



Queensland

# **Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

**Act No. 7 of 2012**





Queensland

# Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	8
2	Commencement . . . . .	8
<b>Part 2</b>	<b>Amendment of Industrial Relations Act 1999</b>	
3	Act amended . . . . .	8
4	Amendment of s 3 (Principal object of this Act) . . . . .	8
5	Amendment of s 104 (Meaning of engaging in conduct for a prohibited reason for ch 4) . . . . .	9
6	Amendment of s 144 (What is to be done when an agreement is proposed) . . . . .	9
7	Insertion of new s 147A . . . . .	9
	147A Employer may ask employees to approve proposed agreement being negotiated with employee organisation . . . . .	9
8	Amendment of s 149 (Arbitration if conciliation unsuccessful) . . . . .	11
9	Amendment of s 156 (Certifying an agreement) . . . . .	12
10	Amendment of s 174 (Protected industrial action) . . . . .	13
11	Replacement of ss 175–177 . . . . .	13
	175 Requirements for industrial action in response to industrial action by another party . . . . .	13
	176 Requirements for other industrial action by an employee organisation or employees . . . . .	14
	177 Requirements for other industrial action by an employer . . . . .	16
	177A Provision about notice of industrial action . . . . .	16
12	Insertion of new ch 6, div 6A . . . . .	16
	Division 6A Termination of protected industrial action by Minister . . . . .	

Contents

	181A	Definitions for div 6A. . . . .	17
	181B	Termination of industrial action by Ministerial declaration	17
	181C	Informing commission and parties of termination declaration . . . . .	18
	181D	Minister may give directions to reduce or remove threat, damage or danger . . . . .	18
	181E	Conciliation of matter during post-industrial action negotiation period. . . . .	19
	181F	Determination of matter by commission after post-industrial action negotiation period. . . . .	20
13		Amendment of s 182 (Penalty provisions) . . . . .	20
14		Amendment of s 183 (Penalties for contravening penalty provisions)	20
15		Insertion of new ss 186 and 187 . . . . .	21
	186	Industrial action organised, or engaged in, in good faith on basis of protected action ballot . . . . .	21
	187	Validity of protected action ballot etc. not affected by technical breach . . . . .	22
16		Amendment of s 285 (Conducting a secret ballot) . . . . .	22
17		Amendment of s 320 (Basis of decisions of the commission and magistrates) . . . . .	22
18		Insertion of new ch 8, pt 7 . . . . .	23
	Part 7	Other matters	
	339AA	Government briefing about State's financial position etc.	23
19		Insertion of new s 664A . . . . .	23
	664A	Interference with protected action ballot or secret ballot conducted by commission etc. . . . .	23
20		Insertion of new ch 20, pt 13 . . . . .	25
	Part 13	Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012	
	780	Definitions for pt 13. . . . .	26
	781	Application of amended s 149(5) . . . . .	26
	782	Application of provisions about protected action ballots	26
	783	Application of new ch 6, div 6A (Termination of protected industrial action by Minister). . . . .	27
	784	Transitional regulation-making power. . . . .	27
	785	Amendment of regulation . . . . .	28
21		Insertion of new sch 4 . . . . .	28
	Schedule 4	Provisions for protected action ballots	

	Part 1	Preliminary	
	1	Purpose of sch 4 . . . . .	28
	2	Definition for sch 4 . . . . .	28
	Part 2	Protected action ballot orders	
	3	Application for protected action ballot order . . . . .	29
	4	When application may be made . . . . .	30
	5	Notice of application . . . . .	30
	6	When application must be decided . . . . .	30
	7	Dealing with multiple applications together . . . . .	30
	8	Making of protected action ballot order by commission . . . . .	31
	9	Notice of protected action ballot order . . . . .	32
	10	Protected action ballot order may require 2 or more ballots to be held together . . . . .	32
	11	Variation of protected action ballot order . . . . .	33
	12	Revocation of protected action ballot order . . . . .	33
	Part 3	Conduct of protected action ballot	
	13	Requirements for conduct of protected action ballot . . . . .	34
	14	Voting must be by post . . . . .	34
	15	Timetable for protected action ballot . . . . .	34
	16	Compiling roll of voters . . . . .	34
	17	Who is eligible to be included on the roll of voters . . . . .	35
	18	Variation of roll of voters . . . . .	35
	19	Protected action ballot papers . . . . .	37
	20	Who may vote in a protected action ballot . . . . .	37
	21	Scrutineers . . . . .	37
	22	Results of protected action ballot . . . . .	37
	23	Report about conduct of protected action ballot . . . . .	38
	Part 4	Other provisions	
	24	Costs of protected action ballot . . . . .	38
	25	Records . . . . .	38
22		Amendment of sch 5 (Dictionary) . . . . .	39
<b>Part 3</b>		<b>Amendment of Industrial Relations Regulation 2011</b>	
23		Regulation amended . . . . .	39
24		Insertion of new ss 10A–10H . . . . .	40
	10A	Notice of protected action ballot order . . . . .	40

Contents

10B	Conduct of protected action ballot—information that may accompany ballot paper . . . . .	41
10C	Conduct of protected action ballot—compilation of roll of voters . . . . .	41
10D	Conduct of protected action ballot—issue of ballot papers . . . . .	42
10E	Conduct of protected action ballot—issue of replacement ballot papers . . . . .	43
10F	Conduct of protected action ballot—counting of votes by ECQ . . . . .	43
10G	Conduct of protected action ballot—scrutiny of ballot papers by scrutineers . . . . .	44
10H	Scrutineers for protected action ballot . . . . .	45
<b>Part 4</b>	<b>Amendment of Public Service Act 2008</b>	
25	Act amended . . . . .	46
26	Amendment of s 9 (Public service employees) . . . . .	47
26A	Amendment of s 45 (Commissioners) . . . . .	47
27	Amendment of s 77 (Staff members of the commission) . . . . .	47
28	Amendment of s 78 (Staff generally subject to direction by commission chief executive) . . . . .	47
29	Amendment of ch 3, pt 5, hdg (Appeals officer) . . . . .	47
30	Insertion of new s 88AA . . . . .	48
	88AA Definition for pt 5 . . . . .	48
31	Replacement of s 88A (Appeals officer) . . . . .	48
	88A Appeals officers . . . . .	48
32	Omission of s 88B (Acting as appeals officer) . . . . .	49
33	Replacement of s 88C (Appeals officer's functions) . . . . .	49
	88C Appeals officer's function . . . . .	49
34	Amendment, relocation and renumbering of s 88D (Report on performance of functions) . . . . .	49
35	Insertion of new s 88D . . . . .	50
	88D Dealing with matters as appeals officer and member of the IRC . . . . .	50
36	Amendment of s 88E (Staff members to help appeals officer) . . . . .	50
37	Omission of s 88F (Delegation) . . . . .	50
38	Replacement of s 88G (Duty of persons performing appeal functions) . . . . .	51
	88G Duty of persons performing appeal function . . . . .	51
39	Amendment of s 112 (Acting senior executives) . . . . .	51

