

INDUSTRIAL ORGANISATIONS BILL 1996

EXPLANATORY NOTES

Objectives of the Legislation

The principal objectives of the Bill are to—

- encourage the democratic control of industrial organisations;
- encourage members of industrial organisations to participate in their organisation's affairs;
- encourage the efficient management of industrial organisations;
- ensure freedom of association, including the rights of employees and employers to join an industrial organisation or association, or not join an organisation or association;
- ensure employee and employer organisations are representative of and accountable to their members; and
- establish consistency with certain provisions of the Commonwealth Workplace Relations Act 1996.

Reasons for the Legislation

This Bill and the Workplace Relations Bill 1996 provide a new framework for the industrial relations system in Queensland.

The Industrial Organisations Bill concerns arrangements relating to employee and employer industrial organisations and associations.

The Bill contains recast provisions of the *Industrial Relations Act 1990* and amendments to complement the recently amended Commonwealth industrial legislation.

The Bill ensures that all industrial organisations are made more accountable. This includes the strengthening of financial and other reporting

requirements to their members. Certain amendments are based on the recommendations of the Commission of Inquiry into the Activities of Particular Trade Unions (Cooke Inquiry).

This Bill, together with the Workplace Relations Bill 1996, contain legislative reforms to support a co-operative relationship between employers and employees.

Key reforms include—

- freedom of association which ensures employers, employees and independent contractors are free to join or not join an industrial association or industrial organisation;
- enabling deregistered parts of amalgamated organisations to withdraw from those amalgamations and reducing the minimum membership requirement;
- the establishment of enterprise organisations for employees;
- restricting the “conveniently belong rule” as it applies to industrial organisations and ensuring the rule will not apply to enterprise organisations;
- minimum standards for the conduct of elections;
- ensuring industrial organisations are more accountable by the strengthening their financial and other reporting requirements to members and the supervisory responsibilities of the industrial court, industrial relations commission and industrial registrar.
- transparency and accountability of political donations; and
- the expiry of the *Industrial Relations (Protection from Invalidities) Act 1991*.

Other provisions of Part 14 (Industrial Organisations) of the *Industrial Relations Act 1990* have been written in modern drafting format. Existing offence provisions have generally been transferred to the corresponding individual provision.

Cost for Government Implementation

The costs for the conduct of elections for officers of industrial organisations and ballots for amalgamations of organisations and withdrawals from amalgamations are to be borne by the organisation

concerned in most instances. At present the costs are carried by the Government.

In overall terms, there will be no increase in costs for Government arising from this legislation.

Consultation

Extensive consultation has taken place with key stakeholders including all major employer and employee organisations in the preparation of the Bill.

Fundamental Legislative Principles

The following provisions of the Bill involve relevant principles—

Clause 81 (Entitlement to membership)

Paragraph (c) requires that a person not be of general bad character. This provision is in the *Industrial Relations Act 1990* and is considered to be a reasonable requirement for membership of an industrial organisation.

Clause 208 (Auditors have qualified privilege)

This section confers immunity from civil and criminal proceedings relating to defamation on an organisation's auditors similar to in the position of company auditors (see s 863 Corporations Law).

Clause 247 (Proof not required of the reason for, or the intention of, conduct-Cwlth s298V)

This section reverses the onus of proof. It is necessary to ensure that the freedom of association provisions mirror Commonwealth provisions.

Clause 277 (Recovering member's liabilities to organisation)

This section removes an organisation's right to recover some member's liabilities. This provision is fair to both members and the organisation.

Clause 282 (No action for defamation in certain cases)

This section confers immunity from civil and criminal proceedings. It is required to protect electoral officials and returning officers. This is justified because electoral officials and returning officers have no control over the material that will be published by them during the course of an election.

PART 1—PRELIMINARY

Short title

Clause 1 provides a short title for the legislation.

Commencement

Clause 2 provides for the provisions of the legislation to commence on a date to be proclaimed.

The prescriptions relating to political objects funds (Part 12, Division 8) are to commence 6 months from the date of the initial proclamation.

Objects of the Act

Clause 3 sets out the objects of the legislation.

The objects clause reflects the intent of the legislation which surrounds the affairs and management of industrial organisations.

The objects complement those provided in commonwealth industrial legislation.

Definitions—the dictionary

Clause 4 establishes a dictionary in schedule 3 of the Bill which defines various terms for the purposes of the legislation.

Some provisions in the Bill have the meanings of terms defined specifically in those provisions and not in the dictionary. In many cases such terms are signposted in the dictionary.

Act does not bind State

Clause 5 confirms that this legislation does not bind the State with the exception of clause 91 (Conduct about exemption certificate holders) and Part 14 (Freedom of association).

PART 2—REGISTRATION

Definitions for pt 2

Clause 6 prescribes definitions of “enterprise” and “enterprise association” to accord with the allowing of enterprise associations to be registered as industrial organisations under this part.

An enterprise is restricted to being a business carried on by a single employer. A functionally distinct part or parts of such a business also may constitute an enterprise.

Applying for registration—general

Clause 7 specifies where an application for registration as an employer or an employee organisation must be made, in what form and if it must be published.

Applying for registration—employer associations

Clause 8 states the associations that may apply for registration as an industrial organisation of employers which include associations—

- whose members are all employers
- whose members are not all employers but effectively represent employer members
- whose members who are not employers are officers of the association, persons carrying on business otherwise than as employees or persons who were employers when admitted to membership.

The provision sets out the details to be included with the application. Requirements include details of members, officers, rules, the resolution in favour of registration, relevant callings, the association’s property and registered office and the fee.

Applying for registration—employee associations

Clause 9 specifies the associations that may apply for registration as an

industrial organisation of employees which include associations—

- whose members are employees
- whose members include certain independent contractors or officers of the association
- whose members perform work in the same enterprise.

The provision sets out the details to be included with the application. Requirements include details of members, officers, rules, the resolution in favour of registration, relevant callings and registered office and the fee.

Registration criteria—employer associations

Clause 10 specifies what must be met by an industrial association of employers before it can be registered as an industrial organisation—

- the association exists to further or protect its members' interests
- employer members in total must have employed an average of at least 20 employees each month in the 6 months immediately preceding the application (unless there are special circumstances)
- the association would conduct its affairs in compliance with the Act (the industrial relations commission will take into account any recent conduct by the association or its members)
- rules of the association comply with the Act
- the name of the association will not cause confusion
- registration would further the objects of the Act.

Registration criteria—employee associations other than enterprise associations

Clause 11 specifies that the following must be met by an industrial association of employees (excluding an enterprise association) before it can be registered as an industrial organisation—

- the association exists to further or protect its members' interests
- the association is not influenced by an employer or an employer group

- at least 20 members are employees (unless there are special circumstances)
- the association would conduct its affairs in compliance with the Act (the industrial relations commission will take into account any recent conduct by the association or its members)
- rules of the association comply with the Act
- the name of the association will not cause confusion
- registration would further the objects of the Act
- there is no organisation to which members might belong or could more conveniently belong and would effectively provide representation, except where the commission approves an undertaking to avoid demarcation disputes.

Registration criteria—enterprise associations

Clause 12 specifies that the following must be met by an enterprise association before it can be registered as an industrial organisation—

- the association is a genuine enterprise association
- the association exists to further or protect its members' interests
- the association is not influenced by an employer, person or body with an interest in the enterprise or an employer or employee group
- at least 20 members are employees
- the association would conduct its affairs in compliance with the Act (the industrial relations commission will take into account any recent conduct by the association or its members)
- rules of the association comply with the Act
- the name of the association will not cause confusion
- the commission is satisfied that majority support of members exists
- a supporting resolution has been passed by a majority of members at a general meeting or an absolute majority of the management committee
- registration would further the objects of the Act.

Approving and registering rules—Cwlth s 205

Clause 13 establishes the function of the industrial relations commission to approve the rules of an association seeking registration as an industrial organisation.

Continued registration of small organisations

Clause 14 provides the industrial relations commission's power to continue the registration of small employer and employee organisations where special circumstances exist.

The minimum membership numbers to accord with clauses 10, 11 and 12.

Registering several organisations for the same calling

Clause 15 allows 2 or more associations for a calling to be granted joint registration as an industrial organisation.

Change of callings

Clause 16 provides that an industrial organisation may apply to the industrial relations commission to amend its registered callings.

Deciding application

Clause 17 sets out provisions regarding opposition to an application for registration as an industrial organisation, the granting of an application for registration as an organisation and the issue of a certificate of registration as an organisation.

Organisations corporate bodies

Clause 18 confers corporate status on an industrial organisation.

Registered name of organisation

Clause 19 provides words that must be included in the registered names of industrial organisations. This provision aligns with contemporary usage.

Registered office of organisation

Clause 20 provides that an industrial organisation must have a registered office and the notification of same must be given to the industrial registrar who is to record it.

PART 3—ORGANISATIONS' RULES*Division 1—General***Requirement for rules**

Clause 21 requires that industrial organisations must have rules about the matters prescribed in the legislation.

General requirements for rules

Clause 22 specifies the general requirements as to rules of industrial organisations, and provides that rules—

- must not fail to comply with the Act, its objects, law or other nominated instruments
- must not prevent members from observing the law or provisions of nominated instruments or other decisions of the industrial court or industrial relations commission
- must not prevent members from entering into written agreements under nominated instruments or other decisions of the court or commission
- must not impose oppressive, unreasonable or unjust conditions on members or applicants for membership, having regard to the objects of the Act and the organisation's registration.

Content of rules

Clause 23 specifies what must and may be contained in the rules of industrial organisations.

Mandatory new requirements have been incorporated relating to eligibility of full-time officers and full-time employees for election to an office, the composition of management committees and the holding of an annual general meeting.

Rules to give conditions for loans, grants and donations

Clause 24 specifies conditions to be included in rules under which industrial organisations may make loans, grants or donations.

Division 2—Election rules

Subdivision 1—General

Rules for elections and ballots

Clause 25 specifies provisions which must be included in rules concerning the election of officers of industrial organisations, including giving each candidate equal opportunity to express their views in a statement to members.

Elections must be by either a direct voting system or a collegiate electoral system. Definitions of these systems are provided.

Rules for elections by secret postal ballot

Clause 26 provides that ballots for elections are to be by secret postal ballot where an industrial organisation's rules provide for a direct voting system.

The industrial registrar may grant an exemption from the postal requirement.

Rules about office terms

Clause 27 requires the rules of an industrial organisation to provide for terms of office no longer than four years without re-election. The term may be extended as prescribed for 1 year.

Rules may allow filling casual vacancies

Clause 28 allows the rules of industrial organisations, under specified arrangements, to provide for the filling of casual vacancies.

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

Clause 29 gives power to the Minister to make model election rules for industrial organisations which become subordinate legislation.

Organisations may adopt model election rules

Clause 30 allows an industrial organisation to adopt all or part of the model election rules by resolution.

