

Queensland



# **INDUSTRIAL ORGANISATIONS ACT 1997**

**Reprinted as in force on 1 June 1998  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 1 June 1998.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have been made to—

- omit the enacting words (s 42A)
- make all necessary consequential amendments (s 7(1)(k)).

**See endnotes for information about when provisions commenced.**

Queensland



**INDUSTRIAL ORGANISATIONS ACT  
1997**

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# INDUSTRIAL ORGANISATIONS ACT 1997

[reprinted as in force on 1 June 1998]

## An Act to provide for industrial organisations in Queensland and for other matters

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Industrial Organisations Act 1997*.

#### Commencement

- 2.(1) This Act commences on a day to be fixed by proclamation.
- (2) Part 12, division 8 commences 6 months after section 3 commences.

#### Objects of Act

3. The objects of this Act are—
  - (a) to encourage the democratic control of industrial organisations (“**organisations**”)<sup>1</sup> and participation by their members in the affairs of organisations; and
  - (b) to encourage the efficient management of organisations; and
  - (c) to ensure 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

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<sup>1</sup> Industrial organisations are called ‘organisations’: see the dictionary in the schedule, definition “organisation”.

- (d) to ensure employee and employer organisations registered under this Act<sup>2</sup> are representative of, and accountable to, their members and are capable of operating effectively.

### **Definitions—the dictionary**

**4.(1)** The dictionary in schedule 3 defines particular words used in this Act.

**(2)** Definitions found elsewhere in this Act are signposted in the dictionary.

### **Act does not bind State**

**5.(1)** This Act does not bind the State.

**(2)** However, the State is bound by section 91<sup>3</sup> and part 14<sup>4</sup>.

## **PART 2—REGISTRATION**

### **Definitions for pt 2**

**6.** In this part—

“**enterprise**” means—

- (a) a business that is carried on by only 1 employer; or
- (b) a functionally distinct part of a business mentioned in paragraph (a); or
- (c) 2 or more functionally distinct parts of the same business carried on by the same employer.

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<sup>2</sup> This Act is only concerned with industrial organisations registered in Queensland. Commonwealth employee and employer organisations in Queensland are registered under the Commonwealth Act.

<sup>3</sup> Section 91 (Conduct about exemption certificate holders)

<sup>4</sup> Part 14 (Freedom of association)

“**enterprise association**” means an association of a type mentioned in section 9(1)(d).<sup>5</sup>

### **Applying for registration—general**

**7.(1)** An employee or employer association may apply to the commission for registration.<sup>6</sup>

**(2)** The application must be—

- (a) in the form in the rules of court; and
- (b) signed by the applicant’s president and secretary.

**(3)** Notice of the application must be published by the applicant in the way prescribed under a regulation.

### **Applying for registration—employer associations**

**8.(1)** Only the following employer associations may apply for registration as an employer organisation—

- (a) an association whose members are all employers;
- (b) an association, some of whose members are employers, if—
  - (i) the association effectively represents its members who are employers; or
  - (ii) its members who are not employers are—
    - (A) officers of the association; or
    - (B) persons who carry on business otherwise than as employees; or
    - (C) persons who were employers when admitted to membership of the association and whose membership has not ended, by resignation or otherwise.

**(2)** The application must be accompanied by—

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<sup>5</sup> Section 9 (Applying for registration—employee associations)

<sup>6</sup> ‘Registration’ means registration as an organisation: see the dictionary in the schedule, definition “registration”.

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- (a) particulars of the name and the place or places where business is carried on by each employer member; and
- (b) a list of persons holding appointment as the following officers of the association—
  - (i) president;
  - (ii) secretary;
  - (iii) management or executive committee members;
  - (iv) if the association has trustees—trustees;
  - (v) other officers, and their official designations; and
- (c) 2 copies of the association’s rules; and
- (d) for an association of more than 1 person—a copy of a resolution in favour of registration of the association passed under the association’s rules—
  - (i) by a majority of the employers who are members of the association; or
  - (ii) in another way allowed by the rules; and
- (e) a list of the callings in which employees are employed by the association’s members who are employers; and
- (f) particulars of—
  - (i) the control of the association’s property; and
  - (ii) investment of its funds, as distinct from the property and funds of the members of the association; and
- (g) the address of the proposed registered office under section 20;<sup>7</sup> and
- (h) the appropriate fee under the rules of court.

**Applying for registration—employee associations**

**9.(1)** Only the following employee associations may apply for registration as an employee organisation—

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<sup>7</sup> Section 20 (Registered office of organisation)

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- (a) an association whose members are all employees;
  - (b) an association, some of whose members are employees, if the other members are officers of the association;
  - (c) an association of which—
    - (i) some or all of the members are employees; and
    - (ii) the other members, if any, are 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 association; and
  - (d) an association of which some or all of the members are employees performing work in the same enterprise and the other members, if any, are—
    - (i) officers of the association; or
    - (ii) independent contractors who, if they were employees performing work of the type that they usually perform as independent contractors, would be employees eligible for membership of the association.
- (2)** The application must be accompanied by—
- (a) a list of the association's members; and
  - (b) a list of the persons holding appointment as the following officers of the association—
    - (i) president;
    - (ii) secretary;
    - (iii) management or executive committee members;
    - (iv) if the association has trustees—trustees;
    - (v) other officers, and their official designations; and
  - (c) 2 copies of the association's rules; and
  - (d) a copy of a resolution in favour of registration of the association passed under the association's rules—
    - (i) by a majority of its members present at a general meeting; or
    - (ii) in another way allowed by the rules; and

- (e) a list of callings of its members or callings to which its eligibility rules relate; and
- (f) a list of the localities where its members exercise their callings; and
- (g) the address of the proposed registered office under section 20;<sup>8</sup> and
- (h) the appropriate fee under the rules of court.

### **Registration criteria—employer associations**

**10.(1)** The commission may approve an employer association's application for registration if—

- (a) the association exists to further or protect its members' interests; and
- (b) its employer members have in total employed a monthly average of at least 20 employees during the 6 months before the making of the application; and
- (c) the commission is satisfied the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and
- (d) the association's rules have—
  - (i) the provisions required by this Act; and
  - (ii) been approved by the commission under section 13;<sup>9</sup> and
- (e) the association's name is not—
  - (i) the same as an organisation's name; or
  - (ii) so similar to an organisation's name as to be likely to cause confusion; and
- (f) registration of the association would further the objects of this Act; and

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<sup>8</sup> Section 20 (Registered office of organisation)

<sup>9</sup> Section 13 (Approving and registering rules—Cwlth s 205)

- (g) there is no organisation to which members of the association might belong, or no organisation—
  - (i) to which the members of the association could more conveniently belong; and
  - (ii) that would effectively represent those members.

(2) Despite subsection (1)(b), the commission may approve an application if it is satisfied there are special circumstances that justify the association's registration.

(3) In applying subsection (1)(c), 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 187<sup>10</sup> had the association been registered when the conduct happened.

(4) Without limiting the matters the commission may take into account in considering, under subsection (1)(g)(ii), the effectiveness of the representation of an organisation, it must take into account whether the representation would be consistent with the objects of this Act.

### **Registration criteria—employee associations other than enterprise associations**

**11.(1)** The commission may approve an application for registration by an employee association, other than an enterprise association, if—

- (a) the association exists to further or protect its members' interests; and
- (b) the association is free from control by, or improper influence from, an employer or an employer association or organisation; and
- (c) the association has at least 20 members who are employees; and
- (d) the commission is satisfied the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and
- (e) the association's rules have—

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<sup>10</sup> Section 187 (Cancelling registration for industrial conduct)

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- (i) the provisions required by this Act; and
- (ii) been approved by the commission under section 13;<sup>11</sup> and
- (f) the association's name is not—
  - (i) the same as an organisation's name; or
  - (ii) so similar to an organisation's name as to be likely to cause confusion; and
- (g) registration of the association would further the objects of this Act; and
- (h) there is no organisation to which members of the association might belong, or no organisation—
  - (i) to which the members of the association could more conveniently belong; and
  - (ii) that would effectively represent those members.

(2) In applying subsection (1)(c), 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 187<sup>12</sup> had the association been registered when the conduct happened.

(3) Despite subsection (1)(d), the commission may approve an application if it is satisfied there are special circumstances that justify the association's registration.

(4) Despite subsection (1)(h), the commission may approve an application if it accepts an undertaking it considers appropriate from the association to avoid demarcation disputes that might otherwise arise from an overlap between the association's eligibility rules and those of the organisation.

(5) Without limiting the matters the commission may take into account in considering, under subsection (1)(h)(ii), the effectiveness of the representation of an organisation, it must take into account whether the representation would be consistent with the objects of this Act.

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<sup>11</sup> Section 13 (Approving and registering rules—Cwlth s 205)

<sup>12</sup> Section 187 (Cancelling registration for industrial conduct)



**Registration criteria—enterprise associations**

**12.(1)** The commission may approve an enterprise association's application for registration if—

- (a) the association—
  - (i) is a genuine enterprise association; and
  - (ii) exists to further or protect its members interests; and
- (b) the association is free from control by, or improper influence from—
  - (i) an employer, whether at the enterprise to which the enterprise association belongs or otherwise; or
  - (ii) an entity with an interest in the enterprise; or
  - (iii) an organisation or an employers or employees association; and
- (c) the association has at least 20 members who are employees; and
- (d) the commission is satisfied the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and
- (e) the association's rules have—
  - (i) the provisions required by this Act; and
  - (ii) been approved by the commission under section 13; and
- (f) the association's name is not—
  - (i) the same name as an organisation's name; or
  - (ii) so similar to an organisation's name as to be likely to cause confusion; and
- (g) the commission is satisfied a majority of the persons eligible to be members of the association support its registration as an organisation; and
- (h) a resolution in favour of the association's registration was passed under the association's rules by—
  - (i) a majority of its members present at a general meeting; or

- (ii) an absolute majority of its management committee; and
- (i) registration of the association would further the objects of this Act.

(2) In applying subsection (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 187<sup>13</sup> had the association been registered when the conduct happened.

### **Approving and registering rules**

**13.(1)** If an association applies for registration, the registrar must give the association's rules to the commission for approval.

(2) The commission must approve the rules if satisfied they are not contrary to this Act or to law.

(3) The registrar must register the approved rules.

(4) An organisation's rules become effective when the organisation is registered.

### **Continued registration of small organisations**

**14.(1)** The commission may continue a small organisation's registration if it considers special circumstances exist to justify its continued registration in the public interest.

(2) The power under subsection (1) must not be exercised more than once a year for an organisation.

(3) The commission must cancel a small organisation's registration if it is not satisfied special circumstances exist to justify its continued registration in the public interest.

(4) In this section—

**“small organisation”** means—

- (a) for an employee organisation—an organisation having fewer than 20 members who are employees; or

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<sup>13</sup> Section 187 (Cancelling registration for industrial conduct)

- (b) for an employer organisation—an organisation whose employer members have in total employed a monthly average of fewer than 20 employees during the 6 months before the commission acts under subsection (1).

### **Registering several organisations for the same calling**

**15.(1)** If there are 2 or more associations for a calling, 2 or more of them may apply for joint registration.

**(2)** If an association applies for registration for a calling for which an organisation is already registered, the commission may—

- (a) approve the application; and
- (b) if it approves the application—bracket together the registration of the organisations for the calling.

**(3)** If the commission brackets together the registration of organisations for a calling, subsection (2) applies to a later application for registration by another association for the same calling.

**(4)** If an association applies for registration for a calling for which an organisation is registered, the commission must give at least 14 days notice to the organisation before it considers the application.

**(5)** An organisation given notice under subsection (4) may be heard as prescribed under a regulation before the commission to oppose the approval of the application.

**(6)** Industrial organisations that have had their registrations bracketed for a calling have joint rights under this Act.

**(7)** In a proceeding before the court, the commission, a magistrate, or the registrar, the organisations may appear jointly or separately.

### **Change of callings**

**16.** On an application by an organisation in the way prescribed under a regulation, the commission may change a calling for which the organisation is registered.

**Deciding application**

**17.(1)** A person may object to an application for registration if the person—

- (a) has an appropriate interest in the matter; and
- (b) gives notice to the commission in the time and way prescribed under a regulation.

**(2)** If the commission receives a notice objecting to an application, the commission must—

- (a) fix a hearing day for the objection; and
- (b) give notice of the day, as prescribed under a regulation; and
- (c) on the day notified, or another day to which the matter is adjourned—hear and decide the application and objections.

**(3)** If the commission grants an association's application for registration, the registrar must immediately register the association as an organisation.

**(4)** On registration of the organisation, the registrar must—

- (a) give it a certificate of registration in the form in the rules of court; and
- (b) enter the organisation's name in the register.

**(5)** If requested by the organisation, the registrar may give it a copy of the certificate or a replacement certificate.

**Organisations corporate bodies**

**18.** An organisation, in its registered name—

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has power to purchase, take on lease or hire, hold, sell, lease, let, mortgage, exchange, accept or dispose of by way of gift, own, possess, and otherwise deal with property; and
- (d) must have a common seal; and
- (e) may sue and be sued.

**Registered name of organisation**

**19.(1)** An organisation's registered name must include the words—

- (a) if it is an employer organisation—'industrial organisation of employers' or 'industrial union of employers'; or
- (b) if it is an employee organisation—'industrial organisation of employees' or 'industrial union of employees'.

**(2)** The registered name of an employer or employee organisation must state the locality where most of its members live or carry on their business or calling.

**Registered office of organisation**

**20.(1)** An organisation must, within 7 days of being registered, have a registered office to which all notices to it may be given.

Maximum penalty—2 penalty units for each week the provision is contravened.

**(2)** The organisation must give notice to the registrar of—

- (a) the address of its registered office within 14 days after the organisation is registered; or
- (b) a change in the address of its registered office within 7 days after the change happens.

Maximum penalty—2 penalty units for each week the provision is contravened.

**(3)** The organisation's officers must ensure the organisation complies with subsections (1) and (2).

**(4)** If an organisation contravenes subsections (1) or (2), each of its officers commits a continuing offence, that is the offence of failing to ensure the organisation complies with the provision.

Maximum penalty for subsection (3)—the penalty for the contravention of the provision by the organisation .

**(5)** However, it is a defence for an officer to prove—

- (a) if the officer was in a position to influence the conduct of the organisation in relation to the offence, the officer exercised reasonable diligence to ensure the organisation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the organisation in relation to the offence.

## **PART 3—ORGANISATIONS' RULES**

### *Division 1—General*

#### **Requirement for rules**

**21.** An organisation must have rules about the matters required under this Act.

#### **General requirements for rules**

**22.** An organisation's rules must not—

- (a) contravene—
  - (i) this Act or its objects; or
  - (ii) an award, industrial agreement, certified agreement or EFA; or
  - (iii) law; or
- (b) prevent members of the organisation from—
  - (i) observing the law, an award, industrial agreement, certified agreement, EFA or QWA, or a decision of the court or commission; or
  - (ii) entering into written agreements under an award, industrial agreement, certified agreement, EFA or QWA or a decision of the commission; or

- (c) impose on its members, or membership applicants, conditions, obligations or restrictions that are oppressive, unreasonable or unjust, having regard to the objects of—
  - (i) this Act; and
  - (ii) the registration of organisations.

### **Content of rules**

**23.(1)** An organisation's rules must state the following—

- (a) the organisation's objectives;
- (b) the eligibility conditions for membership of the organisation;
- (c) the functions and powers of the organisation's committees, branch committees, office holders and branch office holders;
- (d) how meetings of members and committees of the organisation and its branches are called;
- (e) how office holders in the organisation and its branches are removed;
- (f) how committees of the organisation or its branches are controlled by the organisation's members or branch members;
- (g) how documents may be signed for the organisation;
- (h) that notice must be given by a stated authorised office holder to the commission of the existence or likelihood of industrial disputes, in the way prescribed under the rules of court;
- (i) how a person—
  - (i) becomes a member; or
  - (ii) stops being a member, other than by resignation;
- (j) how members resign;
- (k) how the organisation's property is controlled and its funds invested;
- (l) the conditions for spending the organisation's funds;

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- (m) that the organisation's accounts must be audited yearly or another more frequent period;
  - (n) that the organisation must keep a member's register, arranged according to branches if the organisation has branches;
  - (o) how the rules may be amended;
  - (p) that membership applicants must be informed in writing of—
    - (i) a member's financial obligations; and
    - (ii) when and how a member may resign;
  - (q) that a full-time officer or a full-time employee of the organisation or branch of the organisation may not be elected to an office in the organisation or branch, other than an office stated by the rules to be a full-time elected position;
  - (r) that the organisation's or a branch's management committee membership must not be made up of more than a total of 30% of the organisation's or branch's full-time elected officers or full-time employees;
  - (s) that there must be an annual general meeting of its members;
  - (t) that its annual general meeting must be held within 5 months of the end of each of its financial years, including a financial year under section 195(2);<sup>14</sup>
  - (u) that its annual general meeting may pass a resolution that binds the management committee of the organisation or its branches;
  - (v) that if an annual general meeting takes the form of a meeting of elected delegates, no more than 30% of the delegates may be full-time elected officers or full-time employees of the organisation.
- (2)** An organisation's rules may—
- (a) state the industry for which the organisation is formed; and
  - (b) make another provision that does not contravene this Act.

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<sup>14</sup> Section 195 (Meaning of "financial year" in pt 12)



(3) However, an organisation's rules may only provide for a person's removal from an elected office in the organisation or branch if the person—

- (a) has been found guilty under the rules of—
  - (i) misappropriation of the organisation's or branch's funds; or
  - (ii) substantial contravention of the rules; or
  - (iii) gross misbehaviour or gross neglect of duty in the office; or
- (b) has stopped being eligible to hold the office under the rules.

(4) In this section—

**“committee”**, of an organisation or a branch, means a body of the members or officers of the organisation or branch that has the powers mentioned in paragraph (b) of the definition “office” in schedule 3.

### **Rules to give conditions for loans, grants and donations**

**24.(1)** An organisation's rules must state that the organisation or a branch must not give a loan, grant or donation (a **“payment”**) totalling more than \$1 000 to anyone unless the organisation's or branch's management committee—

- (a) has approved the payment; and
- (b) is satisfied the payment could be given under the other rules of the organisation; and
- (c) if the payment is a loan—is satisfied—
  - (i) the security to be provided for the loan is sufficient; and
  - (ii) the proposed arrangements to repay the loan are satisfactory.

(2) Despite subsection (1), an organisation's rules may authorise a person to give a payment of no more than \$3 000 to a member of the organisation if the payment is—

- (a) to relieve the member, or the member's dependants, from severe financial hardship; and
- (b) made on condition that if the management committee at its next meeting does not approve the payment, it must be repaid as decided by the committee.

(3) In considering whether to approve a payment to a member under subsection (2), the management committee must consider if—

- (a) the payment was made under the organisation's rules; and
- (b) if the payment is a loan—it is satisfied—
  - (i) the security to be provided for the loan is sufficient; and
  - (ii) the proposed arrangements to repay the loan are satisfactory.

### *Division 2—Election rules*

#### *Subdivision 1—General*

#### **Rules for elections and ballots**

**25.(1)** An organisation's rules must—

- (a) provide for the election of the organisation's officers by—
  - (i) a direct voting system; or
  - (ii) a collegiate electoral system; and
- (b) provide for a returning officer, who is not an employee, member or officer of the organisation or a branch, to conduct an election or ballot if the organisation is exempted from the requirement that the electoral commission conduct an election or ballot for the organisation; and
- (c) require the organisation to give candidates for an election equal opportunity to express their views to members of an organisation in a statement that is—
  - (i) given to each member with the ballot papers for the election; and
  - (ii) paid for by the organisation; and
  - (iii) published in a way prescribed under a regulation.
- (d) require a returning officer, before rejecting a person's nomination as defective (other than because the person is not qualified to hold the office that the nomination is for)—

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- (i) to notify the person of the defect; and
- (ii) if practicable, to give the person the opportunity of remedying the defect within a stated period of not less than 7 days after the person is notified; and
- (e) provide for—
  - (i) the way a person becomes a candidate for election; and
  - (ii) the functions of returning officers; and
  - (iii) the declaration of the result of an election; and
- (f) if a ballot is required for an election—require the ballot to be a secret ballot, and allow for—
  - (i) absentee voting; and
  - (ii) the conduct of the ballot; and
  - (iii) the appointment, conduct and functions of scrutineers to represent the candidates at the ballot; and
- (g) ensure, as far as is practicable, that no irregularities can happen for an election.

(2) An organisation's rules may require compulsory voting in a ballot required for an election.

(3) An organisation's rules about elections for office must relate to elections for all offices in the organisation, including offices in the organisation's branches.

(4) In this section—

**“collegiate electoral system”** for an election of an organisation's officers means a system of electing the officers comprising—

- (a) a first stage, at which persons are elected to a number of offices by a direct voting system; and
- (b) 1 subsequent stage, at which persons are elected by and from the persons elected at the first stage.

**“conduct an election”**, includes accept or reject nominations for the election.

**“direct voting system”**, for an election of an organisation’s officers, means a system of electing the officers in which, subject to reasonable provisions about enrolment of members in an organisation or branch in its rules, the following members may vote—

- (a) all financial members of the organisation or branch; or
- (b) all financial members included in the branch, section, class, or other division, of the organisation’s members, having regard to the nature of the office.

### **Rules for elections by secret postal ballot**

**26.(1)** This section applies if an organisation’s rules provide for an election to be by a direct voting system.

**(2)** An organisation’s rules must provide that if a ballot is necessary for an election, the ballot must be a secret postal ballot.

**(3)** However, the organisation may apply to the registrar for an exemption from subsection (2) that the ballot be a postal ballot.

**(4)** The application must include particulars of the proposed amendments to the organisation’s rules to provide for the conduct of the election by a secret ballot in a way other than a postal ballot.

**(5)** The registrar may only give the exemption if satisfied—

- (a) the proposed amendments—
  - (i) are not contrary to this Act, apart from subsection (1), or to law; and
  - (ii) have been properly decided under the organisation’s rules; and
- (b) the ballot under the organisation’s rules, as they would be if amended by the proposed amendments—
  - (i) is likely to have a higher participation by the organisation’s members than a postal ballot; and
  - (ii) will give members who are eligible to vote an adequate opportunity of voting without intimidation.

(6) If the registrar gives the exemption, the amendment of the organisation's rules made by the proposed amendments is effective from the day the registrar gives the organisation notice of the exemption, unless a later day is stated in the notice.

(7) The exemption remains effective until it is cancelled by the registrar under subsection (8).

(8) The registrar may cancel the organisation's exemption if—

- (a) the organisation applies and the registrar is satisfied its rules comply with subsection (2); or
- (b) the registrar—
  - (i) is no longer satisfied—
    - (A) the rules allow for elections under subsection (2) by a secret ballot other than a postal ballot; or
    - (B) of an issue under subsection (5)(b); and
  - (ii) has given the organisation the opportunity prescribed under a regulation to show cause why the exemption should not be cancelled.

(9) If the registrar cancels the organisation's exemption under subsection (8)(b), the registrar may by notice to the organisation, after giving it the opportunity to be heard prescribed under a regulation, amend the organisation's rules in the way the registrar decides is necessary for them to comply with subsection (2).

(10) If the registrar amends the organisation's rules under subsection (9), the amendment takes effect on the day the notice is given to the organisation, unless a later day is stated in the notice.

### **Rules about office terms**

**27.(1)** An organisation's rules may not allow an officer to hold office for more than 4 years (the "**maximum term**") without re-election.

(2) However, an organisation's rules may extend the maximum term for a period of no more than 1 year to synchronise elections for other officers in the organisation.

(3) Rules may be made for an extension under subsection (2) for a term beginning before the commencement.

### **Rules may allow filling casual vacancies**

**28.(1)** An organisation's rules may provide for filling a casual vacancy in an office in the organisation or its branches by—

- (a) an ordinary election; or
- (b) another way allowed by the rules.

(2) Despite subsection (1)(b), the rules must not allow the filling of a casual vacancy other than by ordinary election, if the unexpired part of the term of the office is longer than the greater of—

- (a) 1 year; or
- (b)  $\frac{3}{4}$  of the term of office.

(3) A person filling a casual vacancy in an office is taken to have been elected to the office under the relevant provisions if the vacancy in the office is filled by—

- (a) an ordinary election; or
- (b) another way allowed by the rules and this section.

(4) In this section—

**“relevant provisions”** means—

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

**“term”**, of an office, means the total period the person last elected to the office by an ordinary election, other than by an ordinary election to fill a casual vacancy, may hold the office without being re-elected, having regard to a rule permitted by section 27(2).

***Subdivision 2—Model election rules*****Minister may make model election rules**

- 29.(1)** The Minister may make model election rules for organisations.
- (2)** The model election rules are subordinate legislation.

**Organisations may adopt model election rules**

**30.** An organisation may, by its resolution, adopt all or part of the model election rules, with or without change.

**Adoption of entire model election rules without change**

**31.(1)** If an organisation adopts all of the model election rules without change, its secretary may give the registrar notice of the resolution.

**(2)** The registrar must register the notice as an amendment of the organisation's rules.

**Adoption of model election rules with change**

**32.(1)** This section applies if an organisation adopts—

- (a) the model election rules with change; or
- (b) part of the model election rules; or
- (c) all of the model election rules without change, but notice has not been given under section 31(1).<sup>15</sup>

**(2)** Within 1 year after the notification of the model rules, or a longer period allowed by the registrar, the organisation must—

- (a) amend its rules to comply with this part; and
- (b) file a copy of its amended election rules with the registrar.

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<sup>15</sup> Section 31 (Adoption of entire model election rules without change)

(3) If the registrar considers the amended election rules do not comply with subsection (2), the registrar must require the organisation to file further amended election rules that do comply with this part within a stated time.

(4) The model election rules are taken to be the organisation's election rules if the organisation—

- (a) does not comply with subsection (2); or
- (b) does not file a complete set of its further amended election rules within a stated time under subsection (3); or
- (c) files a complete set of further amended election rules within a stated time under subsection (3) but the registrar considers they do not comply with this part.

(5) The registrar must give notice to the organisation if the registrar considers its further amended election rules do not comply with this part.

***Division 3—Exemption from elections for organisations with counterpart federal bodies***

**What is a counterpart federal body**

**33.** A federal organisation or a branch or part of a federal organisation is a “**counterpart federal body**” of an organisation if a substantial number of members of each are—

- (a) members or eligible to be members of both; or
- (b) engaged in the same work, in aspects of the same work or in similar work; or
- (c) employed in the same or similar work by employers engaged in the same industry; or
- (d) engaged in work or in industries for which there is a community of interest.

**Exemption if federal election held**

**34.(1)** This section applies if—



- (a) an organisation's counterpart federal body has held an election under the Commonwealth Act (the "**federal election**"); and
- (b) the organisation's rules provide that it has offices corresponding to offices in its counterpart federal body.

(2) The organisation may apply to the commission for an exemption from holding an election.

(3) A member of the organisation may object to the exemption—

- (a) on the ground that the exemption would detrimentally affect the objector's interests; and
- (b) in the way prescribed under a regulation.

(4) The commission may only give the exemption if satisfied—

- (a) the office will be filled by a person elected in the federal election to a corresponding office in the counterpart federal body; and
- (b) if the organisation's and the federal body's eligibility rules differ—the interests of the organisation's members who were ineligible to vote in the federal election have not been detrimentally affected.

(5) If an exemption is given—

- (a) the person elected in the federal election is taken to have been elected to the office; and
- (b) the organisation's rules for the election are taken to be complied with.

(6) In this section—

**"corresponding office"**, to an office, means an office, however described, similar to the office.

### **Change in federal election result**

**35.(1)** This section applies if—

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- (a) an organisation has been given an exemption under section 34;<sup>16</sup> and
- (b) an order under the Commonwealth Act has changed the federal election result about which the exemption was given.

(2) The organisation must give the commission notice of the change as soon as practicable after it becomes aware of the change.

Maximum penalty—40 penalty units.

(3) The organisation is taken to become aware of the change if an officer of the organisation becomes aware of it.

(4) If an organisation has given the commission notice of a change and the commission proposes to make an order under subsection (5), it must give an opportunity to be heard to—

- (a) the organisation; and
- (b) the officer holding the office the exemption is about; and
- (c) a member of the organisation.

(5) The commission may make an order it considers appropriate, including an order—

- (a) cancelling or amending the exemption; or
- (b) giving another exemption; or
- (c) validating a contravention of the organisation's election rules.

#### *Division 4—Changing name or eligibility rules*

#### **Application of div 4**

**36.** This division applies to a change of an organisation's name or an amendment of its eligibility rules, other than a change or amendment—

- (a) by the registrar under sections 41 or 297;<sup>17</sup> or

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<sup>16</sup> Section 34 (Exemption if federal election held)

<sup>17</sup> Section 41 (Registrar may amend rules—Cwlth s 203)  
Section 297 (Registrar may amend name of union)

- (b) decided by the commission under section 44(8);<sup>18</sup> or
- (c) proposed to be made for—
  - (i) an amalgamation under part 9;<sup>19</sup> or
  - (ii) a withdrawal from amalgamation under part 10.<sup>20</sup>

### **Commission's consent needed for change or amendment**

**37.(1)** A change of an organisation's name or an amendment of its eligibility rules is ineffective unless the commission consents to it.

**(2)** The commission may consent, wholly or partly, to the change or amendment only if satisfied it has been made under the organisation's rules.

**(3)** The commission may refuse to consent to an amendment of an organisation's eligibility rules if satisfied the amendment—

- (a) would contravene an agreement or understanding to which the organisation is a party; and
- (b) deals with the organisation's right to represent under this Act, the industrial interests of a particular class or group of persons.

**(4)** The commission may refuse to consent to an amendment of an employee organisation's eligibility rules if it—

- (a) is satisfied the amendment would change the effect of an order made by the full bench under the *Workplace Relations Act 1997*, section 293, or given effect to under section 513 of that Act, about the right of the organisation to represent the industrial interests of a particular class or group of employees; and
- (b) considers that the change would give rise to a serious risk of a demarcation dispute that would prevent, obstruct or restrict the performance of work in an industry, or harm an employer's business.

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<sup>18</sup> Section 44 (Rules contravening s 22)

<sup>19</sup> Part 9 (Amalgamating industrial organisations)

<sup>20</sup> Part 10 (Withdrawal from amalgamations)

(5) Subsections (3) and (4) do not limit the grounds on which the commission may refuse to consent to an amendment of an organisation's eligibility rules.

(6) The commission may not consent to an amendment of an organisation's eligibility rules if, for a person who would be eligible for membership because of the amendment, the commission considers there is another organisation—

- (a) to which the person might more conveniently belong; and
- (b) that would effectively represent the person.

(7) Despite subsection (6), the commission may consent to an amendment if, for an employee organisation, it accepts an undertaking it considers appropriate from the organisation to avoid demarcation disputes that might otherwise arise from an overlap between the organisation's eligibility rules and those of another organisation.

### **New name must be different from other organisations**

**38.** The commission must not consent to a change of an organisation's name unless satisfied the proposed new name is not—

- (a) the same as the name of another organisation; or
- (b) so similar to another organisation's name as to be likely to cause confusion.

### **When name change or rule amendment takes effect**

**39.** If the commission consents to a change of an organisation's name or an amendment of its eligibility rules, it takes effect on—

- (a) if a day is specified in the consent—the day; or
- (b) otherwise—on the day of the consent.

