

INDUSTRIAL RELATIONS AMENDMENT BILL 1992

EXPLANATORY NOTES

The principal objectives of this Bill are—

- provide legislative arrangements that will encourage and facilitate enterprise bargaining agreements. There is to be scope for extensive flexibility and productivity improvement in our environment of fair treatment of employees and regard for the public interest.
- provide legislative arrangements that will encourage and ease the process of effective amalgamation of industrial organisations.
- assist in rationalisation of coverage of industrial organisations by reducing the number operating in an industry or enterprise.
- contribute to the democratic operation of industrial organisations by providing that elections for office holders are to be conducted by an independent authority.
- make a number of changes that will improve the conditions of individuals receiving rights under the principal act.

Clause 1—Short Title. This proposed section provides a short title of the Act.

Clause 2—Commencement. This proposed section provides that the date of commencement for various sections of this Act will be fixed by proclamation and permits different sections to apply from different proclamation dates.

Clause 3—Amended Act. Names the existing Act affected by the provisions of the amending legislation.

Clause 4—Amendment of s.1.3 (Objects). The Act is amended to provide two new objects of the Act to make it explicit that amalgamations of industrial organisations are to be encouraged as is the reduction of the number of industrial organisations operating in an industry or enterprise.

Clause 5—Omission of ss.1.4 and 1.5. This amendment omits sections 1.4 (Repeals) and 1.5 (Savings). These are provided later in a new Part 19A.

Clause 6—Amendment of s.2.1 (Meaning of terms). This amendment adjusts definitions to reflect amendments to the Act.

Clause 7—Replacement of s.4.25 (Dealing with demarcation disputes)

Proposed Section 4.25—Demarcation disputes

This section provides for certain requirements to be placed on the Industrial Commission when it is exercising powers in relation to a demarcation dispute.

Proposed Section 4.25A—Organisation coverage

This section empowers the Full Bench, on the application of an industrial organisation, employer or the Minister to make an order—

- to give an industrial organisation of employees exclusive right of coverage for a particular class of employees who are eligible for membership;
- that an industrial organisation of employees does not have the right to represent a particular class of employees;
- that an industrial organisation of employees does not have the right to represent a class of employees who are eligible for membership.

In considering such an order the Full Bench must consider whether to consult with an appropriate peak council or any industrial organisation.

If the Full Bench decides to consult it is to inform the parties of the views expressed. The Full Bench is also to take into account any agreement which may be in place.

If the order requires the rules of the industrial organisation to be changed the Full Bench is to refer the matter to a nominated Commissioner who after hearing the parties may determine the alteration to the rules.

The context of the existing legislation is varied to make it mandatory for the Full Bench to consider consultation and where it does consult to inform the parties of those views.

Clause 8—Amendment of s.5.4 (Power of Industrial Magistrate concerning unpaid superannuation contribution). The amendment provides for unpaid occupational superannuation contributions ordered by an Industrial Magistrate to be paid to—

- an employee who is no longer employed by the employer, or
- a superannuation scheme or fund nominated by the employee (where the amount involved is more than \$500)

to be paid into the Unclaimed Moneys Fund in the Treasury in circumstances where—

- the employee cannot be located, or
- the employee fails to nominate a scheme or fund into which the amount due can be paid.

Clause 9—Amendment of s.8.6 (Powers incidental to exercise of jurisdiction). The amendment provides that the Industrial Court, Industrial Commission and the Industrial Registrar, in circumstances where a person (other than the Minister or the Crown) wishes to intervene in a matter, may determine whether that person is to be heard and if allowed to be heard, on what conditions.

Clause 10—Amendment of s.8.17 (Representation of parties). The amendment provides that persons can be represented by legal practitioners as a right in proceedings in the Industrial Court involving prosecution of an offence under any Act that gives the Industrial Court jurisdiction to deal with the matter.

Clause 11—Amendment of s.8.19 (Intervention). The amendment alters the head note to the existing section for clarification that intervention by—

- the Crown
- the Minister

in proceedings in the Industrial Court, the Industrial Commission, an Industrial Magistrate’s Court, or before the Industrial Registrar is as of right and not subject to determination as provided in the amendment to s.8.6.

Clause 12—New Division 1A in Part 10

Division 1A—Certified agreements

The amendment inserts a new Division containing sections dealing with certified agreements.

Proposed Section 10.3A (Objects of Division)

Subsection (1) (Objects of Division) sets out objects for the new Division. Essentially the objects of the Division are to encourage the making and certifying of agreements that will facilitate labour market reform by encouraging—

- the setting up of single bargaining units, and
- workplace bargaining that is directed at increased productivity.

In addition it is contended that the agreements will foster the achievement in the workplace of—

- best practice,
- increased work satisfaction, and
- greater career opportunities.

It is intended that these new objects will provide guidance to the Queensland Industrial Relations Commission in the performance of its functions under the Division.

Under subsection (2), the Industrial Commission must perform those functions in a way which furthers the objects of the Act and, in particular, the objects of the Division.

Subsection (3) provides that section 4.27 is not to apply to the performance of functions of the Industrial Commission under this Division. (Section 4.27 sets out the process by which a matter before an Industrial Commissioner may be referred to a Full Bench of the Commission).

Proposed Section 10.3B—Definitions

This section defines three additional terms for this Division.

“Party” to an agreement includes an employer who is a successor, assignee or transmittee (whether immediate or not) to or of the whole or part of the business of a party, including a corporation that has acquired or taken over the whole or part of the business of the party.

The definition of party includes the successor, assignee or transmittee of the business of a party, including a corporation. (For instance this will mean that a person or Corporation taking over a business that is a party to an agreement under this Division becomes the party to the agreement.)

“Period of the agreement” means the period of operation of the agreement specified in the agreement, or that period as extended or further extended under section 10.3K.

“Single business” is defined as a business carried on by a single employer and also includes a joint venture, common enterprise or single project. An activity undertaken by the State or body established by State law for a public purpose or other body in which the State has a controlling interest falls within the definition.

A corporation that is an employer and its wholly owned subsidiaries can be treated as a “single employer” carrying on a “single business” for the purpose of entering into a certified agreement.

Proposed Section 10.3C—Agreements may be made about industrial matters

Subsection (1) allows an employer or an industrial organisation of employers and an industrial organisation of employees to make a memorandum of agreement about an industrial matter. The term “industrial matter” is defined at section 2.2 of the Act and includes such issues as the privileges, rights or duties of employers and employees; occupational superannuation, wages and other conditions of employment. This ensures that any certified agreement must have at least one industrial organisation of employees as a party.

Subsection (2) requires the parties to an agreement which is contemplated by subsection (1) to apply to the Industrial Commission to certify the agreement.

Proposed Section 10.3D—Minister may intervene in certain cases

Subsection (1) provides that the Minister may intervene in an application for a certified agreement where that agreement applies only to a single business, part of a single business or single place of work, on the ground that certification of the agreement may jeopardise seriously the public interest.

Subsection (2) requires that intervention is to be made by giving written notice to the Industrial Registrar.

Subsection (3) provides that this section does not limit the operation of section 8.19 (Intervention of the Crown) or section 8.6 (Powers incidental to exercise of jurisdiction).

Subsection (4) provides for this section to cease to have effect at the end of 18 months after the commencement of the section.

The Minister's right of intervention under this section is intended to exist for a limited period while the operation of the new provisions becomes established. Accordingly, the provision ceases to operate 18 months after the commencement of the section.

Section 8.19(2) of the Act provides that the Minister may intervene, in the public interest, at any stage in any proceedings before the Industrial Court, the Industrial Commission, an Industrial magistrates Court, or the Industrial Registrar. Upon intervention the Minister becomes a party to the proceedings.

