



Queensland

Industrial Relations Act 1999

Industrial Relations Regulation 2000

Reprinted as in force on 29 July 2005

Reprint No. 1G revised edition

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This regulation is reprinted as at 29 July 2005. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

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Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.



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[as amended by all amendments that commenced on or before 29 July 2005]

Part 1 Preliminary

1 Short title

This regulation may be cited as the *Industrial Relations Regulation 2000*.

2 Commencement

This regulation commences on 1 December 2000.

3 Definitions

The dictionary in schedule 8 defines particular words used in this regulation.

Part 2 Dismissals and power to amend or void contracts

4 Prescribed amount—Act, ss 72 and 276

For sections 72(1)(e)(iii) and (3)(f)(iii) and 276(6)(b)(ii)¹ of the Act, the amount is \$94900.

¹ Sections 72 (Who this chapter does not apply to) and 276 (Power to amend or void contracts) of the Act

5 Meaning of temporary absence—Act, s 73

- (1) This section applies for section 73(2)(a)² of the Act.
- (2) If an employee is required under an industrial instrument to notify the employer of an absence from work and substantiate the reason for the absence, an absence is temporary if the employee complies with the industrial instrument.
- (3) Otherwise, an absence is temporary—
 - (a) if an employee promptly notifies the employer of—
 - (i) the illness or injury that will cause the employee to be absent; and
 - (ii) the approximate period for which the employee will be absent; and
 - (b) if the employee is absent for more than 2 days—
 - (i) the employee gives the employer a doctor's certificate about the nature of the illness or injury and the approximate period for which the employee will be absent; or
 - (ii) the employee gives the employer other evidence of the illness or injury that is satisfactory to the employer.
- (4) However, an absence is not temporary if the total period of unpaid absence within a 1 year period because of 1 or more illnesses or injuries is more than 3 months.

6 Working out continuous service—Act, s 84(2)

- (1) For working out continuous service under section 84(1)³ of the Act, the following do not break an employee's continuity of service with the employer—
 - (a) the employee's absence from work if there was a reasonable cause for the absence;

2 Section 73 (When is a dismissal unfair) of the Act

3 Section 84 (Minimum period of notice required) of the Act

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- (b) the employee's absence from work because of protected action under section 174⁴ of the Act;
 - (c) another absence from work by the employee, unless the employer gives the employee notice that the absence from work breaks the employee's continuity of service.
- (2) An employee's absence from work under subsection (1)(a) does break the continuity of service if—
- (a) a decision requires the employee to—
 - (i) notify the employer of an absence from work; and
 - (ii) substantiate the reason for the absence; and
 - (b) the employee does not comply with the decision.
- (3) Also, an employee's absence from work under subsection (1)(a) does break the continuity of service if—
- (a) there is no decision mentioned in subsection (2); and
 - (b) the employee does not promptly notify the employer of—
 - (i) the employee's absence from work; and
 - (ii) the reason for the absence; and
 - (iii) the likely duration of the absence.
- (4) An employee's absence from work under subsection (1)(b) does break the continuity of service if the commission or a magistrate has decided, in making an order under section 83(4)⁵ of the Act, that the absence must be taken to be a break in the continuity of service.
- (5) A notice under subsection (1)(c)—
- (a) must be given during, or within 14 days after the end of, the absence; and
 - (b) may be withdrawn by the employer.
- (6) If the employer withdraws the notice, it is taken not to have been given.

4 Section 174 (Protected industrial action) of the Act

5 Section 83 (What employer must do to dismiss employee) of the Act

- (7) If an employee's absence from work does not break the employee's continuity of service, the period of absence must be included as a period of service in working out the employee's continuous service for section 84(1) of the Act.

7 Compensation for commission or piece rate employees—Act, s 85

For section 85(3)⁶ of the Act, the amount taken to be payable is the average weekly remuneration payable to the employee—

- (a) for an employee who was continuously employed by the employer for 3 months or more immediately before dismissal—in the 3 months before dismissal; or
- (b) for an employee who was continuously employed by the employer for a period of less than 3 months immediately before dismissal—in that period.

Part 3 Freedom of association

8 Procedure for exemption hearing—Act, s 112

- (1) On receiving an application under section 111⁷ of the Act, the magistrate or registrar must promptly—
- (a) set a time and place to hear the application; and
 - (b) give at least 2 days notice of the hearing to—
 - (i) the applicant; and
 - (ii) the organisation from which the applicant is seeking exemption from membership.
- (2) Only the following persons may attend the hearing—
- (a) the applicant;

⁶ Section 85 (Minimum amount of compensation required) of the Act

⁷ Section 111 (Who may apply for exemption) of the Act

- (b) 1 member or officer of the organisation.
- (3) At the hearing, the member or officer of the organisation may—
 - (a) ask the applicant questions that are relevant to the application; and
 - (b) make submissions to the magistrate or registrar.

Part 4 Certified agreements

9 Agreement for certification to be accompanied by affidavit—Act, s 156

- (1) For section 156(1)(f)⁸ of the Act, an agreement must be accompanied by an affidavit containing the following information—
 - (a) whether the agreement is for a new business, is a project agreement or is a multi-employer agreement;
 - (b) whether or not the agreement is made with an employee organisation;
 - (c) the industry in which the employer is engaged;
 - (d) the name of the relevant or designated award;
 - (e) for non-State government employees—the address or addresses at which the employees to be covered by the agreement are, or are to be, employed;
 - (f) the number of male and female employees to be covered by the agreement;
 - (g) the number of apprentices or trainees to be covered by the agreement;
 - (h) the name and address of each employer to be bound by the agreement;

8 Section 156 (Certifying an agreement) of the Act

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- (i) if the agreement is a project agreement and the project or proposed project has a principal contractor—the principal contractor’s name and address;
- (j) if the agreement was negotiated for another person—the person who negotiated the agreement and the person for whom it was negotiated;
- (k) the average percentage by which the wages of the employees to be covered by the agreement will increase or decrease under the agreement compared with wages before the agreement;
- (l) the nominal expiry date of the agreement;
- (m) the steps taken to ensure compliance with section 143 of the Act, and, if it applies, section 144 or 145⁹ of the Act, and in particular, that the terms of the agreement were explained in an appropriate way given the particular circumstances and needs of the employees to be covered by the agreement;¹⁰
- (n) a statement that the employer did not do something mentioned in section 156(1)(b)¹¹ of the Act;
- (o) where the procedures for preventing and settling disputes can be found in the agreement;
- (p) a statement that the requirement for equal remuneration of employees under section 156(1)(l) or (m) of the Act¹² is met;
- (q) a statement that the agreement passes the no-disadvantage test under chapter 6, part 1, division 3 of the Act.¹³

9 Sections 143 (Proposed parties to be advised when agreement is proposed), 144 (What is to be done when an agreement is proposed) and 145 (Negotiations for project agreements) of the Act

10 For examples of persons with particular circumstances and needs see the Act, section 156(1)(a).

11 Section 156 (Certifying an agreement) of the Act

12 Section 156 (Certifying an agreement) of the Act

13 Chapter 6 (Agreements), part 1 (Certified agreements), division 3 (No-disadvantage test) of the Act

- (2) The affidavit must be in the form provided for in the rules of court.
- (3) For section 156(1)(f) of the Act, if there is or was a certified agreement covering part or all of the employees to be covered by the agreement, the agreement must also be accompanied by the name and agreement number of the certified agreement.
- (4) In this section—
multi-employer agreement means an agreement made with a multi-employer.

10 Protected industrial action—Act, s 174

- (1) For section 174(6)¹⁴ of the Act, the prescribed purpose is the assessment of eligibility for, or the calculation of, an entitlement arising from the employee's employment including, for example—
 - (a) a superannuation entitlement; and
 - (b) an authorised leave entitlement; and
 - (c) an entitlement to remuneration and promotion as affected by seniority; and
 - (d) an entitlement to notice of, or compensation for, dismissal.
- (2) In this section—
authorised leave means leave authorised by—
 - (a) the employer; or
 - (b) an industrial instrument; or
 - (c) an order of a court or tribunal having power to fix wages and other employment conditions; or
 - (d) the employee's employment contract; or
 - (e) a Commonwealth or State law.

14 Section 174 (Protected industrial action) of the Act

11 Complementary laws—Act, s 186

- (1) For section 186¹⁵ of the Act, the provisions of the Commonwealth Act that apply as a law of the State are amended as set out in this section.
- (2) Part VIB, division 2, heading—
omit, insert—
‘Division 2—Making agreements with employers other than constitutional corporations or the Commonwealth’.
- (3) Section 170LH, ‘employers who are constitutional corporations or the Commonwealth’—
omit, insert—
‘employers other than constitutional corporations or the Commonwealth’.
- (4) Section 170LH(b)—
omit, insert—
‘(b) employees any of whose terms and conditions are governed by:
- (i) an award, a certified agreement or an AWA under this Act in its operation as a law of the Commonwealth; or
 - (ii) an old IR agreement within the meaning of the *Workplace Relations Regulations*, regulation 2.’.
- (5) Section 170LI(1)(a)—
omit, insert—
‘(a) an employer other than a constitutional corporation or the Commonwealth; and’.
- (6) Section 170LI—
insert—
- ‘(3) In this section:
persons means persons any of whose terms and conditions are governed by:

15 Section 186 (Complementary laws) of the Act

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- (a) an award, a certified agreement or an AWA under this Act in its operation as a law of the Commonwealth; or
 - (b) an old IR agreement within the meaning of the *Workplace Relations Regulations*, regulation 2.’.
- (7) Division 3—
omit.
- (8) Section 170MB—
insert—
‘(2A) If:
- (a) an employer that is a Commonwealth-law employer within the meaning of subsection (2B) is bound by an agreement that, under this Act in its operation as a law of the Commonwealth, is a certified agreement (*the certified agreement*); and
 - (b) the application for certification for the certified agreement stated that it was made under Division 2 of Part VIB in its operation as a law of the Commonwealth; and
 - (c) at a later time, a new employer that is not a Commonwealth-law employer within the meaning of subsection (2B) becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;
- then from the later time:
- (d) the new employer is bound by the certified agreement, to the extent that it relates to the whole or part of the business, as if:
 - (i) that agreement had been certified under Division 4; and
 - (ii) the new employer became bound by that agreement under subsection (2); and
 - (e) the previous employer is not bound by that agreement, to the extent that it relates to the whole or part of the business; and

- (f) a reference in this Part to the employer includes a reference to the new employer, and does not include the previous employer, to the extent that the context relates to the whole or part of the business.
- ‘(2B) For subsection (2A), an employer is a Commonwealth-law employer if the employer:
- (a) is a constitutional corporation; or
 - (b) is the Commonwealth; or
 - (c) carries on a single business or part of a single business in a Territory; or
 - (d) is a waterside employer who employs waterside workers in a single business or part of a single business of the employer; or
 - (e) employs maritime employees in a single business or part of a single business of the employer; or
 - (f) is a flight crew officer’s employer who employs flight crew officers in a single business or part of a single business of the employer.’.

Part 5 **Queensland workplace agreements**

12 **Matters to be included in QWA—Act, s 193**

- (1) For section 193(1)(a)¹⁶ of the Act, the prescribed provisions about discrimination are in schedule 1.
- (2) For section 193(5) of the Act, the prescribed model dispute resolution procedure is in schedule 2.

16 Section 193 (Matters to be included in QWA) of the Act

13 Filing requirements—Act, s 200

- (1) For section 200(8)¹⁷ of the Act, the required information is as follows—
- (a) the address where the employee is employed, including the postcode;
 - (b) a postal address given by the employee;
 - (c) whether the employee is male or female;
 - (d) whether the employee is an apprentice or trainee;
 - (e) if the employee is under 21 years—the employee’s date of birth;
 - (f) whether the employee was already employed by the employer when the agreement was made;
 - (g) the employee’s occupation;
 - (h) the industry in which the employer is engaged;
 - (i) the name of the relevant or designated award;
 - (j) the percentage by which the wages of the employee will increase or decrease under the agreement compared with wages before the agreement;
 - (k) a statement that the QWA meets the requirement for equal remuneration of the employee under section 193(1)(b) of the Act;¹⁸
 - (l) the steps taken to explain the effect of the QWA or ancillary document to the employee in an appropriate way given the employee’s particular circumstances and needs;
 - (m) a statement that the QWA passes the no-disadvantage test under chapter 6, part 2, division 6.¹⁹

17 Section 200 (Filing requirements) of the Act

18 Section 193 (Matters to be included in QWA) of the Act

19 Chapter 6 (Agreements), part 2 (Queensland workplace agreements), division 6 (No-disadvantage test) of the Act

- (2) The information must be contained in an affidavit in the form provided for in the rules of court.

14 Form of QWA or ancillary document—Act, s 709(2)(c)

A QWA or ancillary document must—

- (a) be made in the form provided for in the rules of court; and
- (b) be in English; and
- (c) be printed in legible typescript; and
- (d) include the full name of each party who signs the QWA or ancillary document.

15 Witnessing signatures on QWA or ancillary document—Act, s 709(2)(d)

The following persons can not witness a party's signature on a QWA or ancillary document—

- (a) the other party to the QWA or ancillary document;
- (b) the bargaining agent of the other party to the QWA or ancillary document;
- (c) if the other party to the QWA or ancillary document is a corporation—a person who is a director of the corporation or a person involved in the day to day management of the corporation.

Part 6 Authorised industrial officers

16 Application for issue of an authority—Act, s 364

For section 364(4)(a)²⁰ of the Act, an application for an authority must—

²⁰ Section 364 (Authorising industrial officers) of the Act

- (a) be made in the form provided for in the rules of court; and
- (b) state whether the person to be authorised is an officer, or employee, of the organisation; and
- (c) be signed by the applicant's president and secretary; and
- (d) be accompanied by—
 - (i) the fee provided for in the rules of court; and
 - (ii) 2 passport size (4.5cm x 3.5cm) photographs, each signed on the reverse side by the person; and
 - (iii) 2 specimen signatures of the person verified by the applicant's president or secretary as being genuine signatures of the person.

Part 7 Overpaid wages

17 Recovering overpaid wages—Act, s 396

The amount prescribed for section 396(4)²¹ of the Act is $\frac{3}{4}$ of the wages payable for the pay period.

Part 7A Fees charged by private employment agents

17A Particulars for written notice—Act, s 408D(2)(a)

- (1) For section 408D(2)(a) of the Act,²² the following particulars are prescribed—

21 Section 396 (Overpaid wages) of the Act

22 Section 408D (When fees are or are not payable to private employment agent)

- (a) the name of the person for whom the work is to be undertaken;
- (b) the address of the place of work;
- (c) the particulars of the work;

Example—

- For modelling work—modelling clothing
- For a performer—live theatre.

- (d) the period of the work;
 - (e) the gross amount payable to the model or performer by the person for whom the work is to be undertaken;
 - (f) an itemised list of the fees, charges, or expenses payable to the agent by the model or performer;
 - (g) the net amount the model or performer is to receive after payment of the agent's fees, charges, or expenses;
 - (h) if a rate of payment is provided for under an industrial instrument, the details of the instrument and the rate of payment.
- (2) In this section—

industrial instrument includes an award or agreement made under the Commonwealth Act.

17B Prescribed percentage of gross amount payable to model or performer—Act, s 408D(2)(b)

For section 408D(2)(b) of the Act, the percentage of the gross amount payable to a model or performer for the work mentioned in column 1 of schedule 7 is stated in column 2 of the schedule.

17C Prescribed allowances or payments excluded from gross amount payable to model or performer—Act, s 408D(2)(b)

For section 408D(2)(b) of the Act, the following allowances or payments are prescribed—

- (a) travelling and meal allowance;
- (b) holiday pay;

- (c) long service leave payments;
- (d) superannuation payments;
- (e) overtime or penalty payments paid on an irregular basis;

Example of an irregular basis—

A model or performer may occasionally work overtime during the period of the work.

- (f) payments for rehearsals.

Part 8 Application to industrial tribunal under chapter 12 of the Act

Division 1 Definition

18 Definition for pt 9

In this part—

industrial tribunal means the court, commission or registrar.

Division 2 Applications, and service and publication of process

19 Applications to industrial tribunal

- (1) An application to an industrial tribunal under chapter 12 of the Act must—
 - (a) be filed in the registry; and
 - (b) be in the form provided for in the rules of court; and
 - (c) state the facts and issues the applicant relies on to support the application.

- (2) However, subsection (1)(c) does not apply to an application to which section 501²³ of the Act applies.
- (3) If an applicant to an industrial tribunal under chapter 12 of the Act is not the organisation the application is about, the applicant must serve a copy of the application on the organisation within 7 days after filing the application.

20 Applications for registration, change of list of callings or amendment of name or eligibility rules

- (1) This section applies to an application for—
 - (a) registration as an organisation; or
 - (b) change of list of callings; or
 - (c) amendment of the name of an organisation, other than an application mentioned in section 472²⁴ of the Act; or
 - (d) amendment of eligibility rules of an organisation.
- (2) The applicant may file a statement supporting the application when the application is filed.
- (3) The applicant must publish notice of the application in the form decided by the registrar within 21 days after the application is filed—
 - (a) in a newspaper circulating throughout the State; and
 - (b) if the registrar considers it appropriate—
 - (i) in another newspaper or publication; or
 - (ii) in the industrial gazette.
- (4) The applicant must, within 7 days of publication of the notice—
 - (a) serve a copy of the notice on each organisation whose callings—
 - (i) include the callings of the applicant’s members; or
 - (ii) relate to the applicant’s eligibility rules; and

23 Section 501 (Requirements for application) of the Act already requires an application under that section to state the facts relied on to support the application.

