

Queensland



# INDUSTRIAL RELATIONS ACT 1999

**Reprinted as in force on 18 November 2004  
(includes commenced amendments up to 2004 Act No. 45)**

**Reprint No. 2J**

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# Queensland



## INDUSTRIAL RELATIONS ACT 1999

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# **INDUSTRIAL RELATIONS ACT 1999**

[as amended by all amendments that commenced on or before 18 November 2004]

## **An Act relating to industrial relations in Queensland, and for other purposes**

### **CHAPTER 1—PRELIMINARY**

#### **1 Short title**

This Act may be cited as the *Industrial Relations Act 1999*.

#### **2 Commencement**

(1) Section 744 commences, or is taken to have commenced, on 1 July 1999.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

#### **3 Principal object of this Act**

The principal object of this Act is to provide a framework for industrial relations that supports economic prosperity and social justice by—

- (a) providing for rights and responsibilities that ensure economic advancement and social justice for all employees and employers; and
- (b) providing for an effective and efficient economy, with strong economic growth, high employment, employment security, improved living standards, low inflation and national and international competitiveness; and
- (c) preventing and eliminating discrimination in employment; and

- (d) ensuring equal remuneration for men and women employees for work of equal or comparable value; and
- (e) helping balance work and family life; and
- (f) promoting the effective and efficient operation of enterprises and industries; and
- (g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and
- (h) promoting participation in industrial relations by employees and employers; and
- (i) encouraging responsible representation of employees and employers by democratically run organisations and associations; and
- (j) promoting and facilitating the regulation of employment by awards and agreements; and
- (k) meeting the needs of emerging labour markets and work patterns; and
- (l) promoting and facilitating jobs growth, skills acquisition and vocational training through apprenticeships, traineeships and labour market programs; and
- (m) providing for effective, responsive and accessible support for negotiations and resolution of industrial disputes; and
- (n) assisting in giving effect to Australia's international obligations in relation to labour standards.

#### **4 Definitions**

The dictionary in schedule 5 defines particular words used in this Act.

#### **5 Who is an employee**

**(1)** An “employee” is—

- (a) a person employed in a calling on wages or piecework rates; or
- (b) a person whose usual occupation is that of an employee in a calling; or

- (c) a person employed in a calling, even though—
  - (i) the person is working under a contract for labour only, or substantially for labour only; or
  - (ii) the person is a lessee of tools or other implements of production, or of a vehicle used to deliver goods; or
  - (iii) the person owns, wholly or partly, a vehicle used to transport goods or passengers; or
- (d) a person who is a member of a class of persons declared to be employees under section 275;<sup>1</sup> or
- (e) each person, being 1 of 4 or more persons who are, or claim to be, partners working in association in a calling or business; or
- (f) for proceedings for payment or recovery of amounts—a former employee; or
- (g) an outworker; or
- (h) an apprentice or trainee.

(2) A person who is undertaking a vocational placement within the meaning of the *Vocational Education, Training and Employment Act 2000* is not an employee.

## 6 Who is an employer

(1) An “**employer**” is—

- (a) a person employing, or who usually employs, 1 or more employees, for the person or someone else; or
- (b) for employees employed in a department of government—the chief executive of that department.

(2) The following persons are also employers—

- (a) a person carrying on a calling in which employees are usually employed, even though for the time being employees are not employed in it;
- (b) a person who is managing director, manager, secretary or member of the managing body (however called) of a corporation, partnership, firm or association of persons;

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1 Section 275 (Power to declare persons to be employees or employers)

- (c) if 4 or more persons are, or claim to be, partners working in association in a calling or business—the partnership firm constituted, or claimed to be constituted, by the persons;
- (d) a group training organisation or labour hire agency that arranges for an employee (who is a party to a contract of service with the organisation or agency) to do work for someone else, even though the employee is working for the other person under an arrangement between the organisation or agency and the other person;
- (e) for proceedings for payment or recovery of amounts—a former employer;
- (f) a person for whose calling or business an outworker works;
- (g) a person declared to be an employer under section 275.<sup>2</sup>

(3) In this section—

**“labour hire agency”** means an entity that conducts a business that includes the supply of services of employees to others.

## 7 What is an industrial matter

(1) An **“industrial matter”** is a matter that affects or relates to—

- (a) work done or to be done; or
- (b) the privileges, rights or functions of—
  - (i) employers or employees; or
  - (ii) persons who have been, or propose to be, or who may become, employers or employees; or
- (c) a matter (whether or not an industrial matter as defined in this section) that the court or commission considers has been, is, or may be a cause or contributory cause of an industrial action or industrial dispute.

(2) However, a matter is not an industrial matter if it is the subject of proceedings for an indictable offence.

(3) Without limiting subsection (1) or affecting subsection (2), a matter is an industrial matter if it relates to a matter mentioned in schedule 1.

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<sup>2</sup> Section 275 (Power to declare persons to be employees or employers)



## **8 Provisions about appointments and procedures of committees**

Schedule 2 contains provisions about—

- (a) the president and commissioners; and
- (b) the registrar; and
- (c) inspectors; and
- (d) the members, and procedure, of—
  - (i) the president’s advisory committee; and
  - (ii) the industrial relations advisory committee.

# **CHAPTER 2—GENERAL EMPLOYMENT CONDITIONS**

## **PART 1—GENERAL**

### *Division 1A—Minimum wage*

#### **8A Minimum wage**

(1) An employee is entitled to a wage that is not less than the Queensland minimum wage declared by the full bench’s general ruling under section 287.<sup>3</sup>

(2) This section does not apply to an employee who is excluded from the operation of the general ruling under section 287(5).

### *Division 1—Working time*

#### **9 Working time**

(1) This section applies to an employee under an industrial instrument.

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3 Section 287 (General rulings)

*Industrial Relations Act 1999*

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(2) The periods for which an employee is required to work must not exceed—

- (a) 6 days in any 7 consecutive days; or
- (b) 40 hours in any 6 consecutive days; or
- (c) 8 hours in any day.

(3) An employee must be paid overtime at the rate of at least—

- (a) for a calling in which more than 1 shift is worked in a day—double time; and
- (b) for another calling—time and a half.

(4) If an employee is paid at a higher rate than the minimum rate prescribed in the industrial instrument, the overtime rate must be worked out on the higher rate.

(5) If practicable, an employee is entitled to a rest pause of at least 10 minutes in each 4 hours of working time on a day.

(6) The rest pause—

- (a) is part of the employee's working time; and
- (b) if continuity of work is necessary—must be taken when it does not interfere with continuity.

(7) This section does not apply if an industrial instrument provides otherwise.

(8) In this section—

“**overtime**” means time worked—

- (a) outside any of the periods mentioned in subsection (2); or
- (b) before or after the fixed or recognised times of starting or finishing work on a day in a calling.

*Division 2—Sick leave***10 Entitlement**

(1) This section does not apply to—

- (a) casual employees; or
- (b) pieceworkers; or

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- (c) school-based apprentices or trainees.
- (2) An employee is entitled to—
- (a) at least 8 days sick leave on full pay for each completed year of employment with an employer; and
  - (b) for each completed period of employment of less than a year—at least 1 day's sick leave on full pay for each completed 6 weeks of employment with an employer.
- (3) However, the employee's entitlement is conditional on—
- (a) the employee promptly notifying the employer of—
    - (i) any illness that will cause the employee to be absent from work; and
    - (ii) the approximate period for which the employee will be absent; and
  - (b) if the employee is absent for more than 2 days—
    - (i) the employee giving the employer a doctor's certificate about the nature of the illness and the approximate period for which the employee will be absent; or
    - (ii) the employee giving the employer other evidence of the illness to the employer's satisfaction.
- (4) Subsection (3) does not apply if—
- (a) an industrial instrument provides otherwise; or
  - (b) the employee and employer agree otherwise.
- (5) Sick leave may be taken for part of a day.

*Examples—*

1. An employee is ordinarily required to work for 8 hours on a particular day and on that day becomes sick after working 3 hours. The employee may take sick leave for the remaining 5 hours that the employee is unable to work because of the sickness.
2. An employee is ordinarily required to perform work for 40 hours a week over 5 days, but has come to an arrangement with the employer to work 10 hours a day for 4 days a week. If the employee is unable to work because of sickness on a day, the employee may take 10 hours sick leave, which equates to  $1\frac{1}{4}$  days sick leave.

(6) Sick leave accumulates, unless an industrial instrument provides otherwise.

(7) This section does not operate to confer an entitlement or an additional entitlement in relation to employment before the commencement of this section.

(8) In subsections (2) and (5)—

“**day**”, for an employee who is paid on the basis of the number of hours worked, means—

- (a) for an employee for whom an industrial instrument provides sick leave—a day within the meaning of the industrial instrument so far as it relates to sick leave; or
- (b) otherwise—one-fifth of the number of ordinary hours that the employee would ordinarily have been required to work in a week, averaged over each completed 6 weeks of employment with the employer.

### *Division 3—Annual leave*

## **11 Entitlement**

(1) This section does not apply to—

- (a) casual employees; or
- (b) pieceworkers; or
- (c) school-based apprentices or trainees.

(2) For each completed year of employment with an employer, an employee is entitled to—

- (a) if the employee is not a shift worker—at least 4 weeks annual leave; or
- (b) if the employee is a shift worker—at least 5 weeks annual leave.

(3) Annual leave is exclusive of a public holiday that falls during the leave.

(4) However, if an employee is entitled to additional annual leave as compensation for working on a particular public holiday, annual leave is inclusive of the particular public holiday.

(5) In working out a completed year of employment, the following periods when an employee is absent without pay are not to be taken into account—

- (a) a period of more than 3 months when an employee is absent with the employer's approval;
- (b) a period when an employee is absent without the employer's approval, unless the employee is absent for not more than 3 months because of illness or injury certified to by a doctor.

(6) This section does not operate to confer an entitlement or an additional entitlement in relation to employment before the commencement of this section.

(7) Annual leave accumulates, unless an industrial instrument provides otherwise.

(8) In this section—

“**shift worker**” means an employee who—

- (a) is employed in a calling in which shifts are worked 24 hours a day, 7 days a week; and
- (b) works a rotating roster that includes each of the shifts.

## **12 Taking annual leave**

(1) An employee and employer may agree when the employee is to take annual leave.

(2) If the employee and employer can not agree, the employer—

- (a) may decide when the employee is to take leave; and
- (b) must give the employee at least 14 days written notice of the starting date of the leave.

(3) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.

(4) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

## **13 Payment for annual leave**

(1) Unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.

(2) The employer must pay for the leave—

- (a) at the ordinary rate being paid to the employee immediately before the leave is taken; or
- (b) if, immediately before taking the leave, the employee is being paid at a higher rate than the ordinary rate—at the higher rate.

#### **14 Payment for annual leave on termination of employment**

(1) This section applies if an employee's employment is terminated by the employee or employer.

(2) If the employee has not taken all the annual leave the employee is entitled to, the employee is presumed to have taken the leave from the day the termination takes effect (the "**termination day**").

(3) The employer must immediately pay the employee for the annual leave not taken, including any public holiday that falls in the period the employee is presumed to have taken the leave.

(4) If the employee has been employed for any period of less than 1 year, the employer must pay the employee proportionate annual leave for the period.

(5) The employer must pay the employee at least the ordinary rate being paid to the employee immediately before the termination day, unless an industrial instrument states otherwise.

#### ***Division 4—Public holidays***

#### **15 Public holidays**

(1) An employee who would ordinarily be required to work on a day on which a public holiday falls is entitled to full pay for the time the employee would ordinarily have been required to perform work on that day.

(2) Subsection (1) applies to an employee whether the employee—

- (a) works on the public holiday; or
- (b) does not work on that day because of the public holiday.

(2A) Despite subsection (2), subsection (1) applies to a school-based apprentice or trainee only if the apprentice or trainee works on the public holiday.

(3) Subsection (1) does not apply—

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- (a) to a casual employee or pieceworker; or
- (b) if the employee is rostered off on the public holiday.

(4) If an employee who is bound by an industrial instrument does work on a public holiday, the employer must pay the employee—

- (a) for the greater of the hours worked or 4 hours—
  - (i) if the employee would ordinarily be required to work on a day on which a public holiday falls—at the rate of 1.5 times the hourly rate, in addition to the amount payable under subsection (1); or
  - (ii) if the employee would not ordinarily be required to work on a day on which a public holiday falls—at the rate of double time and a half; or
  - (iii) if the employee is a casual employee—at the rate of double time and a half; and

- (b) if the employee works outside the employee's ordinary working hours—at double the rate stated in the instrument for that work.

(5) Subsections (3) and (4) do not apply if an industrial instrument provides otherwise.

(6) Subject to another Act that restricts work or trading hours on particular days of the year, the employee and employer may agree that the employee work on a public holiday at ordinary rates in exchange for another day off on full pay.

(7) The commission may confer on an employee an entitlement to extra annual leave on full pay, instead of extra pay, for work on a public holiday.

(8) In a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show, the employee and employer must agree on an ordinary working day that is to be treated as a show holiday for all purposes.

(9) An employee, while employed by the 1 employer, is only entitled to leave on full pay for a show holiday once each calendar year.

(10) In this section—

**“double time and a half”** means 2.5 times the hourly rate.

**“ordinary working day”** means a day on which the employee would ordinarily be required to perform work.

**“ordinary working hours”**, for an employee, means the hours between the employee’s ordinary starting time and ordinary finishing time under a relevant industrial instrument.

**“show holiday”** means—

- (a) a public holiday appointed for an annual agricultural, horticultural or industrial show under the *Holidays Act 1983*, section 4;<sup>4</sup> or
- (b) for a district in which a public holiday is not appointed for an annual agricultural, horticultural or industrial show—the day agreed on by the employee and employer under subsection (8).

## **PART 2—FAMILY LEAVE**

### *Division 1—Preliminary*

#### **15A Who is a “long term casual employee” for pt 2**

(1) A **“long term casual employee”** is a casual employee engaged by a particular employer, on a regular and systematic basis, for several periods of employment during a period of at least 1 year immediately before the employee seeks to access an entitlement under this part.

(2) The periods of employment mentioned in subsection (1) include periods before and after the commencement of this section.

### *Division 2—Parental leave*

#### **16 Who this division does not apply to**

This division does not apply to—

- (a) casual employees, other than long term casual employees; or

---

<sup>4</sup> *Holidays Act 1983*, section 4 (Special holidays)



- (b) seasonal employees; or
- (c) pieceworkers.

## 17 Definitions for pt 2

In this part—

**“adoption leave”** means short adoption leave or long adoption leave.

**“child”**, for adoption leave, means a child who is under the age of 5 years, but does not include a child who—

- (a) has previously lived continuously with the employee for a period of at least 6 months; or
- (b) is the child or stepchild of the employee or employee’s spouse.

**“long adoption leave”** means leave taken by an employee to enable the employee to be the primary caregiver of an adopted child.

**“long parental leave”** means—

- (a) for a pregnant employee—maternity leave; or
- (b) for an employee whose spouse gives birth—leave taken by the employee to enable the employee to be the child’s primary caregiver.

**“maternity leave”** means leave that a pregnant employee takes—

- (a) for the birth of her child; or
- (b) to enable her to be the child’s primary caregiver.

**“parental leave”** means long parental leave, short parental leave or adoption leave.

**“short adoption leave”** means leave taken by an employee at the time of the placement of an adopted child with the employee.

**“short parental leave”** means leave taken by an employee, in connection with the birth of a child of the employee’s spouse, at the time of—

- (a) the birth of the child; or
- (b) the other termination of the pregnancy.

## 18 Entitlement

(1) This section details the parental leave entitlement of an employee for—

- (a) an employee who is not a long term casual employee and who has had at least 12 months continuous service with the employer; or
- (b) a long term casual employee.

(2) A pregnant employee is entitled to an unbroken period of up to 52 weeks unpaid maternity leave—

- (a) for the child's birth; and
- (b) to be the child's primary caregiver.

(3) For the birth of a child of an employee's spouse,<sup>5</sup> the employee is entitled to the following leave—

- (a) an unbroken period of up to 1 week's unpaid short parental leave;
- (b) a further unbroken period of up to 51 weeks unpaid long parental leave.

(4) For the adoption of a child, an employee is entitled to the following leave—

- (a) an unbroken period of up to 3 weeks unpaid short adoption leave;
- (b) a further unbroken period of up to 49 weeks unpaid long adoption leave.

(5) However, parental leave must not extend beyond 1 year after the child was born or adopted.

(6) In this section—

**“continuous service”** means service, including a period of authorised leave or absence, under an unbroken employment contract.

## 19 Notices and documents—maternity leave

(1) This section applies if a pregnant employee wants to take maternity leave.

(2) The employee must give the employer—

---

<sup>5</sup> **“Spouse”**, of an employee, includes a former spouse of the employee.

- (a) at least 10 weeks' written notice of intention to take the leave; and
  - (b) at least 4 weeks' written notice of the dates on which she wants to start and end the leave.
- (3) The employee must, before starting the leave, give the employer—
- (a) a doctor's certificate confirming that she is pregnant and the expected date of birth; and
  - (b) a statutory declaration by the employee stating the period of any parental leave sought by her spouse.

## **20 Notices and documents—parental leave other than maternity or adoption leave**

(1) This section applies if an employee wants to take parental leave, other than maternity leave or adoption leave.

- (2) The employee must give the employer—
- (a) for long parental leave—at least 10 weeks' written notice of intention to take the leave; and
  - (b) at least 4 weeks' written notice of the dates on which the employee wants to start and end the leave.
- (3) The employee must, before starting the leave, give the employer—
- (a) a doctor's certificate confirming that the employee's spouse is pregnant and the expected date of birth; and
  - (b) for long parental leave—a statutory declaration by the employee stating—
    - (i) the period of any maternity leave sought by the employee's spouse; and
    - (ii) the employee is seeking the leave to be the child's primary caregiver.

## **21 Notices and documents—adoption leave**

(1) This section applies if an employee wants to take adoption leave.

- (2) The employee must give the employer—

- (a) for long adoption leave—written notice of any approval to adopt a child at least 10 weeks before the expected date of placement of the child for adoption purposes (the “**expected placement date**”); and
  - (b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected placement date but, in any case, at least 14 days before starting the leave.
- (3) The employee must, before starting the leave, give the employer—
- (a) a statement from an adoption agency of the expected placement date; and
  - (b) for long adoption leave—a statutory declaration by the employee stating—
    - (i) the period of any adoption leave sought by the employee’s spouse; and
    - (ii) the employee is seeking the leave to be the child’s primary caregiver.
- (4) In this section—

“**adoption agency**” means an agency, body, office or court, authorised by a Commonwealth or State law to perform functions about adoption.

## 22 Reasons not to give notice or documents

- (1) An employee does not fail to comply with section 19, 20 or 21 if the failure was caused by—
- (a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or
  - (b) the child being placed for adoption before the expected placement date; or
  - (c) another reason that was reasonable in the circumstances.
- (2) However, the employee must give the employer—
- (a) notice of the period of the leave within 2 weeks after the birth or placement; and
  - (b) in the case of the birth of a living child—a doctor’s certificate stating the date on which the child was born.

**23 Notice of change to situation**

An employee must notify the employer of any change in the information provided under section 19, 20 or 21 within 2 weeks after the change.

**24 Continuity of service**

(1) Parental leave does not break an employee's continuity of service.

(2) Parental leave is not to be taken into account in working out the employee's period of service, other than—

- (a) to decide the employee's entitlement to a later period of parental leave; or
- (b) as expressly provided in this Act, an industrial instrument or employment contract.

**25 Spouses not to take parental leave at same time**

(1) An employee is not entitled to parental leave, other than short parental leave or short adoption leave, when his or her spouse is on parental leave.

(2) If the employee contravenes subsection (1), the period of parental leave that the employee is entitled to is reduced by the period of leave taken by his or her spouse.

**26 Cancelling parental leave**

(1) Parental leave applied for but not started is automatically cancelled if—

- (a) the employee withdraws the application for leave by written notice to the employer; or
- (b) the pregnancy terminates other than by the birth of a living child; or
- (c) the placement of the child with the employee for adoption purposes does not proceed.

(2) If, while an employee is on parental leave—

- (a) the pregnancy terminates other than by the birth of a living child; or

- (b) the child in relation to whom the employee is on parental leave dies; or
- (c) the placement of the child with the employee for adoption purposes does not proceed or continue;

the employee is entitled to resume work at a time nominated by his or her employer within 2 weeks after the day on which the employee gives his or her employer a written notice stating the employee intends to resume work and the reason for the resumption.

(3) This section does not affect an employee's entitlement to special maternity leave or sick leave under section 37.<sup>6</sup>

## **27 Parental leave with other leave**

(1) An employee may take any annual leave or long service leave to which the employee is entitled instead of or together with parental leave.

(2) However, the total period of leave can not extend beyond the total period allowed under section 18.

(3) While the employee is on unpaid parental leave, the employee is not entitled to paid sick leave or other paid leave, unless the employer agrees.

(4) In this section—

**“other paid leave”** means paid leave authorised by law or by an industrial instrument or employment contract.

## **28 Interruption of parental leave by return to work**

(1) An employee and employer may agree that the employee break the period of parental leave by returning to work for the employer, whether on a full-time, part-time or casual basis.

(2) The period of parental leave can not be extended by the return to work beyond the total period allowed under section 18.

## **29 Extending period of parental leave**

(1) An employee may extend the period of parental leave once only by written notice given to the employer at least 14 days—

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<sup>6</sup> Section 37 (Special maternity leave and sick leave)

- (a) before the start of the parental leave; or
- (b) if the leave has been started—before the leave ends.

(2) The notice must state when the extended period of leave ends.

(3) The total period of leave can not be extended beyond the total period allowed under section 18, unless the employer agrees.

### **30 Shortening period of parental leave**

If the employer agrees, an employee may shorten parental leave by written notice given to the employer at least 14 days before the employee wants to return to work.

### **31 Effect on parental leave of ceasing to be the primary caregiver**

(1) This section applies if—

- (a) during a substantial period starting on or after the start of an employee's long parental leave, the employee is not the child's primary caregiver; and
- (b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not again become the child's primary caregiver within a reasonable period.

(2) The employer may notify the employee of the day, at least 4 weeks after the employer gives the notice, on which the employee must return to work.

(3) If the employee returns to work, the employer must cancel the rest of the leave.

### **32 Return to work after parental leave etc.**

(1) This section applies to—

- (a) an employee who returns to work after parental leave; or
- (b) a female employee who returns to work after special maternity leave or sick leave under section 37.

(2) The employee is entitled to be employed in—

- (a) the position held by the employee immediately before starting parental leave; or
- (b) if the employee worked part-time because of the pregnancy before starting maternity leave—the position held by the employee immediately before starting part-time work; or
- (c) if the employee was transferred to a safe job under section 36 before starting maternity leave—the position held by the employee immediately before the transfer.

(3) If the position no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.

(4) An employer must make a position to which an employee is entitled available to the employee.

(5) If a long term casual employee's hours were reduced because of the pregnancy before starting maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

### **33 Employer's obligations**

(1) On becoming aware that an employee or an employee's spouse is pregnant, or that an employee is adopting a child, an employer must inform the employee of—

- (a) the employee's entitlement to parental leave under this part; and
- (b) the employee's obligations to notify the employer of any matter under this part.

(2) An employer can not rely on an employee's failure to give a notice or other document required by this part unless the employer establishes that subsection (1) has been complied with.

### **34 Dismissal because of pregnancy or parental leave**

(1) An employer must not dismiss an employee because—

- (a) the employee or employee's spouse is pregnant or has applied to adopt a child; or



- (b) the employee or employee's spouse has given birth to a child or adopted a child; or
  - (c) the employee has applied for, or is absent on, parental leave.
- (2) This section does not affect any other rights of—
- (a) an employer to dismiss an employee; or
  - (b) a dismissed employee.

### **35 Replacement employees**

(1) The employer must, before a replacement employee starts employment, give the replacement employee a written notice informing the replacement employee of—

- (a) the temporary nature of the employment; and
- (b) the parent's right to return to work.

(2) In this section—

**“replacement employee”** means—

- (a) a person who is specifically employed because an employee (the **“parent”**)—
  - (i) starts parental leave; or
  - (ii) is transferred to a safe job under section 36; or
- (b) a person replacing an employee who is temporarily promoted or transferred to replace the parent.

### **36 Transfer to a safe job**

(1) This section applies whenever the present work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or of her unborn or newborn child.

(2) The assessment of the risk is to be made on the basis of—

- (a) a doctor's certificate given by the employee to the employer; and
- (b) the employer's obligations under the *Workplace Health and Safety Act 1995*.

(3) The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.

(4) If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that—

- (a) will not expose her to the risk; and
- (b) is, as nearly as possible, comparable in status and remuneration to that of her present work.

(5) If a transfer is not feasible or can not reasonably be required to be made, the employer must grant the employee maternity leave, or any available paid sick leave, for as long as a doctor certifies it is necessary to avoid exposure to the risk.

### **37 Special maternity leave and sick leave**

(1) This section applies if, before an employee starts maternity leave—

- (a) the employee’s pregnancy terminates before the expected date of birth, other than by the birth of a living child; or
- (b) the employee suffers illness related to her pregnancy.

(2) For as long as a doctor certifies it to be necessary, the employee is entitled to the following types of leave—

- (a) unpaid leave (“**special maternity leave**”);
- (b) paid sick leave, either instead of, or as well as, special maternity leave.

### **38 Special adoption leave**

An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave to attend compulsory interviews or examinations as part of the adoption procedure.

## *Division 3—Carer’s leave*

### **39 Entitlement**

(1) An employee may use up to 5 days of sick leave on full pay (“**carer’s leave**”) in each year to care and support—

*Industrial Relations Act 1999*

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- (a) members of the employee's immediate family when they are ill;  
or
- (b) members of the employee's household when they are ill.

(2) A long term casual employee is entitled to 5 days unpaid leave (also “**carer’s leave**”) in each year to care and support—

- (a) members of the employee's immediate family when they are ill;  
or
- (b) members of the employee's household when they are ill.

(3) The employee must, if required by the employer, produce a doctor's certificate or statutory declaration evidencing that the member is ill with an illness that requires care by another.

(4) An employee can not take carer's leave if another person has taken leave to care for the same person.

(5) Carer's leave may be taken for part of a day.

(6) The employee must, if practicable, give the employer—

- (a) notice of the intention to take carer's leave before taking the leave; and
- (b) the name of the person requiring care and the person's relationship to the employee; and
- (c) the reason for taking the leave; and
- (d) the period that the employee estimates he or she will be absent.

(7) If it is not practicable for the employee to notify the employer of the intention to take carer's leave before taking the leave, the employee must notify the employer at the first reasonable opportunity.

(8) An employee who may use sick leave as carer's leave may take unpaid carer's leave if the employer agrees.

(9) A long term casual employee may take additional unpaid carer's leave if the employer agrees.

*Division 4—Bereavement leave***40 Entitlement**

(1) This section does not apply to—

- (a) casual employees, other than long term casual employees; or
- (b) pieceworkers.

(2) An employee, other than a long term casual employee, is entitled to at least 2 days bereavement leave on full pay on the death of a member of the person's immediate family or household in Australia.

(3) A long term casual employee is entitled to at least 2 days unpaid bereavement leave on the death of a member of the person's immediate family or household in Australia.

(4) The employee must give the employer a copy of the funeral notice or other evidence of the death the employer reasonably requires.

(5) An employee may take additional leave as unpaid bereavement leave if the employer agrees.

*Division 5—Part overrides less favourable conditions*

**41 This part overrides less favourable conditions**

This part has effect despite—

- (a) another law of the State; or
- (b) an industrial instrument or order;

to the extent that the law, instrument or order provides an employee with a benefit that is less favourable to the employee.

**PART 3—LONG SERVICE LEAVE**

*Division 1—Definitions for pt 3*

**42 Definitions for pt 3**

In this part—

**“continuous service”** of an employee means—

*Industrial Relations Act 1999*

- (a) in section 50<sup>7</sup>—the period of continuous service the employee is taken to have had with an employer under section 50(4); and
- (b) elsewhere—the employee’s continuous service with the same employer (whether wholly in the State, or partly in and partly outside the State).

“**owner**” of a meat works includes a person who carries on the business of the works.

“**period between seasons**” includes the period between—

- (a) the end of 1 season and the start of the next season; and
- (b) for a particular employee—the day the employee stops employment in 1 season and the day the employee starts employment in the next season.

“**season**” means a period (whether falling completely in 1 calendar year or partly in 1 calendar year and partly in the next calendar year) when—

- (a) for the sugar industry—
  - (i) sugar cane is delivered to, and crushed at, a sugar mill; or
  - (ii) sugar cane is harvested, or farm work is performed, in the sugar industry; or
- (b) for a meat works—stock are delivered to, and slaughtered at, the works.

*Division 2—Employees generally***43 Entitlement**

(1) This section applies to all employees, other than seasonal employees.

(2) An employee is entitled to long service leave on full pay of—

- (a) for the first 10 years continuous service—8.6667 weeks; and
- (b) if the employee has completed at least a further 5 years continuous service—another period that bears to 8.6667 weeks the proportion that the employee’s further period of continuous service bears to 10 years.

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7 Section 50 (Entitlement—employees in sugar industry and meat works)

*Industrial Relations Act 1999*

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(3) An employee who has completed at least 7 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee's service.

(4) However, if the employee's service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—

- (a) the employee's service is terminated because of the employee's death; or
- (b) the employee terminates the service because of—
  - (i) the employee's illness or incapacity; or
  - (ii) a domestic or other pressing necessity; or
- (c) the termination is because the employer—
  - (i) dismisses the employee for a reason other than the employee's conduct, capacity or performance; or
  - (ii) unfairly dismisses the employee.

(5) Long service leave is exclusive of a public holiday that falls during the period of the leave.

(6) An employee who is entitled to long service leave elsewhere than under this Act, is entitled to leave that is at least as favourable as the entitlement under this section.

(7) For the purposes of working out when an employee may take long service leave, only two-thirds of the employee's continuous service completed before the commencement of this subsection counts as continuous service.

(8) Subsection (7) does not reduce an entitlement to long service leave that an employee has accrued before subsection (7) commences.

*Examples of subsections (7) and (8)—*

An employee has completed 15 years continuous service immediately before the commencement. The 15 years counts as 10 years continuous service for working out when the employee may take long service leave. The employee may take the leave immediately. The employee's entitlement then is 13 weeks (15 x 0.86667 weeks).

An employee has completed 10 years continuous service immediately before the commencement. The 10 years counts as 6.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 3.3333 years continuous service. The employee's entitlement then will be 11.5556 weeks ((10 + 3.3333) x 0.86667 weeks).

An employee has completed 1 year continuous service immediately before the commencement. The 1 year counts as 0.6667 years continuous service for working out when the employee may take long service leave. The employee may take the leave after completing another 9.3333 years continuous service. The employee's entitlement then will be 8.9556 weeks  $([1 + 9.3333] \times 0.86667 \text{ weeks})$ .

An employee starts employment after the commencement. The employee may take long service leave after completing 10 years continuous service. The employee's entitlement then will be 8.6667 weeks  $(10 \times 0.86667 \text{ weeks})$ .

(9) In this section—

**“proportionate payment”** means a payment equal to the employee's full pay for a period that bears to 8.6667 weeks the proportion that the employee's period of continuous service (stated in years, and a fraction of a year if necessary) bears to 10 years.

#### **44 Working out continuity of service for service before 23 June 1990**

(1) This section applies to service of all employees who are not casual employees before 23 June 1990.<sup>8</sup>

(2) The repealed *Industrial Conciliation and Arbitration Act 1961*, sections 17, 18, 19 and 20, applies to—

- (a) the determination of the employee's continuous service before 23 June 1990; and
- (b) the calculation of the employee's entitlement to long service leave in relation to continuous service before 23 June 1990.

#### **45 Taking long service leave**

(1) The commission may insert in an industrial instrument provisions—

- (a) about the time when, the way in which, and the conditions on which, long service leave may be taken; or
- (b) to the effect that leave in the nature of long service leave taken, before the provisions take effect, by an employee bound by the instrument must be deducted from the long service leave that the employee becomes entitled to under the provisions.

(2) An employee and employer may agree when the employee is to take long service leave.

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<sup>8</sup> In all other circumstances, see part 6 (Continuity of service and employment).

(3) If the employee and employer can not agree, the employer may decide when the employee is to take leave by giving the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks long service leave.

(4) Subsection (3) applies subject to an industrial instrument.

#### **46 Payment for long service leave**

(1) The employer must pay the employee for long service leave at the ordinary rate being paid to the employee immediately before the leave is taken.

(2) However, if the employee is, immediately before taking the leave, being paid at a higher rate than the ordinary rate, the employer must pay the employee at the higher rate.

(3) An employer must not reduce an employee's usual rate, before an employee starts long service leave, with intent to avoid the employer's obligation under subsection (2).

(4) If satisfied an employer has done so, the commission may order the employer to pay the employee at the usual rate even though the employee was not being paid the usual rate immediately before starting leave.

(5) If, during the employee's leave—

- (a) the ordinary rate is increased above the higher rate—the employer must pay the employee at the increased rate for the part of the leave period that the increased rate applies to; or
- (b) the ordinary rate is reduced—the employer may pay the employee at the reduced rate for the part of the leave period that the reduced rate applies to.

(6) In this section—

**“usual rate”** the rate at which the employee is being paid for ordinary time, being a rate that is higher than the ordinary rate.



***Division 3—Casual or regular part-time employees*****47 Continuity of service—additional considerations for casual employees**

(1) The service of an employee (a “casual employee”) who is employed more than once by the same employer over a period is continuous service with the employer even though—

- (a) the employment is broken; or
- (b) any of the employment is not full-time employment; or
- (c) the employee is employed by the employer under 2 or more employment contracts; or
- (d) the employee would, apart from this section, be taken to be engaged in casual employment; or
- (e) the employee has engaged in other employment during the period.

(2) However, the continuous service ends if the employment is broken by more than 3 months between the end of 1 employment contract and the start of the next employment contract.

(3) In working out the length of an employee’s continuous service—

- (a) the following service must not be taken into account—
  - (i) service by the employee before 23 June 1990;
  - (ii) if the employee only obtained the entitlement because of the enactment of the repealed *Industrial Relations Reform Act 1994*, section 17<sup>9</sup>—the employee’s service between 23 June 1990 and 30 March 1994; and
- (b) subject to subsection (2), a period when the employee was not employed by the employer must be taken into account.

(4) Subsection (3)(a)(i) does not affect an employee’s entitlement to long service leave under—

- (a) an award made before 23 June 1990; or
- (b) the *Industrial Conciliation and Arbitration Act 1961*.

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9 *Industrial Relations Reform Act 1994*, section 17 (Replacement of s 164 (Continuous service of casual employees))

(5) This section does not limit any other entitlement to long service leave that an employee may have.

#### **48 Taking long service leave—alternative provision for casual or regular part-time employees**

(1) An employer may agree with a casual or regular part-time<sup>10</sup> employee that the entitlement to long service leave may be taken in the form of its full-time equivalent.

*Example—*

If an employee—

- (a) is entitled to be paid for 260 hours long service leave; and
- (b) works under an award that provides for a full-time working week of 40 ordinary working hours;

the employee and the employer may agree that the employee take 6½ weeks leave (260 ÷ 40 = 6½).

(2) This section applies subject to a provision in an industrial instrument about the employee's long service leave.

#### **49 Payment for long service leave**

(1) This section applies if an employee who is entitled to long service leave was a casual or regular part-time employee at any time during the employee's continuous service to which the long service leave relates.

(2) The minimum amount payable to the employee for long service leave is worked out using the formula—

$$\frac{\text{actual service}}{52} \times \frac{8.6667}{10} \times \text{hourly rate}$$

*Example—*

An employee who worked 15 600 ordinary working hours over a 10 year period and is being paid an hourly rate of \$12 is entitled to be paid—

$$\frac{15\,600}{52} \times \frac{8.6667}{10} \times \$12 = \$3\,120.01$$

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<sup>10</sup> See the dictionary for the definition “regular part-time employee”.

(3) If a dispute arises between an employee who is paid at piecework rates and the employer about the rate the employee should be paid for long service leave, the commission may decide the rate payable.

(4) An employee and employer may agree on the times when, and the way in which, the employee will be paid for long service leave.

(5) The commission may decide any matter relating to payment for long service leave that the employee and employer can not agree on.

(6) An amount payable for long service leave becomes payable at a time agreed between the employee and employer or, if they can not agree, at a time decided by the commission.

(7) In this section—

“**actual service**” means the total ordinary working hours actually worked by an employee during the employee’s period of continuous service.

“**casual employee**” means an employee mentioned in section 47(1).<sup>11</sup>

“**hourly rate**” means the hourly rate for ordinary time payable to the employee—

- (a) if the employee takes the long service leave—on the day that the employee starts the leave; or
- (b) if the employee’s employment is terminated—on the date that the termination takes effect.

#### *Division 4—Seasonal employees*

### **50 Entitlement—employees in sugar industry and meat works**

(1) This section applies to the following seasonal employees—

- (a) an employee employed in seasonal employment in the sugar industry; or
- (b) an employee employed in or about meat works in seasonal employment by the meat works owner.

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<sup>11</sup> Section 47 (Continuity of service—additional considerations for casual employees)

(2) The employee is entitled to long service leave on full pay of at least the number of weeks worked out using the following formula—

$$\text{section 43 entitlement} \times \frac{\text{actual service}}{10}$$

*Example—*

An employee who worked half of each year, over a 10 year period, is entitled to half the section 43 entitlement, that is, half of 8.6667 weeks leave ( $8.6667 \times \frac{5}{10} = 4.3334$ ).

(3) Service with the employer of an employee engaged in harvesting sugar cane or farm work in the sugar industry before 23 June 1990 must not be taken into account in working out the length of the employee's continuous service.

(4) A period between seasons when the employee is not employed by the employer must be taken into account in working out the length of an employee's continuous service if—

- (a) in 1 season—the employee's service with the employer continued until the end of the season or until an earlier day when the employee's employment was terminated by the employer; and
- (b) in the next season—the employee's service with the same employer started on the season's opening or on a later day in the season when the employer required the employee to start employment.

(5) If an employee is employed by the employer between seasons, the part of the period between seasons when the employee is employed must be taken into account in working out the length of the employee's actual service.

(6) An employee who is entitled to long service leave elsewhere than under this Act, is entitled to leave that is at least as favourable as the entitlement under this section.

(7) In this section—

**“actual service”** means the total ordinary time actually worked by an employee during the employee's period of continuous service.

**“section 43 entitlement”** means the entitlement to long service leave of an employee under section 43.

**51 Taking long service leave—employees in sugar industry and meat works**

(1) This section applies to the following seasonal employees—

- (a) an employee employed in seasonal employment in the sugar industry;
- (b) an employee employed in or about meat works in seasonal employment by the meat works owner.

(2) An employee may take long service leave between seasons.

(3) If an employee takes leave between seasons, the leave is taken to have started when the employee last ceased employment with the employer.

**52 Other seasonal employees**

The commission may decide the entitlement to long service leave of an employee—

- (a) who is employed in seasonal employment, but who is not employed—
  - (i) in the sugar industry, or
  - (ii) in or about meat works; or
- (b) who is employed in other periodic employment that is not defined as casual employment by the relevant industrial instrument.

***Division 5—Miscellaneous*****53 Payment instead of long service leave**

(1) An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave if subsection (2) or (3) applies.

(2) If the relevant industrial instrument provides for the employee to be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made, in accordance with the industrial instrument, if the employee and employer agree by a signed agreement.

(3) If no industrial instrument provides for the employee to be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave, payment may be made only if the payment is ordered by the commission on application by the employee.

(4) The commission may order the payment only if satisfied the payment should be made—

- (a) on compassionate grounds; or
- (b) on the ground of financial hardship.

(5) Despite section 58(2), the full bench must not make a general ruling that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.

(6) In subsection (3)—

**“employee”** includes a registered worker under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*.

**“entitlement to long service leave”** includes an entitlement to long service leave under the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57(1).<sup>12</sup>

## **54 Payment instead of long service leave on death**

(1) This section applies if an employee entitled to long service leave dies—

- (a) before taking the leave; or
- (b) after starting, but before finishing, the leave.

(2) The employer must pay the employee’s legal personal representative any amount payable for the employee’s entitlement to long service leave that has not been already been paid.

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<sup>12</sup> *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 57 (Entitlement to long service leave)

(3) If the employer does not do so, the employee's legal personal representative or an inspector may recover the amount as unpaid wages.<sup>13</sup>

## **55 Continuity not broken by service in Reserve Forces**

(1) An employee's service in the reserve forces is taken to be continuous service with the employer who employed the employee immediately before the employee starting service with the Forces.

(2) In this section—

**“reserve forces”** means the Australian Naval Reserve, Australian Army Reserve or Australian Air Force Reserve.

## **56 Recognition of certain exemptions**

(1) This part does not apply to an employer if—

- (a) the commission has exempted the employer, under the repealed *Industrial Conciliation and Arbitration Act 1961*, from the application of long service leave provisions in that Act or an award; and
- (b) the exemption is in force.

(2) On application, the commission may revoke an exemption.

## **57 Person may be “employer” and “employee”**

If in performing duties in a calling a person is an employee, the person is entitled to long service leave as prescribed under this part despite the person being, by definition for this Act, an employer because of—

- (a) the person's engagement in the calling; or
- (b) the position the person holds in the calling.

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13 See section 399 (Recovery of unpaid wages etc.).

## **PART 4—REVIEW**

### **58 Review of general employment conditions**

(1) On application by the Minister, an organisation or a State peak council, the full bench may review a condition under this chapter.

(2) The full bench may, by a general ruling under section 287,<sup>14</sup> substitute the condition with another condition that is no less favourable.

## **PART 5—EQUAL REMUNERATION FOR WORK OF EQUAL OR COMPARABLE VALUE**

### **59 Definition for pt 5**

In this part—

“**equal remuneration for work of equal or comparable value**” means equal remuneration for men and women employees for work of equal or comparable value.

### **60 Orders requiring equal remuneration**

(1) The commission may make any order it considers appropriate to ensure employees covered by the order receive equal remuneration for work of equal or comparable value.

(2) An order may provide for an increase in remuneration rates, including minimum rates.

### **61 Orders only on application**

The commission may make an order under this part only on application by—

- (a) an employee to be covered by the order; or

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14 Section 287 (General rulings)



- (b) an organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or
- (c) a State peak council; or
- (d) the Minister; or
- (e) the anti-discrimination commissioner.

## **62 When commission must and may only make order**

The commission must, and may only, make an order if it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal or comparable value.

## **63 Immediate or progressive introduction of equal remuneration**

The order may introduce equal remuneration for work of equal or comparable value—

- (a) immediately; or
- (b) progressively, in specified stages.

## **64 Employer not to reduce remuneration**

(1) An employer must not reduce an employee's remuneration because an application or order has been made under this part.

(2) If an employer purports to do so, the reduction is of no effect.

## **65 Part does not limit other rights**

(1) This part does not limit any right a person or organisation may otherwise have to secure equal remuneration for work of equal or comparable value.

(2) Subsection (1) is subject to section 66.

## **66 Applications under this part**

(1) An application can not be made under this part for an order to secure equal remuneration for work of equal or comparable value for an employee if proceedings for an alternative remedy—

- (a) to secure the remuneration for the employee; or
- (b) against unequal remuneration for work of equal or comparable value for the employee;

have started under another provision of this Act or under another Act.

(2) Subsection (1) does not prevent an application under this part if the proceedings for the alternative remedy have—

- (a) been discontinued by the party who started the proceedings; or
- (b) failed for want of jurisdiction.

(3) If an application under this part has been made for an order to secure equal remuneration for work of equal or comparable value for an employee, a person is not entitled to start proceedings for an alternative remedy under a provision or Act mentioned in subsection (1)—

- (a) to secure the remuneration for the employee; or
- (b) against unequal remuneration for work of equal or comparable value for the employee.

(4) Subsection (3) does not prevent proceedings being started for an alternative remedy if the proceedings under this part have—

- (a) been discontinued by the party who started the proceedings; or
- (b) failed for want of jurisdiction.

## **PART 6—CONTINUITY OF SERVICE AND EMPLOYMENT**

### **67 Definition for pt 6**

In this part—

“**service**” includes employment.

### **68 How part applies**

(1) This part applies when working out an employee’s rights and entitlements under this Act or an industrial instrument by prescribing when the employee’s continuity of service is not broken.

(2) An employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service.

### **69 Continuity of service—transfer of calling**

(1) A “**transferred employee**” is a person who becomes an employee of an employer (the “**new employer**”) because of the transfer of a calling to the new employer from another employer (the “**former employer**”).

(2) Even if a person is dismissed by the former employer before the transfer of a calling, the person is taken to be a transferred employee if—

- (a) the person is employed by the new employer after the transfer; and
- (b) the employee—
  - (i) was dismissed by the former employer within 1 month immediately before the transfer; and
  - (ii) is re-employed by the new employer within 3 months after the dismissal.

(3) The transfer of the calling is taken not to break the transferred employee’s continuity of service.

(4) A period of service with the former employer (including service before the commencement of this section) is taken to be a period of service with the new employer.

(5) In this section—

“**dismissed**” includes stood-down.

### **70 Continuity of service—apprentices or trainees**

(1) This section applies if—

- (a) an employee, while employed with the employer, starts an apprenticeship or traineeship; or
- (b) the employer—
  - (i) continues to employ an apprentice or trainee (the “**employee**”) on the completion of the apprenticeship or traineeship; or

- (ii) re-employs the employee within 3 months after completion of the employee's apprenticeship or traineeship.

(2) The period of the apprenticeship or traineeship does not break the employee's continuity of service.

## **71 Continuity of service—generally**

(1) Service with a partnership and an employer who was, or becomes, a member of the partnership is taken to be continuous service with the same employer.

(2) An employee's continuity of service with an employer is not broken if the employee's service is temporarily lent or let on hire by the employer to another employer.

(3) An employee's continuity of service with an employer is not broken by an absence, including through illness or injury—

- (a) on paid leave approved by the employer; or
- (b) on unpaid leave approved by the employer.

(4) An employee's continuity of service with an employer is not broken if—

- (a) the employee's employment is terminated by the employer or employee because of illness or injury; and
- (b) the employer re-employs the employee; and
- (c) the employee has not been employed in a calling (whether on the employee's own account or as an employee) between the termination and the re-employment.

(5) An employee's continuity of service with an employer is not broken if—

- (a) the employee's employment is terminated by the employer or employee; and
- (b) the employer re-employs the employee within 3 months after the termination.<sup>15</sup>

(6) An employee's continuity of service with an employer is not broken if—

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<sup>15</sup> See also section 78(4)(a) (Remedies—reinstatement or re-employment).

- (a) the employee's employment is interrupted or terminated by the employer with intent to avoid an obligation under this part, an industrial instrument or employment contract; or
- (b) the employee's employment is interrupted or terminated by the employer as a direct or indirect result of an industrial dispute, and the employer re-employs the employee.

(7) An employee's continuity of service is not broken if—

- (a) the employee's employment is interrupted or terminated by the employer because of slackness of trade or business; and
- (b) the employer re-employs the employee.

(8) Service with a corporation and any of its subsidiaries is taken to be continuous service with the same employer.

(9) However, a period for which the employee is away from work under subsections (3)(b) to (6) is not service under this part unless—

- (a) this Act or an industrial instrument provides otherwise; or
- (b) the commission directs otherwise.

(10) In this section—

“**subsidiary**” has the meaning given by the Corporations Act.

“**terminate**” includes stand-down.

## **CHAPTER 3—DISMISSALS**

### **PART 1—EXCLUSIONS**

#### **72 Who this chapter does not apply to**

(1) Section 73(1) does not apply to—

- (a) an employee during the first 3 months of employment with an employer (the “**probationary period**”), if the dismissal is for a reason other than an invalid reason, unless the employee and employer agree in writing that the employee serve—

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- (i) a period of probation that is shorter than the probationary period; or
  - (ii) no period of probation; or
  - (b) an employee serving a period of probation that is longer than the probationary period, if—
    - (i) the period decided, by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; and
    - (ii) the dismissal is for a reason other than an invalid reason; or
  - (c) a short term casual employee, unless the dismissal is for a reason mentioned in section 73(2)(i), (j), (k) or (m); or
  - (d) an employee engaged for a specific period or task, unless—
    - (i) the main purpose of engaging the employee in that way is, or was at the time of the employee's engagement, to avoid the employer's obligations under part 2; or
    - (ii) the employee is participating in a labour market program and is dismissed before the period ends or the task is complete; or
  - (e) an employee—
    - (i) who is not employed under an industrial instrument; and
    - (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
    - (iii) whose annual wages immediately before the dismissal are more than \$68 000 or a greater amount stated in, or worked out in a way prescribed under a regulation; or
  - (f) an apprentice or trainee.
- (2) In deciding—
- (a) the probationary period for subsection (1)(a); or
  - (b) whether an employee is a short term casual employee for subsection (1)(c) and (8);

periods of employment with a former employer that are taken to be service with a new employer because of section 69<sup>16</sup> must be taken into account.

(3) Parts 3 and 4<sup>17</sup> do not apply to—

- (a) a casual employee; or
- (b) an employee engaged by the hour or day; or
- (c) an employee engaged for a specific period or task; or
- (d) an employee during the first 3 months of employment with an employer (the “**probationary period**”) unless the employee and employer agree in writing that the employee serve—
  - (i) a period of probation that is shorter than the probationary period; or
  - (ii) no period of probation; or
- (e) an employee serving a period of probation that is longer than the probationary period if the period decided by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; or
- (f) an employee—
  - (i) who is not employed under an industrial instrument; and
  - (ii) who is not a public service officer employed on tenure under the *Public Service Act 1996*; and
  - (iii) whose annual wages immediately before the dismissal are more than \$68 000 or a greater amount stated in, or worked out in a way prescribed, under a regulation.

(4) Part 4 does not apply to an employee with less than 1 year of continuous service.

(5) A regulation may exclude particular employees from the operation of particular provisions of this chapter.

(6) Without limiting subsection (5), the regulation may identify as a class of employees those employees whose wages or salary immediately before dismissal was more than an amount, or an amount worked out in a way, prescribed under the regulation.

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16 Section 69 (Continuity of service—transfer of calling)

17 Parts 3 (Requirements for dismissal) and 4 (Additional requirements for dismissal)

(7) Parts 3 to 7<sup>18</sup> do not apply to—

- (a) an apprentice or trainee; or
- (b) an employee participating in a labour market program.

(8) In this section—

“**short term casual employee**” means a casual employee, other than a casual employee who—

- (a) is engaged—
  - (i) by a particular employer on a regular and systematic basis; and
  - (ii) for several periods of employment during a period of at least 1 year; and
- (b) apart from the employer’s decision not to offer the person further employment, had a reasonable expectation of further employment by the employer.

## PART 2—UNFAIR DISMISSALS

### 73 When is a dismissal unfair

(1) A dismissal is unfair if it is—

- (a) harsh, unjust or unreasonable; or
- (b) for an invalid reason.

(2) Each of the following is an “**invalid reason**”—

- (a) temporary absence, within the meaning of a regulation, from work because of illness or injury (other than an injury within the meaning of part 5<sup>19</sup>);
- (aa) temporary absence from work if—

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18 Chapter 3 (Dismissals), parts 3 (Requirements for dismissal), 4 (Additional requirements for dismissal), 5 (Protection of injured employees), 6 (Stand-down of employees) and 7 (General)

19 Part 5 (Protection of injured employees)



*Industrial Relations Act 1999*

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- (i) the absence is—
  - (A) by an SES member or an ESU member under the *Disaster Management Act 2003* and for the purpose of performing an SES function or an ESU function under that Act in an emergency situation; or
  - (B) by a member of a rural fire brigade under the *Fire and Rescue Service Act 1990* and for the purpose of performing a function of a rural fire brigade under that Act in an emergency situation; or
  - (C) by an honorary ambulance officer under the *Ambulance Service Act 1991* and for the purpose of performing a function of an honorary ambulance officer under that Act in an emergency situation; or
  - (D) by a hazmat advisor under the *Dangerous Goods Safety Management Act 2001* and for the purpose of performing a function of a hazmat advisor under that Act in an emergency situation; and
- (ii) having regard to all the circumstances, the period of absence is reasonable;
- (b) seeking office as, or acting or having acted in the capacity of, an employees' representative;
- (c) membership of an employee organisation or participation in the organisation's activities outside working hours or, with the employer's consent, during working hours;
- (d) non-membership of an employee organisation;
- (e) filing a complaint, or taking part in proceedings, against an employer involving alleged violation of laws or recourse to competent administrative authorities;
- (f) the making by anyone, or a belief that anyone has made or may make—
  - (i) a public interest disclosure under the *Whistleblowers Protection Act 1994*; or
  - (ii) a complaint under the *Health Rights Commission Act 1991*;
- (g) refusing to negotiate for, make, sign, extend, amend or terminate a certified agreement or QWA;

- (h) refusing to negotiate for or make a certified agreement, or Australian workplace agreement, under the Commonwealth Act;
- (i) the employee or employee's spouse is pregnant or has applied to adopt a child;
- (j) the employee or employee's spouse has given birth to a child or adopted a child;
- (k) applying for, or being absent on, parental leave;
- (l) a reason mentioned in section 394(2);<sup>20</sup>
- (m) discrimination.

#### **74 Application for reinstatement**

(1) If it is alleged that an employee has been unfairly dismissed, an application for reinstatement may be made to the commission for the dismissal to be dealt with under this chapter.

(2) The application must be made within—

- (a) 21 days after the dismissal takes effect; or
- (b) a further period the commission allows on an application made at any time.

(2A) However, a person—

- (a) who, immediately before the commencement of this subsection, was a federal award employee within the meaning of section 72(8), as in force immediately before the commencement of this subsection; and
- (b) who was dismissed after 30 June 1999, but before the commencement of this subsection; and
- (c) who—
  - (i) has made an application for reinstatement relating to that dismissal to the commission, but the application was rejected or dismissed because the person was a federal award employee; and
  - (ii) has not made an application for reinstatement relating to that dismissal to the Australian commission;

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<sup>20</sup> Section 394 (Contract not to stipulate mode of spending wages)

may make an application within 21 days after the commencement of this subsection.

(3) An application may be made by—

- (a) an employee; or
- (b) with the employee's consent—an organisation whose rules entitle it to represent the employee's industrial interests.

(4) The registrar may reject an application if the registrar considers the dismissed employee is a person mentioned in section 72(1) as a person to whom section 73(1) does not apply.

(5) If the registrar rejects the application, the registrar must, by written notice, notify the applicant—

- (a) that the application has been rejected; and
- (b) of the reasons why the registrar considers the dismissed employee is a person mentioned in section 72(1) as a person to whom section 73(1) does not apply.

(6) The applicant may, by written notice given within 21 days after the registrar's notice is received, inform the registrar that the applicant wishes the application to proceed.

(7) If the applicant does so, the commission must deal with the application, despite the registrar's rejection.

(8) The commission and registrar must deal with an application as quickly as possible.

## **75 Conciliation before application heard**

(1) The commission must hold a conference to attempt to settle an application under section 74 by conciliation before it hears the application.

(2) The commission may, by written notice, require the applicant, employee or employer to attend the conference at a stated time and place.

(3) If the commission is satisfied all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as it relates to at least 1 ground of the application or because the applicant is a person to whom section 73(1) does not apply, it—

- (a) must issue a written certificate stating that the commission—
  - (i) is so satisfied for a stated ground; or

- (ii) considers the applicant is a person to whom section 73(1) does not apply; and
  - (b) inform the parties to the conciliation of—
    - (i) the commission's assessment of the merits of the application in relation to the stated ground or in relation to how the applicant is a person to whom section 73(1) does not apply; and
    - (ii) the possible consequences of further proceeding on the application; and
  - (c) may recommend the application be discontinued, whether or not it also recommends another way of resolving the matter.
- (4) The application lapses if the applicant has not, within 6 months after the applicant has been informed by the commission under subsection (3)—
- (a) taken any action in relation to the application; or
  - (b) discontinued the application.
- (5) The parties may seek further conciliation, or settle the matter, at any time before an order is made under section 78, 79 or 80.
- (6) The vice president may delegate the functions of the commission under this section to the registrar or a deputy registrar.

## **76 Arbitration when conciliation unsuccessful**

If the commission considers all reasonable attempts to settle an application by conciliation have been made, but have been unsuccessful, the commission may hear and decide the application by—

- (a) making an order under section 78, 79 or 80; or
- (b) dismissing the application.

## **77 Matters to be considered in deciding an application**

In deciding whether a dismissal was harsh, unjust or unreasonable, the commission must consider—

- (a) whether the employee was notified of the reason for dismissal; and
- (b) whether the dismissal related to—

- (i) the operational requirements of the employer's undertaking, establishment or service; or
- (ii) the employee's conduct, capacity or performance; and
- (c) if the dismissal relates to the employee's conduct, capacity or performance—
  - (i) whether the employee had been warned about the conduct, capacity or performance; or
  - (ii) whether the employee was given an opportunity to respond to the allegation about the conduct, capacity or performance; and
- (d) any other matters the commission considers relevant.

## **78 Remedies—reinstatement or re-employment**

(1) This section applies if the commission is satisfied an employee was unfairly dismissed.

(2) The commission may order the employer to reinstate the employee to the employee's former position on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal.

(3) If the commission considers reinstatement would be impracticable, the commission may order the employer to re-employ the employee in another position that the employer has available and that the commission considers suitable.

(4) The commission may also—

- (a) make an order it considers necessary to maintain the continuity of the employee's employment or service; and
- (c) order the employee to repay any amount paid to the employee by, or for, the employer on the dismissal; and
- (b) order the employer to pay the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal, after taking into account any employment benefits or wages received by the employee since the dismissal.

(5) This section does not limit the commission's power to make an interim or interlocutory order.

**79 Remedies—compensation**

(1) If, and only if, the commission considers reinstatement or re-employment would be impracticable, the commission may order the employer to pay the employee an amount of compensation decided by the commission.

(2) The commission must not award an amount of compensation that is more than—

- (a) if the employee was employed under an industrial instrument—the wages the employer would have been liable to pay the employee for the 6 months immediately after the dismissal, paid at the rate the employee received immediately before the dismissal; or
- (b) if the employee was not employed under an industrial instrument—the lesser of the wages under paragraph (a) and an amount equal to half the amount prescribed under section 72(1)(e)(iii).

(3) The commission must take into account any amount paid to the employee by the employer on the dismissal.

(4) This section does not limit the commission's power to make an interim or interlocutory order.

**80 Sanctions for unfair dismissal—invalid reason**

(1) If satisfied an employer has dismissed an employee for an invalid reason, the commission may order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

(2) The commission may make the order in addition to an order for reinstatement, re-employment or compensation.

**81 Further orders if employer fails to reinstate**

(1) If an employer wilfully contravenes an order to reinstate or re-employ an employee, the commission may—

- (a) further order the employer to pay the employee—
  - (i) an amount of not more than the monetary value of 50 penalty units; and
  - (ii) an amount for lost wages; and

- (b) make further orders until the employer complies with an order under section 78 or this section.

(2) This section does not affect another provision of this Act allowing proceedings to be taken against the employer.

## **82 Effect of order on leave**

If the commission makes an order under section 78, the interruption to the employee's continuity of employment or service caused by the dismissal must be disregarded when working out the employee's entitlement—

- (a) to annual, sick, family or long service leave; or
- (b) under this chapter.

## **PART 3—REQUIREMENTS FOR DISMISSAL**

### **83 What employer must do to dismiss employee**

(1) An employer may dismiss an employee only if—

- (a) the employee has been—
  - (i) given the period of notice required by section 84; or
  - (ii) paid the compensation required by section 85; or
- (b) the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the notice period.

(2) Misconduct under subsection (1)(b) includes—

- (a) theft; and
- (b) assault; and
- (c) fraud; and
- (d) other misconduct prescribed under a regulation.

(3) However, subsection (1)(b) does not apply if the employee can show that, in the circumstances, the conduct was not conduct that made it unreasonable to continue the employment during the notice period.

(4) If an employer dismisses an employee, to whom subsection (1)(a) applies, without giving the required notice or paying the required compensation—

- (a) on an application under section 74<sup>21</sup>—the commission may order the employer to pay the employee the compensation that the employer was required to pay under section 85; or
- (b) otherwise—the commission or a magistrate may order the employer to pay the employee the compensation that the employer was required to pay under section 85.

(5) An application for an order under subsection (4)(b) may be made by—

- (a) an employee who has been dismissed; or
- (b) with the employee's consent—an organisation whose rules entitle it to represent the employee's industrial interests; or
- (c) an inspector.

(6) The application must be made within 6 years after the day on which the employee is dismissed.

(7) A regulation may exclude from the operation of this section dismissals happening in specified circumstances that relate to the transfer of the employer's business.

## **84 Minimum period of notice required**

(1) The minimum period of notice is—

- (a) if the employee's continuous service is—
  - (i) not more than 1 year—1 week; and
  - (ii) more than 1 year, but not more than 3 years—2 weeks; and
  - (iii) more than 3 years, but not more than 5 years—3 weeks; and
  - (iv) more than 5 years—4 weeks; and
- (b) increased by 1 week if the employee—
  - (i) is 45 years old or over; and



(ii) has completed at least 2 years of continuous service with the employer.

(2) A regulation may prescribe matters that must be disregarded when working out continuous service under subsection (1).

### **85 Minimum amount of compensation required**

(1) The minimum compensation payable to an employee is at least equal to the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

(2) The total must be worked out on the basis of—

- (a) the ordinary working hours worked by the employee; and
- (b) the amounts payable to the employee for the hours, including, for example, allowances, loadings and penalties; and
- (c) any other amounts payable under the employee's employment contract.

(3) A regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under an employment contract mentioned in subsection (2)(c), to an employee whose wages before dismissal were decided wholly or partly on the basis of commission or piece rates.

## **PART 4—ADDITIONAL REQUIREMENTS FOR DISMISSAL**

### *Division 1—Orders giving effect to article 12 of Termination of Employment Convention*

### **86 When this division applies**

This division applies to an application about severance allowance or other separation benefits.

**87 Orders about severance allowance and other separation benefits**

(1) The commission may make an order about severance allowance or other separation benefits on application by—

- (a) an employee; or
- (b) an organisation whose rules entitle it to represent the employee's industrial interests.

(2) An employer must not contravene the order.

(3) If an employer contravenes the order, the commission may—

- (a) make any of the orders it may make under section 78(2), (3) or (4);<sup>22</sup> or
- (b) order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

(4) In this section—

“**severance allowance or other separation benefits**” means severance allowance or other separation benefits under article 12 of the Termination of Employment Convention 1982.

**88 Time for making application under this division**

An application for an order under this division must be made—

- (a) before, or within 21 days after, the dismissal takes effect; or
- (b) within a further period the commission allows on an application made at any time.

*Division 2—Order giving effect to article 13 of Termination of  
Employment Convention*

**89 When this division applies**

This division applies if an employer decides to dismiss 15 or more employees for an economic, technological or structural reason.

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<sup>22</sup> Section 78 (Remedies—reinstatement or re-employment)

**90 Employer must give notice of proposed dismissals**

(1) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies—

- (a) the Commonwealth department or agency whose primary function is helping unemployed people find work; and
- (b) each employee organisation of which any of the employees is a member.

(2) The notice must state—

- (a) the number and categories of employees being dismissed; and
- (b) the reasons for the dismissals; and
- (c) the time when, or the period over which, the employer intends to carry out the dismissals.

(3) If satisfied an employer has dismissed, or proposes to dismiss, an employee without giving the notice, the commission may make any or all of the following orders—

- (a) any of the orders it may make under section 78(2), (3) or (4);<sup>23</sup>
- (b) an order imposing on the employer a penalty of not more than 16 penalty units;
- (c) an order that the employer pay the employee an amount of not more than the monetary value of 135 penalty units;
- (d) an order declaring the dismissal ineffective until the employer has given the notice.

