



Queensland

# Industrial Relations and Other Legislation Amendment Act 2022

**Act No. 27 of 2022**

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**An Act to amend the Anti-Discrimination Act 1991, the Associations Incorporation Act 1981, the Associations Incorporation Regulation 1999, the Industrial Relations Act 2016 and the Public Trustee Act 1978 for particular purposes**

**[Assented to 3 November 2022]**





Queensland

# Industrial Relations and Other Legislation Amendment Act 2022

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Industrial Relations and Other Legislation Amendment Act 2022*.

### **2 Commencement**

Part 2, division 3 commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Industrial Relations Act 2016**

### **Division 1 Preliminary**

#### **3 Act amended**

This part and schedule 1 amend the *Industrial Relations Act 2016*.

### **Division 2 Amendments commencing on assent**

#### **4 Amendment of s 4 (How main purpose is primarily achieved)**

Section 4(i), after ‘preventing and eliminating’—  
*insert—*

[s 5]

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sexual harassment, sex or gender-based harassment,

## **5 Amendment of s 40 (Entitlement to sick leave)**

(1) Section 40—

*insert—*

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

(2) Section 40(3A) to (5)—

*renumber* as section 40(4) to (6).

## **6 Amendment of s 41 (Requirement for employee to give notice etc.)**

Section 41(1)(b)—

*omit, insert—*

(b) if the employee is absent for more than 2 days and the employer requires evidence of the illness—the employee giving the employer sufficient evidence of the illness to satisfy a reasonable person.

## **7 Amendment of s 45 (Employee to provide evidence to employer)**

Section 45(1), from ‘a doctor’s’—

*omit, insert—*

sufficient evidence to satisfy a reasonable person that the person is ill with an illness requiring care or support by another person.

---

**7A Amendment of s 52 (Entitlement to domestic and family violence leave)**

- (1) Section 52(1), ‘other than’—  
*omit, insert—*  
including
- (2) Section 52(2) and (3)—  
*omit.*
- (3) Section 52(4), (5) and (7), ‘, (2) or (3)’—  
*omit.*
- (4) Section 52(8), from ‘long term’ to ‘short term’—  
*omit.*
- (5) Section 52(4) to (9)—  
*renumber* as section 52(2) to (7).

**8 Amendment of s 57 (Definitions for division)**

- (1) Section 57, definition *maternity leave*—  
*omit.*
- (2) Section 57—  
*insert—*  
***stillborn child*** means a child—
  - (a) who has shown no sign of respiration or heartbeat, or other sign of life, after delivery of the child has been completed; and
  - (b) who—
    - (i) has been gestated for 20 weeks or more; or
    - (ii) weighs 400g or more.
- (3) Section 57, definition *child*, paragraphs (a) and (c), ‘5 years’—

[s 9]

---

*omit, insert—*

16 years

- (4) Section 57, definition *long birth-related leave*, paragraph (a)—

*omit, insert—*

(a) leave taken by a pregnant employee—

- (i) for the birth of the employee's child; or
- (ii) to enable the employee to be responsible for the care of the child; or

- (5) Section 57, definition *short adoption leave*, 'placed with'—

*omit, insert—*

adopted by

- (6) Section 57, definition *short birth-related leave*, paragraph (b), after 'living child'—

*insert—*

or stillborn child

## **9 Amendment of s 58 (Application of subdivision)**

- (1) Section 58—

*insert—*

- (1A) Also, this subdivision applies subject to section 87B.

*Note—*

Section 87B ends an employee's entitlement to parental leave under this subdivision when the employee takes unpaid flexible parental leave under that section.

- (2) Section 58(2), definition *continuous service*, 'employment contract'—

*omit, insert—*

contract of employment

- 
- (3) Section 58(1A) and (2)—  
*renumber* as section 58(2) and (3).