24 Section 472 (Approval to change ‘union’ to ‘organisation’ in name) of the Act

- (b) file in the registry a copy of the relevant section of any newspaper or publication in which the notice was published, showing the date and name of the newspaper or publication.
- (5) The application must be dealt with, as far as is practicable, in the order in which it was filed.
- (6) Each document accompanying an application for registration as an organisation must be signed and dated by the applicant's president and secretary.

21 Certain applications must state grounds on which they are made

An application for any of the following must state the grounds on which it is made—

- (a) an exemption under chapter 12, part 13²⁵ of the Act;
- (b) cancellation of an exemption under section 602²⁶ of the Act;
- (c) a deregistration order;
- (d) an approval under section 447²⁷ of the Act.

22 Application for exemption under Act, s 580

- (1) This section applies to an application for an exemption under section 580²⁸ of the Act from holding an election for a stated office.
- (2) The application may be made only if each applicant has given each of its members, free of charge, written notice of the details of the application.
- (3) An applicant may give the notice by including it in a publication that it gives to its members free of charge.

25 Chapter 12 (Industrial organisations), part 13 (Exemptions) of the Act

26 Section 602 (Cancellation grounds) of the Act

27 Section 447 (Approval application) of the Act

28 Section 580 (Exemption if federal election held) of the Act

- (4) The application must be accompanied by an affidavit by a member of each applicant's management committee stating that subsection (2) has been complied with.

23 How making of resolution is to be notified for Act, s 595(1)(b)

For section 595(1)(b)²⁹ of the Act, a member of the organisation or branch is notified of the making of the resolution if—

- (a) the member is given a copy of the resolution; or
- (b) for an organisation or branch that gives its members a publication free of charge—a notice of the making of the resolution is included in the publication.

24 Publishing notice for Act, s 596

- (1) For section 596³⁰ of the Act, a notice stating details of the application must be published in—
- (a) a newspaper circulating generally throughout the State; and
 - (b) any other newspaper or publication the registrar considers appropriate.
- (2) The notice must be published within 21 days after the application is filed in the registry.

25 Signing or sealing application for deregistration order under Act, s 639

If an application under section 639³¹ of the Act for a deregistration order is made by an organisation, the application must be—

- (a) under the organisation's seal; or

29 Section 595 (Requirements for application) of the Act

30 Section 596 (Publication of application) of the Act

31 Section 639 (Who may bring deregistration proceedings) of the Act

- (b) signed by 2 of the organisations's officers authorised to sign the application.

26 Application by registrar for deregistration order for defunct organisation

- (1) This section applies if the registrar proposes to apply for a deregistration order for an organisation under section 639(4) of the Act.
- (2) The registrar must make appropriate inquiries by letters sent to the—
 - (a) organisation's registered office; and
 - (b) members of the organisation's management committee last known to the registrar at their residential addresses last known to the registrar.
- (3) If, after the inquiries, the registrar is satisfied the organisation is defunct, the registrar must publish a notice in the industrial gazette stating that—
 - (a) the registrar will apply after 35 days from the notice's publication for a deregistration order on the ground that the organisation is defunct; and
 - (b) a person who wants to show cause why the deregistration should not be made may file an objection notice, in the form provided for in the rules of court, in the registry within 35 days of the publication.
- (4) If the registrar makes the application, the registrar must ensure the application is accompanied by a copy of any objection notice filed.

Division 3 Objections

27 Who may object—Act, s 654

- (1) A person with an appropriate interest in the following kinds of applications may object to the application—

- (a) an application for amendment of name other than an application mentioned in section 472³² of the Act;
 - (b) an application for amendment of eligibility rules;
 - (c) an application for a change of list of callings.
- (2) A member of an organisation that has applied for an exemption from holding an election under section 580³³ of the Act may object to the application.
- (3) A member of an organisation that has applied for an exemption from the requirement that the electoral commission conduct an election under section 594³⁴ of the Act may object to the application.
- (4) A person with an appropriate interest in an application by the registrar for a deregistration order under section 639(4)³⁵ of the Act may object to the application.
- (5) A person who may object to an application may give notice of an objection to the commission.

28 Notice of objection

- (1) This section applies to a notice of objection under—
- (a) section 418(1)(b)³⁶ of the Act; and
 - (b) section 27(5).
- (2) The notice must—
- (a) be in the form provided for in the rules of court; and
 - (b) state the grounds on which the objection is made; and
 - (c) be filed in the registry within 35 days after the publication of the notice of the application to which the objection relates; and

32 Section 472 (Approval to change ‘union’ to ‘organisation’ in name) of the Act

33 Section 580 (Exemption if federal election held) of the Act

34 Section 594 (Who may apply) of the Act

35 Section 639 (Who may bring deregistration proceedings) of the Act

36 Section 418 (Right to object) of the Act

- (d) be accompanied by a statement of the facts and issues the objector relies on in support of the objection.
- (3) A person who gives a notice of objection must serve a copy of the notice on the applicant and any other party to the proceedings within 7 days after filing the notice.
- (4) On application, the relevant industrial tribunal may grant leave to extend the period for filing an objection notice.

29 Answering objections—Act, s 654

- (1) The applicant may file a written response to an objection in the registry within 14 days after the notice is served on the applicant.
- (2) The response must be accompanied by a statement of the facts and issues relied on in support of the response.
- (3) The applicant must serve a copy of the response on the person who objected within 7 days after filing the response.

Division 4 Notice of hearing and hearing

30 Hearing application and objections—Act, s 654

- (1) This section applies to an application under chapter 12³⁷ of the Act other than—
 - (a) an application under section 472³⁸ of the Act; or
 - (b) an application for an election inquiry under section 500³⁹ of the Act.
- (2) The industrial tribunal that is to hear the application must—
 - (a) fix a time and place to hear the application and any objections; and

37 Chapter 12 (Industrial organisations) of the Act

38 Section 472 (Approval to change ‘union’ to ‘organisation’ in name) of the Act

39 Section 500 (Who may apply) of the Act

- (b) give at least 7 days notice of the time and place of the hearing to each person who must be given an opportunity to be heard under section 654 of the Act.⁴⁰

31 Notice of hearing

- (1) This section applies to a hearing for—
 - (a) cancellation of an exemption under section 602⁴¹ of the Act; and
 - (b) cancellation of an approval under section 450⁴² of the Act; and
 - (c) amendment of rules under chapter 12, part 6, division 1⁴³ of the Act; and
 - (d) a deregistration order under section 639(3) of the Act.⁴⁴
- (2) A notice under section 30(2)(b) of the time and place of the hearing must also state the following information—
 - (a) if section 466 or 639(3)(b)⁴⁵ of the Act applies—the demarcation dispute undertaking to which the hearing relates;
 - (b) the reasons for the proposed cancellation, amendment or deregistration order;
 - Example of reasons for paragraph (b)—*
 - If the registrar considers an organisation’s rules contravene the Act, how the rules contravene the Act.
 - (c) any proposed amendments to the organisation’s rules;
 - (d) that the organisation may make oral or written submissions to show why—

40 Section 654 (Hearing to be given before making decision) of the Act. The notice must state additional information for certain hearings. See section 31(2).

41 Section 602 (Cancellation grounds) of the Act

42 Section 450 (Cancellation of approval) of the Act

43 Chapter 12 (Industrial organisations), part 6 (Amendment of rules), division 1 (Amendments by commission or registrar) of the Act

44 Section 639 (Who may bring deregistration proceedings)

45 Sections 466 (Breach of demarcation dispute undertaking) and 639 (Who may bring deregistration proceedings) of the Act

- (i) the exemption or approval should not be cancelled;
or
- (ii) the rules should not be amended; or
- (iii) the deregistration order should not be made;
- (e) the person to whom the notice is given may file a written submission within a stated time.

32 Opportunity to make written submissions

Giving a person an opportunity to be heard under section 654⁴⁶ of the Act includes giving the person an opportunity to make written submissions within a time decided by the tribunal.

33 Grounds objector may rely on

- (1) An objector may rely only on the grounds stated in the objection notice.
- (2) However, the tribunal may allow the objector to rely on another ground if—
 - (a) the objector gives adequate reasons for doing so; and
 - (b) the applicant is given an opportunity to be heard.

Part 9 Rules generally

34 Cost of copy of rules—Act, s 428

The amount for section 428(2)⁴⁷ of the Act is \$5.00.

46 Section 654 (Hearing to be given before making decision) of the Act

47 Section 428 (Organisation must have complying rules) of the Act

Part 10 Model election rules

35 Model election rules—Act, s 454

The model election rules are in schedule 3.⁴⁸

Part 11 Conduct of elections by organisation or branch

36 Prescribed information for elections—Act, s 481

- (1) For section 481(1)⁴⁹ of the Act, the following information is prescribed—
- (a) the name of each office for which an election is required;
 - (b) whether the election is because—
 - (i) the term of the office has ended; or
 - (ii) there is a casual vacancy in the office; or
 - (iii) of a new office created under the organisation's or branch's rules;
 - (c) the number of offices for election;
 - (d) the membership figures, if any, used to calculate the number of offices if—
 - (i) more than 1 office for which an election is required has the same name; and
 - (ii) the number of the offices can, under the organisation's or branch's rules, be calculated before the prescribed day under subsection (4);

48 See section 454 (Model election rules) of the Act.

49 Section 481 (Organisation or branch must file prescribed election information) of the Act

- (e) if the electorate consists only of members of a branch, section or other division of an organisation—the name of the branch, section or division;
 - (f) the day and time of the start and end of the term for each office for which an election is required;
 - (g) whether the organisation or branch has adopted the model election rules without change;
 - (h) if the organisation or branch has not adopted the model election rules or has adopted the model election rules with changes—
 - (i) whether the voting system for the election is a direct voting system or a collegiate electoral system; and
 - (ii) how the organisation's or branch's rules require the result of the election to be decided.
- (2) The information under subsection (1)(h) may be given by giving the registrar a copy of the provisions of the organisation's or branch's rules that contain the information.
- (3) The prescribed information must be accompanied by a statement signed by an authorised officer of the organisation or branch stating the information is being filed under section 481(1) of the Act.
- (4) For section 481(2) of the Act, the prescribed day is the day 2 months before the first day on which a person may become a candidate in the election under the organisation's or branch's rules.⁵⁰

37 Prescribed particulars for election or ballot result reports—s 121 and Act, ss 488 and 600

- (1) This section
 - (a) sets out the particulars for section 121;⁵¹ and

⁵⁰ Under section 481(2) of the Act, the registrar may allow the prescribed information to be filed on a later day than the prescribed day.

⁵¹ Section 121 (Ballot result report)

- (b) prescribes the particulars for an election result report under section 488⁵² or 600⁵³ of the Act.
- (2) The particulars are as follows—
- (a) how many ballot papers were printed;
 - (b) how many eligible members were on the roll for the election or ballot, including a supplementary roll;
 - (c) how many ballot papers were given;
 - (d) how many duplicate ballot papers were given;
 - (e) how many ballot papers were not given;
 - (f) how many ballot papers were returned other than as unclaimed mail;
 - (g) how many ballot papers were returned as unclaimed mail;
 - (h) how many ballot papers were not returned;
 - (i) how many votes were informal;
 - (j) how many votes were rejected for a reason other than being informal and the reason for each rejection;
 - (k) how many ballot papers were counted;
 - (l) the percentage of voters who voted;
 - (m) how many formal votes were—
 - (i) for an election—for each candidate; or
 - (ii) for a proposed amalgamation or withdrawal—for and against the proposal;
 - (n) if a preferential system of voting is used for an election—how many formal votes were for each candidate after distribution of preferences;
 - (o) if the report is a ballot result report under section 121 and votes about an alternative amalgamation were counted under section 117(2)⁵⁴—

52 Section 488 (Election result report) of the Act

53 Section 600 (Election result report) of the Act

54 Section 117 (Counting votes)

- (i) the number of votes for and against the alternative amalgamation; and
- (ii) the number of votes that were informal.

Examples of reasons for rejection under paragraph (j)—

For a postal vote, the voter's voting declaration was—

- (a) not filled in or signed; or
- (b) not put in the return envelope; or
- (c) taken from the return envelope before the manager of the ballot received the return envelope.

38 Declaration of election or ballot result

- (1) The manager of an election or ballot must—
 - (a) make a signed declaration of the result of the election or ballot as soon as possible after the votes for the election or ballot are counted; and
 - (b) within 1 day of making the declaration, give a copy of it to—
 - (i) the organisation, branch, or constituent part that the election or ballot was about; and
 - (ii) for an election—each candidate.
- (2) The declaration may be countersigned by a scrutineer.

39 Copies of result reports to be given

The manager of an election or ballot must, within 1 day of the giving of the report for the election under section 488 or 600⁵⁵ of the Act or the ballot under section 121, give a copy of the report to—

- (a) the organisation, branch, or constituent part that the election or ballot was about; and
- (b) for an election—each candidate who asks the manager for a copy of the report.

55 Section 488 (Election result report) or 600 (Election result report) of the Act

40 Voters may ask for information about election or ballot

- (1) A voter may ask a manager of an election or ballot to give stated information that—
 - (a) may allow the voter to find out whether there has been an irregularity for the election or ballot; and
 - (b) is in the manager's knowledge.

Examples of information a voter may ask for—

- 1 Whether ballot papers were posted on the same day.
 - 2 If all material required to be given to voters for a ballot was given.
- (2) The manager must give the information to the voter.
Maximum penalty—20 penalty units.
 - (3) However, subsection (2) does not make an electoral officer liable for an offence.

41 Unauthorised action in conducting election or ballot

A person, other than the manager of an election or ballot, must not do, or purport to do, an act in the conduct of the ballot unless authorised by the manager.

Maximum penalty—20 penalty units.

42 Ballot security

- (1) The manager of an election or ballot must ensure each ballot paper for the election—
 - (a) has a watermark or other distinctive pattern that prevents it from being reproduced other than by the manager or someone authorised by the manager; and
 - (b) is of paper that will hide a vote marked on it from view when it is folded once.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not make an electoral officer liable for an offence.

Part 12 Accounts and audit

Division 1 Accounting obligations

43 Accounting records—Act, s 554(2)

- (1) For section 554(2)⁵⁶ of the Act, an organisation's accounting records—
 - (a) must be prepared in accordance with Australian Accounting Standards; and
 - (b) must be kept for each of its financial years—
 - (i) on an accrual basis; or
 - (ii) on a cash basis; or
 - (iii) on a cash basis for entrance fees and membership contributions and on an accrual basis for all other accounting records.
- (2) In subsection (1)—

accrual basis has the meaning given in Australian Accounting Standards.

cash basis has the meaning given in Australian Accounting Standards.

44 Prescribed accounts—Act, s 555(1)

- (1) For section 555(1)⁵⁷ of the Act, each of the accounts stated in schedule 4 is prescribed.
- (2) The accounts must be prepared in accordance with Australian Accounting Standards.

56 Section 554 (Obligation to keep accounting records) of the Act

57 Section 555 (Obligation to prepare accounts) of the Act

45 Certificates to be given in accounts

- (1) An organisation's accounts for each financial year must contain a certificate by—
 - (a) for the matters in schedule 5, part 1—the organisation's officer responsible for keeping its accounting records; and
 - (b) for the matters in schedule 5, part 2—the organisation's management committee.
- (2) A management committee's certificate must be—
 - (a) given under a management committee resolution; and
 - (b) signed for the committee by 2 of its members.
- (3) A management committee's certificate about a matter mentioned in schedule 5, section 12⁵⁸ is inadmissible in evidence in proceedings against the organisation under sections 565 and 566 of the Act.⁵⁹

46 How to apply for information—Act, s 556

An application to an organisation for prescribed information under section 556⁶⁰ of the Act must—

- (a) be addressed to the organisation's secretary; and
- (b) be delivered by hand at, or sent by prepaid post to, the organisation's registered office; and
- (c) state the information applied for.

47 Information that must be supplied on application by member—Act, s 556

- (1) For section 556(1) of the Act, an organisation must give to its members the information stated in schedule 6 about the

58 Schedule 5 (Matters for account certificates), section 12 (Audit report and accounts for the last financial year)

59 Sections 565 (Obligation to present to general or committee meeting) and 566 (Obligation to publish audit report and accounts) of the Act

60 Section 556 (Member may apply for prescribed information) of the Act

organisation's last financial year for which accounts were prepared.

- (2) The information must be in a signed notice by the organisation's secretary given—
 - (a) if the registrar applied for the information—by hand delivery or prepaid post to the registry office; or
 - (b) if a member applied for the information and stated the member's address—by prepaid post to the member at the address; or
 - (c) if a member applied for the information and did not state the member's address—by leaving it for collection by the member at the organisation's registered office.
- (3) The information must be given within—
 - (a) 6 weeks after the application is received if—
 - (i) a member of the organisation applied for the information; and
 - (ii) the organisation's secretary applies to the registrar; and
 - (iii) the registrar certifies the registrar is satisfied it was or is impracticable for the organisation to give the information within 28 days after the application is received for reasons beyond its control;
 - (b) otherwise—28 days after the application is received.

