

Queensland



INDUSTRIAL RELATIONS AMENDMENT ACT 1992

Act No. 62 of 1992

Queensland



INDUSTRIAL RELATIONS AMENDMENT ACT 1992

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Queensland



Industrial Relations Amendment Act

Act No. 62 of 1992

An Act to amend the *Industrial Relations Act 1990*

[Assented to 7 December 1992]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows.

Short title

1. This Act may be cited as the *Industrial Relations Amendment Act 1992*.

Commencement

2. Sections 5, 20 to 24, 34, 36 and 37 commence on a day to be fixed by proclamation.

Amended Act

3. The *Industrial Relations Act 1990* is amended as set out in this Act.

Amendment of s.1.3 (Objects)

4. After section 1.3(f)—

insert—

- ‘(g) to encourage and facilitate the amalgamation of industrial organisations where this will contribute to the attainment of the object mentioned in paragraph (d); and
- (h) to encourage and facilitate rationalisation of the coverage of industrial organisations, particularly by reducing the number of industrial organisations that are in an industry or enterprise.’.

Omission of ss.1.4 and 1.5

5. Sections 1.4 and 1.5—

omit.

Amendment of s.2.1 (Meaning of terms)

6.(1) Section 2.1(1) (definition “**demarcation dispute**”)—

omit.

(2) Section 2.1(1)—

insert—

“**certified agreement**” means an agreement certified under Division 1A of Part 10 that is in force, and includes an agreement varied—

(a) under section 10.3L(2); or

(b) in accordance with a permission given under section 10.3M(3)(e);

“**Commonwealth Act**” means the *Industrial Relations Act 1988* of the Commonwealth;

“**demarcation dispute**” includes—

(a) a dispute arising between 2 or more industrial organisations, or within an industrial organisation, about the rights, status or functions of members of the industrial organisations or industrial organisation in relation to the employment of those members; or

(b) a dispute arising between employers and employees, or between members of different industrial organisations, about the demarcation of functions of employees or classes of employees; or

(c) a dispute about the representation under this Act of the industrial interests of employees by an industrial organisation of employees;

“**electoral official**” means the Electoral Commissioner, the Deputy Electoral Commissioner or a member of the staff of the Electoral Commission;

“**registered company auditor**” means a registered company auditor within the meaning of the Corporations Law;

“**repealed Acts**” means the Acts or parts of Acts that have been repealed by this Act;.

(3) Section 2.1(1) (definition “**decision**”, after ‘agreement approved’)—

insert ‘, certified’.

(4) Section 2.1(1) (definition “**industrial agreement**”)—
omit ‘section 12.4 or’.

Replacement of s.4.25 (Dealing with demarcation disputes)

7. Section 4.25—

omit, insert—

‘Demarcation disputes

‘4.25 In exercising its powers in relation to a demarcation dispute, the Commission—

- (a) must consider whether it should consult with appropriate peak councils and industrial organisations; and
- (b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the dispute of any views expressed by the peak councils and organisations.

‘Organisation coverage

‘4.25A(1) A Full Bench may, on the application of an industrial organisation, an employer or the Minister, make the following orders—

- (a) an order that an industrial organisation of employees is to have the right, to the exclusion of another industrial organisation or other industrial organisations, to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;
- (b) an order that an industrial organisation of employees that does not have the right to represent under this Act the industrial interests of a particular class or group of employees is to have that right;
- (c) an order that an industrial organisation of employees is not to have the right to represent under this Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.

‘(2) In considering whether to make an order under subsection (1), the

Full Bench—

- (a) must consider whether it should consult with appropriate peak councils and industrial organisations; and
- (b) may consult with appropriate peak councils and industrial organisations and, if it does so, must inform the parties to the dispute of any views expressed by the peak councils and organisations; and
- (c) must have regard to any agreement or understanding of which the Full Bench becomes aware that deals with the right of an industrial organisation of employees to represent under this Act the industrial interests of a particular class or group of employees.

‘(3) An order under subsection (1) may be subject to conditions or limitations.

‘(4) If the Full Bench makes an order under subsection (1), the Full Bench must refer the matter to a nominated Commissioner unless the Full Bench is satisfied that the rules of the industrial organisations concerned do not need to be altered.

‘(5) If a matter is referred to a nominated Commissioner under subsection (4), the nominated Commissioner must, after giving each industrial organisation concerned an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of any industrial organisation concerned as are, in the nominated Commissioner’s opinion, necessary to reflect the order of the Full Bench.

‘(6) An alteration of the rules of an industrial organisation determined under subsection (5) takes effect on the day on which the determination is made.

‘(7) In this section—

“**nominated Commissioner**” means the Chief Industrial Commissioner or another Industrial Commissioner nominated by the Chief Industrial Commissioner.’.

Amendment of s.5.4 (Power of Industrial Magistrate concerning unpaid superannuation contribution)

8. After section 5.4(3)—

insert—

‘(3A) If the former employee in relation to whom an order under subsection (3) is made—

- (a) cannot be located after all reasonable inquiries; or
- (b) fails to nominate a superannuation scheme or fund for the purpose of the order;

the sum ordered to be paid must be paid into the Unclaimed Moneys Fund in the Treasury.’.

Amendment of s.8.6 (Powers incidental to exercise of jurisdiction)

9. Section 8.6(b)—

omit, insert—

‘(b) direct—

- (i) who are the parties to the proceedings; and
- (ii) by whom the parties may be represented; and
- (iii) persons to be summoned to attend the proceedings, if they have not been summoned and it appears that they should attend the proceedings; and
- (iv) parties to be joined or struck out; and
- (v) who may be heard and on what conditions; and’.

Amendment of s.8.17 (Representation of parties)

10. Section 8.17(1)(a)—

omit, insert—

‘(a) in relation to proceedings in the Industrial Court—

- (i) if the proceedings are for the prosecution of an offence under any Act; or
- (ii) if all parties to the proceedings consent; or
- (iii) if the Court grants leave; or’.

Amendment of s.8.19 (Intervention)

11. Section 8.19 (heading)—

omit, insert—

‘Intervention as of right’.

Insertion of new Division 1A of Part 10

12. After Division 1 of Part 10—

insert—

‘Division 1A—Certified agreements

‘Objects of Division

‘10.3A(1) The objects of this Division are to assist the making and certifying of agreements that will facilitate labour market reform by encouraging—

- (a) single bargaining units; and
- (b) workplace bargaining that is directed at increased productivity; and
- (c) continuous improvement in the workplace; and
- (d) the achievement in the workplace of—
 - (i) best practice; and
 - (ii) increased work satisfaction; and
 - (iii) career opportunities.

‘(2) The Commission must, as far as practicable, perform its functions under this Division in a way that furthers the objects of this Act and, in particular, the objects of this Division.

‘(3) Section 4.27 does not apply to the performance of functions of the Commission under this Division.

‘Definitions

‘10.3B In 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;

“period of the agreement” means—

- (a) the period of operation of the agreement specified in the agreement; or
- (b) that period as extended or further extended under section 10.3K;

“single business” means—

- (a) a business that is carried on by a single employer; or
- (b) a business that is carried on by 2 or more employers as a joint venture or common enterprise; or
- (c) a single project or undertaking; or
- (d) an activity carried on by—
 - (i) the State; or
 - (ii) a body, association, office or other entity established for a public purpose by or under a law of the State; or
 - (iii) any other body in which the State has a controlling interest;

“single employer”, in relation to a single business, includes, if the employer is a corporation, wholly owned subsidiaries of the corporation.

‘Agreements may be made about industrial matters

‘10.3C(1) An employer or an industrial organisation of employers and an industrial organisation of employees may make a memorandum of agreement about an industrial matter.

‘(2) The parties to the agreement must apply to the Commission to certify the agreement.

‘Minister may intervene in certain cases

‘10.3D(1) If an agreement applies only to a single business, part of a single business or a single place of work, the Minister may intervene in the application on the ground that certification of the agreement may jeopardise seriously the public interest.

‘(2) The intervention is to be made by giving written notice to the Industrial Registrar.

‘(3) This section does not limit the operation of section 8.6 or 8.19.

‘(4) This section expires 18 months after the commencement of the section.

‘Certification of agreements under this Division

‘10.3E(1) If application is made under section 10.3C(2), the Commission must certify an agreement if it is satisfied that—

- (a) the agreement does not disadvantage the employees who are covered by the agreement in relation to their terms of employment; and
- (b) the agreement includes procedures for preventing and settling disputes between the employers and employees covered by the agreement about matters arising under the agreement; and
- (c) subject to subsection (3), before the application for certification of the agreement was made, each industrial organisation of employees that is a party to the agreement took reasonable steps—
 - (i) to consult with its members whose employment is covered by the agreement over the terms of the agreement; and
 - (ii) to inform those members of the industrial organisation’s intention to apply for certification; and
- (d) each industrial organisation of employees that is a party to the agreement has—

- (i) informed the Commission whether or not it consulted with its members as described in paragraph (c)(i); and
 - (ii) informed the Commission of the outcome of any such consultations; and
- (e) if the agreement applies only to a single business, part of a single business or a single place of work—
- (i) 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
 - (ii) 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; and
- (f) the agreement specifies its period of operation.

‘(2) For the purposes of subsection (1)(a), an agreement is taken to disadvantage employees in relation to their terms of employment only if—

- (a) certification of the agreement would result in the reduction of any entitlements or protections of the employees under an award or an industrial agreement; and
- (b) in the context of their terms and conditions of employment considered as a whole, the Commission considers that the reduction would be contrary to the public interest.

‘(3) Subsection (1)(c) does not apply to an industrial organisation of employees if—

- (a) the agreement applies only to a new business, project or undertaking; and

- (b) 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.

‘(4) Subsection (1)(e)(i) does not apply if the Commission is satisfied that—

- (a) each industrial organisation of employees referred to in subsection (1)(e)(i)(A) has been given the opportunity to be a party to the agreement; and
- (b) at least 1 of the organisations is a party to the agreement; and
- (c) the agreement is in the interests of the employees whose employment is covered by the agreement.

‘(5) 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.

‘When Commission may refuse to certify agreements

‘10.3F(1) Despite section 10.3E, the Commission may refuse to certify an agreement if—

- (a) the agreement is one that does not apply only to a single business, part of a single business or a single place of work; and
- (b) the Commission considers that certification of the agreement would be contrary to the public interest.

‘(2) Despite section 10.3E, if—

- (a) the agreement applies only to a single business, part of a single business or a single place of work; and
- (b) the Minister has intervened in the application under section 10.3D;

the Commission may also refuse to certify the agreement if it thinks that certification of the agreement is likely to jeopardise seriously the public interest.

‘(3) Subsection (2) and this subsection expire 18 months after the commencement of this section.

‘Other options open to Commission

‘10.3G(1) If, under section 10.3E or 10.3F, the Commission has grounds to refuse to certify the agreement—

- (a) the Commission may accept an undertaking from 1 or more of the parties in relation to the operation of the agreement and may certify the agreement if it is satisfied that the undertaking meets its concerns; and
- (b) in any case, before refusing to certify the agreement, the Commission must give the parties an opportunity to amend it or to take any other action that may be necessary to make the agreement certifiable.

‘(2) If an undertaking is not observed, the Commission may terminate the agreement after giving the parties an opportunity to be heard.

‘Procedures for preventing and settling disputes

‘10.3H Procedures in an agreement for preventing and settling disputes between employers and employees covered by the agreement may, if the Commission so approves, empower the Commission to settle disputes over the application of the agreement.

‘Operation of certified agreements

‘10.3I(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 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—
 - (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.

‘(2) If the agreement remains in force until the end of the period of the agreement, then, at the end of the period, the agreement continues in force until—

- (a) it is terminated by the Commission; or
- (b) it is varied by the parties (other than under section 10.3M(3)(e));
or
- (c) a new agreement, in substitution for 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.

‘Party may retire from a certified agreement

‘10.3J(1) 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 remains 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.

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

‘Extension of certified agreements

‘10.3K(1) Subject to subsection (2), the parties to a certified agreement may extend the period of the agreement’s operation.