***Division 5—Amending rules*****Approval of rule amendments—Cwlth s 205**

**40.** The registrar may approve a proposed amendment of an organisation's rules, other than an amendment of its eligibility rules.

**(2)** However, subsection (1) does not apply to an amendment—

- (a) adopting model election rules without change under section 31;<sup>21</sup> or
- (b) ordered, directed or decided, and prepared by—
  - (i) the court; or
  - (ii) the commission; or
  - (iii) the registrar.

**(3)** The registrar must approve a proposed amendment if satisfied the amendment—

- (a) is not contrary to this Act or to law; and
- (b) is made under the organisation's rules.

**(4)** After a proposed amendment has been filed with the registrar, the registrar may, with the organisation's consent, alter the amendment to correct a typographical, clerical or formal error.

**(5)** The registrar must register an approved amendment.

**(6)** An amendment becomes effective—

- (a) for an amendment adopting the model election rules without change—when notice is given to the registrar under section 31(1);<sup>22</sup> or
- (b) for an amendment mentioned in subsection (2)(b)—from the day of the order, direction or decision; or
- (c) otherwise—when registered.

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<sup>21</sup> Section 31 (Adoption of entire model election rules without change)

<sup>22</sup> Section 31 (Adoption of entire model election rules without change)

**Registrar may amend rules—Cwlth s 203**

- 41.(1)** The registrar may amend an organisation's rules if the registrar—
- (a) considers the rules do not make provision as required by this Act; and
  - (b) has given the organisation an opportunity to be heard on the matter as prescribed under a regulation.
- (2)** The amendment—
- (a) must be made by instrument; and
  - (b) becomes effective when the instrument is made.

**Commission may amend rules if undertaking breached—Cwlth s 203A**

- 42.(1)** This section applies if—
- (a) in the course of an organisation's registration under section 11,<sup>23</sup> an undertaking was given under section 11(4) or 37(7); and
  - (b) the organisation has breached the undertaking.
- (2)** The commission may amend the organisation's rules in a way it considers necessary to remove an overlap between the organisation's eligibility rules and those of another organisation.
- (3)** The commission must give the organisation and the other organisation an opportunity to be heard on the matter as prescribed under a regulation.
- (4)** An amendment—
- (a) must be made by instrument; and
  - (b) takes effect on the day the instrument is made.

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<sup>23</sup> Section 11 (Registration criteria—employee associations other than enterprise associations)

**Some amendments to be recorded**

**43.** If an organisation amends its name or its eligibility rules under this Act, the registrar must—

- (a) for an amendment of name—
  - (i) enter the new name in the register; and
  - (ii) amend the organisation's registration certificate and return it to the organisation as soon as practicable after the organisation produces it to the registrar; and
- (b) for an amendment of eligibility rules—enter particulars of the amendment in the register.

## **PART 4—VALIDITY AND COMPLIANCE WITH RULES**

**Rules contravening s 22**

**44.(1)** An organisation member or the chief inspector may apply to the court for an order about an organisation's rules.

**(2)** The order may declare that—

- (a) the whole, or a part of, an organisation's rules contravene section 22;<sup>24</sup> or
- (b) an organisation's rules contravene section 22 in a stated way.

**(3)** The organisation must be given an opportunity to be heard by the court.

**(4)** Without limiting any of its other powers to adjourn proceedings under this section, the court may adjourn proceedings for a stated period on terms it considers appropriate to give the organisation an opportunity to amend its rules.

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<sup>24</sup> Section 22 (General requirements for rules)

(5) The court may make an interim order it considers appropriate for the proceeding.

(6) An interim order ends—

- (a) when the proceeding in which it is made ends; or
- (b) at an earlier time stated in the order; or
- (c) if it is discharged.

(7) If the order declares the whole or a part of a rule contravenes section 22, the rule or the part of the rule, is taken to be void from the making of the order.

(8) The appropriate authority may amend an organisation's rules to comply with section 22 for the matters that gave rise to the order if the authority—

- (a) is satisfied the rules have not been amended as required within 3 months of the making of the order; and
- (b) has given the organisation an opportunity to be heard.

(9) However, if an organisation applies within 3 months of the making of the order, or within any extension of that period, the appropriate authority may extend the period mentioned in subsection (8)(a).

(10) In this section—

**“appropriate authority”** means—

- (a) for an organisation's eligibility rules—the commission; or
- (b) for other rules—the registrar.

### **Directions to perform rules**

**45.(1)** An organisation member or the chief inspector may apply to the court for an order directing a person obliged to perform or observe the organisation's rules to perform or observe the rules.

(2) The court must give an opportunity to be heard to—

- (a) the organisation; and
- (b) a person against whom the order is sought.



(3) The court may refuse to deal with the application unless it is satisfied the applicant has taken all reasonable steps to resolve the matter within the organisation.

(4) The court may make an interim order it considers appropriate, for example, an order to help a resolution of the matter within the organisation.

(5) An interim order ends—

- (a) when the proceeding in which it is made ends; or
- (b) at an earlier time stated in the order; or
- (c) if it is discharged.

(6) An order must not be made under this section if it invalidates—

- (a) an election; or
- (b) a step for the election.

(7) In considering an application under this section the court may by its order declare—

- (a) the whole or a part of an organisation's rules contravene section 22;<sup>25</sup> or
- (b) an organisation's rules contravene section 22 in a stated way.

(8) Section 44,<sup>26</sup> other than subsections (1) to (3), applies to an order made under subsection (7) as if the order had been made under section 44.

(9) A person must not contravene an order under this section.

Maximum penalty—40 penalty units.

(10) In this section—

“**election**” includes a purported election that is a nullity.

### **Financial help for application under this part**

**46.(1)** An organisation member may apply to the Minister for financial help if the member—

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<sup>25</sup> Section 22 (General requirements for rules)

<sup>26</sup> Section 44 (Rules contravening s 22)

- (a) proposes to take, is taking, or has taken a proceeding under this part; and
- (b) applies within 3 months after the proceeding ends.

(2) The Minister may direct the State to give financial help to the member for the cost of the proceeding if satisfied—

- (a) there are, or were, reasonable grounds for taking the proceeding; and
- (b) the proceeding is proposed to be, or was, taken in good faith.

(3) If a direction is made under this section, the registrar must decide the amount to be paid to the applicant.

(4) If appropriated by Parliament, all amounts decided by the registrar under subsection (3) must be paid out of the consolidated fund.

## **PART 5—CONDUCTING ELECTIONS**

### **Electoral commission to conduct elections**

**47.(1)** An election must be conducted by the electoral commission.

(2) However, subsection (1) does not apply to an election—

- (a) in an organisation or branch if an exemption given to the organisation or branch under section 50<sup>27</sup> is in force for—
  - (i) elections in the organisation or branch; or
  - (ii) an election for a particular office; or
- (b) for an office in an organisation if an exemption has been given for the office under section 34.<sup>28</sup>

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<sup>27</sup> Section 50 (Commission may give exemption from s 47)

<sup>28</sup> Section 34 (Exemption if federal election held)

**Application for exemption from s 47**

**48.(1)** An organisation's or branch's management committee may file in the registrar's office an application for the organisation or branch to be exempted from section 47(1) for—

- (a) elections for its offices; or
- (b) an election for a particular office.

**(2)** An application may only be made if the management committee—

- (a) has resolved to make the application; and
- (b) has notified the members of the organisation or branch, as prescribed under a regulation, of the making of the resolution.

**(3)** The application must be accompanied by an affidavit by a member of the management committee stating subsection (2) has been complied with.

**(4)** On the filing of an application, the registrar must publish, as prescribed under a regulation, a notice stating details of the application.

**(5)** If an organisation's rules require an office to be filled by an election by the members, or by some of the members, of 1 branch of the organisation, an election to fill the office is taken to be an election for the branch.

**Objections to application for exemption**

**49.(1)** A member of an organisation or branch of the organisation for which an application is made under section 48(1) may object to it.

**(2)** The commission must hear the application and properly made objections in the way prescribed under a regulation.

**Commission may give exemption from s 47**

**50.(1)** This section applies if—

- (a) an application for an organisation or branch has been filed under section 48(1);<sup>29</sup> and

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<sup>29</sup> Section 48 (Application for exemption from s 47)

*Industrial Organisations Act 1997*

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- (b) there are no properly made objections to the application or any properly made objections have been heard.

(2) The commission may exempt the organisation or branch from section 47(1)<sup>30</sup> for elections for the organisation or branch, or the election for the particular office if satisfied—

- (a) the rules of the organisation or branch comply with the requirements of this Act about the conduct of elections; and

- (b) if the organisation or branch were to be exempted from section 47(1), the elections for the organisation or branch, or the election for the particular office, would be conducted—

- (i) under the rules of the organisation or branch and this Act; and

- (ii) in a way that would give members who have the right to vote at the elections or election an adequate opportunity of voting without intimidation; and

- (c) if an exemption has been given to the organisation or branch under this section or to the organisation under section 111<sup>31</sup>—

- (i) the organisation or branch has not contravened section 51 or 112;<sup>32</sup> or

- (ii) a returning officer has not contravened section 52 or 113<sup>33</sup> for a ballot conducted under the exemption.

(3) The commission may cancel an exemption given to an organisation or branch if—

- (a) the management committee of the organisation or branch applies for its cancellation; or

- (b) the commission—

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<sup>30</sup> Section 47 (Electoral commission to conduct elections)

<sup>31</sup> Section 111 (Commission may give exemption from s 108)

<sup>32</sup> Section 51 (Duties of organisation or branch if exemption given)  
Section 112 (Duties of organisation of exemption given)

<sup>33</sup> Section 52 (Election result report)  
Section 113 (Ballot result report)

- (i) is no longer satisfied as required by subsection (2); and
  - (ii) has given the organisation's or branch's management committee an opportunity, as prescribed under a regulation, to show cause why the exemption should not be cancelled;  
or
- (c) the organisation or branch contravenes section 51 or 112.

### **Duties of organisation or branch if exemption given**

**51.(1)** This section applies if an organisation or branch has been exempted from section 47(1)<sup>34</sup> for elections for the organisation or branch or for an election for a particular office.

**(2)** Before holding an election to which the exemption applies the organisation or branch must—

- (a) appoint a returning officer, who is not an employee, member or officer of the organisation or branch, to conduct the election; and
- (b) give the registrar—
  - (i) notice of the returning officer's name; and
  - (ii) a statutory declaration sworn by the returning officer stating the returning officer is not an employee, member or officer of the organisation or any branch of the organisation; and
- (c) obtain the registrar's written approval of the returning officer's appointment.

**(3)** A contravention of this section does not invalidate an election to which the exemption applies.

### **Election result report**

**52.(1)** Within 14 days after the declaration of the result of a ballot, a written election result report containing the particulars prescribed under a regulation must be given to the registrar by—

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<sup>34</sup> Section 47 (Electoral commission to conduct elections)

- (a) if the electoral commission conducted the election—the electoral commission; or
- (b) otherwise—the returning officer appointed by the organisation or branch for which the election was held.

(2) A contravention of this section does not invalidate an election to which the exemption applies.

### **Registrar to arrange for elections**

**53.(1)** This section applies to an organisation or branch of an organisation intending to conduct an election, other than an organisation or branch that has an exemption under section 50<sup>35</sup> for the election.

(2) The organisation or branch must file the information prescribed under a regulation for the election in the registrar's office before the day prescribed under a regulation or a later day the registrar allows.

(3) The registrar must arrange for the election to be conducted by the electoral commission if—

- (a) the information is filed in the registrar's office by the organisation or branch, whether or not before the day permitted under subsection (2); and
- (b) the registrar is satisfied the election is required to be held under the rules of the organisation or branch.

### **Electoral commission's conduct of elections**

**54.(1)** If an electoral officer is conducting an election, or taking a step in an election, the electoral officer must comply with the rules of the organisation or branch for which the election is being conducted.

(2) Despite subsection (1), the electoral officer may take action, and give directions the electoral officer considers necessary—

- (a) to ensure no irregularities happen in the election; or

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<sup>35</sup> Section 50 (Commission may give exemption from s 47)

- (b) to remedy a procedural defect that appears to the electoral officer to exist in the rules.

(3) An election conducted by an electoral officer, or a step taken in an election, is not invalid merely because the rules of the organisation or branch are contravened by an action or direction under subsection (2).

(4) The electoral commissioner must arrange for another electoral officer to complete an election, or a step in an election, if the electoral officer conducting the election or taking the step—

- (a) dies or can not complete the election or take the step; or
- (b) ceases to be qualified to conduct the election or take the step.

### **Election expenses**

**55.(1)** The expenses of an election conducted by the electoral commission under this part are payable by the organisation for which the election was held.

(2) The organisation must pay the State the expenses within 1 month after receiving a written request from the electoral commission to do so.

(3) An amount payable by an organisation under this section may be recovered by the State as a debt payable to it.

### **Death of candidate**

**56.(1)** An election must be discontinued and a new election held if—

- (a) 2 or more candidates are nominated for the election; and
- (b) one of the candidates dies before the close of the ballot.

(2) Subsection (1) applies despite anything in an organisation's or branch's rules.

### **Ballot records must be preserved**

**57.(1)** This section applies—

- (a) if an election is held under this part; and
- (b) despite the rules of an organisation or branch.

(2) A responsible person for the election must do everything necessary to ensure all ballot records for the election are kept for 1 year after the election by—

- (a) if the election is conducted by the electoral commission—the electoral commission; or
- (b) otherwise—the organisation or branch.

Maximum penalty—40 penalty units.

(3) In this section—

**“responsible person”** means—

- (a) for an election conducted by the electoral commission—the electoral commission; or
- (b) otherwise—
  - (i) the returning officer for the election; or
  - (ii) the organisation or branch; or
  - (iii) an officer of the organisation or branch who performs a function in relation to the records.

### **Election help**

**58.** An organisation must help a candidate for an election in the way—

- (a) stated in the model election rules; or
- (b) prescribed under a regulation.

Maximum penalty—100 penalty units.

### **Resources of organisations not to be used for election purposes**

**59.** An organisation must not use, or permit its employees or agents, members or officers to use, the organisation’s property or resources to help a candidate for an election against another candidate for the election by advertising or distributing material about the election.

Maximum penalty—100 penalty units.



## **PART 6—DISPUTED ELECTIONS**

### *Division 1—Election inquiries*

#### **Application for election inquiry**

**60.(1)** This section applies if a financial member of an organisation, or a person who was a financial member of the organisation within the previous year, claims there has been an irregularity in an election.

**(2)** The member or person may apply to the court for it to conduct an inquiry (an “**inquiry**”) into the irregularity.

**(3)** An application for an inquiry must—

- (a) be in the form in the rules of court; and
- (b) be filed with the registrar within—
  - (i) 6 months after the election has ended; or
  - (ii) an extended period allowed by the registrar; and
- (c) state—
  - (i) the election the application is made for; and
  - (ii) the irregularity that is claimed to have happened; and
  - (iii) the facts relied on to support the application; and
- (d) be accompanied by an affidavit by the applicant stating the facts claimed in the application are true to the best of the applicant’s knowledge and belief.

#### **Action by registrar for inquiry**

**61.(1)** The registrar must allow an application for an inquiry for an election and refer the matter to the court if satisfied—

- (a) there are reasonable grounds to inquire whether there has been an irregularity in the election that may have affected, or may affect, the election result; and
- (b) the circumstances justify an inquiry.

(2) If the registrar is not satisfied to that effect, the registrar must refuse the application and inform the applicant of the refusal.

(3) The registrar may exercise powers under subsection (1) on the basis of—

- (a) anything stated in the application; or
- (b) other appropriate information the registrar has knowledge of.

(4) After the application is filed the court may authorise the registrar to—

- (a) inspect the ballot records that have been used for, or are appropriate to, the election; or
- (b) enter premises used or occupied by the organisation or branch where the registrar believes the ballot records are located, using necessary and reasonable help and force; or
- (c) require a person to deliver the ballot records in the person's possession or under the person's control to the registrar; or
- (d) take possession of the ballot records; or
- (e) keep the ballot records until—
  - (i) an inquiry is completed; or
  - (ii) an earlier time ordered by the court.

(5) The registrar may delegate the powers conferred on the registrar under subsection (4) to an appropriately qualified person.

(6) The court may only exercise the power under subsection (4) if it has first given a person the court considers should be heard, the opportunity to be heard by the court.

(7) A person must not—

- (a) contravene a requirement under subsection (4)(c); or
- (b) prevent the registrar or the registrar's delegate exercising power under this section.

Maximum penalty—40 penalty units.

**Court to conduct inquiry**

**62.(1)** If the registrar refers an application for an inquiry for an election to the court, the inquiry is taken to have been started in the court when the application is referred to it.

**(2)** When an inquiry starts, the court—

- (a) must fix a time and place for conducting it; and
- (b) may give directions to ensure that all persons who have the right to appear or be represented at the inquiry are given notice of the time and place.

**Court may make interim orders**

**63.(1)** The court may make any of the following orders (an “**interim order**”) after an inquiry for an election has started—

- (a) an order stopping any further steps to—
  - (i) conduct the election; or
  - (ii) carry into effect the election result;
- (b) an order stopping a person from acting in an office the inquiry is about, if the person has—
  - (i) assumed the office; or
  - (ii) continued to act in it; or
  - (iii) claims to occupy it;
- (c) an order directing a person who holds, or who last held before the election, an office that the inquiry is about, to act or continue to act in the office;
- (d) an order directing a member of the organisation or branch, or another stated person, to act in an office that the inquiry is about, if the court considers an order under paragraph (c) would—
  - (i) not be practicable; or
  - (ii) prejudice the efficient conduct of the affairs of the organisation or branch; or
  - (iii) be inappropriate having regard to the nature of the inquiry;

- (e) an order incidental or supplementary to an order made under this subsection;
- (f) an order amending or discharging an order made under this subsection.

(2) If a person is acting, or continuing to act, in an office under an interim order, the person is taken to hold the office—

- (a) while the order is in force; and
- (b) despite the rules of the organisation or branch.

(3) Unless an interim order is sooner discharged by the court, the order is in force until the earlier of—

- (a) the completion of the inquiry and everything the court ordered (other than under this section) during the inquiry; and
- (b) the day stated in the order for it to end.

### **Procedure at inquiry**

**64.(1)** At an inquiry for an election, the court may—

- (a) give leave to a person to appear or be represented at the inquiry; or
- (b) order a person to appear or be represented there.

(2) A person who appears or is represented, or who is ordered to appear or be represented, at an inquiry is taken to be a party to the inquiry.

### **Functions and powers of court at inquiry**

**65.(1)** At an inquiry for an election, the court must inquire into and decide—

- (a) if an irregularity has happened in the election; and
- (b) other questions it considers necessary about the conduct and results of the election.

(2) For the inquiry, the court has the powers and authorities of a commission of inquiry under the *Commissions of Inquiry Act 1950*.

(3) For subsection (2), the *Commissions of Inquiry Act 1950*, other than sections 4 and 19C,<sup>36</sup> apply as if, in the provisions—

- (a) a reference to an inquiry were a reference to the court's inquiry; and
- (b) a reference to a commission were a reference to the court; and
- (c) a reference to the chairperson, including a chairperson who is a Supreme Court Judge, of a commission were a reference to the president; and
- (d) a reference to a commissioner were a reference to the president; and
- (e) a reference to a regulation were a reference to a regulation made under this Act.

(4) The court may make orders it considers necessary for the inquiry, including a recount of votes for the election.

(5) If the court finds an irregularity has happened, or is likely to happen, in the election, it may make any of the following orders—

- (a) despite the rules of the organisation or branch—an order directing safeguards to be taken against irregularities in the election;
- (b) an order declaring the election, or a step taken in or for it, void;
- (c) an order declaring a person apparently elected at the election not to have been elected;
- (d) an order declaring a person to have been elected at the election instead of a person declared not to have been elected;
- (e) an order directing a fresh election or the repeat of a step in it, including calling for and submitting nominations, under—
  - (i) the rules of the organisation or branch, or the rules as amended by the court in a way it considers necessary to correct a procedural defect in the rules; or

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<sup>36</sup> *Commissions of Inquiry Act 1950* section 4 (Application of Act) and section 19C (Authority to use listening devices)

- (ii) despite the rules of the organisation or branch, the safeguards the court considers necessary to stop irregularities in the election;
- (f) an order appointing a returning officer—
  - (i) to act with a returning officer, if any, under the rules of the organisation or branch; and
  - (ii) to exercise the powers stated in the order for the election;
- (g) an order incidental or supplementary to an order under this subsection.

(6) However, the court must not make an invalidating order for the election unless the court decides that, having regard to the irregularity found and the likelihood that similar irregularities have happened or may happen, the election result may have been, or may be, affected by the irregularity.

(7) In subsection (6)—

“**invalidating order**” for an election means an order that—

- (a) the election, or a step taken in it, is void; or
- (b) a person has not been elected in the election.

### **Enforcing orders under this part**

66. The court may make an order in the nature of an injunction, either mandatory or restrictive, it considers necessary to enforce an order or perform its functions or exercise its powers under this part.

### **Preventing orders about disputed elections**

67. A person must not prevent the carrying out of a court order under this part.

Maximum penalty—40 penalty units.

### **Validating certain acts**

68.(1) This section applies if a person—

- (a) was apparently elected to an office in an election; and

- (b) the person has purported to act in the office since the election; and
- (c) the court declares the person's election void.

(2) The person's acts while purporting to act in the office that could have been validly done if the person were duly elected, are valid and effectual for all purposes.

(3) However, the court may, if it considers it desirable to do so, declare an act void.

(4) An act declared void is taken to be, and to have always been, inoperative.

### **Election not invalid**

**69.** An election, or step in it under a court order, is not invalid because of a contravention of the rules of an organisation or branch in complying with the order.

### **Inquiry costs**

**70.(1)** The Minister may pay the whole, or a part, of a person's costs incurred at an inquiry for an election if—

- (a) for a person who applies for the inquiry and the court finds an irregularity has happened—the Minister considers the circumstances justify the payment; or
- (b) for a person who applies for the inquiry but the court does not find an irregularity has happened—the court certifies the person acted reasonably in applying for the inquiry; or
- (c) for anyone else—the Minister is satisfied, having regard to the court's findings in the inquiry, it is not just that the person should pay the whole or a part of the costs.

(2) This section does not limit the court's power to make an order about the costs of the proceeding before the court in an inquiry.

(3) If appropriated by Parliament, costs payable by the Minister under this section must be paid out of the consolidated fund.

(4) In this section—  
“costs” includes expenses, for example, witness expenses.

### *Division 2—Registrar may conduct elections*

#### **Application of pt 6, div 2**

**71.** This division does not apply to an election conducted under section 47(1)<sup>37</sup> and only applies to an election mentioned in section 47(2).

#### **Registrar to conduct elections on request**

**72.(1)** To ensure no irregularities happen in an election, the organisation or branch may, by signed notice, request the registrar to conduct the election.

(2) A request may be made—

- (a) by or for the management committee of the organisation or branch; or
- (b) by the number of members of the organisation or of the branch that is the lower of 5% of the membership of the organisation or branch or 250.

(3) A regulation may prescribe the time when a request may be made.

(4) If the registrar decides a request for an election has been properly made and decides, on reasonable grounds, there is a likelihood of irregularity in the election, the registrar must—

- (a) give the organisation or branch signed notice of the decisions; and
- (b) make arrangements with the electoral commission for an electoral officer to conduct the election.

(5) If the registrar decides a request for an election has not been properly made or decides, on reasonable grounds, there is a likelihood of no irregularity in an election, the registrar must give the organisation or branch signed notice of the decision.

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<sup>37</sup> Section 47 (Electoral commission to conduct elections)



(6) When the registrar gives notice under subsection 4(a), if the election has already been held, it is taken to be void from the beginning.

(7) Despite the rules of the organisation or branch, an electoral officer may take action and give directions the officer considers necessary to—

- (a) ensure no irregularities happen in the election; or
- (b) remedy a procedural defect that appears to exist in the rules.

(8) If an electoral officer has given a direction under this section, a person must not contravene the direction or prevent another person from carrying out the direction.

Maximum penalty—40 penalty units.

(9) This part does not allow the conduct of an inquiry for an election conducted under this section.

(10) An election conducted under this section is not invalid because of—

- (a) an irregularity in an election request, as a result of which the election was conducted; or
- (b) a contravention of the rules of the organisation or branch—
  - (i) from an act done under this section; or
  - (ii) under a direction given under this section.

(11) A person must not prevent another person conducting an election under this section.

Maximum penalty—40 penalty units.

### **Election on registrar's initiative**

**73.(1)** This section applies if the registrar decides, on reasonable grounds, there is a likelihood of irregularity in an election.

(2) The registrar must—

- (a) give the organisation or branch signed notice of the decision; and
- (b) make arrangements with the electoral commission for an electoral officer to conduct the election.

(3) When the registrar gives a notice under subsection (2), section 72(6), (7), (9) and (10) apply as if the registrar had given the organisation or branch a notice under section 72(4)(a).

(4) If an electoral officer has given a direction under this section, a person must not—

- (a) contravene the direction; or
- (b) prevent another person from carrying out the direction.

Maximum penalty—40 penalty units.

(5) A person must not prevent another person conducting an election under this section from taking action under this section.

Maximum penalty—40 penalty units.

### *Division 3—Election expenses*

#### **Expenses for elections under this part**

**74.(1)** This section applies if—

- (a) the court orders any of the following under section 65<sup>38</sup> for an election for an organisation or branch—
  - (i) a fresh election to be held;
  - (ii) a step in an election to be taken again;
  - (iii) a safeguard, not allowed for in the rules of the organisation or branch, to be observed in an election or uncompleted steps in an election; or
- (b) an election is conducted under section 72 or 73<sup>39</sup> for the organisation or branch.

(2) The organisation or branch must pay the expenses of complying with the court's order about the election or for conducting the election.

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<sup>38</sup> Section 65 (Functions and powers of court at inquiry)

<sup>39</sup> Section 72 (Registrar to conduct elections on request)  
Section 73 (Election on registrar's initiative)

(3) The organisation or branch must pay the State the expenses within 1 month after receiving a written request from the electoral commission to do so.

(4) An amount payable by an organisation or branch under this section may be recovered by the State as a debt payable to it.

(5) Despite subsection (2), the court may order the State to pay all or part of the expenses of an election if—

- (a) the election was under an order of a type mentioned in subsection (1)(a); and
- (b) the order was made because of an irregularity caused by the electoral commission.

(6) If appropriated by Parliament, expenses that are to be paid by the State under subsection (3) are to be paid by the State out of the consolidated fund.

(7) In this section—

“expenses” include—

- (a) the wages, salary or other remuneration of a State employee who performs a function, whether or not the employee performs only that function or other functions as well, in complying with the court’s order or conducting the election; and
- (b) the expenses for providing or using premises, whether or not the premises are used only for these purposes or other purposes as well, provided by the State in complying with the court’s order or conducting of the election.

## **PART 7—DISQUALIFICATION FROM HOLDING OFFICE IN ORGANISATIONS**

### **Definitions for pt 7**

**75.(1)** In this part—

**“convicted of a prescribed offence”** means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

**“convicted person”** means a person who has been convicted of a prescribed offence.

**“prescribed offence”** means an offence—

- (a) under an Act or under a law of the Commonwealth or another State or foreign country, involving—
  - (i) fraud or dishonesty and punishable on conviction by imprisonment for 3 months or more; or
  - (ii) the intentional—
    - (A) use of violence towards another person; or
    - (B) causing of death or injury to a person; or
    - (C) damage or destruction of property; or
- (b) under section 57(2), 61(7), 72(8), 72(11), 73(4), 115(4), 117(2), 171(4), 172(2), 249 or 250;<sup>40</sup> or
- (c) about the formation, registration or management of an association or organisation.

(2) A reference in this part to a convicted person includes a reference to a person having been convicted before the commencement of this Act of an offence that, apart from the non-commencement, would have been a prescribed offence against this Act.

(3) A reference in this part to a convicted person is a reference to a person being convicted—

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<sup>40</sup> Section 57 (Ballot records must be preserved)  
 Section 61 (Action by registrar for inquiry)  
 Section 72 (Registrar to conduct elections on request)  
 Section 73 (Election on registrar’s initiative)  
 Section 115 (Providing information and documents to electoral officers)  
 Section 117 (Ballot records to be kept)  
 Section 171 (Providing information and documents to electoral officers—Cwlth s 253ZN)  
 Section 172 (Ballot records must be preserved)  
 Section 245 (Applications to the court—Cwlth s 298T)  
 Section 246 (Orders that the court may make—Cwlth s 298U)

- (a) for an offence mentioned in paragraph (c) of the definition “prescribed offence”—on indictment; or
- (b) for an offence mentioned in paragraph (a)(ii) of the definition “prescribed offence”—if the person has served, or is serving, a term of imprisonment for the offence.

### **Eligibility for office**

**76.(1)** A person convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed to fill a casual vacancy, to an office unless—

- (a) the person is given leave to hold the office under section 77 or 78;<sup>41</sup> or
- (b) the person was refused leave to hold the office under section 77 or 78 and—
  - (i) under section 77(3)(b) or 78(3)(b), the court stated a period for this section; and
  - (ii) the period has elapsed since—
    - (A) the person’s conviction; or
    - (B) if the person served a term of imprisonment for the prescribed offence—since the person was released from prison; or
- (c) otherwise—5 years has elapsed since—
  - (i) the person’s conviction; or
  - (ii) if the person served a term of imprisonment for the prescribed offence—the person’s release from prison.

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<sup>41</sup> Section 77 (Application for leave to hold office by prospective candidate for office)  
Section 78 (Application for leave to hold office in organisation by office holder)

(2) If a person who holds an office is convicted of a prescribed offence, the person stops holding the office 28 days after the conviction unless, within that time, the person applies to the court under section 77.<sup>42</sup>

(3) However, if a person who holds an office and has been convicted of a prescribed offence applies under section 77, the person stops holding office—

(a) 3 months after the conviction—

(i) if the application has not been decided; and

(ii) the court has not extended that time; or

(b) if the court has extended that time—at the end of the extended time.

(4) The court must not extend a time under subsection (3)(b) unless—

(a) the application for the extension is made before the end of the time mentioned in subsection (3)(a); or

(b) if the court has previously extended the time under subsection (3)(b)—the application for the further extension is made before the end of the time as extended.

(5) An organisation, an organisation member or the registrar may apply to the court for a declaration that, because of this section or section 77 or 78<sup>43</sup>—

(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 giving of leave to hold an office under section 77 or 78 for a conviction does not affect the operation of this section or section 77 or 78 for another conviction.

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<sup>42</sup> Section 77 (Application for leave to hold office by prospective candidate for office)

<sup>43</sup> Section 77 (Application for leave to hold office by prospective candidate for office)  
Section 78 (Application for leave to hold office in organisation by office holder)

**Application for leave to hold office by prospective candidate for office**

**77.(1)** This section applies if a person who wants to be a candidate for election, or to be appointed to fill a casual vacancy to an office has, within the preceding 5 years—

- (a) been convicted of a prescribed offence; or
- (b) been released from prison after serving a term of imprisonment for a conviction for a prescribed offence.

**(2)** The person may apply to the court for leave to hold the office.

**(3)** The court may—

- (a) give the person leave to hold the office; or
- (b) refuse the person leave to hold the office and state, for section 76(1), a time of less than 5 years; or
- (c) refuse a person leave to hold office.

**(4)** A person may not apply under this section about a conviction if the person has previously made an application under this section or section 78 for the conviction.