Proposed Section 10.3E—Certification of agreements under this Division

Subsection (1) requires the Industrial Commission to certify a memorandum of agreement if an application is made under section 10.3(C)2 and certain criteria are met (and prevents the Industrial Commission from certifying an agreement unless they are met), subject to certain exceptions.

The criteria, which are cumulative, are specified in subsection (1).

An agreement must be certified if the Industrial Commission is satisfied that:

- the agreement does not disadvantage the employees who are covered by the agreement (paragraph (1)(a)).

(Certain matters to be considered in deciding whether an agreement disadvantages employees are stipulated in subsection (2).)

- it contains dispute settling procedures (paragraph 1(b)).
- before the application for certification was made, each organisation of employees that is a party to the agreement took reasonable steps to consult members whose employment is covered by the agreement over its terms and to inform them of the organisation's intention to apply for certification (paragraph (1)(c)).

- It is left for the organisation’s internal processes to provide for any system of approval.
- Reference should be made to subsection (3) which provides for an exception to the consultation requirement.
 - The industrial organisation of employees must inform the Industrial Commission whether or not it has consulted its members and of the outcome of any such consultations (paragraph (1)(d)).
- an additional criterion, paragraph 1(e), applies where an agreement applies only to a single business, part of a single business or a single place of work. Subject to subsections (4) and (5), the parties to the agreement include—
 - (A) each industrial organisation of employees that is a party to an award that binds an employer in respect of the work performed in that business, part of a business or place of work; or
 - (B) if there is no such award, an industrial organisation of employees that is able to represent the industrial interests of the employees who are covered by the agreement; and
- the agreement has been negotiated, on the one hand, by each employer concerned or a representative of the employer, and, on the other hand, by a single person or group of persons representing all the other parties to the agreement.

(This provision ensures that employee organisations parties to the agreement must be represented by a single bargaining unit—paragraph (1)(e)(ii).)
- the agreement specifies the period of operation of the agreement (paragraph (1)(f)).

Subsection (2) provides guidance to the Industrial Commission on how to determine whether an agreement disadvantages employees. Under the subsection, the Industrial Commission is required to decide whether certification of the agreement would result in the reduction of any entitlements or protections which the employees enjoy under an award or industrial agreement and in the context of their terms and conditions of employment. If the Industrial Commission decides that such reduction would occur, it then must determine whether, in the context of their terms

and conditions of employment considered as a whole, the reduction would be contrary to the public interest.

Subsection (3) provides that (1)(c) (the requirement for industrial organisations of employees to consult with their members prior to an application for certification of agreement) does not apply to an industrial organisation of employees if—

- the agreement applies only to a new business, project or undertaking; and
- at the time when the application for certification is made no members of the industrial organisation have yet been employed in connection with the business, project or undertaking.

There may be cases, where a new business, project or undertaking is being established and an agreement is negotiated before the business etc, commences operation eg on a so-called “greenfields” site.

Under subsection (3), it is made clear that there is no requirement for consultation if there are no members who are employed in connection with the business, etc. This does not exclude consultation by the union concerned with members, if it considers it appropriate.

Under paragraph (1)(e) there is a requirement that where an agreement applies only to a single business, part of a single business or single place of work, each industrial organisation of employees that is a party to an award applying to that single business etc, or if there is no such award, an industrial organisation of employees that is able to represent the industrial interests of the employees who are covered by the agreement, must be party to the agreement. Under subsection (4), an agreement can still be certified even if not all such organisations are party to the agreement, provided the Industrial Commission is satisfied that—

- each industrial organisation of employees has been given the opportunity to be a party to the agreement; and
- at least one of those organisations is a party to the agreement; and
- the agreement is in the interests of the employees it covers.

Subsection (5) provides that subsection (1)(e)(i)(A) does not apply to an industrial organisation of employees if none of its members are employed in the business, part of a business or place of work concerned.

The objective of the provisions relating to the question of whether employees will be disadvantaged by an agreement, if it is certified and so takes effect, is to balance:

- on the one hand, the capacity of the parties to an agreement to decide on arrangements about work and related matters and to have them given force as a certified agreement, and
- on the other hand, to ensure that such arrangements are not unfair to the employees concerned by reducing the employment standards which apply to them.

Proposed Section 10.3F—Commission may refuse to certify agreements

Subsection (1) provides that despite the provisions of section 10.3E (Certification of agreements under the Division) the Industrial Commission may refuse to certify an agreement which is one that does not apply only to a single business, part of a single business or a single place of work, if the Commission thinks that certification would be contrary to the public interest.

In subsection (2) a different public interest test is to be applied by the Industrial Commission in respect of agreements only applying to a single business, part of a single business or a single place of work.

In this situation, despite the provisions of section 10.3E, the Industrial Commission may refuse to certify the agreement only if—

- the Minister has intervened in the application on the ground that certification under section 10.3D may jeopardise seriously the public interest; and
- the Industrial Commission thinks that certification of the agreement is likely to jeopardise seriously the public interest.

Subsection (3) provides that subsection (2) ceases to have effect at the end of 18 months after the commencement of this section.

For agreements of wider application than a single business, part of a single business or a single place of work the Industrial Commission may refuse to certify if it thinks certification would be contrary to the public interest.

For agreements that apply to a single business only, part of a single business or a single place of work then provided that the Minister has

intervened in the application under section 10.3D, the Industrial Commission must be of the view that certification of the agreement is likely to jeopardise seriously the public interest. This is in effect a narrower public interest test.

It is contended that the provision of a narrower public interest for agreements applying to a single business, part of a single business, or a single place of work will assist in facilitating the process of workplace reform.

Proposed Section 10.3G—Other options open to Commission

This section contains facilitative provisions. They are intended to ensure that where an application is made for the certification of an agreement and the Industrial Commission has grounds for refusing certification, parties are given the opportunity to rectify the problem, rather than certification being refused.

Under paragraph 1(a) the Industrial Commission may accept an undertaking from a party, or parties, about how the agreement will operate. If the Industrial Commission is satisfied that the undertaking meets its concerns, it may certify the agreement.

If the undertaking is breached, the Industrial Commission may terminate the agreement, provided all parties to the agreement are given an opportunity to be heard—subsection (2).

Under paragraph 1(b) the Industrial Commission, before refusing to certify an agreement, must give the parties an opportunity to amend the agreement to make it certifiable. The parties must be given the opportunity to take any other action that might be necessary to make the agreement certifiable (for example, an organisation of employees might engage in further consultations with members).

Proposed Section 10.3H—Procedures for preventing and settling disputes

This section provides that an agreement may include terms which give the Industrial Commission power to settle disputes over the application of the agreement.

This means that the Industrial Commission, if it so determines that it is appropriate, may include a provision in an agreement which gives it arbitral power to settle disputes over how the terms of the agreement are applied.

It is possible under this section that the Industrial Commission might take the view that disputes settling procedures contained in the agreement propose a role for the Industrial Commission which is inappropriate. It is for the Industrial Commission to determine its role in this issue.

Proposed Section 10.3I—Operation of certified agreements

This section contains provisions relating to the period during which a certified agreement is in force and to the status of a certified agreement after the period of operation of the agreement specified by the parties expires.

Under subsection (1), a certified agreement comes into force when it is certified and during the period of the agreement, it remains in force unless:

- (a) the Industrial Commission terminates it under section 10.3G(2);
or
- (b) because of 1 or more orders or declarations under section 10.3M or 10.3N (see notes on these sections)
 - (i) the agreement is terminated; or
 - (ii) all the remaining parties to the agreement are industrial organisations of employees; or
 - (iii) all the remaining parties to the agreement are employers or industrial organisations of employers.

Under subsection (2), if an agreement remains in force until the end of the period of the agreement, then, at the end of that period, the agreement continues in force until—

- (a) it is terminated by the Industrial Commission; or
- (b) it is varied by the parties (other than under section 10.3M(3)(e)) (see notes for 10.3M); or
- (c) a new agreement, in substitution of the agreement, is certified under this Division; or
- (d) all the remaining parties to the agreement are industrial organisations of employees; or

- (e) all the remaining parties to the agreement are employers or industrial organisations of employers.

