
Division 4—Alternative dispute resolution process used to resolve other disputes

704 Application

(1) A person may apply to the Commission to have an alternative dispute resolution process conducted by the Commission under this Division in relation to a matter or matters in dispute if:
   (a) the dispute on the matter or matters arises in the course of bargaining in relation to a proposed collective agreement (as defined for the purposes of Part 9); and
   (b) all parties to the dispute agree that the process is to be conducted by the Commission.

(2) An application to have an alternative dispute resolution process conducted by the Commission under this Division must:
   (a) be in the form (if any) prescribed by the regulations; and
   (b) describe the matter, or matters, in dispute in relation to which the alternative dispute resolution process is to be conducted; and
   (c) be signed by the party to the dispute on that matter or those matters who is making the application; and
   (d) specify that the alternative dispute resolution process is to be conducted in relation to a dispute on a matter or matters arising in the course of bargaining in relation to a proposed collective agreement (as defined for the purposes of Part 9).

(3) The Commission may request the parties to provide further information about the matter or matters in dispute.

705 Grounds on which Commission must refuse application

The Commission must refuse to conduct the alternative dispute resolution process if the circumstances mentioned in subsection 704(1) do not exist.
706 Powers of the Commission

(1) If the Commission conducts an alternative dispute resolution process under this Division, the Commission must take such action as is appropriate to assist the parties to resolve the matter.

(2) The action that the Commission may take includes:
   (a) arranging conferences of the parties or their representatives at which the Commission is present; and
   (b) arranging for the parties or their representatives to confer among themselves at conferences at which the Commission is not present.

(3) The Commission must, as far as is practicable, act:
   (a) quickly; and
   (b) in a way that avoids unnecessary technicalities and legal forms; and
   (c) if the parties have agreed that an aspect of the process is to be conducted in a particular way—subject to subsection (4), in accordance with that agreement.

(4) The Commission does not have power:
   (a) to compel a person to do anything; or
   (b) to arbitrate the matter, or matters, in dispute; or
   (c) to otherwise determine the rights or obligations of a party to the dispute; or
   (d) to make an award in relation to the matter, or matters, in dispute; or
   (e) to make an order in relation to the matter, or matters, in dispute; or
   (f) to appoint a board of reference.

(5) The Commission does not have power to do any of the things mentioned in subsection (4), even if the parties agree that the Commission should do it.

(6) The Commission may, subject to any reasonable limitations imposed by the Commission, permit a party to the dispute on the matter to be represented in the alternative dispute resolution process.
Part 13  Dispute resolution processes
Division 4  Alternative dispute resolution process used to resolve other disputes

Section 707

(7) If the parties request the Commission to make recommendations about particular aspects of a matter about which they are unable to reach agreement, then the Commission may make recommendations about those aspects of the matter.

(8) Subdivision B of Division 4 of Part 3 of this Act does not apply in relation to the conduct of the alternative dispute resolution process by the Commission under this Division.

707 Privacy

(1) The Commission must conduct the alternative dispute resolution process in private.

(2) The Commission must not disclose or use any information or document that is given to the Commission in the course of conducting the alternative dispute resolution process to any person, unless:
   (a) the information or document is disclosed or used for the purpose of conducting the process; or
   (b) the parties to the process consent to the disclosure or use; or
   (c) the information or document is disclosed or used in circumstances specified in regulations made for the purposes of this paragraph; or
   (d) the disclosure or use is otherwise required or authorised by law.

(3) Evidence of anything said, or any act done, in the alternative dispute resolution process is not admissible in proceedings relating to the dispute:
   (a) in any court; or
   (b) before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
   (c) before a person authorised by the consent of the parties to hear evidence;

   unless:
   (d) the parties agree to the evidence being admissible; or
   (e) the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.

516  Workplace Relations Act 1996
708 When alternative dispute resolution process complete

The alternative dispute resolution process is completed when the parties agree that the matters in dispute are resolved.
Part 13  Dispute resolution processes
Division 5  Dispute resolution process conducted by the Commission under workplace agreement

Section 709

Division 5—Dispute resolution process conducted by the Commission under workplace agreement

709  Application

(1) A person may apply to the Commission to have a dispute resolution process conducted by the Commission under this Division in relation to a matter or matters in dispute if:
   (a) the dispute is one that, under the terms of a workplace agreement, may be resolved using a dispute resolution process conducted by the Commission; and
   (b) any steps that, under the terms of agreement, must be taken before the matter is referred to the Commission have been taken.

(2) An application to have a dispute resolution process conducted by the Commission under this Division must:
   (a) be in the form (if any) prescribed by the regulations; and
   (b) describe the matter, or matters, in dispute in relation to which the dispute resolution process is to be conducted; and
   (c) be signed by the party to the dispute on that matter or those matters who is making the application; and
   (d) specify that the dispute resolution process is to be conducted under the terms of a workplace agreement and not under the model dispute resolution process.

(3) The Commission may request the parties to provide further information about:
   (a) the matter or matters in dispute; and
   (b) the steps that have been taken to resolve the dispute.

Note: Under section 353, a workplace agreement must include a dispute resolution process. That process may be something other than the model dispute resolution process, and may involve applying to have the Commission conduct an alternative dispute resolution process.

710  Grounds on which Commission must refuse application

The Commission must refuse to conduct a dispute resolution process under this Division in relation to a matter in dispute if:

518  Workplace Relations Act 1996
Dispute resolution process conducted by the Commission under workplace agreement

Division 5

Section 711

(a) the dispute is not one that, under the terms of the workplace agreement, may be resolved using a dispute resolution process conducted by the Commission; or

(b) any of the steps that, under the terms of agreement, must be taken before the matter is referred to the Commission have not been taken.

711 Commission’s powers

(1) In conducting the dispute resolution process under this Division, the Commission has, subject to subsection (2), the functions and powers:

(a) given to it under the workplace agreement; or

(b) otherwise agreed by the parties.

(2) The Commission does not have the power to make orders.

(3) The Commission must, as far as is practicable, act:

(a) quickly; and

(b) in a way that avoids unnecessary technicalities and legal forms; and

(c) if the parties have agreed, either in the workplace agreement or otherwise, that an aspect of the process is to be conducted in a particular way—in accordance with that agreement.

(4) Subdivision B of Division 4 of Part 3 of this Act does not apply in relation to the conduct of the dispute resolution process by the Commission under this Division.

712 Privacy

(1) The Commission must conduct the dispute resolution process in private.

(2) The Commission must not disclose or use any information or document that is given to the Commission in the course of conducting the dispute resolution process to any person, unless:

(a) the information or document is disclosed or used for the purpose of conducting the process; or

(b) the parties to the process consent to the disclosure or use; or
(c) the information or document is disclosed or used in circumstances specified in regulations made for the purposes of this paragraph; or
(d) the disclosure or use is otherwise required or authorised by law.

(3) Evidence of anything said, or any act done, in the dispute resolution process is not admissible in any proceedings relating to the dispute:
(a) in any court; or
(b) before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
(c) before a person authorised by the consent of the parties to hear evidence;
unless:
(d) the parties agree to the evidence being admissible; or
(e) the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.
Division 6—Dispute resolution process conducted by another provider

713 Application of this Division

This Division applies to a dispute resolution process in relation to a dispute on a matter or matters that is not conducted by the Commission.

714 Representation

(1) If the dispute resolution process is an alternative dispute resolution process, the person conducting the process may allow a party to be represented in the process if the person conducting the process believes that it is appropriate to do so.

(2) The person conducting the dispute resolution process may set reasonable limits on the conduct of the representative in relation to the process.

(3) If:

(a) the dispute resolution process is conducted under the terms of a workplace agreement; and
(b) the agreement makes provision for a party to the dispute to be represented in the process;

the person conducting the dispute resolution process must allow the party to be represented in accordance with the agreement.

715 Privacy

(1) The person conducting the dispute resolution process must do so in private.

(2) A person who is conducting, or has conducted, a dispute resolution process must not disclose or use any information or document that is given to the person in the course of conducting that process to any person, unless:

(a) the information or document is disclosed or used for the purpose of conducting the process; or
(b) the parties to the process consent to the disclosure or use; or
(c) the information or document is disclosed or used in circumstances specified in regulations made for the purposes of this paragraph; or
(d) the disclosure or use is otherwise required or authorised by law.

(3) Subsections (1) and (2) are civil remedy provisions.

(4) Evidence of anything said, or any act done, in the dispute resolution process is not admissible in proceedings relating to the dispute:
(a) in any court; or
(b) before a person authorised by a law of the Commonwealth or of a State or Territory to hear evidence; or
(c) before a person authorised by the consent of the parties to hear evidence;
unless:
(d) the parties agree to the evidence being admissible; or
(e) the evidence is admitted in circumstances specified in regulations made for the purposes of this paragraph.

(5) The Court may make an order imposing a pecuniary penalty on a person who has contravened subsection (1) or (2).

(6) The pecuniary penalty 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 subsection (5) may be made by:
(a) a party to the dispute in relation to which the dispute resolution process is conducted; or
(b) an organisation that has at least one member who is an employee bound by the agreement, and that is entitled to represent the industrial interests of at least one such employee; 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.
716 Where anti-discrimination or equal opportunity proceedings in progress

A person must not conduct an alternative dispute resolution process in relation to a dispute on a matter if the matter is the subject of proceedings or has already been settled as a result of proceedings, whether before a court or another body, under a law of the Commonwealth or of a State or Territory relating to the prevention of discrimination or to equal opportunity.
Part 14—Compliance

Division 1—Definitions

717 Definitions

In this Part:

**applicable provision**, in relation to a person, means:

(a) a term of one of these that applies to the person:
   (i) an AWA;
   (ii) the Australian Fair Pay and Conditions Standard;
   (iii) an award;
   (iv) a collective agreement;
   (v) an order of the Commission (except one made under Division 4 of Part 9); and
(b) section 607 (meal breaks); and
(c) section 612 (public holidays); and
(d) section 689 (extended entitlement to parental leave).

Note 1: Workplace determinations are treated for the purposes of the Act as if they were collective agreements (see section 506). Undertakings are treated the same way (see section 394). This means that a term of one of these is an applicable provision for the purposes of this Part.

Note 2: Division 4 of Part 9 deals with protected action ballots. Breaches of orders made under that Division are dealt with under section 471.

**eligible court** means:

(a) the Court; or
(b) the Federal Magistrates Court; or
(c) a District, County or Local Court; or
(d) a magistrate’s court; or
(e) the Industrial Relations Court of South Australia; or
(f) any other State or Territory court that is prescribed by the regulations.

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524 Workplace Relations Act 1996
Division 2—Penalties and other remedies for contravention of applicable provisions

718 Standing to apply for penalties or remedies under this Division

(1) The table sets out the persons who may apply for a penalty or other remedy under this Division in relation to a breach of an applicable provision.

<table>
<thead>
<tr>
<th>Item</th>
<th>If the applicable provision is...</th>
<th>These persons may apply...</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a term of an AWA</td>
<td>(a) an employer that is bound by the AWA;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an employee who is bound by the AWA;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an organisation of employees that represents an employee who is bound by the AWA (subject to subsection (5));</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) an inspector</td>
</tr>
<tr>
<td>2</td>
<td>a term of the Australian Fair Pay and Conditions Standard</td>
<td>(a) an employee whose employment is subject to the Standard;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an organisation of employees (subject to subsection (6));</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an inspector</td>
</tr>
</tbody>
</table>
### Part 14 Compliance

**Division 2** Penalties and other remedies for contravention of applicable provisions

Section 718

<table>
<thead>
<tr>
<th>Standing</th>
<th>If the applicable provision is...</th>
<th>These persons may apply...</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>a term of an award</td>
<td>(a) an employer that is bound by the award;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an employee whose employment is subject to the award;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an organisation of employers that has a member affected by the breach;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) an organisation of employees, a member of which is employed by the respondent employer and whose industrial interests the organisation is entitled, under its eligibility rules, to represent in relation to work carried on by the member for the employer;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(da) if the term is an outworker term (within the meaning of Division 7 of Part 10)—a person or eligible entity (within the meaning of Division 7 of Part 10) that is bound by the award;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(e) an inspector</td>
</tr>
<tr>
<td>4</td>
<td>a term of a collective agreement</td>
<td>(a) an employer that is bound by the agreement;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an employee who is bound by the agreement;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an organisation of employees (subject to subsection (6));</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) an inspector</td>
</tr>
<tr>
<td>5</td>
<td>a term of an order of the Commission</td>
<td>(a) a person who is bound by the order;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an organisation of employers that has a member affected by the breach;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an organisation of employees, a member of which is employed by the respondent employer and whose industrial interests the organisation is entitled, under its eligibility rules, to represent in relation to work carried on by the member for the employer;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(d) an inspector</td>
</tr>
<tr>
<td>6</td>
<td>section 607 (meal breaks)</td>
<td>(a) an employee to whom section 607 applies;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b) an organisation of employees (subject to subsection (6));</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(c) an inspector</td>
</tr>
</tbody>
</table>

526 Workplace Relations Act 1996
Standing

<table>
<thead>
<tr>
<th>Item</th>
<th>If the applicable provision is...</th>
<th>These persons may apply...</th>
</tr>
</thead>
<tbody>
<tr>
<td>6A</td>
<td>section 612 (public holidays)</td>
<td>(a) an employee to whom section 612 applies; (b) an organisation of employees (subject to subsection (6)); (c) an inspector</td>
</tr>
<tr>
<td>7</td>
<td>section 689 (extended entitlement to parental leave)</td>
<td>(a) an employee to whom section 689 applies; (b) an organisation of employees (subject to subsection (6)); (c) an inspector</td>
</tr>
</tbody>
</table>

Note 1: Workplace determinations are treated for the purposes of this Act as if they were collective agreements (see section 506). Undertakings are treated the same way (see section 394). This means that they are covered by table item 4.

Note 2: An outworker term is a protected award condition under section 354.

(2) For the purposes of table items 2, 3, 4, 6, 6A and 7 in subsection (1), a reference to an employee is a reference to an employee who is affected by the breach of the applicable provision.

(3) For the purposes of table items 3 and 4 in subsection (1), a reference to an employer is a reference to an employer that is affected by the breach of the applicable provision.

(4) For the purposes of table item 5 in subsection (1), a reference to a person bound by the order is a reference to a person bound by the order who is affected by the breach of the order.

(5) An organisation of employees that represents an employee who is bound by an AWA must not apply on behalf of the employee for a penalty or other remedy under this Division in relation to a breach of an applicable provision of the AWA unless:
   (a) the employee has requested, in writing, the organisation to apply on the employee’s behalf; and
   (b) a member of the organisation is employed by the employee’s employer; and
   (c) the organisation is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer.
(6) An organisation of employees must not apply for a penalty or other remedy under this Division in relation to a breach of an applicable provision that is:
   (a) a term of the Australian Fair Pay and Conditions Standard; or
   (b) a term of a collective agreement; or
   (c) section 607; or
   (d) section 612; or
   (e) section 689;
   unless:
   (f) a member of the organisation is employed by the respondent employer; and
   (g) the breach relates to, or affects, the member of the organisation or work carried on by the member for the employer.

719 Imposition and recovery of penalties

(1) An eligible court may impose a penalty in accordance with this Division on a person if:
   (a) the person is bound by an applicable provision; and
   (b) the person breaches the provision.

(2) Subject to subsection (3), where:
   (a) 2 or more breaches of an applicable provision are committed by the same person; and
   (b) the breaches arose out of a course of conduct by the person;
   the breaches shall, for the purposes of this section, be taken to constitute a single breach of the term.

(3) Subsection (2) does not apply to a breach of an applicable provision that is committed by a person after an eligible court has imposed a penalty on the person for an earlier breach of the provision.

(4) The maximum penalty that may be imposed under subsection (1) for a breach of an applicable provision is:
   (a) 60 penalty units for an individual; or
   (b) 300 penalty units for a body corporate.

(5) If, in a proceeding under this section in relation to an AWA, it appears to the eligible court that a party to the AWA has suffered
loss or damage as a result of a breach of the AWA by the other party, the court may order the other party to pay the amount of the loss or damage to the first-mentioned party.

(6) Where, in a proceeding against an employer under this section, it appears to the eligible court that an employee of the employer has not been paid an amount that the employer was required to pay under an applicable provision (except a term of an AWA), the court may order the employer to pay the employee the amount of the underpayment.

(7) Where, in a proceeding against an employer under this section, it appears to the eligible court that the employer has not paid an amount to a superannuation fund that the employer was required, under an applicable provision (except a term of an AWA), to pay on behalf of a person, the court may order the employer to make a payment to or in respect of that person for the purpose of restoring the person, as far as practicable, to the position that the person would have been in had the employer not failed to pay the amount to the superannuation fund.

(8) Without limiting the generality of subsection (7), the eligible court may order that the employer pay to the superannuation fund referred to in subsection (7), or another superannuation fund, an amount equal to the amount (in this subsection called the *unpaid amount*) that the employer failed to pay together with such additional amount as, in the opinion of the court, represents the return that would have accrued in respect of the unpaid amount had it been duly paid by the employer.

(9) An order must not be made under subsection (6) or (7) in relation to so much of an underpayment as relates to any period more than 6 years before the commencement of the proceeding.

(10) A proceeding under this section in relation to a breach of an applicable provision must be commenced not later than 6 years after the commission of the breach.

720 Recovery of wages etc.

If an employer is required by an applicable provision (except a term of an AWA) to pay an amount to an employee or to pay an amount to a superannuation fund on behalf of an employee, the
employee, or an inspector on behalf of the employee, may, not later than 6 years after the employer was required to make the payment to the employee or fund, sue for the amount of the payment in an eligible court.

721 Damages for breach of AWA

(1) A party to an AWA who suffers loss or damage as a result of a breach of the AWA by the other party may recover the amount of the loss or damage in an eligible court.

(2) The action must be brought within 6 years after the date on which the cause of action arose.

722 Interest up to judgment [see Note 2]

(1) In exercising its powers under subsection 719(5) or (6) or in a proceeding under section 720 or 721, the eligible court must, upon application, unless good cause is shown to the contrary, either:

(a) order that there be included in the sum for which an order is made or judgment given, interest at such rate as the Court or court of competent jurisdiction, as the case may be, thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date on which the order is made or judgment entered; or

(b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which an order is made or judgment given, a lump sum instead of any such interest.

(2) Subsection (1) does not:

(a) authorise the giving of interest upon interest or of a sum instead of such interest; or

(b) apply in relation to any debt upon which interest is payable as of right whether by virtue of an agreement or otherwise; or

(c) authorise the giving of interest, or a sum instead of interest, otherwise than by consent, upon any sum for which judgment is given by consent.

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**723 Interest on judgment**

A debt under a judgment or order of an eligible court made under subsection 719(5) or (6) or section 720 or 721 carries interest from the date on which the judgment is entered or order made at such rate as would apply under section 52 of the *Federal Court of Australia Act 1976* if the debt were a judgment debt to which that section applies.

**724 Plaintiffs may choose small claims procedure in magistrates’ courts**

If:

(a) a person starts an action under section 720 or 721 in a magistrate’s court; and

(b) the person indicates, in a manner prescribed by the regulations under this Act or by rules of court relating to that court, that he or she wants a small claims procedure to apply;

the action is to be dealt with under section 725.

**725 Small claims procedure**

(1) If an action is to be dealt with under this section, subsections (2), (3) and (4) apply in relation to the action.

(2) The procedure is governed by the following conditions:

(a) the court may not award an amount exceeding $5,000 or such higher amount as is prescribed;

(b) the court may act in an informal manner, is not bound by any rules of evidence, and may act without regard to legal forms and technicalities;

(c) at any stage of the action, the court may amend the papers initiating the action if sufficient notice is given to any party adversely affected by the amendment;

(d) a person is not entitled to be represented by counsel or solicitor unless the court permits;

(e) if the court permits a party to be represented by counsel or solicitor, the court may, if it thinks fit, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.

(3) In a case heard in a court of a Territory:
Section 726

(a) despite paragraphs (2)(d) and (e), the regulations made under this Act may prohibit or restrict legal representation of the parties; and

(b) the regulations made under this Act may provide for the representation of a party in specified circumstances by an officer or employee of an organisation of employees or of an organisation or association of employers.

(4) In a case heard in a court of a State:

(a) despite paragraphs (2)(d) and (e), if, in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State prohibits or restricts legal representation of the parties—the regulations made under this Act may prohibit or restrict legal representation of the parties to the same extent as that law; and

(b) if, in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State allows representation of a party in that court in some circumstances by officials of bodies representing interests related to the matters in dispute—the regulations made under this Act may provide for representation of a party in specified circumstances by an officer or employee of an organisation of employees or of an organisation or association of employers.

726 Unclaimed moneys

(1) Where:

(a) an employee has left the employment of an employer without having been paid an amount to which the employee is entitled under an applicable provision; and

(b) the employer is unable to pay the amount to the former employee because the employer does not know the former employee’s whereabouts;

the employer may pay the amount to the Commonwealth.

(2) The Commonwealth holds the amount in trust for the former employee.

(3) Payment of the amount to the Commonwealth is a sufficient discharge to the employer, as against the former employee, for the amount paid.
Division 3—General provisions relating to civil remedies

727 Operation of this Division

(1) This Division sets out rules that apply for the purposes of these provisions:
   (a) section 719; and
   (b) another provision of this Act that is declared (whether by that provision or by another provision of this Act) to be a civil remedy provision (whether or not for the purposes of a particular segment of this Act); and
   (c) another provision of this Act that provides a remedy for a contravention of a provision referred to in paragraph (b).

(2) Those provisions are called the civil remedy provisions.

728 Involvement in contravention treated in same way as actual contravention

(1) A person who is involved in a contravention of a civil remedy provision is treated as having contravened that provision.

(2) For this purpose, a person is involved in a contravention of a civil remedy provision if, and only if, the person:
   (a) has aided, abetted, counselled or procured the contravention; or
   (b) has induced the contravention, whether by threats or promises or otherwise; 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.

729 Civil evidence and procedure rules for civil remedy orders

A court hearing a proceeding under a civil remedy provision must apply the rules of evidence and procedure for civil matters.
730 Recovery of pecuniary penalties

A pecuniary penalty payable under a civil remedy provision may be recovered as a debt due to the person to whom the penalty is payable.

731 Civil proceedings after criminal proceedings

A court must not make an order under a civil remedy provision requiring a person to pay a pecuniary penalty if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct in relation to which the order would be made.

732 Criminal proceedings during civil proceedings

(1) Proceedings for an order under a civil remedy provision requiring a person to pay a pecuniary penalty are stayed if:
   (a) criminal proceedings are started or have already been started against the person for an offence; and
   (b) the offence is constituted by conduct that is substantially the same as the conduct in relation to which the order would be made.

(2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

733 Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct in relation to which an order under a civil remedy provision requiring the person to pay a pecuniary penalty could be made regardless of whether such an order has been made against the person.

734 Evidence given in proceedings for pecuniary 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:

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(a) the individual previously gave the evidence or produced the documents in proceedings for an order under a civil remedy provision requiring the individual to pay a pecuniary penalty (whether or not the order was made); and
(b) the conduct alleged to constitute the offence is substantially the same as the conduct in relation to which the order was sought.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings under the civil remedy provision.

735 Civil double jeopardy

If a person is ordered to pay a pecuniary penalty under a civil remedy provision in respect of particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth law in respect of that conduct.
Part 15—Right of entry

Division 1—Preliminary

736 Objects of this Part

In addition to the object set out in section 3, this Part has the following objects:

(a) to establish a framework that balances:
   (i) the right of organisations to represent their members in the workplace, hold discussions with potential members and investigate suspected breaches of industrial laws, industrial instruments and OHS laws; and
   (ii) the right of occupiers of premises and employers to conduct their businesses without undue interference or harassment;

(b) to ensure that permits to enter premises and inspect records are only held by persons who understand their rights and obligations under this Part and who are fit and proper persons to exercise those rights;

(c) to ensure that occupiers of premises and employers understand their rights and obligations under this Part;

(d) to ensure that permits are suspended or revoked where rights granted under this Part are misused.

737 Definitions

In this Part:

affected employee means:

(a) in relation to the entry onto premises under section 747 to investigate a suspected breach—an employee for whom all the following are satisfied:
   (i) the employee carries out work on the premises;
   (ii) the employee is a member of the permit holder’s organisation;
   (iii) the suspected breach relates to, or affects, the employee or the work; and

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(b) in relation to the entry onto premises under section 760 to hold discussions—an employee for whom all the following are satisfied:

(i) the employee carries out work on the premises;
(ii) the employee is a member of the permit holder’s organisation or is eligible to become a member of that organisation;
(iii) the employee is one of the employees with whom the discussions are to be held.

**affected employer** means an employer of affected employees.

**authority documents**, in relation to the entry onto premises by a permit holder, means:

(a) if the permit holder entered the premises in reliance on an entry notice:
   (i) the permit holder’s permit; and
   (ii) the entry notice; or
(b) if the permit holder entered the premises in reliance on an exemption certificate:
   (i) the permit holder’s permit; and
   (ii) the exemption certificate; or
(c) if the permit holder entered the premises in reliance on an order of the Commission:
   (i) the permit holder’s permit; and
   (ii) the order.

**Commonwealth place** means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

**conduct** includes an omission.

**Court** means the Federal Court of Australia or the Federal Magistrates Court.

**entry notice** means an entry notice in the form approved under section 738.

**exemption certificate** means an exemption certificate under section 750.

**industrial law** means:
(a) this Act; or
(b) the Registration and Accountability of Organisations Schedule; or
(c) a law of the Commonwealth, however designated, that regulates the relationships between employers and employees; or
(d) a State or Territory industrial law.

official, in relation to an organisation, means an officer or employee of the organisation.

OHS law means a law of a State or Territory prescribed by the regulations for the purposes of this definition.

permit means a permit under this Part.

permit holder means a person who holds a permit.

permit holder’s organisation, in relation to a permit, means the organisation in respect of which the permit was issued.

repealed Part IX means Part IX of this Act, as in force at any time before the reform commencement.

738 Form of entry notice

(1) The Industrial Registrar must, in writing, approve a form of entry notice for the purposes of this section.

(2) The form:
   (a) must require the following matters to be specified by the person using the form:
       (i) the premises that are proposed to be entered;
       (ii) the organisation in respect of which the relevant permit was issued;
       (iii) any other matters prescribed by the regulations; and
   (b) must include any other information prescribed by the regulations.

(3) Subsection (2) does not, by implication, limit the matters that may be contained in, or required by, the form.
739 Extraterritorial extension

_In Australia’s exclusive economic zone_

(1) This Part, and the rest of this Act so far as it relates to this Part, extend to premises that:
   (a) are in Australia’s exclusive economic zone; and  
   (b) are owned or occupied by an Australian employer.
This subsection has effect subject to Australia’s obligations under international law concerning jurisdiction over ships that fly the flag of a foreign country and aircraft registered under the law of a foreign country.

_On Australia’s continental shelf outside exclusive economic zone_

(2) This Part, and the rest of this Act so far as it relates to this Part, extend to premises that:
   (a) are outside the outer limits of Australia’s exclusive economic zone, but in, on or over a part of Australia’s continental shelf prescribed for the purposes of this subsection; and  
   (b) are connected with the exploration of the continental shelf or the exploitation of its natural resources; and  
   (c) meet the requirements that are prescribed by the regulations for that part.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

_Definition_

(3) In this section:

this Act includes the Registration and Accountability of Organisations Schedule and regulations made under it.
Division 2—Issue of permits

740 Issue of permit

(1) An organisation may apply to a Registrar for the issue of a permit to an official of the organisation. The application must be in writing.

(2) The Registrar may issue a permit to the official named in the application.

(3) The permit:
   (a) must include any conditions that are imposed by the Registrar under section 741; and
   (b) must include any conditions that are applicable under section 770 at the time of issue.

(4) The regulations may make provision in relation to the following matters:
   (a) the form of an application for a permit;
   (b) the declarations and other documents that must accompany the application;
   (c) verification, by statutory declaration, of those documents;
   (d) the form of a permit.

Note: Under the Criminal Code and the Statutory Declarations Act 1959, penalties apply to false statements etc.

741 Imposition of permit conditions at time of issue

(1) At the time of issuing a permit, a Registrar may impose conditions that limit the circumstances in which the permit has effect.

Note: For example, the conditions could limit the premises to which the permit applies or the time of day when the permit operates.