**Application for leave to hold office in organisation by office holder**

**78.(1)** This section applies if a person holding an office is convicted of a prescribed offence.

**(2)** The person may, within 28 days after conviction, apply to the court for leave to hold the office or another office (a **“relevant office”**).

**(3)** The court may—

- (a) give the person leave to hold the relevant office; or
- (b) refuse the person leave to hold the relevant office and state, for section 76(1),<sup>44</sup> a period of less than 5 years; or
- (c) refuse the office holder leave to hold the relevant office.

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<sup>44</sup> Section 76 (Eligibility for office)

(4) If the person is refused leave to hold the office, the person is taken to have stopped holding the office held at the time of making the application.

(5) The person may apply only once to the court about the conviction.

### **Court's obligation and powers for declarations**

**79.(1)** If an application is made to the court for a declaration under section 76(5), the court must give the following persons an opportunity to be heard on the application—

- (a) the person whose eligibility, or whose holding of office, is in dispute;
- (b) if the application is made by someone other than the organisation concerned—the organisation.

(2) Despite anything in the rules of the organisation, the court may make the orders it considers appropriate to give effect to a declaration.

### **Court's obligations for applications**

**80.(1)** In deciding an application under section 77 or 78,<sup>45</sup> the court must consider the following—

- (a) the nature of the prescribed offence;
- (b) the circumstances and the nature of the applicant's involvement in the commission of the prescribed offence;
- (c) the applicant's general character;
- (d) the applicant's fitness to be involved in the management of organisations, having regard to the conviction for the prescribed offence;
- (e) other appropriate matters.

(2) The court must give the organisation concerned an opportunity to be heard on the application.

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<sup>45</sup> Section 77 (Application for leave to hold office by prospective candidate for office)  
Section 78 (Application for leave to hold office in organisation by office holder)



## **PART 8—MEMBERSHIP OF ORGANISATIONS**

### **Entitlement to membership**

**81.** A person may be a member of an organisation if the person—

- (a) by the nature of the person’s occupation or employment, engages in a calling for which the organisation is registered; and
- (b) complies with the organisation’s rules; and
- (c) is not of general bad character.

### **Members and officers registers**

**82.(1)** An organisation must keep a members register and an officers register for each year.

Maximum penalty—40 penalty units.

**(2)** An organisation must keep its members and officers registers in the form of a book or other writing.<sup>46</sup>

Maximum penalty—40 penalty units.

**(3)** An organisation must record the following particulars for a member in its members register—

- (a) the member’s name;
- (b) if the member is an individual—where the member ordinarily lives;
- (c) if the member is an individual and, at the day of becoming a member or renewing membership, the member is living at another place than where the member ordinarily lives—the place;
- (d) if a corporation is an employer organisation member—its registered office;
- (e) the day the member becomes a member;

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<sup>46</sup> Under the *Acts Interpretation Act 1954*, s 36, definition “writing”, that term means any mode of representing or reproducing words in a visible form.

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- (f) if a member stops being a member during the year for which the register is kept—the day the membership stopped.

Maximum penalty—40 penalty units.

(4) An organisation must record the following particulars for an officer in its officers register—

- (a) the officer's name;
- (b) where the officer ordinarily lives;
- (c) the day the officer is declared elected;
- (d) if a person stops being an officer during the year for which the register is kept—the day the person stopped being an officer.

Maximum penalty—40 penalty units.

(5) An organisation with more than 100 members must keep—

- (a) the names of its members in its members register alphabetically;  
or
- (b) an alphabetical index of its members or former member's names, in a loose leaf, computer print-out or card index form.

Maximum penalty—40 penalty units.

(6) If an organisation contravenes this section, its president and secretary (an “**officer**”) each commit an offence, namely the offence of failing to ensure that the organisation complies with the provision.

Maximum penalty—40 penalty units.

(7) However, it is a defence for an officer to prove—

- (a) if the officer was in a position to influence the conduct of the organisation in relation to the offence, the officer exercised reasonable diligence to ensure the organisation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the organisation in relation to the offence.

**Filing registers**

**83.(1)** This section applies if an organisation has not been exempted from this section under section 84.

**(2)** The organisation must file a copy of its members and officers registers as at the filing date, with the registrar within—

- (a) 7 days after the organisation is registered; or
- (b) a longer period allowed by the commission.

Maximum penalty—40 penalty units.

**(3)** The organisation must—

- (a) file with the registrar by 31 March in each year, or a later day allowed by the registrar, a copy of its members and officers registers as at 31 December immediately before the filing date; and
- (b) within 30 days of the appointment or resignation of an officer give the registrar notice of the appointment or resignation.

Maximum penalty—40 penalty units.

**(4)** If an organisation contravenes this section, its president and secretary (an “**officer**”) each commit a continuing offence, namely the offence of failing to ensure the organisation complies with the provision.

Maximum penalty—40 penalty units.

**(5)** However, it is a defence for an officer to prove—

- (a) if the officer was in a position to influence the conduct of the organisation in relation to the offence, the officer exercised reasonable diligence to ensure the organisation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the organisation in relation to the offence.

**Exemption from filing members register etc.**

**84.(1)** The registrar may give an exemption from filing a members register under section 83 to an organisation if the registrar is satisfied the

organisation's members register is maintained for members under section 82.

(2) An exemption may apply to an organisation or branch.

(3) While an exemption remains in force—

- (a) if it is for an organisation—section 83 does not apply to the organisation; or
- (b) if it is for a branch of an organisation—section 83 applies to the organisation as if—
  - (i) the part of the members register for the branch did not form part of the organisation's members register; and
  - (ii) the members or officers of the branch were not members of the organisation.

(4) The registrar may cancel an exemption by notice given to the organisation if the registrar decides—

- (a) the part of the members register to which an exemption relates, is no longer maintained under section 82;<sup>47</sup> or
- (b) the organisation has refused or failed to give the registrar information or facilities required by the registrar to decide whether the exemption should be continued.

(5) If an exemption is cancelled, the organisation must file with the registrar within 30 days after the cancellation or a longer period allowed by the registrar—

- (a) a copy of its members register as at the filing date; or
- (b) if the exemption related to a branch—a copy of the part of the members register for the branch.

Maximum penalty—40 penalty units.

(6) If an organisation contravenes this section, its president and secretary (an “**officer**”) each commit a continuing offence, namely the offence of failing to ensure the organisation complies with the provision.

Maximum penalty—40 penalty units.

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<sup>47</sup> Section 82 (Members and officers registers)

(7) However, it is a defence for an officer to prove—

- (a) if the officer was in a position to influence the conduct of the organisation in relation to the offence, the officer exercised reasonable diligence to ensure the organisation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the organisation in relation to the offence.

### **Rectification of registers by commission**

**85.(1)** The commission may, of its own initiative, order any rectification of the organisation's members or officers registers it considers necessary to correctly record the organisation's members and officers under section 82.

(2) However, the commission must give the organisation an opportunity to be heard before making the order.

(3) If the commission makes an order under subsection (1), the register and the copy of the register filed with the registrar must be rectified as required by the order.

(4) The order is taken to be directed to and binds—

- (a) the organisation; and
- (b) the organisation's president; and
- (c) the organisation's secretary.

(5) If the register is not rectified as required by the order, each person bound by the order is taken to have contravened the order.

### **Registrar's access to registers**

**86.(1)** When an organisation's office is open for business, its members and officers registers and membership index, if required under section 82(5),<sup>48</sup> must be open for inspection at the office by—

- (a) the registrar, or a person with the registrar's written authorisation; or

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<sup>48</sup> Section 82 (Members and officers registers)

- (b) the organisation's members, or a person with a member's written authorisation.

(2) The registrar may give a written direction to an organisation to deliver its members or officers registers and membership index, if required under section 82(5)—

- (a) to the registrar, or a stated person; and
- (b) at a stated time and place.

(3) However, a direction may be given only if a register or the index are required—

- (a) to take a ballot under this Act; or
- (b) under a court or commission order.

(4) A direction is directed to and binds—

- (a) the organisation; and
- (b) the organisation's president; and
- (c) the organisation's secretary.

(5) A person bound by a direction must not contravene the direction.

Maximum penalty—40 penalty units.

### **Organisations to keep union ticket butts**

**87.(1)** An organisation must—

- (a) keep butts of all union tickets issued to its members in the previous year; and
- (b) ensure the following particulars about a member are stated on the butt for the member—
  - (i) where the member ordinarily lives;
  - (ii) if, when the ticket for the butt is issued, the member is living at another place—the place.

Maximum penalty—40 penalty units.

(2) In this section—

**“butt”**, of a union ticket, means a duplicate original or copy of the union ticket issued to a member of an organisation.

**“union ticket”** means a document issued by an organisation acknowledging that a person has paid a subscription, dues or other money for membership or membership renewal of the organisation.

### **Resigning organisation membership**

**88.(1)** This section applies despite an organisation’s rules.

(2) A member of an organisation may resign from membership of the organisation under this section or the organisation’s rules.

(3) The member’s membership ends if the member gives the organisation a notice stating the member resigns from the organisation.<sup>49</sup>

(4) The notice is taken to be given if it is—

- (a) left at the organisation’s registered office; or
- (b) sent to the organisation.<sup>50</sup>

(5) The membership ends—

- (a) if the notice states a day or time after the giving of the notice when the resignation takes effect—on the day or time; or
- (b) otherwise—when the notice is given.

### **Resignation if subscription unpaid for 1 year and no renewal**

**89.(1)** A member of an organisation is taken to have resigned from the organisation if the member has not—

- (a) paid a membership subscription for the organisation within 1 year of when the subscription first became payable; and

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<sup>49</sup> The notice must be in writing. See section 288 (Notices and applications to be written)

<sup>50</sup> This includes sending it by post, telex, facsimile or similar facility to the organisation’s registered office. See the *Acts Interpretation Act 1954*, section 39(1) and (2) (Service of documents).

(b) renewed the membership.

(2) This section applies despite an organisation's rules.

### **Conscientious objection to organisation membership**

**90.(1)** A person may apply for an exemption from membership of an employee organisation because of the person's conscientious beliefs.

(2) The application for exemption must be made to a magistrate or the registrar.

(3) On receiving the application, the magistrate or registrar must immediately—

(a) set a time and place to interview the applicant; and

(b) give at least 2 days notice of the interview to—

(i) the applicant; and

(ii) the employee organisation the magistrate or registrar considers is the appropriate organisation for the calling in which the applicant is, or is seeking to be, employed.

(4) Only the following persons may attend the interview—

(a) the magistrate or registrar;

(b) the applicant;

(c) 1 member or officer of the employee organisation.

(5) At the interview the member or officer of the employee organisation may—

(a) ask the applicant relevant questions; and

(b) make submissions to the magistrate or registrar.

(6) The magistrate or registrar must give the exemption and issue the applicant with an exemption certificate in the form in the rules of court if—

(a) satisfied the applicant genuinely holds conscientious beliefs; and

(b) the applicant has paid the same amount as the membership subscription of the employee organisation to the registrar of the Magistrates Court or the registrar's office.



(7) No appeal lies from the magistrates or registrar's decision about a person's conscientious beliefs.

(8) An exemption certificate lasts for 1 year from the day stated in the certificate.

(9) The amount paid to the registrar of the Magistrates Court or the registrar's office must be paid to the consolidated fund.

(10) In this section—

**“conscientious beliefs”** means an individual's beliefs based on the individual's moral values or fundamental religious beliefs, but does not include beliefs founded wholly or principally on objections to the policies of an organisation or organisations generally.

### **Conduct about exemption certificate holders**

**91.(1)** This section applies—

- (a) if a person (an **“exempted person”**) holds a current exemption certificate; and
- (b) despite another provision of this part, part 14, an Act, award, industrial agreement, certified agreement or EFA.

**(2)** An employer must not—

- (a) refuse the exempted person employment because the person is not an organisation member; or
- (b) dismiss the exempted person or change the exempted person's employment to the person's disadvantage because the person is not an organisation member; or
- (c) threaten to do any of the following to the exempted person with intent to force the person to become an organisation member—
  - (i) dismiss the person;
  - (ii) injure the person's employment;
  - (iii) change the person's employment to the person's disadvantage.

Maximum penalty—

- (a) if the contravention continues and is charged as a continuing offence—27 penalty units for each day the contravention continues; or
- (b) otherwise—27 penalty units.

**(3)** A person must not cause an exempted person to gain an advantage or suffer a detriment that the exempted person would not have gained or suffered if the exempted person were an organisation member.

Maximum penalty—

- (a) if the contravention continues and is charged as a continuing offence—27 penalty units for each day the contravention continues; or
- (b) otherwise—27 penalty units.

**(4)** An organisation must not—

- (a) advise, encourage or incite an employer to take action that would contravene subsection (2) or (3); or
- (b) take or threaten industrial action about an employer with intent to force the employer to take action that would contravene subsection (2) or (3); or
- (c) take or threaten action having the direct or indirect effect of prejudicing an exempted person's employment with intent to force the person to become an organisation member.

Maximum penalty—

- (a) if the contravention continues and is charged as a continuing offence—135 penalty units for each day the contravention continues; or
- (b) otherwise—135 penalty units.

**(5)** An offence against subsection (2), (3) or (4) that continues from day to day is a continuing offence.

**Evidentiary provision for s 91**

**92.(1)** This section applies to an action or a threat of action taken by the following—

- (a) the management committee of an organisation or a branch of the organisation, or at the management committee's instigation;
- (b) an officer, employee or agent of an organisation or branch of the organisation, acting in that capacity;
- (c) a group of members of an organisation;
- (d) a member of an organisation dealing with an employer on behalf of members of the organisation.

**(2)** For section 91—

- (a) the taking of the action or the making of the threat is evidence that the action or threat was taken or made by the organisation; and
- (b) the intent of the person who took or instigated the action or made or instigated the threat is evidence of the organisation's intent.

**Court may decide membership disputes**

**93.(1)** The court may decide questions or disputes for an organisation about the following—

- (a) whether a person is, or may be, a member of the organisation;
- (b) the qualifications or character of a membership applicant;
- (c) the reasonableness of an admission fee, subscription, fine or levy, or other requirement of its members under its rules.

**(2)** On a hearing of a question or dispute the court may do any of the following—

- (a) decide that an applicant for membership may be a member of the organisation;
- (b) direct that the applicant be admitted immediately to membership;
- (c) declare that a person is or is not a member of the organisation;
- (d) direct that the organisation's rules be amended or annulled to conform with what the court declares to be reasonable.

(3) If the court directs that an organisation's rules be amended or annulled, they are taken to have been so amended or annulled when the direction is given.

### **Offences about membership**

**94.(1)** An organisation must—

- (a) admit to its membership a person who may be a member under section 81<sup>51</sup>—
  - (i) within 3 months of the person applying to be a member; or
  - (ii) if a question or dispute has within that 3 months been referred to the court for decision under section 93<sup>52</sup>—within 1 month of the court deciding the person may be a member; or
- (b) give a union ticket within 1 month to a person who—
  - (i) may be a member, or may remain a member, under section 81;<sup>53</sup> and
  - (ii) complies with the organisation's rules for membership or membership renewal.

Maximum penalty—100 penalty units and, in addition, 2 penalty units for each day when the failure forming the offence continues.

(2) An offence against subsection (1) that continues from day to day is a continuing offence.

(3) In this section—

**“union ticket”** means a document issued by an organisation acknowledging that a named person is a member of the organisation.

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<sup>51</sup> Section 81 (Entitlement to membership)

<sup>52</sup> Section 93 (Court may decide membership disputes)

<sup>53</sup> Section 81 (Entitlement to membership)

**Members under 18**

**95.(1)** A person under 18 years—

- (a) may be a member of an organisation, unless its rules provide otherwise; and
- (b) if the person is an organisation member, the person—
  - (i) has the rights of an organisation member under this part and the organisation’s rules; and
  - (ii) may execute instruments and give receipts under an organisation’s rules.

(2) However, a person under 18 years may not be a management committee member, trustee or treasurer of an organisation.

## **PART 9—AMALGAMATING INDUSTRIAL ORGANISATIONS**

### *Division 1—Preliminary*

**Definitions for pt 9**

**96.** In this part—

**“alternative ballot”** see section 107(1).<sup>54</sup>

**“alternative provision”** means a provision of a scheme of a kind mentioned in section 101(1).<sup>55</sup>

**“amalgamated organisation”**, for a completed amalgamation, means the organisation that members of the deregistered organisations have become members of under section 142(d).<sup>56</sup>

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<sup>54</sup> Section 107 (Application for alternative ballot)

<sup>55</sup> Section 101 (Alternative schemes)

<sup>56</sup> Section 142 (Action on amalgamation)

**“amalgamation day”** see section 141(1).<sup>57</sup>

**“amalgamation hearing”** see section 118(2).<sup>58</sup>

**“approving organisation”** means an existing organisation whose members approve an alternative provision.

**“authorised person”**, for an amalgamated organisation, means—

- (a) the amalgamated organisation’s secretary; or
- (b) a person with the amalgamated organisation’s management committee’s written authority.

**“ballot”**, for a proposed amalgamation, other than in section 134(1),<sup>59</sup> means a ballot of the members of an organisation about whether to approve the proposed amalgamation under this part.

**“ballot application”** see section 104(2).<sup>60</sup>

**“ballot conditions”** see section 120(1).<sup>61</sup>

**“ballot exemption”** see section 106(1).<sup>62</sup>

**“community of interest declaration”** means a declaration under section 103.<sup>63</sup>

**“completed amalgamation”** means a proposed amalgamation that has had effect.

**“deregistered organisation”**, for a completed amalgamation, means an organisation that has been deregistered under this part.

**“deregistration”**, for an organisation, means the cancellation of its registration.

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<sup>57</sup> Section 141 (Fixing amalgamation day)

<sup>58</sup> Section 118 (Amalgamation hearing)

<sup>59</sup> Section 134 (Ballot exemption—recognising federal ballot)

<sup>60</sup> Section 104 (Application to submit proposal to a ballot)

<sup>61</sup> Section 120 (Ballot approval not extending eligibility rules etc.)

<sup>62</sup> Section 106 (Application for exemption from holding ballot)

<sup>63</sup> Section 103 (Community of interest declaration)

**“existing organisation”** means an organisation concerned in a proposed amalgamation.

**“federation”** see section 98(1).<sup>64</sup>

**“finishing day”**, for a ballot, means the day fixed under section 123<sup>65</sup> as the ballot’s finishing day.

**“instrument”** means an instrument of any kind and includes, for example, the following whether made orally or in writing and whether express or implied—

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

**“no case”** see section 126(1).<sup>66</sup>

**“proposed alternative amalgamation”**, for a proposed amalgamation, means a proposed amalgamation under an alternative provision.

**“proposed amalgamated organisation”**, for a proposed amalgamation, means the existing organisation or proposed organisation that members of the proposed deregistering organisations propose to become members of under this part.

**“proposed amalgamation”** means the proposed carrying out of arrangements for 2 or more organisations or associations under which—

- (a) an organisation is, or 2 or more organisations are, to be deregistered under this part; and

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<sup>64</sup> Section 98 (Federations)

<sup>65</sup> Section 123 (Fixing ballot period)

<sup>66</sup> Section 126 (‘No’ cases)

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

**“proposed deregistering organisation”**, for a proposed amalgamation, means an organisation that is to be deregistered under this part as part of the amalgamation.

**“proposed principal amalgamation”**, for a proposed amalgamation, means—

- (a) if the amalgamation scheme has an alternative provision—the amalgamation proposed under the scheme, other than under the alternative provision; or
- (b) otherwise—the proposed amalgamation.

**“scheme”** means a scheme under section 100(1).<sup>67</sup>

**“scheme outline”** means an outline of a scheme under section 104.<sup>68</sup>

**“starting day”**, for a ballot, means the day fixed under section 123<sup>69</sup> as the ballot’s starting day.

**“‘yes’ case”** see section 125(1).<sup>70</sup>

### **Proposed amalgamation procedure**

**97.(1)** The procedure under this part is the only procedure that may be used to carry out a scheme for a proposed amalgamation.

**(2)** If the commission is asked to do an act it considers is to carry out or to help in carrying out a proposed amalgamation, the commission may do the act only under this part.

**(3)** The commission may make an order or give a direction to resolve a difficulty or likely difficulty in carrying out a scheme for a proposed amalgamation.

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<sup>67</sup> Section 100 (Amalgamation scheme)

<sup>68</sup> Section 104 (Application to submit proposal to a ballot)

<sup>69</sup> Section 123 (Fixing ballot period)

<sup>70</sup> Section 125 (Filing ‘yes’ case)



(4) The order or direction—

- (a) is subject to a court order; and
- (b) applies despite anything in—
  - (i) a regulation or rules of court; or
  - (ii) the rules of an organisation or an association proposed to be registered as an organisation.

(5) In this section—

“act” includes—

- (a) registering an organisation; and
- (b) deregistering an organisation; and
- (c) consenting to an organisation changing its name or eligibility rules.

## **Federations**

**98.(1)** Existing organisations may jointly apply to the commission for recognition as a federation (a “**federation**”).

(2) The application must—

- (a) be filed with the registrar before the existing organisations make a ballot application for a proposed amalgamation; and
- (b) include the particulars prescribed under a regulation.

(3) The commission must allow the application if satisfied the existing organisations intend to make a ballot application for the proposed amalgamation within the period prescribed under a regulation.

(4) If the application is allowed, the registrar must enter the particulars prescribed under a regulation for the federation in the register.

(5) A federation may represent its constituent members under this Act after it is registered.

(6) However—

- (a) an organisation belonging to a federation may still represent itself or its members; and

(b) a federation may not become a party to an award or certified agreement.

(7) A federation may, with the commission's approval, amend its composition to—

(a) if another organisation intends to become concerned in the proposed amalgamation—include the organisation; or

(b) release an organisation from the federation.

(8) A federation ends—

(a) on the amalgamation day for the proposed amalgamation; or

(b) if a ballot application for the proposed amalgamation is not made within the period prescribed under a regulation—on the day after that period; or

(c) if a full bench decides, on an application by a person prescribed under a regulation, that the achievement of an object of this Act is being prevented by the industrial conduct of the federation or any of its members—on the day the decision is made.

### **Using resources for proposed amalgamation**

**99.(1)** An existing organisation for a proposed amalgamation may use its financial and other resources to support the proposed principal amalgamation and any proposed alternative amalgamation before the finishing day of the ballot for the proposed amalgamation if—

(a) its management committee has resolved to do so; and

(b) the committee has given reasonable notice of its resolution to the organisation's members.

(2) Subsection (1) does not limit an existing organisation's other powers to use its financial and other resources for the proposed amalgamation.

***Division 2—Starting amalgamation procedure*****Amalgamation scheme**

**100.(1)** There must be a written scheme for every proposed amalgamation.

**(2)** The scheme must state the following—

- (a) the general nature of the amalgamation, showing—
  - (i) the existing organisations; and
  - (ii) if an existing organisation is the proposed amalgamated organisation—that fact; and
  - (iii) if an association proposed to be registered as an organisation is the proposed amalgamated organisation—that fact and its name; and
  - (iv) the organisations that are proposed to be deregistered;
- (b) if it is proposed to change an existing organisation's name—particulars of the proposed change;
- (c) if it is proposed to amend an existing organisation's eligibility or other rules—particulars of the proposed amendments;
- (d) if an association is proposed to be registered as an organisation—its eligibility and other rules;
- (e) other matters prescribed under a regulation.

**(3)** Subsection (2) does not limit the matters a scheme may have.

**Alternative schemes**

**101.(1)** A scheme for a proposed amalgamation of 3 or more existing organisations may include a provision (an “**alternative provision**”) for an amalgamation of 2 or more approving organisations if—

- (a) the members of 1 or more of the existing organisations do not approve the amalgamation; and
- (b) 2 or more approving organisations approve, in the alternative, the amalgamation so far as it involves—

- (i) the other approving organisations; or
- (ii) 2 or more of the other approving organisations; and
- (c) if 1 of the existing organisations is the proposed amalgamated organisation—that organisation is 1 of the approving organisations.

(2) An alternative provision must show details of the differences between—

- (a) the proposed principal amalgamation and each proposed alternative amalgamation for the proposed amalgamation; and
- (b) a proposed organisation's rules, and proposed amendments to the existing organisations' rules, under—
  - (i) the proposed principal amalgamation; and
  - (ii) each proposed alternative amalgamation.

### **Management committee approval**

**102.(1)** A scheme for a proposed amalgamation and any changes to the scheme must be approved by every organisation that the scheme concerns.

(2) The approval may only be given by the organisations' management committees.

(3) Management committee approval must be by resolution.

(4) Despite an existing organisation's rules, the following are taken to have been made under its rules if approved by its management committee's resolution—

- (a) a scheme;
- (b) a scheme amendment;
- (c) any proposed amendment of its rules in a scheme.

### **Community of interest declaration**

**103.(1)** Existing organisations may jointly apply to the commission for a declaration under this section.

(2) The application must be filed with the registrar before or with the ballot application for the proposed amalgamation.

(3) If the application is filed before the ballot application, the commission—

- (a) must immediately fix a time and place to hear submissions on the application; and
- (b) must promptly notify all the existing organisations of the fixed time and place; and
- (c) may advise another person likely to be interested of the fixed time and place.

(4) A submission at a hearing may only be made by the applicant.

(5) However, another person may make a submission at a hearing if—

- (a) the submission is about a matter prescribed under a regulation; and
- (b) the commission consents.

(6) If after a hearing under this section or section 118,<sup>71</sup> the commission is satisfied there is a community of interest between the existing organisations about their industrial interests, it must declare to that effect.

(7) A declaration ends if—

- (a) the application for the declaration was filed before a ballot application for the proposed amalgamation is filed; and
- (b) a ballot application for the proposed amalgamation is not filed within 6 months after the declaration.

(8) The commission may revoke a declaration if satisfied there is no longer a community of interest between the existing organisations about their industrial interests.

(9) For the purposes of subsection (6), there is a community of interest between existing organisations about their industrial interests if—

- (a) a substantial number of members of 1 of the organisations are—

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<sup>71</sup> Section 118 (Amalgamation hearing)

- (i) eligible to become members of the other organisation or each of the other organisations; or
  - (ii) engaged in the same work or industry or in aspects of the same or similar work or industry as members (“**other members**”) of the other organisation or each of the other organisations; or
  - (iii) bound by the same awards, industrial agreements, certified agreements or EFA’s as other members; or
  - (iv) engaged in work or in industries for which there is a community of interest with other members; or
  - (v) for an employee organisation—employed in the same or similar work by employers engaged in the same industry as other members; or
- (b) the commission is otherwise satisfied that there is a community of interest.

### **Application to submit proposal to a ballot**

**104.(1)** Existing organisations for a proposed amalgamation and any association proposed to be registered as an organisation under the amalgamation must jointly apply to the commission for approval to submit the proposed amalgamation to a ballot.

**(2)** The ballot application (“**ballot application**”) must be—

- (a) filed with the registrar; and
- (b) accompanied by—
  - (i) a copy of the scheme for the proposed amalgamation; and
  - (ii) a written scheme outline.

**(3)** The scheme outline must—

- (a) be no more than—
  - (i) 3 000 words; or

- (ii) if a greater number of words is allowed under section 132<sup>72</sup>—that number; and
- (b) give enough information to allow existing organisation members to make an informed decision about the scheme.

### **Holding office after amalgamation**

**105.(1)** This section applies to a proposed amalgamated organisation's rules.

(2) Despite section 25,<sup>73</sup> the rules may allow an officer (an “**existing officer**”) of a proposed deregistering or existing organisation who holds office immediately before the amalgamation day to be an officer of the proposed amalgamated organisation.

(3) However, the rules must not allow the existing officer to hold office in the amalgamated organisation without an ordinary election for more than the longer of—

- (a) the existing officer's unexpired term immediately before the amalgamation day; or
- (b) 2 years from the amalgamation day.

(4) The rules must make reasonable provisions for synchronising elections under subsection (3) with elections for other offices in the organisation.

(5) Section 27<sup>74</sup> does not apply to an office in an amalgamated organisation held by an existing officer.

(6) Section 28<sup>75</sup> applies to an office in an amalgamated organisation held by an existing officer of a deregistered organisation.

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<sup>72</sup> Section 132 (Scheme outlines)

<sup>73</sup> Section 25 (Rules for elections and ballots)

<sup>74</sup> Section 27 (Rules about office terms)

<sup>75</sup> Section 28 (Rules may allow filling casual vacancies)

### **Application for exemption from holding ballot**

**106.(1)** A proposed amalgamated organisation for a proposed amalgamation may apply to the commission for an exemption (a “**ballot exemption**”) from the requirement to hold a ballot for the amalgamation.

(2) The application must be filed with the registrar together with the ballot application for the amalgamation.

### **Application for alternative ballot**

**107.(1)** An existing organisation may apply to the commission to approve a proposed ballot (an “**alternative ballot**”) that is not conducted under section 136<sup>76</sup> for the amalgamation.

(2) The application must be filed with the registrar together with the ballot application for the amalgamation.

(3) The alternative ballot must provide for the following—

- (a) the ballot is to be—
  - (i) a secret ballot of the organisation’s members; and
  - (ii) held at duly formed member’s meetings; and
  - (iii) carried out by the electoral commission unless the commission exempts the organisation from section 108; and
  - (iv) otherwise held under this Act;
- (b) members are to be given at least 21 days notice of the meetings, the things to be considered at the meetings and their entitlement to an absentee vote;
- (c) the distribution or publication of the scheme outline and the ‘yes’ and ‘no’ cases under section 130;<sup>77</sup>
- (d) absentee voting.

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<sup>76</sup> Section 136 (Members’ secret postal ballot)

<sup>77</sup> Section 130 (‘Yes’ and ‘no’ cases to be sent to voters)



***Division 3—Conduct of ballots*****Electoral commission to conduct ballot**

**108.(1)** A ballot for a proposed amalgamation must be conducted by the electoral commission.

**(2)** However, subsection (1) does not apply to a ballot if the commission has given an exemption for the ballot under section 111.<sup>78</sup>

**Application for exemption from s 108**

**109.(1)** An existing organisation's management committee may file in the registrar's office an application for the organisation to be exempted from section 108<sup>79</sup> for a ballot for a proposed amalgamation.

**(2)** An application may only be made if the management committee has—

- (a) resolved to make the application; and
- (b) notified the organisation's members of the making of the resolution as prescribed under a regulation.

**(3)** The application must be accompanied by an affidavit by a member of the management committee stating subsection (2) has been complied with.

**(4)** On the filing of an application, the registrar must publish, as prescribed under a regulation, a notice stating details of the application.

**Objections to application for exemption**

**110.(1)** A member of an existing organisation for which an application is made under section 109(1)<sup>80</sup> may object to it.

**(2)** The commission must hear the application and properly made objections in the way prescribed under a regulation.

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<sup>78</sup> Section 111 (Commission may give exemption from s 108)

<sup>79</sup> Section 108 (Electoral commission to conduct ballot)

<sup>80</sup> Section 109 (Application for exemption from s 108)

**Commission may give exemption from s 108**

**111.(1)** This section applies if an application for an exemption for an existing organisation has been filed under section 109(1) and properly made objections to the application have been heard.