This subsection has the effect that, after the specified period of operation, the agreement continues in force but may be terminated, varied, replaced etc as set out in the above subsection.

Proposed Section 10.3J—Party may retire from a certified agreement

Subsection (1) sets out the process by which, in the normal course of events, a party may retire from a certified agreement.

That is, a party to a certified agreement—

- (a) within 30 days before the end of the period of the agreement; or
- (b) at any time while the agreement continues in force because of section 10.3I(2);

may file in the Industrial Registrar’s office a notice in accordance with the rules of court signifying an intention to retire from the agreement at the end of a specified period of at least 30 days from the day of filing.

Subsection (2) specifies that at the end of the specified period, the party that has filed the notice ceases to be a party to the certified agreement.

Proposed Section 10.3K—Extension of certified agreements

This section allows parties to extend, and further extend, the specified period of operation of a certified agreement—subsection (1).

For an extension to have effect, the parties must agree and must notify the Industrial Commission of the extension. The notification must be in writing and must be provided to the Industrial Commission before the period of operation of the agreement that is specified in the agreement expires (or before the expiry of that period as extended or further extended under the section.)

Proposed Section 10.3L—Effect of certified agreements

It is intended that certified agreements operate differently from awards and industrial agreements.

Paragraph (1)(a) provides that the terms of the certified agreement while it is in force prevail over the terms of an award or an industrial agreement to the extent of the inconsistency.

Paragraph (1)(b) provides that a term of the certified agreement while it is in force can be varied by the parties, but only as provided in section 10.3M (see notes on section 10.3M).

Subsection (2) specifies that a certified agreement may be varied by the Industrial Commission, on the application of the parties, only for the purpose of removing ambiguity or uncertainty.

Subsection (3) specifies that subject to section 10.3H (procedures for preventing and settling disputes), the Industrial Commission must not exercise arbitration powers in relation to the certified agreement.

Proposed Section 10.3M—Certified agreements may be varied or terminated by Full Bench

This section sets out the circumstances in which a Full Bench of the Industrial Commission may review the operation of a certified agreement and the action it may take following such a review.

Subsection (1) provides that a review of a certified agreement may be conducted by a Full Bench of the Industrial Commission at any time while the certified agreement is in force and must give the parties to the agreement an opportunity to be heard.

Subsection (2) provides that a review may only be initiated by a Full Bench of the Industrial Commission acting on its own motion, or an industrial organisation or person bound by the agreement.

Subsection (3) specifies that if the Full Bench finds in the case of any certified agreement that its continued operation-

- (a) would be unfair to the employees covered by the agreement; or
- (b) in the case of an agreement that does not apply only to a single business, part of a business or a single place of work, that the continued operation of the agreement would be contrary to the public interest;

and provided the Full Bench finds either of the above, it may do any of the following things—

- (c) by order, terminate the agreement;

- (d) accept an undertaking from all or any of the parties in relation to the operation of the agreement;
- (e) permit the parties to vary the agreement.

Subsection (4) provides that if an undertaking, as per subsection (3)(d), is not observed, the Full Bench may, by order, terminate the agreement after giving the parties an opportunity to be heard.

Subsections (5) and (6) provide a mechanism whereby a party to a certified agreement may be released from the agreement if another party to the agreement engages in industrial action.

Subsection (5) provides that the party seeking to be released must apply to a Full Bench of the Commission for a declaration that the party is no longer bound. That party must be affected by the industrial action, the industrial action must relate to a matter dealt with in the agreement, and must be engaged in by another party or other parties to the agreement.

Subsection (6) provides that, upon receipt of an application, the Full Bench may declare that the applicant party is no longer bound, provided the Full Bench is satisfied that it is in the public interest to make such a declaration.

Subsection (7) makes separate and distinct provisions for review, by a Full Bench on public interest grounds, of certified agreements which apply only to a single business, part of a single business or single place of work. Such reviews may only be conducted where the Minister applies to a Full Bench. The ground on which the Minister may apply for review is that the continued operation of the agreement would “jeopardise seriously” the public interest. If the Full Bench finds the ground established, it may—

- terminate the agreement;
- accept an undertaking from all or any of the parties in relation to the operation of the agreement;
- permit the parties to vary the agreement.

The right of the Minister to apply for review on the basis of substantial jeopardy to the public interest, and the power of the Industrial Commission to review on the basis of such an application, are intended to exist for a limited period while the operation of the new provisions becomes established. Accordingly, subsection (7) ceases to operate 18 months after the commencement of the section. After that, the only ground on which agreements applying only to a single business, etc, will be reviewable will

be provided in subsection (3)(a), that the continued operation of the agreement would be unfair to the employees covered by the agreement.

Proposed Section 10.3N—Certified agreements may be terminated by parties

This section enables a party to a certified agreement to apply to the Industrial Commission to withdraw from the agreement, where all the other parties agree. It also provides that, if they agree, all parties may apply jointly to the Industrial Commission to have an agreement terminated. If the Industrial Commission considers that it is in the public interest to do so, it may allow such application.

Subsection (1) provides that a party to a certified agreement may, with the consent of all the relevant parties, give notice to the Industrial Commission stating that the party does not wish to remain bound by the agreement. Notice must be in writing. Relevant parties are defined in the section as follows:

- where the party seeking to withdraw from the agreement is an employer or an employer organisation—the relevant parties are parties that are organisations of employees;
- where the party seeking to withdraw from the agreement is an organisation of employees—the relevant parties are parties that are employers or organisations of employers.

Under subsection (2), all the parties to a certified agreement may give jointly to the Industrial Commission notice stating that they want the agreement to be terminated. Notice must be in writing.

Subsection (3) provides that, where the Industrial Commission receives notice that a party no longer wishes to be bound by an agreement or that all parties wish an agreement to be terminated, it may make an order or declaration to that effect, provided it considers that it is in the public interest to do so.

Proposed Section 10.3O—Enforcement of certified agreements

This section provides that an agreement certified under this Division is enforceable in the same way as an award is enforceable under the Act.

Clause 13—Amendment of s.10.12 (Powers of Commission re awards). The Industrial Commission’s jurisdiction to ‘terminate’ an award

is altered in this amendment to that of being able to ‘rescind’ an award. The amendment facilitates the making of a ‘new’ award in substitution of that which is ‘rescinded’.

Clause 14—Replacement of s.11.7 (University or college of advanced education students). New section 11.7 rearranges the existing provisions and alters their context to the extent that the permit which the Industrial Registrar can issue to a student of a ‘university or college of advanced education’ to allow the student to work at less than the applicable award wage in work necessary for the fulfilment of the student’s course now can be issued to a student ‘participating in a tertiary study course’.

Clause 15—Omission of s.11.11 (Reinstatement and re-employment). Section 11.11 is omitted and replaced by proposed sections 11.37 to 11.41.

Clause 16—Amendment of s.11.22 (Entitlement to long service leave). The amendment clarifies an entitlement for seasonal employees to long service leave subject to provisions contained in existing sections 11.32 and 11.33.

Clause 17—Amendment of s.11.32 (Long service leave in meat works and sugar industry). The amendment rearranges the existing legislation and inserts provisions which give seasonal employees in meat works and in the sugar industry an entitlement to long service leave on the same basis as full-time employees ie 13 weeks after 15 years service, based on the ratio that the actual service of the seasonal employee bears to the service of a full-time employee.

For Example

A full-time employee with 15 years service receives 13 weeks long service leave.

A seasonal employee working a 6 month season each year for 15 years has an actual service of $7\frac{1}{2}$ years.

On the ratio that $7\frac{1}{2}$ bears to 15 the seasonal employee would have an entitlement to $6\frac{1}{2}$ weeks long service leave.

