



Fair Work (Commonwealth Powers) and Other Provisions Act 2009

Reprinted as in force on 6 May 2010

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Reprint No. 0F

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Information about this reprint

This Act is reprinted as at 6 May 2010. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

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

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

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

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

Also see endnotes for information about—

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

Spelling

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

Dates shown on reprints

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

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

Replacement reprint date If the date of an authorised reprint is the same as the date shown on another authorised reprint it means that one is the replacement of the other.



Queensland

Fair Work (Commonwealth Powers) and Other Provisions Act 2009

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Fair Work (Commonwealth Powers) and Other Provisions Act 2009

[as amended by all amendments that commenced on or before 6 May 2010]

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

Part 1 Preliminary

1 Short title

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

2 Commencement

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

3 Definitions

- (1) In this Act—
amendment reference means the reference under section 5(1)(b).
Commonwealth Fair Work Act means the *Fair Work Act 2009* (Cwlth) (as amended from time to time).

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

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

excluded subject matter means any of the following matters—

- (a) a matter dealt with in the *Anti-Discrimination Act 1991*;
- (b) superannuation;
- (c) workers' compensation;
- (d) occupational health and safety;
- (e) matters relating to outworkers (within the ordinary meaning of the term);
- (f) child labour;
- (g) training arrangements;
- (h) long service leave;
- (i) leave for victims of crime;
- (j) attendance for service on a jury, or for emergency service duties;
- (k) declaration, prescription or substitution of public holidays;
- (l) the following matters relating to provision of essential services or to situations of emergency—
 - (i) directions to perform work, including to perform work at a particular time or place, or in a particular way;
 - (ii) directions not to perform work, including not to perform work at a particular time or place, or in a particular way;
- (m) regulation of any of the following—
 - (i) employee associations;
 - (ii) employer associations;

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- (iii) members of employee associations or of employer associations;
 - (n) workplace surveillance;
 - (o) business trading hours;
 - (p) claims for enforcement of contracts of employment, except so far as a law of the State provides for the variation or setting aside of rights and obligations arising under a contract of employment, or another arrangement for employment, that a court or tribunal finds is unfair;
 - (q) rights or remedies incidental to a matter referred to in a preceding paragraph of this definition;

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

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

fundamental workplace relations principles see section 4.

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

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

law enforcement officer means—

- (a) a member of the Queensland Police Service as defined under the *Police Service Administration Act 1990*, section 2.2; or

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- (b) a special constable appointed under the *Police Service Administration Act 1990*, section 5.16.

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

local government sector employer means an employer that is—

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

public sector employee means—

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

public sector employer means any of the following—

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

(f) a chief executive of, or part of, an entity mentioned in a preceding paragraph;

but does not include the following—

(g) a GOC;

(h) an entity mentioned in schedule 1;

(i) a chief executive of an entity mentioned in paragraphs (g) and (h).

reference means—

(a) the initial reference; or

(b) the amendment reference; or

(c) the transition reference.

referred subject matters means any of the following—

(a) terms and conditions of employment, including any of the following—

(i) minimum terms and conditions of employment (including employment standards and minimum wages);

(ii) terms and conditions of employment contained in instruments (including instruments such as awards, determinations and enterprise-level agreements);

(iii) bargaining in relation to terms and conditions of employment;

(iv) the effect of a transfer of business on terms and conditions of employment;

(b) terms and conditions under which an outworker entity may arrange for work to be performed for the entity (directly or indirectly), if the work is of a kind that is often performed by outworkers;

(c) rights and responsibilities of persons, including employees, employers, independent contractors, outworkers, outworker entities, associations of

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employees or associations of employers, being rights and responsibilities relating to any of the following—

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

but does not include any excluded subject matter.

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

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

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

scheduled text means the text set out in Schedule 2.