**10 Amendment of s 59 (Entitlement to birth-related leave)**

- (1) Section 59(1), ‘maternity’—  
*omit, insert*—  
birth-related
- (2) Section 59(3)(a)—  
*omit, insert*—
- (a) if the employee’s spouse gave birth to a child and is taking long birth-related leave—may be taken concurrently with the employee’s spouse’s long birth-related leave; and

**11 Amendment of s 63 (Employee notice—intention to take maternity leave)**

- (1) Section 63, heading, from ‘to take’—  
*omit, insert*—  
**of pregnant employee to take birth-related leave**
- (2) Section 63(1), ‘maternity’—  
*omit, insert*—  
birth-related
- (3) Section 63(2)(b), ‘she’—  
*omit, insert*—  
the employee
- (4) Section 63(3)(a)—  
*omit, insert*—

[s 12]

---

- (a) if required by the employer—sufficient evidence to satisfy a reasonable person that the employee is pregnant and the expected date of birth; and
- (5) Section 63(3)(b), ‘her’—  
*omit, insert—*  
the employee’s
- (6) Section 63—  
*insert—*
  - (4) Without limiting subsection (3)(a), the employer may require the evidence to be a health practitioner’s certificate confirming the matters mentioned in that subsection.

## 12 **Amendment of s 64 (Employee notice—intention to take birth-related leave other than maternity leave)**

- (1) Section 64, heading, from ‘to take’—  
*omit, insert—*  
**of pregnant employee’s spouse to take birth-related leave**
- (2) Section 64(1)—  
*omit, insert—*
  - (1) This section applies if an employee whose spouse is pregnant or has given birth to a child wants to take birth-related leave.
- (3) Section 64(3)(a)—  
*omit, insert—*
  - (a) if required by the employer—sufficient evidence to satisfy a reasonable person that the employee’s spouse is pregnant and the expected date of birth; and
- (4) Section 64(3)(b)(i), ‘maternity’—



*omit, insert—*

birth-related

(5) Section 64—

*insert—*

- (4) Without limiting subsection (3)(a), the employer may require the evidence to be a health practitioner's certificate confirming the matters mentioned in that subsection.

**13 Amendment of s 67 (Reasons not to give notice or documents)**

(1) Section 67(1)(b)—

*omit, insert—*

(b) the child's adoption before the expected adoption date; or

(2) Section 67(2)(a), 'placement'—

*omit, insert—*

adoption

(3) Section 67(2)(b), 'doctor's'—

*omit, insert—*

health practitioner's

(4) Section 67(2)—

*insert—*

(c) in the case of the birth of a stillborn child—a health practitioner's certificate stating the date on which the child was stillborn.

**14 Amendment of ch 2, pt 3, div 8, sdiv 4, hdg (Application to extend parental leave or return part-time)**

Chapter 2, part 3, division 8, subdivision 4, heading, 'return'—

[s 15]

---

*omit, insert—*

**work**

**15 Amendment of s 73 (Application for extension of parental leave)**

Section 73(1), from ‘employer’—

*omit, insert—*

employer for an extension of the leave for an unbroken period of up to 104 weeks in total, minus the period of any short parental leave taken by the employee.

**16 Amendment of s 74 (Application to work part-time)**

(1) Section 74—

*insert—*

(1A) Also, an employee who returned to work on a full-time basis after taking parental leave may apply to the employer to change to work on a part-time basis.

(2) Section 74(1A) to (2)—

*renumber* as section 74(2) to (3).

**17 Amendment of s 75 (Application for extension or part-time work)**

(1) Section 75(1)(b)—

*insert—*

(iv) for an application to change to work on a part-time basis—at least 7 weeks before change being applied for is to start; and

(2) Section 75(1)(c), (d) and (f), after ‘return’—

*insert—*

or change

- (3) Section 75(1)(f)(ii), ‘continue to’—  
*omit.*

## **18 Amendment of s 78 (Cancelling parental leave)**

- (1) Section 78(1)(b), after ‘living child’—  
*insert—*

or stillborn child

- (2) Section 78(1)(c)—  
*omit, insert—*

(c) the adoption of the child by the employee  
does not proceed; or

- (3) Section 78(2)(c)—  
*omit, insert—*

(c) the adoption of the child by the employee  
does not proceed or continue; or

- (4) Section 78(4)—  
*omit, insert—*

(4) This section does not affect an employee’s  
entitlement to—

(a) special pregnancy-related leave or sick leave  
under section 85; or

(b) if the pregnancy of an employee’s spouse  
ends other than by the birth of a living child  
or a stillborn child—short birth-related  
leave; or

(c) birth-related leave for the birth of a stillborn  
child under section 85A.