(4) An application for an order may be made by—

- (a) an employee, including a dismissed employee; or
- (b) an organisation whose rules entitle it to represent the employee's industrial interests; or
- (c) an inspector.

(5) The commission may order that a penalty, or part of a penalty, under subsection (3)(b) be paid to any person who may have made the application, other than an officer or employee of the State or a public service officer.

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23 Section 78 (Remedies—reinstatement or re-employment)

(6) Any part of the penalty ordered to be paid to the person under subsection (5) must first be paid to the person.

(7) The remainder of the penalty must then be paid to the consolidated fund.

(8) A failure to give a notice is not an offence.

### **90A Employer must consult with employee organisations about dismissals**

(1) The employer must give each employee organisation of which any of the employees is a member an opportunity to consult with the employer on ways to—

- (a) avoid or minimise the dismissals; and
- (b) minimise the adverse effects of the dismissals, for example, by finding alternative employment.

(2) The employer must do so as soon as practicable after making the decision to dismiss employees, but in any case before dismissing any of the employees.

(3) If the employer does not give the organisation an opportunity to consult as required, the commission may make the orders it considers appropriate to put employees, and their organisations, in the same position, as nearly as can be done, as if the employer had done so.

(4) The commission may make an order on application from an employee or organisation that is to be affected by the order.

(5) Subsections (1) and (2) do not apply to an organisation if the employer could not reasonably be expected to have known, at the time of the decision, that the organisation's rules entitled it to represent the industrial interests of a dismissed employee.

### **90B Time for making application under this division**

An application for an order under this division must be made—

- (a) before, or within 21 days after, the dismissal takes effect; or
- (b) within a further period the commission allows on an application made at any time.

## **PART 5—PROTECTION OF INJURED EMPLOYEES**

### **91 Definitions for pt 5**

In this part—

“**dismiss**” an injured employee includes a situation where—

- (a) an unreasonable employment condition that is designed to make the employee leave employment is imposed on the employee; and
- (b) the employee leaves the employment.

“**injured employee**” means an employee who receives an injury.

“**injury**” means an injury within the meaning of the *Workers’ Compensation and Rehabilitation Act 2003* for which compensation is payable under that Act.

### **92 Wages to be paid for the day employee injured**

(1) An injured employee is entitled to be paid full wages for the day when the injury happens.

(2) Subsection (1) applies despite an industrial instrument or employment contract.

(3) An injured employee’s entitlement under subsection (1), or an entitlement to be paid in relation to an injury under the *WorkCover Queensland Act 1996*, is in addition to the employee’s entitlement to sick leave under chapter 2, part 1, division 2.<sup>24</sup>

### **93 Dismissal of injured employees only after 6 months**

(1) Within 6 months after an employee becomes injured, the employer must not dismiss the employee solely or mainly because the employee is not fit for employment in a position because of the injury.

Maximum penalty—40 penalty units.

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<sup>24</sup> Chapter 2 (General employment conditions), part 1 (General), division 2 (Sick leave)

(2) This section applies to a dismissal after the commencement of this section even if the employee became unfit before the commencement.

#### **94 Replacement for injured employee**

(1) This section applies if the employer wants to employ a replacement employee while an injured employee is not fit for employment in a position because of the injury.

(2) The employer must, before a replacement employee starts employment, give the replacement employee a written notice informing the replacement employee of—

- (a) the temporary nature of the employment; and
- (b) the injured employee's right to return to work.

(3) In this section—

**“replacement employee”** means—

- (a) a person who is specifically employed because an injured employee is not fit for employment in a position because of the injury; or
- (b) a person replacing an employee who is temporarily promoted or transferred to replace the injured employee.

#### **95 Reinstatement of injured employees**

(1) This section applies if an injured employee is dismissed because the employee is not fit for employment in a position because of the injury.

(2) The employee may apply to the employer, within 12 months after the injury, for reinstatement to the employee's former position.

(3) The employee must give the employer a doctor's certificate that certifies the employee is fit for employment in the former position.

(4) If the employer fails to immediately reinstate the employee, the following persons may apply to the commission for a reinstatement order—

- (a) the employee;
- (b) an employee organisation of which the employee is a member, with the employee's consent.

(5) The commission may order the employer to reinstate the employee if satisfied the employee is fit for employment in the former position.

(6) The order may specify terms of reinstatement, including for example, the day the reinstatement is to take effect.

(7) This section applies to a dismissal after the commencement of this section even if the employee became unfit before the commencement.

(8) In this section—

“**former position**” of an injured employee means, at the employee’s option—

- (a) the position from which the injured employee was dismissed; or
- (b) if the employee was transferred to a less advantageous position before dismissal—the position held by the employee when the employee became unfit for employment.

## **96 Preservation of employee’s rights**

(1) This part does not affect another right of a dismissed employee under an Act or law.

(2) This part can not be affected by a contract or agreement.

## **PART 6—STAND-DOWN OF EMPLOYEES**

### **97 Employee stood-down in December then re-employed in January**

(1) This section applies to an employee, other than a casual employee, who—

- (a) is stood-down by an employer during December; and
- (b) is re-employed by the employer before the end of the next January; and
- (c) was employed by the employer for a continuous period of at least 2 weeks immediately before being stood-down.

(2) The employer must pay the employee at the ordinary rate payable to the employee immediately before the stand-down for the Christmas Day,

Boxing Day, and New Year's Day public holidays between the stand-down and the re-employment.

(3) In this section—

“**stand-down**” includes dismissal.

### **98 Permissible stand-down of employee**

(1) An employer may stand-down an employee on a day, or for part of a day, when the employee can not be usefully employed because of something that happened—

- (a) for which the employer is not responsible; or
- (b) over which the employer has no control.

(2) The employer may stand-down the employee without pay, unless an industrial instrument provides otherwise.

(3) This section does not apply to an apprentice or trainee.

## **PART 7—GENERAL**

### **99 Chapter does not limit other rights**

This chapter does not limit a right a person or organisation may otherwise have to—

- (a) appeal against a dismissal; or
- (b) have an industrial instrument or order about a dismissal made.

### **100 Inconsistent instruments and orders**

An industrial instrument or order that is inconsistent with an order under this chapter does not apply to the extent the inconsistency detrimentally affects the rights of employees concerned.



## CHAPTER 4—FREEDOM OF ASSOCIATION

### PART 1—PRELIMINARY

#### 101 Main purposes of ch 4

The main purposes of this chapter are to ensure—

- (a) a person who is eligible to become a member of an industrial association may become or remain a member of the association without fear of discrimination;<sup>25</sup> and
- (b) a person who does not wish to become or remain a member of an industrial association may refrain from doing so without fear of discrimination.

#### 102 Definitions for ch 4

In this chapter—

**“conduct”** includes an omission.

**“conscientious beliefs”** means an individual’s beliefs based on the individual’s moral values or fundamental religious beliefs, other than a belief founded wholly or principally on objections to the policies of an organisation or organisations generally.

**“exempted person”** means a person who holds an exemption certificate.

**“exemption certificate”** means an exemption certificate under section 115(1) that has not expired.

**“industrial association”** means any of the following—

- (a) an organisation;
- (b) an association of independent contractors, however called, that is registered or recognised as an association under an industrial law;
- (c) an association of employees having as a principal purpose the protection and promotion of their interests in matters concerning their employment;

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<sup>25</sup> For eligibility for membership, see section 531 (Eligibility).

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- (d) an association of independent contractors having as a principal purpose the protection and promotion of their interests as independent contractors;
- (e) an association of employers having as a principal purpose the protection and promotion of their interests in matters concerning employment or independent contractors;
- (f) a branch of an industrial association under paragraphs (a) to (e).

**“industrial body”** means—

- (a) the commission; or
- (b) the court or another court or commission, however called, exercising industrial law functions and powers corresponding to the commission’s functions and powers.

**“industrial instrument”** includes an award or agreement made under the Commonwealth Act or a law of another State.

**“industrial law”** means this Act or another Act regulating the relationships between employers and employees.

**“management committee”** of an industrial association means the body of persons, however called, that manages its affairs.

**“prohibited conduct”** means conduct prohibited under part 2.

**“representative”** of an industrial association means—

- (a) a delegate of the association; or
- (b) an employee of the association; or
- (c) an officer or agent of the association acting in that capacity.

### **103 Meaning of “industrial action” for ch 4**

(1) In this chapter, **“industrial action”** includes conduct by a person—

- (a) engaged as an independent contractor that would be a strike if the conduct had been engaged in by an employee; and
- (b) who has engaged an independent contractor that would be a lockout if the conduct had been engaged in by an employer.

(2) A reference in this chapter to **“industrial action”** includes a reference to a course of conduct that makes up a series of industrial actions.

**104 Meaning of “engaging in” conduct for a “prohibited reason” for ch 4**

(1) For this chapter, a person engages in conduct for a **“prohibited reason”** if the person engages in, or threatens to engage in, the conduct because another person—

- (a) is, has been, proposes to cease being or become, or has proposed to cease being or become a member or representative of an industrial association; or
- (b) is not, or does not propose to become, a member or representative of an industrial association; or
- (c) has not paid, or does not propose to pay, a fee, however called, to an industrial association; or
- (d) is, has been, proposes to cease being or become, or has proposed to cease being or become an exempted person; or
- (e) has not or does not propose to join in industrial action; or
- (f) has not agreed or consented to, or voted for, the making of an agreement to which an industrial association of which the person is a member, would be a party; or
- (g) has participated in, proposes to participate in or has proposed to participate in, a secret ballot ordered by an industrial body under an industrial law; or
- (h) has the right to the benefit of an industrial instrument or an order of an industrial body; or
- (i) has made or proposes to make an inquiry or complaint to a person or body having the capacity under an industrial law to seek—
  - (i) compliance with that law; or
  - (ii) the observance of a person’s rights under an industrial instrument; or
- (j) has given evidence or taken part in (**“participate”**) or proposes to participate in, or has proposed to participate in proceedings under an industrial law; or
- (k) is a member of an industrial association that is seeking better industrial conditions; or
- (l) is dissatisfied with the person’s industrial conditions; or

- (m) has absented himself or herself from work as an employee or independent contractor without leave and—
  - (i) the absence was to carry out a duty or exercise a right as an officer of an industrial association; and
  - (ii) the person applied for leave before absenting himself or herself and leave was unreasonably refused or withheld; or
- (n) as an officer or member of an industrial association has done, or proposes to do, an act or thing that is lawful and authorised by the association's rules to further or protect the industrial interests of the association or its members; or
- (o) is a health and safety representative appointed under the *Workplace Health and Safety Act 1995*.

(2) A person “**engages in**” conduct for a prohibited reason if the conduct is engaged in for a reason that includes a prohibited reason.

(3) In this section, a reference to a person engaging in conduct includes a reference to the person being, directly or indirectly, a party to or concerned in the conduct.

## **PART 2—PROHIBITED CONDUCT**

### **105 Prohibited conduct for employers and principals**

(1) This section applies to a person who is, or proposes to become, an employer or who has engaged, or proposes to engage, someone else as an employee or independent contractor.

(2) The person must not, for a prohibited reason, engage in the following conduct—

- (a) refuse to engage a person as an employee or independent contractor;
- (b) terminate a person's contract of employment or contract for services;
- (c) disadvantage or injure a person who is, or proposes to become, an employee or independent contractor;

- (d) discriminate against a person in the conditions on which the person is offered a contract of employment or contract for services;
- (e) in negotiating an agreement under chapter 6, part 1,<sup>26</sup> discriminate between the persons's employees because—
  - (i) some of the employees are members of an employee organisation, while others are not members of the organisation; or
  - (ii) some of the employees are members of a particular employee organisation, while others are not members of the organisation, or are members of a different employee organisation.

### **106 Prohibited conduct for employees and independent contractors**

(1) This section applies to a person who is, or proposes to become, an employee or who is, or proposes to become, an independent contractor.

(2) The person must not, for a prohibited reason, take industrial action against the person who engaged, or proposes to engage, the person as an employee or an independent contractor.

### **107 Prohibited conduct for industrial associations**

An industrial association must not, for a prohibited reason, engage in the following conduct—

- (a) organise or take, or threaten to organise or take, industrial action;
- (b) advise, encourage or incite a person to engage in prohibited conduct or conduct that would be prohibited conduct if the person were an employer or a person who engaged an independent contractor;
- (c) take or threaten to take action that disadvantages a person in the person's employment, prospective employment, contract for services or prospective contract for services;

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26 Chapter 6 (Agreements), part 1 (Certified agreements)

- (d) disadvantage, or impose or threaten to impose a penalty or disability, on a member of the association or a person who is eligible to become a member of the association.

### **108 Certain actions by representative not prohibited conduct**

An industrial association does not engage in prohibited conduct under another provision of this part if—

- (a) the conduct was engaged in by its representative, during or in connection with industrial action; and
- (b) the representative acted without the knowledge of the association's management committee; and
- (c) the management committee could not, by the exercise of reasonable diligence, have prevented the conduct.

### **109 Provision requiring or permitting prohibited conduct**

An industrial instrument or an arrangement is void to the extent it requires or permits prohibited conduct.

### **110 Encouragement provisions permitted**

(1) A provision (an “**encouragement provision**”) of an industrial instrument may encourage a person to join or maintain membership of an industrial association.

(2) The following is not prohibited conduct—

- (a) making or acting under an encouragement provision;
- (b) encouraging a person to join or maintain membership of an industrial association.

(3) In this section—

“**encourage**” does not include coerce.

## **PART 3—EXEMPTION FROM MEMBERSHIP**

### **111 Who may apply for exemption**

A person may apply to a magistrate or the registrar for an exemption from membership of an organisation only because of the person's conscientious beliefs.

### **112 Procedure for hearing**

Before deciding the application, the magistrate or registrar must follow the procedure prescribed under a regulation for the hearing.

### **113 Deciding application**

(1) The magistrate or registrar may grant the application only if satisfied the applicant—

- (a) genuinely holds conscientious beliefs; and
- (b) has paid the same amount as the membership subscription of the organisation to the registrar of a Magistrates Court or the registry.

(2) If the magistrate or registrar decides to refuse to grant the application, the registrar must promptly give the applicant a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the applicant may appeal against the decision to the full bench within 21 days;
- (d) how to start an appeal.<sup>27</sup>

### **114 How payment must be applied**

The amount paid to the registrar of the Magistrates Court or the registry must be paid to the consolidated fund.

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<sup>27</sup> See sections 342 (Appeal from commission, magistrate or registrar) and 346 (Time limited for appeal).

**115 Exemption certificate**

(1) If the application is granted, the magistrate or registrar must give the applicant a certificate (an “**exemption certificate**”).

(2) The exemption certificate must—

- (a) be in the approved form; and
- (b) state—
  - (i) that the applicant is exempt from membership of the organisation because the applicant’s conscientious beliefs; and
  - (ii) the day the exemption takes effect.

**116 Expiry of exemption certificate**

An exemption certificate expires 1 year after the day the exemption stated in the certificate took effect.

**PART 4—CIVIL REMEDIES****117 Who may apply**

The following may apply to the commission for an order under this part—

- (a) an entity against whom prohibited conduct has been carried out or is proposed to be carried out;
- (b) an industrial association of which an entity mentioned in paragraph (a) is a member or is eligible to become a member of;
- (c) another entity prescribed under a regulation.

**118 Conciliation required before hearing**

Before the commission hears the application, it must direct the parties to the proceedings to hold a conference before it—

- (a) to try to resolve, by conciliation, the issues relevant to the proceedings; and



- (b) to ensure the parties are fully informed of the orders that may be made at the hearing.

### **119 Right to be heard**

(1) The commission must, before making an order under this part against an entity, give the entity an opportunity to be heard.

(2) This section does not apply to the making of an interim order or interim injunction.

### **120 Remedies**

(1) If, after hearing the application, the commission is satisfied an entity has engaged in, or proposes to engage in, prohibited conduct it may order the entity—

- (a) to pay a penalty of not more than the monetary value of—
  - (i) for a corporation, 135 penalty units; or
  - (ii) otherwise, 27 penalty units; or
- (b) to reinstate an employee in—
  - (i) the position from which the employee was removed or dismissed because of the prohibited conduct or proposed prohibited conduct on which the ground was based; or
  - (ii) a similar position; or
- (c) to re-engage an independent contractor; or
- (d) to pay appropriate compensation to an entity disadvantaged by the conduct or proposed conduct; or
- (e) not to carry out a threat made by the entity or make any further threat.

(2) If the commission orders the reinstatement of an employee, the reinstatement must be on conditions at least as favourable as the conditions on which the employee was employed immediately before the employee's removal or dismissal.

(3) The commission may also—

- (a) grant an interim or other injunction or make any other order it considers appropriate to stop the conduct or proposed conduct or to remedy its effects; or
- (b) make any other order that is consequential to an order under this section.

(4) The commission may make more than 1 order under this section against the same entity.

### **121 Payment of penalty**

(1) If the commission orders an entity to pay a penalty, it may also order that the penalty, or a part of the penalty, be paid to another entity.

(2) Any part of the penalty that is ordered to be paid to the other entity must first be paid to the other entity.

(3) The remainder of the penalty must be paid to the consolidated fund.

### **122 Evidence of prohibited conduct**

(1) This section applies if conduct was engaged in by any of the following—

- (a) an industrial association's management committee;
- (b) an officer or agent of an industrial association acting in that capacity;
- (c) a member or group of members of an industrial association authorised by—
  - (i) the rules of the association; or
  - (ii) its management committee; or
  - (iii) an officer or agent of the association acting in that capacity;
- (d) a member of an industrial association, who performs the function of dealing with an employer or principal on behalf of the member and other members of the association, acting in that capacity;
- (e) a director or other officer or an employee or agent of a corporation, acting in that capacity.

(2) Evidence that the conduct was engaged in by an entity mentioned in subsection (1) is evidence the conduct was engaged in by the industrial association or corporation.

(3) Evidence that the entity engaged in the conduct for a prohibited reason is evidence the conduct was engaged in by the industrial association or corporation for the prohibited reason.

## **CHAPTER 5—AWARDS**

### **PART 1—FORM AND APPLICATION**

#### **123 Form, effect and term of award**

(1) An award—

- (a) must be in a form decided by the commission; and
- (b) takes effect and has the force of law throughout the State and without limit of time, except as otherwise prescribed by subsection (2).

(2) An award may state it is in force—

- (a) in a stated locality; or
- (b) for a stated period; or
- (c) in relation to a stated employer; or
- (d) in relation to a stated establishment or operation of a stated employer.

(3) An award stated to be limited in a way mentioned in subsection (2) has effect only to the extent that it provides.

#### **124 Persons bound by award**

(1) An award binds—

- (a) subject to paragraphs (d) to (f)—all employers who are engaged in the calling to which the award applies; and

- (b) subject to paragraphs (d) to (f)—all employees who are engaged in the calling to which the award applies; and
- (c) all organisations concerned with the calling to which the award applies; and
- (d) if the award applies only in a stated locality—all employers and employees in the locality who are engaged in the calling to which the award applies; and
- (e) if the award applies only to a stated employer—
  - (i) the employer and any successor of the employer; and
  - (ii) all employees of the employer and any successor; and
- (f) if the award applies only to a stated establishment or operation of a stated employer—
  - (i) the employer and any successor of the employer; and
  - (ii) all employees of the employer in the establishment or operation.

(2) This section applies subject to section 653 and to all exemptions ordered by the commission under section 132 or 234.<sup>28</sup>

## **PART 2—COMMISSION'S POWERS**

### **125 Making, amending and repealing awards**

(1) The commission may make, amend or repeal an award to provide, among other things, fair and just employment conditions.

(2) The commission may act under subsection (1)—

- (a) of its own initiative; or
- (b) on application by—
  - (i) the Minister; or
  - (ii) an organisation; or

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<sup>28</sup> Section 653 (Effect on certain instruments) and 132 (Exemptions) or 234 (Remedies on show cause)

- (iii) an employer; or
  - (iv) a person who satisfies the commission that the person is not an officer of, or acting for, an eligible association.
- (3) The commission may make an award that—
- (a) revokes or amends a decision; or
  - (b) declares void or amends labour contracts made before or after the commencement of this Act, subject to the conditions and exemptions the commission considers appropriate; or
  - (c) gives the retrospective effect the commission considers appropriate, or that is consented to by the parties, to the whole or part of an award, but so that, except with the parties' consent, the retrospective effect is not made to operate before the day when the commission first took cognisance of the matter; or
  - (d) directs a copy of an award be exhibited by the employer in a conspicuous and convenient place on the premises of an employer bound by the award.

## **126 Content of awards**

The commission must ensure an award—

- (a) does not contain discriminatory provisions; and
- (b) is stated in plain English and is easy to understand in structure and content; and
- (c) does not contain provisions that are obsolete or need updating; and
- (d) provides for secure, relevant and consistent wages and employment conditions; and
- (e) provides for equal remuneration for men and women employees for work of equal or comparable value; and
- (f) provides fair standards for employees in the context of living standards generally prevailing in the community; and
- (g) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and

- (h) takes account of the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment; and
- (i) whenever possible—
  - (i) contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply; and
  - (ii) contains provisions enabling the employment of regular part-time employees; and
  - (iii) provides support for training arrangements.

### **127 Dispute resolution procedures in each award**

(1) The commission must ensure an award contains a dispute resolution procedure.

(2) The form of the procedure is to be agreed on by the parties to the award.

(3) However, if the parties can not agree, the commission must insert an appropriate procedure in the award.

(4) Without limiting subsection (1), the procedure must include—

- (a) procedures for consultation at the workplace; and
- (b) procedures for the involvement of relevant organisations; and
- (c) any other procedure prescribed under a regulation.

### **128 Awards that fix wage rates**

(1) In fixing wage rates payable to employees in a calling, the commission must fix the rates on the basis that a man and a woman employed by the same employer must receive equal remuneration for work of equal or comparable value without discrimination on the ground of sex.

(2) Despite any other provision of this Act, wage rates fixed by the commission for persons under 21 years may be fixed on a progressive scale based on the wage rates payable to employees 21 years or over in the same calling.

(3) In making an award that fixes the wage rates, the commission must consider the age and experience of the persons under 21 years.

### **129 Flow-on of certified agreements**

The commission may include in an award provisions that are based on a certified agreement only if satisfied the provisions—

- (a) are consistent with principles established by the full bench that apply for deciding wages and employment conditions; and
- (b) are not contrary to the public interest.

### **130 Review of awards**

(1) The commission may review an award—

- (a) of its own initiative; or
- (b) on the application of a party to the award.

(2) Without limiting subsection (1), a party may apply to the commission to amend a provision of an award about wages or employment conditions.

(3) The commission must review an award within 3 years after—

- (a) it was made; or
- (b) if it was made before the commencement of this section—the commencement; or
- (c) it was last reviewed under this section.

(4) In reviewing an award, the commission must do what is required by sections 126, 127 and 128.

### **131 Review of industrial instruments referred by the Anti-Discrimination Commission**

(1) The commission must review an industrial instrument referred to it by the Anti-Discrimination Commission on the grounds that it is discriminatory.

(2) The anti-discrimination commissioner is a party to the proceedings.

## **PART 3—EXEMPTIONS**

### **132 Exemptions**

(1) The commission may, of its own initiative or on application by an organisation or employer, by the order by which it makes an award, or by its later order, exempt from the application of the award—

- (a) an employer or class of employer, or employee or class of employee, in a locality or in the calling to which the award applies; and
- (b) a person who is engaged, whether as employer or employee, in the locality or calling, while the award remains in force.

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

- (a) is in the best interests of the employees and employers concerned; and
- (b) is not contrary to the public interest.

(3) While an exemption exists, the award does not bind the employer, employee, class, or person, according to the exemption.

## **PART 4—GENERAL**

### **133 Enforceability of awards**

Action can not be commenced to enforce an award until 21 days after the date it is published in the industrial gazette.

### **134 Effect of appeals on awards**

The commission must immediately amend an award to give effect to—

- (a) a decision of the Court of Appeal, court or full bench affecting the award on appeal from a decision of the commission; or
- (b) a decision of the court affecting the award on a case stated by the commission.



**135 Inconsistency between awards and contracts**

(1) To the extent of any inconsistency, an award prevails over a contract of service that is—

- (a) in force when the award becomes enforceable; or
- (b) made while the award continues in force.

(2) The contract is to be interpreted, and takes effect, as if it were amended to the extent necessary to make the area of inconsistency conform to the award.

(3) However, no inconsistency arises only because the contract provides for employment conditions more favourable to the employee than the award.

**PART 5—WAGES AND EMPLOYMENT CONDITIONS  
FOR APPRENTICES AND TRAINEES****136 Apprentice's and trainee's employment conditions**

(1) An apprentice or trainee is entitled to the same employment conditions as those fixed by the industrial instrument applicable to employees in the workplace where the apprentice or trainee is employed.

(2) An apprentice or trainee is entitled to wages at—

- (a) if an industrial instrument applying to employees in the workplace where the apprentice or trainee is employed or placed states a rate payable to apprentices or trainees—the rate stated in the instrument; or
- (b) otherwise—the rate fixed by the commission, being a proportion of the wages payable for the relevant calling to employees in the workplace where the apprentice or trainee is employed or placed.

*Examples—*

1. An apprentice plumber is placed by a group training organisation in the workplace of a host employer where a federal award applies. The apprentice is entitled to the rate of wages stated in the federal award rather than a State award.
2. An apprentice carpenter is placed by a group training organisation in the workplace of a host employer where a certified agreement applies.

The certified agreement does not state the rate of wages payable to an apprentice. The apprentice is entitled to wages at the rate fixed by the commission, being a proportion of the wages payable to a qualified carpenter under the certified agreement.

(3) If an industrial instrument provides for a tradesperson in a calling to be paid an allowance in addition to wages, an apprentice in the calling is entitled to be paid—

- (a) if, under the instrument, the allowance is taken to be part of the tradesperson's wages—the percentage of the allowance that the apprentice's wages bear to the tradesperson's wages; or
- (b) if, under the instrument, the allowance is not taken to be part of the tradesperson's wages—the full allowance.

(4) If an industrial instrument provides for a tradesperson in a calling to be paid an allowance that is assessed as a percentage of the tradesperson's wages, an apprentice in the calling is entitled to be paid the percentage of the allowance that the apprentice's wages bear to the tradesperson's wages.

(5) Subsection (4) applies whether or not, under the instrument, the allowance is taken to be part of the tradesperson's wages.

(6) In this section—

**“industrial instrument”** includes an award or agreement under the *Workplace Relations Act 1996* (Cwlth).

**“workplace”**, for an apprentice or trainee employed by a group training organisation, includes the workplace of the host employer with whom the apprentice or trainee is placed.

### **137 Order setting minimum wages and conditions**

(1) The commission may make an order fixing minimum wages and employment conditions for the following employees, whether or not they are employed under an industrial instrument—

- (a) apprentices or trainees; or
- (b) different classes of apprentices or trainees.

(2) In making an order, the commission may consider any matter it considers relevant, including—

- (a) the age, competency, or method of progression through training of the apprentices or trainees; and

(b) an industrial instrument.

(3) Despite section 136, if there is an inconsistency between an order and an industrial instrument (other than a certified agreement or QWA), the order prevails to the extent of the inconsistency.

(4) The commission may make an order—

- (a) of its own initiative; or
- (b) on application by—
  - (i) the Training Recognition Council; or
  - (ii) an organisation; or
  - (iii) a State peak council; or
  - (iv) the Minister; or
  - (v) another entity with an interest in apprentices or trainees.

(5) In this section—

**“industrial instrument”** includes an award or agreement under the Commonwealth Act.

### **138 Order setting tool allowance**

(1) The commission may make an order requiring an apprentice’s employer to provide the apprentice with—

- (a) tools relevant to the calling the apprentice is engaged in; or
- (b) an amount to enable the apprentice to buy the tools (a **“tool allowance”**).

(2) The order may state—

- (a) the particular tools to be provided and the circumstances in which they are to be provided; or
- (b) the circumstances in which a tool allowance must be provided.

(3) The commission may make an order—

- (a) of its own initiative; or
- (b) on application by—
  - (i) the Training Recognition Council; or
  - (ii) an organisation; or

- (iii) a State peak council; or
- (iv) the Minister; or
- (v) another entity with an interest in apprentices.

(4) An employer must not contravene an order.

Maximum penalty—40 penalty units.

(5) An offence against subsection (4) may consist of—

- (a) a single failure to provide the apprentice with the relevant tools, or tool allowance, for a level of the apprenticeship; or
- (b) a failure to provide the apprentice with the relevant tools, or tool allowance, for the term of the apprenticeship.

(6) The offence starts on the day of the failure and continues until the apprentice has been provided with the relevant tools or tool allowance.

(7) A complaint, or a series of complaints, may be made for any period over which the offence continues.

(8) However, a complaint may only relate to offences started within 6 years before the complaint is made.

(9) If a magistrate finds an employer guilty of an offence against subsection (4), the magistrate must, in addition to a penalty the magistrate may impose, order the employer to—

- (a) provide the apprentice with the tools required to be provided under the commission's order; or
- (b) pay to the Magistrates Court the amount—
  - (i) stated in the commission's order; or
  - (ii) equivalent to the cost of the tools required to be provided under the commission's order.

(10) The magistrate may express the order in the alternative so the employer may decide how to comply with it.

(11) The court must pay an amount paid under subsection (9)(b) to the apprentice.

### **138A Termination of employment during probationary period**

(1) The employment of an apprentice or trainee may be terminated during the probationary period by 1 week's notice given by—

- (a) the employer to the apprentice or trainee; or
- (b) the apprentice or trainee to the employer.

(2) An employer who terminates the employment without giving 1 week's notice must pay the apprentice or trainee an amount equal to 1 week's wages.

(3) An apprentice or trainee who terminates the employment without giving 1 week's notice loses an amount equal to 1 week's wages.

(4) However, subsection (1) does not apply if section 139A applies.

(5) In this section—

**“1 week's wages”** means the amount that is at least equal to the total of the amounts the employer would have been liable to pay the apprentice or trainee if the apprentice's or trainee's employment had continued until the end of the required notice period, worked out on the basis of—

- (a) the ordinary working hours worked by the apprentice or trainee; and
- (b) the amounts payable to the apprentice or trainee for the hours, including, for example, allowances, loadings and penalties; and
- (c) any other amounts payable under the apprentice's or trainee's employment contract.

**“probationary period”** means the probationary period decided by the Training and Employment Recognition Council under the *Vocational Education, Training and Employment Act 2000*.

### **138B Wages payable to former apprentices or trainees**

(1) This section applies if—

- (a) an employee was engaged as an apprentice or trainee; and
- (b) the employer continued to employ the employee after the end of the probationary period; and
- (c) either—
  - (i) the employer dismisses the employee; or
  - (ii) the employer does not sign a training contract.

(2) The employee is entitled to the higher of the following for the period after the end of the probationary period—

- (a) the wages that would have been payable under the relevant industrial instrument had the employee continued to be employed as an apprentice or trainee;
- (b) the wages payable under the relevant industrial instrument applicable to the type of work the employee performed.

(3) This section does not apply to an employee if a training contract between the employee and employer has been sent to the Training Recognition Council for registration.

### **139 Termination of employment before apprenticeship or traineeship cancelled or completed**

(1) This section applies despite any other provision of this Act if an employer is training—

- (a) an apprentice under an apprenticeship; or
- (b) a trainee under a traineeship.

(2) The apprentice's or trainee's employment with the employer can not be terminated unless the apprenticeship or traineeship is completed or is cancelled under the *Vocational Education, Training and Employment Act 2000*.

Maximum penalty—40 penalty units.

### **139A Reinstatement to previous position**

(1) This section applies if—

- (a) an apprenticeship or traineeship is started with an employer; and
- (b) immediately before the apprenticeship or traineeship started, the person training as the apprentice or trainee was employed in a position (the **“previous position”**) by the employer; and
- (c) any of the following events happen—
  - (i) the Training and Employment Recognition Council refuses to register the person's training contract;
  - (ii) the training contract is cancelled;
  - (iii) the apprenticeship or traineeship ends before the probationary period for the apprenticeship or traineeship ends;

(iv) the person completes the apprenticeship or traineeship.

(2) The person is taken to be immediately reinstated with the employer in the person's previous position.

(3) The reinstated person is not excluded from the operation of chapter 3<sup>29</sup> only because of the apprenticeship or traineeship.

*Example—*

If the reinstated person is dismissed, section 73(1)<sup>30</sup> may apply to the reinstated person despite section 72(1)(f).

## **PART 6—LABOUR MARKET PROGRAMS**

### **140 Orders for wages and employment conditions**

(1) The commission may make an order fixing wages and employment conditions for employees who participate in a labour market program.

(2) In making an order, the commission may consider any matter it considers relevant, including—

- (a) the objectives of the program; and
- (b) any attribute of the participants that affects their ability to get employment, including, for example—
  - (i) the age and competency of the participants; and
  - (ii) any disability or incapacity of the participants; and
- (c) the kind of work done in the program; and
- (d) the experience to be gained by the participants; and
- (e) any relevant industrial instrument; and
- (f) any remuneration or benefit the participants are receiving from the Commonwealth or the State.

(3) The commission may make an order—

- (a) of its own initiative; or

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29 Chapter 3 (Dismissals)

30 Section 73 (When is a dismissal unfair)

- (b) on application by—
  - (i) the Training Recognition Council; or
  - (ii) the Minister.

## **PART 7—VOCATIONAL PLACEMENT**

### **140A Vocational placement**

(1) The commission may make an order fixing remuneration and conditions that apply to the vocational placement of a student that is for more than 240 hours a year.

(2) The commission may make an order—

- (a) of its own initiative; or
- (b) on application by—
  - (i) the Training Recognition Council; or
  - (ii) an organisation; or
  - (iii) the Minister; or
  - (iv) another entity with an interest in vocational placement.

(3) In making an order, the commission may consider anything it considers relevant, including for example—

- (a) the objectives of the vocational placement scheme; and
- (b) any attribute of the students, including for example—
  - (i) the age and competency of the students; and
  - (ii) any disability or incapacity of the students; and
- (c) the kind of work done in the vocational placement scheme; and
- (d) the experience to be gained by the students; and
- (e) any relevant industrial instrument; and
- (f) any remuneration or benefit the students are receiving from the Commonwealth or the State.

(4) A person must not contravene the order.



Maximum penalty—40 penalty units.

(5) In this section—

“**vocational placement scheme**” has the meaning given by the *Vocational Education, Training and Employment Act 2000*.

## CHAPTER 6—AGREEMENTS

### PART 1—CERTIFIED AGREEMENTS

#### *Division 1—Making agreements*

#### **141 Certified agreements**

(1) A certified agreement may be made about the relationship between an employer and a group of employees (whether all employees, or a category of employees) of the employer.

(2) The certified agreement covers all employees in the group, even if they were employed after the agreement was made.

(3) In this section—

“**group of employees**” includes—

- (a) employees of a single employer; and
- (b) employees of a multi-employer; and
- (c) employees of an employer who are engaged in a project, including a proposed project; and
- (d) employees proposed to be employed in a new business by an employer, other than a multi-employer; and<sup>31</sup>
- (e) employees of—
  - (i) the State; or

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31 See section 167 (Successor employers bound) for what happens on the transfer of a business to a new employer.

- (ii) an entity established for a public purpose under a law of the State or Commonwealth; or
- (iii) another entity in which the State has a controlling interest.

#### **142 Who may make certified agreements**

A certified agreement may be made between—

- (a) on the one hand, the employer; and
- (b) on the other hand—
  - (i) 1 or more employee organisations who represent, or are entitled to represent, any employees who are, or are eligible to be, members of the organisation; or
  - (ii) the employees at the time the agreement is made.

#### **143 Proposed parties to be advised when agreement is proposed**

(1) This section applies when a person (the “**proposer**”) proposes to make a certified agreement.

(2) The proposer must advise the following persons, in writing, of the proposer’s intention to begin negotiations for the agreement—

- (a) the other proposed parties to the agreement; and
- (b) for a project agreement—all relevant employee organisations and the commission.

(3) The proposer must advise the persons at least 14 days before the negotiations are proposed to begin.

(4) If the agreement proposed is a project agreement, an organisation that receives advice under subsection (2) and wants to be party to the agreement must give written notice of that fact to—

- (a) the proposer; and
- (b) the commission.

(5) If the agreement proposed is a multi-employer agreement, a person who receives advice under subsection (2) and wants to be party to the agreement must give written notice of that fact to the proposer.

(6) A notice under subsection (4) or (5) must be given within 21 days of the person receiving the advice.

(7) An agreement may only be made within that 21 days if the other proposed parties to the agreement, and all relevant employee organisations, have given a notice under subsection (4) or (5).

(8) In this section—

**“multi-employer agreement”** means an agreement made with a multi-employer.

**“relevant employee organisation”** means an employee organisation that—

- (a) is bound by an award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or
- (b) if there is no award or agreement that binds, or would bind, the employer—is entitled to represent the industrial interests of the relevant employees.

#### **144 What is to be done when an agreement is proposed**

(1) This section does not apply to—

- (a) a certified agreement to be made with an employee organisation for employees proposed to be employed in a new business; or
- (b) a project agreement if the agreement is to be made before the project commences.

(2) When a certified agreement is proposed to be made with an employee organisation or employees, the employer must take reasonable steps to ensure—

- (a) at least 14 days before the relevant employees are asked to approve the agreement, each relevant employee has, or has ready access to, the proposed written agreement; and
- (b) the terms of the agreement (including the procedures for preventing and settling disputes), and the effect of the terms, are explained to each relevant employee before approval is given; and
- (c) for an agreement with employees—each relevant employee is informed that he or she may ask a relevant employee organisation to represent the employee in negotiating with the employer about the agreement.

(3) If a relevant employee does ask a relevant employee organisation to represent the employee, the employer must give the organisation a reasonable opportunity to represent the employee in negotiating with the employer about the agreement before it is made.

(4) Subsection (3) stops applying if, after the request is made—

- (a) the relevant employee withdraws the request; or
- (b) the employee stops being a relevant employee.

(5) In this section—

**“relevant employee organisation”** means an employee organisation—

- (a) of which a relevant employee is a member; and
- (b) that—
  - (i) is bound by an award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or
  - (ii) if there is no award or agreement that binds, or would bind, the employer—is entitled to represent the industrial interests of the relevant employees.

## **145 Negotiations for project agreements**

(1) This section applies if more than 1 employee organisation has given notice, under section 143(4), that it wants to be party to a proposed project agreement.

(2) The employer must negotiate with the single bargaining unit, through a person nominated by the single bargaining unit to represent it.

(3) An organisation may withdraw as a party to a proposed project agreement by written notice to—

- (a) the other organisations that comprise the single bargaining unit; and
- (b) the proposer; and
- (c) the commission.

(4) In this section—

**“single bargaining unit”** means all the employee organisations that have given notice, under section 143(4), that they want to be party to a proposed project agreement.

### **146 Negotiations must be in good faith**

When negotiating the terms of a proposed agreement, the proposed parties to the agreement must negotiate in good faith.

*Examples of good faith in negotiating—*

- agreeing to meet at reasonable times proposed by another party
- attending meetings that the party had agreed to attend
- complying with negotiation procedures agreed to by the parties
- not capriciously adding or withdrawing items for negotiation
- disclosing relevant information as appropriate for the negotiations
- negotiating with all of the parties.

### **147 Peace obligation period to assist negotiations**

**(1)** To enable the proposed parties to reach agreement about the terms of the proposed agreement, the proposed parties can not during the peace obligation period—

- (a) take industrial action for the purpose of—
  - (i) supporting or advancing claims made in relation to the proposed agreement; or
  - (ii) responding to industrial action by the employer or the relevant employees; or
- (b) ask the commission to help the parties to make the agreement under section 148.

**(2)** In this section—

**“peace obligation period”** means the period of 21 days after the giving of the advice mentioned in section 143(2), ending no earlier than 7 days after the nominal expiry date of any existing certified agreement.

### **148 Assistance in negotiating by conciliation**

**(1)** This section applies if, after the peace obligation period has ended—

*Industrial Relations Act 1999*

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- (a) a party who has attempted to negotiate a certified agreement (a “**negotiating party**”), by a declaration of a breakdown in negotiations, has asked the commission to help the parties to make a certified agreement; or
- (b) the commission becomes aware that a negotiating party is engaging in industrial action that—
  - (i) is threatening, or has caused, significant damage to the economy, community or local community, or part of the economy; or
  - (ii) is threatening to endanger, or has endangered, the personal health, safety or welfare of the community or part of it.

(2) To help the parties to reach agreement, the commission has the conciliation powers it would have under section 230 if that section applied to certified agreement negotiations instead of to industrial disputes.

*Example—*

The commission might help the parties to—

- develop and consider options and processes
- negotiate in good faith.

(3) Also, the commission may make orders to—

- (a) promote the efficient conduct of negotiations; or
- (b) ensure the parties negotiate in good faith; or
- (c) otherwise help the parties to negotiate the agreement.

(4) In particular, the commission may order a party to take, or not to take, specified action.

(5) In deciding what orders to make, the commission must consider the conduct of each of the parties.

(6) If 2 or more employee organisations are involved in the negotiations or proposed negotiations, the commission may order that the organisations be represented, for conciliating the matter, by a single person or group of persons authorised by the organisations to represent them (whether generally or for the particular negotiations).

(7) Subsection (6) does not limit subsection (2).

**149 Arbitration if conciliation unsuccessful**

(1) This section applies if—

- (a) the commission considers conciliation has not been successful because industrial action—
  - (i) has been protracted; or
  - (ii) is threatening, or has caused, significant damage to—
    - (A) the economy or local community, or part of the economy; or
    - (B) a single enterprise; or
    - (C) employees; or
  - (iii) is threatening to endanger, or has endangered, the personal health, safety or welfare of the community or part of it; or
- (b) the commission considers it is not likely that further conciliation will result in the matter being settled within a reasonable time, considering, among other things, the history of industrial relations in the enterprise or industry to which the proposed agreement is to relate; or
- (c) all the negotiating parties consider conciliation has been unsuccessful and ask the commission to determine the matter by arbitration.

(2) To determine the matter by arbitration—

- (a) the commission has the arbitration powers that it would have under section 230<sup>32</sup> if that section applied to certified agreement negotiations instead of industrial disputes; and
- (b) the commission may give directions or make orders of an interlocutory nature.

(3) Industrial action organised, or engaged in, while the commission determines the matter by arbitration is not protected industrial action for section 174.

(4) In exercising the arbitration powers, the commission must limit its consideration to the matters at issue during negotiations for the proposed agreement.

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32 Section 230 (Action on industrial dispute)

(5) In considering the matters at issue, the commission must consider at least the following—

- (a) the merits of the case;
- (b) the likely effects of the commission's proposed determination, and any matters agreed before arbitration, on employees and employers who will be bound by the proposed determination;
- (c) the public interest, and to that end the commission must consider—
  - (i) the objects of this Act; and
  - (ii) the likely effects of the commission's determination on the community, economy, industry generally and on the particular enterprise or industry concerned;
- (d) the extent to which the negotiating parties have negotiated in good faith.

(6) The commission must publish its reasons when determining a matter under this section.

(7) The reasons must address each of the things the commission considered under subsection (5).

(8) The full bench may establish principles about the arbitration of certified agreements.

(9) After the principles have been established, the commission must exercise its power to arbitrate in a way that is consistent with the principles.

(10) Unless all the negotiating parties agree, the commission as constituted for the conciliation can not exercise the arbitration powers mentioned in this section.

### **150 Determinations made under s 149**

(1) A determination under section 149 must specify a date, of no later than 3 years after the date on which the determination is made, as its nominal expiry date.

(2) Subject to this section, the determination operates at all times after it commences and can not be amended.

(3) The determination has effect subject to any conditions specified in it.



(4) Before the determination's nominal expiry date has passed, the commission must not revoke the determination unless satisfied—

- (a) the employer and the 1 or more organisations, or a majority of the employees, who are bound by the determination have agreed to the revocation (for example, because they propose to make an agreement under division 1<sup>33</sup>); and
- (b) the revocation would not be against the public interest.

(5) After the determination's nominal expiry date—

- (a) the employer, or an organisation, bound by the determination; or
- (b) a majority of the employees to whom the determination applies;

may give notice to all of the employees, or other employees, to whom the determination applies and persons, or other persons, who are bound by the determination and to the commission, stating that the determination is revoked with effect from a specified day.

(6) The specified day must be at least 28 days after—

- (a) the day on which the notice is given; or
- (b) if it is given to different persons on different days—the day on which it is last given.

### **151 Steps to be repeated if proposed agreement is amended**

(1) If a proposed agreement is amended for any reason, the steps in section 144(2) and (3)<sup>34</sup> must be taken again for the agreement as amended.

(2) If the agreement is being amended only by adding an employer (a “**new employer**”) as a party to the agreement, the steps need only be taken in relation to the new employer's employees.

(3) However, the steps need not be taken if the commission is satisfied the proposed agreement was amended only—

- (a) for a formal or clerical reason; or
- (b) in another way that does not adversely affect a relevant employee's interests.

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33 Division 1 (Making agreements)

34 Section 144 (What is to be done when an agreement is proposed)

**152 Certificate as to requested representation**

(1) An employee organisation may apply to the registrar for a certificate stating that an employee has requested the organisation, under section 144, to represent the employee in negotiating with the employer about a proposed agreement.

(2) An employer may apply to the registrar for a certificate stating that the employer need not negotiate with an employee organisation about a proposed agreement because of a circumstance mentioned in section 144(4).

(3) A certificate must identify the organisation, the employer and the proposed agreement.

(4) A certificate must not identify any of the employees concerned.

(5) The certificate is, for all purposes of this Act, evidence of the matters stated in it.

***Division 2—Certifying agreements*****153 Time for applying for certification**

An application for the commission to certify an agreement must be made within 21 days after the day on which the agreement is signed by or for all the parties.

**154 Notice of hearing**

The registrar must, at least 7 days before an application for certification of an agreement is to be heard, place a notice in the registry detailing—

- (a) the names of the parties to the agreement; and
- (b) the relevant or designated award; and
- (c) the hearing date.

**155 Right of employee organisation to be heard**

(1) All relevant employee organisations are entitled to be heard on an application for the certification of an agreement.

(2) As soon as practicable after the application is made, the commission must notify all relevant employee organisations that—

- (a) the application has been made; and
- (b) the organisation is entitled to be heard on the application.

(3) This section does not affect another right of an employee organisation, or anyone else, to be heard on or intervene in an application.

(4) In this section—

**“relevant employee organisation”** means an employee organisation that—

- (a) is bound by an award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or
- (b) if there is no award or agreement that binds, or would bind, the employer—is entitled to represent the industrial interests of the relevant employees.

## 156 Certifying an agreement

(1) The commission must certify the agreement if, and must not certify the agreement unless, it is satisfied—

- (a) the things required by sections 143, 144 and 145<sup>35</sup> were done, and in particular, the terms of the agreement were explained in a way that was appropriate, having regard to the persons’ particular circumstances and needs; and

*Examples of persons with particular circumstances and needs—*

1. Women
  2. Persons from a non-English speaking background
  3. Young persons
  4. Persons with limited literacy or numeracy skills.
- (b) the employer did not coerce, or attempt to coerce, an employee—
    - (i) not to make a request mentioned in section 144(2)(c); or

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<sup>35</sup> Sections 143 (Proposed parties to be advised when agreement is proposed), 144 (What is to be done when an agreement is proposed) and 145 (Negotiations for project agreements)

- (ii) to withdraw the request; and
- (c) the agreement is in writing and signed by or for all the parties; and
- (d) the agreement includes procedures for preventing and settling disputes; and
- (e) the agreement specifies a nominal expiry date that is—
  - (i) for a project agreement—the date no later than the date on which the project ends; and
  - (ii) for another agreement—a date no later than 3 years after the date on which the agreement will come into operation; and
- (f) the agreement contains, or is accompanied by, information prescribed under a regulation; and
- (g) a valid majority of the relevant employees employed at the time approved the agreement; and
- (h) the agreement passes the no-disadvantage test; and
- (i) for a project agreement—each employee organisation that has given notice of wanting to be party to the agreement under section 143(4), and that has not withdrawn as a party under section 145(3), is a party to the agreement; and
- (j) for an agreement to be made with an employee organisation, other than an agreement for a new business—
  - (i) each employee organisation that is bound by the award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act, is a party to the agreement; or
  - (ii) if no award or industrial agreement binds, or would bind, the employer—each employee organisation that is entitled to represent the industrial interests of the relevant employees is a party to the agreement; and
- (k) for an agreement for a new business—
  - (i) the agreement was made before the employment of any of the persons in the new business at the new workplace whose employment will be subject to the agreement; and

- (ii) the agreement has been made with 1 or more employee organisations that are entitled to represent the industrial interests of the persons; and
- (l) for an agreement other than a multi-employer agreement or project agreement, the employer—
  - (i) remunerates all men and women employees of the employer equally for work of equal or comparable value; or
  - (ii) will, because of the agreement if it is certified, remunerate all men and women employees of the employer equally for work of equal or comparable value; or
  - (iii) is implementing equal remuneration for work of equal or comparable value for all men and women employees of the employer; and
- (m) for a multi-employer agreement or project agreement—the agreement provides for equal remuneration for all men and women employees covered by the agreement for work of equal or comparable value.

(2) Subsection (1)(j) does not apply if the commission is satisfied an employee organisation mentioned in subsection (1)(j)—

- (a) has been given the opportunity to be a party to the agreement, but does not want to be a party; or
- (b) has no members who are to be bound by the agreement.

(3) For subsection (1)(l), the commission may consider, but must not review, any relevant industrial instrument to decide whether the instrument provides for equal remuneration for all men and women employees covered by the instrument for work of equal or comparable value.

### **157 When commission to refuse to certify an agreement**

(1) The commission must refuse to certify an agreement if it considers that a provision of the agreement is inconsistent with—

- (a) a provision of—
  - (i) chapter 2, part 5; or
  - (ii) chapter 3; or

- (iii) chapter 4;<sup>36</sup> or
  - (b) an order by the commission under any of those provisions; or
  - (c) an injunction granted by the commission under any of those provisions.
- (2)** The commission must refuse to certify an agreement if satisfied—
- (a) the employer has, in connection with negotiating the agreement, contravened—
    - (i) section 170; or
    - (ii) chapter 4;<sup>37</sup> or
  - (b) the employer has caused an entity to engage, in connection with negotiations for an agreement, in conduct that, had the employer engaged in the conduct, would be a contravention by the employer of—
    - (i) section 170; or
    - (ii) chapter 4; or
  - (c) an entity has, for the employer—
    - (i) engaged in conduct mentioned in paragraph (b); or
    - (ii) caused another entity to engage in the conduct.
- (3)** Subsection (2) does not apply if the commission is satisfied the contravention or conduct, and its effects, have been fully remedied.
- (4)** The commission must refuse to certify an agreement if it considers a provision of the agreement is a discriminatory provision.
- (5)** The commission must refuse to certify an agreement if a provision of the agreement seeks to prohibit or restrict an application being made under chapter 2, part 5.<sup>38</sup>
- (6)** The commission must refuse to certify an agreement if—

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36 Chapter 2 (General employment conditions), part 5 (Equal remuneration for work of equal or comparable value), chapter 3 (Dismissals) or 4 (Freedom of association)

37 Section 170 (Amendment if discrimination between unionists and non-unionists) or chapter 4 (Freedom of association)

38 Chapter 2 (General employment conditions), part 5 (Equal remuneration for work of equal or comparable value)

- (a) the agreement applies only to a group or category of employees; and
- (b) the commission considers the agreement defines the group or category in a way that results in other employees not being subject to the agreement, if it would be reasonable for the other employees to be subject to the agreement, having regard to—
  - (i) the nature of the work performed by the other employees; and
  - (ii) the organisational and operational relationships between the group or category and the other employees; and
- (c) the commission considers it unfair that the other employees are not subject to the agreement.

### **158 Other options open to commission instead of refusing to certify agreement**

(1) If, under section 156 or 157, the commission has grounds to refuse to certify an agreement—

- (a) the commission may accept an undertaking from 1 or more of the persons who made the agreement in relation to the operation of the agreement and, if satisfied the undertaking meets the commission's concerns, certify the agreement; and
- (b) before refusing to certify the agreement, the commission must give the persons who made the agreement an opportunity to take action that may be necessary to enable the commission to certify the agreement.

(2) If an undertaking is not complied with, the commission, after giving the persons who made the agreement an opportunity to be heard, may—

- (a) order the 1 or more persons who gave the undertaking to comply with it; or
- (b) terminate the agreement.

(3) If—

- (a) after doing the things required or allowed by subsection (1), the commission is still required to refuse to certify the agreement; and

- (b) it is so required only because of an inconsistency mentioned in section 157(1);

the commission may conciliate the industrial matter concerned with a view to helping the persons concerned to take the action necessary to enable the commission to certify the agreement.

### **159 Procedures for preventing and settling disputes**

The procedures for preventing and settling disputes contained in a certified agreement may, with the commission's approval, authorise the commission to settle a dispute.<sup>39</sup>

### *Division 3—No-disadvantage test*

### **160 When an agreement passes the no-disadvantage test**

(1) An agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their employment conditions.

(2) An agreement disadvantages employees only if the commission considers it would result in a reduction in the employees' entitlements or protections.

(3) Subsection (2) applies subject to section 161 and 162.

(4) Subsection (2) does not apply if the commission considers that, in the context of the employment conditions considered as a whole, the reduction is not against the public interest.

*Example of subsection (4)—*

The making of the agreement is part of a reasonable strategy to deal with a short-term crisis in, and to help in the revival of, a business.

(5) If the president considers exceptional circumstances exist, the president may require the registrar to give the commission a report comparing the agreement with the employee's entitlements or protections.

(6) In this section—

**“entitlements or protections”** means the entitlements or protections under—

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<sup>39</sup> See also section 230 (Action on industrial dispute) for commission's powers to prevent or settle industrial disputes.



- (a) a relevant award, designated award, industrial agreement or order under chapter 5, part 5; or
- (b) chapter 2, including as reviewed by a general ruling of the full bench.

### **161 Special case—employee eligible for supported wage system**

(1) This section applies if a certified agreement provides for the payment of wages to an employee who is eligible for the supported wage system at a rate not less than the rate set in accordance with that system for the employee.

(2) The agreement does not disadvantage the employee in relation to the employee's employment conditions only because of the reduction of the employee's wages.

### **162 Special case—employee undertaking approved apprenticeship or traineeship**

(1) This section applies if—

- (a) a certified agreement provides for the payment of wages to an employee undertaking approved training (a **“training employee”**) in a particular trade, occupation or work, or a trade, occupation or work similar to the particular trade, occupation or work (the **“work”**); and
- (b) there is a relevant award, designated award or order providing for the payment of wages to employees undertaking benchmark training for the work.

(2) The agreement is taken to disadvantage the training employee in the employee's employment conditions if the agreement provides for the payment of wages to the employee at a rate less than the rate payable to an employee undertaking benchmark training (the **“benchmark employee”**) under the relevant award, designated award or order, as adjusted under subsection (3).

(3) For subsection (2), the rate payable to a benchmark employee is to be adjusted to take into account the proportionate difference, as decided by the approving authority, between the productive time of a training employee and the productive time of a benchmark employee.

(4) If the agreement adopts, as the qualification for a wage level, a criterion decided by the approving authority (the “**decided criterion**”) instead of a specified criterion applying under the relevant award, designated award or order (the “**award criterion**”), the award is taken, for this section, to have effect as if the decided criterion were substituted for the award criterion.

(5) This section does not apply to a trainee bound by—

- (a) the Training Wage Award—State;
- (b) the National Training Wage Award 1994.

(6) In this section—

“**benchmark training**” means training for an apprentice or trainee in a particular trade, occupation or work if the trade, occupation or work is recognised under an award or under an order made under section 137.<sup>40</sup>

### **163 Deciding designated awards**

(1) This section applies if—

- (a) an employer or organisation of employees proposes to make a certified agreement; and
- (b) there is no relevant award for some or all of the persons to whom the agreement will apply.

(2) The employer or organisation must apply to the commission for a decision under subsection (3).

(3) On application, the commission must decide that an award (regulating employment conditions of employees engaged in a similar kind of work as the person under the proposed agreement) is appropriate for deciding whether the agreement passes the no-disadvantage test.

(4) The commission must inform the employer or organisation in writing of its decision.

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<sup>40</sup> Section 137 (Order setting minimum wages and conditions)

***Division 4—Effect of certified agreements*****164 When a certified agreement is in operation**

- (1) A certified agreement starts operating when it is certified.
- (2) The agreement continues to operate until—
  - (a) after its nominal expiry date, it is replaced by another certified agreement; or
  - (b) it is terminated under section 158, 171, 172 or 173.<sup>41</sup>

**165 Certified agreement's effect on awards, agreements or orders**

(1) While a certified agreement operates, it prevails, to the extent of any inconsistency, over an award or industrial agreement or an order made under section 137.

(2) While a project agreement operates, it operates to the exclusion of any other certified agreement or QWA.

**166 Persons bound**

- (1) A certified agreement binds—
  - (a) the employer—
    - (i) for an agreement made by an organisation of employers for a project—for whom the agreement was made; or
    - (ii) who made the agreement; and
  - (b) all persons who are, while the agreement operates, relevant employees; and
  - (c) if the agreement is made with 1 or more employee organisations—the 1 or more organisations.

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41 Section 158 (Other options open to commission instead of refusing to certify agreement), 171 (Other options open to commission instead of refusing to approve amendment of agreement), 172 (Terminating certified agreement on or before its nominal expiry date) or 173 (Terminating agreement after its nominal expiry date)

(2) For a certified agreement made between the employees and employer, the commission must decide that the agreement also binds an employee organisation if—

- (a) before the agreement is certified, the organisation gives the commission and employer notice that it wants to be bound by the agreement; and
- (b) the organisation satisfies the commission that—
  - (i) the organisation has at least 1 member—
    - (A) whose employment will be subject to the agreement; and
    - (B) who asked the organisation to give the notice; and
  - (ii) the organisation—
    - (A) is bound by an award or industrial agreement that binds the employer, or would bind the employer apart from an award under the Commonwealth Act; or
    - (B) if there is no award or agreement that binds, or would bind, the employer—is entitled to represent the industrial interests of the relevant employees.

### **167 Successor employers bound**

(1) This section applies if—

- (a) an employer is bound by a certified agreement; and
- (b) at a later time a new employer becomes the successor (whether or not immediate) of the whole or a part of the business of the employer bound by the agreement.

(2) From the later time—

- (a) the new employer is bound by the certified agreement, to the extent it relates to the whole or part of the business; and
- (b) the previous employer stops being bound by the certified agreement, to the extent it relates to the whole or part of the business; and
- (c) a reference in this part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent the context relates to the whole or part of the business.

*Division 5—Extending, amending or terminating certified agreements***168 Extending a certified agreement**

(1) On or before the nominal expiry date of a certified agreement, the following persons may apply to the commission to extend a certified agreement's nominal expiry date—

- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
- (b) otherwise—the employer.

(2) However, the nominal expiry date can not be extended beyond—

- (a) for a project agreement—the date on which the project ends; or
- (b) for another agreement—3 years after the date on which the agreement came into operation.

(3) The extension has no effect unless the commission approves it.

(4) The commission must approve the extension if, and must not approve the extension unless, satisfied a valid majority of the relevant employees at the time approved the extension.

(5) The extension takes effect when the commission's approval takes effect.

(6) This section does not apply to—

- (a) an agreement made with an employee organisation for employees proposed to be employed in a new business; or
- (b) an agreement to which section 160(4)<sup>42</sup> applies.

**169 Amending a certified agreement**

(1) This section does not apply to an amendment of the parties to the agreement, other than in a multi-employer agreement (a “**multi-employer amendment**”).

(2) The following persons may apply to the commission to amend a certified agreement—

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42 Section 160 (When an agreement passes the no-disadvantage test)

*Industrial Relations Act 1999*

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- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
  - (b) for a multi-employer amendment—the person who wants to become a party to the agreement (the “**new employer**”);
  - (c) otherwise—the employer.
- (3) The commission must approve the amendment if, and only if, satisfied—
- (a) the amendment has been approved by—
    - (i) for a multi-employer amendment—
      - (A) a valid majority of the new employer’s employees whose employment will be subject to the amended agreement; and
      - (B) the other parties to the agreement, or their representative; or
    - (ii) for any other amendment—a valid majority of the relevant employees at the time; and
  - (b) the commission would be required to certify the agreement as amended if it were an agreement whose certification was applied for under this part.
- (4) In applying subsection (3)(b)—
- (a) a requirement about a majority of persons making or approving the agreement is taken to be satisfied; and
  - (b) section 158<sup>43</sup> is to be disregarded.
- (5) The amendment takes effect when the commission’s approval takes effect.
- (6) The commission may, on application by a person bound by a certified agreement, amend a certified agreement—
- (a) to remove ambiguity; or
  - (b) to include, omit or amend a term, however specified, that allows an employer to stand-down an employee; or
  - (c) in another way, if—

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43 Section 158 (Other options open to commission instead of refusing to certify agreement)

- (i) the following persons have agreed to the amendment—
    - (A) for an agreement between the employer and an employee organisation—the employer and organisation;
    - (B) for an agreement between the employer and employees—the employer and a valid majority of the relevant employees at the time; and
  - (ii) the commission is satisfied the amendment does not disadvantage the relevant employees; and
  - (iii) the commission is satisfied exceptional circumstances have arisen in the workplace that necessitate the amendment.
- (7) A certified agreement may be amended only under—
- (a) this section (including as it applies under section 170); or
  - (b) section 168; or
  - (c) section 171.

### **170 Amendment if discrimination between unionists and non-unionists**

- (1) This section applies if—
- (a) 1 or more employees whose employment is not subject to the agreement ask the employer to—
    - (i) amend the agreement so that their employment is subject to the agreement; and
    - (ii) seek the approval of the commission for the amendment under section 169; and
  - (b) their employment would be subject to the agreement if—
    - (i) they were members of an employee organisation or of a particular employee organisation; or
    - (ii) they were not members of an employee organisation or of a particular employee organisation.
- (2) The employer must seek the commission's approval to amend the agreement in accordance with the request.

(3) The commission must disregard section 169(3)(a) in deciding whether to approve the amendment.

### **171 Other options open to commission instead of refusing to approve amendment of agreement**

(1) If, for section 170, the commission is not satisfied as required under section 169(3)—

- (a) before refusing to approve the amendment, it must give the persons who amended the agreement an opportunity to take action necessary to enable the commission to approve the amendment; or
- (b) it may accept an undertaking from 1 or more of the persons who amended the agreement in relation to the operation of the agreement as amended and, if satisfied the undertaking meets the commission's concerns, approve the amendment.

(2) If an undertaking is not complied with, the commission, after giving the persons who amended the agreement an opportunity to be heard, may—

- (a) order the 1 or more persons who gave the undertaking to comply with the undertaking; or
- (b) undo any effect of the amendment; or
- (c) terminate the amendment.

### **172 Terminating certified agreement on or before its nominal expiry date**

(1) On or before a certified agreement's nominal expiry date, the following persons may terminate the agreement by notice—

- (a) if 1 or more organisations are bound by the agreement—the employer and the 1 or more organisations;
- (b) otherwise—the employer.

(2) The commission must approve the termination if, and only if, satisfied a valid majority of the relevant employees at the time approve its termination.

(3) The termination takes effect when the commission's approval takes effect.



**173 Terminating agreement after its nominal expiry date**

(1) After a certified agreement's nominal expiry date, the following persons may apply to the commission to terminate a certified agreement—

- (a) the employer;
- (b) a valid majority of the relevant employees;
- (c) an employee organisation that is bound by the agreement and that has at least 1 member who is a relevant employee.

(2) If the agreement does not provide for the way it may be terminated after the agreement's nominal expiry date has passed, the person who intends to apply to terminate it must give all other persons bound by the agreement notice of the intention.

(3) The commission must approve the termination if, and only if, satisfied—

- (a) for an agreement that provides that it may be terminated if certain conditions are met—the conditions have been met; or
- (b) for an agreement that does not provide for the way it may be terminated—it is in the public interest to terminate the agreement.