**(2)** The commission may exempt the organisation from section 108(1)<sup>81</sup> for a ballot for a proposed amalgamation if satisfied—

- (a) if the organisation or branch were to be exempted from section 108(1)—the ballot would be conducted in a way that would give members who have the right to vote at the ballot an adequate opportunity of voting without intimidation; and
- (b) if an exemption has been given to the organisation under this section or section 50<sup>82</sup>—the organisation or branch has not contravened section 51 or 112.<sup>83</sup>

**(3)** The commission may cancel an exemption given to an organisation if—

- (a) the organisation's management committee applies for its cancellation; or
- (b) the commission—
  - (i) is no longer satisfied as required by subsection (2); and
  - (ii) has given the organisation's management committee an opportunity, as prescribed under a regulation, to show cause why the exemption should not be cancelled; or
- (c) an exemption has been given to the organisation under this section or section 50<sup>84</sup>—
  - (i) the organisation contravenes section 51 or 112;<sup>85</sup> or

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<sup>81</sup> Section 108 (Electoral commission to conduct ballot)

<sup>82</sup> Section 50 (Commission may give exemption from s 47)

<sup>83</sup> Section 51 (Duties of organisation or branch if exemption given)  
Section 112 (Duties of organisation if exemption given)

<sup>84</sup> Section 50 (Commission may give exemption from s 47)

<sup>85</sup> Section 51 (Duties of organisation or branch if exemption given)  
Section 112 (Duties of organisation if exemption given)

- (ii) a returning officer has contravened section 52 or 113<sup>86</sup> for a ballot conducted under the exemption.

### **Duties of organisation if exemption given**

**112.(1)** This section applies if an organisation has been exempted from section 108(1)<sup>87</sup> for a ballot for a proposed amalgamation.

**(2)** Before holding a ballot the organisation must—

- (a) appoint a returning officer, who is not an employee, member or officer of an existing or proposed organisation, to conduct the ballot; and
- (b) give the registrar—
  - (i) notice of the returning officer's name; and
  - (ii) a statutory declaration sworn by the returning officer stating the returning officer is not an employee, member or officer of an existing organisation for the amalgamation; and
- (c) obtain the registrar's written approval of the returning officer's appointment.

**(3)** A contravention of this section does not invalidate a ballot to which the exemption applies.

### **Ballot result report**

**113.(1)** Within 14 days after the declaration of the result of a ballot, a written ballot result report containing the particulars prescribed under a regulation must be given to the registrar by—

- (a) if the electoral commission conducted the ballot—the electoral commission; or
- (b) otherwise—the returning officer appointed by the organisation for which the ballot was held.

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<sup>86</sup> Section 52 (Election result report)  
Section 113 (Ballot result report)

<sup>87</sup> Section 108 (Electoral commission to conduct ballot)

(2) A contravention of this section does not invalidate a ballot to which the exemption applies.

### **Notice to electoral commission**

**114.(1)** If the registrar receives an application for a ballot for a proposed amalgamation, the registrar must immediately notify the electoral commission.

(2) After it is notified, the electoral commission must immediately take the action it considers necessary or desirable to hold the ballot as quickly as possible.

### **Providing information and documents to electoral officers**

**115.(1)** This section applies if—

- (a) the registrar has notified the electoral commission of an application for a ballot for a proposed amalgamation; and
- (b) the electoral commission has authorised in writing an electoral officer for the ballot; and
- (c) the electoral officer considers information within the knowledge or possession of an officer of an existing organisation or documents in the officer's custody or control or to which the officer has access, are reasonably necessary for a ballot that is or may be required because of the application.

(2) The electoral officer may, by notice, require the officer to—

- (a) give information to the officer within the officer's knowledge or possession; and
- (b) make available documents to the officer that the officer has—
  - (i) custody or control of; or
  - (ii) to which the officer has access.

(3) The notice must state—

- (a) if it requires the officer to give information—
  - (i) the information required; and

- (ii) a period in which it is to be given of no less than 7 days; and
- (iii) a reasonable way of giving it; and
- (b) if it requires the officer to produce or make documents available—
  - (i) the documents required; and
  - (ii) a reasonable period in which they are to be produced or made available; and
  - (iii) a reasonable place at which they are to be produced or made available.

(4) The officer must not contravene the notice without reasonable excuse.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for the officer not to comply with a notice under subsection (2) if doing so might tend to incriminate the officer.

(6) In this section—

“**officer**” of an existing organisation includes an employee of the organisation.

### **Ballot expenses under pt 9**

**116.(1)** Expenses of a ballot for a proposed amalgamation conducted by the electoral commission under this part are payable by the organisation for which the ballot was held.

(2) The organisation must pay the State the expenses within 1 month after receiving a written request from the electoral commission to do so.

(3) The amount payable by an organisation under this section may be recovered by the State as a debt payable to it.

(4) Despite subsections (1) to (3), the court may order the State to pay all or part of the expenses of a ballot if—

- (a) the ballot was ordered under section 139;<sup>88</sup> and

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<sup>88</sup> Section 139 (Irregularity inquiries)

- (b) the order was made because of an irregularity caused by the electoral commission.

### **Ballot records to be kept**

**117.(1)** This section applies—

- (a) if a ballot is held under this part; and
- (b) despite the rules of an organisation or branch.

**(2)** A responsible person for the ballot must do everything necessary to ensure all ballot records for the ballot are kept for 1 year after the ballot by—

- (a) if the ballot is conducted by the electoral commission—the electoral commission; or
- (b) otherwise—the organisation or branch.

Maximum penalty—40 penalty units.

**(3)** In this section—

**“responsible person”** means—

- (a) for a ballot conducted by the electoral commission—the electoral commission; or
- (b) otherwise—
  - (i) the returning officer for the ballot; or
  - (ii) the organisation or branch; or
  - (iii) an officer of the organisation or branch who performs a function in relation to the records.

### ***Division 4—Amalgamation approval procedure***

#### **Amalgamation hearing**

**118.(1)** This section applies if an application for a proposed

amalgamation is filed under section 104.<sup>89</sup>

(2) The commission must immediately fix a time and place for a hearing (an “**amalgamation hearing**”) to hear submissions about—

- (a) the application; and
- (b) if a community of interest declaration application was filed with the application—making a declaration for the amalgamation; and
- (c) if a ballot exemption was applied for—giving the exemption; and
- (d) if approval for an alternative ballot was applied for—giving the approval.

(3) The commission—

- (a) must promptly give notice of the time and place for the amalgamation hearing to—
  - (i) all organisations; and
  - (ii) if the hearing is about a ballot exemption and section 135<sup>90</sup> applies—the proposed amalgamated organisation’s members; and
- (b) may notify other persons who are likely to be interested in the hearing.

(4) A notice under subsection (3)(a)(ii)—

- (a) must tell a member of the right to object under section 134(4);<sup>91</sup> and
- (b) may be given—
  - (i) personally; or
  - (ii) by post, addressed to the member’s residential address in the organisation’s register; or

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<sup>89</sup> Section 104 (Application to submit proposal to a ballot)

<sup>90</sup> Section 135 (Alternative ballot approval)

<sup>91</sup> Section 134 (Ballot exemption—recognising federal ballot)

- (iii) in a journal published by the organisation that circulates generally to its members; or
- (iv) in a newspaper that circulates throughout the State.

### **Submissions at amalgamation hearings**

**119.(1)** Submissions at an amalgamation hearing may only be made by the applicant.

- (2)** However, another person may make a submission at the hearing if—
- (a) the submission is about a matter prescribed under a regulation; and
  - (b) the commission consents.

### **Ballot approval not extending eligibility rules etc.**

**120.(1)** At an amalgamation hearing, the commission must allow the application and approve the submission of the amalgamation to ballot if it considers the application meets the following conditions (the “**ballot conditions**”)—

- (a) the amalgamation involves registering a proposed organisation;
- (b) a person ineligible for membership of an existing organisation will not be eligible for membership of the amalgamated organisation;
- (c) if a proposed amendment of an existing organisation’s name gives it the same name as another organisation—the other organisation has consented in writing to the name;
- (d) a proposed amendment of an existing organisation’s rules—
  - (i) does not contravene this Act or an award or certified agreement; or
  - (ii) is not contrary to law;
- (e) a proposed deregistration of an existing organisation complies with this Act and is not otherwise contrary to law.



(2) The commission must allow an application for a ballot exemption under section 133 or 134<sup>92</sup> if the ballot conditions are met.

(3) If the commission is not satisfied the ballot conditions have been met, it must—

- (a) refuse the application; or
- (b) adjourn the hearing.

(4) However, the commission must allow the application if it is satisfied the ballot conditions will be met by—

- (a) permitting the applicant to amend the scheme for the amalgamation; or
- (b) accepting the applicant's undertaking to amend the amalgamation scheme.

(5) A permission under subsection (4)(a) may—

- (a) despite an existing organisation's rules, allow the organisation to amend the scheme (including proposed alterations to the organisation's rules); and
- (b) provide for the procedure that, despite the rules, may or must be followed by the management committee; and
- (c) be given on conditions stated by the commission.

(6) If an undertaking under subsection (4)(b) or commission conditions under subsection (5) are contravened, the commission may—

- (a) amend the scheme; or
- (b) give orders or directions about—
  - (i) holding the ballot; or
  - (ii) the procedure for the amalgamation.

(7) Subsections (3)(b) and (6) do not limit the commission's other powers.

(8) In this section—

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<sup>92</sup> Section 133 (Ballot exemption—number of members)  
Section 134 (Ballot exemption—recognising federal ballot)

**“another organisation”** includes an organisation under the Commonwealth Act.

**“same name”**, for an organisation, means a name that is—

- (a) the same as another organisation’s name; or
- (b) so similar to another organisation’s name as to be likely to cause confusion.

**“scheme”** includes proposed alterations of an existing organisation’s rules.

### **Objections about amalgamation involving extending eligibility rules etc.**

**121.(1)** This section applies if an objection to a proposed amalgamation is about an extension of eligibility rules of an organisation or association.

**(2)** The objection may only be made—

- (a) if the commission has refused to approve an amalgamation be submitted to ballot; and
- (b) by a person, and on a ground, prescribed under a regulation.

**(3)** The commission must hear the objection as prescribed under a regulation.

### **Ballot approval if ballot extends eligibility rules etc.**

**122.(1)** This section applies if—

- (a) the commission considers an application to submit a proposed amalgamation to ballot meets the ballot conditions; and
- (b) the time for objections under section 121<sup>93</sup> to the proposed amalgamation has ended or any objections have been heard.

**(2)** The commission must allow the application if satisfied—

- (a) no properly made objection is justified; and
- (b) the amalgamation—

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<sup>93</sup> Section 121 (Objections about amalgamation involving extending eligibility rules etc.)

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- (i) does not contravene this Act or an award or certified agreement; and
- (ii) is not contrary to law.

**(3)** The commission must also allow a ballot exemption under section 133 or 134<sup>94</sup> if—

- (a) it is satisfied under subsection (2); and
- (b) an exemption—
  - (i) was applied for; and
  - (ii) would be given under section 133 or 134.

**(4)** If the commission is not satisfied under subsection (2) it must—

- (a) refuse the application; or
- (b) adjourn the proceeding.

**(5)** However, the commission must allow the application and approve the submission of the amalgamation to ballot or allow a ballot exemption if it considers it would be satisfied as required by subsection (2) by—

- (a) permitting the applicant to amend the scheme for the proposed amalgamation; or
- (b) accepting the applicant's undertaking to amend the amalgamation scheme.

**(6)** The commission may permit an amendment of a proposed organisation's rules under subsection (5)—

- (a) despite the proposed organisation's rules—so as to allow the existing organisations to amend the scheme for the proposed amalgamation in a way that affects the proposed organisation, including its rules, by resolutions of their management committees; or
- (b) despite the existing or proposed organisations' rules—under a procedure the commission decides the management committees must, or may, follow; or

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<sup>94</sup> Section 133 (Ballot exemption—number of members)  
Section 134 (Ballot exemption—recognising federal ballot)

(c) on conditions stated by the commission.

(7) The commission may permit an amendment of an existing organisation's rules under subsection (5)—

(a) despite the organisation's rules—

- (i) to allow the organisation to amend the scheme, other than by amending a proposed organisation's rules, by management committee resolution; or
- (ii) under a procedure the commission decides the management committee must, or may, follow; or

(b) on conditions stated by the commission.

(8) If an applicant contravenes an undertaking under subsection (5), or conditions stated by the commission under subsection (6) or (7), the commission may—

- (a) amend the scheme; or
- (b) give directions or orders about—
  - (i) holding the ballot; or
  - (ii) the procedure for the amalgamation.

(9) Subsections (4)(b) and (8) do not limit the commission's other powers.

(10) In this section—

**“scheme”** for a proposed amalgamation includes—

- (a) a proposed organisation's rules for the amalgamation; and
- (b) proposed amendments of an existing organisation's rules.

### **Fixing ballot period**

**123.(1)** This section applies if the commission approves the submission of a proposed amalgamation to a ballot.

(2) The commission must—

- (a) consult with the electoral commissioner; and
- (b) fix days for the ballot to start and finish.

(3) The ballot must start within 28 days of approval, unless—

- (a) the commission is satisfied the electoral commission needs more time to arrange the ballot; or
- (b) the existing organisations for the amalgamation request a later day.

(4) If a scheme for the proposed amalgamation has a proposed alternative provision, all ballots for the proposed amalgamation must have the same starting and finishing days.

(5) The commission may, after consulting with the electoral commissioner, change the starting or finishing days.

(6) Subsection (5) does not limit the powers of the person holding the ballot.

### **Roll of voters for ballot**

**124.(1)** The roll of voters for a ballot for a proposed amalgamation is the roll of persons having the right to vote at the ballot on the later of—

- (a) the day the commission fixes the ballot's starting and finishing days; and
- (b) 28 days before the ballot starts.

(2) A person has the right to vote at the ballot if the person may, under the rules of the relevant existing organisation—

- (a) vote at the ballot; or
- (b) vote in an election.

### **Filing 'yes' case**

**125.(1)** An existing organisation for a proposed amalgamation may file a written statement (a “**‘yes’ case**”) supporting—

- (a) the proposed principal amalgamation; and
- (b) each proposed alternative amalgamation.

(2) A 'yes' case must not be more than 2 000 words.

(3) A ‘yes’ case must be filed with the ballot application for the proposed amalgamation.

### ‘No’ cases

**126.(1)** Members of an existing organisation for a proposed amalgamation may file in the registrar’s office a written statement (a “‘no’ case”) opposing the proposed principal amalgamation or any proposed alternative amalgamation.

(2) The number of members filing a ‘no’ case must be at least the required minimum number of members of the organisation.

(3) A ‘no’ case must be—

- (a) filed no later than 7 days before the hearing for the proposed amalgamation; and
- (b) not more than 2 000 words.

(4) In this section—

“**required minimum number**”, of members of an organisation, means the lesser of—

- (a) 5% of the organisation’s total members when the ballot application for the proposed amalgamation was filed; or
- (b) 1 000.

### Commission statements

**127.(1)** If 2 or more ‘no’ cases are filed, the commission must prepare a written statement opposing the amalgamation—

- (a) based on the ‘no’ cases; and
- (b) as far as practicable, fairly presenting the substance of the arguments in the ‘no’ cases; and
- (c) if practicable, in consultation with representatives of the persons who filed the ‘no’ cases.

(2) The statement—

- (a) must not be more than 2 000 words; and

- (b) must be sent with the ballot paper to persons who may vote at a ballot under section 136;<sup>95</sup> and
- (c) is taken to be the only ‘no’ case for the amalgamation.

### **‘Yes’ or ‘no’ cases may include things other than words**

**128.** A ‘yes’ or ‘no’ case may, if the commission approves, include things other than words, including, for example, diagrams, illustrations, and photographs.

### **Amending ‘yes’ or ‘no’ cases**

**129.** The commission may—

- (a) allow the person who filed a ‘yes’ or ‘no’ case to amend it; and
- (b) amend a filed ‘yes’ or ‘no’ case to—
  - (i) correct factual errors; or
  - (ii) ensure it complies with this Act.

### **‘Yes’ and ‘no’ cases to be sent to voters**

**130.** A copy of the ‘yes’ and ‘no’ cases and any amendments to them must be sent with the ballot paper to persons who may vote at a ballot under section 136.

### **Amending schemes**

**131.(1)** The commission may, before a ballot for a proposed amalgamation starts, permit the existing organisations for the amalgamation to amend the amalgamation’s scheme, including—

- (a) the rules of a proposed organisation for the amalgamation; or
- (b) proposed amendments of the existing organisations’ rules.

**(2)** The permission may—

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<sup>95</sup> Section 136 (Members’ secret postal ballot)

- (a) if it is a permission to amend a proposed organisation's rules—allow the amendment to be made by resolutions of the existing organisations' management committees—
    - (i) as far as the amendment affects the proposed organisation or its rules; and
    - (ii) despite the proposed organisation's rules; and
  - (b) if the permission is to amend an existing organisation's rules—despite the rules, allow the existing organisation by a resolution of its management committee to amend the rules, or the scheme, other than a proposed organisation's rules; and
  - (c) make provision for procedures that, despite the existing organisations' rules may or must be followed by management committees; and
  - (d) be given on conditions stated by the commission.
- (3) If the commission gives the permission on conditions and the conditions are contravened, the commission may—
- (a) amend the scheme for the amalgamation, including—
    - (i) the rules of a proposed organisation for the amalgamation; or
    - (ii) proposed amendments of the rules of the existing organisations; or
  - (b) give directions or orders about—
    - (i) holding the ballot; or
    - (ii) procedures for the amalgamation.
- (4) Subsection (3) does not limit the commission's other powers.
- (5) If a scheme is amended, under this section or otherwise, the scheme outline must be amended to reflect the amendment.

### **Scheme outlines**

**132.(1)** A scheme outline may, if the commission approves, have more than 3 000 words.



(2) The outline may, if the commission approves, include things other than words including, for example, diagrams, illustrations, and photographs.

(3) The commission may—

- (a) before a ballot begins, permit the existing organisations concerned in the amalgamation to amend the outline; and
- (b) amend the outline to—
  - (i) correct factual errors; or
  - (ii) ensure it complies with this Act.

### **Ballot exemption—number of members**

**133.(1)** This section applies at a hearing for a proposed amalgamation if—

- (a) a ballot exemption application was filed with the ballot application for the amalgamation; and
- (b) the number of persons that could become members of the proposed amalgamated organisation for the amalgamation is not more than 25% of the number of members of the applicant organisation when the applications were filed.

(2) At the end of the hearing, the commission must allow the ballot exemption, unless it considers the exemption should be refused because of special circumstances.

(3) If the commission gives the exemption, the members of the applicant organisation are taken to have approved—

- (a) the proposed principal amalgamation; and
- (b) each proposed alternative amalgamation.

### **Ballot exemption—recognising federal ballot**

**134.(1)** This section applies if—

*Industrial Organisations Act 1997*

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- (a) an organisation's counterpart federal body has amalgamated with another organisation's counterpart federal body after each body has—
  - (i) held a ballot (the “**federal ballot**”) under the Commonwealth Act; or
  - (ii) been given an exemption from a ballot under the Commonwealth Act; and
- (b) the organisations propose to amalgamate under this Act.

(2) The organisations may apply to the commission for a ballot exemption for the proposed amalgamation.

(3) Section 106<sup>96</sup> applies to the organisations as if it were the proposed amalgamated organisation with all necessary changes.

(4) A member of any of the organisations may object to the exemption—

- (a) on the ground that the exemption would detrimentally affect the objector's interests; and
- (b) in the way prescribed under a regulation.

(5) At the end of the amalgamation hearing for the amalgamation, the commission may only allow the exemption if satisfied—

- (a) the percentage of Queensland voters in the federal ballot approving the amalgamation was the same as, or more than, the percentage that would have been required to approve the amalgamation under section 137<sup>97</sup> had the Queensland voters been voting in a ballot for an amalgamation to which section 137 applied; and
- (b) if the organisations' and the federal body's eligibility rules differ—the interests of the organisations' members who were ineligible to vote in the federal ballot have not been detrimentally affected; and
- (c) objections about the possible extension of eligibility rules have been resolved; and

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<sup>96</sup> Section 106 (Application for exemption from holding ballot)

<sup>97</sup> Section 137 (Members' decision on amalgamation)

(d) in the federal jurisdiction, all likely legal challenges (including inquiries under the Commonwealth Act) have ended.

(6) If the commission is satisfied as required by subsection (5), the commission must give the exemption unless it considers the exemption should be refused because of the special circumstances of the case.

(7) If an exemption is given, the organisation's members are taken to have approved the proposed principal amalgamation and a proposed alternative amalgamation.

### **Alternative ballot approval**

**135.(1)** This section applies to an amalgamation hearing for a proposed amalgamation if—

- (a) an alternative ballot for the amalgamation is applied for; and
- (b) the application has a proposal that complies with section 107(3).<sup>98</sup>

(2) At the end of the hearing and after consulting with the electoral commissioner, the commission must approve the alternative ballot if satisfied the proposal is—

- (a) practicable; and
- (b) likely to give an organisation's members—
  - (i) fuller participation than a ballot under section 136; and
  - (ii) an adequate opportunity to vote on the amalgamation without intimidation.

### **Members' secret postal ballot**

**136.(1)** This section applies to each existing organisation concerned in a proposed amalgamation if—

- (a) the commission has approved a ballot for the amalgamation, and
- (b) it has not—

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<sup>98</sup> Section 107 (Application for alternative ballot)

- (i) given the organisation a ballot exemption under section 133 or 134;<sup>99</sup> or
- (ii) approved an alternative ballot for the amalgamation.

(2) The electoral commission must carry out secret postal ballots of the organisation's members about—

- (a) whether they approve the proposed principal amalgamation; and
- (b) if the scheme for the amalgamation contains a proposed alternative provision—if the proposed principal amalgamation does not take place, whether they approve—
  - (i) the proposed alternative amalgamation; or
  - (ii) each proposed alternative amalgamation.

(3) If 2 or more ballots of an organisation's members must be held, the same ballot paper must be used for all of them.

(4) Votes in a ballot under subsection (2) need not be counted if the person conducting it is satisfied the ballot result is unnecessary for this Act.

(5) A copy of the scheme outline and amendments to it must be sent with the ballot paper to persons who may vote at the ballot.

(6) A ballot held under this section must be carried out as prescribed under a regulation.

### **Members' decision on amalgamation**

**137.(1)** This section applies if a proposed amalgamation is submitted to a ballot of the members of an existing organisation.

- (2) The amalgamation is only approved by the members—
  - (a) if a community of interest declaration exists for the proposed amalgamation—if more than 50% of the formal votes cast are for the amalgamation; or
  - (b) otherwise—if—

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<sup>99</sup> Section 133 (Ballot exemption—number of members)  
Section 134 (Ballot exemption—recognising federal ballot)

- (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 for the amalgamation.

### **Further ballot if amalgamation not approved**

**138.(1)** This section applies if—

- (a) a ballot (the “**first ballot**”) of existing organisation members is held for a proposed amalgamation; and
- (b) the members do not approve the amalgamation.

**(2)** The existing organisations may jointly file another ballot application for the proposed amalgamation.

**(3)** If the application is filed within 1 year of the declaration of the first ballot, the commission may—

- (a) omit a procedural step under this part for the proposed amalgamation; or
- (b) order the conduct of a fresh ballot in place of an earlier ballot in the amalgamation; or
- (c) give directions and make further orders as it considers necessary or desirable.

**(4)** Subsection (2) does not require a further ballot application to be made within 1 year of the declaration of the first ballot.

### **Irregularity inquiries**

**139.(1)** An application may be made to the court by a member of an existing organisation for it to inquire into an alleged irregularity in a ballot.

**(2)** The application must be made—

- (a) within 60 days after the result of the ballot has been declared; and
- (b) in the way prescribed under a regulation.

**(3)** If the court decides to inquire into the alleged irregularity—

- (a) the court must fix a time and place for conducting the inquiry; and

- (b) the court may give directions to ensure that all persons who have the right to appear or be represented at the inquiry are given notice of the time and place; and
- (c) in conducting the inquiry under this section, sections 63 to 66<sup>100</sup> apply with all necessary changes.

### **Amalgamation approval**

**140.(1)** If the members of each existing organisation for a proposed amalgamation approve the proposed principal amalgamation, the proposed amalgamation is approved.

**(2)** A proposed alternative amalgamation for the proposed amalgamation is approved if—

- (a) the scheme for the proposed amalgamation has an alternative provision; and
- (b) the members of 1 or more existing organisations for the amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more existing organisations are approving organisations; and
- (d) one of the existing organisations is the proposed amalgamated organisation—it is one of the approving organisations.

### *Division 5—Amalgamation taking effect*

#### **Fixing amalgamation day**

**141.(1)** An approved amalgamation starts on the day (the “**amalgamation day**”) fixed by the commission by gazette notice.

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<sup>100</sup> Section 63 (Court may make interim orders)  
Section 64 (Procedure at inquiry)  
Section 65 (Functions and powers of court at inquiry)  
Section 66 (Enforcing orders under this part)

(2) However, the commission may not fix an amalgamation day before—

- (a) the time for making an application to the court for an inquiry into an alleged irregularity in a ballot has ended; or
- (b) if an application mentioned in paragraph (a) has been made—the application has been decided and the result of any fresh ballot ordered by the court has been declared.

(3) Before fixing an amalgamation day, the commission must—

- (a) consult with the existing organisations for the amalgamation; and
- (b) be satisfied there are no pending proceedings, other than civil proceedings, against the existing organisations for a contravention of—
  - (i) this Act or another law; or
  - (ii) an award, industrial agreement, certified agreement or EFA; or
  - (iii) an order made under this or another Act.

### **Action on amalgamation**

**142.** On the amalgamation day—

- (a) if the proposed amalgamated organisation is not registered, the registrar must enter in the register—
  - (i) particulars about the amalgamated organisation; and
  - (ii) the amalgamation day; and
- (b) a proposed amendment of the rules of an existing organisation starts; and
- (c) the commission must deregister a proposed deregistering organisation; and
- (d) the members of a proposed deregistering organisation are taken to be members of the amalgamated organisation, without paying an entrance fee.

### **Vesting of property and liabilities in amalgamated organisation**

**143.** On the amalgamation day, a deregistered organisation's property and liabilities vest in the amalgamated organisation.

### **Effect of amalgamation on commission decisions**

**144.** From the amalgamation day—

- (a) a commission decision that bound a proposed deregistering organisation and its members immediately before that day binds the amalgamated organisation and its members; and
- (b) a reference in a commission decision to a deregistered organisation is taken to include the amalgamated organisation.

*Example of paragraph (b)—*

A reference to an organisation's obligation to a deregistered organisation is taken to include the amalgamated organisation.

### **Instruments**

**145.(1)** From the amalgamation day an instrument to which this part applies continues to have effect.

**(2)** The instrument applies, for acts, omissions, transactions and matters done on or after that day as if a reference in the instrument to a deregistered organisation were a reference to the amalgamated organisation.

**(3)** In this section—

**“instrument”**, to which this part applies, means an instrument—

- (a) that—
  - (i) a deregistered organisation is a party to; or
  - (ii) was given to, by or in favour of a deregistered organisation;  
or
  - (iii) refers to a deregistered organisation; or
- (b) under which—
  - (i) money is, or may become, payable to or by a deregistered organisation; or



- (ii) property may be disposed of to or by a deregistered organisation.

### **Pending proceedings**

**146.(1)** This section applies if a deregistered organisation was a party to a pending proceeding in a court or before the commission immediately before the amalgamation day.

**(2)** The amalgamated organisation is substituted for each deregistered organisation as a party to the proceeding.

**(3)** The proceeding continues as if the amalgamated organisation were, and had always been, the deregistered organisation.

### **Division applies despite laws or instruments**

**147.(1)** This division applies despite another Act or an instrument.

**(2)** Nothing done under this division—

(a) makes an organisation or other person—

(i) contravene—

(A) a contract or confidence; or

(B) an Act; or

(ii) guilty of a civil wrong; or

(b) releases a surety's obligations, wholly or in part.

**(3)** If apart from this section a person's consent would be necessary to give effect to this division, the consent is taken to have been given.

*Example of a contract mentioned in subsection(2)(a)(i)(A)—*

A contractual provision that prohibits, restricts or regulates assigning or transferring an asset or liability or disclosing information.

### **Amalgamated organisation to carry out amalgamation**

**148.(1)** An amalgamated organisation for a completed amalgamation must take all necessary steps to carry out the amalgamation under this part for the amalgamation.

(2) The commission may, on the application of an interested person, make any orders it considers appropriate for subsection (1).

### **Certificates about land**

**149.(1)** This section applies if land becomes land of an amalgamated organisation under this division.

(2) A certificate from an authorised person for the amalgamated organisation is evidence that the land is an asset of the organisation if it—

- (a) is signed by the person; and
- (b) identifies the land in any way, including by reference to a map; and
- (c) states the land became the amalgamated organisation's land under this division.

(3) The certificate is taken to be an instrument of transfer that conforms with the requirements of the *Land Title Act 1994*, section 61.<sup>101</sup>

(4) The registrar of titles must register the vesting of the land in the amalgamated organisation if the certificate is filed with the registrar.

(5) A vesting of land in the amalgamated organisation may be registered or given effect to under another State's law if—

- (a) the certificate is given to a person with functions for a land registration under the other State's law; and
- (b) the person is permitted by law to do so.

### **Certificates about charges**

**150.(1)** This section applies if an amalgamated organisation becomes a charge holder because of this division.

(2) An authorised person's certificate is evidence of an amalgamated organisation becoming a charge holder under this division if it—

- (a) is signed by the person; and

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<sup>101</sup> *Land Title Act 1994*, section 61 (Requirements of instrument of transfer)

- (b) identifies the charge; and
- (c) states the amalgamated organisation became the charge holder because of this division.

(3) If the certificate is given to a person required or permitted by law to keep a register about charges, the person must—

- (a) register an amalgamated organisation becoming a charge holder under this part; or
- (b) otherwise deal with and give effect to the certificate.

(4) This section applies despite the Corporations Law, section 268.<sup>102</sup>

(5) In this section—

**“charge”** means—

- (a) a mortgage created in any way; and
- (b) an agreement to give a mortgage.

**“holder”**, of a charge, includes a person to be given the benefit of a charge under an agreement, on demand or otherwise.

### **Certificates about company interests**

**151.(1)** This section applies if an amalgamated organisation becomes the holder of a share, debenture or interest in a company (a **“company interest”**) because of this division.

(2) An authorised person’s certificate is evidence of an amalgamated organisation becoming the holder of a company interest because of this division if it—

- (a) is signed by the person; and
- (b) identifies the share, debenture or interest; and
- (c) states the amalgamated organisation has become the holder of the interest because of this division.

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<sup>102</sup> Corporations Law, section 268 (Assignment and variation of charges)

(3) If the certificate is delivered to the company, the company must do the following as if the certificate is an appropriate instrument of transfer for the interest—

- (a) register the interest in the same way as transfers of similar interests in the company;
- (b) complete the appropriate documents for the registration;
- (c) deliver the completed documents to the amalgamated organisation.

(4) This section applies despite the Corporations Law, chapter 7, part 7.13.<sup>103</sup>

(5) In this section—

“**debenture**” see the Corporations Law, chapter 7, part 7.12, division 4.<sup>104</sup>

### **Certificates about other property**

**152.(1)** This section applies if property, other than property to which sections 149 to 151<sup>105</sup> apply, becomes the property of an amalgamated organisation because of this division.

(2) An authorised person’s certificate is evidence of property becoming the amalgamated organisation’s property because of this division if it—

- (a) is signed by the person; and
- (b) identifies the property; and
- (c) states the property has, under this division, become the amalgamated organisation’s property because of this division.