[s 19]

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**19 Amendment of s 85 (Special maternity leave and sick leave)**

(1) Section 85, heading, ‘maternity’—

*omit, insert—*

**pregnancy-related**

(2) Section 85(1)(a), after ‘living child’—

*insert—*

or stillborn child

(3) Section 85(1)(b), ‘maternity’—

*omit, insert—*

birth-related

(4) Section 85(1)(b), ‘her’—

*omit, insert—*

the employee’s

(5) Section 85(2), ‘doctor’—

*omit, insert—*

health practitioner

(6) Section 85(2)(a), ‘maternity’—

*omit, insert—*

**pregnancy-related**

(7) Section 85(2)(b), ‘maternity’—

*omit, insert—*

pregnancy-related

**20 Insertion of new s 85A**

After section 85—

*insert—*

---

### **85A Birth-related leave—stillborn child**

- (1) This section applies if an employee’s pregnancy ends by the birth of a stillborn child.
- (2) The employee and the employee’s spouse are each entitled to the birth-related leave that they would have been entitled to if the child had been born living.
- (3) For this division, the employee and the employee’s spouse are taken to be responsible for caring for a child.

## **21 Insertion of new s 87B**

After section 87A—

*insert—*

### **87B Flexible parental leave**

- (1) This section applies if—
  - (a) an employee is entitled to parental leave under subdivision 2 to be responsible for the care of a child of the employee; and
  - (b) the periods of the parental leave the employee has taken for the child, if any, total less than 52 weeks.
- (2) The employee is entitled to a maximum of 30 days of unpaid flexible parental leave in relation to the child.
- (3) However, the employee’s entitlement to flexible parental leave under subsection (2) ends when—
  - (a) the sum of the following amounts equals or exceeds 52 weeks—
    - (i) the total of the periods of parental leave taken by the employee for the child;
    - (ii) the total number of days of flexible parental leave taken in relation to the

[s 21]

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child, expressed as a notional 5-day work week in the way mentioned in subsection (4); or

- (b) the period mentioned in subsection (6) ends.
- (4) For subsection (3)(a)(ii), the number of days of flexible parental leave taken by the employee is expressed as a notional 5-day work week by adding 2 days of notional weekend for each 5 days of leave taken.
- (5) The employee's flexible parental leave under subsection (2) may be taken—
- (a) whether or not the employee has taken any of the parental leave the employee is entitled to take to be responsible for the care of the child; and
  - (b) in an unbroken period or broken periods; and
  - (c) if the total period of the parental leave taken by the employee for the child concurrently with the employee's spouse, if any, does not exceed 8 weeks—concurrently with the employee's spouse's parental leave for the child.
- (6) The employee may take flexible parental leave within the period of 104 weeks after—
- (a) the child was born; or
  - (b) the child was adopted by the employee; or
  - (c) the child started residing with the employee under the surrogacy arrangement; or
  - (d) the child's parentage was transferred to the employee under a cultural recognition order.
- (7) If the child and another child of the employee were born during the same multiple birth, or were adopted by the employee on the same day, the

---

employee's entitlement to flexible parental leave under this section—

- (a) applies jointly in relation to both children; and
  - (b) does not apply separately in relation to each child.
- (8) The employee's entitlement to take parental leave under subdivision 2 to be responsible for the care of the child ends on the first day the employee takes flexible parental leave in relation to the child.
- (9) However, subsection (8) does not affect the employee's entitlement to flexible parental leave under this section.
- (10) In this section, a reference to parental leave taken by an employee for a child—
- (a) is a reference to the parental leave taken by the employee under subdivision 2 to be responsible for the care of the child; but
  - (b) does not include parental leave taken that is part of an extended period of parental leave agreed to in response to an application under section 73.