40	Amendment of s 193, hdg (Appeals to appeals officer) . . . . .	51
41	Insertion of new ch 7, pt 1, div 1A . . . . .	51
	Division 1A Appeals heard and decided by appeals officers	
	196A Appeal heard and decided by appeals officer . . . . .	51
42	Amendment of s 197 (Starting an appeal) . . . . .	52
43	Amendment of s 198 (Notice by appeals officer of appeal) . . . . .	52
44	Amendment of s 201 (Appeal is by way of review) . . . . .	52
45	Amendment of s 204 (Representation of parties) . . . . .	53
46	Amendment of s 206 (Withdrawing an appeal) . . . . .	53
47	Amendment of s 208 (Decision on appeal) . . . . .	53
48	Amendment of s 210 (Decision on appeal is binding on parties) .	53
49	Amendment of s 212 (Public service employee's entitlements for attending appeal as part of duties) . . . . .	54
50	Amendment of s 213 (Entitlement of non-public service employees)	54
51	Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal) . . . . .	54
51A	Amendment of s 214A (Protection of appeals officials from liability)	54
52	Amendment of s 215 (Jurisdiction of IRC for industrial matters) .	55
53	Insertion of new s 218B . . . . .	55
	218B Commission chief executive's functions—appeals . . .	55
54	Renumbering of ch 9, pt 6, hdg (Transitional provision for Public Interest Disclosure Act 2010) . . . . .	55
55	Renumbering of s 264 (Amendment of regulation by Public Interest Disclosure Act 2010 does not affect powers of Governor in Council)	55
56	Insertion of new ch 9, pt 9 . . . . .	56
	Part 9 Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012	
	281 Definitions for pt 9. . . . .	56
	282 Appointment of former appeals officer and former delegate ends at commencement . . . . .	57
	283 Appeals started after commencement . . . . .	57
	284 Appeals started before commencement. . . . .	57
57	Amendment of sch 4 (Dictionary) . . . . .	58
<b>Part 5</b>	<b>Minor and consequential amendments</b>	
58	Acts amended . . . . .	58
<b>Schedule</b>	<b>Minor and consequential amendments</b> . . . . .	59

Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act  
2012

Contents

---

Industrial Relations Act 1999 . . . . .	59
Public Service Act 2008 . . . . .	59





Queensland

## **Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

**Act No. 7 of 2012**

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**An Act to amend the Industrial Relations Act 1999, the Industrial Relations  
Regulation 2011 and the Public Service Act 2008 for particular purposes**

**[Assented to 12 June 2012]**

## **The Parliament of Queensland enacts—**

# **Part 1 Preliminary**

## **1 Short title**

This Act may be cited as the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012*.

## **2 Commencement**

Parts 4 and 5 and the schedule commence on 1 July 2012.

# **Part 2 Amendment of Industrial Relations Act 1999**

## **3 Act amended**

This part amends the *Industrial Relations Act 1999*.

## **4 Amendment of s 3 (Principal object of this Act)**

Section 3—

*insert—*

‘(p) ensuring that, when wages and employment conditions are determined by arbitration, the following are taken into account—

- (i) for a matter involving the public sector—the financial position of the State and the relevant public sector entity, and the State’s fiscal strategy;

- (ii) for another matter—the employer’s financial position.’.

**5 Amendment of s 104 (Meaning of *engaging in* conduct for a *prohibited reason* for ch 4)**

Section 104(1)(g), from ‘in, a’—

*omit, insert—*

‘in—

- (i) a protected action ballot; or  
(ii) a secret ballot ordered by an industrial body under an industrial law; or’.

**6 Amendment of s 144 (What is to be done when an agreement is proposed)**

Section 144—

*insert—*

- ‘(4A) Subsections (2)(c) and (3) do not apply to an agreement proposed to be made with employees under section 147A.’.

**7 Insertion of new s 147A**

After section 147—

*insert—*

**‘147A Employer may ask employees to approve proposed agreement being negotiated with employee organisation**

- ‘(1) This section applies if—
- (a) the parties to a proposed agreement are an employer and 1 or more employee organisations; and
- (b) the agreement is not a project agreement.
- ‘(2) The employer may request the employees who will be bound by the proposed agreement to approve it.

- ‘(3) The request must not be made until after the peace obligation period has ended.
- ‘(4) In making the request, the employer must comply with section 144(2)(a) and (b).
- ‘(5) If a valid majority of the employees approve the proposed agreement—
  - (a) the employer may apply to the commission for certification of the agreement under division 2; and
  - (b) the agreement is taken to be made by—
    - (i) the employer; and
    - (ii) the employees at the time the agreement is made.

*Note—*

See section 142(b)(ii).

- ‘(6) For section 156, if—
  - (a) a step was taken by the employer, in negotiating the proposed agreement with a relevant employee organisation, to comply with a requirement under this Act; and
  - (b) the employer complied with the requirement as it applied to that proposed agreement;

the employer is taken to have complied with the requirement as it applies to the agreement made by the employer with the employees.

*Example—*

For paragraph (a), the step taken was that the employer advised a relevant employee organisation, under section 143(2), of the employer’s intention to begin negotiations for the proposed agreement.

For section 156, the employer is taken to have given the notice under section 143(2) to the employees.

- ‘(6A) If the commission is satisfied a valid majority of the employees approved the agreement, section 156(1)(c) does not apply to the extent it requires the commission to be satisfied the agreement is signed by or for all the parties.

- 
- ‘(7) Subsection (5) does not prevent a relevant employee organisation being bound by the agreement under section 166(2).
- ‘(8) If the commission has jurisdiction to arbitrate the matter under section 149, this section stops applying and anything being done under this section ends.
- ‘(9) Making a request under subsection (2) does not, of itself, constitute a failure to negotiate in good faith as required under section 146.
- ‘(10) In this section—
- peace obligation period* see section 147.
- relevant employee organisation* means an employee organisation mentioned in subsection (1).’.

## **8 Amendment of s 149 (Arbitration if conciliation unsuccessful)**

- (1) Section 149(5)(c)(ii)—
- omit, insert—*
- ‘(ii) either—
- (A) for a matter involving a public sector entity—the State’s financial position and fiscal strategy, and the financial position of the public sector entity; or
- (B) for any other matter—the employer’s financial position;
- and the likely effects of the commission’s determination on those things; and
- (iii) the likely effects of the commission’s determination on the economy and the community;’.
- (2) Section 149(7), ‘(5).’—
- omit, insert—*

‘(5) and, for each thing, must—

- (a) set out the commission’s findings on material questions of fact; and
- (b) refer to the evidence or other material on which those findings were based.

*Note—*

See also the *Acts Interpretation Act 1954*, section 27B.’.

(3) Section 149—

*insert—*

‘(11) In this section—

***public sector entity—***

- (a) includes an entity that is—
  - (i) a department; or
  - (ii) a public service office; or
  - (iii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or
  - (iv) a part of an entity mentioned in subparagraph (i), (ii) or (iii); but
- (b) does not include—
  - (i) a local government; or
  - (ii) a local government owned corporation, or a subsidiary of a local government owned corporation, under the *Local Government Act 2009*; or
  - (iii) a parents and citizens association formed under the *Education (General Provisions) Act 2006*.’.

## **9 Amendment of s 156 (Certifying an agreement)**

Section 156(1)(a), after the examples—

*insert—*

*Note—*

For an agreement made with employees under section 147A—see also section 147A(6).'

## **10 Amendment of s 174 (Protected industrial action)**

Section 174—

*insert—*

‘(3A) Also, subsection (2) applies to industrial action only if the requirements stated in the following provision are complied with—

- (a) if the action is in response to, and is taken after the start of, industrial action by another negotiating party in relation to a proposed agreement—section 175;
- (b) if the action is organised, or engaged in, by an employee organisation or employees and paragraph (a) does not apply—section 176;
- (c) if the action is organised, or engaged in, by an employer and paragraph (a) does not apply—section 177.’.

## **11 Replacement of ss 175–177**

Sections 175 to 177—

*omit, insert—*

### **‘175 Requirements for industrial action in response to industrial action by another party**

- ‘(1) This section applies to industrial action in response to, and taken after the start of, industrial action by another negotiating party in relation to a proposed agreement.
- ‘(2) The person intending to take the action must give all of the negotiating parties written notice of the intended action.

*Note—*

See also section 177A in relation to the notice required to be given under this subsection.

- ‘(3) However, if the person is an employer who is negotiating an agreement with employees, the employer may take other reasonable steps to notify the employees of the intended action instead of giving a written notice.