(4) The termination takes effect when the commission's approval takes effect.

***Division 6—Industrial action*****174 Protected industrial action**

(1) This section applies to industrial action that is organised, or engaged in, by a protected person or the employer for the purpose of—

- (a) supporting or advancing claims made in relation to a proposed agreement; or
- (b) responding to industrial action by the employer or the relevant employees.

(2) An action for the industrial action taken after the peace obligation period does not lie under any law, unless the industrial action has involved or is likely to involve—

- (a) personal injury; or

- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

(3) However, subsection (2) applies to—

- (a) a strike by a protected person, only if the protected person has genuinely tried to reach agreement before the strike starts; and
- (b) a lockout by an employer, only if the employer has genuinely tried to reach agreement before the lockout starts.

(4) Despite subsection (2), an action for defamation may be brought in relation to anything that happened during the industrial action.

(5) If the employer lawfully locks out an employee, the employer may refuse to pay the employee remuneration for the period of the lockout.

(6) The employer can not lock out an employee unless the continuity of the employee's employment, for the purposes prescribed under a regulation, is not affected by the lockout.

(7) In this section—

**“protected person”** means—

- (a) an employee organisation that is a negotiating party; or
- (b) an officer or employee of the employee organisation acting in that capacity; or
- (c) an employee who is a negotiating party or a member of the employee organisation.

### **175 Notice of industrial action to be given**

(1) Section 174(2) does not apply to industrial action unless the person intending to take the action gives all of the negotiating parties—

- (a) if the action is in response to, and is taken after the start of, industrial action by another negotiating party in relation to a proposed agreement—written notice of the intended action; or
- (b) otherwise—at least 3 working days written notice of the intended action.

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

(3) A notice must state the nature of the intended action and the day when it will begin.

(4) A notice may be given before the end of the peace obligation period if the intended action does not start before the end of the period.

### **176 Secret ballot about taking industrial action**

(1) This section applies if the commission considers—

- (a) industrial action is being taken, or industrial action is threatened or probable, in relation to a proposed certified agreement; and
- (b) finding out the relevant employees' attitudes about the matters giving rise to the industrial action might help—
  - (i) to stop or prevent the industrial action; or
  - (ii) to settle the matters.

(2) The commission may order that a vote of employees be taken by secret ballot<sup>44</sup> (with or without a provision for absent voting), in accordance with the commission's directions, to find out their attitudes about the matters.

(3) After an order is made, the organising of, or engaging in, industrial action by the employee organisation or employees is not protected industrial action unless—

- (a) the ballot has been taken; and
- (b) the industrial action has been approved by a majority of the valid votes cast in the ballot.

(4) The commission must revoke the order if after an order is made, but before the vote is taken, the commission forms the view that the ballot should not proceed because it has satisfied itself that—

- (a) the matters have been, or are about to be, settled; or
- (b) the industrial action has stopped or been prevented, or is about to stop or be prevented.

(5) In subsection (3)—

**“organisation”** includes—

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44 See section 285 (Conducting a secret ballot).

- (a) a member of the organisation; and
- (b) an officer or employee of the organisation acting in that capacity.

### **177 Industrial action must be properly authorised**

(1) Section 174 does not apply to industrial action engaged in by members of an employee organisation that is a negotiating party unless, before the industrial action begins—

- (a) the industrial action is properly authorised by the organisation's management committee or someone authorised by the committee to authorise the industrial action; and
- (b) if the organisation's rules state the way industrial action is to be authorised—the industrial action is properly authorised under the rules; and
- (c) notice of the giving of the authorisation is given to the registrar.

(2) Industrial action is taken to be properly authorised under an employee organisation's rules even though a technical breach has happened in authorising the industrial action, if the person who committed the breach acted in good faith.

(3) Examples of a technical breach in authorising industrial action include—

- (a) a contravention of the organisation's rules; and
- (b) an error or omission in complying with this Act; and
- (c) participation, by a person not eligible to do so, in the making of a decision by a management committee, or by members, of the organisation.

(4) Industrial action is taken to have been properly authorised under an employee organisation's rules, and to have been authorised before the industrial action began, unless—

- (a) the commission declares in proceedings that the industrial action was not properly authorised under the rules; and
- (b) the proceedings were brought in the commission within 6 months after the notice was given to the registrar under subsection (1)(c).

(5) So far as an employee organisation's rules specify the way in which industrial action under this division is to be authorised, the rules do not contravene section 435<sup>45</sup> unless the way specified contravenes that section.

### **178 No protection if certification application not timely**

Industrial action is not protected by section 174 unless an application to the commission to certify an agreement is made within 21 days after the day when the agreement is signed by or for all the parties.

### **179 Employer not to dismiss employee for engaging in protected industrial action**

(1) An employer must not—

- (a) dismiss an employee, injure an employee in his or her employment or change an employee's position to the employee's prejudice; or
- (b) threaten to dismiss an employee, injure an employee in his or her employment or change an employee's position to the employee's prejudice;

wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected industrial action.

(2) Subsection (1) does not apply to any of the following actions taken by the employer—

- (a) standing-down the employee;
- (b) refusing to pay the employee if, under common law, the employer is permitted to do so because the employee has not performed work as directed;
- (c) action of the employer that is itself protected industrial action.

(3) In proceedings under section 183<sup>46</sup> for an alleged contravention of subsection (1), it is to be presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage, was engaging, or had engaged, in protected industrial action.

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45 Section 435 (General restrictions)

46 Section 183 (Penalties for contravening penalty provisions)

**180 Remedies if employee dismissed etc. for engaging in protected industrial action**

(1) If an employer contravenes section 179(1), the commission may order the employer—

- (a) if the contravention was constituted by dismissing an employee—to reinstate the employee to the position the employee occupied immediately before the dismissal or re-employ the employee in a position at least as favourable as that position; and
- (b) to pay the employee dismissed, injured or prejudiced, compensation for loss suffered because of the dismissal, injury or prejudice.

(2) The rights of and relating to reinstatement and re-employment that are conferred on an employee by this section do not limit any other rights of the employee.

**181 When industrial action must not be taken**

(1) This section applies to—

- (a) a certified agreement from when it starts operating until its nominal expiry date has passed; and
- (b) a determination under section 149<sup>47</sup> while it operates.

(2) The following persons must not engage in industrial action for the purpose of supporting or advancing claims against the employer in relation to the employment of employees whose employment is subject to the agreement or determination—

- (a) an employee whose employment is subject to the agreement or determination;
- (b) an employee organisation that is bound by the agreement or determination;
- (c) an officer or employee of the employee organisation acting in that capacity.

(3) If the employee, organisation or officer does so, the action is not protected industrial action.

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<sup>47</sup> Section 149 (Arbitration if conciliation unsuccessful)

(4) The employer must not lock out an employee from his or her employment for the purpose of supporting or advancing the employer's claims in relation to the employment of employees whose employment is subject to the agreement or determination.

(5) If the employer does so, the lockout is not protected industrial action.

### *Division 7—Penalty provisions*

#### **182 Penalty provisions**

In this division, each of the following is a “penalty provision”—

- (a) section 170(2);
- (b) section 179(1);
- (c) section 181(2) or (4);
- (d) section 185 (1) or (3).<sup>48</sup>

#### **183 Penalties for contravening penalty provisions**

(1) A contravention of a penalty provision is not an offence.

(2) However, a magistrate may, by order, impose a penalty on a person who contravenes a penalty provision.

(3) The penalty can not be more than the amount of the monetary value of—

- (a) for a corporation—135 penalty units; or
- (b) otherwise—27 penalty units.

(4) An application for an order for a contravention of section 170(2) may be made by—

- (a) the employees making the request mentioned in section 170; or
- (b) an employee organisation of which any of the employees making the request is a member; or

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<sup>48</sup> Section 170 (Amendment if discrimination between unionists and non-unionists), 179 (Employer not to dismiss employee for engaging in protected industrial action), 181 (When industrial action must not be taken) or 185 (Coercion of persons to make, amend or terminate certified agreements etc.)

- (c) an inspector; or
- (d) another person prescribed under a regulation.

(5) An application for an order for a contravention of section 179(1) may be made by—

- (a) the employee concerned; or
- (b) an employee organisation of which the employee is a member; or
- (c) an inspector; or
- (d) another person prescribed under a regulation.

(6) An application for an order for a contravention of section 181(2) or (4) may be made by—

- (a) an employee whose employment is subject to the certified agreement concerned; or
- (b) another person who is bound by the agreement; or
- (c) another person prescribed under a regulation.

(7) An application for an order for a contravention of section 185(1) or (3)<sup>49</sup> may be made by—

- (a) an employee whose employment is subject to the agreement, or will be subject to the proposed agreement concerned; or
- (b) another person bound by the agreement or who will be bound by the proposed agreement; or
- (c) the person who allegedly was intended to be coerced; or
- (d) an employee organisation of which the person is a member; or
- (e) an inspector; or
- (f) another person prescribed under a regulation.

(8) The magistrate may order that a penalty, or part of a penalty, be paid to any person who may have made the application (other than an officer or employee of the State or a public service officer).

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<sup>49</sup> Section 185 (Coercion of persons to make, amend or terminate certified agreements etc.)



(9) Any part of the penalty that is ordered to be paid to the person must first be paid to the person.

(10) The remainder of the penalty must be paid to the consolidated fund.

### *Division 8—General*

#### **184 Secret ballot on valid majority**

(1) This section applies if—

- (a) the commission is required under this part to be satisfied that a valid majority of the persons employed at a particular time whose employment is or will be subject to an agreement have made or terminated the agreement, or given an approval; and
- (b) the commission is not so satisfied.

(2) The commission may order a vote be taken by secret ballot<sup>50</sup> (with or without a provision for absent voting), in accordance with the commission's directions, of employees whose employment is or will be subject to the agreement to find out whether they would make or terminate the agreement, or give the approval.

(3) If a majority of the validly cast votes is in favour of making or terminating the agreement, or giving the approval, the commission is taken to be satisfied of the requirement.

(4) Before a vote is taken, the commission may revoke an order under subsection (2) if it becomes satisfied that the requirement of subsection (1)(a) has been met.

#### **185 Coercion of persons to make, amend or terminate certified agreements etc.**

(1) A person must not take, or refrain from taking, industrial action or other action with intent to coerce someone else to agree, or not to agree, to—

- (a) making, amending or terminating, or extending the nominal expiry date of, an agreement under this part; or

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<sup>50</sup> See section 285 (Conducting a secret ballot) for the way a secret ballot is conducted.

(b) approving anything mentioned in paragraph (a).

(2) Subsection (1) does not apply to industrial action that is protected industrial action.

(3) An employer must not coerce, or attempt to coerce, an employee of the employer—

(a) not to make a request mentioned in section 144(2)(c)<sup>51</sup> in relation to an agreement the employer proposes to make; or

(b) to withdraw the request.

(4) In this section—

“**take or refrain from taking**” includes threaten to take or refrain from taking.

## **186 Complementary laws**

(1) This section applies to enable the Australian commission to perform functions or exercise powers.

(2) The Commonwealth Act, part VIB (and the other provisions of that Act as far as they relate to part VIB) applies as a law of the State, with any amendments prescribed under a regulation.

# **PART 2—QUEENSLAND WORKPLACE AGREEMENTS**

## *Division 1—Preliminary*

### **187 Definitions for pt 2**

In this part—

“**additional approval requirements**” means the additional approval requirements in section 202.<sup>52</sup>

“**amendment agreement**” see section 197.

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51 Section 144 (What is to be done when an agreement is proposed)

52 Section 202 (Additional approval requirements for QWA and ancillary documents)

**“ancillary document”** means any of the following—

- (a) an amendment agreement;
- (b) an extension agreement;
- (c) a termination agreement;
- (d) a termination notice.

**“approval notice”** means an approval notice issued by the commission.

**“bargaining agent”** means a person appointed as a bargaining agent under section 196.

**“certified copy”** of a document means a copy that is certified as being a true copy of the document.

**“employee”** see section 188(2).

**“employer”** see section 188(2).

**“existing employee”**, in relation to a QWA, means an employee who signed the QWA after commencing the employment to which the QWA relates.

**“extension agreement”** means an agreement to extend the nominal expiry date of a QWA.

**“file”** a QWA or ancillary document means file with the registrar or chief inspector.

**“filing receipt”** means a receipt issued by the registrar or chief inspector.

**“filing requirements”** means the filing requirements in section 200.

**“new employee”**, in relation to a QWA, means an employee who signed the QWA before, or at the time of, commencing the employment to which the QWA relates.

**“nominal expiry date”** of a QWA, see section 194.

**“party”** to a QWA or ancillary document means the employer or employee.

**“period of operation”** of a QWA, see section 195.

**“QWA”** see sections 188 and 207.

**“QWA date”** means the date on which the employer and employee sign the QWA or, if they sign on different dates, the later of the dates.

**“refusal notice”** means a refusal notice issued by the commission under section 206.

**“relevant or designated award”** means the relevant or designated award that is used when applying the no-disadvantage test.

**“required number of days”** means—

- (a) for a new employee—5 days; or
- (b) for an existing employee—14 days.

**“termination agreement”** see section 198(1).

**“termination notice”** see section 198(3).

### **188 Proposed QWAs and ancillary documents—interpretation**

(1) As far as the context permits, a reference in this part to a QWA or ancillary document includes a reference to a proposed QWA or ancillary document.

(2) In relation to a proposed QWA or ancillary document, a reference in this part to the employer or employee is a reference to the person who will be the employer or employee when the QWA or ancillary document starts to operate.

### **189 Functions and powers of commission**

The commission must, as far as practicable, perform its functions under this part—

- (a) in a way that furthers the objects of this Act; and
- (b) without undue delay; and
- (c) in an informal way.

### *Division 2—General rules about QWAs and ancillary documents*

### **190 QWAs and ancillary documents only have effect as provided by this part**

(1) A QWA or ancillary document has effect as provided by this part, and not otherwise.

(2) In particular—

- (a) a QWA for a new employee has no effect before a filing receipt is issued for the QWA; and
- (b) a QWA for an existing employee has no effect before an approval notice is issued for the QWA.

### **191 Collective QWAs**

(1) In this part, 2 or more agreements negotiated collectively may be included in the same document if the same employer is a party to all the agreements.

(2) The agreements need not be in the same terms.

(3) A QWA for a new employee can not be included in the same document as a QWA for an existing employee.

### ***Division 3—Making, amending or terminating a QWA***

### **192 Employer and employee may make a QWA**

(1) A single employer and a single employee, other than an employer and employee mentioned in subsection (3), may make a QWA that deals with matters relating to the relationship between an employer and employee.

(2) A QWA may be made before the start of employment.

(3) The employer of an employee employed in 1 of the following may not make a QWA with the employee—

- (a) a department of government or part of a department;
- (b) a public service office or part of a public service office under the *Public Service Act 1996*;
- (c) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose;
- (d) a part of an entity mentioned in paragraph (c);
- (e) a registry or other administrative office of a court of the State of any jurisdiction;

- (f) the parliamentary service;
- (g) the Governor's official residence (known as 'Government House') and its associated administrative unit;
- (h) a court of the State of any jurisdiction;
- (i) the police service to the extent that it does not include staff members mentioned in the *Police Service Administration Act 1990*, section 2.5(1)(a);<sup>53</sup>
- (j) another entity, or part of another entity, declared under a regulation for this section.

(4) The employer may not make a QWA with an employee who is under 18 years.

### **193 Matters to be included in QWA**

(1) The employer must ensure the QWA includes—

- (a) the provisions about discrimination prescribed under a regulation; and
- (b) provision for the remuneration of the employee on the basis of equal remuneration for the employee for work of equal or comparable value performed by other men and women employees of the employer.

(2) If the QWA does not in fact include the prescribed provisions about discrimination, the QWA is taken to include the provisions.

(3) The employer must ensure the QWA does not include provisions that prohibit or restrict disclosure of details of the QWA by either party to another person.

(4) The employer must ensure the QWA includes a dispute resolution procedure.

(5) If the QWA does not include a dispute resolution procedure, the QWA is taken to include the model dispute resolution procedure prescribed under a regulation.

(6) If a dispute resolution procedure confers powers on the commission to prevent or settle disputes between the parties to the QWA about the

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<sup>53</sup> *Police Service Administration Act 1990*, section 2.5 (Administration of staff members)

application or interpretation of the QWA, the commission may exercise the powers.

(7) To avoid doubt, unless power is conferred on the commission to prevent or settle disputes, the commission must not exercise arbitration powers to prevent or settle a dispute between the parties to the QWA.

### **194 Nominal expiry date of QWA**

(1) A QWA must specify a date as its nominal expiry date.

(2) The date can not be more than 3 years after the QWA date.

(3) An employer and employee may make a written agreement (an “**extension agreement**”) that extends the nominal expiry date.

(4) The extended date can not be more than 3 years after the QWA date.

(5) The extension agreement has no effect unless a filing receipt is issued for the extension agreement at least 21 days before the nominal expiry date that is to be extended.

(6) The extension agreement takes effect on the day after an approval notice is issued for the extension agreement.

### **195 Period of operation of QWA**

(1) A QWA for a new employee starts operating on the later of the following days—

- (a) the day after a filing receipt is issued for the QWA;
- (b) the day specified in the QWA as the starting day;
- (c) the day the employee’s employment starts.

(2) A QWA for a new employee stops operating at the earlier of the following times—

- (a) the end of the day when a refusal notice is issued for the QWA;
- (b) the time when a termination under section 198<sup>54</sup> takes effect;
- (c) the time when another QWA between the employer and employee starts to operate.

(3) A QWA for an existing employee starts operating on the later of the following days—

- (a) the day after an approval notice is issued for the QWA;
- (b) the day specified in the QWA as the starting day.

(4) A QWA for an existing employee stops operating at the earlier of the following times—

- (a) the time when a termination under section 198 takes effect;
- (b) the time when another QWA between the employer and employee starts to operate.

### **196 Bargaining agents**

(1) An employer or employee may appoint a person to be his or her bargaining agent for the making, approval, amendment or termination of a QWA.

*Example—*

An employee may appoint an employee organisation to be the employee's bargaining agent.

(2) When the employer proposes the QWA, the employer must inform the employee of his or her right under subsection (1).

(3) The appointment of a bargaining agent must be written.

(4) An employer or employee must not refuse to recognise a bargaining agent appointed by the other party if the employer or employee has been given a copy of the bargaining agent's instrument of appointment.

(5) An employer or employee must not coerce, or attempt to coerce, the other party—

- (a) to appoint, or not to appoint, a particular person as a bargaining agent; or
- (b) to terminate the appointment of a bargaining agent.

### **197 Amending a QWA**

(1) An employer and employee may make a written agreement (“**amendment agreement**”) amending a QWA.



(2) The amendment agreement takes effect on the later of the following days—

- (a) the day after an approval notice is issued for the amendment agreement;
- (b) the day specified in the amendment agreement as the date it takes effect.

(3) Section 193 applies to the QWA as amended in the same way as it applied to the QWA before amendment.

### **198 Terminating a QWA**

(1) The employer and employee may at any time make a written agreement (“**termination agreement**”) to terminate the QWA.

(2) The termination agreement takes effect at the later of the following times—

- (a) the end of the day on which an approval notice is issued for the termination agreement;
- (b) the day specified in the termination agreement as the date it takes effect.

(3) After the nominal expiry date of a QWA, the employer or employee may file a notice (“**termination notice**”) to terminate the QWA.

(4) The termination notice takes effect at the end of 28 days after the party filing the termination notice gave notice to the other party of the filing of the termination notice.

### *Division 4—Filing QWAs and ancillary documents*

### **199 Filing QWAs and ancillary documents**

(1) A QWA or ancillary document (“**document**”) may be filed with the registrar or chief inspector.

(2) If the registrar or chief inspector is satisfied that the filing requirements for the document have been met, the registrar or chief inspector must issue a filing receipt to the person who filed it.

(3) For a QWA, the registrar or chief inspector may issue a filing receipt only if it is filed within 14 days after the QWA date.

(4) If the document is filed with the chief inspector, the chief inspector must immediately give it to the registrar.

## **200 Filing requirements**

(1) The filing requirements for a QWA are—

- (a) the QWA must be signed and dated by each of the parties, and the signatures must be witnessed; and
- (b) the QWA must be accompanied by a declaration by the employer, declaring—
  - (i) the QWA complies with section 193; and
  - (ii) the employer gave the employee a copy of an information statement at least the required number of days before the employee signed the QWA.

(2) The chief inspector must prepare an information statement for subsection (1).

(3) The information statement must include information about the following matters, but may include other information—

- (a) entitlements under this Act;
- (b) occupational health and safety law;
- (c) services provided by the chief inspector;
- (d) bargaining agents.

(4) The filing requirements for an amendment agreement are—

- (a) the agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
- (b) the agreement must be accompanied by a declaration by the employer, declaring the QWA, as amended, complies with section 193.

(5) The filing requirement for an extension agreement is the agreement must be signed and dated by each of the parties, and the signatures must be witnessed.

(6) The filing requirement for a termination agreement is the agreement must be signed and dated by each of the parties, and the signatures must be witnessed.

(7) The filing requirement for a termination notice is the notice must be signed and dated by the party filing the notice, and the signature must be witnessed.

(8) The employer must provide any other information required under a regulation.

### **201 Employer's declaration must be accurate**

An employer must not, in a declaration filed for this part, make a statement that the employer knows, or ought reasonably to know, is false or misleading.

#### *Division 5—Approving QWAs and ancillary documents*

### **202 Additional approval requirements for QWA and ancillary documents**

(1) The additional approval requirements for a QWA are—

- (a) the QWA complies with section 193;<sup>55</sup> and
- (b) the employee received a copy of the QWA at least the required number of days before signing the QWA; and
- (c) the employer explained the effect of the QWA to the employee as soon as practicable after the employee first received a copy of it; and
- (d) the employee consented to making the QWA; and
- (e) if the employer did not offer a QWA in the same terms to all comparable employees—the employer did not act unfairly or unreasonably in not doing so.

(2) The employee may consult with, or seek advice from, anyone about the QWA given to the employee under subsection (1)(b) and the copy is the property of the employee.

(3) The additional approval requirements for an amendment agreement are—

- (a) the QWA, as amended, complies with section 193; and

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55 Section 193 (Matters to be included in QWA)

- (b) the employee received a copy of the amendment agreement at least 14 days before signing the amendment agreement; and
- (c) the employer explained the effect of the amendment agreement to the employee as soon as practicable after the employee first received a copy of it; and
- (d) the employee consented to making the amendment agreement; and
- (e) if the employer did not offer an amendment agreement in the same terms to all comparable employees who also have a QWA in the same terms—the employer did not act unfairly or unreasonably in not doing so.

(4) The explanation of the effect of the QWA or amendment agreement mentioned in subsection (1) or (3) must have been done in a way that was appropriate, having regard to the employee's particular circumstances and needs.

*Example of employees with particular circumstances and needs—*

1. Women
2. Persons from a non-English speaking background
3. Young persons
4. Persons with limited literacy or numeracy skills.

(5) The additional approval requirement for an extension agreement is that the employee consented to making the extension agreement.

(6) The additional approval requirement for a termination agreement is that the employee consented to making the termination agreement.

(7) In this section—

**“comparable employee”**, for a QWA, means an employee of the employer who does the same kind of work as the employee who is a party to the QWA.

## **203 Approving QWA**

(1) The commission must approve a QWA for which a filing receipt has been issued if satisfied—

- (a) the QWA passes the no-disadvantage test; and
- (b) the QWA meets the additional approval requirements; and

(c) the QWA is not contrary to the public interest.

(2) If the commission has concerns about whether the QWA passes the no-disadvantage test, the commission must—

- (a) notify the employee of the concerns; and
- (b) the reasons for them.

(3) If the commission has concerns about whether the QWA passes the no-disadvantage test, but the concerns are resolved by—

- (a) a written undertaking given by the employer and accepted by the commission; or
- (b) other action by the parties;

the QWA is taken to pass the no-disadvantage test.

(4) If the commission—

- (a) is still not satisfied the QWA passes the no-disadvantage test; but
- (b) is satisfied that approving the QWA is not contrary to the public interest;

the QWA is taken to pass the no-disadvantage test.

(5) If the commission is not satisfied the QWA meets the additional approval requirements, the commission must refuse to approve the QWA.

(6) In considering the public interest, the commission may consider—

- (a) the relative bargaining power of the parties; and
- (b) the particular circumstances and needs of low-paid employees and any likely changes in award wages during the period of the QWA; and
- (c) the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons, apprentices, trainees and outworkers; and
- (d) anything else the commission considers relevant to the QWA.

(7) For subsection (1), the commission may consider, but must not review, any relevant industrial instrument to decide whether the instrument

provides for equal remuneration for all men and women employees covered by the instrument for work of equal or comparable value.<sup>56</sup>

### **204 Approving amendment agreement**

(1) The commission must approve an amendment agreement for which a filing receipt has been issued if satisfied—

- (a) the QWA, as amended, passes the no-disadvantage test; and
- (b) the agreement meets the additional approval requirements; and
- (c) the QWA is not contrary to the public interest.

(2) If the commission has concerns about whether the QWA, as amended, passes the no-disadvantage test, but the concerns are resolved by—

- (a) a written undertaking given by the employer and accepted by the commission; or
- (b) other action by the parties;

the QWA, as amended, is taken to pass the no-disadvantage test.

(3) If the commission—

- (a) is still not satisfied the QWA passes the no-disadvantage test; but
- (b) is satisfied that approving the QWA is not contrary to the public interest;

the QWA, as amended, is taken to pass the no-disadvantage test.

(4) If the commission is not satisfied the amendment agreement meets the additional approval requirements, the commission must refuse to approve the amendment agreement.

(5) In considering the public interest, the commission may consider—

- (a) the relative bargaining power of the parties; and
- (b) the particular circumstances and needs of low-paid employees and any likely changes in award wages during the period of the agreement; and

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<sup>56</sup> For the requirement for a QWA to include provision for equal remuneration for work of equal or comparable value, see section 193 (Matters to be included in QWA).

- (c) the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons, apprentices, trainees and outworkers; and
- (d) anything else the commission considers relevant to the agreement.

## **205 Approving other ancillary documents**

(1) This section applies to the following ancillary documents—

- (a) an extension agreement;
- (b) a termination agreement;
- (c) a termination notice.

(2) The commission may approve the ancillary document only if satisfied the ancillary document meets the additional approval requirements for the document.

## **206 Commission must issue approval or refusal notice**

(1) If the commission approves a QWA or ancillary document, the commission must issue an approval notice to the employer.

(2) If the commission refuses to approve a QWA or ancillary document, the commission must issue a refusal notice to the employer.

(3) If the commission is not satisfied the QWA passes or is taken to pass the no-disadvantage test, the commission must issue a notice to that effect to the employee.

(4) In each approval or refusal notice, the commission must identify the relevant or designated award that applies to the QWA.

## **207 Undertakings taken to be included in QWAs**

An undertaking accepted by the commission under this division is taken to be included in the QWA.

**208 Commission to issue copies of approved QWAs and ancillary documents**

After a QWA or ancillary document is approved, the commission must issue to the employer a copy of the QWA or ancillary document, as approved.

*Division 6—No-disadvantage test***209 When does a QWA pass the no-disadvantage test**

(1) A QWA passes the no-disadvantage test if it does not disadvantage the employee in relation to his or her employment conditions.

(2) A QWA disadvantages the employee in relation to his or her employment conditions only if the commission considers its approval would result in a reduction in the employee's entitlements or protections.

(3) Subsection (2) applies subject to sections 210 and 211.

(4) If the president considers exceptional circumstances exist, the president may require the registrar to give the commission a report comparing the QWA with the employee's entitlements or protections.

(5) In this section—

**“certified agreement”** means a certified agreement that, immediately before the initial day of the QWA, binds the employer.

**“entitlements or protections”** means the entitlements or protections under—

- (a) if there is a certified agreement—the certified agreement; or
- (b) if there is no certified agreement—a relevant award, a designated award, industrial agreement or an order under chapter 5, part 5;<sup>57</sup> or
- (c) chapter 2,<sup>58</sup> including as reviewed by a general ruling of the full bench.

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57 Chapter 5 (Awards), part 5 (Wages and employment conditions for apprentices and trainees)

58 Chapter 2 (General employment conditions)



**210 Special case—employee eligible for supported wage system**

(1) This section applies if a QWA provides for the payment of wages to an employee who is eligible for the supported wage system at a rate not less than the rate set in accordance with that system for the employee.

(2) The agreement does not disadvantage the employee in relation to the employee's employment conditions only because of the reduction of the employee's wages.

**211 Special case—employee undertaking approved apprenticeship or traineeship**

(1) This section applies if—

- (a) a QWA provides for the payment of wages to an employee undertaking approved training (a **“training employee”**) in a particular trade, occupation or work, or a trade, occupation or work similar to the particular trade, occupation or work (the **“work”**); and
- (b) there is a relevant award, designated award or order providing for the payment of wages to employees undertaking benchmark training for the work.

(2) The agreement is taken to disadvantage the training employee in the employee's employment conditions if the QWA provides for the payment of wages to the employee at a rate less than the rate payable to an employee undertaking the benchmark training (the **“benchmark employee”**) under the relevant award, designated award or order, as adjusted under subsection (3).

(3) For subsection (2), the rate payable to a benchmark employee is to be adjusted to take into account the proportionate difference, as decided by the approving authority, between the productive time of a training employee and the productive time of a benchmark employee.

(4) If the QWA adopts, as the qualification for a wage level, a criterion decided by the approving authority (the **“decided criterion”**) instead of a specified criterion applying under the relevant award, designated award or order (the **“award criterion”**), the award is taken, for this section, to have effect as if the decided criterion were substituted for the award criterion.

(5) This section does not apply to a trainee bound by—

- (a) the Training Wage Award—State;

(b) the National Training Wage Award 1994.

(6) In this section—

“**benchmark training**” means training for an apprentice or trainee in a particular trade, occupation or work if the trade, occupation or work is recognised under an award or under an order made under chapter 5, part 5.<sup>59</sup>

## 212 Deciding designated awards

(1) This section applies if—

- (a) an employer proposes to make a QWA with a person; and
- (b) there is no relevant award for the person.

(2) The employer must apply to the commission for a decision under subsection (3).

(3) On application, the commission must decide that an award (regulating employment conditions of employees engaged in a similar kind of work as the person under the QWA) is appropriate for deciding whether the QWA passes the no-disadvantage test.

(4) The commission must inform the employer in writing of the commission’s decision.

### *Division 7—Effect of QWAs*

## 213 QWA’s effect on awards, certified agreements or orders

(1) A QWA, during its period of operation, operates to the exclusion of an award, or an order made under chapter 5, part 5, that would otherwise apply to the employee’s employment.

(2) A certified agreement or a determination under section 149,<sup>60</sup> during its period of operation, prevails over a QWA to the extent of any inconsistency.

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59 Chapter 5 (Awards), part 5 (Wages and employment conditions for apprentices and trainees)

60 Section 149 (Arbitration if conciliation unsuccessful)

(3) However, subsection (2) does not apply to a certified agreement if the agreement contains a QWA provision.

(4) In this section—

“**QWA provision**” of a certified agreement means a provision that expressly allows a subsequent QWA—

- (a) to operate to the exclusion of the certified agreement; or
- (b) to prevail over the certified agreement to a specified extent or to the extent of any inconsistency.

## **214 Successor employers bound**

(1) This section applies if—

- (a) an employer is a party to a QWA; and
- (b) at a later time a new employer becomes the successor (whether or not immediate) of the whole or part of the business of the employer who is a party to the QWA.

(2) From the later time—

- (a) the new employer replaces the employer as a party to the QWA; and
- (b) the previous employer stops being a party to the QWA, to the extent it relates to the whole or part of the business; and
- (c) a reference in this part to the employer is a reference to the new employer, and ceases to refer to the previous employer, to the extent the context relates to the whole or part of the business

## **215 Parties must not contravene QWA**

A party to a QWA must not contravene the QWA.

## **216 Conciliation for agreements**

The commission has the conciliation powers for a matter arising under this part that it would have under section 230<sup>61</sup> if that section applied to the matter instead of to industrial disputes.

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61 Section 230 (Action on industrial dispute)

**217 Industrial action by party to QWA**

During the period of operation of a QWA before its nominal expiry date, a party to the QWA must not engage in industrial action in relation to the employment to which the QWA relates.

***Division 8—Penalty provisions and remedies*****218 Penalties for contravening this part**

(1) A magistrate may, by order, impose a penalty on a person who contravenes a penalty provision.

(2) The penalty can not be more than—

- (a) for a corporation—135 penalty units; or
- (b) otherwise—27 penalty units.

(3) An application for an order relating to a QWA or ancillary document may be made by—

- (a) a party to the QWA or ancillary document; or
- (b) an inspector.

(4) In this section—

“**penalty provision**” means section 196(2), (3), (4) or (5), 201, 215, 217, 222(1), 223(1) or (2) or 224(1) or (2).<sup>62</sup>

**219 Damages for contravention of QWA**

(1) A party to a QWA who suffers loss or damage because of a contravention of the QWA by the other party may recover the amount of the loss or damage in an Industrial Magistrates Court.

(2) The action must be brought within 6 years after the date on which the cause of action arose.

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62 Section 196 (Bargaining agents), 201 (Employer’s declaration must be accurate), 215 (Parties must not contravene QWA), 217 (Industrial action by party to QWA), 222 (Hindering QWA negotiations), 223 (Persons must not apply duress or make false statements in connection with QWA etc.) or 224 (Employer must give copy of documents to employee)

**220 Compensation to new employee for shortfall in entitlements**

(1) Subsection (3) applies if a QWA for a new employee stops operating because a refusal notice was issued and the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b)—

- (a) the total value of the entitlements to which the employee became entitled under the QWA for the period while it was in operation;
- (b) the total value of the entitlements to which the employee would have been entitled for that period under an award or agreement, if the QWA had not been made, in relation to the employment to which the QWA relates.

(2) Subsection (3) applies if a QWA that has been approved for a new employee includes an undertaking by the employer under section 203<sup>63</sup> and the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b)—

- (a) the total value of the entitlements to which the employee became entitled under the QWA for the period before it was approved;
- (b) the total value of the entitlements to which the employee would have been entitled for that period if the QWA as filed, had included the employer's undertaking.

(3) The employee is entitled to recover the shortfall from the employer in the commission or an Industrial Magistrates Court.

**221 Injunctions**

The commission, on application by a party to a QWA, may grant an injunction requiring a person not to contravene, or to stop contravening, this part.

*Division 9—General***222 Hindering QWA negotiations**

(1) A person who is not a party to negotiations for a QWA or ancillary document must not use threats or intimidation with the intention of

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63 Section 203 (Approving QWA)

hindering the negotiations or the making of the QWA or ancillary document.

(2) This section does not apply to conduct by or for an employee organisation for the purpose of negotiating a certified agreement, if the conduct is authorised by another provision of this Act.

(3) In this section—

“**party to negotiations**” includes a bargaining agent.

### **223 Persons must not apply duress or make false statements in connection with QWA etc.**

(1) A person must not apply duress to an employer or employee in connection with a QWA or ancillary document.

(2) A person must not knowingly make a false or misleading statement to someone else with the intention of persuading the other person to make, or not to make, a QWA or ancillary document.

### **224 Employer must give copy of documents to employee**

(1) As soon as practicable after receiving any of the following documents from the commission, registrar or chief inspector, the employer must give a copy of it to the employee—

- (a) a filing receipt;
- (b) an approval notice or refusal notice;
- (c) a QWA or ancillary document, as approved.

(2) The employer must give the employee any other document prescribed under a regulation within the period required under the regulation.

### **225 Intervention not permitted**

A person other than—

- (a) a party to a QWA; or
- (b) a party’s bargaining agent; or
- (c) the Minister;

can not make submissions, or be heard, in relation to the filing, approval, amendment or termination of a QWA.

## **226 Reports and advice about development in making QWAs**

(1) If the Minister asks, the chief executive must prepare and give to the Minister a report about developments in the State in bargaining for the making of QWAs.

(2) To enable the chief executive to prepare the report and generally to advise the Minister, the registrar must allow access to approved QWAs and ancillary documents to—

- (a) the chief executive; or
- (b) the chief executive's agent.

## **227 Evidence**

(1) The registrar may give a certified copy of an approved QWA or ancillary document to a person who is or was a party to the QWA or ancillary document.

(2) The registrar may issue a certificate stating—

- (a) specified QWAs or ancillary documents are the only QWAs or ancillary documents that were filed, before a specified date, in relation to a specified employer and employee; or
- (b) a copy of a specified approved QWA or ancillary document was issued on a specified day; or
- (c) a filing receipt, approval notice or refusal notice was issued for a specified QWA or ancillary document on a specified day.

(3) The certificate may be given only to a person who is or was a party to the document to which the certificate relates.

(4) In all courts and proceedings—

- (a) a certified copy of an approved QWA or ancillary document is evidence of the QWA or ancillary document; and
- (b) a certificate issued by the registrar under subsection (2) is evidence of the matters stated in the certificate.

(5) A document that purports to be a certified copy, or certificate, mentioned in subsection (4) is taken to be the copy or certificate, unless the contrary is proved.

### **228 Signature for corporation**

A QWA or ancillary document may be signed for a corporation by a properly authorised officer of the corporation and need not be made under the corporation's seal.

## **CHAPTER 7—INDUSTRIAL DISPUTES**

### **PART 1—NOTICE OF INDUSTRIAL DISPUTE**

#### **229 Notice of industrial dispute**

(1) Subsection (2) applies if an industrial dispute—

- (a) exists between—
  - (i) an employer organisation or employer; and
  - (ii) an employee organisation or employee; and
- (b) remains unresolved after the parties have genuinely attempted to settle the dispute.

(2) Each party to the dispute must immediately give the registrar notice of the dispute.

(3) The notice—

- (a) may be given by letter, telex, fax, email, or other means of written communication; and
- (b) must state—
  - (i) the names of the parties to the dispute; and
  - (ii) the place where the dispute exists; and
  - (iii) the subject matter of the dispute; and
  - (iv) anything else required under the rules.



(4) If the Minister is aware an industrial dispute exists, the Minister may notify the commission or registrar of the dispute.

## **PART 2—ACTION FOR SETTLING INDUSTRIAL DISPUTES**

### **230 Action on industrial dispute**

(1) This section applies if—

- (a) notice of a dispute has been given by a party under section 229(2); or
- (b) notice of a dispute has been given by the Minister under section 229(4) and the commission considers it is in the public interest to take action under this section; or
- (c) whether or not a notice has been given under section 229—the commission considers it is in the public interest to take action under this section.

(2) Subsection (1)(c) applies irrespective of whether the parties are attempting to resolve the dispute.

(3) The commission may take the steps it considers appropriate for the prevention or prompt settlement of the dispute, by—

- (a) conciliation in the first instance; and
- (b) if the commission considers conciliation has failed and the parties are unlikely to resolve the dispute—arbitration.

(4) Without limiting subsection (3), the commission may—

- (a) direct the industrial action to stop or not happen; or
- (b) make orders, or give directions, of an interlocutory nature; or
- (c) exercise the commission's powers under section 277<sup>64</sup> (whether or not application under that section has been made) to grant an interim injunction; or

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64 Section 277 (Power to grant injunctions)

- (d) make another order or exercise another power the commission considers appropriate for the prevention or prompt settlement of the dispute.

**(5)** For proceedings for the dispute—

- (a) the commission may name a party to the dispute as having carriage of the proceedings; and
- (b) the party named has the carriage of the proceedings accordingly.

**(6)** This section does not affect the operation of an industrial instrument that imposes a duty on a party to the instrument in relation to industrial disputes.

### **231 Mediation by commission**

The commission may act as mediator in an industrial cause, whether or not it is within the jurisdiction of the commission—

- (a) on the request of the parties directly involved in the cause; or
- (b) if the commissioner is satisfied mediation is desirable in the public interest.

### **232 Compulsory conference**

**(1)** This section applies if the commission, when taking action under section 230, considers that holding a conference is desirable to prevent or settle the industrial dispute.

**(2)** The commission may, by attendance notice, require a person to attend a conference at a stated time and place.

**(3)** A person may be required to attend even though not directly involved in the dispute, if the commission considers the person's presence would be conducive to the prevention or prompt settlement of the dispute.

**(4)** A person required to attend must—

- (a) attend the conference at the stated time and place; and
- (b) continue to attend as directed by the commission.

Maximum penalty—40 penalty units.

(5) The person is entitled to be paid by the State an amount certified by the commission as reasonable compensation for the person's expenses and loss of time.

(6) At the commission's discretion, a conference may be held—

- (a) in public or private; or
- (b) partly in public and partly in private.

### **233 Enforcing commission's orders**

(1) The commission may direct an order about an industrial dispute to—

- (a) an organisation; or
- (b) a person in a capacity as an officer or agent of an organisation; or
- (c) any other person.

(2) If an order may be directed to an organisation or a person, the commission may direct the order to the person only after considering whether it would be more appropriate to direct the order to the organisation.

(3) An order must—

- (a) if the order is made against a person—state the person's name; and
- (b) state a time for complying with the order; and
- (c) direct any of the following persons to file an affidavit with the registrar within a stated time—
  - (i) the organisation or person;
  - (ii) the party to the proceedings who sought the order;
  - (iii) any other party to the proceedings the commission considers appropriate.

(4) An affidavit under subsection (3)(c) must state whether there has been compliance with the order and, if the order has not been complied with, the steps the person is aware of that have been taken to comply.

(5) The commission may extend a time stated under subsection (3)(b) or (c).

(6) At the end of the time stated for filing an affidavit, or the time as extended by the commission, the registrar must—

- (a) examine all affidavits filed; and
- (b) if all affidavits required to be filed have not been filed in the stated time—make all necessary further inquiries;

to decide whether there has been substantial compliance with the order.

(7) If the registrar is not satisfied that there has been substantial compliance with the order, the registrar must issue a notice under the rules calling on the organisation or person to whom the order was directed to show cause to the full bench at a stated time why the organisation or person should not be dealt with under section 234.

(8) In this section—

**“full bench”** means the full bench constituted by the president and 2 or more members.

### **234 Remedies on show cause**

(1) If an organisation issued with the notice does not show cause at the stated time, the full bench may—

- (a) impose on the organisation a penalty of not more than 1 000 penalty units; or
- (b) amend an award or certified agreement to which the organisation is a party; or
- (c) if the organisation is an employee organisation—suspend the date of operation of a wage increase that would otherwise be payable to members of the organisation or to a class of the members; or
- (d) change the organisation’s rules to exclude from eligibility for membership persons belonging to a particular class or section of the membership; or
- (e) make the orders it considers appropriate—
  - (i) restricting the use of the organisation’s property; or
  - (ii) controlling the organisation’s property to ensure the restrictions are complied with; or
- (f) suspend the organisation’s registration for a stated period; or
- (g) deregister the organisation; or
- (h) make the other orders it considers appropriate—

- (i) to secure the organisation's compliance with the commission's order; or
  - (ii) to punish the organisation for not complying with the commission's order; or
  - (i) order the organisation to pay the costs of the show cause proceedings.
- (2) If a person issued with the notice does not show cause at the stated time, the full bench may—
- (a) impose on the person a fine of not more than 40 penalty units; or
  - (b) make the other orders it considers appropriate—
    - (i) to secure the person's compliance with the commission's order; or
    - (ii) to punish the person for not complying with the commission's order; or
  - (c) order the person to pay the costs of the show cause proceedings.
- (3) All persons concerned must comply with an order or direction made or given by the full bench.
- (4) In this section—

**“organisation”** includes a branch of the organisation.

**“stated time”** means at the time stated in the notice to show cause under section 233(7), or at a time to which the proceedings are adjourned.

## **PART 3—BALLOTS**

### **235 Secret ballot on strike action**

- (1) This section applies if—
- (a) a strike happens; or
  - (b) the commission, or a person applying to the commission, considers a strike is likely to happen.
- (2) The commission may act under subsection (4)—
- (a) of its own initiative; or

- (b) on application by an employer or employer organisation; or
- (c) on application—
  - (i) by or on behalf of 5% of the employees engaged in or on the calling, enterprise, establishment or project concerned; or
  - (ii) by 250 employees;

whichever is less, but being, in any case, at least 4.

**(3)** The commission must act under subsection (4)—

- (a) on application by an employee organisation; or
- (b) if directed by the Minister.

**(4)** To find out the number of employees or members who favour the strike, the commission may direct the registrar to conduct a secret ballot<sup>65</sup> of—

- (a) the employees engaged in or on the calling, enterprise, establishment or project concerned; or
- (b) the members of an employee organisation engaged in or on the calling, enterprise, establishment or project concerned.

**(5)** The registrar must publish the result of the secret ballot in a newspaper circulating in the locality concerned.

### **236 Effect of ballot adverse to strike**

**(1)** Subsection (2) applies if—

- (a) when a secret ballot was conducted under section 235(4)—
  - (i) a strike exists; or
  - (ii) a strike appeared likely to happen, and a strike happens for the same issue within 1 month after the ballot result is published under section 235(5); and
- (b) the ballot shows that a majority of employees or members who voted in the ballot is not in favour of the strike.

**(2)** The registrar must advertise a date (the “**end date**”), not more than 7 days after the date of publication, on or before which the employees or members who are on strike must discontinue the strike.

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<sup>65</sup> See section 285 (Conducting a secret ballot).

(3) The advertisement—

- (a) must be in a newspaper circulating in the locality concerned; and
- (b) may be included in the advertisement published under section 235(5).

(4) The employees or members must discontinue the strike on or before the end date.

(5) An employee or member who does not is taken to have terminated, from the end date, the employment in which the employee or member was engaged when the strike commenced, unless the employee or member has a reasonable excuse.

(6) Disagreement by a person with the result of the ballot is not a reasonable excuse.

## **PART 4—INDUSTRIAL ACTION**

### **237 Indemnity against agent's unauthorised actions**

An organisation or association of persons is not liable for anything said or done by its agent, during or in connection with industrial action, if—

- (a) the agent acted without the knowledge of the governing body of the organisation or association; and
- (b) the governing body could not, by the exercise of reasonable diligence, have prevented the action.

### **238 Payments for strikes can not be compelled**

(1) An employer may pay, or refuse to pay, an employee for a period when the employee engages in a strike.

(2) An employee must not organise or engage in, or threaten to organise or engage in, a strike against an employer with intent to coerce the employer to make the payment.

(3) An employee organisation, or an officer, member or employee of the organisation, must not organise or engage in, or threaten to organise or

engage in, a strike against an employer with intent to coerce the employer to make the payment.

(4) For subsection (3), action is taken to have been done by an organisation if it is done by—

- (a) the organisation's management committee; or
- (b) an officer, employee or agent of the organisation acting in that capacity; or
- (c) a member or group of members of the organisation acting under the organisation's rules; or
- (d) a member of the organisation, who performs the function of dealing with an employer on behalf of the member and other members of the organisation, acting in that capacity.

(5) Subsection (4)(c) and (d) does not apply if any of the following persons has taken reasonable steps to prevent the action—

- (a) the organisation's management committee;
- (b) a person authorised by the committee;
- (c) an officer of the organisation.

(6) A contravention of subsection (2) or (3) is not an offence.<sup>66</sup>

(7) In this section—

“**strike**” does not include the failure to perform work in excess of that required under a relevant industrial instrument.

### **239 Orders the commission may make**

(1) An application may be made to the commission for orders under this section for a contravention of section 238.

(2) The application may be made by—

- (a) the Minister; or
- (b) a person who has an interest in the matter; or
- (c) for a contravention of section 238(2) or (3)—the employer; or
- (d) someone else prescribed under a regulation.

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<sup>66</sup> See section 239 for the orders the commission may make for a contravention of this section.



(3) A regulation prescribing persons for subsection (2)(d) may limit its application to stated circumstances.

(4) The commission may, if it considers it appropriate in all the circumstances, make 1 or more of the following orders—

- (a) an order imposing on a person who contravenes section 238 a penalty of not more than 135 penalty units;
- (b) an order requiring a person who contravenes section 238(2) or (3) to pay an employer compensation of the amount the commission considers appropriate;
- (c) an injunctive order (including an interim injunction), and any other order, the commission considers necessary to stop the contravention or remedy its effects;
- (d) another consequential order.

#### **240 Commission not to deal with claims for payments for strikes**

(1) The commission can not deal with a claim for the making of a payment to employees for a period when the employees engage in a strike under section 238.

(2) Subsection (1) applies to a claim for a period before or after—

- (a) the making of the claim; or
- (b) the commencement of this section.

#### **241 Right to refuse to work if imminent health or safety risk**

Nothing in this Act prevents an employee from refusing to perform work if—

- (a) the refusal is based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (b) the employee does not unreasonably contravene a direction of his or her employer to perform other available work (whether at the same or another workplace) that is safe and appropriate for the employee to perform.

## CHAPTER 8—INDUSTRIAL TRIBUNALS AND REGISTRY

### PART 1—INDUSTRIAL COURT

#### *Division 1—Industrial Court of Queensland*

#### **242 Continuance**

The Industrial Court, as formerly established as a superior court of record in Queensland, is continued in existence as the Industrial Court of Queensland (the “**court**”).

#### *Division 2—President*

#### **243 President of the court**

(1) The Governor in Council may appoint a person as president of the court by commission.

(2) The person must be a person—

(a) who—

(i) has been a judge of the Supreme or District Court; or

(ii) is a lawyer of at least 5 years standing; and

(b) who has skills and experience in industrial relations.

(3) The person can not be—

(a) a member of the Executive Council or Legislative Assembly; or

(b) a director of a corporation engaged in a calling; or

(c) an auditor of a corporation engaged in a calling or of a business;  
or

(d) a person who participates in any capacity in the management  
of—

(i) a corporation engaged in a calling; or

(ii) a business.

(4) The appointment of the president is on a full-time basis.

#### **244 When a judge is appointed as president**

(1) The appointment of, or service by, a judge of the Supreme or District Court as president does not affect—

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

(2) The judge's service as president is taken to be service as a judge for all purposes.

#### **245 When president holds office**

(1) The president holds office until—

- (a) the president turns 70; or
- (b) the president resigns by signed notice given to the Governor; or
- (c) the president becomes a member of the Executive Council or Legislative Assembly; or
- (d) the president becomes a person mentioned in section 243(3)(b) to (d), other than with the Minister's written approval; or
- (e) the president is removed from office under subsection (2).

(2) The Governor may remove the president from office on an address to the Legislative Assembly for—

- (a) mental or physical incapacity; or
- (b) misbehaviour.

(3) If the president stops holding office because of subsection (1)(a) or (b) while hearing a matter, the Governor in Council may, without reappointing the person as president, continue the person in office for the time necessary to enable the hearing to be completed.

(4) The person continued in office may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

**246 Acting president of the court**

(1) This section applies if the president temporarily can not perform the functions of office.

(2) The Governor in Council may appoint the vice president to act as president by industrial gazette notice.

(3) A person who has acted as president may attend sittings of the court for the purpose of giving a decision in, or otherwise completing, proceedings that were heard by the person while acting as president.

(4) The person's decision is taken to be the president's decision in the proceedings.

***Division 3—Jurisdiction and powers of the court*****247 Constitution of court**

The court is constituted by the president sitting alone.

**248 Court's jurisdiction**

(1) The court may—

- (a) perform all functions and exercise all powers prescribed for the court by this or another Act; and
- (b) hear and decide cases stated to it by the commission; and
- (c) hear and decide an offence against this Act, other than an offence for which jurisdiction is expressly conferred on a magistrate; and
- (d) hear and decide appeals from an industrial magistrate's decision in proceedings for—
  - (i) an offence against this Act; or
  - (ii) recovery of damages, or other amounts, under this Act; and
- (e) exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process—
  - (i) the commission and magistrates exercise their jurisdictions according to law; and
  - (ii) the commission and magistrates do not exceed their jurisdictions.

(2) In proceedings, the court may—

- (a) make the decisions it considers appropriate, irrespective of specific relief sought by a party; and
- (b) give directions about the hearing of a matter.

(3) The court's jurisdiction is not limited, by implication, by a provision of this or another Act.

### **249 Court's interpretation**

The court's interpretation of a provision of this Act, an industrial instrument or permit binds—

- (a) the commission; and
- (b) magistrates; and
- (c) organisations and persons who are subject to this Act, or bound by the industrial instrument or permit.

### **250 Court may refuse to proceed**

(1) This section applies if proceedings before the court relate to an industrial instrument that exists or is sought in the proceedings.

(2) The court may refuse to hear and decide the proceedings if any of the employees who are, or would be, bound by the instrument are—

- (a) involved in an industrial dispute; or
- (b) contravening this Act or a decision.

(3) Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision.

### **251 Contempt of court**

(1) The court has all the protection, powers, jurisdiction and authority of the Supreme Court for a contempt of court.

(2) The court must comply with the Uniform Civil Procedure Rules relating to contempt of court, with necessary changes.

(3) The registrar or another officer of the court may apply to the court for an order that a person be committed to prison for contempt of court.

(4) The court's jurisdiction to punish a contempt of the court may be exercised on the president's own initiative.

(5) The court has jurisdiction to punish an act or omission as a contempt of the court, although a penalty is prescribed for the act or omission.

#### *Division 4—President's annual report*

### **252 President's annual report**

(1) As soon as practicable after the end of each financial year, the president must prepare and give to the Minister a report for the year on—

- (a) the operation of this Act; and
- (b) in particular, the working of the court, commission and registry.

(2) The report must also contain summaries of significant decisions and interpretations about awards, certified agreements, industrial agreements, QWAs and ancillary documents.

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

#### *Division 5—President's advisory committee*

### **253 Advisory committee established**

(1) The president's advisory committee (the “**advisory committee**”) is established.

(2) The advisory committee consists of—

- (a) the president; and
- (b) the vice president; and
- (c) the chief executive or the chief executive's nominee; and
- (d) 2 persons representing employee organisations, nominated by the organisations; and
- (e) 2 persons representing employer organisations, nominated by the organisations; and

(f) 2 persons who have knowledge of, or experience in, industrial relations; and

(g) 1 person representing the Anti-Discrimination Commission.

(3) The Minister must appoint the members under subsection (2)(d) to (f).

(4) The Minister may appoint the members only after consulting with the president.

### **254 Functions of advisory committee**

The president's advisory committee's functions are to discuss matters relating to the accessibility, efficiency, effectiveness, flexibility, operation, and responsiveness of the court and commission.

## **PART 2—INDUSTRIAL RELATIONS COMMISSION**

### *Division 1—Continuance and composition*

#### **255 Continuance**

The Queensland Industrial Relations Commission (the “**commission**”), as formerly established as a court of record, is continued in existence.

#### **256 Composition**

(1) The following persons are members of the commission (“**members**”)—

(a) the president;

(b) the vice president, 2 deputy presidents and at least 5 other industrial commissioners (“**commissioners**”).

(2) The full bench of the commission (“**full bench**”) is constituted by—

- (a) for chapter 12, part 16<sup>67</sup> or for the hearing of an appeal—the president and 2 or more commissioners; or
  - (b) otherwise—3 or more members including at least 1 presidential member.
- (3) The commission is constituted by a commissioner sitting alone.
- (4) More than 1 full bench or commission may sit at the same time.
- (5) The commission's jurisdiction, or existence, is not affected by a vacancy in any office of the commission.

### *Division 2—Membership of the commission*

#### **257 President of the commission**

The president of the court is also the president of the commission.

#### **258 Vice president of the commission**

(1) The Governor in Council may appoint a person as vice president of the commission—

- (a) if the person is not already a commissioner—by commission; or
- (b) if the person is already a commissioner—by gazette notice.

(2) The person must be a person who—

- (a) is a lawyer of at least 5 years standing; and
- (b) has the experience, qualifications and standing mentioned in section 259(2).

#### **258A Deputy presidents of the commission**

(1) The Governor in Council may appoint a person as a deputy president of the commission—

- (a) if the person is not already a commissioner—by commission; or
- (b) if the person is already a commissioner—by gazette notice.

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67 Chapter 12 (Industrial organisations), part 16 (Deregistration)



(2) The person must be a person who has the experience, qualifications and standing mentioned in section 259(2).

## **259 Commissioners**

(1) The Governor in Council may appoint a person as a commissioner by commission.

(2) The person must have—

(a) a high level of experience in—

(i) business or industry; or

(ii) an organisation or employer association or a State peak council; or

(iii) a department of government; or

(iv) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or

(b) suitable experience, qualifications and standing in the community to be appointed as a commissioner.

## **260 When commissioner holds office**

(1) A commissioner holds office until—

(a) the commissioner is appointed as the president; or

(b) the commissioner turns 70; or

(c) the commissioner resigns by signed notice given to the Governor; or

(d) the commissioner becomes a member of the Executive Council or Legislative Assembly; or

(e) the commissioner becomes a person mentioned in section 262(b), other than with the Minister's written approval; or

(f) the commissioner is removed from office under section 263.

(2) However, if a commissioner stops holding office because of subsection (1)(b) or (c) while investigating or hearing a matter, the Governor in Council may, without reappointing the person as a

commissioner, continue the person in office for the time necessary to enable the investigation or hearing to be completed.

(3) The person continued in office may exercise the jurisdiction and powers of the commission necessary or convenient for the investigation or hearing to be completed.

### **261 Acting vice president, deputy president or other commissioner**

(1) This section applies if the vice president, a deputy president or another commissioner temporarily can not perform the functions of office.

(2) The Governor in Council may appoint a person to act as the vice president, deputy president or other commissioner by industrial gazette notice.

### **262 Restrictions on appointment**

The following persons can not be appointed as commissioners—

- (a) a member of the Executive Council or Legislative Assembly;
- (b) a person who—
  - (i) acts as director of a corporation engaged in a calling; or
  - (ii) acts as auditor of a corporation engaged in a calling or of a business; or
  - (iii) participates in any capacity in the management of a corporation engaged in a calling; or
  - (iv) participates in any capacity in the management of a business.

### **263 Removal of commissioners from office**

The Governor may remove a commissioner from office, on an address to the Legislative Assembly, for—

- (a) mental or physical incapacity; or
- (b) misbehaviour.

***Division 3—The commission*****264 Administrative responsibilities for the commission and registry**

(1) In addition to performing the functions of a member, the vice president is responsible for the administration of the commission and registry, and the orderly and expeditious exercise of the commission's jurisdiction and powers.

(2) Without limiting subsection (1), the vice president is responsible for determining the member or members who is or are to constitute the commission, including a full bench of the commission, for a matter or proceeding.

(3) The vice president has the power to do all things necessary or convenient to be done to perform responsibilities under subsection (1) or (2).

(4) The vice president is to be assisted by the deputy presidents in performing responsibilities under subsection (1) or (2) and may delegate a power under subsection (3) to a deputy president.

(5) A commissioner must comply with a direction of the vice president or a deputy president given for the performance of responsibilities under subsection (1) or (2).

(6) The vice president must assign an industry or group of industries to a panel of members.

(7) The powers of the commission in relation to that industry, other than the powers of the full bench, may only be exercised by—

- (a) a member of the panel; or
- (b) another member of the commission to whom the vice president has assigned a particular matter.

(8) A panel must consist of at least 1 presidential member and 1 commissioner.

(9) A member of the commission may be a member of more than 1 panel.

**265 Commission's jurisdiction**

(1) The commission may hear and decide the following matters—

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- (a) all questions of law or fact brought before it or that it considers expedient to hear and decide for the regulation of a calling;
  - (b) all questions—
    - (i) arising out of an industrial matter; or
    - (ii) involving deciding the rights and duties of a person in relation to an industrial matter; or
    - (iii) it considers expedient to hear and decide about an industrial matter;
  - (c) an industrial dispute, referred to the commission by a member who has held a conference under this Act at which no agreement has been reached;
  - (d) all appeals properly made to it under this or another Act;
  - (e) all matters committed to the commission by this or another Act.
- (2)** The commission may regulate a calling by an award—
- (a) on application by an organisation, an employer, or 20 employees (who are not members of an employee organisation and not covered by an award) in a calling; or
  - (b) on application by the Minister; or
  - (c) of its own initiative.
- (3)** The commission—
- (a) may hold an inquiry into or about an industrial matter on application by an interested person or on its own initiative; and
  - (b) must hold an inquiry into or about an industrial matter if the Minister directs.
- (4)** The commission must report the result of the inquiry, and make recommendations, to the Minister.
- (5)** The commission may consolidate into 1 award all awards binding or affecting an employer or class of employer in a calling, or the members of an organisation employed by the same employer or class of employer—
- (a) on application by an organisation or an employer; or
  - (b) by direction of the Minister.

(6) When exercising power under subsection (4), the commission may make the amendments of the award it considers expedient to make to effect the consolidation.

(7) No provision of this or another Act limits, by implication, the commission's jurisdiction.

(8) In this section—  
“class” includes a section of a class.

### **266 Commission to prevent discrimination in employment**

In exercising a power, the commission must not allow discrimination in employment.

### **267 Commission's jurisdiction is exclusive**

The original and appellate jurisdiction conferred on the commission by this Act or another Act is exclusive of the jurisdiction of the Supreme Court or another court or tribunal, unless otherwise prescribed under this Act.

### **268 Commission may refuse to proceed**

(1) This section applies if proceedings before the commission relate to an industrial instrument that exists or is sought in the proceedings.

(2) The commission may refuse to hear and decide the proceedings if any of the employees who are, or would be, bound by the instrument are—

- (a) involved in an industrial dispute; or
- (b) contravening this Act or a decision; or

(3) Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision of the proceedings.

### **269 Commissioner administrator to consider efficiencies that may be achieved by using dual commissioners**

When administering the commission, the vice president must consider—

- (a) the improved efficiency of the commission; and
- (b) in particular, the improved cooperation between the commission and the Australian commission;

that may be achieved by the commission's functions and powers being performed and exercised, for a particular matter, by a dual commissioner.

### **270 Reallocation of commission's work**

The vice president may reallocate the matter of proceedings before a commission constituted by 1 or more of the members to a commission constituted by—

- (a) the same member or members together with another member or other members; or
- (b) a different member or different members.

### **271 Commission may continue to hear reallocated work without re-hearing evidence**

The commission to which the matter is reallocated may continue to hear and decide the matter, without re-hearing evidence given before the reallocation.

### **272 Decision of full bench**

A decision of the full bench is the decision of the majority of its members.

## *Division 4—Commission's functions and powers*

### **273 Commission's functions**

- (1) The commission's functions include the following—
- (a) establishing and maintaining a system of non-discriminatory awards that provide fair wages and employment conditions;
  - (b) supervising the bargaining of agreements;
  - (c) certifying agreements;
  - (d) approving QWAs;
  - (e) resolving disputes by conciliation of industrial matters and, if necessary, by arbitration or making an order;

- (f) making awards;
  - (g) resolving disputes in the negotiation of agreements—
    - (i) by conciliation; or
    - (ii) by arbitration, including by the making of determinations;
  - (h) resolving disputes over union coverage by making representation orders;
  - (i) resolving other disputes that threaten to harm the community or the economy by conciliation and, if necessary, by arbitration;
  - (j) dealing with—
    - (i) applications for orders under section 278 or 408F;<sup>68</sup> or
    - (ii) claims relating to dismissals.
- (2) The commission must perform its functions in a way that—
- (a) furthers the objects of this Act; and
  - (b) avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under this Act.
- (3) In this section—

**“occupational superannuation”** includes an amount equal to the return that would have accrued in relation to the occupational superannuation had it been properly paid to an approved superannuation fund.

## **274 General powers**

(1) The commission has the power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), the commission in proceedings may—

- (a) give directions about the hearing of a matter; or

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<sup>68</sup> Section 278 (Power to recover unpaid wages and superannuation contribution etc.) or 408F (Commission may order repayment of fees received by private employment agent)

- (b) make a decision it considers appropriate, irrespective of the specific relief sought by a party; or
- (c) make an order it considers appropriate.

(3) The commission may, by general order or for a particular case, delegate to the registrar—

- (a) the working out of a decision of the commission; or
- (b) a function relating to the decision, including, for example—
  - (i) the giving of directions; or
  - (ii) the making of orders; or
  - (iii) the preparation of rosters and schedules; or
  - (iv) a similar function it considers appropriate.