## **22 Amendment of s 88 (Return to work after parental leave etc.)**

(1) Section 88(1)—

*omit, insert—*

- (1) This section applies to an employee who returns to work after—
  - (a) parental leave; or
  - (b) special pregnancy-related leave or sick leave under section 85.

[s 23]

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- (2) Section 88(2)(b) and (c) and (5), ‘maternity’—  
*omit, insert*—  
birth-related

## **23 Amendment of s 89 (Transfer to a safe job)**

- (1) Section 89(1)—  
*omit, insert*—  
(1) This section applies whenever the present work of an employee is, because the employee is pregnant or breastfeeding, a risk to the health and safety of the employee or the employee’s unborn or newborn child.
- (2) Section 89(2)(a), ‘doctor’s’—  
*omit, insert*—  
health practitioner’s
- (3) Section 89(4)(a), ‘her’—  
*omit, insert*—  
the employee
- (4) Section 89(4)(b), ‘her’—  
*omit, insert*—  
the employee’s
- (5) Section 89(5), ‘maternity’—  
*omit, insert*—  
birth-related
- (6) Section 89(5), ‘doctor’—  
*omit, insert*—  
health practitioner



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**24 Amendment of s 90 (Continuity of service)**

(1) Section 90(1), ‘does’—

*omit, insert—*

and flexible parental leave do

(2) Section 90(2), ‘is not’—

*omit, insert—*

and flexible parental leave are not

(3) Section 90(2)(a), after ‘parental leave’—

*insert—*

or a period of flexible parental leave

(4) Section 90—

*insert—*

(3) In this section—

*flexible parental leave* means leave an employee is entitled to under section 87B.

**25 Amendment of s 121 (What employer must do to dismiss employee)**

(1) Section 121(2)—

*insert—*

(ba) sexual harassment or sex or gender based-harassment;

(2) Section 121(2)(ba) to (d)—

*renumber* as section 121(2)(c) to (e).

**26 Amendment of s 173 (Parties must negotiate in good faith)**

(1) Section 173—

*insert—*

[s 27]

---

(2A) Without limiting subsection (2)(b), the parties must obtain, and disclose as soon as practicable after the start of negotiations, information relevant to the gender pay gap under the proposed instrument, including—

- (a) the distribution of the employees by gender; and
- (b) details of the gender pay gap; and
- (c) any major factors identified as contributing to the gender pay gap; and
- (d) if appropriate, the projected effect of the proposed instrument on the gender pay gap; and
- (e) other information relevant to the gender pay gap reasonably requested by another party to the negotiations; and
- (f) other information relevant to the gender pay gap prescribed by regulation.

(2B) For subsection (3), the *gender pay gap* under the proposed instrument is the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the proposed instrument.

- (2) Section 173(2A) to (3)—  
*renumber* as section 173(3) to (5).

## 27 Amendment of s 178 (Consent application for arbitration)

Section 178(2)—

*insert*—

- (c) if the parties agree—the full bench may refer arbitration of the matter to a commissioner sitting alone.

---

**28 Insertion of new s 179A**

After section 179—

*insert—*

**179A Constitution of commission for arbitration proceedings**

- (1) The full bench must arbitrate the matter.
- (2) However, the full bench may, with the consent of all of the negotiating parties, refer arbitration of the matter to a commissioner sitting alone.

**29 Amendment of s 201 (Equal remuneration)**

- (1) Section 201, after ‘the commission must’—

*insert—*

be

- (2) Section 201(a), from ‘provides for’—

*omit, insert—*

includes information about the way equal remuneration for work of equal or comparable value is implemented, or is to be implemented, in relation to the employees to be covered by the agreement; or

- (3) Section 201(b)—

*omit, insert—*

(b) for any other proposed bargaining instrument—the proposed bargaining instrument contains information about the way the employer has implemented, will implement (if the instrument is certified or made) or is implementing equal remuneration for work of equal or comparable value in relation to the employees to be covered by the agreement.

