



# Fair Work (Commonwealth Powers) and Other Provisions Act 2009

Reprinted as in force on 31 January 2010

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Reprint No. 0E

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# Information about this reprint

This Act is reprinted as at 31 January 2010. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

- omit provisions that are no longer required (s 40)
- make all necessary consequential amendments (s 7(1)(k)).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

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

## Spelling

The spelling of certain words or phrases may be inconsistent in this reprint or with other reprints because of changes made in various editions of the Macquarie Dictionary (for example, in the dictionary, ‘lodgement’ has replaced ‘lodgment’). Variations of spelling will be updated in the next authorised reprint.

## Dates shown on reprints

**Reprints dated at last amendment** All reprints produced on or after 1 July 2002, authorised (that is, hard copy) and unauthorised (that is, electronic), are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If an authorised reprint is dated earlier than an unauthorised version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of an authorised reprint is the same as the date shown for an unauthorised version previously published, it merely means that the unauthorised version was published before the authorised version. Also, any revised edition of the previously published unauthorised version will have the same date as that version.

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Queensland

# Fair Work (Commonwealth Powers) and Other Provisions Act 2009

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# Fair Work (Commonwealth Powers) and Other Provisions Act 2009

[as amended by all amendments that commenced on or before 31 January 2010]

**An Act to refer particular matters relating to workplace relations to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Commonwealth Constitution**

*Editor's note—*

Part 4 of this Act had not commenced on or before the reprint date.

Uncommenced provisions are italicised in this reprint.

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

### 2 Commencement

- (1) This Act, other than parts 6 and 7, commences on a day to be fixed by proclamation.
- (2) The *Acts Interpretation Act 1954*, section 15DA does not apply to a provision of this Act other than parts 4 and 5.

### 3 Definitions

- (1) In this Act—

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***amendment reference*** means the reference under section 5(1)(b).

***Commonwealth Fair Work Act*** means the *Fair Work Act 2009* (Cwlth) (as amended from time to time).

***department*** see the *Public Service Act 2008*, section 7.

***employing office*** means an entity designated as an employing office, and empowered to employ persons on behalf of the State, under an Act.

***excluded subject matter*** means any of the following matters—

- (a) a matter dealt with in the *Anti-Discrimination Act 1991*;
- (b) superannuation;
- (c) workers' compensation;
- (d) occupational health and safety;
- (e) matters relating to outworkers (within the ordinary meaning of the term);
- (f) child labour;
- (g) training arrangements;
- (h) long service leave;
- (i) leave for victims of crime;
- (j) attendance for service on a jury, or for emergency service duties;
- (k) declaration, prescription or substitution of public holidays;
- (l) the following matters relating to provision of essential services or to situations of emergency—
  - (i) directions to perform work, including to perform work at a particular time or place, or in a particular way;



- 
- (ii) directions not to perform work, including not to perform work at a particular time or place, or in a particular way;
  - (m) regulation of any of the following—
    - (i) employee associations;
    - (ii) employer associations;
    - (iii) members of employee associations or of employer associations;
  - (n) workplace surveillance;
  - (o) business trading hours;
  - (p) claims for enforcement of contracts of employment, except so far as a law of the State provides for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
  - (q) rights or remedies incidental to a matter referred to in a preceding paragraph of this definition;

except to the extent that the *Fair Work Act 2009* (Cwlth), as originally enacted, deals with the matter (directly or indirectly), or requires or permits instruments made or given effect under the Commonwealth Fair Work Act so to deal with the matter.

***express amendment*** of the Commonwealth Fair Work Act means the direct amendment of the text of that Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of the Commonwealth Fair Work Act.

***fundamental workplace relations principles*** see section 4.

***initial reference*** means the reference under section 5(1)(a).

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***initial referred provisions*** means the scheduled text, to the extent to which that text deals with matters that are included in the legislative powers of the Parliament of the State.

***law enforcement officer*** means—

- (a) a member of the Queensland Police Service as defined under the *Police Service Administration Act 1990*, section 2.2; or
- (b) a special constable appointed under the *Police Service Administration Act 1990*, section 5.16.

***local government sector employee*** means an employee of a local government sector employer.

***local government sector employer*** means an employer that is—

- (a) a local government; or
- (b) any entity established under the *Local Government Act 1993* or the *City of Brisbane Act 1924*; or
- (c) a local government entity under the *Local Government Act 2009*; or
- (d) the Local Government Association of Queensland (Incorporated) established under the *Local Government Act 1993*; or
- (e) any other entity controlled by a body or bodies mentioned in a preceding paragraph.

***public sector employee*** means—

- (a) a person employed or appointed in or by a public sector employer; or
- (b) the chief executive of a public sector employer.

***public sector employer*** means any of the following—

- (a) a Minister;
- (b) a department or public service office;
- (c) an employing office;

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- (d) a registry or other administrative office of a court or tribunal of the State of any jurisdiction;
  - (e) an agency, authority, commission, corporation, instrumentality, office, or other entity, not otherwise mentioned in a preceding paragraph, established under an Act or under State authorisation for a public or State purpose;
  - (f) a chief executive of, or part of, an entity mentioned in a preceding paragraph;

but does not include the following—

- (g) a GOC;
- (h) an entity mentioned in schedule 1;
- (i) a chief executive of an entity mentioned in paragraphs (g) and (h).