(4) The full bench may, to assist it in the appropriate resolution of proceedings—

- (a) refer the whole or part of a question or matter before it to the commission—
  - (i) for investigation and report to the full bench; or
  - (ii) for the other action it decides;
- (b) direct 1 or more of its members to carry out a specified investigation or inspection and to report on it to the full bench.

(5) A member to whom a reference is made or a direction is given must comply with the reference or direction.

## **275 Power to declare persons to be employees or employers**

(1) The full bench may, on application by an organisation, a State peak council or the Minister, make an order declaring—

- (a) a class of persons who perform work in an industry under a contract for services to be employees; and
- (b) a person to be an employer of the employees.

(2) The full bench may make an order only if it considers the class of persons would be more appropriately regarded as employees.

(3) In considering whether to make an order, the full bench may consider—



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- (a) the relative bargaining power of the class of persons; or
- (b) the economic dependency of the class of persons on the contract; or
- (c) the particular circumstances and needs of low-paid employees; or
- (d) whether the contract is designed to, or does, avoid the provisions of an industrial instrument; or
- (e) whether the contract is designed to, or does, exclude the operation of the Queensland minimum wage; or
- (f) the particular circumstances and needs of employees including women, persons from a non-English speaking background, young persons and outworkers; or
- (g) the consequences of not making an order for the class of persons.

(4) In this section—

**“contract”** includes—

- (a) an arrangement or understanding; and
- (b) a collateral contract relating to a contract.

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

## **276 Power to amend or void contracts**

(1) On application, the commission may amend or declare void (wholly or partly) a contract if it considers—

- (a) the contract is—
  - (i) a contract of service that is not covered by an industrial instrument; or
  - (ii) a contract for services; and
- (b) the contract is an unfair contract.

(2) In deciding whether to amend or declare void a contract, or part of a contract, the commission may consider—

- (a) the relative bargaining power of the parties to the contract and, if applicable, anyone acting for the parties; or

- (b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; or
- (c) an industrial instrument or this Act; or
- (d) the Queensland minimum wage; or
- (e) anything else the commission considers relevant.

(3) An application may be made by—

- (a) a party to the contract; or
- (b) an inspector, for the party required under the contract to provide services; or
- (c) an organisation of employees or employers of which a party is, or has applied to become, a member, if it is acting with the party's written consent.

(4) The commission may consider a contract to be an unfair contract if it considers the contract—

- (a) was an unfair contract when it was entered into; or
- (b) became an unfair contract after it was entered into because of the conduct of the parties, or a variation to the contract or for any other reason it considers sufficient.

(5) The commission may make an order it considers appropriate about payment of an amount for a contract amended or declared void.

(6) A person can not make an application under this section if—

- (a) an application has been made under section 74<sup>69</sup> for the same matter; or
- (b) the person—
  - (i) is not a public service officer employed on tenure under the *Public Service Act 1996*; and
  - (ii) has an annual wage of more than \$68 000 or a greater amount stated in, or worked out in a way prescribed under a regulation.

(7) In this section—

“**contract**” includes—

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69 Section 74 (Application for reinstatement)

- (a) an arrangement or understanding; and
- (b) a collateral contract relating to a contract.

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

**“unfair contract”** means a contract that—

- (a) is harsh, unconscionable or unfair; or
- (b) is against the public interest; or
- (c) provides, or has provided, a total remuneration less than that which a person performing the work as an employee would receive under an industrial instrument or this Act; or
- (d) is designed to, or does, avoid the provisions of an industrial instrument.

## **277 Power to grant injunctions**

**(1)** The commission may, on application, grant the injunctive order it considers appropriate—

- (a) to compel compliance with an industrial instrument, a permit or this Act; or
- (b) to restrain a contravention, or continuance of a contravention, of an industrial instrument, a permit or this Act.

**(2)** An application may be made by—

- (a) a party to industrial action or an industrial dispute; or
- (b) a person who is, or is likely to be, directly affected by industrial action or an industrial dispute; or
- (c) the registrar; or
- (d) the chief inspector; or
- (e) an inspector.

**(3)** An application by an organisation must be under the organisation’s seal and signed by the organisation’s president and secretary.

**(4)** The commission may direct the injunctive order to—

- (a) the officers or members of an organisation generally; or
- (b) particular officers or members of an organisation; or

- (c) a particular employer; or
- (d) a particular employee.

(5) A person to whom the order is directed must comply with the order after the person has received notice of it.

(6) The commission may decide the form of the notice and the way the order is to be served.

(7) Without limiting subsection (6), the commission may order substituted service of the order by advertisement or otherwise.

(8) If the order is directed to an organisation, the organisation and each officer of the organisation must ensure the officers and members of the organisation comply with the order.

(9) If the officers or members, or a substantial number of the officers or members, of an organisation to whom an injunctive order is directed, contravene the order, the organisation and each officer of the organisation commit an offence, namely, the offence of failing to ensure the organisation complies with the order.

(10) It is a defence to a prosecution for an offence against subsection (9) for the organisation or officer to prove that it, or the officer, took all reasonable steps to ensure the officers or members complied with the order.

(11) The commission can not grant an injunctive order for a proposed contravention of section 73, 83, 87, 90 or 90A.<sup>70</sup>

(12) In this section—

**“injunctive order”** means an order in the nature of a mandatory or restrictive injunction.

**“organisation”** includes a branch of the organisation.

## **278 Power to recover unpaid wages and superannuation contribution etc.**

(1) An application may be made to the commission for an order for payment of—

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<sup>70</sup> Section 73 (When is a dismissal unfair), 83 (What employer must do to dismiss employee), 87 (Orders about severance allowance and other separation benefits), 90 (Employer must give notice of proposed dismissals) or 90A (Employer must consult with employee organisations about dismissals)

- (a) an employee's unpaid wages; or
- (b) an apprentice's unpaid tool allowance under section 138; or
- (c) remuneration lost by an apprentice or trainee because the employer has contravened section 391(2);<sup>71</sup> or
- (d) contributions to the approved superannuation fund payable for an eligible employee that are unpaid;
- (e) remuneration unpaid because a person contravened an order mentioned in section 140A(1).

(2) An application can not be made to the commission if the total amount claimed under subsection (1) is more than \$20 000.<sup>72</sup>

(3) The application may be made by—

- (a) for a claim for occupational superannuation—an employee who is an eligible employee on whose behalf an employer is required to contribute to an approved superannuation fund; or
- (b) for any other claim—an employee; or
- (c) an employee organisation of which the eligible employee or employee is a member, acting for the employee; or
- (d) a person authorised by the eligible employee or employee to make the application, acting for the employee; or
- (e) an inspector.

(4) The application must be made within 6 years after the amount claimed became payable.

(5) However, for an apprentice or trainee, the application can not relate to wages payable more than 4 years before the commencement of this section.

(6) The vice president may, either before or after the start of a hearing, remit the application to a magistrate if the vice president considers the application could be more conveniently heard by a magistrate, having regard to—

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71 Sections 138 (Order setting tool allowance) and 391 (Wages etc. to be paid without deduction)

72 See sections 399 (Recovery of unpaid wages etc.) and 408 (Recovery of unpaid superannuation contribution) for a magistrate's power to hear an application for amounts greater than \$20 000.

- (a) the difficulty or expense of producing witnesses; or
- (b) another good and sufficient reason, for example, cost.

(7) A magistrate may hear and decide the application as if it had been brought before the commission, and the magistrate's decision is taken to be a decision of the commission.

(8) On hearing the application,<sup>73</sup> the commission or magistrate—

- (a) must order the employer to pay the employee—
  - (i) the amount the commission or magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and
  - (ii) an amount the commission or magistrate considers appropriate, based on the return that would have accrued in relation to the contributions had it been properly paid to the approved superannuation fund; and
- (b) may make an order for the payment despite an express or implied provision of an agreement to the contrary; and
- (c) may order the payment to be made on the terms the commission or magistrate considers appropriate.

(9) For an order about an unpaid contribution, the order must require the contribution to be paid to—

- (a) if the employee is employed by the employer—the approved superannuation fund; or
- (b) if the employee is no longer employed by the employer—
  - (i) the approved superannuation fund; or
  - (ii) a complying superannuation fund; or
  - (iii) a superannuation fund nominated by the employee; or
  - (iv) an eligible rollover fund; or
  - (v) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.

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73 See section 320 (Basis of decisions of the commission and magistrates) for the basis of decisions of the commission.

(10) The contribution must be paid into the unclaimed moneys fund, if a former employee in relation to whom an order is made—

- (a) can not be located after reasonable inquiry; or
- (b) does not nominate a superannuation fund for the purpose of the order, if required by the order to do so.

(11) A person can not make an application under this section if an application has been made under section 399 or 408<sup>74</sup> for the same matter.

(12) In this section—

“**employee**” includes a student to whom an order made under section 140A applies.<sup>75</sup>

“**employer**” includes an employer to whom an order made under section 140A applies.

“**occupational superannuation**” includes an amount equal to the return that would have accrued in relation to the occupational superannuation had it been properly paid to an approved superannuation fund.

## **279 Orders about representation rights of employee organisations**

(1) The full bench may, on application by an organisation, an employer or the Minister, make the following orders about a demarcation dispute—

- (a) an order that an employee organisation has the right, to the exclusion of another organisation, to represent a particular group of employees who are eligible for membership of the organisation;
- (b) an order that an employee organisation that does not have the right to represent a particular group of employees has the right;
- (c) an order that an employee organisation does not have the right to represent a particular group of employees who are eligible for membership of the organisation.

(2) The full bench may make an order only if—

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74 Sections 399 (Recovery of unpaid wages etc.) and 408 (Recovery of unpaid superannuation contribution)

75 Section 140A (Vocational placement)

*Industrial Relations Act 1999*

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- (a) the full bench considers conciliation proceedings would not help in the prevention or settlement of the dispute; or
  - (b) conciliation proceedings for the dispute are completed, but the dispute has not been fully settled.
- (3)** The full bench may make an order only if satisfied—
- (a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, member or employee of the organisation is—
    - (i) preventing, obstructing or restricting the performance of work; or
    - (ii) harming an employer's business; or
  - (b) the consequences mentioned in paragraph (a)—
    - (i) have stopped, but are likely to recur as a result of the conduct or threatened conduct; or
    - (ii) are imminent as a result of the conduct or threatened conduct.
- (4)** In considering whether to make an order, the full bench must consider—
- (a) the wishes of employees who would be affected by the order; and
  - (b) the effect of an order on the operations (including operating costs, work practices, efficiency and productivity) of the employees' employer; and
  - (c) whether it should consult with appropriate State peak councils or organisations; and
  - (d) the ability of the organisation to adequately represent the employees' interests; and
  - (e) an agreement or understanding that the full bench becomes aware of that deals with an employee organisation's right to represent a particular group of employees; and
  - (f) the consequences of not making an order for the employees, employer or organisation; and



(g) another order made by the commission that it considers relevant.<sup>76</sup>

(5) An order may be subject to conditions.

(6) An organisation to which an order applies must comply with the order.<sup>77</sup>

(7) The full bench may, on application by the Minister or a person or organisation affected by an order, make the further order it considers appropriate to ensure the Act is complied with.

(8) In this section—

**“right to represent”** a particular group of employees means the right to represent the industrial interests of the particular group of employees.

## **280 Procedures for reopening**

(1) Proceedings may be reopened, on application by a person under subsection (2), by—

- (a) for proceedings taken before the full bench—the full bench; or
- (b) otherwise—the commission.

(2) An application for reopening of proceedings may be made by—

- (a) the Minister; or
- (b) a party to the proceedings; or
- (c) for proceedings that are not about a certified agreement or QWA—
  - (i) an organisation whose members are bound by, or claim to be affected by or dissatisfied with, the proceedings; or
  - (ii) a person who is bound by or claims to be affected by or dissatisfied with the proceedings, and who satisfies the commission that the person is not an officer of, or acting for, an eligible association.

(3) If the commission reopens proceedings, it may—

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<sup>76</sup> See section 235 (Secret ballot on strike action).

<sup>77</sup> As to the commission’s power to enforce its order, see section 233 (Enforcing commission’s orders).

- (a) revoke or amend a decision or recommendation made by it; and
- (b) make the decision or recommendation it considers appropriate.

(4) If a recommendation of the commission has been acted on by the Governor in Council and the commission later revokes or amends the recommendation, the Governor in Council may—

- (a) cancel the action taken on the recommendation to accord with the commission's revocation or amendment; or
- (b) amend the action to accord with the commission's revocation or amendment.

(5) Failure to give notice to a person of the proceedings, or any part of the proceedings, leading to the making by the commission of a decision binding on the person—

- (a) does not invalidate or otherwise affect the decision; but
- (b) if the person is one on whose application the commission may exercise its powers, the person's failure to participate in the proceedings because of the absence of notice does not affect the person's application for reopening of proceedings.

(6) If the commission grants an application for reopening, it may give the retrospective operation to its decision made in the reopened proceedings it considers appropriate.

### **281 Reference to full bench**

(1) The commission may, at any stage of proceedings and on the terms the commission considers appropriate, refer the matter to which the proceedings relate to the full bench.

(2) A commissioner may refer the matter only with the vice president's approval.

(3) However, if the commissioner constituting the commission is the vice president, the vice president may refer the matter only with the president's approval.

(4) Before the hearing of a matter by the commission starts, a party to the proceedings may apply to the vice president for the matter to be referred to the full bench.

(5) The vice president may approve the referral of a matter to the full bench under subsection (2) only if the vice president is satisfied the matter is of substantial industrial significance.

(6) The president may approve the referral of a matter to the full bench under subsection (3) only if the president is satisfied the matter is of substantial industrial significance.

(7) On application under subsection (4), the vice president may refer the matter to the full bench only if the vice president is satisfied the matter is of substantial industrial significance.

(8) The full bench may hear and decide a matter referred to it and make the decision it considers appropriate.

## **282 Case stated to court**

(1) The commission may, at any stage of proceedings and on the terms it considers appropriate, state a written case for the court's opinion on a question of law relevant to the proceedings.

(2) The court may—

- (a) hear and decide the matter raised by a case stated; and
- (b) remit the case, with its opinion, to the commission by which the case was stated.

(3) The commission must give effect to the court's opinion.

## **283 Power to enter and inspect**

(1) A member, an officer of the commission or another person with a member's written authority (a "**commission official**"), may—

- (a) enter a workplace in relation to which—
  - (i) an industrial dispute exists, is impending or threatened, or is likely to arise; or
  - (ii) an industrial matter exists; or
  - (iii) an industrial instrument or permit exists; or
  - (iv) it is reasonably suspected an offence under this Act has been, or is being committed; and

- (b) inspect any work, machinery, appliance, materials, article or thing in or on the workplace; and
- (c) question a person in or on the workplace about a matter relevant to the commission's concern with the workplace.

(2) A power under subsection (1) may be exercised only during working hours at the workplace.

(3) If a commission official is seeking to exercise a power under subsection (1), a person must not—

- (a) refuse or unduly delay the official's entry to the workplace; or
- (b) fail to answer a question about a matter mentioned in subsection (1), unless the person has a lawful excuse; or
- (c) wilfully give false information or make a false statement.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(4) In this section—

**“workplace”** means a place where, or for which—

- (a) a calling is carried on; or
- (b) work has been, or is being, performed; or
- (c) another activity has happened, or is happening.

## **284 Interpretation of industrial instruments**

(1) The commission may give an interpretation of an industrial instrument, other than a certified agreement or QWA, on application by—

- (a) the Minister; or
- (b) an organisation; or
- (c) an employer; or
- (d) a person who satisfies the commission that the person is not an officer of, or acting for, an eligible association; or
- (e) an inspector.

(2) The commission may give an interpretation of a certified agreement on application by—

- (a) the Minister; or
- (b) an organisation, or other person, bound by the agreement; or

- (c) an employee whose employment is subject to the agreement; or
- (d) an inspector.

(3) The commission may give an interpretation of a QWA on application by—

- (a) a party to it; or
- (b) an inspector.

(4) If an inspector's application under this section relates to an alleged ambiguity, the commission must hear and decide the application in the absence of a statement of agreed facts.

### **285 Conducting a secret ballot**

(1) The commission may specify when, where and how a secret ballot is to be conducted.

(2) The registrar must—

- (a) conduct the ballot in accordance with the direction; and
- (b) for the conduct of the ballot—do the things provided for by the rules.

(3) Public service officers must help the registrar, as required, to conduct the ballot.

(4) The registrar must advertise the result of the ballot in a newspaper circulating in the locality concerned, unless the commission otherwise directs.

(5) A person must not—

- (a) resist or obstruct the registrar, a public service officer, or a person acting under the direction or authority of the registrar, performing a duty imposed, or an action directed or authorised to be done, for the ballot; or
- (b) at or near the place where the ballot is being taken—
  - (i) threaten or intimidate, or obstruct the free passage of, an employee going to or attending at the place to vote at the ballot; or
  - (ii) threaten or intimidate an employee so that the employee would not vote or would vote in a particular way at the ballot; or

- (c) obstruct an employee or another person in the performance of an action directed or authorised to be done for the ballot; or
- (d) by a threat or intimidation, prevent an employee or another person from performing an action directed or authorised to be done for the ballot; or
- (e) vote at the ballot unless the person—
  - (i) is entitled to vote; and
  - (ii) has received a ballot paper from the registrar; or
- (f) vote at the ballot in someone else's name; or
- (g) if the person is entitled to vote at the ballot—mark a ballot paper relating to the ballot, other than the ballot paper received by the person from the registrar.

Maximum penalty—40 penalty units.

(8) In this section—

“**prevent**” includes attempt to prevent.

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

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

“**vote**” includes attempt to vote.

## **286 Other powers**

This division does not limit, by implication, another power given to, or possessed by, the commission under this or another Act or law.

## **287 General rulings**

(1) The full bench may make general rulings about—

- (a) for employees bound by an industrial instrument—an industrial matter, to avoid a multiplication of inquiries into the same matter; or
- (b) a review of a general employment condition under chapter 2;<sup>78</sup> or
- (c) a Queensland minimum wage for all employees.

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<sup>78</sup> Chapter 2 (General employment conditions)

(2) The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each calendar year.

(3) Before conducting a hearing about the ruling, the full bench must—

- (a) give reasonable notice, in the way it considers appropriate, of its intention to conduct the hearing; and
- (b) give all interested persons an opportunity to be heard.

(4) A ruling—

- (a) must specify a date (the “**specified date**”) on and from which it has effect; and
- (b) has effect as a decision of the full bench on and from the specified date.

(5) A ruling may exclude from the operation of any of its provisions—

- (a) a class of employers or employees; or
- (b) employers or employees in a particular locality; or
- (c) an industrial instrument or part of an instrument.

(6) As soon as practicable after making a ruling, the registrar must publish notice of the ruling and the specified date in the industrial gazette.

(7) The notice, on and from the specified date, replaces a notice of a ruling on the same subject matter previously published.

(8) The ruling notified continues in force until the end of the day immediately before the specified date included in the next ruling on the same subject matter.

(9) If a ruling takes effect while an industrial instrument, other than a instrument or part of an instrument excluded under subsection (5), is in force—

- (a) the industrial instrument is taken to be amended to accord with the ruling, on and from the specified date; and
- (b) the amendment has effect as an industrial instrument, on and from the specified date.

(10) The registrar may amend an industrial instrument taken to be amended under subsection (9) as the registrar considers appropriate, to accord with the ruling—

- (a) on application under the rules; or

(b) of the registrar's own initiative.

(11) In this section—

“**Queensland minimum wage**” means the wage declared by the full bench to be the Queensland minimum wage.

## **288 Statement of policy**

(1) The full bench may make a statement of policy about an industrial matter, whether or not the matter is before the commission.

(2) On application by a party to an award, a stated policy may be given effect by being inserted in the award.

(3) The registrar may give effect to a stated policy by directions about procedural matters to the extent allowed by the commission.

(4) The directions bind all persons concerned.

## **PART 3—INDUSTRIAL MAGISTRATES**

### *Division 1—Industrial Magistrates Court*

## **289 Industrial Magistrates Court**

An Industrial Magistrates Court is a court of record.

### *Division 2—Industrial magistrates*

## **290 Office of Industrial Magistrate**

Each of the following persons is an industrial magistrate (a “**magistrate**”)—

- (a) a stipendiary magistrate;
- (b) an acting stipendiary magistrate.



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***Division 3—Constitution and jurisdiction of Industrial Magistrates Court***

**291 Constitution of Industrial Magistrates Court**

An Industrial Magistrates Court is constituted by a magistrate sitting alone.

**292 Magistrate's jurisdiction**

(1) A magistrate has jurisdiction—

- (a) to exercise powers conferred on, or jurisdiction given to, magistrates by this Act or another Act; and
- (b) to hear and decide proceedings about the following matters—
  - (i) an offence against this Act for which—
    - (A) a maximum penalty of not more than 40 penalty units is prescribed, unless the offence is one for which this Act makes other provision; or
    - (B) jurisdiction is conferred on magistrates by this Act;
  - (ii) a claim for—
    - (A) wages; or
    - (B) the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2);
  - (iii) claims for damages suffered by an employee because of the employer neglecting to pay the employee's wages;
  - (iv) claims for damages for contravention of an agreement made under an industrial instrument;
  - (v) claims under chapter 11, part 2, division 2;<sup>79</sup>
  - (vi) claims for compensation under section 83.<sup>80</sup>

(2) A magistrate has jurisdiction throughout the State.

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<sup>79</sup> Chapter 11 (Records and wages), part 2 (Wages and occupational superannuation), division 2 (Protection for wages)

<sup>80</sup> Section 83 (What employer must do to dismiss employee)

(3) In this section—

“fee” includes charge, expense of any kind and reward.

### **293 Magistrates’ jurisdiction is exclusive**

(1) The jurisdiction conferred on a magistrate by this or another Act is exclusive of the jurisdiction of another court or tribunal, unless this or the other Act otherwise prescribes.

(2) Jurisdiction conferred on a magistrate for the following matters is not exclusive of another court’s jurisdiction—

- (a) a claim for an employee’s wages payable under an industrial instrument or permit or under section 8A;<sup>81</sup>
- (b) a claim for an employee’s wages payable under an agreement in which wages are payable at a price or rate higher than that fixed by a relevant industrial instrument or permit;
- (c) a claim for an employee’s wages payable under an agreement in which wages are payable at a price or rate that is not fixed by a relevant industrial instrument or permit;
- (d) a claim for amounts payable, with an employee’s written consent, from an employee’s wages;
- (e) a claim for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2).

(3) In this section—

“fee” includes charge, expense of any kind and reward.

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81 Section 8A (Minimum wage)

## **PART 4—INDUSTRIAL REGISTRY**

### *Division 1—Industrial registry*

#### **294 Industrial registry**

- (1) There is an Industrial Registry (the “**registry**”).<sup>82</sup>
- (2) The registry consists of—
  - (a) an industrial registrar (the “**registrar**”); and
  - (b) 1 or more deputy industrial registrars (a “**deputy registrar**”); and
  - (c) the other staff mentioned in section 303.

#### **295 Functions of the registry**

The registry has the following functions—

- (a) to act as the registry for the court and commission;
- (b) to provide administrative support to the court and commission;
- (c) any other functions conferred on the registry by this Act.

#### **296 Seal of the registry**

(1) The registry has a seal.

(2) Judicial notice must be taken of the imprint of the registry’s seal on a document, and the document must be presumed to have been properly sealed unless the contrary is proved.

### *Division 2—Industrial registrar and staff*

#### **297 Appointment of registrar**

(1) The Governor in Council may, by industrial gazette notice, appoint a person to be the registrar.

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<sup>82</sup> The registry is a public service office under the *Public Service Act 1996*.

(2) The registrar is to be paid the remuneration and allowances decided by the Governor in Council.

(3) The registrar holds office on the terms and conditions, not provided for by this Act, decided by the Governor in Council.

## **298 Termination of appointment of registrar**

(1) The Governor in Council must end the registrar's appointment if the registrar—

- (a) is guilty of misconduct of a kind that could warrant dismissal from the public service if the registrar were a public service officer; or
- (b) is absent, without the Minister's leave or without reasonable excuse, for 14 consecutive days or 28 days in any year; or
- (c) becomes incapable of performing the functions of office.

(2) The Governor in Council may end the registrar's appointment if the registrar—

- (a) is convicted of an indictable offence (whether in Queensland or elsewhere); or
- (b) engages in other paid employment.

## **299 Functions and powers of registrar**

(1) The registrar—

- (a) administers the registry; and
- (b) has the functions conferred on the registrar under this or another Act.

(2) The registrar has the power to do all things necessary or convenient to be done to perform the registrar's functions.

(3) In performing a function or exercising a power, the registrar must comply with a direction given in relation to the performance or exercise by the president or vice president.

**300 Deputy registrar**

A deputy registrar must help the registrar in performing the registrar's functions.

**301 Delegation by registrar**

The registrar may delegate a power of the registrar under this Act to—

- (a) a deputy registrar; or
- (b) an appropriately qualified person nominated by the president; or
- (c) for section 374<sup>83</sup>—an appropriately qualified officer of the court or commission.

**302 Acting registrar**

(1) This section applies if the registrar temporarily can not perform the functions of office.

(2) The Governor in Council may appoint a person to act as the registrar by industrial gazette notice.

**303 Staff**

The staff of the registry, including a deputy registrar, are to be appointed under the *Public Service Act 1996*.

**304 Officers of the court and commission**

The registrar, a deputy registrar and the other staff of the registry are officers of the court and the commission.

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83 Section 374 (Inspection of employee register and index—registrar)

## **PART 5—ARRANGEMENTS WITH OTHER AUTHORITIES**

### *Division 1—Member may also be member of Australian commission*

#### **305 Member may hold other appointment**

A member who is appointed as a member of the Australian commission may hold that appointment and the appointment as a member at the same time.

### *Division 2—Dual commissioners*

#### **306 Appointment of Commonwealth official as commissioner**

(1) The Governor in Council may appoint a member of the Australian commission to be a commissioner (“**dual commissioner**”).

(2) Sections 263 and schedule 2, part 1, section 1<sup>84</sup> do not apply to the appointment of a dual commissioner or to a dual commissioner.

(3) The appointment—

- (a) is for the term the Governor in Council considers appropriate and states in the instrument of appointment; and
- (b) may be ended, with the Governor in Council’s approval, by the Minister’s notice given to the dual commissioner.

(4) A dual commissioner—

- (a) is not entitled to remuneration for performing the functions of a commissioner; but
- (b) is entitled to be paid expenses reasonably incurred by the dual commissioner in exercising powers and performing functions as a commissioner.

(5) A dual commissioner stops being a commissioner if the person—

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84 Section 263 (Removal of commissioners from office) and schedule 2 (Appointments and procedures), part 1 (President, vice president, deputy presidents and commissioners), section 1 (Remuneration)

- (a) becomes a person mentioned in section 262;<sup>85</sup> or
- (b) stops being a member of the Australian commission.

### **307 Role of dual commissioner**

(1) A dual commissioner, as agreed from time to time by the president and the president of the Australian commission—

- (a) must perform the functions of a commissioner; and
- (b) has, and may exercise for a particular matter, the powers of—
  - (i) a commissioner; and
  - (ii) a member of the Australian commission.

(2) A provision of this Act prescribing the functions or powers of a commissioner is subject to subsection (1) in its application to a dual commissioner.

### *Division 3—References to Commonwealth official*

### **308 Reference of matter to Commonwealth official**

(1) The president may ask the president of the Australian commission to nominate a member of that commission to deal with an industrial matter before the commission.

(2) If a nomination is made, the president may refer the industrial matter to the nominated member, to be dealt with by the nominated member under this Act.

(3) In dealing with the industrial matter, the nominated member—

- (a) has the powers of a commissioner; and
- (b) in exercising the powers, is taken to constitute the commission.

(4) The nominated commissioner's decision is taken to be a decision of the commission.

(5) The reference of an industrial matter to a nominated commissioner—

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85 Section 262 (Restrictions on appointment)

- (a) does not derogate from the commission's authority to exercise jurisdiction in relation to the matter; and
- (b) may be revoked by the president by notice given to the nominated commissioner.

(6) In this section—

“**industrial matter**” includes part of an industrial matter.

#### *Division 4—Conferences and joint sessions with industrial authorities*

### **309 Conferences with industrial authorities**

(1) This section applies if—

- (a) the president considers it desirable that a conference be held with an industrial authority about an industrial matter; and
- (b) the industrial authority agrees to a conference.

(2) The president may confer, or direct a commissioner to confer, with the industrial authority to coordinate decisions made, or to be made—

- (a) under this Act about the industrial matter; and
- (b) by the industrial authority.

### **310 Joint sessions with industrial authorities**

(1) This section applies if—

- (a) the president considers proceedings relating to an industrial matter before the commission should be heard in joint session with an industrial authority; and
- (b) the industrial authority agrees to a joint session.

(2) The president may—

- (a) hear, or direct a commissioner to hear, the proceedings in joint session with the industrial authority; and
- (b) confer, or direct the commissioner to confer, with the industrial authority about the proceedings and the decision to be made in the proceedings; and



- (c) join, or direct the commissioner to join, with the industrial authority in the decision made in the proceedings.

### **311 Similar matters before full bench and industrial authority**

(1) This section applies if—

- (a) the president considers an industrial authority has before it an industrial matter similar to an industrial matter before the full bench; and
- (b) the industrial authority agrees to participate in joint session.

(2) The president may—

- (a) if the president is a member of the full bench—participate in joint session with the industrial authority about the industrial matter; or
- (b) direct a member of the full bench to participate in joint session with the industrial authority about the industrial matter.

(3) The president or member must report the result of the joint session to the full bench.

### **312 Member's powers in joint session**

A member participating in joint session with an industrial authority, in relation to the industrial matter dealt with in joint session, must perform the functions and has, and may exercise, the powers of the commission.

### **313 President may decide matter not to be dealt with in joint session**

The president may decide that an industrial matter should not be dealt with in joint session and, if the decision is made after a joint session about the matter starts—

- (a) the member participating in the joint session must immediately stop participating; and
- (b) the industrial matter may proceed before the commission or, if appropriate, the full bench.

***Division 5—Other functions etc. and arrangements*****314 Functions and powers vested in commission by other jurisdictions**

(1) The commission may perform the functions and exercise the powers conferred on it under—

- (a) the *Workplace Relations Act 1996* (Cwlth); or
- (b) another enactment of a jurisdiction other than Queensland declared for this section under a regulation.

(2) A decision of the commission under authority conferred by subsection (1) is not a decision made by it under this Act.

**315 Arrangements with Commonwealth public service**

(1) Arrangements may be made under the *Public Service Act 1996*, section 82<sup>86</sup> for—

- (a) a Commonwealth public servant to perform functions and exercise powers under this Act; and
- (b) Queensland public service employees to perform functions and exercise powers under the Commonwealth Act.

(2) An arrangement under subsection (1)(a) is enough authority for a Commonwealth public servant to perform the functions and exercise the powers of a Queensland public service employee under this Act.

(3) In this section—

**“Commonwealth public servant”** means—

- (a) an officer of the Commonwealth public service; or
- (b) the industrial registrar under the Commonwealth Act; or
- (c) another person performing functions and exercising powers under the Commonwealth Act.

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<sup>86</sup> *Public Service Act 1996*, section 82 (Work performance and interchange arrangements)

## **PART 6—PROCEEDINGS OF COURT, COMMISSION, MAGISTRATES AND REGISTRAR**

### *Division 1—Definitions*

#### **316 Definitions for pt 6**

In this part—

“**administer**” an oath includes authorise the administering of an oath.

“**exercising**” jurisdiction includes exercising powers and performing functions.

“**take**” a statutory declaration includes authorise the taking of a statutory declaration.

### *Division 2—Starting proceedings and service of process*

#### **317 Starting proceedings**

(1) Unless otherwise provided, proceedings may be started in the court or commission or before the registrar on application by—

- (a) an organisation or an officer or member of an organisation; or
- (b) the Minister; or
- (c) a State peak council; or
- (d) an inspector; or
- (e) an employer; or
- (f) a person who has an interest in the matter to which the application relates.

(2) Proceedings may also be started by the commission of its own initiative.

(3) In proceedings, the commission may call before it the persons it considers necessary.

(4) This section does not affect another provision of this Act providing for the starting of proceedings.

**318 Service of process**

(1) Subsection (2) applies if—

- (a) for proceedings in, or to be started in, the court—the president or registrar considers service of a document can not be effected promptly by personal service or in a way prescribed under the rules; or
- (b) for proceedings in, or to be started in, the commission—the commission or registrar considers service of a document can not be effected promptly by personal service or in a way prescribed under the rules.

(2) The president, commission or registrar may order—

- (a) substituted service of the document; or
- (b) notice of the document be given by letter, telex, fax, email, advertisement in an appropriate newspaper, or otherwise, instead of service.

(3) Service or notice in accordance with the order is sufficient service of the person required to be served.

(4) Unless otherwise ordered by the court or commission—

- (a) service of the document on an employer organisation; or
- (b) substituted service or notice of the document in accordance with an order under subsection (2);

is taken to be service on all employers who have employees engaged in the calling that is relevant to the purpose of the document, or in related callings.

(5) In this section—

“**document**” includes an attendance notice, notice or order.

***Division 3—Conduct of proceedings*****319 Representation of parties**

(1) In proceedings, a party to the proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented by—

*Industrial Relations Act 1999*

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- (a) an agent appointed in writing; or
  - (b) if the party or person is an organisation—an officer or member of the organisation.
- (2) The party or person may be represented by a lawyer if, and only if—
- (a) for proceedings in the court—
    - (i) the proceedings are for the prosecution of an offence; or
    - (ii) all parties consent; or
    - (iii) the court gives leave; or
  - (b) for proceedings before the commission, other than proceedings under section 278 or 408F<sup>87</sup>—
    - (i) the proceedings relate to a matter under chapter 4, other than section 110;<sup>88</sup> or
    - (ii) all parties consent; or
    - (iii) the proceedings relate to a matter under chapter 3, or under section 110, 275, 276 or 279, or under chapter 12, part 2 or part 16<sup>89</sup> and, on application by a party or person—
      - (A) the commission is satisfied, having regard to the matter the proceedings relate to, that there are special circumstances that make it desirable for the party or person to be legally represented; or
      - (B) the commission is satisfied the party or person can be adequately represented only by a lawyer; or
  - (c) for proceedings before an Industrial Magistrates Court, other than proceedings remitted under section 278(6) or 408F(5)—
    - (i) all parties consent; or

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87 Section 278 (Power to recover unpaid wages and superannuation contribution etc.) or 408F (Commission may order repayment of fees received by private employment agent)

88 Chapter 4 (Freedom of association), other than section 110 (Encouragement provisions permitted)

89 Chapter 3 (Dismissals), section 110 (Encouragement provisions permitted), 275 (Power to declare persons to be employees or employers), 276 (Power to amend or void contracts) or 279 (Orders about representation rights of employee organisations), or chapter 12 (Industrial organisations), part 2 (Registration) or 16 (Deregistration)

- (ii) the proceedings are brought personally by an employee and relate to a matter that could have been brought before a court of competent jurisdiction other than an Industrial Magistrates Court; or
- (iii) the proceedings are for the prosecution of an offence; or
- (d) for proceedings before the registrar, including interlocutory proceedings—
  - (i) all parties consent; or
  - (ii) the registrar gives leave.

(3) However, in proceedings mentioned in subsection (2)(c)(iii), the person represented can not be awarded costs of the representation.

(4) For subsection (2)(b)(iii) and (iv), the commission may consider, for example, the following—

- (a) the amount claimed in the proceedings, if any;
- (b) the nature and complexity of the matter;
- (c) the nature of the evidence to be adduced;
- (d) the cross examination likely to be required;
- (e) the capacity of the party or person to represent himself or herself;
- (f) the questions of law likely to arise;
- (g) whether the duration or cost of the proceedings will be decreased or increased if the party or person is represented.

(5) In this section—

“**proceedings**” means proceedings under this or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar.

### **320 Basis of decisions of the commission and magistrates**

(1) Subsections (2) and (3) do not apply to proceedings for—

(a) the recovery of amounts, other than an amount ordered under section 278 or 408F;<sup>90</sup> or

(b) an offence against this Act.

(2) In proceedings, the commission or Industrial Magistrates Court—

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) may inform itself on a matter it considers appropriate in the exercise of its jurisdiction.

(3) Also, the commission or Industrial Magistrates Court is to be governed in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of—

(a) the persons immediately concerned; and

(b) the community as a whole.

(4) In proceedings, the commission may admit evidence given before, and the findings of, the Anti-Discrimination Commission as evidence in the proceedings.

(5) In making a decision, the commission must consider the public interest, and to that end must consider—

(a) the objects of this Act; and

(b) the likely effects of the commission's decision on the community, local community, economy, industry generally and the particular industry concerned.

(6) In exercising its jurisdiction, the commission must have appropriate regard to the rules.

### **321 Competence and compellability of witnesses**

A party to proceedings in the court or commission is competent, and may be compelled, to give evidence in the proceedings as a witness to the same extent as in civil proceedings in the Supreme Court.

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<sup>90</sup> Section 278 (Power to recover unpaid wages and superannuation contribution etc.) or 408F (Commission may order repayment of fees received by private employment agent)

**322 Intervention**

(1) The Minister may intervene—

- (a) in proceedings before an industrial tribunal; or
- (b) in proceedings before another court or tribunal that touch on—
  - (i) the jurisdiction or powers of the court, the commission, a magistrate or the registrar; or
  - (ii) a matter for which the jurisdiction or powers may be exercised; or
  - (iii) the interpretation of this Act.

(2) A State peak council may intervene in proceedings before the commission if any of its members has a sufficient interest in the proceedings.

(3) On intervention, the Minister or State peak council becomes a party to the proceedings.

(4) In this section—

“**industrial tribunal**” means the court, the commission, an Industrial Magistrates Court or the registrar.

**323 Adjournment by registrar**

If the president or a commissioner can not attend at the time appointed for hearing proceedings, the registrar may adjourn the court or commission and any business set down for the day to a day and time that the registrar considers convenient.

**324 State employee to give information**

(1) A person employed by the State must give the court or commission, if the court or commission asks, information that the person has knowledge of in an official capacity.

(2) The person must comply with the request despite an obligation under an Act or law not to disclose information, unless the Act or law allows, justifies or excuses a refusal to give it in evidence in legal proceedings.



***Division 4—Powers*****325 Exercise of commission's powers**

(1) The commission may, unless otherwise prescribed by or under this Act,<sup>91</sup> exercise its powers—

- (a) of its own initiative; or
- (b) on application by—
  - (i) a party to proceedings in which the power is to be exercised; or
  - (ii) an organisation.

(2) The commission may, of its own initiative—

- (a) join 2 or more matters to be heard and decided by the commission, whether the matters or any of them arise under this or another Act; and
- (b) hear and decide the matters in 1 proceeding.

**326 Interlocutory proceedings**

In an industrial cause, the president, commission or registrar may make orders, or give directions, the president, commission or registrar considers just and necessary in relation to interlocutory proceedings to be taken before the hearing of the cause, including proceedings about—

- (a) naming and joinder of parties; or
- (b) persons to be served with notice of proceedings; or
- (c) calling of persons to attend in proceedings; or
- (d) particulars of the claims of the parties; or
- (e) the issues to be referred to the court or commission; or
- (f) admissions, discovery, interrogatories or inspection of documents or property; or
- (g) examination of witnesses; or

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91 See, for example, section 280 (Procedures for reopening).

- (h) costs of the interlocutory proceedings; or
- (i) place, time and mode of hearing of the cause.

### **327 Power to order inquiry or taking of evidence**

(1) The commission, by order, may direct—

- (a) the registrar to conduct an inquiry into a matter the commission requires information about for the exercise of the commission's jurisdiction; or
- (b) an appropriately qualified person to take evidence for the commission about an industrial cause.

(2) The registrar or other person must comply promptly with the direction and report, or give a record of evidence taken, to the commission.

(3) The registrar may call persons to attend before the registrar and examine parties and witnesses for—

- (a) conducting an inquiry mentioned in subsection (1); or
- (b) disposing of another matter referred to the registrar under this Act.

(4) A person directed to take evidence under subsection (1) has all the powers of the commission for—

- (a) calling witnesses; and
- (b) requiring production of records.

### **328 Power to administer oath**

In exercising jurisdiction, the following persons may take evidence on oath or statutory declaration, and for that purpose may administer an oath or take a statutory declaration—

- (a) a person constituting the court, the commission or an Industrial Magistrates Court;
- (b) the registrar;
- (c) a person directed by the commission to take evidence for the commission.

**329 Powers incidental to exercise of jurisdiction**

Except as otherwise prescribed by this Act or the rules, the court, commission and registrar may—

- (a) at or before a hearing, take steps to find out whether all persons who ought to be bound by a decision to be made in proceedings have been called to attend or given notice of, the proceedings; and
- (b) direct, for proceedings—
  - (i) who the parties to the proceedings are; and
  - (ii) by whom the parties may be represented; and
  - (iii) persons to be called to attend the proceedings, if they have not been called and it appears they should attend the proceedings; and
  - (iv) parties to be joined or struck out; and
  - (v) who may be heard and on what conditions; and
- (c) hear and decide an industrial cause in the way that appears best suited for the purpose; and
- (d) allow claims in the proceedings to be amended on terms that appear fair and just; and
- (e) correct, amend or waive an error, defect or irregularity in the proceedings, whether substantive or formal; and
- (f) give directions under a decision, that the court, commission or registrar considers necessary for, or conducive and appropriate to, the effective implementation of the decision; and
- (g) hear and decide an industrial cause in the absence of a party, or of a person who has been called to attend, or served with a notice to appear, at the proceedings; and
- (h) sit at any time and in any place for hearing and deciding an industrial cause, and adjourn a sitting to any time and place; and
- (i) refer technical matters, accounting matters, or matters involving expert knowledge to an expert, and admit the expert's report in evidence; and

- (j) extend a prescribed or stated time, before or after expiry of the time; and
- (k) waive compliance with the rules.

### **330 Power to obtain data and expert evidence**

(1) If the commission wants expert evidence based on facts or figures to decide an industrial cause, it may—

- (a) order the following persons to give it returns of the facts or figures—
  - (i) an organisation that is, or any of whose members are, party to the proceedings;
  - (ii) an employer, or group of employers, who is a party to the proceedings; and
- (b) allow a person selected by it as an expert in a relevant respect to prepare, from the returns, reports directed to matters that the commission seeks to be informed on.

(2) A person preparing a schedule may show in it the particulars that—

- (a) are relevant to the cause; or
- (b) the commission asks for.

(3) However, the person must not, without the commission's leave, otherwise divulge to anyone (other than the commission)—

- (a) the name of the organisation that gave the return; or
- (b) business information of a private or confidential nature extracted from the return.

Maximum penalty—20 penalty units.

(4) A schedule, as far as possible, must extend beyond 1 year's operation of a business or industry.

## ***Division 5—Decisions and enforcement***

### **331 Decisions generally**

The court or commission may, in an industrial cause—

- (a) make a decision it considers just, and include in the decision a provision it considers appropriate for preventing or settling the industrial dispute, or dealing with the industrial matter, the cause relates to, without being restricted to any specific relief claimed by the parties to the cause; or
- (b) dismiss the cause, or refrain from hearing, further hearing, or deciding the cause, if the court or commission considers—
  - (i) the cause is trivial; or
  - (ii) further proceedings by the court or commission are not necessary or desirable in the public interest; or
- (c) order a party to the cause to pay another party the expenses, including witness expenses, it considers appropriate.

### **332 Reserved decisions**

- (1) The court or commission may reserve its decision in proceedings.
- (2) If a decision is reserved—
  - (a) it may be pronounced at—
    - (i) a continuation or resumption of the court or commission; or
    - (ii) a subsequent sitting of the court or commission; or
  - (b) the court or commission may give its written decision, signed by the person or each of the persons constituting the court or commission, to the registrar.
- (3) The registrar must file a written decision in the registry and give a copy of it to each of the parties to the industrial cause.
- (4) When filed, a written decision has effect as if it had been pronounced by the court or commission.

### **333 Commission decisions to be in plain English**

The commission must ensure the commission's written decisions are—

- (a) in plain English; and
- (b) structured in a way that makes a decision as easy to understand as the subject matter allows.

**334 Extent of decisions and their execution**

- (1) In the exercise of its jurisdiction, the court or commission may—
- (a) make the decisions it considers necessary for—
    - (i) doing complete justice in proceedings before it; and
    - (ii) the execution of the decision; and
  - (b) enforce its own decisions; and
  - (c) direct the issue of a writ or process; and
  - (d) impose and enforce a penalty, allowed or prescribed by this or another Act, in the same way a Supreme Court judgment is enforced.
- (2) A decision of the court or commission—
- (a) must be drawn up and verified; and
  - (b) without limiting any other way of execution and recovery prescribed by or under this Act, may be executed, recovered on, and otherwise enforced;

as a judgment or order of a Supreme Court judge is drawn up, verified, executed, recovered and otherwise enforced against the person, lands, and goods of the party affected.

(3) For the effective operation of subsection (2), the Uniform Civil Procedures Rules, as far as they may reasonably be applied, are to be applied and complied with, with the amendments the court or commission approves.

(4) The registrar, deputy registrars, sheriff, bailiffs and officers of the Supreme Court, or of Magistrates Courts, are taken to be officers of the court and commission for—

- (a) executing, recovering on, and otherwise enforcing decisions of the court or commission; or
- (b) imposing functions or conferring powers by the rules and of performing the functions or exercising the powers.

**335 Costs**

(1) The court or commission may order a party to an application to pay costs, including witness expenses and other expenses, incurred by another party only if satisfied—

- (a) the party made the application vexatiously or without reasonable cause; or
- (b) for an application for reinstatement—the party caused costs, including witness expenses and other expenses, to be incurred by the other party because of an unreasonable act or omission connected with the conduct of the application.

(2) In making an order, the court or commission may order a party to pay another party an amount reasonably payable to a person, who is not a lawyer, for representing the other party.

### **336 Recovery of amounts under orders**

(1) If the court or commission in proceedings orders an amount be paid (as a penalty or otherwise), the registrar may issue a certificate, under the seal of the court or commission, stating—

- (a) the amount payable; and
- (b) who is to pay the amount; and
- (c) to whom the amount is payable; and
- (d) any conditions about payment.

(2) The amount may be recovered in proceedings as for a debt.

(3) When the certificate is filed in a court of competent jurisdiction in an action for a debt of the amount, the order evidenced by the certificate is enforceable as an order made by the court where the certificate is filed.

(4) This section does not limit other ways in which amounts may be recovered on an order of the court or commission.

(5) In this section—

**“registrar”**, for an order made by a magistrate on remission from the commission under section 278 or 408F,<sup>92</sup> means the registrar of the Magistrates Court.

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<sup>92</sup> Section 278 (Power to recover unpaid wages and superannuation contribution etc.) or 408F (Commission may order repayment of fees received by private employment agent)

*Division 6—Protections and immunities***337 Protection and immunities**

(1) The president, the commission and a magistrate, in the exercise of jurisdiction for this or another Act have the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.

(2) The president, the commission, a magistrate or the registrar (the “official”) has, in proceedings for defamation for a publication made to or by the official in the official’s official capacity, a defence of absolute privilege if the publication was made in good faith.

(3) The burden of proving absence of good faith is on a person who alleges the absence.

*Division 7—Rules and practice***338 Rules**

(1) The Governor in Council may make rules under this Act.

(2) The rules may only be made with the consent of the president.

(3) The president must consult with—

(a) for a rule relating to the Industrial Magistrates Court—the Chief Stipendiary Magistrate; or

(b) for a rule relating to the registry—the registrar; or

(c) otherwise—2 commissioners.

(4) Rules may be made about the following matters—

(a) regulating the practice and procedure to be followed and used—

(i) in or for proceedings in the court, commission or Industrial Magistrates Court and before the registrar; or

(ii) in or for drawing up, settling and enforcing decisions, convictions and actions made, recorded or done by the court, commission or registrar;

(b) publishing decisions and other actions of the court, commission or registrar and the effect of the publication;

(c) recovering fines and penalties imposed;



- (d) enforcing orders for attachment or imprisonment and orders for the payment of amounts made by the court or commission;
- (e) fees and expenses payable to witnesses;
- (f) fees payable in relation to proceedings in the court or commission, or before the registrar and the party by whom the fees are to be paid;
- (g) service of process, notices, orders or other things on parties and other persons;
- (h) the functions and powers of officers of the court or commission;
- (i) delegating the jurisdiction of the commission as permitted by this Act;
- (j) requiring organisations or other entities to give returns, lists of officers or members and other statistical information to the registrar;
- (k) providing for all matters necessary or expedient to be provided for to allow for—
  - (i) the full and effective exercise of jurisdiction and powers of the court, commission, Industrial Magistrates Court and registrar; and
  - (ii) giving effect to the decisions, convictions and actions made, recorded, or done by the court, the commission, a magistrate, the registrar, or an officer of the court or commission.

(5) Rules made under this section are subordinate legislation.

### **339 Directions about practice**

(1) Subject to this Act and the rules, the practice and procedure of the court, the commission, an Industrial Magistrates Court or the registrar is as directed by the president, a commissioner, a magistrate or the registrar.

(2) If a person wishes to take a step in an industrial cause or a proposed cause and this Act or the rules do not provide or sufficiently provide for it, application for directions may be made to the appropriate person mentioned in subsection (1).

## CHAPTER 9—APPEALS

### *Division 1—Appeals to Court of Appeal*

#### **340 Appeal from court or full bench**

(1) A defendant who is dissatisfied with a decision of the court in proceedings mentioned in section 251<sup>93</sup> may appeal to the Court of Appeal.

(2) The Minister, or a person who is dissatisfied with a decision of the full bench, may appeal to the Court of Appeal only on the ground of—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

(3) Subsection (2) applies only if the constitution of the full bench included the president.

(4) The Court of Appeal may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision and substitute another decision; or
- (c) allow the appeal and amend the decision; or
- (d) allow the appeal, suspend the operation of the decision and remit the industrial cause (with or without directions) to the court or full bench—
  - (i) for report to the Court of Appeal; or
  - (ii) to act according to law.

### *Division 2—Appeals to court*

#### **341 Appeal from commission, magistrate or registrar**

(1) The Minister, or a person dissatisfied with a decision of the commission (other than a determination under section 149<sup>94</sup> or a decision

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93 Section 251 (Contempt of court)

94 Section 149 (Arbitration if conciliation unsuccessful)

made by a full bench the constitution of which included the president) or registrar, may appeal against the decision to the court only on the ground of—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

(2) A person may appeal to the court if dissatisfied with a decision of a magistrate in relation to a matter for which the magistrate has jurisdiction.

(3) The court may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision and substitute another decision; or
- (c) allow the appeal and amend the decision; or
- (d) allow the appeal, suspend the operation of the decision and remit the industrial cause, with or without directions, to the commission, an Industrial Magistrates Court or the registrar to act according to law.

(4) Also, if—

- (a) under the decision that was appealed, the appellant was sentenced to a term of imprisonment; and
- (b) the appellant was released from custody under the *Industrial Relations (Tribunal) Rules 2000*, rule 120;<sup>95</sup> and
- (c) after the appeal is decided, discontinued or struck out, the appellant is still required to serve all or part of the term of imprisonment;

the court may direct an industrial magistrate to issue a warrant for the appellant's arrest.

(5) The industrial magistrate must comply with the direction.

(6) When arrested, the appellant must be taken to a prison within the meaning of the *Corrective Services Act 2000* to serve the unexpired portion of the term of imprisonment to which the appellant was sentenced.

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95 *Industrial Relations (Tribunals) Rules 2000*, rule 120 (Industrial magistrate may order appellant's release from custody)

***Division 3—Appeals to full bench*****342 Appeal from commission, magistrate or registrar**

(1) A person dissatisfied with a decision of the commission (other than a determination under section 149<sup>96</sup>) may appeal against the decision to the full bench, with the full bench's leave, on a ground other than—

- (a) error of law; or
- (b) excess, or want, of jurisdiction.

(2) However, if a person wants to appeal against a decision of the commission both on a ground mentioned in section 341(1) and on a ground mentioned in subsection (1), the person may only appeal against the decision to the full bench, with the full bench's leave.

(3) The full bench must, and may only, give leave for subsection (1) or (2) if it considers the matter is important enough, in the public interest, to give leave.

(4) Also, the Minister may appeal against a decision of the commission to the full bench.

(5) A person dissatisfied with a decision of a magistrate under this Act, other than a decision mentioned in section 341(2), may appeal against the decision to the full bench.

(6) A person dissatisfied with a decision of the registrar, other than a decision mentioned in section 287(9), 341(1) or 695<sup>97</sup> may appeal against the decision to the full bench.

(7) A person dissatisfied with a decision of the registrar under section 287(9) may appeal against the decision to the full bench as it was constituted when the general ruling under section 287 was made.

(8) The full bench may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision and substitute another decision; or
- (c) allow the appeal and amend the decision; or

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96 Section 149 (Arbitration if conciliation unsuccessful)

97 Section 287 (General rulings), 341 (Appeal from commission, magistrate or registrar) or 695 (Student's work permit)

- (d) allow the appeal, suspend the operation of the decision and remit the industrial cause, with or without directions, to the commission, an Industrial Magistrates Court or the registrar—
  - (i) for report to the full bench; or
  - (ii) to act according to law.

#### *Division 4—Appeals to commission*

### **343 Appeal from registrar**

(1) A person dissatisfied with a decision of the registrar under section 695<sup>98</sup> may appeal against the decision to the commission.

(2) The commission may—

- (a) dismiss the appeal; or
- (b) allow the appeal, set aside the decision and substitute another decision; or
- (c) allow the appeal and amend the decision; or
- (d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the registrar—
  - (i) for report to the commission; or
  - (ii) to act according to law.

### **344 Appeal against stand-downs**

(1) An employee stood-down by an employer under section 98,<sup>99</sup> may appeal to the commission against the stand-down.

(2) If the employee is a member of an employee organisation, the organisation may institute and conduct the appeal for the employee.

(3) The commission may—

- (a) dismiss the appeal; or

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98 Section 695 (Student's work permit)

99 Section 98 (Permissible stand-down of employee)

*Industrial Relations Act 1999*

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- (b) allow the appeal and order the employee be paid, within a stated period, the wages lost by the employee because of the stand-down; or
- (c) if the employee remains stood down at the time of the commission's decision—
  - (i) allow the appeal; and
  - (ii) order the employer to provide for the resumption of work by the employee, immediately or on a stated day; and
  - (iii) make an order about payment of wages mentioned in paragraph (b).

(4) If the commission makes an order under subsection (3)(b), it may include in the order default provisions for its enforcement, other than by imprisonment, as if—

- (a) the commission were an Industrial Magistrates Court; and
- (b) the member who makes the order were a magistrate.

(5) The order may be filed with the clerk of a Magistrates Court and on filing may be enforced as an order made by an Industrial Magistrates Court.

*Division 5—General***345 Definition for div 5**

In this division—

**“industrial tribunal”** means the Court of Appeal, court, full bench or commission.

**346 Time limited for appeal**

(1) An appeal against a decision must be commenced, as required under the rules, within 21 days after—

- (a) if the decision is given at a hearing—the announcement of the decision at the hearing; or
- (b) if the decision is given through the registrar—the release of the decision.

(2) However, on an application made during or after the 21 days, the industrial tribunal may allow an appeal to be commenced within a longer period.

### **347 Stay of decision appealed against**

(1) This section applies if an appeal is made under this part.

(2) The industrial tribunal may order that the decision being appealed be wholly or partly stayed pending—

- (a) the determination of the appeal; or
- (b) a further order of the industrial tribunal.

### **348 Nature of appeal**

(1) An appeal to an industrial tribunal is by way of re-hearing on the record.

(2) However, the industrial tribunal may hear evidence afresh, or hear additional evidence, if the industrial tribunal considers it appropriate to effectively dispose of the appeal.

### **349 Finality of decisions**

(1) This section applies to the following decisions—

- (a) a decision of the Court of Appeal under section 340;
- (b) a decision of the court under section 341;
- (c) a decision of the full bench under section 342;
- (d) a decision of the commission under section 343 or 344;
- (e) another decision of the court, the full bench, the commission, an Industrial Magistrates Court or the registrar.

(2) The decision—

- (a) is final and conclusive; and
- (b) can not be impeached for informality or want of form; and
- (c) can not be appealed against, reviewed, quashed or invalidated in any court.

(3) The industrial tribunal's jurisdiction is exclusive of any court's jurisdiction and an injunction or prerogative order can not be issued, granted or made in relation to proceedings in the court within its jurisdiction.

(4) This section does not apply to a decision mentioned in subsection (1) to the extent that this Act or another Act provides for a right of appeal from the decision.

(5) In this section—

“**industrial tribunal**” includes an Industrial Magistrates Court and the registrar.

## CHAPTER 10—ENFORCEMENT

### *Division 1—Appointment*

#### **350 Appointment of inspectors**

(1) The Governor in Council may, by industrial gazette notice, appoint a person as the chief inspector.

(2) The chief executive may appoint a person as an inspector.

(3) A person appointed as an inspector—

(a) must be—

(i) a public service officer or employee; or

(ii) an inspector under the *Vocational Education, Training and Employment Act 2000*; or

(iii) a person with the qualifications prescribed under a regulation; and

(b) must have the necessary expertise or experience to be an inspector.

(4) An inspector, while the inspector holds the appointment, is also an inspector for—

(a) the *Pastoral Workers' Accommodation Act 1980*; and



- (b) the *Trading (Allowable Hours) Act 1990*; and
  - (c) the *Workers' Accommodation Act 1952*.
- (5) An inspector is to be employed under the *Public Service Act 1996*.

### **351 Functions**

- (1) An inspector must—
- (a) ensure industrial instruments, permits and orders are, as far as possible, complied with; and
  - (b) investigate and, when necessary, take action to deal with alleged contraventions of this Act; and
  - (c) inform employees and employers of their rights and obligations under this Act; and
  - (d) perform other functions—
    - (i) given to an inspector under this or another Act; or
    - (ii) prescribed under a regulation.
- (2) In doing so, the inspector must, when appropriate, have particular regard to—
- (a) the needs of employees in a disadvantaged bargaining position (including for example, women, people from a non-English speaking background, young people, apprentices, trainees and outworkers); and
  - (b) helping employees to balance work and family responsibilities.

### **352 Powers**

(1) An inspector has the power to do all things necessary or convenient to be done for, or in connection with, the performance of the inspector's functions.

(2) An inspector may exercise a power in relation to a person only if the inspector—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the inspector's identity card displayed so it is clearly visible to the person.

(3) However, if for any reason it is not practicable to comply with subsection (2) before exercising the power, the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

### *Division 2—General powers*

#### **353 Entry to places**

(1) An inspector may, without the occupier's consent, enter—

- (a) a public place; or
- (b) a workplace when—
  - (i) the workplace is open for carrying on business; or
  - (ii) the workplace is otherwise open for entry.

(2) If the workplace is on or near domestic premises, an inspector may, without the occupier's consent—

- (a) enter the land around the premises to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public are ordinarily allowed to enter when they wish to contact the occupier.

(3) However, if it is practicable to do so before entering the land, the inspector must first tell the occupier of the inspector's intention to gain access to the workplace.

(4) In this section—

**“domestic premises”** means premises usually occupied as a private dwelling house.

**“workplace”** means a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on.

#### **354 General powers after entering workplaces**

(1) This section applies to an inspector who enters a workplace under section 353.

(2) However, if an inspector enters a workplace to get the occupier's consent to enter the workplace, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the inspector may—

- (a) inspect, photograph or film any part of the place or anything at the workplace; or
- (b) copy a document at the workplace; or
- (c) take into or onto the workplace the persons, equipment and materials the inspector reasonably requires for exercising a power under this part; or
- (d) require a person at the workplace to give the inspector reasonable help to exercise the powers under paragraphs (a) to (c).

(4) When making a requirement under subsection (3)(d), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

(5) A person required to give reasonable help under subsection (3)(d) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **355 Power to require documents to be produced**

(1) An inspector may require a person to produce for inspection, at a reasonable time and place nominated by the inspector, a document relating to employees, including, for example, a time sheet or pay sheet.

(2) The person must produce the document, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) The inspector may keep the document to copy it.

(4) If the inspector copies it, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(5) The person must certify the copy, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) The inspector must return the document to the person as soon as practicable after copying it.

### **356 Power to require information**

(1) An inspector may, during business hours—

(a) question with respect to matters under this Act or under a relevant industrial instrument—

(i) an employer in a calling; or

(ii) a person found in or on a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on; and

(b) require the employer or person to give the inspector information to help the inspector ascertain whether this Act, or a relevant industrial instrument, permit or order are being, have been or will be complied with, or should be given operation in relation to the calling.

(2) When making the requirement, the inspector must warn the employer or person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.

(3) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) It is a reasonable excuse for an individual to fail to comply with the requirement if doing so might tend to incriminate the individual.

(5) The power to question an employee includes power to question the employee out of anyone else's hearing.

### **357 Power to require name and address**

(1) An inspector may require a person, for this Act, to state the person's name and address.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

(4) A person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### *Division 3—Powers to claim and deal with unpaid amounts*

#### **358 Paying employee's wages etc. to inspector**

(1) On an inspector's written demand, an employer must pay—

- (a) an employee's unpaid wages, including an unpaid tool allowance required to be paid under an order made under section 138;<sup>100</sup> and
- (b) for an eligible employee—
  - (i) the unpaid contributions payable under a relevant industrial instrument for the employee by the employer to a complying superannuation fund; and
  - (ii) an amount based on the return that would have accrued had the contribution been properly paid to the fund.

Maximum penalty—40 penalty units.

(2) The payment must be made—

- (a) under subsection (1)(a)—to the inspector; or
- (b) under subsection (1)(b)—
  - (i) into a complying superannuation fund in the time specified by the inspector; or
  - (ii) if not paid into a complying superannuation fund in the specified time—to the inspector.

(3) A demand must not be made, or need not be complied with, if it relates or would relate to unpaid wages for which an order for recovery could not be made on an application under section 399.<sup>101</sup>

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100 Section 138 (Order setting tool allowance)

101 Section 399 (Recovery of unpaid wages etc.)

(4) An Industrial Magistrates Court that hears and decides a complaint against an employer for an offence against subsection (1)(a) or (b)—

- (a) apart from a penalty that it may impose; and
- (b) whether or not it finds the employer guilty;

may order the employer to pay the employee the amount the court finds, on the balance of probabilities, is payable to the employee.

(5) A court that finds an employer guilty of an offence against subsection (1)(b) may make, in relation to the employer, an order that a magistrate may make on an application made under section 408.<sup>102</sup>

(6) If an order is made, section 408 applies to it.

(7) In this section—

“**employee**” includes a former employee.

### **359 Inspector’s obligation for amounts paid on demand**

(1) An inspector who is paid an amount mentioned in section 358 must immediately give the payer a receipt for the amount.

(2) The receipt is a full discharge to the employer concerned for the amount stated in the receipt.

(3) The inspector must pay the amount to—

- (a) for a superannuation contribution—
  - (i) if the employee is employed by the employer—the approved superannuation fund; or
  - (ii) if the employee is no longer employed by the employer—
    - (A) the approved superannuation fund; or
    - (B) a complying superannuation fund; or
    - (C) a superannuation fund nominated by the employee; or
    - (D) an eligible rollover fund; or
    - (E) if the amount is less than the amount of total benefits that may revert to an employee under the

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<sup>102</sup> Section 408 (Recovery of unpaid superannuation contribution)

*Superannuation Industry (Supervision) Act 1993*  
(Cwlth)—the employee; or

(b) otherwise—the employee.

(4) If the inspector has not accounted for the amount within 30 days after receiving it, the inspector must pay the amount immediately to the department.

(5) The department must account for the amount in the way required by subsection (3).