48 Member asking registrar to apply for information

If a person asks the registrar to apply for information from an organisation under section 556(2) of the Act, the registrar may require the person to give evidence the person is a member of the organisation.

49 Management committee must report insolvency to members

- (1) This section applies if an organisation's accounts show the organisation is, or is likely to become, insolvent.

- (2) The organisation's secretary, or the officer responsible for keeping the organisation's accounting records, must notify each of the organisation's members within 14 days that the organisation's accounts show it is, or is likely to become, insolvent.

Maximum penalty—20 penalty units.

- (3) Each member of the organisation's management committee must take reasonable steps to ensure the secretary, or officer responsible for keeping the organisation's accounting records, complies with subsection (2).

Maximum penalty—20 penalty units.

- (4) In this section—

insolvent means the organisation is unable to pay all its debts as and when they become due and payable.

Division 2 Investigations

50 Circumstances in which registrar may conduct other investigations—Act, s 571(2)(b)

For section 571(2)(b)⁶¹ of the Act, the prescribed circumstances are as follows—

- (a) the organisation's auditor notifies the registrar under section 562⁶² of the Act and the registrar considers the matter should be investigated;
- (b) an officer or member of the organisation has complained about a matter to the registrar and the registrar, after consulting the organisation, considers there are reasonable grounds to investigate the matter.

61 Section 571 (Registrar's investigations) of the Act

62 Section 562 (Auditor must notify registrar of contravention) of the Act

52 Representation by federation

- (1) After it is registered, a federation may represent its constituent organisations and the members of its constituent organisations under the Act.
- (2) 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 industrial instrument.

53 Amendment of federation's composition

- (1) A federation may, with the commission's approval, amend its composition—
 - (a) if another organisation intends to become concerned in the proposed amalgamation—to include the organisation; or
 - (b) to release an organisation from the federation.
- (2) If a federation amends its composition, the registrar must enter particulars of the amendment in the register kept under section 426(1)(a) of the Act.

54 When federation ends

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 of 3 years after the existing organisations were recognised as a federation—on the day after the end of that period; or
- (c) if, on an application by the Minister or by a person or organisation the full bench considers has an appropriate interest, a full bench decides the achievement of an object of this Act is being prevented by the industrial conduct of the federation or any of its constituent organisations—on the day the decision is made.

55 Change in particulars, rules or agreement for federation

- (1) A federation must file a statement in the registry if there is a change in—
 - (a) a particular mentioned in section 51(2)(b); or
 - (b) the federation's rules; or
 - (c) the agreement about the federation's functions and powers.Maximum penalty—20 penalty units.
- (2) The statement must—
 - (a) be filed within 28 days after the change; and
 - (b) state full particulars of the change.
- (3) Subsection (1) does not apply if the federation has a reasonable excuse.

Division 2 Community of interest declaration**56 Community of interest declaration for amalgamation**

- (1) Existing organisations for a proposed amalgamation may jointly apply to the commission for a declaration under this section.
- (2) The application must—
 - (a) state the grounds on which it is made; and
 - (b) nominate 1 of the applicants as the person authorised to receive on the applicants' behalf service of documents for the application, a proposed amalgamation and each proposed alternative amalgamation; and
 - (c) be signed by the president or secretary of each joint applicant; and
 - (d) be accompanied by a copy of each resolution for the proposed amalgamation under section 59(4),⁶⁴ signed by

64 Section 59 (Management committee approval)

- the president or secretary of the applicant whose management committee passed it; and
- (e) be filed in the registry before or with the ballot application for the proposed amalgamation.
- (3) Service of a document on the person nominated for subsection (2)(b) is taken to be service on each of the applicants.
 - (4) If the application is filed before the ballot application, the commission must promptly fix a time and place to hear submissions on the application.
 - (5) If, after a hearing under this section or section 82,⁶⁵ the commission is satisfied there is a community of interest between the existing organisations about their industrial interests, it must make a declaration to that effect.
 - (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—
 - (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 industrial instruments as other members; or
 - (iv) 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 there is a community of interest.

57 End of declaration

- (1) A community of interest declaration ends if—

65 Section 82 (Amalgamation or withdrawal hearing)

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

Division 3 Acting for constituent part

58 Who may act for constituent part

Anything that must or may be done under this part by a constituent part must or may be done by—

- (a) a management committee of the constituent part; or
- (b) if there is no management committee of the constituent part—the representative constituent member.

Division 4 Amalgamation and withdrawal schemes

59 Management committee approval

- (1) A scheme for a proposed amalgamation and any changes to the scheme must be approved by each existing organisation the scheme is about.
- (2) A scheme for a proposed withdrawal and any changes to the scheme must be approved by the constituent part seeking to withdraw.
- (3) An approval under subsection (1) may be given only by the organisation's management committee.
- (4) The management committee's approval must be by resolution.

- (5) 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.

60 Amalgamation or withdrawal scheme

- (1) The scheme for a proposed amalgamation 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) that all members of the proposed deregistering organisations are to become, on amalgamation, without payment of an entrance fee, members of the amalgamated organisation;
 - (c) if it is proposed to change an existing organisation's name—particulars of the proposed change;
 - (d) if it is proposed to amend an existing organisation's eligibility and other rules—particulars of the proposed amendments;
 - (e) if an association is proposed to be registered as an organisation—its eligibility and other rules;
 - (f) the arrangements that will exist on amalgamation in relation to the property of the proposed deregistering organisations;

- (g) the arrangements that will exist on amalgamation in relation to the liabilities of the proposed deregistering organisations.
- (2) The scheme for a proposed withdrawal must state the following—
 - (a) the general nature of the withdrawal, showing—
 - (i) the amalgamated organisation; and
 - (ii) the name and rules of the proposed newly registered organisation;
 - (b) that all constituent members are to become on withdrawal, without payment of an entrance fee, members of the newly registered organisation.
- (3) Subsections (1) and (2) do not limit the matters stated in a scheme.

61 Alternative schemes for amalgamation

- (1) A scheme for a proposed amalgamation of 3 or more existing organisations may have 1 or more alternative schemes for an alternative amalgamation of 2 or more of the existing organisations.
- (2) Each alternative scheme must be approved by each existing organisation the alternative amalgamation is about.
- (3) Each alternative scheme must show details of the differences between—
 - (a) the proposed amalgamation and each proposed alternative amalgamation; and
 - (b) a proposed organisation's rules, and proposed amendments to the existing organisations' rules, under—
 - (i) the proposed amalgamation; and
 - (ii) each proposed alternative amalgamation.

62 Amending schemes

- (1) The commission may, before a ballot for a proposed amalgamation starts, permit the existing organisations for the amalgamation to amend the amalgamation scheme.
- (2) The commission may, before a ballot for a proposed withdrawal starts, permit a constituent part to amend the withdrawal scheme.
- (3) The permission may—
 - (a) for a permission to amend a proposed amalgamated 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 amalgamated organisation or its rules; and
 - (ii) despite the proposed amalgamated organisation's rules; and
 - (b) for a permission 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, other than a proposed amalgamated organisation's rules; and
 - (c) for a permission to amend the rules of a proposed newly registered organisation—allow the amendment to be made by the constituent part—
 - (i) as far as the amendment affects the proposed newly registered organisation or its rules; and
 - (ii) despite the proposed newly registered organisation's rules; and
 - (d) provide for procedures that, despite an organisation's rules may or must be followed by a management committee or a constituent part; and
 - (e) be given on conditions stated by the commission.
- (4) If the commission gives the permission on conditions and the conditions are contravened, the commission may—
 - (a) amend the scheme; or

- (b) give directions or make orders about—
 - (i) holding the ballot; or
 - (ii) procedures for the amalgamation or withdrawal.
- (5) Subsection (4) does not limit the commission's other powers.
- (6) If a scheme is amended, whether under this section or otherwise, the scheme outline must be amended to reflect the amendment.

63 Scheme outlines

- (1) A scheme outline must have no more than 3000 words, unless the commission approves otherwise.
- (2) The outline may, if the commission approves, include things other than words including, for example, diagrams, illustrations, and photographs.
- (3) The commission may, before an amalgamation ballot begins, allow the existing organisations seeking amalgamation to amend the outline.
- (4) The commission may, before a withdrawal ballot begins, allow the constituent part seeking withdrawal to amend the outline.
- (5) The commission may amend the outline to—
 - (a) correct factual errors; or
 - (b) ensure it complies with the Act.

Division 5 Applications about ballots

64 Application to submit proposed amalgamation to a ballot

- (1) An application may be made to the commission for an amalgamation ballot.
- (2) The application must be made jointly by the existing organisations and any association proposed to be registered as an organisation under the amalgamation.
- (3) The ballot application must—

- (a) be accompanied by—
 - (i) a copy of the scheme for the proposed amalgamation; and
 - (ii) a written scheme outline; and
 - (b) nominate 1 of the applicants as the person authorised to receive on the applicants' behalf service of documents for the application, proposed amalgamation and each proposed alternative amalgamation; and
 - (c) be signed by the president or secretary of each joint applicant; and
 - (d) be accompanied by a copy of each resolution for the proposed amalgamation under section 59,⁶⁶ signed by the president or secretary of the existing organisation whose management committee passed it; and
 - (e) be accompanied by an affidavit by a member of each existing organisation's management committee stating that subsection (5)(b) has been complied with.
- (4) Service of a document on the applicant nominated under subsection (3)(b) is taken to be service on each of the applicants.
- (5) An application may be made only if each existing organisation's management committee has—
- (a) resolved to make the application; and
 - (b) notified each member of the making of the resolution by—
 - (i) giving the member a copy of the resolution; or
 - (ii) including the resolution in a publication that the organisation gives to its members free of charge.

65 Application to submit proposed withdrawal to a ballot

- (1) An application may be made to the commission for a withdrawal ballot.

66 Section 59 (Management committee approval)

- (2) However, an application may not be made if—
 - (a) it is more than 5 years after the amalgamation happened; or
 - (b) in the year immediately before it is intended to make the application, the commission rejected an application for a withdrawal ballot to be held in relation to the constituent part of the organisation seeking withdrawal; or
 - (c) a withdrawal ballot did not approve the withdrawal of the constituent part.
- (3) The application may be made by—
 - (a) the lesser of—
 - (i) the number equal to 5% of the constituent members on the day the application is filed; or
 - (ii) 2000 constituent members; or
 - (b) the management committee of a constituent part.
- (4) An application may be made only if the constituent part has given the constituent members notice of the making of the application.
- (5) The notice must be given—
 - (a) personally; or
 - (b) by post, addressed to the member's residential address; or
 - (c) in a publication that the amalgamated organisation or constituent part gives to the constituent members free of charge.
- (6) The application must state a person (the ***representative constituent member***) to be the applicant's representative for the ballot—
 - (a) to receive documents on the applicant's behalf; and
 - (b) for other purposes under this part.
- (7) The application must be accompanied by an affidavit by the representative constituent member stating that subsection (4) has been complied with.

66 Amalgamation ballot exemption—number of members

- (1) A proposed amalgamated organisation may apply to the commission for an exemption (a *ballot exemption*) from the requirement to hold a ballot for the amalgamation.
- (2) The application may be made only on the ground that the number of persons that could become members of the proposed amalgamated organisation is not more than 25% of the number of members of the applicant when the application was filed.
- (3) The application must—
 - (a) be filed in the registry together with the ballot application for the amalgamation; and
 - (b) state the ground on which it is made; and
 - (c) be signed by the president or secretary of the applicant; and
 - (d) be accompanied by an affidavit by a member of the applicant's management committee stating that subsection (4)(b) has been complied with.
- (4) An application may be made only if the applicant's management committee has—
 - (a) resolved to make the application; and
 - (b) notified the organisation's members of the making of the resolution by—
 - (i) giving each member a copy of the resolution; or
 - (ii) including it in a publication the organisation gives to its members free of charge.

67 Amalgamation ballot exemption—recognising federal ballot

- (1) This section applies if—
 - (a) an organisation's counterpart federal body has amalgamated with another organisation's counterpart federal body under the Commonwealth Act; and
 - (b) the organisations propose to amalgamate under the Act.

- (2) The organisations may apply to the commission for an exemption from holding an amalgamation ballot.
- (3) The application must—
 - (a) be filed in the registry with the ballot application for the amalgamation; and
 - (b) state the grounds on which it is made; and
 - (c) be signed by the president or secretary of each organisation; and
 - (d) be accompanied by an affidavit by a member of each applicant's management committee stating that subsection (4)(b) and (c) has been complied with.
- (4) An application may be made only if the management committee of each organisation has—
 - (a) resolved to make the application; and
 - (b) notified each member of the making of the resolution by—
 - (i) giving the member a copy of the resolution; or
 - (ii) including the resolution in a publication that the organisation gives to its members free of charge; and
 - (c) notified each member of the member's right to object to the application under section 77⁶⁷ either—
 - (i) personally; or
 - (ii) by post, addressed to the member's residential address; or
 - (iii) by including notice of the right in a publication the organisation gives to its members free of charge.

68 Withdrawal ballot exemption—recognising federal ballot

- (1) This section applies if—

⁶⁷ Section 77 (Objection to amalgamation ballot exemption—recognising federal ballot)

- (a) a ballot has been held under the Commonwealth Act to decide whether a constituent part of an amalgamated organisation under that Act should withdraw from the organisation; and
 - (b) the constituent part has been registered as an organisation under section 253ZQ of the Commonwealth Act.
- (2) The constituent part may apply to the commission for an exemption from holding a withdrawal ballot.
- (3) The application must—
- (a) be filed in the registry with the ballot application for the withdrawal; and
 - (b) state the grounds on which it is made; and
 - (c) be signed by the representative constituent member; and
 - (d) be accompanied by an affidavit by the representative constituent member stating that subsection (4) has been complied with.
- (4) An application may be made only if the constituent part has given each constituent member notice of the making of the application and of the member's right to object to the application under section 78⁶⁸ either—
- (a) personally; or
 - (b) by post, addressed to the member's residential address; or
 - (c) by including it in a publication that the amalgamated organisation or constituent part gives to the constituent members free of charge.

69 Application for alternative ballot

- (1) An existing organisation may apply to the commission for approval for an amalgamation ballot that is not a postal ballot (an *alternative ballot*).

68 Section 78 (Objection to withdrawal ballot exemption—recognising federal ballot)

- (2) A constituent part may apply to the commission for approval for a withdrawal ballot that is not a postal ballot (also an *alternative ballot*).
- (3) The application must—
 - (a) be filed in the registry with the ballot application for the amalgamation or withdrawal; and
 - (b) state, or be accompanied by, the proposal for the alternative ballot; and
 - (c) for an amalgamation ballot—
 - (i) be signed by the applicant's president or secretary; and
 - (ii) be accompanied by an affidavit by a member of the applicant's management committee stating that subsection (4) has been complied with; and
 - (d) for a withdrawal ballot—
 - (i) be signed by the applicant's representative constituent member; and
 - (ii) be accompanied by an affidavit by the applicant's representative constituent member stating that subsection (5) has been complied with.
- (4) An application for an amalgamation ballot may be made only if the applicant's management committee has—
 - (a) resolved to make the application; and
 - (b) notified each member of the making of the resolution by—
 - (i) giving the member a copy of the resolution; or
 - (ii) including it in a publication that the organisation gives to its members free of charge.
- (5) An application for a withdrawal ballot may be made only if the constituent part has given each member notice of the making of the application either—
 - (a) personally; or
 - (b) by post, addressed to the member's residential address; or

- (c) by including it in a publication that the amalgamated organisation or constituent part gives to the constituent members free of charge.
- (6) The alternative ballot must provide—
 - (a) that the ballot is to be—
 - (i) a secret ballot of the existing organisation's members or constituent members who have a right to vote in the ballot; and
 - (ii) held at meetings of the members; and
 - (iii) carried out by the electoral commission; and
 - (iv) otherwise held under the Act; and
 - (b) that members are to be given at least 21 days notice of—
 - (i) the meetings; and
 - (ii) the things to be considered at the meetings; and
 - (ii) each member's entitlement to an absentee vote; and
 - (c) for the posting of the scheme outline and the 'yes' and 'no' cases under section 102;⁶⁹ and
 - (d) for absentee voting.

70 Withdrawing from application

- (1) A party to an application under section 56(1) or 64(1)⁷⁰ may file a notice of the withdrawal of the application in the registry.
- (2) If a notice is filed under subsection (1), the registrar must take the steps the registrar thinks are necessary to ensure the notice is brought to the attention of the organisations, associations and persons likely to be affected by the withdrawal.

⁶⁹ Section 102 (Material for alternative ballots)

⁷⁰ Section 56 (Community of interest declaration for amalgamation) or 64 (Application to submit proposed amalgamation to a ballot)

- (3) The parties to an application under section 56(1) or 64(1) may jointly file a notice of withdrawal of the application in the registry.
- (4) An applicant under section 65(1), 66(1), 67(2), 68(2) or 69⁷¹ may file a notice of withdrawal of the application in the registry.
- (5) A party or applicant filing a notice of withdrawal must file with the notice a statement that the party's or applicant's management committee has passed a resolution approving the withdrawal of the application.
- (6) However, if an applicant has no management committee, the applicant must file with the notice a statement that the applicant has passed a resolution approving the withdrawal of the application.
- (7) The statement must be signed by an authorised officer of the party or applicant or the representative constituent member.