***reference*** means—

- (a) the initial reference; or
- (b) the amendment reference; or
- (c) the transition reference.

***referred subject matters*** means any of the following—

- (a) terms and conditions of employment, including any of the following—
  - (i) minimum terms and conditions of employment (including employment standards and minimum wages);
  - (ii) terms and conditions of employment contained in instruments (including instruments such as awards, determinations and enterprise-level agreements);
  - (iii) bargaining in relation to terms and conditions of employment;
  - (iv) the effect of a transfer of business on terms and conditions of employment;

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- (b) terms and conditions under which an outworker entity may arrange for work to be performed for the entity (directly or indirectly), if the work is of a kind that is often performed by outworkers;
- (c) rights and responsibilities of persons, including employees, employers, independent contractors, outworkers, outworker entities, associations of employees or associations of employers, being rights and responsibilities relating to any of the following—
  - (i) freedom of association in the context of workplace relations, and related protections;
  - (ii) protection from discrimination relating to employment;
  - (iii) termination of employment;
  - (iv) industrial action;
  - (v) protection from payment of fees for services related to bargaining;
  - (vi) sham independent contractor arrangements;
  - (vii) standing down employees without pay;
  - (viii) union rights of entry and rights of access to records;
- (d) compliance with, and enforcement of, the Commonwealth Fair Work Act;
- (e) the administration of the Commonwealth Fair Work Act;
- (f) the application of the Commonwealth Fair Work Act;
- (g) matters incidental or ancillary to the operation of the Commonwealth Fair Work Act or of instruments made or given effect under the Commonwealth Fair Work Act;

but does not include any excluded subject matter.

***referred transition matters*** means the matters of the making of laws with respect to the transition from the regime provided for by—

- 
- (a) the *Workplace Relations Act 1996* (Cwlth) (as it continues to apply because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth)); or
  - (b) a law of this State relating to workplace relations or industrial relations;

to the regime provided for by the Commonwealth Fair Work Act.

*scheduled text* means the text set out in Schedule 2.

*transition reference* means the reference under section 5(1)(c).

- (2) Words or phrases in the definition of *excluded subject matter* or the definition of *referred subject matters* that are defined in the Commonwealth Fair Work Act have, in that definition, the meanings set out in that Act as in force on 1 July 2009.
- (3) For the purposes of the Commonwealth Fair Work Act, the Commissioner of the Police Service is to be taken to be an employer of law enforcement officers of the State.

## Part 2 Reference of matters

### 4 Fundamental workplace relations principles

The following are the fundamental workplace relations principles under this Act—

- (a) that the Commonwealth Fair Work Act should provide for, and continue to provide for, the following—
  - (i) a strong, simple and enforceable safety net of minimum employment standards;
  - (ii) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to

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- join and be represented by a union or participate in collective activities;
- (iii) collective bargaining at the enterprise level with no provision for individual statutory agreements;
- (iv) fair and effective remedies available through an independent umpire;
- (v) protection from unfair dismissal;
- (b) that there should be, and continue to be, in connection with the operation of the Commonwealth Fair Work Act, the following—
  - (i) an independent tribunal system;
  - (ii) an independent authority able to assist employers and employees within a national workplace relations system.

## **5 Reference of matters**

- (1) Subject to the other provisions of this Act, the following matters are referred to the Parliament of the Commonwealth—
  - (a) the matters to which the initial referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the initial referred provisions in the Commonwealth Fair Work Act, as originally enacted, and as subsequently amended by amendments enacted at any time before this Act commences, in the terms, or substantially in the terms, set out in the scheduled text;
  - (b) the referred subject matters, but only to the extent of making laws with respect to any such matter by making express amendments of the Commonwealth Fair Work Act;
  - (c) the referred transition matters.
- (2) The reference of a matter under subsection (1) has effect only—

- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Commonwealth Constitution); and
  - (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- (3) The operation of each paragraph of subsection (1) is not affected by any other paragraph.
- (4) To remove doubt, it is declared that it is the intention of the Parliament of the State that the Commonwealth Fair Work Act may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts whose operation is based on legislative powers that the Parliament of the Commonwealth has apart from under the references under subsection (1).
- (5) Despite any other provision of this section, a reference under subsection (1) has effect for a period—
- (a) beginning when this section commences; and
  - (b) ending at the end of the day fixed under section 7 as the day on which the reference is to terminate;
- but no longer.

## **6 Matters excluded from the reference**

A matter referred by section 5 does not include—

- (a) matters relating to Ministers or Members of Parliament;  
or
- (b) matters relating to the Governor, the Office of the Governor, the Governor's official residence (known as 'Government House') and its associated administrative unit; or

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- (c) matters relating to judicial officers, or members of tribunals established by or under a law of the State, or their associates; or
- (d) matters relating to public sector employees and employers; or
- (e) matters relating to persons appointed or engaged by the Governor, Governor in Council or a Minister under any other Act, law or authority; or
- (f) matters relating to officers or employees of the parliamentary service as defined under the *Parliamentary Service Act 1988*, section 23; or
- (g) matters relating to law enforcement officers; or
- (h) matters relating to local government sector employees and employers.