Service prior to the commencement of the amending Act is to be taken into account and the entitlement in relation to that service is to be calculated in accordance with these new provisions.

This accords with the formula provided at subsection (6).

Clause 18—New Divisions 4 and 5 in Part 11

Division 4—Reinstatement and re-employment

A proposed Division 4 relating to reinstatement and re-employment is inserted.

This Division rearranges the wording in the existing provisions, previously provided at section 11.11, and modifies such provisions to the extent that—

- the Industrial Commission, upon considering ‘the circumstances of the case’, may extend the time (21 days) in which application for reinstatement or re-employment is to be made. (Section 11.37(1))
- an industrial organisation (union) of employees, with the consent of a dismissed employee who is a member, now may make an application for reinstatement or re-employment of that employee. (Section 11.37(2)).
- in those cases where the Commission determines that an employee be reinstated or re-employed but considers that to enforce either remedy would be inappropriate, the Commission now can order the employer to pay compensation in an amount as determined by the Commission. (Section 11.38(1))
- any fraction of a year now can be taken into account when calculating the amount of compensation which uses a formula based on ‘average monthly wage’ and ‘years of employment’. (Section 11.38(3)).

Rearrangement of existing wording into separate numbered sections is to accord with current drafting practice.

Division 5—Protection of injured employees

A proposed Division 5 relating to protection of employees who are injured within the meaning of the Workers’ Compensation Act is inserted.

Proposed Section 11.42—Interpretation of Division

This section provides definitions to reflect the new provisions of the Division.

Proposed Section 11.43—Wages to be paid for the day employee injured

This section provides an entitlement to an employee to a full days wage for the day an injury occurred that resulted in the employee being absent on workers compensation.

Proposed Section 11.44—Application to employer for reinstatement after dismissal

This section prescribes on what basis an employee may apply to an employer for reinstatement and within what timeframe.

Proposed Section 11.45—Application to Commission for reinstatement order

This section provides for who may apply to the Industrial Commission for a reinstatement order in cases where an employer does not reinstate an employee after the employee has made an application under section 11.44.

Proposed Section 11.46—Commission order to reinstate

This section provides the criteria by which the Commission may order reinstatement and gives power to the Commission to include terms of reinstatement in the order.

Proposed Section 11.47—Extension of time for application

This section provides on what condition the Commission may order a reinstatement in situations where an employee applied for reinstatement outside the timeframe prescribed in section 11.44.

Proposed Section 11.48—Dismissal an offence in certain cases

This section creates an offence for an employer to dismiss an employee who is not fit for employment as a result of an injury within 3 months of the employee becoming unfit.

Proposed Section 11.49—Preservation of employee’s rights

This section protects the rights of a dismissed employee that may exist under any legislation and provides that the provisions of the division are still operative despite any contract or agreement that may exist.

Clause 19—Repeal of s.12.4 (Conciliation by Commissioner or Industrial Magistrate). The amendment repeals the existing section 12.4 which provides for employers to make enterprise agreements directly with their employees without publication.

New sections 10.3A to O now cater more properly for the creation of enterprise agreements.

Clause 20—Amendment of s.13.13 (Rules to provide for election of officers). Currently the Industrial Relations Act 1990 at section 13.13 provides that each officeholder in an industrial organisation must be elected either by a direct voting system or a one-tier collegiate electoral system (as defined) for a full-time official. Collegiate voting or such similar term is not defined in the current Act.

The first amendment to section 13.13 omits subsection (1)(a) and inserts a new subsection (1)(a) which ensures that the rules of an industrial organisation must provide for the election of the holder of each office in the industrial organisation by—

- (i) a direct voting system; or
- (ii) a collegiate electoral system.

The second amendment to section 13.13, inserts a new subsection (4). This subsection defines the term “collegiate electoral system”. This term means a method of election comprising a first stage, at which persons are elected to a number of offices by a direct voting system, and 1 subsequent stage at which persons are elected by and from a body of persons consisting of persons elected at the first stage.

(This means that a popular vote by members of an organisation creates a college of members that subsequently elect from their own body, persons to fill offices of the organisation, such as the Secretary.)

The effect of the amendments to section 13.13 is that the collegiate system of voting has been retained in a modified form. That is, where there is a collegiate electoral system only those officials elected at the first stage by the rank and file membership would be eligible to be elected at the following stage.

Clause 21—Insertion of a New Division 3A in Part 13

Division 3A—Conduct of elections for office

The amendment inserts a new Division containing a number of clauses having provisions relating to the conduct of elections for office in an industrial organisation.

Proposed Section 13.24A—Conduct by Electoral Commission

This section specifies that elections for an office in an industrial organisation are to be conducted by the Electoral Commission, except where an exemption is granted by the Industrial Registrar under new section 13.24D.

Proposed Section 13.24B—Application for industrial organisation or branch to conduct its elections

Subsection (1) provides that a committee of management of an industrial organisation or a branch of an industrial organisation may file an application with the Industrial Registrar for exemption from having elections conducted by the Electoral Commission under section 13.24A with a view to conducting the election itself.

Subsection (2) requires the Committee of Management of an industrial organisation or branch of an industrial organisation making application for exemption under subsection (1)—

- firstly, to have passed a resolution to make the application, and
- secondly, to have notified the members of the resolution.

Subsection (3) requires the application be accompanied by a statutory declaration to the effect that there has been compliance with the requirements of subsection (2).

Subsection (4) provides that whenever an application is made under section 13.24B, the Industrial Registrar must advertise the fact, the purpose being to bring the matter to the attention of the members of the industrial organisation concerned.

Subsection (5) provides that if the rules of an industrial organisation require an office to be filled by an election by the members, or by some of the members, of a single branch of the organisation, an election to fill the office is taken to be an election for the branch.

Proposed Section 13.24C—Objections to application to conduct elections

Subsection (1) specifies that a member of an industrial organisation or branch of the industrial organisation may object to an application made under section 13.24B.

Subsection (2) provides that the Industrial Registrar is to hear any objections made.

Proposed Section 13.24D—Registrar may permit industrial organisation or branch to conduct its elections

Subsection (1) allows the Industrial Registrar to permit an industrial organisation or branch to conduct its own elections and therefore exempt the industrial organisation from the requirements of section 13.24A in relation to elections for the organisation.

To sanction this process the Industrial Registrar must be satisfied that—

- (a) the rules of the industrial organisation or branch comply with the requirements of the Act relating to the conduct of elections; and
- (b) the election to be conducted by the industrial organisation or branch is done so under the rules of the industrial organisation or branch and will afford those members entitled to vote an adequate opportunity of voting without intimidation.

Under subsection (2) the Industrial Registrar retains a power to revoke any exemption granted under section 13.24D. Such power may be exercised by the Industrial Registrar on application by a committee of management of an industrial organisation or on the Industrial Registrar's own motion when the Registrar is no longer satisfied of the existence of the conditions for exemption for industrial organisations from the requirement of section 13.24A.

Proposed Section 13.24E—Industrial Registrar to arrange for conduct of elections

Subsection (1) requires that an industrial organisation (other than one exempted under section 13.24D) file with the Industrial Registrar certain prescribed information in relation to an election.

Under subsection (2) if the prescribed information is filed and the Industrial Registrar is satisfied that an election is required to be held under the rules of the industrial organisation, the Industrial Registrar must arrange for the conduct of the election by the Electoral Commission.

Proposed Section 13.24F—Provisions applicable to elections conducted by Electoral Commission

Subsection (1) requires that where an electoral official is involved in or is actually conducting an election that official must ensure—

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

Subsection (2) provides that an election conducted by an electoral official is not invalid merely because of a breach of the rules of the industrial organisation or branch because of—

- action taken under subsection (1); or
- an act done in compliance with a direction under subsection (1).