Division 6 'Yes' or 'no' case

71 Filing 'yes' case

- (1) An existing organisation for a proposed amalgamation may file in the registry a written statement (a **'yes' case**) supporting—
 - (a) the proposed principal amalgamation; and
 - (b) each proposed alternative amalgamation.
- (2) A constituent part that wants to withdraw from an amalgamated organisation may file a written statement (also a **'yes' case**) supporting the withdrawal.
- (3) A 'yes' case must not be more than 2000 words.
- (4) A 'yes' case must be filed with the ballot application for the proposed amalgamation or withdrawal.

71 Section 65 (Application to submit proposed withdrawal to a ballot), 66 (Amalgamation ballot exemption—number of members), 67 (Amalgamation ballot exemption—recognising federal ballot), 68 (Withdrawal ballot exemption—recognising federal ballot) or 69 (Application for alternative ballot)

72 Filing ‘no’ case

- (1) The number of members mentioned in subsection (2) of an existing organisation for a proposed amalgamation may file in the registry a written statement (a *‘no’ case*) opposing either or both of the following—
 - (a) the proposed amalgamation;
 - (b) each proposed alternative amalgamation.
- (2) The number of members filing a ‘no’ case for an amalgamation must be at least the lesser of—
 - (a) 5% of the organisation’s total members when the ballot application for the proposed amalgamation was filed; or
 - (b) 1000.
- (3) The number of members mentioned in subsection (4) of an amalgamated organisation from which a constituent part wants to withdraw may file in the registry a written statement (also a *‘no’ case*) opposing the proposed withdrawal.
- (4) The number of members filing a ‘no’ case for a withdrawal must be at least the lesser of—
 - (a) 5% of the constituent members when the ballot application for the proposed withdrawal was filed; or
 - (b) 1000.
- (5) A ‘no’ case must be—
 - (a) filed no later than 7 days before the hearing for the proposed amalgamation or withdrawal; and
 - (b) not more than 2000 words.

73 Commission statements

- (1) If 2 or more ‘no’ cases are filed, the commission may 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 must not be more than 2000 words.
- (3) The statement is taken to be the only ‘no’ case for the amalgamation.

74 ‘Yes’ or ‘no’ cases may include things other than words

If the commission approves, a ‘yes’ or ‘no’ case may include things other than words, including, for example, diagrams, illustrations, and photographs.

75 Amending ‘yes’ or ‘no’ cases

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 the Act.

Division 7 Objections

76 Objections about amalgamations involving extending eligibility rules

- (1) The following persons may object to an application under section 64⁷²—
 - (a) a member of an existing organisation that the amalgamation is about;
 - (b) another person with appropriate interest in the proposed amalgamation.

72 Section 64 (Application to submit proposed amalgamation to a ballot)

- (2) The objection must be on the ground that the proposed amalgamated organisation does not meet, or if the amalgamation takes effect, will not meet, the requirements for registration under sections 419 to 421⁷³ of the Act.

77 Objection to amalgamation ballot exemption—recognising federal ballot

A member of an organisation that has applied for an exemption from holding a ballot for a proposed amalgamation under section 67⁷⁴ may object to the application on the ground that the exemption would detrimentally affect the member's interests.

78 Objection to withdrawal ballot exemption—recognising federal ballot

A constituent member of a constituent part that has applied for an exemption from holding a withdrawal ballot under section 68⁷⁵ may object to the application on the ground that the exemption would detrimentally affect the member's interests.

79 Notice of objection

- (1) A notice of objection under section 76 must be filed—
- (a) by the day fixed by the commission; or
 - (b) if the commission substitutes a later day for the fixed day—by the substituted day; or
 - (c) if no day is fixed—within 28 days after a notice under section 84 for the proposed amalgamation is first published.
- (2) A notice of objection under section 77 or 78 must be filed within 28 days after a notice of the application is given under section 81.

73 Sections 419 (Registration criteria for all applications), 420 (Additional criteria for registration as employee organisation) and 421 (Additional criteria for registration as employer organisation) of the Act

74 Section 67 (Amalgamation ballot exemption—recognising federal ballot)

75 Section 68 (Withdrawal ballot exemption—recognising federal ballot)

- (3) The notice must state—
 - (a) the objector's name and address; and
 - (b) the grounds of the objection; and
 - (c) particulars of the grounds.
- (4) A notice of objection from an organisation must—
 - (a) be under the organisation's seal; or
 - (b) be signed by the organisation's authorised officer.
- (5) The person who files the notice must serve a copy of it on each applicant within 7 days after the filing.

80 Answering objection

- (1) If a copy of a notice of objection has been served under section 79(5), the applicant may file a statement answering the notice.
- (2) The statement must—
 - (a) be signed by an authorised officer of each applicant; and
 - (b) state the facts relied on in answer to the objection; and
 - (c) be filed in the registry within 14 days after the objection notice is served on the applicants.
- (3) The applicant must serve a copy of the statement on the objector stated in the notice of objection within 7 days after filing it.

Division 8 Hearing

81 Notice of application

- (1) This section applies if an application for a proposed amalgamation is filed under section 64⁷⁶ or an application for a proposed withdrawal is filed under section 65.⁷⁷

76 Section 64 (Application to submit proposed amalgamation to a ballot)

77 Section 65 (Application to submit proposed withdrawal to a ballot)

- (2) For a proposed amalgamation, the commission must promptly give notice to all members of the existing organisations the amalgamation is about of—
 - (a) the application; and
 - (b) any application for a community of interest declaration; and
 - (c) any application for a ballot exemption; and
 - (d) any application for an alternative ballot; and
 - (e) for each application—any right to object to the application under this part; and
- (3) A notice under subsection (2) must be given in—
 - (a) a newspaper circulating throughout the State; and
 - (b) the industrial gazette.
- (4) For a proposed withdrawal, the commission must promptly give notice to all constituent members of—
 - (a) the application; and
 - (b) any application for a ballot exemption; and
 - (c) any application for an alternative ballot; and
 - (d) for each application—any right to object to the application under this part.
- (5) A notice under subsection (4) must be given in—
 - (a) a newspaper circulating throughout the State; and
 - (b) the industrial gazette.

82 Amalgamation or withdrawal hearing

- (1) When the time for filing a statement answering a notice of objection under section 79(2) for a proposed amalgamation or withdrawal has ended, the commission must promptly fix a time and place for a hearing to hear submissions about—
 - (a) the application; and
 - (b) if an application for a community of interest declaration 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.
- (2) The commission—
- (a) must promptly give notice of the time and place for the hearing to—
 - (i) the applicant; and
 - (ii) all organisations; and
 - (iii) any person who has filed an objection to an application to be heard at the hearing; and
 - (b) may notify other persons it considers may be interested in the hearing.

Example of paragraph (b)—

Notifying the electoral commission.

83 Amalgamation ballot approval

- (1) At a hearing for a proposed amalgamation, 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 application complies with section 64;⁷⁸
 - (b) the amalgamation involves registering a proposed organisation;
 - (c) a person ineligible for membership of an existing organisation for the amalgamation will not be eligible for membership of the amalgamated organisation;
 - (d) if the name of the proposed amalgamated organisation is the same as another organisation's name or so similar to another organisation's name as to be likely to cause confusion—the other organisation has consented in writing to the name;

78 Section 64 (Application to submit proposed amalgamation to a ballot)

Industrial Relations Regulation 2000

- (e) the proposed amalgamated organisation's rules and any proposed amendment of an existing organisation's rules do not contravene the Act or an industrial instrument;
 - (f) a proposed deregistration of an existing organisation complies with the Act.
- (2) If the commission considers the application does not meet the ballot conditions, it may allow the application only if 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.
- (3) If the commission is not satisfied under either subsection (1) or (2) it must—
 - (a) refuse the application; or
 - (b) adjourn the proceeding.
- (4) A permission under subsection (2)(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 for the application; and
 - (c) be given on conditions stated by the commission.
- (5) If an undertaking under subsection (2)(b) or conditions under subsection (4) 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.
- (6) Subsections (3) and (5) do not limit the commission's other powers.

84 Notifying refusal of ballot application

- (1) This section applies if the commission refuses to approve a ballot application because the ballot condition in section 83(1)(c) is not met and the commission is not satisfied as stated in section 83(2).
- (2) The registrar must publish a notice of the refusal in a newspaper in a way that, in the registrar's opinion, is likely to come to the attention of persons likely to be affected by the application's proposed amalgamation.
- (3) The notice must state—
 - (a) the grounds stated in section 76 for an objection; and
 - (b) the day under section 79(1) on which an objection notice must be filed by.

85 Hearing objection

- (1) When the time for filing a statement answering a notice of objection under section 79(1) has ended, the commission must promptly—
 - (a) fix a time and place to hear objections to the application; and
 - (b) give the applicant and any objector notice of the time and place of the hearing.
- (2) The commission may fix separate hearings for different objections.

86 Amalgamation ballot approval if ballot extends eligibility rules

- (1) After the hearing of objections under section 85, 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 application complies with section 64;⁷⁹

⁷⁹ Section 64 (Application to submit proposed amalgamation to a ballot)

Industrial Relations Regulation 2000

- (b) the amalgamation involves registering a proposed organisation;
 - (c) a person ineligible for membership of an existing organisation for the amalgamation will not be eligible for membership of the amalgamated organisation;
 - (d) if the name of the proposed amalgamated organisation is the same as another organisation's name or so similar to another organisation's name as to be likely to cause confusion—the other organisation has consented in writing to the name;
 - (e) the proposed amalgamated organisation's rules and any proposed amendment of an existing organisation's rules do not contravene the Act or an industrial instrument;
 - (f) a proposed deregistration of an existing organisation complies with the Act.
- (2) If the commission considers the application does not meet the ballot conditions, it may allow the application only if 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.
- (3) If the commission considers an application does not meet the ballot conditions and is not satisfied the ballot conditions will be met by the things mentioned in subsection (2), the commission must allow the application only if satisfied—
- (a) no properly made objection is justified; and
 - (b) the amalgamation does not contravene the Act or an industrial instrument.
- (4) If the commission is not satisfied under either subsection (1), (2) or (3) it must—
- (a) refuse the application; or
 - (b) adjourn the proceeding.
- (5) A permission under subsection (2)(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 for the application; and
 - (c) be given on conditions stated by the commission.
- (6) If an undertaking under subsection (2)(b) or 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 (4) and (6) do not limit the commission's other powers.

87 Withdrawal ballot approval

- (1) At the hearing for a proposed withdrawal, the commission must allow the application and approve the submission of the withdrawal to ballot if it considers the application meets the following conditions (the *ballot conditions*)—
- (a) the application for the ballot is made in accordance with section 65;⁸⁰
 - (b) if the name of the proposed newly registered organisation is the same as another organisation's name or so similar to another organisation's name as to be likely to cause confusion—the other organisation has consented in writing to the name;
 - (c) the proposed newly registered organisation's rules do not contravene the Act or an industrial instrument.
- (2) If the commission orders that a ballot be held, it may make the orders it considers appropriate for the conduct of the ballot.

80 Section 65 (Application to submit proposed withdrawal to a ballot)

88 Ballot exemption—number of members

- (1) This section applies at a hearing for a proposed amalgamation if a ballot exemption application under section 66⁸¹ was filed with the ballot application for the amalgamation.
- (2) If the number of persons that could become members of the proposed amalgamated organisation is not more than 25% of the number of members of the applicant when the application was filed, 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 organisation's members are taken to have approved—
 - (a) the proposed amalgamation; and
 - (b) each proposed alternative amalgamation.

89 Amalgamation ballot exemption—recognising federal ballot

- (1) If an application for an exemption from holding an amalgamation ballot has been made under section 67,⁸² the commission may give the exemption only 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 119⁸³ had the Queensland voters been voting in a ballot for an amalgamation to which section 119 applied; and
 - (b) if the organisations' and the counterpart federal bodies' eligibility rules differ—the interests of the organisations' members who were ineligible to vote in the federal ballot have not been detrimentally affected; and

81 Section 66 (Amalgamation ballot exemption—number of members)

82 Section 67 (Amalgamation ballot exemption—recognising federal ballot)

83 Section 119 (Members' decision on amalgamation or withdrawal)

- (c) any objections on the ground mentioned in section 76⁸⁴ have been resolved; and
 - (d) all likely legal challenges, including inquiries under the Commonwealth Act, in the federal jurisdiction, have ended.
- (2) If the commission is satisfied of the things mentioned in subsection (1), the commission must give the exemption unless it considers the exemption should be refused because of special circumstances.
 - (3) If the commission gives the exemption, the organisation's members are taken to have approved—
 - (a) the proposed amalgamation; and
 - (b) each proposed alternative amalgamation.
 - (4) In this section—

federal ballot means a ballot that has been held under the Commonwealth Act to approve a proposed amalgamation.

90 Withdrawal ballot exemption—recognising federal ballot

- (1) If an application for an exemption from holding a ballot for a proposed withdrawal is made under section 68,⁸⁵ the commission may give the exemption only if satisfied—
 - (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 under section 119⁸⁶ had the Queensland voters been voting in a ballot for a withdrawal to which section 119 applied; and
 - (b) if the proposed newly registered organisation's eligibility rules are different from those of the organisation registered under section 253ZQ of the Commonwealth Act—the interests of the constituent

84 Section 76 (Objections about amalgamations involving extending eligibility rules)

85 Section 68 (Withdrawal ballot exemption—recognising federal ballot)

86 Section 119 (Members' decision on amalgamation or withdrawal)

- 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) all likely legal challenges, including inquiries under the Commonwealth Act, in the federal jurisdiction have ended.
- (2) If the commission is satisfied of the things mentioned in subsection (1), the commission must give the exemption unless it considers the exemption should be refused because of special circumstances.
 - (3) If the commission gives an exemption, the constituent members are taken to have approved the withdrawal.
 - (4) In this section—

federal ballot means a ballot that has been held under the Commonwealth Act to decide whether a constituent part of an amalgamated organisation under that Act should withdraw from the organisation.

91 Alternative ballot approval

- (1) This section applies to a hearing for a proposed amalgamation or withdrawal if an application for an alternative ballot has been made under section 69.⁸⁷
- (2) After consulting with the manager of the ballot, the commission must approve the alternative ballot if satisfied the proposal—
 - (a) is practicable; and
 - (b) complies with section 69(3); and
 - (c) is likely to give members of the existing organisation, or constituent members, with a right to vote—
 - (i) fuller participation than a ballot under section 98;⁸⁸ and

⁸⁷ Section 69 (Application for alternative ballot)

⁸⁸ Section 98 (Members' secret postal ballot)

- (ii) an adequate opportunity to vote on the amalgamation without intimidation.

92 Notice to manager of ballot

- (1) If the commission approves a ballot for a proposed amalgamation or withdrawal, the registrar must promptly—
 - (a) notify the manager of the ballot; and
 - (b) give a copy of the ballot documents to the manager of the ballot.
- (2) After the manager is notified, the manager must promptly take the action the manager considers necessary to hold the ballot as quickly as possible.
- (3) In subsection (1)—

ballot documents means—

 - (a) the scheme, scheme outline and each ‘yes’ case; and
 - (b) each ‘no’ case; and
 - (c) each amendment of, or document filed in substitution for, a document mentioned in paragraphs (a) or (b).

93 Fixing ballot period

- (1) If the commission approves the submission of a proposed amalgamation or withdrawal to a ballot, the commission must—
 - (a) consult with the manager of the ballot about the matters mentioned in paragraphs (b) and (c); and
 - (b) fix days and times for the ballot to start and finish; and
 - (c) fix the roll cut-off day under section 110.⁸⁹
- (2) The ballot must start within 28 days of the approval, unless—
 - (a) the commission is satisfied the manager of the ballot needs more time to arrange the ballot; or

89 Section 110 (Roll—who may vote)

- (b) the applicant for the amalgamation or withdrawal ballot requests a later day.
- (3) If a scheme for a proposed amalgamation has 1 or more proposed alternative schemes, all ballots for the proposed amalgamation and proposed alternative amalgamations must have the same start and finish days.
- (4) The commission may, after consulting with the manager of the ballot, change the start or finish days.

Division 9 Ballots

94 Electoral commission to conduct ballot

A ballot for a proposed amalgamation or withdrawal must be conducted by the electoral commission.

95 Providing information and documents to electoral officers

- (1) This section applies if—
 - (a) the registrar has notified the electoral commission of an application for a ballot for a proposed amalgamation or withdrawal; and
 - (b) the electoral commission has by written notice appointed an electoral officer as manager of the ballot; and
 - (c) the manager considers information within the knowledge of an officer of an existing organisation, amalgamated organisation or constituent part, 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 manager may, by written notice, require the officer to—
 - (a) give the manager information that is within the officer's knowledge; and
 - (b) produce documents to the manager that the officer—

- (i) has 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, of not less than 7 days, in which the information is to be given; and
 - (iii) a reasonable way of giving it; and
 - (b) if it requires the officer to produce documents—
 - (i) the documents required; and
 - (ii) a reasonable period, of not less than 7 days, in which the documents are to be produced; and
 - (iii) a reasonable place at which the documents are to be produced.
- (4) The officer must not contravene the notice, unless the officer has reasonable excuse.
- Maximum penalty—20 penalty units.
- (5) It is a reasonable excuse for the officer not to comply with the notice if doing so might tend to incriminate the officer.
- (6) In this section—
- officer* of an organisation includes an employee of the organisation.