(3) If the certificate is given to a person with registration functions for that kind of property under a law of the State, the person must do the following as if the certificate were an appropriate instrument of transfer of the property—

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<sup>103</sup> Corporations Law, chapter 7, part 7.13 (Title to, and transfer of, securities)

<sup>104</sup> Corporations Law, chapter 7, part 7.12, division 4 (Debentures)

<sup>105</sup> Section 149 (Certificates about land)  
Section 150 (Certificates about changes)  
Section 151 (Certificates about company interests)

- (a) register the matter in the same way as transactions for property of that kind;
- (b) deal with, and give effect to, the certificate.

(4) A transfer of the property to the amalgamated organisation may be registered or given effect to under another State's law if—

- (a) the certificate is given to a person with functions for registration of property of that kind under the other State's law; and
- (b) the person is permitted by law to do so.

### **Commission may resolve difficulties**

**153.(1)** If a difficulty arises about applying this part to a particular matter, the commission may, on the application of an interested person, make orders it considers necessary to resolve the difficulty.

(2) An order made under subsection (1) has effect despite the rules of an organisation or proposed organisation.

## ***Division 6—Validation***

### **Application of division**

**154.(1)** This division applies to an act (a “**relevant act**”), if the relevant act is done—

- (a) before or after the commencement; and
- (b) to or by an existing organisation or association concerned in an amalgamation, or the organisation's management committee or officer; and
- (c) for a proposed or completed amalgamation.

(2) However, sections 155 and 156 do not apply to a relevant act to the extent ordered by the commission under section 157<sup>106</sup>.

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<sup>106</sup> Section 157 (Order that s 155 or 156 does not apply)

**Validating acts in good faith**

**155.(1)** A relevant act done in good faith is valid despite an invalidity discovered about it later.

**(2)** A relevant act is taken as being done in good faith unless proved otherwise.

**(3)** A person who purports to be a management committee member, or an officer, of an organisation that has done a relevant act, is taken as having done so in good faith unless proved otherwise.

**(4)** An invalidity in a relevant act that consists of the making or amending of a scheme for the amalgamation is taken not to be discovered until the invalidity was known to a majority of—

- (a) management committee members; or
- (b) persons purporting to act as members of the management committee.

**(5)** Knowledge of facts from which the invalidity arose is not knowledge of the invalidity.

**(6)** Nothing in this section affects—

- (a) a court or commission order made before the commencement; or
- (b) section 24, 82, 83, 84, 85, 86, 139, 148, 153, 173 or 185.<sup>107</sup>

**Validation after 4 years**

**156.(1)** This section applies if more than 4 years has elapsed since a relevant act was done.

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<sup>107</sup> Section 24 (Rules to give conditions for loans, grants and donations)  
 Section 82 (Members and officers registers)  
 Section 83 (Filing registers)  
 Section 84 (Exemption from filing members register etc.)  
 Section 85 (Rectification of registers by commission)  
 Section 86 (Registrar's access to registers)  
 Section 139 (Irregularity inquiries)  
 Section 148 (Amalgamated organisation to carry out amalgamation)  
 Section 153 (Commission may resolve difficulties)  
 Section 173 (Irregularity inquiries)  
 Section 185 (Commission may resolve difficulties—Cwlt s 253ZV)

(2) The relevant act is taken to have been done under this part and the organisation's rules.

(3) However, this section does not affect an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the court, another court or the commission about a relevant act made before the 4 years ends.

### **Order that s 155 or 156 does not apply**

**157.(1)** The commission may, if an eligible person applies, order that section 155 or 156<sup>108</sup> does not apply, and never applied, to a relevant act.

(2) The commission may make the order only if satisfied the application of section 155 or 156 to the relevant act does substantial injustice to—

- (a) an eligible person; or
- (b) a creditor of the organisation or association concerned in the amalgamation; or
- (c) a person having dealings with a person or creditor mentioned in paragraph (a) or (b).

(3) In this section—

**“eligible person”** means—

- (a) the organisation or association concerned in the amalgamation; or
- (b) a member of the organisation or proposed organisation or another person having a sufficient interest for the organisation or proposed organisation.

### **Orders about invalidities**

**158.(1)** If an eligible person applies to the commission, it may decide if an invalidity has happened in a proposed or completed amalgamation.

(2) If the commission decides an invalidity has happened, it may—

- (a) make orders or declarations it considers appropriate to—

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<sup>108</sup> Section 155 (Validating acts in good faith)  
Section 156 (Validation after 4 years)

- (i) correct the invalidity; or
  - (ii) change the consequences in law of the invalidity; or
  - (iii) validate any thing made invalid because of the invalidity; and
- (b) give additional or consequential directions it considers appropriate.

(3) However, the commission must not make an order if it does substantial injustice to—

- (a) an eligible person; or
- (b) a creditor of the organisation or association; or
- (c) a person having dealings with the organisation or association.

(4) To remove doubt, it is declared this section also applies to an invalidity happening—

- (a) before or after the commencement; and
- (b) about an association before it became an organisation.

(5) In this section—

“eligible person” see section 157(3).<sup>109</sup>

## **PART 10—WITHDRAWAL FROM AMALGAMATIONS**

### *Division 1—General*

#### **Object of pt 10—Cwlth s 253ZH**

**159.** The object of this part is to provide for certain organisations that have taken part in amalgamations under the repealed Act, part 14, division 9 or this part, to be reconstituted and re-registered in a way that is fair to—

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<sup>109</sup> Section 157 (Order that s 155 or 156 does not apply)



- (a) the members of the organisations concerned; and
- (b) the creditors of those organisations.

### **Definitions for pt 10—Cwlth s 253ZI**

**160.(1)** In this part—

**“amalgamated organisation”** means an organisation that was formed under the repealed Act, part 14, division 9 or under part 9, but does not include an organisation that was subsequently deregistered under that part or this Act.

**“ballot”** means a ballot conducted under division 2.<sup>110</sup>

**“constituent member”**, in relation to a constituent part of an amalgamated organisation, means a member of the amalgamated organisation who would be eligible for membership of the constituent part if the constituent part was still registered as an organisation with the same rules as it had when it was deregistered under the repealed Act, part 14, division 9, or under part 9.

**“constituent part”**, in relation to an amalgamated organisation, means a part of the membership of the amalgamated organisation that would have been eligible for membership of an organisation deregistered under the repealed Act, part 14, division 9, or under part 9, for the formation of that amalgamated organisation if the deregistration had not happened.

**“newly registered organisation”** means an organisation registered under section 175.<sup>111</sup>

**(2)** For the purposes of this part, an organisation is taken to have been deregistered under the repealed Act, part 14, division 9, or under part 9, for the formation of an amalgamated organisation if the deregistration happened as a result of the registration of—

- (a) the amalgamated organisation; or

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<sup>110</sup> Division 2 (Ballots for withdrawal from amalgamated organisations)

<sup>111</sup> Section 175 (Registration of constituent part—Cwlth s 253ZQ)

- (b) another organisation that was subsequently deregistered under the repealed Act, part 14, division 9, or under part 9 as a result of the registration under that paragraph of—
  - (i) the amalgamated organisation; or
  - (ii) an organisation that, through 1 or more previous applications of this subsection, is taken to have been deregistered under the repealed Act, part 14, division 9, or under part 9, for the formation of the amalgamated organisation.

### *Division 2—Ballots for withdrawal from amalgamated organisations*

#### **Applications to the commission for ballots—Cwlth s 253ZJ**

**161.(1)** An application may be made to the commission for a 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) the repealed Act, part 14, division 9, after 18 June 1993; or
    - (ii) part 9; and
  - (b) the amalgamation happened no less than 2 years before the date of the application; and
  - (c) the application is made—
    - (i) if the amalgamation occurred before the commencement of this part—no more than 3 years after that commencement; or
    - (ii) if the amalgamation happened after the commencement of this part—no more than 5 years after the amalgamation happened.
- (2)** However, an application may not be made if—
- (a) during the last year, 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 number of constituent members prescribed under a regulation; or
  - (b) a management committee elected entirely or substantially by the constituent members.
- (4) The application must be made as prescribed under a regulation.

### **Ballot exemption—recognising federal ballot**

**162.(1)** This section applies if—

- (a) an organisation’s counterpart federal body has withdrawn from amalgamation with another organisation’s counterpart federal body after each body has—
    - (i) held a ballot (the “**federal ballot**”) under the Commonwealth Act; or
    - (ii) been given an exemption from a ballot under the Commonwealth Act; and
  - (b) the organisations propose to withdraw from amalgamation under this part.
- (2) The organisations may apply to the commission for an exemption for a ballot for the proposed withdrawal from amalgamation.
- (3) A member of any of the organisations may object to the exemption—
- (a) on the ground that the exemption would detrimentally affect the objector’s interests; and
  - (b) in the way prescribed under a regulation.
- (4) At the end of the hearing for a ballot to be held under section 161<sup>112</sup> for the withdrawal from the amalgamation, the commission may only give the exemption if satisfied—

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<sup>112</sup> Section 161 (Applications to the commission for ballots—Cwlth s 253ZJ)

- (a) the percentage of Queensland voters in the federal ballot approving the withdrawal from amalgamation was the same as, or more than, the percentage that would have been required to approve the withdrawal from amalgamation under this part had the Queensland voters been voting in a ballot for a withdrawal from amalgamation to which this part applied; and
- (b) if the organisations' and the federal body's eligibility rules differ—the interests of the organisations' members who were ineligible to vote in the federal ballot have not been detrimentally affected; and
- (c) objections about the possible changes of eligibility rules have been resolved; and
- (d) in the Federal jurisdiction, all likely legal challenges (including inquiries under the Commonwealth Act) have ended.

(5) If the commission is satisfied as required by subsection (4), the commission must give the exemption unless it considers the exemption should be refused because of the special circumstances of the case.

(6) If an exemption is given, the organisation's members are taken to have approved the withdrawal from amalgamation.

#### **Notice to electoral commission—Cwlth s 253ZK**

**163.(1)** The registrar must immediately notify the electoral commission if an application for a ballot is made.

(2) On being notified, the electoral commission must immediately take action it considers necessary or desirable to conduct a ballot for the application as quickly as possible.

#### **Orders for ballots—Cwlth s 253ZL**

**164.(1)** The commission must order that a vote of the constituent members be taken by secret ballot, to decide whether the constituent part of the amalgamated organisation should withdraw from the organisation, if the commission is satisfied—

- (a) the application for the ballot is validly made under section 161;<sup>113</sup> and
- (b) the proposal for withdrawal from the organisation complies with any requirements specified in a regulation.

(2) In considering whether to order that a ballot be held, the commission must have regard to any submissions made to it by persons authorised under a regulation to make submissions for the purposes of this section.

(3) If the commission orders that a ballot be held, it may make such orders as it considers appropriate for the conduct of the ballot.

### **Conducting ballot—Cwlth s 253ZM**

**165.(1)** A ballot must be conducted by the electoral commission.

(2) However, subsection (1) does not apply to a ballot if the commission has given an exemption for the ballot under section 168.<sup>114</sup>

### **Application for exemption from s 165**

**166.(1)** The persons or the body who may apply for a ballot may file in the registrar's office an application for the constituent part to be exempted from section 165(1) for the ballot.<sup>115</sup>

(2) An application may only be made if the persons or the body have—

- (a) resolved to make the application; and
- (b) notified the constituent members of the making of the resolution as prescribed under a regulation.

(3) The application must be accompanied by an affidavit by a person authorised by the persons or the body stating that subsection (2) has been complied with.

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<sup>113</sup> Section 161 (Applications to the commission for ballots—Cwlth s 253ZJ)

<sup>114</sup> Section 168 (Commission may give exemption from s 165)

<sup>115</sup> The persons and the body who may apply for a ballot are stated in section 161(3) (Applications to the commission for ballots—Cwlth s 253ZJ)

(4) On the filing of an application, the registrar must publish, as prescribed under a regulation, a notice stating details of the application.

### **Objections to application for exemption**

**167.(1)** A member of a constituent part for which an application is made under section 166(1)<sup>116</sup> may object to it.

(2) The commission must hear the application and properly made objections in the way prescribed under a regulation.

### **Commission may give exemption from s 165**

**168.(1)** This section applies if an application for a constituent part has been filed under section 166(1) and any properly made objections to the application have been heard.

(2) The commission may exempt the constituent part from section 165(1)<sup>117</sup> for a ballot if satisfied—

- (a) the ballot would be conducted in a way that would give constituent members an adequate opportunity of voting without intimidation; and
- (b) if an exemption has been given to the constituent part under this section—the constituent part has not contravened section 169 or 170;<sup>118</sup> or

(3) The commission may cancel an exemption given to a constituent part if—

- (a) the constituent part's management committee applies for its cancellation; or
- (b) the commission—
  - (i) is no longer satisfied as required by subsection (2); and

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<sup>116</sup> Section 166 (Application for exemption from s 165)

<sup>117</sup> Section 165 (Conducting ballot—Cwlth s 253ZM)

<sup>118</sup> Section 169 (Duties of constituent part if exemption given)  
Section 170 (Ballot result report)

- (ii) has given the constituent part's management committee an opportunity, as prescribed under a regulation, to show cause why the exemption should not be cancelled; or
- (c) the constituent part contravenes section 169 or 170.

(4) In this section—

**“management committee”**, for a constituent part, means a management committee elected entirely or substantially by the part's constituent members.

### **Duties of constituent part if exemption given**

**169.(1)** This section applies if a constituent part has been exempted from section 165(1)<sup>119</sup> for a ballot.

(2) Before holding a ballot the constituent part must—

- (a) appoint a returning officer, who is not an employee, member or officer of the constituent part, to conduct the ballot; and
- (b) give the registrar—
  - (i) notice of the returning officer's name; and
  - (ii) a statutory declaration sworn by the returning officer stating that the returning officer is not an employee, member or officer of the constituent part; and
- (c) obtain the registrar's written approval of the returning officer's appointment.

(3) A contravention of this section does not invalidate a ballot to which the exemption applies.

### **Ballot result report**

**170.(1)** Within 14 days after the declaration of the result of an election, a written ballot result report containing the particulars prescribed under a regulation must be given to the registrar by—

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<sup>119</sup> Section 165 (Conducting ballot—Cwlth s 253ZM)

- (a) if the electoral commission conducted the ballot—the electoral commission; or
- (b) otherwise—the returning officer appointed by the constituent part for which the ballot was held.

(2) A contravention of this section does not invalidate a ballot to which the exemption applies.

### **Providing information and documents to electoral officers—Cwlth s 253ZN**

**171.(1)** This section applies if—

- (a) the registrar has notified the electoral commission of an application for a ballot for a proposed withdrawal from amalgamation; and
- (b) the electoral commission has authorised in writing an electoral officer for the ballot; and
- (c) the electoral officer considers information within the knowledge or possession of an officer of an amalgamated organisation the ballot concerns or documents in the officer's custody or control or to which the officer has access, are reasonably necessary for a ballot that is or may be required because of the application.

(2) The electoral officer may, by notice, require the officer to—

- (a) give information to the officer within the officer's knowledge or possession; and
- (b) make available documents to the officer that the officer has—
  - (i) custody or control of; or
  - (ii) to which the officer has access.

(3) The notice must state—

- (a) if it requires the officer to give information—
  - (i) the information required; and
  - (ii) a period in which it is to be given of no less than 7 days; and
  - (iii) a reasonable way of giving it; or



(b) if it requires the officer to produce or make documents available—

(i) the documents required; and

(ii) a reasonable period in which they are to be produced or made available; and

(iii) a reasonable place at which they are to be produced or made available.

(4) A person must not contravene the notice without reasonable excuse.

Maximum penalty—40 penalty units.

(5) It is a reasonable excuse for a person not to comply with a notice under subsection (2) if doing so might tend to incriminate the person.

(6) In this section—

“**officer**” of an amalgamated organisation includes an employee of the organisation.

### **Ballot records must be preserved**

**172.(1)** This section applies—

(a) if a ballot is held under this part; and

(b) despite the rules of an organisation or branch.

(2) A responsible person for the ballot must do everything necessary to ensure all ballot records for the ballot are kept for 1 year after the ballot by—

(a) if the ballot is conducted by the electoral commission—the electoral commission; or

(b) otherwise—the organisation or branch.

Maximum penalty—40 penalty units.

(3) In this section—

“**responsible person**” means—

(a) for a ballot conducted by the electoral commission—the electoral commission; or

- (b) otherwise—
  - (i) the returning officer for the ballot; or
  - (ii) the organisation or branch; or
  - (iii) an officer of the organisation or branch who performs a function in relation to the records.

### **Irregularity inquiries**

**173.(1)** An application may be made to the court by a constituent member for it to inquire into an alleged irregularity in a ballot.

**(2)** The application must be made—

- (a) not later than 60 days after the result of the ballot has been declared; and
- (b) in the way prescribed under a regulation.

**(3)** If the court decides to inquire into the alleged irregularity—

- (a) the court must fix a time and place for conducting it; and
- (b) the court may give directions to ensure that all persons who have the right to appear or be represented at the inquiry are given notice of the time and place; and
- (c) in conducting the inquiry under this section, sections 63 to 66<sup>120</sup> apply with all necessary changes.

### ***Division 3—Giving effect to ballots***

#### **Deciding the day of withdrawal—Cwlth s 253ZP**

**174.(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 commission must, on the application of the constituent part—

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<sup>120</sup> Section 63 (Court may make interim orders)  
Section 66 (Enforcing orders under this part)

- (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 appropriate for giving effect to the withdrawal.

(2) However, the commission must not determine the day on which the withdrawal is to take effect before—

- (a) the time for making an application to the court for an inquiry into an alleged irregularity in a ballot has ended; or
- (b) if an application mentioned in paragraph (a) has been made—the application has been decided and the result of any fresh ballot ordered by the court has been declared.

(3) In making an order under subsection (1)(b), the commission must have regard to—

- (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a branch was deregistered under the repealed Act, part 14, division 9, or under part 9 for the formation of the amalgamated organisation; and
- (b) any change in the net value of those assets or liabilities that has happened since the amalgamation; and
- (c) the interests of the creditors of the amalgamated organisation.

### **Registration of constituent part—Cwlth s 253ZQ**

**175.** The registrar must, with effect from the day determined under section 174(1)(a)—

- (a) register the constituent part as an organisation in the register; and
- (b) enter in the register particulars about the organisation.

### **Members of amalgamated organisation may join registered organisation—Cwlth s 253ZR**

**176.** 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 an entrance fee if the person is eligible for membership of it.

### **Orders of the commission, awards etc.—Cwlth s 253ZS**

**177.(1)** This section applies to an order of the commission, an award or a certified 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 certified 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 certified agreement to the amalgamated organisation included references to the newly registered organisation.

**(3)** In this section—

“**award**” includes an EFA or industrial agreement that—

- (a) has effect under the *Workplace Relations Act 1997* immediately before the day on which the registration takes effect; and
- (b) continues to have effect under the *Workplace Relations Act 1997* immediately after that day.

### **Withdrawal regulations—Cwlth s 253ZT**

**178.** A regulation may provide for any other matters relating to giving effect to the withdrawal of constituent parts from amalgamated organisations, including any matter related to—

- (a) the transfer of assets and liabilities of an amalgamated organisation to a newly registered organisation; and
- (b) the extent to which a newly registered organisation is bound or otherwise affected by any agreements, arrangements or other

- instruments binding on or otherwise affecting an amalgamated organisation; and
- (c) the extent to which an amalgamated organisation continues, after a registration under section 175<sup>121</sup> takes effect, to be bound or otherwise affected by any agreements, arrangements or other instruments binding on or otherwise affecting the amalgamated organisation; and
  - (d) the extent to which a newly registered organisation becomes a party to any proceeding to which an amalgamated organisation is a party; and
  - (e) the extent to which an amalgamated organisation continues to be a party to any proceedings to which the amalgamated organisation was a party immediately before a registration under section 175 takes effect; and
  - (f) the appointment of officers of an amalgamated organisation as officers of a newly registered organisation, and the results of such appointments.

**Division applies despite laws and agreements prohibiting transfer etc.—Cwlth s 253ZU**

**179.(1)** This division applies, and must be given effect to, despite anything in—

- (a) an Act; 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 taken 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

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<sup>121</sup> Section 175 (Registration of constituent part—Cwlth s 253ZQ)

- (b) is to be taken as placing an organisation or other person in breach of—
- (i) an Act; 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.

#### *Division 4—Validation*

#### **Application of division**

**180.(1)** This division applies to an act (a “**relevant act**”), if the relevant act is done—

- (a) before or after the commencement; and
- (b) to or by an amalgamated organisation or a constituent part, or the organisation's or part's management committee or officer; and
- (c) for a proposed or completed withdrawal from amalgamation.

(2) However, sections 181 and 182 do not apply to a relevant act to the extent ordered by the commission under section 183.<sup>122</sup>

#### **Validating acts in good faith**

**181.(1)** A relevant act done in good faith is valid despite an invalidity discovered later about it.

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<sup>122</sup> Section 181 (Validating acts in good faith)  
Section 182 (Validation after 4 years)  
Section 183 (Order that s 181 or 182 does not apply)

(2) A relevant act is taken as being done in good faith unless proved otherwise.

(3) A person who purports to be a management committee member, or an officer, of an amalgamated organisation or a constituent part that has done a relevant act, is taken as having done so in good faith unless proved otherwise.

(4) Nothing in this section affects—

- (a) a court or commission order made before the commencement; or
- (b) section 24, 82, 83, 84, 85, 86, 139, 148, 153, 173 or 185.<sup>123</sup>

### **Validation after 4 years**

**182.(1)** This section applies if more than 4 years has elapsed since a relevant act was done.

(2) The relevant act is taken to have been done under this part and the organisation's rules.

(3) However, this section does not affect an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the court, another court or the commission about a relevant act made before the 4 years ends.

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<sup>123</sup> Section 24 (Rules to give conditions for loans, grants and donations)  
Section 82 (Members and officers registers)  
Section 83 (Filing registers)  
Section 84 (Exemption from filing members register etc.)  
Section 85 (Rectification of registers by commission)  
Section 86 (Registrar's access to registers)  
Section 139 (Irregularity inquiries)  
Section 148 (Amalgamated organisation to carry out amalgamation)  
Section 153 (Commission may resolve difficulties)  
Section 173 (Irregularity inquiries)  
Section 185 (Commission may resolve difficulties—Cwlt s 253ZV)

**Order that s 181 or 182 does not apply**

**183.(1)** The commission may if an eligible person applies, order that section 181 or 182<sup>124</sup> does not apply, and never applied, to a relevant act.

**(2)** The commission may make the order only if satisfied the application of section 181 or 182 to the relevant act does substantial injustice to—

- (a) an eligible person; or
- (b) a creditor of an amalgamated organisation or a constituent part concerned in a withdrawal from amalgamation; or
- (c) a person having dealings with a person or creditor mentioned in paragraph (a) or (b).

**(3)** In this section—

**“eligible person”** means—

- (a) an amalgamated organisation or a constituent part concerned in a withdrawal from amalgamation; or
- (b) a member of an amalgamated organisation, a constituent member or another person having a sufficient interest for an amalgamated organisation or a constituent part.

**Orders about invalidities**

**184.(1)** If an eligible person applies to the commission, it may decide if an invalidity has happened in a proposed or completed withdrawal from amalgamation.

**(2)** If the commission decides an invalidity has happened, it may—

- (a) make orders or declarations it considers appropriate to—
  - (i) correct the invalidity; or
  - (ii) change the consequences in law of the invalidity; or
  - (iii) validate any thing made invalid because of the invalidity; and

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<sup>124</sup> Section 181 (Validating acts in good faith)  
Section 182 (Validation after 4 years)



(b) give additional or consequential directions it considers appropriate.

(3) However, the commission must not make an order if it does substantial injustice to—

- (a) an eligible person; or
- (b) the creditors of an amalgamated organisation or a constituent part concerned in the withdrawal from amalgamation; or
- (c) a person having dealings with the amalgamated organisation or constituent part for the withdrawal from amalgamation.

(4) To remove doubt, it is declared this section also applies to an invalidity happening—

- (a) before or after the commencement; and
- (b) about an amalgamated organisation or a constituent part before the part's withdrawal from amalgamation.

(5) In this section—

“eligible person” see section 183(3).

### *Division 5—Miscellaneous*

#### **Commission may resolve difficulties—Cwlth s 253ZV**

**185.(1)** If any difficulty arises in relation to the application of this part to a particular matter, the commission may, on the application of a person having a proper interest, make such order as it thinks appropriate to resolve the difficulty.

(2) An order made under subsection (1) has effect despite the rules of an organisation or any association proposed to be registered as an organisation.

#### **Ballot expenses under pt 10**

**186.(1)** Expenses of a ballot for a proposed withdrawal from amalgamation conducted by the electoral commission under this part are payable by the person who applied for the ballot.

(2) The applicant must pay the State the expenses within 1 month after receiving a written request from the electoral commission to do so.

(3) The amount payable by a person under this section may be recovered by the State as a debt payable to it.

(4) Despite subsections (1) to (3), the court may order the State to pay all or part of the expenses of a ballot if—

- (a) the ballot was ordered under section 173;<sup>125</sup> and
- (b) the order was made because of an irregularity that was caused by the electoral commission.

## **PART 11—CANCELLING REGISTRATION**

### **Cancelling registration for industrial conduct**

**187.(1)** Each of the following may apply to the full court to cancel an organisation's registration—

- (a) an organisation;
- (b) the registrar;
- (c) the Minister;
- (d) another interested person.

(2) The application may be made on any of the following grounds—

- (a) achieving the objects of the Act has been prevented or hindered by—
  - (i) the organisation's or its members' continued contravention of a commission order or an award, certified agreement, EFA, industrial agreement or QWA; or
  - (ii) the organisation's failure to ensure its members do not contravene a commission order or an award, certified agreement, EFA, industrial agreement or QWA; or

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<sup>125</sup> Section 173 (Irregularity inquiries)

- (iii) the organisation's or its members' other conduct;
  - (b) the organisation or its members are engaging in industrial action that has prevented or interfered with—
    - (i) trade or commerce; or
    - (ii) providing a public service;
  - (c) the organisation or its members have been, or are, engaging in industrial action that has, 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.
- (3) The respondent organisation has the right to be heard by the full court about the application.
- (4) The full court must cancel the organisation's registration if it—
- (a) finds the application ground is made out; and
  - (b) does not consider cancellation unjust, considering the—
    - (i) significance of the circumstances forming the ground; and
    - (ii) action taken by or against the organisation about the ground.
- (5) However, if the full court finds the application ground is wholly or mainly because of the conduct of a section or class of the organisation's membership, instead of cancelling the organisation's registration, it may—
- (a) order amendments to the organisation's eligibility rules to exclude from membership eligibility persons belonging to the section or class; or
  - (b) exclude a person from the organisation's membership.
- (6) If the full court cancels an organisation's registration, it may direct the former organisation not to apply for registration before a stated period.
- (7) In this section—
- “members”**, of an organisation, means—
- (a) a substantial number of the organisation's members; or
  - (b) a section or class of its members.

**Orders if cancellation deferred**

**188.(1)** This section applies if the full court—

- (a) finds a ground is made out to cancel an organisation's registration under section 187; and
- (b) considers, instead of cancelling the registration or making another order under section 187, it is just to make an order under subsection (2).

**(2)** The full court may, by order—

- (a) suspend to a stated extent, the rights, privileges or capacities of the organisation, or its members, as members, under this Act or a commission order or an award, certified agreement, EFA or industrial agreement; or
- (b) direct a way for exercising a suspended right, privilege or capacity; or
- (c) restrict the organisation or its branches in using their funds or property and control the funds or property to enforce the restrictions.

**(3)** If the full court makes an order under subsection (2), it must defer its decision on cancelling the registration until—

- (a) if a party to the proceedings applies—the court considers it is just to make the decision, considering—
  - (i) evidence given about compliance with the order; and
  - (ii) other relevant circumstances; or
- (b) the order ends.

**(4)** An order under subsection (2)—

- (a) has effect despite the rules of the organisation or its branches; and
- (b) if a party to the proceedings applies—may be cancelled by another full court order; and
- (c) unless it is cancelled sooner, ends—
  - (i) 6 months after it began; or

- (ii) if a party to the proceeding in which the order was made applies before the order ends and the full court extends the order—at the end of the extended period.

### **Cancelling registration on other grounds**

**189.(1)** The full court may cancel an organisation's registration—

- (a) of its own initiative, if the organisation's rules state the organisation is to end if a stated event happens and the event happens; or
- (b) of its own initiative, or if the organisation, the Minister or an interested person applies to the court and the court is satisfied—
  - (i) the organisation has breached an undertaking under section 11(4); and
  - (ii) it is not appropriate to amend the eligibility rules of the organisation under section 42;<sup>126</sup> or
- (c) if the organisation, the Minister or an interested person applies to the court and the court is satisfied—
  - (i) the organisation was registered by mistake; or
  - (ii) the organisation's rules do not allow members to join the organisation with reasonable ease; or
  - (iii) the rules impose unreasonable conditions on a person's continuing membership of the organisation; or
  - (iv) the rules, or the way they are administered, are harsh or oppressive; or
  - (v) a majority of the organisation's members agree to the cancellation; or

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<sup>126</sup> Section 42 (Commission may amend rules if undertaking breached—Cwlth s 203A)

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- (vi) the organisation is not free from control by, or improper influence from, a person or body mentioned in section 11(1)(b) or 12(1)(b);<sup>127</sup> or
  - (vii) subject to subsection (3), if the organisation is an enterprise association—the enterprise to which it relates has ended; or
- (d) at the registrar's initiative, if the court is satisfied the organisation is defunct.
- (2)** An enterprise to which an organisation relates ends under subsection (1)(c)(vii) if—
- (a) for an organisation that relates only to a functionally distinct part or parts of the business that constitutes the enterprise—that part or those parts have ended, or the whole of the business has ended; or
  - (b) for an organisation that relates to the whole of the business that constitutes the enterprise—the whole of the business has ended.
- (3)** However, subsection (1)(c)(vii) does not apply if—
- (a) some or all of the business of the enterprise that has ended is now conducted by another enterprise; and
  - (b) all the alterations to the organisations rules, necessary to enable the organisation to operate as an enterprise association for the other enterprise have been made; and
  - (c) the full court is satisfied the organisation still meets the requirements of section 11(4).
- (4)** The full court must give the organisation a reasonable opportunity to alter its rules as provided in subsection (3)(b) before it considers cancelling the organisation's registration on the ground in subsection (1)(c)(vii).
- (5)** If the full court proposes to make an order under this section, other than because of the organisation's application, it must give the organisation an opportunity to be heard before making the order.

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<sup>127</sup> Section 11 (Registration criteria—employee associations other than enterprise associations)  
Section 12 (Registration criteria—enterprise associations)

### **Cancellation directions**

**190.(1)** This section applies if the full court cancels an organisation's registration under—

- (a) section 187 or 189; or
- (b) the *Workplace Relations Act 1997*, section 352(1)(g).<sup>128</sup>

**(2)** The court may give the directions it considers appropriate for the cancellation.

### **Recording cancellation**

**191.** If an organisation's registration is cancelled, the registrar must record the cancellation and its date in the register.

### **Consequences of cancellation**

**192.(1)** This section applies if an organisation's registration is cancelled.

**(2)** The organisation stops being an organisation and a body corporate but does not stop being an association.

**(3)** The cancellation does not relieve the association or its members from a penalty or liability incurred by the organisation or its members before the cancellation.