(2) In deciding whether to impose conditions, a Registrar must have regard to the matters specified in subsection 742(2).
742 Permit not to be issued in certain cases

Official not a fit and proper person

(1) A Registrar must not issue a permit to an official unless the Registrar is satisfied that the official is a fit and proper person to hold the permit.

(2) For the purposes of subsection (1), the Registrar must have regard to the following matters:
   (a) whether the official has received appropriate training about the rights and responsibilities of a permit holder;
   (b) whether the official has ever been convicted of an offence against an industrial law;
   (c) whether the official has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country, involving:
      (i) entry onto premises; or
      (ii) fraud or dishonesty; or
      (iii) intentional use of violence against another person or intentional damage or destruction of property;
   (d) whether the official, or any other person, has ever been ordered to pay a penalty under this Act or any other industrial law in respect of conduct of the official;
   (e) whether any permit issued to the official under this Part, or under the repealed Part IX, has been revoked or suspended or made subject to conditions;
   (f) whether a court, or other person or body, under a State or Territory industrial law or an OHS law, has cancelled, suspended or imposed conditions on a right of entry for industrial or occupational health and safety purposes that the official had under that law;
   (g) whether a court, or other person or body, under a State or Territory industrial law or an OHS law, has disqualified the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under that law;
   (h) any other matters that the Registrar considers relevant.

Note: Part VIIC of the Crimes Act 1914 includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent...
convictions and require persons aware of such convictions to disregard them.

**Banning order or disqualification applies under this Part**

(3) A Registrar must not issue a permit to an official:
   (a) during a disqualification period specified by a Registrar under section 744; or
   (b) if the issue is prevented by a Commission order under section 770 or 772.

**Disqualification etc. applies under State law**

(4) A Registrar must not issue a permit to an official at a time when:
   (a) a suspension, imposed by a court or other person or body, applies under a State or Territory industrial law or an OHS law to a right of entry for industrial or occupational health and safety purposes that the official has under that law; or
   (b) a disqualification, imposed by a court or other person or body, prevents the official from exercising, or applying for, a right of entry for industrial or occupational health and safety purposes under a State or Territory industrial law or an OHS law.
Division 3—Expiry, revocation, suspension etc. of permits

743 Expiry of permit

Unless earlier revoked, a permit expires at the earlier of the following times:

(a) at the end of the third anniversary of the date of issue;
(b) when the permit holder ceases to be an official of the organisation that applied for the permit.

744 Revocation, suspension etc. by Registrar

(1) A workplace inspector, or a person prescribed by the regulations, may apply to a Registrar to take action under this section against a permit holder. The application must be made in accordance with the regulations.

(2) On application made under subsection (1), the Registrar may do any of the following in relation to one or more permits held by the permit holder:

(a) revoke the permit (whether or not the permit is already suspended);
(b) suspend the permit for a specified period;
(c) impose conditions on the permit (whether or not the permit is already suspended).

(3) In exercising powers under subsection (2), the Registrar must have regard to the matters specified in subsection 742(2).

Registrar must revoke or suspend in certain circumstances

(4) If the Registrar is satisfied that any of the things mentioned in subsection (5) has happened since the first of the permits was issued, then the Registrar must take the following action in relation to each permit held by the permit holder:

(a) if the permit expires before the end of the minimum disqualification period—the Registrar must revoke the permit;
(b) if the permit does not expire before the end of the minimum disqualification period—the Registrar must either:
(i) revoke the permit; or  
(ii) suspend the permit for a period that does not end earlier than the end of the minimum disqualification period.  
The Registrar must also specify a disqualification period for the purposes of section 742. The disqualification period cannot be shorter than the minimum disqualification period.

(5) The things are:
   (a) the permit holder was found, in proceedings under this Act, to have contravened section 768; or
   (b) the permit holder, or another person, was ordered to pay a penalty under this Act in respect of a contravention of this Part by the permit holder; or
   (c) a court, or other person or body, under a State or Territory industrial law, cancelled or suspended a right of entry for industrial purposes that the permit holder had under that law; or
   (d) a court, or other person or body, under a State or Territory industrial law, disqualified the permit holder from exercising, or applying for, a right of entry for industrial purposes under that law; or
   (e) the holder has, in exercising a right of entry under an OHS law, engaged in conduct that was not authorised by that law.

(6) The Commission may make an order quashing or varying the revocation or suspension of a permit if:
   (a) the permit was revoked or suspended on grounds set out in paragraph (5)(b) or (e); and
   (b) the Commission is satisfied, on application by the permit holder, that the revocation or suspension was harsh or unreasonable in the circumstances.

Definition

(7) In this section:

*minimum disqualification period*, in relation to action by a Registrar under subsection (4) (the *current action*), means:
   (a) if a Registrar has never previously taken action against the permit holder under that subsection—the period of 3 months starting when the current action is taken; or
(b) if a Registrar has previously taken action against the permit holder under that subsection on only one occasion—the period of 12 months starting when the current action is taken; or

(c) if a Registrar has previously taken action against the permit holder under that subsection on at least 2 occasions—the period of 5 years starting when the current action is taken.

745 Revoked etc. permit must be returned to Registrar

(1) If any of the following happens to a permit, then the permit holder must within 7 days return the permit to a Registrar:
   (a) the permit is revoked;
   (b) the permit expires;
   (c) the permit is suspended;
   (d) conditions are imposed on the permit after it is issued.

(2) Subsection (1) is a civil remedy provision.

   Note: See Division 8 for enforcement.

(3) In the case of a suspended permit, a Registrar must, on application by the permit holder or the permit holder’s organisation, return the permit to the permit holder after the end of the suspension period if the Registrar is satisfied that the permit is then still in force.

   Note: In the meantime the permit might have been revoked or might have expired.

746 Extra conditions to be endorsed on permit

If conditions are imposed on a permit by a Registrar under section 744 or by the Commission under section 770, then the permit ceases to have effect until the Registrar endorses those conditions on the permit.
Division 4—Right of entry to investigate suspected breaches

747 Right of entry to investigate breach

Right of entry for breach of Commonwealth industrial law etc.

(1) If a permit holder for an organisation suspects, on reasonable grounds, that a breach has occurred, or is occurring, of:
   (a) this Act; or
   (b) an AWA; or
   (c) an award or collective agreement or an order of the Commission under this Act, being an award, collective agreement or order that is binding on the permit holder’s organisation; or
   (d) an employee collective agreement, or an employer greenfields agreement, that is binding on an employee who is a member of the permit holder’s organisation;
then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:
   (e) work is being carried out on the premises by one or more employees who are members of the permit holder’s organisation; and
   (f) the suspected breach relates to, or affects, that work or any of those employees.

No right to investigate AWA breach unless employee requests

(2) Paragraph (1)(b) does not apply unless the employee who is a party to the AWA makes a written request to the organisation to investigate the breach.

748 Rights of permit holder after entering premises

(1) This section applies if a permit holder has entered premises under section 747 for the purpose of investigating a suspected breach.
Inspection of work etc. and interviewing employees

(2) While on the premises, the permit holder may, for the purpose of investigating the suspected breach:
   (a) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach; and
   (b) during working hours, interview the following persons about the suspected breach:
       (i) employees who are members of the permit holder’s organisation;
       (ii) employees who are eligible to become members of the permit holder’s organisation.

(3) For the avoidance of doubt, a refusal or failure by a person to participate in an interview under this section is not to be treated as conduct covered by section 149.1 of the Criminal Code.

Inspection of records while on the premises

(4) While on the premises, the permit holder may, for the purpose of investigating the suspected breach, require an affected employer to allow the permit holder, during working hours, to inspect and make copies of, any records relevant to the suspected breach (other than non-member records) that:
   (a) are kept on the premises by the employer; or
   (b) are accessible from a computer that is kept on the premises by the employer.

Inspection of records at later time

(5) The permit holder may, for the purpose of investigating the suspected breach, by notice in writing, require an affected employer, on a later day or days specified in the notice:
   (a) to produce, or allow access to, all records, or particular records, relevant to the suspected breach (other than non-member records), either at the premises or at another place that is agreed between the permit holder and the employer; and
   (b) to allow the permit holder, during working hours, to inspect and make copies of, any of those records.
The permit holder may give the notice while on the premises or within 5 days after the day on which the permit holder entered the premises.

(6) A day specified in a notice to an employer under subsection (5) cannot be earlier than 14 days after the notice is given to the employer.

(7) Before issuing a requirement to an affected employer under subsection (4) or (5), the permit holder must produce the permit holder’s authority documents for inspection by the employer.

(8) If a permit holder has given a notice to an employer under subsection (5) requiring the employer to produce, or allow access to, records at the premises, then the permit holder is entitled to enter the premises during working hours for the purpose of inspecting and copying the records in accordance with the notice.

Note: The Privacy Act 1998 has rules about the disclosure of personal information.

Application to Commission for access to non-member records

(9) The permit holder may, for the purposes of investigating the suspected breach, apply to the Commission for either or both of the following orders:

(a) an order to allow the permit holder to enter the premises and to inspect and make copies of non-member records that are relevant to the suspected breach;

(b) an order to require an affected employer to produce, or allow access to, such records for inspection and copying.

(10) The Commission may make such an order if it is satisfied that the order is necessary to investigate the suspected breach. Before doing so, the Commission must have regard to the conditions (if any) that apply to the permit holder’s permit.

(11) An application for an order under subsection (9):

(a) must be in accordance with the regulations; and

(b) must set out the grounds on which the application is made.
Definitions

(12) In this section:

*non-member record* means a record that:

(a) relates to the employment of a person who is not a member of the permit holder’s organisation; and
(b) does not also relate to the employment of a person who is a member of the permit holder’s organisation.

*record relevant to the suspected breach* means a record:

(a) that is relevant to the suspected breach; and
(b) that is of the following kind:

(i) a time sheet;
(ii) a pay sheet;
(iii) any other record or document, other than an AWA.

### 749 Limitation on rights—entry notice or exemption certificate

(1) Section 747 does not authorise entry to premises unless:

(a) the conditions in subsection (2) of this section are satisfied; or
(b) the conditions in subsection (3) of this section are satisfied.

(2) The conditions are:

(a) the permit holder gave an entry notice to the occupier of the premises and gave the notice during working hours at least 24 hours, but not more than 14 days, before the entry; and
(b) the entry notice specifies section 747 as the section that authorises the entry; and
(c) the entry notice specifies particulars of the suspected breach or breaches; and
(d) the entry is on a day specified in the entry notice.

(3) The conditions are:

(a) the entry is on a day specified in an exemption certificate under section 750 and the premises are the premises specified in the exemption certificate; and
(b) the permit holder gave a copy of the exemption certificate to the occupier of the premises not more than 14 days before the entry.
(4) Conduct after entry is not authorised by section 748 unless the conduct is for the purpose of investigating a suspected breach identified in the permit holder’s authority documents.

750 Exemption from requirement to provide entry notice

(1) An organisation may apply to a Registrar for an exemption certificate in respect of the entry onto premises under section 747 to investigate a suspected breach.

(2) If the Registrar is satisfied that there are reasonable grounds for believing that advance notice of entry onto the premises under section 747 might result in the destruction, concealment or alteration of relevant evidence, then the Registrar must issue an exemption certificate in respect of entry onto those premises.

(3) An exemption certificate must:
   (a) specify the premises to which it applies; and
   (b) specify the organisation to which it relates; and
   (c) specify the day or days on which it operates; and
   (d) specify particulars of the suspected breach or breaches to which it relates; and
   (e) specify section 747 as the section that authorises the entry.

(4) The regulations may make provision in relation to the following matters:
   (a) the form of an application for an exemption certificate;
   (b) the form of an exemption certificate.

751 Limitation on rights—failure to comply with requests of occupier or affected employer

(1) This Division does not authorise a permit holder to enter, or remain on, premises if the permit holder fails to produce the permit holder’s authority documents for inspection when requested to do so by an affected employer or by the occupier of the premises.

(2) This Division does not authorise a permit holder to enter, or remain on, premises if:
   (a) an affected employer or the occupier of the premises requests the permit holder to comply with an occupational health and safety requirement that applies to the premises; and
(b) the request is a reasonable request; and
(c) the permit holder fails to comply with the request.

Note: The Commission may make an order under section 771 if the request is unreasonable.

(3) This Division does not authorise a permit holder to enter, or remain on, premises if:
   (a) an affected employer or the occupier of the premises requests the permit holder to do either or both of the following:
       (i) to conduct interviews in a particular room or area of the premises;
       (ii) to take a particular route to reach a particular room or area of the premises; and
   (b) the request is a reasonable request; and
   (c) the permit holder fails to comply with the request.

Note: The Commission may make an order under section 771 if the request is unreasonable.

(4) For the purposes of subsection (3), if an affected employer or the occupier requests the permit holder to hold discussions in a particular room or area, or to take a particular route to reach a particular room or area, the request is not unreasonable only because it is not the room, area or route that the permit holder would have chosen.

752 Limitation on rights—residential premises

This Division does not authorise a person to enter any part of premises that is used for residential purposes.

753 Limitation on rights—permit conditions

(1) A permit holder’s rights under this Division in respect of a permit are subject to any conditions that apply to the permit.

(2) Subsection (1) does not apply to rights of a permit holder under an order by the Commission under section 748.

754 Burden of proving reasonable grounds for suspecting breach

Whenever it is relevant to determine whether a permit holder had reasonable grounds for suspecting a breach, as mentioned in
section 747, the burden of proving the existence of reasonable grounds lies on the person asserting the existence of those grounds.
Division 5—Entry for OHS purposes

755 OHS entries to which this Division applies

(1) This Division has effect in relation to a right to enter premises under an OHS law if:
   (a) the premises are occupied or otherwise controlled by:
       (i) a constitutional corporation; or
       (ii) the Commonwealth; or
   (b) the premises are located in a Territory; or
   (c) the premises are, or are located in, a Commonwealth place; or
   (d) the right relates to requirements to be met by:
       (i) a constitutional corporation or the Commonwealth in its capacity as an employer; or
       (ii) an employee of a constitutional corporation or the Commonwealth; or
       (iii) a contractor providing services for a constitutional corporation or the Commonwealth; or
   (e) the right relates to conduct engaged in, or activity undertaken or controlled, by:
       (i) a constitutional corporation or the Commonwealth in its capacity as an employer; or
       (ii) an employee of a constitutional corporation or the Commonwealth; or
       (iii) a contractor providing services for a constitutional corporation or the Commonwealth; or
   (f) the exercise of the right will have a direct effect on:
       (i) a constitutional corporation or the Commonwealth in its capacity as an employer; or
       (ii) an employee of a constitutional corporation or the Commonwealth; or
       (iii) a contractor providing services for a constitutional corporation or the Commonwealth.

(2) In this section:

   constitutional corporation includes:
Section 756

(a) a Commonwealth authority; and
(b) a body corporate incorporated in a Territory.

756 Permit required for OHS entry

(1) An official of an organisation who has a right under an OHS law to enter premises must not exercise that right unless the official:
   (a) holds a permit under this Part; and
   (b) exercises the right during working hours.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 8 for enforcement.

757 Rights to inspect employment records after entering premises

(1) A person who:
   (a) is required to enter premises under an OHS law in accordance with section 756; and
   (b) has a right under the OHS law to inspect or otherwise access employment records on the premises;
   must not exercise the right unless he or she has complied with subsection (2).

(2) At least 24 hours before the entry, the person must have given the occupier of the premises written notice of his or her intention to exercise the right and the reasons for doing so.

(3) Subsection (1) is a civil remedy provision.

Note: See Division 8 for enforcement.

Definition

(4) In this section:

employment record means a record relating to the employment of an employee:
   (a) that relates to any of the following matters:
       (i) hours of work;
       (ii) overtime;
       (iii) remuneration or other benefits;
       (iv) leave;
(v) superannuation contributions;
(vi) termination of employment;
(vii) type of employment (for example, permanent, temporary, casual, full-time or part-time);
(viii) personal details of the employee;
(ix) any other matter prescribed by the regulations; or
(b) that sets out the kind of industrial instrument that regulates the employment of the employee (for example, an AWA, a collective agreement, an award or a contract of employment).

758 Limitation on OHS entry—failure to comply with requests of occupier

(1) A permit holder must not enter, or remain on, premises under an OHS law unless the permit holder produces his or her permit for inspection when requested to do so by the occupier of the premises.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 8 for enforcement.

(3) A permit holder must not enter, or remain on, premises under an OHS law if:

(a) the occupier of the premises requests the permit holder to comply with an occupational health and safety requirement that applies to the premises; and
(b) the request is a reasonable request; and
(c) the permit holder fails to comply with the request.

Note: The Commission may make an order under section 771 if the request is unreasonable.

(4) Subsection (3) is a civil remedy provision.

Note: See Division 8 for enforcement.

759 Limitation on OHS entry—permit conditions

A permit holder’s right to enter premises under an OHS law in accordance with section 756 is subject to any conditions that apply to the permit.
Division 6—Right of entry to hold discussions with employees

760 Right of entry to hold discussions with employees

A permit holder for an organisation may enter premises for the purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, eligible employee means any employee who:

(a) on the premises, carries out work that is covered by an award or collective agreement that is binding on the permit holder’s organisation; and

(b) is a member of the permit holder’s organisation or is eligible to become a member of that organisation.

761 Limitation on rights—times of entry and discussions

The permit holder may only enter the premises under section 760 during working hours and may only hold the discussions during the employees’ mealtime or other breaks.

762 Limitation on rights—conscientious objection certificates

(1) This Division does not authorise entry to premises, or subsequent conduct on the premises, if all of the following conditions are satisfied:

(a) no more than 20 employees are employed to work at the premises;

(b) all the employees at the premises are employed by an employer who is the holder of a conscientious objection certificate in force under section 180 of the Registration and Accountability of Organisations Schedule, that has been endorsed by a Registrar under subsection (2) of this section, or under section 285C of the repealed Part IX;

(c) none of the employees employed at the premises is a member of an organisation.

(2) A Registrar may, on the application of an employer, endorse a certificate issued to that employer under section 180 of the Registration and Accountability of Organisations Schedule if the
Registrar is satisfied that the employer is a practising member of a religious society or order whose doctrines or beliefs preclude membership of an organisation or body other than the religious society or order of which the employer is a member.

(3) An application under subsection (2) may be made at the time of an application under section 180 of the Registration and Accountability of Organisations Schedule or at any later time.

(4) The endorsement of a Registrar under subsection (2) remains in force for the period that the certificate remains in force.

Note: A certificate issued under section 180 of the Registration and Accountability of Organisations Schedule remains in force for the period (not exceeding 12 months) specified in the certificate, but may be renewed. A Registrar’s endorsement under subsection (2) does not remain in force when a certificate is renewed, but a new application for endorsement may be made.

763 Limitation on rights—entry notice

This Division does not authorise entry to premises, or subsequent conduct on the premises, unless all the following conditions are satisfied:

(a) the permit holder gave an entry notice to the occupier of the premises at least 24 hours, but not more than 14 days, before the entry;

(b) the entry notice specifies section 760 as the section that authorises the entry;

(c) the entry is on a day specified in the entry notice.

764 Limitation on rights—residential premises

This Division does not authorise a person to enter any part of premises that is used for residential purposes.

765 Limitation on rights—failure to comply with requests of occupier or affected employer

(1) This Division does not authorise a permit holder to enter, or remain on, premises if the permit holder fails to produce the permit holder’s authority documents for inspection when requested to do so by an affected employer or by the occupier of the premises.
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(2) This Division does not authorise a permit holder to enter, or remain on, premises if:
   (a) an affected employer or the occupier of the premises requests the permit holder to comply with an occupational health and safety requirement that applies to the premises; and
   (b) the request is a reasonable request; and
   (c) the permit holder fails to comply with the request.

   Note: The Commission may make an order under section 771 if the request is unreasonable.

(3) This Division does not authorise a permit holder to enter, or remain on, premises if:
   (a) an affected employer or the occupier of the premises requests the permit holder to do either or both of the following:
      (i) to hold discussions in a particular room or area of the premises;
      (ii) to take a particular route to reach a particular room or area of the premises; and
   (b) the request is a reasonable request; and
   (c) the permit holder fails to comply with the request.

   Note: The Commission may make an order under section 771 if the request is unreasonable.

(4) For the purposes of subsection (3), if an affected employer or the occupier requests the permit holder to hold discussions in a particular room or area, or to take a particular route to reach a particular room or area, the request is not unreasonable only because it is not the room, area or route that the permit holder would have chosen.

766 Limitation on rights—permit conditions

A permit holder’s rights under this Division in respect of a permit are subject to any conditions that apply to the permit.
Division 7—Prohibitions

767 Hindering, obstruction etc. in relation to this Part

(1) A permit holder exercising, or seeking to exercise, rights:
   (a) under section 747, 748 or 760; or
   (b) under an OHS law in accordance with section 756 or 757;
   must not intentionally hinder or obstruct any person, or otherwise
   act in an improper manner.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 8 for enforcement.

(3) A person must not refuse or unduly delay entry to premises by a
   permit holder who is entitled to enter the premises:
   (a) under section 747, subsection 748(8) or (10) or section 760; or
   (b) under an OHS law in accordance with section 756.

(4) Subsection (3) is a civil remedy provision.

Note: See Division 8 for enforcement.

(5) An employer must not refuse or fail to comply with a requirement
   under subsection 748(4) or (5).

(6) Subsection (5) is a civil remedy provision.

Note: See Division 8 for enforcement.

(7) A person must not otherwise intentionally hinder or obstruct a
   permit holder exercising rights:
   (a) under section 747, 748 or 760; or
   (b) under an OHS law in accordance with section 756 or 757.

(8) Subsection (7) is a civil remedy provision.

Note: See Division 8 for enforcement.

(9) To avoid doubt, a failure to agree on a place as mentioned in
    paragraph 748(5)(a) does not constitute hindering or obstructing a
    permit holder exercising rights under section 748.

(10) Without limiting subsection (7), that subsection:
(a) extends to hindering or obstructing that occurs after the entry notice is given but before the permit holder enters the premises; and
(b) applies whether or not the person who is hindering or obstructing knows at the time which permit holder will be exercising the rights in respect of the entry notice.

Note: For example, if an entry notice is given to the occupier and a person then destroys, conceals or manufactures evidence relating to the suspected breach, that conduct would amount to hindering or obstructing.

768 Misrepresentations about right of entry

(1) A person must not, in the circumstances mentioned in subsection (2), engage in conduct:
   (a) with the intention of giving a second person the impression;
   or
   (b) reckless as to whether a second person would get the impression;
that the first person, or a third person, is authorised by this Part to do a particular thing.

(2) The circumstances are:
   (a) the first person or the third person (as the case requires) is not authorised by this Part to do that thing; and
   (b) the first person knows, or has reasonable grounds to believe, that the first person or the third person (as the case requires) is not authorised by this Part to do that thing.

(3) Subsection (1) is a civil remedy provision.

Note: See Division 8 for enforcement.
Division 8—Enforcement

769 Penalties etc. for contravention of civil remedy provisions

(1) The Court, on application by an eligible person, may make one or more of the following orders in relation to a person (the defendant) who has contravened a civil remedy provision of this Part:
   (a) an order imposing a pecuniary penalty on the defendant;
   (b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;
   (c) any other order that the Court considers appropriate.

(2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the defendant is a body corporate and otherwise 60 penalty units.

(3) The orders that may be made under paragraph (1)(c) include:
   (a) injunctions; and
   (b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.

(4) Each of the following is an eligible person for the purposes of this section:
   (a) a workplace inspector;
   (b) a person affected by the contravention;
   (c) a person prescribed by the regulations for the purposes of this paragraph.

(5) A regulation prescribing persons for the purposes of paragraph (4)(c) may provide that a person is prescribed only in relation to circumstances specified in the regulation.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.
Division 9—Powers of the Commission

770 Orders by Commission for abuse of system

(1) If the Commission is satisfied that an organisation, or any official of an organisation, has abused the rights conferred by this Part, then the Commission may make whatever orders it considers appropriate to restrict the rights of the organisation, or officials of the organisation, under this Part.

(2) The Commission may make the orders:
   (a) on its own initiative; or
   (b) on application by a workplace inspector.

(3) The orders may include:
   (a) an order that revokes or suspends some or all of the permits that have been issued in respect of the organisation; and
   (b) an order that imposes limiting conditions on some or all of the permits that have been issued in respect of the organisation or that might in future be issued in respect of the organisation; and
   (c) an order that bans, for a specified period, the issue of permits in respect of the organisation, either generally or to specified persons.

For the purposes of this subsection, limiting condition means a condition that limits the circumstances in which a permit has effect.

(4) An organisation, or an official of an organisation, who is subject to an order under this section must comply with the order.

(5) Subsection (4) is a civil remedy provision.

Note: See Division 8 for enforcement.

(6) The powers of the Commission under this section are exercisable by:
   (a) the President; or
   (b) a Presidential Member assigned by the President for the purposes of the matter concerned; or
   (c) a Full Bench, if the President so directs.
(7) Without limiting subsection (1), a permit holder abuses rights conferred by this Part if, in exercising rights under Division 6, the permit holder engages in recruitment conduct that is unduly disruptive, either because the permit holder’s exercise of powers of entry is excessive in the circumstances or for some other reason.

(8) In this section:

recruitment conduct means encouraging employees to become members of an organisation.

771 Unreasonable requests by occupier or affected employer

(1) If the Commission is satisfied that:

(a) an affected employer or the occupier of premises has made a request to a permit holder as mentioned in section 751, 758 or 765; and

(b) the request is not a reasonable request;

then the Commission may make whatever orders it considers appropriate in respect of the rights of the organisation, or officials of the organisation, to investigate breaches as mentioned in section 747, to enter premises under an OHS law in accordance with section 756 or to hold discussions with employees as mentioned in section 760, as the case requires.

Note: Unreasonable requests might amount to a breach of subsection 767(7).

(2) Without limiting subsection (1), the Commission may order that, for a specified period, the permit holder who was exercising or seeking to exercise rights under section 748 or 760 or under an OHS law in accordance with section 756 or 757 is entitled to enter specified premises, or a specified part of specified premises, for a specified period, and exercise those rights.

(3) The powers of the Commission under this section are exercisable by:

(a) the President; or

(b) a Presidential Member assigned by the President for the purposes of the matter concerned; or

(c) a Full Bench, if the President so directs.

(4) The Commission may make an order under this section on its own initiative or on application in accordance with the regulations.
772 Disputes about the operation of this Part

(1) The Commission may make orders for the purposes of settling disputes about the operation of this Part.

(2) The Commission may make orders under subsection (1) on application by:

(a) a permit holder; or
(b) a permit holder’s organisation; or
(c) an affected employer; or
(d) an occupier of, or an employer who employs employees who carry out work on, OHS premises.

(3) In making orders under subsection (1), the Commission:

(a) must have regard to fairness between the parties concerned; and
(b) must not confer rights that are additional to, or inconsistent with, rights exercisable under this Part.

(4) However, the Commission does have power, under subsection (1), to:

(a) revoke or suspend a permit issued to a person under this Part; or
(b) impose limiting conditions on a permit issued to a person under this Part.

If the Commission does so, it may make any order that it considers appropriate, for the purpose of settling the dispute, about the issue of any further permit to the person, or of any permit or further permit to any other person, under this Part.

(5) In this section:

*limiting condition* means a condition that limits the circumstances in which a permit has effect.

*OHS premises* means premises in relation to which a person must hold a permit in order to exercise a right of entry under an OHS law.
773 Powers of inspection

(1) For the purposes of dealing with a proceeding under this Part, a member of the Commission may at any time during working hours do one or more of the following:
   (a) enter prescribed premises;
   (b) inspect or view any work, material, machinery, appliance, article, document or other thing on the prescribed premises;
   (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 in relation to which a person must hold a permit in order to exercise a right of entry under:
   (a) this Part; or
   (b) an OHS law.

774 Parties to proceedings

The Commission may direct that parties be joined or struck out as parties to proceedings under this Part.

775 Kinds of orders

The orders that the Commission may make under this Part include the following:
   (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.

776 Relief not limited to claim

In making an order in proceedings under this Part, 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 proceeding.

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777 Publishing orders

(1) If the Commission makes an order under this Part, 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 Part 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 Part;
   (b) any written reasons for the order that are received by a Registrar.