‘(2) An extension has effect only if—

- (a) the parties agree to the extension; and
- (b) the parties notify the Commission in writing of the extension

before the end of the period of the agreement's operation or that period as extended or further extended under this section.

'Effect of certified agreements

'10.3L(1) While a certified agreement is in force—

- (a) the terms of the agreement prevail over the terms of an award or an industrial agreement to the extent of the inconsistency; and
- (b) a term of the agreement can be varied by the parties, but only as provided in section 10.3M.

'(2) The agreement may only be varied by the Commission on the application of the parties for the purpose of removing ambiguity or uncertainty.

'(3) Subject to section 10.3H, the Commission must not exercise arbitration powers in relation to the agreement.

'Certified agreements may be varied or terminated by Full Bench

'10.3M(1) At any time while a certified agreement is in force, a Full Bench may review the operation of the agreement after giving the parties to the agreement an opportunity to be heard.

'(2) The Full Bench may act under subsection (1) only—

- (a) on its own motion; or
- (b) on application by an industrial organisation or person bound by the agreement.

'(3) If the Full Bench finds—

- (a) in the case of any agreement—that the continued operation of the agreement 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;

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.

‘(4) If an undertaking is not observed, a Full Bench may, by order, terminate the agreement after giving the parties an opportunity to be heard.

‘(5) If a party to a certified agreement engages in industrial action in relation to a matter dealt with in the agreement, another party who is affected by the industrial action may apply to a Full Bench for a declaration that the applicant is no longer bound by the agreement.

‘(6) The Full Bench may, by order, declare that the applicant is no longer bound by the agreement if the Full Bench is satisfied that it is in the public interest to make the declaration.

‘(7) Despite subsections (2) and (3), the following provisions have effect in relation to an agreement that applies only to a single business, part of a single business or a single place of work—

- (a) the Minister may apply to a Full Bench to review the agreement on the ground that its continued operation would jeopardise seriously the public interest;
- (b) if, on such an application, the Full Bench finds that the ground is established, it may do any of the things specified in subsection (3)(c), (d) and (e).

‘(8) Subsection (7) and this subsection expire 18 months after the commencement of this section.

‘Certified agreements may be terminated by parties

‘10.3N(1) A party to a certified agreement may, with the consent of all the relevant parties, give the Commission written notice stating that the party does not want to remain bound by the agreement.

‘(2) All the parties to a certified agreement may jointly give the Commission written notice stating that they want the agreement to be terminated.

‘(3) On receipt of a notice under subsection (1) or (2), if the Commission is satisfied that it would be in the public interest for the party to be no longer bound or for the agreement to be terminated, as the case may be, the Commission may, by order, make a declaration to that effect.

‘(4) In this section—

“**relevant party**” to an agreement means—

- (a) in relation to a party that is an employer or an industrial organisation of employers—a party that is an industrial organisation of employees; or
- (b) in relation to a party to the agreement that is an industrial organisation of employees—a party that is an employer or an industrial organisation of employers.

‘Enforcement of certified agreements

‘10.30 An agreement certified under this Division is enforceable in the same way as an award.’.

Amendment of s.10.12 (Powers of Commission re awards)

13. Section 10.12(1)—

omit ‘terminate’, *insert* ‘rescind’.

Replacement of s.11.7 (University or college of advanced education students)

14. Section 11.7—

omit, insert—

‘Student’s work permit

‘11.7(1) On application, the Industrial Registrar and, on appeal from the registrar, the Commission, may grant to a student participating in a tertiary study course a permit to work for a period in a calling.

‘(2) The student must provide satisfactory proof on the application that the period of work in the calling is necessary to complete the course.

‘(3) The registrar or Commission granting the permit must determine and specify in the permit—

- (a) the period of work; and
- (b) the rate of the student’s wage.

‘(4) When a permit is granted, the Industrial Registrar is to notify immediately the secretary of the industrial organisation of employees in the calling of the grant of the permit and the permit’s conditions.

‘(5) This section applies despite any award, industrial agreement or certified agreement.’

Omission of s.11.11 (Reinstatement and re-employment)

15. Section 11.11—

omit.

Amendment of s.11.22 (Entitlement to long service leave)

16. Section 11.22 (1st sentence)—

omit ‘The entitlement of an employee’,

insert ‘Subject to adjustments made for a seasonal employee under sections 11.32 and 11.33, the entitlement of an employee’.

Amendment of s.11.32 (Long service leave in meat works and sugar industry)

17. Section 11.32—

omit, insert—

‘Long Service leave in meat works and sugar industry

‘11.32(1) In this section—

“**actual service**”, in relation to an employee to whom this section applies, means the period of actual service the employee is taken to have had with an employer under the rules in subsection (5);

“continuous service”, in relation to an employee to which this section applies, means the period of continuous service the employee is taken to have had with an employer under the rules in subsection (5) for the purpose of section 11.22;

“owners” of a meat works includes any person who carries on the business of the works;

“period between seasons” includes—

- (a) the period between the termination of one season and the start of the next season; and
- (b) in relation to a particular employee, the period between the day on which the employee ceases employment in one season and the day on which the employee starts employment in the next season;

“season” means—

- (a) in relation to the sugar industry, a period, whether falling—
 - (i) completely in one calendar year; or
 - (ii) partly in one calendar year and partly in the next calendar year;
during which—
 - (iii) sugar cane is taken delivery of and crushed at a sugar mill;
or
 - (iv) harvesting of sugar cane, or farm work, is performed in the sugar industry; and
- (b) in relation to a meat works, a period, whether falling—
 - (i) completely in one calendar year; or
 - (ii) partly in one calendar year and partly in the next calendar year;
during which stock are taken delivery of and slaughtered at a meat works;

“seasonal employment” means employment related to season;

“seasonal entitlement”, in relation to each period of long service leave provided under section 11.22, means the period of long service leave to which an employee to whom this section applies is entitled by using

the formula in subsection (6);

“unadjusted entitlement” means the period of long service leave to which an employee would be entitled under section 11.22 if—

- (a) the rules in subsection (5) for calculating the period of continuous employment with the employer for the purpose of the section 11.22 were applied; but
- (b) the adjustment of the entitlement by using the formula in subsection (6) were not made.

‘(2) This section applies to an employee who is entitled to a period of long service leave because the Commission has conferred, under section 11.21, an entitlement to long service leave on full pay on—

- (a) employees employed in seasonal employment in the sugar industry; or
- (b) employees employed in or about meat works in seasonal employment by the meat works owners;

‘(3) The object of this section is to prescribe the entitlement to long service leave of an employee to which it applies by—

- (a) determining under subsection (5)—
 - (i) how the employee’s period of continuous service with an employer must be calculated for the purpose of calculating the employee’s unadjusted entitlement; and
 - (ii) how the employee’s period of actual service with an employer must be calculated; and
- (b) determining by the formula in subsection (6) how the employee’s unadjusted entitlement must be adjusted to take into account the employee’s actual service.

‘(4) The rules in subsection (5) apply for the purpose of determining, in relation to an employee—

- (a) the employee’s period of continuous service with an employer for the purpose of section 11.22; and
- (b) the employee’s period of actual service with the employer.

‘(5) The rules are—

- (a) the employee’s service with an employer (the “**employer**”) is taken not to be broken (and never has been broken) by a period when the employee was not employed by the employer between seasons if—
 - (i) in one season, the employee’s service with the employer continued until the termination of the season or until an earlier day on which the employee’s employment was terminated by the employer; and
 - (ii) in the next season, the employee’s service with the same employer started on the opening of the season or on a later day in that season on which the employer required the employee to start employment; and
- (b) subject to paragraph (c), service before the commencement of this subsection is to be treated in the same way as service after the commencement; and
- (c) if the employee is engaged in the calling of the harvesting of sugar cane or farm work in the sugar industry, service had by the employee with the employer before 23 June 1990 is not to be taken into account; and
- (d) any period between seasons, during which period the employee is not in employment with the employer—
 - (i) must be taken into account for the purpose of calculating the employee’s period of continuous service with an employer for the purpose of section 11.22; and
 - (ii) must not to be taken into account for the purpose of calculating the length of the employee’s actual service; and
- (e) times in a period between seasons when the employee is employed by the employer are to be taken into account; and
- (f) long service leave to which an employee is entitled, or any part of that leave—
 - (i) may be given to, and taken by, the employee during the period between seasons; and
 - (ii) if taken during the period between seasons, is taken to have

started on the last cessation of the employee's employment by the employer.

‘(6) In relation to each period of long service leave provided for under section 11.22, the seasonal entitlement of an employee to whom this section applies is the period obtained by using the following formula—

$$\frac{\text{unadjusted entitlement} \times \text{actual service}}{\text{continuous service}}.$$

Insertion of new Divisions 4 and 5 of Part 11

18. After Division 3 of Part 11—

insert—

‘Division 4—Reinstatement and re-employment

‘Application for reinstatement, re-employment or compensation

‘11.37(1) If an employee is dismissed from employment, application for relief under section 11.38 may be made to the Commission—

- (a) within 21 days after the dismissal; or
- (b) within a longer period after the dismissal that the Commission may allow at any time in the circumstances of the case.

‘(2) An application may be made by—

- (a) the employee; or
- (b) an industrial organisation of employees of which the employee is a member, acting on behalf of the employee and with the employee's consent.

‘(3) An application cannot be made if the dismissal is subject to appeal or review under another Act or law.

‘(4) Before the Commission hears an application, a conference of the parties to the application must be held—

- (a) to explore the possibility of resolving the matters at issue by conciliation; and
- (b) to ensure that the parties are fully informed of the possible

consequences of further proceedings on the application.

‘Orders on application

‘11.38(1) If the Commission on hearing an application for relief from dismissal considers that the dismissed employee should be reinstated or re-employed, the Commission may order—

- (a) that the employee be reinstated by the employer in the employee’s former position without prejudice to the former employment conditions; or
- (b) if the Commission considers that reinstatement would be inappropriate, for example, because the employer could not practically reinstate the employee—that the employee be re-employed by the employer in some other position, if available, on any conditions that may be determined by the Commission; or
- (c) if the Commission considers that an order under paragraph (a) or (b) is inappropriate—that the employer pay the employee an amount of compensation determined by the Commission.

‘(2) An order that an employee be reinstated or re-employed may specify when the reinstatement or re-employment is to start.

‘(3) Under subsection (1)(c), the Commission must not determine an amount of compensation that exceeds the amount obtained in accordance with the formula—

average monthly wages X years of employment

where—

“average monthly wages” means the employee’s average monthly wages

- (a) over the period of the employment by the employer; or
 - (b) over the period of 1 year before the day the dismissal took effect;
- whichever period is less;

“years of employment” means the number of years that the employee was employed by the employer, including a fraction of a year, if necessary.

‘(4) If the Commission makes an order under subsection (1), it may also order the employer to pay to the employee an amount it considers

appropriate as remuneration for wages lost by the employee between the day the dismissal took effect and the day on which the Commission's order is complied with.

‘(5) The remuneration must not exceed the actual amount of loss to the employee because of not receiving wages from the employer, after taking into account any employment benefits or other wages received by the employee during the period for which remuneration is being assessed.

‘(6) If the Commission makes an order under subsection (1), it may also order the repayment by the employee of any amounts paid to the employee by or on account of the employer on termination of the employee's employment.

‘Effect of dismissal relief order on leave

‘11.39 If the Commission makes an order under section 11.38(1), the interruption to the employee's continuity of service caused by the dismissal to which the order relates is to be disregarded for the purpose of determining the employee's entitlement to sick leave, annual leave or long service leave.

‘Costs for frivolous or vexatious applications

‘11.40 If the Commission considers that an application for relief under section 11.38 is frivolous or vexatious, the costs it may order against the applicant include costs in respect of representation by counsel, solicitor or agent whether or not the Commission has certified as prescribed by section 8.18.

‘Further orders against employer

‘11.41(1) If an employer wilfully fails to comply with an order made against the employer under section 11.38 (the “relief order”), the Commission may—

- (a) further order the employer to pay to the employee an amount of not more than the monetary value of 50 penalty units together with a further amount as remuneration for lost wages; and
- (b) may make the further order from time to time until the employer

complies with the relief order.