[s 30]

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**30 Amendment of s 246 (Definition for chapter)**

Section 246, definition *wage-related information*—  
*insert*—

- (e) other information relevant to the gender pay gap prescribed by regulation.

**31 Amendment of s 250 (Requirement for application relating to proposed bargaining instrument)**

- (1) Section 250(2)(c), after ‘employees—’—  
*insert*—

states

- (2) Section 250(3)—  
*omit, insert*—

- (3) The affidavit must be in the form required under the rules.

**32 Amendment of s 260 (Definitions for chapter)**

Section 260, definition *party*—  
*omit*.

**33 Amendment of s 279 (Definitions)**

Section 279, definition *industrial association*—  
*omit*.

**34 Amendment of s 290 (Meaning of *engages in industrial activity*)**

- (1) Section 290, ‘industrial association’—  
*omit, insert*—  
industrial organisation

- (2) Section 290(b), note—

*omit, insert—*

*Note—*

For subparagraph (vii), representation of a person by an industrial organisation includes a member, delegate or officer of the industrial organisation making representations or advocating on the person's behalf.

- (3) Section 290—

*insert—*

(ba) gives or distributes information, or organises or encourages discussion, about the following matters for, or on behalf of, an industrial organisation—

- (i) the wages and employment conditions of employees;
- (ii) workplace rights; or

- (4) Section 290(ba) to (f)—

*renumber* as section 290(c) to (g).

### **35 Amendment of s 293 (Misrepresentations)**

- (1) Section 293, heading, after 'Misrepresentations'—

*insert—*

**—engaging in industrial activity**

- (2) Section 293(1)(b)(i), 'industrial association'—

*omit, insert—*

industrial organisation

### **36 Insertion of new s 293A**

After section 293—

*insert—*

[s 37]

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### **293A Misrepresentations—right to represent**

- (1) This section applies in relation to an entity that is not an organisation.
- (2) A person or other entity must not make a false or misleading representation to another person that the person or entity has the right to represent the industrial interests of a person or a particular group of persons.

*Note—*

This subsection is a civil penalty provision.

- (3) For subsection (2), an entity does not have the right to represent the industrial interests of a person or a particular group of persons only because the entity's rules state it has that right.

### **37 Amendment of s 315 (Employees to whom this part does not apply)**

Section 315(9), definition *short term casual employee*, paragraph (a)(ii), '1 year'—

*omit, insert—*

6 months

### **38 Amendment of s 320 (Matters to be considered in deciding an application)**

Section 320—

*insert—*

- (2) Without limiting subsection (1), the commission may decide a dismissal was not harsh, unjust or unreasonable if—
  - (a) the dismissal related to conduct of the employee while at work or otherwise in connection with the employee's employment; and

- 
- (b) the employee's conduct was, wholly or partly—
- (i) unlawful; or
  - (ii) sexual harassment or sex or gender-based harassment.

**39 Omission of s 354A (Definition for division)**

Section 354A—

*omit.*

**40 Amendment of s 375 (Payment of unpaid wages if employee's whereabouts unknown)**

- (1) Section 375(2), 'nearest clerk of the Magistrates Court'—

*omit, insert—*

public trustee

- (2) Section 375(3), 'clerk'—

*omit, insert—*

public trustee

- (3) Section 375(4)—

*omit, insert—*

- (4) The public trustee must deal with the amount as unclaimed moneys under the *Public Trustee Act 1978*.