(5) If a member of the Commission ceases to be a member:
   (a) after an order under this Part 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 16—Freedom of association

Division 1—Preliminary

778  Objects of Part

In addition to the object set out in section 3, this Part has the following objects:

(a) to ensure that employers, employees and independent contractors are free to become, or not become, members of industrial associations;

(b) to ensure that employers, employees and independent contractors are not discriminated against or victimised because they are, or are not, members or officers of industrial associations;

(c) to provide effective relief to employers, employees and independent contractors who are prevented or inhibited from exercising their rights to freedom of association;

(d) to provide effective remedies to penalise and deter persons who engage in conduct which prevents or inhibits employers, employees or independent contractors from exercising their rights to freedom of association.

779  Definitions

(1) In this Part:

bargaining services means services provided by (or on behalf of) an industrial association in relation to an agreement, or a proposed agreement, under Part 8 (including the negotiation, making, approval, lodgment, operation, extension, variation or termination of the agreement).

bargaining services fee means a fee (however described) payable:

(a) to an industrial association; or

(b) to someone else in lieu of an industrial association; wholly or partly for the provision, or purported provision, of bargaining services, but does not include membership dues.
Commonwealth place means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

conduct includes an omission.

Court means the Federal Court of Australia or the Federal Magistrates Court.

industrial association means:
(a) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
(b) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or
(c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors; and includes a branch of such an association, and an organisation.

industrial body means:
(a) the Commission; or
(b) a court or commission, however designated, exercising under an industrial law powers and functions corresponding to those conferred on the Commission by this Act; or
(c) a court or commission, however designated, exercising under an industrial law powers and functions corresponding to those conferred on the Commission by the Registration and Accountability of Organisations Schedule.

industrial instrument means an award or agreement, however designated, that:
(a) is made under or recognised by an industrial law; and
(b) concerns the relationship between an employer and the employer’s employees, or provides for the prevention or settlement of a dispute between an employer and the employer’s employees.
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**industrial law** means this Act, the Registration and Accountability of Organisations Schedule or a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

**objectionable provision** has the meaning given by section 810.

**office**, in relation to an organisation or industrial association or a branch of an organisation or industrial association, has the meaning given by section 781.

**officer**, in relation to an industrial association, means:
(a) a person who holds an office in the association; or
(b) a delegate or other representative of the association; or
(c) an employee of the association.

**organisation** includes a branch of an organisation.

**threat** means a threat of any kind, whether direct or indirect and whether express or implied.

(2) For the purposes of this Part, the following conduct is taken to be conduct of an industrial association:
(a) conduct of the committee of management of the industrial association;
(b) conduct of an officer or agent of the industrial association acting in that capacity;
(c) conduct of a member, or group of members, of the industrial association where the conduct is authorised by:
   (i) the rules of the industrial association; or
   (ii) the committee of management of the industrial association; or
   (iii) an officer or agent of the industrial association acting in that capacity;
(d) conduct of a member of the industrial association, who performs the function of dealing with an employer on behalf of the member and other members of the industrial association, acting in that capacity.

(3) Paragraphs (2)(c) and (d) do not apply if:

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570  *Workplace Relations Act 1996*
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(a) a committee of management of the industrial association; or
(b) a person authorised by the committee; or
(c) an officer of the industrial association;

has taken reasonable steps to prevent the action.

(4) A reference in this Part, or in regulations made for the purposes of this Part, to an independent contractor is not confined to a natural person.

780 Meaning of industrial action

For the purposes of this Part, section 420 has effect as if the words employer, employee and employment had their ordinary meaning.

781 Meaning of office

(1) In this Part:

office, in relation to an association, means:

(a) an office of president, vice president, secretary or assistant secretary of the association; or

(b) the office of a voting member of a collective body of the association, being a collective body that has power in relation to any of the following functions:

(i) the management of the affairs of the association;
(ii) the determination of policy for the association;
(iii) the making, alteration or rescission of rules of the association;
(iv) the enforcement of rules of the association, 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 association, 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 association; or
(ii) decisions concerning the association; or
(d) an office the holder of which is, under the rules of the association, 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 association; or
   (ii) in which the association has a beneficial interest.

(2) In subsection (1):

   association means an organisation or branch of an organisation, or an industrial association or branch of an industrial association.

(3) A reference in this Part to an office in an organisation or industrial association includes a reference to an office in a branch of the organisation or association.
Division 2—Conduct to which this Part applies

782 Application

Divisions 3 to 8 of this Part apply only to the extent provided in this Part.

783 Organisations

This Part applies to:
(a) conduct by an organisation; and
(b) conduct by an officer of an organisation acting in that capacity; and
(c) conduct carried out with a purpose or intent relating to a person’s membership or non-membership of an organisation.

784 Matters arising under this Act or the Registration and Accountability of Organisations Schedule

(1) This Part applies to conduct carried out with a purpose or intent relating to a person’s participation or non-participation (in any capacity) in:
(a) any proceedings under this Act; or
(b) any other activity provided for by this Act; or
(c) any proceedings under the Registration and Accountability of Organisations Schedule; or
(d) any other activity provided for by the Registration and Accountability of Organisations Schedule.

(2) This Part applies to conduct carried out with a purpose or intent relating to:
(a) the fact that an award or a workplace agreement applies to a person’s employment; or
(b) the fact that a person is bound by an award or a workplace agreement.

785 Constitutional corporations

(1) This Part applies to the following conduct:
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(a) conduct by a constitutional corporation;
(b) conduct against a constitutional corporation;
(c) conduct that adversely affects a constitutional corporation;
(d) conduct carried out with intent to adversely affect a constitutional corporation;
(e) conduct that directly affects a person in the capacity of:
   (i) an employee, or prospective employee, of a constitutional corporation; or
   (ii) a contractor, or prospective contractor, of a constitutional corporation;
(f) conduct carried out with intent to directly affect a person in the capacity of:
   (i) an employee, or prospective employee, of a constitutional corporation; or
   (ii) a contractor, or prospective contractor, of a constitutional corporation;
(g) conduct that consists of advising, encouraging or inciting a constitutional corporation:
   (i) to take, or not to take, particular action in relation to another person; or
   (ii) to threaten to take, or not to take, particular action in relation to another person.

(2) In this section:

  constitutional corporation includes a body corporate incorporated in a Territory.

786 Commonwealth and Commonwealth authorities

This Part applies to the following conduct:
(a) conduct by the Commonwealth or a Commonwealth authority;
(b) conduct that affects, or is carried out with intent to affect, the Commonwealth, or a Commonwealth authority, in its relationships with its employees or contractors;
(c) conduct that affects, or is carried out with intent to affect, a person in the capacity of an employee or contractor of the Commonwealth or of a Commonwealth authority.
787 Territories and Commonwealth places

This Part applies to conduct in a Territory or a Commonwealth place.

788 Extraterritorial extension

In Australia’s exclusive economic zone

(1) This Part, and the rest of this Act so far as it relates to this Part, extend to the following conduct in Australia’s exclusive economic zone:

(a) conduct that:
   (i) is by an organisation, an Australian-based employee or a group of persons including either an organisation or an Australian-based employee; and
   (ii) affects adversely, or is intended to affect adversely, an Australian employer;

(b) conduct that:
   (i) is by an Australian employer or a group including an Australian employer; and
   (ii) affects adversely, or is intended to affect adversely, an Australian-based employee, whether alone or with other persons;

(c) conduct that affects adversely, or is intended to affect adversely, either an independent contractor who has a connection with Australia that is prescribed for the purposes of this paragraph or a group including such an independent contractor.

On Australia’s continental shelf outside exclusive economic zone

(2) This Part, and the rest of this Act so far as it relates to this Part, extend to the following conduct outside the outer limits of Australia’s exclusive economic zone and in, on or over a part of Australia’s continental shelf prescribed by the regulations for the purposes of this subsection:

(a) conduct that:
   (i) is by an organisation, an Australian-based employee or a group of persons including either an organisation or an Australian-based employee; and
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(ii) affects adversely, or is intended to affect adversely, an Australian employer; and

(iii) meets the requirements prescribed by the regulations for that part of Australia’s continental shelf;

(b) conduct that:

(i) is by an Australian employer or a group including an Australian employer; and

(ii) affects adversely, or is intended to affect adversely, an Australian-based employee, whether alone or with other persons; and

(iii) meets the requirements prescribed by the regulations for that part of Australia’s continental shelf;

(c) conduct that:

(i) affects adversely, or is intended to affect adversely, either an independent contractor who has a connection with Australia that is prescribed for the purposes of this subparagraph or a group including such an independent contractor; and

(ii) meets the requirements prescribed by the regulations for that part of Australia’s continental shelf.

Note: The regulations may prescribe different requirements relating to different parts of Australia’s continental shelf. The regulations may need to do so to give effect to Australia’s international obligations.

Outside Australia’s exclusive economic zone and continental shelf

(3) This Part, and the rest of this Act so far as it relates to this Part, extend to the following conduct outside Australia and neither in Australia’s exclusive economic zone nor in, on or over a part of Australia’s continental shelf described in subsection (2):

(a) conduct that:

(i) is by an organisation, an Australian-based employee or a group of persons including either an organisation or an Australian-based employee; and

(ii) affects adversely, or is intended to affect adversely, an Australian employer;

(b) conduct that:

(i) is by an Australian employer or a group including an Australian employer; and

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(ii) affects adversely, or is intended to affect adversely, an
Australian-based employee, whether alone or with other
persons;
(c) conduct that affects adversely, or is intended to affect
adversely, either an independent contractor who has a
connection with Australia that is prescribed for the purposes
of this paragraph or a group including such an independent
contractor.

Definition

(4) In this section:

this Act includes the Registration and Accountability of
Organisations Schedule and regulations made under it.
Part 16  Freedom of association
Division 3  General prohibitions relating to freedom of association

Section 789

Division 3—General prohibitions relating to freedom of association

789 Coercion

(1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person or a third person:
   (a) to become, or not become, an officer or member of an industrial association; or
   (b) to remain, or cease to be, an officer or member of an industrial association.

(2) Subsection (1) is a civil remedy provision.
   Note: See Division 9 for enforcement.

790 False or misleading statements about membership

(1) A person must not make a false or misleading representation about:
   (a) another person’s obligation:
      (i) to be, or become, an officer or member of an industrial association; or
      (ii) not to be, not to become or to cease to be, an officer or member of an industrial association; or
   (b) another person’s obligation to disclose whether he or she, or a third person, is, or has been, an officer or member of an industrial association or of a particular industrial association; or
   (c) the need for another person to be, or not to be, an officer or member of an industrial association, or of a particular industrial association, in order for the other person to obtain the benefit of an industrial instrument.

(2) Subsection (1) is a civil remedy provision.
   Note: See Division 9 for enforcement.
791 Industrial action for reasons relating to membership

(1) A person must not organise or take, or threaten to organise or take, industrial action against another person for the reason that, or for reasons that include the reason that, a person:
   (a) is, has been, proposes to become or has at any time proposed to become an officer or member of an industrial association; or
   (b) is not, does not propose to become or proposes to cease to be, an officer or member of an industrial association.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.
Division 4—Conduct by employers etc.

792 Dismissal etc. of members of industrial associations etc.

(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) refuse to employ another person as an employee;
   (e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person as an employee.

(2) Subsection (1) is a civil remedy provision.
Note: See Division 9 for enforcement.

(3) For the purposes of paragraph (1)(d), an employer does not refuse to employ another person if the employer does not intend to employ anyone.

(4) An employer does not contravene subsection (1) because of paragraph 793(1)(i) unless the entitlement described in that paragraph is the sole or dominant reason for the employer doing any of the things described in paragraphs (1)(a), (b), (c), (d) and (e) of this section.

(5) 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 the independent contractor in relation to the terms and conditions of the contract for services;
   (c) alter the position of the independent contractor to the independent contractor’s prejudice;
   (d) refuse to engage another person as an independent contractor;

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(e) discriminate against another person in the terms or conditions on which the person offers to engage the other person as an independent contractor.

(6) Subsection (5) is a civil remedy provision.

Note: See Division 9 for enforcement.

(7) For the purposes of paragraph (5)(d), a person does not refuse to engage another person if the person does not intend to engage anyone.

(8) A person does not contravene subsection (5) because of paragraph 793(1)(i) unless the entitlement described in that paragraph is the sole or dominant reason for the person doing any of the things described in paragraphs (5)(a), (b), (c), (d) and (e) of this section.

793 Prohibited reasons

(1) Conduct referred to in subsection 792(1) or (5) is for a prohibited reason if it is carried out because the employee, independent contractor or other person concerned:

(a) is, has been, proposes to become or has at any time proposed to become an officer, delegate or member of an industrial association; or

(b) is not, does not propose to become or proposes to cease to be, a member of an industrial association; or

(c) in the case of a refusal to engage another person as an independent contractor—has one or more employees who are not, or do not propose to become, members of an industrial association; or

(d) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or

(e) has refused or failed to join in industrial action; or

(f) in the case of an employee—has refused or failed to agree or consent to, or vote in favour of, the making of an agreement to which an industrial association of which the employee is a member would be a party; or

(g) has made, proposes to make or has at any time proposed to make an application to an industrial body for an order under an industrial law for the holding of a secret ballot; or
(h) has participated in, proposes to participate in or has at any time proposed to participate in a secret ballot ordered by an industrial body under an industrial law; or

(i) is entitled to the benefit of an industrial instrument, an order of an industrial body or the Australian Fair Pay and Conditions Standard; or

(j) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
   (i) compliance with that law; or
   (ii) the observance of a person’s rights under an industrial instrument; or

(k) has participated in, proposes to participate in or has at any time proposed to participate in a proceeding under an industrial law; or

(l) has given or proposes to give evidence in a proceeding under an industrial law; or

(m) in the case of an employee, or an independent contractor, who is a member of an industrial association that is seeking better industrial conditions—is dissatisfied with his or her conditions; or

(n) in the case of an employee or an independent contractor—has absented himself or herself from work without leave if:
   (i) the absence was for the purpose of carrying out duties or exercising rights as an officer of an industrial association; and
   (ii) the employee or independent contractor applied for leave before absenting himself or herself and leave was unreasonably refused or withheld; or

(o) as an officer or member of an industrial association, has done, or proposes to do, an act or thing for the purpose of furthering or protecting the industrial interests of the industrial association, being an act or thing that is:
   (i) lawful; and
   (ii) within the limits of an authority expressly conferred on the employee, independent contractor or other person by the industrial association under its rules; or

(p) in the case of an employee or independent contractor—has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.
(2) If:
   (a) a threat is made to engage in conduct referred to in subsection 792(1) or (5); and
   (b) one of the prohibited reasons in subsection (1) of this section refers to a person doing or proposing to do a particular act, or not doing or proposing not to do a particular act; and
   (c) the threat is made with the intent of dissuading or preventing the person from doing the act, or coercing the person to do the act, as the case requires;

the threat is taken to have been made for that prohibited reason.

794 Inducements to cease membership etc. of industrial associations etc.

(1) An employer, or a person who has engaged an independent contractor, must not (whether by threats or promises or otherwise) induce an employee, or the independent contractor, as the case requires:
   (a) to become an officer or member of an industrial association; or
   (b) to remain an officer or member of an industrial association; or
   (c) not to become an officer or member of an industrial association; or
   (d) to cease to be an officer or member of an industrial association.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.
Division 5—Conduct by employees etc.

795 Cessation of work

(1) An employee or independent contractor must not cease work in the service of his or her employer, or of the person who engaged the independent contractor, as the case requires, because the employer or person:
   (a) is an officer or member of an industrial association; or
   (b) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
   (c) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
      (i) compliance with that law; or
      (ii) the observance of a person’s rights under an industrial instrument; or
   (d) has participated in, proposes to participate in or has at any time proposed to participate in any proceedings under an industrial law; or
   (e) has given evidence in a proceeding under an industrial law.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.
Division 6—Conduct by industrial associations etc.

796 Industrial associations acting against employers

(1) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer because the employer is an officer or member of an industrial association.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.

(3) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer:

(a) to become an officer or member of an industrial association; or
(b) to remain an officer or member of an industrial association; or
(c) not to become an officer or member of an industrial association; or
(d) to cease to be an officer or member of an industrial association; or
(e) to pay a fee (however described) to an industrial association.

(4) Subsection (3) is a civil remedy provision.

Note: See Division 9 for enforcement.

(5) An industrial association, or an officer or member of an industrial association, must not:

(a) advise, encourage or incite an employer; or
(b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;

to take action in relation to a person that would, if taken, contravene subsection 792(1).

(6) Subsection (5) is a civil remedy provision.

Note: See Division 9 for enforcement.
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(7) An industrial association, or an officer or member of an industrial association, must not, because a member of the association has refused or failed to comply with a direction given by the association:
   (a) advise, encourage or incite an employer; or
   (b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;
   to prejudice the member in the member’s employment or possible employment.

(8) Subsection (7) is a civil remedy provision.

Note: See Division 9 for enforcement.

797 Industrial associations acting against employees etc.

(1) An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person’s employment, or prospective employment, with intent:
   (a) to coerce the person to join in industrial action; or
   (b) to dissuade or prevent the person from making an application to an industrial body for an order under an industrial law for the holding of a secret ballot.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.

(3) An industrial association, or an officer or member of an industrial association, must not:
   (a) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person’s employment or prospective employment; or
   (b) advise, encourage or incite a person to take action having the effect, directly or indirectly, of prejudicing another person in the other person’s employment or prospective employment; for any of the following reasons, or for reasons that include any of the following reasons:
   (c) the person has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee;
(d) the person is, has been, proposes to become, or has at any
time proposed to become, an officer or member of an
industrial association;
(e) the person is not, does not propose to become or proposes to
cease to be, a member of an industrial association;
(f) the person has not paid, has not agreed to pay, or does not
propose to pay, a fee (however described) to an industrial
association;
(g) the person has refused or failed to join in industrial action;
(h) the person has made, or proposes to make, any inquiry or
complaint to a person or body having the capacity under an
industrial law to seek:
   (i) compliance with that law; or
   (ii) the observance of a person’s rights under an industrial
instrument.

(4) Subsection (3) is a civil remedy provision.

Note: See Division 9 for enforcement.

798 Industrial associations acting against members

(1) An industrial association, or an officer or member of an industrial
association, must not impose, or threaten to impose, a penalty,
forfeiture or disability of any kind on a member of the association:
(a) with intent to coerce the member to join in industrial action;
or
(b) because the member has refused or failed to join in industrial
action; or
(c) because the member has made, proposes to make, or has at
any time proposed to make, an application to an industrial
body for an order under an industrial law for the holding of a
secret ballot; or
(d) because the member has participated in, proposes to
participate in, or has at any time proposed to participate in, a
secret ballot ordered by an industrial body under an industrial
law; or
(e) because the member has made, or proposes to make, any
inquiry or complaint to a person or body having the capacity
under an industrial law to seek:
   (i) compliance with that law; or
(ii) the observance of a person’s rights under an industrial instrument; or

(f) because the member has refused or failed to agree or consent to, or vote in favour of, the making of an agreement to which the industrial association would be a party; or

(g) because the member has participated in, proposes to participate in, or has at any time proposed to participate in, a proceeding under an industrial law; or

(h) because the member has given, or proposes to give, evidence in a proceeding under an industrial law.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.

799 Industrial associations acting against independent contractors etc.

(1) In this section:

{\textit{discriminatory action}}, in relation to an eligible person, means:

(a) a refusal to make use of, or to agree to make use of, services offered by the eligible person; or

(b) a refusal to supply, or to agree to supply, goods or services to the eligible person; or

(c) threatening to refuse as mentioned in paragraph (a) or (b).

\textit{eligible person} means a person who is not an employee, but who:

(a) is eligible to become a member of an industrial association; or

(b) would be eligible to become a member of an industrial association if he or she were an employee.

(2) An industrial association, or an officer or member of an industrial association, must not:

(a) advise, encourage or incite a person (whether an employer or not) to take discriminatory action against an eligible person because the eligible person, or any person employed or engaged by the eligible person:

(i) is, has been, proposes to become or has at any time proposed to become, a member of an industrial association; or

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(ii) is not, proposes not to become or proposes to cease to be, a member of an industrial association; or

(iii) is a member of an industrial association who has refused or failed to comply with a direction given by the association; or

(iv) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or

(v) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek compliance with that law; or

(vi) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek the observance of a person’s rights under an industrial instrument; or

(b) take, or threaten to take, industrial action against a person (whether an employer or not) with intent to coerce the person to take discriminatory action against an eligible person because the eligible person, or any person employed or engaged by the eligible person:

(i) is, has been, proposes to become or has at any time proposed to become, a member of an industrial association; or

(ii) is not, proposes not to become or proposes to cease to be, a member of an industrial association; or

(iii) is a member of an industrial association who has refused or failed to comply with a direction given by the association; or

(iv) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or

(v) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek compliance with that law; or

(vi) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek the observance of a person’s rights under an industrial instrument; or

(c) take, or threaten to take, industrial action against an eligible person with intent to coerce the eligible person, or any person employed or engaged by the eligible person:
(i) to become, or to remain, a member of an industrial association; or
(ii) not to become, or not to remain, a member of an industrial association; or
(iii) to comply with a direction given by the association.

(3) Subsection (2) is a civil remedy provision.

Note: See Division 9 for enforcement.

(4) For the avoidance of doubt, nothing in subsection (2) prevents an industrial association from entering into an agreement or arrangement with another person for the supply of goods or services to members of the industrial association (including the supply on particular terms or conditions).

(5) An industrial association, or an officer or member of an industrial association, must not:
   (a) advise, encourage or incite a person (whether an employer or not) to take discriminatory action against an eligible person for a prohibited reason; or
   (b) take, or threaten to take, industrial action against a person (whether an employer or not) with intent to coerce the person to take discriminatory action against an eligible person for a prohibited reason; or
   (c) take, or threaten to take, industrial action against an eligible person for a prohibited reason.

(6) Subsection (5) is a civil remedy provision.

Note: See Division 9 for enforcement.

(7) Conduct mentioned in subsection (5) is carried out for a prohibited reason if it is carried out because the eligible person concerned has not paid, has not agreed to pay, or does not propose to pay, a bargaining services fee.

**800 Industrial associations acting against independent contractors etc. to encourage contraventions**

(1) An industrial association, or an officer or member of an industrial association, must not:
   (a) advise, encourage or incite a person; or
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(b) organise or take, or threaten to organise or take, industrial action against a person with intent to coerce the person; to take action in relation to another person that would, if taken, contravene subsection 792(5).

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.

801 Industrial associations not to demand bargaining services fee

(1) An industrial association, or an officer or member of an industrial association, must not demand (whether orally or in writing) payment of a bargaining services fee from another person.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.

(3) Nothing in this section prevents an industrial association from demanding payment of a bargaining services fee that is payable to the association under a contract for the provision of bargaining services.

(4) In this section:

demand includes:

(a) purport to demand; and
(b) have the effect of demanding; and
(c) purport to have the effect of demanding.

802 Action to coerce person to pay bargaining services fee

(1) An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action against another person with intent to coerce the person, or a third person, to pay a bargaining services fee.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.
803 Industrial associations not prevented from entering contracts

To avoid doubt, nothing in this Division prevents an industrial association from entering into a contract for the provision of bargaining services with a person who is not a member of the association.
804 Discrimination against employer in relation to industrial instruments

(1) A person (the first person) must not discriminate against another person (the second person) on the ground that:
   (a) the employment of the second person’s employees is covered, or is not covered, by:
       (i) the Australian Fair Pay and Conditions Standard; or
       (ii) a particular kind of industrial instrument; or
       (iii) an industrial instrument made with a particular person;
   or
   (b) it is proposed that the employment of the second person’s employees be covered, or not be covered, by:
       (i) a particular kind of industrial instrument; or
       (ii) an industrial instrument made with a particular person.

(2) Subsection (1) is a civil remedy provision.  
Note: See Division 9 for enforcement.

(3) Subsection (1) does not apply to conduct that is protected action (within the meaning of section 435).
Division 8—False or misleading representations about bargaining services fees etc.

805 False or misleading representations about bargaining services fees etc.

(1) A person must not make a false or misleading representation about:
   (a) another person’s liability to pay a bargaining services fee; or
   (b) another person’s obligation to enter into an agreement to pay a bargaining services fee; or
   (c) another person’s obligation to become a member of an industrial association.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 9 for enforcement.
Division 9—Enforcement

806 Definition

In this Division:

person, in relation to a contravention of a civil remedy provision, includes an industrial association.

Note: A person who is involved in a contravention of a civil remedy provision is treated as having contravened that provision: see section 728.

807 Penalties etc. for contravention of civil remedy provisions

(1) The Court, on application by an eligible person, may make one or more of the following orders in relation to a person (the defendant) who has contravened a civil remedy provision of this Part:

(a) an order imposing a pecuniary penalty on the defendant;

(b) an order requiring the defendant to pay a specified amount to another person as compensation for damage suffered by the other person as a result of the contravention;

(c) any other order that the Court considers appropriate.

(2) The maximum pecuniary penalty under paragraph (1)(a) is 300 penalty units if the defendant is a body corporate and otherwise 60 penalty units.

(3) The orders that may be made under paragraph (1)(c) include:

(a) injunctions; and

(b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.

(4) Each of the following is an eligible person for the purposes of this section:

(a) a workplace inspector;

(b) a person affected by the contravention;

(c) a person prescribed by the regulations for the purposes of this paragraph.
(5) A regulation prescribing persons for the purposes of paragraph (4)(c) may provide that a person is prescribed only in relation to circumstances specified in the regulation.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

808 Conduct that contravenes Division 3 and another Division of this Part

If:
(a) a person engages in conduct; and
(b) the conduct contravenes both Division 3 and another Division of this Part;
the Court may make orders under section 807 in relation to only one of those contraventions.

809 Proof not required of the reason for, or the intention of, conduct

(1) If:
(a) in an application under section 807 relating to a person’s conduct, it is alleged that the conduct was, or is being, carried out for a particular reason or with a particular intent; and
(b) for the person to carry out the conduct for that reason or with that intent would constitute a contravention of this Part;
it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the person proves otherwise.

(2) This section does not apply in relation to the granting of an interim injunction.

Note: See section 838 for interim injunctions.
Division 10—Objectionable provisions

810 Meaning of objectionable provision

(1) For the purposes of this Division, each of the following provisions (however it is described in the document concerned) is an objectionable provision:

(a) a provision that requires or permits any conduct that would contravene this Part, or that would contravene this Part if Division 2 were disregarded;

(b) a provision that directly or indirectly requires a person:
   (i) to encourage another person to become, or remain, a member of an industrial association; or
   (ii) to discourage another person from becoming, or remaining, a member of an industrial association;

(c) a provision that indicates support for persons being members of an industrial association;

(d) a provision that indicates opposition to persons being members of an industrial association;

(e) a provision that requires or permits payment of a bargaining services fee to an industrial association.

(2) For the purpose of determining whether a provision is an objectionable provision, it does not matter whether that provision is void because of section 811.

(3) In this section:

permits includes:

(a) purports to permit; and
(b) has the effect of permitting; and
(c) purports to have the effect of permitting.

requires includes:

(a) purports to require; and
(b) has the effect of requiring; and
(c) purports to have the effect of requiring.
811 Objectionable provisions etc. in industrial instruments etc.

(1) A provision of an award is void to the extent that it is an objectionable provision.

(2) A provision of an industrial instrument, or an agreement or arrangement (whether written or unwritten), is void to the extent that it requires or permits, or has the effect of requiring or permitting, any conduct that would contravene this Part.

812 Removal of objectionable provisions from awards

(1) Where, on application by a person mentioned in subsection (2), the Commission is satisfied that an award contains objectionable provisions, the Commission must vary the award so as to remove the objectionable provisions.

(2) The application may be made by:
   (a) an employer, employee or an organisation bound by the award; or
   (b) an employee whose employment is subject to the award; or
   (c) a workplace inspector.
Division 11—Miscellaneous

813 Freedom of association not dependent on certificate

(1) A person’s rights under this Part do not depend on whether the person is the holder of a conscientious objection certificate in force under section 180 of Schedule 1 to this Act.

(2) This section is enacted for the avoidance of doubt.
Part 17—Offences

814 Offences in relation to Commission

General offences

(1) A person shall not:

(a) insult or disturb a member of the Commission in the exercise of powers, or the performance of functions, as a member; or
(b) interrupt the proceedings of the Commission; or
(c) use insulting language towards a member of the Commission exercising powers, or performing functions, as a member; or
(d) by writing or speech use words calculated to influence improperly a member of the Commission or a witness before the Commission.

Penalty: Imprisonment for 12 months.

(2) A reference in subsection (1) to the Commission or a member of the Commission includes a reference to a person authorised to take evidence on behalf of the Commission.