## 7 Termination of references

- (1) The Governor may, at any time, by proclamation published in the Gazette, fix a day as the day on which—
  - (a) the references are to terminate; or
  - (b) the amendment reference is to terminate; or
  - (c) the transition reference is to terminate.
- (2) The Governor may, by proclamation published in the Gazette, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 5) never to have been published.
- (3) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (4) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.
- (5) If the amendment reference and the transition reference have been terminated, the expression *the references* in subsection (1) refers only to the initial reference.



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## **8 Effect of termination of amendment reference or transition reference before initial reference**

- (1) If the amendment reference or the transition reference terminates before the initial reference, the termination of the amendment reference or transition reference does not affect—
  - (a) laws that were made under that reference before that termination (whether or not they have come into operation before that termination); or
  - (b) the continued operation in the State of the Commonwealth Fair Work Act as in operation immediately before the termination or as subsequently amended or affected by—
    - (i) laws referred to in paragraph (a) that come into operation after that termination; or
    - (ii) provisions referred to in section 5(4).
- (2) Accordingly, the amendment reference or transition reference continues to have effect for the purposes of subsection (1) unless the initial reference is terminated.

## **9 Period for termination of references**

- (1) Subject to subsection (2), a day fixed by a proclamation under section 7(1) must be no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published.
- (2) If—
  - (a) a proclamation under section 7(1) only provides for the termination of the amendment reference; and
  - (b) the Governor, as part of the proclamation by which the termination is to be effected, declares that, in the opinion of the Governor, the Commonwealth Fair Work Act—
    - (i) is proposed to be amended (by an amendment introduced into the Parliament of the Commonwealth by a Commonwealth Minister); or

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(ii) has been amended;

in a manner that is inconsistent with 1 or more of the fundamental workplace relations principles;

the day fixed by the proclamation under section 7(1)(b) may be earlier than the day that applies under subsection (1) but must be no earlier than the first day after the end of the period of 3 months beginning on the day on which the proclamation is published.

- (3) If the Governor fixes a day under subsection (2), the Minister must, as soon as practicable after the publication of the relevant proclamation, prepare a report on the matter and cause a copy of the report to be laid before the Legislative Assembly.

## **10 Proclamations**

A proclamation made under this Act is subordinate legislation.

## **12 Transitional provision**

A reference in any Act or instrument to an industrial instrument as defined under the *Industrial Relations Act 1999* includes, if the context permits and it is necessary to do so to take account of the reference of matters under this Act, a reference to a federal industrial instrument.

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**Part 4**                      **Amendments relating to trustee companies**

**Division 1**                **Amendment of Trustee Companies Act 1968**

**80**      **Act amended**

*This division amends the Trustee Companies Act 1968.*

**81**      **Amendment of s 4 (Definitions)**

(1) *Section 4, definitions corporation, director, financial institution, financial institution's books, foreign company, insurance company, new trustee company, related corporation, trustee company and unincorporated association—*

*omit.*

(2) *Section 4—*

*insert—*

*'trustee company means a licensed trustee company under the Corporations Act, section 601RAA.'*

**82**      **Amendment of s 4AA (Powers conferred on trustee companies are additional powers)**

*Section 4AA, 'by any other Act'—*

*omit, insert—*

*'under any other Act or the Corporations Act'.*

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**83 Omission of s 4A (Subsidiaries, holding companies and related corporations)**

*Section 4A—*

*omit.*

**84 Omission of ss 36 and 36A**

*Sections 36 and 36A—*

*omit.*

**85 Relocation and renumbering of s 43 (When legatee to bear commission on legacy)**

*Section 43—*

*relocate and renumber, in part 8, as section 68A.*

**86 Omission of pt 4**

*Part 4, as amended—*

*omit.*

**87 Omission of ss 50–53**

*Sections 50 to 53—*

*omit.*

**88 Omission of pt 6**

*Part 6—*

*omit.*

**89 Relocation and renumbering of s 62 (Appointment of attorney by trustee company)**

*Section 62—*

*relocate and renumber, in part 8, as section 68B.*

**90 Omission of pt 7**

Part 7—  
omit.

**91 Replacement of pt 8, hdg (General)**

Part 8, heading—  
omit, insert—

**‘Part 8 Miscellaneous’.**

**92 Insertion of new s 68C**

After section 68B—  
insert—

**‘68C Compulsory transfer determinations**

- ‘(1) This section applies if—
- (a) ASIC cancels the licence of a trustee company (the **transferring company**) and makes a determination under the Corporations Act, section 601WBA that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the **receiving company**); and
  - (b) ASIC issues a certificate of transfer under the Corporations Act, section 601WBG for the transfer; and
  - (c) either the transferring company or the receiving company is registered in Queensland.
- ‘(2) When the certificate of transfer comes into force, the receiving company becomes the successor in law of the transferring company in relation to estate assets and liabilities of the transferring company, to the extent of the transfer.