- (4) Section 375—

*insert—*

- (6) In this section—

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

[s 41]

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**41 Amendment of s 418 (Appointment of vice-president)**

Section 418(4), definition *relevant entity*, paragraph (a)—  
*omit, insert—*

- (a) an organisation, a State peak council or another entity that represents the interests of employers or has members who are employers;

**42 Amendment of s 442 (Industrial commissioners)**

Section 442(3), definition *relevant entity*, paragraph (a)—  
*omit, insert—*

- (a) an organisation, a State peak council or another entity that represents the interests of employers or has members who are employers;

**43 Insertion of new s 459A**

After section 459—

*insert—*

**459A Provision about general ruling for State wage case**

- (1) This section applies if—
  - (a) the commission makes a general ruling under section 458(1)(a) that increases the wages payable to employees under 1 or more awards; and
  - (b) applying the increase to the wages payable to employees, or a class of employees, under a particular award would result in the wages payable to the employees under the award equalling or exceeding the wages payable to employees in relation to the same employment under—



- 
- (i) a certified agreement or arbitration determination; or
  - (ii) a ruling under the *Public Service Act 2008*.
- (2) Without limiting section 459(2), the ruling may provide that the increase does not apply to the wages payable to the employees, or the class of employees, under the award.

**44 Amendment of s 468 (Who may apply for an interpretation of an industrial instrument)**

- (1) Section 468(1)(d)—

*omit, insert—*

- (d) a person who satisfies the commission that the person is not acting for an entity (other than an industrial organisation) that purports to represent the industrial interests of employees covered by the instrument;

- (2) Section 468(2)(b), after ‘agreement’—

*insert—*

or award

- (3) Section 468(2)(c), after ‘agreement’—

*insert—*

or award, if the employee satisfies the commission that the employee is not an officer of, or acting for, an entity (other than an industrial organisation) that purports to represent the industrial interests of employees covered by the agreement or award

**45 Amendment of s 473 (Power to grant injunctions)**

Section 473(1)—

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---

*insert—*

- (c) the commission considers appropriate for the prevention or settlement of an industrial dispute involving allegations of sexual harassment or sex or gender-based harassment.

**46 Amendment of s 474 (Who may apply for an injunction)**

- (1) Section 474(1)(b), after ‘paragraph (a);’—

*insert—*

or

- (2) Section 474(1)—

*insert—*

- (ba) an applicant for an order in relation to a contravention, or alleged contravention, of a civil penalty provision; or

- (3) Section 474(1)(ba) to (f)—

*renumber* as section 474(1)(c) to (g).

- (4) Section 474(2)—

*omit.*

**47 Omission of s 478 (Definitions for subdivision)**

Section 478—

*omit.*

**48 Amendment of s 479 (Power of full bench to make orders about rights of associations or employee organisations to represent)**

- (1) Section 479, heading, ‘associations or’—

*omit.*

- 
- (2) Section 479(a), from ‘an association or’ to ‘to represent’—  
*omit, insert—*  
another organisation, to represent the industrial interests of
- (3) Section 479(b), after ‘right to represent’—  
*insert—*  
the industrial interests of
- (4) Section 479(c), ‘association or’—  
*omit.*
- (5) Section 479(c), after ‘right to represent’—  
*insert—*  
the industrial interests of

#### **49 Replacement of s 480 (Who may apply for order)**

Section 480—

*omit, insert—*

##### **480 Who may apply for order**

An organisation or employer may apply for an order under section 479.

#### **50 Amendment of s 481 (Limitations on when order may be made)**

- (1) Section 481(2)(a), ‘association or’—  
*omit.*
- (2) Section 481(2)(a)—  
*insert—*  
(iii) preventing, obstructing or restricting negotiations or discussion between the employer and another organisation or the employer and the employer’s employees; or

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(3) Section 481(2)(b) to (d)—

*omit, insert—*

- (b) an organisation to which the order would relate, or an officer, member or employee of the organisation, has made or is making representations directed at employees about the organisation having rights, functions or powers in relation to employees under this Act that the organisation does not have; or
- (c) the consequences or representations mentioned in paragraph (a) or (b)—
  - (i) have stopped, but are likely to recur as a result of the conduct or threatened conduct; or
  - (ii) are imminent as a result of the conduct or threatened conduct.