Note 1: This section is not the only provision creating an offence relating to improper influence on a member of the Commission. Sections 135.1, 135.4, 139.1, 141.1 and 142.1 of the Criminal Code create offences of using various dishonest means (including bribery, providing benefits and making demands with menaces) to influence a Commonwealth public official in the performance of his or her duties.

Note 2: This section is not the only provision creating an offence relating to interference with a witness in a proceeding before the Commission. Sections 816 and 818 of this Act and sections 36A, 37, 38 and 40 of the Crimes Act 1914 also do so. Section 39 of that Act also makes it an offence to destroy evidence that may be required in such a proceeding.

Contravening an order of the Commission

(3) A person commits an offence if:

(a) the Commission has made an order under this Act (other than an order under Part 10 (Awards)) or the Registration and Accountability of Organisations Schedule; and

(b) the order binds the person; and

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(c) the person engages in conduct; and
(d) the conduct contravenes the order.

Penalty: Imprisonment for 12 months.

(4) In subsection (3):

engage in conduct means:
(a) do an act; or
(b) omit to perform an act.

Publishing false allegation of misconduct affecting Commission

(5) A person commits an offence if:
(a) the person publishes a statement; and
(b) the statement implies or expressly states there was misconduct by a member (whether identified or not) of the Commission in relation to the performance of the functions, or exercise of the powers, of the Commission; and
(c) there was not such misconduct as implied or stated by the statement; and
(d) the publication is likely to have a significant adverse effect on public confidence that the Commission is properly performing its functions and exercising its powers.

Penalty: Imprisonment for 12 months.

815 Attendance at compulsory conferences

A person directed under subsection 115(1) to attend a conference shall attend the conference, and continue to attend, as directed by the person presiding over the conference.

Penalty: 20 penalty units.

816 Intimidation etc.

A person who:
(a) threatens, intimidates or coerces another person; or
(b) prejudices another person;

because the other person:
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(c) provided, or proposed to provide, information to the Commission;
(d) produced, or proposed to produce, documents to the Commission; or
(e) appeared, or proposed to appear, as a witness before the Commission;

is guilty of an offence punishable on conviction by imprisonment for not more than 12 months.

817 Creating disturbance near Commission

A person shall not create or continue a disturbance, or take part in creating or continuing a disturbance, in or near a place at which the Commission is sitting.

Penalty: Imprisonment for 6 months.

818 Offences relating to witnesses

Contravention of requirement by witness

(1) A person who has been summoned to appear, or who has appeared, before the Commission as a witness shall not:
   (a) disobey the summons to appear;
   (b) refuse or fail to be sworn or make an affirmation;
   (c) refuse or fail to answer a question that the person is required by the Commission to answer; or
   (d) refuse or fail to produce a document that the person is required by the Commission to produce.

Penalty: Imprisonment for 6 months.

(2) For the purposes of an offence against subsection (1), strict liability applies to the physical element, that the person fails as mentioned in paragraph (1)(b), (c) or (d).

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

(3) Subsection (1) 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 reference in subsection (1) to the Commission includes a reference to a person authorised to take evidence on behalf of the Commission.

_Giving false evidence_

(5) A person (the witness) is guilty of an offence if:
   (a) the witness gives false sworn or affirmed evidence touching any matter material to that proceeding; and
   (b) either:
       (i) the evidence is given in a proceeding before the Commission; or
       (ii) the evidence is given before a person taking evidence on behalf of the Commission either in a proceeding that has been instituted in the Commission by anyone or for use in a proceeding that will be instituted in the Commission by the witness.

Penalty: Imprisonment for 12 months.

_Note: Section 10.2 of the Criminal Code Act 1995 states that a person is not criminally responsible for an offence if he or she carries out the conduct constituting the offence under duress._

_Inducing or coercing another person to give false evidence_

(6) A person (the offender) is guilty of an offence if:
   (a) another person (the witness) has been called or is to be called as a witness in a proceeding before the Commission (whether the person is to appear before the Commission or before someone taking evidence on behalf of the Commission in the proceeding); and
   (b) the offender induces, threatens or intimidates the witness to give false evidence in the proceeding.

Penalty: Imprisonment for 12 months.

**819 Non-compliance with requirement made by an inspector**

(1) A person is guilty of an offence if the person contravenes a requirement made by an inspector under subparagraph 169(2)(b)(iv), paragraph 169(2)(c) or subsection 169(4) or
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subparagraph 906(2)(b)(iv), paragraph 906(2)(c) or subsection 906(4).

Penalty: Imprisonment for 6 months.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

820 False statement in application for protected action ballot order

A person commits an offence if:

(a) the person makes, or joins with other persons in making, an application for a protected action ballot order under Division 4 of Part 9; and

(b) the application contains a statement that is false or misleading in a material particular.

Penalty: 30 penalty units.

821 Offences in relation to secret ballots ordered under Division 4 of Part 9

(1) A person shall not, in relation to a ballot ordered under Division 4 of Part 9:

(a) personate another person to secure a ballot paper to which the personator is not entitled or personate another person for the purpose of voting;

(b) do an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with;

(c) fraudulently put or deliver a ballot paper or other paper:

(i) into a ballot box or other ballot receptacle;

(ii) into the post; or

(iii) to a person receiving ballot papers for the purposes of the ballot;

(d) record a vote that the person is not entitled to record;

(e) record more than one vote;

(f) forge a ballot paper or envelope, or utter a ballot paper or envelope that the person knows to be forged;

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(g) provide a ballot paper without authority;
(h) obtain or have possession of a ballot paper to which the person is not entitled; or
(i) do an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Penalty: 30 penalty units.

(2) A person shall not, in relation to a ballot ordered under Division 4 of Part 9:
   (a) hinder or obstruct the taking of the ballot;
   (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot;
   (c) threaten, offer or suggest, or use, cause or inflict, any violence, injury, punishment, damage, loss or disadvantage because of, or to induce:
       (i) any vote or omission to vote;
       (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) counsel or advise a person entitled to vote to refrain from voting.

Penalty: 30 penalty units.

(3) A person (in this subsection called the relevant person) shall not, in relation to a ballot ordered under Division 4 of Part 9:
   (a) request, require or induce another person to show a ballot paper to the relevant person, or 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) if the relevant person is a person performing duties for the purposes of the ballot, show to another person, or permit another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Penalty: 30 penalty units.
822 Contracts entered into by agents of employers

A person carrying on the business of an employment agency shall not, as agent for an employer, make an agreement for the employment of an employee on terms and conditions less favourable to the employee than the terms and conditions of an award, an order of the Commission, or a collective agreement, binding on the employer and employee.

Penalty: 20 penalty units.

823 Publication of trade secrets etc.

(1) A person commits an offence if:
   (a) the person gives information as evidence or publishes information; and
   (b) giving or publishing the information:
      (i) contravenes section 839; or
      (ii) contravenes a direction given under section 839.

Penalty: 20 penalty units.

(2) Strict liability applies to subparagraph (1)(b)(i).

Note: For strict liability, see section 6.1 of the Criminal Code.
Part 18—Costs

Division 1—Costs

824 Costs only where proceeding instituted vexatiously etc.

(1) A party to a proceeding (including an appeal) in a matter arising under this Act (other than an application under section 663) must not be ordered to pay costs incurred by any other party to the proceeding unless the first-mentioned party instituted the proceeding vexatiously or without reasonable cause.

(2) Despite subsection (1), if a court hearing a proceeding (including an appeal) in a matter arising under this Act (other than an application under section 663) is satisfied that a party to the proceeding has, by an unreasonable act or omission, caused another party to the proceeding to incur costs in connection with the proceeding, the court may order the first-mentioned party to pay some or all of those costs.

(3) In subsections (1) and (2):

costs includes all legal and professional costs and disbursements and expenses of witnesses.
Part 19—Miscellaneous

825 Delegation by Minister

The Minister may, by signed instrument, delegate to a person occupying a specified office in the Department all or any of the Minister’s powers under this Act.

826 Conduct by officers, directors, employees or agents

(1) Where it is necessary to establish, for the purposes of this Act or the BCII Act, 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;

shall be taken, for the purposes of this Act or the BCII Act (as the case requires), 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.
827 Signature on behalf of body corporate

For the purposes of this Act, a document may be signed on behalf of a body corporate by a duly authorised officer of the body corporate and need not be made under the body corporate’s seal.

828 No imprisonment in default

In spite of the provisions of any other law, a court may not direct that a person shall serve a sentence of imprisonment in default of the payment of a fine or other pecuniary penalty imposed under this Act or the BCII Act.

829 Jurisdiction of courts limited as to area

(1) For the purposes of this Act, 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 shall be 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.

830 Public sector employer to act through employing authority

In spite of anything to the contrary in this Act, the BCII Act or any other law, the employer of an employee engaged in public sector employment shall, for the purposes of this Act, the BCII Act 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.
Section 831

831 Variation of workplace agreements on grounds of sex discrimination

(1) Subsections 554(2), (3), (4) and (7) apply in relation to a workplace agreement, as if a reference in those subsections to an award or a term of an award were a reference to a workplace agreement or a term of a workplace agreement.

(2) Before taking action under subsections 554(2) or (4) as applied by force of subsection (1) of this section, the Commission must give the persons bound by the agreement and the employees whose employment is subject to the agreement an opportunity to amend the agreement so as to remove the discrimination.

832 Court’s powers in relation to unfair contracts with independent contractors

(1) In this section and in section 833:

contract means:

(a) a contract for services that:
   (i) is binding on an independent contractor; and
   (ii) relates to the performance of work by the independent contractor, other than work for the private and domestic purposes of the other party to the contract; and
(b) any condition or collateral arrangement relating to such a contract.

Note: The meaning of contract is limited by section 834 for constitutional reasons.

(2) Application may be made to the Court to review a contract on either or both of the following grounds:

(a) the contract is unfair;
(b) the contract is harsh.

(3) An application under subsection (2) may be made only by:

(a) a party to the contract; or
(b) an organisation of employees of which the independent contractor is (or has applied to become) a member, if it is acting with the written consent of the independent contractor; or

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C. an organisation or association of employers of which the person contracting for the services is (or has applied to become) a member, if it is acting with the written consent of the person.

(4) In reviewing the contract, the Court may have regard to:
   (a) the relative strength of the bargaining positions of the parties to the contract and, if applicable, any persons acting on behalf of the parties; and
   (b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; and
   (c) whether the contract provides total remuneration that is, or is likely to be, less than that of an employee performing similar work; and
   (d) any other matter that the Court thinks relevant.

(5) If the Court forms the opinion that a ground referred to in subsection (2) is established in relation to the whole or part of the contract, it must record its opinion, stating whether the opinion relates to the whole or a specified part of the contract.

(6) The Court may form the opinion that a ground referred to in subsection (2) is established in relation to the whole or part of the contract even if the ground was not canvassed in the application.

(7) The Court must exercise its powers under this section in a way that furthers the objects of this Act as far as practicable.

833 Court may make orders about unfair contracts

(1) If the Court records an opinion under section 832 in relation to a contract, it may make one or more of the following orders in relation to the opinion:
   (a) an order setting aside the whole or part of the contract;
   (b) an order varying the contract.

(2) An order may only be made for the purpose of placing the parties to the contract as nearly as practicable on such a footing that the ground on which the opinion is based no longer applies.
Section 834

(3) While the application is pending, the Court may make an interim order if it thinks it is desirable to do so to preserve the position of a party to the contract.

(4) An order takes effect from the date of the order or a later date specified in the order.

(5) A party to the contract may apply to the Court to enforce an order by injunction or otherwise as the Court thinks fit.

(6) This section does not limit any other rights of a party to the contract.

834 Application of sections 832 and 833

(1) Sections 832 and 833 apply only as follows:
   (a) in relation to a contract to which a constitutional corporation is a party;
   (b) in relation to a contract entered into by a constitutional corporation for the purposes of the business of the corporation;
   (c) in relation to a contract relating to work in trade or commerce to which paragraph 51(i) of the Constitution applies;
   (d) in relation to a contract so far as it affects matters that take place in or are otherwise connected with a Territory;
   (e) in relation to a contract to which the Commonwealth or a Commonwealth authority is a party.

(2) In this section:

   contract has the same meaning as in section 832.

835 Proceedings by and against unincorporated clubs

(1) For the purposes of this Act, the treasurer of a club shall be 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 Act 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.

836  Records relating to employees

(1) The regulations may make provision in relation to:

(a) the making and retention by employers of records relating to the employment of employees; and

(b) the inspection of such records.

(2) The regulations may require employers of employees to issue pay slips to those employees at such times, and containing such particulars, as are prescribed.

837  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.

838  Interim injunctions

If, under a provision of this Act, a court may grant an injunction, the court may, if in its opinion it is desirable to do so, grant an interim injunction pending its decision on the granting of an injunction.

839  Trade secrets etc. tendered as evidence

(1) In a proceeding before the 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.
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Section 840

(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 Court or Commission.

(3) If information is given as evidence under subsection (2), it shall not be published in any newspaper, or otherwise, unless the Court or Commission, by order, permits the publication.

(4) Where the Court or Commission directs that information relating to a trade secret or to the profits or financial position of a witness or party shall be given in evidence, the evidence shall be taken in private if the person entitled to the trade secret, or the witness or party, requests.

(5) The Court or Commission may direct that evidence given in a proceeding before it, or the contents of a document produced for inspection, shall not be published.

Note: Giving information as evidence, or publishing information, in contravention of this section or a direction under this section may be an offence under section 823.

840  Powers of courts

A provision of this Act conferring a power on a court does not affect any other power of the court conferred by this Act or otherwise.

841  Application of penalty

A court that imposes a pecuniary penalty under this Act (other than a penalty for an offence) may order that the penalty, or a part of the penalty, be paid:
(a) to the Commonwealth; or
(b) to a particular organisation or person.

842  Enforcement of penalties etc.

(1) Where a court has:
(a) imposed a pecuniary penalty under this Act or the BCII Act (other than a penalty for an offence); or
(b) under subsection 719(5) or (6), ordered the payment of an amount; or

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(c) under subsection 719(7) or (8), ordered the payment of an amount; or
(d) 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 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.

843 Appropriation for payment of certain salaries and allowances

The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries, allowances (including travelling allowance) and other amounts under section 66, 79, 81, 365 or 366.

844 Reports about developments in making agreements

(1) For:
(a) the period of 3 years beginning on 1 January 2004; and
(b) the period of 3 years beginning on 1 January 2007; and
(c) the period of 5 years beginning on 1 January 2010 and each subsequent period of 5 years;
the Minister must cause a person to review and report to the Minister in writing about:
(d) developments, in Australia during that period, in bargaining for the making of workplace agreements; and
(e) in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background, mature age persons, young persons and such other persons as are prescribed by the regulations.

(2) The person who reviews and reports as mentioned in subsection (1) must be someone who, in the Minister’s opinion, is suitably qualified and appropriate to do so.
Section 845

(3) The person preparing the report must give it to the Minister as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.

(4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

(5) Subsections 34C(4) to (7) of the Acts Interpretation Act 1901 apply to a report under this section as if it were a periodic report as defined in subsection 34C(1) of that Act.

845 Acquisition of property

(1) The following laws and instruments:
   (a) this Act;
   (b) regulations, or any other instrument, made under this Act;
   (c) Schedule 1;
   (d) regulations, or any other instrument, made under Schedule 1;
   (e) regulations made under item 1 of Schedule 4 to the Workplace Relations Amendment (Work Choices) Act 2005;
   (f) Part 2 of Schedule 4 to the Workplace Relations Amendment (Work Choices) Act 2005;

do not apply, and are taken never to have applied, to the extent that the operation of the law or instrument would result in an acquisition of property from a person otherwise than on just terms.

(2) The repeals and amendments made by the following laws and instruments:
   (a) the Workplace Relations Amendment (Work Choices) Act 2005;
   (b) any other Act, so far as it repeals or amends a provision of:
      (i) this Act; or
      (ii) regulations, or any other instrument, made under this Act; or
      (iii) Schedule 1; or
      (iv) regulations, or any other instrument, made under Schedule 1;
   (c) regulations made under item 2 of Schedule 4 to the Workplace Relations Amendment (Work Choices) Act 2005;
(d) any other regulation or instrument, so far as it repeals or amends a provision of:
   (i) this Act; or
   (ii) regulations, or any other instrument, made under this Act; or
   (iii) Schedule 1; or
   (iv) regulations, or any other instrument, made under Schedule 1;

do not apply, and are taken never to have applied, to the extent that the repeals or amendments would result in an acquisition of property from a person otherwise than on just terms.

(3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

846 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
   (a) required or permitted by this Act to be prescribed; or
   (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The matters in relation to which the Governor-General may make regulations include, but are not limited to:
   (a) the manner in which, and the time within which, applications, submissions and objections under this Act may be made and dealt with; and
   (b) the practice and procedure of the Commission; and
   (c) the fees to be charged in relation to proceedings under this Act; and
   (d) the duties of the Industrial Registrar, the Deputy Industrial Registrars and any officers of the Commission; and
   (e) the exhibiting, on the premises of an employer bound by an award, an order of the Commission or a workplace
agreement, of any of the terms of the award, order or agreement; and

(f) penalties for offences against the regulations, not exceeding 10 penalty units; and

(g) civil penalties for contraventions of the regulations, not exceeding:

(i) 5 penalty units for an individual; or

(ii) 25 penalty units for a body corporate.

(3) The power conferred by subsection (1) to make regulations with respect to the matter referred to in paragraph (2)(b) includes power to make regulations with respect to that matter in relation to any jurisdiction conferred on the Commission by or under any other Act, whether passed before or after this Act.

(4) If jurisdiction in relation to a provision of this Act relating to a civil remedy provision referred to in section 727 is conferred on the Court or the Federal Magistrates Court, the regulations may confer jurisdiction in relation to that provision on a specified court of a State or Territory.

(5) The regulations may provide for a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.

(6) A penalty under subsection (5) must not exceed one-fifth of the maximum fine that a court could impose on the person as a penalty for that offence.

(7) The regulations may make provision enabling a person who is alleged to have contravened a civil remedy provision the remedy for which consists of or includes a pecuniary penalty to pay to the Commonwealth, as an alternative to proceedings against the person, a specified penalty.

(8) A penalty under subsection (7) must not exceed one-tenth of the maximum pecuniary penalty that could have been imposed on the person for contravening that civil remedy provision.
Part 20—Jurisdiction of the Federal Court of Australia and Federal Magistrates Court

Division 1—Original jurisdiction

847 Jurisdiction of Court

(1) The Court has jurisdiction with respect to matters arising under this Act in relation to which:
   (a) applications may be made to it under this Act; or
   (b) actions may be brought in it under this Act; or
   (c) questions may be referred to it under this Act; or
   (d) appeals lie to it under section 853; or
   (e) penalties may be sued for and recovered under this Act; or
   (f) prosecutions may be instituted for offences against this Act.

(2) For the purposes of section 44 of the Judiciary Act 1903, the 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 this Act or the Coal Industry Act 1946.

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 Court has jurisdiction with respect to matters remitted to it under section 44 of the Judiciary Act 1903.

(4) The Federal Magistrates Court has jurisdiction with respect to matters arising under this Act in relation to which:
   (a) applications may be made to it under this Act; or
   (b) actions may be brought in it under this Act; or
   (c) questions may be referred to it under this Act; or
   (d) penalties may be sued for and recovered under this Act; or
   (e) prosecutions may be instituted for offences against this Act.

Note: A proceeding pending in the Federal Magistrates Court may be transferred to the Federal Court: see Part 5 of the Federal Magistrates Act 1999.
848 Interpretation of awards

(1) The Court or the Federal Magistrates Court may give an interpretation of an award on application by:
   (a) the Minister; or
   (b) an organisation or person bound by the award.

(2) The decision of the Court or the Federal Magistrates Court is final and conclusive and is binding on the organisations and persons bound by the award who have been given an opportunity of being heard by the Court or the Federal Magistrates Court.

849 Interpretation of certified agreements

(1) The Court or the Federal Magistrates Court may give an interpretation of a collective agreement on application by:
   (a) the Minister; or
   (b) an organisation or person bound by the agreement; or
   (c) an employee whose employment is subject to the agreement.

(2) The decision of the Court or the Federal Magistrates Court is final and conclusive and is binding on:
   (a) the organisations and persons bound by the agreement; and
   (b) the employees whose employment is subject to the agreement;
   who have been given an opportunity of being heard by the Court or the Federal Magistrates Court.

850 Exclusive jurisdiction

(1) Subject to this Act, the jurisdiction of the Court and the Federal Magistrates 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.

Note: The regulations can confer jurisdiction on a specified court of a State or Territory in relation to a civil remedy provision: see subsection 846(4).

(2) The jurisdiction of the Court under section 853 is exclusive of the jurisdiction of any court of a State or Territory to hear and
determine an appeal from a judgment from which an appeal may be brought to the Court under that section.

851 Exercise of Court’s original jurisdiction

(1) The jurisdiction of the Court under this Act is to be exercised by a Full Court in relation to matters in which a writ of mandamus or prohibition or an injunction is sought against:
   (a) a Presidential member; or
   (b) 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
   (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.
852 Reference of proceedings to Full Court

(1) At any stage of a proceeding in a matter arising under this Act, a single Judge exercising the jurisdiction of the 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.
Division 2—Appellate jurisdiction

853 Appeals from State and Territory courts

(1) An appeal lies to the Court from a judgment of a court of a State or Territory in a matter arising under this Act or the BCII Act.

(2) It is not necessary to obtain the leave of the Court or the court appealed from in relation to an appeal under subsection (1).

(3) An appeal does not lie to the High Court from a judgment from which an appeal may be made to the Court under subsection (1).
Section 854

Division 3—Representation and intervention

854 Representation of parties before the Court or the Federal Magistrates Court

(1) A party to a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule may appear in person.

(2) A party to a proceeding before the Federal Magistrates Court in a matter arising under this Act or the BCII Act may appear in person.

(3) Subject to this and any other Act, a party to a proceeding before the Court or the Federal Magistrates Court in a matter arising under this Act may be represented only as provided by this section.

(4) Subject to this Act, the Registration and Accountability of Organisations Schedule and any other Act, a party to a proceeding before the Court in a matter arising under the Registration and Accountability of Organisations Schedule may be represented only as provided by this section.

(5) Subject to this Act, the BCII Act and any other Act, a party to a proceeding before the Court or the Federal Magistrates Court in a matter arising under the BCII Act may be represented only as provided by this section.

(6) A party (including an employing authority) may be represented by counsel or solicitor.

(7) An employing authority may be represented by a prescribed person.

(8) Regulations made for the purposes of subsection (7) may prescribe different classes of persons in relation to different classes of proceedings.

(9) Subject to subsections (11) and (12), a party that is an organisation may be represented by:
   (a) a member, officer or employee of the organisation; or
   (b) a member, officer or employee of a peak council to which the organisation is affiliated.

624 Workplace Relations Act 1996
(10) Subject to subsections (11) and (12), a party other than an organisation or employing authority may be represented by:
   (a) an officer or employee of the party; or
   (b) a member, officer or employee of an organisation of which the party is a member; or
   (c) an officer or employee of a peak council to which the party is affiliated; or
   (d) an officer or employee of a peak council to which an organisation or association of which the party is a member is affiliated.

(11) Subsections (9) and (10) do not apply in relation to:
   (a) proceedings under section 853; or
   (b) proceedings in relation to offences against this Act, the BCII Act or the Registration and Accountability of Organisations Schedule.

(12) In a relevant proceeding, a party may be represented as provided by subsection (9) and (10) only with the leave of the Court or the Federal Magistrates Court.

(13) In this section:

   party includes an intervener.

   relevant proceeding means proceedings under section 122, 148, 848 or 849.

855 Intervention generally

(1) If the Court is of the opinion that an organisation, person or body should be heard in a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule, the Court may grant leave to the organisation, person or body to intervene in the proceeding.

(2) If the Federal Magistrates Court is of the opinion that an organisation, person or body should be heard in a proceeding before that court in a matter arising under this Act or the BCII Act, that court may grant leave to the organisation, person or body to intervene in the proceeding.
Section 856

856 Particular rights of intervention of Minister

(1) The Minister may, on behalf of the Commonwealth, by giving written notice to the Registrar of the Court, intervene in the public interest in a proceeding before the Court in a matter arising under this Act, the BCII Act or the Registration and Accountability of Organisations Schedule.

(2) The Minister may, on behalf of the Commonwealth, by giving written notice to a Registrar of the Federal Magistrates Court, intervene in the public interest in a proceeding before that court in a matter arising under this Act or the BCII Act.

(3) If the Minister intervenes in a proceeding before the Court or the Federal Magistrates Court, that court may, despite section 824, make an order as to costs against the Commonwealth.

(4) If the Minister intervenes in a proceeding before the Court or the Federal Magistrates Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Minister is taken to be a party to the proceeding.

(5) If, under subsection (4), the Minister institutes an appeal from a judgment, a court hearing the appeal may, despite section 824, make an order as to costs against the Commonwealth.
Part 21—Matters referred by Victoria

Division 1—Introduction

857 Objects

The main objects of this Part are:

(a) to extend certain provisions of this Act; and
(b) to include additional provisions in this Act;

as a result of the referral of certain matters to the Parliament of the Commonwealth by the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.

858 Definitions

In this Part (other than Division 12):

employee has the same meaning as in section 3 of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria, but does not include:

(a) a person who is undertaking a vocational placement; or
(b) a person so far as the definition of employee in subsection 5(1) of this Act covers the person.

employer has the same meaning as in section 3 of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria, but does not include an employer so far as the definition of employer in subsection 6(1) of this Act covers the employer.

employment means employment of an employee, and employed has a corresponding meaning.

859 Part only has effect if supported by reference

A provision of this Part (other than paragraph 862(b) or Division 11 or 12) 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 provision so to have effect.
Division 2—Pay and conditions

860 Additional effect of Act—AFPC’s powers

(1) Without affecting its operation apart from this section, Part 2 also has effect in relation to the employment of any employee in Victoria, and for this purpose, each reference in paragraph 23(d) to an employee (within the meaning of that paragraph) is to be read as a reference to an employee (within the meaning of this Division) in Victoria.

(2) Subsection (1) has effect subject to:
(a) sections 864, 865, 866, 867 and 896; and
(b) clause 30 of Schedule 7.

861 Additional effect of Act—Australian Fair Pay and Conditions Standard

(1) Without affecting its operation apart from this section, Part 7 also has effect in relation to the employment of any employee in Victoria, and for this purpose:
(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and
(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and
(d) Division 2 of Part 7 has effect as if the following provisions had not been enacted:
   (i) Subdivisions E, F, G, J, L and M of that Division;
   (ii) sections 205, 206, 207, 216 and 217;
   (iii) subsections 182(3) and (4);
   (iv) item 3 of the table in subsection 185(3);
(v) paragraph 201(2)(b); and
(e) Division 2 of Part 7 has effect as if an order that was in force under repealed section 501 or 501A on the reform comparison day (within the meaning of that Division) were a pre-reform federal wage instrument (within the meaning of that Division); and
(f) section 175 has effect as if Part 13 had been modified in a corresponding way to the way in which Part 7 is modified by paragraphs (a), (b) and (c); and
(g) Part 7 has effect as if Division 6 of that Part had not been enacted.

(2) Subsection (1) has effect subject to:
   (a) sections 864, 865, 866, 867 and 896; and
   (b) clause 30 of Schedule 7.

(3) The repeal of sections 501 and 501A by the Workplace Relations Amendment (Work Choices) Act 2005 does not affect the continuity of an APCS (within the meaning of Part 7) derived from an order under either of those sections.

862 Application of the Australian Fair Pay and Conditions Standard to employees in Victoria

For the purposes of the application of a provision of this Act (other than this Division or Divisions 3 to 11) to an employee in Victoria, a reference in the provision to the Australian Fair Pay and Conditions Standard:
   (a) is to be read as a reference to the Australian Fair Pay and Conditions Standard that applies to the employee because of section 861; and
   (b) includes a reference to the provisions of Division 6 of Part 7 as they apply to the employee because of section 689.

863 Additional provisions of the Australian Fair Pay and Conditions Standard

For the purposes of this Act, sections 864, 865, 866 and 867 are additional provisions of the Australian Fair Pay and Conditions Standard that applies to an employee in Victoria because of section 861.
864 Adjustment of APCSs

(1) The AFPC may adjust an APCS if the adjustment:
   (a) relates to the employment of one or more employees in Victoria; and
   (b) is of a rate provision or casual loading provision.