(6) However, the department must pay the amount into the unclaimed moneys fund if—

(a) the department can not locate the employee after making reasonable inquiries; or

(b) the employee does not nominate a superannuation fund for subsection (3) if requested by an inspector to do so.

(7) In this section—

“**employee**” includes a former employee.

“**superannuation contribution**” means—

(a) an employer’s contribution to an approved superannuation fund to the credit of an eligible employee, which is unpaid; or

(b) an amount mentioned in section 358(1)(b)(ii).

*Division 4—General***360 Obstructing inspectors**

A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

**361 Impersonating inspectors**

A person must not pretend to be an inspector.

Maximum penalty—40 penalty units.

**362 Validity of inspector's conduct despite administrative contravention**

The failure of an inspector to comply with section 352(2) or (3) or schedule 2, part 3, section 9<sup>103</sup>—

- (a) does not affect the lawfulness or effect of an act done or omission made by the inspector for this Act; but
- (b) makes the inspector liable to disciplinary action.

**CHAPTER 11—RECORDS AND WAGES****PART 1—EMPLOYERS RECORDS***Division 1—Definitions***363 Definitions for pt 1**

In this part—

**“authorised industrial officer”** means a person who holds an authority in force under section 364.

**“record”** includes a computer record if—

- (a) a print-out or disk containing the contents of the record relevant to this part are separate from all other material in the print-out or disk; and
- (b) the print-out or disk gives the particulars required by this part accurately and in a way convenient for an inspection under this part.

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103 Section 352 (Powers) or schedule 2 (Appointments and procedures), part 3 (Inspectors), section 9 (Limitation on powers)



**“time and wages record”—**

- (a) for an industrial instrument employee—see section 366;<sup>104</sup> and
- (b) for a non-industrial instrument employee—see section 367.<sup>105</sup>

***Division 2—Authorised industrial officers*****364 Authorising industrial officers**

(1) The registrar, on application by an organisation, may issue an officer or employee of the organisation with an authority under this section.

(2) An authority may be subject to conditions stated in it.

(3) A person who holds an authority that is in force (an **“authorised industrial officer”**) may exercise the powers of an authorised industrial officer under this part.

(4) The authority—

- (a) must be applied for in the way prescribed under a regulation; and
- (b) is in force for the term stated in it, unless it sooner stops being in force for a reason mentioned in paragraph (c); and
- (c) stops being in force—
  - (i) on its revocation; or
  - (ii) on its suspension, for the period of suspension; or
  - (iii) on its holder ceasing to be an officer or employee of the organisation that made the application or ceasing to be an authorised industrial officer acceptable to the organisation.

(5) When an authority stops being in force under subsection (4)(c)(iii), the organisation who applied for it—

- (a) must notify the registrar within 14 days after the authorisation stops being in force; and

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104 Section 366 (Time and wages record—industrial instrument employees)

105 Section 367 (Time and wages record—non-industrial instrument employees)

- (b) on the registrar's request, must surrender the authority to the registrar.

Maximum penalty for subsection (5)—16 penalty units.

### **365 Revocation and suspending industrial officer's authorisation**

(1) This section applies if, on application by an employer, the commission considers an authorised industrial officer has—

- (a) breached a condition of the authorisation; or
- (b) contravened section 372(2);<sup>106</sup> or
- (c) exercised the officer's power to enter in an unreasonable or vexatious way; or
- (d) made unreasonable, vexatious or inappropriate use of information obtained from inspection of a record made available because of the officer's power as an authorised industrial officer.

(2) The commission may—

- (a) revoke the officer's authorisation; or
- (b) suspend the officer's authorisation for a period it considers appropriate; or
- (c) attach conditions to the officer's authorisation it considers appropriate.

### *Division 3—Employers to keep certain records*

### **366 Time and wages record—industrial instrument employees**

(1) An employer must keep, at a workplace of the employer in Queensland, a time and wages record that contains the following particulars for each industrial instrument employee—

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) for each pay period—

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106 Section 372 (Right of entry—authorised industrial officer)

- (i) the employee's designation; and
- (ii) the name of the industrial instrument or permit under which the employee is working; and
- (iii) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks; and
- (iv) if the industrial instrument or permit provides for—
  - (A) a weekly, daily or hourly wage rate—details of the wage rate for each week, day, or hour at which the employee is paid; or
  - (B) piecework rates—details of the piecework performed and the rate at which payment is made to the employee; and
- (v) the gross and net wages paid to the employee; and
- (vi) details of any deductions made from the wages; and
- (vii) contributions made by the employer to a superannuation fund;
- (d) if an employee's entitlement to long service leave is worked out under section 47<sup>107</sup>—the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year;
- (e) details of sick leave credited or approved, and sick leave payments to the employee;
- (f) the date when the employee became an employee of the employer;
- (g) if appropriate, the date when the employee stopped employment with the employer;
- (h) other particulars necessary to show compliance with the hours of work, wage rates and general employment conditions provided under the instrument, permit or order under chapter 5, part 5.<sup>108</sup>

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107 Section 47 (Continuity of service—additional considerations for casual employees)

108 Chapter 5 (Awards), part 5 (Wages and employment conditions for apprentices and trainees)

Maximum penalty—40 penalty units.

(2) The employer must ensure the time and wages record clearly states the employer's full name.

Maximum penalty—40 penalty units.

(3) If the industrial instrument does not limit the employee's daily or weekly working hours, particulars of the employee's starting and finishing times each day need not be recorded, unless the instrument requires it.

(4) The employer must keep the record for 6 years.

Maximum penalty—40 penalty units.

(5) On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(d) for the employee, worked out to the previous 30 June.

Maximum penalty—40 penalty units.

(6) In this section—

“**employer**” includes an employer to whom an order made under section 140A<sup>109</sup> applies.

“**industrial instrument employee**” means—

- (a) a person who—
  - (i) is employed by the employer; and
  - (ii) works under an industrial instrument or permit; or
- (b) a student to whom an order made under section 140A applies.

### **367 Time and wages record—non-industrial instrument employees**

(1) An employer must keep, at a workplace of the employer in Queensland, a time and wages record that contains the following particulars for each non-industrial instrument employee—

- (a) the employee's full name and address;
- (b) the employee's date of birth;
- (c) for each pay period—
  - (i) the employee's designation; and

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109 Section 140A (Vocational placement)

- (ii) the number of hours worked by the employee during each day and week; and
  - (iii) the employee's wage rate; and
  - (iv) the gross and net wages paid to the employee; and
  - (v) details of any deductions made from the wages;
- (d) if an employee's entitlement to long service leave is worked out under section 47—the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

Maximum penalty—40 penalty units.

**(1A)** Subsection (1)(b) and (c)(ii) does not apply to an employee who is excluded from the operation of a general ruling for the Queensland minimum wage under section 287(5).

**(2)** The employer must ensure the time and wages record clearly states the employer's full name.

Maximum penalty—40 penalty units.

**(3)** The employer must keep the record for 6 years.

Maximum penalty—40 penalty units.

**(4)** On the employee's request, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(b) for the employee, worked out to the previous 30 June.

Maximum penalty—40 penalty units.

**(5)** In this section—

**“non-industrial instrument employee”** means a person who—

- (a) is employed by the employer; and
- (b) works other than under an industrial instrument or a permit.

### **368 Employee register**

**(1)** An employer must keep an employee register that contains the following particulars for each employee—

- (a) the employee's full name and residential address;

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- (b) for a person who is residing other than at the person's permanent residence when the person becomes an employee—the person's permanent residential address and the address of the person's other residence;
- (c) the calling in which the employee is engaged;
- (d) the date when the employee became an employee of the employer;
- (e) if appropriate, the date when the employee stopped employment with the employer.

Maximum penalty—40 penalty units.

(2) If an employer has more than 100 employees and the register is not an alphabetical index itself, the employer must keep an alphabetical index of the employee's names.

Maximum penalty—40 penalty units.

(3) The index may be in a loose leaf, computer print-out or card index form.

(4) Within 14 days after a change in an employee's calling, the employer must enter in the register particulars of the change and the date when the change happened.

Maximum penalty—40 penalty units.

(5) An employee must inform the employer of—

- (a) the employee's residential address whenever asked by the employer; and
- (b) if the employee changes the employee's residential address—the new address immediately.

Maximum penalty—40 penalty units.

(6) Particulars must be entered in a register opposite and relative to the name of the employee to which they relate.

(7) If an employer carries on business at more than 1 place, the employer must keep a register and index for each place.

### **369 Records to be kept in English**

A record or index kept under this part must be in the English language.

**370 Notation of wages details**

(1) When paying an employee wages, the employer must state how the payment is made up by giving a written statement to the employee.

Maximum penalty—40 penalty units.

(2) The statement may be given on the employee's pay envelope or advice and must include the following particulars—

- (a) the date of payment;
- (b) the period covered by the payment;
- (c) the number of hours covered by the payment at—
  - (i) ordinary wage rate; and
  - (ii) overtime wage rate;
- (d) the ordinary hourly rate and the amount paid at that rate;
- (e) the overtime hourly rate and the amount paid at that rate;
- (f) the gross wages paid;
- (g) the net wages paid;
- (h) details of any deductions made from the wages;
- (i) the amount of contribution paid to a superannuation fund.

(3) The statement must also clearly state the employer's full name.

Maximum penalty—40 penalty units.

***Division 4—Power to inspect certain records*****371 Inspection of time and wages record—inspector**

(1) An inspector may inspect a time and wages record at a workplace in the employer's business hours.

(2) The employer must allow the inspector to inspect the record.

Maximum penalty—40 penalty units.

(3) Subsection (4) applies if—

- (a) an employer does not produce the record to the inspector; or
- (b) an inspector is obstructed during the inspection of the record; or

(c) an inspector wants to inspect the record of a former employer.

(4) The inspector may, by notice, require the employer or former employer to produce the record—

(a) at—

(i) a stated workplace of the employer; or

(ii) for an employer who has no official workplace or a former employer—a reasonably convenient place nominated by the inspector; and

(b) at a stated reasonable time.

(5) If the employer or former employer does not produce the record as required by the notice, the employer or former employer is taken to have failed to keep the record, unless he or she has a reasonable excuse.

(6) The notice may be given by post or in another way.

### **372 Right of entry—authorised industrial officer**

(1) An authorised industrial officer may enter a workplace at which an employer carries on a calling of the officer's organisation, during the employer's business hours, to exercise a power under section 373.

(2) On entering the workplace, the officer must first—

(a) notify the employer or the employer's representative of the officer's presence; and

(b) produce the officer's authorisation, if required by the employer or representative.

(3) An employer must not refuse an authorised industrial officer entry to the workplace if the officer complies with subsection (2).

Maximum penalty—27 penalty units.

(4) If the officer does not comply with subsection (2), the officer may be treated as a trespasser.

(5) Subsection (2) does not apply if on entering the workplace, the officer discovers that neither the employer nor an employer's representative having charge of the workplace is present.



**373 Right to inspect and request information—authorised industrial officer**

(1) This section applies to an authorised industrial officer who has entered a workplace under section 372.

(2) The officer may inspect the time and wages record of—

- (a) a member employee; or
- (b) an employee who is eligible to become a member of the officer's organisation; or
- (c) an employee who is a party to a QWA or ancillary document, but only with the employee's written consent.

(3) The employer—

- (a) must allow the officer to inspect the record for an employee mentioned in subsection (2)(a) or (b), unless the employee has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; and
- (b) must not allow the officer to inspect the record for—
  - (i) an employee who has made a written request to the employer that the record not be available for inspection by an authorised industrial officer or a particular authorised industrial officer; or
  - (ii) an employee mentioned in subsection (2)(c), unless the employee has given written consent.

Maximum penalty—27 penalty units.

(3A) The officer may make a copy of the record, but can not require any help from the employer.

(4) A person must not, by threats or intimidation, persuade or attempt to persuade an employee or prospective employee to make, or refuse to make, a written request to the employer or prospective employer that the record not be available for inspection by an authorised industrial officer.

Maximum penalty—27 penalty units.

(5) If the employer keeps particulars other than those mentioned in section 366<sup>110</sup> in the record, the employer need not make the other particulars available for inspection.

(6) The officer may discuss matters under this Act with the following persons during working or non-working time—

- (a) the employer;
- (b) a member employee, or an employee who is eligible to become a member of the officer's organisation.

(7) The officer may discuss any other matter with a member employee, or an employee who is eligible to become a member of the officer's organisation, during non-working time.

(8) A person must not obstruct the officer exercising a power under subsection (6) or (7).

Maximum penalty—27 penalty units.

(9) The officer must not—

- (a) wilfully obstruct the employer, or an employee during the employee's working time; or
- (b) contravene a requirement of this section.

Maximum penalty—27 penalty units.

(10) A person must not act as an authorised industrial officer under this section, unless the person holds a current authorisation.

Maximum penalty—27 penalty units.

(11) In this section—

**“member employee”** means—

- (a) an employee who is a member of the authorised industrial officer's organisation; or
- (b) a former employee who was, or is, a member of the officer's organisation.

**“time and wages record”** means the time and wages record required to be kept under section 366.

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110 Section 366 (Time and wages record—industrial instrument employees)

**374 Inspection of employee register and index—registrar**

(1) The registrar may inspect an employer's employee register and index at the employer's workplace during the employer's business hours.

(2) The employer must allow the registrar to inspect the record or index.  
Maximum penalty—40 penalty units.

(3) The registrar may, by notice, direct the employer to give the register or index to a stated person, at a stated reasonable time and place, if—

- (a) the registrar requires a register or index for the taking of a ballot;  
or
- (b) the court or commission orders the register or index be made available for another purpose.

(4) The employer must comply with the direction.  
Maximum penalty for subsection (4)—40 penalty units.

**375 Inspection of time and wages book—employees**

(1) An employee may inspect the time and wages record for the employee's particulars relating to the 12 month period before the inspection.

(2) At the employer's discretion, the employer may give the particulars to the employee in writing.

(3) Unless the employer otherwise consents, the employee may inspect the record only—

- (a) once in any 12 month period; and
- (b) during the employer's business hours, but outside the employee's working time.

## **PART 2—WAGES AND OCCUPATIONAL SUPERANNUATION**

### *Division 1—Interpretation*

#### **376 Definitions for pt 2**

In this part—

**“assignment”** includes disposition and charge, whether legal or equitable.

**“contracted work”** means work that is, or is to be, performed under a contract or undertaking (whether written or unwritten).

**“employer”**, in division 2, means the person—

- (a) with whom a prime contractor has contracted to perform work; or
- (b) who has an obligation to a prime contractor to perform work.

**“fixed rate”**, in division 3,<sup>111</sup> means the rate applicable under—

- (a) for an apprentice or trainee—section 136; or
- (b) for an employee under an industrial instrument or permit—the industrial instrument or permit; or
- (c) for an employee who is entitled to the Queensland minimum wage and in relation to whom paragraph (a) or (b) does not apply—a general ruling for the Queensland minimum wage.

**“mine”**, in division 4,<sup>112</sup> means a mine within the meaning of the *Mining and Quarrying Safety and Health Act 1999*.

**“mortgagee”**, in division 4, means a person entitled to payment under the security of an instrument of mortgage, crop lien, stock mortgage or bill of sale.

**“mortgagor”**, in division 4, means a person liable to pay a mortgagee under an instrument of mortgage, crop lien, stock mortgage or bill of sale.

**“prime contractor”** means—

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111 Division 3 (Paying and recovering wages)

112 Division 4 (Wages in rural and mining industries)

- (a) a person (the “**contractor**”) who contracts with someone else for the performance of work by the other person, or at whose request, or on whose credit or behalf and with whose knowledge and consent, work is performed; or
- (b) a person, claiming under the contractor, whose rights are acquired after the work begins.

“**rate**”, in division 3, includes price.

“**subcontractor**” means a person who contracts with an employer to perform work to discharge the employer’s obligation to a prime contractor.

### **377 References to service**

A reference in this part to service on a person includes reference to service on the person’s agent.

## *Division 2—Protection for wages*

### **378 Wages are first charge on amounts payable to employer**

(1) Wages payable to employees employed on any contracted work are, subject to the prime contractor’s rights as prescribed under this Act, a first charge on the amount payable to the employer by the prime contractor for the work.

(2) Until a notice of attachment under section 381<sup>113</sup> is served on the prime contractor, the prime contractor may pay the employer all amounts payable for the contracted work.

### **379 Assignment of amount payable ineffectual against claims for wages**

(1) This section applies to an assignment by an employer of amounts that have become, or are to become, payable to the employer by a prime contractor for contracted work.

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113 Section 381 (Attachment notices)

(2) The assignment is of no effect as against wages payable, or to become payable, to employees employed by the employer in performance of the work.

(3) Subsection (2) does not apply if the assignment is to the employees employed by the employer in performance of the work concerned for wages payable, or to become payable, to them for performing the work.

### **380 Amounts paid or payable to employer to be applied in payment of wages**

(1) This section applies to amounts paid or payable to an employer by a prime contractor for contracted work.

(2) The amount is not liable to be attached or charged, except by employees mentioned in subsection (5), until all wages payable, or to become payable, to the employees have been properly paid to them or have been secured to them in a way approved by a magistrate.

(3) The employer must apply the amounts received, to the extent necessary, in payment of wages payable, or to become payable, to employees employed by the employer in performance of work for which the amounts are received.

Maximum penalty—40 penalty units.

(4) The employer must keep an accurate written account of the amounts received from the prime contractor, and of the way the amounts have been disbursed or disposed of.

Maximum penalty—40 penalty units.

(5) The employer must produce the account for inspection to an employee mentioned in subsection (3)—

- (a) whose wages are more than 8 days in arrears and are not paid when demanded; and
- (b) who asks to see the account.

Maximum penalty—40 penalty units.

(6) The employer must allow the employee to make a copy of the account.

Maximum penalty—40 penalty units.

**381 Attachment notices**

An employee, whose wages remain unpaid for 24 hours after they are payable and have been demanded by the employee, may serve the prime contractor with an attachment notice in the approved form.

**382 Effect of attachment notice**

(1) This section applies if an attachment notice is served on the prime contractor.

(2) The prime contractor must retain from the amounts payable, or to become payable, by the prime contractor to the employer for the contracted work an amount sufficient to satisfy—

- (a) the claim for wages specified in the notice; and
- (b) all further claims for wages specified in notices of attachment served on the prime contractor within 7 days after the service of the first notice.

(3) At the end of the 7 day period, the amount claimed as wages and specified in the notices is attached in the prime contractor's hands, and must be kept by the prime contractor until—

- (a) a magistrate orders to whom, and in what way, the amount must be paid; or
- (b) the prime contractor deals with the amount under subsection (4); or
- (c) the notices are withdrawn.

(4) After being served with a notice, the prime contractor may pay the amount to which the notice relates to a clerk of the Magistrates Court until—

- (a) a magistrate makes an order in relation to the amount; or
- (b) the notice is withdrawn.

(5) The payment—

- (a) must be accompanied by the notice or a copy of it; and
- (b) is a full discharge of the prime contractor from liability for the amount paid and costs of proceedings for the amount.

(6) An amount paid to a clerk of the Magistrates Court may be paid out only—

- (a) on the order of a magistrate; or
- (b) if the relevant attachment notice is withdrawn.

(7) A prime contractor who fails to keep, or to pay under subsection (4), an amount required by subsection (2) or (3) to be kept is personally liable to each employee in the amount of the employee's claim for wages stated in the employee's attachment notice served on the prime contractor.

(8) An employee who has served an attachment notice on a prime contractor may withdraw the notice by giving notice of withdrawal to—

- (a) the prime contractor; and
- (b) the employer to whom amounts are payable, or are to become payable, by the prime contractor.

### **383 Orders for payment by prime contractor or clerk of the court**

(1) Subsection (2) applies if an employee who served an attachment notice on a prime contractor obtains judgment from a magistrate against the employer for the claim for wages.

(2) The magistrate may order the judgment be satisfied, wholly or partly, by payment of a stated amount—

- (a) from amounts paid to the clerk of the Magistrates Court under section 382(4); or
- (b) if no amount was paid to the clerk under section 382(4) or the amount paid was not enough to cover the amount ordered to be paid by the magistrate—by the prime contractor.

(3) In deciding the amount that should be ordered to be paid for an employee's claim, the magistrate must take into account the existence of claims for wages of other employees of the employer of which the magistrate has knowledge.

(4) Subject to any appeal against the magistrate's decision, the clerk or prime contractor must pay the amount stated in the relevant order to the employee from the amounts—

- (a) paid to the clerk under section 382(4); or
- (b) attached and kept in the hands of the prime contractor.

(5) Payment must be made within 21 days after a copy of the order is served on the clerk or prime contractor.



(6) If an appeal is started and notice of it is served, the clerk or prime contractor must continue to keep or hold the amounts from which payment is to be made until the appeal is finally decided or discontinued.

(7) The prime contractor is not liable to a greater extent than the amount actually payable by the prime contractor to the employer when—

- (a) the order is served; or
- (b) payment is made under the order;

whichever is the greater.

### **384 Employees to be paid according to when attachment notices are served**

(1) An amount attached in the hands of a prime contractor, or paid to a clerk of the Magistrates Court, is to be paid in priority according to the order of the service of the relevant attachment notices.

(2) However, for this section, all notices served within 7 days after the service of the first notice are—

- (a) taken to have been served simultaneously with the first notice; and
- (b) accorded equal priority to distribution of the amount attached or paid.

(3) The claims for wages of all employees who are taken to have served notices simultaneously must be paid in full, unless the amounts attached in the hands of the prime contractor or held by the clerk are insufficient for the purpose.

(4) If the amounts are insufficient for the purpose, the claims are to abate in equal proportions among themselves.

(5) Subsection (1) is subject to sections 381 to 383.<sup>114</sup>

### **385 Employee may sue prime contractor**

(1) Subsection (2) applies if—

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<sup>114</sup> Sections 381 (Attachment notices), 382 (Effect of attachment notice) and 383 (Orders for payment by prime contractor or clerk of the court)

- (a) a prime contractor is served with a copy of the magistrate's order made under section 383(2);<sup>115</sup> and
- (b) the amount stated in the order and payable by the prime contractor is not paid in accordance with the order.

(2) The employee in whose favour the order is made may, in an Industrial Magistrates Court and in the employee's own name, sue the prime contractor for the amount stated in the order and unpaid, by way of any action or proceedings the employer could have brought against the prime contractor as if—

- (a) there had been no attachment of amounts under this part; and
- (b) the amounts required by the attachment under section 381<sup>116</sup> to be kept were payable to the employer and unpaid.

(3) The employee's entitlement is subject to the prime contractor's right to set off against the employee's claim all amounts—

- (a) properly paid by the prime contractor to the employer under section 378(2);<sup>117</sup> and
- (b) the employer was, when the notice was served on the prime contractor, liable to pay the prime contractor for a breach, or non-performance, of the contract or undertaking in performance of which the relevant work is or is to be performed.

### **386 Cessation of attachment not to prejudice prime contractor**

(1) This section applies if an order under section 383<sup>118</sup> stops operating because—

- (a) of satisfaction of the employee's claim; or
- (b) it is set aside.

(2) A prime contractor who has paid an amount in accordance with the order before receiving notice of the satisfaction or setting aside is not to be prejudiced in relation to the payment because the order stopped operating.

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115 Section 383 (Orders for payment by prime contractor or clerk of the court)

116 Section 381 (Attachment notices)

117 Section 378 (Wages are first charge on amounts payable to employer)

118 Section 383 (Orders for payment by prime contractor or clerk of the court)

**387 Discharge by employee for payment received**

An employee who receives an amount for a claim for wages to which an order under section 383 relates must sign a discharge for the amount, in the approved form if asked by the person making the payment.

**388 Remedy of subcontractor's employees**

(1) If an employer has let the performance of work to a subcontractor, an employee employed by the subcontractor in that work has the same rights and remedies for a claim for wages against the employer under this division as an employee of the employer has against a prime contractor.

(2) For subsection (1), in construing this division (other than section 376<sup>119</sup> and this section) 'employer' is substituted for 'prime contractor' and 'subcontractor' is substituted for 'employee'.

**389 Prime contractor's right to reimbursement**

(1) This section applies if—

- (a) a prime contractor has paid a claim for wages payable to an employee of the employer, in satisfaction of the prime contractor's obligations under this division; and
- (b) either of the following happens—
  - (i) for an employer who is a corporation—winding-up proceedings are commenced;
  - (ii) for an employer who is an individual—the employer's assets are distributed in insolvency of the employer or in a composition with the employer's creditors.

(2) The prime contractor is taken to have a claim for wages against the employer's assets, which is a preferential claim, as if the prime contractor were an employee of the employer to whom wages were payable by the employer.

(3) This section applies only to the extent that a State law may validly apply to the distribution of assets.

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119 Section 376 (Definitions for pt 2)

**390 Magistrate may hear claim for wages ex parte**

A magistrate may hear and decide proceedings for a claim for wages in the absence of a person to whom the originating process is directed on proof, on oath or affirmation, of the service of the process.

***Division 3—Paying and recovering wages*****391 Wages etc. to be paid without deduction**

(1) If an employer employs an employee to perform work for a fixed rate, the employer must pay the employee the fixed rate without deduction, other than a deduction authorised by—

- (a) a relevant industrial instrument; or
- (b) this division; or
- (c) the employee's written consent.

(2) An employer must pay an apprentice or trainee the fixed rate without deduction, other than a deduction mentioned in subsection (1)(a), (b) or (c) until—

- (a) the apprentice or trainee is suspended or the apprentice's or trainee's training contract is cancelled; or
- (b) the Training Recognition Council has allowed the employer to stand-down the apprentice or trainee under the *Vocational Education, Training and Employment Act 2000*.

(3) If—

- (a) an employer employs an employee to perform work for a rate agreed between the employer and the employee; and
- (b) either—
  - (i) the rate for the work is not fixed by a relevant industrial instrument or permit; or
  - (ii) the fixed rate is less than the agreed rate;

the employer must pay the employee the agreed rate without deduction, other than a deduction authorised by this division or the employee's written consent.

(4) A contract or authority is void to the extent it provides for a deduction to be made from wages in contravention of this section.

### **392 Paying apprentices or trainees for supervised training**

(1) Time spent by an apprentice or trainee undertaking supervised training is taken to be—

- (a) time worked for the employer; and
- (b) ordinary working hours when calculating the apprentice's or trainee's wages and employment conditions.

*Example of paragraph (b)—*

A trainee is required to work 38 ordinary working hours a week under an award. In a particular week, the trainee spends 30 hours working for the employer and 10 hours at college. The trainee is entitled to be paid 38 hours ordinary time (which includes 10 hours ordinary time for the time spent at college) and 2 hours overtime.

(2) Subsection (1) applies irrespective of the way the supervised training is delivered.

*Examples of ways supervised training can be delivered—*

Block release, day release, workplace-delivered training or correspondence.

(3) Despite subsection (1), wages are not payable for time spent by an apprentice or trainee undertaking supervised training when the apprentice or trainee is—

- (a) a school-based apprentice or trainee; or
- (b) the subject of a decision of the approving authority under section 162 or 211.

(4) In this section—

**“supervised training”**, for an apprentice or trainee, means training up to the maximum period required, under the *Vocational Education, Training and Employment Act 2000*, to be delivered by a supervising registered training organisation during the apprenticeship or traineeship.

### **393 Paying wages**

(1) An employee's wages must be paid at least monthly to the employee.  
Maximum penalty—16 penalty units.

**(2)** The wages must be paid—

- (a) in Australian currency; or
- (b) with the employee's written consent—
  - (i) wholly or partly to the employee's credit in an account with a financial institution nominated by the employee; or
  - (ii) by cheque of a type mentioned in subsection (5), draft, money order or electronic fund transfer; or
- (c) in another way allowed under a relevant industrial instrument.

Maximum penalty—16 penalty units.

**(3)** If—

- (a) wages are to be paid in cash; and
- (b) the amount is not a multiple of 5c;

the amount may be rounded to the nearest amount that is a multiple of 5c, even if this involves a reduction.

**(4)** If wages are to be paid other than in cash, they are to be paid without deduction of any charge made because of the way payment is made.

Maximum penalty—16 penalty units.

**(5)** Except with the employee's written consent, a cheque by which wages are paid—

- (a) must be payable to a bearer on demand; and
- (b) must not be crossed.

**(6)** If wages are payable to an employee when the employee stops employment with the employer, the wages must be paid to the employee within 3 days after the employment stops, unless—

- (a) section 395 applies; or
- (b) the employer has complied with an inspector's demand under section 358.<sup>120</sup>

Maximum penalty—40 penalty units.

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<sup>120</sup> Section 358 (Paying employee's wages etc. to inspector)

(7) If an employee accepts for wages a cheque, draft or money order that is dishonoured, the employee may recover from the employer by action in a court of competent jurisdiction as a debt payable to the employee—

- (a) the wages payable; and
- (b) a reasonable amount for damages suffered by the employee because of the dishonour.

(8) A contract or authority is void to the extent it provides for payment of wages other than under this section.

### **394 Contract not to stipulate mode of spending wages**

(1) Subject to this division, an employer is not, directly or indirectly, to impose as a condition, express or implied, of an employee's employment, a provision about the place where, way in which, or person with whom an employee's wages, or a part of the wages, are to be spent.

Maximum penalty—16 penalty units.

(2) An employer must not dismiss an employee because the employee's wages, or a part of the wages, are spent, or not spent, at a place, in a way, or with a person.<sup>121</sup>

### **395 Payment of unpaid wages if employee's whereabouts unknown**

(1) Subsection (2) applies if—

- (a) an employer can not comply with section 391<sup>122</sup> because the former employee's whereabouts are unknown to the employer and can not be discovered by the employer with reasonable diligence; and
- (b) the inability continues for 30 days after cessation of employment by the former employee.

(2) The employer, immediately at the end of the 30 days, must pay the wages payable to the former employee to the nearest clerk of the Magistrates Court.

Maximum penalty—40 penalty units.

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121 See section 73 (When is a dismissal unfair).

122 Section 391 (Wages etc. to be paid without deduction)

(3) The receipt of the clerk for the payment is a full discharge to the employer for the amount stated in the receipt.

(4) The clerk must pay the amount—

- (a) if the former employee's whereabouts are discovered—to the former employee; or
- (b) if at the end of a further 30 days, the amounts have not been paid to the former employee—to the department's funds for the former employee.

(5) This section does not apply if the employer has complied with an inspector's demand made under section 358.<sup>123</sup>

### **396 Overpaid wages**

(1) This division does not prevent an employer recovering an amount paid to an employee that the employee is not entitled to because of absence from work.

(2) Without limiting the employer's right to recover, the employer may recover an amount to which the employee is not entitled by deducting amounts from the employee's wages for a subsequent pay period or periods.

(3) Deductions under subsection (2)—

- (a) must be commenced within 1 year after the payment; and
- (b) may extend over a period of 6 years after the payment.

(4) A deduction can not be made in an amount that would reduce the wages payable to the employee for a pay period to less than an amount prescribed under a regulation.

### **397 Deduction of wages in lieu of notice of termination**

(1) This section applies if—

- (a) an industrial instrument requires an employee to give notice of termination of employment for a specified period; and
- (b) an employee ceases the employment without giving the employer the notice for the specified period.

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<sup>123</sup> Section 358 (Paying employee's wages etc. to inspector)



(2) The employer may deduct from the employee's wages an amount stated by the instrument to be forfeited or payable to the employer if notice of termination is not given for the period specified.

### **398 Minor may recover unpaid wages**

A minor may bring proceedings under this Act for the minor's wages in the same way, and to the same extent, as if the minor were 18 years.

### **399 Recovery of unpaid wages etc.**

(1) An application may be made to a magistrate for an order for payment of—

- (a) an employee's unpaid wages; or
- (b) an apprentice's unpaid tool allowance under section 138;<sup>124</sup> or
- (c) remuneration lost by an apprentice or trainee because the employer has contravened section 391(2);<sup>125</sup>
- (d) remuneration unpaid because a person contravened an order mentioned in section 140A(1).

(2) The application may be made by—

- (a) the employee; or
- (b) an employee organisation of which the employee is a member, acting for the employee; or
- (c) a person authorised by the employee to make the application, acting for the employee; or
- (d) an inspector.

(3) The application must be made within 6 years after the amount claimed became payable.

(4) However, for an apprentice or trainee, the application can not relate to an amount payable more than 4 years before the commencement of this section.

(5) On hearing the application, the magistrate—

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124 Section 138 (Order setting tool allowance)

125 Section 391 (Wages etc. to be paid without deduction)

- (a) must order the employer to pay the employee the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and
- (b) may make an order for the payment despite an express or implied provision of an agreement to the contrary; and
- (c) may order the payment to be made on the terms the magistrate considers appropriate; and
- (d) may award costs to either party in an amount assessed by the magistrate.

(6) A person can not make an application under this section if an application has been made under section 278<sup>126</sup> for the same matter.

(7) In this section—

“**employee**” includes a student to whom an order made under section 140A<sup>127</sup> applies.

“**employer**” includes an employer to whom an order made under section 140A applies.

#### **400 Enforcement of magistrate’s order**

(1) This section applies to an order of a magistrate for payment by an employer of—

- (a) wages found to be payable; or
- (b) an unpaid tool allowance required to be paid under an order made under section 138(9);<sup>128</sup> or
- (c) contributions to an approved superannuation fund found to be payable; or
- (d) remuneration lost by an apprentice or trainee because the employer contravened section 391(2);<sup>129</sup> or
- (e) remuneration unpaid because a person contravened an order mentioned in section 140A(1); or

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126 Section 278 (Power to recover unpaid wages and superannuation contribution etc.)

127 Section 140A (Vocational placement)

128 Section 138 (Order setting tool allowance)

129 Section 391 (Wages etc. to be paid without deduction)

(f) costs in proceedings relating to unpaid amounts mentioned in paragraphs (a) to (e).

(2) The order is enforceable under the *Justices Act 1886* as an order for payment of money made by justices under that Act.

(3) If an order is made, the amount ordered to be paid (including costs) is a debt payable to the person, in whose favour the order is made, by the employer.

(4) The order may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

- (a) is taken to be an order properly made by a Magistrates Court; and
- (b) without limiting subsection (2), may be enforced as an order made by a Magistrates Court.

(5) In this section—

“**employer**” includes an employer to whom an order made under section 140A<sup>130</sup> applies.

#### *Division 4—Wages in rural and mining industries*

### **401 Wages recoverable against mortgagee if mortgagor defaults**

(1) This section applies if an employee—

- (a) has performed work—
  - (i) in cultivating, or otherwise improving, land that is subject to a mortgage; or
  - (ii) in cultivating, or otherwise in connection with, a crop that is subject to a lien; or
  - (iii) relating to animal or vegetable matter prepared or manufactured by machinery that is subject to a bill of sale; or
  - (iv) in tending, feeding, driving, or otherwise in connection with, stock that is subject to a mortgage; and

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130 Section 140A (Vocational placement)

- (b) is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because—
- (i) the mortgagee has entered into, or taken possession of the land, crop, machinery or stock, or is taken to have done so; or
  - (ii) the mortgagee has sold the land, crop, machinery or stock, under the mortgagee's security; or
  - (iii) a cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee.

(2) The mortgagee is taken to be the employee's employer for the performance of the work.

(3) The mortgagor is taken, in engaging the employee for the work, to have acted as the mortgagee's authorised agent.

(4) Subsections (2) and (3) do not affect appropriate accounting as between the mortgagor and the mortgagee.

(5) A mortgagee is not liable for the employee's wages that have become payable more than 6 months before whichever of the following events happens first—

- (a) the employee first applies to the mortgagee for payment of the wages;
- (b) the mortgagee takes possession of, or sells, the land, crop, machinery or stock.

(6) The mortgagee's liability under this section—

- (a) is additional to the mortgagor's liability for the employee's wages; and
- (b) does not affect rights, liabilities, functions and powers as between the mortgagor and employee.

(7) An employee does not lose a right to bring proceedings against the mortgagee for unpaid wages, and costs of the proceedings, if the employee—

- (a) brings proceedings against a mortgagor for wages, whether or not the employee obtains an order for payment against the mortgagor; and
- (b) because of a reason in subsection (1)(b), fails to obtain payment of the wages, or part of the wages, from the mortgagor.

**402 Distress warrant levied on property of mortgagor or mortgagee**

(1) A warrant of distress issued to enforce an order for payment of an employee's wages for work performed in connection with property mentioned in section 401(1), as far as the land, crop, machinery or stock is concerned—

- (a) authorises distress on and sale of the mortgagee's property and the mortgagor's property; and
- (b) may be executed on the mortgaged land or the encumbered crop, machinery, or stock even though the mortgagee has entered into or taken possession of the land, crop, machinery or stock, or is taken to have done so, under the mortgagee's security.

(2) An amount paid by, or recovered from, the mortgagee for the wages—

- (a) is taken to be an advance made by the mortgagee to the mortgagor under the mortgagee's security; and
- (b) may be recovered by the mortgagee under the security.

(3) In this section—

“land” includes the fixtures on the land.

**403 Application of ss 401 and 402 to mines**

(1) Sections 401 and 402 apply, with necessary changes, if an employee—

- (a) has performed work in or about—
  - (i) a mine, including its fixtures, that is subject to a mortgage; or
  - (ii) machinery or apparatus, used in or for a mine, that is subject to a bill of sale; and
- (b) is prevented from, or hindered in, recovering wages for the work from the mortgagor as employer because—
  - (i) the mortgagee has entered into, or taken possession of, the mine, machinery or apparatus, or is taken to have done so; or
  - (ii) has sold the mine, machinery or apparatus, under the mortgagee's security; or

(iii) a cheque, draft or order drawn by the mortgagor on the mortgagee is dishonoured by the mortgagee.

(2) However, a mortgagee is not liable for the employee's wages that have become payable more than 1 month before whichever of the following events happens first—

- (a) the employee first applies to the mortgagee for payment of the wages;
- (b) the mortgagee takes possession of, or sells, the mine, machinery or apparatus.

(3) In this section—

“wages” for work includes earnings for work.

#### **404 Priority in payment of wages earned in mine**

(1) An amount of wages, of not more than 4 weeks, payable to an employee for employment in or about a mine—

- (a) is a first charge on the claim or land in or on which the mine is situated; and
- (b) in the winding-up of a corporation formed for or engaged in working the mine, must be paid in priority to all other debts, secured or unsecured, of the corporation.

(2) Subsection (1)(a) applies even though—

- (a) the claim or land is mortgaged or charged to secure payment of other amounts; or
- (b) there is a lien on the claim or land.

(3) Subsection (1)(b) applies only to the extent that a law of the State may validly apply to the distribution of assets in a winding-up.

(4) If a first charge exists under subsection (1)(a), the amount charged includes—

- (a) all amounts awarded by a court as costs against an employer in proceedings brought by or for an employee to recover the wages mentioned in the subsection; and
- (b) the amount of costs, charges and expenses reasonably incurred in attempting to enforce an order or orders for payment of the wages.

(5) The debts that are a first charge under subsection (1)(a) or are to be paid in priority under subsection (1)(b)—

- (a) rank equally among themselves; and
- (b) if necessary, abate in equal proportions among themselves.

(6) In this section—

“wages” for work includes earnings for work.

### *Division 5—Occupational superannuation*

#### **405 Agreement about superannuation fund**

(1) This section applies if an industrial instrument requires an employer to pay contributions to a specified superannuation fund.

(2) Despite the instrument, the required contributions may be paid to a complying superannuation fund agreed to by the employer and employee.

(3) The agreement must be written and signed by the employer and employee.

(4) A person must not coerce someone else to make an agreement mentioned in subsection (3).

Maximum penalty for subsection (4)—40 penalty units.

#### **406 Contributing occupational superannuation**

(1) An employer must contribute, for eligible employees, to the approved superannuation fund at the level required by the relevant industrial instrument.

Maximum penalty—40 penalty units.

(2) The offence is a continuing offence that may be charged in 1 or more complaints for 1 or more periods.

(3) An employer who contributed—

- (a) to a complying superannuation fund at a level required by a relevant industrial instrument; but
- (b) to a fund that is not the approved superannuation fund;

does not commit an offence unless the employer has knowingly contravened the instrument.

(4) If the commission makes an order under section 407(2), an employer who fails to contribute in accordance with the order is taken to fail to make the contribution under the relevant industrial instrument, whether or not the order was directed to that employer.

(5) The court by which a defendant is found guilty of an offence against subsection (1) may make, in relation to the defendant, an order that a magistrate is authorised by section 408<sup>131</sup> to make on an application under that section, and that section applies and extends accordingly.

#### **407 Power to order contribution to particular fund**

(1) This section applies if—

- (a) an industrial matter relates to an allegation that an employer has been, or is, contributing to a complying superannuation fund for employees at a level required by a relevant industrial instrument; but
- (b) the fund is not the approved superannuation fund.

(2) The commission, of its own initiative or on application by an inspector, organisation or employee concerned, may—

- (a) decide which complying superannuation fund the employer should have been, or should be, contributing to comply with the relevant industrial instrument; and
- (b) order the employer to contribute accordingly.

(3) If the commission considers it appropriate, the commission may make its order to operate from the date when a particular employee became eligible for payment of contribution to the fund decided by the commission.

(4) The commission may recognise all or any of the contribution made by an employer to a complying superannuation fund up to and including the date of the commission's decision as having met the requirements, or a part of them, of a relevant industrial instrument, relating to employers' contribution to the approved superannuation fund.

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131 Section 408 (Recovery of unpaid superannuation contribution)



**408 Recovery of unpaid superannuation contribution**

(1) An application may be made to a magistrate for an order for payment of contributions to the approved superannuation fund payable for an eligible employee that are unpaid.

(2) The application may be made by—

- (a) an employee who is an eligible employee on whose behalf an employer is required to contribute to an approved superannuation fund; or
- (b) an employee organisation of which the employee is a member, acting for the employee; or
- (c) an inspector.

(3) The application must be made within 6 years after the amount claimed became payable.

(4) On hearing the application, the magistrate must order the employer to pay the employee—

- (a) the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and
- (b) an amount the magistrate considers appropriate, based on the return that would have accrued in relation to the contribution had it been properly paid to the fund.

(5) The magistrate may award costs to either party in an amount assessed by the magistrate.

(6) The magistrate may only make an order about the payment of the amount that the commission may make under section 278(9) or (10).<sup>132</sup>

(7) A person can not make an application under this section if an application has been made under section 278 for the same matter.

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132 Section 278 (Power to recover unpaid wages and superannuation contribution etc.)

## CHAPTER 11A—FEES CHARGED BY PRIVATE EMPLOYMENT AGENTS

### 408A Definitions for ch 11A

In this chapter—

“**fee**” includes charge, expense of any kind and reward.

“**manager**” see section 408C.

“**model**” means a person whose work is to—

- (a) pose for a painter, photographer, sculptor or other artist; or
- (b) put on articles of clothing or accessories, including, for example, jewellery, hats and shoes, and display them to customers, the public or for advertising purposes; or
- (c) display a hairstyle or other personal body ornamentation or decoration.

“**performer**” means a person whose work is to act, dance, mime, perform, play, sing or speak in advertising or entertainment.

“**private employment agent**” see section 408B.

“**publish**” includes—

- (a) publish in writing or in any other form of media; and
- (b) cause to be published.

### 408B Meaning of “private employment agent”

(1) A person is a “**private employment agent**” if the person, in the course of carrying on business and for gain—

- (a) offers to find—
  - (i) casual, part-time, temporary, permanent or contract work for a person; or
  - (ii) a casual, part-time, temporary, permanent or contract worker for a person; or
- (b) negotiates the terms of contract work for a model or performer; or

- (c) administers a contract for a model or performer and arranges payments under it; or
- (d) provides career advice for a model or performer.

(2) However, a person is not a “**private employment agent**” only because the person publishes—

- (a) for someone else, an advertisement about employment opportunities; or
- (b) an advertisement offering employment opportunities with the person.

(3) Also, an employer is not a “**private employment agent**” if, for an agreed rate of payment to the employer—

- (a) the employer makes an employee of the employer available to perform work of a temporary nature for a client of the employer; and
- (b) the employee works under the client’s direction; and
- (c) the employer is solely responsible for performing obligations owed by an employer for the employee, including paying the employee for the work.

#### **408C Meaning of “manager”**

(1) A private employment agent is a “**manager**” of a model or performer if the agent, under a written agreement with the model or performer, provides for the model or performer at least 4 of the management services mentioned in paragraphs (a) to (f) of the definition “**management service**” in subsection (4).

(2) A private employment agent may be a “**manager**” of a model or performer whether or not any agreement between them states that the agent is the sole provider of management services for the model or performer.

(3) However, a private employment agent is not a “**manager**” of a model or performer only because of a written agreement under which the agent helps the model or performer find modelling or performing work.

(4) In this section—

“**management service**” includes any of the following services—

- (a) handling business affairs for the model or performer;

- (b) providing accounting advice for the model or performer;
- (c) publicising and promoting the model or performer;
- (d) providing services ancillary to a performance by the model or performer;
- (e) providing continuing career or artistic advice for the model or performer;
- (f) representing the model or performer in negotiations with media, entertainment industry workers or the public;

but does not include a service mentioned in section 408B(1)(a) to (c).

#### **408D When fees are or are not payable to private employment agent**

(1) A private employment agent must not directly or indirectly demand or receive from a person, other than a model or performer, looking for work (a “**work seeker**”) a fee for finding, or attempting to find, the person work.

Maximum penalty—16 penalty units.

(2) A private employment agent must not directly or indirectly demand or receive from a model or performer looking for work (also a “**work seeker**”) a fee for finding, or attempting to find, the model or performer work unless—

- (a) the agent gives the model or performer a written notice stating the particulars prescribed under a regulation; and
- (b) the fee payable is not more than the percentage prescribed under a regulation of the gross amount payable to the model or performer, excluding any allowances or payments prescribed under a regulation, for the work; and
- (c) the amount payable to the model or performer is at least the amount payable under an applicable industrial instrument.

Maximum penalty—16 penalty units.

(3) Subsection (2) does not apply if the private employment agent is also the manager of the model or performer and the fee is payable under a written agreement between the manager and the model or performer.

(4) In this section—

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

**408E Magistrate may order repayment of fees received by private employment agent in criminal proceedings**

(1) A magistrate who hears and decides a complaint for an offence against section 408D(1) or (2)—

- (a) must, if the magistrate finds the defendant guilty, order the defendant to repay to the work seeker the fee, if any, the magistrate finds, on the balance of probabilities, to have been received in contravention of section 408D(1) or (2), if—
  - (i) the fee has not been repaid to the work seeker; and
  - (ii) the defendant is not liable to repay the fee to the work seeker under an existing order under section 408F or 408G; or
- (b) may, if the magistrate does not find the defendant guilty, order the defendant to repay to the work seeker the amount the magistrate finds, on the balance of probabilities, the defendant has received from the work seeker.

(2) The magistrate may make the order—

- (a) despite an express or implied provision of an agreement to the contrary; and
- (b) on the terms the magistrate considers appropriate.

**408F Commission may order repayment of fees received by private employment agent**

(1) An application may be made to the commission for an order for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2) from a person (“**claimant**”) for finding or attempting to find the claimant work.

(2) An application can not be made to the commission if the total fee claimed under subsection (1) is more than \$20 000.

(3) The application may be made by—

- (a) the claimant; or
- (b) an employee organisation of which the claimant is a member, acting for the claimant; or
- (c) a person authorised by the claimant to make the application, acting for the claimant; or

(d) an inspector.

(4) The application must be made within 6 years after the claimant gave the agent the fee.

(5) The vice president may, either before or after the start of a hearing, remit the application to a magistrate if the vice president considers the application could be more conveniently heard by a magistrate, having regard to—

- (a) the difficulty or expense of producing witnesses; or
- (b) another good and sufficient reason, for example, cost.

(6) A magistrate may hear and decide the application as if it had been brought before the commission and the magistrate's decision and order is taken to be a decision and order of the commission.

(7) On hearing the application, the commission or magistrate—

- (a) must order the agent to repay to the claimant the amount the commission or magistrate finds to be the fee the agent has received from the claimant in contravention of section 408D(1) or (2) if—
  - (i) the fee has not been repaid to the claimant; and
  - (ii) the agent is not liable to repay the fee to the claimant under an existing order under section 408E or 408G; and
- (b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and
- (c) may order the repayment to be made on the terms the commission or magistrate considers appropriate; and
- (d) may order 1 party to pay costs to another party in an amount assessed by the commission or magistrate.

(8) A person can not make an application under this section if an application has been made under section 408G about the same matter.

#### **408G Magistrate may order repayment of fees received by private employment agent in civil proceedings**

(1) An application may be made to a magistrate for an order for the repayment of a fee received by a private employment agent in contravention of section 408D(1) or (2) from a person (“**claimant**”) for finding or attempting to find the claimant work.

(2) The application may be made by—

- (a) the claimant; or
- (b) an employee organisation of which the claimant is a member, acting for the claimant; or
- (c) a person authorised by the claimant to make the application, acting for the claimant; or
- (d) an inspector.

(3) The application must be made within 6 years after the claimant gave the agent the fee.

(4) On hearing the application, the magistrate—

- (a) must order the agent to repay to the claimant the amount the magistrate finds to be the fee the agent has received from the claimant in contravention of section 408D(1) or (2) if—
  - (i) the fee has not been repaid to the claimant; and
  - (ii) the agent is not liable to repay the fee to the claimant under an existing order under section 408E or 408F; and
- (b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and
- (c) may order the repayment to be made on the terms the magistrate considers appropriate; and
- (d) may order 1 party to pay costs to another party in an amount assessed by the magistrate.

(5) A person can not make an application under this section if an application has been made under section 408F about the same matter.

### **408H Enforcement of magistrate's orders**

(1) This section applies if, under section 408E or 408G, a magistrate orders—

- (a) a private employment agent to repay a fee received by the agent in contravention of section 408D(1) or (2) to a work seeker mentioned in section 408E or to a claimant mentioned in section 408G; or
- (b) costs in the application under section 408G of a party.

(2) The order is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.

(3) Also, an amount ordered to be paid to the work seeker or claimant by the agent may be recovered by the work seeker or claimant from the agent as a debt.

(4) For subsection (3), the order requiring payment may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

- (a) is taken to be an order properly made by a Magistrates Court; and
- (b) may be enforced as a money order made by the Magistrates Court.

## CHAPTER 12—INDUSTRIAL ORGANISATIONS

### PART 1—PRELIMINARY

#### 409 Definitions for ch 12

In this chapter—

“**accounts**” see section 555.

“**amalgamation**” means the carrying out, under part 15, of arrangements for 2 or more organisations, associations or corporations, under which—

- (a) an organisation is, or 2 or more organisations are, to be deregistered; and
- (b) members of the organisation or organisations to be deregistered are to become members of another organisation, whether existing or proposed.

“**association**” means an unincorporated body or entity formed or carried on to protect and promote its members’ interests.

“**audit report**” see section 558(1)(b).



“**ballot records**”, for an election or ballot, means any ballot envelopes, papers or other records that have been prepared or used for the election or ballot.

“**branch**” of an organisation means a constituent part of the organisation, however called, that has a management committee or officers.

“**casual vacancy**” means a vacancy in an office because of the death, removal or resignation from office of the office holder.

“**committee meeting**”, for an organisation, means a meeting of its management committee.

“**corporation**” see section 410.

“**counterpart federal body**” see section 411.

“**defect**” includes an error, irregularity, nullity and an omission.

“**demarcation dispute undertaking**” from an organisation or applicant for registration means an undertaking from it to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and another organisation’s eligibility rules.

“**deregistered organisation**” means a former organisation whose registration has been cancelled.

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

“**election**” means an election for an office in an organisation or branch.

“**electoral commission**” means the Electoral Commission of Queensland.

“**electoral officer**” means the electoral commissioner, the deputy electoral commissioner or a member of the staff of the electoral commission.

“**eligibility rules**” of an organisation or applicant for registration means its rules about eligibility for its membership.

“**federal organisation**” means an organisation under the Commonwealth Act.

“**file**” a document means file it with the registrar.

“**financial hardship payment**”, for an organisation, means a payment by the organisation to relieve a member or the member’s dependant from severe financial hardship.

“**general meeting**” of an organisation or applicant for registration means a general meeting of its members.

**“irregularity”** includes—

- (a) a contravention of an organisation’s rules; and
- (b) for an election or ballot, an act or omission by which the following is, or is attempted to be, prevented—
  - (i) the full and free recording of votes by all persons who may record a vote and by no other persons;
  - (ii) a correct working out or declaration of the results of the voting.

**“management committee”**, for an organisation, branch or applicant for registration, means the body of persons, however called, that manages its affairs.

**“membership subscription”**, for an organisation, means a subscription, due or other amount payable under its rules for membership or membership renewal.

**“members register”**, for an organisation, means the current register of its members required to be kept under section 544.

**“model election rules”** means the model election rules under section 454.

**“office”**, for an organisation, branch or applicant for registration, see section 412.

**“officer”** of an organisation, branch or applicant for registration means a person who holds an office in the organisation or branch or in the applicant association or corporation.

**“officers register”**, for an organisation, means the current register of its officers required to be kept under section 544.

**“ordinary election”** means an election held under rules under part 4.

**“organisation”** means—

- (a) a body registered under this chapter as an organisation; or
- (b) an association of employers or employees, the continuity of whose registration as an industrial organisation or union under an Act is continued or preserved by this Act.

**“postal ballot”** means a ballot by which—

- (a) a ballot paper is sent by prepaid post to each person who may vote in the ballot; and

- (b) facilities are provided for returning the completed ballot paper by post by each voter without cost to the voter.

**“president”** of an organisation, branch or applicant for registration means—

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

**“register”**, when used as a noun, means the register of industrial organisations the registrar keeps under section 426(1).

**“registration”** means registration under this chapter as an organisation.

**“required number”** of members of an organisation means the number of its members that is the lesser of 5% of the membership or 250.

**“secretary”**, of an organisation, for the signing of a document to be filed means—

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

**“withdrawal”** means the withdrawal, under part 15, of a constituent part from an amalgamated organisation.

#### **410 Meaning of “corporation” for ch 12**

(1) In this chapter, **“corporation”** means—

- (a) a corporation under the Corporations Act, section 57A;<sup>133</sup> or  
 (b) an incorporated association under the *Associations Incorporation Act 1981*; or  
 (c) a body incorporated under a law of the State, another State or the Commonwealth, other than—  
 (i) a federal organisation; or

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133 Corporations Act, section 57A (Meaning of corporation)

- (ii) an organisation registered under a law of another State about the registration of industrial organisations or unions.

(2) However, an organisation incorporated under section 423<sup>134</sup> is not a corporation.

#### **411 Meaning of “counterpart federal body” for ch 12**

(1) In this chapter, a federal organisation or a branch or part of a federal organisation (“**federal body**”) is a “**counterpart federal body**” of an organisation (“**State body**”) if—

- (a) a substantial number of members of the State body are—
  - (i) members or eligible to be members of the federal body; or
  - (ii) engaged in the same work, in aspects of the same work or in similar work as members of the federal body; or
  - (iii) employed in the same or similar work by employers engaged in the same industry as members of the federal body; or
  - (iv) engaged in work or in industries for which there is a community of interest between the federal body and the State body; or
- (b) there is an agreement in force under the Commonwealth Act, section 202,<sup>135</sup> between the federal body and the State body.

(2) If subsection (1)(a) or (b) applies to more than 1 State body for the same federal body, the federal body is a counterpart federal body of each of the State bodies.

#### **412 Meaning of “office” for ch 12**

In this chapter, “**office**”, for an organisation, branch or applicant for registration (“**industrial association**”), means the following—

- (a) the office of president, vice-president, secretary or assistant secretary of the industrial association;

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<sup>134</sup> Section 423 (Incorporation on registration if not already incorporated)

<sup>135</sup> Section 202 (Agreement between organisation and State union) of the Commonwealth Act

- (b) the office of a member of the management committee of the industrial association;
- (c) the office of a voting member of any other collective body that has power to do any of the following—
  - (i) manage the affairs of the industrial association;
  - (ii) decide the policy of the industrial association;
  - (iii) make, amend or repeal the rules of the industrial association;
  - (iv) enforce the rules of the industrial association;
- (d) an office for which the holder may under the rules of the industrial association manage the association's affairs and enforce its rules, other than a holder only participating under directions of a collective body or other person to implement—
  - (i) the association's existing policy; or
  - (ii) decisions concerning the association;
- (e) an office for which the holder may under the industrial association's rules decide the association's policy and make, amend or repeal its rules;
- (f) the office of a person holding, whether as trustee or otherwise, the property of the industrial association or property the association has a beneficial interest in.

## **PART 2—REGISTRATION**

### *Division 1—Registration applications*

#### **413 Application is to commission**

A registration application may only be made to the commission.

**414 Who may apply**

(1) An association may apply for registration as an employee or employer organisation.

(2) A corporation may only apply for registration as an employer organisation.

**415 General requirements for applications**

(1) A registration application must be—

- (a) signed by the applicant's president and secretary; and
- (b) accompanied by the following—
  - (i) the proposed address under section 425(1) of the applicant's proposed registered office;
  - (ii) 2 copies of the rules the applicant proposes to have as an organisation;
  - (iii) a copy of the register that will, on its registration, be the applicant's officers register;
  - (iv) a list of any trustees of the applicant;
  - (v) the appropriate fee under the rules; and
- (c) filed.

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

**416 Additional requirements for employee organisation application**

If the application is for registration as an employee organisation, it must be accompanied by the following—

- (a) a copy of a resolution in favour of the applicant's registration passed under the applicant's rules—
  - (i) by a majority of its members present at a general meeting;  
or
  - (ii) in another way allowed under the applicant's rules;
- (b) a list stating the applicant's members on the day the resolution was made;

- (c) a list stating the callings of its members or callings to which its eligibility rules relate;
- (d) a list stating each locality in which its members exercise their callings.

#### **417 Additional requirements for employer organisation applications**

(1) If the application is for registration as an employer organisation, it must be accompanied by the following—

- (a) a list stating the name of, and the place or places where business is carried on by, each employer member of the applicant;
- (b) if the applicant has more than 1 member, a copy of a resolution in favour of registration of the applicant passed under the applicant's rules—
  - (i) by a majority of the employer members; or
  - (ii) in another way allowed under the applicant's rules;
- (c) a list stating the callings in which employees are employed by the employer members;
- (d) a statement of particulars of—
  - (i) the control of the applicant's property; and
  - (ii) investment of its funds, as distinct from the property and funds of the members of the applicant.

(2) In this section—

“**member**” includes shareholder.

“**rules**” includes constitution.

#### *Division 2—Hearing of registration applications*

#### **418 Right to object**

(1) A person may object to a registration application if the person—

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

(2) The commission must hear the objection in the way prescribed under a regulation.

#### **419 Registration criteria for all applications**

(1) The commission may grant the application only if satisfied of the following—

- (a) the applicant exists to further or protect its members' interests;
- (b) the applicant would, if registered, comply with the obligations of an organisation under this chapter and would not contravene chapter 4;<sup>136</sup>
- (c) the rules the applicant proposes to have as an organisation—
  - (i) comply with parts 3 and 4;<sup>137</sup> and
  - (ii) are not contrary to this Act or another law;
- (d) the applicant's name—
  - (i) is not the same as an organisation's name or so similar to an organisation's name as to be likely to cause confusion; and
  - (ii) will, if the applicant is registered, comply with section 424;<sup>138</sup>
- (e) registration of the applicant would not be inconsistent with the objects of this Act.

(2) For subsection (1)(e), the commission must consider whether recent conduct by the applicant or its members would have been an industrial conduct ground under part 16<sup>139</sup> if the applicant had been registered when the conduct happened.

#### **420 Additional criteria for registration as employee organisation**

(1) If the application is for registration as an employee organisation, the commission must also be satisfied of the following—

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136 Chapter 4 (Freedom of association)

137 Parts 3 (General contents of rules) and 4 (Election rules)

138 Section 424 (Registered name of organisation that is not a corporation)

139 Part 16 (Deregistration)



- (a) the applicant is free from control by, or improper influence from, an employer, an employer association or an employer organisation;
- (b) either—
  - (i) there is no organisation to which the applicant's members might belong; or
  - (ii) there is no organisation to which the members could conveniently belong that would effectively represent them in a way consistent with the objects of this Act.
- (c) the applicant has at least 20 members who are employees;
- (d) the applicant's members who are not employees are—
  - (i) officers of the applicant; or
  - (ii) independent contractors who, if they were employees performing work of the kind that they usually perform as independent contractors, would be employees eligible for membership of the applicant.

(2) Despite subsection (1)(c) or (d), the commission may grant the application if satisfied special circumstances justify the applicant's registration.

#### **421 Additional criteria for registration as employer organisation**

(1) If the application is for registration as an employer organisation, the commission must also be satisfied of the following—

- (a) the applicant has employer members;
- (b) either—
  - (i) there is no organisation to which the applicant's members might belong; or
  - (ii) there is no organisation to which the members could conveniently belong that would effectively represent them in a way consistent with the objects of this Act;
- (c) the applicant effectively represents its employer members in a way that is consistent with the objects of this Act;
- (d) each member of the applicant who is not an employer—
  - (i) is an officer of the applicant; or

- (ii) was an employer on becoming a member; or
  - (iii) carries on a business;
- (e) the applicant's members have, in total, employed a monthly average of at least 20 employees in the 6 months before the application was made.

(2) Despite subsection (1)(e), the commission may grant the application if satisfied special circumstances justify the applicant's registration.

### *Division 3—Grant of application*

#### **422 Grant of application**

(1) If the commission grants a registration application, the applicant immediately becomes an organisation.

(2) The rules for which the application was granted take effect as the rules of the organisation.

(3) The registrar must, as soon as practicable—

- (a) enter the organisation's name and the day it became an organisation in the register; and
- (b) give the organisation a certificate of registration in the approved form; and
- (c) register the applicant's rules.

#### **423 Incorporation on registration if not already incorporated**

If an organisation was not a corporation immediately before it became an organisation, on registration it—

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

***Division 4—Registered name and office*****424 Registered name of organisation that is not a corporation**

(1) If an organisation is not a corporation, its registered name must include the words—

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

(2) The name must state the locality in which most of its members live or carry on their business or calling.

**425 Registered office**

(1) An organisation must have a registered office in the State to which all notices to it may be given.

Maximum penalty—40 penalty units.

(2) The organisation must give notice to the registrar of a change in the address of its registered office within 7 days after the change happens.

Maximum penalty—40 penalty units.

***Division 5—Miscellaneous*****426 Registrar’s functions for register and rules**

(1) The registrar must keep—

- (a) a register of organisations; and
- (b) a copy of each organisation’s rules.

(2) The rules are open to inspection by a person paying the fee stated in the rules of court.

**427 Change of callings**

(1) On an application by an organisation made in the way prescribed under a regulation, the commission may, by order, change its list of callings.

(2) If the list of callings is changed under subsection (1), the organisation's list of callings is taken to be the changed list.

(3) In this section—

“**list of callings**” means the list stating the callings that accompanied the organisation's registration application.

**PART 3—GENERAL CONTENTS OF RULES***Division 1—Requirement to have rules***428 Organisation must have complying rules**

(1) An organisation must have rules about the matters required of it under this part and part 4.<sup>140</sup>

(2) The organisation must give a copy of its rules to a person who asks for a copy and pays the amount prescribed under a regulation.

*Division 2—General requirements for contents***429 Requirements for all organisations**

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

- (a) its objectives;
- (b) its eligibility rules;
- (c) how and when—
  - (i) a person may become a member; or

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- (ii) a person may resign from membership; or
- (iii) a person's membership ends, other than by resignation;
- (d) the functions and powers of its committees, branch committees, office holders and branch office holders;
- (e) how meetings of its committees, branches and members may be called;
- (f) how its committees are controlled by its members;
- (g) how committees of its branches are controlled by members of the branch;
- (h) how documents may be signed for the organisation;
- (i) that notice must be given by a stated authorised office holder to the commission of the existence or likelihood of industrial disputes, in the way required under section 229;<sup>141</sup>
- (j) how its property is controlled and its funds are invested;
- (k) any conditions for spending its funds;
- (l) that, unless exempted under part 13, its accounts must be audited yearly or in another more frequent period;
- (m) that, unless exempted under part 13, it must keep a members register, arranged according to branches if it has branches;
- (n) how the rules may be amended;
- (o) that membership applicants must be informed in writing of—
  - (i) a member's financial obligations; and
  - (ii) how and when a member may resign from membership.