## 51 Insertion of new ch 11, pt 2, div 4, sdiv 10A

Chapter 11, part 2, division 4—

*insert—*

### **Subdivision 10A Orders about entities not eligible for registration under chapter 12**

#### **483A Meaning of *eligible for registration under chapter 12***

- (1) For this subdivision, an entity is *eligible for registration under chapter 12* as an employee organisation if the entity—
  - (a) is an association; and
  - (b) satisfies the criteria for registration mentioned in sections 607(1)(a) and (d) and 608(1)(a), (b) and (d); and

- (c) under the entity's rules, has passed a resolution in favour of being registered under chapter 12; and
  - (d) has members who are employees; and
  - (e) has applied for registration as an employee organisation under chapter 12 if the entity has—
    - (i) had at least 20 members who are employees for a continuous period of at least 12 months; or
    - (ii) had at least 100 members who are employees for a continuous period of at least 4 weeks; and
  - (f) has not been refused an application for registration under chapter 12 within the previous 5 years.
- (2) For this subdivision, an entity is *eligible for registration under chapter 12* as an employer organisation if the entity—
- (a) is an association or corporation; and
  - (b) satisfies the criteria for registration mentioned in sections 607(1)(a) and (d) and 609(1)(a) to (e); and
  - (c) has not been refused an application for registration under chapter 12.

### **483B Power of commission to make order about ineligible entity**

On application by an entity under section 483C, the commission may make an order declaring an entity, other than an organisation, to be an ineligible entity if satisfied—

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- (a) the entity is not eligible for registration under chapter 12 as an employee organisation or employer organisation; or
- (b) registration of the entity under chapter 12 would be inconsistent with the objects of this Act.

### **483C Who may apply for order**

The following entities may apply for an order under section 483B—

- (a) an organisation;
- (b) an entity that is eligible for registration under chapter 12 as an employee organisation or employer organisation;
- (c) an employer.

### **483D Ancillary orders**

- (1) If the commission makes an order under section 483B in relation to an entity, it may also make an ancillary order it considers necessary to support the order, including an order prohibiting—
  - (a) an officer, employee or agent of the entity from representing a person in a matter before the court, the commission, the full bench or the registrar; and
  - (b) the entity from arranging for an agent to represent a person under chapter 6; and
  - (c) the entity from holding out membership on the basis of being able to provide representation in stated industrial matters; and
  - (d) another entity associated with the entity, or an officer, employee or agent of another entity associated with the entity, from

engaging in the conduct mentioned in paragraph (a), (b) or (c).

- (2) An order under section 483B, and an ancillary order, may—
  - (a) be subject to conditions; and
  - (b) apply to an individual or other entity.
- (3) The commission may, on application by an entity affected by an order, make the further order it considers appropriate to ensure the order, an ancillary order and this Act are complied with.
- (4) An entity to which an order mentioned in subsection (2) or (3) applies must comply with the order.

Maximum penalty—100 penalty units.

#### **483E Revocation of order if grounds no longer apply**

- (1) This section applies if the entity to which an order under section 483B applies makes an application to the commission for the revocation of the order.
- (2) The registrar must, at least 7 days before the application for revocation will be heard, give notice of the application to the entity (the *original applicant*) that applied for the order under section 483B.
- (3) The original applicant is entitled to be heard on the application for revocation.
- (4) If the commission is no longer satisfied that the ground mentioned in section 483B(a) or (b) applies, the commission must revoke the order made under that section.
- (5) If the commission revokes the order made under section 483B, an ancillary order or further order made under section 483D also stops having effect.