96 Action and directions by manager of ballot

A manager of a ballot for a proposed amalgamation or proposed withdrawal may take action and give directions the manager reasonably considers are necessary to ensure no unlawful disclosure or irregularity happens in the ballot.

97 Manager of ballot must give scheme and outline if asked

- (1) This section applies if—

- (a) a manager of a ballot for a proposed amalgamation or proposed withdrawal has received a copy of—
 - (i) the ballot application for the ballot; or
 - (ii) a scheme or scheme outline for a ballot application; and
 - (b) a voter asks for a copy of the scheme, scheme outline or ballot application.
- (2) The manager must promptly give the voter a copy, free of charge.

98 Members' secret postal ballot

- (1) This section applies to each existing organisation concerned in a proposed amalgamation, and to a constituent part concerned in a proposed withdrawal, if—
- (a) the commission has approved a ballot for the amalgamation or withdrawal; and
 - (b) the commission—
 - (i) has not approved an alternative ballot for the amalgamation or withdrawal; or
 - (ii) for a proposed amalgamation—has not given the organisation a ballot exemption under section 88 or 89;⁹⁰ or
 - (iii) for a proposed withdrawal—has not given the constituent part a ballot exemption under section 90.⁹¹
- (2) The manager of the ballot must carry out secret postal ballots of the members who have a right to vote in the ballot on the amalgamation or withdrawal about—
- (a) whether they approve the proposed amalgamation or withdrawal; and

90 Section 88 (Ballot exemption—number of members) or 89 (Amalgamation ballot exemption—recognising federal ballot)

91 Section 90 (Withdrawal ballot exemption—recognising federal ballot)

- (b) if the scheme for the amalgamation has an alternative scheme—if the proposed amalgamation does not take place, whether they approve the alternative amalgamation.
- (3) If there is an alternative scheme for an amalgamation, the same ballot paper must be used for voting on the proposed amalgamation and proposed alternative amalgamation.

99 Form of ballot paper

A ballot paper must be in the form provided for in the rules of court.

100 Notice of ballot

- (1) The manager of a ballot for a proposed amalgamation or withdrawal must give notice, before the ballot starts, to each person with a right to vote in the ballot of the start and finish days and times of the ballot.
- (2) If the commission has approved an alternative ballot under section 91(2),⁹² the manager of the ballot must—
 - (a) fix the place for the ballot; and
 - (b) give at least 21 days notice to each voter of—
 - (i) the place, day and times; and
 - (ii) the procedure to get and cast an absentee vote.
- (3) The manager of a ballot may give a notice under this section by—
 - (a) post addressed to the voter's residential address; or
 - (b) including it in a publication that the organisation or constituent part gives to the organisation's members with a right to vote in the ballot free of charge; or
 - (c) another way the manager thinks will reasonably bring the notice to each member's attention.

92 Section 91 (Alternative ballot approval)

101 Postal ballots—distributing voting material

- (1) A manager of a secret postal ballot must post the following material for the ballot (the *voting material*) to each voter—
 - (a) a ballot paper initialled by the manager;
 - (b) a copy of the scheme outline and any amendments to it;
 - (c) a copy of each ‘yes’ case and any amendments to it;
 - (d) a copy of each ‘no’ case and any amendments to it;
 - (e) an unsealed reply paid envelope (a *return envelope*) addressed to the manager;
 - (f) a ballot envelope and voting declaration;
 - (g) other material the manager considers appropriate for the ballot including, for example, directions or notes to help the voter to comply with the Act and cast a valid vote;
 - (h) a statement that tells the voter how and where they may obtain a copy of the latest version of the scheme.
- (2) The voting declaration must state ‘I certify I am the person whose name appears on this envelope and I have voted on the ballot paper enclosed.’.
- (3) The voting material must be posted to a voter—
 - (a) in a sealed envelope to the voter’s address on the roll; and
 - (b) as soon as practicable, but not earlier than 2 days before the start day of the ballot.
- (4) If a voter gives the manager notice that the voter will be at an address other than the address stated on the roll when voting material is to be given, the manager must post the material to the address stated in the notice.
- (5) Before posting voting material to a voter, the manager must mark a ballot number for each voter on—
 - (a) the roll against the voter’s name; and
 - (b) the voting declaration.
- (5A) The manager must give each voter a different ballot number.

- (6) The ballot numbers must start with a number chosen by the manager.
- (7) A ballot paper or ballot envelope must not be marked in a way that could identify the voter.

102 Material for alternative ballots

- (1) The manager of an alternative ballot must post to each voter at their address on the roll—
 - (a) a copy of the latest version of—
 - (i) the scheme outline for the proposed amalgamation or withdrawal and any amendments to it; and
 - (ii) each ‘yes’ case for the proposed amalgamation or withdrawal; and
 - (iii) each ‘no’ case for the proposed amalgamation or withdrawal; and
 - (b) a statement that tells the voter how and where they may obtain a copy of the latest version of the scheme.
- (2) The documents must be posted in enough time for them to be delivered, in the ordinary course of post, at least 7 days before the start day of the ballot.

103 Alternative ballots—distributing ballot papers

- (1) The manager of an alternative ballot must give a ballot paper initialled by the manager to each voter at the meeting at which the ballot is to be held.
- (2) However, if a voter tells the manager the voter will be absent from the meeting, the manager must give the voter each of the following as soon as practicable before the meeting starts—
 - (a) a ballot paper;
 - (b) a ballot envelope;
 - (c) a return envelope;
 - (d) a voting declaration.

104 Duplicate ballot documents—postal voting

- (1) This section applies if a ballot document for a proposed amalgamation or withdrawal posted to a voter—
 - (a) has not been received by the voter; or
 - (b) has been lost or destroyed; or
 - (c) if the ballot document is a ballot paper—has been spoilt.
- (2) The voter may apply to the manager of the ballot for a duplicate of the ballot document.
- (3) The application must—
 - (a) be received by the manager on or before the finish day of the ballot; and
 - (b) state the grounds for the application; and
 - (c) if practicable, be substantiated by evidence verifying or tending to verify the grounds; and
 - (d) state the voter has not voted at the ballot; and
 - (e) if the ballot document is a spoilt ballot paper—be accompanied by the ballot paper.
- (4) If the application complies with subsection (3), the manager must—
 - (a) give a duplicate of the document to the voter; or
 - (b) for a spoilt ballot paper—
 - (i) mark ‘spoilt’ on the paper; and
 - (ii) initial the paper where marked and keep the paper; and
 - (iii) give a fresh ballot paper to the voter.
- (5) In this section—

ballot document means—

 - (a) a document mentioned in section 103(2); or
 - (b) voting material given to an voter under section 101.

105 Duplicate ballot papers—alternative ballot

- (1) If a voter at an alternative ballot satisfies the manager of the ballot, before putting the ballot paper in the ballot box, that the voter has spoiled the paper, the manager must—
 - (a) mark ‘spoilt’ on the paper; and
 - (b) initial the paper where marked and keep it; and
 - (c) give a fresh ballot paper to the voter.
- (2) If a voter at an alternative ballot satisfies the manager of the ballot, before the ballot finishes, that the voter’s ballot paper has been lost, stolen or destroyed, the manager must give the voter a duplicate ballot paper.

106 Manager must keep a ballot box

The manager must get a ballot box and—

- (a) keep the box in a safe place; and
- (b) seal the box in a way that—
 - (i) allows voting material to be put in it until the ballot finishes; and
 - (ii) prevents voting material from being taken from it until votes for the ballot are to be counted.

107 How to vote by post

- (1) This section applies if—
 - (a) a ballot is a secret postal ballot; or
 - (b) a voter is given voting material under section 103(2)⁹³ to cast an absentee vote in an alternative ballot.
- (2) The voter may vote only by completing the following steps—
 - (a) completing a ballot paper by complying with the instructions on the paper;
 - (b) putting the ballot paper in the ballot envelope;

93 Section 103 (Alternative ballots—distributing ballot papers)

- (c) sealing the ballot envelope;
- (d) filling in and signing the voting declaration;
- (e) putting the voting declaration and the ballot envelope in the return envelope;
- (f) sealing the return envelope;
- (g) complying with any direction given under section 101(1)(g);⁹⁴
- (h) returning the return envelope to the manager of the ballot before the ballot finishes by—
 - (i) posting it so the manager receives it before the ballot finishes; or
 - (ii) putting it in the ballot box before the ballot finishes.

108 How to vote in an alternative ballot

- (1) This section applies to a vote at a meeting for an alternative ballot.
- (2) The voter must vote by—
 - (a) completing a ballot paper; and
 - (b) complying with the instructions on the paper about how to vote and putting it in the ballot box.

109 How ballot manager must deal with voting material

- (1) A manager of a ballot for a proposed amalgamation or withdrawal must—
 - (a) put each return envelope apparently containing a ballot paper in the ballot box; and
 - (b) put all other voting material returned to the manager in a safe place until the vote has been counted.

Maximum penalty—20 penalty units.

94 Section 101 (Postal ballots—distributing voting material)

- (2) If, after the finish day of the ballot for a proposed amalgamation or withdrawal, the manager receives a return envelope apparently containing a ballot paper for the ballot, the manager must—
 - (a) keep the envelope sealed; and
 - (b) mark the envelope ‘Received after the finish day’; and
 - (c) keep the envelope in safe custody, but separately from voting material received before the finish day.

Division 10 Roll

110 Roll—who may vote

- (1) The roll of voters for a ballot for a proposed amalgamation or withdrawal is the roll of persons having the right to vote at the ballot on a day (the *roll cut-off day*) fixed by the commission.
- (2) The day fixed must be at least 30 days and not more than 60 days before the ballot starts.
- (3) A person has the right to vote at a ballot for a proposed amalgamation if the person may, under the rules of the relevant existing organisation vote—
 - (a) at the ballot; or
 - (b) in an election.
- (4) A person has the right to vote at a ballot for a proposed withdrawal if the person—
 - (a) is a member of the amalgamated organisation; and
 - (b) has the right to be a member of the proposed newly registered organisation under its proposed eligibility rules after the withdrawal day.
- (5) The roll must be prepared at the direction of the manager of the ballot.
- (6) The manager must ensure the roll—
 - (a) states each voter’s name and, opposite their name, their address; and

- (b) is completed no less than 14 days before the ballot starts.

Maximum penalty for subsection (5)—20 penalty units.

111 Roll—inspection

- (1) A manager of a ballot for a proposed amalgamation or withdrawal must make the roll for the ballot available for inspection—
 - (a) in the period that—
 - (i) starts on the day after the roll must be completed under section 110(6)(b); and
 - (ii) ends 30 days after the ballot result is declared; and
 - (b) during ordinary business hours at the place the manager carries out the manager's duties for the ballot.

Maximum penalty—20 penalty units.

- (2) The following persons may inspect the roll, free of charge, or take a copy of the roll or of part of the roll—
 - (a) for an amalgamation ballot—a member of the existing organisation the ballot is about;
 - (b) for a withdrawal ballot—a member of the amalgamated organisation from which the constituent part is seeking to withdraw;
 - (c) for an amalgamation or withdrawal ballot—a person authorised by the manager.

Division 11 Scrutineers

112 Scrutineers

- (1) An existing organisation's management committee may appoint a member of the organisation as a scrutineer for a ballot to represent the interests of members for a proposed amalgamation.
- (2) An amalgamated organisation's management committee may appoint a member of the organisation as a scrutineer for a

ballot to represent the interests of members for a proposed withdrawal.

- (3) An appointment under subsection (1) or (2) must be written and be signed by an authorised officer of the organisation on the committee's behalf.
- (4) A constituent part may appoint a constituent member as a scrutineer for a ballot to represent the interests of the part for a proposed withdrawal.
- (5) An appointment under subsection (4) must be written and be signed by the representative constituent member.
- (6) A committee or constituent part that appoints a scrutineer must notify the manager of the ballot of the scrutineer's name as soon as possible after the appointment.
- (7) If a 'no' case has been filed for an amalgamation, the manager must allow any member of an existing organisation to be a scrutineer to safeguard the interests of members of the organisation against the proposal, but only if the manager is satisfied the member represents the members who filed the 'no' case.
- (8) However, there may be only 1 scrutineer under this section for each committee or constituent part entitled to appoint a scrutineer under this section for each electoral official who is present where the ballot is being conducted.
- (9) Also, there may be only 1 scrutineer under subsection (7) for each electoral official who is present where the ballot is being conducted.

113 Scrutineers' rights

- (1) A scrutineer may be present when—
 - (a) ballot papers or other voting material for a ballot are prepared and given to voters; or
 - (b) voting material is received and put in the ballot box or in a safe place under section 109(1);⁹⁵ or
 - (c) votes are counted.

95 Section 109 (How ballot manager must deal with voting material)

- (2) The manager may refuse to allow a person to act as a scrutineer if—
 - (a) the manager asks to inspect the written appointment as a scrutineer; and
 - (b) the person does not produce it.

114 Scrutineers' objections

- (1) Before votes are counted for a ballot for a proposed amalgamation or withdrawal, a scrutineer may advise the manager of the ballot that the scrutineer considers an error has been made in conducting the ballot.
- (2) When votes for a ballot for a proposed amalgamation or withdrawal are being counted, a scrutineer may—
 - (a) object to a ballot paper being admitted as formal or rejected as informal; or
 - (b) advise the manager of the ballot that the scrutineer considers an error has been made in conducting the ballot or counting votes.
- (3) If the scrutineer advises the manager of an error under subsection (1) or (2)(b), the manager must—
 - (a) decide whether the error has been made; and
 - (b) if appropriate, direct action to correct or mitigate the error.
- (4) If a scrutineer objects under subsection (2)(a), the manager must—
 - (a) decide whether the ballot paper is to be admitted or rejected; and
 - (b) note the decision on the ballot paper; and
 - (c) initial the note.

115 Direction to leave count

- (1) A manager of a ballot for a proposed amalgamation or withdrawal may direct a person to leave the place where votes

for the ballot are being counted if the manager reasonably believes the person—

- (a) does not have the right to be present, or remain present, at the count; or
 - (b) is interrupting the count, other than to exercise a scrutineer's right.
- (2) A person must comply with a direction under subsection (1) unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Division 12 Counting votes

116 Initial scrutiny of postal votes

- (1) This section applies if a vote is made under section 107.⁹⁶
- (2) As soon as possible after the ballot finishes, the manager of the ballot must—
 - (a) seal the ballot box in a way that prevents voting material from being put in it; and
 - (b) take the ballot box to the place where votes are to be counted.
- (3) The manager must then—
 - (a) unseal the ballot box; and
 - (b) take out the return envelopes; and
 - (c) open each return envelope and take out the ballot envelope and the voting declaration; and
 - (d) examine the declaration and mark off the voter's name on the roll; and
 - (e) check the ballot number on the declaration against the ballot number marked against the voter's name on the roll; and
 - (f) ensure the declaration is signed.

96 Section 107 (How to vote by post)

- (4) After complying with subsection (3), the manager must put the ballot envelopes in a container and the declarations into another container if satisfied—
 - (a) each declaration is signed; and
 - (b) the ballot number on each declaration corresponds with the ballot number marked beside the voter's name on the roll.
- (5) However, the manager must not put a ballot envelope or declaration in the containers mentioned in subsection (4) if—
 - (a) the manager reasonably believes the voter to whom it was sent did not sign the declaration; or
 - (b) the person named on the declaration is not the person to whom it was sent.
- (6) Subsection (5) does not apply if the manager is satisfied the person who filled in and signed the declaration—
 - (a) is a voter; and
 - (b) has not previously voted in the ballot; and
 - (c) has a reasonable explanation for using someone else's ballot material.
- (7) The manager must keep ballot envelopes and declarations excluded under subsection (5) separate from other ballot envelopes and declarations.
- (8) A declaration is valid only if—
 - (a) it complies with subsection (4)(a) and (b); and
 - (b) subsection (5) does not apply.
- (9) A valid declaration must be accepted as valid, and an invalid declaration must be rejected, by the manager.
- (10) If a declaration is accepted as valid by the manager, the manager must—
 - (a) note the acceptance of validity on the declaration; and
 - (b) record the correct ballot number on the roll against the name of the voter who signed the declaration.
- (11) After separating the ballot envelopes and declarations, the manager must, in the following order—

- (a) seal the container holding declarations;
- (b) open the ballot envelopes not excluded under subsection (5) and take out the ballot papers;
- (c) if a ballot envelope contains more than 1 ballot paper—mark each of the ballot papers from the envelope ‘informal under section 117(3)(e)’;
- (d) put all of the ballot papers in the ballot box.