Under subsection (3) where an electoral official conducting an election, dies or becomes unable to complete the conduct of the election, the Electoral Commissioner must arrange for the completion of the conduct of the election.

Proposed Section 13.24G—Expenses of election ballot

Subsection (1) provides for certain of the expenses of a ballot conducted by the Electoral Commission to be paid by the State.

Subsection (2) provides the industrial organisation must pay printing, postage and distribution costs of the ballot.

Under subsection (3) the industrial organisation must pay the State its share of the costs within 1 month of receiving a written request from the Electoral Commission.

Subsection (4) specifies that the amount payable by an industrial organisation under this section may be recovered by the State as a debt payable to it.

Proposed Section 13.24H—Death of candidate

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

Proposed Section 13.24I—Ballot papers etc from elections to be preserved

Subsection (1) provides that where there is an election for an office in an industrial organisation and such election is conducted by the Electoral Commission, the industrial organisation and its officers, and the Electoral Commission must ensure that all ballot papers, envelopes and records relevant to the election are preserved and kept by the Electoral Commission for a period of 1 year after the election.

Subsection (2) provides that in those instances where the election is conducted by the industrial organisation, the organisation and its officers must ensure that all the ballot papers, envelopes and records relevant to the election are preserved and kept by the industrial organisation for a period of 1 year after the election.

Proposed Section 13.24J—No action for defamation in certain cases

Section 13.24J prevents any action for defamation civil or criminal against the State, or an electoral official or a person acting at the request or direction of an electoral official, in relation to the printing or publication of a document by the electoral official or person in the course of the conduct of an election under this Division of the Act.

The intent is to protect electoral officials, printers etc, who are publishing or printing material that has been authorised by a third party. It does not protect public officials except where there is a process of distributing authorised material in terms of the Act's requirements.

There is no intention to deprive a citizen of the right to take a defamation action against the person who authorised the material.

Clause 22—Omission of s.13.40 (Ballot papers and other records to be preserved). The provisions of the existing section 13.40 are captured in the proposed new section 13.24I.

Clause 23—Amendment of s.13.41 (Registrar to conduct elections on request). The insertion of the words “other than an election conducted by the Electoral Commission” after “election” in section 13.41(1) ensures that requests to the Registrar for the conduct of elections do not include those elections conducted by the Electoral Commission.

The omission of subsection (4)(b) and the insertion of new subsection(4)(b) provides that such elections conducted by the Registrar are to be arranged by the Electoral Commission.

Clause 24—Replacement of Division 7 in Part 13

Division 7—Amalgamation of industrial organisations

General Note

The Queensland Act when introduced in 1990, closely followed the lead of the Federal Government to facilitate union amalgamations. The Federal Government has since introduced amendments to the provisions with a view to simplification. So that difficulties do not arise for unions wishing to amalgamate due to differing State and Federal requirements and to improve the process in Queensland, it is necessary to repeal the existing provisions relating to union amalgamation and insert new provisions to reflect the provisions of the Australian Industrial Relations Act.

Subdivision A—General

The subdivision contains provisions of general application to matters under the Division.

Proposed Section 13.54—Application of objects to Division etc.

This section is similar to section 323 of the Australian Industrial Relations Act and contains a statement of Parliamentary intention relating to the application of the objects of the Act to amalgamations. This statement emphasises that the aim is to proceed quickly where a decision is made on whether an industrial organisation is to amalgamate with another. The statement of intent is to assist in the interpretation of the provisions of the Division 7 (Amalgamation of Industrial Organisations). A similar provision is not provided under the existing legislation.

Proposed Section 13.55—Interpretation

This section defines certain terms used in Division 7 (Amalgamation of Industrial Organisations) and is similar to section 324 of the Australian Industrial Relations Act. The section includes additional definitions to those under the existing legislation.

Proposed Section 13.56—Procedure to be followed for proposed amalgamation etc.

This section is similar to section 235 of the Australian Industrial Relations Act and sets out how an amalgamation is to be achieved. The existing legislation is extended to empower the Industrial Commission to give directions and make orders to resolve any difficulty that is likely to arise in the process.

Subdivision B—Preliminary matters

Under this subdivision, provision is made for the voluntary establishment of a federation of organisations prior to their amalgamation and for a procedure to authorise the use of an industrial organisation's resources to promote a proposed amalgamation.

Proposed Section 13.57—Federations

This section is similar to section 236 of the Australian Industrial Relations Act and provides a mechanism whereby industrial organisations intending to amalgamate can have their interests represented by a single body prior to the application.

The resultant federation has the right to representation of its members for all purposes of the Act except that it may not become a party to an award, industrial agreement or certified agreement.

The existing legislation does not have provisions of this nature.

Proposed Section 13.58—Use of resources to support proposed amalgamation

This section is similar to section 237 of the Australian Industrial Relations Act and clarifies the fact that an industrial organisation is not prevented from using its resources, financial or otherwise to support a proposed amalgamation.

This section was introduced into the Federal legislation to overcome a decision of the Federal Court of Australia (*Andersen v Johnson* (1990) 32 AILR case report No. 246) which prevented industrial organisations from using their resources to promote a particular result to a ballot after the day on which notice of the amalgamation was given.

Similar provisions are not contained in the existing legislation.

Subdivision C—Commencement of amalgamation procedure

The subdivision contains provision relating to the initiation of the procedures leading to the approval or rejection of a proposed amalgamation.

Proposed Section 13.59—Scheme for amalgamation

This section is similar to section 238 of the Australian Industrial Relations Act and provides for a formal scheme for a proposed amalgamation.

Subsection (2) and (3) specify what is to be included and to accompany the application.

The context of the existing legislation is unchanged.

Proposed Section 13.60—Alternative scheme for amalgamation

This section is similar to section 239 of the Australian Industrial Relations Act and provides for a scheme for amalgamation of three or more

industrial organisations to contain and alternative amalgamation scheme should all the organisations not agree to the original scheme for amalgamation.

The context of the existing legislation is unchanged.

Proposed Section 13.61—Approval by committee of management

This section is similar to section 240 of the Australian Industrial Relations Act and requires that the Committee of Management approve, by resolution, the scheme for a proposed amalgamation, as well as any alteration to the scheme. This extends the existing legislation by making this an express requirement where the existing legislation only implies this to be the case.

Proposed Section 13.62—Community of interest declaration

This section is similar to section 241 of the Australian Industrial Relations Act and provides for the filing for a declaration that the industrial organisation seeking a proposed amalgamation have a community of interest. This declaration means that less onerous requirements apply in relation to the required ration of votes in the amalgamation ballot.

Subsection (5) sets out the circumstances in which a community of interest between industrial organisations of employees may be declared. Subsection (6) sets out the circumstances in which a community of interest between industrial organisations of employers may be declared.

The context of the existing legislation is changed in that—

- the Commission no longer is required to be satisfied that the amalgamation will further the objects of the Act;
- the criteria for establishing a community of interest has been varied from requiring a substantial number of members of each organisation to meet the criteria to a substantial number of members of one of the organisations;
- empowering the Commission to be satisfied that a community of interest exists for reasons other than those set out in subsection (5) and (6); and
- permits a community of interest to be declared before a formal application for approval of a proposed amalgamation is lodged.

Proposed Section 13.63—Application for approval for submission of amalgamation to ballot

This section is similar to section 242 of the Australian Industrial Relations Act and concerns the initiating step in the formal process for seeking the Commission’s approval of the submission of an amalgamation to a ballot of members. The application is to be accompanied by a copy of the scheme for amalgamation and an outline of the scheme which will enable members of the industrial organisation to make informed decisions.

Proposed Section 13.64—Holding office after amalgamation

This section is similar to section 243 of the Australian Industrial Relations Act and allows for transitional arrangements under which the rules of a proposed amalgamated industrial organisation may provide for—

- a person who held office in one of the industrial organisations prior to the amalgamation to hold a different office after the amalgamation without being elected;
- the continuation in office of a person who held office in an industrial organisation after that organisation is amalgamated.