(2) The power to adjust an APCS under subsection (1) is subject to:
   (a) sections 176 and 177; and
   (b) section 202; and
   (c) section 203; and
   (d) section 222; and
   (e) sections 865, 866 and 867.

(3) For the purposes of section 215, an adjustment under subsection (1) of this section is taken to be an adjustment under Subdivision K of Division 2 of Part 7.

(4) In this section:

   casual loading provision has the same meaning as in Division 2 of Part 7.

   rate provision has the same meaning as in Division 2 of Part 7.

865 Limitation on application of minimum wage standards

(1) If the AFPC exercises its wage-setting powers so as to set or adjust a minimum wage for employees in Victoria:
   (a) the setting or adjustment has no effect unless the employees are within a work classification; and
   (b) the setting or adjustment has no effect, in relation to a particular employee, while the employee is subject to an award or agreement under this Act.

(2) If a provision of the Australian Fair Pay and Conditions Standard sets or adjusts a minimum wage for employees in Victoria:
   (a) the setting or adjustment has no effect unless the employees are within a work classification; and
   (b) the setting or adjustment has no effect, in relation to a particular employee, while the employee is subject to an award or agreement under this Act.
Section 866

(3) In this section:

minimum wage has the same meaning as in subsection 4(7) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.

work classification means a work classification that, immediately before the commencement of subsection 4(7) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria:

(a) was a declared work classification under the Employee Relations Act 1992 of Victoria; or

(b) had been declared by the Employee Relations Commission of Victoria to be an interim work classification.

Note: See also clauses 89, 95 and 102 of Schedule 6 (extended meaning of award).

866 Guarantee against reductions below pre-reform basic periodic rates of pay

(1) This section applies if:

(a) the AFPC proposes to exercise its power under subsection 864(1) to adjust a preserved APCS; and

(b) immediately after the exercise of the power takes effect, there will, under section 182, be a guaranteed basic periodic rate of pay (the resulting guaranteed basic periodic rate) for a particular employee (within the meaning of this Division) in Victoria who is affected by the exercise of the power; and

(c) immediately after the reform commencement (and after any relevant adjustments mentioned in sections 209 to 212 took effect), there would, under section 182, have been a guaranteed basic periodic rate of pay (the commencement guaranteed basic periodic rate) for the employee if the employee had at that time been in his or her current circumstances of employment.

(2) The AFPC must ensure that the result of the exercise of the power, so far as it affects the employee, is such that the resulting guaranteed basic periodic rate of pay for the employee will not be less than the commencement guaranteed basic periodic rate of pay for the employee.
Section 867

(3) In this section:

_**basic periodic rate of pay**_ has the same meaning as in Division 2 of Part 7.

867 **Guarantee against reductions below pre-reform casual loadings that apply to basic periodic rates of pay**

(1) This section applies in relation to the exercise by the AFPC of its power under subsection 864(1) to adjust a preserved APCS.

(2) The AFPC must ensure that the result of the exercise of the power, so far as it affects a particular casual employee (within the meaning of this Division) in Victoria, is such that the resulting guaranteed casual loading percentage for the employee will not be less than the commencement guaranteed casual loading percentage for the employee.

(3) For the purposes of subsection (2):

(a) the _**resulting guaranteed casual loading percentage**_ for the employee is the guaranteed casual loading percentage referred to in section 185 for the employee, as it will be immediately after the exercise of the power takes effect; and

(b) the _**commencement guaranteed casual loading percentage**_ for the employee is the percentage that, immediately after the reform commencement (and after any relevant adjustments mentioned in sections 209 to 212 took effect), would have been the guaranteed casual loading percentage referred to in section 185 for the employee if the employee had, at that time, been in his or her current circumstances of employment.

868 **Additional effect of Act—enforcement of, and compliance with, the Australian Fair Pay and Conditions Standard**

Without affecting its operation apart from this section, Part 14 also has effect in relation to a term of the Australian Fair Pay and Conditions Standard that applies to an employee in Victoria because of section 861, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an
employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and

(d) each reference in that Part to the Australian Fair Pay and Conditions Standard (within the meaning of that Part) is to be read as a reference to the Australian Fair Pay and Conditions Standard as that Standard applies to an employee in Victoria because of section 861.
Division 3—Workplace agreements

869 Additional effect of Act—workplace agreements

(1) In addition to the effect that Part 8 and related provisions of this Act (other than Part 11) have in relation to agreements about matters pertaining to the relationship between:
   (a) an employer, or employers, within the meaning of that Part; and
   (b) an employee, or employees, within the meaning of that Part;
that Part and those provisions also have effect as mentioned in this section.

(2) That Part and those provisions have effect in the same way as mentioned in subsection (1) in relation to agreements about matters pertaining to the relationship between:
   (a) an employer or employers in Victoria; and
   (b) an employee or employees in Victoria;
and for this purpose:
   (c) each reference in that Part and those provisions to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and
   (d) each reference in that Part and those provisions to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
   (e) each reference in that Part and those provisions to employment (within the meaning of that Part) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria by an employer (within the meaning of this Division) in Victoria.

(3) The regulations may provide that a specified provision of this Act is taken to be a related provision for the purposes of this section.

(4) The regulations may provide that a specified provision of this Act is taken not to be a related provision for the purposes of this section.

Note: See also section 885 (transmission of business).
870 Workplace agreements—mandatory term about basic periodic rate of pay

(1) This section applies to an agreement under Part 8 (as that Part has effect because of section 869).

(2) The agreement must contain an express term to the effect that, for so long as an employee is subject to the agreement, the basic periodic rate of pay that is payable to the employee must not be less than:
   (a) if a basic periodic rate of pay would have been applicable to the employee under the Australian Fair Pay and Conditions Standard if the employee had not been subject to an award or the agreement—the basic periodic rate of pay that would so have been applicable; or
   (b) if:
      (i) paragraph (a) does not apply to the employee; and
      (ii) the employee is a junior employee, an employee with a disability, or an employee to whom a training arrangement applies;
      the rate of pay specified in, or worked out in accordance with a method specified in, regulations made for the purposes of this paragraph; or
   (c) if neither paragraph (a) nor (b) applies to the employee—the standard FMW.

(3) The agreement is void if the requirement in subsection (2) is not satisfied.

(4) In this section:

   basic periodic rate of pay has the same meaning as in Division 2 of Part 7.

   employee with a disability means an employee who is qualified for a disability support pension as set out in section 94 or 95 of the Social Security Act 1991, or who would be so qualified but for paragraph 94(1)(e) or 95(1)(c) of that Act.

   junior employee means an employee who is under the age of 21.

   standard FMW has the same meaning as in Division 2 of Part 7.
Section 871

871 Workplace agreements—mandatory term about casual loading

(1) This section applies to an agreement under Part 8 (as that Part has effect because of section 869) if a casual employee is subject to the agreement.

(2) The agreement must contain an express term to the effect that, for so long as the casual employee is subject to the agreement, the casual loading that is payable to the employee must not be less than the default casual loading percentage (within the meaning of Division 2 of Part 7).

(3) The agreement is void if the requirement in subsection (2) is not satisfied.
Division 4—Industrial action

872 Additional effect of Act—industrial action

Without affecting its operation apart from this section, Part 9 also has the effect it would have if:

(a) each reference in that Part to an employer (within the meaning of that Part) were read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) were read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) were read as a reference to the employment of an employee (within the meaning of this Division) in Victoria by an employer (within the meaning of this Division) in Victoria; and

(d) Division 8 of that Part had not been enacted; and

(e) subsections 420(1) to (4) were replaced by the following subsections:

(1) For the purposes of this Act (other than Part 16), industrial action means any action of the following kind:

(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:
Section 872

(e) action that is not agreement-related (as defined by subsection (3));

(f) action by employees that is authorised or agreed to by the employer of the employees;

(g) action by an employer that is authorised or agreed to by or on behalf of employees of the employer;

(h) 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 (5), which deals with the burden of proof of the exception in paragraph (e) of this definition.

Note 2: See also subsection (6), which deals with the burden of proof of the exception in subparagraph (h)(i) of this definition.

(2) For the purposes of this Act (other than Part 16):

(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 agreement-related

(3) For the purposes of this section, action is agreement-related if:

(a) it relates to the negotiation or proposed negotiation of an agreement under Part 8 (as that Part has effect because of section 869); or

(b) it affects or relates to work that is regulated by an agreement under Part 8 (as that Part has effect because of section 869).

Meaning of lockout

(4) 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**

(5) Whenever a person seeks to rely on paragraph (e) of the definition
of *industrial action* in subsection (1), that person has the burden of
proving that paragraph (e) applies.

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

873 **Intervention in proceedings under Part 9**

(1) The Commission must, on application, grant to a Minister of
Victoria, on behalf of the Government of Victoria, leave to
intervene in proceedings under Division 2 of Part 9 if one or more
of the employees to be covered by the proposed agreement is an
employee in Victoria.

(2) The Full Bench must, on application, grant to a Minister of
Victoria, on behalf of the Government of Victoria, leave to
intervene in an appeal against a decision of a member of the
Commission if:

(a) the decision is made under Division 2 of Part 9 in relation to
a bargaining period for negotiating a proposed agreement;
and

(b) one or more of the employees to be covered by the proposed
agreement is an employee in Victoria.

874 **Additional effect of Act—enforcement of, and compliance with,
orders under Part 9**

Without affecting its operation apart from this section, Part 14 also
has effect in relation to an order of the Commission under Part 9 as
Part 9 applies because of section 872, and for this purpose:

(a) each reference in Part 14 to an employer (within the meaning
of Part 14) is to be read as a reference to an employer (within
the meaning of this Division) in Victoria; and
(b) each reference in Part 14 to an employee (within the meaning of Part 14) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in Part 14 to employment (within the meaning of Part 14) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.
Division 5—Meal breaks

875 Additional effect of Act—meal breaks

Without affecting its operation apart from this section, Division 1 of Part 12 also has effect in relation to the employment of any employee in Victoria, and for this purpose:

(a) each reference in that Division to an employer (within the meaning of that Division) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Division to an employee (within the meaning of that Division) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Division to employment (within the meaning of that Division) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and

(d) section 609 has effect as if Part 13 had been modified in a corresponding way to the way in which Division 1 of Part 12 is modified by paragraphs (a), (b) and (c).

876 Additional effect of Act—enforcement of, and compliance with, section 607

Without affecting its operation apart from this section, Part 14 also has effect in relation to section 607 as that section applies because of section 875, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the
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employment of an employee (within the meaning of this Division) in Victoria; and
(d) each reference in that Part to section 607 is to be read as a reference to section 607 as that section has effect because of section 875.
Division 6—Public holidays

877 Additional effect of Act—public holidays

Without affecting its operation apart from this section, Division 2 of Part 12 also has effect in relation to the employment of any employee in Victoria, and for this purpose:

(a) each reference in that Division to an employer (within the meaning of that Division) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Division to an employee (within the meaning of that Division) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Division to employment (within the meaning of that Division) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria; and

(d) section 614 has effect as if Part 13 had been modified in a corresponding way to the way in which Division 2 of Part 12 is modified by paragraphs (a), (b) and (c).

878 Additional effect of Act—enforcement of, and compliance with, section 612

Without affecting its operation apart from this section, Part 14 also has effect in relation to section 612 as that section applies because of section 877, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the
Part 21  Matters referred by Victoria
Division 6  Public holidays

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employment of an employee (within the meaning of this Division) in Victoria; and

(d) each reference in that Part to section 612 is to be read as a reference to section 612 as that section has effect because of section 877.
Division 7—Termination of employment

879 Additional effect of Act—termination of employment

Without affecting its operation apart from this section, Division 4 of Part 12 also has effect in relation to the termination of employment, at the initiative of the employer, of any employee in Victoria, and for this purpose:

(a) each reference in that Division to an employer within the meaning of subsection 6(1) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Division to an employee within the meaning of subsection 5(1) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Division to employment within the meaning of subsection 7(1) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.

880 Additional effect of Act—enforcement of, and compliance with, orders under Division 4 of Part 12

Without affecting its operation apart from this section, Part 14 also has effect in relation to an order of the Commission under Division 4 of Part 12 as that Division applies because of section 879, and for this purpose:

(a) each reference in Part 14 to an employer (within the meaning of Part 14) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in Part 14 to an employee (within the meaning of Part 14) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in Part 14 to employment (within the meaning of Part 14) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.
Part 21  Matters referred by Victoria  
Division 8  Freedom of association

Section 881

Division 8—Freedom of association

881 Additional effect of Act—freedom of association

(1) Without affecting its operation apart from this section, Part 16 also has effect in relation to conduct in Victoria.

(2) Subsection (1) has effect despite section 782.
Division 9—Right of entry

882 Right of entry

Part 15 has effect, in relation to premises of an employer in Victoria, as if:

(a) Division 4 of that Part did not authorise entering any such premises for the purposes of investigating a suspected breach unless the suspected breach relates to:

(i) a provision of this Act (as that provision has effect because of this Part); or

(ii) an agreement under Part 8 (as Part 8 has effect because of section 869); and

(b) Division 6 of that Part did not authorise entering any such premises for the purposes of holding discussions unless the discussions relate to:

(i) an agreement under Part 8 (as Part 8 has effect because of section 869); or

(ii) a proposed agreement under Part 8 (as Part 8 has effect because of section 869).

883 Additional effect of Act—enforcement of, and compliance with, orders under Part 15

Without affecting its operation apart from this section, Part 14 also has effect in relation to an order of the Commission under Part 15 in relation to premises of an employer in Victoria, and for this purpose:

(a) each reference in Part 14 to an employer (within the meaning of Part 14) includes a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in Part 14 to an employee (within the meaning of Part 14) includes a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in Part 14 to employment (within the meaning of Part 14) includes a reference to the employment of an employee (within the meaning of this Division) in Victoria.
Division 10—Employee records and pay slips

884 Additional effect of Act—employee records and pay slips

Without affecting its operation apart from this section, section 836 also has effect in relation to the employment of any employee in Victoria, and for this purpose:

(a) each reference in that section to an employer (within the meaning of that section) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that section to an employee (within the meaning of that section) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that section to employment (within the meaning of that section) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.
Division 11—Transmission of business

885 Additional effect of Act—transmission of business

(1) Without affecting its operation apart from this section, Part 11 also has the effect it would have if:

(a) each reference in that Part to an employer (within the meaning of that Part) included a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) included a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to employment (within the meaning of that Part) included a reference to the employment of an employee (within the meaning of this Division) in Victoria by an employer (within the meaning of this Division) in Victoria; and

(d) each reference in that Part to employed (within the meaning of that Part) included a reference to employed (within the meaning of this Division) in Victoria by an employer (within the meaning of this Division) in Victoria; and

(e) Division 5 of that Part had not been enacted; and

(f) each reference in that Part to an AWA (within the meaning of that Part) included a reference to an AWA made under Part 8 (as Part 8 has effect because of section 869); and

(g) each reference in that Part to a post-reform AWA (within the meaning of that Part) included a reference to a post-reform AWA made under Part 8 (as Part 8 has effect because of section 869); and

(h) each reference in that Part to a collective agreement (within the meaning of that Part) included a reference to a collective agreement made under Part 8 (as Part 8 has effect because of section 869); and

(i) each reference in that Part to a workplace agreement (within the meaning of that Part) included a reference to a workplace agreement made under Part 8 (as Part 8 has effect because of section 869); and

(j) each reference in that Part to the Australian Fair Pay and Conditions Standard (within the meaning of that Part)
included a reference to the Australian Fair Pay and Conditions Standard as that Standard has effect because of section 861; and

(k) each reference in that Part to an APCS (within the meaning of that Part) included a reference to an APCS in force under Part 7 (as Part 7 has effect because of section 861).

(2) To the extent to which Part 11 (as it has effect because of subsection (1)) applies if an employer (within the meaning of this Division) 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 Division) in Victoria;

that Part 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 Part so to have effect.

(3) To the extent to which Subdivision B of Division 4 of Part 11 (as it has effect because of subsection (1)) applies if an employer (within the meaning of this Division) 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 Division) in Victoria;

that Subdivision 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 Subdivision so to have effect.

886 Additional effect of Act—enforcement of, and compliance with, orders under Part 11

Without affecting its operation apart from this section, Part 14 also has effect in relation to an order of the Commission under Part 11 as Part 11 applies because of section 885, and for this purpose:

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(a) each reference in Part 14 to an employer (within the meaning of Part 14) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in Part 14 to an employee (within the meaning of Part 14) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in Part 14 to employment (within the meaning of Part 14) is to be read as a reference to the employment of an employee (within the meaning of this Division) in Victoria.
Division 12—Employment agreements

887 Definitions

In this Division:

*employee* has the same meaning as in section 3 of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria, but does not include a person who is undertaking a vocational placement.

*employer* has the same meaning as in section 3 of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

*employment* means employment of an employee, and *employed* has a corresponding meaning.

*employment agreement* means an agreement that, immediately before the reform commencement, was continued in force by Subdivision E of Division 3 of Part XV of this Act.

Note: These agreements were entered into under Part 2 of the *Employee Relations Act 1992* of Victoria before 1 January 1997.

888 Application of this Division

(1) This Division applies to an employment agreement about matters pertaining to the relationship between an employer (within the meaning of this Division) in Victoria and an employee (within the meaning of this Division) in Victoria if:

(a) both:
   (i) the employer is also an employer within the meaning of Division 1; and
   (ii) the employee is also an employee within the meaning of Division 1; or

(b) both:
   (i) the employer is also an employer within the meaning of subsection 6(1); and
   (ii) the employee is also an employee within the meaning of subsection 5(1).
(2) This Division, to the extent to which it applies to an employment agreement because of paragraph (1)(a), 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 Division so to have effect.

889 Inconsistency with other Commonwealth laws

Subject to clause 39 of Schedule 7, this Division does not have effect to the extent of any inconsistency with a law of the Commonwealth other than this Act.

890 Continued operation of employment agreements

(1) Subject to subsection (2), for the purposes of this Act, an employment agreement continues in force as if Part 2 of the Employee Relations Act 1992 of Victoria had not been repealed.

(2) For the purposes of this Act, an employment agreement ceases to be in force in relation to an employee if the employment of the employee is subject to an AWA, a collective agreement or a workplace determination.

891 Stand down provisions

(1) If an employment agreement does not contain provision for the standing-down of the employee if the employee cannot be usefully employed because of:
   (a) any strike; or
   (b) any breakdown of machinery; or
   (c) any stoppage of work for any cause for which the employer cannot reasonably be held responsible;
the agreement is taken to include the provision mentioned in subsection (2).

(2) The provision is that:
   (a) the employer may deduct payment for any part of a day during which the employee cannot usefully be employed because of:
      (i) any strike; or
(ii) any breakdown of machinery; or
(iii) any stoppage of work for any cause for which the employer cannot reasonably be held responsible; and
(b) this does not break the continuity of employment of the employee for the purpose of any entitlements.

892 Model dispute resolution process

(1) An employment agreement is taken to include a term requiring disputes about the application of the agreement to be resolved using the model dispute resolution process.

Note: The model dispute resolution process is set out in Part 13.

(2) Any term of the employment agreement that would otherwise deal with the resolution of those disputes is void to that extent.

(3) Without affecting its operation apart from this subsection, Part 13 also has effect in relation to an employment agreement, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an employer (within the meaning of this Division) in Victoria; and

(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and

(c) each reference in that Part to a contract of employment (within the meaning of that Part) is to be read as a reference to an employment agreement; and

(d) each reference in that Part to a workplace agreement is to be read as a reference to an employment agreement.

893 Additional effect of Act—enforcing employment agreements

Without affecting its operation apart from this section, Part 14 also has effect in relation to an employment agreement, and for this purpose:

(a) each reference in that Part to an employer (within the meaning of that Part) is to be read as a reference to an

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employer (within the meaning of this Division) in Victoria; and
(b) each reference in that Part to an employee (within the meaning of that Part) is to be read as a reference to an employee (within the meaning of this Division) in Victoria; and
(c) each reference in that Part to employment (within the meaning of that Part) is to be read as a reference to the employment of a person under an employment agreement; and
(d) each reference in that Part to an AWA is to be read as a reference to an employment agreement.

894 Employer to give copy of employment agreement

Each employer bound by an employment agreement must, on being requested to do so by the employee bound by the agreement, give a copy of the agreement to the employee as soon as possible.

895 Registrar not to divulge information in employment agreements

If a Registrar has a copy of an employment agreement, the Registrar must not allow the information in the copy to become available to any person other than:
(a) a party to the agreement; or
(b) a person with authority to enforce the provisions of the agreement.

896 Relationship between employment agreements and Australian Fair Pay and Conditions Standard

(1) An employment agreement that operates in relation to an employee prevails over the Australian Fair Pay and Conditions Standard to the extent to which, in a particular respect, the employment agreement provides a more favourable outcome for the employee.

(2) The Australian Fair Pay and Conditions Standard prevails over an employment agreement that operates in relation to an employee to the extent to which, in a particular respect, the Australian Fair Pay and Conditions Standard provides a more favourable outcome for the employee.
Part 21  Matters referred by Victoria  
Division 12  Employment agreements  

Section 897

(3) The regulations may prescribe:
   (a) what a particular respect is for the purposes of this section; or
   (b) the circumstances in which an employment agreement provides or does not provide a more favourable outcome in a particular respect; or
   (c) the circumstances in which the Australian Fair Pay and Conditions Standard provides or does not provide a more favourable outcome in a particular respect.

897  Relationship between employment agreements and awards

An award prevails to the extent of any inconsistency with an employment agreement.

Note:  See also clauses 89, 95 and 102 of Schedule 6 (extended meaning of award).
Division 13—Exclusion of Victorian laws

898 Additional effect of Act—exclusion of Victorian laws

(1) This Act is intended to apply to the exclusion of all the following laws of Victoria so far as they would otherwise apply in relation to an employee or employer:

(a) a law of Victoria that applies to employment generally and relates to one or more of the following matters:
   (i) agreements about matters pertaining to the relationship between an employer or employers in Victoria and an employee or employees in Victoria;
   (ii) minimum terms and conditions of employment (other than minimum wages) for employees in Victoria;
   (iii) setting and adjusting of minimum wages for employees in Victoria within a work classification;
   (iv) termination, or proposed termination, of the employment of an employee in Victoria;
   (v) freedom of association;
(b) a law of Victoria that is prescribed by regulations made for the purposes of this paragraph.

Victorian laws that are not excluded

(2) However, subsection (1) does not apply to a law of Victoria so far as:

(a) the law deals with the prevention of discrimination and is neither a State or Territory industrial law nor contained in such a law; or
(b) the law is prescribed by the regulations as a law to which subsection (1) does not apply.

Definitions

(3) In this section:

freedom of association has the same meaning as in subsection 4(6) of the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria.
Part 21  Matters referred by Victoria
Division 13  Exclusion of Victorian laws

Section 898

*minimum terms and conditions of employment* has the same meaning as in subsection 4(4) of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

*minimum wage* has the same meaning as in subsection 4(7) of the *Commonwealth Powers (Industrial Relations) Act 1996* of Victoria.

*work classification* has the same meaning as in section 865.

Note:  See also clause 87 of Schedule 6 (common rules in Victoria), which has effect despite any other provision of this Act.

658  *Workplace Relations Act 1996*
Division 14—Additional effect of other provisions of this Act

899 Additional effect of other provisions of this Act

The regulations may provide that, without affecting the operation of specified provisions of this Act apart from those regulations, those provisions also have a specified effect.

Note: The regulations must deal with matters referred by Victoria (see section 859).
Part 22—Contract outworkers in Victoria in the textile, clothing and footwear industry

Division 1—Preliminary

900  Object of Part

The object of this Part is to ensure that an individual who is an outworker other than an employee performing work in Victoria in the textile, clothing or footwear industry is paid not less than the amount he or she would have been entitled to be paid for performing the same work as an employee.

901  Definitions

In this Part:

contract outworker means an individual who:
(a) is a party to a contract for services; and
(b) performs work under it for another party or parties to the contract.

court of competent jurisdiction means:
(a) a District, County or Local Court; or
(b) a magistrates court.

employee means an individual so far as he or she is employed by a constitutional corporation.
Division 2—New Commonwealth provisions

Subdivision A—General

902 Constitutional corporations

Without affecting its operation apart from this section, this Part applies where a person who is a party to a contract for services is a constitutional corporation.

903 Interstate trade or commerce etc.

Without affecting its operation apart from this section, this Part applies where work is contracted to be performed under a contract for services in the course of, or in relation to, trade or commerce:
   (a) between Australia and a place outside Australia; or
   (b) between the States; or
   (c) within a Territory; or
   (d) between a State and a Territory; or
   (e) between 2 Territories.

904 Concurrent operation of Victorian laws

This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.

Subdivision B—Minimum rate of pay

905 Minimum rate of pay

(1) To the extent that work performed under and in accordance with a contract for services to which a contract outworker is a party is work that:
   (a) is performed by:
       (i) the contract outworker; or
       (ii) one or more other individuals who are not parties to the contract; and
   (b) satisfies the criteria in subsection (2);
a person who is obliged under the contract to pay for the work performed must pay the contract outworker and each other individual not less than the statutory amount calculated under subsection (3) for his or her work.

(2) The criteria are:
(a) the work is performed in Victoria; and
(b) the work comprises packing, processing or otherwise working on articles or materials for the textile, clothing or footwear industry; and
(c) the work is performed in or about:
   (i) private residential premises; or
   (ii) premises that are not business or commercial premises of anyone who is obliged under the contract to pay for the work performed.

(3) The statutory amount owed to the contract outworker and each other individual is the amount that he or she would have been entitled to be paid because of a provision of the Australian Fair Pay and Conditions Standard for the work mentioned in subsection (1) if he or she had performed the work as an employee in or about any premises in Victoria.

(4) For the purposes of subsection (3), disregard a provision of the Australian Fair Pay and Conditions Standard that deals with paid leave.

(5) A person may discharge an obligation under subsection (1) to pay an amount to an individual other than a contract outworker by paying the amount to the contract outworker on behalf of the individual.

(6) To avoid doubt, the obligation imposed by subsection (1) on a person to pay not less than the statutory amount for work performed under a contract for services does not apply to that person to the extent that the obligation relates to work performed under another contract for services.

Example: A person (the head contractor) enters into a contract for services with a contract outworker under which the contract outworker is to make shirts. If the contract outworker subcontracts some of that work to other contract outworkers and agrees to pay them for that work, it is the subcontractor who is subject to the obligation in subsection (1) and not the head contractor.
Subdivision C—Inspectors

906 Powers of inspectors

Purpose for which powers of inspectors can be exercised

(1) The powers of an inspector under this section may be exercised for the purpose of ascertaining whether section 905 is being, or has been, observed.

Powers of inspectors

(2) The powers of an inspector are:
   (a) to, without force, enter:
      (i) premises on which the inspector has reasonable cause to believe that work to which section 905 applies is being or has been performed; or
      (ii) a place of business in which the inspector has reasonable cause to believe that there are documents relevant to the purpose set out in subsection (1); and
   (b) on premises or in a place referred to in paragraph (a):
      (i) to inspect any work, material, machinery, appliance, article or facility; and
      (ii) as prescribed, to take samples of any goods or substances; and
      (iii) to interview any person; and
      (iv) to require a person having the custody of, or access to, a document relevant to that purpose to produce the document to the inspector within a specified period; and
      (v) to inspect, and make copies of or take extracts from, a document produced to him or her; and
   (c) to require a person, by notice, to produce to the inspector a document relevant to the purpose set out in subsection (1).

When may the powers be exercised?

(3) An inspector may exercise the powers in subsection (2) at any time during ordinary working hours or at any other time at which it is necessary to do so for the purpose set out in subsection (1).
(4) If a person who is required under subparagraph (2)(b)(iv) to produce a document contravenes the requirement, an inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).

(5) Where a document is produced to an inspector under paragraph (2)(c) or subsection (4), the inspector may:
   
   (a) inspect, and make copies of or take extracts from, the document; and
   
   (b) retain the document for such period as is necessary for the purpose of exercising powers or performing functions as an inspector.

(6) During the period for which an inspector retains a document, the inspector must permit the person otherwise entitled to possession of the document, or a person authorised by the person, to inspect, and make copies of or take extracts from, the document at all reasonable times.

Notices under paragraph (2)(c)

(7) The notice referred to in paragraph (2)(c) must:
   
   (a) be in writing; and
   
   (b) be served on the person; and
   
   (c) require the person to produce the document at a specified place within a specified period of not less than 14 days.

Service may be effected by sending the notice to the person’s fax number.