**‘176 Requirements for other industrial action by an employee organisation or employees**

- ‘(1) This section applies to industrial action that is organised, or engaged in, by an employee organisation or by employees, other than industrial action to which section 175 applies.
- ‘(2) The industrial action must be authorised by a ballot conducted under schedule 4 (a *protected action ballot*).
- ‘(3) Industrial action is authorised by a protected action ballot if—
- (a) a protected action ballot order has been made by the commission in relation to the proposed action; and
  - (b) the action was the subject of the protected action ballot; and
  - (c) at least 50% of the employees on the roll of voters for the ballot voted; and
  - (d) more than 50% of the valid votes cast approved the industrial action; and
  - (e) the industrial action starts—
    - (i) during the 30-day period starting on the day the results of the ballot are declared; or
    - (ii) if the commission has extended the period under subsection (7)—during the extended period.

*Note—*

See also sections 186 and 187 in relation to the authorisation of industrial action by a protected action ballot if—

- the action is later found not to have been authorised by the ballot; or
- there is a technical breach relating to the protected action ballot order.



‘(4) However, the industrial action must not start before the peace obligation period, within the meaning of section 147, has ended.

‘(5) The person intending to take the industrial action must give written notice of the intended action to all of the negotiating parties.

*Note—*

See also section 177A in relation to the notice required to be given under this subsection.

‘(6) For subsection (5)—

(a) the written notice must not be given until the results of the protected action ballot have been declared; and

(b) the period of the notice given must be at least—

(i) 3 working days; or

(ii) if the protected action ballot order states a longer period of notice for the purpose of this subsection—the stated period.

*Note—*

Under schedule 4, section 8(5) the stated period must not be more than 7 working days.

‘(7) The commission may extend the 30-day period mentioned in subsection (3)(e)(i) by not more than 30 days if—

(a) an applicant for the protected action ballot order applies to the commission for the period to be extended; and

(b) the period has not previously been extended.

‘(8) Subsection (9) applies if—

(a) the nature of the proposed industrial action stated in the question put to the employees in the protected action ballot included periods of industrial action of a stated duration; and

(b) the question did not state that consecutive periods of the industrial action may be organised or engaged in.

- ‘(9) For subsection (3)(b), only the first period in a series of consecutive periods of the industrial action is taken to be the subject of the protected action ballot.

### **‘177 Requirements for other industrial action by an employer**

- ‘(1) This section applies to industrial action that is organised, or engaged in, by an employer, other than industrial action to which section 175 applies.
- ‘(2) The employer must give all of the negotiating parties at least 3 working days written notice of the intended action.

*Note—*

See also section 177A in relation to the notice required to be given under this subsection.

- ‘(3) However, if the employer is negotiating an agreement with employees, the employer may take other reasonable steps to notify the employees of the intended action instead of giving a written notice.

### **‘177A Provision about notice of industrial action**

- ‘(1) This section applies to a notice required to be given under section 175(2), 176(5) or 177(2).
- ‘(2) The notice must state the nature of the intended action and the day it will start.
- ‘(3) The notice may be given before the end of the peace obligation period if the intended action does not start before the end of that period.
- ‘(4) In this section—  
*peace obligation period* see section 147(2).’.

## **12 Insertion of new ch 6, div 6A**

Chapter 6—

*insert—*



**‘181C Informing commission and parties of termination declaration**

- ‘(1) This section applies if a termination declaration is made.
- ‘(2) The Minister must inform the commission of the making of the termination declaration.
- ‘(3) The Minister must take all reasonable steps to ensure the parties to the proposed agreement are made aware of—
  - (a) the making of the termination declaration; and
  - (b) the effect of section 181F(2).

**‘181D Minister may give directions to reduce or remove threat, damage or danger**

- ‘(1) If a termination declaration has taken effect in relation to a proposed agreement, the Minister may give written directions requiring any of the following persons to take, or not take, stated action—
  - (a) a stated employee who will be covered by the agreement;
  - (b) an employee organisation that is a party to the proposed agreement;
  - (c) the employer who is a party to the proposed agreement.
- ‘(2) However, the Minister may only give a direction under subsection (1) if the Minister is satisfied the direction is reasonably directed to removing or reducing the threat, damage or danger mentioned in section 181B(1)(b).
- ‘(3) A person to whom a direction under subsection (1) applies must comply with it.

*Note—*

See division 7 for penalty provisions applicable to contraventions of this subsection.

- ‘(4) The Minister must inform the commission of the making of a direction under subsection (1).

---

**‘181E Conciliation of matter during post-industrial action negotiation period**

- ‘(1) This section applies if a termination declaration has taken effect in relation to a proposed agreement.
- ‘(2) During the post-industrial action negotiation period, to help the parties reach agreement the commission has the power to conciliate the matter as if section 148 applied.
- ‘(3) However, during the post-industrial action negotiation period—
  - (a) the commission must not make any order that is inconsistent with the termination declaration or a direction given by the Minister under section 181D; and
  - (b) any industrial action organised, or engaged in, is not protected industrial action for section 174.
- ‘(4) The *post-industrial action negotiation period* is the period—
  - (a) starting on the day the termination declaration is made; and
  - (b) ending—
    - (i) 21 days after the day the termination declaration is made; or
    - (ii) if the commission extends the post-industrial action negotiation period under subsection (5)—42 days after the day the termination declaration is made.
- ‘(5) The commission must extend the post-industrial action negotiation period if—
  - (a) all of the parties to the proposed agreement jointly apply to the commission for the extension within 21 days after the day the termination declaration is made; and
  - (b) the parties have not settled all of the matters that were at issue during negotiations for the proposed agreement.

**‘181F Determination of matter by commission after post-industrial action negotiation period**

- ‘(1) This section applies if—
- (a) the post-industrial action negotiation period has ended; and
  - (b) the matters that were at issue during negotiations for the proposed agreement have not been settled.
- ‘(2) The commission must determine the matter by arbitration as quickly as possible.
- ‘(3) For subsection (2), section 149(2) to (11) is taken to apply.
- ‘(4) For sections 150, 181, 341, 342 and 719, a determination under this section is taken to be a determination under section 149.’.

**13 Amendment of s 182 (Penalty provisions)**

- (1) Section 182—
- insert—*
- ‘(ca) section 181D(3);
  - (e) schedule 4, section 9(4).’.
- (2) Section 182(ca) to (e)—
- renumber* as section 182(d) to (f).

**14 Amendment of s 183 (Penalties for contravening penalty provisions)**

- Section 183—
- insert—*
- ‘(6A) An application for an order for a contravention of section 181D(3) may be made by—
- (a) the Minister within the meaning of section 181A(1); or
  - (b) a party to the proposed agreement to which the termination declaration relates; or

- (c) another person prescribed under a regulation.
- ‘(7A) An application for an order for a contravention of schedule 4, section 9(4) may be made by—
- (a) an employee who will be covered by the proposed agreement concerned; or
  - (b) if an employee organisation was an applicant for the protected action ballot order concerned—the employee organisation; or
  - (c) another person prescribed under a regulation.’

## **15 Insertion of new ss 186 and 187**

Chapter 6, division 8—

*insert—*

### **‘186 Industrial action organised, or engaged in, in good faith on basis of protected action ballot**

- ‘(1) This section applies if—
- (a) the results of a protected action ballot declared by the ECQ under schedule 4 purportedly authorise particular industrial action; and
  - (b) a protected person, within the meaning of section 174, organises, or engages in, the industrial action acting in good faith on the basis of the declared results; and
  - (c) either—
    - (i) it later becomes clear the industrial action was not authorised by the ballot; or
    - (ii) the decision to make the protected action ballot order is set aside on appeal after the industrial action is organised or engaged in.
- ‘(2) For section 176(2), the industrial action is taken to be authorised by the protected action ballot.