The section also provides for the timing of elections after the amalgamation.

Proposed Section 13.65—Application for exemption from ballot

This section is similar to section 244 of the Australian Industrial Relations Act and sets out the circumstances in which a large industrial organisation proposing to amalgamate with a small industrial organisation may apply for and be granted an exemption from conducting a ballot of its members.

The context of the previous legislation is unchanged.

Proposed Section 13.66—Application for ballot not conducted under 13.73J

This section is similar to section 245 of the Australian Industrial Relations Act and permits an industrial organisation concerned in a proposed amalgamation to apply to the Commission for permission to have

an amalgamation ballot conducted other than by secret postal ballot under section 13.73J. The criteria for an alternative ballot is set out in 13.73I.

This provision does not appear in the existing legislation.

Proposed Section 13.67—Lodging “yes” case

This section is similar to section 246 of the Australian Industrial Relations Act and allows for the lodging of a statement in favour of a proposed amalgamation for distribution to members.

The context of the existing legislation is unchanged.

Subdivision D—Role of the Electoral Commission

Proposed Section 13.68—Ballots to be conducted by the Electoral Commission

This section is similar to section 247 of the Australian Industrial Relations Act and provides that all ballots for amalgamation are to be conducted by the Electoral Commission of Queensland.

The existing legislation provides for the Industrial Registrar to arrange for the ballot to be conducted. This should reduce the delay in conducting a ballot.

Proposed Section 13.69—Notification of Electoral Commission

This section is similar to section 245 of the Australian Industrial Relations Act and provides for the Industrial Registrar to immediately notify the Electoral Commission of the application.

Subsection (2) provides for the Electoral Commission to take such action so as to ensure that any prospective ballots are conducted quickly.

This section is to facilitate section 13.68 (Ballots to be conducted by Electoral Commission).

Proposed Section 13.70—Officer of industrial organisation to provide information for ballot etc.

This section is similar to section 249 of the Australian Industrial Relations Act and specifies that an electoral official conducting an

amalgamation ballot may require an officer or employee of an industrial organisation or branch concerned to supply information or documents in the possession of that officer or employee.

The context of the existing legislation is unchanged except an electoral official is empowered rather than the person conducting the ballot.

Subdivision E—Procedure for approval of amalgamation

This division provides for the steps to be taken from the lodging of an application for approval for the submission of the amalgamation to ballot up to the declaration of the result of the ballot.

The provisions have been varied to provide for greater speed and adaptability.

Proposed Section 13.71—Fixing hearing in relation to amalgamation etc.

This section is similar to section 250 of the Australian Industrial Relations Act and provides for the Commission to immediately fix a time and place for the notification of a hearing in relation to a proposed amalgamations.

The context of the existing legislation has not been changed.

Proposed Section 13.72—Submissions at amalgamation hearings

This section is similar to section 251 of the Australian Industrial Relations Act and provides for submissions to be made by the applicants or other persons with the leave of the Commission. Submissions can only be made on prescribed matters.

The context of the existing legislation is unchanged except the applicants have been given a right to make submissions where as previously they also required leave of the Commission to do so.

Proposed Section 13.73—Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.

This section is similar to section 252 of the Australian Industrial Relations Act and provides that the Commission must approve the submission of the amalgamation to ballot providing the conditions set out in subsection (1) have been satisfied.

The Commission is empowered under subsection (3) to authorise the applicants to alter a scheme for amalgamation or accept an undertaking by the applicants to alter the scheme for amalgamation so as to approve the submission to ballot.

Subsection (4) validates the action taken by the applicants so as to comply with the conditions necessary for approval for submission to ballot.

Subsection (5) deals with situations where the applicants do not alter the scheme as required or do not fulfil their undertaking.

The existing legislation is extended to give the Industrial Commission the additional power to alter the scheme or accept the applicant's undertaking with respect to the scheme. This should speed-up the process.

Proposed Section 13.73A—Objections in relation to amalgamation involving extension of eligibility rules etc.

This section is similar to section 253 of the Australian Industrial Relations Act and permits objections to be made by a prescribed person on prescribed grounds where the Commission has refused to approve under section 13.73, the submission of amalgamation to ballot. The Industrial Commission is empowered to hear these objections.

The context of the existing legislation is unchanged.

Proposed Section 13.73B—Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.

This section is similar to section 253A of the Australian Industrial Relations Act and provides for the Commission to approve the submission of the amalgamation to ballot once the objections made under section 13.73A have been dismissed and other criteria are met.

To minimise delays in the process, the existing legislation is extended to empower the Commission to permit alterations to the scheme or accept an undertaking to alter the scheme.

Subsection (6) deals with noncompliance with the alterations or undertaking.

Proposed Section 13.73C—Fixing commencing and closing days of ballot

This section is similar to section 253B of the Industrial Relations Act and provides for the Commission, after consulting with the Electoral Commission to fix a commencing day and a closing day of the ballot. The commencing day for the ballot is to be within 28 days of the approval unless approval otherwise is given.

The existing legislation has been varied by deleting the necessity for the commencing day of the ballot to be published in the Industrial Gazette not less than 3 months before that day. This should accelerate the process of amalgamation by decreasing the time between the date of approval and the commencing day of the ballot. In accordance with subdivision D which requires that the Electoral Commission of Queensland to conduct the ballot, it has been necessary to add the need for the Commission to consult with the Electoral Commission before setting the commencement date.

Provision exists to allow the commencing or closing date to be varied.

Proposed Section 13.73D—Roll of voters for ballot

This section is similar to section 253C of the Australian Industrial Relations Act and defines the persons who may vote in the amalgamation ballot.

This is a new provision which clarifies who may vote at the amalgamation ballot.

Proposed Section 13.73E—"Yes" case and "no" case for amalgamation

This section is similar to section 253D of the Australian Industrial Relations Act and provides that a statement in support of a proposed amalgamation ("yes" case) may be lodged with the Industrial Registrar. Provision is made for statements in opposition ("no" case) also to be lodged by or on behalf of a minimum number of members with the Industrial Registrar. Where more than one statement in opposition are

received, the Commission may prepare, in consultation with the parties, a single statement in opposition.

These statements are to accompany the ballot papers.

The existing legislation is varied by increasing the required minimum number of members from 5% of the total membership or 250 to 5% of the total membership or 1000. This change is intended to give greater proportionality to the requirement in its application to large industrial organisations. The Commission is also given additional power to correct factual errors which may appear in the statement either supporting or opposing the amalgamation.

Proposed Section 13.73F—Alteration and amendment of scheme

This section is similar to section 253 of the Australian Industrial Relations Act and allows the Commission to permit the scheme for amalgamation to be altered prior to the commencing day of the ballot.

A similar provision does not appear in the existing legislation. The provision is intended to make the amalgamation process more adaptable by allowing the scheme to be altered, for example, to reflect changes to the rules of an industrial organisation before an amalgamation takes place.

Proposed Section 13.73G—Outline of scheme for amalgamation

This section is similar to section 253F of the Australian Industrial Relations Act and is to be read in conjunction with section 13.63(2). The section gives the Commission discretion to allow the outline for the scheme for amalgamation to exceed 3000 words and to include material not in the form of words such as diagram, photographs and illustrations. The Commission is also empowered to permit alteration of the outline of the scheme and may correct factual errors in the outline.

Proposed Section 13.73H—Exemption from ballot

This section is similar to section 253G of the Australian Industrial Relations Act and provides that an application may be made for exemption from the requirement for an amalgamation ballot. Subsection (1) provides the Commission must grant the exemption unless in special circumstances, where the total number of members that could be admitted to membership

of the proposed amalgamated industrial organisation does not exceed 25% of the number of members of the applicant industrial organisation.