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

‘Division 5—Protection of injured employees

‘Interpretation of Division

‘11.42 In this Division—

“**dismissed**”, in relation to an injured employee—

- (a) includes a case where—
 - (i) the employer imposes any unreasonable condition of employment which is designed to make the employee leave the employment; and
 - (ii) the employee leaves the employment; and
- (b) does not include a case where the dismissal happens before, but takes effect after, the commencement of this section;

“**former position**”, in relation to an injured employee, means—

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

at the option of the employee;

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

“**injury**” means an injury within the meaning of the *Workers’ Compensation Act 1990* in relation to which workers’ compensation is payable under the Act.

‘Wages to be paid for the day employee injured

‘11.43(1) An injured employee is entitled to be paid by the employer’s employer full wages for the day on which the injury happens.

‘(2) Subsection (1) has effect despite any award, industrial agreement, certified agreement or contract of employment.

‘Application to employer for reinstatement after dismissal

‘11.44(1) If an injured employee is dismissed because of unfitness for employment in a position because of the injury, the employee may apply to the employer for reinstatement to the employee’s former position.

‘(2) Subject to section 11.47, application must be made within 21 days after the dismissal.

‘(3) The employee must produce to the employer a certificate given by a medical practitioner to the effect that the employee is fit for employment in the former position.

‘Application to Commission for reinstatement order

‘11.45(1) If an employer fails to reinstate immediately an employee who applies under section 11.44 to be reinstated, the employee may apply to the Commission for a reinstatement order.

‘(2) An application may be made by—

- (a) the employee; or
- (b) an industrial organisation of employees of which the employee is a member applying on behalf of the employee and with the employee’s consent.

‘Commission order to reinstate

‘11.46(1) If the Commission is satisfied that an employee, in relation to whom an application under section 11.45 is made, is fit for employment in the employee’s former position, the Commission may order the employer to reinstate the employee.

‘(2) The order may specify terms of reinstatement, for example, the day on which reinstatement is to take effect.

‘Extension of time for application

‘11.47 The Commission may order an employer to reinstate an employee under section 11.46 even if the employee applied to the employer to be reinstated more than 21 days after the dismissal, if the Commission considers that this would be appropriate in the circumstances of the case.

‘Dismissal an offence in certain cases

‘11.48(1) An employer must not dismiss an injured employee solely or principally because the employee is not fit for employment in a position because of the injury within 3 months after the employee becomes unfit.

‘(2) A person who contravenes subsection (1) commits an offence against this Act.

Maximum penalty—40 penalty units

‘(3) This section applies to a dismissal after the commencement of this section even if the employee mentioned in subsection (1) became unfit before the commencement.

‘Preservation of employee’s rights

‘11.49(1) This Division does not affect any other right of a dismissed employee under any Act or law.

‘(2) This Division cannot be affected by any contract or agreement.’.

Repeal of s.12.4 (Conciliation by Commissioner or Industrial Magistrate)

19. Section 12.4—

omit.

Amendment of s.13.13 (Rules to provide for election of officers)

20.(1) Section 13.13(1)(a)—

omit, insert—

‘(a) 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; and’.

(2) After section 13.13(3)—

insert—

‘(4) In this section—

“**collegiate electoral system**” 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.’.

Insertion of new Division 3A of Part 13

21. After Division 3 of Part 13—

insert—

Division 3A—Conduct of elections for office

‘Conduct by Electoral Commission

‘13.24A(1) Each election for an office in an industrial organisation or branch of an industrial organisation is to be conducted by the Electoral Commission.

‘(2) Subsection (1) does not apply to an election for an office in an industrial organisation or branch if an exemption granted to the organisation or branch under section 13.24D is in force in relation to elections in the organisation or branch or an election for the particular office.

‘Application for industrial organisation or branch to conduct its elections

‘13.24B(1) A committee of management of an industrial organisation or branch of an industrial organisation may file in the Industrial Registrar’s Office an application for the organisation or branch, as the case may be, to

be exempted from section 13.24A(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.

‘(2) An application may be made by a committee of management of an industrial organisation or branch of an industrial organisation only if the committee of management—

- (a) has resolved to make the application; and
- (b) has notified the members of the organisation or branch, as prescribed, of the making of the resolution.

‘(3) The application must be accompanied by a statutory declaration by a member of the committee of management stating that subsection (2) has been complied with.

‘(4) On the filing of an application, the Industrial Registrar must publish as prescribed, a notice setting out details of the application for the purpose of bringing the notice to the attention of members of the industrial organisation or branch concerned.

‘(5) 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.

‘Objections to application to conduct elections

‘13.24C(1) Objection may be made to an application under section 13.24B(1) by a member of the industrial organisation or branch of the industrial organisation in relation to which the application was made.

‘(2) The Industrial Registrar is to hear, in the way prescribed, the application and any objections properly made.

‘Registrar may permit industrial organisation or branch to conduct its elections

‘13.24D(1) If an application in relation to an industrial organisation or branch has been filed under section 13.24B(1) and, after any objections properly made have been heard, the Industrial Registrar is satisfied—

- (a) that the rules of the industrial organisation or branch comply with

the requirements of this Act relating to the conduct of elections;
and

- (b) that, if the organisation or branch is exempted from section 13.24A(1), the elections for the organisation or branch, or the election for the particular office, will be conducted—
 - (i) under the rules of the organisation or branch, as the case may be, and this Act; and
 - (ii) in a way that will afford members entitled to vote at the elections or election an adequate opportunity of voting without intimidation;

the Industrial Registrar may exempt the organisation or branch from section 13.24A(1) in relation to elections for the organisation or branch, or the election for the particular office, as the case may be.

‘(2) The Industrial Registrar may revoke an exemption granted to an industrial organisation or branch under subsection (1)—

- (a) on application by the committee of management of the organisation or branch; or
- (b) if the registrar—
 - (i) is no longer satisfied as mentioned in subsection (1); and
 - (ii) has given the committee of management of the organisation or branch an opportunity, as prescribed, to show cause why the exemption should not be revoked.

‘Industrial Registrar to arrange for conduct of elections

‘13.24E(1) An industrial organisation or branch of an industrial organisation (other than an organisation or branch to which the Industrial Registrar has, under section 13.24D, granted an exemption) must file the prescribed information in relation to an election in the Industrial Registrar’s Office before the prescribed day or any later day the registrar allows.

‘(2) If—

- (a) the prescribed information is filed in the Industrial Registrar’s Office by the industrial organisation or branch (whether or not before the prescribed day or the later day allowed by the Industrial

Registrar); and

- (b) the Industrial Registrar is satisfied that an election is required to be held under the rules of the organisation or branch;

the registrar must arrange for the conduct of the election by the Electoral Commission.

‘Provisions applicable to elections conducted by Electoral Commission

‘13.24F(1) If an electoral official is conducting an election, or taking a step in relation to an election, for an office in, or in a branch of, an industrial organisation, the electoral official—

- (a) subject to paragraph (b), must comply with the rules of the organisation or branch; and
- (b) may, despite anything in the rules of the organisation or branch, take such action, and give such directions, as the electoral official considers necessary—
 - (i) to ensure that no irregularities happen in relation to the election; or
 - (ii) to remedy any procedural defects that appear to the electoral official to exist in the rules.

‘(2) An election conducted by an electoral official, or a step taken in relation to such an election, is not invalid merely because of a breach of the rules of the industrial organisation or branch because of—

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

‘(3) If an electoral official conducting an election, or taking a step in connection with an election—

- (a) dies or becomes unable to complete the conduct of the election or the taking of the step; or
- (b) ceases to be qualified to conduct the election or to take the step;

the Electoral Commissioner must arrange for the completion of the conduct of the election, or the taking of the step, by another electoral official.

‘Expenses of election ballot

‘13.24G(1) The expenses (other than the expenses mentioned in subsection (2)) of a ballot conducted by the Electoral Commission under this Division are payable by the State.

‘(2) The industrial organisation in relation to which the ballot is held must pay for the printing, postage and distribution costs incurred by the Electoral Commission in the conduct of the ballot.

‘(3) The industrial organisation must pay to the State the costs mentioned in subsection (2) within 1 month after receiving a written request from the Electoral Commission to do so.

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

‘Death of candidate

‘13.24H(1) If—

- (a) 2 or more candidates are nominated for an election in relation to an office in an industrial organisation or branch; and
- (b) one of the candidates dies before the close of the ballot;

the election must be discontinued and a new election must be held.

‘(2) Subsection (1) has effect despite anything in the rules of an industrial organisation or branch.

‘Ballot papers etc. from elections to be preserved

‘13.24I(1) If—

- (a) an election for an office is held under this Division; and
- (b) the election is conducted by the Electoral Commission;

the industrial organisation or branch of the industrial organisation concerned, every officer of the organisation or branch who is in a position to do so, and the Electoral Commission, are to take such steps as are necessary to 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.

‘(2) If—

- (a) an election for an office is held under this Division; and
- (b) the election is conducted by the industrial organisation or branch;

the industrial organisation or branch of the industrial organisation concerned, and every officer of the organisation or branch who is in a position to do so, are to take such steps as are necessary to ensure that all ballot-papers, envelopes and records relevant to the election are preserved and kept by the industrial organisation or branch for a period of 1 year after the election.

‘(3) Subsections (1) and (2) have effect despite anything in the rules of the industrial organisation or branch concerned.

‘No action for defamation in certain cases

‘**13.24J(1)** A proceeding (whether civil or criminal) for defamation does not lie against—

- (a) the State; or
- (b) an electoral official; or
- (c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or person in the course of the conduct of an election under this Division.

‘(2) In this section—

“**document**” means a document or a copy of a document authorised by, or on behalf of, a candidate in the election.’.

Omission of s.13.40 (Ballot-papers and other records to be preserved)

22. Section 13.40—

omit.

Amendment of s.13.41 (Registrar to conduct elections on request)

23.(1) Sections 13.41(1) (after ‘election’ (1st occurring))—

insert ‘(other than an election conducted under section 13.24A or Division 7)’.

(2) Section 13.41(4)(b)—

omit, insert—

‘(b) the registrar is to make arrangements with the Electoral Commissioner for the conduct of the election by an electoral official.’.

Replacement of Division 7 of Part 13

24. Division 7 of Part 13—

omit, insert—

‘Division 7—Amalgamation of industrial organisations

‘Subdivision A—General

‘Application of objects to Division etc.

‘13.54 It is the intention of the Parliament—

- (a) that, in the application to this Division of the objects of this Act, particular regard should be had to the attainment of the objects mentioned in section 1.3(g) and (h); and
- (b) that this Act should be applied in relation to the amalgamation of industrial organisations in a way that, to the greatest extent that is consistent with the attainment of the objects mentioned in section 1.3(d), (e) and (f), is fair, practical, quick and non-legalistic.