**‘187 Validity of protected action ballot etc. not affected by technical breach**

‘A technical breach of a provision in schedule 4 does not affect the validity of any of the following—

- (a) a protected action ballot order;
- (b) an order, direction or decision of the commission in relation to a protected action ballot order or a protected action ballot;
- (c) a direction or decision of the ECQ in relation to a protected action ballot order or a protected action ballot;
- (d) a protected action ballot, including, for example, the conduct of the ballot and the declaration of the results of the ballot.’.

**16 Amendment of s 285 (Conducting a secret ballot)**

- (1) Section 285(1)—

*insert—*

*‘Note—*

See also section 664A in relation to interference with a secret ballot conducted under this section.’.

- (2) Section 285(5) and (8)—

*omit.*

**17 Amendment of s 320 (Basis of decisions of the commission and magistrates)**

- (1) Section 320(5), after ‘making a decision,’—

*insert—*

‘other than a decision made under section 149.’.

- (2) Section 320(5)—

*insert—*



*Note—*

For a decision made under section 149, section 149(5)(c) provides for the matters the commission must consider in relation to the public interest.’.

## **18 Insertion of new ch 8, pt 7**

Chapter 8—

*insert—*

### **‘Part 7 Other matters**

#### **‘339AA Government briefing about State’s financial position etc.**

- ‘(1) The treasury chief executive may, at any time, give the members of the commission a briefing about the State’s financial position and fiscal strategy, and related matters.

*Note—*

The briefing is for information purposes only.

- ‘(2) The briefing must be given in an open hearing or otherwise made available to the public.
- ‘(3) In this section—

*treasury chief executive* means the chief executive of the department in which the *Duties Act 2001* is administered.’.

## **19 Insertion of new s 664A**

After section 664—

*insert—*

#### **‘664A Interference with protected action ballot or secret ballot conducted by commission etc.**

- ‘(1) A person must not—
- (a) resist or obstruct a following person performing a duty imposed, or an action directed or authorised to be done, for an employee ballot—

- (i) a person acting under the direction or authority of the balloting agent for the ballot;
- (ii) for a secret ballot conducted under section 285—the registrar or a public service officer; or
- (b) threaten or intimidate an employee entitled to vote in a protected action ballot so that the employee would not vote or would vote in a particular way; or
- (c) at or near the place where a ballot is being conducted under section 285—
  - (i) threaten or intimidate, or obstruct the free passage of, an employee going to or attending at the place to vote at the ballot; or
  - (ii) threaten or intimidate an employee so that the employee would not vote or would vote in a particular way; or
- (d) obstruct an employee or another person in the performance of an action directed or authorised to be done for an employee ballot; or
- (e) by a threat or intimidation, prevent an employee or another person from performing an action directed or authorised to be done for an employee ballot; or
- (f) vote in an employee ballot unless the person—
  - (i) is entitled to vote; and
  - (ii) has received a ballot paper from the balloting agent for the ballot; or
- (g) vote in an employee ballot in someone else’s name; or
- (h) if the person is entitled to vote in an employee ballot—mark a ballot paper relating to the ballot, other than a ballot paper received by the person from the balloting agent for the ballot.

Maximum penalty—40 penalty units.

- ‘(2) A person who is performing functions or exercising powers under this Act for a protected action ballot must not show

another person, or allow another person to have access to, a ballot paper used in the ballot, except in the course of performing those functions or exercising those powers.

Maximum penalty—40 penalty units.

- ‘(3) A person must not contravene any of the following—
- (a) a protected action ballot order;
  - (b) an order made by the commission in relation to a protected action ballot order or a protected action ballot;
  - (c) a direction given by the commission, or the ECQ, in relation to a protected action ballot order or a protected action ballot.

Maximum penalty—40 penalty units.

- ‘(4) Subsection (3) does not apply to the ECQ.

- ‘(5) In this section—

***balloting agent***, for an employee ballot, means—

- (a) for a protected action ballot—the ECQ; or
- (b) for a secret ballot conducted under section 285—the registrar.

***employee ballot*** means—

- (a) a protected action ballot; or
- (b) a secret ballot conducted under section 285.

***prevent*** includes attempt to prevent.

***resist or obstruct*** includes attempt to resist or obstruct.

***threaten or intimidate*** includes attempt to threaten or intimidate.

***vote*** includes attempt to vote.’.

## 20 Insertion of new ch 20, pt 13

Chapter 20—

*insert*—

## **‘Part 13                      Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

### **‘780    Definitions for pt 13**

‘In this part—

*amending Act* means the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012*.

*commencement* means the commencement of this part.

*previous section 175* means section 175 as it was in force immediately before the commencement.

### **‘781    Application of amended s 149(5)**

- ‘(1) Section 149(5), as amended by the amending Act, section 8, applies to the arbitration of a matter only if the arbitration starts on or after the commencement.
- ‘(2) For subsection (1), an arbitration *starts* when the requirements under section 149(1)(a), (b) or (c) are first satisfied.

### **‘782    Application of provisions about protected action ballots**

- ‘(1) This section applies to protected industrial action started before, on or after the commencement, if notice of the intended action was given before the commencement under previous section 175.
- ‘(2) Chapter 6, division 6 (Industrial action) as it was in force before the commencement continues to apply to the protected industrial action.

---

**‘783 Application of new ch 6, div 6A (Termination of protected industrial action by Minister)**

- ‘(1) This section applies to protected industrial action started before, on or after the commencement, if notice of the intended action was given before the commencement under previous section 175.
- ‘(2) Chapter 6, division 6A does not apply to the protected industrial action.

**‘784 Transitional regulation-making power**

- ‘(1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature for which—
  - (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the amended Act in relation to a prescribed matter; and
  - (b) this Act does not make provision or sufficient provision.
- ‘(2) Without limiting subsection (1), a transitional regulation may continue the operation of a repealed provision.
- ‘(3) A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement.
- ‘(4) A transitional regulation must declare it is a transitional regulation.
- ‘(5) This section and any transitional regulation expire 2 years after the day of commencement.
- ‘(6) In this section—

*amended Act* means this Act as amended by the amending Act.

*pre-amended Act* means this Act as in force before the commencement of the amending Act.

*prescribed matter* means—

- (a) the making of agreements, and the certification of agreements made, under section 147A; or

(b) protected action ballot orders or protected action ballots.

### **‘785 Amendment of regulation**

‘The amendment of the *Industrial Relations Regulation 2011* by the amending Act does not affect the power of the Governor in Council to further amend the regulation or to repeal it.’.

### **21 Insertion of new sch 4**

After schedule 3—

*insert—*

## **‘Schedule 4 Provisions for protected action ballots**

section 176

## **‘Part 1 Preliminary**

### **‘1 Purpose of sch 4**

‘The purpose of this schedule is to establish a process enabling employees to choose, by a fair and democratic secret ballot, whether they wish to engage in particular industrial action in relation to a proposed agreement if negotiations for the agreement have begun.

*Note—*

Under section 176 of this Act, industrial action by employees in relation to a proposed agreement is not protected industrial action unless the action has been authorised in advance by a protected action ballot.

### **‘2 Definition for sch 4**

‘In this schedule—



#### **‘4 When application may be made**

- ‘(1) This section applies if 1 or more existing certified agreements bind the employees who will be bound by the proposed agreement.
- ‘(2) An application for a protected action ballot order must not be made earlier than 30 days before the nominal expiry date of the existing certified agreement, or the latest nominal expiry date of those existing certified agreements, as the case may be.

#### **‘5 Notice of application**

‘Within 24 hours after making an application for a protected action ballot order, each applicant must give a copy of the application to—

- (a) the employer of the employees who are to be balloted; and
- (b) the ECQ.

#### **‘6 When application must be decided**

- ‘(1) This section applies if an application for a protected action ballot order is made and the commission is satisfied section 5 has been complied with.
- ‘(2) The commission must, as far as practicable, decide the application within 2 working days after the application is made.