Note—

*Under the Corporations Act, section 601WBG(2)(d), the certificate of transfer is required to state when the certificate comes into force.*

- ‘(3) Without limiting subsection (2)—
- (a) *if the transfer is a total transfer—all the estate assets and liabilities of the transferring company, wherever those assets and liabilities are located, become assets and liabilities of the receiving company (in the same capacity as they were assets and liabilities of the transferring company) without any transfer, conveyance or assignment; and*
  - (b) *if the transfer is a partial transfer—all the estate assets and liabilities included in the list mentioned in the Corporations Act, section 601WBG(2)(c), wherever those assets and liabilities are located, become assets and liabilities of the receiving company (in the same capacity as they were assets and liabilities of the transferring company) without any transfer, conveyance or assignment; and*
  - (c) *to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the transferring company apply to the receiving company.*
- ‘(4) *If the certificate includes provisions of a kind mentioned in the Corporations Act, section 601WBG(3)—*
- (a) *if the provisions state that particular things are to happen or are taken to be the case—those things are, by force of this section, taken to happen, or to be the case, in accordance with those provisions; and*
  - (b) *if the provisions state a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with the mechanism are, by force of this section, taken to happen, or to be the case, as determined in accordance with that mechanism.’*

**93 Omission of s 69 (Other companies may apply for similar powers)**

*Section 69—  
omit.*

**94 Omission of s 73 (Provisions relating to ex trustee companies)**

*Section 73—  
omit.*

**95 Renumbering of pts 1–8**

*Parts 1 to 8—  
renumber as parts 1 to 5.*

**96 Insertion of new pt 6**

*After part 5—  
insert—*

**‘Part 6 Transitional provisions for Fair Work (Commonwealth Powers) and Other Provisions Act 2009**

**‘74 Definitions for pt 6**

*‘In this part—*

***amendment Act** means the Fair Work (Commonwealth Powers) and Other Provisions Act 2009.*

***commencement** means the commencement of this section.*

***repealed**, followed by a provision number, means that provision as it existed before its repeal by the amendment Act.*

***trustee company** means a trustee company under section 4 as in force immediately before the commencement.*

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**‘75 Court may review rate of commission**

- ‘(1) This section applies if a person made an application to the Court or a Judge to review the rate of commission, as mentioned in repealed section 41(4), before the commencement.*
- ‘(2) Repealed section 41 continues to apply, despite its repeal, in relation to the application.*

**‘76 Court may review fee**

- ‘(1) This section applies if a person made an application to the Court or a Judge to review a fee, as mentioned in repealed section 45(1), before the commencement.*
- ‘(2) Repealed section 45 continues to apply, despite its repeal, in relation to the application.*

**‘77 Filing and passing accounts**

- ‘(1) This section applies to an account filed in the office of the Registrar of the Supreme Court, as mentioned in repealed section 50(3), before the commencement.*
- ‘(2) Repealed section 50(3) continues to apply, despite its repeal, in relation to the account.*

**‘78 Court may order account**

- ‘(1) This section applies if a person made an application to an officer of a trustee company for an account of the property and assets of an estate, as mentioned in repealed section 51(1), before the commencement.*
- ‘(2) Repealed sections 51 and 52 continue to apply, despite their repeal, in relation to the application.*

**‘79 Investment of capital in name of Treasurer**

- ‘(1) This section applies if a trustee company was required to invest part of its paid-up capital in the name of the Treasurer*



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*of the State of Queensland in trust for the trustee company, as mentioned in repealed section 56(1), before the commencement.*

- ‘(2) The securities and investments mentioned in the section in existence at the time of the repeal are to be transferred by the Treasurer as soon as practicable after the repeal to the trustee company or another person nominated by the trustee company.*

*Note—*

*The timing of the transfer may be affected by the nature, and the terms and conditions, of the security or investment.*

- ‘(3) Repealed section 56(3) continues to apply, despite its repeal, in relation to interest and income mentioned in the subsection, whether the interest and income is held by the Treasurer at the time of the repeal or received afterwards.*

## **‘80 Offences**

- ‘(1) This section applies if a person is alleged to have committed an offence against the Trustee Companies Act 1968 before the commencement.*
- ‘(2) Proceedings for the offence may be started or continued, and the court may hear and decide the proceedings, as if the Fair Work (Commonwealth Powers) and Other Provisions Act 2009 had not commenced.*
- ‘(3) This section applies despite the Criminal Code, section 11.*

## **‘81 Special transitional provisions**

- ‘(1) The Governor in Council may, by regulation (a **transitional regulation**), make additional provisions of a saving or transitional nature for the purposes of—*
- (a) the enactment of the Fair Work (Commonwealth Powers) and Other Provisions Act 2009, part 4; or*

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- (b) *the transition from the regulation of trustee companies under this Act to the regulation of trustee companies under the Corporations Act; or*
  - (c) *applying, complementing or otherwise giving effect to the provisions of the Corporations Act regulating trustee companies.*
- ‘(2) *A provision of a transitional regulation may, if the regulation so provides, take effect from the commencement of this section or from a later day.*
- ‘(3) *To the extent to which a provision takes effect under subsection (2) from a day earlier than the day of the regulation’s publication in the gazette, the provision does not operate to the disadvantage of a person by—*
- (a) *decreasing the person’s rights; or*
  - (b) *imposing liabilities on the person.*
- ‘(4) *A transitional regulation must declare it is a transitional regulation.*
- ‘(5) *This section and a transitional regulation expire at the end of 2 years after the commencement.’.*