‘Interpretation

‘13.55 In this Division—

“**alternative provision**” means a provision of the kind mentioned in section 13.60(1);

“**amalgamated organisation**”, in relation to a completed amalgamation, means the industrial organisation of which members of the

deregistered industrial organisations have become members under section 13.73P(3)(d);

“amalgamation day”, in relation to a completed amalgamation, means the day fixed under section 13.73P(2) in relation to the amalgamation;

“asset” means property of any kind, and includes any right, interest or claim of any kind in or in relation to property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing);

“authorised person”, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation;

“charge” means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise);

“closing day” for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 13.73C as the closing day of the ballot;

“commencing day” for a ballot for a proposed amalgamation means the day, from time to time, fixed under section 13.73C as the commencing day of the ballot;

“completed amalgamation” means a proposed amalgamation that has taken effect;

“debenture” has the same meaning as in Division 4 of Part 7.12 of the Corporations Law;

“defect” includes a nullity, omission, error and irregularity;

“deregistered organisation”, in relation to a completed amalgamation, means an industrial organisation that has been deregistered under this Division;

“deregistration”, in relation to an industrial organisation, means the cancellation of its registration;

“holder” of a charge includes a person in whose favour a charge is to be given or executed (whether on demand or otherwise) under an agreement;

“instrument” means an instrument of any kind, and includes—

- (a) any contract, deed, undertaking or agreement; and
- (b) any mandate, instruction, notice, authority or order; and
- (c) any lease, licence, transfer, conveyance or other assurance; and
- (d) any guarantee, bond, power of attorney, bill of lading, negotiable instrument or order for the payment of money; and
- (e) any mortgage, charge, lien or security;

whether express or implied and whether made or given orally or in writing;

“instrument to which this Division applies”, in relation to a completed amalgamation, means an instrument—

- (a) to which a deregistered organisation is a party; or
- (b) that was given to, by or in favour of a deregistered organisation; or
- (c) in which a reference is made to a deregistered organisation; or
- (d) under which any money is or may become payable, or any other property is to be, or may become liable to be, transferred, conveyed or assigned, to or by a deregistered organisation;

“interest”, in relation to a company, includes a prescribed interest made available by the company within the meaning of the Corporations Law;

“invalidity” includes a defect;

“irregularity” includes a breach of the rules of an industrial organisation, but in Subdivision G does not include an irregularity in relation to a ballot;

“proceeding to which this Division applies”, in relation to a completed amalgamation, means a proceeding to which a deregistered organisation was a party immediately before the amalgamation day;

“proposed alternative amalgamation”, in relation to a proposed amalgamation, means an amalgamation proposed to be made under an alternative provision;

“proposed amalgamated organisation”, in relation to a proposed amalgamation, means the industrial organisation or proposed industrial

organisation of which members of the proposed deregistering organisations are proposed to become members under this Division;

“proposed amalgamation” means the proposed carrying out of arrangements in relation to 2 or more industrial organisations under which—

- (a) an industrial organisation is, or 2 or more industrial organisations are, to be deregistered under this Division; and
- (b) members of the industrial organisation or organisations to be deregistered are to become members of another industrial organisation (whether existing or proposed);

“proposed deregistering organisation”, in relation to a proposed amalgamation, means an industrial organisation that is to be deregistered under this Division;

“proposed principal amalgamation”, in relation to a proposed amalgamation, means—

- (a) if the scheme for the amalgamation contains an alternative provision—the amalgamation proposed to be made under the scheme otherwise than under an alternative provision; or
- (b) in any other case—the proposed amalgamation.

‘Procedure to be followed for proposed amalgamation etc.

‘13.56(1) For the purpose of implementing the scheme for a proposed amalgamation, the procedure provided by this Division is to be followed.

‘(2) If it appears to the Commission that the performance of an act, including—

- (a) the deregistration of an industrial organisation; and
- (b) the registration of an organisation; and
- (c) the giving of consent to—
 - (i) a change in the name of an industrial organisation; or
 - (ii) an alteration of the eligibility rules of an industrial organisation;

is sought for the purposes of a proposed amalgamation, the Commission

may perform the act only in accordance with this Division.

‘(3) If any difficulty arises, or appears likely to arise, in the application of this Act for the purpose of implementing the scheme for a proposed amalgamation, the Commission may give directions and make orders to resolve the difficulty.

‘(4) Directions and orders under subsection (3)—

- (a) have effect subject to any order of the Court; and
- (b) have effect despite anything in—
 - (i) the regulations or the rules of court; or
 - (ii) the rules of an industrial organisation or any association proposed to be registered as an industrial organisation.

‘Subdivision B—Preliminary matters

‘Federations

‘13.57(1) The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar’s Office an application for recognition as a federation.

‘(2) The application must—

- (a) be filed before an application is filed under section 13.63 in relation to the amalgamation; and
- (b) include such particulars as are prescribed.

‘(3) If the Commission is satisfied that the industrial organisations intend to file an application under section 13.63 in relation to the amalgamation within the prescribed period, the Commission must grant the application for recognition as a federation.

‘(4) If the application is granted, the Industrial Registrar must enter in the register kept under section 6.3(1)(b) the prescribed details in relation to the federation.

‘(5) On registration, the federation may, subject to subsection (6) and the regulations, represent its constituent members for all of the purposes of this Act.

‘(6) Subsection (5) does not authorise the federation to become a party to an award, industrial agreement or certified agreement.

‘(7) After the federation is recognised, it may vary its composition by—

- (a) including, with the approval of the Commission, another industrial organisation within the federation if the other industrial organisation intends to become concerned in the amalgamation; or
- (b) releasing, with the approval of the Commission, an industrial organisation from the federation.

‘(8) The federation ceases to exist—

- (a) on the day on which the amalgamation takes effect; or
- (b) if an application under section 13.63 is not filed in relation to the amalgamation within the prescribed period—on the day after the end of the period; or
- (c) if it appears to a Full Bench, on an application by a prescribed person, that the industrial conduct of the federation, or an industrial organisation belonging to the federation, is preventing or hindering the attainment of an object of this Act—on the day the Full Bench so determines.

‘(9) Nothing in this section limits the right of an industrial organisation belonging to a federation to represent itself or its members.

‘Use of resources to support proposed amalgamation

‘13.58(1) An existing industrial organisation concerned in a proposed amalgamation may, at any time before the closing day of the ballot for the amalgamation, use its financial and other resources in support of the proposed principal amalgamation and any proposed alternative amalgamation if—

- (a) the committee of management of the organisation has resolved that the organisation should so use its resources; and
- (b) the committee of management has given reasonable notice of its resolution to the members of the organisation.

‘(2) Subsection (1) does not limit any power that the existing industrial

organisation has, apart from that subsection, to use its financial and other resources in support of, or otherwise in relation to, the amalgamation.

‘Subdivision C—Commencement of amalgamation procedure

‘Scheme for amalgamation

‘13.59(1) There is to be a scheme for every proposed amalgamation.

‘(2) The scheme must contain the following matters—

- (a) a general statement of the nature of the amalgamation, identifying the existing industrial organisations concerned and indicating—
 - (i) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that fact; and
 - (ii) if an association proposed to be registered as an industrial organisation is the proposed amalgamated organisation—that fact and the name of the association; and
 - (iii) the proposed deregistering industrial organisations;
- (b) if it is proposed to change the name of an existing industrial organisation—particulars of the proposed change;
- (c) if it is proposed to alter the eligibility rules of an existing industrial organisation—particulars of the proposed alterations;
- (d) if it is proposed to alter any other rules of an existing industrial organisation—particulars of the proposed alterations;
- (e) if an association is proposed to be registered as an industrial organisation—the eligibility and other rules of the association;
- (f) such other matters as are prescribed.

‘(3) Subsection (2) does not limit the matters that the scheme may contain.

‘Alternative scheme for amalgamation

‘13.60(1) If 3 or more existing industrial organisations are concerned in a proposed amalgamation, the scheme for the amalgamation may contain a

provision to the effect that, if—

- (a) the members of 1 or more of the organisations do not approve the amalgamation; and
- (b) the members of 2 or more of the organisations (the “**approving organisations**”) approve, in the alternative, the amalgamation so far as it involves—
 - (i) the other of the approving organisations; or
 - (ii) 2 or more of the other approving organisations; and
- (c) if 1 of the existing organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;

there is to be an amalgamation involving the approving organisations.

‘(2) If the scheme for a proposed amalgamation contains an alternative provision, the scheme must also contain particulars of—

- (a) the differences between the proposed principal amalgamation and each proposed alternative amalgamation; and
- (b) the differences between the rules of any association proposed to be registered as an industrial organisation, and any proposed alterations of the rules of the existing industrial organisations, under the proposed principal amalgamation and each proposed alternative amalgamation.

‘Approval by committee of management

‘13.61(1) The scheme for a proposed amalgamation, and each alteration of the scheme, must be approved, by resolution, by the committee of management of each existing industrial organisation concerned in the amalgamation.

‘(2) Despite anything in the rules of an existing industrial organisation, approval, by resolution, by the committee of management of the scheme, or an alteration of the scheme, is taken to be sufficient compliance with the rules, and any proposed alteration of the rules contained in the scheme, or the scheme as altered, is taken to have been properly made under the rules.

‘Community of interest declaration

‘13.62(1) The existing industrial organisations concerned in a proposed amalgamation may jointly file in the Industrial Registrar’s Office an application for a declaration under this section in relation to the amalgamation.

‘(2) The application must be filed—

- (a) before an application has been filed under section 13.63 in relation to the amalgamation; or
- (b) with the application that is filed under section 13.63 in relation to the amalgamation.

‘(3) If the application is filed before an application has been filed under section 13.63 in relation to the amalgamation, the Commission—

- (a) must immediately fix a time and place for hearing submissions in relation to the making of the declaration; and
- (b) must ensure that all industrial organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

‘(4) If, at the conclusion of the hearing arranged under subsection (3) or section 13.71 in relation to the proposed amalgamation, the Commission is satisfied that there is a community of interest between the existing industrial organisations in relation to their industrial interests, the Commission must declare that it is so satisfied.

‘(5) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employees in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same work or in aspects of the same or similar work as members of the other organisation or each of the other organisations; or

- (c) bound by the same awards, industrial agreements or certified agreements as members of the other organisation or each of the other organisations; or
- (d) employed in the same or similar work by employers engaged in the same industry as members of the other organisation or each of the other organisations; or
- (e) engaged in work, or in industries, in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

‘(6) The Commission must be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations of employers in relation to their industrial interests if the Commission is satisfied that a substantial number of members of 1 of the organisations are—

- (a) eligible to become members of the other organisation or each of the other organisations; or
- (b) engaged in the same industry or in aspects of the same industry or similar industries as members of the other organisation or each of the other organisations; or
- (c) bound by the same awards as members of the other organisation or each of the other organisations; or
- (d) engaged in industries in relation to which there is a community of interest with members of the other organisation or each of the other organisations.

‘(7) Subsections (5) and (6) do not limit the circumstances in which the Commission may be satisfied, for the purposes of subsection (4), that there is a community of interest between industrial organisations in relation to their industrial interests.

‘(8) If—

- (a) an application for a declaration under this section in relation to a proposed amalgamation is filed before an application has been filed under section 13.63 in relation to the amalgamation; and
- (b) a declaration is made under this section in relation to the amalgamation; and

- (c) an application is not filed under section 13.63 in relation to the amalgamation within 6 months after the declaration is made;

the declaration ceases to be in force.

‘(9) The Commission may revoke a declaration under this section if the Commission is satisfied that there is no longer a community of interest between the industrial organisations concerned in relation to their industrial interests.

‘Application for approval for submission of amalgamation to ballot

‘13.63(1) The existing industrial organisations concerned in a proposed amalgamation, and any association proposed to be registered as an industrial organisation under the amalgamation, must jointly file in the Industrial Registrar’s Office an application for approval for the submission of the amalgamation to ballot.

‘(2) The application must be accompanied by—

- (a) a copy of the scheme for the amalgamation; and
- (b) a written outline of the scheme.

‘(3) Subject to section 13.73G, the outline must, in no more than 3 000 words, provide sufficient information on the scheme to enable members of the existing industrial organisations to make informed decisions in relation to the scheme.

‘Holding office after amalgamation

‘13.64(1) The rules of—

- (a) an association proposed to be registered as an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation; or
- (b) an existing industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation;

may, despite section 13.13, make provision in relation to—

- (c) the holding of office in the proposed amalgamated organisation by persons holding office in any of the proposed deregistering

organisations immediately before the amalgamation takes effect;
and

- (d) in a case to which paragraph (b) applies—the continuation of the holding of office by persons holding office in the proposed amalgamated organisation immediately before the amalgamation takes effect;

but the rules may not permit an office to be held under subsection (1)(c) or (d) for longer than—

- (e) the period that equals the unexpired part of the term of the office held by the person immediately before the day on which the amalgamation takes effect; or
- (f) the period that ends 2 years after that day;

whichever ends last, without an ordinary election being held in relation to the office.

‘(2) If—

- (a) a person holds an office in an industrial organisation under rules made under subsection (1); and
- (b) the organisation is involved in a proposed amalgamation;

the rules of the proposed amalgamated organisation must not permit the person to hold an office in the proposed amalgamated organisation after the amalgamation takes effect, without an ordinary election being held in relation to the office, for longer than the period that equals the unexpired part of the term of the office mentioned in paragraph (a) immediately before the day on which the amalgamation takes effect.