117 Counting votes

- (1) The manager for a proposed amalgamation or withdrawal must—
 - (a) admit the formal votes and reject the informal votes; and
 - (b) count the formal votes, and record the number for and against the proposal; and
 - (c) count the informal votes.
- (2) If there is an alternative scheme for a proposed amalgamation and a ballot does not approve the proposed amalgamation, the manager must—
 - (a) admit the formal votes, and reject the informal votes, for the alternative amalgamation; and
 - (b) count the formal votes, and record the number for and against the alternative amalgamation; and
 - (c) count the informal votes for the alternative amalgamation.
- (3) A vote is informal only if—
 - (a) the ballot paper is not initialled by the manager and the manager is not satisfied the paper is authentic; or
 - (b) the ballot paper is marked in a way that allows the voter to be identified; or
 - (c) the ballot paper is not marked in a way that makes it clear how the voter meant to vote; or

- (d) the ballot paper does not comply with a direction given under section 101(1)(g);⁹⁷ or
- (e) the ballot envelope from which the ballot paper was taken contained more than 1 ballot paper.

118 Ballot records to be kept

- (1) This section applies—
 - (a) if a ballot is held for a proposed amalgamation or proposed withdrawal; and
 - (b) despite the rules of an organisation or constituent part.
- (2) The electoral commission must do everything necessary to ensure all ballot records for the ballot are kept for 1 year after the ballot.

Division 13 Approval of proposal

119 Members' decision on amalgamation or withdrawal

- (1) This section applies if a proposed amalgamation or withdrawal is submitted to a ballot.
- (2) The amalgamation or withdrawal is approved by an existing organisation or constituent part only if—
 - (a) when a community of interest declaration exists for the proposed amalgamation—more than 50% of the formal votes cast by the members of the organisation are for the amalgamation; or
 - (b) otherwise—
 - (i) at least 25% of the members of the existing organisation or constituent members on the roll of voters cast a vote in the ballot; and
 - (ii) more than 50% of the formal votes cast by members of the existing organisation or constituent members are for the amalgamation or withdrawal.

⁹⁷ Section 101 (Postal ballots—distributing voting material)

120 Amalgamation approval

- (1) If each existing organisation for a proposed amalgamation approves the proposed amalgamation, the proposed amalgamation is approved.
- (2) An alternative amalgamation is approved if—
 - (a) the scheme for the proposed amalgamation has an alternative scheme; and
 - (b) 1 or more existing organisations for the amalgamation do not approve the proposed amalgamation; and
 - (c) each existing organisation that the alternative amalgamation is about approve the alternative amalgamation.

121 Ballot result report

- (1) The ballot manager must, within 14 days after the declaration of the result of a ballot for a proposed amalgamation or withdrawal, give the registrar a written ballot result report containing the particulars mentioned in section 37.⁹⁸
- (2) A contravention of this section does not invalidate a ballot.

122 Further ballot if amalgamation not approved

- (1) This section applies if—
 - (a) an amalgamation ballot (the *first ballot*) for a proposed amalgamation is held; and
 - (b) an existing organisation does 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—

⁹⁸ Section 37 (Prescribed particulars for election or ballot result reports—s 121 and Act, ss 488 and 600)

- (b) 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.

126 Referral to commission

- (1) The registrar may refer the application to the commission only if satisfied—
 - (a) there are reasonable grounds to inquire whether there has been an irregularity in the ballot that may have affected, or may affect, the ballot result; and
 - (b) the circumstances justify an inquiry.
- (2) In deciding whether to refer, the registrar may consider other appropriate information that the registrar knows about.
- (3) If the registrar refers the application, the commission must—
 - (a) fix a time and place for the inquiry; and
 - (b) give directions to ensure that the persons who must be given an opportunity to be heard under section 654⁹⁹ of the Act are given notice of the time and place.

Subdivision 2 Investigations and interim orders

127 Commission may authorise registrar to investigate

- (1) The commission may, by order, made before or after the registrar's decision to refer, authorise the registrar to do any of the following—
 - (a) inspect ballot records for the ballot;
 - (b) take possession of the ballot records;
 - (c) enter a place of business used or occupied by the existing organisation, amalgamated organisation or constituent part at which the registrar reasonably believes the ballot records are held, using necessary and reasonable help;

99 Section 654 (Hearing to be given before making decision) of the Act

- (d) require a person to give the registrar ballot records in the person's possession or under the person's control, or to keep the ballot records, until—
 - (i) an inquiry is completed; or
 - (ii) an earlier time ordered by the commission.
- (2) A person must comply with a direction under subsection (1)(d) to give ballot records, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.
- (3) A person must not obstruct the registrar when exercising a power under this section.

Maximum penalty—20 penalty units.

128 Interim orders

After the registrar refers the application, the commission may make an interim order—

- (a) stopping any further steps—
 - (i) to conduct the ballot; or
 - (ii) that give effect to the ballot result; or
- (b) consequential to another interim order.

129 When interim order ends

An interim order ends—

- (a) on the day stated in the order for it to end; or
- (b) if it is discharged by the commission; or
- (c) at the end of the ballot inquiry and everything the commission ordered, other than under an interim order, during the inquiry.

Subdivision 3 Conduct of ballot inquiries

130 Commission's functions and powers for inquiry

- (1) For a ballot inquiry, the commission must inquire into and decide—
 - (a) if an irregularity has happened in the ballot; and
 - (b) other questions it considers necessary about the conduct and results of the ballot.
- (2) The commission may make orders it considers necessary for the inquiry, including for example, a recount of votes for the ballot.

131 Orders if irregularity found

- (1) This section applies if the commission finds an irregularity has happened, or is likely to happen, in a ballot.
- (2) The commission may make an order—
 - (a) for a fresh ballot or the repeat of a step in the ballot; or
 - (b) amending the rules of an organisation or constituent part in a way it considers necessary to correct a procedural defect in the rules; or
 - (c) directing safeguards it considers appropriate to stop irregularities in the ballot, fresh ballot or repeat step.
- (3) Also, if the commission finds the ballot result may have been, or may be, affected by the irregularity or another irregularity, the commission may, by order, declare the ballot, or a step taken in or for it, to be void.
- (4) The commission may make any other order that is consequential to an order under this section.

132 Enforcing orders under this division

The commission 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 division.

Subdivision 4 Offences about ballot inquiries

133 Disadvantaging applicant for inquiry

- (1) A person must not cause, inflict or procure a disadvantage to another person because the other person has applied for a ballot inquiry.

Maximum penalty—20 penalty units.

- (2) In this section—

disadvantage includes damage, detriment, injury, loss, punishment and violence.

134 Obstructing orders being carried out

A person must not obstruct someone who is carrying out a commission order under this division.

Maximum penalty—20 penalty units.

Subdivision 5 Miscellaneous

135 Financial help for application

- (1) An applicant for a ballot inquiry may apply to the Minister for financial help.
- (2) The Minister may direct that financial help from the State be given to the applicant for the cost of the application, including witness expenses, if—
- (a) the commission found an irregularity happened in the ballot and the Minister considers the circumstances justify the payment; or
 - (b) the commission certifies the applicant acted reasonably in applying for the inquiry; or
 - (c) after considering the commission's findings at the inquiry, it is not just that the applicant should pay any of the costs.
- (3) The registrar must decide the amount of the financial help.

136 Costs of fresh ballot ordered by inquiry

- (1) If the commission orders a fresh ballot under this part, the State must pay the costs of the fresh ballot.

Example of a 'cost'—

The cost of premises used for the fresh ballot.

- (2) In this section—

fresh ballot, for an amalgamation or withdrawal, includes—

- (a) a step in a ballot; and
- (b) a safeguard, not allowed for under the rules of the organisation or constituent part, for a ballot or step in a ballot.

Division 15 Amalgamation or withdrawal taking effect

137 Who may apply to fix a start day for amalgamation or withdrawal

- (1) If an amalgamation or alternative amalgamation is approved under section 120,¹⁰⁰ any of the organisations that approved the amalgamation or alternative amalgamation may apply to the commission to fix a start day for the amalgamation.
- (2) A constituent part that has approved a withdrawal under section 119(2)(b)¹⁰¹ may apply to the commission to fix a start day for the withdrawal.

138 Fixing start day for amalgamation or withdrawal

- (1) An amalgamation starts on the day (the *amalgamation day*) fixed by the commission by industrial gazette notice.
- (2) A withdrawal starts on the day (the *withdrawal day*) fixed by the commission by industrial gazette notice.

100 Section 120 (Amalgamation approval)

101 Section 119 (Members' decision on amalgamation or withdrawal)

- (3) However, the commission must not fix an amalgamation day or withdrawal day before—
 - (a) the time for making an application 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 commission has been declared.
- (4) Before fixing an amalgamation day, the commission must—
 - (a) consult with the existing organisations for the amalgamation about the proposed amalgamation day; and
 - (b) be satisfied that the proposed amalgamated organisation's rules comply with the Act; and
 - (c) be satisfied there are no pending proceedings, other than civil proceedings, against the existing organisations for a contravention of—
 - (i) the Act or another Act; or
 - (ii) an industrial instrument; or
 - (iii) an order made under the Act or another Act.
- (5) Before fixing a withdrawal day, the commission must be satisfied the proposed newly registered organisation's rules comply with the Act.
- (6) If the commission has fixed an amalgamation day or withdrawal day by industrial gazette notice, the registrar must publish the notice in a newspaper circulating generally throughout the State.

139 Order to apportion assets and liabilities on withdrawal

- (1) If the commission fixes a withdrawal day, the commission must make the orders necessary to apportion the assets and liabilities of the amalgamated organisation between the amalgamated organisation and the proposed newly registered organisation.
- (2) In making the order, the commission must consider—

- (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a branch, was deregistered 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.

140 Holding office after withdrawal

- (1) A newly registered organisation's rules may allow for a person to hold an elected office in the organisation if the person—
 - (a) was elected to an equivalent office in the constituent part of the amalgamated organisation; and
 - (b) held the office immediately before the withdrawal day for the constituent part.
- (2) However, the rules may not allow the person to hold the office, without an election, for more than the longer of—
 - (a) the person's unexpired office term immediately before the withdrawal day; or
 - (b) 1 year after the withdrawal day.

141 Effect of amalgamation on commission decisions

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.

142 Effect of withdrawal on order of commission or industrial instrument

- (1) This section applies to an order of the commission or industrial instrument that, immediately before the withdrawal day, bound the amalgamated organisation in relation to the constituent part of the organisation and the constituent members.
- (2) On and from the withdrawal day, the order or industrial instrument—
 - (a) binds the newly registered organisation and its members; and
 - (b) has effect for all purposes as if references in the order or industrial instrument to the amalgamated organisation includes references to the newly registered organisation.

143 Effect of amalgamation on instruments

- (1) From the amalgamation day, the following instruments continue to have effect—
 - (a) an instrument 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;
 - (b) an instrument 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.
- (2) For acts, omissions, transactions and matters done on or after that day, the instrument applies as if a reference in the instrument to a deregistered organisation were a reference to the amalgamated organisation.

144 Effect of withdrawal on agreements, arrangements or other instruments

- (1) This section applies if an instrument other than an order of the commission or an industrial instrument—
 - (a) operated immediately before a withdrawal day for a newly registered organisation; and
 - (b) is an agreement, arrangement or other instrument—
 - (i) that applied to the amalgamated organisation from which a constituent part withdrew to form the newly registered organisation; or
 - (ii) given to, or in favour of, the amalgamated organisation; or
 - (iii) that refers to the amalgamated organisation; or
 - (iv) under which a right or liability accrues, or may accrue, to the amalgamated organisation for the constituent part and its members.
- (2) The agreement, arrangement or other instrument, as far as its context permits, continues to operate on and after the withdrawal day as if a reference to the amalgamated organisation includes a reference to the newly registered organisation.

145 Effect of amalgamation on pending proceedings

- (1) This section applies if a deregistered organisation was a party to a pending proceeding in a court or tribunal immediately before the amalgamation day.
- (2) The amalgamated organisation is substituted for each deregistered organisation as a party to the proceeding.
- (3) The proceeding must continue as if the amalgamated organisation were, and had always been, the deregistered organisation.

146 Effect of withdrawal on pending proceedings

- (1) This section applies if—

- (a) an amalgamated organisation from which a constituent part withdrew to form a newly registered organisation was, immediately before the withdrawal day, a party to proceedings in a court or tribunal; and
 - (b) the proceedings were—
 - (i) pending on the withdrawal day; and
 - (ii) wholly or partly about the constituent members' interests.
- (2) On and from the withdrawal day, the newly registered organisation—
- (a) if the proceeding was wholly about the constituent members' interests—is substituted for the amalgamated organisation; or
 - (b) if the proceeding was partly about the constituent members' interests—becomes a party.
- (3) On and from the withdrawal day, the newly registered organisation has the same rights and obligations as the amalgamated organisation.

147 Amalgamated organisation to carry out amalgamation

An amalgamated organisation for a completed amalgamation must take all necessary steps to carry out the amalgamation under this part.

Part 14 General

148 Certificate of employment on termination—Act, s 700

- (1) For section 700(1)¹⁰² of the Act, a certificate of employment on termination must include the following particulars—
- (a) the employee's full name and address;

¹⁰² Section 700 (Certificate of employment on termination) of the Act

- (b) a description of the trade or occupation in which the employee was employed;
 - (c) the dates on which the employee started and finished employment with the employer;
 - (d) the address of the workplace at which the employee was employed.
- (2) The certificate must be signed and dated by the employer.

149 Repeals

The *Industrial Organisations Regulation 1997* SL No. 282 and the *Workplace Relations Regulation 1997* SL No. 78 are repealed.

Schedule 1 Provision about discrimination

section 12(1)

The parties agree that the effect of this agreement is not to allow any conduct or treatment, either direct or indirect, that would—

- (a) contravene the *Anti-Discrimination Act 1991*; or
- (b) discriminate on the basis of sexual preference; or
- (c) discriminate on the basis of family responsibilities.

Schedule 2 Model dispute resolution procedure

section 12(2)

In relation to any matter that may be in dispute between the parties to this QWA, the parties—

- (a) will attempt to resolve the matter at the workplace level, including for example by—
 - (i) the employee and the employee’s supervisor meeting and discussing the matter; and
 - (ii) if the matter is not resolved at the meeting, the parties arranging further discussions involving more senior levels of management, as appropriate; and
- (b) agree to allow either party to appoint someone else to act for the party in resolving the matter; and
- (c) agree to allow either party to refer the matter to the commission to conciliate, and if necessary to arbitrate, if the matter still can not be resolved after attempts to resolve the matter at the workplace level; and
- (d) agree that while the parties attempt to resolve the matter—
 - (i) the parties continue to work in accordance with normal work practices unless the employee has a reasonable concern about an imminent risk to the employee’s health or safety; and
 - (ii) even if the employee has a reasonable concern about an imminent risk to the employee’s health or safety, the employee must not unreasonably fail to comply with a direction by the employer to perform other available work, whether at the same workplace or another workplace, that is safe and appropriate for the employee to perform; and

Schedule 2 (continued)

- (iii) the parties must cooperate to ensure the dispute resolution procedure is carried out as quickly as is reasonably possible.

Schedule 3 Model election rules

section 35

Part 1 Definitions

1 Definitions

In these rules—

ballot box means a ballot box kept under section 15.

candidate, for an election, means a person—

- (a) who has nominated as a candidate for the office the election is about; and
- (a) whose nomination has been accepted under section 6(3); and
- (b) whose nomination has not been withdrawn.

eligible member means a person who was a financial member of the organisation 30 days before the starting time for nominations.

higher office means—

- (a) for the office of management committee member—any office other than the office of trustee; or
- (b) for the office of assistant secretary—the office of secretary, vice-president or president; or
- (c) for the office of secretary—the office of vice-president or president; or
- (d) for the office of vice-president—the office of president.

initialled by the manager of an election includes being marked with a facsimile of the manager's initials.

member means a member of the organisation.

return envelope see section 14(1)(b).

roll, for an election, means the roll of voters prepared for the election under section 10.

Schedule 3 (continued)

scrutineer means—

- (a) a candidate who acts personally as a scrutineer; or
- (b) a person appointed as a scrutineer for a candidate under section 21.

secretary means—

- (a) the person holding office as the organisation's secretary; or
- (b) another officer of the organisation, however described, who has the functions of the organisation's secretary.

trustee means the office of a person holding, whether as trustee or otherwise, property—

- (a) of the organisation; or
- (b) that the organisation has a beneficial interest in.

voter means a person—

- (a) who is an eligible member; and
- (b) whose name is on the roll under section 10.

voting material see section 14(1).

Part 2 Manager of election

2 Manager of election—functions and powers

- (1) The manager of an election¹⁰³—
 - (a) must not influence, or attempt to influence, the outcome of the election; and
 - (b) must conduct the election under these rules; and
 - (c) may take the action, and give the directions, the manager considers reasonably necessary to ensure that

103 See schedule 8 (Dictionary) for the meaning of *manager* of an election.

Schedule 3 (continued)

the processes under which the election is conducted are transparent; and

- (d) must ensure suitable arrangements are made with Australia Post for the return of ballot papers to a box or locked bag at a post office.
- (2) The manager of an election other than an electoral officer¹⁰⁴ may take the action, and give the directions, the manager considers reasonably necessary—
 - (a) to ensure no irregularities happen in the election; or
 - (b) to remedy a procedural defect that appears to the manager to exist about the election.
- (3) To ensure the integrity of an election, the address for return of ballot papers must not be the organisation's usual postal address.