## **97 Omission of sch 2**

*Schedule 2—*

*omit.*

## **Division 2 Repeal**

### **98 Repeal of regulation**

*The Trustee Companies Regulation 1996, SL No. 94 is repealed.*

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**Division 3**                      **Amendment of Foreign Ownership  
of Land Register Act 1988**

**99**      **Act amended**

*This division amends the Foreign Ownership of Land Register Act 1988.*

**100**     **Amendment of s 10 (Trustee company common funds)**

*Section 10, from ‘(within’ to ‘State)’, second mention—  
omit, insert—*

*‘(within the meaning of the Trustee Companies Act 1968) was  
acquired through the investment of moneys forming part of a  
common fund of the trustee company,’.*

**Division 4**                      **Amendment of Guardianship and  
Administration Act 2000**

**101**     **Act amended**

*This division amends the Guardianship and Administration Act 2000.*

**102**     **Amendment of s 48 (Remuneration of professional  
administrators)**

(1) *Section 48(2)—  
omit, insert—*

‘(2) *The remuneration may not be more than the amount the  
tribunal considers fair and reasonable, having regard to—*

(a) *the nature and complexity of the service; and*

(b) *the care, skill and specialised knowledge required to  
provide the service; and*

[s 103]

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- (c) *the responsibility displayed in providing the service; and*
  - (d) *the time within which the service was provided; and*
  - (e) *the place where, and the circumstances in which, the service was provided.’.*
- (2) Section 48(3) after ‘Act’—  
*insert—*  
*‘or the Corporations Act’.*

**103 Insertion of new ch 12, pt 10**

*Chapter 12, after part 9—*  
*insert—*

**‘Part 10 Transitional provision for Fair Work (Commonwealth Powers) and Other Provisions Act 2009**

**‘268 Remuneration of professional administrators**

- ‘(1) *This section applies if the tribunal orders, before the commencement, that an administrator for an adult as mentioned in section 48(1) is entitled to remuneration from the adult.*
- ‘(2) *Repealed section 48(2) continues to apply, despite its repeal, in relation to the remuneration, until the tribunal makes a further order about the administrator’s remuneration.*
- ‘(3) *In this section—*  
*commencement means the commencement of this section.*  
*repealed section 48(2) means section 48(2) as it existed before its repeal by the Fair Work (Commonwealth Powers) and Other Provisions Act 2009.’.*

**Division 5**                      **Amendment of Trusts Act 1973**

**104**    **Act amended**

*This division amends the Trusts Act 1973.*

**105**    **Amendment of s 5 (Definitions)**

*Section 5, definition trustee corporation—*

*omit, insert—*

*‘trustee corporation means the public trustee or a trustee company under the Trustee Companies Act 1968.’.*

## **Schedule 1      Other entities that are not public sector employers**

section 3, definition *public sector employer*

- 1 a board established under the *Grammar Schools Act 1975*
- 2 bodies corporate established under the *Hospitals Foundations Act 1982*
- 3 Island Industries Board established under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*
- 4 Queensland Performing Arts Trust established under the *Queensland Performing Arts Trust Act 1977*
- 5 Queensland Theatre Company established under the *Queensland Theatre Company Act 1970*
- 6 Queensland Treasury Corporation established under the *Queensland Treasury Corporation Act 1988*
- 7 The Council of The Queensland Institute of Medical Research and the Queensland Institute of Medical Research Trust established under the *Queensland Institute of Medical Research Act 1945*
- 8 Royal National Agricultural and Industrial Association of Queensland established under the *Royal National Agricultural and Industrial Association of Queensland Act 1971*
- 9 universities established under an Act

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## **Schedule 2**      **Text to be included in the provisions of the Commonwealth Fair Work Act**

section 3, definition *scheduled text*

### **Division 2B**      **Application of this Act in States that refer matters after 1 July 2009 but on or before 1 January 2010**

#### **30K**      **Meaning of terms used in this Division**

(1) In this Division:

*amendment reference* of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection 30L(4).

*excluded subject matter* means any of the following matters:

- (a) a matter dealt with in a law referred to in subsection 27(1A) of this Act;
- (b) superannuation;
- (c) workers compensation;
- (d) occupational health and safety;
- (e) matters relating to outworkers (within the ordinary meaning of the term);
- (f) child labour;
- (g) training arrangements;
- (h) long service leave;
- (i) leave for victims of crime;
- (j) attendance for service on a jury, or for emergency service duties;

Schedule 2

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- (k) declaration, prescription or substitution of public holidays;
- (l) the following matters relating to provision of essential services or to situations of emergency:
  - (i) directions to perform work (including to perform work at a particular time or place, or in a particular way);
  - (ii) directions not to perform work (including not to perform work at a particular time or place, or in a particular way);
- (m) regulation of any of the following:
  - (i) employee associations;
  - (ii) employer associations;
  - (iii) members of employee associations or of employer associations;
- (n) workplace surveillance;
- (o) business trading hours;
- (p) claims for enforcement of contracts of employment, except so far as a law of a State provides for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
- (q) rights or remedies incidental to a matter referred to in a preceding paragraph of this definition;

except to the extent that this Act as originally enacted deals with the matter (directly or indirectly), or requires or permits instruments made or given effect under this Act so to deal with the matter.