Adoption of entire model election rules without change

Clause 31 allows the industrial organisation's secretary to give the industrial registrar notice of the resolution adopting the model election rules without change.

The registrar must amend the organisation's rules accordingly.

Adoption of model election rules with change

Clause 32 provides for an industrial organisation to amend its rules and file a copy of the amended election rules with the industrial registrar within 1 year of publication of the model election rules in the Government Gazette.

Safeguards are provided should these requirements not be carried out by the organisation.

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

What is a counterpart federal body

Clause 33 defines the term “counterpart federal body”.

Exemption if federal election held

Clause 34 permits an industrial organisation whose counterpart federal body has conducted an election and whose rules provide for corresponding offices in the counterpart federal body to apply to the industrial relations commission for an exemption from holding an election.

Provision is made for a member of the organisation to be able to object to the exemption on the grounds that the exemption would detrimentally effect the objector’s interests.

The commission can only grant an exemption under the terms which are provided. The exemption results in the person elected under the federal election being taken to have been elected and the organisations rules for election being taken to have been complied with.

Change in federal election result

Clause 35 provides that an industrial organisation to which an exemption from holding an election has been granted must give notice to the industrial relations commission where an order is made under the Commonwealth Act changing the election result. After giving the member who held the office and the organisation the opportunity to be heard, the commission is empowered to make an order it considers appropriate and may cancel or amend the exemption, give another exemption or validate a contravention of the organisation’s election rules.

Division 4—Changing name or eligibility rules

Application of div 4

Clause 36 specifies the changes to an industrial organisation’s name or eligibility rules to which the division applies.

Commission's consent needed for change or amendment

Clause 37 provides that any change to an industrial organisation's name or eligibility rules must be with the consent of the industrial relations commission and sets out related criteria. The provision empowers the commission to refuse to consent to an amendment of eligibility rules on certain grounds. These grounds, however, are not limited.

The commission may not consent to an amendment if it considers there is another organisation to which members might more conveniently belong and would effectively provide representation, except where the commission approves an undertaking to avoid demarcation disputes.

New name must be different from other organisations

Clause 38 states an industrial organisation may change its name if the name is not the same as nor similar to the name of another organisation.

When name change or rule amendment takes effect

Clause 39 provides that any change takes effect either on a specified day or the day of the consent of the change.

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

Clause 40 establishes the function of the industrial registrar to approve certain proposed alterations to the rules of industrial organisations. Exceptions relate to amendments adopting model election rules without change and orders, directions or decisions by the industrial court, industrial relations commission or registrar.

Registrar may amend rules—Cwlth s 203

Clause 41 provides that the industrial registrar may amend the rules of an industrial organisation where it is considered the rules do not make provision required by the Act. The amendment is to be by way of instrument which becomes effective when made.

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

Clause 42 provides that where certain undertakings have been given under clauses 11 (4) or 37(7) to avoid demarcation issues with another registered organisation and those undertakings are breached, the industrial relations commission may amend the rules of the organisation to remove any overlap between that organisation's eligibility rules and the eligibility rules of the other organisation.

The commission must give the organisations concerned an opportunity to be heard.

The amendment is to be by way of instrument which becomes effective when made.

Some amendments to be recorded

Clause 43 sets out the manner in which changes of name and alterations of eligibility rules of industrial organisations are to be recorded by the industrial registrar.

PART 4—VALIDITY AND COMPLIANCE OF RULES**Rules contravening s 22**

Clause 44 establishes that application may be made to the industrial court for an order (including an interim order) declaring that an industrial organisation's rules contravene the requirements of the Act, rendering them void.

Directions to perform rules

Clause 45 establishes that application may be made to the industrial court for an order directing the performance or observance of the rules of an industrial organisation. Penalty provisions are included.

Financial help for application under this part

Clause 46 provides that the Minister has discretion to grant financial assistance to members of industrial organisations taking proceedings for the disallowance or amendment of, or a direction for the performance of rules. If financial assistance is granted the industrial registrar is to decide the amount to be paid to the applicant.

PART 5—CONDUCTING ELECTIONS**Electoral commission to conduct elections**

Clause 47 specifies that elections for an office in an industrial organisation are to be conducted by the electoral commission, except where an exemption is granted by the industrial relations commission under clause 50 or 34 (federal election held).

Application for exemption from s 47

Clause 48 provides for the manner in which an industrial organisation may apply to conduct its elections and the procedures associated therewith.

The clause provides that—

- a committee of management of the organisation or branch may file an application with the industrial registrar for exemption from having elections conducted by the electoral commission
- the committee of management of the organisation or branch making application for exemption must have passed a resolution to make the application and have notified the members of the resolution
- the application must be accompanied by an affidavit to the effect that there has been compliance with the resolution requirements.

Objections to application for exemption

Clause 49 specifies that a member of an industrial organisation or branch

may object to an application made under clause 48 and provides that the industrial relations commission is to hear any objections made.

Commission may give exemption from s 47

Clause 50 allows the industrial relations commission to permit an industrial organisation or branch to have an election conducted other than by the electoral commission subject to the commission being satisfied that specified requirements are met.

The commission retains a power to revoke such permission on application by a committee of management of an organisation or if not satisfied that prescribed requirements have been met or the organisation or branch contravened certain provisions of the Act.

Duties of organisation or branch if exemption given

Clause 51 requires that an industrial organisation or branch which has been exempted from clause 47 for elections in the organisation or branch or for a particular office must appoint a returning officer, who is not an employee, member or officer of the organisation.

The industrial registrar's written approval of the returning officer's appointment must be obtained.

Election result report

Clause 52 introduces the requirement that a written election result report containing prescribed particulars must be given to the industrial registrar by the electoral commission or the returning officer as the case may be.

Registrar to arrange for elections

Clause 53 requires that an industrial organisation (other than one exempted under clause 50) file with the industrial registrar prescribed information in relation to an election.

If the prescribed information is filed and the registrar is satisfied that an election is required to be held under the rules of the organisation, the registrar must arrange for the conduct of the election by the electoral commission.

Electoral commission's conduct of elections

Clause 54 requires that where an electoral commission official is involved in or is actually conducting an election that official must comply with the rules of the industrial organisation. The official may take action, and give directions to ensure—

- no irregularities happen in the election, or
- any procedural defects that appear to the electoral official to exist in the rules will be remedied.

An election conducted by an electoral official is not invalid merely because of a breach of the rules of the organisation or branch because of action taken or an act done in compliance with a direction given.

Where an electoral official conducting an election, dies, becomes unable to complete the conduct of the election, or ceases to be qualified to conduct the election, the electoral commissioner must arrange for the completion of the conduct of the election.

Election expenses

Clause 55 provides for the expenses of a ballot conducted by the electoral commission to be paid by the industrial organisation concerned in the ballot.

The relevant organisation must pay the State within 1 month of receiving a written request from the electoral commission.

Death of candidate

Clause 56 provides that despite anything in the rules of an industrial organisation, if 2 or more candidates are nominated for an election in relation to an office in the organisation and one of the candidates dies before the close of the ballot, the election must be discontinued and a new election held.

Ballot records must be preserved

Clause 57 provides that where there is an election for an office in an industrial organisation and such election is conducted by the electoral commission, the responsible person for the ballot must ensure that all

records relevant to the election are kept by the electoral commission for a period of 1 year after the election.

Where the election is conducted other than by the electoral commission, the responsible person for the ballot must ensure that all records relevant to the election are kept by the organisation for a period of 1 year after the election.

Election help

Clause 58 provides that an organisation must help a candidate in the way contained in the model election rules or in a regulation.

Resources of organisations not to be used for election purposes

Clause 59 ensures that an industrial organisation does not spend resources, including financial resources, on a candidate in an election against another candidate. This applies to advertising or distributing material.

PART 6—DISPUTED ELECTIONS

Division 1—Election inquiries

Application for election inquiry

Clause 60 sets out the requirements for applications to the industrial court for election inquiries by financial members of an industrial organisation (including a person who was a financial member within the previous year) who claim alleged irregularities in an election. The application must be lodged with the industrial registrar.

Action by registrar for inquiry

Clause 61 sets out the action which is to, or may, be taken by the industrial registrar in relation to an election inquiry application.

The registrar must refuse an application if not satisfied there are reasonable grounds and circumstances.

The industrial court may also empower the registrar to do certain actions in respect of gathering information about the relevant election.

Court to conduct inquiry

Clause 62 sets out procedural steps to be taken by the industrial court in connection with an election inquiry.

Court may make interim orders

Clause 63 enables the industrial court to make interim orders relating to an election, a person who holds or acts in an office that an inquiry relates to and incidental matters.

Procedure at inquiry

Clause 64 enables the industrial court to permit or require persons to appear at an election inquiry hearing. Such persons are parties to the inquiry.

Functions and powers of court at inquiry

Clause 65 specifies the action the industrial court is to take at an election inquiry and if an irregularity is found (or is likely) it may make a range of prescribed orders.

The order cannot be made unless the court decides the election may have been (or may be) affected by the irregularity.

To assist any inquiry the court has the majority of the powers and authorities of a commission of inquiry under the *Commissions of Inquiry Act 1950*.

Enforcing orders under this part

Clause 66 empowers the industrial court to make orders for injunctions for the purposes of this part.

Preventing orders about disputed elections

Clause 67 makes it an offence for a person to prevent the carrying out of an order of the industrial court under this part.

Validating certain acts

Clause 68 validates actions done by a person during a period when the person purported to hold office in an industrial organisation but whose purported election has been overturned as a result of an inquiry.

However, the industrial court may declare any act by the person to be void.

Election not invalid

Clause 69 provides that in complying with an order of the industrial court, an election or step in an election is not invalid by reason only of contravening the rules of the industrial organisation concerned.

Inquiry costs

Clause 70 provides that the Minister may make payments on certain grounds relating to costs in connection with an election inquiry.

Division 2—Registrar may conduct elections**Application of pt 6, div 2**

Clause 71 specifies that this division shall only apply where the commission has granted an exemption for the conduct of an election.

Registrar to conduct elections on request

Clause 72 provides that the management committee of an industrial organisation or branch or 5% or 250 (whichever is less) of the members of the organisation or branch may request an election for an office in an organisation be conducted by the industrial registrar. This is on the basis of ensuring no irregularities occur in the election.

Under certain criteria, the registrar must organise with the electoral commission for an electoral official to conduct the election.

The electoral official may give directions to ensure no irregularities occur in an election and to remedy a procedural defect in the rules of the organisation concerned.

Election on registrar's initiative

Clause 73 enables the industrial registrar to make arrangements with the electoral commission for the conduct of an election for an office in an industrial organisation on the registrar's own motion if satisfied on reasonable grounds there is a likelihood of an irregularity in connection with an election for an office in the organisation.

Division 3—Election expenses

Expenses for elections under this part

Clause 74 provides that expenses in connection with certain elections are to be paid by the industrial organisation concerned, except where an irregularity occurred for which the electoral commission was at fault and the court orders the State to pay all or part of the expenses.