The context of the existing legislation is unchanged except the exemption threshold of the existing legislation of 5% is being increased to 25% because the existing figure is considered to be too low.

Proposed Section 13.73I—Approval for ballot not conducted under section 13.73J

This section is similar to section 253H of the Australian Industrial Relations Act and deals with the circumstances under which an exemption must be granted from conducting an amalgamation ballot by a means other than by secret postal ballot.

Proposed Section 13.73J—Secret postal ballot of members

This section is similar to section 253J of the Australian Industrial Relations Act and provides that if the Commission approves the submission to ballot, the Electoral Commission is to conduct a secret postal ballot unless otherwise exempted, in each of the industrial organisations involved in the proposed amalgamation. If the scheme contains a proposed alternative provision then the Electoral Commission must conduct at the same time in the same way a ballot on the alternative provision. If more than one ballot is required, then only one ballot paper is to be used.

Subsection (4) provides that it is not necessary to count the votes on an alternative amalgamation if the result is not required. Subsection (5) provides for an outline of the scheme for amalgamation to accompany the ballot papers sent to persons who are entitled to vote.

The context of the existing legislation is unchanged except for the involvement of the Electoral Commission in conducting the vote.

Proposed Section 13.73K—Determination of approval of amalgamation by members

This section is similar to section 253K of the Australian Industrial Relations Act and provides the minimum voting requirements necessary for approval of the amalgamation ballot. Where a community of interest has been declared in accordance with section 13.62 more than 50% of the formal votes cast are required to be in favour of amalgamation. Where a

community of interest has not been declared, 25% of the members on the role must cast a vote in the ballot and more than 50% of the formal votes must be in favour of the amalgamation.

The context of the existing legislation is unchanged.

Proposed Section 13.73L—Further ballot if amalgamation not approved

This section is similar to section 253L of the Australian Industrial Relations Act and makes provision to enable for an application to be made to enable a proposed amalgamation that has failed to be resubmitted. The provision allows the Commission to dispense with any step in the procedure or to order a fresh ballot provided the application is made within twelve months after the result of the ballot being declared.

Proposed Section 13.73M—Inquiries into irregularities

This section is similar to section 253M of the Australian Industrial Relations Act and makes provision for the Commission to, within 30 days after the result of a ballot, enquire into alleged irregularities in relation to the ballot. The section also empowers the Commission to make orders where it finds an irregularity has affected or may effect the result of a ballot.

The context of the existing legislation is unchanged.

Proposed Section 13.73N—Approval of amalgamation

This section is similar to section 253N of the Australian Industrial Relations Act and provides that a proposed amalgamation is to be taken as approved if the members of each industrial organisation concerned have approved it in a ballot, or if, in a proposed amalgamation of more than two industrial organisations, the principal amalgamation scheme is rejected, but the members of two or more of the existing industrial organisations approve the proposed alternative amalgamation, the proposed alternative amalgamation is taken to have been approved.

The context of the existing legislation is unchanged.

Proposed Section 17.73O—Expenses of ballot

This section provides for expenses connected with a ballot for amalgamation conducted by the Electoral Commission to be paid by the State.

Subdivision F—Amalgamation taking effect

The subdivision provides for the taking effect of a proposed amalgamation which has been approved at ballot. To avoid delay, there are a number of provisions which automatically make the amalgamated industrial organisation the successor of the deregistered industrial organisation or organisations for various purposes.

Proposed Section 13.73P—Action to be taken after ballot

This section is similar to section 253Q of the Australian Industrial Relations Act and provides that an amalgamation which has been approved takes effect as provided in the section.

Subsection (2) requires the Commission to fix the day on which an amalgamation that has been approved is to take effect. This is to be done after consultation with the industrial organisations concerned and if the Commission is satisfied about various specified matters relating to the validity of the amalgamation and the responsibilities of the participating industrial organisations. Notice of the day is to be published.

Subsection (3) sets out the action to be taken by the Industrial Registrar on that day with respect to the registration and deregistration of the industrial organisations involved.

The context of the existing legislation is unchanged.

Proposed Section 13.73Q—Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation

This subsection is similar to section 253R of the Australian Industrial Relations Act and provides that on amalgamation day, all assets and liabilities of deregistered industrial organisations become the assets and liabilities of the amalgamated organisation.

Proposed Section 13.73R—Effect of amalgamation on existing decisions of Commission

This section is similar to section 253T of the Australian Industrial Relations Act and provides that all decisions of the Commission including awards which were binding on a deregistering organisation and its members immediately before the amalgamation took effect become automatically binding on the amalgamated organisation and its members, and are effective for all purposes. References in such decisions to an industrial organisation which was deregistered for the amalgamation are to be read to include references to the amalgamated organisation.

The context of the existing legislation is unchanged.

Proposed Section 13.73S—Instruments

This section is similar to section 253U of the Australian Industrial Relations Act and provides that an instrument continues in force from the time of the amalgamation. Subsection (2) provides that a reference in an instrument to a deregistered industrial organisation is to be read as referring to the amalgamated organisation.

This is a new provision which ensures continuity and operation of instruments (see definition section 13.55).

Proposed Section 13.73T—Pending proceedings

This section is similar to section 253V of the Australian Industrial Relations Act and provides that an amalgamated industrial organisation takes the place of the deregistered organisation in all pending proceedings in a court or before the Commission.

This is a new provision which ensures continuity in Court or Commission proceedings.

Proposed Section 13.73U—Subdivision applies despite laws and agreements prohibiting transfer etc.

This section is similar to section 253W of the Australian Industrial Relations Act and provides that this subdivision prevails over any other Act, any contract, deed, undertaking, agreement or other instrument.

Subsection (2) protects an industrial organisation or other person from liability from a breach of contract, confidence, civil wrong or breach of any Act for action taken arising from this division.

Subsection (2)(c) provides that action taken under the division does not release any surety or part of the surety's obligations.

Subsection (3) provides that where consent is required by a person to give effect to any aspect of this subdivision, that consent is deemed to have been given.

Proposed Section 13.73V—Amalgamated organisation to take steps necessary to carry out amalgamation

This section is similar to section 253X of the Australian Industrial Relations Act and provides that the amalgamated industrial organisation do everything to ensure the amalgamation is fully effective.

Subsection (2) empowers the Commission to make an order to ensure compliance with subsection (1).

Proposed Section 13.73W—Certificates in relation to land and interests in land

This section is similar to section 253Y of the Australian Industrial Relations Act and provides for the transfer of land or interests in land where an amalgamated industrial organisation acquires it through the amalgamation. The section allows for a certificate lodged with the appropriate authority to be sufficient notification to transfer the land or interests.

This is a new provision which simplifies the transfer of land to the new amalgamated industrial organisation.

Proposed Section 13.73X—Certificates in relation to charges

This section is similar to section 253Z of the Australian Industrial Relations Act and provides for the transfer of charges where an amalgamated industrial organisation acquires them through the amalgamation. The section allows for a certificate lodged with the Australian Securities Commission to be an appropriate assignment of the charge.

This is a new provision which simplifies the transfer of charges to the new amalgamated industrial organisation.

Proposed Section 13.73Y—Certificates in relation to shares etc.

This section is similar to section 253ZA of the Australian Industrial Relations Act and provides for the transfer of shares, debenture or interest in a company where an amalgamated industrial organisation acquires them through the amalgamation process. The section allows for a certificate issued and delivered to the company to be a proper instrument of transfer.

This new provision simplifies the transfer of shares, debentures or interests in companies to the new amalgamated industrial organisation.

Proposed Section 13.73Z—Certificates in relation to other assets

This section is similar to section 253ZB of the Australian Industrial Relations Act and provides for the transfer of other assets where an amalgamated industrial organisation acquires them through the amalgamation. The section allows for a certificate issued and delivered to the appropriate authority to be an appropriate instrument for transactions in relation to assets of that kind.