‘(3) The rules of an industrial organisation that is the proposed amalgamated organisation under a proposed amalgamation must, subject to this section, make reasonable provision for the purpose of synchronising elections for offices in the organisation held under subsection (1)(c) with elections for other offices in the organisation.

‘(4) Section 13.15 does not apply to an office held under rules made under subsection (1).

‘(5) Section 13.16 applies to an office held under rules made under subsection (1)(c).

‘(6) In this section—

“ordinary election” means an election held under rules that comply with section 13.13.

‘Application for exemption from ballot

‘13.65(1) The proposed amalgamated organisation under a proposed amalgamation may file in the Industrial Registrar’s Office an application for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

‘(2) The application must be filed with the application that is filed under section 13.63 in relation to the amalgamation.

‘Application for ballot not conducted under section 13.73J

‘13.66(1) An existing industrial organisation concerned in a proposed amalgamation may file in the Industrial Registrar’s Office an application for approval of a proposal for the submission of the amalgamation to a ballot of its members that is not conducted under section 13.73J.

‘(2) The application must be filed with the application that is filed under section 13.63 in relation to the amalgamation.

‘Lodging “yes” case

‘13.67(1) Subject to section 13.73E, an existing industrial organisation concerned in a proposed amalgamation may file a written statement of not more than 2 000 words in support of the proposed principal amalgamation and each proposed alternative amalgamation.

‘(2) The statement must be filed with the application that is filed under section 13.63 in relation to the amalgamation.

‘Subdivision D—Role of the Electoral Commission

‘Ballots to be conducted by the Electoral Commission

‘13.68 All ballots under this Division are to be conducted by the Electoral Commission.

‘Notification of Electoral Commission

‘13.69(1) If an application is filed under section 13.63 in relation to a proposed amalgamation, the Industrial Registrar must immediately notify the Electoral Commission of the application.

‘(2) On being notified of the application, the Electoral Commission must immediately take the action that it considers necessary or desirable to enable it to conduct as quickly as possible any ballots that may be required in relation to the amalgamation.

‘Officer of industrial organisation to provide information for ballot etc.

‘13.70 An electoral official who is authorised, in writing, by the Electoral Commission for the purposes of a proposed amalgamation may, if it is reasonably necessary for the purposes of any ballot that may be required or is required in relation to the amalgamation, by written notice, require an officer or employee of the industrial organisation concerned or a branch of the industrial organisation concerned—

- (a) to give to the electoral official, within a reasonable period of not less than 7 days, and in a reasonable way, specified in the notice, any information within the knowledge or in the possession of the person; and
- (b) to produce or make available to the electoral official, at a reasonable time and place specified in the notice, any documents—
 - (i) in the custody or under the control of the person; or
 - (ii) to which the person has access.

‘Subdivision E—Procedure for approval of amalgamation**‘Fixing hearing in relation to amalgamation etc.**

‘13.71 If an application is filed under section 13.63 in relation to a proposed amalgamation, the Commission—

- (a) must immediately fix a time and place for hearing submissions in relation to—
 - (i) the granting of an approval for the submission of the amalgamation to ballot; and
 - (ii) if an application for a declaration under section 13.62 was filed with the application—the making of a declaration under the section in relation to the amalgamation; and
 - (iii) if an application was filed under section 13.65 for exemption from the requirement that a ballot be held in relation to the amalgamation—the granting of the exemption; and
 - (iv) if an application was filed under section 13.66 for approval of a proposal for the submission of the amalgamation to a ballot that is not conducted under section 13.73J—the granting of the approval; and
- (b) must ensure that all industrial organisations are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

‘Submissions at amalgamation hearings

‘13.72(1) Submissions at a hearing arranged under section 13.62(3) or 13.71 may only be made under this section.

‘(2) Submissions may be made by the applicants.

‘(3) Submissions may be made by another person only with the leave of the Commission and may be made by the person only in relation to a prescribed matter.

‘Approval for submission to ballot of amalgamation not involving extension of eligibility rules etc.

‘13.73(1) If, at the conclusion of the hearing arranged under section 13.71 in relation to a proposed amalgamation, the Commission is satisfied—

- (a) that the amalgamation does not involve the registration of an association as an industrial organisation; and
- (b) that a person who is not eligible for membership of an existing industrial organisation concerned in the amalgamation would not be eligible for membership of the proposed amalgamated organisation immediately after the amalgamation takes effect; and
- (c) that any proposed alteration of the name of an existing industrial organisation concerned in the amalgamation will not result in the organisation having a name that—
 - (i) is the same as the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act; or
 - (ii) is so similar to the name of another industrial organisation or an organisation within the meaning of the Commonwealth Act as to be likely to cause confusion;without the written permission of the other organisation; and
- (d) that any proposed alterations of the rules of an existing industrial organisation comply with, and are not contrary to, this Act and awards, industrial agreements and certified agreements and are not contrary to law; and
- (e) that any proposed deregistration of an existing industrial organisation complies with this Act and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot.

‘(2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (7), refuse to approve, under this section, the submission of the amalgamation to ballot.

‘(3) If, apart from this subsection, the Commission would be required to

refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

‘(4) A permission under subsection (3)(a)—

- (a) may, despite anything in the rules of an existing industrial organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
- (c) may be given subject to conditions.

‘(5) If—

- (a) the Commission—
 - (i) gives a permission under subsection (3)(a) subject to conditions; or
 - (ii) accepts an undertaking under subsection (3)(b); and
- (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

- (c) amend the scheme for the amalgamation, including any proposed alterations of the rules of the existing industrial organisations concerned in the proposed amalgamation; or

- (d) give directions and orders—
 - (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

‘(6) Subsection (5) does not limit the powers that the Commission has apart from that subsection.

‘(7) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.

‘(8) Subsection (7) does not limit the power of the Commission to adjourn the proceeding at any stage.

‘Objections in relation to amalgamation involving extension of eligibility rules etc.

‘13.73A(1) Objection to a matter involved in a proposed amalgamation may only be made to the Commission under this section.

‘(2) Objection may be made to a Full Bench in relation to the amalgamation only if the Commission has refused to approve, under section 13.73, the submission of the amalgamation to ballot.

‘(3) Objection may be made by a prescribed person on a prescribed ground.

‘(4) The Commission is to hear, as prescribed, all objections properly made to the amalgamation.

‘Approval for submission to ballot of amalgamation involving extension of eligibility rules etc.

‘13.73B(1) If, after the prescribed time allowed for making objections under section 13.73A in relation to a proposed amalgamation and after hearing any objections properly made to the amalgamation, the Commission—

- (a) finds that no properly made objection is justified; and

- (b) is satisfied that, so far as the amalgamation involves—
- (i) the registration of an association; or
 - (ii) a change in the name of an industrial organisation; or
 - (iii) an alteration of the rules of an industrial organisation; or
 - (iv) the deregistration of an industrial organisation under this Division;
- it complies with, and is not contrary to, this Act and awards, industrial agreements and certified agreements and is not otherwise contrary to law;

the Commission must approve the submission of the amalgamation to ballot.

‘(2) If the Commission is not satisfied, the Commission must, subject to subsections (3) and (8), refuse to approve, under this section, the submission of the amalgamation to ballot.

‘(3) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may—

- (a) permit the applicants to alter the scheme for the amalgamation, including—
 - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (b) accept an undertaking by the applicants to alter the scheme for the amalgamation, including—
 - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation;

and, if the Commission is satisfied that the matters mentioned in subsection (1) will be met, the Commission must approve the submission of the amalgamation to ballot.

‘(4) A permission under subsection (3)(a)(i)—

- (a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
- (c) may be given subject to conditions.

‘(5) A permission under subsection (3)(a)(ii)—

- (a) may, despite anything in the rules of an existing industrial organisation concerned in the proposed amalgamation, authorise the industrial organisation to alter the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and
- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
- (c) may be given subject to conditions.

‘(6) If—

- (a) the Commission—
 - (i) gives a permission under subsection (3)(a) subject to conditions; or
 - (ii) accepts an undertaking under subsection (3)(b); and
- (b) the conditions are breached or the undertaking is not fulfilled within the period allowed by the Commission;

the Commission may—

- (c) amend the scheme for the amalgamation, including—
 - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (d) give directions and orders—
 - (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

‘(7) Subsection (6) does not limit the powers that the Commission has apart from that subsection.

‘(8) If, apart from this subsection, the Commission would be required to refuse to approve the submission of the amalgamation to ballot, the Commission may adjourn the proceeding.

‘(9) Subsection (8) does not limit the power of the Commission to adjourn the proceeding at any stage.

‘Fixing commencing and closing days of ballot

‘13.73C(1) If the Commission approves, under section 13.73 or 13.73B, the submission of a proposed amalgamation to ballot, the Commission must, after consulting with the Electoral Commissioner, fix a day as the commencing day of the ballot and a day as the closing day of the ballot.

‘(2) The commencing day must be a day not later than 28 days after the day on which the approval is given unless—

- (a) the Commission is satisfied that the Electoral Commission requires a longer period to make the arrangements necessary to enable it to conduct the ballot; or
- (b) the existing industrial organisations concerned in the amalgamation request the Commission to fix a later day.

‘(3) If the scheme for the amalgamation contains a proposed alternative provision, a single day is to be fixed as the commencing day, and a single

day is to be fixed as the closing day, for all ballots in relation to the proposed amalgamation.

‘(4) The Commission may, after consulting with the Electoral Commissioner, vary the commencing day or the closing day.

‘(5) Subsection (4) does not limit the powers of the person conducting a ballot under this Division.

‘Roll of voters for ballot

‘**13.73D** The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the Commission fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later)—

- (a) have the right under the rules of the existing industrial organisation concerned to vote at such a ballot; or
- (b) if the rules of the existing industrial organisation concerned do not then provide for the right to vote at such a ballot—have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

‘ “Yes” case and “no” case for amalgamation

‘**13.73E(1)** If an existing industrial organisation concerned in a proposed amalgamation files a statement under section 13.67 in relation to the amalgamation, the Commission may permit the organisation to alter the statement.

‘(2) Not later than 7 days before the day fixed under section 13.71 for hearing submissions in relation to the amalgamation, members of the industrial organisation (whose number is at least the required minimum number) may file in the Industrial Registrar’s Office a written statement of not more than 2 000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

‘(3) The Commission may permit a statement filed under subsection (2) to be altered.

‘(4) Subject to subsections (5), (6) and (7), a copy of the statements

mentioned in subsections (1) and (2), or, if the statements have been altered or amended, the statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

‘(5) If 2 or more statements in opposition to the amalgamation are properly filed in the Industrial Registrar’s Office under subsection (2)—

- (a) the Commission must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who filed each of the statements, a written statement of not more than 2 000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and
- (b) the statement prepared by the Commission must accompany the ballot paper for the amalgamation as if it had been the sole statement filed under subsection (2).

‘(6) The Commission may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

‘(7) A statement mentioned in subsection (1) or (2) may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

‘(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

‘(9) Subsections (4) and (5)(b) do not apply to a ballot that is not conducted under section 13.73J.

‘(10) In this section—

“**required minimum number**”, in relation to an industrial organisation, means—

- (a) 5% of the total number of members of the industrial organisation on the day on which the application was filed under section 13.63 in relation to the proposed amalgamation concerned; or

- (b) 1 000;
- whichever is the lesser.

‘Alteration and amendment of scheme

‘13.73F(1) The Commission may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the scheme for the amalgamation, including—

- (a) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
- (b) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation.

‘(2) A permission under subsection (1)(a)—

- (a) may, despite anything in the rules of any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation, authorise the existing industrial organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and
- (b) may make provision in relation to the procedure that, despite anything in the rules of the existing industrial organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and
- (c) may be given subject to conditions.

‘(3) A permission under subsection (1)(b)—

- (a) may, despite anything in the rules of an existing industrial organisation concerned in a proposed amalgamation, authorise the industrial organisation to amend the scheme (including any proposed alterations of the rules of the industrial organisation, but not including the scheme so far as it affects any association proposed to be registered as an industrial organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

- (b) may make provision in relation to the procedure that, despite anything in those rules, may be followed, or is to be followed, by the committee of management in that regard; and
- (c) may be given subject to conditions.