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

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

Part 2 Reference of matters

4 Fundamental workplace relations principles

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

- (a) that the Commonwealth Fair Work Act should provide for, and continue to provide for, the following—
 - (i) a strong, simple and enforceable safety net of minimum employment standards;
 - (ii) genuine rights and responsibilities to ensure fairness, choice and representation at work, including the freedom to choose whether or not to join and be represented by a union or participate in collective activities;
 - (iii) collective bargaining at the enterprise level with no provision for individual statutory agreements;
 - (iv) fair and effective remedies available through an independent umpire;

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- (v) protection from unfair dismissal;
- (b) that there should be, and continue to be, in connection with the operation of the Commonwealth Fair Work Act, the following—
 - (i) an independent tribunal system;
 - (ii) an independent authority able to assist employers and employees within a national workplace relations system.

5 Reference of matters

- (1) Subject to the other provisions of this Act, the following matters are referred to the Parliament of the Commonwealth—
 - (a) the matters to which the initial referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the initial referred provisions in the Commonwealth Fair Work Act, as originally enacted, and as subsequently amended by amendments enacted at any time before this Act commences, in the terms, or substantially in the terms, set out in the scheduled text;
 - (b) the referred subject matters, but only to the extent of making laws with respect to any such matter by making express amendments of the Commonwealth Fair Work Act;
 - (c) the referred transition matters.
- (2) The reference of a matter under subsection (1) has effect only—
 - (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Commonwealth Constitution); and

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

6 Matters excluded from the reference

A matter referred by section 5 does not include—

- (a) matters relating to Ministers or Members of Parliament; or
- (b) matters relating to the Governor, the Office of the Governor, the Governor's official residence (known as 'Government House') and its associated administrative unit; or
- (c) matters relating to judicial officers, or members of tribunals established by or under a law of the State, or their associates; or
- (d) matters relating to public sector employees and employers; or

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

7 Termination of references

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

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

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

9 Period for termination of references

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

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(ii) has been amended;

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

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

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

10 Proclamations

A proclamation made under this Act is subordinate legislation.

12 Transitional provision

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

Part 4 **Amendments relating to trustee companies**

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

80 **Act amended**

This division amends the *Trustee Companies Act 1968*.

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

Sections 36 and 36A—

omit.

Editor's note—

This provision had not commenced on or before the reprint date.

86 **Omission of pt 4**

Part 4, as amended—

omit.

Editor's note—

Section 86, to the extent it omits sections 41 to 44, 45(1)(a) and (1)(c), (2) and (3) and 45A, commenced on 6 May 2010.

Division 2 **Repeal**

98 **Repeal of regulation**

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

Schedule 1 Other entities that are not public sector employers

section 3, definition *public sector employer*

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

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

section 3, definition *scheduled text*

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

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

(1) In this Division:

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

excluded subject matter means any of the following matters:

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

Schedule 2

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

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

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

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

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

law enforcement officer means:

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

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

local government employee, of a State, means:

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

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

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

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

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

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

referred subject matters means any of the following:

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

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

but does not include any excluded subject matter.

referring State: see section 30L.

State public sector employee, of a State, means:

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

and includes a law enforcement officer of the State.

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

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

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

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

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

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

30L Meaning of *referring State*

Reference of matters by State Parliament to Commonwealth Parliament

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

This subsection has effect subject to subsection (6).

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

Reference covering referred provisions

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

Reference covering amendments

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

Reference covering transitional matters

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

to the regime provided for by this Act.

Effect of termination of reference

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

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

30M Extended meaning of *national system employee*

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

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

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

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

30N Extended meaning of *national system employer*

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

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

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

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

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

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

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

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

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

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

30Q Extended meaning of *outworker entity*

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

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

30R General protections

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

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

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

30S Division only has effect if supported by reference

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

Endnotes

1 Index to endnotes

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 May 2010. Future amendments of the Fair Work (Commonwealth Powers) and Other Provisions Act 2009 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