PART 7—DISQUALIFICATION FROM HOLDING OFFICE IN ORGANISATIONS

Definitions for pt 7

Clause 75 defines terms used commonly and solely in part 7.

Eligibility for office

Clause 76 deals with the eligibility of a person convicted of a prescribed offence to stand for election to an office, or to be elected or appointed to a

casual vacancy for an office in an industrial organisation. Such person is not eligible except under certain circumstances.

The provision also deals with existing office holders in the event of a conviction.

Application for leave to hold office by prospective candidate for office

Clause 77 deals with applications to the industrial court by persons convicted of a prescribed offence for leave to stand for election, or to be appointed to a casual vacancy for an office in an industrial organisation.

Application for leave to hold office in organisation by office holder

Clause 78 deals with applications by current office holders convicted of a prescribed offence for leave to continue to hold office in industrial organisations.

Court's obligation and powers for declarations

Clause 79 details who is to be given an opportunity to be heard by the industrial court for declarations that a person

- is or was not eligible to be a candidate for election or to be elected
- has ceased to hold an office.

In these instances the court can make any order it considers appropriate.

Court's obligations for applications

Clause 80 sets out the matters which the industrial court must take into account when considering an application for leave to hold office in industrial organisations. The court is to give the organisation an opportunity to be heard on the application.

PART 8—MEMBERSHIP OF ORGANISATIONS

Entitlement to membership

Clause 81 stipulates the criteria for membership of an industrial organisation.

Members and officers registers

Clause 82 requires every industrial organisation to keep a register of its members and a register of its officers.

Certain particulars are required to be recorded in the registers including where an organisation has more than 100 members, the members names listed alphabetically.

Filing registers

Clause 83 provides that industrial organisations must file with the industrial registrar a copy of the register of members and register of officers within 7 days of its registration (or longer period allowed by the industrial relations commission) and subsequently on an annual basis.

Exemption from filing members register etc.

Clause 84 allows the industrial registrar to exempt an industrial organisation from the requirement to file a copy of its register of members of the organisation.

In this regard a certificate is issued which may apply to the organisation or a branch of the organisation.

Rectification of registers by commission

Clause 85 empowers the industrial relations commission to rectify by order an industrial organisation's register of members or register of officers.

Registrar's access to registers

Clause 86 enables access to the register of members and register of officers of an industrial organisation (including an index) by the industrial registrar and members of the organisation.

For purposes of a ballot or by order of the industrial court or industrial relations commission the registrar may direct either registers (and index) to be delivered to the registrar.

Organisations to keep union ticket butts

Clause 87 provides that an industrial organisation must keep butts or copies of union membership tickets.

A union ticket includes receipts for organisation membership.

The butts must show where members live.

Resigning organisation membership

Clause 88 sets out the manner in which a person resigns from membership of an industrial organisation.

Resignation is effected if the procedures outlined in this provision are followed regardless of the rules of the organisation concerned.

Resignation if subscription unpaid for 1 year and no renewal

Clause 89 provides that resignation from an industrial organisation is taken to have occurred where the member has not paid a membership subscription within 1 year of it first becoming payable and not renewed membership.

Conscientious objection to organisation membership

Clause 90 enables certificates of exemption from membership of an industrial organisation of employees to be granted to individuals on the grounds of their conscientious beliefs.

Applications are to be made either to an industrial magistrate or the industrial registrar.

Interviews are conducted at which only selected persons are allowed to be present.

Conscientious beliefs means individual beliefs on moral values or religious beliefs.

Conduct about exemption certificate holders

Clause 91 provides protection from prejudicial conduct in employment towards holders of conscientious objectors' certificates.

Evidentiary provision for s 91

Clause 92 ensures that actions taken by management committees, officers, employees, agents and members of industrial organisations in relation to conduct about exemption certificate holders is evidence the action was taken by the organisation and the intent of the parties is taken to be the organisation's intent.

Court may decide membership disputes

Clause 93 provides a means whereby questions or disputes regarding membership entitlements may be settled in the industrial court.

Offences about membership

Clause 94 makes it an offence for an industrial organisation not to—

- grant membership to a person entitled to be admitted within 3 months of that person's application unless the matter is disputed before the industrial court (in the latter case it must be within 1 month of the court decision to allow membership)
- give a union ticket, within 1 month, to a person who has a right to be a member and complies with the organisation's rules.

Members under 18

Clause 95 allows persons under 18 to be members of an industrial organisation but not to be members of the organisation's committee of management. In addition, a person under 18 is not to be a trustee or treasurer of an organisation.

PART 9—AMALGAMATING INDUSTRIAL ORGANISATIONS

Division 1—Preliminary

Definitions for pt 9

Clause 96 sets out the meaning of certain terms specific to part 9. These definitions are also signposted in the dictionary in Schedule 3 to the Bill.

Proposed amalgamation procedure

Clause 97 confirms that the only procedure available to implement a scheme for a proposed amalgamation is as set out under this part. The industrial relations commission can make orders and give directions to resolve any difficulties or likely difficulties that may arise during the process.

Federations

Clause 98 allows for existing industrial organisations proposing to amalgamate to become a federation. The federation can represent the interests of its members but cannot become a party to an award or certified agreement. The federation ends on the amalgamation taking effect or in other specific circumstances.

Using resources for proposed amalgamation

Clause 99 allows an existing industrial organisation for a proposed amalgamation to use its financial and other resources to support the proposed amalgamation providing the management committee resolves to do so and gives reasonable notice to the members.

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

Clause 100 requires a written scheme for every proposed amalgamation and specifies that the scheme must include a general statement containing specific information.

Alternative schemes

Clause 101 allows for a scheme for a proposed amalgamation of 3 or more existing industrial organisations to include a provision (known as an “alternative provision”) for an amalgamation of 2 or more approving organisations where all the organisations do not agree with the original scheme.

The alternative provision must contain information regarding the differences between the proposed principal amalgamation and each proposed alternative amalgamation and any differences in the organisations’ rules.

Management committee approval

Clause 102 requires that the management committee of every industrial organisation to which the scheme relates must approve, by resolution, the scheme for proposed amalgamation including any changes to the scheme.

Community of interest declaration

Clause 103 provides an avenue for industrial organisations seeking a proposed amalgamation to jointly apply for a declaration that there is a community of interest between the organisations.

The application is filed with the industrial registrar. If the industrial relations commission, after hearing submissions from relevant parties, is satisfied there is a community of interest it must declare that it is so satisfied.

The circumstances in which a community of interest may be declared is set out in the clause.

The commission may revoke a declaration.

Application to submit proposal to a ballot

Clause 104 specifies that industrial organisations for a proposed amalgamation must jointly apply in the industrial relations commission for approval to submit the proposed amalgamation to a ballot of members. This application is known as a “ballot application”.

The application is filed with the industrial registrar and is to be accompanied by a copy of the scheme for the proposed amalgamation and a written scheme outline which gives enough information to allow members of the organisation to make an informed decision about the scheme.

Holding office after amalgamation

Clause 105 specifies that the rules of a proposed amalgamated organisation can allow for an officer (known as an “existing officer”) who held office in one of the organisations immediately before the amalgamation day to be an officer of the proposed amalgamated organisation but the continuation in office is only for a specified period.

The rules must also provide for synchronising of elections after amalgamation takes effect.

Application for exemption from holding ballot

Clause 106 provides for a proposed amalgamated organisation to apply for an exemption (a “ballot exemption”) from holding a ballot for the amalgamation.

The application is filed with the industrial registrar with the ballot application for amalgamation.

Application for alternative ballot

Clause 107 allows an industrial organisation to apply to the industrial relations commission to approve an “alternative ballot” not under clause 136 for amalgamation.

The application is filed with the industrial registrar with the ballot application for amalgamation.

The proposed ballot must provide a specific criteria for the conduct of the ballot.

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

Clause 108 states that the electoral commission must conduct a ballot for amalgamation except in the instance where the commission has given an exemption for the ballot.

Application for exemption from s 108

Clause 109 provides for the manner in which an industrial organisation may apply to conduct a ballot for a proposed amalgamation and the procedures associated therewith.

The clause provides that—

- a committee of management of the organisation may file an application with the industrial registrar for exemption from having ballots conducted by the electoral commission
- the committee of management of the organisation making application for exemption must have passed a resolution to make the application and have notified the members of the resolution
- the application must be accompanied by an affidavit to the effect that there has been compliance with the resolution requirements.

Objections to application for exemption

Clause 110 specifies that a member of an industrial organisation may object to an application made under clause 109 and provides that the industrial relations commission is to hear any objections made.

Commission may give exemption from s 108

Clause 111 allows the industrial relations commission to permit an industrial organisation to have a ballot conducted other than by the electoral commission subject to the commission being satisfied that specified requirements are met.

The commission retains a power to revoke such permission on application by a committee of management of an organisation or if not

satisfied that prescribed requirements have been met or the organisation or retiring officer contravened certain provisions of the Act.

Duties of organisation if exemption given

Clause 112 requires that an industrial organisation which has been exempted from clause 108 for a ballot for a proposed amalgamation must appoint a returning officer, who is not an employee, member or officer of the organisation.

The industrial registrar's written approval of the returning officer's appointment must be obtained.

Ballot result report

Clause 113 introduces the requirement that a written ballot result report containing prescribed particulars must be given to the industrial registrar by the electoral commission or the returning officer as the case may be.

Notice to electoral commission

Clause 114 requires the industrial registrar to notify the electoral commission immediately of an application for a ballot for a proposed amalgamation. The electoral commission is required to take action to hold the ballot as quickly as possible.

Providing information and documents to electoral officers

Clause 115 allows an electoral official when conducting a ballot for a proposed amalgamation to require by notice, an officer (including employee) of an existing industrial organisation to provide information within the officers knowledge or possession and to produce documents under the officers custody or control.

It is a reasonable excuse for a person not to comply with a notice if doing so might tend to incriminate the person.

Ballot expenses under pt 9

Clause 116 states that the expenses of a ballot for a proposed

amalgamation conducted by the electoral commission under this part are payable to the State by the industrial organisation, except where an irregularity has occurred at the fault of the electoral commission. In this instance the industrial court may order the State to pay the expenses.

The amount payable may be recovered by the State as a debt payable to it.

Ballot records to be kept

Clause 117 provides that where there is a ballot conducted and such ballot is conducted by the electoral commission, the responsible person for the ballot must ensure that all records relevant to the ballot are kept by the electoral commission for a period of 1 year after the election.

Where the ballot is conducted other than by the electoral commission, the responsible person for the ballot must ensure that all records relevant to the ballot are kept by the industrial organisation or branch for a period of 1 year after the election.

Division 4—Amalgamation approval procedure

Amalgamation hearing

Clause 118 requires the industrial relations commission to immediately fix a time and place for the hearing of submissions about—

- the application; and
- making a declaration of a community of interest, where relevant; and
- giving a ballot exemption where relevant; and
- giving approval for an alternative ballot, where relevant.