Person must produce document even if it may incriminate them

(8) A person is not excused from producing a document under paragraph (2)(c) on the ground that the production of the document may tend to incriminate the person.

Limited use immunity for documents produced

(9) If an individual produces a document under paragraph (2)(c), the document produced and any information or thing (including any document) obtained as a direct or indirect consequence of the production of the document is not admissible in evidence against
the individual in any criminal proceedings unless it is proceedings for an offence against section 819.

(10) If an inspector proposing to enter, or being on, premises is required by the occupier to produce evidence of authority, the inspector is not entitled to enter or remain on the premises without producing to the occupier the inspector’s identity card.

Subdivision D—Enforcement of minimum rate of pay

907 Imposition and recovery of penalties

(1) If a person breaches subsection 905(1), a penalty may be imposed by the Court or a court of competent jurisdiction.

(2) Subject to subsection (3), if:
   (a) 2 or more breaches of subsection 905(1) are committed by the same person; and
   (b) the breaches arose out of a course of conduct by the person; the breaches are taken for the purposes of this section to constitute a single breach of that subsection.

(3) Subsection (2) does not apply in relation to a breach of subsection 905(1) that is committed by the person after a court has imposed a penalty on the person for an earlier breach of that subsection.

(4) The maximum penalty that may be imposed under subsection (1) for a breach of subsection 905(1) is:
   (a) $10,000 for a body corporate; or
   (b) $2,000 in other cases.

(5) A penalty for a breach of subsection 905(1) may be sued for and recovered by:
   (a) an inspector; or
   (b) an individual to whom the obligation concerned was owed.

(6) If, in a proceeding against a person under this section, it appears to the court that an individual has not been paid an amount that the person was required to pay, the court may order the person to pay to the individual the amount of the underpayment.
Section 908

(7) An order must not be made under subsection (6) in relation to so much of an underpayment as relates to any period more than 6 years before the commencement of the proceeding.

(8) A proceeding under this section in relation to a breach of subsection 905(1) must be commenced not later than 6 years after the commission of the breach.

908 Recovery of pay

If a person is required by subsection 905(1) to pay an amount to an individual, the individual may sue for the amount of the payment in the Court or in any court of competent jurisdiction not later than 6 years after the person was required to make the payment to him or her.

909 Interest up to judgment

(1) In exercising its powers under section 907 or in a proceeding under section 908, the Court or a court of competent jurisdiction must, on application:

(a) order that there be included in the sum for which an order is made or judgment given, interest at such rate as the Court or court of competent jurisdiction (as the case requires) thinks fit on all or any part of the money for all or any part of the period between the date when the cause of action arose and the date on which the order is made or judgment entered; or

(b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which an order is made or judgment given, a lump sum instead of any such interest.

(2) Subsection (1) does not:

(a) authorise the giving of interest on interest or of a sum instead of such interest; or

(b) apply in relation to any debt on which interest is payable as of right whether by virtue of an agreement or otherwise; or

(c) authorise the giving of interest, or a sum instead of interest, except by consent, on any sum for which judgment is given by consent.

666 Workplace Relations Act 1996
(3) Subsection (1) does not apply if good cause is shown to the contrary.

910 Interest on judgment

A debt under a judgment or order of a court of competent jurisdiction made under section 907 or 908 carries interest from the date on which the judgment is entered or order made at such rate as would apply under section 52 of the Federal Court of Australia Act 1976 if the debt were a judgment debt to which that section applies.

911 Plaintiffs may choose small claims procedure in magistrates courts

(1) An action started by a person under section 908 in a magistrates court is to be dealt with in accordance with this section if the person indicates, in a manner prescribed by the regulations or by rules of court relating to that court, that he or she wants a small claims procedure to apply.

(2) The procedure is governed by the following conditions:
   (a) the court may not award an amount exceeding $5,000 or such higher amount as is prescribed;
   (b) the court may act in an informal manner, is not bound by any rules of evidence, and may act without regard to legal forms and technicalities;
   (c) at any stage of the action, the court may amend the papers initiating the action if sufficient notice is given to any party adversely affected by the amendment;
   (d) a person is not entitled to be represented by counsel or solicitor unless the court permits;
   (e) if the court permits a party to be represented by counsel or solicitor, the court may, if it thinks fit, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.

(3) If the case is heard in a court of a Territory, the regulations may (despite paragraphs (2)(d) and (e)) prohibit or restrict legal representation of the parties.

(4) Despite paragraphs (2)(d) and (e), if:
(a) the case is heard in a court of a State; and
(b) in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State prohibits or restricts legal representation of the parties;
regulations made under this Act may prohibit or restrict legal representation of the parties to the same extent as that law.

912 Enforcement of penalties etc.

(1) If a court has:
(a) imposed a pecuniary penalty under this Part (other than a penalty for an offence); or
(b) under subsection 907(6), ordered the payment of an amount; or
(c) 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 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) If 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.

913 Records relating to contracts for services with contract outworkers

(1) The regulations may make provision in relation to:
(a) the making of outworker records by a person who is a party to a contract for services and who is subject to an obligation under subsection 905(1); and
(b) the making of outworker records by a contract outworker who is a party to a contract for services and to whom an obligation is owed under subsection 905(1) in relation to the contract; and
(c) the inspection of records mentioned in paragraphs (a) and (b); and
(d) the giving of records mentioned in paragraphs (a) and (b) (or a copy of them) by a party to the contract concerned to one or more other parties to the contract; and

(e) the retention of outworker records by parties to the contract concerned.

(2) In subsection (1):

*outworker records*, in relation to a contract for services, means records relating to the contract to the extent that work to be performed under the contract meets the criteria in subsection 905(2).
Part 23—School-based apprentices and trainees

Division 1—Preliminary

914 Definitions

In this Part:

**additional condition** means a condition under an award or notional agreement preserving State awards.

**full-time apprentice** means a person employed on a full-time basis who is recognised, under the award or notional agreement preserving State awards that covers his or her employment, as an apprentice.

**full-time trainee** means a person employed on a full-time basis under a training arrangement who is not a full-time apprentice.

**school-based apprentice** means an employee:
- (a) whose employment is part of a school-based training arrangement; and
- (b) who would, if employed full-time under a training arrangement to do the same kind of work, in the same location and for the same employer, be a full-time apprentice.

**school-based trainee** means an employee, other than a school-based apprentice, whose employment is part of a school-based training arrangement.

**school-based training arrangement** means a training arrangement undertaken as part of a course of secondary education.

**work on-the-job**, in relation to a school-based apprentice or school-based trainee, means work that contributes directly to the productive output of the employer of the school-based apprentice or school-based trainee.

Note: So, for example, time spent studying or in other off-the-job training or education would not be **work on-the-job** for the purposes of this Part.
Division 2—School-based apprentices

915 Additional conditions for school-based apprentices

Additional conditions adjusted as necessary

(1) A school-based apprentice is entitled, in accordance with subsection (2), to any additional conditions (the full-time conditions) to which a full-time apprentice doing the same kind of work, in the same location and for the same employer would be entitled.

(2) The school-based apprentice is entitled to the full-time conditions adjusted as necessary in proportion to the hours worked on-the-job by the school-based apprentice.

(3) For the purposes of subsection (2), the regulations may determine, or make provision for determining, either or both of the following:

(a) whether particular full-time conditions should be adjusted in proportion to the hours worked on-the-job by the school-based apprentice;

(b) the method for adjusting particular full-time conditions in proportion to the hours worked on-the-job by the school-based apprentice.

This section does not limit additional conditions

(4) To avoid doubt, this section does not operate to prevent the school-based apprentice from receiving conditions more generous than those provided by this section.

School-based apprentices not covered by this section

(5) This section does not apply to a school-based apprentice if:

(a) an award or notional agreement preserving State awards covers the employment of the school-based apprentice; and

(b) the award or notional agreement preserving State awards specifies additional conditions for the school-based apprentice; and
Section 916

(c) the award or notional agreement preserving State awards does so by making specific provision for school-based apprentices.

916 Pay for apprentices who were school-based apprentices

(1) Subsection (2) applies for the purposes of determining the rate of pay under an APCS for a full-time apprentice doing the same kind of work he or she did as a school-based apprentice.

(2) The person’s time as a full-time apprentice is taken to include the period calculated using the formula:

\[ \text{Time as a school-based apprentice} \times \frac{1}{2} \]

where:

*time as a school-based apprentice* means the time for which the person was a school-based apprentice.
Division 3—School-based trainees

917 Additional conditions for school-based trainees

Additional conditions adjusted as necessary

(1) A school-based trainee is entitled, in accordance with subsection (2), to any additional conditions (the full-time conditions) to which a full-time trainee doing the same kind of work, in the same location and for the same employer would be entitled.

(2) The school-based trainee is entitled to the full-time conditions adjusted as necessary in proportion to the hours worked on-the-job by the school-based trainee.

(3) For the purposes of subsection (2), the regulations may determine, or make provision for determining, either or both of the following:
   (a) whether particular full-time conditions should be adjusted in proportion to the hours worked on-the-job by the school-based trainee;
   (b) the method for adjusting particular full-time conditions in proportion to the hours worked on-the-job by the school-based trainee.

(4) Subsection (2) has effect subject to section 918.

This section does not limit additional conditions

(5) To avoid doubt, this section does not operate to prevent a school-based trainee from receiving conditions more generous than those provided by this section.

School-based trainees not covered by this section

(6) This section does not apply to a school-based trainee if:
   (a) an award or notional agreement preserving State awards covers the employment of the school-based trainee; and
   (b) the award or notional agreement preserving State awards specifies additional conditions for the school-based trainee; and
918 Loading in lieu of certain conditions

(1) The employer of a school-based trainee may, with the written agreement of the school-based trainee, pay the school-based trainee a loading in lieu of paid annual leave, paid sick leave, paid personal leave and payment for public holidays.

(2) The loading is payable for all hours worked on-the-job and is calculated using the formula:

\[
\text{Hourly rate} \times \frac{20}{100}
\]

where:

**hourly rate** means the hourly rate paid to the school-based trainee apart from this section.

Note: The loading does not compensate for work done on a public holiday. A school-based trainee who works on a public holiday would be paid the applicable hourly rate for such work.

(3) This section has effect as if it were a provision of the Australian Fair Pay and Conditions Standard.
Division 4—Enforcement

919 Enforcement

Part 14 has effect, in relation to a school-based apprentice or a school-based trainee who is entitled to be provided additional conditions in accordance with subsection 915(2) or 917(2), as if the subsection were a term of an award:

(a) that bound the employer of the school-based apprentice or school-based trainee; and

(b) to which the employment of the school-based apprentice or school-based trainee was subject.
Workplace Relations Act 1996

Act No. 86 of 1988 as amended

This compilation was prepared on 31 March 2006
taking into account amendments up to Act No. 153 of 2005
and SLI 2006 Nos. 50, 52 and 68

Volume 2 includes:  Table of Contents
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on that date is appended in the Notes section

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Schedule 1—Registration and Accountability of Organisations

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.

AWA has the same meaning as in the Workplace Relations Act.

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
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(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.

**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

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(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.

*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.

*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
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(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.

Employment Advocate means the Employment Advocate referred to in Part 5 of the Workplace Relations Act.

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.

defederally 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.

defederal system employee has the meaning given by subsection 18B(2).
defederal system employer has the meaning given by subsection 18A(2).

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;
Section 6

(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.

*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:
   (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.

*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.
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**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.

**transitionally registered association** has the meaning given by clause 1 of Schedule 10 to 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
Section 9

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.

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:
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(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:
(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;

14 Workplace Relations Act 1996
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:
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(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.

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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) the majority of its members are federal system employers.

(2) An employer is a *federal system employer* if the employer is:
   (a) a constitutional corporation; or
   (b) an employer in relation to an enterprise that:
       (i) operates principally within or from a Territory; or
       (ii) is engaged principally in trade or commerce between Australia and a place outside Australia; or
       (iii) is engaged principally in trade or commerce among the States; or
       (iv) is engaged principally in trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
       (v) is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
       (vi) is engaged principally in banking (other than State banking not extending beyond the limits of a State); or
       (vii) is engaged principally in insurance (other than State insurance not extending beyond the limits of a State); or
   (c) an employer in relation to public sector employment; or
(d) an employer in Victoria, provided the provisions of this Schedule that would apply to the employer as a federal system employer, or to 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.

(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) the majority of its members are not federal system employers.

### 18B Federally registrable employee associations

(1) An association of employees is *federally registrable* if:
   (a) it is a constitutional corporation; or
   (b) the majority of its members are federal system employees.

(2) A person is a *federal system employee* if the person is:
   (a) employed by a constitutional corporation; or
   (b) employed in an enterprise that:
      (i) operates principally within or from a Territory; or
      (ii) is engaged principally in trade or commerce between Australia and a place outside Australia; or
      (iii) is engaged principally in trade or commerce among the States; or
      (iv) is engaged principally in trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or

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(v) is engaged principally in the supply of postal, telegraphic, telephonic or other like services; or
(vi) is engaged principally in banking (other than State banking not extending beyond the limits of a State); or
(vii) is engaged principally in insurance (other than State insurance not extending beyond the limits of a State); or
(c) employed in public sector employment; or
(d) employed in Victoria, provided the provisions of this Schedule that would apply to the employee as a federal system employee, or to an association of which the employee is a member, fall within the legislative power referred to the Commonwealth under the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria; or
(e) 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 one or more of the ways mentioned in paragraphs (a) to (d).

(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) the majority of the association’s members are not 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) the majority 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 of the State.
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 one or more of the ways mentioned in paragraphs 18B(2)(a) to (d); and
   (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 particular class of employers mentioned in paragraphs 18A(2)(a) to (d) were included when working out whether the majority of its members are federal system employers, subsection 18A(2) 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 particular class of person mentioned in paragraphs 18B(2)(a) to (e) were included when working out whether the majority of its members are federal system employees, subsection 18B(2) 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.

*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
(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(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:
(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
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
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(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.
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.
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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.

Federation may vary its composition

(7) After the federation is registered, it may vary its composition by:

Workplace Relations Act 1996
(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
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(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.
(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
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(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
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.
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.
(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
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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).
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.
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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:
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(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:
(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.
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(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.
“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
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.
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.
Schedule 1  Registration and Accountability of Organisations

Chapter 3  Amalgamation and withdrawal from amalgamation

Part 2  Amalgamation of organisations

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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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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
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(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
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(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.
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.
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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.
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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.
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
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.
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(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
(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:
(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
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(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
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.
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(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.
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:
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(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:

100 Workplace Relations Act 1996
Section 103

(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.
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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
(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.
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.

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.

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.
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.
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.
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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.

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.
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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).
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(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
(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
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(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:
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(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
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(i) 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.
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
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(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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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
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(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).

136 Workplace Relations Act 1996
(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;
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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.

138 Workplace Relations Act 1996
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
(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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(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):
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(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.
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(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 contravene 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
Section 164

(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.
Section 164A

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.

154 Workplace Relations Act 1996
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;
(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:
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(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.
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.
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.
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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;
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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.
(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
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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.
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:
Section 190

(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.

Note: For strict liability, see section 6.1 of the Criminal Code.
Section 192

(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
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Section 193

(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;
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
Section 195

(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.
Section 197

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).
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:
Section 198

(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.
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.
Section 199

(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.
Section 202

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:
Section 203

(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
Section 204

(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.
Section 206

(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 nominations) to be taken again and for the uncompleted steps in the election to be taken; or

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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
(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

Section 216

(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:

Workplace Relations Act 1996
Section 219

(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.
(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.
Section 234

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.
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.
Section 244

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
Section 245

(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.
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
Section 250

(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.
Section 252

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.
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).
Section 254

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; and
where 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.
(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
(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.
Section 257

(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
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
(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).
(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
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).
Section 267

(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
members and presented to a meeting in accordance with section 266.

Note: This section is a civil penalty provision (see section 305).
Section 269

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.
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.
(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.
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.
Section 275

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.
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.
Section 280

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.
Section 285

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.

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:

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(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:
Section 290

(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).
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;
   (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
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(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

This Part sets out the general duties of officers and employees in relation to orders or directions of the Federal Court or the Commission.

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.
Section 297

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
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
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);
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(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.
Section 308

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).
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:
Section 315

(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.
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.
Section 319

**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.
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.
Section 320

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).
Section 321

(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.
Section 322

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
(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
Section 325

(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.
274 Workplace Relations Act 1996
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.
Section 332

(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:
Section 334

(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:
Section 336

(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.
Section 337

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

280 Workplace Relations Act 1996
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) the Employment Advocate;
   (iii) the Australian Building and Construction Commissioner;
   (iv) an Australian Building and Construction Inspector;
   (v) a workplace inspector; 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.
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
Section 337C

(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
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(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.
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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...
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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);

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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.

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
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  **Unauthorized 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.
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:
(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
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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

(1) 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.
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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;
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

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.
Clause 2

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);
(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.

(2) Each of the references to employee in the following provisions has its ordinary meaning (subject to subsections 5(3) and (4)):
Clause 3

(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 151(1)(b);
(n) paragraph 151(1)(c);
(o) paragraph 151(1)(f);
(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;
(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;
Clause 4

(c) a reference in paragraph 16(3)(m);
(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.

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 151(1)(b);
(g) paragraph 151(1)(c);
(h) paragraph 151(1)(f);
(i) section 518.

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;
   (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;
(e) a reference in Division 3 or 6 of Part 12;
(f) a reference in Part 15;
(g) a reference in Part 16.
(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 158;
   (n) paragraph 162(2)(g);
   (o) subsection 170(4);
   (p) subsection 515(4), definition of *labour hire agency*;
   (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, [insert name], 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, [insert name], 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.

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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

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.

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).

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.

**Victorian reference award** means an award made under this Act in its operation in accordance with repealed subsection 493(1).

(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.
Clause 3

(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
Clause 3

(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 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.
Clause 3

(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:

342 Workplace Relations Act 1996
Clause 10

(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

Workplace Relations Act 1996 343
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.
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;
(i) 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.
Clause 18

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:
Transitional arrangements for parties bound by federal awards  Schedule 6
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Settlement of industrial disputes  Division 1

Clause 19

**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.

(6) A preserved transitional award term about superannuation ceases to have effect at the end of 30 June 2008.
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;
Clause 25

(b) definitions;
(c) titles;
(d) arrangement;
(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.
Clause 31

(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
Clause 40

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.
(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...
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.

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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
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Part 3
Powers of Commission for dealing with industrial disputes  
Division 4

Clause 47

(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
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(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.
Clause 55

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.
Schedule 6  Transitional arrangements for parties bound by federal awards
Part 5  Circumstances in which transitional awards cease to be binding

Clause 57

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.
Clause 61

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.
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;
Clause 69

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.

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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 Employment Advocate 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).
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, transmitee 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, transmitee 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, transmitee 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 Employment Advocate (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.
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 to the transferring transitional employee’s employment with the new transitional employer and would prevail over the

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transmitted award to the extent of any inconsistency with the transmitted award;
the transmitted award, to the extent to which it relates to the transferring transitional employee’s employment with the new transitional employer, prevails over that certified agreement to the extent of any inconsistency with that certified agreement.

(3) Subclause (2) has effect despite section 170LY of the pre-reform Act (as applied by clause 2 of Schedule 7).
**Clause 72J**

**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 Employment Advocate**

*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 Employment Advocate within 14 days after the notice is given to the transferring transitional employee.
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 Employment Advocate 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 Employment Advocate 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.
Schedule 6  Transitional arrangements for parties bound by federal awards

Part 6A  Transmission of transitional awards

Division 4  Notice requirements and enforcement

Clause 72L

Lodgment with Employment Advocate

(4) A notice is lodged with the Employment Advocate in accordance with this subclause only if it is actually received by the Employment Advocate.

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  Employment Advocate must issue receipt for lodgment

(1) If a notice is lodged under clause 72K, the Employment Advocate 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 Employment Advocate 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.
Clause 73

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;
Clause 75

(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.
Schedule 6  Transitional arrangements for parties bound by federal awards
Part 7  Matters relating to Victoria
Division 1  Matters referred by Victoria

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) parental leave does not include one or both of the following:
   (i) special maternity leave (within the meaning of section 265);
   (ii) paid leave under subparagraph 268(2)(b)(i) or (ii); 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)).
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 449(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 449(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

Workplace Relations Act 1996 405
Schedule 6   Transitional arrangements for parties bound by federal awards
Part 7  Matters relating to Victoria
Division 1  Matters referred by Victoria

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, 354, 399, 865 and 897; and
(b) clauses 5, 15 and 19 of Schedule 7.

(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.

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) subclause 105(1); and
(b) the definitions of transitional employee and transitional employer in subclause 2(1), so far as those definitions apply to subclause 105(1).

406   Workplace Relations Act 1996
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).

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

A transitional Victorian reference award is taken to be an award for the purposes of:

(a) sections 349, 354, 399, 865 and 897; and

(b) clauses 5, 15 and 19 of Schedule 7.
Clause 95A

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) parental leave does not include one or both of the following:
       (i) special maternity leave (within the meaning of section 265);
       (ii) paid leave under subparagraph 268(2)(b)(i) or (ii); and
Clause 98

(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:
(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;
Clause 101

(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.
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

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, 354, 399, 865 and 897; and

(b) clauses 5, 15 and 19 of Schedule 7.

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.
Clause 102A

(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
Clause 105

(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:

244A  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.
Clause 107C

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:

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.

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.
Clause 1

**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).

**section 170MX award** means an award under subsection 170MX(3) of the pre-reform Act.

**transitional period** means the period of 5 years beginning on the reform commencement.
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.
Part 2 Pre-reform certified agreements

Division 1 General

Clause 3

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 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.

(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.

(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.

(2) Subclause (1) 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 subclause (1):

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Workplace Relations Act 1996
Clause 5

(a) paragraph 170ND(e);
(b) section 170NE;
(c) subsection 170NF(7);
(d) section 170NG.

5 Interaction of agreement with other instruments

(1) The following have no effect in relation to an employee while a pre-reform certified agreement operates in relation to the employee:
   (a) a preserved State agreement;
   (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.

7 Effect of pre-reform certified agreement if AWA is terminated

(1) A pre-reform certified agreement has no effect in relation to an employee if:
   (a) an AWA operated in relation to the employee; and
   (b) the AWA was terminated.

Note 1: See Part 7 for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.

Note 2: See subsections 394(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.
Clause 8

(2) Subclause (1) operates in relation to the period:
   (a) starting when the AWA was terminated; and
   (b) ending when another workplace agreement comes into operation in relation to the employee.

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 workplace agreement may incorporate by reference terms from a pre-reform certified agreement under section 355 of this Act as if the pre-reform certified agreement were a workplace agreement.

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
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.
Clause 17

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.

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 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.
(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.

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) 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 AWA:
(a) Part 6;
(b) section 494;
(c) subsection 451(2);
(d) Part 14;
(e) Part 15.

21 Calling up contents of pre-reform AWA in workplace agreement

A workplace agreement may incorporate by reference terms from a pre-reform AWA under section 355 of this Act as if the pre-reform AWA were a workplace agreement.
Clause 22

Part 4—Awards under subsection 170MX(3) of the pre-reform Act

22 Application of Part

This Part applies in relation to a section 170MX award that:
(a) was in force just before the reform commencement; or
(b) 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 the award, 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).

24 Continuing operation of section 170MX awards—under new provisions

Subject to this Schedule, the following provisions of this Act apply in relation to the award as if it were a workplace determination:
(a) Part 6;
(b) section 494;
(c) subsection 451(2);
(d) Part 14;
(e) Part 15.
Clause 25

25 Interaction of section 170MX awards with other instruments

(1) A section 170MX award has no effect in relation to an employee while an AWA operates in relation to that employee.

(2) A section 170MX award 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 that operates in relation to the employee:
   (a) an award;
   (b) a preserved State agreement;
   (c) a notional agreement preserving State awards.

26 Effect of section 170MX award if AWA is terminated

(1) A section 170MX award has no effect in relation to an employee if:
   (a) an AWA operated in relation to the employee; and
   (b) the AWA was terminated.

   Note 1: See Part 7 for the operation of the Australian Fair Pay and Conditions Standard in these circumstances.

   Note 2: See subsections 394(2), (3) and (4) for the operation of undertakings (if any) in these circumstances.

(2) Subclause (1) operates in relation to the period:
   (a) starting when the AWA was terminated; and
   (b) ending when another workplace agreement comes into operation in relation to the employee.
Part 5—Exceptional matters orders

27 Exceptional matters orders

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.
Part 6—Old IR agreements

28 Operation of old IR agreement

(1) An old IR agreement ceases to be in operation no later than 3 years after the reform commencement.

(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.

29 Old IR agreement cannot be varied after the reform commencement

An old IR agreement cannot be varied after the reform commencement.
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

The Australian Fair Pay and Conditions Standard 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 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.
Clause 31

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 an 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 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).
Clause 34

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.

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.

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.

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 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).

*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.

(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.

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(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 Employment Advocate 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:
Clause 12

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, the person would have been bound by that agreement;

that person is bound by 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.

(2) If, immediately before the reform commencement, a term of a State award would have determined, in whole or in part, a term or
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Part 2  Preserved State agreements  
Division 2  Preserved collective State agreements  

Clause 14

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

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Clause 15

(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 Employment Advocate can alter the document recording the terms of a preserved State agreement to remove prohibited content of a prescribed kind (see clause 19).
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 a preserved State agreement and the Australian Fair Pay and Conditions Standard

The Australian Fair Pay and Conditions Standard 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.

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.

(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:
   (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.
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.

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.

19 Variation to remove prohibited content

19 Variation to remove prohibited content

Initiating consideration of removal of prohibited content

(1) The Employment Advocate 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 Employment Advocate’s decision whether to make a variation under subclause (9).

Employment Advocate must give notice that considering variation

(3) If the Employment Advocate is considering making a variation to a preserved State agreement under subclause (9), the Employment Advocate 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 Employment Advocate is considering making the variation; and
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(c) state the reasons why the Employment Advocate 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 Employment Advocate about whether the Employment Advocate 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.

Employment Advocate must remove prohibited content from agreement

(9) If the Employment Advocate is satisfied that a term of the preserved State agreement contains prohibited content of the prescribed kind, the Employment Advocate must vary the agreement so as to remove that content.

(10) In making a decision under subclause (9), the Employment Advocate must consider all written submissions (if any) received.
within the objection period from a person mentioned in subclause (6).

(11) The Employment Advocate must not make the variation before the end of the objection period.

(12) If the Employment Advocate 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 AWA.

(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 AWA.
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 an 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 an AWA.

22 Coercion of persons to terminate a preserved State agreement

(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.

(2) Subclause (1) 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 subclause (1) as if it were a contravention of subsection 170CN(1) as in force at that time:
   (a) paragraph 170ND(e);
   (b) section 170NE;
   (c) subsections 170NF(1), (2) and (7);
Schedule 8  Transitional treatment of State employment agreements and State awards
Part 2  Preserved State agreements
Division 5 Terminating a preserved State agreement

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(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.
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(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).
(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
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(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 workplace agreement came into operation in relation to the employee.

(2) Protected preserved conditions:
   (a) are taken to be included in the 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 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 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.
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Part 2  Preserved State agreements

Division 6A  Protected conditions

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

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(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.
Division 7—Miscellaneous

26 Calling up contents of a preserved State agreement in a workplace agreement

(1) A workplace agreement may incorporate by reference under section 355 terms from a preserved State agreement as if the preserved State agreement were a workplace agreement.

(2) Despite subsection 355(6), a term of a 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 AWA.

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

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(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.
Schedule 8  Transitional treatment of State employment agreements and State awards
Part 3  Notional agreements preserving State awards
Division 2  Effect and operation of a notional agreement preserving State awards

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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 period of 3 years beginning on the reform commencement.

(2) A notional agreement preserving State awards ceases to be in operation in relation to an employee if a 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.

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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 Employment Advocate 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 Employment Advocate’s decision whether to make a variation under subclause (9).

Employment Advocate must give notice that considering variation

(3) If the Employment Advocate is considering making a variation to a notional agreement preserving State awards under subclause (9), the Employment Advocate 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
   (b) state that the Employment Advocate is considering making the variation; and
(c) state the reasons why the Employment Advocate 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 Employment Advocate about whether the Employment Advocate 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.

Employment Advocate must remove prohibited content from agreement

(9) If the Employment Advocate is satisfied that a term of the notional agreement contains prohibited content of the prescribed kind, the Employment Advocate must vary the agreement so as to remove that content.