#### **‘7 Dealing with multiple applications together**

‘The commission may deal with 2 or more applications for a protected action ballot order at the same time if—

- (a) the applications relate to industrial action by—
  - (i) employees of the same employer; or
  - (ii) employees at the same workplace; and



- (b) the commission is satisfied that dealing with the applications at the same time will not unreasonably delay the deciding of any of the applications.

## **‘8 Making of protected action ballot order by commission**

- ‘(1) The commission must make a protected action ballot order in relation to a proposed agreement if—
  - (a) an application for the order has been made under section 3; and
  - (b) the commission is satisfied each applicant has been, and is, genuinely trying to reach agreement with the employer of the employees who are to be balloted; and
  - (c) negotiations for the agreement have begun.
- ‘(2) The commission must not make a protected action ballot order if the requirements under subsection (1) are not satisfied.
- ‘(3) A protected action ballot order must state the following—
  - (a) the name of each applicant for the order;
  - (b) the group of employees who are to be balloted;
  - (c) the date by which voting in the ballot closes;
  - (d) the question to be put to the employees who are to be balloted, including the nature of the proposed industrial action.
- ‘(4) Subsection (5) applies if the commission is satisfied that exceptional circumstances relating to the proposed industrial action justify the period of notice mentioned in section 176(6)(b) of this Act being longer than 3 working days.
- ‘(5) The protected action ballot order may state a longer period of not more than 7 working days.

**‘9 Notice of protected action ballot order**

- ‘(1) As soon as practicable after making a protected action ballot order, the commission must give the following persons a copy of the order—
- (a) each applicant for the order;
  - (b) the employer of the employees who are to be balloted;
  - (c) the ECQ.
- ‘(2) The ECQ must, as soon as practicable after the protected action ballot order is made, take all reasonable steps to notify each employee who is eligible to be included on the roll of voters for the protected action ballot.
- ‘(3) A notice for subsection (2) must—
- (a) state the matters prescribed under a regulation; and
  - (b) be given to the employee in the way prescribed under a regulation.
- ‘(4) An employer must allow the ECQ access to the workplace to—
- (a) give notice under subsection (2) to employees; or
  - (b) prepare for the protected action ballot.

*Note—*

See chapter 6, division 7 for penalty provisions applicable to contraventions of this subsection.

**‘10 Protected action ballot order may require 2 or more ballots to be held together**

- ‘(1) This section applies if—
- (a) the commission has made a protected action ballot order; and
  - (b) the commission proposes to make 1 or more other protected action ballot orders; and

- (c) the orders would require a protected action ballot to be held in relation to industrial action by employees of the same employer or employees at the same workplace.
- ‘(2) The commission may make, or vary, the protected action ballot orders to require the protected action ballots to be held at the same time if the commission is satisfied—
  - (a) the level of disruption of the employer’s enterprise, or at the workplace, could be reduced if the ballots were held at the same time; and
  - (b) requiring the ballots to be held at the same time will not unreasonably delay any of the ballots.

#### **‘11 Variation of protected action ballot order**

- ‘(1) An applicant for a protected action ballot order may apply to the commission to vary the order.
- ‘(2) The ECQ may apply to the commission to vary the order to change the date by which voting in the ballot closes.
- ‘(3) An application may be made under subsection (1) or (2)—
  - (a) at any time before the date by which voting in the protected action ballot closes; or
  - (b) if the ballot has not been held before that date and the commission consents—after that date.
- ‘(4) If an application is made under subsection (1) or (2), the commission may vary the protected action ballot order.

#### **‘12 Revocation of protected action ballot order**

- ‘(1) An applicant for a protected action ballot order may apply to the commission to revoke the order.
- ‘(2) An application may be made under subsection (1) at any time before voting in the protected action ballot closes.
- ‘(3) If an application is made under subsection (1), the commission must revoke the protected action ballot order.



- ‘(3) For subsection (2), a *voting information direction* is a written direction requiring the person to whom it is given to give the ECQ—
- (a) the names of the employees included in the group of employees stated in the protected action ballot order; and
  - (b) any other information the ECQ reasonably requires to compile the roll of voters.

#### **‘17 Who is eligible to be included on the roll of voters**

‘An employee is eligible to be included on the roll of voters for the protected action ballot only if—

- (a) the employee will be bound by the proposed agreement to which the ballot relates; and
- (b) on the day the protected action ballot order was made, the employee was—
  - (i) included in the group of employees stated in the order; and
  - (ii) if the proposed agreement is an agreement with 1 or more employee organisations—a member of an employee organisation that is an applicant for the order.

#### **‘18 Variation of roll of voters**

- ‘(1) The ECQ must include an employee’s name on the roll of voters for the protected action ballot if—
- (a) the ECQ is asked to do so by any of the following—
    - (i) an applicant for the protected action ballot order;
    - (ii) the employee;
    - (iii) the employee’s employer; and
  - (b) the ECQ is satisfied the employee is eligible to be included on the roll of voters; and

- (c) the request is made before the end of the working day before the day on which voting in the ballot starts.
- ‘(2) The ECQ must remove an employee’s name from the roll of voters for the protected action ballot if—
- (a) the ECQ is asked to do so by any of the following—
    - (i) an applicant for the protected action ballot order;
    - (ii) the employee;
    - (iii) the employee’s employer; and
  - (b) the ECQ is satisfied the employee is not eligible to be included on the roll of voters; and
  - (c) the request is made before the end of the working day before the day on which voting in the ballot starts.
- ‘(3) The ECQ must remove a person’s name from the roll of voters for the protected action ballot if—
- (a) the person (the *former employee*) is no longer employed by the employer (the *former employer*) of the employees who are to be balloted; and
  - (b) the ECQ is requested to do so by any of the following—
    - (i) an applicant for the protected action ballot order;
    - (ii) the former employee;
    - (iii) the former employer; and
  - (c) the request is made before the end of the working day before the day on which voting in the ballot starts.
- ‘(4) The ECQ may, on its own initiative and before the end of the working day before the day on which voting in the protected action ballot starts, do any of the following—
- (a) include an employee’s name on the roll of voters for the ballot if the ECQ is satisfied the employee is eligible to be included on the roll of voters;
  - (b) remove an employee’s name from the roll of voters for the ballot if the ECQ is satisfied the employee is not eligible to be included on the roll of voters;

- (c) remove a person's name from the roll of voters for the ballot if the person is no longer employed by the employer of the employees who are to be balloted.

#### **'19 Protected action ballot papers**

'The ballot paper for the protected action ballot must, if there is an approved form for the ballot paper, be in the approved form.

#### **'20 Who may vote in a protected action ballot**

'An employee may vote in the protected action ballot only if the employee's name is on the roll of voters for the ballot.

#### **'21 Scrutineers**

'A regulation may provide for the qualifications, appointment, powers and duties of scrutineers for the protected action ballot.

#### **'22 Results of protected action ballot**

- '(1) As soon as practicable after voting in the protected action ballot closes, the ECQ must, in writing—
  - (a) make a declaration of the results of the ballot; and
  - (b) inform the following persons of the results—
    - (i) each applicant for the protected action ballot order;
    - (ii) the employer of the employees who were balloted;
    - (iii) the commission.
- '(2) As soon as practicable after the commission becomes aware of the results of the protected action ballot, the commission must publish the results—
  - (a) on its website; or

- (b) by any other means the commission considers appropriate.

*Note—*

The commission mentioned in subsections (1)(b)(iii) and (2) is the Queensland Industrial Relations Commission.