***express amendment*** means the direct amendment of the text of this Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter), but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act.



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***fundamental workplace relations principles***: see subsection 30L(9).

***initial reference*** of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection 30L(3).

***law enforcement officer*** means:

- (a) a member of a police force or police service; or
- (b) a person appointed to a position for the purpose of being trained as a member of a police force or police service; or
- (c) a person who has the powers and duties of a member of a police force or police service;

and, without limiting paragraphs (a), (b) and (c), includes a police reservist, a police recruit, a police cadet, a junior constable, a police medical officer, a special constable, an ancillary constable or a protective services officer.

***local government employee***, of a State, means:

- (a) an employee of a local government employer of the State; or
- (b) any other employee in the State of a kind specified in the regulations.

***local government employer***, of a State, means an employer that is:

- (a) a body corporate that is established for a local government purpose by or under a law of a State; or
- (b) a body corporate in which a body to which paragraph (a) applies has, or 2 or more such bodies together have, a controlling interest; or
- (c) a person who employs individuals for the purposes of an unincorporated body that is established for a local government purpose by or under a law of a State; or
- (d) any other body corporate that is a local government body in the State of a kind specified in the regulations; or

- (e) any other person who employs individuals for the purposes of an unincorporated body that is a local government body in the State of a kind specified in the regulations.

***referral law***, of a State, means the law of the State that refers matters, as mentioned in subsection 30L(1), to the Parliament of the Commonwealth.

***referred provisions*** means the provisions of this Division to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

***referred subject matters*** means any of the following:

- (a) terms and conditions of employment, including any of the following:
  - (i) minimum terms and conditions of employment, (including employment standards and minimum wages);
  - (ii) terms and conditions of employment contained in instruments (including instruments such as awards, determinations and enterprise-level agreements);
  - (iii) bargaining in relation to terms and conditions of employment;
  - (iv) the effect of a transfer of business on terms and conditions of employment;
- (b) terms and conditions under which an outworker entity may arrange for work to be performed for the entity (directly or indirectly), if the work is of a kind that is often performed by outworkers;
- (c) rights and responsibilities of persons, including employees, employers, independent contractors, outworkers, outworker entities, associations of employees or associations of employers, being rights and responsibilities relating to any of the following:
  - (i) freedom of association in the context of workplace relations, and related protections;

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- (ii) protection from discrimination relating to employment;
  - (iii) termination of employment;
  - (iv) industrial action;
  - (v) protection from payment of fees for services related to bargaining;
  - (vi) sham independent contractor arrangements;
  - (vii) standing down employees without pay;
  - (viii) union rights of entry and rights of access to records;
  - (d) compliance with, and enforcement of, this Act;
  - (e) the administration of this Act;
  - (f) the application of this Act;
  - (g) matters incidental or ancillary to the operation of this Act or of instruments made or given effect under this Act;

but does not include any excluded subject matter.

**referring State:** see section 30L.

**State public sector employee,** of a State, means:

- (a) an employee of a State public sector employer of the State; or
- (b) any other employee in the State of a kind specified in the regulations;

and includes a law enforcement officer of the State.

**State public sector employer,** of a State, means an employer that is:

- (a) the State, the Governor of the State or a Minister of the State; or
- (b) a body corporate that is established for a public purpose by or under a law of the State, by the Governor of the State or by a Minister of the State; or

Schedule 2

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- (c) a body corporate in which the State has a controlling interest; or
- (d) a person who employs individuals for the purposes of an unincorporated body that is established for a public purpose by or under a law of the State, by the Governor of the State or by a Minister of the State; or
- (e) any other employer in the State of a kind specified in the regulations;

and includes a holder of an office of the State whom the State's referral law provides is to be taken, for the purposes of this Act, to be an employer of law enforcement officers of the State.

*transition reference* of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection 30L(5).

- (2) Words or phrases in the definition of *excluded subject matter* in subsection (1), or in the definition of *referred subject matters* in subsection (1), that are defined in this Act (other than in this Division) have, in that definition, the meanings set out in this Act as in force on 1 July 2009.

### **30L Meaning of *referring State***

*Reference of matters by State Parliament to Commonwealth Parliament*

- (1) A State is a *referring State* if the Parliament of the State has, after 1 July 2009 but on or before 1 January 2010, referred the matters covered by subsections (3), (4) and (5) in relation to the State to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:
  - (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and
  - (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

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This subsection has effect subject to subsection (6).

- (2) A State is a *referring State* even if:
- (a) the State's referral law provides that the reference to the Parliament of the Commonwealth of any or all of the matters covered by subsections (3), (4) and (5) is to terminate in particular circumstances; or
  - (b) the State's referral law provides that particular matters, or all matters, relating to State public sector employees, or State public sector employers, of the State are not included in any or all of the matters covered by subsections (3), (4) and (5); or
  - (c) the State's referral law provides that particular matters, or all matters, relating to local government employees, or local government employers, of the State are not included in any or all of the matters covered by subsections (3), (4) and (5).