(10) In making a decision under subclause (9), the Employment Advocate must consider all written submissions (if any) received
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within the objection period from a person mentioned in subclause (6).

(11) The Employment Advocate must not make the variation before the end of the objection period.

(12) If the Employment Advocate 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, then a term (other than a preserved notional term) of the notional agreement that also deals with that matter 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).
Clause 45

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.

(3) A preserved notional term about the matter referred to in paragraph (1)(g) (superannuation) ceases to have effect at the end of 30 June 2008.

(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);
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(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).

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.
Clause 47

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.

Note: Preserved notional terms about matters referred to in paragraph 45(1)(g) cease to have effect at the end of 30 June 2008—see subclause 45(3).

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;

Workplace Relations Act 1996
(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.

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) an award is made under section 539 or is varied under section 544, 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
Schedule 8  Transitional treatment of State employment agreements and State awards

Part 3  Notional agreements preserving State awards

Division 5  Preserved notional terms and preserved notional entitlements

Clause 51

(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.

(7) Section 550 applies in relation to a preserved notional term included in an award under this clause in the same way as it applies in relation to a preserved award term included in an award made under section 539 or varied under section 544.

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 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 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 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 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, 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.
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.
Clause 52A

Division 7—Miscellaneous

52A Calling up a notional agreement preserving State awards in a workplace agreement

(1) A workplace agreement may incorporate by reference under section 355 terms from a notional agreement preserving State awards as if the notional agreement were a workplace agreement.

(2) Despite subsection 355(6), a term of a 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 3 to 5 of this Schedule deal with the transmission of particular transitional instruments as follows:

(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 Employment Advocate and the enforcement of employer obligations by pecuniary penalties.

(4) Part 7 of this Schedule deals with special rules for Victoria.

(5) Part 8 of this Schedule deals with the interaction between transitional instruments and collective agreements and awards that are transmitted under Part 11.

488 Workplace Relations Act 1996
Clause 3

(6) Part 9 of this Schedule allows regulations to be made to deal with other transmission of business issues in relation to transitional industrial instruments.

3 Definitions

In this Schedule:

*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.

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 industrial instrument means:
(a) a pre-reform AWA; or
(b) a pre-reform certified agreement; or
(c) a section 170MX award; or
(d) an exceptional matters order; or
(e) a notional agreement preserving State awards; or
(f) a preserved State agreement.

transitional instrument means:
(a) a pre-reform AWA; or
(b) a pre-reform certified agreement; or
(c) a notional agreement preserving State awards; or
(d) a preserved State agreement.

transmission period has the meaning given by subclause 4(4).
Part 2—Application of Schedule

4 Application of Schedule

(1) This Schedule applies if a person (the new employer) becomes the successor, transmittestee 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, transmittestee or assignee is the business being transferred for the purposes of this Schedule.

(3) The time at which the new employer becomes the successor, transmittestee 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
Schedule 9  Transmission of business rules (transitional instruments)
Part 2  Application of Schedule

Clause 6

(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 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 Employment Advocate (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 (AWA
    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.
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.

8 Interaction rules

(1) From the time of transmission, a transitional industrial instrument
(other than a pre-reform AWA) does not apply to the transferring
employee’s employment with the new employer.

(2) Subclause (1) has effect despite section 170VQ of the pre-reform
Act (as applied by subclause 17(1) of Schedule 7).

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 Employment Advocate (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;
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 Employment Advocate (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 Employment Advocate (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;
(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:
(a) the pre-reform certified agreement ceases to be in operation in relation to the transferring employee’s employment with
the new employer because the new employer makes an AWA with the transferring employee (see subclause 12(2));
(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 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
Clause 11

(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).

Transitional industrial instruments not to apply

(5) From the time of transmission, a transitional industrial instrument (other than the transmitted certified agreement) does not apply to the transferring employee’s employment with the new employer.

(6) Subclause (5) has effect despite section 170LY of the pre-reform Act (as applied by subclause 2(1) of Schedule 7).
Clause 12

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.

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, transmee 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, transmee or assignee; and
   (d) the transfer time is the time at which the incoming employer becomes, or is likely to become, the successor, transmee 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.
(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;
Clause 18

(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 Employment Advocate (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 at the end of the period of 3 years beginning on the
Clause 19

reform commencement (see 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).
Transmission of business rules (transitional instruments) Schedule 9
Transmission of State transitional instruments Part 5
General Division 1

Clause 20

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 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
   (b) the transmitted State instrument is a preserved State 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.

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Clause 21

Other transitional instruments

(4) From the time of transmission, a transitional industrial instrument (other than the transmitted State instrument) does not apply to the transferring employee’s employment with the new employer.

(5) Subclause (4) has effect despite the following provisions:
   (a) clause 5 of Schedule 7 (pre-reform certified agreement);
   (b) subclause 25(3) of Schedule 7 (section 170MX award).

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).
Clause 22

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.

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(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 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:
      (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 and the new employer and the transferring employee become bound by an AWA within 14 days after the time of transmission; or
(b) the transmitted instrument is not a pre-reform AWA and the new employer and the transferring employee become bound by an AWA or a collective agreement at the time of transmission or within 14 days after the time of transmission.
29 Lodging copy of notice with Employment Advocate

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

(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 Employment Advocate 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 Employment Advocate 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 30

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 Employment Advocate 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 Employment Advocate in accordance with this subclause only if it is actually received by the Employment Advocate.

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.

30 Employment Advocate must issue receipt for lodgment

(1) If a notice is lodged under clause 29, the Employment Advocate must issue a receipt for the lodgment.

(2) The receipt must state that the notice was lodged under clause 29 on a particular day.

(3) The Employment Advocate must give a copy of the receipt to the person who lodged the notice under clause 29.

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).

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.
Clause 31

(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 listed in the following table may be made by a person specified in the item of the table relating to that kind of instrument:

<table>
<thead>
<tr>
<th>Item</th>
<th>Instrument</th>
<th>People with standing to apply for order</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>pre-reform AWA</td>
<td>(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</td>
</tr>
<tr>
<td>2</td>
<td>pre-reform certified agreement</td>
<td>(a) a transferring employee; or (b) an organisation of employees that is bound by the agreement; 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</td>
</tr>
<tr>
<td>3</td>
<td>notional agreement preserving State awards</td>
<td>(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</td>
</tr>
</tbody>
</table>

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Schedule 9  Transmission of business rules (transitional instruments)
Part 6  Notice requirements and enforcement

Clause 31

<table>
<thead>
<tr>
<th>Item</th>
<th>Instrument</th>
<th>People with standing to apply for order</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>preserved State Agreement</td>
<td>(a) a transferring employee; or (b) an organisation of employees that is bound by the agreement; 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</td>
</tr>
</tbody>
</table>
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.
Part 8—Transitional instruments and transmitted post-reform instruments

34 Relationship between transitional instruments and transmitted collective agreement

(1) This clause applies if subsection 585(1) applies to a collective agreement (the \textit{transmitted collective agreement}).

(2) From the time of transmission, a transitional industrial instrument does not apply to a transferring employee’s employment with the new employer.

(3) In subclause (2):

\textit{new employer} has the same meaning as in Part 11.

\textit{time of transmission} has the same meaning as in Part 11.

\textit{transferring employee} has the same meaning as in Part 11.

35 Relationship between transitional instruments and transmitted award

(1) This clause applies if subsection 595(1) applies to an award (the \textit{transmitted award}).

(2) From the time of transmission, a transitional industrial instrument does not apply to the transferring employee’s employment with the new employer.

(3) Subclause (2) has effect despite the following provisions:

(a) clause 5 of Schedule 7 (pre-reform certified agreement);
(b) subclause 25(3) of Schedule 7 (section 170MX award);
(c) clause 15D of Schedule 8 (preserved State agreement).

(4) In subclause (2):

\textit{new employer} has the same meaning as in Part 11.

\textit{time of transmission} has the same meaning as in Part 11.
Clause 35

*transferring employee* has the same meaning as in Part 11.
Part 9—Miscellaneous

36 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 obligation of employers and the terms and conditions of employees under transitional industrial instruments.
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.
Transitionally registered associations  

**Schedule 10**

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:
Clause 3

(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:

526 Workplace Relations Act 1996
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
Clause 5

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 or of a section or class of 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—on the third anniversary of the commencement of this Schedule.
Clause 7

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.
Workplace Relations Act 1996

Act No. 86 of 1988 as amended

This compilation was prepared on 31 March 2006
taking into account amendments up to Act No. 153 of 2005
and SLI 2006 Nos. 50, 52 and 68

Volume 3 includes:  
Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Repeal Table  
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Table A  
Renumbering Table

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
Notes to the Workplace Relations Act 1996

Note 1

The Workplace Relations Act 1996 as shown in this compilation comprises Act No. 86, 1988 amended as indicated in the Tables below.

The Workplace Relations Act 1996 was amended by the Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1) (SLI 2006 No. 50) and the Workplace Relations Regulations 2006 (SLI 2006 No. 52 as amended by SLI 2006 No. 68). The amendments are incorporated in this compilation.


All relevant information pertaining to application, saving or transitional provisions prior to 25 November 1996 is not included in this compilation. For all other subsequent information see Table A.

The Workplace Relations Act 1996 was modified by the Industrial Relations (Christmas Island) Regulations (1992 No. 225 as amended). The modifications are not incorporated in this compilation.

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Act Notes

(a) The Workplace Relations Act 1996 was amended by section 32 only of the A.C.T. Self-Government (Consequential Provisions) Act 1988, subsection 2(3) of which provides as follows:

(3) The remaining provisions of this Act (including the amendments made by Schedule 5) commence on a day or days to be fixed by Proclamation.

(b) The Australian Federal Police Legislation Amendment Act (No. 2) 1989 was amended by subsection 74(1) only of the Crimes Legislation Amendment Act 1991, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(c) The Workplace Relations Act 1996 was amended by the Schedule (Parts 3, 4 and 6) only of the Qantas Sale Act 1992, subsections 2(2), (3)(b), (5) and (6) of which provide as follows:

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

(3) A Proclamation may fix a day that is earlier than the day on which the Proclamation is published in the Gazette but only if:

(b) in the case of sections 22, 23, 26, 27, 29, 32, 33, 34, 42, 45, 46, 47, 48 and 49 and Parts 3 and 4 of the Schedule—the day is not earlier than the 50% sale day; and

(5) If, on the 100% sale day, Part 3 of the Schedule has not commenced, then, on the day on which Part 7 of the Schedule commences, Parts 3 and 6 of the Schedule are taken to have been repealed.

(6) If a provision of this Act has not commenced before 31 August 1995, the provision is taken to have been repealed on that day.

Parts 3 and 6 of the Schedule are taken to have been repealed on 31 August 1995.

(d) The Qantas Sale Act 1992 was amended by the Schedule (item 17) only of the Qantas Sale Amendment Act 1994, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(e) The Workplace Relations Act 1996 was amended by Schedule 1 (items 2, 6, 7, 8–12 and 14–19) only of the Industrial Relations Legislation Amendment Act (No. 2) 1994, subsection 2(2) of which provides as follows:

(2) The provisions of Schedule 1 commence as set out in item 1 of that Schedule.

Item 1 of Schedule 1 provides as follows:

(1) This Part of this Schedule commences on the day on which this Act receives the Royal Assent.

(2) The provisions of Part 2 of this Schedule commence on a day or days to be fixed by Proclamation.

(3) The Governor-General must not make a Proclamation fixing a day for the commencement of a provision of Part 2 of this Schedule unless the Governor of New South Wales has consented in writing to the provision coming into operation.

Schedule 1 (item 7) was repealed by section 8 of the Industrial Relations and other Legislation Amendment Act 1995 before a date was fixed for the commencement.

(f) The Industrial Relations Legislation Amendment Act (No. 2) 1994 was amended by Schedule 6 only of the Industrial Relations and other Legislation Amendment Act 1995, subsection 2(2) of which provides as follows:

(2) The items set out in the Schedules other than Schedules 5, 7, 8, 9 and 10 commence on a day or days to be fixed by Proclamation.
Act Notes

(g) The Workplace Relations Act 1996 was amended by sections 14 and 23 only of the Evidence (Transitional Provisions and Consequential Amendments) Act 1995, subsections 2(1) and (10) of which provide as follows:

1. This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
2. Sections 21, 23 and 24 of this Act commence on the day on which section 21 of the Evidence Act 1995 commences.

(h) Subsection 2(5) of the Workplace Relations and Other Legislation Amendment Act 1996 provides as follows:

1. Item 1 of Schedule 9 is taken to have commenced immediately before item 19 of Schedule 8 commences.

(i) The Workplace Relations and Other Legislation Amendment Act 1996 was amended by Schedule 1 (item 125) only of the Human Rights Legislation Amendment Act (No. 1) 1999, subsections 2(2) and (3) of which provide as follows:

2. The remaining sections of this Act, and the items of Schedule 1, commence on a day or days to be fixed by Proclamation.
3. If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(j) Subsection 2(4) of the Workplace Relations and Other Legislation Amendment Act (No. 2) 1996 provides as follows:

1. The items of Schedule 3 are taken to have commenced immediately after the Workplace Relations and Other Legislation Amendment Act 1996 received the Royal Assent.

The Workplace Relations and Other Legislation Amendment Act 1996 received the Royal Assent on 25 November 1996.

(k) The Workplace Relations Act 1996 was amended by Schedule 1 (items 984–994) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

1. In this Act, commencing time means the time when the Public Service Act 1999 commences.
2. Subject to this section, this Act commences at the commencing time.

(l) The Workplace Relations Act 1996 was amended by Schedule 2 (item 42) only of the Timor Gap Treaty (Transitional Arrangements) Act 2000, subsection 2(2) of which provides as follows:

1. Sections 3 to 7 and Schedules 1 and 2 (other than items 18 to 25 of Schedule 2) are taken to have commenced at the transition time. [see Table A]

(m) The Workplace Relations Act 1996 was amended by Schedule 1 (item 91) only of the Jurisdiction of Courts Legislation Amendment Act 2000, subsection 2(2) of which provides as follows:

1. The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.

(n) The Workplace Relations Act 1996 was amended by Schedule 3 (items 571–573) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

1. Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the Corporations Act 2001.

(o) Subsection 2(1) (items 66 and 67) of the Statute Law Revision Act 2002 provides as follows:

1. Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.
Notes to the Workplace Relations Act 1996

Act Notes

### Commencement information

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<tr>
<td>67. Schedule 2, item 38</td>
<td>Immediately after the time specified in the Workplace Relations Amendment (Termination of Employment) Act 2001 for the commencement of item 11B of Schedule 1 to that Act</td>
<td>30 August 2001</td>
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(p) The Workplace Relations Act 1996 was amended by Schedule 1 (items 140–202) only of the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Act 2001, subsections 2(1) and (8)(b) of which provide as follows:

(1) Subject to this section, this Act commences on the day after the day on which it receives the Royal Assent.

(8) Item 159 of Schedule 1 to this Act commences on the later of the following times:

(b) immediately after the commencement of:

(i) if item 28 of Schedule 12 to the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Act 2001 commences— that item; or

(ii) if item 29 of Schedule 1 to the Workplace Relations Amendment (Secret Ballots for Protected Action) Act 2001 commences— that item.

The Workplace Relations Legislation Amendment (More Jobs, Better Pay) Act 2001 and the Workplace Relations Amendment (Secret Ballots for Protected Action) Act 2001 have not been enacted. Therefore this amendment does not commence.

(q) Subsection 2(1) (items 3–5) of the Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003 provide as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

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<th>Provision(s)</th>
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<td>4. Schedule 3</td>
<td>A single day to be fixed by Proclamation.</td>
<td>1 January 2004 (s 2(1); Gazette 2003, No. S502)</td>
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<td>5. Schedule 4</td>
<td>The later of: (a) at the same time as the provisions covered by table item 4; and (b) immediately after the commencement of item 3 of Schedule 2 to this Act.</td>
<td>1 January 2004 (paragraph (b) applies)</td>
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Notes to the *Workplace Relations Act 1996*

**Act Notes**

*(r)* Subsection 2(1) (item 24) of the *Statute Law Revision Act 2005* provides as follows:

1. Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<td>24. Schedule 1, items 84 and 85</td>
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The amendment history of the *Workplace Relations Act 1996* after renumbering by the *Workplace Relations Amendment (Work Choices) Act 2005* (No. 153, 2005) appears in the Table below. For repealed provisions up to and including Act No. 153, 2005 see the Repeal Table.

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**Division 2**


**Division 3**

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Certain provisions of the *Workplace Relations Act 1996*, as amended, were repealed either prior to renumbering by the *Workplace Relations Amendment (Work Choices) Act 2005* (No. 153, 2005) or by that Act. The amendment history of the repealed provisions appears in the Table below.

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*Workplace Relations Act 1996* 61
## Notes to the *Workplace Relations Act 1996*

### Repeal Table

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Note 2

Section 722(1)(a)—Schedule 1 (item 187) of the Workplace Relations Amendment (Work Choices) Act 2005 (No. 153, 2005) provides as follows:

Schedule 1

187 Paragraph 179A(1)(a) (renumbered s. 722(1)(a))

Omit “Court or a court of competent jurisdiction, as the case may be,”, substitute “eligible court”.

The proposed amendment was misdescribed and is not incorporated in this compilation.
Table A

Application, saving or transitional provisions

*Workplace Relations and Other Legislation Amendment Act 1996*  
(No. 60, 1996)

Schedule 4

11 **Transitional—applications under section 118A of the Workplace Relations Act in respect of which the substantive hearing has not begun**

(1) This item applies to an application made under section 118A of the Workplace Relations Act but in respect of which the Commission had not begun the substantive hearing before the commencement of this item.

(2) After the commencement of this item, the application has effect as if it were an application made under section 118A of the Workplace Relations Act as amended by this Schedule.

12 **Transitional—applications under section 118A of the Workplace Relations Act in respect of which the substantive hearing has begun**

(1) This item applies to an application made under section 118A of the Workplace Relations Act and in respect of which the Commission had begun the substantive hearing before the commencement of this item.

(2) Despite the amendments made to section 118A of the Workplace Relations Act by this Schedule, that section as in force immediately before the commencement of this item continues to apply in relation to the hearing of the application.

(3) An order made as a result of the hearing of the application has effect as if it had been made under section 118A of the Workplace Relations Act as amended by this Schedule.
13 Transitional—orders under section 118A of the Workplace Relations Act

(1) This item applies to an order that was in force under section 118A of the Workplace Relations Act immediately before the commencement of this item.

(2) The order continues in force, after the commencement of this item, as if it had been made under section 118A of the Workplace Relations Act as amended by this Schedule.

Schedule 5

46 Interpretation

In this Part:

interim period means the period of 18 months beginning on the day on which section 89A of the Principal Act commences.

Principal Act means the Workplace Relations Act.

special consent provisions has the meaning given by item 48.

termination time, in relation to special consent provisions, means the end of the period that is specified in the award under section 147 of the Principal Act.

47 Exercise of Commission's powers under this Part

In exercising its powers under this Part, the Commission is to have regard to the desirability of assisting parties to awards to agree on appropriate variations to their awards, rather than have parts of awards cease to have effect under item 50 at the end of the interim period.

48 Special consent provisions

For the purposes of this Part, special consent provisions are provisions of an award that give effect to a decision of the Commission that is expressed to be made in accordance with one or more of the following principles:

(a) the Enterprise Bargaining Principle adopted by the Commission in the National Wage Case decision of October 1991 (Dec 1150/91, Print K0300);
Table A

(b) the Enterprise Awards Principle adopted by the Commission in its Review of the Wage Fixing Principles decision of October 1993 (Dec 1300/93, Print K9700);
(c) Principle 2.2 (Consent Award or Award Variation to Give Effect to an Enterprise Agreement), adopted by the Commission in its Review of the Wage Fixing Principles decision of August 1994 (Dec 1408/94, Print L4700) and incorporated without amendment in wages principles established by the Commission in its Safety Net Adjustment & Section 150A Review decision of October 1995 (Dec 2120/95, Print M5600).

49 Variation of awards during the interim period

(1) If one or more of the parties to an award apply to the Commission for a variation of the award under this item, the Commission may, during the interim period, vary the award so that it only deals with allowable award matters.

(2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.

(3) Special consent provisions cannot be varied under this item before the termination time for those provisions.

(4) The Commission may only deal with the application by arbitration if it is satisfied that the applicant or applicants have made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters.

(5) If:

(a) the award provides for rates of pay that, in the opinion of the Commission:
   (i) are not operating as minimum rates; or
   (ii) were made on the basis that they were not intended to operate as minimum rates; and

(b) the application under this item seeks to have such rates of pay varied so that they are expressed as minimum rates of pay;

the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act.

66 Workplace Relations Act 1996
and the limitation on the Commission’s power in subsection 89A(3) of that Act.

(6) If the Commission varies the award under subitem (5), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.

(7) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
   
   (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
   
   (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
   
   (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

(8) The Commission must also review the award to determine whether or not it meets the following criteria:

   (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
   
   (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
   
   (c) it is expressed in plain English and is easy to understand in both structure and content;
   
   (d) it does not contain provisions that are obsolete or that need updating;
   
   (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
   
   (f) it does not contain provisions that discriminate against an employee 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.
Table A

(9) If the Commission determines that the award does not meet the criteria set out in subitem (7) or (8), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

50 Parts of awards cease to have effect at the end of the interim period

(1) At the end of the interim period, each award ceases to have effect to the extent that it provides for matters other than allowable award matters.

(2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.

(3) For the purposes of this item, an award that is made under subsection 170MX(3) of the Principal Act, or varied under item 49 of this Schedule, is taken to provide wholly for allowable award matters.

(4) If the termination time for special consent provisions is after the end of the interim period, then this item and item 51 apply to the special consent provisions as if a reference to the end of the interim period were instead a reference to the termination time.

51 Variation of awards after the end of the interim period

(1) As soon as practicable after the end of the interim period, the Commission must review each award:
   (a) that is in force; and
   (b) that the Commission is satisfied has been affected by item 50.

(2) The Commission must vary the award to remove provisions that ceased to have effect under item 50.

(3) When varying the award under subitem (2), the Commission may also vary the award so that, in relation to an allowable award matter, the award is expressed in a way that reasonably represents the entitlements of employees in respect of that matter as provided in the award as in force immediately before the end of the interim period.

(4) If, immediately before the end of the interim period, the award provided for rates of pay that, in the opinion of the Commission:
   (a) were not operating as minimum rates of pay; or
(b) were made on the basis that they were not intended to operate as minimum rates;
the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission’s power in subsection 89A(3) of that Act.

(5) If the Commission varies the award under subitem (4), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.

(6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
(a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
(b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
(c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

(7) The Commission must also review the award to determine whether or not it meets the following criteria:
(a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
(b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
(c) it is expressed in plain English and is easy to understand in both structure and content;
(d) it does not contain provisions that are obsolete or that need updating;
(e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
(ea) if it applies to work that is or may be performed by young people—protects the competitive position of young people in
Table A

the labour market, promotes youth employment, youth skills and community standards and assists in reducing youth unemployment by including, if, on a case-by-case basis, the Commission determines it appropriate, junior rates of pay; and

(f) it does not contain provisions that discriminate against an employee 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.

(8) If the Commission determines that the award does not meet the criteria set out in subitem (6) or (7), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

52 Corporations not bound by State awards

(1) If:

(a) a constitutional corporation is bound by an award in respect of an employee; and

(b) the award is varied under subitem 49(1) or wholly or partly ceases to have effect because of item 50; and

(c) as a result of the award being varied, or ceasing to have effect, as mentioned in paragraph (b), the corporation would (apart from this item) become bound by a State award in respect of the employee;

then the corporation is not bound by the State award in relation to the employee unless it becomes bound as a result of an application by the corporation to the relevant State industrial authority.

(2) Subitem (1) does not operate so that a State award, or part of a State award, prevails over an award of the Commission.

53 Matters to be dealt with by Full Bench

(1) After the commencement of this Part, a Full Bench may establish principles about varying awards under this Part.

(2) After such principles (if any) have been established, the power of the Commission to vary an award under this Part is exercisable only by a Full Bench unless the contents of the award:
(a) give effect to determinations of a Full Bench under this Part;
or
(b) are consistent with principles established by a Full Bench under this item.

54 Certain provisions not discriminatory

(1) A provision of an award does not discriminate against an employee for the purposes of paragraph 49(8)(f) or 51(7)(f) merely because:
(a) it provides for a junior rate of pay; or
(b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
(c) 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.

(2) Paragraph (1)(a) does not apply to a decision or determination made by the Commission under this Part more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.

55 Transitional—repeal of subsection 111(1A)

The repeal of subsection 111(1A) of the Principal Act does not apply to any proceedings before the Commission that commenced before the commencement of the repeal.

Schedule 6

17 Application of amendments

(1) Subject to this item and other provisions in this Act, the Workplace Relations Act as amended by this Schedule applies to terminations of employment occurring on or after 30 March 1994.

(2) The Workplace Relations Act as amended by this Schedule does not apply to a termination of employment occurring before the commencement of this Schedule if an application was made in respect
of that termination under section 170EA of the Workplace Relations Act as in force at any time before that commencement.

(3) Subject to Schedule 16 and any provision in an Act, if an application was made under section 170EA of the Workplace Relations Act as in force at any time before the commencement of this Schedule, that Act as so in force continues to be in force in respect of any proceeding arising from that application.

(4) If, in the continuing application of this Act as in force before the commencement of this Schedule, the Commission decides, after the transfer day as defined for the purposes of Part 3 of Schedule 16, to refer a matter to the Industrial Relations Court of Australia, that matter is to be treated, for the purposes of that Part, as if it had been so referred before that day and item 64 of that Part applies accordingly.

(5) Item 14 of Schedule 2 to the Industrial Relations and Other Legislation Amendment Act 1995 continues to have effect in relation to an application made under section 170EA of the Workplace Relations Act as in force before the commencement of this Schedule. However, that item ceases to have effect in relation to a termination of employment for which no application under that section has been made before the commencement of this Schedule.

Schedule 7

12 Orders in force under Division 1 of Part VIA

Any order made under Division 1 of Part VIA of the Workplace Relations Act and in force immediately before the repeal of that Division continues in force, on and after that repeal, subject to the terms of Division 4 of that Part, as if the repeal had not taken effect.

13 Application of section 170BHA

(1) Subsections 170BHA(1) and (2) of the Workplace Relations Act have effect in relation to the prevention of an application being made under Division 2 of Part VIA of that Act on or after the commencement of this Schedule, whether or not the proceedings for an alternative remedy referred to in subsection 170BHA(1) began before that commencement.

(2) Subsections 170BHA(3) and (4) of the Workplace Relations Act have effect in relation to the prevention of the taking of proceedings for an alternative remedy referred to in subsection 170BHA(3) on or after the
commencement of this Schedule, whether or not the application under Division 2 of Part VIA referred to in that subsection was made before that commencement.

Schedule 8

23 Application and transitional

(1) Subject to this item, the amendments made by this Schedule apply to:

(a) an agreement made after the commencement of this Schedule; and

(b) a bargaining period, for a proposed agreement, initiated after the commencement of this Schedule.

New termination provisions apply to pre-commencement certified agreements

(2) If:

(a) an agreement was entered into before the commencement of this Schedule and was covered by Division 2 of Part VIB of the Workplace Relations Act 1996 as then in force; and

(b) whether before or after the commencement of this Schedule:

(i) the period of operation specified in the agreement; or

(ii) if it has been extended or further extended under section 170MJ of that Act as in force at the time—that period as extended or further extended;

has ended;

then, after the commencement of this Schedule, section 170MH of that Act as amended by this Schedule, instead of section 170MN of that Act as in force immediately before the commencement of this Schedule, applies to the agreement.

Enterprise flexibility agreements that prevail over certified agreements

(3) If:

(a) an enterprise flexibility agreement is continued in force by Schedule 9; and

(b) any part (the post-commencement EFA period) of the period of operation specified in the agreement, or that period as
extended or further extended, occurs after the commencement of this Schedule; and

(c) the enterprise flexibility agreement is, during the post-commencement EFA period, to any extent inconsistent with a certified agreement (whether made before or after the commencement of this Schedule); and

(d) the certified agreement was certified after implementation of the enterprise flexibility agreement was approved;

then the enterprise flexibility agreement prevails over the certified agreement, to the extent of the inconsistency, during the post-commencement EFA period.