## **‘23 Report about conduct of protected action ballot**

- ‘(1) Subsection (2) applies if the ECQ—
- (a) receives any complaints about the conduct of the protected action ballot; or
  - (b) becomes aware of any irregularities in relation to the conduct of the ballot.
- ‘(2) The ECQ must prepare a written report about the conduct of the protected action ballot and give it to the commission.
- ‘(3) In this section—
- conduct*, in relation a protected action ballot, includes compiling the roll of voters for the ballot.
- irregularity*, in relation to the conduct of a protected action ballot, includes an act or omission that prevents or hinders the full and free recording of votes by all employees entitled to the vote in the ballot and not by any other person.

## **‘Part 4 Other provisions**

### **‘24 Costs of protected action ballot**

- ‘(1) The costs of a protected action ballot are payable by the State.
- ‘(2) Subsection (1) applies whether or not the ballot is completed.

### **‘25 Records**

- ‘(1) The ECQ must keep the following documents or records for a protected action ballot—



- (a) the roll of voters;
  - (b) ballot papers, envelopes and other documents and records for the ballot;
  - (c) any other documents prescribed under a regulation.
- ‘(2) The ECQ must keep the documents or records—
- (a) for 1 year after the day on which voting for the protected action ballot closed; and
  - (b) in compliance with any requirements prescribed under a regulation about how the documents or records must be kept.’.

## 22 Amendment of sch 5 (Dictionary)

Schedule 5—

*insert—*

‘*ECQ* means the Electoral Commission of Queensland established under the *Electoral Act 1992*.

*Minister*, for chapter 6, division 6A, see section 181A.

*post-industrial action negotiation period*, for chapter 6, division 6A, see section 181A.

*protected action ballot* see section 176(2).

*protected action ballot order* see schedule 4, section 2.

*termination declaration* see section 181A.’.

# Part 3 Amendment of Industrial Relations Regulation 2011

## 23 Regulation amended

This part amends the *Industrial Relations Regulation 2011*.

## **24 Insertion of new ss 10A–10H**

Part 4—

*insert—*

### **‘10A Notice of protected action ballot order**

- ‘(1) For the Act, schedule 4, section 9(3)(a), the following matters are prescribed—
- (a) any matter stated in the protected action ballot order;
  - (b) that the ballot will be by post;
  - (c) the period during which the ballot will be conducted;
  - (d) contact details for the ECQ;
  - (e) that the employee may contact the ECQ to find out whether the employee is on the roll of voters;
  - (f) that the employee may ask the ECQ to add or remove the employee’s name from the roll of voters;
  - (g) that the employee may raise concerns or complaints about the conduct of the ballot, including any alleged irregularity, with the ECQ.
- ‘(2) For the Act, schedule 4, section 9(3)(b), the following ways are prescribed—
- (a) giving the notice to the employee personally;
  - (b) sending the notice by pre-paid post to—
    - (i) the employee’s residential address; or
    - (ii) another postal address nominated by the employee;
  - (c) sending the notice to—
    - (i) the employee’s email address at work; or
    - (ii) another email address nominated by the employee;
  - (d) sending, to an email address mentioned in paragraph (c), an electronic link that takes the employee directly to a copy of the notice on the employer’s intranet;
  - (e) faxing the notice to—

- (i) the employee's fax number at work; or
- (ii) the employee's fax number at home; or
- (iii) another fax number nominated by the employee;
- (f) displaying the notice in a conspicuous place at the workplace that is known by and readily accessible to the employee;
- (g) any other way the ECQ considers appropriate.

**'10B Conduct of protected action ballot—information that may accompany ballot paper**

- '(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to information the ECQ may provide to an employee with the ballot paper for the protected action ballot.
- '(2) Any of the following may be provided—
  - (a) directions about what an employee who is entitled to vote in the ballot must do to cast a valid vote;
  - (b) other directions the ECQ reasonably believes may help to ensure there is no irregularity in the conduct of the ballot;
  - (c) notes to assist an employee who is entitled to vote in the ballot by informing the employee of matters relating to the conduct of the ballot.

**'10C Conduct of protected action ballot—compilation of roll of voters**

- '(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to information provided, as required under a direction given under the Act, schedule 4, section 16, by—
  - (a) an applicant for the protected action ballot order; or
  - (b) the employer of an employee who is to be balloted.

- ‘(2) The information must be accompanied by a written declaration by the applicant or employer that he or she reasonably believes the information is complete, up to date and accurate.

**‘10D Conduct of protected action ballot—issue of ballot papers**

- ‘(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the issue of ballot papers.
- ‘(2) The ECQ must issue, to each employee who is to be balloted, a ballot paper that bears the relevant ECQ officer’s initials or a facsimile of the officer’s initials.
- ‘(3) The ECQ must post to each employee who is to be balloted a sealed envelope that contains each of the following—
- (a) the ballot paper;
  - (b) information about—
    - (i) the closing date for the ballot; and
    - (ii) the time on the closing date by which the ECQ must receive the employee’s vote;
  - (c) an envelope in which the employee must place his or her ballot paper;
  - (d) a pre-paid envelope addressed to the ECQ;
  - (e) any other material the ECQ considers relevant to the ballot.
- ‘(4) The envelope mentioned in subsection (3)(c) must—
- (a) set out a form of declaration that the employee has not previously voted in the ballot; and
  - (b) have a place where the employee can sign the envelope; and
  - (c) be able to fit in the pre-paid envelope mentioned in subsection (3)(d).

---

**‘10E Conduct of protected action ballot—issue of replacement ballot papers**

- ‘(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the issue of replacement ballot papers.
- ‘(2) An employee who is to be balloted may ask the ECQ for a replacement ballot paper if—
- (a) the employee did not receive all of the documents mentioned in section 10D(3); or
  - (b) the ballot paper received by the employee has been lost, destroyed or spoilt.
- ‘(3) The request must—
- (a) be received by the ECQ on or before the closing day of the ballot; and
  - (b) state the reason for the request; and
  - (c) if practicable, be accompanied by evidence relating to the reason; and
  - (d) include a declaration by the employee that the employee has not voted in the ballot.
- ‘(4) The ECQ must give the employee a replacement ballot paper if satisfied—
- (a) the reason for the request is a reason mentioned in subsection (2); and
  - (b) the request for the replacement ballot paper complies with subsection (3); and
  - (c) the employee has not voted in the ballot.

**‘10F Conduct of protected action ballot—counting of votes by ECQ**

- ‘(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the counting of votes.

- ‘(2) The ECQ must decide the result of the protected action ballot, as soon as practicable after the close of the ballot, by conducting a scrutiny of the ballot papers under this section.
- ‘(3) The ECQ must—
  - (a) admit the valid ballot papers and reject the informal ballot papers; and
  - (b) count the valid ballot papers; and
  - (c) record the number of votes—
    - (i) in favour of the question; and
    - (ii) against the question; and
  - (d) count the informal ballot papers.
- ‘(4) A ballot paper is *informal* only if—
  - (a) the initials, or a facsimile of the initials, of the relevant ECQ officer are missing; or
  - (b) the ballot paper is marked in a way that allows the employee to be identified; or
  - (c) the ballot paper is not marked in a way that makes it clear how the employee intended to vote; or
  - (d) the employee has not complied with a direction given to the employee under section 10B.
- ‘(5) However, a ballot paper is not *informal* under subsection (4)(a) if the ECQ is otherwise satisfied the ballot paper is authentic.