This new provision simplifies the transfer of other assets to the new amalgamated industrial organisation.

Proposed Section 13.73ZA—Commission may resolve difficulties

This section is similar to section 253ZC of the Australian Industrial Relations Act and empowers the Commission to make an order to overcome any difficulty which may arise in relation to the subdivision. Such order prevails over any other provision in the Act or any other Act.

Subdivision G—Validation

An underlying objective of the new division is to avoid or minimise difficulties in respect of amalgamations. Accordingly, certain acts by organisations or their officers for the purposes of an amalgamation are to be treated as valid, if done in good faith and if their validation would not do substantial injustice to interested persons or bodies.

Proposed Section 13.73ZB—Validation of certain acts done in good faith

This section is similar to section 253ZD of the Australian Industrial Relations Act and provides that acts done in good faith for the purposes of an amalgamation are valid notwithstanding any invalidity later discovered.

Proposed Section 13.73ZC—Validation of certain acts after 4 years

This section is similar to section 253ZE of the Australian Industrial Relations Act and provides after 4 years have elapsed from the day on which an act in relation to an amalgamation was done then that act is taken to be valid.

Proposed Section 13.73ZD—Orders affecting application of section 13.73ZB or 13.73ZC

This section is similar to section 253ZF of the Australian Industrial Relations Act and provides that the Commission may make orders to displace the validity of acts which any have been deemed valid under sections 13.73ZB or 13.73ZC.

Proposed Section 13.73ZE—Commission may make orders in relation to consequences of invalidity

This section is similar to section 253ZG of the Australian Industrial Relations Act and empowers the Commission, on application, to determine whether there has been an invalidity in relation to an amalgamation or proposed amalgamation and to make certain orders to correct the invalidity.

As a safeguard, subsection (5) requires the Commission, before making an order to rectify the invalidity or its consequences, to satisfy itself that substantial injustice would not occur as a result of the order.

Subdivision H—Miscellaneous

Proposed Section 13.73ZF—Ballot papers etc from ballots to be preserved

This section provides for the Electoral Commission to preserve ballot papers for an amalgamation for a period of 1 year after the ballot.

The existing legislation provides for the person conducting the amalgamation ballot to preserve the ballot papers for a period of 30 days from the date of the declaration of the result or where an application has been made in respect to an alleged irregularity in relation to a ballot, until that application has been disposed of and any period allowed for an appeal against the Commission's decision or the appeal has been determined.

Proposed Section 13.73ZG—No action for defamation in certain cases

This section provides protection for the State, an electoral official or a person acting under direction of the electoral office from an action for defamation.

This is a new provision which protects officers who publish statements in accordance with the amalgamation provisions of the division.

The protection does not extend to the author of any alleged defamatory statement.

There is no intention to deprive a citizen of the right to take a defamation action against the person who authorised the material.

Clause 25—Amendment of s.13.87 (Auditors of industrial organisations). The amendment removes the existing provisions' inappropriate reference to an auditor of an industrial organisation being a person 'duly registered under the Public Accountants Registration Act 1946-1988, or under a law of another State or Territory of the Commonwealth that provides for registration of public accountants', as that Act was repealed.

Rearrangement of the remainder of the existing provisions is to accord with current drafting practice.

Clause 26—Amendment of s.14.1 (Appointment of Industrial Inspectors). The amendment provides that Inspectors appointed under the Industrial Relations Act of the Commonwealth may be appointed as, and exercise the powers of, Industrial Inspectors.

Clause 27—Amendment of s.14.11 (Payment of employee's wages etc to Industrial Inspector). The amendment provides that an employer convicted of an offence for failing to comply with a demand by an Industrial Inspector for payment of wages due to an employee and unpaid may suffer the making of an Order by an Industrial Magistrate for payment of the amount of money that was the subject of the demand.

Clause 28—Amendment of s.14.12 (Industrial Inspector’s obligation for moneys paid on demand). The amendment provides that unpaid occupational superannuation contributions received by an Industrial Inspector on behalf of an employee, if the moneys cannot be paid to—

- the employee because the employee cannot be located
- an occupational superannuation scheme or fund, or in the case of a past employee, any superannuation scheme or fund, because the employee fails to nominate any such fund to which the moneys are to be paid

are to be paid by the Inspector to the Department.

The Department is to pay the moneys into the Unclaimed Moneys Fund in the Treasury.

Clause 29—Amendment of s.15.19 (Certifying Barrister). The amendment provides for authority for determining the fees payable to the Certifying Barrister for examining the rules, and amendment to the rules, of industrial organisations under section 13.20 of the Act to be vested in the Minister.

Clause 30—Amendment of s.17.16 (Payment of wages). The amendment permits an employer paying wages in cash to ‘round off’ the amount being paid to the nearest 5 cents.

Clause 31—Amendment of s.17.20 (Recovery of wages etc). The amendment clarifies that an application by an Industrial Inspector to an Industrial Magistrate for payment of wages due to an employee may be made in the name of the Inspector.

Clause 32—Amendment of s17.21 (Enforcement of Industrial Magistrate’s Orders). The amendment clarifies that any order made by an Industrial Magistrate in proceedings relating to the underpayment of occupational superannuation contributions is enforceable in the same manner as an order made under the Justices Act.

Clause 33—Replacement of s.18.19 (Offence re taking of ballot for office in industrial organisation). It varies the previous provision by applying it to amalgamation ballots.

This section prescribes certain offences in relation to the conduct of ballots for an election or for a proposed amalgamation.

Maximum penalty for the offences is prescribed as 80 penalty units (\$4,800).

Clause 34—Amendment of s.18.23 (Failure to provide information re amalgamation ballot). The reference to s.13.66 is altered to reflect the replacement of existing s.13.66 with a new s.13.70 “Officers of industrial organisation to provide information for ballot etc” as effected by clause 24 of the Bill.

Clause 35—Amendment of s.18.49 (Persons considered parties to offences). The amendment clarifies that where members of the governing body of a corporation or persons who manage or participate in the management or control of a corporation’s business in Queensland are convicted of an offence relating to—

- payment of wages to an employee, or
- payment of occupational superannuation contributions

are liable for any such payments ordered by an Industrial Magistrate to be made to, or on behalf of, the employee concerned.

Clause 36—Insertion of New Part 19A

Part 19A—Savings, transitional and repeals

Proposed Section 19A.1—Repeals

To accord with modern drafting practice the repeals which were previously listed at section 1.4 of the Act have been moved to this new Part.

The context of the existing legislation is unchanged.

Proposed Section 19A.2—Savings

To accord with modern drafting practice the savings which previously listed at section 1.5 of the Act have been moved to this new Part.

The context of the existing legislation is unchanged.

Proposed Section 19A.3—Demarcation orders and disputes

This section provides that demarcation orders which were made prior to the commencement of this Act under section 4.25 are to be given effect, after the commencement of this Act as if they were made under section 4.25A.

Subsection (2) provides that any action being dealt with under section 4.25 is to be dealt with, after the commencement of this Act under section 4.25A.

Proposed Section 19A.4—Transitional provisions in relation to amalgamations

This section provides that a scheme for a proposed amalgamation which was submitted to ballot before the commencement of this Act but had not yet taken effect or had been rejected then it is to be continued to be dealt with under the existing provisions.

If, however, none of the ballots had been started, the action taken prior to the commencement of this Act is taken to have been done under the corresponding provision of this Act.

Clause 37—Insertion of new Part 19B. Part 19B—Renumbering of Act. Provides for renumbering of the Act in accordance with current numbering style. The amending section will be proclaimed when a reprinted Act is available.

Clause 38—Minor and consequential amendments. A schedule of minor and consequential amendments which are necessary as a result of the insertion of the new Part 10, Division 1A—Certified Agreements has been inserted in the Act.