*Reference covering referred provisions*

- (3) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by amending this Act, as originally enacted, and as subsequently amended by amendments enacted at any time before the State's referral law commenced, to include the referred provisions.

*Reference covering amendments*

- (4) This subsection covers the referred subject matters to the extent of making laws with respect to those matters by making express amendments of this Act.

*Reference covering transitional matters*

- (5) This subsection covers making laws with respect to the transition from the regime provided for by:
- (a) the *Workplace Relations Act 1996* (as it continues to apply because of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*); or
  - (b) a law of a State relating to workplace relations or industrial relations;

to the regime provided for by this Act.

*Effect of termination of reference*

- (6) Despite anything to the contrary in a referral law of a State, a State ceases to be a *referring State* if any or all of the following occurs:
- (a) the State's initial reference terminates;
  - (b) the State's amendment reference terminates, and neither of subsections (7) and (8) apply to the termination;
  - (c) the State's transition reference terminates.
- (7) A State does not cease to be a ***referring State*** because of the termination of its amendment reference if:
- (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
  - (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
  - (c) that State's amendment reference, and the amendment reference of every other referring State (other than a referring State that has terminated its amendment reference in the circumstances referred to in subsection (8)), terminate on the same day.
- (8) A State does not cease to be a ***referring State*** because of the termination of its amendment reference if:
- (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
  - (b) the day fixed is no earlier than the first day after the end of the period of 3 months beginning on the day on which the proclamation is published; and
  - (c) the Governor of that State, as part of the proclamation by which the termination is to be effected, declares that, in the opinion of the Governor, this Act:

- 
- (i) is proposed to be amended (by an amendment introduced into the Parliament by a Minister); or
  - (ii) has been amended;
- in a manner that is inconsistent with one or more of the fundamental workplace relations principles.
- (9) The following are the *fundamental workplace relations principles*:
- (a) that this Act should provide for, and continue to provide for, the following:
    - (i) a strong, simple and enforceable safety net of minimum employment standards;
    - (ii) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities;
    - (iii) collective bargaining at the enterprise level with no provision for individual statutory agreements;
    - (iv) fair and effective remedies available through an independent umpire;
    - (v) protection from unfair dismissal;
  - (b) that there should be, and continue to be, in connection with the operation of this Act, the following:
    - (i) an independent tribunal system;
    - (ii) an independent authority able to assist employers and employees within a national workplace relations system.

### **30M Extended meaning of *national system employee***

- (1) A *national system employee* includes:
- (a) any individual in a State that is a referring State because of this Division so far as he or she is employed, or usually employed, as described in paragraph 30N(1)(a), except on a vocational placement; and

(b) a law enforcement officer of the State to whom subsection 30P(1) applies.

- (2) This section does not limit the operation of section 13 (which defines a national system employee).

Note: Section 30S may limit the extent to which this section extends the meaning of *national system employee*.

### **30N Extended meaning of *national system employer***

- (1) A *national system employer* includes:

(a) any person in a State that is a referring State because of this Division so far as the person employs, or usually employs, an individual; and

(b) a holder of an office to whom subsection 30P(2) applies.

- (2) This section does not limit the operation of section 14 (which defines a national system employer).

Note: Section 30S may limit the extent to which this section extends the meaning of *national system employer*.

### **30P Extended ordinary meanings of *employee* and *employer***

- (1) A reference in this Act to an employee with its ordinary meaning includes a reference to a law enforcement officer of a referring State if the State's referral law so provides for the purposes of that law.

- (2) A reference in this Act to an employer with its ordinary meaning includes a reference to a holder of an office of a State if the State's referral law provides, for the purposes of that law, that the holder of the office is taken to be the employer of a law enforcement officer of the State.

- (3) This section does not limit the operation of section 15 (which deals with references to employee and employer with their ordinary meanings).

Note: Section 30S may limit the extent to which this section extends the meanings of *employee* and *employer*.



**30Q Extended meaning of *outworker entity***

- (1) An *outworker entity* includes a person, other than in the person's capacity as a national system employer, so far as:
  - (a) the person arranges for work to be performed for the person (either directly or indirectly); and
  - (b) the work is of a kind that is often performed by outworkers; and
  - (c) one or more of the following applies:
    - (i) at the time the arrangement is made, one or more parties to the arrangement is in a State that is a referring State because of this Division;
    - (ii) the work is to be performed in a State that is a referring State because of this Division;
    - (iii) the person referred to in paragraph (a) carries on an activity (whether of a commercial, governmental or other nature) in a State that is a referring State because of this Division, and the work is reasonably likely to be performed in that State;
    - (iv) the person referred to in paragraph (a) carries on an activity (whether of a commercial, governmental or other nature) in a State that is a referring State because of this Division, and the work is to be performed in connection with that activity.
- (2) This section does not limit the operation of the definition of *outworker entity* in section 12.

Note: Section 30S may limit the extent to which this section extends the meaning of *outworker entity*.

**30R General protections**

- (1) Part 3-1 (which deals with general protections) applies to action taken in a State that is a referring State because of this Division.
- (2) This section applies despite section 337 (which limits the application of Part 3-1), and does not limit the operation of

sections 338 and 339 (which set out the application of that Part).