‘(4) If—

- (a) the Commission gives a permission under subsection (1) subject to conditions; and
- (b) the conditions are breached;

the Commission may—

- (c) amend the scheme for the amalgamation, including—
 - (i) the rules of any association proposed to be registered as an industrial organisation in relation to the amalgamation; or
 - (ii) any proposed alterations of the rules of the existing industrial organisations concerned in the amalgamation; or
- (d) give directions and orders—
 - (i) in relation to the conduct of the ballot for the amalgamation; or
 - (ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

‘(5) Subsection (4) does not limit the powers that the Commission has apart from that subsection.

‘(6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

‘Outline of scheme for amalgamation

‘13.73G(1) The outline of the scheme for a proposed amalgamation may, if the Commission approves, consist of more than 3 000 words.

‘(2) The outline may, if the Commission approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

‘(3) The Commission—

- (a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing industrial organisations concerned in the amalgamation to alter the outline; and
- (b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

‘Exemption from ballot**‘13.73H(1) If—**

- (a) an application was filed under section 13.65 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and
- (b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant industrial organisation on the day on which the application was filed;

the Commission must, at the conclusion of the hearing arranged under section 13.71 in relation to the amalgamation, grant the exemption unless the Commission considers that, in the special circumstances of the case, the exemption should be refused.

‘(2) If the exemption is granted, the members of the applicant industrial organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

‘Approval for ballot not conducted under section 13.73J**‘13.73I If—**

- (a) an application was filed under section 13.66 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 13.73J; and
- (b) the proposal provides for—
 - (i) the ballot to be by secret ballot of the members of the industrial organisation; and

- (ii) the ballot to be held at duly constituted meetings of the members; and
- (iii) the ballot to be conducted by the Electoral Commission; and
- (iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and
- (v) the distribution or publication of—
 - (A) the outline of the scheme for the amalgamation; and
 - (B) the statements mentioned in section 13.73E(1) and section 13.73E(2) or (5); and
- (vi) absent voting; and
- (vii) the ballot to be otherwise conducted in accordance with the regulations; and
- (c) the Commission is satisfied, after consulting with the Electoral Commissioner—
 - (i) that the proposal is practicable; and
 - (ii) that approval of the proposal is likely—
 - (A) to result in participation by members of the industrial organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 13.73J; and
 - (B) to give the members of the industrial organisation an adequate opportunity to vote on the amalgamation without intimidation;

the Commission must, at the conclusion of the hearing arranged under section 13.71 in relation to the amalgamation, approve the proposal.

‘Secret postal ballot of members

‘13.73J(1) If the Commission approves, under section 13.73 or 13.73B, the submission of a proposed amalgamation to ballot, the Electoral Commission must, in relation to each of the existing industrial organisations concerned in the amalgamation, conduct a secret postal ballot

of the members of the industrial organisation on the question whether they approve the proposed principal amalgamation.

‘(2) If the scheme for the amalgamation contains a proposed alternative provision, the Electoral Commission must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing industrial organisations on the question or questions whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

‘(3) If, under subsection (2), the Electoral Commission is required to conduct 2 or more ballots of the members of an industrial organisation at the same time, the same ballot paper is to be used for both or all the ballots.

‘(4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Act.

‘(5) A copy of the outline of the scheme for the amalgamation as filed under this Division, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

‘(6) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

‘(7) This section does not apply to an existing industrial organisation concerned in the amalgamation if—

- (a) the Commission has granted the industrial organisation an exemption under section 13.73H from the requirement that a ballot be held in relation to the proposed amalgamation; or
- (b) the Commission has approved under section 13.73I a proposal by the industrial organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

‘Determination of approval of amalgamation by members

‘**13.73K** If the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation concerned in the

amalgamation, the members of the industrial organisation approve the amalgamation if, and only if—

- (a) if a declaration under section 13.62 is in force in relation to the proposed amalgamation—more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or
- (b) in any other case—
 - (i) at least 25% of the members on the roll of voters cast a vote in the ballot; and
 - (ii) more than 50% of the formal votes cast are in favour of the amalgamation.

‘Further ballot if amalgamation not approved

‘13.73L(1) If—

- (a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing industrial organisation; and
- (b) the members of the industrial organisation do not approve the amalgamation;

the existing industrial organisations concerned in the amalgamation may jointly file in the Industrial Registrar’s Office a further application under section 13.63 for approval for the submission of the amalgamation to ballot.

‘(2) If the application is filed within 1 year after the result of the ballot is declared, the Commission may order—

- (a) that any step in the procedure provided by this Division be dispensed with in relation to the proposed amalgamation; or
- (b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the Commission may give such directions and make such further orders as it considers necessary or desirable.

‘(3) Subsection (2) does not by implication require a further application under section 13.63 to be filed within the 1 year period mentioned in that subsection.

‘Inquiries into irregularities

‘13.73M(1) Not later than 30 days after the result of a ballot under this Division is declared, application may be made to the Commission, as prescribed, for an inquiry by the Commission into alleged irregularities in relation to the ballot.

‘(2) If the Commission finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Commission may—

- (a) if the ballot has not been completed—order that a step in relation to the ballot be taken again; or
- (b) in any other case—order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;

and may make such further orders as it considers necessary or desirable.

‘(3) A regulation may make provision with respect to the procedure for inquiries by the Commission into alleged irregularities in relation to ballots under this Division, and for matters relating to, or arising out of, inquiries.

‘Approval of amalgamation

‘13.73N(1) If the members of each of the existing industrial organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Division.

‘(2) If—

- (a) the scheme for a proposed amalgamation contains an alternative provision; and
- (b) the members of 1 or more of the existing industrial organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more of the industrial organisations (the **“approving organisations”**) approve a proposed alternative amalgamation; and
- (d) if 1 of the existing industrial organisations is the proposed amalgamated organisation—that organisation is one of the approving organisations;

the proposed alternative amalgamation is approved for the purposes of this Division.

‘Expenses of ballot

‘13.73O The expenses of a ballot conducted by the Electoral Commission under this Division are payable by the State.

‘Subdivision F—Amalgamation taking effect

‘Action to be taken after ballot

‘13.73P(1) The scheme of a proposed amalgamation that is approved for the purposes of this Division takes effect in accordance with this section.

‘(2) If the Commission is satisfied—

- (a) that the period, or the latest of the periods, within which application may be made to the Court under section 13.73M in relation to the amalgamation has ended; and
- (b) that any application to the Court under section 13.73M has been disposed of, and the result of any fresh ballot ordered by the Court has been declared; and
- (c) that there are no proceedings (other than civil proceedings) pending against any of the existing industrial organisations concerned in the amalgamation in relation to—
 - (i) contraventions of this Act or another law; or
 - (ii) breaches of—
 - (A) awards, industrial agreements or certified agreements; or
 - (B) orders made under this or another Act;

the Commission must, after consultation with the existing industrial organisations, by notice published as prescribed, fix a day as the day on which the amalgamation is to take effect.

‘(3) On the amalgamation day—

- (a) if the proposed amalgamated organisation is not already registered, the Industrial Registrar must enter, in the register kept under section 6.3(1)(b), the prescribed particulars in relation to the organisation, and the date of the entry; and
- (b) any proposed alteration of the rules of an existing industrial organisation concerned in the amalgamation takes effect; and
- (c) the Commission must deregister the proposed deregistering industrial organisations; and
- (d) the persons who, immediately before that day, were members of a proposed deregistering industrial organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

‘Assets and liabilities of deregistered industrial organisation become assets and liabilities of amalgamated organisation

‘13.73Q(1) On the amalgamation day, all assets and liabilities of a deregistered industrial organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.

‘(2) For all purposes and in all proceedings, an asset or liability of a deregistered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

‘Effect of amalgamation on existing decisions of Commission

‘13.73R On and from the amalgamation day—

- (a) a decision of the Commission that was, immediately before that day, binding on a proposed deregistering industrial organisation and its members becomes, by force of this section, binding on the proposed amalgamated organisation and its members; and
- (b) the decision has effect for all purposes (including the obligations of employers and industrial organisations of employers) as if references in the decision to a deregistered organisation included references to the amalgamated organisation.

‘Instruments

‘13.73S(1) On and after the amalgamation day, an instrument to which this Division applies continues, subject to subsection (2), in full force and effect.

‘(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or happening on or after that day as if a reference in the instrument to a deregistered organisation were a reference to the amalgamated organisation.

‘Pending proceedings

‘13.73T If, immediately before the amalgamation day, a proceeding to which this Division applies was pending in a court or before the Commission—

- (a) the amalgamated organisation is, on that day, substituted for each deregistered organisation as a party; and
- (b) the proceeding is to continue as if the amalgamated industrial organisation were, and had always been, the deregistered organisation.

‘Subdivision applies despite laws and agreements prohibiting transfer etc.

‘13.73U(1) This Subdivision applies, and must be given effect to, despite anything in—

- (a) any other Act; or
- (b) any contract, deed, undertaking, agreement or other instrument.

‘(2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of this Subdivision—

- (a) is to be regarded as—
 - (i) placing an industrial organisation or other person in breach of contract or confidence; or

- (ii) otherwise making an industrial organisation or other person guilty of a civil wrong; or
- (b) is to be regarded as placing an industrial organisation or other person in breach of—
 - (i) any Act; or
 - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
- (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.

‘(3) Without limiting subsection (1), if, but for this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

‘Amalgamated organisation to take steps necessary to carry out amalgamation

‘13.73V(1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.

‘(2) The Commission may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.

‘Certificates in relation to land and interests in land

‘13.73W(1) If land or an interest in land becomes, under this Subdivision, land or an interest in land of the amalgamated organisation, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the land or interest, whether by reference to a map or otherwise; and
- (c) states that the land or interest has, under this Subdivision, become land or an interest in land of the amalgamated organisation;

is evidence that the land or interest is an asset of the amalgamated organisation.

‘(2) If the certificate is filed with the Registrar of Titles, the registrar must—

- (a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State.

‘(3) If the certificate is filed with the person or authority who has, under the law of another State or a Territory, responsibility for keeping a register dealing with land registration, the person or authority may, if the person or authority is permitted by law to do so—

- (a) register the matter in the same way as dealings in land or interests in land of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a grant, conveyance, memorandum or instrument of transfer of the land (including all rights, title and interest in the land) or the interest in the land, as the case may be, to the amalgamated organisation that had been properly executed under the law of the State or Territory.

‘Certificates in relation to charges

‘13.73X(1) If the amalgamated organisation under an amalgamation becomes, under this Subdivision, the holder of a charge, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the charge; and
- (c) states that the amalgamated organisation has, under this Subdivision, become the holder of the charge;

is evidence that the charge is an asset of the amalgamated organisation.

‘(2) If the certificate is filed with the Australian Securities Commission,

the Commission may, if it is permitted by law to do so—

- (a) register the matter in the same way as assignments of charges are registered; and
- (b) deal with, and give effect to, the certificate;

as if it were a notice of assignment of the charge that had been properly filed with that Commission.

‘Certificates in relation to shares etc.

‘13.73Y(1) If the amalgamated organisation becomes, under this Subdivision, the holder of a share, debenture or interest in a company, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the share, debenture or interest; and
- (c) states that the amalgamated organisation has become, under this Subdivision, the holder of the share, debenture or interest;

is evidence that the share, debenture or interest is an asset of the amalgamated organisation.

‘(2) If the certificate is delivered to the company, the company may—

- (a) register the matter in the same way as transfers of shares, debentures or interests, as the case may be, in the company are registered; and
- (b) complete all the appropriate certificates, debentures or other documents in relation to the matter; and
- (c) deliver the completed certificates, debentures or other documents to the amalgamated organisation;

as if the certificate were a proper instrument of transfer.

‘Certificates in relation to other assets

‘13.73Z(1) If an asset (other than an asset to which section 13.73W, 13.73X or 13.73Y applies) becomes, under this Subdivision, an asset of the amalgamated organisation, a certificate that—

- (a) is signed by an authorised person; and
- (b) identifies the asset; and
- (c) states that the asset has, under this Subdivision, become an asset of the amalgamated organisation;

is evidence that the asset is an asset of the amalgamated organisation.