**(4)** If an award, EFA, commission order, certified agreement or industrial agreement bound the organisation and its members before the cancellation—

- (a) on and from the cancellation, the association and its members do not have the right to a benefit under the instrument; and
- (b) the instrument stops having any operation for the association and its members 21 days after the cancellation.

**(5)** Despite subsection (4)(b), the commission may, if an organisation or interested person applies, make an order the commission considers appropriate about the effect, if any, of an award, EFA, commission order,

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<sup>128</sup> *Workplace Relations Act 1997*, section 352 (Remedies on show cause)

certified agreement or industrial agreement on the association and its members.

(6) The organisation's property—

- (a) is the property of the association; and
- (b) must be held and used for the association under the organisation's rules, so far as they can still be carried out or complied with.

(7) Despite subsection (6), the full court may, if an interested person applies, make an order the court considers appropriate to satisfy the organisation's liabilities from the association's property.

## **PART 12—ACCOUNTS AND AUDIT**

### *Division 1—Preliminary*

#### **Objects of pt 12**

**193.** The main objects of this part are to ensure that—

- (a) as far as practicable, an organisation is accountable to its members for—
  - (i) the organisation's financial transactions and its financial position; and
  - (ii) money it spends on political objects; and
- (b) the organisation complies with the provisions of—
  - (i) the Australian accounting standards appropriate for it; and
  - (ii) this part.

#### **Definition for pt 12**

**194.** In this part—

**“Australian accounting standards”** means the written accounting standards made by the Australian Accounting Standards Board.



**Meaning of “financial year” in pt 12**

**195.(1)** An organisation’s financial year before its first financial year after registration is not a financial year under this part.

**(2)** If an organisation’s rules change its financial year, the time from the end of the financial year before the change and the start of the first financial year after the change is taken to be a financial year in this part.<sup>129</sup>

**Applying part to organisations with branches**

**196.(1)** This part, other than this section and sections 197 and 215,<sup>130</sup> applies to every branch of an organisation, as if—

- (a) the financial affairs, including transactions, of a branch did not form part of the financial affairs of the organisation; and
- (b) the branch were an organisation.

**(2)** For the application of this part under subsection (1)(b), in relation to a branch of an organisation—

- (a) the members of the organisation forming the branch are taken to be members of the branch; and
- (b) employees of the organisation employed for the branch, whether or not they are also employed for another branch, are taken to be employees of the branch; and
- (c) a journal published by the organisation is taken to be a journal published by the branch.

**(3)** The registrar may on the application of an organisation with branches and if satisfied about the things mentioned in subsection (4), give to the organisation a certificate to that effect.

**(4)** The registrar may give the certificate only if satisfied—

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<sup>129</sup> Under the dictionary in the schedule, definition “financial year”, an organisation’s financial year means the period of 1 year beginning on 1 July, or another period of 1 year provided in its rules.

<sup>130</sup> Section 197 (Exemption for branches without financial affairs—Cwlth s 271A)  
Section 215 (Organisation may file reports for branches)

- (a) the organisation's management committee has, by the organisation's rules or established practice not inconsistent with the rules—
  - (i) the management and control of the assets of the organisation including assets of the branches of the organisation; or
  - (ii) effective control over the financial management of the organisation; and
- (b) if subsections (1) and (2) did not apply to the organisation, it would be able to comply with this part.

(5) If the registrar gives the certificate to the organisation subsections (1) and (2) do not apply to it until the certificate is cancelled under subsection (6).

(6) The registrar may by notice to the organisation, cancel the certificate if the registrar is no longer satisfied about the things mentioned in subsection (4) for the organisation.

### **Exemption for branches without financial affairs—Cwlth s 271A**

**197.(1)** If, on the application of a branch of an organisation, the registrar is satisfied, after considering the circumstances prescribed under a regulation, that the branch did not have any financial affairs in a financial year, the registrar may issue to the branch a certificate to that effect for the financial year.

(2) The certificate exempts the branch from the requirements of this part for the financial year.

(3) The application must be made to the registrar within 90 days, or such longer period as the registrar allows, after the end of the financial year.

### *Division 2—Accounting obligations*

#### **Organisations must keep proper accounting records**

**198.(1)** An organisation must keep—

- (a) documents (“**accounting records**”) that—

- (i) explain the methods and calculations about how its accounts are made up; and
- (ii) correctly record and explain its transactions and financial position; and
- (b) accounting records about the following—
  - (i) if it has a political objects fund—contributions to and expenditure from the fund;
  - (ii) contributions by members for political objects under section 226;<sup>131</sup>
  - (iii) directions or amended directions to the organisation by members about contributions to its political objects fund under section 227;<sup>132</sup>
- (c) other accounting records prescribed under a regulation.

Maximum penalty—40 penalty units.

**(2)** The organisation must keep its accounting records in a way that enables—

- (a) accounts to be prepared from them under section 199; and
- (b) the accounts to be conveniently and properly audited under this part.

Maximum penalty—40 penalty units.

**(3)** Accounting records for income and expenditure must be kept in a way prescribed under a regulation.

**(4)** The organisation must keep its accounting records for 7 years after the completion of the transactions they are about.

Maximum penalty—40 penalty units.

### **Preparing accounts**

**199.(1)** An organisation must prepare the accounts and other statements

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<sup>131</sup> Section 226 (Contributions by members for political objects)

<sup>132</sup> Section 227 (Member may give direction about contribution)

(the “**accounts**”) prescribed under a regulation for each financial year as soon as practicable after the year ends.

Maximum penalty—40 penalty units.

(2) The organisation must include in the accounts—

- (a) the relevant figures from the preceding financial year’s accounts (other than its accounts for its first financial year after registration); and
- (b) the particulars prescribed under a regulation about each matter for which a compulsory levy or voluntary contribution has been paid to the organisation.

Maximum penalty—40 penalty units.

(3) A regulation may provide for a certificate to be given in, or for, the accounts.

(4) In this section—

“**compulsory levy**”, for an organisation, means a levy payable by a member to the organisation under its rules.

### **Regulation may give effect to Australian accounting standards**

**200.(1)** A regulation may give effect, with or without changes and whether in whole or part, to the Australian accounting standards.

(2) A person must not contravene a regulation made under subsection (1) that is declared to be a regulation to which this subsection applies.

Maximum penalty—40 penalty units.

### **Members may apply for information**

**201.(1)** A member of an organisation, or the registrar at a member’s request, may apply to the organisation for the information prescribed under a regulation.

(2) The organisation must give the applicant the information requested in the application in the time and way prescribed under a regulation.

Maximum penalty—40 penalty units.

(3) If the registrar applies for a member, the registrar must give the member all information given to the registrar.

(4) The organisation must include in the accounts a notice drawing attention to subsections (1) to (3) and set them out.

Maximum penalty—40 penalty units.

### **Officers' duties**

**202.(1)** The registrar may require an organisation's officer to—

- (a) give the registrar information about the organisation's funds and accounts; or
- (b) comply with a direction about—
  - (i) books and forms of accounts kept, or to be kept; or
  - (ii) entries made, or to be made in books and forms of accounts; or
  - (iii) how the entries are made, or to be made, in books and forms of account; or
- (c) produce to the registrar, or an auditor appointed by the registrar, the organisation's books.

(2) An officer must not contravene a requirement under subsection (1) without reasonable excuse.

Maximum penalty—40 penalty units.

(3) It is a reasonable excuse for an officer not to comply with a requirement under subsection (1) if doing so might tend to incriminate the officer.

### ***Division 3—Audits***

#### **Auditors**

**203.(1)** An organisation must have an auditor when an auditor is required to perform functions under this part for the organisation.

Maximum penalty—40 penalty units.

(2) An organisation must ensure the person who performs an audit of the organisation's accounts and financial statements and prepares the report on them is a competent person.

Maximum penalty—40 penalty units.

(3) A person, other than a competent person, must not—

- (a) accept an appointment as an auditor; or
- (b) continue in an appointment to perform an audit or prepare an audit report.

Maximum penalty—40 penalty units.

(4) In this section—

**“competent person”**, for an audit or audit report for an organisation, means—

- (a) if the organisation's financial year income is more than \$20 000—a person who is—
  - (i) a registered company auditor; and
  - (ii) not an officer or a member of the organisation; and
  - (iii) not employed by the organisation, other than as its auditor; or
- (b) for another organisation—a person who is—
  - (i) a registered company auditor or certified by the registrar as having enough experience in keeping or auditing accounts; and
  - (ii) not an officer or member of the organisation.

**“financial year income”**, of an organisation, means its income in the financial year immediately before the financial year being audited.

### **Auditor's functions**

**204.(1)** An organisation's auditor must—

- (a) inspect and audit the organisation's accounting records for each financial year for which the auditor is appointed; and

- (b) make a report (an “**audit report**”) to the organisation within 4 months after each financial year.

Maximum penalty—40 penalty units.

(2) The auditor must state in the audit report whether in the auditor’s opinion—

- (a) the organisation kept satisfactory accounting records for the financial year, including records of the—
- (i) sources and nature of the organisation’s income (including income from members); and
  - (ii) nature and reasons for the organisation’s expenditure; and
- (b) the accounts for the year were properly drawn to give a true and fair view of the organisation’s—
- (i) financial affairs at the end of the year; and
  - (ii) income and expenditure and surplus or deficit for the year; and
- (c) the accounts for the year were prepared under—
- (i) the Australian accounting standards given effect by regulation under section 200;<sup>133</sup> and
  - (ii) this Act; and
- (d) information and explanations required from the organisation’s officers or employees were given; and
- (e) there was a deficiency, failure or shortcoming (an “**accounting deficiency**”) for a matter mentioned in paragraphs (a) to (c); and
- (f) the organisation’s accounting records were prepared in a way that readily enabled the auditor to identify a contravention of section 227.<sup>134</sup>

(3) An auditor performing auditor’s functions for an organisation must immediately give notice to the registrar if the auditor—

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<sup>133</sup> Section 200 (Regulation may give effect to Australian accounting standards)

<sup>134</sup> Section 227 (Member may give direction about contribution)

- (a) becomes aware a provision of this part has been contravened; and
- (b) is of the opinion that the matter can not be adequately dealt with by comment in the auditor's audit report.

Maximum penalty—40 penalty units.

(4) An auditor must not state anything in an audit report the auditor knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(5) A complaint against an auditor for an offence against subsection (4) is sufficient if it states the statement made was false or misleading in a material particular.

### **Auditor's powers**

**205.(1)** When exercising an auditor's functions under section 204 for an organisation, the organisation's auditor has the right to—

- (a) full and free access at all reasonable times to the organisation's records about its—
  - (i) receipt or payment of money; or
  - (ii) acquisition, receipt, custody or disposal of assets; and
- (b) ask the organisation's employees, members or officers for information or explanations the auditor wants for the audit.

(2) An auditor may authorise another person to exercise powers under subsection (1) for an organisation.

(3) If an auditor authorises a person under subsection (2), the auditor must give the organisation notice of the person's name and address.

(4) The organisation or its employees, members or officers must not prevent the organisation's auditor exercising the auditor's rights under subsection (1) without reasonable excuse.

Maximum penalty—40 penalty units.

(5) The auditor may require the organisation or its employees, members or officers to produce to the auditor a document in the person's custody or control.



(6) The organisation or the employee, member or officer must give the auditor the document unless the organisation employee, member or officer has a reasonable excuse.

Maximum penalty—40 penalty units.

(7) It is a reasonable excuse for a person not to give a document to an auditor if doing so might tend to incriminate the person.

(8) A person does not commit an offence against this section if the person did not know, and could not reasonably have known, that the person for whom the offence is alleged to have been committed was an auditor.

(9) In this section—

“**auditor**” includes—

- (a) a person authorised by an auditor under this section; and
- (b) an auditor engaged by the registrar under section 220(4).<sup>135</sup>

### **Auditor’s fees and expenses**

**206.** An organisation must pay its auditor’s reasonable fees and expenses.

### **Removing auditors**

**207.** An organisation’s auditor may only be removed during the auditor’s appointed term by—

- (a) if the auditor was appointed by the organisation’s management committee—a resolution passed at a committee meeting by an absolute majority of its members; or
- (b) if the auditor was appointed by a general meeting of the organisation—a resolution passed at a general meeting by a majority of members voting at the meeting.

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<sup>135</sup> Section 220 (Registrar’s examinations and audits)

**Auditors have qualified privilege**

**208.(1)** It is lawful for an auditor to make an oral or written statement or comment that is defamatory if it is—

- (a) made in good faith; and
- (b) made in the course of performing the auditor’s functions as an auditor under this Act; and
- (c) relevant to the auditor’s functions.

**(2)** It is lawful for a person to publish in good faith, a document that contains defamatory matter, if the document was—

- (a) prepared by an auditor in the course of performing functions as an auditor under this Act; and
- (b) required to be filed with or made to the registrar under this Act.

**(3)** In this section—

**“auditor”** means—

- (a) an organisation’s auditor; or
- (b) an auditor engaged by the registrar under section 220.<sup>136</sup>

***Division 4—Presenting and lodging audit reports and accounts*****Presentation to annual general meeting**

**209.(1)** An organisation must present its audit report and the accounts the report is about to an annual general meeting before—

- (a) 5 months after the end of the financial year that the report and accounts are about; or
- (b) if the registrar has extended the time to hold the meeting—the extended time.

Maximum penalty—40 penalty units and an additional penalty of 5 penalty units for each week the provision is contravened.

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<sup>136</sup> Section 220 (Registrar’s examinations and audits)

(2) An offence against subsection (1) that continues from week to week is a continuing offence.

### **Extension of time to hold annual general meeting**

**210.(1)** An organisation may apply to the registrar for an extension of time to hold an annual general meeting if—

- (a) its management committee has resolved to make the application; and
- (b) the application is filed before the time the meeting must be held under section 209(1)(a).<sup>137</sup>

(2) The registrar may extend the time to hold the meeting to a stated time, with or without conditions.

### **Presentation to committee meeting if a deficiency**

**211.(1)** This section applies if—

- (a) an audit report made to an organisation states details of an accounting deficiency for the accounts; and
- (b) the report and the accounts the report is about are not presented to a general meeting within 7 days of the making of the report.

(2) The organisation must present the report and accounts to a management committee meeting called for that purpose within 7 days.

Maximum penalty—40 penalty units and an additional penalty of 5 penalty units for each week the provision is contravened.

(3) An offence against subsection (2) that continues from week to week is a continuing offence.

### **Copies of report must be given to members**

**212.(1)** An organisation must give its members a copy of its audit report and the accounts the report is about at least 14 days before the annual general meeting that the report and accounts must be laid before.

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<sup>137</sup> Section 209 (Presentation to annual general meeting)

Maximum penalty—40 penalty units and an additional penalty of 5 penalty units for each week the provision is contravened.

(2) An offence against subsection (1) that continues from week to week is a continuing offence.

(3) The report and accounts—

- (a) may be given with the notice to members of the meeting if the notice is given at least 14 days before the meeting; and
- (b) must be given free of charge.

(4) If an organisation publishes a journal or newsletter that it gives to its members free of charge, it may give the report and accounts the report is about to its members by publishing the report and accounts in the journal or newsletter.

### **False or misleading statements about reports**

**213.(1)** This section applies if—

- (a) a member of an organisation's management committee—
  - (i) gives the organisation's members a copy of its audit report and the statements or accounts the report is about; or
  - (ii) presents the report and the accounts to an annual general meeting or a management committee meeting of the organisation; and
- (b) the member comments on a matter dealt with in the audit report and the statements.

(2) The member must not state anything in the comment the member knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(3) A complaint against the member for an offence against this section is sufficient if it states the statement made was false or misleading in a material particular.

**Lodging reports with registrar**

**214.(1)** This section applies if an organisation has presented its audit report and the accounts the report is about under section 209 or 211.<sup>138</sup>

**(2)** The organisation must within 14 days, or a longer time allowed by the registrar, file with the registrar—

- (a) copies of the audit report and the accounts; and
- (b) a certificate by the organisation's president or secretary that the documents filed are copies of the presented documents.

Maximum penalty—40 penalty units and an additional penalty of 5 penalty units for each week the provision is contravened.

**(3)** An offence against subsection (2) that continues from week to week is a continuing offence.

**Organisation may file reports for branches**

**215.(1)** This section applies if—

- (a) an organisation, other than an organisation for which a certificate by the registrar under section 196(3)<sup>139</sup> is in force, has relevant branches; and
- (b) each of the organisation's relevant branches has—
  - (i) rules that apply this section, or otherwise provide for lodging the branch's audit report and the accounts the report is about under subsection (4); and
  - (ii) a financial year ending on the same day.

**(2)** Section 214(2) does not apply to a relevant branch of the organisation.

**(3)** The organisation must file with the registrar within 14 days after the relevant day for the organisation, or a longer time allowed by the registrar—

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<sup>138</sup> Section 209 (Presentation to annual general meeting)  
Section 211 (Presentation to committee meeting if a deficiency)

<sup>139</sup> Section 196 (Applying part to organisations with branches)

- (a) copies of the relevant branches' audit reports and accounts presented under section 209;<sup>140</sup> and
- (b) a certificate by the president or secretary of the branch that the audit reports and the accounts filed are copies of the documents presented.

(4) If the organisation contravenes subsection (3), each relevant branch must file with the registrar within 14 days after the day for lodgment under subsection (3), or a longer time allowed by the registrar—

- (a) copies of the branch's presented audit report and the accounts; and
- (b) a certificate by the president or secretary of the branch that the audit reports and the audited accounts filed are copies of the documents presented.

(5) If a relevant branch contravenes subsection (4), the organisation commits a continuing offence.

Maximum penalty—40 penalty units and an additional penalty of 5 penalty units for each week this the provision is contravened.

(6) Sections 216 to 219<sup>141</sup> apply to a relevant branch as if the references to documents filed under section 214<sup>142</sup> were references to the audit report and accounts of the relevant branch filed—

- (a) if subsection (4) does not apply to the branch—by the organisation under subsection (3); or
- (b) if subsection (4) applies to the branch—by the branch under subsection (4).

(7) In this section—

**“relevant branch”** of an organisation means each part of the organisation to which part 12, other than this section, section 196<sup>143</sup> and

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<sup>140</sup> Section 209 (Presentation to annual general meeting)

<sup>141</sup> Section 216 (Registrar's investigations)  
Section 219 (Offences about registrar's investigations)

<sup>142</sup> Section 214 (Lodging reports with registrar)

<sup>143</sup> Section 196 (Applying part to organisations with branches)

section 212(4), applies under section 196(1)(a) or (b), other than a part of an organisation for which a certificate has been given under section 223(2) for a particular financial year.

**“relevant day”** for an organisation, means the day when copies of the audit reports and the accounts the reports are about of all relevant branches of the organisation have been presented under section 209 or 211.<sup>144</sup>

### *Division 5—Registrar’s investigations and audits*

#### **Registrar’s investigations**

**216.(1)** This section applies if the documents filed by an organisation with the registrar under section 214—

- (a) include an auditor’s report stating details of an accounting deficiency in the organisation’s accounts; or
- (b) state another matter the registrar considers should be investigated.

**(2)** The registrar must investigate the deficiency or matter.

**(3)** However, the registrar need not investigate the deficiency or matter if after consulting with the organisation and the auditor, the registrar is satisfied the deficiency or matter—

- (a) is trivial; or
- (b) will be remedied in the next financial year.

**(4)** The registrar may investigate the organisation’s finances or financial administration if, because of an investigation under subsection (2), the registrar considers there are grounds to investigate them.

**(5)** The registrar must investigate the organisation’s finances or financial administration if requested by—

- (a) if the organisation has more than 5 000 members—at least 250 members; or
- (b) otherwise—at least 5% of the organisation’s members.

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<sup>144</sup> Section 209 (Presentation to annual general meeting)  
Section 211 (Presentation to committee meeting if a deficiency)

**Registrar may conduct other investigations—Cwlth s 280A**

**217.** The registrar may, in the circumstances stated in a regulation, or if the registrar is otherwise satisfied there are reasonable grounds for doing so, investigate whether—

- (a) the accounts of an organisation contain an accounting deficiency; or
- (b) a provision of this part has been contravened by any person; or
- (c) a regulation made for the purposes of this part has been contravened by any person; or
- (d) a rule of an organisation relating to its finances or financial administration has been contravened.

**Investigations under ss 216 and 217—Cwlth s 280B**

**218.(1)** For the purpose of making an investigation under section 216 or 217,<sup>145</sup> the registrar may, by notice, require a person to whom subsection (2) applies—

- (a) to provide the registrar with specified information relevant to the investigation; or
- (b) to attend before the registrar 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 officer, employee or person relating to those matters.

**(2)** This subsection applies to—

- (a) an officer or employee of the organisation concerned; and
- (b) a former officer or employee of the organisation, who is a member of the organisation; and
- (c) a person who held the position of auditor of the organisation during the period the subject of the investigation.

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<sup>145</sup> Section 216 (Registrar's investigation)

Section 217 (Registrar may conduct other investigations—Cwlth s 280A)



(3) If, at the conclusion of an investigation under section 216 or 217, the registrar is satisfied the organisation concerned has contravened any of the following, the registrar must notify the organisation to that effect—

- (a) a provision of this Act;
- (b) a rule of the organisation relating to the finances or financial administration of the organisation.

(4) The notice must include a request that the organisation take specified action, within a specified period, to rectify the matter.

(5) The organisation must comply with that request.

(6) The court may, on application by the registrar, make such orders as it thinks appropriate to ensure that the organisation complies with subsection (5).

(7) The registrar must not take proceedings under this Act against the organisation in relation to a matter the subject of the notice unless the organisation has refused or failed to comply with the request made in the notice.

### **Offences about registrar's investigations**

**219.(1)** This section applies if a person has been given a notice under section 218.

(2) The person must not, without reasonable excuse—

- (a) fail to—
  - (i) provide specified information, or produce records, and other documents that the person is required to provide or to produce under section 218(1); or
  - (ii) attend before the registrar; or
- (b) give the registrar information, or produce a record, under section 218(1) that the person knows is false or misleading in a material particular; or
- (c) make an oral or written statement to the registrar under section 218(1) that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(3) Subsection (2)(b) does not apply to a person if the person, when giving the information or record—

- (a) informs the registrar, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain the correct information or record—gives the information or record.

(4) It is a reasonable excuse for a person not to comply with subsection (2)(a) to (c) if doing so might tend to incriminate the person.

(5) A person does not commit an offence against subsection (2)(a) only because of a failure to answer a question.

(6) In subsection (2) a reference to section 218(1) includes a reference to that section as it applies under section 215(6).<sup>146</sup>

(7) A complaint against a person for an offence against this section is sufficient if it states the statement made was false or misleading in a material particular.

### **Registrar's examinations and audits**

**220.(1)** The registrar may engage an auditor to examine an organisation's accounting records if dissatisfied with the way—

- (a) an inspection and audit of the records has been done; or
- (b) the organisation's audit report and the accounts the audit is about have been presented under section 209 or 211.<sup>147</sup>

(2) The registrar must give the auditor notice of the engagement for the examination and the organisation it is for.

(3) The auditor must examine the accounting records and report on them to the registrar.

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<sup>146</sup> Section 215 (Organisation may file reports for branches)

<sup>147</sup> Section 209 (Presentation to annual general meeting)  
Section 211 (Presentation to committee meeting if a deficiency)

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(4) The registrar may engage the auditor to audit the organisation's accounts, accounting records and affairs for a stated period if, because of the auditor's report to the registrar, the registrar has reason to believe—

- (a) the organisation does not keep accounting records; or
- (b) the organisation has an accounting deficiency in its accounts; or
- (c) the organisation's property has been misappropriated or improperly applied; or
- (d) the organisation, or an officer of the organisation, has committed an offence about the organisation's property.

(5) The registrar must give the auditor notice of the engagement for the audit, the organisation it is for and the period the audit is for.

(6) The auditor must give an audit report to the registrar and not the organisation.

(7) For an examination of an organisation's accounting records or an audit of an organisation's accounts, accounting records and affairs—

- (a) the auditor, or a person (an “**authorised person**”) authorised in writing by the auditor, has the powers, rights and functions of an auditor under sections 204 and 205;<sup>148</sup> and
- (b) a reference in sections 204 and 205 to a financial year is taken to be a reference to the stated period in subsection (4).

(8) The auditor or an authorised person may require an officer, employee or a person having custody of records for the organisation's affairs to give the auditor, or authorised person, information that is—

- (a) within their knowledge or control; and
- (b) required by the auditor for an examination or audit under this section.

(9) A person must not contravene a requirement under subsection (8) without reasonable excuse.

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<sup>148</sup> Section 204 (Auditor's functions)  
Section 205 (Auditor's powers)

Maximum penalty—

- (a) for an organisation or other corporation—40 penalty units; or
- (b) otherwise—4 penalty units.

(10) It is a reasonable excuse for a person not to comply with a requirement under subsection (8) if so doing might tend to incriminate the person.

(11) The costs of or associated with an examination or audit under this section must be paid by the organisation if demanded by the registrar.

(12) The registrar may recover by a proceeding in a court of competent jurisdiction costs under subsection (11) not paid on demand, as a debt payable from the organisation to the registrar.

### *Division 6—Auditors may attend meetings*

#### **Notice of meeting to auditor**

**221.(1)** This section applies if an auditor's audit report to an organisation and the accounts the audit is about are to be presented at an annual general or management committee meeting of the organisation.

- (2) The organisation must give the auditor notice of the meeting.

Maximum penalty—40 penalty units.

- (3) In this section—

“**notice**”, of a meeting, means the notice of the meeting and other communications about it that the organisation's members or the committee members have the right to receive.

#### **Auditor may attend meetings**

**222.(1)** This section applies if, at part of an organisation's annual general or management committee meeting—

- (a) its auditor's audit report and the accounts the audit is about are to be presented or considered; or

(b) business is to be conducted at the meeting about the auditor, in that capacity.

(2) The auditor, or another person authorised by the auditor under this section, may attend and address the part of the meeting.

(3) If an auditor authorises a person (a “**substitute**”) under subsection (2), the auditor must give the organisation notice of the substitute’s name and address.

(4) An officer, employee or member of the organisation must not prevent the auditor or the substitute from attending or addressing the part of the meeting unless the officer, employee or member has a reasonable excuse.

Maximum penalty—40 penalty units.

(5) If the auditor or the substitute attends the part of the meeting, the presiding officer for the meeting must allow the auditor or the substitute to address the meeting, as soon as is practicable after the auditor or the substitute indicates to the presiding officer that he or she wishes to speak.

Maximum penalty—40 penalty units.

(6) However, a person does not commit an offence against this section if the person did not know, and could not reasonably have known, that the person for whom the offence is alleged to have been committed was an auditor or substitute.

### *Division 7—Exemption for organisations with low income*

#### **Accounts and audits for low income organisations**

**223.(1)** This section applies if, on the application of an organisation made after the end of a financial year, the registrar is satisfied the organisation’s income for the year was not over—

- (a) for a financial year that, because of section 195<sup>149</sup> is a period other than 1 year—such amount as the registrar considers appropriate in the circumstances; or

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<sup>149</sup> Section 195 (Meaning of “financial year in pt 12)

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- (b) for any other financial year—\$20 000, unless a higher amount is prescribed under a regulation.
- (2) The registrar must issue a certificate to the organisation to that effect.
- (3) If a certificate is given under subsection (2) for an organisation for a financial year—
- (a) the following provisions of this section apply to the organisation for the year; and
- (b) except as provided in paragraph (c), this part continues to apply to the organisation for the year; and
- (c) sections 199, 209, 211 and 214(1)<sup>150</sup> do not apply to the organisation for the year.
- (4) This part, other than this section, applies to the organisation for the year as if—
- (a) a reference to accounts were a reference to accounts prepared under subsection (6); and
- (b) the reference in section 201(4)<sup>151</sup> to accounts were a reference to accounts prepared under subsection (6); and
- (c) the reference in section 216(1) to section 214 was a reference to subsection (10).
- (5) Sections 209, 211 and 213<sup>152</sup> apply to the organisation for the financial year as if a reference in sections 209 and 211 about presenting an auditor's report was a reference to subsection (8).
- (6) The organisation must, as soon as practicable after a certificate under subsection (2) is given—

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<sup>150</sup> Section 199 (Preparing accounts)  
 Section 209 (Presentation to annual general meeting)  
 Section 211 (Presentation to committee meeting if a deficiency)  
 Section 214 (Lodging reports with registrar)

<sup>151</sup> Section 201 (Members may apply for information)

<sup>152</sup> Section 209 (Presentation to annual general meeting)  
 Section 211 (Presentation to committee meeting if a deficiency)  
 Section 213 (False or misleading statements about reports)

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- (a) prepare from its accounting records for the year, the accounts prescribed under a regulation and other statements for the year; and
- (b) must include in the accounts, other than the accounts prepared for the first financial year of the organisation to which this part applies, the relevant figures from the organisation's accounts for the preceding financial year.

Maximum penalty—40 penalty units.

(7) A regulation may provide for giving certificates about accounts prepared under subsection (6).

(8) The organisation must present copies of its auditor's audit report and the accounts the report is about prepared under subsection (6) for the year to an annual general meeting of the organisation before the next financial year ends.

Maximum penalty—40 penalty units.

(9) An organisation must give a copy of the audit report or the accounts the report is about free of charge to a member who requests it within 14 days of receiving the request.

Maximum penalty—40 penalty units.

(10) The organisation must file with the registrar within 90 days after it presents the audit report, or a later time the registrar allows—

- (a) copies of the report and the accounts; and
- (b) a certificate by the organisation's president or secretary that the information in the accounts is correct.

Maximum penalty—40 penalty units.

### *Division 8—Political objects funds*

#### **What is spending money on political objects**

**224.(1)** An organisation spends money on “**political objects**” if it spends its money on payments to or for—

- (a) a political party; or

- (b) the direct or indirect costs or expenses of a candidate or prospective candidate for election to the Legislative Assembly, the Parliament of the Commonwealth or another State or to a local government, before, during or after the candidate's candidature or election; or
- (c) holding a meeting or distributing documents supporting a candidate; or
- (d) registering electors for an election mentioned in paragraph (b) or selecting a candidate; or
- (e) holding a political meeting or distributing political documents; or
- (f) a person on the understanding that the payment will be directly or indirectly applied in whole or in part on a matter of a type mentioned in paragraphs (a) to (e).

(2) In this section—

**“political party”** see—

- (a) Commonwealth Electoral Act 1918 (Cwlth), section 4;<sup>153</sup> and
- (b) Electoral Act 1992, section 3;<sup>154</sup> and
- (c) Local Government Act 1993, section 4.<sup>155</sup>

**“spend”** includes lend.

### **Political objects fund**

**225.(1)** This section applies if an organisation spends money on political objects.

(2) The organisation must—

- (a) have a political objects fund; and
- (b) keep its political objects fund separate and distinct from its other funds; and

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<sup>153</sup> *Commonwealth Electoral Act 1918* (Cwlth), section 4 (Interpretation)

<sup>154</sup> *Electoral Act 1992*, section 3 (Definitions)

<sup>155</sup> *Local Government Act 1993*, section 4 (Definitions)



- (c) only spend money on political objects from its political objects fund.

Maximum penalty—40 penalty units.