**‘10G Conduct of protected action ballot—scrutiny of ballot papers by scrutineers**

- ‘(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the scrutiny of ballot papers by scrutineers.
- ‘(2) If the ECQ is informed by a scrutineer that the scrutineer objects to a ballot paper being admitted as valid, or rejected as informal, the ECQ must—

- 
- (a) decide whether the ballot paper is to be admitted as valid or rejected as informal; and
  - (b) endorse its decision on the ballot paper and initial the endorsement.
- ‘(3) If the ECQ is informed by a scrutineer that, in the scrutineer’s opinion, an error has been made in the scrutiny of the ballot papers, the ECQ must—
- (a) decide whether an error has been made; and
  - (b) if appropriate, take action to correct the error.
- ‘(4) To preserve the secrecy of the voting, the ECQ must ensure that a scrutineer does not have access to any information that may allow the scrutineer to identify which employee has completed a particular ballot paper.
- ‘(5) Subsection (6) applies if a person—
- (a) is not entitled to be present or to remain present at the scrutiny of the protected action ballot; or
  - (b) interrupts the scrutiny of the protected action ballot, other than to perform a function mentioned in section 10F(3).
- ‘(6) The ECQ may direct the person to leave the place where the protected action ballot is being scrutinised.
- ‘(7) In this section—  
*scrutineer* see section 10H(2).

#### ‘10H **Scrutineers for protected action ballot**

- ‘(1) This section prescribes, for the Act, schedule 4, section 21, matters relating to the qualifications, appointment, functions and powers of scrutineers for a protected action ballot.
- ‘(2) A *scrutineer* for the protected action ballot is a person appointed under subsection (3) or (4).
- ‘(3) The employer may appoint 1 or more scrutineers for the protected action ballot.





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**26 Amendment of s 9 (Public service employees)**

Section 9(3), note 1, ‘to the appeals officer’—

*omit, insert—*

‘under chapter 7, part 1’.

**26A Amendment of s 45 (Commissioners)**

(1) Section 45(b), first dot point—

*omit.*

(2) Section 45(d)—

*omit.*

**27 Amendment of s 77 (Staff members of the commission)**

Section 77(2), ‘The appeals officer and persons’—

*omit, insert—*

‘Persons’.

**28 Amendment of s 78 (Staff generally subject to direction by commission chief executive)**

Section 78(2) and (3)—

*omit, insert—*

‘(2) Subsection (1) does not apply to a staff member of the commission performing functions under section 88E to help appeals officers perform their function under this Act.’.

**29 Amendment of ch 3, pt 5, hdg (Appeals officer)**

Chapter 3, part 5, heading, ‘officer’—

*omit, insert—*

‘**officers**’.

### **30 Insertion of new s 88AA**

Chapter 3, part 5, before section 88A—

*insert—*

#### **‘88AA Definition for pt 5**

‘In this part—

*member*, of the IRC, see the *Industrial Relations Act 1999*, schedule 5.’.

### **31 Replacement of s 88A (Appeals officer)**

Section 88A—

*omit, insert—*

#### **‘88A Appeals officers**

- ‘(1) The Governor in Council must appoint 1 or more persons to be appeals officers (each an *appeals officer*).
- ‘(2) To be appointed as an appeals officer, a person must be a member of the IRC.
- ‘(3) If the person stops holding office as a member of the IRC, the person’s appointment as an appeals officer ends.
- ‘(4) An appeals officer may perform the functions of office of both appeals officer and member of the IRC.
- ‘(5) A member of the IRC’s service as an appeals officer is taken to be service as a member for all purposes.
- ‘(6) Without limiting subsection (5), a member of the IRC’s service as an appeals officer is taken to be—
  - (a) if, because of an appointment or agreement under the *Industrial Relations Act 1999*, section 258, 258A or 259, the member is performing the functions of the office of a member on a part-time basis—part of the percentage of the full-time basis the member is to perform; and
  - (b) for the *Industrial Relations Act 1999*, section 337, in the exercise of jurisdiction as a member of the IRC under an Act.’.

**32 Omission of s 88B (Acting as appeals officer)**

Section 88B—

*omit.*

**33 Replacement of s 88C (Appeals officer's functions)**

Section 88C—

*omit, insert—*

**'88C Appeals officer's function**

- '(1) An appeals officer's function is to hear and decide appeals under chapter 7, part 1.
- '(2) Despite section 88A(2) and (5), an appeals officer performs the officer's function mentioned in subsection (1), and exercises the officer's powers, under this Act and not under the *Industrial Relations Act 1999*.'

**34 Amendment, relocation and renumbering of s 88D (Report on performance of functions)**

- (1) Section 88D, heading, 'performance of functions'—

*omit, insert—*

**'appeals'.**

- (2) Section 88D(1), from 'appeals officer'—

*omit, insert—*

'commission chief executive must give the Minister a written report about appeals started, decided or withdrawn under part 1 during the financial year.'

- (3) Section 88D(2), 'appeals officer'—

*omit, insert—*

'commission chief executive'.

- (4) Section 88D—

*relocate and renumber*, in chapter 7, part 4, as section 218C.

**35 Insertion of new s 88D**

After section 88C—

*insert—*

**‘88D Dealing with matters as appeals officer and member of the IRC**

‘(1) This section applies if—

- (a) an appeals officer has dealt with a matter while performing the functions of the office of member of the IRC; and
- (b) the matter is or has become the subject of an appeal under chapter 7, part 1.

‘(2) The appeals officer must not deal with the appeal.

‘(3) The appeals officer must inform the commission chief executive why the appeals officer is not dealing with the appeal.’.

**36 Amendment of s 88E (Staff members to help appeals officer)**

(1) Section 88E, heading, ‘officer’—

*omit, insert—*

**‘officers’.**

(2) Section 88E, ‘the appeals officer perform his or her functions’—

*omit, insert—*

‘appeals officers perform their function’.

**37 Omission of s 88F (Delegation)**

Section 88F—

*omit.*

**38 Replacement of s 88G (Duty of persons performing appeal functions)**

Section 88G—

*omit, insert—*

**‘88G Duty of persons performing appeal function**

‘An appeals officer hearing and deciding an appeal and any staff member performing functions to help the appeals officer to hear and decide an appeal—

- (a) must perform the functions independently, impartially, fairly, and in the public interest; and
- (b) in performing the functions, are not subject to direction by the commission, the commission chief executive or any Minister.’.

**39 Amendment of s 112 (Acting senior executives)**

Section 112(3) and note—

*omit.*

**40 Amendment of s 193, hdg (Appeals to appeals officer)**

Section 193, heading, ‘to appeals officer’—

*omit.*

**41 Insertion of new ch 7, pt 1, div 1A**

Chapter 7, part 1, after section 196—

*insert—*

**‘Division 1A Appeals heard and decided by appeals officers**

**‘196A Appeal heard and decided by appeals officer**

‘An appeal under this part is heard and decided by an appeals officer.’.

**42 Amendment of s 197 (Starting an appeal)**

- (1) Section 197(1), ‘to the appeals officer’—  
*omit.*
- (2) Section 197(1), ‘appeals officer’, second mention—  
*omit, insert—*  
‘commission chief executive’.
- (3) Section 197(2) and (3), ‘appeals officer’—  
*omit, insert—*  
‘commission chief executive’.

**43 Amendment of s 198 (Notice by appeals officer of appeal)**

- (1) Section 198, heading, ‘appeals officer’—  
*omit, insert—*  
‘**commission chief executive**’.
- (2) Section 198(1), from ‘appeals officer’—  
*omit, insert—*  
‘commission chief executive must—
  - (a) give notice of receipt of the appeal notice to the appellant; and
  - (b) give the appeal notice to an appeals officer to hear and decide the appeal.’.
- (3) Section 198(2), ‘appeals officer’—  
*omit, insert—*  
‘commission chief executive’.

**44 Amendment of s 201 (Appeal is by way of review)**

- Section 201(4), ‘(2)’—  
*omit, insert—*

‘(3)’.

**45 Amendment of s 204 (Representation of parties)**

Section 204(3), ‘the appeals officer’s leave’—

*omit, insert—*

‘the leave of the appeals officer who is hearing the appeal’.

**46 Amendment of s 206 (Withdrawing an appeal)**

(1) Section 206, ‘appeals officer’—

*omit, insert—*

‘commission chief executive’.