The commission must promptly give notice of the time and place for the hearing.

Submissions at amalgamation hearings

Clause 119 provides for submissions at the hearing to be only made by the applicant. However, where the industrial relations commission

consents, another person may make a submission about a matter as prescribed under a regulation.

Ballot approval not extending eligibility rules etc.

Clause 120 relates to the industrial relations commission's involvement in the approval of ballots. More specifically the provision—

- requires the commission to approve the submission of the amalgamation to ballot conditional upon certain requirements being met
- requires the commission to allow an application for a ballot exemption under clause 133 or 134 if the ballot conditions are met
- requires the commission to refuse the application or adjourn the hearing if it is satisfied the ballot conditions have not been met
- requires the commission to allow the application if it considers the ballot conditions will be met by allowing the applicant to amend, or give an undertaking to amend, the amalgamation scheme
- provides for the scheme to be amended with conditions despite the industrial organisation's rules
- specifies action that the commission may take where the applicant does not fulfil its undertaking or meet the commission conditions.

Objections about amalgamation involving extending eligibility rules etc.

Clause 121 states that where the industrial relations commission has refused to approve an amalgamation be submitted to ballot an objection may be made by a person and on a ground prescribed by regulation.

The commission must hear the objection as prescribed under a regulation.

Ballot approval if ballot extends eligibility rules etc.

Clause 122 provides for the industrial relations commission to approve an application to submit a proposed amalgamation to ballot and allow a

ballot exemption where any objections have been heard and dismissed and other criteria met.

One of the criteria for approving the application is that the amalgamation does not contravene this legislation, an award or certified agreement.

The commission can refuse an application or adjourn a proceeding.

If the applicant makes amendments to the scheme or gives an undertaking to make amendments subject to conditions and in so doing satisfies the commission that the criteria are met, the commission must allow the application and approve the submission or allow an exemption.

The commission can take action where the applicant has not fulfilled its undertaking or met the commission conditions.

Fixing ballot period

Clause 123 requires the industrial relations commission after approving the submission of a proposed amalgamation to a ballot, to consult with the electoral commissioner and fix a starting and finishing day for the ballot.

The ballot must start within 28 days of approval but this can be extended in certain circumstances.

The commission can change the starting and finishing days after consulting with the electoral commissioner.

Role of voters for ballot

Clause 124 defines the role of voters and specifies who may vote in the ballot for the proposed amalgamation.

Filing ‘yes’ case

Clause 125 provides for the filing of a written statement by an existing industrial organisation supporting the proposed amalgamation.

This statement (known as a “ ‘yes’ case”) is filed with the ballot application for the proposed amalgamation.

‘No’ cases

Clause 126 provides for the filing of a written statement by a “required minimum number” of members of the industrial organisation opposing the proposed amalgamation.

This statement (known as a “ ‘no’ case”) must be filed within a nominated time.

Commission statements

Clause 127 requires the industrial relations commission to prepare a written statement opposing the amalgamation where 2 or more ‘no’ cases are filed. Where practicable, consultation with representatives of the persons who filed the ‘no’ cases is to occur.

The statement must be sent with the ballot paper and is taken to be the only ‘no’ case for the amalgamation.

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

Clause 128 states that, if the industrial relations commission approves, a ‘yes’ or ‘no’ case may include material other than words for example, diagrams, illustrations, photographs etc.

Amending ‘yes’ or ‘no’ cases

Clause 129 states the industrial relations commission may allow the person who filed a ‘yes’ or ‘no’ case to make amendments to it.

‘Yes’ and ‘no’ cases to be sent to voters

Clause 130 requires that a copy of the ‘yes’ and ‘no’ cases and any amendments must be sent with the ballot paper to persons eligible to vote.

Amending schemes

Clause 131 allows the industrial relations commission, prior to the ballot, to permit the existing industrial organisations for amalgamation to amend the scheme for amalgamation.

The commission can impose conditions and can take action if the conditions are contravened.

Scheme outlines

Clause 132 gives the industrial relations commission discretion to allow the scheme outline to extend beyond the 3000 words as prescribed in clause 104. The outline can include material not in written format including diagrams, illustrations and photographs.

The commission can also permit amendments to the outline before the ballot begins.

Ballot exemption—number of members

Clause 133 requires the industrial relations commission to approve, unless special circumstances exist, a ballot exemption application where the total number of persons that could be members of the proposed amalgamated organisation does not exceed 25% of the number of members of the applicant organisation.

Ballot exemption—recognising federal ballot

Clause 134 allows the industrial relations commission to recognise the results of a ballot under the Commonwealth Act and approve a ballot exemption subject to specific requirements, including an objection by a member.

Alternative ballot approval

Clause 135 allows the industrial relations commission to approve an alternative ballot for a proposed amalgamation after the hearing is conducted and consultation has occurred with the electoral commissioner.

Members' secret postal ballot

Clause 136 provides that where the industrial relations commission approves a ballot for the amalgamation, the electoral commission is to conduct a secret postal ballot of the industrial organisation's members.

Where the amalgamation scheme contains a proposed alternative provision the electoral commission must conduct a ballot on the alternative provision.

If 2 or more ballots are required, the same ballot paper must be used.

Votes are not required to be counted if the ballot result is unnecessary.

A copy of the scheme outline and amendments to it is to accompany the ballot paper sent to eligible voters.

Members' decision on amalgamation

Clause 137 prescribes the voting requirements necessary for approval of the amalgamation.

Further ballot if amalgamation not approved

Clause 138 permits industrial organisations to file another ballot application for a proposed amalgamation should a ballot not be approved by the members. Specifically, the provision allows the industrial relations commission to dispense with any procedural step or order a fresh ballot be conducted where the application is made within 1 year of the declaration of the first ballot.

Irregularity inquiries

Clause 139 provides for an application to be made to the industrial court within 60 days after the result of the ballot to inquire into an alleged irregularity in the ballot.

The court has the same functions and powers as applicable under part 6 which relates to inquiries on elections to hold office.

Amalgamation approval

Clause 140 provides that the proposed amalgamation is approved if the members of each existing organisation approve the amalgamation.

Where the approval relates to a proposed alternative amalgamation, specific criteria apply.

Division 5—Amalgamation taking effect**Fixing amalgamation day**

Clause 141 states that the approved amalgamation commences on the day fixed by the industrial relations commission by notice in the gazette.

Prior to fixing the day, the commission is required to consult with the industrial organisations concerned and satisfy itself about various specific issues.

Action on amalgamation

Clause 142 requires the industrial relations commission and industrial registrar to take particular action on the amalgamation day with respect to the registration and deregistration of the industrial organisations involved.

Vesting of property and liabilities in amalgamated organisation

Clause 143 provides that on the amalgamation day the assets and liabilities of the deregistered industrial organisation become the assets and liabilities of the amalgamated organisation.

Effect of amalgamation on commission decisions

Clause 144 states that all decisions of the industrial relations commission binding on a deregistering industrial organisation immediately before the amalgamation day binds the amalgamated organisation. This includes the organisation's members.

Any reference in such decisions to a deregistered organisation are to be read to include the amalgamated organisation.

Instruments

Clause 145 provides that an instrument, as defined in this clause, continues to have effect from the amalgamation day.

Any reference in an instrument to a deregistered industrial organisation is to be read to include the amalgamated organisation.

Pending proceedings

Clause 146 states that an amalgamated industrial organisation is substituted for each deregistered organisation in any pending proceedings before the industrial court and industrial relations commission as from the amalgamation day.

Division applies despite laws or instruments

Clause 147 provides that—

- this division prevails over another Act or instrument
- protection is afforded to an industrial organisation or other person from liability from a breach of contract, confidence, civil wrong or breach of any Act for action taken arising from this division
- action taken under the division does not release any surety or part of the surety's obligations
- where consent is required by a person to give effect to any aspect of this division, that consent is deemed to have been given.

Amalgamated organisation to carry out amalgamation

Clause 148 provides for the amalgamated industrial organisation to take all necessary steps to carry out the amalgamation.

The industrial relations commission can make any orders considered appropriate in relation thereto on application by an interested person.

Certificates about land

Clause 149 provides for the transfer of land, which includes interest in land, where an amalgamated industrial organisation acquires it as a result of the amalgamation. The registrar of titles, upon receipt of a certificate from an authorised person for the amalgamated organisation must register the vesting of the land in the amalgamated organisation.

The vesting of land in the amalgamated organisation may be registered under another State's law in certain circumstances.

Certificates about charges

Clause 150 applies where an amalgamated industrial organisation becomes a charge holder because of this division.

An authorised person's certificate listing specified criteria is evidence of an amalgamated organisation becoming a charge holder.

A person required or permitted to keep a register about charges, upon receipt of the certificate, is to take action to register the organisation becoming a charge holder or otherwise deal with and give effect to the certificate.

Certificates about company interests

Clause 151 provides for the transfer of a share, debenture or interest in a company where an amalgamated industrial organisation becomes the holder thereof through the amalgamation process.

An authorised person's certificate listing specified criteria is evidence of an amalgamated organisation becoming the holder of a company interest.

The company, having received the certificate, must take appropriate action to register the interest.

Certificates about other property

Clause 152 provides for the transfer of other assets where an amalgamated industrial organisation acquires the assets as a result of the amalgamation.

An authorised person's certificate listing specified criteria is evidence of an asset becoming the amalgamated organisation's property.

A person with registration functions for the relevant asset, upon receipt of the certificate, must register the matter, deal with and give effect to the certificate.

A transfer of the asset may be registered under another State's law in certain circumstances.

Commission may resolve difficulties

Clause 153 empowers the industrial relations commission to make an order to overcome any difficulty which may arise in connection with this part.

Any order made prevails over any rules of an organisation.

Division 6—Validation**Application of division**

Clause 154 provides for the application of this division to certain actions done relating to amalgamations excluding industrial relations commission orders made under a specified provision.

Validating acts in good faith

Clause 155 provides that a relevant act done in good faith in connection with an amalgamation is valid despite an invalidity discovered later.

Validation after 4 years

Clause 156 states that 4 years after the relevant act was done, the act is taken to have been done under this part and the industrial organisation's rules.

Order that s 155 or 156 does not apply

Clause 157 provides that the industrial relations commission on application by an eligible person may make orders that clause 155 or 156 does not apply.

Orders about invalidities

Clause 158 allows the industrial relations commission, on application by an eligible person, to make orders that it considers appropriate if it decides an invalidity has happened in relation to a proposed or completed amalgamation.

PART 10—WITHDRAWAL FROM AMALGAMATIONS

Division 1—General

Object of pt 10—Cwlth s 253ZH

Clause 159 provides that the object of Part 10 is to allow, in a manner that is fair to the members of the industrial organisations concerned, and the creditors of those organisations the reconstitution and re-registration of certain organisations that have taken part in amalgamations.