Part 3 Pre-election procedures

3 Closing day and time for nominations

- (1) The manager of the election must fix the opening day and closing day for nominations for office.
- (2) The closing day must be at least 28 days after notice is given under section 5.
- (3) Nominations open at midday on the opening day and close at midday on the closing day.

¹⁰⁴ See the Act, section 485 (Action or directions by electoral officer) for the actions and directions an electoral officer may take or give.

Schedule 3 (continued)**4 Starting and finishing days of ballot**

- (1) If a ballot becomes necessary under section 8, the manager of the election must fix the start and finish days for the ballot to decide the result of the election.
- (2) The start day must not be before the closing day for nominations for the offices to be filled at the election.

5 Calling for nominations

- (1) The manager of the election must call for nominations for the offices to be filled by notice given to members in 1 of the following ways—
 - (a) by post to each member at the address recorded in the members register;
 - (b) if the organisation publishes a journal or newsletter that it gives to its members free of charge, by advertisement in the journal or newsletter;
 - (c) in a daily newspaper circulating in the area where the organisation's members live or work.
- (2) The notice must state—
 - (a) the opening day for nominations; and
 - (b) the closing day for nominations; and
 - (c) that nominations for office—
 - (i) open at midday on the opening day; and
 - (ii) close at midday on the closing day; and
 - (d) who may nominate as a candidate in the election; and
 - (e) that nominations for office must be written, signed by the nominee and given to the manager before nominations close; and
 - (f) the starting and finishing days for a ballot to decide the result of the election if a ballot becomes necessary under section 8; and

Schedule 3 (continued)

- (g) that only a person who was a financial member 30 days before the opening time for nominations may vote in the election; and
- (h) that the ballot will be decided by a first-past-the-post system of voting.

6 Nomination procedure

- (1) A nomination for office must be written, signed by the nominee and given to the manager of the election before nominations close.
- (2) A person may nominate for more than 1 office.¹⁰⁵
- (3) The manager must accept a nomination if—
 - (a) it complies with subsection (1); and
 - (b) the nominee is an eligible member.
- (4) A candidate may withdraw the candidate's nomination by written notice given to the manager no later than 7 days after nominations close.

7 What happens if a nomination is defective

- (1) The manager of the election must reject a nomination given to the manager of the election after nominations have closed.
- (2) If a nomination for an office is defective, other than because the nominee is not qualified to hold the office or because the nomination was made after the closing time, the manager must—
 - (a) reject it; and
 - (b) give the nominee notice of the defect; and
 - (c) if practicable, give the nominee an opportunity to remedy the defect.

¹⁰⁵ For what happens when a person nominates for more than 1 office, see sections 9 (Election without ballot) and 30 (What happens if multiple nominee elected).

Schedule 3 (continued)

- (3) If practicable, the notice must be given before nominations close.
- (4) Failure to give the notice does not invalidate the election.

8 When a ballot must be held

If there are more candidates for election to an office than the number to be elected, the manager must conduct a secret postal ballot under part 4.

9 Election without ballot

The manager of the election must declare a candidate elected to an office if—

- (a) nominations have closed; and
- (b) the candidate does not hold another office; and
- (c) the candidate has—
 - (i) not nominated for a higher office; or
 - (ii) nominated for a higher office and is not elected to the higher office; and
- (d) if the election is for president or secretary—the candidate is the only candidate; or
- (e) if the election is for another type of office—the number of candidates for the office is not more than the number of offices of the same type to be elected at the same time.

Schedule 3 (continued)

Part 4 Conducting ballots**Division 1 General****10 Roll—preparation**

- (1) A roll for a ballot must be prepared at the direction of the manager of the election.
- (2) The manager must ensure the roll—
 - (a) states—
 - (i) the name of each person who is an eligible member of the organisation in alphabetical order; and
 - (ii) each eligible member's address, opposite their name; and
 - (b) is completed when nominations for the election close.
- (3) The organisation must give the manager—
 - (a) a copy of its members register; and
 - (b) access to the organisation's records reasonably necessary for the manager to ensure the roll is accurate.

11 Roll—inspection

- (1) The manager of the election must make the roll for the election available for inspection—
 - (a) in the period that—
 - (i) starts on the day after the roll must be completed under section 10; and
 - (ii) ends 30 days after the result of the election is declared; and
 - (b) at the manager's office when it is open for business.
- (2) A candidate, member or a person authorised by the manager may inspect the roll, free of charge.

Schedule 3 (continued)

- (3) If, during the period stated in subsection (1), a candidate or member asks for a copy of the roll or a stated part of the roll, the manager must give the person the copy, free of charge.

12 When someone can claim a right to vote

- (1) Despite section 10(2), if an eligible member's name does not appear on the roll, the member may apply to the manager of the election to have the member's name included on the roll.¹⁰⁶
- (2) If the manager is satisfied the applicant is an eligible member, the manager must include the applicant's name on the roll.

Division 2 Voting material**13 Ballot papers**

- (1) A ballot paper for the election must¹⁰⁷—
- (a) have a watermark or other distinctive pattern that prevents it from being reproduced other than by the manager or a person authorised by the manager; and
 - (b) be of paper that will hide a vote marked on it from view when it is folded once; and
 - (c) be a different colour from the colour used for ballot papers at the 2 previous elections held for the organisation; and
 - (d) list the names of each candidate once only for each office the election is for, with the surname first, followed by the candidate's other names; and
 - (e) state how the voter may vote; and

106 The application must be written. See section 704 (Notices and applications to be written) of the Act.

107 See section 42 of this regulation (Ballot security) for other requirements for ballot papers.

Schedule 3 (continued)

- (f) state that the voter must fill in and sign the voting declaration or the vote will not be counted; and
 - (g) state that the voter must return the ballot paper to the manager so it is received on or before the finish day of the ballot.
- (2) The order of names on the ballot paper must be decided by lot.
 - (3) If 2 or more candidates have the same surname and first names, the candidates must be distinguished in an appropriate way.

Example—

The occupation of each candidate may be added to the ballot paper.

14 Distributing voting material

- (1) The manager of the election must post the following things (the *voting material*) to each voter—
 - (a) a ballot paper initialled by the manager;
 - (b) an unsealed reply paid envelope (a *return envelope*) addressed to the manager;
 - (c) a ballot envelope and a voting declaration;
 - (d) other material the manager considers appropriate for the ballot including, for example, directions or notes to help the eligible member to comply with these rules and cast a valid vote.
- (2) Voting material must be posted to each voter—
 - (a) in a sealed envelope to the voter's address on the roll; and
 - (b) as soon as practicable, but no earlier than 2 days before the starting day of the ballot.
- (3) The voting declaration must state 'I certify that I am the person whose name appears on this envelope and I have voted on the ballot paper enclosed.'
- (4) If a voter gives the manager a notice that the voter will be at an address other than the address stated on the roll when

Schedule 3 (continued)

voting material is to be given, the manager must post the material to the other address.

- (5) Before posting voting material to a voter, the manager must mark a ballot number for each voter on—
 - (a) the roll against the voter's name; and
 - (b) the declaration form.
- (5A) The manager must give each voter a different ballot number.
- (6) The ballot numbers must start with a number chosen by the manager.
- (7) A ballot paper or ballot envelope must not be marked in a way that could identify the voter.

15 Manager must keep a ballot box

The manager must get a ballot box and—

- (a) keep the box in a safe place; and
- (b) seal the box in a way that—
 - (i) allows voting material to be put in it until the ballot finishes; and
 - (ii) prevents voting material from being taken from it until votes for the ballot are to be counted.

16 Duplicate voting material

- (1) This section applies if voting material posted to a voter—
 - (a) has not been received by the voter; or
 - (b) has been lost or destroyed; or
 - (c) if the document is a ballot paper—has been spoiled.
- (2) The voter may apply to the manager of the election for a duplicate of the document.
- (3) The application must—
 - (a) be received by the manager on or before the finish day of the ballot; and

Schedule 3 (continued)

- (b) state the grounds on which it is made; and
 - (c) if practicable, be substantiated by evidence verifying or tending to verify the grounds; and
 - (d) state that the voter has not voted at the ballot; and
 - (e) if the document is a spoiled ballot paper—be accompanied by the ballot paper.
- (4) If the application complies with subsection (3), the manager must—
- (a) if the document is a spoiled ballot paper—
 - (i) mark ‘spoilt’ on the paper; and
 - (ii) initial the paper beside that marking and keep the paper; and
 - (iii) give a fresh ballot paper to the voter; or
 - (b) otherwise—give a duplicate of the document to the voter.

Division 3 Voting**17 How long ballot is open**

A ballot must remain open for—

- (a) at least 21 days; and
- (b) no longer than 49 days.

18 How to vote

A voter may vote only by completing the following steps—

- (a) completing a ballot paper by—
 - (i) writing a tick or cross in the square opposite the name or names of the number of candidates the voter may vote for under section 19; and

Schedule 3 (continued)

- (ii) complying with the instructions on the paper about how to vote;
- (b) putting the ballot paper in a ballot envelope;
- (c) sealing the ballot envelope;
- (d) filling in and signing the voting declaration for the ballot paper;
- (e) putting the voting declaration and the ballot envelope in the return envelope;
- (f) sealing the return envelope;
- (g) complying with any direction given under section 14(1)(d);¹⁰⁸
- (h) returning the return envelope to the manager of the election so that the envelope is received on or before the finish day for the ballot.

19 How many votes may be cast

A voter may vote for only the following number of candidates on a ballot paper—

- (a) for an election for president or secretary—1 candidate;
- (b) for an election for another type of office—the number of candidates that is not more than the number of offices of the same type to be elected at the same time.

Division 4 Counting and scrutiny of votes**20 How manager must deal with voting material**

- (1) The manager of the election must put all voting material returned to the manager in the ballot box until voting has ended.

¹⁰⁸ Section 14 (Distributing voting material)

Schedule 3 (continued)

- (2) If, after the finishing day for the election, the manager receives a return envelope apparently containing a ballot paper for the election, the manager must—
 - (a) keep the envelope sealed; and
 - (b) mark the envelope ‘Received by the manager after the finishing day for the ballot’; and
 - (c) keep the envelope in safe custody, but separately from return envelopes received before or on the finishing day.

21 Scrutineers—appointment

- (1) A candidate may—
 - (a) act personally as a scrutineer; or
 - (b) appoint another person (an *appointee*) as a scrutineer for the candidate.
- (2) An appointment must be in writing and signed by the candidate.
- (3) A candidate must notify the manager of the election of the name of the candidate’s appointee as soon as possible after the appointee is appointed.
- (4) The manager may refuse to allow an appointee to act as a scrutineer if—
 - (a) the manager asks to inspect the appointment as a scrutineer; and
 - (b) the appointee does not produce it.

22 Scrutineers’ rights

Subject to section 23, a scrutineer may be present when—

- (a) ballot papers or other voting material for a ballot are prepared and given to voters; and
- (b) voting material is received and put in safe custody under section 20; and
- (c) votes are counted.

Schedule 3 (continued)

23 Scrutineers—numbers attending

- (1) Each candidate may have only 1 scrutineer exercising a right under section 22 for each official present where the ballot is being conducted.
- (2) In subsection (1)—
official means—
 - (a) if the ballot is being conducted by the electoral commission—an electoral officer; or
 - (b) if the ballot is not being conducted by the electoral commission—
 - (i) the manager of the election; or
 - (ii) any other person appointed by the manager to exercise the manager's powers for the election.

24 Initial scrutiny of voting material

- (1) As soon as possible after the ballot finishes, the manager of the ballot must—
 - (a) seal the ballot box in a way that prevents voting material from being put in it; and
 - (b) take the ballot box to the place where votes are to be counted.
- (2) The manager must then—
 - (a) unseal the ballot box; and
 - (b) take out the return envelopes; and
 - (c) open each return envelope and take out the ballot envelope and the voting declaration; and
 - (d) examine the declaration and mark off the voter's name on the roll; and
 - (e) check the ballot number on the declaration against the ballot number marked against the voter's name on the roll; and
 - (f) ensure the declaration is signed.

Schedule 3 (continued)

- (3) After complying with subsection (2), the manager must put the ballot envelopes in a container and the declarations into another container if satisfied—
 - (a) each declaration is signed; and
 - (b) the ballot number on each declaration corresponds with the ballot number marked beside the voter's name on the roll.
- (4) However, the manager must not put a ballot envelope or declaration in the containers mentioned in subsection (3) if—
 - (a) the manager reasonably believes the voter to whom it was sent did not sign the declaration; or
 - (b) the person named on the declaration is not the person to whom it was sent.
- (5) Subsection (4) does not apply if the manager is satisfied the person who filled in and signed the declaration—
 - (a) is a voter; and
 - (b) has not previously voted in the ballot; and
 - (c) has a reasonable explanation for using someone else's ballot material.
- (6) The manager must keep ballot envelopes and declarations excluded under subsection (4) separate from other ballot envelopes and declarations.
- (7) A declaration is valid only if—
 - (a) it complies with subsection (3)(a) and (b); and
 - (b) subsection (4) does not apply.
- (8) A valid declaration must be accepted as valid, and an invalid declaration must be rejected, by the manager.
- (9) If a declaration is accepted as valid by the manager the manager must—
 - (a) note the acceptance of validity on the declaration; and
 - (b) record the correct ballot number on the roll against the name of the voter who signed the declaration.

Schedule 3 (continued)

- (10) After separating the ballot envelopes and declarations, the manager must, in the following order—
- (a) seal the container holding declarations;
 - (b) open the ballot envelopes not excluded under subsection (4) and take out the ballot papers;
 - (c) if a ballot envelope contains more than 1 ballot paper for each office the election is for—mark each of the ballot papers from the envelope ‘informal under section 25(2)(e)’;
 - (d) put all of the ballot papers in the ballot box.

25 Counting votes

- (1) To count votes the manager of the election must—
- (a) admit the formal votes and reject the informal votes; and
 - (b) count the formal votes, and record the number for each candidate; and
 - (c) count the informal votes.
- (2) A vote is informal only if—
- (a) the ballot paper is not initialled by the manager and the manager is not satisfied the paper is authentic; or
 - (b) the ballot paper is marked in a way that allows the voter to be identified; or
 - (c) the ballot paper is not marked in a way that makes it clear how the voter meant to vote; or
 - (d) the ballot paper does not comply with a direction given under section 14(1)(d);¹⁰⁹ or
 - (e) the ballot paper was taken from a ballot envelope that contained another ballot paper for the office the election is for.

¹⁰⁹ Section 14 (Distributing voting material)

Schedule 3 (continued)**26 Scrutineers' objections**

- (1) Before votes are counted, a scrutineer may advise the manager that the scrutineer considers an error has been made in conducting the ballot.
- (2) When votes are counted, a scrutineer may—
 - (a) object to a ballot paper being admitted as formal or rejected as informal by the manager of the election; or
 - (b) advise the manager of the election that the scrutineer considers an error has been made in conducting the ballot or counting votes.
- (3) If a scrutineer advises the manager under subsection (1) or (2)(b), the manager must—
 - (a) decide whether the error has been made; and
 - (b) if appropriate—direct action to correct or mitigate the error.
- (4) If a scrutineer objects under subsection (2)(a), the manager must—
 - (a) decide whether the ballot paper is to be admitted or rejected; and
 - (b) note the decision on the ballot paper and initial the note.

27 Direction by manager to leave count

The manager of the election may direct a person to leave the place where votes are being counted if the person—

- (a) does not have the right to be present at the count; or
- (b) interrupts the count, other than to exercise a scrutineer's right.

Schedule 3 (continued)

Division 5 Election result**28 How result is decided**

- (1) The method of deciding the result of a ballot is by a first-past-the post system.
- (2) If only 1 office of the same type is to be filled in an election, the candidate with the most formal votes is elected.
- (3) If more than 1 office of the same type is to be filled, that number of candidates corresponding with the number of offices to be filled who have the most formal votes are elected.
- (4) This section is subject to sections 29 and 30.

29 What happens if votes for 2 or more candidates are equal

- (1) If the manager can not decide which candidate is elected to an office because the votes cast for 2 or more candidates are equal, the manager of the election must decide which candidate is elected by drawing lots.
- (2) A decision under subsection (1) must be made in the presence of any scrutineer who wishes to attend.

30 What happens if multiple nominee elected

If a candidate is elected to an office, other than as a trustee, and the candidate is also elected to a higher office, the manager of the election may only declare the candidate elected to the higher office.

Schedule 4 Prescribed accounts

section 44

Part 1 Income and expenditure

Division 1 Income and expenditure account

1 Income and expenditure account

An income and expenditure account consisting of—

- (a) a statement of all the organisation's income and expenditure for the year; and
- (b) the particulars stated in—
 - (i) for income—sections 2 to 13; or
 - (ii) for expenditure—sections 14 to 32.

Division 2 Particulars of income

2 Entrance fees or membership contributions

The amount paid to the organisation as entrance fees or contributions for membership of the organisation.

3 Payments from a branch to an organisation

The amount received, or receivable, by the organisation from a branch of the organisation that keeps accounting records and accounts separate from the organisation's accounts and accounting records.

4 Payments from an organisation to a branch

The amount received, or receivable, by a branch that keeps accounting records and accounts separate from its

Schedule 4 (continued)

organisation's accounts and accounting records from the organisation.