(2) In this section—

**“committee”** of an organisation or branch means—

- (a) its management committee; or
- (b) any other collective body of its members or officers, however called, that has power to do any of the following—
  - (i) manage its affairs;
  - (ii) decide its policy;

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141 Section 229 (Notice of industrial dispute)

- (iii) make, amend or repeal its rules;
- (iv) enforce its rules.

#### **430 Additional requirements for organisation that is not a corporation**

If an organisation is not a corporation, its rules must also state—

- (a) that an elected officer may be removed from office only on the ground that the officer has ceased to be eligible to hold the office or has been found guilty under the rules of—
  - (i) misappropriation of the organisation’s property; or
  - (ii) a substantial contravention of the rules; or
  - (iii) gross misbehaviour or gross neglect of duty in the office;  
and
- (b) the procedure for removing an elected officer.

#### **431 Rules must give conditions for loans, grants and donations**

(1) An organisation’s rules must state that the organisation or a branch of the organisation must not make donations, grants or loans totalling more than \$1 000 (the “**payment**”) to the same person unless the management committee of the organisation or branch—

- (a) has approved the payment; and
- (b) is satisfied the payment is not otherwise prohibited under the rules of the organisation; and
- (c) if the payment is a loan, it is made on satisfactory terms.

(2) Despite subsection (1), the rules may allow a financial hardship payment of not more than \$3 000 if it is made on condition that, if the management committee at its next meeting does not approve the payment, it must be repaid as decided by the committee.

(3) In deciding whether to approve the payment, the management committee must consider whether it was made under the rules and on satisfactory terms.

(4) For this section, a loan is made on satisfactory terms if the management committee is satisfied—

- (a) the security to be provided for the loan is sufficient; and
- (b) the proposed arrangements to repay the loan are satisfactory.

### *Division 3—Permitted contents*

#### **432 Permitted contents—general**

An organisation's rules may—

- (a) state the industry for which the organisation is formed; and
- (b) make another provision that does not contravene this Act.

#### **433 Filling casual vacancies**

(1) The rules may provide for filling a casual vacancy in an office.

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

- (a) 1 year; or
- (b) three-quarters of the term of office.

(3) If a person fills a casual vacancy in an office under this section, the person is taken to have been elected to the office.

(4) In this section—

“**term**” of an office means the period for which the person last elected to the office by an ordinary election, other than by an ordinary election to fill a casual vacancy, may hold the office without being re-elected.

#### **434 Mortality benefit fund**

(1) An organisation's rules may provide for an amount to be paid on the death of a member of the organisation to an eligible nominee nominated by the member.

(2) Despite the rules, the member may, by giving notice to the organisation, cancel the nomination or change the nominee to another eligible nominee.

(3) In this section—

“eligible nominee” of a member means—

- (a) any person who is not an officer or employee of the organisation; or
- (b) a spouse of the member; or
- (c) a child, grandchild, grandparent, nephew, niece, parent or sibling of the member.

#### *Division 4—Restrictions on contents*

### **435 General restrictions**

(1) An organisation’s rules must not—

- (a) contravene this Act, another law or an industrial instrument; or
- (b) prevent members of the organisation from—
  - (i) complying with this Act or another law, an industrial instrument or decision; or
  - (ii) entering into a written agreement under an industrial instrument or decision; or
- (c) impose on its members, or membership applicants, conditions, obligations or restrictions that are oppressive, unreasonable or unjust.

(2) An eligibility rule does not contravene subsection (1)(c) only because it requires reasonable minimum standards for the conduct of the businesses or callings of its members or membership applicants.

### **436 Maximum office term for organisation that is not a corporation**

(1) If an organisation is not a corporation, its rules must not allow an officer to hold office for more than 4 years (the “**maximum term**”) without re-election.

(2) However, the rules may extend the maximum term for a period of not more than 1 year to synchronise elections for other offices in the organisation.



## PART 4—ELECTION RULES

### *Division 1—Preliminary*

#### **437 Part does not apply to corporations**

This part does not apply to a corporation.

#### **438 Meaning of “direct voting system” for pt 4**

(1) In this part, a “**direct voting system**”, for an office in an organisation, means an electoral system in which, subject to provisions in the organisation’s rules about voting enrolment—

- (a) all eligible members of an organisation may vote for the office; or
- (b) if the office is for a branch of the organisation, all eligible members included in the constituent part may vote.

(2) In this section—

“**eligible member**” means a member mentioned in section 445(c).<sup>142</sup>

#### **439 Meaning of “collegiate electoral system” for pt 4**

In this part, a “**collegiate electoral system**” means a system for the election of an organisation’s officers under which—

- (a) persons are elected to a number of offices by a direct voting system; and
- (b) at a subsequent stage or stages, persons are elected to offices by an electoral college consisting of the persons elected at the last preceding stage.<sup>143</sup>

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142 Section 445 (Required contents—ballots)

143 There are restrictions on who may be elected at the subsequent stage or stages. See section 452 (Restriction on persons who may be elected by electoral college).

***Division 2—General requirements*****440 General requirement of transparency**

An organisation's rules about elections must, as far as practicable, ensure—

- (a) the processes under which its elections are conducted are transparent; and
- (b) no irregularities can happen in an election for the organisation or a branch of the organisation.

**441 Rules must provide for elections**

An organisation's rules must provide for elections for all elected offices in the organisation or a branch of the organisation.

**442 Direct voting or collegiate electoral system must be used**

An organisation's rules must provide for the election of its elected officers by a direct voting system or a collegiate electoral system.

***Division 3—Direct voting systems******Subdivision 1—Preliminary*****443 Application of div 3**

This division applies if an organisation's rules provide for the election of its elected officers by a direct voting system.

***Subdivision 2—Requirements for direct voting systems*****444 General requirements for direct voting system**

The organisation's rules must state the following—

- (a) who may nominate as a candidate in the election;

- (b) how a person may nominate and become a candidate;
- (c) the times for nominations to open and to close;
- (d) that nominations must be called in a stated way that is reasonably likely to notify the organisation's members—
  - (i) that nominations have been called; and
  - (ii) of how to nominate;
- (e) that if a nomination for an office is rejected as defective, other than because the person is not qualified to hold the office or because the nomination was made after the closing time—
  - (i) the nominee must be notified of the defect; and
  - (ii) if practicable, the nominee must be given an opportunity to remedy the defect;
- (f) that a candidate must be declared elected if the number of candidates for election is not more than the number of officers to be elected;
- (g) that if at the closing time there are more candidates than the number of officers to be elected a ballot must be conducted to decide the result of the election.

#### **445 Required contents—ballots**

The organisation's rules must also state the following—

- (a) that a ballot to decide the result of an election must be a secret postal ballot or another type of secret ballot approved by the registrar under subdivision 3;
- (b) how the ballot is to be conducted;
- (c) that a person ("**eligible member**") may vote in the ballot only if the person was a financial member of the organisation on a stated day during the period—
  - (i) starting no earlier than 60 days before the opening time for nominations; and
  - (ii) ending no later than 30 days before the opening time;
- (d) that the person conducting the ballot must, when nominations for the election close, prepare a list or roll of the eligible members;

- (e) the appointment, conduct and functions of scrutineers to represent the candidates in the ballot;
- (f) that an eligible member may cast an absentee vote and how the member may cast the vote;
- (g) the method of voting and deciding the result of the ballot, by either a first-past-the-post system or a preferential system;
- (h) that a candidate or a member of the organisation has the right, up to 30 days after the declaration of the result of the election, free of charge—
  - (i) to inspect the list or roll of persons who may vote in the ballot at the organisation's registered office when it is open for business; and
  - (ii) to be given a copy of the whole or a stated part of the list or roll.

#### **446 Compulsory voting permitted**

The organisation's rules may require compulsory voting in a ballot required for an election.

#### *Subdivision 3—Alternative types of secret ballot*

#### **447 Approval application**

(1) An organisation may apply to the registrar for approval for ballots to decide the result of its elections for its elected officers not to be postal ballots.

(2) The application must include particulars of proposed amendments to the organisation's rules that provide for secret ballots that are not postal ballots.

#### **448 Consideration of application**

The registrar may grant the approval only if satisfied—

- (a) the proposed amendments—
  - (i) are not contrary to this Act or to law; and

- (ii) have been made under the organisation's rules; and
- (b) a ballot under the proposed amendments—
  - (i) is likely to have a higher participation by the organisation's members than a postal ballot; and
  - (ii) will give members who are eligible to vote an adequate opportunity of voting without intimidation.

#### **449 Grant of approval**

If the registrar grants the approval, the proposed amendments take effect from—

- (a) the day the registrar gives the organisation notice of the approval; or
- (b) a later day stated in the notice.

#### **450 Cancellation of approval**

The registrar may cancel the approval only if—

- (a) the organisation applies for the cancellation; or
- (b) the registrar is no longer satisfied a ballot under the organisation's rules—
  - (i) is likely to have a higher participation by the organisation's members than a postal ballot; and
  - (ii) will give members who are eligible to vote an adequate opportunity of voting without intimidation.

### *Division 4—Collegiate electoral systems*

#### *Subdivision 1—Preliminary*

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

This division applies if an organisation's rules provide for the election of its elected officers by a collegiate electoral system.

***Subdivision 2—Requirements for collegiate electoral systems*****452 Restriction on persons who may be elected by electoral college**

At least 80% of the persons elected by an electoral college must be elected at the stage in the collegiate electoral system that immediately preceded the stage for which the electoral college is formed.

**453 Requirements for second or subsequent stage**

The organisation's rules must state the following for an election at the second or subsequent stage of a collegiate electoral system—

- (a) who may nominate as a candidate in the election;
- (b) how a person may nominate and become a candidate;
- (c) that a candidate must be declared elected if the number of candidates for election is not more than the number of officers to be elected;
- (d) that if there are more candidates than the number of officers to be elected, a secret ballot must be conducted to decide the result of the election;
- (e) that if a ballot must be conducted—
  - (i) how the ballot must be conducted; and
  - (ii) the methods of voting and deciding the result of the ballot; and
  - (iii) that a person who may vote in the ballot (a “**voter**”) may vote by an absentee or proxy vote; and
  - (iv) how a voter may vote by an absentee or proxy vote; and
  - (v) that scrutineers may be appointed for candidates; and
  - (vi) the functions of scrutineers.

***Division 5—Model election rules*****454 Model election rules**

A regulation may make model election rules under this division for organisations.

**455 Model election rules may be adopted**

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

**456 Adoption without change**

(1) If an organisation resolves to adopt all the model election rules without change, its secretary may give the registrar notice of the resolution.

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

(3) The amendment takes effect when it is registered.

**457 Effect of adoption without change**

If an organisation adopts the model election rules without change, its rules are taken to comply with this part.

**458 Model rules apply if election rules do not comply with pt 4**

The model election rules are taken to be an organisation's election rules if its election rules do not comply with this part within 2 years after this section commences.

**PART 5—VALIDITY AND COMPLIANCE WITH RULES****459 Powers of court**

(1) The court may, on application—

- (a) decide whether an organisation's rules comply with section 435;<sup>144</sup> or
  - (b) direct a person obliged to perform or observe an organisation's rules to perform or observe the rules.
- (2) However, a direction must not be made if it invalidates—
- (a) an election or purported election; or
  - (b) a step for an election or purported election.
- (3) In deciding the application, the court may declare—
- (a) the whole, or a part of, the rules comply with or contravene section 435; or
  - (b) the rules contravene section 435 in a stated way.

#### **460 Who may apply**

An application may be made only by a member of the organisation or another person prescribed under a regulation.

#### **461 Financial help for application**

(1) A member of an organisation may apply to the Minister for financial help if the member—

- (a) has made, or proposes to make, an application under this part; and
- (b) applies within 3 months after the application has been decided.

(2) The Minister may direct that financial help from the State be given to the member for the cost of the application if satisfied—

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

(3) The registrar must decide the amount of the financial help.

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144 Section 435 (General restrictions)



**462 Interim orders**

(1) The court may make an interim order it considers appropriate.

*Example—*

If the application is for a direction, the court may make an order to help resolve the matter within the organisation.

(2) An interim order ends—

- (a) when the proceedings end; or
- (b) at an earlier time stated in the order; or
- (c) if it is discharged by the court.

**463 Hearing application**

(1) The court may adjourn the hearing for a stated period on conditions it considers appropriate to give the organisation an opportunity to amend its rules.

(2) The court may refuse to hear an application for directions until it is satisfied the applicant has taken all reasonable steps to resolve the matter within the organisation.

**464 Effect of declaration**

If the court declares the whole or a part of a rule contravenes section 435, the rule or the part of the rule, is taken to be void from the making of the declaration.

**465 Direction must be complied with**

If the court directs a person to perform or observe an organisation's rules, the person must comply with the direction unless the person has a reasonable excuse for not complying with the direction.

Maximum penalty—40 penalty units.

## PART 6—AMENDMENT OF RULES

### *Division 1—Amendments by commission or registrar*

#### **466 Breach of demarcation dispute undertaking**

(1) This section applies if an organisation has given a demarcation dispute undertaking to the commission and the organisation has breached the undertaking.

(2) The commission may amend the organisation's rules in a way it considers necessary to remove an overlap between the organisation's eligibility rules and another organisation's eligibility rules.

#### **467 When registrar may amend rules**

The registrar may amend an organisation's rules as follows—

- (a) on the registrar's own initiative, if the registrar considers the rules do not make a provision required by section 435;<sup>145</sup>
- (b) if, under section 450, the registrar has cancelled an approval under section 449 and the amendment is to provide that if a ballot is necessary for an election for the organisation it must be a secret postal ballot;
- (c) if section 458 applies, so that the organisation's election rules are the model election rules;
- (d) to omit a provision declared, under section 459(3)(a), to be in contravention of section 435;
- (e) to amend a provision declared, under section 459(3)(b), to contravene section 435 in a stated way so that the provision no longer contravenes section 435 in the stated way;
- (f) to give effect to an order under section 508(2)(b) or 536(e);
- (g) to correct a formal or clerical error.<sup>146</sup>

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145 See however section 654 (Hearing to be given before making decision).

146 Sections 435 (General restrictions), 449 (Grant of approval), 450 (Cancellation of approval), 458 (Model rules apply if election rules do not comply with pt 4), 459 (Powers of court), 508 (Orders if irregularity found) and 536 (Deciding application)

**468 Amendment to cure noncompliance if rule declared void**

(1) This section applies if—

- (a) the court declares the whole or a part of a rule of an organisation contravenes section 435 or contravenes section 435 in a stated way; and
- (b) the organisation's rules have not been amended so as to comply with section 435 within 3 months after the declaration is made.

(2) The appropriate tribunal may amend the rules to comply with section 435 for the matters that gave rise to the declaration.

(3) In this section—

**“appropriate tribunal”** means—

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

**469 How amendment must be made**

(1) An amendment under this division may only be made by an order, direction or written decision (**“instrument”**).

(2) The amendment takes effect from the day of the instrument.

(3) The registrar must give the organisation a copy of the instrument as soon as practicable after the decision is made.

*Division 2—Amendments by organisation**Subdivision 1—Name or eligibility rule amendments***470 Application of sdiv 1**

(1) This subdivision applies if an organisation proposes to amend its name or eligibility rules.

(2) This subdivision does not apply if the amendment is made under section 467 or 468 or proposed to be made for an amalgamation or withdrawal.

(3) In this section—  
“**amend**” includes replace.

#### **471 Requirements for amendment**

The proposed amendment may be made only if it has been—

- (a) proposed under the organisation’s rules; and
- (b) approved under this subdivision.

#### **472 Approval to change ‘union’ to ‘organisation’ in name**

If an organisation’s name contains the word ‘union’, the registrar may, by order, approve the replacement of the word with ‘organisation’ or the words ‘industrial organisation’.

#### **473 Approval for other name amendment**

(1) This section applies to a name amendment other than an amendment mentioned in section 472.

(2) The commission may, by order, approve the name amendment only if satisfied the amended name—

- (a) has been proposed under the organisation’s rules; and
- (b) is not—
  - (i) the same as another organisation’s name; or
  - (ii) so similar to another organisation’s name as to be likely to cause confusion.

(3) Approval may be given wholly or in part.

#### **474 Approval for eligibility rule amendment**

(1) The commission may, by order, approve an eligibility rule amendment only if satisfied—

- (a) the amendment has been proposed under the organisation’s rules; and

- (b) there is no organisation to which its members could conveniently belong that would effectively represent them in a way consistent with the objects of this Act.

(3) The commission may refuse to approve an eligibility rule amendment if satisfied—

- (a) the amendment—
  - (i) would contravene an agreement or understanding to which the organisation is a party; and
  - (ii) deals with the organisation’s right to represent; or
- (b) the amendment—
  - (i) would change the effect of a full bench order under section 279<sup>147</sup> about the organisation’s right to represent; and
  - (ii) would give rise to a serious risk of a demarcation dispute that would prevent or restrict the performance of work in an industry, or harm an employer’s business.

(4) Subsection (3) does not limit the grounds on which approval may be refused.

(5) Approval may be given wholly or in part.

(6) In this section—

**“right to represent”** of an organisation means a right of the organisation to represent the industrial interests of a particular class or group of persons.

#### **475 When amendment takes effect**

If a name amendment or eligibility rule amendment is approved, the amendment takes effect on the day of the order or a later stated day.

#### **476 Registrar must record amendment**

As soon as practicable after a name amendment or eligibility rule amendment takes effect the registrar must—

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147 Section 279 (Orders about representation rights of employee organisations)

- (a) for a name amendment—
  - (i) enter the amended name in the register; and
  - (ii) give the organisation whose name was amended a replacement certificate of registration in the approved form; and
- (b) for an eligibility rule amendment, enter particulars of the amendment in the register.

### *Subdivision 2—Other rule amendments*

#### **477 Application of sdiv 2**

This subdivision applies if an organisation proposes to amend its rules, other than by amending its name or eligibility rules, or by, under section 456,<sup>148</sup> adopting the model election rules without change.

#### **478 When amendment may be made**

(1) The proposed amendment may be made only if the registrar has approved it.

(2) The registrar may approve a proposed amendment only if satisfied it—

- (a) does not contravene section 435<sup>149</sup> or another law; and
- (b) has been proposed under the organisation's rules.

#### **479 When amendment takes effect**

(1) If the registrar approves the proposed amendment, the registrar must register the amendment as soon as practicable.

(2) The amendment takes effect when it is registered.

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148 Section 456 (Adoption without change)

149 Section 435 (General restrictions)

## **PART 7—CONDUCT OF ELECTIONS**

### *Division 1—Preliminary*

#### **480 Part does not apply to corporations**

This part does not apply to a corporation.

### *Division 2—Preparatory steps*

#### **481 Organisation or branch must file prescribed election information**

(1) If an organisation or a branch of an organisation proposes to conduct an election, the organisation or branch must file the information prescribed under a regulation for the election in the registry.

(2) The information must be filed before the day prescribed under a regulation or a later day the registrar allows.

#### **482 Registrar must arrange for elections**

The registrar must arrange for an election to be conducted by the electoral commission if—

- (a) the information prescribed under a regulation is filed; and
- (b) satisfied the election is required to be held under the rules of the relevant organisation or branch.

### *Division 3—Conduct of elections*

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

An election must only be conducted by the electoral commission.<sup>150</sup>

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150 See however part 13 (Exemptions), division 3 (Exemptions from requirement that electoral commission conduct election).

**484 Organisation's rules generally to be complied with**

Subject to section 485, the rules of the organisation or branch for which an election or a step in an election is being conducted must be complied with.

**485 Action or directions by electoral officer**

(1) The electoral officer conducting an election or a step in an election may take action, and give directions, the officer considers necessary—

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

(2) The election or step is not invalid only because the rules of the organisation or branch are contravened by the action or direction.

**486 Substitute electoral officer**

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

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

**487 Death of candidate**

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

- (a) 2 or more candidates are nominated for the election; and
- (b) 1 of the candidates dies before the close of the ballot.

(2) Subsection (1) applies despite anything in the rules of an organisation or branch.



**488 Election result report**

(1) The electoral commission must, within 14 days after the declaration of the result of an election, give the registrar a written election result report for the election stating the particulars prescribed under a regulation.

(2) A contravention of this section does not invalidate the election.

**489 Election costs to be paid by State**

The costs of an election conducted by the electoral commission under this part are payable by the State.

**490 Ballot records must be preserved**

(1) This section applies despite the rules of an organisation or branch.

(2) The electoral commission must do everything necessary to ensure all ballot records for an election are kept by it for 1 year after the election.

*Division 4—Offences about conduct of elections***491 Using organisation's resources for election purposes**

An organisation must not use, or permit its employees or agents, members or officers to use, the organisation's property or resources to help a candidate for an election against another candidate for the election.

Maximum penalty—80 penalty units.

**492 Obstructing conduct of election**

A person must not obstruct another person conducting an election.

Maximum penalty—80 penalty units.

**493 Failing to comply with electoral officer's direction**

A person to whom a direction is given by an electoral officer under this part must not fail to comply with the direction, unless the person has a reasonable excuse for not complying with the direction.

Maximum penalty—80 penalty units.

**494 Obstructing electoral officer's direction**

A person must not obstruct another person complying with a direction by an electoral officer under this part.

Maximum penalty—80 penalty units.

**495 Offences about ballots**

A person must not, without lawful authority or excuse, do any of the following about a ballot for an election—

- (a) obtain or possess a ballot paper if the person does not have the right to obtain or possess it;
- (b) pretend to be and vote as someone else;
- (c) amend, deface, destroy, interfere with, or remove a ballot record;
- (d) vote in the ballot if the person does not have the right to vote;
- (e) vote more than once;
- (f) forge a ballot record;
- (g) utter a ballot record knowing it to be forged;
- (h) give a ballot record to someone else;
- (i) put a ballot record in a ballot box or other container used for the ballot (a “**ballot box**”) if the person does not have the right to vote;
- (j) deliver or post a ballot record to another person performing functions for the ballot if the person does not have the right to deliver or post it;
- (k) destroy, interfere with, open, or remove a ballot box.

Maximum penalty—80 penalty units.

**496 Disadvantaging candidates etc.**

(1) A person must not cause, inflict or procure a disadvantage to anyone or anything because of, or to induce—

- (a) a candidature or withdrawal of a candidature in an election; or
- (b) a vote or omission to vote in an election; or
- (c) support for or opposition to a candidate in an election; or

- (d) a promise of a vote, omission to vote, support or opposition for or to a candidate in an election.

Maximum penalty—80 penalty units.

(2) In this section—

“**cause**” a disadvantage includes offering, suggesting and threatening a disadvantage.

“**disadvantage**” includes damage, detriment, injury, loss, punishment and violence.

#### **497 Unauthorised access to ballot paper**

A person must not, without lawful authority or excuse—

- (a) ask, require or induce another person to show to, or permit the person to see, a ballot paper so the person can see the vote recorded in the ballot paper—
- (i) while the paper is being marked; or
  - (ii) after it has been marked; or
- (b) if the person is performing functions for an election, show to or permit anyone else access to a ballot paper used in the election or ballot, other than to perform the functions.

Maximum penalty—80 penalty units.

## **PART 8—ELECTION INQUIRIES**

### *Division 1—Preliminary*

#### **498 Part does not apply to corporations**

This part does not apply to a corporation.

*Division 2—Applications and referrals to commission***499 Commission may conduct election inquiry**

The commission may, on an application referred to it by the registrar under this part, conduct an inquiry (an “**election inquiry**”) about a claimed irregularity in an election for an organisation or branch.

**500 Who may apply**

An application for an election inquiry may be made only by—

- (a) a financial member of the organisation; or
- (b) a person who was a financial member of the organisation within 1 year before the application is made.

**501 Requirements for application**

The application—

- (a) may be filed only during the period that—
  - (i) starts on the day the prescribed information for the election is filed under section 481(1);<sup>151</sup> and
  - (ii) ends—
    - (A) 6 months after the election has ended; or
    - (B) on a later day allowed by the registrar; and
- (b) must state—
  - (i) the election for which the application is made; and
  - (ii) the irregularity that is claimed to have happened; and
  - (iii) the facts relied on to support the application; and
- (c) must be accompanied by an affidavit by the applicant stating the facts claimed in the application are true to the best of the applicant’s knowledge and belief.

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151 Section 481 (Organisation or branch must file prescribed election information)

**502 Referral to commission**

(1) The registrar may refer the application to the commission only if satisfied—

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

(2) In deciding whether to refer, the registrar may consider other appropriate information of which the registrar has knowledge.

(3) An election inquiry is taken to have been started in the commission when the application is referred.

*Division 3—Investigations and interim orders***503 Commission may authorise registrar to investigate**

(1) The commission may, by order, before or after the registrar's decision to refer, authorise the registrar to do any of the following—

- (a) inspect ballot records for the election;
- (b) take possession of the ballot records;
- (c) enter a place of business used or occupied by the organisation or branch at which the registrar reasonably believes the ballot records are held, using necessary and reasonable help;
- (d) require a person to give the registrar ballot records in the person's possession or under the person's control or to keep the ballot records until—
  - (i) an inquiry is completed; or
  - (ii) an earlier time ordered by the commission.

(2) If a person is required to give ballot records under subsection (1)(d), the person must not fail to comply with the direction, unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—80 penalty units.

(3) A person must not obstruct the registrar when exercising a power under this section.

Maximum penalty—80 penalty units.

#### **504 Interim orders**

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

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

#### **505 Person acting under interim order**

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

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

### **506 When interim order ends**

An interim order ends—

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

### *Division 4—Conduct of election inquiries*

### **507 Commission's functions and powers for inquiry**

(1) For an election inquiry, the commission must inquire into and decide—

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

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

### **508 Orders if irregularity found**

(1) This section applies if the commission finds an irregularity has happened, or is likely to happen, in an election.

(2) The commission may make an order—

- (a) for a fresh election or the repeat of a step in the election, including, for example, calling for and submitting nominations; or
- (b) amending the election rules of the relevant organisation or branch in a way it considers necessary to correct a procedural defect in the rules; or

- (c) directing safeguards it considers appropriate to stop irregularities in the election, fresh election or repeat step; or
- (d) appointing a returning officer to act with any returning officer appointed under the rules; or
- (e) providing for the powers of a returning officer appointed under paragraph (d).

(3) Also, the commission may, by order, if it finds the election result may have been, or may be, affected by the irregularity or a similar irregularity, declare—

- (a) the election, or a step taken in or for it, to be void; or
- (b) a person apparently elected in the election not to have been elected; or
- (c) a person to have been elected at the election instead of a person declared not to have been elected.

(4) The commission may make any other order that is consequential to an order under this section.

### **509 Enforcing pt 8 orders**

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

### *Division 5—Offences about election inquiries*

### **510 Disadvantaging applicant for inquiry**

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

Maximum penalty—80 penalty units.

(2) In this section—

“**disadvantage**” includes damage, detriment, injury, loss, punishment and violence.



**511 Obstructing orders being carried out**

A person must not obstruct the carrying out of a commission order under this part.

Maximum penalty—80 penalty units.

***Division 6—Miscellaneous*****512 Financial help for application**

(1) An applicant for an election inquiry may apply to the Minister for financial help.

(2) The Minister may direct that financial help from the State be given to the applicant for the cost of the application, including witness expenses, if—

- (a) the commission found an irregularity happened in the election and the Minister considers the circumstances justify the payment; or
- (b) the commission certifies the applicant acted reasonably in applying for the inquiry; or
- (c) after considering the commission's findings at the inquiry, it is not just the applicant should pay any of the costs.

(3) The registrar must decide the amount of the financial help.

**513 Costs of fresh election ordered by inquiry**

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

*Example of a 'cost'—*

The cost of premises used for the fresh election.

(2) In this section—

**“fresh election”**, for an organisation or branch, includes—

- (a) a step in an election; and
- (b) a safeguard, not allowed for under the rules of the organisation or branch, for an election or step in an election.

## **PART 9—OFFICERS**

### *Division 1—Preliminary*

#### **514 Definitions for pt 9**

In this part—

**“candidate”** means a candidate for election or appointment to an office.

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

**“convicted person”** see section 515.

**“disqualification period”** see section 522(1).

**“disqualifying offence”** means an offence—

- (a) against an Act or a law of the State or another jurisdiction, involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more; or
- (b) against this chapter involving a failure to keep ballot records, comply with a direction or give information or documents for an election or ballot; or
- (c) against section 492, 627, 656 or 657;<sup>152</sup> or
- (d) involving the formation, registration or management of an association, corporation or organisation; or
- (e) that is a violent offence.

**“elected”**, to an office, includes appointed to fill a casual vacancy in the office.

**“leave application”** means an application under division 2, subdivision 2.

**“violent offence”** means an offence involving the—

- (a) intentional use of violence towards another person; or

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<sup>152</sup> Sections 492 (Obstructing conduct of election), 627 (Obstructing conduct of ballot), 656 (Falsely obtaining organisation’s property) and 657 (Wrongfully applying organisation’s property)

- (b) causing of death or injury to a person; or
- (c) damage or destruction of property.

### **515 Meaning of “convicted person” for pt 9**

(1) In this part, a “**convicted person**” means a person who—

- (a) has been convicted on indictment of a disqualifying offence; or
- (b) without limiting paragraph (a), has served, or is serving, a prison term for a violent offence.

(2) A “**convicted person**” also includes a person convicted, before this part commenced, of an offence that, apart from the non-commencement of this part, would have been a disqualifying offence.

### *Division 2—Disqualifications from candidature or holding office*

#### *Subdivision 1—Disqualifications*

### **516 Persons under 18**

A person under 18 years is not eligible to be a candidate or to be elected as a management committee member, treasurer or trustee of an organisation.

### **517 Convicted persons—candidature**

A person convicted of a disqualifying offence may be a candidate or elected to an office in an organisation only if—

- (a) the person has made a leave application to hold the office and—
  - (i) was given leave to hold the office; or
  - (ii) the court fixed a disqualification period for the person and the period has ended; or
- (b) 5 years has elapsed since the later of the following—
  - (i) the conviction;
  - (ii) if the person served a prison term for the offence, the person’s release from prison.

**518 Convicted persons—holding office**

(1) This section applies if a person who holds an office in an organisation is convicted of a disqualifying offence.

(2) The person ceases to hold the office 28 days after the conviction unless the person makes a leave application within that time.

(3) However, if the person makes a leave application within that time, the person ceases to hold the office—

- (a) 3 months after the conviction, if the application has not been decided and the court has not extended that time; or
- (b) if the court has extended that time, at the end of the extended time.

(4) The court may extend the time only if—

- (a) an application for the extension before the time mentioned in subsection (3)(a); or
- (b) if it has previously extended the time, the application for the further extension is made before the end of the time as extended.

***Subdivision 2—Applications for leave to hold office*****519 Prospective candidates**

(1) This section applies if a person who wants to be a candidate for an office in an organisation has, within 5 years, been—

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

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

(3) The court must not grant the leave if the applicant has already made a leave application for the conviction.

**520 Existing office holders**

(1) If a person holding an office is convicted of a disqualifying offence, the person may apply to the court for leave to hold the office or another stated office.

(2) The court may grant the leave only if—

- (a) the application is made within 28 days after the conviction; and
- (b) the person has not already made a leave application for the conviction.

### **521 Consideration of leave applications**

In deciding a leave application, the court must consider—

- (a) the nature of the disqualifying offence in relation to which leave is sought; and
- (b) the circumstances and the nature of the applicant's involvement in the commission of the offence; and
- (c) the applicant's general character and fitness to be involved in the management of organisations, having regard to the offence; and
- (d) any other matter it considers appropriate.

### **522 Disqualification period may be given if leave refused**

(1) If the court decides to refuse a leave application, it may fix a period (a “**disqualification period**”) during which the applicant is disqualified from holding office in any organisation.

(2) However, the court must not fix a disqualification period that starts before or ends more than 5 years after the later of the following—

- (a) the conviction that is the subject matter of the application;
- (b) if the person served a prison term for the conviction, the person's release from prison.

### **523 Leave or fixing of disqualification period does not affect div 2**

The granting of a leave application or the fixing of a disqualification period for a conviction does not affect the operation of this division for another conviction.

*Subdivision 3—Miscellaneous***524 Declaration about eligibility or ceasing to hold office**

(1) An organisation, a member of the organisation or the registrar may apply to the court for a declaration that, because of this division, a person—

- (a) is not, or was not, eligible to be a candidate or to be elected to an office in the organisation; or
- (b) has ceased to hold an office in the organisation.

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

**525 Certificate evidence for div 2**

(1) For an application under this division, a certificate stating the following about a person and purporting to be by an appropriate officer of a court of the State or another jurisdiction is evidence the person was—

- (a) convicted by the court of a stated offence on a stated day;
- (b) acquitted by the court of a stated offence, or that a stated charge against the person was dismissed by the court, on a stated day.

(2) A certificate purporting to be by a person in charge of a prison is evidence that a stated person was released from the prison on a stated day.

(3) In this section—

**“appropriate officer”** of a court means a registrar or other officer with registration functions for the court.

*Division 3—Officers’ financial management duties***526 Application of div 3**

This division applies if an officer of an organisation performs functions or exercises powers relating to the organisation’s financial management.

**527 Duty of honesty**

The officer must act honestly.

Maximum penalty—40 penalty units.

**528 Duty of reasonable care and diligence**

The officer must exercise the degree of care and diligence that a reasonable person in the officer's position would be reasonably expected to exercise.

Maximum penalty—40 penalty units.

**529 Officers with material personal interests**

(1) This section applies if the officer has a material personal interest in a matter involving the organisation's financial management.

(2) The officer must disclose the nature of the interest to the organisation's management committee as soon as practicable after the relevant facts come to the officer's knowledge.

Maximum penalty—40 penalty units.

(3) If the matter is to be considered at an annual general or management committee meeting at which the officer is present, the officer must not—

- (a) vote on the matter; or
- (b) remain at the meeting when the matter is being considered.

Maximum penalty—40 penalty units.

**530 Other duties not affected**

This division does not—

- (a) limit a law about the exercise of an officer's powers or performance of an officer's functions; or
- (b) prevent the taking of proceedings about a breach of an officer's duty to an organisation.

## **PART 10—MEMBERSHIP**

### *Division 1—Eligibility and admission to membership*

#### **531 Eligibility**

A person is eligible to become a member of an organisation if the person—

- (a) by the nature of the person’s occupation or employment, engages in a calling for which the organisation is registered; and
- (b) complies with the organisation’s rules.

#### **532 Obligation to admit**

(1) An organisation must admit to membership a person who is eligible to become a member—

- (a) within 3 months of the person applying to become a member; or
- (b) if a question or dispute has within the 3 months been referred to the court for decision under division 2, within 1 month of the court deciding the person is, or is eligible to become, a member.

Maximum penalty—40 penalty units

(2) In this section—

“**admit to membership**” means—

- (a) do what is necessary under the organisation’s rules to ensure the person is a member of the organisation; or
- (b) record in the organisation’s members register the particulars required under section 545<sup>153</sup> for the person’s membership of the organisation.

#### **533 Obligation to give union card**

(1) If a person is admitted to membership of an organisation or a person’s membership of an organisation is renewed, the organisation must

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153 Section 545 (Requirements for members register)



give a union card to the person as soon as practicable after the admission or renewal.

Maximum penalty—40 penalty units

(2) The giving of a union card under this section does not prevent the organisation making an application under division 2 or the court making a decision or order under division 2.

(3) In this section—

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

### **534 Members under 18**

A person under 18 years—

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

### *Division 2—Membership disputes*

### **535 Court may decide**

The court may, on the application of an organisation or a person who has applied for membership of an organisation, decide a question or dispute about the following—

- (a) whether a person is, or is eligible to become, a member of the organisation;
- (b) when a person became a member or must be treated by the organisation and its members as if the person had become a member;
- (c) the qualifications of a membership applicant;
- (d) the reasonableness of a membership subscription, fine or levy, or other requirement of its members under its rules.

**536 Deciding application**

On hearing the application, the court may do any of the following—

- (a) declare a person is or is not a member of the organisation;
- (b) decide a membership applicant may become a member of the organisation;
- (c) order the organisation to admit a membership applicant to its membership and record the applicant as a member in its members register;
- (d) order the organisation to treat a membership applicant as if the applicant had been a member of the organisation from a stated day;
- (e) order an amendment or repeal of a rule of the organisation.

***Division 3—Membership subscriptions*****537 Obligation to give receipt**

(1) This section applies if a person pays an organisation a membership subscription for the person's membership or membership renewal of the organisation.

(2) The organisation must give the person a written receipt for the payment within 1 month after the payment was made.

Maximum penalty for subsection (2)—40 penalty units.

***Division 4—Resignation*****538 Division applies despite rules**

This division applies despite an organisation's rules.

**539 Resignation**

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

(2) The person's membership ends if the person gives the organisation a notice stating the person resigns from the organisation.

(3) The person's membership ends—

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

#### **540 Resignation if membership subscription unpaid for 2 years**

(1) A person's membership of an organisation ends if the person—

- (a) owes the organisation a membership subscription; and
- (b) has owed the subscription for 2 years.

(2) For subsection (1), a person is taken not to owe a subscription if the person has—

- (a) entered into an agreement with the organisation to pay the subscription; and
- (b) complied with, and continues to comply with, the agreement.

#### ***Division 5—Liabilities of member to organisation***

#### **541 Meaning of “member's liability” for div 5**

In this division, a “**member's liability**” to an organisation means an amount payable to the organisation under its rules by a member or former member of the organisation.

*Examples of a 'member's liability'—*

A membership fee, fine, levy or subscription.

#### **542 Recovering member's liabilities**

(1) A member's liability to an organisation may only be sued for and recovered before a magistrate.

(2) Proceedings to recover a member's liability to an organisation must be commenced within 3 years from when the member's liability first become payable.

(3) If proceedings to recover a member's liability to an organisation are not commenced under subsection (2), the member's liability is not recoverable.

### **543 Limit on liability after resignation**

If a person's membership of an organisation has ended, the person—

- (a) continues to be liable for a member's liability that—
  - (i) became payable within 1 year before the membership ended; and
  - (ii) is recoverable under section 542; and
- (b) is not liable for a member's liability that became payable—
  - (i) more than 1 year before the membership ended; or
  - (ii) after the membership ended.

## **PART 11—REGISTERS**

### **544 Members and officers registers**

An organisation must, for each year, keep written registers stating each person who is or was—

- (a) a member of the organisation during the whole or part of the year; or
- (b) an officer of the organisation during the whole or part of the year.

Maximum penalty—40 penalty units.

### **545 Requirements for members register**

(1) An organisation must record the following for each person who is or was a member of the organisation during the whole or part of the year for which the register is kept—

- (a) the person's name;
- (b) for an employee organisation, the person's residential address;

- (c) for an employer organisation, the person's business address;
- (d) the day the person became a member;
- (e) if the person's membership has ended, the day it ended.

Maximum penalty—40 penalty units.

(2) If the organisation has more than 100 members, it must keep the register in a way that allows the names to be read alphabetically.

Maximum penalty—40 penalty units.

### **546 Officers register—required particulars**

An organisation must record the following for each person who is or was an officer of the organisation during the whole or part of the year for which the register is kept—

- (a) the person's name and address;
- (b) each office the person holds or held;
- (c) the day the person was elected or appointed to each office;
- (d) if a person ceased or ceases to hold an office, the day the office holding ceased or ceases.

Maximum penalty—40 penalty units.

### **547 Annual obligation to file officers register**

An organisation must, before 31 March in each year, file a copy of its officers register as at the start of the year.

Maximum penalty—40 penalty units.

### **548 Obligation to file officers register on change of office holder**

An organisation must file a copy of its officers register within 30 days after a person becomes or ceases to be an officer of the organisation.

Maximum penalty—40 penalty units.

**549 Inspection of registers**

(1) When an organisation's office is open for business, its members and officers registers must be open for inspection, free of charge, at the office by—

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

(2) A copy of an organisation's officers register filed with the registrar may be inspected by any person who pays the fee prescribed under the rules of court.

**550 Registrar's directions about registers**

(1) The registrar may give a written direction to an organisation to—

- (a) give the registrar its members or officers register; or
- (b) correct its members or officers register in a stated way the registrar considers is necessary to ensure compliance with this part.

(2) The organisation must comply with the direction, unless it has a reasonable excuse for not complying with the direction.

Maximum penalty for subsection (2)—40 penalty units.

**PART 12—ACCOUNTS AND AUDIT***Division 1—Preliminary***551 Definitions for pt 12**

In this part—

“**accounting deficiency**” see section 560(d).

“**accounting records**” see section 554(3).

“**financial affairs**” includes transactions.

“**financial year**” of an organisation, see section 552.

“**presentation meeting**” see section 565.

“**registrar’s auditor**” see section 575(1).

“**transactions**” includes membership subscription payments.

### **552 Meaning of “financial year” for pt 12**

(1) In this part, a “**financial year**” of an organisation means—

- (a) the period of 1 year starting on 1 July; or
- (b) if its rules provide for another period of 1 year as its financial year, the other period.

(2) If an organisation’s rules change so that the period of its financial year changes, the time from the end of the financial year before the change and the start of the first financial year after the change is taken to be a financial year.

(3) The period from when an organisation is registered to the start of its first financial year under subsection (1) is not included in a financial year of the organisation.

### **553 Part applies to branches with separate financial affairs**

If a branch keeps accounting records and accounts separate from its organisation’s accounts and accounting records, this part, other than this section, applies to the branch for the year, as if—

- (a) it is an organisation (the “**notional organisation**”); and
- (b) the members of the organisation that form the branch are members of the notional organisation; and
- (c) employees of the organisation employed for the branch, whether or not they are also employed for another branch, are employees of the notional organisation; and
- (d) a journal published by the organisation is a journal published by the notional organisation.

***Division 2—Accounting obligations*****554 Obligation to keep accounting records**

(1) An organisation must keep accounting records for its transactions for at least 7 years after the end of the transactions they are about.

Maximum penalty—40 penalty units.

(2) The accounting records must be kept in a way prescribed under a regulation.

Maximum penalty—40 penalty units.

(3) In this section—

**“accounting records”** of an organisation means financial documents that—

- (a) explain the methods and calculations about how its accounts are made up and correctly record and explain the organisation’s transactions and financial position; or
- (b) are prescribed under a regulation.

**555 Obligation to prepare accounts**

(1) An organisation must prepare the accounts and other statements (**“accounts”**) prescribed under a regulation for each financial year as soon as practicable after the year ends.

Maximum penalty—40 penalty units.

(2) The organisation must include in the accounts—

- (a) the relevant figures from the preceding financial year’s accounts; and
- (b) the particulars prescribed under a regulation about each matter for which a compulsory levy or voluntary contribution has been paid to the organisation.

Maximum penalty—40 penalty units.

(3) A regulation may prescribe certificates that must be included in the accounts.

(4) In this section—



“**compulsory levy**”, for an organisation, means a levy payable by a member to the organisation under its rules.

### **556 Member may apply for prescribed information**

(1) A member of an organisation may apply to the organisation for information that it must, under a regulation, give its members.

(2) An application may be made by the registrar for a member.

(3) The organisation must give the member or, if the registrar applied for a member, the registrar, the information applied for in the way prescribed under a regulation.

Maximum penalty—40 penalty units.

(4) If the information is given to the registrar, the registrar must give the information to the member for whom the registrar made the application.

### **557 Registrar’s directions about accounts and accounting records**

(1) The registrar may direct an officer of an organisation to give the registrar—

- (a) stated information about the organisation’s funds and accounts within the officer’s knowledge or possession; or
- (b) stated accounts or accounting records of the organisation over which the officer has control or custody.

(2) The registrar may also direct any officer of an organisation with functions or powers for keeping its accounts or accounting records to—

- (a) keep the organisation’s accounts in a stated form; or
- (b) make a stated entry or entries of a stated type in the accounts.

(3) If an officer is given a direction under this section, the officer must comply with the direction, unless the officer has a reasonable excuse for not complying with the direction.

Maximum penalty—40 penalty units.

(4) It is a reasonable excuse for the officer not to comply with the direction if doing so might tend to incriminate the officer.

**Division 3—Audits****558 Obligation to have auditor**

- (1) An organisation must appoint a competent person as its auditor to—
- (a) inspect and audit the organisation’s accounting records for each financial year for which the auditor is appointed; and
  - (b) make a report (an “**audit report**”) to the organisation within 4 months after the end of each financial year.

Maximum penalty—40 penalty units.

- (2) A person, other than a competent person, must not—
- (a) accept an appointment as an auditor; or
  - (b) continue in an appointment to perform an audit or prepare an audit report.

Maximum penalty—40 penalty units.

- (3) In this section—

“**competent person**”, for an audit or audit report for an organisation, means a person who is—

- (a) a registered company auditor under the Corporations Act, section 9, definition “registered company auditor”; and
- (b) not an officer or a member of the organisation; and
- (c) not employed by the organisation, other than as its auditor.

**559 How auditor may be removed**

An organisation’s auditor may only be removed—

- (a) if the auditor was appointed by its management committee—with the agreement of a majority of the members of the committee; or
- (b) if the auditor was appointed by a general meeting of the organisation, by a resolution passed at a general meeting by a majority of its members voting at the meeting.

**560 Requirements for audit report**

An audit report must state whether, in the auditor’s opinion—

- (a) the organisation kept satisfactory accounting records for the financial year, including records of—
  - (i) the sources and nature of the organisation’s income, including membership subscriptions and other income from members; and
  - (ii) the nature of and reasons for the organisation’s expenditure; and
- (b) the accounts for the year were properly drawn to give a true and fair view of the organisation’s—
  - (i) financial affairs at the end of the year; and
  - (ii) income and expenditure and surplus or deficit for the year; and
- (c) the accounts for the year were prepared under this Act; and
- (d) there was a deficiency, failure or shortcoming (an “**accounting deficiency**”) for a matter mentioned in paragraphs (a) to (c); and
- (e) information and explanations required from the organisation’s officers or employees were given.

### **561 Audit report must not be knowingly false or misleading**

(1) An auditor must not state anything in an audit report the auditor knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint for an offence against subsection (1) to state the statement made was ‘false or misleading’ to the auditor’s knowledge.

### **562 Auditor must notify registrar of contravention**

An auditor performing auditor’s functions for an organisation must immediately notify the registrar if the auditor—

- (a) becomes aware a provision of this part has been contravened; and
- (b) is of the opinion that the matter can not be adequately dealt with by comment in the auditor’s audit report.

Maximum penalty—40 penalty units.

**563 Auditor's powers**

(1) An organisation's auditor has the right—

- (a) to full and free access at all reasonable times to the organisation's records about its—
  - (i) payments or receipts; or
  - (ii) acquisition, receipt, custody or disposal of property; and
- (b) to ask the organisation's employees, members or officers for information or explanations required for the audit.

(2) The auditor may authorise another appropriately qualified person (an **“authorised person”**) to exercise the rights.

(3) The organisation or an employee, member or officer of the organisation must not obstruct the auditor or an authorised person when exercising any of the rights unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(4) The auditor or an authorised person may require the organisation or its employees, members or officers to produce to the auditor or authorised person a document in the person's custody or control.

(5) The organisation, employee, member or officer must give the auditor or authorised person the document, unless the person has a reasonable excuse for not giving the document.

Maximum penalty—40 penalty units.

(6) It is a reasonable excuse for the person not to give the document if doing so might tend to incriminate the person.

(7) In this section—

**“auditor”** includes the registrar's auditor engaged to examine the organisation's accounting records.

**564 Auditors have qualified privilege**

(1) An auditor may make a statement or comment that is defamatory if it is—

- (a) made in good faith; and
- (b) made in the course of performing the auditor's functions as an auditor under this Act; and

(c) relevant to the auditor's functions.

(2) A person may print or publish in good faith a document that contains defamatory matter, if it was—

- (a) prepared by an auditor for an audit under this Act; and
- (b) required to be filed or made to the registrar.

(3) In this section—

“**auditor**” means an organisation's auditor or the registrar's auditor.

#### *Division 4—Presentation and filing of audit reports*

### **565 Obligation to present to general or committee meeting**

An organisation must present its audit report and relevant accounts for each of its financial years to a general meeting or management committee meeting (a “**presentation meeting**”) within—

- (a) 5 months after the end of the financial year that the report and accounts are about; or
- (b) if the registrar has extended the time to hold the meeting, the extended time.

Maximum penalty—40 penalty units.

### **566 Obligation to publish audit report and accounts**

An organisation must, at least 28 days before each presentation meeting—

- (a) give its members, free of charge, a copy of the audit report and relevant accounts to be presented at the meeting; or
- (b) publish the report and accounts in a journal or newsletter that it gives to its members free of charge.

Maximum penalty—40 penalty units.

### **567 Notice of meetings to auditor**

(1) An organisation must give its auditor notice of—

- (a) each presentation meeting; and

- (b) any other meeting of the organisation at which business is to be conducted about the auditor, in that capacity.

Maximum penalty—40 penalty units.

(2) In this section—

“**notice**” of the meeting means the notice of the meeting that the persons who may attend the meeting have the right to receive under the organisation’s rules.

### **568 Auditor may attend meetings**

(1) An organisation’s auditor, or another person authorised by the auditor, may attend and address the part of—

- (a) a presentation meeting at which the auditor’s audit report and relevant accounts are to be considered or presented; or
- (b) any other meeting of the organisation at which business is to be conducted about the auditor, in that capacity.

(2) An employee, member or officer of the organisation must not obstruct the auditor or authorised person from attending or addressing the part of the meeting, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

### **569 False or misleading statements about reports**

(1) This section applies if—

- (a) a member of an organisation’s management committee—
  - (i) gives members of the organisation a copy of its audit report and relevant accounts; or
  - (ii) presents the report and accounts to a general meeting or management committee meeting of the organisation; and
- (b) the member comments on a matter dealt with in the report or accounts.

(2) The member must not state anything in the comment the member knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(3) It is enough for a complaint for an offence against subsection (2) to state the statement made was ‘false or misleading’ to the member’s knowledge.

### **570 Report and accounts must be filed**

(1) An organisation must, within the required period, file—

- (a) a copy of the audit report and relevant accounts for each of its financial years; and
- (b) a certificate by its president or secretary stating the originals of the report and accounts have been presented to a general meeting or management committee meeting of the organisation.

Maximum penalty—40 penalty units.

(2) In this section—

“**required period**” means the period of 14 days after the report and accounts are presented or a longer time allowed by the registrar.

### *Division 5—Registrar’s investigations and audits*

### **571 Registrar’s investigations**

(1) The registrar must investigate an organisation’s finances or financial administration if—

- (a) an audit report for the organisation states—
  - (i) there was an accounting deficiency in the organisation’s accounts; or
  - (ii) another matter the registrar considers should be investigated; or
- (b) asked by the required number of members of the organisation.

(2) The registrar may also conduct an investigation—

- (a) if satisfied there are reasonable grounds to conduct an investigation; or
- (b) in another circumstance prescribed under a regulation.

**572 Registrar's directions for investigation**

(1) The registrar may direct an auditor, employee or officer, or a former auditor, employee or officer, of the organisation to give the registrar—

- (a) information relevant to the investigation within the person's knowledge or possession; or
- (b) documents relevant to the investigation over which the person has control or custody.

(2) If a direction is given to a person under this section, the person must comply with the direction, unless the person has a reasonable excuse for not complying with the direction.

Maximum penalty—40 penalty units.

(3) It is a reasonable excuse for the person not to comply with the direction if doing so might tend to incriminate the person.

**573 Notice of contravention to organisation**

(1) This section applies if the registrar considers an investigation has revealed a contravention of this Act or a rule of the organisation investigated about its finances or financial administration.

(2) The registrar may by notice—

- (a) advise the organisation of the contravention; and
- (b) require it to take stated action, within a stated period, to remedy the contravention.

**574 Court may order compliance with notice**

If an organisation does not comply with a notice under section 573(2), the court may, on the application of the registrar, make an order it considers appropriate to remedy the contravention stated in the notice.

**575 Registrar's examinations and audits**

(1) The registrar may engage an auditor (“**registrar's auditor**”) to examine an organisation's accounting records for a financial year or other period for the organisation if the registrar considers—

- (a) the organisation has not kept accounting records; or



- (b) the organisation has an accounting deficiency in its accounts; or
- (c) the organisation's property has been misappropriated or improperly applied; or
- (d) the organisation, or an officer of the organisation, has committed an offence about the organisation's property.

(2) The registrar's auditor must examine the organisation's accounting records and give the registrar an audit report.

### **576 Powers of registrar's auditor**

The registrar's auditor, or an appropriately qualified person authorised in writing by the auditor, has the functions and powers of an organisation's auditor.

### **577 Costs of examination and audit by registrar's auditor**

(1) The costs of or associated with an examination or audit by a registrar's auditor must be paid by the organisation for which the examination or audit is carried out if demanded by the registrar.

(2) The registrar may recover the amount of the costs not paid on demand, as a debt.

## *Division 6—Loans, grants and donations*

### **578 Obligation to file details of loans, grants and donations**

(1) An organisation must, as soon as practicable after the end of its financial year, file a statement under this section of its loans, grants or donations (a “**payment**”) to the same person during the year of more than, or if added together more than, \$1 000.

Maximum penalty—40 penalty units.

(2) The statement must include for each payment—

- (a) the amount of the payment and the reason for making it; and
- (b) if it was not a financial hardship payment—
  - (i) the name and address of the person to whom it was made; and

(ii) if it was a loan, the arrangements to repay the loan.

(3) The statement must be signed by an officer of the organisation.

### **579 Member may inspect statement**

A filed statement may be inspected, during office hours, by a member of the organisation that filed it.

## **PART 13—EXEMPTIONS**

### *Division 1—Exemptions for organisations with counterpart federal bodies*

#### *Subdivision 1—Exemption from holding election*

### **580 Exemption if federal election held**

(1) An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices (a “**stated office**”).

(2) The registrar may grant an exemption to an applicant for a stated office only if satisfied as follows—

- (a) the applicant has a counterpart federal body;
- (b) the body has held an election (the “**federal election**”) for an office (the “**federal office**”) under the Commonwealth Act;
- (c) the applicant’s rules provide that the stated office is a corresponding office to the federal office;
- (d) the stated office will be filled by a person elected (the “**elected person**”) in the federal election to the federal office;
- (e) if the eligibility rules of the organisation and the body differ—the interests of the organisation’s members who were ineligible to vote in the federal election have not been disadvantaged.

(3) If an exemption is granted for a stated office—

- (a) the elected person is taken to have been elected to the stated office; and
- (b) the organisation's rules for the election of the elected person to the stated office are taken to be complied with; and
- (c) section 441<sup>154</sup> does not apply to the rules for the election.

(4) In this section—

“**corresponding office**”, to a federal office, means an office, however called, similar to the federal office.

### **581 Obligation to notify change in federal election result**

(1) This section applies if—

- (a) an organisation has been given an exemption under section 580; and
- (b) an order under the Commonwealth Act has changed the federal election result about which the exemption was given.

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

Maximum penalty—40 penalty units.

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

#### *Subdivision 2—Exemption from keeping members or officers register*

### **582 Exemption**

(1) An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from keeping a members or officers register.

(2) The registrar may grant an exemption to an applicant only if satisfied the applicant has a counterpart federal body and—

- (a) for an exemption from keeping a members register—

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154 Section 441 (Rules must provide for elections)

- (i) its members are, when the application is made, recorded as members of the body in the body's register of members under the Commonwealth Act;<sup>155</sup> and
  - (ii) the body has complied with the requirements under the Commonwealth Act about keeping its register of members and other records for its members; or
- (b) for an exemption from keeping an officers register—
- (i) its officers are all officers of the body; and
  - (ii) the body has complied with the requirements under the Commonwealth Act about keeping and filing records for its officers.

(3) The exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

### **583 Effect of exemption**

(1) While an exemption from keeping a members register is in force for an organisation, its counterpart federal body's register of members is taken to be the organisation's members register.

(2) While an exemption from keeping an officers register is in force for an organisation, its counterpart federal body's register of officers is taken to be the organisation's officers register.

### **584 Obligation to file copy of federal officers register**

(1) This section applies if the registrar has, under section 582, granted an exemption to an organisation that exempts it from keeping an officers register.

(2) The organisation must, within 14 days after any officer's records for its counterpart federal body are filed under the Commonwealth Act, file a copy of the records certified by the president or secretary of the body as being a true copy of the records.

Maximum penalty—40 penalty units.

(3) In this section—

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155 See the Commonwealth Act, section 268 (Records to be kept and lodged by organisations).

“**officer’s records**” includes a statement of changes made to the records required to be filed under the Commonwealth Act.<sup>156</sup>

### **585 Obligation to give notice of change or contravention**

(1) This section applies to an organisation that has been granted an exemption under section 582 if any of the following events happen—

- (a) it no longer has a counterpart federal body;
- (b) if it was exempted from keeping a members register—
  - (i) its members are not recorded as members of the counterpart federal body of the organisation for which the exemption was granted in the body’s register of members under the Commonwealth Act; or
  - (ii) the body has contravened a requirement of the Commonwealth Act about keeping or filing records for its members;
- (c) if it was exempted from keeping an officers register—
  - (i) not all of its officers are officers of the counterpart federal body of the organisation for which the exemption was granted; or
  - (ii) the body has contravened a requirement of the Commonwealth Act about keeping or filing records for its officers.

(2) The organisation must give the registrar notice of the happening of the event as soon as practicable after it becomes aware of the happening of the event.

Maximum penalty—40 penalty units.

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

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<sup>156</sup> See the Commonwealth Act, section 268 (Records to be kept and lodged by organisations).

***Subdivision 3—Exemption from accounting or audit provisions*****586 Who may apply**

An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from the whole or part of part 12, divisions 2 to 4<sup>157</sup> if—

- (a) either—
  - (i) there is only 1 applicant and the applicant has a counterpart federal body; or
  - (ii) there is more than 1 applicant and each applicant has the same counterpart federal body; and
- (b) the members of each applicant are recorded as members of the body in the body's register of members under the Commonwealth Act; and
- (c) the body is not a body for which a certificate has been issued under the Commonwealth Act, section 285.<sup>158</sup>

**587 Grant of exemption**

(1) The registrar may grant the exemption only if satisfied the counterpart federal body for which the application is to be granted has complied with each relevant Commonwealth provision.

(2) The exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

(3) While the exemption is in force, each exempted provision does not apply to the organisation.

(4) In this section—

**“relevant Commonwealth provision”** means each provision of the Commonwealth Act, part 9, division 11<sup>159</sup> that corresponds, or substantially corresponds, with each provision to be exempted.

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157 Part 12 (Accounts and audit), divisions 2 (Accounting obligations), 3 (Audits) and 4 (Presentation and filing of audit reports)

158 Section 285 (Accounts and audit where income of organisation less than certain amount) of the Commonwealth Act

159 Part 9, division 11 (Accounts and audit) of the Commonwealth Act

**588 Obligation to file copies of federal audit documents**

(1) This section applies if the registrar has, under section 587, granted an exemption for an organisation that exempts it from presenting or filing audit reports or relevant accounts under part 12, division 4.

(2) The organisation must, within 14 days after the filing under the Commonwealth Act, section 280,<sup>160</sup> of any audit report or relevant accounts for its counterpart federal body, file a copy of the documents certified by the president or secretary of the body as being a true copy of the documents.

Maximum penalty for subsection (2)—40 penalty units.

**589 Obligation to give notice of change or contravention**

(1) This section applies to an organisation that has been granted an exemption under section 587 if any of the following events happen—

- (a) it no longer has a counterpart federal body;
- (b) its members are not recorded as members of the counterpart federal body of the organisation for which the exemption was granted in the body's register of members under the Commonwealth Act;
- (c) a certificate is issued for the body under the Commonwealth Act, section 285;
- (d) it has contravened a relevant Commonwealth provision under section 587 for which the exemption was granted.

(2) The organisation must give the registrar notice of the event as soon as practicable after it becomes aware of the happening of the event.

Maximum penalty—40 penalty units.

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

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<sup>160</sup> Section 280 (Reports etc. to be lodged in Industrial Registry) of the Commonwealth Act

***Division 2—Exemption from accounting or audit obligations for employer organisations that are corporations***

**590 Who may apply**

An employer organisation that is a corporation may apply to the registrar for an exemption from the whole or part of part 12, divisions 2 to 4.<sup>161</sup>

**591 Grant of exemption**

(1) The registrar may grant the exemption only if satisfied—

- (a) another Act or law imposes accounting and audit obligations on the organisation that are an adequate substitute for each provision to be exempted; and

*Examples of other laws that impose accounting and audit obligations—*

- the Corporations Act, chapter 2M<sup>162</sup>
- the *Associations Incorporation Act 1981*.

- (b) the organisation has complied with the provisions of the other Act or law that correspond with or substantially correspond with each provision to be exempted; and

- (c) if the exemption is granted, the organisation will continue to be financially accountable to its members.

(2) The exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

(3) While the exemption is in force, each exempted provision does not apply to the organisation.

**592 Obligation to file copies of reports under other Act or law**

(1) This section applies if—

- (a) the registrar has, under section 591, granted an exemption for an organisation from the requirement to present or file audit reports or relevant accounts under part 12, division 4; and

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161 Part 12 (Accounts and audit), divisions 2 (Accounting obligations,) 3 (Audits) and 4 (Presentation and filing of audit reports)

162 Corporations Act, chapter 2M (Financial reports and audit)



- (b) another Act or law requires the organisation or its counterpart federal body to prepare and file with a person or body with regulatory functions for the organisation—
- (i) a financial report; or
  - (ii) a director's report; or
  - (iii) an auditor's report.

(2) The organisation must, within 14 days after the report is filed under the other Act or law, file a copy of the report certified by its president or secretary as being a true copy of the report.

Maximum penalty for subsection (2)—40 penalty units.

### **593 Obligation to notify registrar of contravention of other law**

(1) This section applies if an organisation has contravened a provision of another Act or law that corresponds, or substantially corresponds, with the provision for which an exemption under section 591 was granted.

(2) The organisation must give the registrar notice of the contravention as soon as practicable after it becomes aware of the happening of the contravention.

Maximum penalty—40 penalty units.

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

### ***Division 3—Exemptions from requirement that electoral commission conduct election***

#### ***Subdivision 1—Grant of exemption***

### **594 Who may apply**

(1) An organisation or branch may apply to the registrar for an exemption from the requirement that the electoral commission conduct—

- (a) elections for the organisation or branch; or
- (b) an election for a particular office in the organisation or branch.<sup>163</sup>

(2) For this section, if an organisation's rules require an office to be filled by an election by the members, or by some of the members, of 1 branch of the organisation, an election to fill the office is taken to be an election for the branch.

### **595 Requirements for application**

(1) An application may be made only if the management committee of the organisation or branch has—

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

(2) The application must be accompanied by an affidavit by a member of the management committee stating subsection (1) has been complied with.

### **596 Publication of application**

The registrar must publish, in the way prescribed under a regulation, a notice stating details of the application.

### **597 Hearing application**

The registrar may grant the exemption only if satisfied as follows—

- (a) the rules of the organisation or branch comply with part 4;
- (b) if the exemption is granted, for each election to which the exemption applies—
  - (i) the organisation's rules and the obligations under subdivision 2 and part 7 will be complied with; and
  - (ii) the election will be conducted in a way that gives the organisation's members who have the right to vote in the election an adequate opportunity of voting without intimidation;
- (c) subdivision 2 and part 7 have been complied with for any previous exemption granted to the organisation or branch under this subdivision;<sup>164</sup>

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163 For the requirement, see section 483 (Electoral commission to conduct elections).

- (d) the IO Act, sections 51 and 52, have been complied with for any previous exemption granted under the IO Act, section 50,<sup>165</sup> to the organisation or branch for which the exemption is sought.