Definitions for pt 10—Cwlth s 253ZI

Clause 160 (1) defines a number of terms for the purposes of this part. Several of these definitions are consistent with those in part 9 (amalgamation of industrial organisations). *Subclause 160 (2)* sets out the circumstances in which an organisation is taken to have been de-registered in connection with the formation of an amalgamated organisation.

Division 2—Ballots for withdrawal from amalgamated organisations

Applications to the commission for ballots—Cwlth s 253ZJ

Clause 161 specifies the time limits that apply on an application for a withdrawal from amalgamation.

An application may be made to the industrial relations commission for a secret ballot to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation.

An application may be made if the specified requirements are satisfied. These include periods after which the amalgamation cannot be undone.

An application may not be made within 1 year of either the commission having rejected an application in relation to the constituent part of the organisation or a proposal for withdrawal having been rejected in a ballot.

Ballot exemption—recognising federal ballot

Clause 162 provides that State industrial organisations that have a counter-part federal body may apply to the industrial relations commission for an exemption from ballot if the counterpart federal body has withdrawn from an amalgamation.

A member of the organisation may object to the exemption on certain grounds.

The criteria the commission is to take account of before granting an exemption is prescribed.

The commission must grant the exemption if satisfied of these stipulations unless special circumstances exist.

Where an exemption is granted, the members of the organisation are taken to have approved the withdrawal from amalgamation.

Notice to electoral commission—Cwlth s 253ZK

Clause 163 requires the industrial registrar to immediately notify the electoral commission if an application for ballot is made.

The electoral commission is required to conduct a ballot for the application as quickly as possible.

Orders for ballots—Cwlth s 253ZL

Clause 164 provides that, where the industrial relations commission is satisfied that the application for the ballot has been validly made, and the proposal for the withdrawal of the constituent part is feasible, the commission must order that the ballot take place.

Subclause 164 (2) provides that in considering whether to order a ballot, the commission must consider any submissions made by authorised persons.

Subclause 164 (3) allows the commission to make orders in relation to the conduct of the ballot.

Conducting ballot—Cwlth s 253ZM

Clause 165 requires the electoral commission to carry out the ballot in accordance with the regulations except where an exemption has been given.

Application for exemption from s 165

Clause 166 provides that the persons or body who may apply for a ballot (a certain number of constituent members or a committee of management) may file an application with the industrial registrar for exemption from having the ballot conducted by the electoral commission.

The parties must have passed a resolution to make the application and have notified the members of the resolution.

An authorised person must include with the application an affidavit to the effect that there has been compliance with the resolution requirements.

The registrar must publish a notice stating details of any application.

Objections to application for exemption

Clause 167 specifies that a member of a constituent part may object to an application made under clause 166 and provides that the industrial relations commission is to hear any objections made.

Commission may give exemption from s 165

Clause 168 allows the industrial relations commission to exempt a constituent part from the requirement to have a ballot conducted by the electoral commission where the application has been made as prescribed and properly made objections have been heard.

The commission retains a power to revoke any exemption granted under specified circumstances.

Duties of constituent part if exemption given

Clause 169 requires that a constituent part which has been exempted from the requirement that the ballot be conducted by the electoral

commission must—

- appoint a returning officer, who is not a member, employee or officer of the industrial organisation (a statutory declaration sworn by the returning officer must state this)
- obtain the industrial registrar's written approval of the returning officer's appointment.

Ballot result report

Clause 170 requires that a written ballot result report containing prescribed particulars must be given to the industrial registrar by the electoral commission or the returning officer as the case may be.

Providing information and documents to electoral officers—Cwlth s 253ZN

Clause 171 empowers an electoral official who has written authorisation from the electoral commission to require (by written notice and where reasonably necessary) an officer or an employee of the amalgamated organisation or a branch thereof to provide to the official, within a reasonable period, information or documents.

The required content of any notice from the electoral official to an officer or employee for information or documents is stipulated.

A person must not contravene the notice without reasonable excuse.

Ballot records must be preserved

Clause 172 provides that where there is a ballot conducted and such ballot is conducted by the electoral commission, the responsible person for the ballot must ensure that all records relevant to the ballot are kept by the electoral commission for a period of 1 year after the election.

In those instances where the ballot is conducted other than by the electoral commission, the responsible person for the ballot must ensure that all records relevant to the ballot are kept by the industrial organisation or branch for a period of 1 year after the election.

Irregularity inquiries

Clause 173 provides for an application to be made by a constituent member to the industrial court for it to inquire into a ballot irregularity.

The application must be made in a prescribed way and not later than 60 days after the ballot result has been declared.

Division 3—Giving effect to ballots**Deciding the day of withdrawal—Cwlth s 253ZP**

Clause 174 specifies that the industrial relations commission must make certain orders where more than 50% of the formal votes cast in a ballot are in favour of the withdrawal from amalgamation.

The commission is required to—

- determine the day on which the withdrawal is to take effect;
- make orders in connection with the apportionment of assets and liabilities; and
- make other orders necessary to give effect to the withdrawal, eg changes to eligibility rules.

The commission must not determine the day on which the withdrawal is to take effect if certain applications are made.

The commission is to consider the assets and liabilities, (including changes in value) of the constituent part before it was deregistered and the interests of creditors of the amalgamated organisation.

Registration of constituent part—Cwlth s 253ZQ

Clause 175 provides for the registration of the constituent part as an industrial organisation and the entry of particulars in the register of organisations.

Members of amalgamated organisation may join registered organisation—Cwlth s 253ZR

Clause 176 provides for members of the amalgamated organisation who fall within the eligibility rules of the newly registered industrial organisation to join the latter, without payment of a membership fee.

Orders of the commission, awards etc.—Cwlth s253 ZS

Clause 177 provides for the application of awards, orders and certified agreements following a withdrawal from an amalgamation. On the day that the registration of the newly registered industrial organisation takes effect all applicable awards, orders and certified agreements become binding on the newly registered organisation and its members.

Withdrawal regulations—Cwlth s 253ZT

Clause 178 states that regulations may provide for other matters related to giving effect to the withdrawal of the constituent part. These include, but are not limited to, the matters specified in the clause.

Division applies despite laws and agreements prohibiting transfer etc.—Cwlth s 253ZU

Clause 179 protects an industrial organisation or person from liability under any Act, or the common law in relation to actions carried because of, or for a purpose connected to or arising out of, this division.

The division applies despite anything in an Act, contract, deed, undertaking agreement or other instrument. This does not apply to place an organisation or person in breach of an Act, certain contracts or to release any surety, wholly or part from the surety's obligations.

Nothing done by the division is to be regarded as placing an organisation or other person in breach of contract, confidence or guilty of a civil wrong.

Division 4—Validation**Application of division**

Clause 180 provides for the application of this division to certain actions done relating to withdrawals from amalgamations excluding industrial relations commission orders made under specified clauses.

Validating acts in good faith

Clause 181 provides that a relevant act done in good faith in connection with a withdrawal from amalgamation is valid despite an invalidity discovered later.

Validation after 4 years

Clause 182 states that 4 years after the relevant act was done, the act is taken to have been done under this part and the industrial organisation's rules.

Order that s 181 or 182 does not apply

Clause 183 provides that the industrial relations commission on application by an eligible person may make orders that clause 181 or 182 does not apply.

Orders about invalidities

Clause 184 allows the industrial relations commission, on application by an eligible person, to make orders that it considers appropriate if it decides an invalidity has happened in relation to a proposed or completed withdrawal from amalgamation.

Division 5—Miscellaneous**Commission may resolve difficulties—Cwlth s 253ZV**

Clause 185 gives the industrial relations commission the power to make discretionary orders for the purpose of resolving any difficulties which arise in relation to the application of this division. Any order made by the commission prevails over any law or the rules of an industrial organisation or association seeking registration as an organisation.

Ballot expenses under pt 10

Clause 186 provides that the expenses of a ballot conducted by the electoral commission are payable by the applicant for the ballot and may be recovered by the State as a debt.

PART 11—CANCELLING REGISTRATION**Cancelling registration for industrial conduct**

Clause 187 provides for application to be made to the full industrial court for the cancellation of registration of an industrial organisation on grounds of industrial conduct.

Orders if cancellation deferred

Clause 188 enables the full industrial court to make orders other than for the cancellation of an industrial organisation's registration where a ground for cancellation has been established.

Cancelling registration on other grounds

Clause 189 provides for the full industrial court to cancel the registration of an industrial organisation in various circumstances. Provisions include those applicable for the cancellation of registration of enterprise organisations.

Cancellation directions

Clause 190 enables the full industrial court to give directions to bring about the cancellation of registration of an industrial organisation.

Recording cancellation

Clause 191 provides that the industrial registrar is to record the cancellation of an industrial organisation in the register of organisations.

Consequences of cancellation

Clause 192 sets out the consequences of cancellation of registration for the status, property, entitlements and liabilities of the former industrial organisation and its members.

PART 12—ACCOUNTS AND AUDIT***Division 1—Preliminary*****Objects of pt 12**

Clause 193 sets out the objects of this part namely to ensure that an industrial organisation is accountable to its members and that it complies with the Australian accounting standards.

Definition for pt 12

Clause 194 defines Australian accounting standards for the purpose of this part.

Meaning of “financial year” in pt 12

Clause 195 defines the term “financial year” for the purposes of this part.

Applying part to organisations with branches

Clause 196 provides that this part applies to a branch of an industrial organisation as if it was an organisation in its own right. The industrial registrar is empowered, on application of an organisation with branches, to give a certificate exempting a branch from the provisions that it was an organisation in its own right.

Exemption for branches without financial affairs—Cwlth s 271A

Clause 197 enables the industrial registrar, on application of a branch of an industrial organisation, to issue a certificate that the branch did not have any financial affairs. A certificate exempts that branch from the requirements of this part in respect of the financial year.

Division 2—Accounting obligations**Organisations must keep proper accounting records**

Clause 198 provides that industrial organisations are to keep proper accounting records which—

- explain the methods and calculations about how the accounts are made up
- correctly record and explain its transactions and financial position
- contain details of contributions to and expenditure from a political objects fund, if one exists for the organisation.

Preparing accounts

Clause 199 provides that an industrial organisation must prepare accounts for each financial year which include the relevant figures from the preceding financial year's accounts and particulars which may be prescribed by regulation.

Prescribed particulars include details about any matter for which a levy payable by a member of an organisation under its rules or voluntary contribution is paid.

Regulation may give effect to Australian accounting standards

Clause 200 provides that a regulation may give effect to the Australian accounting standards.

Members may apply for information

Clause 201 permits a member of an industrial organisation or the industrial registrar at the request of a member to apply to an organisation for information prescribed by regulation.

The organisation must provide the information in the manner prescribed by regulation. The organisation must include in their accounts a notice to this effect.

Officers' duties

Clause 202 provides that the industrial registrar may require an officer of an industrial organisation to—

- give information about the organisation's funds and accounts
- comply with a direction about the books and forms of account
- produce the organisation's books.