### **Contributions by members for political objects**

**226.** An organisation that has a political objects fund must not—

- (a) include in the membership subscription for the organisation a contribution to the organisation's political objects fund; or
- (b) require a member of the organisation to contribute to the organisation's political objects fund unless—
  - (i) the organisation decides a separate rate for the contribution; and
  - (ii) the member has given notice to the organisation that the member wants to make a contribution; and
  - (iii) the member has not cancelled the notice; or
- (c) pay the contribution into a fund other than its political objects fund.

Maximum penalty—40 penalty units.

### **Member may give direction about contribution**

**227.(1)** This section applies if—

- (a) an organisation has a political objects fund; and
- (b) a member of the organisation makes a contribution to its political objects fund.

**(2)** When the member makes the contribution, the member may give the organisation a written direction to spend the contribution on the political objects stated by the member.

**(3)** The organisation must spend money in its political objects fund from the contribution (other than interest or other earnings) as required by the direction.

Maximum penalty—40 penalty units.

(4) The member may change the direction by giving notice of the change to the organisation.

(5) The amended direction is taken to be the direction from when the notice is given.

(6) A direction or amended direction must be given before the organisation spends all of the contribution.

### **No disadvantage to non-contributing members**

**228.(1)** This section applies if—

- (a) an organisation has a political objects fund; and
- (b) a member of the organisation has not made a contribution to the fund.

(2) Because the member has not made a contribution, a person must not—

- (a) exclude the member from the benefits of membership of the organisation; or
- (b) place, directly or indirectly, the member under a disability or disadvantage compared with other organisation members.

Maximum penalty—

- (a) for an organisation or other corporation—40 penalty units; or
- (b) otherwise—4 penalty units.

(3) However, the member does not have an interest in the fund.

(4) In this section—

**“interest”**, in a political objects fund, means interest in—

- (a) anything concerning the fund, other than the organisation’s decision on the contribution rate payable by contributors to the fund; or
- (b) the fund’s disposition, management or control.

**Payments from fund must be under a direction or approved**

**229.** An organisation must not spend money out of its political objects fund for which no direction has been given under section 227<sup>156</sup> unless spending the money is approved by—

- (a) the organisation's state council; or
- (b) if the organisation does not have a state council—a body approved by the chief commissioner as having the functions of a state council.

Maximum penalty—40 penalty units.

**Officers must ensure organisation complies with division**

**230.(1)** An organisation's officers must ensure that the organisation complies with this division.

**(2)** If an organisation commits an offence against a provision of this division, an officer of the organisation commits an offence, namely, the offence of failing to ensure that the organisation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by the organisation.

**(3)** However, it is a defence for an officer to prove—

- (a) if the officer was in a position to influence the conduct of the organisation in relation to the offence, the officer exercised reasonable diligence to ensure the organisation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the organisation in relation to the offence.

**(4)** Evidence that the organisation has been convicted of an offence against a provision of this division is evidence that the officer committed the offence of failing to ensure that the organisation complies with the provision.

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<sup>156</sup> Section 227 (Member may give direction about contribution)

**Filing statements of political expenditure**

**231.(1)** An organisation must—

- (a) file with the registrar after the end of each of its financial years within the time prescribed under a regulation, a statement showing the appropriate details of expenditure in the year by the organisation on political objects; and
- (b) ensure that the statement is certified by a statutory declaration of the organisation's secretary or other officer prescribed under a regulation to be a correct statement of the information that it contains.

Maximum penalty—40 penalty units.

**(2)** However, the statement does not have to give details for a payment if the payment was less than—

- (a) for a payment to an individual—\$200; or
- (b) otherwise—\$1 500.

**(3)** The organisation must not file a statement that is false or misleading in a material particular to the knowledge of the officer that certified it.

Maximum penalty—40 penalty units.

**(4)** A complaint against an organisation for an offence against subsection (3) is sufficient if it states the statement made was false or misleading in a material particular.

**(5)** A statement filed with the registrar must be made available for inspection at the registrar's office in the way prescribed under a regulation.

**(6)** In this section—

**“appropriate details”**, of payments by an organisation on political objects in a year, means all of the following—

- (a) the amount of each payment;
- (b) the way in which each payment was made;
- (c) the name and address of the person to whom each payment was made;
- (d) if the organisation has more than 1 political objects fund—the political objects fund from which each payment was made.

## PART 13—PRESUMED VALIDITY OF ORGANISATIONS' ACTIONS

### Definitions for pt 13

232. In this part—

**“collective body”**, for an organisation or a branch of the organisation, means—

- (a) its management committee; or
- (b) a conference, council, committee, panel or other body of, or within the organisation or branch.

**“invalidity”** includes nullity and includes invalidity resulting from an omission or because—

- (a) a person purporting to act as a member or officer of a collective body of an organisation or branch—
  - (i) is not duly elected or appointed; or
  - (ii) did not, or did not at a material time, have the right to be elected or appointed or to hold office; or
  - (iii) was not, or not at a material time, a member of the organisation or branch; or
  - (iv) claims to have been elected or appointed by an alleged election or appointment and a person who participated in that election or appointment did not have the right to; or
- (b) a person took part in the alleged making or an amendment to an organisation's or branch's rules, as an officer, voter or otherwise who did not have the right to.

**“omission”** includes a defect, error, irregularity or absence of a quorum.

### Validating actions taken in good faith

233.(1) Actions done in good faith by persons purporting to act as a collective body of an organisation or branch are valid despite an invalidity discovered later in—

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- (a) electing or appointing—
  - (i) the collective body; or
  - (ii) persons purporting to act as the collective body; or
- (b) making or amending the rules of the organisation or branch.

(2) Actions done in good faith by a person purporting to be an officer of an organisation or branch, are valid despite an invalidity discovered later in—

- (a) the person's election or appointment; or
- (b) making or amending the rules of the organisation or branch.

(3) A person is not taken to purport to act as a member of a collective body of, or as the holder of an office in, an organisation or branch unless the person has in good faith—

- (a) purported to be the member or officer; and
- (b) has been treated by the members or officers of the organisation or branch as being the member or officer.

(4) In this section—

- (a) an action is taken to be done in good faith unless proved otherwise; and
- (b) a person who has purported to be a member of a collective body of an organisation or branch is taken to have done so in good faith unless proved otherwise; and
- (c) knowledge of facts from which an invalidity arose is not by itself knowledge of the invalidity; and
- (d) an invalidity in any of the following is taken not to be discovered until known by a majority of the members of the management committee of an organisation or branch, or the purported members of the committee—
  - (i) electing or appointing—
    - (A) a collective body of the organisation or branch; or
    - (B) a person who purports to be a member of the collective body;

- (ii) another election or appointment;
- (iii) making or amending rules of the organisation or branch;
- (iv) making or amending a rule to which this section applies.

**(5)** This section—

- (a) does not affect the operation of part 5; and
- (b) does not validate expelling, suspending, fining or penalising a member of an organisation if taking that action would not have been valid had this section not been enacted; and
- (c) applies to an action done—
  - (i) before or after the commencement of this Act; and
  - (ii) about an association before it became an organisation.

### **Validating acts after 4 years**

**234.(1)** This section applies if more than 4 years have elapsed after any of the following events—

- (a) the doing of an action by—
  - (i) persons purporting to—
    - (A) act as a collective body of an organisation or branch; and
    - (B) exercise power under the rules of the organisation or branch; or
  - (ii) a person purporting to—
    - (A) hold an office in an organisation or branch; and
    - (B) exercise power under the rules of the organisation or branch;
- (b) the alleged election or appointment to an office in an organisation or branch;
- (c) an alleged making or amendment of a rule of an organisation or branch.

(2) The event is taken to have been done under the rules of the organisation or branch.

(3) However, this section does not affect an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the court or another court about the event made before the 4 years ends.

(4) This section applies to an event happening—

- (a) before or after the commencement; and
- (b) to an association before it became an organisation.

## **PART 14—FREEDOM OF ASSOCIATION**

### *Division 1—Preliminary*

#### **Objects of pt 14—Cwlth s 298A**

**235.** As well as the objects set out in section 3,<sup>157</sup> this part has these objects—

- (a) to ensure that employers, employees and independent contractors are free to join industrial associations of their choice or not to join industrial associations; and
- (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.

#### **Definitions—Cwlth s 298B**

**236.(1)** In this part—

“conduct” includes an omission.

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<sup>157</sup> Section 3 (Objects of Act)



**“industrial action”** means—

- (a) the performance of work in a way different from that in which it is customarily performed, or the adoption of a certain practice in relation to work, 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 an industrial instrument or an order of an industrial body; or
  - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work, under the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work that is adopted in connection with an industrial dispute; or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work; or
- (e) conduct carried out with a purpose or intent relating to a person’s participation or non-participation in the things mentioned in paragraphs (a) to (d);

but does not include—

- (f) action by employees that is authorised or agreed to by the employer of the employees; or
- (g) action by an employer that is authorised or agreed to by or on behalf of employees of the employer; or
- (h) action by an employee if—
  - (i) the action was based on a reasonable concern by the employee about an imminent risk to the employee’s 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.

**“industrial association”** means—

- (a) an association of employees 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 or independent contractors a principal purpose of which is the protection and promotion of their interests in matters about 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 about employment or independent contractors; or
- (d) a branch of an association mentioned in paragraphs (a) to (c).

**“industrial body”** means—

- (a) the commission; or
- (b) a court or commission, however designated, exercising industrial law powers and functions corresponding to those conferred on the commission by this Act.

**“industrial dispute”** means—

- (a) an industrial dispute, including a threatened, impending or probable industrial dispute, that is about an industrial matter; or
- (b) a situation that is likely to give rise to an industrial dispute of the kind mentioned in paragraph (a); or
- (c) a dispute arising between 2 or more industrial associations, or within an industrial association, as to the rights, status or functions of members of the association or association in relation to the employment of those members; or
- (d) a dispute arising between employers and employees, or between members of different industrial associations, as to the demarcation of functions of employees or classes of employees;

or

- (e) a dispute about the representation under an industrial law of the industrial interests of employees by an industrial association of employees.

**“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.

**“industrial law”** means this Act or another Act that regulates the relationships between employers and employees.

**“officer”**, in relation to an industrial association, includes—

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

**“organisation”** includes a branch of an organisation.

(2) For the purposes of this part, action done by one of the following bodies or persons is taken to have been done by an industrial association—

- (a) the management committee of the industrial association;
- (b) an officer or agent of the industrial association acting in that capacity;
- (c) a member or group of members of the industrial association acting under the rules of the association;
- (d) 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 association, acting in that capacity.

(3) Subsections (2)(c) and (d) do not apply if any of the following has taken reasonable steps to prevent the action—

- (a) a committee of management of the industrial association;
- (b) a person authorised by the committee;
- (c) an officer of the industrial association.

(4) For the purposes of this part—

- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons 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 constituting a series of industrial actions.

***Division 2—Conduct by employers etc.***

**Dismissal etc. of members of industrial associations etc.—Cwlth  
s 298K**

**237.(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 the employee's employment;
- (c) alter the position of an employee to the employee's prejudice;
- (d) refuse to employ another person;
- (e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person.

**(2)** A person must not, for a prohibited reason, or for reasons including a prohibited reason, do or threaten to do any of the following—

- (a) terminate a contract for services 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 a person as an independent contractor;
- (e) discriminate against a person in the terms or conditions on which the person offers to engage the person as an independent contractor.

**Prohibited reasons—Cwlth s 298L**

**238.(1)** Conduct mentioned in section 237(1) or (2) 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, or does not propose to become, a member of an industrial association; or
- (c) for a refusal to engage another person as an independent contractor—
  - (i) has 1 or more employees who are not, or do not propose to become, members of an industrial association; or
  - (ii) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or
- (d) has refused or failed to join in industrial action; or
- (e) for an employee—has 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
- (f) 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
- (g) 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
- (h) has the right to the benefit of an industrial instrument or an order of an industrial body; or
- (i) 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

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- (ii) the observance of a person's rights under an industrial instrument; or
- (j) has participated in, proposes to participate in or has at any time proposed to participate in a proceeding under an industrial law; or
- (k) has given or proposes to give evidence in a proceeding under an industrial law; or
- (l) for 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
- (m) for an employee or an independent contractor—has absented from work without leave if—
  - (i) the absence was to carry 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
- (n) as an officer or member of an industrial association, has done, or proposes to do, an act or thing to further or protect 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
- (o) is a health and safety representative appointed under the *Workplace Health and Safety Act 1995*; or
- (p) is, or proposes to become, an officer or member of an association that has applied to be registered; or
- (q) has stopped, or proposes to stop, being—
  - (i) an officer or member of an association that has applied to be registered; or
  - (ii) a member of an organisation.

(2) A threat is taken to have been made for a prohibited reason if—

- (a) the threat is made to engage in conduct mentioned in section 237(1) or (2); and
- (b) one of the prohibited reasons in subsection (1) 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.

**Inducements to cease membership etc. of industrial association etc.—Cwlth s 298M**

**239.** An employer, or a person who has engaged an independent contractor, must not, whether by threats, promises or otherwise, induce an employee or the independent contractor, to stop being an officer or member of an industrial association.

*Division 3—Conduct by employees etc.*

**Cessation of work—Cwlth s 298N**

**240.** An employee or independent contractor must not cease work in the service of the person's 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) has the right to the benefit of an industrial instrument or an order of an industrial body; or
- (c) has made or proposes to make an inquiry or complaint to an entity having the capacity under an industrial law to seek—
  - (i) compliance with the 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.

***Division 4—Conduct by industrial associations etc.***

**Industrial associations acting against employers—Cwlth s 298P**

**241.(1)** 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)** 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 or person—

- (a) to become a member of an industrial association of employers; or
- (b) to cease to be an officer or member of such an association; or
- (c) not to become an officer or member of such an association; or
- (d) because the employer or person is an officer, delegate or member of an organisation or association that has applied to be registered as an organisation.

**(3)** An industrial association, or an officer or member of an industrial association, must not—

- (a) advise, encourage or incite an employer; or
- (b) organise to 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 section 237.<sup>158</sup>

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<sup>158</sup> Section 237 (Dismissal etc. of members of industrial associations etc.—Cwlth s 298K)



(4) 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.

(5) For the purposes of subsection (4), a direction given by one of the following bodies or persons is taken to have been given by an industrial association—

- (a) the management committee of the association;
- (b) an officer or agent of the association acting in that capacity;
- (c) a member or group of members of the association authorised to give the direction by—
  - (i) the rules of the association; or
  - (ii) the management committee of the association; or
  - (iii) an officer or agent of the association acting in that capacity;
- (d) a member of the association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.

### **Industrial associations acting against employees etc.—Cwlth s 298Q**

**242.** 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 possible 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; or

- (c) to coerce the person to join, or not to join, an industrial association.

### **Industrial associations acting against members—Cwlth s 298R**

**243.** 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.

### **Industrial associations acting against independent contractors etc.—Cwlth s 298S**

**244.(1)** 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 is not a member of an industrial association; or
- (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take discriminatory action against an eligible person because the eligible person is not a member of an industrial association; or
- (c) take, or threaten to take, industrial action against an eligible person with intent to coerce the person to join an industrial association.

**(2)** In this section—

**“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.

**“eligible person”** means a person who is not an employee, but who—

- (a) is eligible to join an industrial association; or
- (b) would be eligible to join an industrial association if the person was an employee.

### *Division 5—Remedies for breaches of this part*

#### **Applications to the court—Cwlth s 298T**

**245.(1)** An application may be made to the court for orders under section 246 about conduct in contravention of this part.

**(2)** The application may be made by—

- (a) the person, mentioned in the provision in question, against whom the conduct has been, is being or would be carried out; or
- (b) an industrial association of which the person is a member; or
- (c) the employment advocate; or
- (d) another person prescribed by regulation.

#### **Orders that the court may make—Cwlth s 298U**

**246.(1)** This section applies if there has been a contravention of this part.

**(2)** The court may, if it considers it appropriate in all the circumstances of the case, make one or more of the following orders—

- (a) an order imposing on a person or industrial association whose conduct contravened or is contravening the relevant provision in question a penalty of not more than—
  - (i) in the case of a body corporate—135 penalty units; or
  - (ii) in any other case—27 penalty units;

- (b) an order requiring the person or industrial association to—
  - (i) reinstate an employee in—
    - (A) the position from which the employee was removed or dismissed in committing the contravention; or
    - (B) a similar position; or
  - (ii) re-engage an independent contractor;
- (c) an order requiring the person or industrial association to pay to an employee or independent contractor, or to a prospective employee or independent contractor, compensation of such amount as the court considers appropriate;
- (d) an order requiring the person or industrial association not to carry out a threat made by the person or association, or not to make any further threat;
- (e) injunctions, including interim injunctions, and any other orders, that the court considers necessary to stop the conduct or remedy its effects;
- (f) any other consequential orders.

(3) The court must give an opportunity to be heard to any person against whom an order is sought.

(4) If the court imposes a penalty under subsection (2), it may order the whole or part of the penalty to be paid to—

- (a) the consolidated fund; or
- (b) a stated organisation or individual.

(5) However, a contravention of this part is not an offence.

**Proof not required of the reason for, or the intention of, conduct—Cwlth s 298V**

**247.(1)** This section applies if—

- (a) in an application under this division relating to a person's or an industrial association'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 or industrial association to carry out the conduct for that reason or with that intent would constitute a contravention of this part.

(2) 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 or industrial association proves otherwise.

### *Division 6—Miscellaneous*

#### **Provisions of industrial instruments requiring or permitting conduct in contravention of this part—Cwlth s 298Y**

248. 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.

## **PART 15—OTHER OFFENCES**

### *Division 1—Specific offences*

#### **Offence about organisation's property**

249.(1) A person must not obtain possession of an organisation's property by false representation or imposition.

Maximum penalty—40 penalty units.

(2) A person in possession of an organisation's property must not—

- (a) wilfully withhold it from a person who has the right to possess it; or
- (b) fraudulently misapply it; or
- (c) wilfully apply it to a use not authorised under the organisation's rules.

Maximum penalty—40 penalty units.

(3) As well as imposing a penalty, a court convicting a defendant under this section may order—

- (a) the defendant to—
  - (i) deliver up as directed property to which the conviction relates; or
  - (ii) repay as directed an amount found to have been withheld, fraudulently misapplied or improperly applied; and
- (b) that in default, the defendant be imprisoned for no more than 1 year.

### **Preventing elections**

**250.** A person must not prevent a person from conducting—

- (a) an election; or
- (b) a ballot for a proposed amalgamation under part 9; or
- (c) a ballot for a proposed withdrawal from amalgamation under part 10.

Maximum penalty—40 penalty units.

### **Offences about persons conducting ballot**

**251.(1)** This section applies to the conduct of each of the following events—

- (a) an election under part 5;<sup>159</sup>
- (b) a proposed amalgamation under part 9;<sup>160</sup>
- (c) a proposed withdrawal from an amalgamation under part 10.<sup>161</sup>

(2) A person must not, without lawful authority or excuse—

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<sup>159</sup> Part 5 (Conducting elections)

<sup>160</sup> Part 9 (Amalgamating industrial organisations)

<sup>161</sup> Part 10 (Withdrawal from amalgamations)

*Industrial Organisations Act 1997*

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- (a) pretend to be anyone else to obtain a ballot paper which the person does not have the right to obtain; or
- (b) pretend to be anyone else to vote in a ballot for the event; or
- (c) destroy, deface, amend, take or interfere with a nomination paper, ballot paper or envelope; or
- (d) put a ballot or other paper about the event in a ballot box or other receptacle used for ballots; or
- (e) deliver, or put in the post for delivery, a ballot or other paper about the event to a person receiving ballot papers for the event; or
- (f) vote without having the right to vote; or
- (g) vote more than once; or
- (h) forge a nomination paper, ballot paper or envelope; or
- (i) utter a nomination paper, ballot paper or envelope knowing it to be forged; or
- (j) give a ballot paper to someone else; or
- (k) obtain or possess a ballot paper; or
- (l) destroy, open, take or interfere with a ballot box or other receptacle used for ballots.

Maximum penalty—80 penalty units.

**(3)** A person must not threaten, offer, suggest or cause a detriment to anyone or anything because of, or to induce—

- (a) a candidature or withdrawal of a candidature in an event; or
- (b) a vote or omission to vote in an event; or
- (c) support for or opposition to a candidate in an event; or
- (d) a promise of a vote, omission to vote, support or opposition for or to a candidate or cause in an event.

Maximum penalty—80 penalty units.

**(4)** A person must not, without lawful authority or excuse—

*Industrial Organisations Act 1997*

- (a) ask, require or induce another person to show to or permit the person to see a ballot paper so the person can see the vote recorded in the ballot paper—
  - (i) while the paper is being marked; or
  - (ii) after it has been marked; or
- (b) if the person is performing functions for an event—show to or permit anyone else access to a ballot paper used in the election or ballot, other than to perform the functions.

Maximum penalty—80 penalty units.

(5) A person must not cause a detriment to another person because the other person has applied for an election inquiry under section 61.<sup>162</sup>

Maximum penalty—80 penalty units.

(6) In this section—

**“candidate”** means—

- (a) a person standing for office in an election; or
- (b) an organisation or association seeking amalgamation under part 9;<sup>163</sup> or
- (c) a constituent part that is seeking withdrawal from amalgamation under part 10.<sup>164</sup>

**“cause”** includes inflict, procure and use.

**“detriment”** includes violence, injury, punishment, damage, loss and disadvantage.

### **Officer to act honestly etc.**

**252.** An officer of an organisation who exercises powers or performs functions about the organisation’s financial management must, when

<sup>162</sup> Section 61 (Action by registrar for inquiry)

<sup>163</sup> Part 9 (Amalgamating industrial organisations)

<sup>164</sup> Part 10 (Withdrawal from amalgamations)



exercising the powers or performing the functions, act honestly and exercise a reasonable degree of care and diligence.

Maximum penalty—40 penalty units.

### **Officers with material personal interests**

**253.(1)** This section applies if an officer of an organisation who exercises powers or performs functions about the organisation's financial management has a material personal interest in a matter involving the organisation's financial management.

**(2)** The officer must disclose the nature of the interest to the organisation's management committee as soon as practicable after the relevant facts come to the officer's knowledge.

Maximum penalty—40 penalty units.

**(3)** If the matter is to be considered at an annual general, state council or management committee meeting of the organisation at which the officer is present, the officer must not—

- (a) vote on the matter; or
- (b) remain at the meeting when the matter is being considered.

Maximum penalty—40 penalty units.

### **Proceedings not affected**

**254.** Sections 252 and 253 do not limit—

- (a) a law about the exercise of an officer's powers or performance of an officer's functions; or
- (b) the taking of proceedings about a breach of an officer's duties to an organisation.

***Division 2—Parties to offences*****Parties to offences**

**255.(1)** This section applies without limiting the Criminal Code, section 7,<sup>165</sup> if an organisation or other person—

- (a) takes part in the commission of an offence against this Act; or
- (b) counsels, procures or aids in the commission of an offence against this Act; or
- (c) encourages the commission of an offence against this Act; or
- (d) is concerned, directly or indirectly in the commission of an offence against this Act.

**(2)** The organisation or person is taken to have committed the offence and to be liable for the penalty for the offence.

***Division 3—Attempts to commit offences*****Attempt to commit offence**

**256.(1)** A person who attempts to commit an offence against this Act contravenes this Act and is liable to the same penalty as if the offence attempted had been committed.

**(2)** An attempt to commit an offence is as defined in the Criminal Code, section 4.<sup>166</sup>

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<sup>165</sup> Criminal Code, section 7 (Principal offenders)

<sup>166</sup> Criminal Code, section 4 (Attempts to commit offences)

**PART 16—APPEALS***Division 1—Appeals to Court of Appeal***Appeal from court to Court of Appeal**

**257.(1)** A person aggrieved as defendant may appeal to the Court of Appeal against the following decisions—

- (a) a decision of the full court, in a proceeding—
  - (i) for an offence against—
    - (A) this Act for which the penalty is more than 40 penalty units and the offence may not be heard and decided by a magistrate; or
    - (B) section 45, 61, 67, 72, 73, 82, 83, 84, 86, 115, 171, 202 or 250;<sup>167</sup>
  - (ii) to cancel or suspend an organisation’s registration;
- (b) a decision of the court in a proceeding to punish a contempt of the court.

**(2)** In the appeal, the validity of a proceeding in or before, or of a decision of, the commission or a magistrate may not be disputed.

**(3)** Except as provided in subsection (1), the court’s decision—

- (a) is final and conclusive; and

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<sup>167</sup> Section 45 (Directions to perform rules)  
 Section 61 (Action by registrar for inquiry)  
 Section 67 (Prevention orders about disputed elections)  
 Section 72 (Registrar to conduct elections on request)  
 Section 73 (Election on registrar’s initiative)  
 Section 82 (Members and officers registers)  
 Section 83 (Filing registers)  
 Section 84 (Exemption from filing members register etc.)  
 Section 86 (Registrar’s access to registers)  
 Section 115 (Providing information and documents to electoral officers)  
 Section 171 (Providing information and documents to electoral officers—Cwlth s 253ZN)  
 Section 202 (Officers’ duties)  
 Section 250 (Preventing elections)

- (b) can not be impeached for informality or want of form; and
- (c) can not be appealed against, reviewed, quashed or invalidated in another court.

### ***Division 2—Appeals to Industrial Court***

#### **Appeal from commission, magistrate or registrar to court**

**258.(1)** A person may appeal to the full court if aggrieved by a decision of the commission on—

- (a) an application for registration of an organisation; or
- (b) an objection to the application.

**(2)** Apart from the right of appeal under subsection (1), the State, or a person aggrieved by a decision of the commission or registrar, may appeal against the decision to the court only on the ground of—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

**(3)** Despite subsection (2), an appeal does not lie to the court, on any ground against a decision of a full bench made on appeal from—

- (a) a decision of a commissioner; or
- (b) a decision of the registrar under section 32 or 40.<sup>168</sup>

**(4)** A person aggrieved by a decision of a magistrate exercising jurisdiction conferred under section 271(a) or (b)<sup>169</sup> may appeal to the court.

**(5)** The court may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—

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<sup>168</sup> Section 32 (Adoption of model election rules with change)  
Section 40 (Approval of rule amendments—Cwlth s 205)

<sup>169</sup> Section 271 (Magistrates jurisdiction)

- (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
- (ii) amend, as it considers appropriate, the decision appealed against; or
- (iii) suspend the operation of the decision appealed against and remit the matter, with or without directions, to the commission, Industrial Magistrates Court, or registrar to act according to law.

### **Court's discretion on penalty on appeal**

**259.** If the court, on appeal, confirms a person's conviction for an offence, it may increase or reduce the penalty imposed on the person.

### ***Division 3—Appeals to Industrial Relations Commission***

#### **Appeals from commissioner to full bench with leave**

**260.(1)** A person aggrieved by a decision of a commissioner may appeal to a full bench, with the president's leave, on a ground other than—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

**(2)** The president may give leave for the appeal only if the president considers the matter is of enough importance that an appeal should be brought in the public interest.

**(3)** The full bench may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or

- (iii) suspend the operation of the decision appealed against if it has not already been stayed under section 262,<sup>170</sup> and remit the matter, with or without directions, to the member—
  - (A) for report to the full bench; or
  - (B) to act according to law.

### **Appeal from registrar to full bench**

**261.(1)** A person aggrieved by a decision of the registrar under section 32 or 40<sup>171</sup> may appeal to a full bench on a ground other than—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

**(2)** The full bench may—

- (a) dismiss the appeal; or
- (b) allow the appeal and—
  - (i) set aside the decision appealed against and substitute the decision it considers should have been made; or
  - (ii) amend, as it considers appropriate, the decision appealed against; or
  - (iii) suspend the operation of the decision appealed against if it has not already been stayed under section 262, and remit the matter, with or without directions, to the registrar—
    - (A) for report to the full bench; or
    - (B) to act according to law.

### **President may stay decisions when leave sought**

**262.(1)** After application is made for leave to appeal under

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<sup>170</sup> Section 262 (President may stay decisions when leave sought)

<sup>171</sup> Section 32 (Adoption of model election rules with change)  
Section 40 (Approval of rule amendments—Cwlth s 205)

section 260(1),<sup>172</sup> a person with enough interest in the matter may apply to the president for an order staying the operation of the decision against which it is sought to appeal.

(2) The president may order the operation be stayed, wholly or partly, for a stated period, if the president considers it appropriate.

(3) The order has effect according to its terms.

### **Decisions on appeal that are final**

**263.** A decision of a full bench on the following appeals is final—

- (a) an appeal against a commissioner's decision;
- (b) an appeal against a decision of the registrar under section 32 or 40.<sup>173</sup>

### ***Division 4—Appeals to both Industrial Court and Industrial Relations Commission***

#### **Appeals from commissioner or registrar to both court and commission**

**264.(1)** A person who may appeal against a commissioner's decision, or a decision of the registrar under section 32 or 40, may appeal both to—

- (a) the court; and
- (b) a full bench.

(2) The person must file 2 separate appeals stating—

- (a) for the appeal to the court—only the grounds mentioned in section 258(2);<sup>174</sup> and
- (b) for the appeal to a full bench—

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<sup>172</sup> Section 260 (Appeals from commissioner to full bench with leave)

<sup>173</sup> Section 32 (Adoption of model election rules with change)  
Section 40 (Approval of rule amendments—Cwlth s 205)

<sup>174</sup> Section 258 (Appeal from commission, magistrate or registrar to court)

- (i) if the appeal is against a commissioner's decision—only the grounds mentioned in section 260(1);<sup>175</sup> or
- (ii) if the appeal is against the registrar's decision—only the grounds mentioned in section 261(1).<sup>176</sup>

(3) The president must decide the order in which the appeals are to be heard.

(4) In this section—

**“appeal against a decision”** includes an application for a prerogative order in relation to a decision.

### *Division 5—General*

#### **Nature of appeal**

**265.(1)** An appeal to the court or commission is by way of re-hearing on the record.

(2) However, the court may hear evidence afresh, or hear additional evidence, if the court considers it appropriate to effectively dispose of the appeal.

#### **Time limited for appeal**

**266.** An appeal against a decision must be commenced as required by the rules of court within 21 days after—

- (a) if the decision is given at a hearing—the announcement of the decision at a hearing; or
- (b) if the decision is given through the registrar—the release of the decision.

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<sup>175</sup> Section 260 (Appeals from commissioner to full bench with leave)

<sup>176</sup> Section 261 (Appeal from registrar to full bench)



## PART 17—JURISDICTION AND PROCEDURE

### *Division 1—Jurisdiction*

#### **Jurisdiction of the full court**

**267.** The full court may hear and decide—

- (a) proceedings for an offence against this Act if—
  - (i) the penalty is more than 40 penalty units; and
  - (ii) the offence can not be heard and decided by a magistrate; and
- (b) proceedings to cancel or suspend an organisation’s registration; and
- (c) proceedings for offences under section 45, 61, 67, 72, 73, 82, 83, 84, 86, 115, 171, 202 or 250.<sup>177</sup>

#### **Court’s jurisdiction exclusive**

**268.** The court’s jurisdiction is exclusive of another court’s jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to a proceeding in the court within its jurisdiction.

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<sup>177</sup> Section 45 (Directions to perform rules)  
 Section 61 (Action by registrar for inquiry)  
 Section 67 (Preventing orders about disputed elections)  
 Section 72 (Registrar to conduct elections on request)  
 Section 73 (Election on registrar’s initiative)  
 Section 82 (Members and officers registers)  
 Section 83 (Filing registers)  
 Section 84 (Exemption from filing members register etc.)  
 Section 86 (Registrar’s access to registers)  
 Section 115 (Providing information and documents to electoral officers)  
 Section 171 (Providing information and documents to electoral officers—Cwlth s 253ZN)  
 Section 202 (Officers’ duties)  
 Section 250 (Preventing elections)

**President's jurisdiction**

**269.** Unless otherwise required by this or another Act, the president sitting alone has all the jurisdiction and powers of the court.