Note: Section 30S may limit the extent to which this section extends the application of Part 3-1.

**30S Division only has effect if supported by reference**

A provision of this Division has effect in relation to a State that is a referring State because of this Division only to the extent that the State's referral law refers to the Parliament of the Commonwealth the matters mentioned in subsection 30L(1) that result in the Parliament of the Commonwealth having sufficient legislative power for the provision so to have effect.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 31 January 2010. Future amendments of the Fair Work (Commonwealth Powers) and Other Provisions Act 2009 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 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.

Reprint No.	Amendments included	Effective	Notes
0A	none	19 November 2009	pts 6–7 commenced
0B	none	10 December 2009	certain provs commenced
0C	2009 Act No. 49	31 December 2009	s 3, pt 2, schs 1–2 commenced
0D rv	—	1 January 2010	s 11 repealed and certain provs commenced
0E	—	31 January 2010	pt 5 commenced

## 5 List of legislation

### **Fair Work (Commonwealth Powers) and Other Provisions Act 2009 No. 49**

date of assent 19 November 2009

ss 1–2, pts 6–7 commenced on date of assent

s 3, pt 2, schs 1–2 commenced 31 December 2009 (2009 SL No. 289)

ss 31, 32, 61, 63, 64 (to the extent s 64(2) ins para (c) the def “federal industrial instrument”), div 8 commenced 1 January 2010 immediately after the commencement of the Fair Work Amendment (State Referrals and Other Measures) Act 2009 No. 124 (Cwlth) sch 1 s 39 (2009 SL No. 289 and Cwth proc F2009L04605)

pt 4 not yet proclaimed into force (see s 2(2))

pt 5 commenced 31 January 2010 (2009 SL No. 289)

remaining provisions commenced 10 December 2009 (2009 SL No. 289)

Note—AIA s 15DA does not apply (see s 2(2))

amending legislation—

### **Fair Work (Commonwealth Powers) and Other Provisions Act 2009 No. 49 ss 1–2, 11**

date of assent 19 November 2009

ss 1–2 commenced on date of assent

remaining provision commenced 31 December 2009 (2009 SL No. 289)

## 6 List of annotations

**Title** amd 2009 No. 49 s 11(1)

### **Amendment of long title**

**s 11** (1) om R0C (see RA s 40)

rep 1 January 2010 (see s 11(2))

### **PART 3—AMENDMENTS OF OTHER LEGISLATION RELATING TO THE REFERENCE OF MATTERS**

#### **Division 1—Amendment of Acts Interpretation Act 1954**

**div 1 (ss 13–14)** om R0B (see RA ss 7(1)(k) and 40)

#### **Division 2—Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991**

**div 2 (ss 15–17)** om R0B (see RA ss 7(1)(k) and 40)

#### **Division 3—Amendment of Contract Cleaning Industry (Portable Long Service Leave) Act 2005**

**div 3 (ss 18–23)** om R0B (see RA ss 7(1)(k) and 40)

#### **Division 4—Amendment of Electoral Act 1992**

**div 4 (ss 24–25)** om R0B (see RA ss 7(1)(k) and 40)

#### **Division 5—Amendment of Electricity Act 1994**

**div 5 (ss 26–27)** om R0B (see RA ss 7(1)(k) and 40)

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**Division 6—Amendment of Health Services Act 1991**

**div 6 (ss 28–29)** om ROB (see RA ss 7(1)(k) and 40)

**Division 7—Amendment of Industrial Relations Act 1999**

**div 7 (ss 30–64)** amd ROB (see RA s 40)  
om ROD (see RA s 40)

**Division 8—Amendment of Industrial Relations Regulation 2000**

**div 8 (ss 65–68)** om ROD (see RA s 40)

**Division 9—Amendment of Magistrates Courts Act 1921**

**div 9 (ss 69–70)** om ROB (see RA ss 7(1)(k) and 40)

**Division 10—Amendment of Statutory Instruments Act 1992**

**div 10 (ss 71–72)** om ROB (see RA ss 7(1)(k) and 40)

**Division 11—Amendment of Summary Offences Act 2005**

**div 11 (ss 73–74)** om ROB (see RA ss 7(1)(k) and 40)

**Division 12—Amendment of Workers' Compensation and Rehabilitation Act 2003**

**div 12 (ss 75–77)** om ROB (see RA ss 7(1)(k) and 40)

**Division 13—Amendment of Workplace Health and Safety Act 1995**

**div 13 (ss 78–79)** om ROB (see RA ss 7(1)(k) and 40)

**PART 5—AMENDMENT OF ADOPTION ACT 2009**

**pt 5 (ss 106–107)** om ROE (see RA ss 7(1)(k) and 40)

**PART 6—AMENDMENT OF TRANS-TASMAN MUTUAL RECOGNITION  
(QUEENSLAND) ACT 2003**

**pt 6 (ss 108–109)** om ROA (see RA ss 7(1)(k) and 40)

**PART 7—AMENDMENT OF MUTUAL RECOGNITION (QUEENSLAND) ACT  
1992**

**pt 7 (ss 110–111)** om ROA (see RA ss 7(1)(k) and 40)