Division 3—Audits**Auditors**

Clause 203 provides that an industrial organisation must—

- have an auditor to perform functions in accordance with this part
- ensure that an audit and audit report are performed by a competent person (as defined).

Auditor's functions

Clause 204 details the duties of an industrial organisation's auditor including the preparing of an audit report within 4 months of the ending of each financial year.

The auditor must notify the industrial registrar if a provision of this part has been contravened and such contravention cannot be dealt with in the audit report.

Auditor's powers

Clause 205 sets out the powers of an auditor of an industrial organisation. An organisation, officer, employee or member of an organisation is prohibited from preventing an auditor from exercising those powers or from failing to produce documents to the auditor without reasonable excuse.

Auditor's fees and expenses

Clause 206 provides that an industrial organisation must pay its auditor's reasonable fees and expenses.

Removing auditors

Clause 207 sets out the ways in which an industrial organisation may remove an auditor.

Auditors have qualified privilege

Clause 208 provides protection for auditors from making defamatory statements and for other persons publishing those statements in the circumstances provided.

Division 4—Presenting and lodging audit reports and accounts

Presentation to annual general meeting

Clause 209 states that an industrial organisation must present its audit report and accounts to an annual general meeting within 5 months of the ending of each financial year unless extended by the industrial registrar.

Extension of time to hold annual general meeting

Clause 210 permits an industrial organisation to apply to the industrial registrar under certain circumstances for an extension of time to hold the annual general meeting.

Presentation to committee meeting if a deficiency

Clause 211 requires an industrial organisation to present an audit report and accounts to a management committee meeting where an audit report identifies an accounting deficiency or the report and accounts will not be presented to an annual general meeting within 7 days.

Copies of report must be given to members

Clause 212 requires an industrial organisation to give its members free of charge a copy of its audit report and accounts at least 14 days before the annual general meeting to which the report will be presented.

This requirement is satisfied if the report and accounts are published in a journal or newsletter which is given to members free of charge at least 14 days before the annual general meeting.

False or misleading statements about reports

Clause 213 prohibits a member of an industrial organisation's management committee from making a statement that the member knows is false or misleading about the organisations audit report.

Lodging reports with registrar

Clause 214 requires an industrial organisation which has presented its audit report and accounts to lodge a copy with the industrial registrar within 14 days unless extended by the registrar.

Organisation may file reports for branches

Clause 215 specifies an industrial organisation must file with the industrial registrar copies of its branches' audit report and accounts within

14 days of when copies of the reports and accounts are required to be presented unless the time is extended by the registrar.

Division 5—Registrar’s investigations and audits

Registrar’s investigations

Clause 216 requires that the industrial registrar investigate an accounting deficiency identified in an auditor’s report or another matter which the registrar considers should be investigated as revealed by documents filed by an industrial organisation.

Where this investigation reveals sufficient grounds, the registrar may investigate the organisation’s finances or financial administration.

If requested by the specified number of members, the registrar must investigate the organisation’s finances or financial administration.

Registrar may conduct other investigations—Cwlth s 280A

Clause 217 empowers the industrial registrar to investigate whether the accounts of an industrial organisation contain any deficiency, failure or shortcoming or there has been a contravention of this part, a regulation made for the purposes of this part or a rule of an organisation relating to its finances or financial administration.

Investigations under ss 216 and 217—Cwlth s 280B

Clause 218 sets out the powers of the industrial registrar in undertaking investigations under sections 216 or 217.

If on completion of the investigation the registrar is satisfied that the industrial organisation has contravened a provision of the legislation or a rule of the organisation relating to its finances or financial administration, the registrar must notify the organisation of the contravention, what action is required and a period in which such action should be taken to rectify the matter.

The industrial court, on application by the registrar is empowered to make such orders to ensure compliance with the registrar’s notice.

Offences about registrar's investigations

Clause 219 makes it an offence for a person, without reasonable excuse, to—

- fail to attend before the industrial registrar
- fail to provide information or documents required by the registrar
- provide information or documents which the person knows to be false or misleading or to make an oral or written statement which the person knows to be false or misleading.

Registrar's examinations and audits

Clause 220 sets out conditions under which the industrial registrar may engage an auditor to examine an industrial organisation's accounting records.

The registrar is required to give the auditor notice of the engagement. The auditor is to report to the registrar and has the powers and duties as set out.

It is an offence for an officer, employee or person having custody of the organisation's records, without reasonable excuse, to withhold information within their knowledge or control or required for the audit under this section.

The organisation is required to meet the costs of the audit and the registrar is empowered to recover those costs where they have not been paid on demand.

Division 6—Auditors may attend meetings**Notice of meeting to auditor**

Clause 221 requires an industrial organisation to give an auditor notice of a general or management committee meeting at which the auditor's report will be presented.

Auditor may attend meetings

Clause 222 allows an auditor or an authorised substitute to attend an industrial organisation's annual general meeting or management committee

meeting at which the auditor's report and the accounts will be presented or business to be conducted concerns the auditor.

It becomes an offence for an officer, employee or member of an organisation, without reasonable excuse, to prevent attendance at the meeting or for the presiding officer to prevent the auditor or substitute from being heard.

Division 7—Exemption for organisations with low income

Accounts and audits for low income organisations

Clause 223 provides that on application by an industrial organisation the industrial registrar must issue a certificate that the organisation's income was less than the specified amount. This certificate exempts the organisation from certain provisions of this part.

After the issue of a certificate, the organisation is required to prepare from its accounting record the accounts and statements which may be required by regulation.

The organisation is required to—

- present a copy of its audit report and accounts to a general meeting before the end of the next financial year
- provide a copy of the audit report and accounts to a member on request
- file copies of the audit report and accounts with the registrar within a specified period.

Failure of an organisation to take any of these actions represents an offence for which a penalty is provided.

Division 8—Political objects funds

What is spending money on political objects

Clause 224 defines the meaning of the term “spending money on political objects”.

The term includes payments (including loans) made to or for—

- a political party
- the expenses of a candidate in respect of an election for Parliament (Commonwealth or State) or local government
- the holding of meetings and distributing documents supporting a candidate for an election
- registering electors or selecting candidates
- the holding of political meetings and distributing political documents.

Political objects fund

Clause 225 requires, if an industrial organisation spends money on political objects, that the organisation—

- have a political objects fund
- keep the fund separate from other funds of the organisation
- only spend money on political objects from the fund

Contributions by members for political objects

Clause 226 requires that, where an industrial organisation has a political objects fund—

- any membership subscription must not include a contribution to the fund
- a member must not be required to contribute to the fund unless certain criteria are met namely, the organisation decides a separate rate for the contribution, the member giving notice that the member wants to make a contribution and the member has not cancelled the notice
- political objects contributions can only be paid into that fund.

This provision has the effect of ensuring that a member of an organisation is to voluntarily choose to contribute to a political objects fund.

Member may give direction about contribution

Clause 227 allows a member to give a written direction to an industrial organisation on what political objects the member's contribution is to be spent. This direction is to be made at the time of making the contribution.

The provision requires the organisation to pay money out of the political objects fund from the member's contribution only as required by the direction.

The provision allows the direction to be changed by giving notice to the organisation before all the contribution is spent.

The effect of this provision is to ensure that a member's voluntary contribution to the political objects fund is directed to a candidate or political party of the member's choice.

No disadvantage to non-contributing members

Clause 228 provides that a member of an industrial organisation is not to be excluded from any benefits of membership or disadvantaged in relation to other members for not contributing to a political objects fund

Such members will not have an interest in the management or control of the fund.

Payments from fund must be under a direction or approved

Clause 229 ensures that monies from an industrial organisation's political objects fund can only be spent—

- as directed by a member under clause 227 ie. as directed by a member from the member's contribution; or
- as approved by the state council of the organisation or similar decision-making body.

Officers must ensure organisation complies with division

Clause 230 provides that officers of an industrial organisation are to ensure that the organisation complies with the requirements of the division.

In this regard, officers may commit an offence of failing to ensure that an organisation complies with the requirements, unless certain defences exist.

Such defences centre on the officer performing reasonable diligence in having the organisation comply with this division and the officer establishing he or she was not in a position of influence.

Filing statements of political expenditure

Clause 231 requires an industrial organisation to file with the industrial registrar a statement, certified by a statutory declaration, detailing certain payments made in a financial year on political objects.

The details of payments include the amount of each payment, the manner each payment was made, to whom the payment was made and from which political objects fund the payment was made (if the organisation has more than 1 fund).

Details of payments made below certain nominated amounts do not have to be filed so as to align with Electoral Act.

PART 13—PRESUMED VALIDITY OF ORGANISATIONS’ ACTIONS

Definitions for pt 13

Clause 232 defines “collective body”, “invalidity” and “omission” for the purposes of Part 13.

Validating actions taken in good faith

Clause 233 validates acts done in good faith by a collective body, or a person holding office in an industrial organisation or branch.

Validating acts after 4 years

Clause 234 validates, for purposes of the current rules of an industrial organisation or branch, any act after 4 years of the event taking place.

An event includes an action done by—

- persons purporting to act as a collective body of an organisation or branch and exercising power under its rules; or

- a person purporting to hold office in an organisation or branch and exercising power under its rules.

Similar provision is made in relation to elections, appointments and rule making or amending.

Industrial court decisions made during the 4 year period are not affected, but provision extends to actions occurring before the commencement of the legislation or occurring in relation to an association before it became an industrial organisation.

PART 14—FREEDOM OF ASSOCIATION

Division 1—Preliminary

Objects of pt 14—Cwlth s 298A

Clause 235 provides that the objectives of this part are—

- that persons are free to join or not join industrial organisations of their choice; and
- to ensure that persons are not discriminated against because they are or are not members or officers of an organisation.

Definitions—Cwlth s 298B

Clause 236 defines a number of terms used expressly for the purposes of this part.

- “industrial action”—refers, in part, to where work is performed in a way different to the way it is customarily performed resulting in a restriction in the performance of work and to certain bans, limitations and conduct relating to work performed
- “industrial association”—means an association (or branch) of employees, independent contractors or employers registered or recognised as such under an industrial law, or a principal purpose of which is the protection and promotion of the interests of members in certain matters.

It details the bodies or persons whose actions are taken to be actions done by an industrial association for the purposes of this part. It provides exceptions in respect of certain parties where reasonable steps have been taken to prevent the action.

Division 2—Conduct by employers etc.

Dismissal etc. of members of industrial associations etc.—Cwlth s 298K

Subclause 237 (1) prohibits an employer from—

- dismissing an employee
- injuring an employee in employment
- changing an employee’s position to their detriment
- refusing to employ another person or discriminating against another person in an offer of employment

for a prohibited reason (as defined in clause 238).

Subclause 237 (2) prohibits a person from

- terminating the contract of an independent contractor
- injuring an independent contractor in the terms of the contract
- changing the independent contractor’s position to their detriment
- refusing to engage a person as an independent contractor
- discriminating against a person being engaged as an independent contractor in the terms or conditions of the contract

for a prohibited reason (as defined in clause 238).