‘(2) If the certificate is given to the person or authority who has, under a law of the State, responsibility for keeping a register in relation to assets of that kind, the person or authority must—

- (a) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

‘(3) If the certificate is given to the person or authority who has, under a law of another State, a Territory or the Commonwealth, responsibility for keeping a register in relation to assets of that kind, the person or authority may, if the person or authority is permitted by law to do so—

- (a) register the matter in the same way as transactions in relation to assets of that kind are registered; and
- (b) deal with, and give effect to, the certificate;

as if the certificate were a proper and appropriate instrument for transactions in relation to assets of that kind.

‘Commission may resolve difficulties

‘13.73ZA(1) If any difficulty arises in relation to the application of this Subdivision to a particular matter, the Commission may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.

‘(2) An order made under subsection (1) has effect despite anything contained in this Act or another Act.

‘Subdivision G—Validation**‘Validation of certain acts done in good faith**

‘13.73ZB(1) Subject to this section and to section 13.73ZD, an act done in good faith for the purposes of a proposed or completed amalgamation by—

- (a) an industrial organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

is valid despite any invalidity that may later be discovered in or in connection with the act.

‘(2) For the purposes of this section—

- (a) an act is treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of the committee of management, or an officer, is to be treated as having done so in good faith until the contrary is proved; and
- (c) an invalidity in the making or altering of the scheme for the amalgamation is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of members of the committee of management or to a majority of the persons purporting to act as the committee of management; and
- (d) knowledge of facts from which an invalidity arises is not of itself treated as knowledge that the invalidity exists.

‘(3) This section applies—

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done to or by an association before it became an industrial organisation.

‘(4) Nothing in this section affects—

- (a) the operation of an order of the Court or the Commission made before the commencement of this section; or
- (b) the operation of section 13.17, 13.47, 13.48, 13.49, 13.50, 13.73M, 13.73V or 13.73ZA.

‘Validation of certain acts after 4 years

‘**13.73ZC(1)** Subject to subsection (2) and section 13.73ZD, after the end of 4 years from the day an act is done for the purposes of a proposed or completed amalgamation by—

- (a) an industrial organisation or association concerned in the amalgamation; or
- (b) the committee of management of such an organisation or association; or
- (c) an officer of such an organisation or association;

the act is taken to have complied with this Division and the rules of the industrial organisation or association.

‘(2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar act of the Court, any other court or the Commission made before the end of that 4 years.

‘(3) This section applies—

- (a) to an act whenever done (including an act done before the commencement of this section); or
- (b) to an act done to or by an association before it became an industrial organisation.

‘Orders affecting application of section 13.73ZB or 13.73ZC

‘**13.73ZD(1)** If, on an application for an order under this section, the Commission is satisfied that the application of section 13.73ZB or 13.73ZC (the “**relevant section**”) in relation to an act would do substantial injustice, having regard to the interests of—

- (a) the industrial organisation or association concerned; or
- (b) members or creditors of the industrial organisation or association concerned; or
- (c) persons having dealings with the industrial organisation or association concerned;

the Commission must, by order, declare accordingly.

‘(2) If the declaration is made, the relevant section does not apply, and is taken never to have applied, in relation to the act specified in the declaration.

‘(3) The Commission may make an order under subsection (1) on the application of the industrial organisation or association concerned, a member of the industrial organisation or association concerned or any other person having a sufficient interest in relation to the industrial organisation or association concerned.

‘Commission may make orders in relation to consequences of invalidity

‘**13.73ZE(1)** An industrial organisation or association, a member of an industrial organisation or association or any other person having a sufficient interest in relation to an industrial organisation or association may apply to the Commission for a determination of the question whether an invalidity has happened in a proposed or completed amalgamation concerning the industrial organisation or association.

‘(2) On an application under subsection (1), the Commission may make such declaration as it considers proper.

‘(3) If, in a proceeding under subsection (1), the Commission finds that an invalidity of the kind mentioned in that subsection has happened, the Commission may make such orders as it considers appropriate—

- (a) to rectify the invalidity or cause it to be rectified; or
- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
- (c) to validate any act, matter or thing that is made invalid by or because of the invalidity.

‘(4) If an order is made under subsection (3), the Commission may give

such ancillary or consequential directions as it considers appropriate.

‘(5) The Commission must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to—

- (a) the industrial organisation or association concerned; or
- (b) any member or creditor of the industrial organisation or association concerned; or
- (c) any person having dealings with the industrial organisation or association concerned.

‘(6) This section applies—

- (a) to an invalidity whenever happening (including an invalidity that happened before the commencement of this section); and
- (b) to an invalidity happening in relation to an association before it became an industrial organisation.

‘Subdivision H—Miscellaneous

‘Ballot papers etc. from ballots to be preserved

‘13.73ZF If a ballot for a proposed amalgamation is held under this Division, the Electoral Commission must take such steps as are necessary to ensure that all ballot papers, envelopes and records relevant to the ballot are preserved and kept by the Electoral Commission for a period of 1 year after the ballot.

‘No action for defamation in certain cases

‘13.73ZG(1) A proceeding (whether civil or criminal) for defamation does not lie against—

- (a) the State; or
- (b) an electoral official; or
- (c) a person acting at the request or direction of an electoral official;

in relation to the printing or publication of a document by the official or

person in the course of the conduct of a proposed amalgamation under this Division.

‘(2) In this section—

“**document**” means a document or a copy of a document authorised by, or on behalf of, an industrial organisation or association that is seeking amalgamation.’.

Amendment of s.13.87 (Auditors of industrial organisations)

25. Section 13.87(1)—

omit, insert—

‘**13.87(1)** In this section—

“**competent person**” means, for the purpose of an audit and audit report—

- (a) in relation to an industrial organisation whose financial year income is more than \$10 000—a person—
 - (i) who is a registered company auditor; and
 - (ii) who is not an officer or a member of the industrial organisation; and
 - (iii) who is not employed for the purposes of the industrial organisation in any capacity other than that of auditor; or
- (b) in relation to any other industrial organisation—a person—
 - (i) who is—
 - (A) a registered company auditor; or
 - (B) certified by the Industrial Registrar as having had sufficient experience in keeping or auditing accounts; and
 - (ii) who is not an officer or a member of the industrial organisation;

“**financial year income**” of an industrial organisation, for the purpose of deciding who is a competent person to perform an audit and prepare an audit report, means the industrial organisation’s income for the

financial year immediately before the financial year for which the audit is to be carried out.’.

Amendment of s.14.1 (Appointment of Industrial Inspectors)

26. Section 14.1 (at the end)—

insert—

‘(5) The Minister and the Minister responsible for the Commonwealth Act may enter into arrangements under which a person appointed as an inspector under the Commonwealth Act may be appointed as an inspector for the purposes of this Act.

‘(6) A person appointed as an inspector under arrangements mentioned in subsection (5) may be appointed by the Minister.’.

Amendment of s.14.11 (Payment of employee’s wages etc. to Industrial Inspector)

27. Section 14.11 (at the end)—

insert—

‘(4) A court that hears and determines a complaint against an employer for an offence against subsection (2)(a)—

- (a) apart from any penalty order that it may make; and
- (b) whether or not it convicts the employer;

may order the employer to pay to the employee to whose wages the complaint relates the amount the court finds, on the balance of probabilities, to be due and payable to the employee, or on account of the employee, as the case may be.

‘(5) A court that convicts an employer of an offence against subsection (2)(b) may make in relation to the employer any order that an Industrial Magistrate is authorised by section 5.4 to make on an application made under the section.

‘(6) If an order is made under subsection (5), the provisions of section 5.4 apply to the order in the same way they apply in relation to an order made under section 5.4.’.

Amendment of s.14.12 (Industrial Inspector's obligation for moneys paid on demand)

28. Section 14.12(6)—

omit, insert—

‘(6) If, at the end of 30 days after receiving moneys that are—

- (a) mentioned in subsection (3)(a); and
- (b) required to be accounted for under subsection (5);

the Industrial Inspector has not accounted for the moneys under subsection (5), the Industrial Inspector must pay the moneys to the department.

‘(7) Subject to subsection (8), the department must account for moneys given to it by an Industrial Inspector under subsection (6) in the way specified for the inspector under subsection (5).

‘(8) If—

- (a) moneys are paid to the department under subsection (6); and
- (b) the employee in relation to whom the moneys are to be paid—
 - (i) cannot be located after all reasonable inquiries; or
 - (ii) fails to nominate a superannuation scheme or fund for the purpose of subsection (3);

the department is to pay the moneys into the Unclaimed Moneys Fund in the Treasury.’.

Amendment of s.15.19 (Certifying Barrister)

29. Section 15.19 (at the end)—

insert—

‘(2) A Certifying Barrister is to be paid the fees that the Minister determines.’.

Amendment of s.17.16 (Payment of wages)

30. After section 17.16(4)—

insert—

‘(4A) If—

- (a) wages are payable to an employee in cash; and
- (b) the amount is not a multiple of 5 cents;

the amount may be rounded to the nearest amount that is a multiple of 5 cents, even if this involves a reduction.’.

Amendment of s.17.20 (Recovery of wages etc.)

31. Section 17.20(1)—

omit, insert—

‘17.20(1) An application may be made to an Industrial Magistrate for an order for payment of wages due and payable to an employee, or payable on account of an employee, and unpaid.

‘(1A) An application may be made by—

- (a) the employee; or
- (b) an industrial organisation of employees of which the employee is a member, acting on behalf of the employee; or
- (c) a person acting on behalf of the employee and authorised by the employee to make the application; or
- (d) an Industrial Inspector.’.

Amendment of s.17.21 (Enforcement of Industrial Magistrate’s Orders)

32. Section 17.21(1)—

omit, insert—

‘17.21(1) An order of an Industrial Magistrate for payment by an employer of—

- (a) wages found to be due and payable; or
- (b) contributions to an approved superannuation scheme or fund found to be due and payable; or

- (c) costs in proceedings relating to unpaid sums mentioned in paragraph (a) or (b);

is enforceable under the *Justices Act 1886* as an order for payment of money made by justices under that Act.’

Replacement of s.18.19 (Offence re taking of ballot for office in industrial organisation)

33. Section 18.19—

omit, insert—

‘Offences in relation to the conduct of ballots

‘18.19(1) This section applies in relation to the conduct of—

- (a) an election under Division 3A of Part 13; or
- (b) a proposed amalgamation under Division 7 of Part 13.

‘(2) A person who, without lawful authority or excuse—

- (a) impersonates another person with a view to obtaining a ballot paper to which the first person is not entitled; or
- (b) impersonates another person with a view to voting in the ballot for the election or proposed amalgamation; or
- (c) destroys, defaces, alters, takes or interferes with a nomination paper, ballot paper or envelope; or
- (d) puts a ballot paper, or other paper concerning the election or proposed amalgamation into a ballot box or other receptacle in use for ballot purposes; or
- (e) delivers, or puts in the post for delivery, to a person receiving ballot papers for the election or proposed amalgamation a ballot paper, or other paper concerning the election or proposed amalgamation; or
- (f) records a vote having no entitlement to do so; or
- (g) records more than 1 vote; or

- (h) forges a nomination paper, ballot paper or envelope, or utters a nomination paper, ballot paper or envelope knowing it to be forged; or
- (i) provides a ballot paper to another; or
- (j) obtains, or has possession of, a ballot paper; or
- (k) destroys, opens, takes or interferes with a ballot box or other receptacle in use for ballot purposes;

commits an offence.

Maximum penalty—80 penalty units.

‘(3) A person who—

- (a) threatens, offers or suggests; or
- (b) uses, inflicts, causes or procures;

violence, injury, punishment, damage, loss or disadvantage because of, or to induce—

- (c) a candidature, or withdrawal of a candidature in an election or a proposed amalgamation; or
- (d) a vote, or an omission to vote, in a ballot for an election or a proposed amalgamation; or
- (e) support for, or opposition to, a candidate in an election or a proposed amalgamation; or
- (f) a promise of a vote, omission to vote, support or opposition for or to a candidate or cause in an election or a proposed amalgamation;

commits an offence.