**Certified agreements that prevail over enterprise flexibility agreements**

(4) If:

(a) an enterprise flexibility agreement is continued in force by Schedule 9; and

(b) a certified agreement (whether made before or after the commencement of this Schedule) is at any time after the commencement of this Schedule to any extent inconsistent with the enterprise flexibility agreement; and

(c) subitem (3) does not apply to the inconsistency;

the certified agreement prevails over the enterprise flexibility agreement, to the extent of the inconsistency.

**170MX(3) awards and exceptional matters orders prevail over pre- and post-commencement certified agreements**

(5) Subsections 170LY(2) and (3) of the *Workplace Relations Act 1996* as amended by this Schedule apply to certified agreements whether certified before or after the commencement of this Schedule.

**Ongoing matters under Bargaining Division**

(6) The Commission may continue to deal with an ongoing matter (see subitem (7)), on and after the day on which this Schedule commences, in the exercise of the functions and powers of the Commission under the *Workplace Relations Act 1996* as amended by this Act.
Meaning of ongoing matters

(7) In subitem (6), an ongoing matter means a matter that the Commission had started to deal with, before the day on which this Schedule commenced, in the exercise of the functions and powers described in the Workplace Relations Act 1996 (as then in force) as the Bargaining Division’s functions and powers.

Annual report under former section 170RC

(8) Section 170RC of the Workplace Relations Act 1996 as in force immediately before the commencement of this Schedule does not require, and is taken never to have required, the Minister to cause a person to review and to report to the Minister in relation to the reporting period ending on 31 December 1996.

Schedule 9

2 Continued operation of EFAs

Pre-commencement EFA continues despite amendments of Act

(1) Despite the amendments made by Part 1 of this Schedule, a pre-commencement EFA continues to have effect, to the extent provided by the following subitems, as if those amendments had not been made.

Period of operation ending after commencement of amendments

(2) If the period of operation of the EFA ends after the commencement of this Part:

   (a) the EFA continues in force until the end of the period of operation; and
   (b) the EFA further continues in force until terminated by the Commission under subitem (4).

Period of operation ending before commencement of amendments

(3) If the period of the EFA ended before the commencement of this Part, the EFA continues in force after the commencement of this Part until terminated by the Commission under subitem (4).
Termination by Commission

(4) The Commission may, on application by a party to an EFA, terminate the EFA if the Commission considers that it is not contrary to the public interest to do so. The termination takes effect at the end of the day on which the Commission makes its determination, or at such later time as is specified in the determination.

Period of operation cannot be extended

(5) The period of operation of the EFA cannot be extended after the commencement of this Part.

EFA is displaced by Australian workplace agreement

(6) If an Australian workplace agreement comes into operation in relation to an employee who is bound by the EFA, the EFA ceases to have effect in relation to that employee.

EFA displaced by certain awards or orders

(7) The following prevail over an EFA, to the extent of any inconsistency:
   (a) an exceptional matters order;
   (b) an award made under subsection 170MX(3) of the Workplace Relations Act.

Disability Discrimination Act

(8) For the purposes of the Disability Discrimination Act 1984, an EFA is taken to be an award of the kind referred to in:
   (a) the definition of Commonwealth law in section 4 of that Act;
   and
   (b) section 47 of that Act.

Sex Discrimination Act

(9) For the purposes of the Sex Discrimination Act 1984, an EFA is taken to be an award of the kind referred to in section 40 of that Act.

Interpretation

(10) In this item:

   EFA means an enterprise flexibility agreement.
Notes to the  *Workplace Relations Act 1996*

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**Table A**

*majority of the employees* means a majority of the employees who are bound by the EFA.

*period of the EFA* means the period of operation specified in the EFA, or that period as extended or further extended.

*pre-commencement EFA* means an enterprise flexibility agreement that is in force at the commencement of this Part.

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**Schedule 11**

88 **Certified agreements**

Part 2 of Schedule 8 applies to the amendments made by this Schedule, so far as they relate to certified agreements, in the same way as that Part applies to the amendments made by Part 1 of Schedule 8.

89 **Enterprise flexibility agreements**

Part 2 of Schedule 9 applies to the amendments made by this Schedule, so far as they relate to enterprise flexibility agreements, in the same way as that Part applies to the amendments made by Part 1 of Schedule 9.

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**Schedule 13**

16 **Bans clauses**

Despite items 1, 4, 6, 7 and 11, sections 125 and 166 and Division 2 of Part VIII of the *Workplace Relations Act*, as in force immediately before the commencement of those items, continue to apply in relation to a bans clause that was in force immediately before that commencement.

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**Schedule 14**

41 **Transitional—notices under subsections 280(7) and (8) of the Workplace Relations Act**

(1) A notice given by a Registrar under subsection 280(7) of the Workplace Relations Act to an officer or employee of an organisation before the commencement of item 28 is, after that commencement, taken to have been given under subsection 280B(1) of the Workplace Relations Act.

(2) A notice given by a Registrar under subsection 280(8) of the Workplace Relations Act to an organisation before the commencement of item 28
is, after that commencement, taken to have been given under subsection 280B(3) of the Workplace Relations Act.

Schedule 17

29 Definitions

In this Part:

*amended TP Act* means the *Trade Practices Act 1974* as in force after the commencement.

*amended WR Act* means the Workplace Relations Act as in force after the commencement.

*commencement* means the commencement of this Schedule.

*Commission* has the same meaning as in the amended WR Act.

*conduct* includes threatened, impending or probable conduct.

*jurisdiction transfer day* means the transfer day as defined in Part 3 of Schedule 16.

*old TP Act* means the *Trade Practices Act 1974* as in force immediately before the commencement.

*old WR Act* means the Workplace Relations Act as in force immediately before the commencement.

30 Conciliation proceedings in progress under Division 7 of Part VI of old WR Act

If:

(a) before the commencement, the Commission was exercising conciliation powers under Division 7 of Part VI of the old WR Act in relation to a dispute about conduct; and

(b) that conduct continues after the commencement; and

(c) paragraphs 156(a) and (b) of the amended WR Act are satisfied in relation to the dispute;

the Commission may exercise conciliation powers under the amended WR Act in relation to the dispute as if the Commission had been notified of the dispute under section 157 of the amended WR Act.
31 If certificate under section 163D of old WR Act granted in relation to conduct that ended before commencement

If, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct ended before the commencement:

(a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and

(b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the ‘Court’ is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and

(c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that ended before the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to that conduct.

32 If certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

(1) This item applies if, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct continues after the commencement.

(2) In relation to so much of the conduct as occurred before the commencement:

(a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and

(b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the ‘Court’ is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and

(c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings
begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

(3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

33 If no certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

If:

(a) before the commencement, there was a dispute about conduct to which Division 7 of Part VI of the old WR Act applied; and

(b) no certificate under section 163D of the old WR Act was granted in relation to the dispute before the commencement; and

(c) the conduct continues after the commencement;

then, in relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that continues after the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to so much of the conduct as occurred before the commencement.

34 If conduct to which section 45D of old TP Act applied ended before commencement

If conduct to which section 45D of the old TP Act applied ended before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

35 If conduct to which section 45D of old TP Act applied continues after commencement

(1) This item applies if conduct to which section 45D of the old TP Act applied started before the commencement and continues after the commencement.
In relation to so much of the conduct as occurred before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct started on the commencement.

### 36 Power to vary or rescind orders and injunctions made under repealed provisions

(1) An order or injunction:
   - made by a court before the commencement under or in relation to a repealed provision; or
   - made by a court after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;

   may, subject to subsection (2), be varied or rescinded by the court after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

(2) If the court that made the order or injunction is or was the Industrial Relations Court of Australia, the power to vary or rescind the order or injunction given by subsection (1) is, on or after the jurisdiction transfer day, to be exercised by the Federal Court of Australia, unless Part 3 of Schedule 16 provides for the Industrial Relations Court of Australia to continue to exercise jurisdiction in proceedings for the variation or rescission of the order or injunction.

(3) In this section:

   **repealed provision** means:
   - a provision of Division 7 of Part VI of the old WR Act; or
   - section 45D of the old TP Act.

### 37 Power to vary or revoke decisions of Commission made under repealed provisions

(1) A decision of the Commission:
   - made before the commencement under or in relation to a repealed provision; or
(b) made after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part; may be varied or revoked by the Commission after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

(2) In this section:

**decision** includes an order, direction or determination.

**repealed provision** means a provision of Division 7 of Part VI of the old WR Act.

Workplace Relations and Other Legislation Amendment Act 1997
(No. 198, 1997)

Schedule 5

5 Application of item 4
The amendment made by item 4 applies for the purpose of any consideration by the Commission, after the commencement of the item, of whether to certify an agreement, even if the application for certification was made before that commencement.

8 Application of items 1 and 7
For the purposes of the application of Part XA of the Workplace Relations Act 1996 in respect of any conduct occurring after the commencement of this item, the amendments made by items 1 and 7 are taken to have been in force at all times since the commencement of that Part.

10 Application of section 298Z
(1) Section 298Z of the Workplace Relations Act 1996 applies to an agreement that was:

(a) entered into before the commencement of Schedule 8 to the Workplace Relations and Other Legislation Amendment Act 1996; and
Table A

(b) covered by Division 2 of Part VIB of the Workplace Relations Act 1996 as then in force; as if the agreement were a certified agreement. Section 298Z so applies in spite of anything in section 170MK of the Workplace Relations Act 1996 as in force before the commencement of Schedule 8 to the Workplace Relations and Other Legislation Amendment Act 1996.

(2) Section 298Z of the Workplace Relations Act 1996 applies to an enterprise flexibility agreement that is in force at the commencement of this Schedule as if the enterprise flexibility agreement were a certified agreement. Section 298Z so applies in spite of anything in section 170NL of the Workplace Relations Act 1996 as in force before the commencement of Schedule 8 to the Workplace Relations and Other Legislation Amendment Act 1996.

Schedule 6

14 Application of items 1, 5 and 6
The amendments made by items 1, 5 and 6 apply for the purposes of any determination of whether an application under section 253ZJ of the Workplace Relations Act 1996 was properly made, including an application made before the commencement of this Schedule.

15 Commenced ballots for withdrawals from amalgamations
The amendments made by items 8, 9 and 11 do not apply in relation to any proposal for a constituent part of an amalgamated organisation to withdraw from the organisation if the ballot to decide whether the constituent part should withdraw has commenced under section 253ZM of the Workplace Relations Act 1996 before the commencement of this Schedule.

16 Applications for withdrawals from amalgamations
(1) If:

(a) an application was made, before the commencement of this Schedule, under section 253ZJ of the Workplace Relations Act 1996, for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation; and
(b) a ballot to decide whether the constituent part should withdraw has not commenced under section 253ZM of that Act before the commencement of this Schedule;

the amendments made by items 8, 9 and 11 apply in relation to the proposal for withdrawal, subject to the modifications specified in subitem (2).

(2) The modifications that apply in relation to the proposal for withdrawal are as follows:

(a) the requirement under subsection 253ZJA(1) of the Workplace Relations Act 1996 that the application referred to in that subsection must be accompanied by the outline referred to in that subsection is taken to be a requirement that the outline must be filed with the Court within such time as the Court allows;

(b) the requirement under subsection 253ZJB(2) of that Act is taken to be a requirement that the statement referred to in that subsection must be filed with the Court within such time as the Court allows.

17 Application of section 253ZW to acts etc. before commencement

Section 253ZW of the Workplace Relations Act 1996 applies to acts or omissions that took place before the commencement of this Schedule but after the commencement of Division 7A of Part IX of the Workplace Relations Act 1996 in the same way that it applies to acts or omissions that took place after the commencement of this Schedule.

18 Applications, and commenced ballots, for withdrawals from amalgamations

(1) Subject to subitem (2), the amendments made by items 2, 3, 4, 7 and 12 apply in relation to any application made before the commencement of this Schedule for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation.

(2) The amendments made by items 2, 3, 4, 7 and 12:

(a) do not apply to the extent (if any) that they would, apart from this paragraph, invalidate the application; and

(b) do not apply in relation to any proposal for a constituent part of an amalgamated organisation to withdraw from the
organisation if the ballot to decide whether the constituent part should withdraw has commenced under section 253ZM of the *Workplace Relations Act 1996* before the commencement of this Schedule.

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**Human Rights Legislation Amendment Act (No. 1) 1999 (No. 133, 1999)**

18 Referrals under the old SDA

The amendments made by items 1, 2, 85, 86, 97, 100, 122, 123, 124 and 125 of Schedule 1 do not apply to a complaint lodged before the starting day under section 50A, 50C or 50E of the old SDA.

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Schedule 3

20 Definition

In this Part:

*commencing time* means the time when this Part commences.

34 Warrants or writs etc. may continue to be executed

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

(a) the Commissioner of the Australian Federal Police; or
(b) a Deputy Commissioner of the Australian Federal Police; or
(c) an AFP employee; or
(d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian...
Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

35 Regulations dealing with matters of a transitional or saving nature

(1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.

(2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.


4 The transition time

In this Act:

*transition time* means 1.23 am Australian Central Standard Time on 26 October 1999.

Note: This time corresponds to the time in New York when the United Nations Security Council adopted Resolution 1272 (1999), which established UNTAET and gave it responsibility for the administration of East Timor. In 2000 the text of the Resolution was available in the Library of the Department of Foreign Affairs and Trade and accessible on the Internet through the Department’s or the United Nations’ world-wide web site.


Schedule 2

418 Transitional—pre-commencement offences

(1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
(a) an offence committed before the commencement of this item; or
(b) proceedings for an offence alleged to have been committed before the commencement of this item; or
(c) any matter connected with, or arising out of, such proceedings;
as if the amendment or repeal had not been made.

(2) Subitem (1) does not limit the operation of section 8 of the Acts Interpretation Act 1901.

419 Transitional—pre-commencement notices
If:

(a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
(b) any or all of those other provisions are repealed by this Schedule; and
(c) the first-mentioned provision is amended by this Schedule;
the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Workplace Relations Amendment (Termination of Employment) Act 2001
(No. 100, 2001)

Schedule 1

41 Application of items 1, 2 and 30
The amendments of the Workplace Relations Act 1996 made by items 1, 2 and 30 apply only in relation to applications under section 170CE of that Act made on or after the date on which those items commence.

42 Application of items 4 and 34
The amendments of the Workplace Relations Act 1996 made by items 4 and 34 apply only in relation to applications under section 170CE of that Act made on or after the date on which that item commences.
Table A

42A Application of items 9A and 10A

The amendments of the Workplace Relations Act 1996 made by items 9A and 10A apply only in relation to applications under section 170CE of that Act where the employment to which the application relates commenced on or after the date on which those items commence.

43 Application of item 11

The amendment of the Workplace Relations Act 1996 made by item 11 applies only in relation to applications under section 170CE of that Act made on or after the date on which that item commences.

44 Saving provision concerning certain motions for dismissal

If, under the rules of the Commission as in force before the date of commencement of item 12, a respondent has elected to have jurisdictional issues in relation to an application under section 170CE of the Workplace Relations Act 1996 determined but those issues have not been determined before that date, that election is to be treated, on and after that date, as if it were a motion for dismissal of the application made under section 170CEA of the Workplace Relations Act 1996 as amended by that item.

45 Application provision concerning certificates given under subsection 170CF(2) of the Workplace Relations Act 1996

Subsection 170CF(2) of the Workplace Relations Act 1996, as amended by item 13, applies only in relation to applications under section 170CE of that Act made on or after the date on which that item commences.

47 Application of item 26

The amendment of the Workplace Relations Act 1996 made by item 26 applies only in relation to applications under section 170CE of that Act made on or after the date on which that item commences.

48 Application of items 31, 32 and 33

The amendments of the Workplace Relations Act 1996 made by items 31, 32 and 33 apply only in relation to a proceeding relating to an application under section 170CE of that Act made on or after the date on which those items commence.
49 Application of item 36
The amendment of the Workplace Relations Act 1996 made by item 36 applies only in relation to applications under section 170CP of that Act made on or after the date on which that item commences.

50 Application provision concerning unmeritorious or speculative proceedings
Subdivision G of Division 3 of Part VIA of the Workplace Relations Act 1996, as inserted by item 40, applies only in relation to proceedings brought under that Subdivision in relation to applications under section 170CE of that Act made on or after the date on which that item commences.


4 Application of amendments
(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments
The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.
Table A

*Workplace Relations Legislation Amendment (Registration and Accountability of Organisations) (Consequential Provisions) Act 2002 (No. 105, 2002)*

**Schedule 2**

**114  Transitional and saving provisions**

1. An application made under section 291A of the *Workplace Relations Act 1996* but not determined before the commencement of this item is taken to have been made under section 170LKA of that Act as in force after that commencement.

2. A certificate in force under section 291A of the *Workplace Relations Act 1996* as in force immediately before the commencement of this item continues in force on and after that commencement as if it had been issued under section 170LKA of that Act as in force after that commencement.

*Workplace Relations Amendment (Genuine Bargaining) Act 2002 (No. 123, 2002)*

**Schedule 1**

**3A  Application of items 1A, 2A and 2B**

The amendments made by items 1A, 2A and 2B apply in relation to a bargaining period that began before, at or after the commencement of those items, even if proceedings for the suspension or termination of the bargaining period were started (but not determined) before that commencement.

**3  Application of item 1**

The amendment made by item 1 applies in relation to a bargaining period that began before, at or after the commencement of that item.

**4  Application of item 2**

The amendment made by item 2 applies in relation to a bargaining period that ended before, at or after the commencement of that item.
Table A


Schedule 3

57 Application of item 28

The amendment made by item 28 applies in relation to decisions of the Commission made before, on or after the commencement of that item.

58 Application of items 33 and 43

The amendments made by items 33 and 43 apply in relation to applications made before, on or after the commencement of those items.

59 Application of items 36 to 40

The amendments made by items 36 to 40 apply in relation to applications made before, on or after the commencement of those items.

60 Application of item 42

The amendment made by item 42 applies in relation to applications made before, on or after the commencement of that item.

61 Application of item 45

The amendment made by item 45 applies in relation to any breach of a term of an award, order or agreement (whether committed before, on or after the commencement of that item).

Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Act 2003 (No. 20, 2003)

Schedule 1

13 Application of items 1 and 2

The amendments made by items 1 and 2 apply for the purpose of any consideration by the Commission after the commencement of this item in relation to a certified agreement, even if the application to the Commission was made before that commencement.
Table A

14 Application of item 11
   The amendment made by item 11 applies in relation to any certified agreement whether certified before or after the commencement of this item.

15 Application of item 12
   The amendment made by item 12 applies in relation to:
   (a) applications made before the commencement of this item but not decided by the Commission before that commencement; and
   (b) applications made after the commencement of this item in relation to certified agreements certified before or after that commencement.

16 Payments received before commencement
   To avoid doubt, the amendments made by Part 1 of this Schedule do not affect payments received before the commencement of this item.


Schedule 1

6 Application of amendments
   To avoid doubt, the amendments made by this Schedule apply in relation to an employee’s absence even if the whole or a part of the absence occurred before the commencement of this item.

Workplace Relations Amendment (Fair Termination) Act 2003 (No. 104, 2003)

Schedule 1

20 Application of items 1 to 19 (other than item 4)
   The amendments made by items 1 to 19, other than item 4, only apply in relation to terminations of employment that occur after the commencement of those items (whether the employment commenced before or after that commencement).
Table A


Schedule 1

27 Definition
   In this Part:
   Principal Act means the Workplace Relations Act 1996.

28 Application of item 1
   The amendment of the Principal Act made by item 1 applies to:
   (a) appeals to the Full Bench instituted under section 45 of the Principal Act but not determined before the commencement of that item; and
   (b) appeals to the Full Bench under that section instituted on or after that commencement.

29 Application of item 7
   The amendment of the Principal Act made by item 7 applies to:
   (a) applications made under section 170MW of the Principal Act but not determined as at the commencement of that item; and
   (b) applications made under that section on or after that commencement.

30 Application of item 10
   The amendment of the Principal Act made by item 10 applies to:
   (a) applications made under section 501 of the Principal Act but not determined as at the commencement of that item; and
   (b) applications made under that section on or after that commencement.

31 Application of item 13
   The amendment of the Principal Act made by item 13 applies to:
   (a) proceedings before the Full Bench under section 502 of the Principal Act but not determined as at the commencement of that item; and
   (b) proceedings referred to the Full Bench under that section on or after that commencement.
Table A

32 Application of item 15

The amendment of the Principal Act made by item 15 applies only in relation to a breach of a minimum term or condition of employment applicable to an employee under subsection 500(1) of that Act if that breach occurs on or after the commencement of that item.

33 Saving provision in relation to certain regulations made for the purposes of sections 353A and 514 of the Principal Act

(1) Any regulations made for the purposes of section 353A of the Principal Act and dealing with record keeping in relation to employees covered by an employment agreement (within the meaning of Part XV) that are in force immediately before the commencement of items 17, 18 and 19 continue in force, on and after that day, as if they were regulations made to deal with that matter for the purposes of subsection 514(2) of that Act as amended by those items.

(2) Any regulations made for the purposes of section 514 of the Principal Act that are in force immediately before the commencement of item 18 continue in force, on and after that day, as if they were regulations made for the purposes of subsection 514(3) of that Act as amended by that item.

34 Application of items 21 and 26—annual leave

(1) The amendments of the Principal Act made by items 21 and 26 (except the insertion of clause 1E of Schedule 1A) apply to the calculation of an employee’s annual leave in respect of:

(a) the first year of the employee’s employment that commences on or after the commencing day; and

(b) each subsequent year of the employee’s employment.

(2) For the purpose of the application of subitem (1) to an employee engaged before the commencing day and continuing in that employment on that day, the reference in paragraph (1)(a) to the first year of the employee’s employment that commences after the commencing day is a reference to the year commencing on the first anniversary of that engagement occurring on or after that day.

(3) The rule in subitem (1) applies even if an employee only works part of a year.
(4) To avoid doubt, the amendments made by items 21 and 26 do not affect any annual leave accumulated by an employee under Schedule 1A of the Principal Act before the commencing day.

(5) In this item:

*commencing day* means the day that items 21 and 26 of this Schedule commence.

### 35 Application of items 21 and 26—personal leave

(1) The amendments of the Principal Act made by items 21 and 26 (except the insertion of clause 1E of Schedule 1A) apply to:

   (a) the calculation of an employee’s personal leave in respect of:
      (i) the first year of the employee’s employment that commences on or after the commencing day; and
      (ii) each subsequent year of the employee’s employment; and
   (b) personal leave taken on or after the commencing day.

(2) For the purpose of the application of paragraph (1)(a) to an employee engaged before the commencing day and continuing in that employment on that day, the reference in subparagraph (1)(a)(i) to the first year of the employee’s employment that commences after the commencing day is a reference to the year commencing on the first anniversary of that engagement occurring on or after that day.

(3) The rule in paragraph (1)(a) applies even if an employee only works part of a year.

(4) Any sick leave accumulated by an employee under paragraph 1(1)(b) of Schedule 1A as in force immediately before the commencing day is taken to be personal leave accumulated by the employee as at the commencing day.

(5) In this item:

*commencing day* means the day that items 21 and 26 of this Schedule commence.

### 36 Bereavement leave

Clause 1E of Schedule 1A to the Principal Act applies in relation to deaths that occur on or after the commencement of item 26.
4 Application of amendments made by Part 1

The amendments made by Part 1 of this Schedule apply to work performed after the commencement of item 3 under a contract for services whether or not the contract was entered into before or after that commencement.

10 Application of item 5

The amendment of the Workplace Relations Act 1996 made by item 5 of this Schedule applies to applications for a declaration under a provision of Division 5 of Part VI of the Workplace Relations Act 1996 made on or after the commencement of that item.

11 Application of item 7—section 142A

Section 142A of the Workplace Relations Act 1996 (as inserted by item 7 of this Schedule) applies in relation to the making of a new declaration mentioned in paragraph 142A(1)(c), regardless of whether the old declaration mentioned in paragraph 142A(1)(a) was made before, on or after the commencement of that item.

12 Application of item 8

The amendment of the Workplace Relations Act 1996 made by item 8 of this Schedule applies in relation to awards made before, on or after the commencement of that item.

13 Transitional—date when common rule comes into force

(1) If the Commission makes a declaration of common rule under section 141 of the Workplace Relations Act 1996 (as it has effect because of subsection 493A(2) of that Act) within the period of 12 months starting on the day on which this item commences, the declaration comes into force immediately after the end of that period.

(2) Subitem (1) does not apply if the Commission specifies a condition in the declaration that the common rule is to come into force after the end of that period.
Schedule 4

5 **Application of items 2, 3 and 4**

The amendments made by items 2, 3 and 4 of this Schedule apply to work performed after the commencement of this Schedule under a contract for services, whether or not the contract was entered into before or after that commencement.

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_Law and Justice Legislation Amendment Act 2004 (No. 62, 2004)_

Schedule 1

59 **Application of items 57 and 58**

The amendments made by items 57 and 58 apply to matters commenced on or after the day on which those items commence.

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_Workplace Relations Amendment (Codifying Contempt Offences) Act 2004_ (No. 112, 2004)

Schedule 1

6 **Application of new offences in section 303**

1. Subsection 303(3) of the _Workplace Relations Act 1996_ (as amended by this Act) applies to the giving of false evidence after the commencement.

2. Subsection 303(4) of the _Workplace Relations Act 1996_ (as amended by this Act) applies to the inducement after the commencement.

Schedule 3

25 **Application of amendments**

The amendments made by this Schedule apply in relation to contraventions occurring after the commencement of the amendments.
Table A

Schedule 5

9 Application

The amendments made by Part 1 of this Schedule apply to persons convicted of a prescribed offence, whether the person is convicted before or after the commencement of that Part.

10 Transitional

(1) This item applies where:
   (a) a person was convicted of a prescribed offence before the commencement of Part 1 of this Schedule; and
   (b) the person was sentenced to a term of imprisonment for the offence; and
   (c) the sentence was suspended for a period; and
   (d) the person holds an office in an organisation when Part 1 of this Schedule commences.

(2) Despite subsection 215(2) of Schedule 1B to the Principal Act:
   (a) the person does not cease to hold the office until the end of the period of 28 days after the commencement of Part 1 of this Schedule; and
   (b) nothing done by the person before the commencement of that Part in fulfilment of that office is affected by the amendments made by that Part.

(3) Despite subsection 217(1) of Schedule 1B to the Principal Act, the person may, subject to subsection 217(4) of that Schedule, within 28 days after the commencement of Part 1 of this Schedule, apply to the Federal Court under section 217 of that Schedule for leave to hold office in organisations.

11 Savings—applications and orders under section 216 of Schedule 1B to the Principal Act

(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 216 of Schedule 1B to the Principal Act, that application is to be dealt with as if that Schedule had not been amended by Part 1 of this Schedule.
(2) If:
   (a) the Federal Court makes an order under section 216 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
   (b) the Federal Court makes an order in reliance on subitem (1); that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

12 Savings—applications and orders under section 217 of Schedule 1B to the Principal Act

(1) If, before the commencement of Part 1 of this Schedule, a person makes an application to the Federal Court under section 217 of Schedule 1B to the Principal Act, that application is to be dealt with as if Schedule 1B to the Principal Act had not been amended by that Part.

(2) If:
   (a) the Federal Court makes an order under section 217 of Schedule 1B to the Principal Act before the commencement of Part 1 of this Schedule; or
   (b) the Federal Court makes an order in reliance on subitem (1); that order has effect after the commencement of Part 1 of this Schedule as if Schedule 1B to the Principal Act had not been amended by that Part.

13 Definition

In this Part:

Schedule 1B to the Principal Act means Schedule 1B to the Workplace Relations Act 1996.

Workplace Relations Amendment (Agreement Validation) Act 2004 (No. 155, 2004)

Schedule 1

3 Application provision

The amendments made by this Act do not apply in relation to industrial action, or a lockout, if, before the commencement of this Act, a court...
Table A

has found the industrial action or lockout not to be protected action (within the meaning of Division 8 of Part VIB of the Workplace Relations Act 1996).

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

(1) If:

(a) a decision or action is taken or another thing is made, given or done; and

(b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister's determinations

If a determination under subsection 20(1) of the Financial Management and Accountability Act 1997 is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.
Table showing Parts, Divisions, Subdivisions, Sections and Schedules of the *Workplace Relations Act 1996* after renumbering by the *Workplace Relations Amendment (Work Choices) Act 2005* (No. 153, 2005).

**NOTE**—This Table does not form part of the *Workplace Relations Act 1996* and is printed for convenience of reference only.

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*Workplace Relations Act 1996* 105
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*Workplace Relations Act 1996* 123
### Renumbering Table

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