| Key | Explanation | Key | Explanation |
|--------|--------------------------------|---------|---|
| AIA | = Acts Interpretation Act 1954 | (prev) | = previously |
| amd | = amended | proc | = proclamation |
| amdt | = amendment | prov | = provision |
| ch | = chapter | pt | = part |
| def | = definition | pubd | = published |
| div | = division | R[X] | = Reprint No. [X] |
| exp | = expires/expired | RA | = Reprints Act 1992 |
| gaz | = gazette | reloc | = relocated |
| hdg | = heading | renum | = renumbered |
| ins | = inserted | rep | = repealed |
| lap | = lapsed | (retro) | = retrospectively |
| notfd | = notified | rv | = revised edition |
| num | = numbered | s | = section |
| o in c | = order in council | sch | = schedule |
| om | = omitted | sdiv | = subdivision |
| orig | = original | SIA | = Statutory Instruments Act 1992 |
| p | = page | SIR | = Statutory Instruments Regulation 2002 |
| para | = paragraph | SL | = subordinate legislation |
| prec | = preceding | sub | = substituted |
| pres | = present | unnum | = unnumbered |
| prev | = previous | | |

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

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

5 List of legislation

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

date of assent 19 November 2009

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

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

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

pt 4 (other than ss 84, 86 (to the extent it om s 45(1)(b)) commenced 6 May 2010 (2010 SL No. 80)

ss 84, 86 (to the extent it om s 45(1)(b)) commence 1 July 2010 (2010 SL No. 80)

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

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

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

amending legislation—

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

date of assent 19 November 2009

ss 1–2 commenced on date of assent

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

6 List of annotations

Title amd 2009 No. 49 s 11(1)

Amendment of long title

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

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

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

Division 1—Amendment of Acts Interpretation Act 1954

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

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

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

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

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

Division 4—Amendment of Electoral Act 1992

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

Endnotes

Division 5—Amendment of Electricity Act 1994

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

Division 6—Amendment of Health Services Act 1991

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

Division 7—Amendment of Industrial Relations Act 1999

div 7 (ss 30–64) amd ROB (see RA s 40)
om ROD (see RA ss 7(1)(k) and 40)

Division 8—Amendment of Industrial Relations Regulation 2000

div 8 (ss 65–68) om ROD (see RA ss 7(1)(k) and 40)

Division 9—Amendment of Magistrates Courts Act 1921

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

Division 10—Amendment of Statutory Instruments Act 1992

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

Division 11—Amendment of Summary Offences Act 2005

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

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

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

Division 13—Amendment of Workplace Health and Safety Act 1995

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

PART 4—AMENDMENTS RELATING TO TRUSTEE COMPANIES

Division 1—Amendment of Trustee Companies Act 1968

Amendment of s 4 (Definitions)

s 81 om ROF (see RA s 40)

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

s 82 om ROF (see RA s 40)

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

s 83 om ROF (see RA s 40)

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

s 85 om ROF (see RA s 40)

Omission of ss 50–53

s 87 om ROF (see RA s 40)

Omission of pt 6

s 88 om ROF (see RA s 40)

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

s 89 om ROF (see RA s 40)

Omission of pt 7

s 90 om ROF (see RA s 40)

Replacement of pt 8, hdg (General)

s 91 om R0F (see RA s 40)

Insertion of new s 68C

s 92 om R0F (see RA s 40)

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

s 93 om R0F (see RA s 40)

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

s 94 om R0F (see RA s 40)

Renumbering of pts 1–8

s 95 om R0F (see RA s 40)

Insertion of new pt 6

s 96 om R0F (see RA s 40)

Omission of sch 2

s 97 om R0F (see RA s 40)

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

div 3 (ss 99–100) om R0F (see RA ss 7(1)(k) and 40)

Division 4—Amendment of Guardianship and Administration Act 2000

div 4 (ss 101–103) om R0F (see RA ss 7(1)(k) and 40)

Division 5—Amendment of Trusts Act 1973

div 5 (ss 104–105) om R0F (see RA ss 7(1)(k) and 40)

PART 5—AMENDMENT OF ADOPTION ACT 2009

pt 5 (ss 106–107) om R0E (see RA ss 7(1)(k) and 40)

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

pt 6 (ss 108–109) om R0A (see RA ss 7(1)(k) and 40)

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

pt 7 (ss 110–111) om R0A (see RA ss 7(1)(k) and 40)