### *Subdivision 2—Obligations if exemption granted*

#### **598 Application of sdiv 2**

This subdivision applies to an organisation or branch for each election for which an exemption under subdivision 1 is granted.

#### **599 Obligation to appoint returning officer**

(1) Before calling nominations for the election, the organisation or branch must—

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

Maximum penalty—40 penalty units.

(2) An employee, member or officer of the organisation or branch must not be appointed as the returning officer.

#### **600 Election result report**

Within 14 days of the declaration of the result of the election, the returning officer for the election must give the registrar a written election result report for the election stating the particulars prescribed under a regulation.

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164 Parts 4 (Election rules) and 7 (Conduct of elections)

165 Sections 50 (Commission may give exemption), 51 (Duties of organisation if exemption given) and 52 (Election result report) of the IO Act

Maximum penalty—40 penalty units.

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

The following persons must take reasonable steps to ensure all ballot records given to them for the election are kept for 1 year after the declaration of the result of the election—

- (a) the returning officer for the election;
- (b) the organisation or branch for which the election is held;
- (c) an officer of the organisation or branch who performs a function for ballot records for the election.

Maximum penalty—40 penalty units.

## *Division 4—Cancellation of exemptions*

### **602 Cancellation grounds**

(1) An exemption under this part may be cancelled by the registrar only—

- (a) if the holder of the exemption asks for its cancellation; or
- (b) on a ground mentioned in subsection (2).

(2) The grounds are as follows—

- (a) for an exemption under section 580—
  - (i) the organisation no longer has a counterpart federal body; or
  - (ii) the making of an order mentioned in section 581(1)(b);
- (b) for an exemption under section 582 from keeping an officers register, the holder has contravened section 584;
- (c) the happening of a contravention or an event for which the holder must, under division 1 or 2, notify the registrar;
- (d) for an exemption under section 591, the registrar is no longer satisfied under section 591(1);
- (e) for an exemption under section 597—
  - (i) the registrar is no longer satisfied under section 597; or

- (ii) there has been a contravention of part 7 or division 3, subdivision 2 for an election for which the exemption was granted; or
- (iii) the required number of members of the holder ask for the cancellation.<sup>166</sup>

### **603 Alternatives to cancellation for federal election exemption**

(1) This section applies if the registrar considers an exemption under section 580 may be cancelled because an order mentioned in section 581(1)(b) has been made.

(2) The registrar may—

- (a) amend the exemption instead of cancelling it; or
- (b) cancel it, but grant another exemption instead to reflect the terms of the order.

## **PART 14—VALIDATIONS**

### *Division 1—Preliminary*

#### **604 Definitions for pt 14**

In this part—

“**act**” includes decision.

“**collective body**” of an organisation means—

- (a) its management committee; or
- (b) a conference, council, committee, panel or other body of, or within the organisation.

“**invalidity**” includes defect.

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<sup>166</sup> Sections 580 (Exemption if federal election held), 581 (Obligation to notify change in federal election result), 582 (Exemption), 584 (Obligation to file copy of federal officers register), 591 (Grant of exemption), 597 (Hearing application) and part 7 (Conduct of elections)

“organisation” includes a branch of an organisation.

### *Division 2—Validations*

#### **605 Limitation on validations if substantial injustice**

(1) This division operates to validate an act or event only if the operation does not or will not cause substantial injustice to—

- (a) the organisation to which the act or event applies or concerns; or
- (b) a member or creditor of the organisation; or
- (c) a person dealing with, or who has dealt with, the organisation.

(2) However, subsection (1) does not apply to sections 607 to 609.

#### **606 Validation of certain acts done in good faith**

(1) This section applies to an act done in good faith by an organisation, a collective body or officer of an organisation or a purported collective body or officer of an organisation.

(2) The act is not invalid only because—

- (a) of an invalidity discovered later in—
  - (i) the election or appointment of a collective body or officer of the organisation; or
  - (ii) the organisation’s rules; or
  - (iii) making, amending or repealing a rule of the organisation; or
- (b) an absence of quorum or other procedural irregularity; or
- (c) the organisation has a counterpart federal body.

(3) In this section—

- (a) an act is taken to be done in good faith unless proved otherwise; and
- (b) a person who has purported to be a member of a collective body is taken to have done so in good faith unless proved otherwise; and
- (c) knowledge of facts from which an invalidity arose is not by itself knowledge of the invalidity; and

- (d) an invalidity is taken not to be discovered until known by a majority of the members of the management committee of the organisation.

**(4)** This section—

- (a) does not affect the operation of part 7 or an election inquiry under part 8;<sup>167</sup> and
- (b) does not validate an expulsion, suspension, fine or penalty for a member of the organisation if that act would not have been valid had this section not been enacted; and
- (c) applies to an action done—
- (i) before or after this section commences; or
- (ii) concerning an association that became an organisation after the act was done.

### **607 Certain acts by person purporting to act in an office**

**(1)** This section applies if a person—

- (a) was apparently elected to an office in an election; and
- (b) the person has purported to act in the office since the election; and
- (c) the commission declares the person's election void.

**(2)** The person's acts while purporting to act in the office that could have been validly done if the person were properly elected, are valid.

### **608 Election not invalid because of compliance with order**

An election or a step in an election conducted under a commission order is valid despite a contravention of the rules of an organisation or branch for which the election or step was conducted.

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<sup>167</sup> Parts 7 (Conduct of elections) and 8 (Election inquiries)

**609 Election not invalid because of contravention of pt 13, div 3, sdiv 2**

If an exemption under part 13, division 3 applies to an election, a contravention of part 13, division 3, subdivision 2 does not invalidate the election.<sup>168</sup>

**610 Validation of certain events after 4 years**

(1) This section applies to an event as follows 4 years after the event happens—

- (a) the election or appointment, or purported election or appointment, to an office in an organisation;
- (b) a making or amendment, or purported making or amendment, of a rule of an organisation.

(2) The event is taken to have been done under the organisation's rules.

(3) However, this section does not affect a decision by the court or another court, the commission or the registrar made about the event before the 4 years ends.

(4) This section applies to an event happening—

- (a) before or after this section commences; or
- (b) to an association before it became an organisation.

(5) In this section—

“**decision**” includes a decree, sentence, verdict and a similar act.

**611 Counterpart federal body not a ground for challenge**

(1) In proceedings, the validity of the following about an organisation can not be challenged or in any way affected only because of a ground mentioned in subsection (2)—

- (a) the organisation's existence or registration;
- (b) the election of an officer of the organisation;
- (c) a rule of the organisation;
- (d) a decision made by or about the organisation;

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168 Part 13 (Exemptions), division 3 (Exemptions from requirement that electoral commission conduct election), subdivision 2 (Obligations if exemption granted)



- (e) the operation of a rule or a decision mentioned in paragraph (c) or (d).

(2) The grounds are as follows—

- (a) the organisation has a counterpart federal body;
- (b) a person is a member of the organisation and its counterpart federal body and the organisation did not receive a separate membership application or fee from the member;
- (c) the organisation has the same, or substantially the same, rules as its counterpart federal body;
- (d) the organisation did not keep separate members or officers registers or accounting or other records from its counterpart federal body.

## **612 Amalgamations and withdrawals**

(1) This section applies if no proceedings have been taken to challenge—

- (a) an amalgamation, within 6 months after the amalgamation day for the amalgamation; or
- (b) a withdrawal, within 6 months after the withdrawal day for a withdrawal.

(2) The following are taken to be, and to have always been, valid—

- (a) the amalgamation or withdrawal;
- (b) anything else done or purporting to have been done—
  - (i) concerning the amalgamation or withdrawal; or
  - (ii) on which the validity of the amalgamation or withdrawal depends.

(3) Subsection (2) has effect despite an order of the court, another court or tribunal, the commission or the registrar made before the end of the 6 months.

(4) In this section—

**“amalgamation”** includes a purported amalgamation and anything done or purporting to have been done under part 15 to give effect to an amalgamation or purported amalgamation.

“**withdrawal**” includes a purported withdrawal and anything done or purporting to have been done under part 15 to give effect to a withdrawal or purported withdrawal.

### *Division 3—Orders about invalidity or its effects*

#### **613 Commission may decide**

(1) The commission may, on application, decide whether an invalidity has happened in—

- (a) the management or administration of an organisation’s affairs; or
- (b) the election or appointment of an officer of an organisation; or
- (c) the making, amending or repealing of a rule of an organisation.

(2) In deciding the application, the commission may declare whether or not an invalidity has happened.

#### **614 Who may apply**

The application may be made only by—

- (a) the organisation; or
- (b) a member of the organisation; or
- (c) another person the commission considers has a sufficient interest in the subject matter of the application.

#### **615 Orders about effects of invalidity**

(1) This section applies if, on the hearing of the application, the commission declares an invalidity has happened.

(2) The commission may make an order it considers appropriate to—

- (a) remedy the invalidity or to cause it to be remedied; or
- (b) change or prevent, or cause to change or prevent, the effects of the invalidity; or
- (c) validate an act, matter or thing made invalid by or because of the invalidity.

(3) The commission may also make another order consequential to an order under subsection (2).

(4) The commission must not make an order under this section if the order would cause substantial injustice to—

- (a) the organisation that the invalidity concerns; or
- (b) a member or creditor of the organisation; or
- (c) a person dealing with or who has dealt with the organisation.

## PART 15—AMALGAMATIONS AND WITHDRAWALS

### *Division 1—Preliminary*

#### 616 Definitions for pt 15

In this part—

**“amalgamated organisation”** means an organisation amalgamated under division 2 or the IO Act, part 9.<sup>169</sup>

**“amalgamation ballot”** means a ballot for a proposed amalgamation under division 2.

**“amalgamation day”**, for an amalgamation or proposed amalgamation, means the day the amalgamation takes effect or is to take effect.

**“constituent part”**, for an amalgamated organisation, means a part of the membership of the amalgamated organisation that would have been eligible for membership of an organisation deregistered for the formation of the amalgamated organisation had the deregistration not happened.

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

**“newly registered organisation”** means an organisation registered under section 625.

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<sup>169</sup> Part 9 (Amalgamating industrial organisations) of the IO Act

**“proposed amalgamated organisation”**, for a proposed amalgamation, means the existing organisation or proposed organisation that members of the proposed deregistering organisations propose to become members of under division 2.

**“proposed deregistering organisation”**, for a proposed amalgamation, means an organisation that is, under division 2, to be deregistered as part of the amalgamation.

**“withdrawal ballot”** means a ballot for a proposed withdrawal.

**“withdrawal day”**, for a withdrawal or proposed withdrawal, means the day the withdrawal is to take effect.

### *Division 2—Amalgamations*

#### **617 Amalgamation permitted only under div 2**

An amalgamation may be carried out only under this division.

#### **618 Commission to approve proposed amalgamation**

The commission may, by order, approve an amalgamation only if—

- (a) the procedure for carrying out an amalgamation prescribed under a regulation has been complied with; and
- (b) the rules of the proposed amalgamated organisation comply with parts 3 and 4.<sup>170</sup>

#### **619 Additional regulation-making powers for amalgamations**

A regulation may provide for the following—

- (a) the joint representation of the members of existing organisations for an amalgamation until the amalgamation day for the amalgamation;
- (b) for an amalgamation ballot by proposed members of the proposed amalgamated organisation;
- (c) how an amalgamation ballot must be conducted;

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<sup>170</sup> Parts 3 (General contents of rules) and 4 (Election rules)

- (d) that the commission may inquire into any claimed irregularity in an amalgamation ballot and its powers for the inquiry;
- (e) for when an approved amalgamation takes effect;
- (f) the effect of an amalgamation on decisions that bound a proposed deregistering organisation for the amalgamation on the amalgamated organisation or its members;
- (g) substituting the amalgamated organisation for a proposed deregistering organisation for the amalgamation in pending proceedings;
- (h) any other matter necessary to give effect to an amalgamation.

### **620 Effect of amalgamation**

(1) This section applies on the amalgamation day for an amalgamation.

(2) If the proposed amalgamated organisation for the amalgamation is not already registered, the registrar must—

- (a) enter in the register its name and the amalgamation day; and
- (b) give it a certificate of registration in the approved form.

(3) If the amalgamated organisation was not incorporated before the entry in the register, section 423 applies to the organisation as if the commission had granted a registration application under part 2 on the amalgamation day.

(4) Despite part 6, a proposed amendment of the rules of an existing organisation for the amalgamation takes effect.

(5) If there is a proposed deregistering organisation for the amalgamation—

- (a) sections 648 to 650 and 653 apply to the organisation as if a deregistration order had been made for it; and
- (b) its property and liabilities vest in the amalgamated organisation; and
- (c) its members become members of the amalgamated organisation, without requirement to pay an entrance fee.

(6) The amalgamated organisation must take all necessary steps to give effect to the amalgamation.<sup>171</sup>

### **621 Holding office after amalgamation**

(1) This section applies to the rules of an amalgamated organisation or proposed amalgamated organisation if the organisation is not a corporation.

(2) Despite parts 3 and 4, the rules may allow an officer (an “**existing officer**”) of a proposed deregistering organisation or existing organisation who holds office immediately before the amalgamation day for the amalgamation to be an officer of the proposed amalgamated organisation.

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

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

(4) The rules must make reasonable provision for synchronising the election with elections for other offices in the organisation.

(5) Section 433 applies to an office in an amalgamated organisation held by an existing officer of a deregistered organisation for the amalgamation.

(6) Section 436 does not apply to an office in an amalgamated organisation held by an existing officer.<sup>172</sup>

### ***Division 3—Withdrawing from amalgamation***

#### **622 Requirements for withdrawal**

A constituent part may withdraw from an amalgamated organisation only if—

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171 Part 6 (Amendment of rules), sections 423 (Incorporation on registration if not already incorporated), 648 (Application and purpose of div 4), 649 (When deregistration takes effect), 650 (Effect on corporate status) and 653 (Effect on certain instruments)

172 Parts 3 (General contents of rules) and 4 (Election rules), sections 433 (Filling casual vacancies) and 436 (Maximum office term for organisation that is not a corporation)

- (a) the constituent part became part of the organisation because of an amalgamation under this division or the IO Act, part 9;<sup>173</sup> and
- (b) the amalgamation happened not more than 2 years before the proposed withdrawal; and
- (c) the withdrawal is carried out under this division.

### **623 Commission to approve proposed withdrawal**

The commission may, by order, approve a withdrawal only if—

- (a) the procedure for carrying out a withdrawal prescribed under a regulation has been complied with; and
- (b) the rules of the constituent part of a proposed organisation comply with parts 3 and 4.

### **624 Additional regulation-making powers for withdrawals**

A regulation may provide for the following—

- (a) a proposed withdrawal to be submitted to a ballot of members of the constituent part seeking the withdrawal;
- (b) how a ballot must be conducted;
- (c) that the commission may inquire into any claimed irregularity in a withdrawal ballot and its powers for the inquiry;
- (d) for when an approved withdrawal takes effect;
- (e) the appointment of officers of an amalgamated organisation as officers of a newly registered organisation, and the results of the appointments;
- (f) any other matter necessary to give effect to a withdrawal.

### **625 Registration of constituent part on withdrawal**

(1) On the withdrawal day for a withdrawal the registrar must—

- (a) enter in the register the withdrawal and the constituent part's name as an organisation; and

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173 Part 9 (Amalgamating industrial organisations) of the IO Act

- (b) give the organisation a certificate of registration in the approved form.

(2) Section 423<sup>174</sup> applies to the organisation as if the commission had granted an application for its registration under part 2 on the withdrawal day.

### **626 Members of constituent part may join newly registered organisation**

(1) This section applies to a person who is a member of the amalgamated organisation from which a constituent part withdrew to form a newly registered organisation.

(2) The person may, if the person is eligible for membership, become a member of the newly registered organisation without paying an entrance fee.

### *Division 4—Offences about amalgamation or withdrawal ballots*

#### **627 Obstructing conduct of ballot**

A person must not obstruct another person conducting an amalgamation or withdrawal ballot.

Maximum penalty—40 penalty units.

#### **628 Offences about ballots**

A person must not, without lawful authority or excuse, do any of the following about an amalgamation or withdrawal ballot—

- (a) obtain or possess a ballot paper if the person does not have the right to obtain or possess it;
- (b) pretend to be and vote as someone else;
- (c) amend, deface, destroy, interfere with, or remove a ballot record;
- (d) vote in the ballot if the person does not have the right to vote;
- (e) vote more than once;

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174 Section 423 (Incorporation on registration if not already incorporated)



- (f) forge a ballot record;
- (g) utter a ballot record knowing it to be forged;
- (h) give a ballot record to someone else;
- (i) put a ballot record in a ballot box or other container used for the ballot (a **“ballot box”**) if the person does not have the right to vote;
- (j) deliver or post a ballot record to another person performing functions for the ballot if the person does not have the right to deliver or post it;
- (k) destroy, interfere with, open, or remove a ballot box.

Maximum penalty—80 penalty units.

### **629 Disadvantaging another to induce vote or omission to vote**

(1) A person must not cause, inflict or procure a disadvantage to anyone or anything because of, or to induce—

- (a) a vote or omission to vote in an amalgamation or withdrawal ballot (a **“ballot”**); or
- (b) a promise of a vote or omission to vote in a ballot.

Maximum penalty—80 penalty units.

(2) In this section—

**“cause”** a disadvantage includes offering, suggesting and threatening a disadvantage.

**“disadvantage”** includes damage, detriment, injury, loss, punishment and violence.

### **630 Unauthorised access to ballot paper**

A person must not, without lawful authority or excuse—

- (a) ask, require or induce another person to show to or permit the person to see a ballot paper for an amalgamation or withdrawal ballot so the person can see the vote recorded in the ballot paper—
  - (i) while the paper is being marked; or
  - (ii) after it has been marked; or

- (b) if the person is performing functions for an amalgamation or withdrawal ballot—show to or permit anyone else access to a ballot paper used in the ballot, other than to perform the functions.

Maximum penalty—80 penalty units.

### *Division 5—Miscellaneous*

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

(1) An existing organisation for a proposed amalgamation may use its financial and other resources to support the proposed amalgamation if—

- (a) its management committee has resolved to do so; and
- (b) the committee has given reasonable notice of its resolution to the organisation's members.

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

#### **632 Costs of ballot conducted by electoral commission**

The costs of an amalgamation or withdrawal ballot conducted by the electoral commission under this part are payable by the State.

#### **633 No action for defamation in certain cases**

A civil proceeding for defamation does not lie against the following for printing or publishing a document for an amalgamation or withdrawal ballot—

- (a) the State;
- (b) an electoral commission;
- (c) an electoral officer;
- (d) another person who may, under this chapter, conduct the ballot;
- (e) a person asked to act for, or at the direction of, a person mentioned in paragraphs (a) to (d).

**634 Commission may resolve difficulties**

(1) A person with sufficient interest may apply to the commission for an order—

- (a) if a difficulty arises, or is likely to arise, in carrying out or giving effect to an amalgamation or withdrawal or in applying this part to another matter; or
- (b) for the taking of a step necessary to give effect to the amalgamation or withdrawal.

(2) The commission may make an order it considers appropriate to resolve the difficulty or to give effect to a step necessary for the amalgamation or withdrawal.

(3) The order has effect despite the rules of an organisation.

**635 Registration of property transferred under pt 15**

(1) This section applies if—

- (a) property becomes the property of an amalgamated organisation (a “**transferee**”) because of an amalgamation; or
- (b) property of an amalgamated organisation becomes the property of a newly registered organisation (also a “**transferee**”) because of a withdrawal.

(2) A certificate by an authorised person for a transferee is evidence of the property having become the transferee’s property if the certificate—

- (a) is signed by the person; and
- (b) identifies the property; and
- (c) states the property has, under this part, become the transferee’s property.

(3) If the certificate is given to a person with registration functions for that kind of property under a law of the State, the person must do the following as if the certificate were an appropriate instrument of transfer of the property—

- (a) register the matter in the same way as transactions for property of that kind;
- (b) deal with, and give effect to, the certificate.

*Examples of ‘a person with registration functions’—*

- the Registrar of Titles
- the Australian Securities and Investment Commission.

(4) Subsection (3) applies despite the Corporations Act, section 268 or the Corporations Act, chapter 7, part 7.11.<sup>175</sup>

(5) A transfer of the property to the transferee may be registered or given effect to under the law of another State if—

- (a) the certificate is given to a person with functions for registration of property of that kind under the other State’s law; and
- (b) the person is permitted by law to do so.

(6) In this section—

“**authorised person**”, for an amalgamated organisation or a newly registered organisation, means its secretary or a person with its management committee’s written authority.

### **636 Part applies despite laws or instruments**

(1) This part applies despite another Act or an instrument.

(2) Nothing done under this part—

- (a) makes an organisation or other person liable for a civil wrong or a contravention of a law or for a breach of a confidence or contract; or

*Example of a ‘contract’—*

A contractual provision that prohibits, restricts or regulates assigning or transferring an asset or liability or disclosing information.

- (b) releases a surety’s obligations, wholly or in part.

(3) If apart from this section a person’s consent would be necessary to give effect to this part, the consent is taken to have been given.

(4) In this section—

“**instrument**” means any written or oral instrument, express or implied.

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<sup>175</sup> Corporations Act, section 268 (Assignment and variation of charges) or chapter 7 (Financial services and markets), part 7.11 (Title and transfer)

*Examples of an ‘instrument’—*

- a contract, deed, undertaking or agreement
- a mandate, instruction, notice, authority or order
- a lease, licence, transfer, conveyance or other assurance
- a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order to pay an amount
- a mortgage, lien or security.

## **PART 16—DEREGISTRATION**

### *Division 1—Preliminary*

#### **637 Definitions for pt 16**

In this part—

“**deregistration order**” see section 638.

“**industrial conduct ground**” means a ground mentioned in section 638(a) to (c).

“**members**” of an organisation means—

- (a) a substantial number of the organisation’s members; or
- (b) a section or class of its members.

“**small organisation**” means—

- (a) an employee organisation that has less than 20 members who are employees; or
- (b) an employer organisation whose employer members have, in total, employed a monthly average of less than 20 employees during any 6 month period.

*Division 2—General deregistration provisions**Subdivision 1—Bringing deregistration proceedings***638 General deregistration grounds**

The full bench may order the deregistration of an organisation (a “**deregistration order**”) on any of the following grounds—

- (a) achieving the objects of the Act has been prevented by—
  - (i) the organisation’s or its members’ continued contravention of a commission order or an industrial instrument (an “**instrument**”); or
  - (ii) the organisation’s continued failure to ensure its members do not contravene an instrument; or
  - (iii) any other conduct by the organisation or its members;
- (b) the organisation or its members are engaging in industrial action that has prevented or interfered with—
  - (i) trade or commerce; or
  - (ii) providing a public service;
- (c) the organisation or its members have been, or are, engaging in industrial action that has, is having, or is likely to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community;
- (d) the organisation was registered by mistake;
- (e) the organisation’s rules—
  - (i) do not allow a person who is eligible to become a member of the organisation to join it with reasonable ease; or
  - (ii) impose unreasonable conditions on a person’s continuing membership of the organisation; or
  - (iii) are harsh or oppressive; or
  - (iv) provide for it to end on the happening of an event and the event has happened;
- (f) the administration of the organisation’s rules is harsh or oppressive;

- (g) a majority of the organisation's members have agreed to its deregistration;
- (h) if the organisation is an employee organisation, it is not free from control by, or improper influence from an employer or an employer association or organisation.

### **639 Who may bring deregistration proceedings**

(1) Each of the following may apply to the full bench for a deregistration order on a ground mentioned in section 638—

- (a) an organisation;
- (b) the Minister;
- (c) the registrar;
- (d) another person given leave by the full bench.

(2) The full bench may give leave only if it considers the person has sufficient interest to make the application.

(3) The full bench may, of its own initiative, bring proceedings for a deregistration order—

- (a) on a ground mentioned in section 638(d) or (e)(iv); or
- (b) because the organisation has failed to comply with a demarcation dispute undertaking and amendment of its eligibility rules is inappropriate.

(4) The registrar may also apply for a deregistration order on the ground that the organisation is defunct.

#### *Subdivision 2—Deciding deregistration proceedings*

### **640 Hearing on ground other than industrial conduct**

If a ground on which the proceedings are based includes a ground other than an industrial conduct ground, the full bench may make a deregistration order if satisfied the ground has been made out.

**641 Hearing on industrial conduct ground**

(1) This section applies if at the hearing of the application a ground on which the proceedings are based is an industrial conduct ground.

(2) The full bench must make a deregistration order if it—

- (a) finds the ground has been made out; and
- (b) does not consider the deregistration unjust, after considering—
  - (i) the significance of the circumstances forming the ground; and
  - (ii) the action taken by or against the organisation about the ground.

(3) However, if the full bench finds the industrial conduct ground is made out wholly or mainly because of conduct by a section or class of the organisation's membership, it may instead of making a deregistration order—

- (a) order amendments the organisation's eligibility rules to exclude persons from the section or class from membership eligibility; or
- (b) exclude a stated person from the organisation's membership.

(4) A deregistration order may also prohibit the deregistered organisation from applying for registration before a stated day.

**642 Deferral of deregistration for industrial conduct**

(1) This section applies if the full bench may make a deregistration order under section 641.

(2) The full bench may defer its decision on making the deregistration order and make an order (a **“deferral order”**)—

- (a) suspending to a stated extent, the rights, privileges or capacities of the organisation or all or any of its members as members, under—
  - (i) this Act; or
  - (ii) a commission order; or
  - (iii) an award, certified agreement, EFA or industrial agreement; or



- (b) directing how a suspended right, privilege or capacity may be exercised; or
- (c) restricting the organisation or its branches in using their funds or property and controlling the funds or property to enforce the restriction.

(3) If a deferral order is made, the full bench must defer its decision on making the deregistration order until—

- (a) if a party to the proceedings applies—the court considers it is just to make the decision considering—
  - (i) evidence given about compliance with the order; and
  - (ii) other relevant circumstances; or
- (b) the order ends.

(4) A deferral order has effect despite the rules of the organisation or its branches.

### **643 When deferral order ends**

(1) A deferral order ends—

- (a) 6 months after it takes effect, if the full bench has not extended the order before that time; or
- (b) if the full bench has extended the order—at the end of the extension; or
- (c) if it is discharged by the full bench.

(2) The full bench may discharge or extend a deferral order only on the application of a party to the deregistration proceedings.

(3) An extension application may only be made before the time mentioned in subsection (1)(a).

### **644 Incidental orders or directions**

If the full bench makes a deregistration order, it may also make—

- (a) an order or direction it considers appropriate to give effect to the deregistration; or

- (b) an order under section 652(2),<sup>176</sup> whether or not anyone has applied for the order.

### *Division 3—Small organisations*

#### **645 Commission may review**

The commission may review an organisation to inquire whether the organisation is or may be a small organisation.

#### **646 Deregistration proceedings by commission**

(1) If the commission considers an organisation is or may be a small organisation, it may bring deregistration proceedings under this division against the organisation.

(2) However, the commission must not bring proceedings under this division more than once a year against the same organisation.

#### **647 Deciding proceedings**

(1) The commission must make a deregistration order if satisfied the organisation is a small organisation.

(2) However, the commission may decide not to make the order if satisfied there are special circumstances and the organisation's continued registration is in the public interest.

*Example of 'special circumstances'—*

The organisation is an employee organisation and the commission is satisfied the organisation will in the near future, if its registration is continued, have more than 20 members who are employees.

### *Division 4—Effects of deregistration*

#### **648 Application and purpose of div 4**

(1) This division applies on the making of a deregistration order.

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176 Section 652 (Effect on property)

(2) This division provides for the effects of the order on the deregistered organisation under the order and on other persons.

### **649 When deregistration takes effect**

(1) The deregistered organisation ceases to be an organisation when the deregistration order is made.

(2) The registrar must record the deregistration and date of the order in the register.

### **650 Effect on corporate status**

(1) If the deregistered organisation was a corporation under another law, the deregistered organisation continues to be incorporated, but only under the other law.

(2) If the deregistered organisation was incorporated only because of its registration—

- (a) it ceases to be incorporated and becomes an association; and
- (b) its name is taken to be changed to omit the words required to be included in its registered name under section 424(2);<sup>177</sup> and
- (c) its rules continue in force to the extent they can still be carried out or complied with.

### **651 No release of liabilities**

The deregistration does not act to satisfy a liability or penalty incurred by the deregistered organisation or any of its members before the deregistration.

### **652 Effect on property**

(1) If the deregistered organisation was incorporated only because of its registration, property owned by it immediately before the deregistration must be—

- (a) held and used under its rules, to the extent they can still be carried out or complied with; and

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<sup>177</sup> Section 424 (Registered name of organisation that is not a corporation)

(b) applied for the purposes of the deregistered organisation under its rules.

(2) Despite subsection (1), the full bench may, if an interested person applies, make an order it considers appropriate to satisfy the deregistered organisation's liabilities from the property.

(3) In this section—

“**rules**” of the deregistered organisation means its rules in force immediately before its deregistration.

### **653 Effect on certain instruments**

(1) If an award, EFA, commission order, certified agreement or industrial agreement (the “**instrument**”) bound the deregistered organisation and its members before the deregistration—

- (a) from the deregistration, the deregistered organisation and its members do not have the right to a benefit under the instrument; and
- (b) the instrument ceases to have any effect for the deregistered organisation 21 days after the deregistration.

(2) Despite subsection (1)(b), the commission may make an order it considers appropriate about the effect, if any, of the instrument on the deregistered organisation and its members.

## **PART 17—MISCELLANEOUS**

### **654 Hearing to be given before making decision**

(1) The court, commission or registrar (the “**industrial tribunal**”) must, before making a decision under this chapter, give the following persons an opportunity to be heard about whether the decision should be made—

- (a) a person who applied for the decision or from whose application the decision is proposed to be made;
- (b) a person in relation to whom the decision is sought or may be made;

- (c) a person who may object to the making of the decision who has objected in the way required under this chapter;
- (d) an organisation the decision concerns;
- (e) any other person the industrial tribunal considers should be heard or who has a sufficient interest in the making of the decision.

(2) However, subsection (1) does not apply if the person asks the industrial tribunal to make a stated decision and it considers the decision may be made without prejudicing the rights of a person or for other sufficient reason.

(3) A regulation may provide for—

- (a) objections to the making of a decision under this chapter; or
- (b) the way in which the opportunity to be heard must be given.

(4) In this section—

“**decision**” includes—

- (a) an amendment of a rule of an organisation, other than a correction of a formal or clerical error; and
- (b) a referral.

### **655 Notice of registrar’s decisions**

(1) This section applies if the registrar makes a decision as follows—

- (a) to refuse an application made to the registrar under this chapter;
- (b) under section 450 to cancel an approval under section 449 or cancel or to amend an exemption under part 13 if the holder of the approval or exemption has not asked for the cancellation or amendment;
- (c) under section 461(3) or 512(3)<sup>178</sup> for an amount of financial help to be given to a person;
- (d) to amend an organisation’s rules under section 467;
- (e) to refuse, under section 502, to refer an application for an election inquiry to the commission.

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178 Sections 449 (Grant of approval), 450 (Cancellation of approval), 467 (When registrar may amend rules), 502 (Referral to commission), 461 (Financial help for application) and 512 (Financial help for application)

(2) The registrar must promptly give the applicant, person who held the cancelled exemption, organisation or person to be given financial help, a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may appeal to the full bench against the decision within 21 days;
- (d) how to start an appeal.<sup>179</sup>

### **656 Falsely obtaining organisation's property**

A person must not obtain possession of an organisation's property by false representation or imposition.

Maximum penalty—40 penalty units.

### **657 Wrongfully applying organisation's property**

A person in possession of an organisation's property must not—

- (a) wilfully withhold it from a person who has the right to possess it;  
or
- (b) fraudulently misapply it; or
- (c) wilfully apply it to a use not authorised under the organisation's rules.

Maximum penalty—40 penalty units.

## **CHAPTER 13—OFFENCES**

### **659 Disobeying penalty orders**

(1) A person must obey a penalty order, unless the person has a reasonable excuse.

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<sup>179</sup> See sections 342 (Appeal from commission, magistrate or registrar) and 346 (Time limited for appeal).

Maximum penalty—the penalty provided for in the order.

(2) In this section—

**“penalty order”** means an order of the court or commission that provides for payment of a penalty if the order is disobeyed.

### **660 Improper conduct towards member, magistrate or registrar**

(1) A person must not—

- (a) interrupt an industrial tribunal’s proceedings; or
- (b) create, take part in, or continue a disturbance in or near a place where an industrial tribunal’s proceedings are being conducted; or
- (c) wilfully insult an official, including by using insulting language; or
- (d) by writing or speech, use words intended to—
  - (i) improperly influence an official; or
  - (ii) improperly influence a witness before an industrial tribunal; or
  - (iii) bring an official or industrial tribunal into disrepute.

Maximum penalty—100 penalty units or 1 year’s imprisonment.

(2) A person who commits an offence under this section before an industrial tribunal may, by the tribunal’s order, be excluded from the place where the tribunal is sitting.

(3) The making of an order under subsection (2) does not affect the offender’s liability to be punished for the offence.

(4) A person acting under the industrial tribunal’s authority may enforce the tribunal’s order, using necessary reasonable force.

(5) In this section—

**“industrial tribunal”** means the commission, an Industrial Magistrates Court or the registrar.

**“official”** means a member, a magistrate or the registrar exercising jurisdiction or powers or performing functions under this or another Act.

**661 Contempt by witness**

- (1) A person must not, without lawful authority or excuse—
- (a) if called to appear before an industrial tribunal—disobey the attendance notice requiring the appearance; or
  - (b) if appearing before an industrial tribunal, whether or not in response to an attendance notice—
    - (i) refuse to be sworn or to make an affirmation or declaration as a witness; or
    - (ii) refuse to answer a question that the person is required by the tribunal to answer; or
    - (iii) refuse to produce records that the person is required by the tribunal to produce.

Maximum penalty—40 penalty units.

- (2) In this section—

**“industrial tribunal”** means the commission, an Industrial Magistrates Court or the registrar.

**662 False or misleading statements**

(1) A person must not state anything to an official for this Act that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was ‘false or misleading’ to the person’s knowledge.

(3) A person must not be prosecuted for an offence under this section if the person can be prosecuted for an offence under section 223 or 283.<sup>180</sup>

- (4) In this section—

**“official”** means an inspector or the registrar.

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<sup>180</sup> Section 223 (Persons must not apply duress or make false statements in connection with QWA etc.) or 283 (Power to enter and inspect)



**663 False or misleading documents**

(1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

- (a) informs the official, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—40 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (1) or (3) to state that the statement made was 'false or misleading' to the person's knowledge.

(5) A person must not be prosecuted for an offence under this section if the person can be prosecuted under section 201 or 283.<sup>181</sup>

(6) In this section—

**“official”** means an inspector, an authorised industrial officer or the registrar.

**664 Obstructing officers**

(1) A person must not—

- (a) obstruct an officer exercising a power, or performing a function, under this or another Act; or
- (b) if lawfully required by an officer to produce or exhibit a document, or to allow a document to be examined—fail to

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<sup>181</sup> Section 201 (Employer's declaration must be accurate) or 283 (Power to enter and inspect)

comply with the request, unless the person has a reasonable excuse; or

- (c) wilfully mislead an officer in a way likely to affect the performance of the officer's function; or
- (d) if lawfully asked a question for this or another Act by an officer—fail to answer the question truthfully and to the best of the person's knowledge, information and belief.

Maximum penalty—40 penalty units.

(2) A person must not be prosecuted for an offence under subsection (1) if the person can be prosecuted under section 283.<sup>182</sup>

(3) In this section—

“**officer**” means an officer of the court or commission.

### **665 Avoiding Act's obligations**

(1) An employer, with intent to avoid an obligation under this Act to pay an employee for a public holiday or leave, must not—

- (a) dismiss the employee; or
- (b) if the employee's entitlement to long service leave is worked out under section 47<sup>183</sup>—interrupt the employee's continuity of service.

Maximum penalty—40 penalty units.

(2) If the Industrial Magistrates Court finds an employer has contravened subsection (1) in relation to long service leave, it must order the defendant to pay the dismissed employee a proportionate amount of long service leave on the basis of 8.6667 weeks leave for 10 years service.

(3) The order is in addition to any order it may make imposing a penalty.

(4) In this section—

“**dismiss**” includes stand-down.

“**leave**” means annual, sick, family or long service leave.

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<sup>182</sup> Section 283 (Power to enter and inspect)

<sup>183</sup> Section 47 (Continuity of service—additional considerations for casual employees)

“**obligation**” under this Act includes an obligation under an industrial instrument.

### **666 Non-payment of wages**

(1) An employer must pay the wages payable to an employee under a relevant industrial instrument or permit or under section 8A or 136<sup>184</sup>—

- (a) to the employee; or
- (b) in accordance with the employee’s written direction.

Maximum penalty—200 penalty units.

(2) An offence under subsection (1) may consist of—

- (a) a single failure to pay wages due on a particular day; or
- (b) a failure to pay wages due over a period of time.

(3) The offence starts on the day of the failure and continues until the wages are paid.

(4) A complaint or a series of complaints may be made for any period over which the offence continues.

(5) However, a complaint may only relate to offences that started within 6 years before the complaint is made.

(6) A magistrate may hear and decide a complaint for an offence under this section, and in addition to any penalty that the magistrate may impose—

- (a) if the magistrate finds the defendant guilty—must order the defendant to pay the employee the amount the magistrate finds to be payable to the employee; or
- (b) if the magistrate does not find the defendant guilty—may order the defendant to pay the employee the amount the magistrate finds, on the balance of probabilities, to be payable to the employee.

(7) A magistrate may make the order—

- (a) despite an express or implied provision of an agreement to the contrary; and

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184 Section 8A (Minimum wage) or 136 (Apprentice’s and trainee’s employment conditions)

(b) on the terms the magistrate considers appropriate.

(8) In this section—

“**employee**” includes a student to whom an order made under section 140A applies.<sup>185</sup>

“**wages**” includes—

- (a) remuneration payable to an apprentice or trainee under section 391(2); and
- (b) remuneration payable under an order made under section 140A.

### **667 Accepting reduced wages**

(1) An employee must not agree with an employer to accept wages that, to the employee’s knowledge, are reduced wages.

Maximum penalty—16 penalty units.

(2) The return by or for an employee to or for the employer of a part of wages paid under a relevant industrial instrument or permit for work performed by the employee is evidence that the employee has entered into an agreement mentioned in subsection (1).

### **668 Publishing statement about employment on reduced wages**

(1) A person must not publish or cause to be published, whether or not for reward, a statement that can be reasonably interpreted to state that a person is ready and willing to—

- (a) employ a person on reduced wages; or
- (b) be employed on reduced wages.

Maximum penalty—16 penalty units.

(2) Proceedings for an offence under subsection (1) may be commenced against a publisher of the statement only if—

- (a) the publisher has been warned by an inspector that the publication of the statement, or of a statement substantially similar, is an offence under this Act; and

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185 Section 140A (Vocational placement)

- (b) the publisher has published, or caused the publication of, the statement after receiving the warning; and
- (c) the Minister's consent to the proceedings is obtained.

(3) A proprietor of a newspaper or advertising medium is taken to have published the statement with knowledge of its unlawfulness, unless the proprietor shows that the proprietor—

- (a) had taken all reasonable precautions against committing the offence; and
- (b) had reasonable grounds to believe, and did believe, the publication to be lawful; and
- (c) had no reason to suspect the publication was unlawful.

(4) In this section—

**“publish”** includes—

- (a) exhibit; and
- (b) broadcast; and
- (c) publish to a person.

**“publisher”** means—

- (a) the printer or proprietor of a newspaper; or
- (b) the distributor or seller of a newspaper; or
- (c) the printer, maker, operator or proprietor of an advertising device or advertising medium; or
- (d) the printer of a document uttered for advertising purposes; or
- (e) a person acting under the authority of a person mentioned in paragraphs (a) to (d).

### **669 Offence to offer or accept premiums**

(1) This section applies subject to the *Private Employment Agents Act 1983* and section 408D.

(2) A person must not—

- (a) offer an employment premium; or
- (b) demand an employment premium; or
- (c) ask for an employment premium; or

(d) accept, or agree to accept, an employment premium.

Maximum penalty—16 penalty units.

(3) If a court finds a person (the “**defendant**”) guilty of accepting an employment premium, it must, in addition to any penalty order it may make, order the defendant to pay an amount, equivalent to the amount or value of the premium, to the person from whom the defendant accepted the premium.

(4) In this section—

“**employment premium**” includes a consideration, gift, allowance or forbearance for the employment of a person.

## **670 Contraventions of industrial instruments**

(1) A person must not contravene an industrial instrument.

Maximum penalty—

(a) for a first offence—

- (i) if the offender is an employer that is a body corporate or an organisation—80 penalty units; or
- (ii) if the offender is an employer that is not a body corporate—16 penalty units; or
- (iii) if the offender is an employee—16 penalty units; or

(b) for a second or subsequent offence consisting of a contravention of the same provision of the instrument—

- (i) if the offender is an employer that is a body corporate or an organisation—100 penalty units; or
- (ii) if the offender is an employer that is not a body corporate—20 penalty units; or
- (ii) if the offender is an employee—20 penalty units.

(2) For subsection (1), a second or subsequent offence is taken to be a first offence if more than 1 year has passed since the commission of the last similar offence of which the person was found guilty.

(3) An employer who pays, directly or by an agent, an employee, and an employee who receives from an employer, or the employer’s agent, reduced wages is each taken to have contravened the instrument.

(4) If an employee returns to an employer, or the employer's agent, a part of wages paid to the employee under an industrial instrument—

- (a) the employee is taken to have received reduced wages; and
- (b) the employer, or the employer's agent, is taken to have paid reduced wages;

unless the return is in discharge, or partial discharge, of a lawful debt or obligation of the employee.

### **671 Injunction restraining contraventions**

(1) This section applies if a person has been found guilty of an offence involving the contravention of an industrial instrument or permit or this Act.

(2) If satisfied the contravention consisted of the person's wilful action or default, the court, on application made to it, may grant an injunction restraining the person from—

- (a) continuing the contravention; or
- (b) committing further contraventions of the instrument or permit or this Act, whether similar to or different from the contraventions the person has been found guilty of.

(3) The person must obey the injunction.

Maximum penalty for subsection (3)—200 penalty units.

### **672 Persons considered parties to offences**

Without limiting the Criminal Code, section 7,<sup>186</sup> an organisation or person who—

- (a) takes part in the commission of an offence under this Act; or
- (b) counsels or procures or aids the commission of an offence under this Act; or
- (c) encourages the commission of an offence under this Act; or
- (d) is concerned, directly or indirectly, in the commission of an offence under this Act;

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<sup>186</sup> Criminal Code, section 7 (Principal offenders)

is taken to have committed the offence and to be liable to the penalty prescribed for the offence.

**673 Executive officers must ensure corporation complies with ss 138, 368, 406 and 666**

(1) If a corporation commits an offence against section 138, 368, 406 or 666,<sup>187</sup> the executive officers of the corporation—

- (a) are also taken to have committed the offence; and
- (b) are liable to the prescribed penalty and any other order the magistrate may make under the section.

(2) It is a defence for an executive officer to prove—

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

(3) In this section—

**“executive officer”** of a corporation means a person who is concerned with, or takes part in, the corporation’s management, whether or not—

- (a) the person is a director; or
- (b) the person’s position is given the name of executive officer.

**674 Attempt to commit offence**

A person who attempts to commit an offence under this Act—

- (a) commits an offence; and
- (b) is liable to the same penalty as if the offence attempted had been committed.

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<sup>187</sup> Section 138 (Order setting tool allowance), 368 (Employee register), 406 (Contributing occupational superannuation) or 666 (Non-payment of wages)



**675 References to making false or misleading statements**

A reference to a person making a statement knowing that it is false or misleading includes a reference to the person making the statement being reckless about whether the statement is false or misleading.

**676 References to engaging in conduct**

A reference to a person engaging in conduct includes a reference to the person being, directly or indirectly, a party to or concerned in the conduct.

**CHAPTER 14—LEGAL PROCEEDINGS****677 General application of jurisdictional provisions**

The provisions of this Act providing for the powers of and procedures before the court, the commission or an Industrial Magistrates Court apply in relation to the jurisdiction of the court, the commission or an Industrial Magistrates Court under this or another Act, unless the contrary intention appears.

**678 Evidentiary provisions affecting proceedings**

In proceedings—

- (a) the appointment as inspector of a person claiming to be, or stated to be, an inspector, and the authority of an inspector to take proceedings or do any act, must be presumed, until the contrary is proved; and
- (b) a signature purporting to be of an inspector is taken as the signature it purports to be, until the contrary is proved; and
- (c) a document purporting to be a copy of a notice or order issued under this Act by an inspector is admissible as evidence of the issue of the notice or order and of the things in it; and
- (d) a document purporting to be a copy of an organisation's officers register last filed with the registrar, certified by the registrar, is admissible as evidence of the things in it; and

- (e) a document purporting to be a copy of an organisation's rules last filed with the registrar, certified by the registrar, is admissible as evidence of the things in it; and
- (f) the limits of a district or part of the State, or of a road, stated in a complaint or other document made for the proceedings must be presumed, until the contrary is proved; and
- (g) judicial notice of the existence of industrial action, or of a proposed industrial action, may be taken.

### **679 Confidential material tendered in evidence**

(1) Subsection (2) applies if records, tendered to the court or commission, relate to—

- (a) a person's trade secrets; or
- (b) the financial position of a party or witness.

(2) The records can not, without the consent of the person, party or witness, be inspected by anyone other than the president, a commissioner or an expert witness.

(3) Subsection (2) does not apply to records relating to the financial position of a party or witness who claims that the financial position of a business or industry does not permit the payment of wages, or the granting of conditions—

- (a) claimed in the proceedings in which the records are tendered; or
- (b) under a proposed industrial instrument or order to which the proceedings relate.

(4) If the court or commission directs that information relating to a person's trade secrets or financial position be given in evidence, the evidence must be taken in private, if the person asks.

(5) The court, commission or registrar may direct—

- (a) a report, or part of a report, of proceedings in an industrial cause not be published; or
- (b) evidence given, records tendered or things exhibited in proceedings for an industrial cause be withheld from release or search.

(6) The direction may prohibit the publication, release or search absolutely, or except on conditions ordered by the court, commission or registrar.

(7) The direction must be complied with by all persons to whom it is directed.

Maximum penalty—16 penalty units.

(8) The direction may be given if the court, commission or registrar considers—

- (a) disclosure of the matter would not be in the public interest; or
- (b) persons, other than parties to the cause, do not have a sufficient legitimate interest in being informed of the matter.

(9) A person must not give as evidence, or publish, material in contravention of this section or of a direction under this section.

Maximum penalty—16 penalty units.

(10) In this section—

“**expert witness**”, for records, means a person appointed by the court or commission as an expert to examine the records and to report on them.

## **680 Evidentiary value of official records**

(1) The following are admissible in proceedings as evidence of a decision or action—

- (a) a copy of the decision, or of a record of other action, of the court or commission, purporting to bear the seal of the court or commission;
- (b) a copy of, or a document purporting to be an extract from, the industrial gazette purporting to contain notice of a decision or other action of the court or commission.

(2) In proceedings—

- (a) a copy of, or a document purporting to be an extract from, the industrial gazette purporting to contain notice of—
  - (i) a declaration of a general ruling published under section 287;<sup>188</sup> or

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188 Section 287 (General rulings)

- (ii) an amendment of an award or certified agreement;  
is admissible as evidence of the making or approval of the declaration or amendment and, for the period for which the declaration or amendment remains in force, is evidence of the matters in the notice; and
- (b) a copy of a certified agreement, certified as a true copy by the registrar, is admissible as evidence of—
  - (i) the agreement; and
  - (ii) its execution as shown in the copy; and
  - (iii) its certification by the commission; and
- (c) a copy of a QWA, certified as a true copy by the registrar, is admissible as evidence of—
  - (i) the agreement; and
  - (ii) its execution as shown in the copy; and
  - (iii) its approval by the commission; and
- (d) a copy of a permit issued by the commission or the registrar, certified as a true copy by the registrar, is admissible as evidence of the permit; and
- (e) a certificate issued by the registrar about an organisation's registration is evidence of the matters in the certificate; and
- (f) a certificate issued by the registrar that a stated person was, at a stated time—
  - (i) an authorised industrial officer or another stated officer of a stated organisation; or
  - (ii) a member of a stated organisation;is evidence of the matters.

### **681 Proof of certain facts by statement**

In proceedings, a statement in a complaint or other process by which the proceedings are started that—

- (a) a calling was, at or about a stated time, transferred from 1 person to another; or

- (b) a stated person is or is not, or was or was not, at a stated time, an officer or member of an organisation; or
- (c) a stated person is liable to pay, but has not paid, contribution to the approved superannuation fund;

is evidence of the matters stated.

### **682 Evidentiary value of certificate of trustee of superannuation fund**

(1) In proceedings, a trustee's certificate stating, for a period of relevant service of an eligible employee concerned in the proceedings—

- (a) an amount was paid as contribution to a complying superannuation fund of which the trustee is a trustee; or
- (b) an amount worked out on the rate of return that stated contributions would have attracted to the fund;

is evidence of the matters stated.

(2) In this section—

**“trustee's certificate”** means a certificate given, or purporting to have been given, by a trustee of a complying superannuation fund.

### **683 Offence proceedings generally**

(1) Proceedings for an offence under this Act are to be heard and decided by the court or a magistrate, within the limits of the court's or magistrate's jurisdiction.

(2) Proceedings before a magistrate are to be heard and decided summarily under the *Justices Act 1886*, but the Industrial Magistrates Court where the proceedings are taken is to be constituted by a magistrate sitting alone.

(3) If the parties to proceedings commenced, or to be commenced, before a magistrate agree, by notice signed by them or their representatives, that the proceedings should be continued or taken before a magistrate at a particular place in the State (other than the place where the proceedings should be heard and decided under the *Justices Act 1886*)—

- (a) the magistrate at the particular place is authorised to hear and decide the proceedings; and
- (b) jurisdiction is conferred on each magistrate accordingly.

(4) If the proceedings have commenced before the agreement is made, the magistrate, if satisfied the agreement exists, must—

- (a) adjourn the proceedings to the magistrate at the agreed place; and
- (b) send the record of the proceedings taken before the magistrate to the clerk of the Magistrates Court at the agreed place.

(5) For the adjourned proceedings, evidence heard or produced in the proceedings before it was adjourned, is taken to have been heard or produced before the magistrate to whom the proceedings were adjourned, unless the parties otherwise agree.

(6) Subject to subsection (7), proceedings for an offence under this Act must be commenced—

- (a) within 1 year after the offence was committed; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed.

(7) Proceedings for an offence against section 138, 406 or 666<sup>189</sup> must be commenced within 6 months after the offence comes to the complainant's knowledge, but within 6 years after the offence was committed.

### **684 Organisations may start proceedings**

Without limiting the authority of the State or a person to take proceedings, an organisation, in its registered name, may commence proceedings for—

- (a) contraventions of industrial instruments or permits; or
- (b) an offence under this Act; or
- (c) recovery of an amount payable to an employee.

### **685 Recovering amounts from organisations**

(1) This section applies for the recovery of—

- (a) a penalty imposed on an organisation under this Act; or
- (b) an amount ordered to be paid by an organisation under this Act.

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<sup>189</sup> Section 138 (Order setting tool allowance), 406 (Contributing occupational superannuation) or 666 (Non-payment of wages)

(2) Process may be issued and executed against the organisation's property, whether the property is vested in trustees or is otherwise held for the organisation, as if the organisation, as a corporation, were the absolute owner of the property.

(3) In this section—

“**property**” of an organisation means property that the organisation has—

- (a) legal title to; or
- (b) a beneficial interest in, to the extent of the interest.

## CHAPTER 15—EMPLOYEES IN EMPLOYMENT OF STATE

### 686 Application of Act to State

(1) This Act binds the State, other than in relation to—

- (a) a matter that has been, or is, the subject of an appeal to the public service commissioner under the *Public Service Act 1996*, part 7;<sup>190</sup> or
- (b) a matter about which another Act excludes—
  - (i) the jurisdiction of the court or commission about the matter; or
  - (ii) the application of a decision under this Act about the matter.

(2) The following provisions do not apply to a public service employee who is subject to a ruling providing for the same matter as the provision—

- (a) section 9(3);
- (b) section 13(2)(a);
- (c) section 15(4);
- (d) section 46(1);
- (e) section 366(1)(c)(iii).

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190 *Public Service Act 1996*, part 7 (Appeals)

(3) If subsection (2) applies, the ruling applies to the employee instead of the provision.

(4) In this section—

“**ruling**” means a ruling under the *Public Service Act 1996*.

### **687 Conflict between industrial instruments etc. and statutory decision**

(1) This section applies if there is an inconsistency between—

(a) any of the following—

- (i) a directive of the public service commissioner under the *Public Service Act 1996*, section 34(1) that is the subject of a regulation under section 117(2)<sup>191</sup> of that Act;
- (ii) a directive of the Minister under the *Public Service Act 1996*, section 34(2);<sup>192</sup> and

(b) an award, industrial agreement, certified agreement or decision of the commission (the “**industrial instrument**”).

(2) If the commission decides that the subject matter of the directive is within its jurisdiction, the industrial instrument prevails to the extent of the inconsistency.

(3) Subsection (2) applies to a directive of the Minister, unless the directive otherwise provides.

(4) In this section—

“**directive**” includes a decision made in the exercise of a discretion given in a directive.

### **688 Protection of public property and officers**

(1) Execution or attachment can not be made against property or revenues of the State or a department to enforce an industrial instrument or decision of the court, the commission or a magistrate.

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191 *Public Service Act 1996*, section 117 (Relationship between directives and awards etc.)

192 *Public Service Act 1996*, sections 32, (The commissioner and office), 34 (Rulings of industrial relations Minister and commissioner) and 117 (Relationship between directives and awards etc.)



(2) A person who is—

- (a) an employer of employees in a department; or
- (b) taken to be an employer of employees in a department for this Act;

is not personally liable under a relevant industrial instrument or for a contravention of a relevant industrial instrument.

(3) In this section—

**“execution or attachment”** includes process in the nature of execution or attachment.

### **689 Ambit of reference to State**

(1) This Act binds an instrumentality or body that is not a department or part of a department, but that is taken by an Act, or otherwise under law—

- (a) to be, or to represent, the State; or
- (b) to have the rights, privileges or immunities of the State;

as it binds an employer, other than the State.

(2) A reference in section 686 or 688 to the State does not include a reference to an instrumentality or body mentioned in subsection (1).

(3) In this section—

**“department or part of a department”** includes a public service office or part of a public service office.

### **690 Representation of public sector units**

(1) A public sector unit, or a person in a public sector unit, who is concerned as an employer in an industrial cause must be represented in an industrial tribunal by—

- (a) the unit’s chief executive or an officer or employee of the unit authorised by the chief executive; or
- (b) if allowed under this Act—a lawyer or agent.

(2) In this section—

**“industrial tribunal”** means the court, the commission or an Industrial Magistrates Court.

**691 Industrial cause affecting diverse employees**

(1) Subsection (2) applies if the Minister decides an industrial cause is one that affects, or is likely to affect, employees in more than 1 public sector unit.

(2) The chief executive of the department is taken to be—

- (a) the employer of all employees who are, or are likely to be, affected; and
- (b) a party to the cause and to proceedings in the court, the commission or an Industrial Magistrates Court in the cause;

instead of all other persons who, apart from this subsection, would be employers of the employees or any of them.

(3) An agreement made by the chief executive as employer or order made in proceedings to which the chief executive is a party binds all persons, and their employees, to whom the agreement or order purports to apply.

## **CHAPTER 16—INDUSTRIAL RELATIONS ADVISORY COMMITTEE**

**692 Committee established**

(1) The industrial relations advisory committee (the “**committee**”) is established.

(2) The committee consists of—

- (a) the chief executive, who is the chairperson; and
- (b) 2 persons representing employee organisations, nominated by the organisations; and
- (c) 2 persons representing employer organisations, nominated by the organisations; and
- (d) 2 persons who have knowledge of, or experience in, industrial relations; and
- (e) 1 person representing the Anti-Discrimination Commission.

(3) The Minister must appoint the members mentioned in subsection (2)(b) to (d).

(4) The Minister must appoint an appointed member as the deputy chairperson.

### **693 Functions of committee**

(1) The committee's functions are—

- (a) to investigate, and report to the Minister on, a matter about industrial relations—
  - (i) referred to it by the Minister; or
  - (ii) considered by the committee to be appropriate to be brought to the Minister's attention; and
- (b) to investigate, and report to the Minister on, a particular industrial matter that has come to its attention; and
- (c) to investigate, and report to the Minister on, other matters that come within the operation of this Act; and
- (d) to review this Act and its operation; and
- (e) to make the recommendations to the Minister it considers appropriate about a matter within the scope of its functions.

(2) In performing its functions, the committee—

- (a) must consult with the president on a matter relating to the exercise or performance of the court's or commission's jurisdiction, functions and powers; and
- (b) may consult with an organisation or other association of persons, or an individual; and
- (c) may confer with the Minister about a matter it is investigating; and
- (d) must consider the attainment of the objects of this Act.

## CHAPTER 17—GENERAL

### 694 Employees working in and outside State

(1) This section applies if an employer—

- (a) has a workplace, or is present, in Queensland; and
- (b) engages in Queensland an employee whose employment is, with the employer's consent, performed partly in Queensland and partly in another State.

(2) An industrial instrument that binds the employer and employee for the employment performed in Queensland also binds them for the employment performed in the other State.

### 695 Student's work permit

(1) A student who is taking part in a tertiary study course may apply to the registrar to issue a permit to work in a calling for a particular period.

(2) The student's application must provide satisfactory proof that the period of work in the calling is necessary to complete the course.

(3) The permit must state—

- (a) the period of work; and
- (b) the student's wage rate; and
- (c) any conditions it is subject to.

(4) On issuing a permit, the registrar must promptly notify the secretary of an employee organisation in the calling of—

- (a) the issue of the permit; and
- (b) the permit's conditions.

(5) The permit has effect despite an award or certified agreement.

### 696 Aged or infirm persons permits

(1) An application may be made to the commission for a permit for an aged or infirm person, alleged to be unable to earn the minimum wage provided for by an industrial instrument that applies to a calling, to work in the calling for less than the minimum wage.

(2) The application may be made by—

- (a) the aged or infirm person; or
- (b) an inspector.

(3) The commission may issue the permit, with or without conditions.

(4) On receiving an application, the registrar must promptly notify the secretary of an employee organisation in the calling of—

- (a) the application; and
- (b) the time when the commission will hear any objection to the issue of the permit.

(5) The commission must promptly hear any objection to the issue of the permit from the organisation's authorised representative.

(6) The organisation may apply, at any time under the rules, to the commission to cancel the permit.

(7) This section applies, and a permit has effect, despite an award or certified agreement.

### **697 Copy of award and certified agreement to be displayed**

(1) This section applies to a workplace where an industrial instrument, other than a QWA, has application.

(2) The employer must display a copy of the instrument, in a conspicuous place at the workplace where it is easily read by the employees in the workplace.

Maximum penalty—20 penalty units.

(3) In this section—

“**workplace**” includes a factory, workroom or shop.

### **698 Incorporating amendments in awards, certified agreements or orders**

If an award, certified agreement or order under chapter 5, part 5 is amended, the registrar may reprint the award, agreement or order in a form certified as correct by the registrar.

**699 Obsolete industrial instrument**

(1) The registrar, after making inquiry, may notify in the industrial gazette an intention to declare a stated industrial instrument obsolete.

(2) A person may, within the stated time and in the stated way, file an objection notice with the commission.

(3) The commission must hear and decide the objection.

(4) If no objection is filed within the stated time, or all objections filed are dismissed, the registrar may notify in the industrial gazette that the instrument is obsolete.

(5) The instrument stops having effect on publication of the notice.

**700 Certificate of employment on termination**

(1) An employer, when asked by a person whose employment with the employer has been terminated, must give the person a certificate, signed by the employer, about the particulars prescribed under a regulation.

Maximum penalty—20 penalty units.

(2) In this section—

“**terminated**” means terminated by the employer or employee.

**701 False pretences relating to employment**

(1) A person must not—

- (a) pretend someone else has been employed by the person for a period, or in a capacity, other than that for, or in, which the other person was employed; or
- (b) assert in writing that someone else has been employed by the person for a period, or in a capacity, knowing the assertion to be false; or
- (c) assert in writing another matter relating to the person’s employment of someone else, knowing the assertion to be false in a material particular.

Maximum penalty—40 penalty units.

(2) A person must not—

- (a) forge a document that purports to be a discharge from, or a record of, previous employment; or
- (b) use a document that purports to be a discharge from, or a record of, previous employment, knowing the document is not genuine or is false; or
- (c) pretend, or falsely claim, when seeking employment, to be a person named in a genuine document mentioned in paragraph (b) as a person to whom the document was given; or
- (d) seek to obtain employment by assuming someone else's name, living or dead, with intent to deceive.

Maximum penalty—40 penalty units.

(3) If in a calling, under a relevant industrial instrument or under a general ruling for the Queensland minimum wage, an employee's wages depends wholly or partly on the employee's age, experience or duration of previous employment, a person must not give information, or make a statement, about the particulars that the person knows is false—

- (a) when seeking employment in the calling; or
- (b) while an employee in the calling.

Maximum penalty—16 penalty units.

(4) A person's liability to be dealt with for an offence under subsection (1) or (2) does not affect the person's liability to be dealt with under the Criminal Code for forgery or false pretences.

(5) However, the person must not be dealt with under both this Act and the Criminal Code for the same conduct.

## **702 Protection from liability**

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this or another Act mentioned in section 350(4).<sup>193</sup>

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

(3) In this section—

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193 Section 350 (Appointment of inspectors)

**“official”** means—

- (a) the Minister; or
- (b) the chief executive; or
- (c) the registrar; or
- (d) another officer of the court or commission; or
- (e) an inspector; or
- (f) a person acting under the direction of an inspector.

### **703 Payments to financially distressed**

**(1)** Subsection (2) applies if a person is—

- (a) suffering hardship because an employer has failed to pay the person the whole or part of wages; and
- (b) unlikely to be able to recover by lawful means the whole or a substantial part of the unpaid wages.

**(2)** The Governor in Council may authorise payment of an amount, not more than the person is unlikely to recover, to the person from the unclaimed moneys fund.

**(3)** The payment does not relieve the employer from liability to pay the unpaid wages.

**(4)** If the person later receives remuneration in full or part satisfaction of the employer’s liability, the person must immediately pay the department (for payment to the unclaimed moneys fund) an amount equal to the lesser of—

- (a) the value of the remuneration received, as assessed by the Minister; or
- (b) the amount of the payment made to the person and not previously repaid by the person under this subsection.

**(5)** The amount payable to the department—

- (a) is a debt payable to the department; and
- (b) may be recovered by action in a court of competent jurisdiction.

**(6)** In this section—

**“remuneration”** means remuneration, in money or kind.



**704 Notices and applications to be written**

If a person must give a notice or make an application under this Act, the notice or application must be written, unless otherwise provided.

**705 Inaccurate descriptions**

No misnomer, inaccurate description or omission in or from a document given under this Act prevents or limits the operation of this Act in relation to the subject matter of the misnomer, inaccurate description or omission, if the subject matter is sufficiently clear to be understood.

**706 Confidentiality of information**

A person must not disclose information acquired when performing functions or exercising powers under this Act to someone else, unless the disclosure is—

- (a) made for this Act when performing a function under this Act; or
- (b) authorised by—
  - (i) the Minister; or
  - (ii) a court order, for hearing and deciding proceedings before the court; or
  - (iii) a regulation; or
- (c) required or permitted by another Act.

Maximum penalty—16 penalty units.

**707 Application of Act generally**

(1) If a provision of this Act does not apply to a person or a class of person, a decision is inoperative to the extent that it purports to apply to the person or a member of the class about the provision's subject matter.