(2) Section 206(3), after ‘the withdrawal to’—

*insert—*

‘the appeals officer who is hearing the appeal.’.

**47 Amendment of s 208 (Decision on appeal)**

Section 208(4)—

*omit, insert—*

‘(4) As soon as possible after a decision on an appeal is available, the appeals officer who made the decision must give a copy of it to—

(a) the parties to the appeal; and

(b) the commission chief executive.’.

**48 Amendment of s 210 (Decision on appeal is binding on parties)**

Section 210(1), ‘The appeals officer’s’—

*omit, insert—*

‘An appeals officer’s’.

**49 Amendment of s 212 (Public service employee's entitlements for attending appeal as part of duties)**

Section 212(2), 'appeals officer'—

*omit, insert—*

'commission chief executive'.

**50 Amendment of s 213 (Entitlement of non-public service employees)**

Section 213(3), 'appeals officer'—

*omit, insert—*

'commission chief executive'.

**51 Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)**

Section 214(2), 'appeals officer'—

*omit, insert—*

'commission chief executive'.

**51A Amendment of s 214A (Protection of appeals officials from liability)**

(1) Section 214A—

*insert—*

'(2A) This section does not apply to an appeals officer.

*Note—*

For the protection of an appeals officer from liability, see section 88A(6)(b).'

(2) Section 214A(2A) and (3)—

*renumber* as section 214A(3) and (4).



**52 Amendment of s 215 (Jurisdiction of IRC for industrial matters)**

Section 215(3), ‘to the appeals officer’—

*omit, insert—*

‘under part 1’.

**53 Insertion of new s 218B**

Chapter 7, part 4—

*insert—*

**‘218B Commission chief executive’s functions—appeals**

‘The commission chief executive may communicate, in the way the officer considers appropriate, matters arising out of an appeal under part 1 that may affect decision-making for particular decisions in the public service, or in a particular government entity, to—

- (a) persons who are likely to make decisions of that kind; or
- (b) persons who are likely to be affected by decisions of that kind; or
- (c) any other person if the officer considers the matters may be relevant to the person’s functions under an Act or other law.’.

**54 Renumbering of ch 9, pt 6, hdg (Transitional provision for Public Interest Disclosure Act 2010)**

Chapter 9, part 6, second occurring—

*renumber* as chapter 9, part 8.

**55 Renumbering of s 264 (Amendment of regulation by Public Interest Disclosure Act 2010 does not affect powers of Governor in Council)**

Section 264, second occurring—

*renumber* as section 280.

**56 Insertion of new ch 9, pt 9**

After section 280—

*insert—*

**‘Part 9 Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012**

**‘281 Definitions for pt 9**

‘In this part—

*commencement* means the commencement of this part.

*former appeals officer* means the person who, immediately before the commencement, held appointment under old section 88A as the appeals officer.

*former delegate* means a person who, immediately before the commencement, was delegated under old section 88F to hear and decide appeals under the old appeals provisions.

*new appeals officer* means a person appointed to be an appeals officer under new section 88A.

*new section 88A* means section 88A as in force from the commencement.

*old appeals provisions* means chapter 7, part 1 as in force immediately before the commencement.

*old section 88A* means section 88A as in force immediately before the commencement.

*old section 88F* means section 88F as in force immediately before the commencement.

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**‘282 Appointment of former appeals officer and former delegate ends at commencement**

‘Subject to section 284(3), the following end at the commencement—

- (a) the former appeals officer’s appointment;
- (b) a former delegate’s delegation.’.

**‘283 Appeals started after commencement**

- ‘(1) This section applies if a person after the commencement starts an appeal under chapter 7, part 1 against a decision made before the commencement.
- ‘(2) The appeal must be heard and decided by a new appeals officer under this Act as in force from the commencement.
- ‘(3) This Act as in force from the commencement applies in relation to starting the appeal and the appeal.

**‘284 Appeals started before commencement**

- ‘(1) This section applies if a person before the commencement starts an appeal under chapter 7, part 1 and the appeal has not been decided or withdrawn at the commencement (a *transitional appeal*).
- ‘(2) A transitional appeals officer or transitional delegate must hear and decide, or continue to hear and decide, a transitional appeal under the old appeals provisions.
- ‘(3) For the purposes of subsection (2)—
  - (a) this Act as in force before the commencement continues to apply; and
  - (b) the former appeals officer and a former delegate are taken to hold the appointment and delegation ended under section 282; and
  - (c) if there is a vacancy in the office of the former appeals officer, the commission chief executive may appoint a

person under old section 88A to be a transitional appeals officer; and

(d) a transitional appeals officer may delegate his or her functions in relation to the appeal to an appropriately qualified person.

‘(4) Each appointment and delegation mentioned in subsection (3)(b), (c) and (d) in effect when the last transitional appeal is decided or withdrawn ends when the decision is made or the withdrawal happens.

‘(5) In this section—

*transitional appeals officer* means—

- (a) the former appeals officer; or
- (b) a person appointed under subsection (3) to be the transitional appeals officer.

*transitional delegate* means—

- (a) a former delegate; or
- (b) a person who is delegated under subsection (3) to hear and decide an appeal.’.

## 57 Amendment of sch 4 (Dictionary)

Schedule 4—

*insert—*

‘*member*, of the IRC, for chapter 3, part 5, see section 88AA.’.

# Part 5 Minor and consequential amendments

## 58 Acts amended

The schedule amends the Acts it mentions.

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## **Schedule**                      **Minor and consequential amendments**

section 58

### **Industrial Relations Act 1999**

**1**            **Section 686(1)(a), ‘to the chief executive of the Public  
Service Commission,’—**

*omit.*

### **Public Service Act 2008**

**1A**          **Chapter 3, part 4, division 1, subdivision 2, heading—**

*omit, insert—*

**‘Subdivision 2      Chairperson’.**

**1B**          **Section 64(1), ‘an appointed commissioner’—**

*omit, insert—*

‘a person as the chairperson of the commission’.

**1C**          **Sections 65(1)(a) and 67(1), ‘an appointed  
commissioner’—**

*omit, insert—*

‘the chairperson’.

**1D**          **Section 65(1)(b), ‘commissioner’s’—**

*omit, insert—*

‘chairperson’s’.

**1E Section 65(2) and (3), ‘commissioner’—**

*omit, insert—*

‘chairperson’.

**1F Section 66, ‘An appointed commissioner’—**

*omit, insert—*

‘The chairperson’.

**1G Section 68—**

*omit.*

**1H Sections 70(2), 71 and 75(a), ‘4 commissioners’—**

*omit, insert—*

‘2 commissioners’.

**1I Section 73(2) and (3)—**

*omit, insert—*

‘(2) If the chairperson is absent from a commission meeting, the commissioner chosen by the commissioners present is to preside.’.

**1 Amendment of particular provisions to omit ‘to the appeals officer’**

The following provisions are amended by omitting ‘to the appeals officer’—

- chapter 7, part 1, heading
- section 193
- section 194(1)
- section 195(1)
- section 196

- section 214B(2)(a)(i).

**2 Amendment of particular provisions to replace ‘The appeals officer’ with ‘An appeals officer’**

The following provisions are amended by omitting ‘The appeals officer’ and replacing that term with ‘An appeals officer’—

- section 199(1)
- section 200
- section 201(1)
- section 203(1).

**3 Amendment of particular provisions to replace ‘the appeals officer’ with ‘an appeals officer’**

The following provisions are amended by omitting ‘the appeals officer’ and replacing that term with ‘an appeals officer’—

- section 201(3)
- section 201(4)
- section 202
- section 203(2)
- section 205(1)
- section 208(1)
- section 208(2)
- section 211(b)
- section 213(1)
- section 214B.

**4**      **Schedule 4, definition *appointed commissioner*—**  
*omit.*

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