**Commission's jurisdiction is exclusive**

**270.** The original and appellate jurisdiction conferred on the commission by this Act is exclusive of the jurisdiction of the Supreme Court or another court or tribunal, unless otherwise prescribed under this Act.

**Magistrate's jurisdiction**

**271.** A magistrate has jurisdiction to hear and decide proceedings about—

- (a) an offence against this Act for which there is a maximum penalty of not more than 40 penalty units, unless the offence is one for which this Act makes other provision; or
- (b) recovering amounts owing to an organisation under its rules by a member or former member; or
- (c) exercising powers conferred under section 90.<sup>178</sup>

**Magistrate's jurisdiction exclusive**

**272.** The jurisdiction conferred on a magistrate by this Act is exclusive of the jurisdiction of another court or tribunal, unless this Act otherwise prescribes.

***Division 2—Procedure*****Evidence, powers and procedure follow Workplace Relations Act 1997**

**273.(1)** This section applies if the Court of Appeal, full court, court, full bench, commission, a magistrate or the registrar has jurisdiction to hear and decide proceedings under this Act.

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<sup>178</sup> Section 90 (Conscientious objection to organisation membership)

(2) Unless a provision of this Act otherwise provides, the provisions of the *Workplace Relations Act 1997*, mentioned in schedule 1 and the rules of court made under that Act apply to the proceeding with all necessary changes.

### **Performance of commission's functions**

**274.** The commission must perform its functions—

- (a) under a provision of this Act in a way that furthers the objects of this Act relevant to the provision; and
- (b) in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under this Act.

### **Recovery of amounts under orders**

**275.(1)** If in a proceeding the court or commission orders an amount be paid, as a penalty or otherwise, the registrar may issue a certificate under the rules of court, under the seal of the court or commission, stating—

- (a) the amount payable; and
- (b) the persons by whom and to whom the amount is payable.

(2) When the certificate is filed in a court of competent jurisdiction in an action for a debt of the amount, the order evidenced by the certificate is enforceable as an order made by the court where the certificate is filed.

(3) This section does not limit other ways in which amounts may be recovered on an order of the court or commission.

### **Recovery of amounts from organisation**

**276.** Process may be executed against an organisation's property to recover—

- (a) a penalty imposed on the organisation under this Act; or
- (b) a amount ordered to be paid by the organisation under this Act.

**Recovering member's liabilities to organisation**

**277.(1)** A member's liability to an organisation may only be sued for and recovered before a magistrate.

**(2)** If a person's membership of an organisation has ended under section 88 or 89,<sup>179</sup> the person—

- (a) continues to be liable for the member's liability that—
  - (i) became payable within 1 year before the membership ended; and
  - (ii) is recoverable under this section; and
- (b) is not liable for the member's liability that became payable—
  - (i) more than 1 year before the membership ended; or
  - (ii) after the membership ended.

**(3)** Proceedings to recover a member's liability to an organisation must be commenced within 3 years from when the member's liability first become payable.

**(4)** If proceedings to recover a member's liability to an organisation are not commenced under subsection (3), the member's liability is not recoverable.

**(5)** In this section—

**“member's liability”**, to an organisation, means the members liability to the organisation for subscriptions, fees, dues, fines, levies and other amounts payable to the organisation under its rules by a member or former member of the organisation.

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<sup>179</sup> Section 88 (Resigning organisation membership)  
Section 89 (Resignation if subscription unpaid for 1 year and no renewal)

***Division 3—Evidentiary provisions*****Certificate evidence in applications about office holding**

**278.(1)** This section applies to applications under section 76, 77 or 78.<sup>180</sup>

**(2)** A certificate stating the following about a person and purporting to be by a registrar or other appropriate officer of the court, a court of the State, the Commonwealth, another State or a foreign country is evidence the person was—

- (a) convicted by the court of a stated offence on a stated day;
- (b) acquitted by the court of a stated offence, or that a stated charge against the person was dismissed by the court, on a stated day.

**(3)** A certificate purporting to be by an officer in charge of a prison is evidence that a stated person was released from the prison on a stated day.

**Evidentiary provision—elections by registrar**

**279.(1)** This section applies if—

- (a) there are proceedings about anything done or proposed to be done because of a request or purported request to the registrar to conduct an election under section 72;<sup>181</sup> and
- (b) the proceedings are about an organisation or branch of an organisation that—
  - (i) must file a register under section 83;<sup>182</sup> or
  - (ii) has been exempted from filing a register under section 84,<sup>183</sup> and the exemption is in force.

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<sup>180</sup> Section 76 (Eligibility for office)  
 Section 77 (Application for leave to hold office by prospective candidate for office)  
 Section 78 (Application for leave to hold office in organisation by office holder)

<sup>181</sup> Section 72 (Registrar to conduct elections on request)

<sup>182</sup> Section 83 ( Filing registers)

<sup>183</sup> Section 84 (Exemption from filing members register etc.)

(2) An organisation's or branch's members register is evidence that the persons shown in it as the members of the organisation or branch were members of the organisation or branch when the request was made.

(3) In this section—

**“members register”** of an organisation or branch of an organisation means—

- (a) for an organisation or branch that must file a true copy of a register under section 83—the copy filed under the section immediately before the request under subsection (1); or
- (b) for an organisation or branch that has been exempted from filing a register under section 84—maintained by the organisation or branch showing the members of the organisation or branch on the day of the request.

### **Evidentiary provisions—general**

**280.(1)** In proceedings under this Act, the following documents are admissible as evidence of the matters mentioned in subsection (2) or (3) for each document—

- (a) the original or a certified copy of a list of an organisation's officers last filed with the registrar by the organisation;
- (b) a certified copy of an organisation's rules.

(2) The document mentioned in subsection (1)(a) is evidence that on the day the list was filed each person named in it was an officer of the organisation and continues to be that officer.

(3) The document mentioned in subsection (1)(b) is evidence that the rules in it are the organisation's rules.

(4) In this section—

**“certified copy”** means a copy with a certificate purporting to be the registrar's stating the copy is a true copy of the document it purports to be.

**Particular offences may be charged in 1 complaint**

**281.(1)** An offence mentioned in subsection (2), being a continuing offence, may be charged in 1 complaint for a period.

**(2)** The offences to which subsection (1) applies are those against the following sections—

- 20(1) to (4)
- 83(4)
- 84(6)
- 91(2) to (4)
- 94(1)
- 209(1)
- 211(2)
- 212(1)
- 214(2)
- 215(5).

**PART 18—MISCELLANEOUS****No action for defamation in certain cases**

**282.(1)** A defamation proceeding (whether civil or criminal) does not lie against a protected person if the protected person prints or publishes a document for—

- (a) an election; or
- (b) a proposed amalgamation under part 9;<sup>184</sup>
- (c) a proposed withdrawal from an amalgamation under part 10.<sup>185</sup>

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<sup>184</sup> Part 9 (Amalgamating industrial organisations)

<sup>185</sup> Part 10 (Withdrawal from amalgamation)

(2) In this section—

**“document”** means a document or a copy of a document authorised by, or for—

- (a) a candidate in an election; or
- (b) an organisation or association that is carrying out an amalgamation under part 9; or
- (c) a constituent part that is seeking a withdrawal from amalgamation under part 10.

**“protected person”** means—

- (a) the State; or
- (b) an electoral officer; or
- (c) a person acting at the request or direction of an electoral officer; or
- (d) a returning officer who gives or publishes material under section 25(1)(c).<sup>186</sup>

### **References to making false or misleading statements**

**283.** A reference in this Act to a person making a statement knowing it is false or misleading in a material particular includes a reference to the person making the statement being reckless about whether the statement is false or misleading in a material particular.

### **References to engaging in conduct**

**284.** A reference in this Act to engaging in conduct includes a reference to being, directly or indirectly, a party to or concerned in the conduct.

### **Filing details of loans, grants and donations**

**285.(1)** An organisation must—

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<sup>186</sup> Section 25 (Rules for elections and ballots)



*Industrial Organisations Act 1997*

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- (a) as soon as is practicable after the end of each financial year, file with the registrar a statement showing the appropriate details of loans, grants or donations made by the organisation to anyone during the financial year of more than, or if added together more than, \$1 000; and
- (b) ensure that the statement is signed by an officer of the organisation.

Maximum penalty—40 penalty units.

(2) The organisation must not file a statement that is false or misleading in a material particular to the knowledge of the officer who signed it.

Maximum penalty—40 penalty units.

(3) A complaint against an organisation for an offence against subsection (2) is sufficient if it states the statement made was false or misleading in a material particular.

(4) A statement filed with the registrar may be inspected, during office hours, by a member of the organisation that filed it.

(5) If an organisation has branches, this section applies—

- (a) to the organisation—as if loans, grants or donations made by a branch were not made by the organisation; and
- (b) to a branch—as if it were an organisation.

(6) In subsection (5), a branch and the organisation's members forming the branch are taken to be members of the branch.

(7) In this section—

**“appropriate details”** of loans, grants or donations means—

- (a) for a loan—
  - (i) the amount of the loan; and
  - (ii) the reason for the loan; and
  - (iii) the security given for the loan; and
  - (iv) unless the loan was to relieve a member or member's dependant from severe financial hardship—the borrower's name and address and the arrangements to repay the loan; or

- (b) for a grant or donation—
  - (i) the amount of the grant or donation; and
  - (ii) the reason for the grant or donation; and
  - (iii) unless the grant or donation was to relieve a member or member's dependant from severe financial hardship—the name and address of the person it was made to.

### **Documents open to inspection**

**286.(1)** An organisation's rules and members and officers registers filed with the registrar are open to inspection by a person paying the fee stated in the rules of court.

**(2)** An organisation or branch must give a copy of its rules to a person who asks for a copy and pays an amount not more than the amount prescribed under a regulation.

### **Nomination for amounts payable on member's death**

**287.(1)** A member of an organisation may give the organisation notice nominating a person to whom amounts payable on the member's death are to be paid.

**(2)** A person may not be nominated if the person is the organisation's officer or employee, unless the person is the spouse, parent, child, sibling, nephew or niece of the nominator.

**(3)** The member may cancel or amend the nomination by giving notice to the organisation.

**(4)** On receiving satisfactory proof of the nominator's death the organisation must pay the nominee the amount owing on the nominator's death.

### **Notices and applications to be written**

**288.** Unless otherwise provided, if a person must give a notice or make an application under this Act, the notice or application must be written.

**Functions and powers of registrar**

**289.(1)** The registrar—

- (a) administers the registrar’s office for the purpose of this Act; and
- (b) for the court and commission—must perform the functions, and may exercise the powers, prescribed under a regulation or provided for under the rules of court for the purpose of this Act; and
- (c) has any other function conferred on the registrar under this Act.

(2) In performing a function or exercising a power under subsection (1)(b), the registrar must comply with a direction given in relation to the performance or exercise by the president or a member of the commission.

(3) The registrar must keep a register of organisations.

(4) The registrar has the power to do all things necessary or convenient to be done for the performance of the registrar’s functions.

**Delegation by registrar**

**290.** The registrar may delegate the registrar’s powers under this Act to—

- (a) an assistant registrar; or
- (b) an appropriately qualified person nominated by the president; or
- (c) an appropriately qualified officer of the court or commission.

**Protection from liability**

**291.(1)** An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

(3) In this section—

“**official**” means—

- (a) the Minister; or

- (b) the chief executive; or
- (c) the employment advocate; or
- (d) the Commonwealth employment advocate; or
- (e) the registrar; or
- (f) an officer of the court or commission; or
- (g) the chief inspector.

### **Stamp duty**

**292.(1)** Despite any other Act, stamp duty is not payable on—

- (a) an instrument evidencing a transfer of property from trustees of an organisation to the organisation, or an agreement relating to the transfer; or
- (b) a certificate executed under, or to give effect to, this Act.
- (c) a transfer instrument.

**(2)** In this section—

**“transfer instrument”** means an instrument that transfers any property—

- (a) to an amalgamated organisation because of an amalgamation under part 9;<sup>187</sup> or
- (b) to an organisation registered under section 175<sup>188</sup> to give effect to an order made under section 174(1)(b).<sup>189</sup>

### **Inaccurate descriptions**

**293.** No misnomer, inaccurate description or omission in or from a document given under this Act prevents or abridges the operation of this Act in relation to the subject matter of the misnomer, inaccurate description or omission, if the subject matter is sufficiently clear to be understood.

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<sup>187</sup> Part 9 (Amalgamating industrial organisations)

<sup>188</sup> Section 175 (Registration of constituent part—Cwlth s 253ZQ)

<sup>189</sup> Section 174 (Deciding the day of withdrawal—Cwlth s 253ZP)

**Regulation-making power**

**294.(1)** The Governor in Council may make regulations under this Act.

**(2)** A regulation may—

- (a) impose fees; and
- (b) create offences and prescribe penalties (including different penalties for successive offences) of not more than 20 penalty units for each offence; and
- (c) make provision about candidates disclosing campaign funds for elections.

**PART 19—SAVINGS, TRANSITIONAL AND OTHER AMENDMENTS****Definition for pt 19**

**295.** In this part—

“**former industrial Act**” means—

- (a) the repealed Act; or
- (b) the *Industrial Conciliation and Arbitration Act 1961*.

**Continued registration of organisations**

**296.(1)** The registration of an industrial organisation registered under a former industrial Act immediately before the commencement is continued under this Act.

**(2)** The organisation is taken to be registered as an organisation under this Act at the commencement.

**(3)** The name of an organisation under a former industrial Act is unchanged under this Act.

**(4)** The organisation is and continues to be the same body corporate under this Act without any break in, or change to, its corporate identity.

**Registrar may amend name of union**

**297.** The registrar, may on the application of a union of employers or employees under a former industrial Act registered at the commencement, amend the applicant's name to contain the word 'organisation' instead of the word 'union'.

**Savings—agreements etc.**

**298.(1)** This section applies to an agreement, decision, exemption, judgment, notice, order, ruling, permit or other act of authority that was—

- (a) made, given, done, or approved under a provision of the repealed Act for which there is a corresponding provision in this Act; and
- (b) in force immediately before the commencement.

**(2)** The agreement, decision, exemption, judgment, notice, order, ruling, permit or other act of authority—

- (a) continues in force as if it had been made, given, done or approved under the corresponding provision of this Act; and
- (b) may be revoked, amended, suspended or modified under this Act.

**Savings—proceedings**

**299.(1)** This section applies to a proceeding—

- (a) started before the commencement under a provision of the repealed Act for which there is a corresponding provision in this Act; and
- (b) not finished on the day of the repealed Act's repeal.

**(2)** The proceeding may be carried on and prosecuted as if it had been started under the corresponding provision of this Act.

**(3)** If the proceeding is one in which the entity before whom it was started had jurisdiction under the repealed Act but does not have jurisdiction under this Act—

- (a) if the proceeding is part heard at the commencement—it is to be completed before that entity which, for this purpose, is taken to have jurisdiction as if this Act had not been enacted; or
- (b) if the proceeding is not part heard at the commencement—it is to be completed before the entity which has jurisdiction under this Act, as if it had been started before that entity under this Act in the first instance.

(4) A proceeding is taken to be part heard after commencement of the hearing until the decision in the proceeding is given.

### References to former industrial Acts

**300.(1)** In an Act or document a reference to a provision of a former industrial Act may, if the context permits, be taken to be a reference to any corresponding provision that may be enacted in this Act.<sup>190</sup>

*Example of a reference under subsection (1)—*

A reference to section 336 of the repealed Act in the *Hypothetical Act* is taken to be a reference to section 21 of this Act.

### Transitional provision about rules

**301.(1)** Section 23(1)(q) to (v)<sup>191</sup> does not apply to an existing organisation until 18 months the (“**transitional period**”) after the commencement.

(2) If an existing organisation applies to the registrar before the end of the transitional period for an extension of the transitional period the registrar may extend it for a further period of 1 year for the organisation.

(3) This section expires 30 months after the commencement.

(4) In this section—

“**existing organisation**” means an industrial organisation registered under the repealed Act immediately before the commencement.

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<sup>190</sup> The *Workplace Relations Act 1997* has similar provision to this section for a similar purpose.

<sup>191</sup> Section 23 (Content of rules)

**Cost of copy of rules**

**302.(1)** Until another amount is prescribed under a regulation for section 286(2)<sup>192</sup> the amount payable is to be not more than \$5.00.

**(2)** This section expires 2 years after the commencement unless an earlier day is prescribed under a regulation.

**Appointments continue**

**303.** A person who immediately before the commencement held an office or appointment under the repealed Act and for which there is a corresponding office or appointment under this Act continues to hold the office or appointment, but does so under this Act.

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<sup>192</sup> Section 286 (Documents open to inspection)



**SCHEDULE 1****PROVISIONS OF WORKPLACE RELATIONS ACT  
1997 THAT APPLY TO PROCEEDINGS UNDER THIS  
ACT**

section 273

**Chapter 7, part 1, division 3—**

- section 262 (Decision of full industrial court)

**Chapter 7, part 2, division 3—**

- section 280 (Commission to take account of Anti-Discrimination Act)
- section 284 (Re-allocation of commission's work)
- section 285 (Commission may continue to hear re-allocated work without rehearing evidence)
- section 286 (Decision of full bench)

**Chapter 7, part 2, division 5—**

- section 289 (General powers)
- section 291 (Power to grant injunctions)
- section 294 (Procedures for reopening)
- section 295 (Reference to full bench)
- section 296 (Case stated to court)
- section 297 (Remission to magistrate)
- section 298 (Power to enter and inspect)

**Chapter 7, part 3, division 4—**

- section 312 (Magistrate's powers on remission)

**Chapter 7, part 6, division 1—**

- section 331 (Definitions for pt 6)
- section 332 (Starting proceedings)
- section 333 (Service of process)

## SCHEDULE 1 (continued)

- section 334 (Representation of parties)
- section 335 (Basis of procedures and decisions of the commission and magistrates)
- section 336 (Competence and compellability of witnesses)
- section 337 (Intervention by State or Minister)
- section 338 (Adjournment by registrar)
- section 339 (State employee to give information)
- section 340 (Exercise of commission's powers)
- section 341 (Interlocutory proceedings and chamber matters)
- section 342 (Power to order inquiry or taking of evidence)
- section 343 (Power to administer oath)
- section 344 (Powers incidental to exercise of jurisdiction)
- section 345 (Power to obtain data and expert evidence)
- section 346 (Decisions generally)
- section 347 (Reserved decisions)
- section 348 (Commission decisions to be in plain English)
- section 349 (Extent of decisions and their execution)
- section 350 (Costs)
- section 351 (Enforcing commission's orders)
- section 352 (Remedies on show cause)
- section 353 (Proceeding of commission or magistrate not to be questioned)
- section 354 (Filing magistrate's decision)
- section 355 (Recovery of amounts under orders)
- section 356 (Protections and immunities)
- section 357 (Rules of court)
- section 358 (Directions about practice)

**Chapter 11—**

- section 454 (General application of jurisdictional provisions)
- section 455 (Evidentiary provisions affecting proceeding under Act)

## SCHEDULE 1 (continued)

- section 456 (Confidential material tendered in evidence)
- section 457 (Evidentiary value at large of official records)
- section 458 (Proof of certain facts by statement)
- section 460 (Offence proceedings generally)

**SCHEDULE 3****DICTIONARY**

section 4

**“accounting deficiency”** see section 204(2)(e).

**“accounting records”** see section 198(1)(a).

**“accounts”** means—

- (a) if a certificate has been given to the organisation for a financial year under section 223(1)<sup>193</sup>—the prescribed accounts and other statements for the year under section 223(6); or
- (b) the prescribed accounts and other statements the organisation must give for each of its financial years under section 199;<sup>194</sup> or
- (c) otherwise—see section 199.

**“alternative ballot”**, for part 9, see section 96.

**“alternative provision”**, for part 9, see section 96.

**“amalgamated organisation”** for—

- (a) for part 9, see section 96; or
- (b) for part 10, see section 160.

**“amalgamation day”**, for part 9, see section 96.

**“amalgamation hearing”**, for part 9, see section 96.

**“appropriately qualified”**, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of ‘standing’—

A person’s classification level in the public service.

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<sup>193</sup> Section 223 (Accounts and audits for low income organisations)

<sup>194</sup> Section 199 (Preparing accounts)

## SCHEDULE 3 (continued)

**“approving organisation”**, for part 9, see section 96.

**“audit report”** see section 204(1).

**“Australian accounting standards”**, for part 12, see section 194.

**“authorised person”**, for part 9, see section 96.

**“award”** see *Workplace Relations Act 1997*, dictionary.

**“ballot”** means—

(a) for part 9, see section 96; or

(b) for part 10, see section 160.

**“ballot application”**, for part 9, see section 96.

**“ballot conditions”**, for part 9, see section 96.

**“ballot exemption”**, for part 9, see section 96.

**“ballot records”**, for an election or ballot, means any ballot papers, envelopes or other records that have been used for or in connection with, the election or ballot.

**“branch”** means a branch of an organisation and includes a section, division, chapter, or other group within the industrial organisation, however called, that has an executive or governing body, or officers.

**“calling”** see *Workplace Relations Act 1997*, dictionary.

**“cancellation”**, for an organisation, means the cancellation of its registration.

**“casual vacancy”** means a vacancy in the term of an office because of the death, resignation or removal from office of the office holder.

**“cause”** means an industrial cause under the *Workplace Relations Act 1997*.

**“certified agreement”** see *Workplace Relations Act 1997*, dictionary.

**“chief commissioner”** see *Workplace Relations Act 1997*, dictionary.

**“chief inspector”** means the chief inspector under the *Workplace Relations Act 1997*.

**“collective body”** for part 13, see section 232.

## SCHEDULE 3 (continued)

- “**commission**” see *Workplace Relations Act 1997*, dictionary.
- “**commissioner**” means a commissioner under the *Workplace Relations Act 1997*, other than the enterprise commissioner.
- “**committee meeting**”, for an association or organisation, means a meeting of the association’s or organisation’s management committee.
- “**committee member**”, for an association or organisation, means a member of the association’s or organisation’s management committee.
- “**Commonwealth Act**” means the *Workplace Relations Act 1996* (Cwlth).
- “**Commonwealth employment advocate**” means a Commonwealth employment advocate under the *Workplace Relations Act 1997*.
- “**community of interest declaration**”, for part 9, see section 96.
- “**completed amalgamation**”, for part 9, see section 96.
- “**conduct**” for part 14, see section 236.
- “**constituent member**” for part 10, see section 160.
- “**constituent part**” for part 10, see section 160.
- “**convicted of a prescribed offence**”, for part 7, see section 75.
- “**convicted person**”, for part 7, see section 75.
- “**counterpart federal body**” see section 33.
- “**court**” see *Workplace Relations Act 1997*, dictionary.
- “**defect**” includes a nullity, omission, error and irregularity.
- “**demarcation dispute**” see *Workplace Relations Act 1997*, dictionary.
- “**deregistered organisation**” means a deregistered organisation under section 96.
- “**deregistration**”, for part 9, see section 96.
- “**EFA**” means an enterprise flexibility agreement under the *Industrial Relations Act 1990* that has effect under the *Workplace Relations Act 1997*.
- “**election**” means an election for an office in an organisation or branch.

## SCHEDULE 3 (continued)

**“electoral commission”** means the Electoral Commission of Queensland

**“electoral officer”** means the electoral commissioner, the deputy electoral commissioner or a member of the staff of the electoral commission.

**“eligibility rules”**, for an organisation or association of persons, means the rules of the organisation or association about eligibility for its membership.

**“employee”** see *Workplace Relations Act 1997*, dictionary.

**“employee organisation”**, means an organisation of employees.

**“employer”** see *Workplace Relations Act 1997*, dictionary.

**“employer organisation”**, means an organisation of employers.

**“employment advocate”** means an employment advocate under the *Workplace Relations Act 1997*.

**“enterprise”**, for part 2, see section 6.

**“enterprise association”**, for part 2, see section 6.

**“existing organisation”**, for part 9, see section 96.

**“federal organisation”** means an organisation under the Commonwealth Act.

**“federation”**, for part 9, see section 96.

**“financial year”**, for an organisation, means—

- (a) the period of 1 year beginning on 1 July; or
- (b) if the rules of the organisation provide for another period of 1 year as its financial year—
  - (i) that other period; and
  - (ii) in part 12—if section 195(2) applies—the period mentioned that section.

**“finishing day”**, for part 9, see section 96.

**“former industrial Act”** for part 19, see section 295.

**“full bench”** see *Workplace Relations Act 1997*, dictionary.

## SCHEDULE 3 (continued)

“**full court**” means the Full Industrial Court under the *Workplace Relations Act 1997*.

“**general meeting**”, of an association or organisation, means a general meeting of the association’s or organisation’s members.

“**industrial action**” means—

- (a) for part 14, see section 236; or
- (b) otherwise—see *Workplace Relations Act 1997*, dictionary.

“**industrial agreement**” means an industrial agreement under the *Industrial Relations Act 1990* that has effect under the *Workplace Relations Act 1997*.

“**industrial association**”, for part 14, see section 236.

“**industrial body**”, for part 14, see section 236.

“**industrial dispute**” means—

- (a) for part 14—an industrial dispute under section 236; or
- (b) otherwise—see *Workplace Relations Act 1997*, dictionary.

“**industrial instrument**” for part 14, see section 236.

“**industrial law**”, for part 14, see section 236.

“**industrial matter**” see *Workplace Relations Act 1997*, dictionary.

“**instrument**”, for part 9, see section 96.

“**interest**”, for a company, includes a prescribed interest made available by the company within the meaning of the Corporations Law, section 9.<sup>195</sup>

“**invalidity**” includes a defect and in part 9 includes the matters stated in section 232, definition “invalidity”.

“**irregularity**” includes—

- (a) a contravention of an organisation’s rules, but in part 7 does not include an irregularity for a ballot; and

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<sup>195</sup> Corporations Law, section 9 (Dictionary)



## SCHEDULE 3 (continued)

- (b) for an election or ballot—an act or omission by means of which the following is, or attempted to be, prevented—
- (i) the full and free recording of votes by all persons who may record a vote and by no other persons; or
  - (ii) a correct ascertainment or declaration of the results of the voting.

**“magistrate”** means an industrial magistrate.

**“management committee”**, for an association, organisation or branch of an organisation means the body of persons, however called, that manages its affairs.

**“members register”**, for an organisation, means the register of its members required to be kept under section 82(1).

**“model election rules”** means model election rules under section 29.

**“newly registered organisation”**, for part 10, see section 160.

**“no’ case”**, for part 9, see section 96.

**“office”**, for an organisation, branch of an organisation or an association (an **“entity”**) means—

- (a) an office of president, vice-president, secretary or assistant secretary; or
- (b) the office of a voting member of a collective body that has power in relation to the following functions—
  - (i) the management of the affairs of the entity;
  - (ii) the determination of policy for the entity;
  - (iii) the making, alteration or rescission of rules of the entity;
  - (iv) the enforcing or functions for enforcing rules of the entity; or
- (c) an office for which the holder may under the entity’s rules exercise the functions mentioned in paragraph (b)(i) and (iv), other than a holder only participating under directions of a collective body or another person to implement—
  - (i) existing policy of the entity; or

## SCHEDULE 3 (continued)

- (ii) decisions concerning the entity; or
- (d) an office for which the holder may under the entity's rules exercise the functions mentioned in paragraph (b)(ii) and (iii); or
- (e) the office of a person holding (whether as trustee or otherwise) property—
  - (i) of the entity; or
  - (ii) that the entity has a beneficial interest in; or
- (f) an office in a branch of an entity.

**“officer”** means—

- (a) for part 14, see section 236; or
- (b) otherwise—for an organisation, or branch of an organisation—a person who holds an office in the organisation or branch.

**“officers register”**, for an organisation, means the register of its officers required to be kept under section 82(1).

**“omission”**, for part 13, see section 232.

**“ordinary election”** means an election held under rules complying with section 25.

**“organisation”** means—

- (a) for part 14, see section 236; or
- (b) otherwise—
  - (i) an association of employers or employees registered under this Act as—
    - (A) an industrial organisation of employers; or
    - (B) an industrial organisation of employees; or
  - (ii) an association of employers or employees, the continuity of whose registration as an industrial union under an Act was preserved by the *Industrial Relations Act 1990* or by this Act.

**“party”** see *Workplace Relations Act 1997*, dictionary.

## SCHEDULE 3 (continued)

“**place**” see *Workplace Relations Act 1997*, dictionary.

“**political objects**” see section 224.

“**political objects fund**” means a political objects fund under section 225.

“**postal ballot**” means a ballot by which—

- (a) a ballot paper is sent by prepaid post to each person who may vote; and
- (b) facilities are provided for returning the completed ballot paper by post by the voter without expense to the voter.

“**prescribed offence**”, for part 7, see section 75.

“**president**” see *Workplace Relations Act 1997*, dictionary.

“**prevent**” includes hinder and obstruct.

“**prohibited reason**” see section 238.

“**proposed alternative amalgamation**”, for part 9, see section 96.

“**proposed amalgamated organisation**”, for part 9, see section 96.

“**proposed amalgamation**”, for part 9, see section 96.

“**proposed deregistering organisation**”, for part 9, see section 96.

“**proposed organisation**” means an association proposed to be registered as an organisation.

“**proposed principal amalgamation**”, for part 9, see section 96.

“**QWA**” see *Workplace Relations Act 1997*, dictionary.

“**record**” includes a document.

“**registered company auditor**” see the Corporations Law.

“**registrar**” see *Workplace Relations Act 1997*, dictionary.

“**registration**” means registration under this Act as an organisation.

“**relevant act**”, for part 9, division 6, see section 154(1).

“**repealed Act**” means the *Industrial Relations Act 1990*.

“**rules of court**” see *Workplace Relations Act 1997*, dictionary.

## SCHEDULE 3 (continued)

“**scheme**”, for part 9, see section 96.

“**scheme outline**”, for part 9, see section 96.

“**starting day**”, for part 9, see section 96.

“**strike**” see *Workplace Relations Act 1997*, dictionary.

“**the register**” means the register of industrial organisations kept by the registrar under section 289.

“**wages**” see *Workplace Relations Act 1997*, dictionary.

“**‘yes’ case**”, for part 9, see section 96.

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Industrial Organisations Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

## 4 List of legislation

### **Industrial Organisations Act 1997 No. 2**

date of assent 14 February 1997

ss 1–2 commenced on date of assent

ss 5, 88–89, 235–248, 273, 275–277, 284, 288, 291, 295–296, schs 1, 3  
commenced 27 March 1997 (1997 SL No. 76)

pt 12 div 8 commenced 1 March 1998 (see s 2(2))

remaining provisions commenced 29 August 1997 (1997 SL No. 281)

## 5 List of annotations

### **Transitional provision about rules**

s 301 exp 29 February 2000 (see s 301(3))

### **Cost of copy of rules**

s 302 exp 29 August 1999 unless an earlier day is prescribed under a regulation  
(see s 302(2))

### **Amended Acts—sch 2**

s 304 exp 30 August 1997 (see s 304(2))

### **SCHEDULE 2—AMENDMENT OF INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991**

exp 30 August 1997 (see s 304(2))