Prohibited reasons—Cwlth s 298L

Clause 238 defines the prohibited reasons for the conduct referred to in *Clause 237*.

It details a list of matters which constitutes a prohibited reason if carried out by the employee, independent contractor or other person concerned.

It details instances where a threat is taken to have been made for a prohibited reason.

Inducements to cease membership etc. of industrial association etc.—Cwlth s 298M

Clause 239 prohibits an employer or person who has engaged an independent contractor from inducing an employee or independent contractor to stop being a member or officer of an industrial association.

Division 3—Conduct by employees etc.

Cessation of Work—Cwlth s 298N

Clause 240 provides a person must not cease work as an employee or independent contractor because the employer or other person—

- is an officer or member of an industrial association
- is entitled to a benefit of an industrial instrument or order
- has made or proposed to make a certain inquiry or complaint
- is involved in proceedings under industrial law
- has given evidence in proceeding under industrial law.

Division 4—Conduct by industrial associations etc.

Industrial associations acting against employers—Cwlth s 298P

Subclause 241 (1) prohibits an industrial association from organising, taking and threatening to take industrial action against an employer because of the employer's involvement or non-involvement with an industrial association.

Subclause 241 (2) prohibits an industrial association from organising, taking and threatening to take industrial action against an employer with

intent to coerce the employer or person—

- to become a member, or cease to be an officer or member or not to become an officer or member of an industrial association
- because the employer or person is an officer, delegate or member of an organisation or association that has applied to be registered as an organisation.

Subclause 241 (3) prohibits an industrial association (or officer or member) from

- advising, encouraging or inciting an employer; or
- organising, taking and threatening to take industrial action against an employer with intent to coerce the employer

to take action in relation to a person that would contravene clause 237.

Subclause 241 (4) prohibits an industrial association (or officer or member) from

- advising, encouraging or inciting an employer; or
- organising, taking and threatening to take industrial action against an employer with intent to coerce the employer

to prejudice an employee who has failed to abide by a direction from the association.

Subclause 241 (5) details the bodies or persons whose directions are taken to have been given by an association for the purposes of (4) above.

Industrial associations acting against employees etc.—Cwlth s 298Q

Clause 242 provides that industrial associations, their officers and members are prohibited from taking or threatening to take action which will prejudice a person in employment or possible employment with intent—

- to coerce a person to join in industrial action
- to prevent a person from applying for a secret ballot
- to coerce a person to join, or not to join an industrial association.

Industrial associations acting against members—Cwlth s 298R

Clause 243 prohibits an industrial association from imposing or threatening to impose a penalty on a member—

- to coerce that member to take industrial action
- because the member has not taken industrial action
- because the member proposes or has made an application for a secret ballot
- because the member proposes to or has participated in a secret ballot.

Industrial associations acting against independent contractors etc.—Cwlth s 298S

Clause 244 provides that industrial associations, their officers and members are prohibited from—

- advising, encouraging or inciting persons to take discriminatory action against an eligible person because that person is not a member of an industrial association
- threatening or taking industrial action to coerce an employer to take discriminatory action against an eligible person because they are not a member of an industrial association or
- threatening or taking industrial action to coerce a person to become a member of an industrial association.

Division 5—Remedies for breaches of this part**Applications to the court—Cwlth s 298T**

Clause 245 provides that an application to the industrial court for an order under this part may be made by—

- the person (including an employer or employee) against whom the conduct has been or would be carried out
- an industrial association

- the employment advocate
- other prescribed persons.

Orders that the court may make—Cwlth s 298U

Clause 246 provides that if the industrial court has found there has been a contravention of this part, it may order—

- imposition of a penalty of 135 penalty units in respect of incorporated body or 27 penalty units in other cases
- reinstatement to the position or similar position or as an independent contractor
- not to carry out a threat or make any further
- injunctions to stop conduct or to correct its effects
- consequential orders.

The court is to give any person against whom an order is sought an opportunity to be heard.

In imposing the penalty, the court may order that the penalty, or part thereof, be paid to the consolidated fund or an industrial organisation or individual.

Proof not required of the reason for, or the intention of, conduct—Cwlth s 298V

Clause 247 provides that if it is alleged that conduct was or is carried out for a particular purpose and to do so would be in contravention of this part, then it is presumed to be the case unless proven to the contrary.

Division 6—Miscellaneous**Provisions of industrial instruments requiring or permitting conduct in contravention of this part—Cwlth s 298Y**

Clause 248 ensures that any provision in an award, agreement or arrangement that contravenes this part has no effect in law.

PART 15—OTHER OFFENCES

Division 1—Specific offences

Offence about organisation's property

Clause 249 provides that a person must not obtain possession of an industrial organisation's property through false representation or imposition.

A person in possession of an organisation's property is not to withhold it from a person entitled to possess it, fraudulently misapply it, or willfully use it for a purpose not authorised under the organisation's rules.

A court is empowered to order the property to be delivered up as directed, the repayment of an amount found to be withheld, fraudulently misapplied or improperly applied.

Preventing elections

Clause 250 makes it an offence for a person to prevent a person from conducting an election or a ballot.

Offences about persons conducting ballot

Clause 251 sets out certain offences in respect of elections or ballots for a proposed amalgamation or a proposed withdrawal from an amalgamation. It is an offence to cause detriment to another person because that person has applied for an election enquiry.

Officer to act honestly etc.

Clause 252 requires an officer of an industrial organisation, while performing functions in relation to the financial management of the organisation, to act honestly and with a reasonable degree of care and diligence.

Officers with material personal interests

Clause 253 ensures that—

- an officer of an industrial organisation must disclose any material personal interest relating to the organisation's financial management to the organisation's management committee where the officer performs functions relating to the financial management of the organisation
- where the material personal interest is to be considered at an organisation's annual general meeting or management committee meeting, the officer is not permitted to vote on that matter or be at the meeting when the matter is considered.

Proceedings not affected

Clause 254 provides that no restriction exists in respect of taking a proceeding against an officer of an industrial organisation for breach of duty.

Division 2—Parties to offences**Parties to offences**

Clause 255 provides that an industrial organisation or other person is taken to have committed an offence where the organisation or other person takes part in the commission of an offence, or counsels, procures or aids in the commission of offence, or encourages the commission of an offence or is concerned directly, or indirectly in the commission of an offence.

Division 3—Attempts to commit offences**Attempt to commit offence**

Clause 256 makes it an offence for a person to attempt to commit an offence under this legislation and the person is liable to the same penalty as if they had committed the offence.

PART 16—APPEALS*Division 1—Appeals to Court of Appeal***Appeal from court to Court of Appeal**

Clause 257 provides that a defendant aggrieved—

- of a decision of the full industrial court for nominated offences; or
- from a decision to cancel or suspend an industrial organisation's registration; or
- of a decision of the court in a proceeding to punish for contempt of court

may appeal to the Court of Appeal (Supreme Court).

In the appeal, the validity of the proceeding or the decision of the industrial relations commission or industrial magistrate cannot be called into question.

*Division 2—Appeals to Industrial Court***Appeal from commission, magistrate or registrar to court**

Clause 258 provides for the following appeals—

- to the full industrial court on a decision of the industrial relations commission on an application for registration of an industrial organisation or an objection to the application for registration
- to the industrial court against the decision of the commission or industrial registrar on the grounds of an error of law excess, or want, of jurisdiction
- to the industrial court against certain decisions of an industrial magistrate.

An appeal to the court can not be made on decisions of the full bench of the commission on appeal from a decision of a member of the commission

or certain decisions of the registrar. This provision aligns with clause 263 which establishes that a decision of a full bench on appeal in these matters is final.

The powers of the court on appeal are set out.

Court's discretion on penalty on appeal

Clause 259 empowers the industrial court to either increase or reduce a penalty imposed on confirmation of a conviction on appeal.

Division 3—Appeals to Industrial Relations Commission

Appeals from commissioner to full bench with leave

Clause 260 provides for an appeal (other than on the grounds of an error of law or excess, or want, of jurisdiction) from a decision of a member of the industrial relations commission to the full bench with the president's leave. The president is only to give leave where the matter is of sufficient importance to be in the public interest.

The powers of the full bench on appeal are stipulated.

Appeal from registrar to full bench

Clause 261 allows for appeals (other than on grounds of an error of law or excess, or want, of jurisdiction) to the full bench against certain decisions of the industrial registrar.

The powers of the full bench on such appeals are stipulated.

President may stay decisions when leave sought

Clause 262 empowers the president to grant an order to stay the operation of a decision of the industrial relations commission for which leave has been sought to appeal to the full bench.

Decisions on appeal that are final

Clause 263 provides that decisions of the full bench on appeal against a decision of a member of the industrial relations commission and certain decisions of the industrial registrar are final.

Division 4—Appeals to both Industrial Court and Industrial Relations Commission**Appeals from commissioner or registrar to both court and commission**

Clause 264 allows a person to lodge an appeal against a decision of a member of the industrial relations commission or the industrial registrar to both the industrial court and the full bench of the commission in accordance with their jurisdictions.

The president of the industrial court decides the order in which the appeals are to heard.

Division 5—General**Nature of appeal**

Clause 265 provides that an appeal to the industrial court or industrial relations commission is by way of re-hearing on the record. The court is empowered to hear additional evidence or to hear the evidence afresh.

Time limited for appeal

Clause 266 provides that an appeal must be commenced within 21 days of the decision being given at a hearing or of the release of the decision by the industrial registrar.

PART 17—JURISDICTION AND PROCEDURE

Division 1—Jurisdiction

Jurisdiction of the full court

Clause 267 confers jurisdiction on the full court to hear and determine—

- proceedings for an offence under this legislation with a penalty of more than 40 penalty units and the offence can not be heard by an industrial magistrate
- proceedings to cancel or suspend an industrial organisation's registration
- proceedings for offences under nominated clauses.

Court's jurisdiction exclusive

Clause 268 provides for the exclusive nature of the jurisdiction of the industrial court.

President's jurisdiction

Clause 269 specifies that the president of the industrial court when sitting alone has all the jurisdiction and powers conferred on the industrial court, unless otherwise prescribed in legislation.

Commission's jurisdiction is exclusive

Clause 270 provides for the exclusive nature of the jurisdiction of the industrial relations commission, unless otherwise prescribed in this legislation.

Magistrate's jurisdiction

Clause 271 confers jurisdiction on an industrial magistrate to hear and determine proceedings about—

- an offence under this legislation with a maximum penalty of 40 penalty units unless the legislation provides otherwise

- recovering money owing to an industrial organisation under its rules from a member or former member
- exercising powers conferred in respect of conscientious objection to organisation membership.

Magistrate's jurisdiction exclusive

Clause 272 provides for the exclusive nature of the jurisdiction of an industrial magistrate, unless otherwise prescribed in this legislation.