(2) In its application, this Act does not create a right, privilege or benefit for a person for a period of service as an employee if, for the period, a similar right, privilege or benefit was given to or received by the person under a corresponding provision of the repealed Act.

**708 Approved forms**

(1) The president may approve, for this Act, forms for use by or in the court, commission, Industrial Magistrates Court or registry.

(2) The chief executive may approve, for this Act, forms for use in circumstances not mentioned in subsection (1).

**709 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) In particular, but without limiting subsection (1), a regulation may be made—

- (a) requiring an employer who is a party to a certified agreement or QWA to supply information for statistical purposes; and
- (b) requiring an employer who is a party to a QWA to supply copies of documents prescribed under the regulation to the employee; and
- (c) about the required form of QWAs or ancillary documents, including a requirement that the document be in the English language; and
- (d) about the witnessing of signatures on QWAs or ancillary documents; and
- (e) about the making and retention by employers of records relating to the employment of persons under QWAs, and the inspection of the records; and
- (f) regulating the conduct of persons, other than lawyers,<sup>194</sup> who act for parties in an industrial cause; and
- (g) regulating the conduct of persons, other than lawyers, who appear in proceedings—
  - (i) in the court; or
  - (ii) before the commission or registrar; and
- (h) creating an offence under a regulation; and

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194 See the *Acts Interpretation Act 1954*, section 36 for the definition of lawyer.

- (i) fixing a penalty for an offence under a regulation, including different penalties for successive offences against a regulation, of not more than 20 penalty units.

## CHAPTER 18—SAVINGS AND REPEALS

### 710 Savings

(1) A person prescribed under any Act to be an employee within the meaning of the repealed Act continues to be an employee within the meaning of this Act.

(2) Subsection (3) applies to an award, decision, exemption, judgment, ruling, permit or licence or other act of authority (the “**instrument**”) that was—

- (a) made, given, done, granted, certified or approved by the court, the commission, a magistrate or the registrar under the repealed Act or the IO Act, and in relation to which there is a corresponding provision under this Act; and
- (b) in force immediately before the commencement of this Act.

(3) The instrument—

- (a) continues in force as if it had been made, given, done, granted or approved by the court, commission, magistrate or registrar, according to their respective functions and jurisdictions, under the corresponding provision of this Act; and
- (b) may be amended, revoked or suspended under this Act.

(4) Proceedings started before the commencement of this section under a provision of the repealed Act or the IO Act and pending at the date of the repeal may be carried on and prosecuted as if they had been started under the corresponding provision of this Act.

(5) However, if the entity before whom proceedings were started had jurisdiction to hear and decide the proceedings under the repealed Act, but the entity no longer has jurisdiction under this Act—

- (a) the proceedings may be continued and completed as if the repealed Act had not been repealed; and

- (b) if a person is dissatisfied with the decision of the entity in the proceedings, an appeal against the decision may be started and completed as if the repealed Act had not been repealed.

(6) Proceedings are taken to be part heard after the start of the hearing until the decision in the proceedings is given.

## **712 Repeals**

(1) The following Acts are repealed—

- (a) the *Workplace Relations Act 1997*;  
(b) the *Industrial Organisations Act 1997*.

(2) A proclamation commencing this section may fix different days or times for the repeal of different provisions of an Act to be repealed under subsection (1).

(3) One or more further proclamations may be made fixing different days or times for the repeal of different provisions of the Act until the Act is entirely repealed.

# **CHAPTER 19—SAVING AND TRANSITIONAL PROVISIONS FOR INDUSTRIAL RELATIONS ACT 1999**

## **PART 1—EXISTING INDUSTRIAL AGREEMENTS**

### **713 Existing industrial agreement continues**

(1) An industrial agreement that is in force immediately before the commencement of this section continues to have effect after the commencement.

(2) The provisions of the 1990 Act, other than those relating to the making or amendment of an industrial agreement, continue to apply to the industrial agreement, subject to this part.

(3) The commission may amend the industrial agreement only before its term expires and in accordance with a written agreement filed by the parties to the industrial agreement in the registry.

(4) However, the term of the industrial agreement can not be extended by agreement.

(5) If there is no applicable award, the commission, of its own initiative or on an application by a party to the industrial agreement, may decide that the industrial agreement has effect as an award.

(6) The industrial agreement may be terminated, before its term expires, by written agreement filed by the parties to the industrial agreement in the registry.

### **714 Industrial agreement displaced by QWA**

If a QWA comes into operation in relation to an employee who is bound by an industrial agreement, the industrial agreement stops having effect in relation to the employee.

## **PART 2—EXISTING CERTIFIED AGREEMENTS**

### **715 New termination provisions for existing certified agreements**

(1) A certified agreement that is in force immediately before the commencement of this section continues to have effect after the commencement.

(2) Section 172<sup>195</sup> applies to a certified agreement entered into before the commencement of this section if, whether before or after the commencement—

- (a) the period of operation stated in the agreement has ended; or
- (b) if it has been extended or further extended under the repealed Act—the period as extended or further extended has ended.

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<sup>195</sup> Section 172 (Terminating certified agreement on or before its nominal expiry date)

**716 EFAs that prevail over certified agreements**

(1) This section applies if—

- (a) an EFA is continued in force by part 3; and
- (b) any part of the period of operation stated in the agreement (the “**post-commencement period**”), or that period as extended or further extended, happens after the commencement of this section; and
- (c) the EFA is, during the post-commencement period, to any extent inconsistent with a certified agreement, whether made before or after the commencement of this section; and
- (d) the certified agreement was certified after implementation of the EFA was approved.

(2) The EFA prevails over the certified agreement, to the extent of the inconsistency, during the post-commencement period.

**717 Certified agreements that prevail over EFAs**

(1) This section applies if—

- (a) an EFA is continued in force by part 3; and
- (b) a certified agreement, whether made before or after the commencement of this section, is to any extent inconsistent with the EFA; and
- (c) section 716 does not apply to the inconsistency.

(2) The certified agreement prevails over the EFA, to the extent of the inconsistency.

**PART 3—EXISTING EFAS****718 Existing EFA continues**

(1) An EFA that is in force immediately before the commencement of this section continues to have effect after the commencement.

(2) The provisions of the 1990 Act, other than those relating to the making of an EFA, continue to apply to the EFA, subject to this part.

(3) However, the period of operation of the EFA can not be extended after the commencement.

### **719 EFA displaced by QWA and determination**

(1) If a QWA comes into operation in relation to an employee who is bound by the EFA, the EFA stops having effect in relation to the employee.

(2) A determination under section 149<sup>196</sup> prevails over an EFA to the extent of any inconsistency.

## **PART 4—UNLAWFUL DISMISSALS**

### **720 Dismissals before commencement of this section**

The repealed Act, chapter 5, part 2, continues to apply to a dismissal within the meaning of that part that happened before the commencement of this section.

## **PART 5—REPRESENTATION RIGHTS OF EMPLOYEE ORGANISATIONS**

### **721 Applications under the repealed Act, s 293**

If an application has been made under the repealed Act, section 293<sup>197</sup>—

- (a) the hearing of the application may be started and continued as if this Act had not been enacted; and
- (b) that section continues to apply to the hearing; and
- (c) an order made as a result of the hearing has effect as if it had been made under that section before its repeal.

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196 Section 149 (Arbitration if conciliation unsuccessful)

197 *Workplace Relations Act 1997*, section 293 (Orders about representation rights of employee organisations)

## **PART 6—REFERENCES AND APPOINTMENTS**

### **722 References to repealed Act or IO Act**

In an Act or document, a reference to the repealed Act or the IO Act may, if the context permits, be taken to be a reference to this Act.

### **723 Appointments continue**

(1) A person who immediately before the commencement of this section held an appointment as a commissioner under the repealed Act continues to hold the appointment, subject to this Act, until—

- (a) the end of the term of appointment; or
- (b) reappointed under this Act.

(2) A person who immediately before the commencement of this section held an appointment as—

- (a) the registrar; or
- (b) the chief inspector; or
- (c) an inspector;

under the repealed Act continues to hold the appointment, subject to this Act.

(3) A person who immediately before the commencement of this section held an appointment under the IO Act continues to hold the appointment until the end of the term of appointment, if any, subject to this Act.

## **PART 7—VETE ORDERS AND DETERMINATIONS**

### **724 Proceedings commenced under the *Vocational Education, Training and Employment Act 1991***

Proceedings started under the *Vocational Education, Training and Employment Act 1991*, section 98(4), 100(6), 103(2) or 120(3)(b), before the commencement of this section, and pending at the commencement,



may be carried on and prosecuted as if they had been started under the corresponding provision of this Act.

### **725 Orders and determinations under the *Vocational Education, Training and Employment Act 1991***

(1) A continuing order continues to have effect after the commencement of this subsection as if it had been made by the commission under—

- (a) for a continuing order made under section 83 of the repealed Act that relates to a person employed under a labour market program approved by the Minister under section 140—section 140;<sup>198</sup> or
- (b) for any other continuing order—section 137.<sup>199</sup>

(2) A determination by the State Training Council under the *Vocational Education, Training and Employment Act 1991*, section 86(5) or section 87(2),<sup>200</sup> that is in force immediately before the commencement of this section, continues to have effect after the commencement as if it had been made by the commission as an order under section 137.

(3) An order made by the commission under the *Vocational Education, Training and Employment Act 1991*, section 89(1),<sup>201</sup> that is in force immediately before the commencement of this section, continues to have effect after the commencement as if it had been made by the commission under section 138.<sup>202</sup>

(4) In this section—

**“continuing order”** means an order made by the commission under section 83, 86(2) or 87(5) of the repealed Act and continued in effect under subsection (1) as in force immediately before the commencement of this subsection.

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198 Section 140 (Orders for wages and employment conditions)

199 Section 137 (Order setting minimum wages and conditions)

200 *Vocational Education, Training and Employment Act 1991*, section 98 (Provision of tools of trade), 100 (Recovery of moneys due and payable to, or on account of apprentice or trainee), 103 (Recovery of unpaid superannuation contribution due to apprentice or trainee) or 120 (Proceedings for offences)

201 *Vocational Education, Training and Employment Act 1991*, section 89 (Industrial Commission may order provision of tools of trade)

202 Section 138 (Order setting tool allowance)

**“repealed Act”** means the *Vocational Education, Training and Employment Act 1991*.

## PART 8—ORGANISATIONS

### 726 Organisations with dual corporate status

(1) This section applies if, on the commencement of this section, an organisation was incorporated under a former incorporation provision and it was also—

- (a) a corporation under the Corporations Act, section 57A;<sup>203</sup> or
- (b) an incorporated association under the *Associations Incorporation Act 1981*; or
- (c) a body incorporated under a law of the State.

(2) Two years after the commencement, the organisation is taken to be no longer incorporated under the former incorporation provision for this Act.

(3) However, subsection (2) does not affect any continued incorporation of the organisation under a law mentioned in subsection (1)(a) to (c).

(4) The registrar may, on the application of the organisation made before the end of the 2 years, cancel its incorporation under the former incorporation provision.

(5) The commission may, on the referral of the registrar, make an order it considers appropriate to resolve any difficulty that may arise from the organisation no longer being incorporated under the former incorporation provision.

(6) In this section—

**“former incorporation provision”** means a provision as follows—

- (a) the *Industrial Conciliation and Arbitration Act 1932*, section 41(1);

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203 Corporations Act, section 57A (Meaning of corporation)

- (b) the *Industrial Conciliation and Arbitration Act 1961*, section 69(1);
- (c) the 1990 Act, section 334;
- (d) the IO Act, section 18.<sup>204</sup>

### **727 Continued registration of organisations**

(1) An industrial organisation registered, or taken to be registered, under the IO Act immediately before this section commences is taken to be registered as an organisation under this Act at the commencement.

(2) The name of an organisation under the IO Act is unchanged under this Act.

(3) The organisation is and continues to be the same body corporate under this Act without any break in, or change to, its corporate identity.

### **728 Applications for exemption from membership of an organisation**

The procedure under the IO Act, section 90(3) to (5) continues to apply to the hearing of an application for exemption from membership of an organisation until a regulation is made under section 112.<sup>205</sup>

### **729 Amalgamations**

(1) This section applies until a regulation is made under chapter 12, part 15 that is expressed to replace the effect of the IO Act, sections 96 to 98, 100 to 104, 106 to 115, 117 to 141, and 144 to 146 (“**continued provisions**”).

(2) Despite the repeal of the IO Act, the continued provisions continue to apply to an amalgamation or proposed amalgamation, with the changes

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204 *Industrial Conciliation and Arbitration Act 1961*, section 69 (Incorporation of union)

*Industrial Relations Act 1990*, section 334 (Industrial organisations corporate bodies)

*Industrial Organisations Act 1997*, section 18 (Organisations corporate bodies)

205 *Industrial Organisations Act 1997*, section 90 (Conscientious objection to organisation membership)

Section 112 (Procedure for hearing)

necessary to make them consistent with this Act and to adapt their operation to the provisions of this Act.

### **730 Withdrawals from amalgamation**

(1) This section applies until a regulation is made under chapter 12, part 15 that is expressed to replace the effect of the IO Act, sections 160 to 174, 177 and 178 (“**continued provisions**”).

(2) Despite the repeal of the IO Act, the continued provisions continue to apply to a withdrawal or proposed withdrawal, with the changes necessary to make them consistent with this Act and to adapt their operation to the provisions of this Act.

### **731 Election and ballot expenses**

(1) The IO Act, section 55 continues to apply to an organisation for an election for the organisation that, immediately before this section commences, was finished or was being conducted but had not finished.

(2) If, immediately before the commencement of this section, the IO Act, section 74 applied to an election or a step in an election, that section continues to apply to the election or step if the election or step was finished or was being conducted, but had not finished.

(3) The IO Act, section 116 continues to apply to an organisation for a ballot for a proposed amalgamation if, immediately before the commencement of this section, the ballot was finished or was being conducted, but had not finished.

(4) The IO Act, section 186 continues to apply to a person who applied for a ballot for a proposed withdrawal from amalgamation if, immediately before the commencement of this section, the ballot was finished or was being conducted, but had not finished.

(5) Subsections (1) to (4) have effect despite the repeal of the IO Act.

**732 Political objects funds**

(1) This section applies if, immediately before section 551 commences, an organisation had a political objects fund under the IO Act, part 12.<sup>206</sup>

(2) The IO Act, section 227(1) to (3) (“**section 227**”) continues to apply to any contribution to the fund for 6 months after the commencement.

(3) A direction to the organisation under section 227 expires at the end of the 6 months.

(4) At the end of the 6 months the organisation must close the fund and pay out any amount in the fund under its rules.

(5) Subsection (2) has effect despite the repeal of the IO Act.

## **CHAPTER 20—OTHER TRANSITIONAL PROVISIONS**

**733 Transitional provision for 2002 amendment Act**

(1) The person who, immediately before the commencement of the 2002 amendment Act, was the commissioner administrator continues to be a commissioner after the commencement.

(2) The 2002 amendment Act does not affect the validity of any decisions or delegations made before the commencement of that Act.

(3) A delegation made by the commissioner administrator that was in force immediately before the commencement of the 2002 amendment Act continues to have effect after the commencement as if made by the vice president.

(4) In this section—

“**2002 amendment Act**” means the *Industrial Relations Amendment Act 2002*.

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206 Section 551 (Definitions for pt 12) and *Industrial Organisations Act 1997*, part 12 (Accounts and audit)

**SCHEDULE 1****INDUSTRIAL MATTERS**

section 7(3)

1. Wages, allowances or remuneration of persons employed, or to be employed, during ordinary working hours, on overtime, on special work or on public holidays.
2. Pay equity.
3. Whether piecework will be allowed.
4. Whether employees are to be given particular leave on full pay.
5. Whether and on what conditions employees may board and lodge with their employers, including where it is necessary for employers to provide the board and lodging at a reasonable standard, where it would be impractical not to.
6. Whether monetary allowances will be paid by employers to employees for standing back or waiting time caused—
  - (a) by the conditions of the employer's calling; or
  - (b) by the intermittency of industrial operations; or
  - (c) otherwise.
7. The length of notice to be given by an employer or employee to the other before terminating employment, and wages to be paid or deducted instead of notice.
8. Occupational superannuation.
9. The hours of work, the time to be worked to entitle employees to a particular wage, allowance, remuneration or price, or what time will be taken to be overtime.
10. Claims to restrict work before or after particular hours.
11. Providing for shorter hours, higher wages, or other conditions for persons employed under abnormal conditions or in abnormal workplaces, and deciding what are abnormal conditions or workplaces.

## SCHEDULE 1 (continued)

12. The age, qualification or status of employees, or the mode and conditions of employment or non-employment, including whether a person should be disqualified for employment.
13. Employment of young employees or of a person or class of person, or the disqualification of a person for employment because of age or impairment.
14. The number or proportion of aged, impaired or infirm persons or other employees that may be employed by an employer, or the lowest prices or rates payable to them.
15. A claim to dismiss or to refuse to employ a particular person or class of person, or whether a particular person or class of person, ought to be continued or reinstated in the employment of a particular employer, considering the public interest, despite common law rights of employers or employees.
16. The right to dismiss, or to refuse to employ, reinstate or re-employ a particular person, or class of person, in a particular calling.
17. Custom or usage about employment conditions, either generally or in a particular calling or locality.
18. The interpretation or enforcement of an industrial instrument or a permit, unless this Act otherwise prescribes.
19. The subject matter of an industrial dispute, and a matter that has caused, or the court or commission considers is likely to cause, disagreement or friction between employers and employees.
20. What is fair and just, considering the interests of the persons immediately concerned and the community, according to the standard of the average good employer and the average competent and honest employee in all matters relating to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed—
  - (a) at or before the making of a relevant application to the court or commission; or
  - (b) at the making or enforcement of a decision of the court or commission.
21. The regulation of relations between employer and employee, or between employees, and to that end the imposition of conditions on—

## SCHEDULE 1 (continued)

- (a) the conduct of a calling; and
  - (b) the provision of benefits to persons engaged in a calling.
- 22.** A demarcation dispute.
  - 23.** The authorised payment by an employer of an employee's membership fees of an organisation of employees.
  - 24.** The surveillance of employees in the workplace.
  - 25.** Discrimination in employment, including in remuneration or other employment conditions.
  - 26.** Claims to have protective clothing or appliances, hot or cold water, or sanitary or bathing accommodation provided for the use of employees.
  - 27.** Fixing standards of normal temperatures or atmospheric purity in workplaces, above or below ground.



**SCHEDULE 2****APPOINTMENTS AND PROCEDURES**

section 8

**PART 1—PRESIDENT, VICE PRESIDENT, DEPUTY PRESIDENTS AND COMMISSIONERS****1 Remuneration**

(1) The person first appointed as the president after the commencement of section 243<sup>207</sup> is to receive the salary and allowances that are payable to a Supreme Court judge immediately before the commencement.

(2) The person first appointed as the vice president after the commencement of section 258<sup>208</sup> is to receive the salary and allowances that were payable to the chief commissioner immediately before the commencement.

(3) After the commencement of this section, the salary and allowances payable to the president, the vice president, a deputy president or a commissioner are to be fixed under the *Judges (Salaries and Allowances) Act 1967*.

(4) A person acting as the president, the vice president, a deputy president or a commissioner is entitled to the salary and allowances payable to the president, the vice president, a deputy president or a commissioner.

(5) The salaries and allowances are payable out of the consolidated fund, which is appropriated for the purpose.

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207 Section 243 (President of the court)

208 Section 258 (Vice president of the commission)

## SCHEDULE 2 (continued)

**2 Benefits—Judges (Pensions and Long Leave) Act**

(1) The *Judges (Pensions and Long Leave) Act 1957*, other than sections 2A and 15,<sup>209</sup> (the “**pensions Act**”) applies with necessary changes to a member and a member’s spouse or child in the way it applies to a judge and a judge’s spouse or child.

(2) In the pensions Act, a reference to a judge may, if the context permits, be taken to be a reference to a member.

(3) In working out a person’s length of service as a member for subsection (1), the following periods must be taken into account—

- (a) a period when the person has served as a member, whether under—
  - (i) a first appointment as a member or a renewal of the appointment; or
  - (ii) a subsequent appointment;
- (b) a period when the person has served as an acting member.

(4) This section does not apply if section 3 applies.

(5) For the purposes of the pensions Act, the salary of a chief commissioner who retired before 2 August 1999 is the salary payable to the vice president.

**3 Benefits—Superannuation (State Public Sector) Act 1990**

(1) Section 2 does not confer an entitlement on a member or a member’s spouse or child, if either of the following apply—

- (a) for a member first appointed to the commission before the commencement of this section—immediately before the commencement, the member was not a member to whom the *Judges (Pensions and Long Leave) Act 1957* applied;
- (b) for a member first appointed to the commission after the commencement of this section—

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209 *Judges (Pensions and Long Leave) Act 1957*, sections 2A (Length of service) and 15 (Leave of absence of judges)

## SCHEDULE 2 (continued)

- (i) the member is a member of the scheme and properly elects to continue as a member of the scheme; or
- (ii) the member is not a member of the scheme and properly elects to be a member of the scheme.

(2) A member making an election under subsection (1)(b) must do so, by signed notice in duplicate, within 3 months after being first appointed as a member.

(3) A copy of the election must be given to—

- (a) the board under the *Superannuation (State Public Sector) Act 1990*; and
- (b) the chief executive of the department in which this Act is administered.

(4) In this section—

“**scheme**” means the scheme under the *Superannuation (State Public Sector) Act 1990*.

#### **4 Extended leave of absence**

(1) The *Judges (Pensions and Long Leave) Act 1957*, section 15<sup>210</sup> applies with necessary changes to a member in the way it applies to a judge.

(2) In section 15 of that Act, a reference to a judge may, if the context permits, be taken to be a reference to a member.

(3) In working out a person’s length of service as a member for subsection (1), the following periods must be taken into account—

- (a) a period when the person has served as a member, whether under—
  - (i) a first appointment as a member or a renewal of the appointment; or
  - (ii) a subsequent appointment;
- (b) a period when the person has served as an acting member.

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<sup>210</sup> *Judges (Pensions and Long Leave) Act 1957*, section 15 (Leave of absence of judges)

## SCHEDULE 2 (continued)

**4A Leave of absence**

(1) The Minister may grant leave of absence to the president or vice president on the terms the Minister considers appropriate.

(2) The vice president may grant leave of absence to a deputy president or commissioner on the terms the vice president considers appropriate.

**PART 2—REGISTRAR****5 Preservation of registrar's rights if a public service officer**

(1) This section applies if the person appointed as the registrar was, immediately before the appointment, a public service officer.

(2) The person keeps the rights the person has accrued because of employment as a public service officer, or that would accrue in the future to the person, as if service as registrar were a continuation of service as a public service officer.

(3) If the person's term of appointment as registrar ends or the person resigns—

- (a) the person has the right to be employed as a public service officer—
  - (i) in the department that is the nearest practical equivalent to the department in which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and
  - (ii) at the classification level at which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and
  - (iii) on the remuneration payable to a public service officer on the classification level mentioned in subparagraph (ii); and
  - (iv) for duties appropriate to the classification level mentioned in subparagraph (ii); and

## SCHEDULE 2 (continued)

- (b) the person's service as registrar is taken to be service as a public service officer for working out the person's rights as a public service officer.

(4) If the person, immediately before the appointment, was a member of the scheme under the *Superannuation (State Public Sector) Act 1990*, the person continues to be eligible to be, and to be, a member of the scheme.

**6 Leave of absence of registrar**

The Minister may grant leave of absence to the registrar on the terms the Minister considers appropriate.

**7 Resignation of registrar**

The registrar may resign by signed notice given to the Minister.

**PART 3—INSPECTORS****8 Appointment conditions**

(1) An inspector holds office on the conditions stated in the instrument of appointment.

(2) An inspector stops holding office—

- (a) if the appointment provides for a term of appointment—at the end of the term; and
- (b) if the appointment conditions provide—on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

(3) An inspector may resign by signed notice of resignation given to the chief executive.

(4) However, an inspector may not resign from the office of inspector (the “**secondary office**”) if a condition of the inspector's employment to the main office requires the inspector to hold the secondary office.

## SCHEDULE 2 (continued)

**9 Limitation on powers**

(1) In exercising a power, an inspector is subject to the chief inspector's directions.

(2) An inspector's powers may be limited—

- (a) under a condition of appointment; or
- (b) by notice given by the chief executive to the inspector; or
- (c) under a regulation.

**10 Identity cards**

(1) The chief executive must give each inspector an identity card.

(2) The identity card must—

- (a) contain a recent photo of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for this Act; and
- (d) include an expiry date for the card.

(3) A person who stops being an inspector must return the person's identity card to the chief executive as soon as possible, but within 21 days, after the person stops being an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(4) This section does not prevent the giving of a single identity card to a person for this and other Acts or for other purposes.

**PART 4—PRESIDENT'S ADVISORY COMMITTEE****11 Definitions for pt 4**

In this part—

## SCHEDULE 2 (continued)

**“appointed member”** means a member of the president’s advisory committee appointed by the Minister.

**“member”** means a member of the president’s advisory committee.

**12 Term of office**

(1) The appointment of a member is for the term, not longer than 3 years, stated in the notice of the member’s appointment.

(2) An appointed member may resign by signed notice given to the Minister.

**13 Remuneration of appointed members**

An appointed member is entitled to the allowances and reasonable expenses approved by the Minister.

**14 Meetings of president’s advisory committee**

Meetings of the president’s advisory committee are to be—

- (a) called by the president; and
- (b) held when the president decides, but at least 3 times a year.

**PART 5—INDUSTRIAL RELATIONS ADVISORY COMMITTEE****15 Definitions for pt 5**

In this part—

**“appointed member”** means a member of the industrial relations advisory committee appointed by the Minister.

**“member”** means a member of the industrial relations advisory committee.

## SCHEDULE 2 (continued)

**16 Term of office**

(1) The appointment of a member is for the term, not longer than 3 years, stated in the notice of the member's appointment.

(2) An appointed member may resign by signed notice given to the Minister.

**17 Deputies of members**

(1) This section applies if a member, other than the chairperson, can not perform the functions of the appointment because of absence, illness, or another cause.

(2) The Minister may appoint a person to act as the deputy of the member during the member's incapacity.

(3) While a deputy of a member acts, the deputy must perform the functions, may exercise the powers, and has the entitlements, of the member.

**18 Remuneration of appointed members**

An appointed member is entitled to the allowances and reasonable expenses approved by the Minister.

**19 Conduct of committee meetings**

(1) Meetings of the committee are to be—

- (a) called by the chairperson; and
- (b) held when the chairperson decides, but at least 3 times a year.

(2) The chairperson must preside at all meetings at which the chairperson is present, and in the chairperson's absence, the deputy chairperson must preside.

(3) A quorum of the committee consists of 6 members of whom the chairperson or deputy chairperson must be 1.

(4) Business must not be conducted at a meeting unless a quorum is present.



## SCHEDULE 2 (continued)

(5) Business before a meeting at which a quorum is present must be decided by majority vote of the members present and entitled to vote.

(6) A member present at a meeting and entitled to vote who refrains from voting on an item of business before the committee, other than with the chairperson's leave on the ground of conflict of interest, is taken to have voted in the negative.

(7) If there is an equality of votes on an item of business, the presiding member has a second or casting vote.

(8) Minutes of each meeting are to be recorded in writing, and the original only of the minutes must be produced at, or for, a meeting.

(9) Records of the committee are in the chairperson's custody.

**SCHEDULE 5****DICTIONARY**

section 4

**“1990 Act”** means the repealed *Industrial Relations Act 1990*.

**“accounting deficiency”**, for chapter 12, part 12, see section 560(d).

**“accounting records”**, for chapter 12, part 12, see section 554(3).

**“accounts”**, for chapter 12, see section 555.

**“act”**, for chapter 12, part 14, see section 604.

**“additional approval requirements”**, for chapter 6, part 2, see section 187.

**“administer”**, for chapter 8, part 6, see section 316.

**“adoption leave”**, for chapter 2, part 2, see section 17.

**“amalgamated organisation”**, for chapter 12, part 15, see section 616.

**“amalgamation”**, for chapter 12, see section 409.

**“amalgamation ballot”**, for chapter 12, part 15, see section 616.

**“amalgamation day”**, for chapter 12, part 15, see section 616.

**“amendment agreement”**, for chapter 6, part 2, see section 197.

**“ancillary document”**, for chapter 6, part 2, see section 187.

**“appointed member”** means—

- (a) for schedule 2, part 4, see schedule 2, part 4, section 11; and
- (b) for schedule 2, part 5, see schedule 2, part 5, section 15.

## SCHEDULE 5 (continued)

**“apprentice”** see the *Vocational Education, Training and Employment Act 2000*, section 9.<sup>211</sup>

**“apprenticeship”** see the *Vocational Education, Training and Employment Act 2000*, section 7.

**“appropriately qualified”**, for a person to whom a power under this Act may be delegated, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

A person’s classification level in the public service.

**“approval notice”**, for chapter 6, part 2, see section 187.

**“approved apprenticeship”** means an apprenticeship approved by an approving authority for sections 162 and 211.

**“approved superannuation fund”** means a complying superannuation fund—

- (a) nominated in an industrial instrument; or
- (b) agreed between an employer and employee under section 405.

**“approved traineeship”** means a traineeship approved by an approving authority for sections 162 and 211, other than a traineeship mentioned in—

- (a) the Training Wage Award—State; or
- (b) the National Training Wage Award 1994.

**“approved training”** means training for an apprentice or trainee that is approved by the approving authority.

**“approving authority”** means the Training and Employment Board under the *Vocational Education, Training and Employment Act 2000*, section 146.

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211 *Vocational Education, Training and Employment Act 2000*, section 9(1), definition “apprentice”—

An employee who is being trained in an apprenticeship is an **“apprentice”** if—

- (a) an apprenticeship contract for the apprenticeship has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the apprenticeship has not ended.

## SCHEDULE 5 (continued)

**“assignment”**, for chapter 11, part 2, see section 376.

**“association”**, for chapter 12, see section 409.

**“attempt to commit an offence”** see Criminal Code, section 4.

**“attendance notice”** means a notice in the approved form issued by the court, the commission, an Industrial Magistrates Court or the registrar requiring a person to attend at a stated time and place until excused, for 1 or more of the following—

- (a) to give evidence;
- (b) to produce a stated document or thing;
- (c) another purpose specified in the notice.

**“audit report”**, for chapter 12, see section 409.

**“Australian commission”** means the Australian Industrial Relations Commission.

**“authorised industrial officer”**, for chapter 11, part 1, see section 363.

**“award”**—

- (a) generally, means—
  - (i) an award made under chapter 5 or continued in force under this Act; or
  - (ii) an award as amended under chapter 5; and
- (b) for chapter 6, part 1, division 3 and part 2, division 6—includes an award under the Commonwealth Act, part VI.

**“ballot records”**, for chapter 12, see section 409.

**“bargaining agent”**, for chapter 6, part 2, see section 187.

**“branch”**, for chapter 12, see section 409.

**“business hours”** of an employer means the hours of operation of the employer’s business.

**“calling”** means—

- (a) a craft, manufacture, occupation, trade, undertaking or vocation; or
- (b) a section of something mentioned in paragraph (a).

## SCHEDULE 5 (continued)

**“candidate”**, for chapter 12, part 9, see section 514.

**“casual vacancy”**, for chapter 12, see section 409.

**“certified agreement”** means a written agreement under chapter 6, part 1 about the relationship between the employer and employees.

**“certified copy”**, for chapter 6, part 2, see section 187.

**“child”**, for chapter 2, part 2, see section 17.

**“claim for wages”** means a claim—

- (a) for an employee’s wages payable under an industrial instrument or permit or under section 8A;<sup>212</sup> or
- (b) for an employee’s wages payable under an agreement in which wages are payable at a price or rate higher than that fixed by a relevant industrial instrument or permit; or
- (c) for an employee’s wages payable under an agreement in which wages are payable at a price or rate that is not fixed by a relevant industrial instrument or permit; or
- (d) for amounts payable, with an employee’s written consent, from an employee’s wages; or
- (e) under chapter 11, part 2, division 2; or
- (f) for amounts payable for a tool allowance under section 138; or
- (g) for damages for contravention of an agreement made under an industrial instrument; or
- (h) for damages suffered by an employee because the employer fails to pay the employee’s wages; or
- (i) for compensation under section 83.

**“collective body”**, for chapter 12, part 14, see section 604.

**“collegiate electoral system”**, for chapter 12, part 4, see section 439.

**“commission”** see section 255.

**“commissioner”** see section 256.

**“committee meeting”**, for chapter 12, see section 409.

## SCHEDULE 5 (continued)

**“Commonwealth Act”** means the *Workplace Relations Act 1996* (Cwlth).

**“Commonwealth award”** means an award made under the Commonwealth Act.

**“complying superannuation fund”** see *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**“conduct”**, for chapter 4, see section 102.

**“conscientious beliefs”**, for chapter 4, see section 102.

**“constituent part”**, for chapter 12, part 15, see section 616.

**“construction”** means building and construction, civil and engineering construction or demolition work.

**“continuous service”**—

(a) for chapter 2, part 2, see section 18; and

(b) for chapter 2, part 3, see section 42.

**“contracted work”**, for chapter 11, part 2, see section 376.

**“convicted of a disqualifying offence”**, for chapter 12, part 9, see section 514.

**“convicted person”**, for chapter 12, part 9, see section 515.

**“corporation”**, for chapter 12, see section 410.

**“counterpart federal body”**, for chapter 12, see section 411.

**“court”** see section 242.

**“decision”** means—

(a) a decision of the court, the commission, a magistrate or the registrar; or

(b) an award, declaration, determination, direction, judgment, order or ruling; or

(c) an agreement approved, certified, or amended by the commission and an extension of the agreement.

**“defect”**, for chapter 12, see section 409.

**“demarcation dispute”** includes—

## SCHEDULE 5 (continued)

- (a) a dispute arising between 2 or more organisations, or within an organisation, about the rights, status or functions of members of the organisations or organisation in relation to the employment of the members; and
- (b) a dispute arising between employers and employees, or between members of different organisations, about the demarcation of functions of employees or classes of employees; and
- (c) a dispute about the representation under this Act of the industrial interests of employees by an employee organisation.

**“demarcation dispute undertaking”**, for chapter 12, see section 409.

**“deputy president”** see section 258A.

**“deputy registrar”** see section 300.

**“deregistered organisation”**, for chapter 12, see section 409.

**“deregistration”**, for chapter 12, see section 409.

**“deregistration order”**, for chapter 12, part 16, see section 638.

**“designated award”**, in relation to a person to whom a certified agreement or QWA will apply, means an award that the commission under section 163, or the commission under section 212, has decided is appropriate for deciding whether a certified agreement or QWA passes the no-disadvantage test.

**“direct voting system”**, for chapter 12, part 4, see section 438.

**“discrimination”** means discrimination—

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

**“dismiss”**, for chapter 3, part 5, see section 91.

**“disqualification period”**, for chapter 12, part 9, see section 522(1).

**“disqualifying offence”**, for chapter 12, part 9, see section 514.

**“doctor’s certificate”** means a certificate signed by a registrant as defined under the *Medical Practitioners Registration Act 2001* or a law of the Commonwealth or another State that substantially corresponds to that Act.

## SCHEDULE 5 (continued)

**“dual commissioner”** see section 306.

**“EFA”** means an enterprise flexibility agreement continued in force under this Act.

**“elected”**, for chapter 12, part 9, see section 514.

**“election”**, for chapter 12, see section 409.

**“electoral commission”**, for chapter 12, see section 409.

**“electoral officer”**, for chapter 12, see section 409.

**“eligibility rules”**, for chapter 12, see section 409.

**“eligible association”** means an association that is eligible to be, but is not, registered as an organisation.

**“eligible employee”** means an employee who, under a relevant industrial instrument, is an eligible employee for entitlement to occupational superannuation benefits.

**“eligible rollover fund”** see *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**“employee”** means—

- (a) generally—see section 5; and
- (b) for chapter 6, part 2—see also section 188(2).

**“employee organisation”** means an organisation of employees.

**“employer”** means—

- (a) generally—see section 6; and
- (b) for chapter 6, part 1, includes—
  - (i) a multi-employer; and
  - (ii) for a project—an organisation of employers; and
- (c) for chapter 6, part 2—see also section 188(2); and
- (d) for chapter 11, part 2—see also section 376.

**“employer organisation”** means an organisation of employers.

**“engage in”** conduct for a prohibited reason, for chapter 4, see section 104.

**“equal remuneration for work of equal or comparable value”**, for chapter 2, part 5, see section 59.



## SCHEDULE 5 (continued)

**“exempted person”**, for chapter 4, see section 102.

**“exemption certificate”**, for chapter 4, see section 102.

**“exercising”**, for chapter 8, part 6, see section 316.

**“existing employee”**, for chapter 6, part 2, see section 187.

**“existing organisation”**, for chapter 12, part 15, see section 616.

**“extension agreement”**, for chapter 6, part 2, see section 187.

**“family responsibilities”** of an employee means the employee’s responsibilities to care for or support—

- (a) a dependent child of the employee; or
- (b) any other immediate family member who is in need of care or support.

**“federal organisation”**, for chapter 12, see section 409.

**“fee”**, for chapter 11A, see section 408A.

**“file”**—

- (a) for chapter 6, part 2, see section 187.
- (b) for chapter 12, see section 409.

**“filing receipt”**, for chapter 6, part 2, see section 187.

**“filing requirements”**, for chapter 6, part 2, see section 187.

**“financial affairs”**, for chapter 12, part 12, see section 551.

**“financial hardship payment”**, for chapter 12, see section 409.

**“financial year”**, for chapter 12, part 12, see section 552.

**“fixed rate”**, for chapter 11, part 2, division 3, see section 376.

**“full bench”** see section 256.

**“full pay”** means payment in full for the time that an employee is absent from work.

**“general meeting”**, for chapter 12, see section 409.

**“group training organisation”** means a corporation recognised by the Training and Employment Board as a group training organisation under the *Vocational Education, Training and Employment Act 2000*.

## SCHEDULE 5 (continued)

**“host employer”** means a person who contracts with a group training organisation for the training of apprentices and trainees.

**“immediate family”** includes—

- (a) the employee’s spouse; and
- (b) a child, ex-nuptial child, stepchild, adopted child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or employee’s spouse.

**“industrial action”** means—

- (a) generally—a lockout or strike; and
- (b) for chapter 4—see also section 103.

**“industrial agreement”** means an industrial agreement continued in force under this Act.

**“industrial association”**, for chapter 4, see section 102.

**“industrial authority”** means a commission, court, board, tribunal or other entity having authority under the law of the Commonwealth or another State to exercise powers of conciliation or arbitration for industrial matters or industrial disputes.

**“industrial body”**, for chapter 4, see section 102.

**“industrial cause”** includes an industrial matter and industrial dispute.

**“industrial conduct ground”**, for chapter 12, part 16, see section 637.

**“industrial dispute”** means—

- (a) a dispute, including a threatened or probable dispute, about an industrial matter; or
- (b) a situation that is likely to give rise to a dispute about an industrial matter.

**“industrial instrument”** means an award, certified agreement, QWA, industrial agreement, EFA or order under chapter 5, parts 5 and 6.

**“industrial law”**, for chapter 4, see section 102.

**“industrial matter”** see section 7.

**“industrial relations commission”** see section 255.

**“industrial tribunal”**, for chapter 9, division 5, see section 345.

## SCHEDULE 5 (continued)

**“initial day”** means—

- (a) for a certified agreement—the day on which it was certified; or
- (b) for a QWA—the day on which it was approved.

**“injured employee”**, for chapter 3, part 5, see section 91.

**“injury”**, for chapter 3, part 5, see section 91.

**“inspector”** means a person, including the chief inspector, who holds an appointment as an inspector under section 350.

**“invalidity”**, for chapter 12, part 14, see section 604.

**“invalid reason”**, for a dismissal, see section 73(2).

**“IO Act”** means the repealed *Industrial Organisations Act 1997*.

**“irregularity”**, for chapter 12, see section 409.

**“joint session”** means proceedings in which a member sits with a member of an industrial authority.

**“labour market program”** means a labour market program approved by the Minister.

**“leave application”**, for chapter 12, part 9, see section 514.

**“lockout”** means an employer’s action in closing a workplace, or suspending or discontinuing the employer’s business, or any branch of it, or an employer’s failure to continue to employ a number of employees, with intent—

- (a) to compel or induce employees to agree to employment conditions or to comply with demands made on them by the employer, or another employer, contrary to this Act; or
- (b) to cause loss or inconvenience to employees; or
- (c) to incite, instigate, aid, abet or procure another lockout; or
- (d) to help another employer to compel or induce employees to agree to employment conditions or comply with demands made by the other employer.

**“long adoption leave”**, for chapter 2, part 2, see section 17.

**“long parental leave”**, for chapter 2, part 2, see section 17.

## SCHEDULE 5 (continued)

**“long term casual employee”**, for chapter 2, part 2, see section 15A.<sup>213</sup>

**“magistrate”** see section 290.

**“management committee”**—

(a) for chapter 4, part 1, see section 102; and

(b) for chapter 12, see section 409.

**“manager”**, for chapter 11A, see section 408A.

**“maternity leave”**, for chapter 2, part 2, see section 17.

**“meat works”** means a place where livestock are slaughtered or meat is boned.

**“member”** of the commission means the president, the vice president, a deputy president or a commissioner.

**“member”**—

(a) for schedule 2, part 4, see schedule 2, part 4, section 11; and

(b) for schedule 2, part 5, see schedule 2, part 5, section 15.

**“members”**, for chapter 12, part 16, see section 637.

**“membership subscription”**, for chapter 12, see section 409.

**“member’s liability”**, for chapter 12, part 10, division 5, see section 541.

**“members register”**, for chapter 12, see section 409.

**“mine”**, for chapter 11, part 2, division 4, see section 376.

**“model”**, for chapter 11A, see section 408A.

**“model election rules”**, for chapter 12, see section 409.

**“mortgagee”**, for chapter 11, part 2, division 4, see section 376.

**“mortgagor”**, for chapter 11, part 2, division 4, see section 376.

**“multi-employer”** means 2 or more associated employers, whether associated because they—

(a) are related corporations; or

(b) are engaged in a joint venture or common enterprise; or

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<sup>213</sup> Section 15A (Who is a “long term casual employee” for pt 2)

## SCHEDULE 5 (continued)

(c) undertake similar work.

**“negotiating party”** see section 148.

**“new business”**, for chapter 6 part 1, means the ongoing operation, once established, of a single business that the employer—

- (a) proposes to establish at a new workplace; or
- (b) is establishing at a new workplace; or
- (c) is relocating to a new workplace;

but does not include the construction of the new workplace.

**“new employee”**, for chapter 6, part 2, see section 187.

**“newly registered organisation”**, for chapter 12, part 15, see section 616.

**“nominal expiry date”**—

- (a) of a certified agreement—see section 156; and
- (b) of a QWA—see section 194.

**“obstruct”** includes assault, hinder, intimidate, resist and threaten to obstruct.

**“office”**, for chapter 12, see section 412.

**“officer”**—

- (a) of the court or commission, see sections 304 and 334(4); and
- (b) of an organisation, or branch of an organisation, see section 409.

**“officers register”**, for chapter 12, see section 409.

**“ordinary election”**, for chapter 12, see section 409.

**“ordinary rate”**, for an employee under an industrial instrument, means the rate that the instrument states is payable for ordinary time.

**“organisation”**—

- (a) generally—see section 409; and
- (b) for chapter 12, part 14, see also section 604.

**“outworker”** means a person engaged, for someone else’s calling or business, in or about a private residence or other premises that are not necessarily business or commercial premises, to—

## SCHEDULE 5 (continued)

- (a) pack, process, or work on articles or material; or
- (b) carry out clerical work.

**“owner”**, for chapter 2, part 3, see section 42.

**“parental leave”**, for chapter 2, part 2, see section 17.

**“party”**—

- (a) for an industrial instrument or permit—includes a person bound by the instrument or permit; or
- (b) for chapter 6, part 2—see section 187.

**“pay”** an employee includes pay, with the employee’s written consent, on account of the employee.

**“pay equity”** means equal remuneration for men and women workers for work of equal or comparable value.

**“penalty provision”**—

- (a) for chapter 6, part 1, division 7—see section 182; and
- (b) for chapter 6, part 2, division 8—see section 218.

**“performer”**, for chapter 11A, see section 408A.

**“period between seasons”**, for chapter 2, part 3, see section 42.

**“period of operation”**, for chapter 6, part 2, see section 195.

**“permit”** means—

- (a) a students permit; or
- (b) an aged or infirm persons permit.

**“person dissatisfied”** with a decision in proceedings means—

- (a) a party to the proceedings; or
- (b) a person bound by the decision; or
- (c) if an inspector started the proceedings—any inspector.

**“piecemaker”** means a person employed in a calling on piecework rates.

**“place”** means—

- (a) any land, building, structure, vehicle, vessel or aircraft; or
- (b) part of anything mentioned in paragraph (a).

## SCHEDULE 5 (continued)

**“postal ballot”**, for chapter 12, see section 409.

**“presentation meeting”**, for chapter 12, part 12, see section 565.

**“president”**—

- (a) see section 243; and
- (b) for chapter 12, see section 409.

**“presidential member”** means the president, the vice president or a deputy president.

**“prime contractor”**, for chapter 11, part 2, see section 376.

**“private employment agent”**, for chapter 11A, see section 408A.

**“prohibited conduct”**, for chapter 4, see section 102.

**“prohibited reason”**, for chapter 4, part 1, see section 104.

**“project”**, for chapter 6, part 1, includes construction.

**“project agreement”** means a certified agreement for a project or a proposed project.

**“proposed amalgamated organisation”**, for chapter 12, part 15, see section 616.

**“proposed deregistering organisation”**, for chapter 12, part 15, see section 616.

**“protected industrial action”** means industrial action protected under section 174.

**“public holiday”** means—

- (a) the following days—
  - New Year’s Day (1 January)
  - Australia Day (26 January)
  - Good Friday
  - Easter Saturday (the day after Good Friday)
  - Easter Monday (the Monday after Good Friday)
  - Anzac Day (25 April)
  - Labour Day (the first Monday in May)

## SCHEDULE 5 (continued)

- Sovereign’s birthday (the second Monday in June)
  - Christmas Day (25 December)
  - Boxing Day (26 December); or
- (b) a day appointed under the Holidays Act 1983 to be a substitute holiday for an day mentioned in paragraph (a); or
- (c) a show holiday.

**“public sector unit”** see *Public Service Act 1996*, section 20.<sup>214</sup>

**“publish”**, for chapter 11A, see section 408A.

**“Queensland minimum wage”** see section 287(11).<sup>215</sup>

**“QWA”** means a Queensland workplace agreement under chapter 6, part 2, see sections 188 and 207.

**“QWA date”**, for chapter 6, part 2, see section 187.

**“rate”**, for chapter 11, part 2, division 3, see section 376.

**“record”**, for chapter 11, part 1, see section 363.

**“records”** means any document containing data.

**“reduced wages”** means—

- (a) for a person to whom an industrial instrument or permit applies—wages at a rate less than that provided for under the industrial instrument or permit; or
- (b) for a person to whom section 8A applies—wages at a rate less than the Queensland minimum wage.

**“refusal notice”**, for chapter 6, part 2, see section 187.

**“register”**, for chapter 12, see section 409.

**“registrar”** see section 297.

**“registrar’s auditor”**, for chapter 12, part 12, see section 575.

**“registration”**, for chapter 12, see section 409.

**“regular part-time employee”** means an employee who—

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<sup>214</sup> *Public Service Act 1996*, section 20 (What is a “public sector unit”)

<sup>215</sup> Section 287 (General rulings)



## SCHEDULE 5 (continued)

- (a) works less than full-time ordinary working hours; and
- (b) has reasonably predictable hours of work; and
- (c) is entitled to receive, on a proportionate basis, equivalent wages and employment conditions to those specified in an award for full-time employees who do the same type of work.

**“relevant award”**, in relation to a person to whom a certified agreement or QWA will apply, means an award—

- (a) regulating any employment condition of persons engaged in the same kind of work as that of persons under the agreement; and
- (b) that, immediately before the initial day of the agreement, binds the person’s employer.

**“relevant employee”**, for a certified agreement, means an employee whose employment is, or will be, subject to the agreement.

**“relevant or designated award”**, for chapter 6, part 2, see section 187.

**“remuneration”**, for a provision relating to work of equal or comparable value, includes—

- (a) the wage or salary payable to an employee; and
- (b) amounts payable or other benefits made available to an employee under a contract of service.

**“repealed Act”** means the *Workplace Relations Act 1997*.

**“representative”**, for chapter 4, part 1, see section 102.

**“required number”**, for chapter 12, see section 409.

**“school-based apprentice or trainee”** means an apprentice or trainee who—

- (a) is a student studying at a secondary school or tertiary institution; and
- (b) has entered into an arrangement about the apprenticeship or traineeship with the school or institution and the employer.

**“season”**, for chapter 2, part 3, see section 42.

**“seasonal employment”** means employment related to a season.

**“secretary”**, for chapter 12, see section 409.

## SCHEDULE 5 (continued)

“**service**”, for chapter 2, part 6, see section 67.

“**short adoption leave**”, for chapter 2, part 2, see section 17.

“**short parental leave**”, for chapter 2, part 2, see section 17.

“**small organisation**”, for chapter 12, part 16, see section 637.

“**spouse**”, of an employee, includes a former spouse of the employee.

“**State peak council**” means an association that is effectively representative of a significant number of organisations that represent employers or employees in a range of callings.

“**strike**”—

(a) means the conduct of 2 or more employees who are, or have been, employed by the same employer, or different employers, consisting in—

(i) a wilful failure to perform work required of them under their employment contracts; or

(ii) a performance of work in a way in which it is not customarily performed; or

(iii) the adoption of a practice or strategy resulting in a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work; or

(iv) a ban, restriction or limitation on the performance of work or on acceptance or offering for work; or

(v) a wilful failure of the employees to attend for work that is not allowed by the employer; or

(vi) a wilful failure to perform any work at all by employees who attend for work that is not allowed by the employer;

that is because of a combination, agreement or understanding (expressed or implied) entered into by the employees or any of them and that has a purpose—

(vii) to compel or induce an employer to agree to employment conditions, or to employ, or cease to employ, a person or class of person, or to comply with demands made by the employees or any of them or by any other employees; or

## SCHEDULE 5 (continued)

- (viii) to cause loss or inconvenience to an employer in the conduct of business; or
  - (ix) to incite, instigate, aid, abet or procure another strike; or
  - (x) to help employees in the employment of another employer to compel or induce the employer to agree to employment conditions or to employ, or cease to employ, a person or class of person or to comply with demands made by any employees; and
- (b) includes conduct capable of constituting a strike even though the conduct relates to part only of the functions the employees must perform in their employment; but
- (c) does not include action by an employee if—
- (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
  - (ii) the employee did not unreasonably contravene a direction of his or her employer to perform other available work (whether at the same or another workplace) that was safe and appropriate for the employee to perform.

**“subcontractor”**, for chapter 11, part 2, see section 376.

**“successor”** includes assignee and transmittee.

**“take”** a statutory declaration, for chapter 8, part 6, see section 316.

**“termination agreement”**, for chapter 6, part 2, see section 198(1).

**“termination notice”**, for chapter 6, part 2, see section 198(3).

**“time and wages record”**, for chapter 11, part 1, see section 363.

**“trainee”** see the *Vocational Education, Training and Employment Act 2000*, section 10.<sup>216</sup>

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216 *Vocational Education, Training and Employment Act 2000*, section 10(1), definition “trainee”—

An employee who is being trained in a traineeship is a **“trainee”** if—

- (a) a traineeship contract has been signed by the parties to the contract, whether or not the contract has been registered under this Act; or
- (b) the probationary period for the traineeship has not ended.

## SCHEDULE 5 (continued)

**“traineeship”** see the *Vocational Education, Training and Employment Act 2000*, section 8.

**“training contract”** means—

- (a) for an apprentice—an apprenticeship contract; or
- (b) for a trainee—a traineeship contract.

**“Training Recognition Council”** means the Training and Employment Recognition Council established under the *Vocational Education, Training and Employment Act 2000*, section 167.

**“transactions”**, for chapter 12, part 13, see section 551.

**“transfer”** of a calling includes the transmission, assurance, conveyance, assignment or succession of the calling—

- (a) either by—
  - (i) operation of law; or
  - (ii) agreement, including an agreement effected by a third person; and
- (b) either before or after the commencement of this Act.

**“valid majority”** means a majority of the relevant employees who cast a valid vote to give an approval, after the employer has given the employees a reasonable opportunity to decide whether they want to give the approval.

**“vice president”** see section 258.

**“violent offence”**, for chapter 12, part 9, see section 514.

**“wage rate”** includes pay rate and prices for work.

**“wages”** means—

- (a) an amount payable to an employee for—
  - (i) work performed, or to be performed, by the employee; or
  - (ii) a public holiday; or
  - (iii) leave the employee is entitled to; or
  - (iv) termination of employment; or
- (b) a salary; or

## SCHEDULE 5 (continued)

- (c) an amount payable from wages for the employee, with the employee's written consent; or
- (d) a shortfall under section 220.

**“withdrawal”**, for chapter 12, see section 409.

**“withdrawal ballot”**, for chapter 12, part 15, see section 616.

**“withdrawal day”**, for chapter 12, part 15, see section 616.

**“working day”** means a day on which employees normally perform work.

**“young employee”** means a person under 21 years engaged in a calling (other than an apprentice or a person subject to the *Vocational Education, Training and Employment Act 2000*) who receives a lower wage rate than that fixed by an industrial instrument for employees 21 years or over in the calling.

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 18 November 2004. Future amendments of the Industrial Relations Act 1999 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

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

### 4 Table of reprints

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

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

#### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	2 August 1999	2 August 1999
1A	to 2000 Act No. 23	23 July 2000	4 August 2000
1B	to 2000 Act No. 63	24 November 2000	1 January 2001
1C	to 2001 Act No. 45	15 July 2001	20 July 2001
1D	to 2001 Act No. 87	3 December 2001	20 December 2001
1E	to 2001 Act No. 87	1 March 2002	8 March 2002
1F	to 2002 Act No. 9	26 April 2002	26 April 2002
2	to 2002 Act No. 9	1 May 2002	3 May 2002
			(Column discontinued)
			Notes
2A	to 2002 Act No. 74	3 February 2003	
2B	to 2003 Act No. 4	4 March 2003	
2C	to 2003 Act No. 4	1 April 2003	
2D	to 2003 Act No. 19	9 May 2003	
2E	to 2003 Act No 27	23 May 2003	

Reprint No.	Amendments included	Effective	Notes
2F	to 2003 Act No. 27	1 July 2003	
2G	to 2003 Act No. 77	8 December 2003	
2H	to 2003 Act No. 77	1 January 2004	
2I	to 2003 Act No. 91	31 March 2004	
2J	to 2004 Act No. 45	18 November 2004	

## 5 Tables in earlier reprints

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## 6 List of legislation

### **Industrial Relations Act 1999 No. 33**

date of assent 18 June 1999

ss 1–2 commenced on date of assent

s 712(1) to the extent it repeals the Workplace Relations Act 1997 (other than ss 253–254, 270–272, 273(1)(a), 275, 278, ch 7 pt 7) commenced 1 July 1999 (1999 SL No. 159)

s 712(1) to the extent it repeals the Industrial Organisations Act 1997 (other than pt 16) commenced 1 July 1999 (1999 SL No. 159)

ss 243–245, 256–259, 261, ch 9, s 723(1) commenced 2 August 1999 (1999 SL No. 172)

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

amending legislation—

### **Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev s 373) sch 3**

date of assent 23 March 2000

ss 1–2 commenced on date of assent (see s 2(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

### **Training and Employment Act 2000 No. 23 ss 1–2, 292 sch 1**

date of assent 27 June 2000

ss 1–2 commenced on date of assent

sch 1 amdt 15 commenced 1 July 1999 (see s 2(1))

sch 1 amdt 77 commenced 1 July 2000 (see s 2(2))

remaining provisions commenced 23 July 2000 (2000 SL No. 197)

### **WorkCover Queensland and Other Acts Amendment Act 2000 No. 61 s 1 pt 4**

date of assent 24 November 2000

commenced on date of assent



**Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88) (remaining provisions were to commence 2 April 2001 but the commencing proclamation (2000 SL No. 335) was repealed (2001 SL No. 23))

**Industrial Relations and Another Act Amendment Act 2001 No. 18 pts 1–2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 June 2001 (2001 SL No. 62)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Industrial Relations Amendment Act 2001 No. 87**

date of assent 3 December 2001

s 6 commenced 1 July 1999 (see s 2(2))

ss 16, 18–21, 28–30 commenced 1 May 2002 (see s 2(1))

remaining provisions commenced on date of assent

**Private Employment Agencies and Other Acts Amendment Act 2002 No. 9 ss 1, 2(2)  
pt 3**

date of assent 19 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 26 April 2002 (2002 SL No. 87)

**Industrial Relations Amendment Act 2002 No. 73**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 3 February 2003 (2003 SL No. 7)

**Discrimination Law Amendment Act 2002 No. 74 ss 1–2, 90 sch**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

s 90 commenced 31 March 2003 (2003 SL No. 51)

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Financial Services Reform (Consequential Amendments) Act 2003 No. 4 pts 1, 5**

date of assent 4 March 2003

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch**

date of assent 9 May 2003  
 commenced on date of assent

**Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2, 612–621, 622 sch 5**

date of assent 23 May 2003  
 ss 1–2, 612, 619–620 commenced on date of assent (see s 2(2))  
 ss 613–618, 621 commenced 1 April 2003 (see s 2(1))  
 remaining provisions commenced 1 July 2003 (see s 2(2))

**Training Reform Act 2003 No. 63 ss 1, 2(2), 60 sch**

date of assent 13 October 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 1 January 2004 (2003 SL No. 293)

**Justice and Other Legislation Amendment Act 2003 No. 77 ss 1, 2(3), pt 15**

date of assent 6 November 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 8 December 2003 (2003 SL No. 310)

**Disaster Management Act 2003 No. 91 pts 1, 15 div 2**

date of assent 18 November 2003  
 ss 1–2 commenced on date of assent  
 remaining provisions commenced 31 March 2004 (2004 SL No. 24)

**Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004 No. 45 s 1, pt 5**

date of assent 18 November 2004  
 commenced on date of assent

## **7 List of annotations**

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**Division 3—Casual or regular part-time employees**

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**Continuity of service—additional considerations for casual employees**

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**Taking long service leave—alternative provision for casual or regular part-time employees**

prov hdg      amd 2001 No. 18 s 6(1)

s 48            amd 2001 No. 18 s 6(2)

**Payment for long service leave**

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def “employer organisation” om 2000 No. 23 s 292 sch 1

**Meaning of “corporation” for ch 12**

s 410 amd 2001 No. 45 s 29 sch 3

**Additional requirements for employer organisation applications**

s 417 amd 2001 No. 45 s 29 sch 3

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**Model rules apply if election rules do not comply with pt 4**

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**Approval for eligibility rule amendment**

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s 525      amd 2000 No. 63 s 276 sch 2

**Obligation to admit**

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**Obligation to have auditor**

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**Exemption if federal election held**

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- def “**claim for wages**” amd 2003 No. 27 s 621(3)  
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## **8 List of forms notified or published in the gazette**

**Form 1 Version 2—Application starting a proceeding – non-chapter 12 approved form**

pubd gaz 12 December 2003 pp 1186–7

**Form 1A Version 1—Application in existing proceeding**

pubd gaz 12 December 2003 pp 1186–7

**Form 2 Version 2—February 2002—Application for reinstatement**

pubd gaz 15 February 2002 p 613

- Form 3 Version 1—Application to recover unpaid wages etc**  
pubd gaz 5 January 2001 pp 49–51
- Form 4 Version 1—Amended Application**  
pubd gaz 5 January 2001 pp 49–51
- Form 5 Version 1—Application to appeal**  
pubd gaz 5 January 2001 pp 49–51
- Form 5A Version 1—Application for stay of decision under appeal**  
pubd gaz 12 December 2003 pp 1186–7
- Form 5B Version 1—Notice of Appeal**  
pubd gaz 12 December 2003 pp 1186–7
- Form 6 Version 1—Application for leave to appeal**  
pubd gaz 5 January 2001 pp 49–51
- Form 7 Version 1—Affidavit of service**  
pubd gaz 5 January 2001 pp 49–51
- Form 8 Version 1—Certificate of exhibit to affidavit**  
pubd gaz 5 January 2001 pp 49–51
- Form 9 Version 1—Affidavit**  
pubd gaz 5 January 2001 pp 49–51
- Form 10 Version 1—Certificate of exemption from membership of an organisation**  
pubd gaz 5 January 2001 pp 49–51
- Form 11 Version 1—Request for attendance notice**  
pubd gaz 5 January 2001 pp 49–51
- Form 12 Version 1—Attendance notice for compulsory conference**  
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- Form 13 Version 1—Attendance notice for production and to give evidence**  
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- Form 14 Version 1—Attendance notice to give evidence**  
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- Form 15 Version 1—Attendance notice to produce**  
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- Form 16 Version 1—List of documents**  
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- Form 17 Version 1—Notice to admit facts**  
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- Form 18 Version 1—Notice to admit documents**  
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- Form 19 Version 2—Notice of intention to retire from an industrial agreement**  
pubd gaz 12 December 2003 pp 1186–7

- Form 20 Version 1—Notice to show cause**  
pubd gaz 5 January 2001 pp 49–51
- Form 21 Version 2—Response**  
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- Form 22 Version 1—Notice of appointment of agent**  
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- Form 23 Version 1—Notice of withdrawal of appointment as lawyer or agent**  
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- Form 24 Version 1—Lawyer’s notice of address for service**  
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- Form 25 Version 1—Notice of change of lawyer or agent**  
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- Form 26 Version 1—Notice of change of address for service**  
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- Form 27 Version 2—Application for certificate as to requested representation**  
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- Form 28 Version 1—Application for certificate of cessation of requirement under section 144(3)**  
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- Form 29 Version 1—Certificate as to requested representation**  
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- Form 30 Version 1—Certificate of cessation of requirement under section 144(3)**  
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- Form 31 Version 1—Certificate of amount to be paid under order**  
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- Form 32 Version 2—Application for decision about designated award for certified agreement or QWA**  
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- Form 32A Version 1—Advice of intention to begin negotiations for a project agreement**  
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- Form 33 Version 2—Queensland Workplace Agreement (QWA) – including employer filing application parts 1 & 2**  
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- Form 34 Version 1—Queensland Workplace Agreement (QWA) Amendment Agreement**  
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- Form 35 Version 1—Queensland Workplace Agreement (QWA) Extension Agreement**  
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- Form 36 Version 1—Queensland Workplace Agreement (QWA) Termination Agreement**  
pubd gaz 5 January 2001 pp 49–51
- Form 37 Version 1—Notice to Terminate a Queensland Workplace Agreement (QWA)**  
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- Form 38 Version 2—Notice of giving of authorisation to engage in industrial action**  
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- Form 39 Version 2—Request for help to make certified agreement**  
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- Form 43 Version 1—Notice of revocation of a determination under section 149**  
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- Form 44 Version 2—Notice terminating a certified agreement under section 172(1) or Notice of intention to terminate a certified agreement under section 173(2)**  
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- Form 45 Version 2—Application for approval of the termination of a certified agreement under section 172(2) or section 173(1)**  
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- Form 46A Version 1—Request to discontinue application other than for section 74**  
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- Form 47 Version 2—Application to Industrial Registrar for issue of an authority under section 364**  
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- Form 48 Version 2—Application for a claim before an Industrial Magistrate**  
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- Form 51 Version 1—Application by person who is aged or infirm for a permit**  
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- Form 68 Version 1—Warrant of commitment where punishment is by imprisonment**  
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**Form 72 Version 1—Application for order for repayment of fee received by a private employment agent**

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**Form WA. 1 Version 1—Wages Attachment Notice**

pubd gaz 10 September 1999 p 177