Maximum penalty—80 penalty units.

‘(4) A person who, without lawful authority or excuse—

- (a) requests, requires or induces another—
 - (i) to show a ballot paper to the person; or
 - (ii) to permit the person to see a ballot paper;

in such a way that the person can see the vote recorded in the

ballot paper, while the paper is being marked or after it has been marked; or

- (b) if the person is performing duties for the purposes of the election or proposed amalgamation—shows to another person, or permits another person access to, a ballot paper used in the election or proposed amalgamation otherwise than in the performance of those duties;

commits an offence.

Maximum penalty—80 penalty units.

‘(5) A person who uses, inflicts, causes or procures violence, injury, punishment, damage, loss or disadvantage to another person because the other person has made an application under section 13.31 commits an offence.

Maximum penalty—80 penalty units.

‘(6) In subsection (3)—

“**candidate**” means—

- (a) a person standing for office in an election; or
- (b) an industrial organisation or association that is seeking amalgamation under Division 7 of Part 13.’.

Amendment of s.18.23 (Failure to provide information re amalgamation ballot)

34. Section 18.23—

omit ‘section 13.66’, *insert* ‘section 13.70’.

Amendment of s.18.49 (Persons considered parties to offences)

35. Section 18.49(2) (after ‘penalty’)—

insert—

‘and any other order that may be made on the hearing and determination of the charge’.

Insertion of new Part 19A

36. After Part 19—

insert—

**‘PART 19A—SAVINGS, TRANSITIONAL AND
REPEALS**

‘Repeals

‘19A.1(1) The repeal of the repealed Acts does not affect—

- (a) the continuity of identity or registration of an industrial union registered as such under any Act in force at any time before the commencement of this Act; or
- (b) an exemption, granted under, or affirmed by, any of the repealed Acts, of any person or class of person from the operation of the provisions of any award or industrial agreement.

‘(2) The repeal of the repealed Acts does not render defective any proceedings started by or against an industrial union registered under any of the repealed Acts, or started under or for the purposes of any of the repealed Acts, before the repeal, or cause any such proceeding to abate or to be discontinued.

‘(3) The repeal of the repealed Acts does not affect the continued operation of any enactment, the operation of which was declared by any of the repealed Acts to be preserved.

‘Savings

‘19A.2(1) Every person of a description of person prescribed by or under any Act to be an employee within the meaning of the repealed Acts continues to be an employee within the meaning of this Act.

‘(2) Every proclamation, order in council, regulation or rule made under any of the repealed Acts and in force immediately before the commencement of this Act continues in force until it expires by effluxion of time, or is repealed, amended, suspended or cancelled under this Act.

‘(3) Every such proclamation, order in council, regulation or rule, while

it so continues in force, is to be read subject to this Act.

‘(4) Every award, decision, exemption, judgment, ruling, permit or licence or other act of authority, or industrial agreement made, given, done, granted or approved by the Industrial Court, the Industrial Commission, an Industrial Magistrate or the Industrial Registrar under any of the repealed Acts and in force immediately before the commencement of this Act continues in force as if it had been made, given, done, granted or approved by the Court, Commission, magistrate or registrar, according to their respective functions and jurisdictions, under the corresponding provision of this Act and may be revoked, amended, suspended or modified pursuant to this Act.

‘(5) All proceedings instituted before the commencement of this Act under or for the purposes of a provision of any of the repealed Acts and pending at the date of the repeal of the provision may be carried on and prosecuted as if they had been instituted under or for the purposes of the corresponding provision of this Act.

‘(6) If the proceeding is one in which the person or entity before whom it was instituted had jurisdiction under the *Industrial Conciliation and Arbitration Act 1961* but has not jurisdiction under this Act, then—

- (a) if the proceeding stands part heard at the commencement of this Act—it is to be completed before that person or entity who, for this purpose, is taken to have jurisdiction as if this Act had not been enacted; or
- (b) if the proceeding does not stand part heard at the commencement of this Act—it is to be completed before the person or entity who has jurisdiction under this Act, as if it had been instituted before that person or entity under this Act in the first instance.

‘(7) A proceeding is taken to be part heard after commencement of the hearing until the decision in the proceeding is pronounced.

‘Demarcation orders and disputes

‘19A.3(1) An order in force under section 4.25 immediately before the commencement is taken, after the commencement, to have been made under section 4.25A.

‘(2) If a matter is, immediately before the commencement, being dealt

with by the Commission under section 4.25, the matter is to be dealt with, after the commencement, under section 4.25A as if the matter were being dealt with by the Commission on an application made under section 4.25A.

‘(3) In this section—

“**commencement**” means the commencement of section 7 of the *Industrial Relations Amendment Act 1992*.

‘**Transitional provisions in relation to amalgamations**

‘**19A.4(1)** If the scheme for a proposed amalgamation was submitted to ballot under Division 7 of Part 13 (as in force immediately before the commencement), but, before the commencement, the amalgamation had neither taken effect nor been rejected by the members of the industrial organisations concerned, then subject to subsections (2) and (4), the proposed amalgamation is to continue to be dealt with, and may take effect, as if the *Industrial Relations Amendment Act 1992* had not been enacted.

‘(2) If, immediately before the commencement, none of the ballots in relation to a proposed amalgamation had been started, Division 7 of Part 13 (as in force after the commencement) applies to the proposed amalgamation as if—

- (a) the submission of the proposed amalgamation to ballot had been approved by the Commission under that Division; and
- (b) the reference in section 13.73K(a) to a declaration having been made under section 13.62 included a reference to a declaration having been made under section 13.60 (as in force immediately before the commencement); and
- (c) anything else done under this Act (as in force immediately before the commencement) in relation to the proposed amalgamation had been done under the corresponding provision of this Act (as in force immediately after the commencement).

‘(3) For the purposes of subsection (2), a ballot is taken to have started when notice of the ballot was published in the *Industrial Gazette* under section 13.65(2) (as in force immediately before the commencement).

‘(4) A proposed amalgamation in relation to which an application was lodged with the Industrial Registrar under section 13.56 (as in force before

the commencement), and that has not taken effect before the commencement, may be withdrawn by the bodies that submitted the application at any time before the amalgamation takes effect.

‘(5) In this section—

“**commencement**” means the commencement of section 24 of the *Industrial Relations Amendment Act 1992*.’.

Insertion of new Part 19B

37. After Part 19A—

insert—

‘PART 19B—RENUMBERING OF ACT

‘Renumbering of Act

‘19B.1(1) In this section—

“**commencement**” means the commencement of this Part;

“**new Act**” means this Act after the commencement;

“**old Act**” means this Act before the commencement.

‘(2) The Parts of the new Act are renumbered so that they bear consecutive arabic numerals starting with ‘1’.

‘(3) The Divisions of each Part of the new Act are renumbered so that they bear consecutive arabic numerals starting with ‘1’.

‘(4) The sections of the new Act are renumbered in a single series so that they bear consecutive arabic numerals starting with ‘1’.

‘(5) The sentences of each section of the new Act (whether or not they are subsections) are renumbered so that they bear consecutive arabic numerals enclosed in brackets starting with ‘(1)’.

‘(6) The provisions of each section of the new Act that are introduced with a dot point (•) are numbered so that a provision—

- (a) if it is a provision unit equivalent to a paragraph—is numbered as a paragraph; and

- (b) if it is a provision unit equivalent to a subparagraph—is numbered as a subparagraph; and
- (c) if it is a provision unit equivalent to a sub-subparagraph—is numbered as a sub-subparagraph.

‘(7) For the purposes of subsection (6)—

- (a) paragraphs in a provision may be numbered and renumbered so that they bear, within the provision, consecutive, lower case arabic letters enclosed in brackets starting with (a); and
- (b) subparagraphs in a provision may be numbered and renumbered so that they bear, within the provision, consecutive, lower case roman numerals enclosed in brackets starting with (i); and
- (c) sub-subparagraphs in a provision may be numbered and renumbered so that they bear, within the provision, consecutive, upper case arabic letters enclosed in brackets starting with (A).

‘(8) Each reference in the new Act to a provision of the new Act that has been numbered or renumbered under this section is amended by omitting the reference and substituting a reference to the provision as numbered or renumbered.’.

Minor and consequential amendments

38. The *Industrial Relations Act 1990* is further amended as set out in the Schedule.

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS

section 38

1. Sections 2.1 (definitions “bonus payment”, “eligible employee” and “young employee”), 3.9, 4.14, 4.18(4)(b), 4.18(6), 4.19(2), 4.21(1), 4.22(1) and (3), 4.23(1) and (3), 5.3(a)(v), 5.4(1) and (2), 8.12(2)(a), 8.13(c), 8.24(1)(b), 9.4(4), 10.16, 10.17, 10.19, 10.20(1), 11.1(1) and (3), 11.2, 11.3(1), (5), (6) and (8), 11.4 to 11.6, 11.7(1), 11.8(1), 11.12(1), 11.14(1), (2) and (4), 11.15(1), (2) and (5), 11.16(2)(b), 11.17, 11.19, 11.20(1), 11.21(1) (1st sentence), 11.28, 11.29, 11.33(1)(b), 11.34, 12.1(8), 13.11, 13.107(1)(c), 13.108(4), 13.109(1), 14.11(2)(b)(i), 14.12(3)(a)(i), 15.3(2)(c)(i) and (3), 15.4, 15.14, 15.15, 15.18(3), 16.3, 17.6(5)(c), 17.23, 18.9(1), 18.43(1), (3) and (4) and 18.45(1)—

omit ‘award or industrial agreement’ (wherever occurring),

insert ‘award, industrial agreement or certified agreement’.

2. Sections 2.1 (definition “party”), 2.2(3)(d)(i), 3.6(1)(b)(iii), 3.8, 3.10(a), 4.30(1)(a)(vi), 5.3(a)(ii) and (iii), 15.3(1)(a) and (b), 15.3(2)(c)(iii) and (2)(f), 15.4(1)(a) and (b), 17.16(1), (2)(a) and (b), 18.42(1) and (2), 18.44(1) and (3), 18.47(1), (3) and (4), 18.48(1) and 18.50(1) (2nd sentence, paragraph (a))—

omit ‘award, industrial agreement or permit’ (wherever occurring),

insert ‘award, industrial agreement, certified agreement or permit’.

3. Section 4.18(4)(a) (after ‘industrial agreement’)—

insert ‘or certified agreement’.

4. Section 8.11(1) (2nd sentence, after ‘industrial agreement’)—

insert ‘or certified agreement’.

5. After section 8.12(2)(b)—

insert—

‘(ba) a copy of a certified agreement, bearing a certificate purporting to be that of the Industrial Registrar that it is a true copy, is admissible as evidence of the agreement, its execution as shown in the copy, and its certification by the Commission; and’.

6. Section 11.21(2) (after ‘industrial agreement’ (1st occurring))—

insert ‘or certified agreement’.

7. Section 11.22(a) (after ‘industrial agreement’)—

insert ‘, certified agreement’.

8. Section 11.23(1)(c)(iv)(A)—

omit ‘an award or an industrial agreement’,

insert ‘an award, an industrial agreement or a certified agreement’.

9. Section 13.74(1)(a)—

omit ‘or industrial agreement’ (wherever occurring),

insert ‘, industrial agreement or certified agreement’.

10. Section 13.75(2)(a)—

omit ‘or industrial agreements’,

insert ‘industrial agreements or certified agreements’.

11. Section 13.79(b) to (d)—

omit ‘or industrial agreement’,

insert ‘industrial agreement or certified agreements’.

12. Section 14.5 (after ‘industrial agreements,’)—

insert ‘certified agreements,’.

13. Section 14.6 (after ‘industrial agreement’ (wherever occurring))—

insert ‘, certified agreement’.

14. Section 15.24 (after ‘industrial agreement’)—

insert ‘, certified agreement’.

15. Section 16.2 (after ‘industrial agreement’ (1st and 3rd occurring))—

insert ‘, certified agreement’.

16. Section 16.2—

omit ‘or industrial agreement’,

insert ‘or industrial agreement or certified agreement’.

17. Section 18.53(a) (after ‘industrial agreements,’)—

insert ‘certified agreements’.