5 Compulsory levies or voluntary contributions

If members of the organisation paid, or were liable to pay, a compulsory levy that the organisation raised, or made a voluntary contribution to the organisation for a particular purpose—

- (a) the purpose of the levy or contribution; and
- (b) the total paid by the organisation's members for the levy or contribution.

6 Donations or grants

The amount donated or granted to the organisation, other than voluntary contributions under section 5.

7 Interest

The amount paid to the organisation as interest.

8 Dividends

The amount paid to the organisation in dividends.

9 Rent

The amount—

- (a) paid to the organisation as rent; and
- (b) payable to the organisation as rent that the organisation considers is likely to be recovered.

10 Other investment income

The amount paid, or payable, to the organisation as income from investing or using its assets, other than interest, dividends or rent.

Schedule 4 (continued)**11 Surplus**

If the organisation's income was more than its expenditure, by how much.

12 Profit on sale or revaluation

If an asset of the organisation was sold or revalued and the outcome of the sale or revaluation was a profit to the organisation of more than \$1000, the amount of the profit.

13 Sundry income

An amount paid to the organisation as income that is not mentioned elsewhere in this division.

Division 3 Particulars of expenditure**14 Affiliation fees**

The amount the organisation incurred for fees and periodic contributions for its affiliation to—

- (a) a political party; or
- (b) a federation, congress, council or group of organisations; or
- (c) an international body having an interest in industrial matters.

15 Payments by organisation to branch for services

The amount paid, or payable, by the organisation to a branch of the organisation that keeps accounts and accounting records separate from the organisation's accounts and accounting records in return for a service rendered, or to be rendered, by the branch.

Schedule 4 (continued)

16 Payments by branch to organisation for services

The amount paid, or payable, by a branch that keeps accounts and accounting records separate from its organisation's accounts and accounting records to the organisation in return for a service rendered, or to be rendered, by the organisation.

17 Compulsory levies

The amount the organisation incurred for compulsory levies imposed on it.

18 Donations or grants

The amount the organisation donated or granted.

19 Officers' and employees' remuneration

The total amount the organisation incurred for its officers' and employees' remuneration.

20 Representatives' fees or allowances

The amount the organisation incurred for fees or allowances for its representatives to attend conferences or other meetings, other than fees or allowances included in the representative's remuneration.

21 Professional services

(1) The amount the organisation incurred for professional services.

(2) In this section—

professional service includes an audit and a legal service.

22 Administrative costs

Administrative costs the organisation incurred, other than administrative costs mentioned elsewhere in this division.

Schedule 4 (continued)

23 Interest on loans and asset management costs

The interest incurred on loans to the organisation and other costs incurred in controlling or managing its assets.

24 Rent

Rent paid or payable by the organisation.

25 Provision for depreciation

The amount the organisation set aside to provide for depreciation or amortisation on investments and fixed assets.

26 Penalties

The penalties imposed on the organisation under the Act.

27 Loss on sale or revaluation

If an asset of the organisation was sold or revalued and the outcome of the sale or revaluation was a loss to the organisation of more than \$1000, the amount of the loss.

28 Deficit

If the organisation's expenditure was more than its income, by how much.

29 Payments by organisation to branch other than for services

The amount paid or payable by the organisation to a branch of the organisation that keeps accounts and accounting records separate from the organisation's accounts and accounting records, if the amount paid or payable is not in return for a service rendered or to be rendered by the branch.

Schedule 4 (continued)

30 Payments by branch to organisation other than for services

The amount paid or payable by a branch that keeps accounts and accounting records separate from its organisation's accounts and accounting records to the organisation, if the amount paid or payable is not in return for a service rendered or to be rendered by the organisation.

31 Bad debts

The organisation's—

- (a) bad debts that were written off; and
- (b) provision for doubtful debts.

32 Sundry expenditure

An amount paid by the organisation that is not mentioned elsewhere in this division.

Part 2 Assets and liabilities**Division 1 Balance sheet****33 Balance sheet**

A balance sheet consisting of—

- (a) a statement of the organisation's assets and liabilities at the end of the year; and
- (b) the particulars stated in—
 - (i) for the organisation's assets at the end of the year—sections 35 to 45; or
 - (ii) for the organisation's liabilities at the end of the year—sections 46 to 52; and

Schedule 4 (continued)

- (c) if section 34 applies—the information or explanation under section 34(3).

34 Value of non-current assets must not be misleading

- (1) This section applies if—
 - (a) in working out the value of an organisation's non-current assets, the value of a non-current asset was calculated at more than its market value; and
 - (b) the organisation's assets and liabilities account does not adequately provide for writing down the asset's value.
- (2) An asset is calculated at more than market value if, having regard to the asset's value to the organisation as a going concern, the calculation is more than the amount that it would have been reasonable for the organisation to spend to acquire the asset as at the end of the financial year.
- (3) The account must include information, or an explanation, that prevents the account from being misleading because of the calculation at more than market value.

Division 2 Particulars of assets**35 Value of current assets**

- (1) The value of the organisation's current assets.
- (2) For current assets, any difference between the assets' current book value and the amount that is expected to be realised on current realisation of the assets.

36 Cash in hand

The amount of the organisation's cash in hand.

37 Cash at financial institutions

The amount of the organisation's cash at financial institutions.

Schedule 4 (continued)

38 Prepayments

The amount of the organisation's prepayments.

39 Accounts and loans receivable

The organisation's accounts, and loans, receivable.

40 Public investments

The book value of the organisation's public investments.

41 Non-public investments

The book value of the organisation's investments, other than public investments.

42 Non-current assets

The book value of each of the organisation's—

- (a) non-current assets, other than land; and
- (b) land.¹¹⁰

43 Investments from special accounts

If the organisation invested the whole or part of a special account in assets, the total book value of the assets.

44 Other account balances

The total of the balances of the organisation's accounts required to be operated under its rules, other than the general account or a special account.

¹¹⁰ Under the *Acts Interpretation Act 1954*, section 36, definition *land*, land includes any interest in land, including, for example, a lease.

Schedule 4 (continued)

45 General account balance

The balance of the general account.

Division 3 Particulars of liabilities**46 Current and non-current liabilities**

The organisation's current and non-current liabilities.

47 Rent payable

Rent payable by the organisation but not yet paid.

48 Accounts payable other than for rent

The organisation's accounts payable other than for rent.

49 Loans payable

The loans payable by the organisation.

50 Provision for long service leave entitlements

The amount the organisation has provided for its employees' and officers' long service leave entitlements.

51 Provision for annual leave entitlements

The amount the organisation has provided for its employees' and officers' annual leave entitlements.

52 Provision for superannuation or retirement benefits

The amount the organisation held to provide for its employees' and officers' superannuation or retirement benefits.

Schedule 4 (continued)

Part 3 Notes to accounts**53 Notes**

- (1) An organisation must include with accounts prepared under parts 1 and 2 notes to the accounts that explain the methods by which the accounts have been prepared.
- (2) The notes must include—
 - (a) significant policies adopted in the preparation of the accounts; and
 - (b) the method by which the book value of an asset or liability was determined.

54 Amounts to be included with notes

An organisation must include with the notes—

- (a) the amount of any difference between the book value of an organisation's non-current assets and the amount that is expected to be realised on current realisation of the asset; and
- (b) the total amount of the organisation's contingent liabilities that are able to be reliably estimated, other than a liability mentioned in part 2, division 3; and
- (c) the amount of the contingent liabilities that were—
 - (i) secured by the organisation's assets; and
 - (ii) unsecured.

Schedule 5 Matters for account certificates

section 45

Part 1 Accounting officer's certificates

1 Number of members

- (1) How many members the organisation had at the end of the year.
- (2) How many of the members were—
 - (a) financial; and
 - (b) not financial.
- (3) In subsection (2)—

financial means the member who has paid all subscriptions, dues, or other money for membership or membership renewal of the organisation.

2 Financial affairs

Whether the officer considers the accounts show a true and fair view of an organisation's financial affairs at the end of the year.

3 Members' payments

Whether the officer considers—

- (a) a record was kept of all amounts paid by, or collected from, the organisation's members; and
- (b) all amounts so paid or collected have been credited to a financial institution account to which the amounts must be credited under the organisation's rules.

Schedule 5 (continued)**4 Approval for expenditures**

Whether the officer considers each expenditure by the organisation, was approved under the organisation's rules before it was incurred.

5 Payments from special accounts

If the organisation kept a special account, whether the officer considers—

- (a) any payment was made from a special account of the organisation other than for the purpose for which the account was operated; and
- (b) if a payment was so made, it was approved under the organisation's rules.

6 Loans and financial benefits

Whether the officer considers all loans or other financial benefits the organisation gave to its employees or officers were allowed under the organisation's rules.

7 Members register

Whether the officer considers the organisation's members register was kept under the Act.

Part 2 Management committee certificates**8 Financial affairs**

Whether the management committee considers the accounts show a true and fair view of the organisation's financial affairs at the end of the year.

Schedule 5 (continued)

9 Organisation's solvency

- (1) Whether the committee considers the organisation was solvent during—
 - (a) the whole of the year; or
 - (b) only part of the year.
- (2) If the organisation was solvent for only part of the year, what part of the year.
- (3) In this section—

solvent means the organisation is able to pay its debts as and when they become due and payable.

10 Management committee meetings

Whether the committee considers the management committee's meetings were held under the organisation's rules.

11 Whether records have not been given under Act or rules

- (1) Whether a committee member knows if any of the organisation's records or rules, or copies of them, have not been given to the organisation's members as required by the Act, this regulation or the rules.
- (2) In this section—

record does not include a document containing information given to a member of the organisation under section 556¹¹¹ of the Act.

12 Audit report and accounts for the last financial year

Whether the audit report and relevant accounts for the organisation's financial year immediately before the year the accounts are about have been—

111 Section 556 (Member may apply for prescribed information) of the Act

Schedule 5 (continued)

- (a) presented to a presentation meeting of the organisation under section 565¹¹² of the Act; and
- (b) given to its members under section 566¹¹³ of the Act.

112 Section 565 (Obligation to present to general or committee meeting) of the Act

113 Section 566 (Obligation to publish audit report and accounts) of the Act

Schedule 6 Prescribed information for previous financial year—Act, section 556

section 47

1 Donations or grants to organisation

If a donation or grant of more than \$1000 was given to the organisation—

- (a) the amount of the donation or grant; and
- (b) if it was made for a stated purpose—the purpose.

2 Donations or grants by organisation

If a donation or grant totalling more than \$1000 was made by the organisation—

- (a) the amount of the donation or grant; and
- (b) its purpose; and
- (c) if it was not a donation or grant under section 431¹¹⁴ of the Act—the name and address of the person the donation or grant was made to.

3 Officer's remuneration

The remuneration paid to an officer of the organisation.

4 Profit or loss on sale or revalue

If an asset of the organisation was sold or revalued and the outcome of the sale or revaluation was a profit or loss to the organisation of more than \$1000—

- (a) a description of the asset; and

114 Section 431 (Rules must give conditions for loans, grants and donations) of the Act

Schedule 6 (continued)

- (b) if the asset was revalued—the reason for the revaluation; and
- (c) the amount of the profit or loss.

5 Loans by organisation

If the organisation made a loan of more than \$1000—

- (a) the amount of the loan; and
- (b) the purpose of the loan; and
- (c) the security given for the loan; and
- (d) if the loan was not a loan under section 431¹¹⁵ of the Act—
 - (i) the borrower's name and address; and
 - (ii) the repayment arrangements for the loan.

6 Loans to organisation

If the organisation received a loan of more than \$10000—

- (a) the amount of the loan; and
- (b) the purpose of the loan; and
- (c) the security given for the loan; and
- (d) the lender's name and address; and
- (e) the repayment arrangements for the loan.

7 Non-public investments

- (1) The amount the organisation invested during the year, other than in public investments.
- (2) If the organisation held an investment, other than a public investment, at the end of the year whose book value was then more than the prescribed amount—

115 Section 431 (Rules must give conditions for loans, grants and donations) of the Act

Schedule 6 (continued)

- (a) a description of the investment; and
 - (b) the book value of the investment at the end of the year; and
 - (c) if the organisation stated a market value for the investment at the end of the year in its accounts or accounting records for the year—the stated value.
- (3) In this section—
- prescribed amount* means the larger of—
- (a) \$1000; or
 - (b) 20% of the total book value of the organisation's investments other than public investments.

8 Contingent liabilities

If the organisation had a contingent liability at the end of the year that had then been calculated by the end of the year and was more than 5% of the net value of the organisation's assets—

- (a) the amount of the liability; and
- (b) a description of the liability.

Schedule 7 Percentage of gross amount payable to model or performer

section 17B

Column 1 Work	Column 2 Percentage of gross amount payable
1 All work, other than work mentioned in item 2.....	10%
2 For work involving live theatre, a live musical or a live variety performance but not involving film, television or electronic media, for any period after 5 weeks	5%

Schedule 8 Dictionary

section 3

constituent member means a member of an amalgamated organisation who is part of the constituent part seeking to withdraw from the organisation.

formal, for a ballot, means valid.

informal, for a ballot, means invalid.

management committee of a constituent part means a management committee elected entirely or substantially by the constituent members.

manager of an election or ballot means—

- (a) the electoral officer conducting the election or ballot; or
- (b) if an exemption has been given under section 597¹¹⁶ of the Act—the returning officer appointed under section 599¹¹⁷ of the Act to conduct the election.

president of an organisation means—

- (a) its president; or
- (b) its chief executive; or
- (c) another officer, however called, who has the functions of its president or chief executive.

representative constituent member see section 65(6).

secretary of an organisation means—

- (a) the person who holds the office of secretary in the organisation; or
- (b) if no-one holds the office of secretary of the organisation—the person authorised by the organisation under its rules to sign documents for the organisation.

116 Section 597 (Hearing application) of the Act

117 Section 599 (Obligation to appoint returning officer) of the Act

Schedule 8 (continued)

special account of an organisation means an account the organisation operated for—

- (a) a compulsory levy raised by the organisation; or
- (b) voluntary contributions collected from its members.

voter, for part 13, means a person whose name is on the roll under section 110.¹¹⁸

118 Section 110 (Roll—who may vote)

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). Accordingly, this reprint includes all amendments that commenced operation on or before 29 July 2005. Future amendments of the Industrial Relations Regulation 2000 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

6 List of legislation

Industrial Relations Regulation 2000 SL No. 287

made by the Governor in Council on 16 November 2000

notfd gaz 17 November 2000 pp 1093–5

ss 1–2 commenced on date of notification

remaining provisions commenced 1 December 2000 (see s 2)

exp 1 September 2011 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

Industrial Relations Amendment Regulation (No. 1) 2001 SL No. 297

notfd gaz 21 December 2001 pp 1482–8

ss 5–7 commenced 1 May 2002 (see s 2)

remaining provisions commenced on date of notification

Private Employment Agents Regulation 2002 SL No. 88 pts 1, 4

notfd gaz 26 April 2002 pp 1540–3

commenced on date of notification

Industrial Relations Amendment Regulation (No. 1) 2003 SL No. 8

notfd gaz 31 January 2003 pp 318–19

commenced on date of notification

Industrial Relations Amendment Regulation (No. 2) 2003 SL No. 195

notfd gaz 22 August 2003 pp 1372–5

commenced on date of notification

Industrial Relations Amendment Regulation (No. 1) 2004 SL No. 160

notfd gaz 20 August 2004 pp 1238–9

commenced on date of notification

Industrial Relations Amendment Regulation (No. 1) 2005 SL No. 169

notfd gaz 29 July 2005 pp 1146–8

commenced on date of notification

7 List of annotations

Definitions

s 3 amd 2002 SL No. 88 s 5

Prescribed amount—Act, ss 72 and 276

s 4 amd 2001 SL No. 297 s 4; 2003 SL No. 8 s 3; 2003 SL No. 195 s 3; 2004 SL No. 160 s 3; 2005 SL No. 169 s 3

Agreement for certification to be accompanied by affidavit—Act, s 156

s 9 amd 2001 SL No. 297 s 5

Matters to be included in QWA—Act, s 193

s 12 amd 2001 SL No. 297 s 6

Filing requirements—Act, s 200

s 13 amd 2001 SL No. 297 s 7

PART 7A—FEES CHARGED BY PRIVATE EMPLOYMENT AGENTS

pt 7A (ss 17A–17C) ins 2002 SL No. 88 s 6

Management committee must report insolvency to members

s 49 amd 2001 SL No. 297 s 8

Withdrawal ballot exemption—recognising federal ballot

s 68 amd 2001 SL No. 297 s 9

Withdrawal ballot exemption—recognising federal ballot

s 90 amd 2001 SL No. 297 s 10

Postal ballots—distributing voting material

s 101 amd 2001 SL No. 297 s 11

SCHEDULE 3—MODEL ELECTION RULES

Distributing voting material

s 14 amd 2001 SL No. 297 s 12

SCHEDULE 7—PERCENTAGE OF GROSS AMOUNT PAYABLE TO MODEL OR PERFORMER

ins 2002 SL No. 88 s 8

SCHEDULE 8—DICTIONARY

(prev sch 7) renum 2002 SL No. 88 s 7