Division 2—Procedure

Evidence, powers and procedure follow Workplace Relations Act 1996

Clause 273 provides that where the Court of Appeal, full court, court, full bench, commission, an industrial magistrate or industrial registrar has jurisdiction to hear and determine proceedings, the provisions of the *Workplace Relations Act 1996* outlined in schedule 1 and the rules of court made under that Act apply unless otherwise provided under this legislation.

Performance of commission's functions

Clause 274 requires the industrial relations commission to perform its functions in a way that-

- furthers the objects of this legislation
- avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings.

Recovery of amounts under orders

Clause 275 deals with the recovery of moneys where the industrial court or industrial relations commission orders payment of a sum.

The industrial registrar may issue a certificate which, if filed in any court of competent jurisdiction, is evidence of the initial order which then may be enforced by that court accordingly.

Recovery of amounts from organisation

Clause 276 provides that recovery of any penalty or any sum ordered to be paid by an industrial organisation can be enforced against the organisation's property.

Recovering member's liabilities to organisation

Clause 277 enables an industrial organisation to recover from a member certain moneys payable by the member under the rules of the organisation.

In respect of a member's resignation, the liability of the member to pay subscriptions, fees etc. is limited to 1 year prior to the membership ending.

This action must be taken before an industrial magistrate within three years of the amount becoming payable.

Division 3—Evidentiary provisions**Certificate evidence in applications about office holding**

Clause 278 provides for the evidentiary nature of a certificate regarding the conviction, acquittal and release of a person from prison and relates to provisions dealing with eligibility for office in an industrial organisation.

Evidentiary provision—elections by registrar

Clause 279 provides that certain records of members of industrial organisations are to be evidence for purposes of a request for the industrial registrar to conduct an election for office in an organisation.

Evidentiary provisions—general

Clause 280 prescribes the evidentiary value of certain records of industrial organisations for purposes of proceedings under the legislation.

Particular offences may be charged in 1 complaint

Clause 281 specifies those offences that may be charged in a single complaint as a facilitative measure.

PART 18—MISCELLANEOUS

No action for defamation in certain cases

Clause 282 prevents any action for defamation civil or criminal against the State, an electoral officer, returning officer or a person acting at the request or direction of an electoral officer, in relation to the printing or publication of a document by the electoral officer, returning officer or person in the course of the conduct of—

- an election
- a proposed amalgamation of industrial organisations
- a proposed withdrawal from amalgamation of organisations.

The intent is to protect electoral or returning officers, printers etc, who are publishing or printing material that has been authorised by a third party.

References to making false or misleading statements

Clause 283 extends the meaning of a false or misleading statement to include a reckless statement.

References to engaging in conduct

Clause 284 provides that a reference to engaging in conduct includes a reference to a party being indirectly concerned in the conduct.

Filing details of loans, grants and donations

Clause 285 requires the preparation of annual statements relating to certain loans, grants and donations made by industrial organisations and their branches and the lodging of such statements with the industrial registrar.

Documents open to inspection

Clause 286 enables any person, on payment of a fee, to inspect the list of members and officers, and the rules, of an industrial organisation held by the industrial registrar.

A copy of the organisation's rules may be obtained on payment of a prescribed fee.

Nomination for amounts payable on member's death

Clause 287 provides that a member of an industrial organisation may nominate someone to receive any money payable on the member's death.

Notices and applications to be written

Clause 288 establishes that notices and applications required under the legislation must be written.

Functions and powers of registrar

Clause 289 prescribes the functions and powers of the industrial registrar which include—

- administering the registry
- for the industrial court and industrial relations commission, performing functions and exercising powers under a regulation or rules of court
- any other function prescribed under this legislation.

In the exercise of the functions for the court and/or commission, the registrar must comply with the direction given by the president or commission member.

The provision requires the registrar to keep a register of industrial organisations.

Delegation by registrar

Clause 290 provides for the delegation of powers of the industrial registrar.

Protection from liability

Clause 291 establishes that certain officials are not civilly liable for any act done or omission made without negligence while performing official duties.

Stamp duty

Clause 292 provides that stamp duty is not payable in certain instances.

Inaccurate descriptions

Clause 293 deals with the effect of certain inaccuracies in documents.

Regulation-making power

Clause 294 provides for the making of regulations under the legislation.

PART 19—SAVINGS, TRANSITIONAL AND OTHER AMENDMENTS**Definition for pt 19**

Clause 295 defines the meaning of the term “former industrial Act”.

Continued registration of organisations

Clause 296 provides for the continued registration under this legislation of an industrial organisation registered under all previous industrial legislation.

Registrar may amend name of union

Clause 297 allows an industrial organisation to make application to change the term “union” to “organisation” in its name.

Savings—agreements etc.

Clause 298 provides for the continuation under this legislation of any agreement, decision, exemption, judgement, notice, order, ruling, permit or act of authority made, given, done or approved under the repealed Act for which there is a corresponding provision under this Act.

Savings—proceedings

Clause 299 provides for the continuation of a proceeding started and not finished before the commencement of this legislation.

References to former industrial Acts

Clause 300 allows for a reference to a provision in a “former industrial Act” (as defined in this clause) to be a reference to a corresponding provision in this legislation where appropriate.

Transitional provision about rules

Clause 301 gives industrial organisations a period of 18 months within which to comply with new rule requirements under this legislation.

Cost of copy of rules

Clause 302 has the effect of saving an order in council that prescribes a fee of \$5 is payable for a copy of the rules of an industrial organisation obtained from the organisation. The provision will expire 2 years after its commencement within which period a corresponding regulation will be made.

Appointments continue

Clause 303 allows for a person who holds an office or appointment under the repealed Act to continue to hold the appointment or office under this legislation.

Amended Acts—sch 2

Clause 304 provides for the Industrial Relations (Protection from Invalidities) Act to be amended in schedule 2 as detailed.

SCHEDULE 1

PROVISIONS OF WORKPLACE RELATIONS ACT 1996 THAT APPLY TO PROCEEDINGS UNDER THIS ACT

This schedule captures provisions of the *Workplace Relations Act 1996* regarding evidence, powers and procedure that apply for purposes of this legislation.

The head of power for this schedule is contained in clause 273.

SCHEDULE 2

AMENDMENT OF INDUSTRIAL RELATIONS (PROTECTION FROM INVALIDITIES) ACT 1991

Clause 1—Section 3

This clause provides that the *Industrial Relations (Protection from Invalidities) Act 1991* is to be read and construed as part of the *Industrial Relations Act 1996* and *Workplace Relations Act 1996* rather than the *Industrial Relations Act 1990*.

Clauses 2,3 and 4—Section 4

These clauses amend the existing section 4 Interpretation.

The existing definitions for ‘Commonwealth Act’, ‘federal organisation’ and ‘previous act’ are repealed and replaced by definitions of these that rely on the Commonwealth Workplace Relations Act, the *Industrial Organisations Act 1996* and the *Workplace Relations Act 1996*. New definitions are inserted.

Clause 5—Section 4

This clause omits section 4(2).

Clause 6—Section 6

This clause repeals section 6(3) and inserts a similarly numbered section. The new section includes references to the new *Industrial Organisations Act 1996* and recasts the old sub-section in clearer language.

Clause 7—Section 6

This clause amends section 6(6) by establishing beyond doubt that a certificate may apply to invalidities that occur before or after the issue of the certificate or before or after the commencement of the invalidities legislation.

Clause 8—Section 6

This clause omits sections 6(8) and 6(9). As a result it removes the need for acts covered by a certificate to have been done in good faith. This is necessary if provision is to be made for specified invalidities after a certificate is issued.

Clause 9—Section 8

This clause amends section 8(a) to provide that the commission may issue a certificate if it is satisfied that an invalidity may exist either before or after the issue. This allows a certificate to operate prospectively.

Clause 10—Section 8

This clause amends section 8(b) so that an organisation's rules, administrative structure, records and other relevant matters that generally provide for the proper protection and representations of the interests of the members are likely to continue to do so.

This allows the commission to be satisfied that the required arrangements are likely to continue as the basis for prospective operation of a certificate.

Clause 11- Section 8

This clause amends section 8(c) so that the requirement that for an invalidity referred to in section 6(4) the actions taken in admitting members were not carried out to prejudice the interests of another organisation is extended to provide that such actions are unlikely to be carried out for that purpose in the future.

Clause 12—Section 9

This clause amends section 9(3) to delete a reference to a section in the *Industrial Relations Act 1990* and replace it with the reference to the

equivalent section in the *Workplace Relations Act 1996*. This refers to intervention by the State Minister.

Clause 13—Section 10

This clause amends section 10(1) to allow the commission to issue a provisional certificate where it is not satisfied that the specified requirements appertaining to an industrial organisation are unlikely to provide as required. The current sub-section refers just to ‘provision’ with no future dimension.

Clause 14—Section 11

This clause amends section 11(1) to up date the Act reference.

Clause 15—Section 13

This clause amends sections 13(1) and (2) to change the reference to section 13.74 of the *Industrial Relations Act 1990* to the equivalent reference in the *Industrial Organisations Act 1996*.

Clause 16—Section 13

This clause amends section 13(2) to replace the reference to the *Industrial Relations Act 1990* with a reference to the *Industrial Organisations Act 1996*.

Clause 17—Section 15

This clause amends section 15 to replace ‘*Industrial Relations Act 1990*’ with ‘*Industrial Organisations Act 1996*’ or the ‘*Workplace Relations Act 1996*’.

Clause 18—Section 15

This clause amends section 15 so that the reference to the *Industrial Relations Act 1990* is replaced with a reference to the ‘*Industrial Relations Act 1996*’ or the ‘*Workplace Relations Act 1996*’.

Clause 19—Section 16

This clause amends sections 16(1) and 16(2) to replace the reference to the ‘*Industrial Relations Act 1990*’ with ‘*Industrial Organisations Act 1996*’ or the ‘*Workplace Relations Act 1996*’.

Clause 20—New sections 17— 20

This clause inserts a number of new sections.

Section 17 provides—

- references to certain terms; and
- the section expires on the day of the next reprint of the Act produced under the *Reprints Act 1992*, unless it sooner expires under section 18.

Section 18 provides that the invalidities legislation expires 18 months after section 3 (objects of act) of the *Industrial Organisations Act 1996* commences.

Section 19 provides that while a certificate expires when this Act expires it continues to apply to a specified invalidity which happened before the expiry.

The section clarifies that ‘certificate’ includes a ‘provisional certificate’ and a ‘provisional certificate made absolute’.

Section 20 applies where an application has been made for a certificate before the invalidities legislation expires and the commission has not decided the application or issued a provisional certificate. In these circumstances the commission may only issue a certificate or make a provisional certificate absolute for an invalidity before the expiry.

SCHEDULE 3

DICTIONARY

The meaning of terms commonly used in the Bill are defined in this schedule. In some instances terms have been signposted to relevant clauses in the Bill which reflect the relevant meaning.