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**483F Requirement to give copy of order to chief executive (associations incorporation)**

- (1) This section applies if—
  - (a) an order is made under section 483B in relation to an incorporated association; and
  - (b) either—
    - (i) no appeal against the decision to make the order is started during the period for starting an appeal; or
    - (ii) an appeal against the decision to make the order has been decided or withdrawn, and the order has not been set aside on appeal.
- (2) The registrar must give the chief executive (associations incorporation) a copy of—
  - (a) the order; and
  - (b) an ancillary order or further order made under section 483D to support the order.
- (3) The copies under subsection (2) must be given—
  - (a) if subsection (1)(b)(i) applies—as soon as practicable after the period for starting an appeal ends; or
  - (b) if subsection (1)(b)(ii) applies—as soon as practicable after the appeal, and any appeal of the decision on appeal, is decided or withdrawn.

**52 Amendment of s 485 (Who may apply to reopen proceedings)**

Section 485(c)(ii)—

*omit, insert—*

- (ii) a person who—



- (A) is bound or affected by, or dissatisfied with, the proceedings; and
- (B) satisfies the commission the person is not an officer of, or acting for, an entity (other than an industrial organisation) that purports to represent the industrial interests of employees or employers.

**52A Amendment of s 529 (Representation of parties generally)**

(1) Section 529(1)—

*omit, insert—*

- (1) A party to proceedings, or a person ordered or permitted to appear or to be represented in the proceedings, may be represented in the proceedings by—
  - (a) a lawyer, only in accordance with section 530; or
  - (b) an employee or officer of an organisation appointed in writing as the agent of the party or person; or
  - (c) if the party or person is an organisation—an employee, officer or member of the organisation; or
  - (d) if the party or person is an employer—an employee or officer of the employer; or
  - (e) another person appointed in writing as the agent of the party or person, only with the leave of the industrial tribunal conducting the proceedings.
- (1A) However, a party or person may not be represented under subsection (1)(e) by a person who—

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- (a) directly or indirectly demands or receives a fee for representing the party or person; or
  - (c) is an employee or officer of, or acting for, an entity (other than an organisation) that purports to represent the industrial interests of employees or employers.
- (1B) The industrial tribunal may give leave under subsection (1)(e) only if—
- (a) giving leave would enable the proceedings to be dealt with more efficiently, having regard to the complexity of the matter; or
  - (b) it would be unfair not to allow the party or person to be represented because the party or person is unable to represent itself, himself or herself; or
  - (c) it would be unfair not to allow the party or person to be represented having regard to fairness between the party or person, and other parties or persons in the proceedings.
- (2) Section 529(2)—
- insert—*
- industrial tribunal*** means the Court of Appeal, court, full bench or commission or an Industrial Magistrates Court.
- (3) Section 529(1A) to (2)—
- renumber* as section 529(2) to (4).

### **53 Amendment of s 530 (Legal representation)**

- (1) Section 530(1)—

*insert—*

- (ca) for proceedings before the commission, other than the full bench, relating to an industrial matter involving allegations of

sexual harassment or sex or gender-based harassment—the commission gives leave; or

- (2) Section 530(1)(ca) to (g)—  
*renumber* as section 530(1)(d) to (h).
- (3) Section 530(4), ‘itself, himself or herself’—  
*omit, insert*—  
the party’s or person’s interests in the proceedings
- (4) Section 530(4), examples, first dot point, ‘industrial association’—  
*omit, insert*—  
industrial organisation
- (5) Section 530(5)(b)(ii) and (iii)—  
*omit, insert*—
  - (ii) a State peak council; or
  - (iii) another entity that only has members who are employers.
- (6) Section 530(6), ‘subsection (1)(e)’—  
*omit, insert*—  
subsection (1)(f)

**53A Amendment of s 530A (Representation—public service appeals)**

Section 530A(2) to (4)—

*omit, insert*—

- (2) A party to the appeal may—
  - (a) appear personally; or
  - (b) be represented in the proceeding by another person under section 529.
- (3) However, a party may not be represented under subsection (2)(b) by a lawyer.

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- (4) For this section, a party is taken not to be represented by a lawyer if the lawyer is—
  - (a) an employee or officer of the party or person; or
  - (b) if the party is represented by an organisation—an employee or officer of the organisation.

#### 54 Insertion of new s 578A

After section 578—

*insert—*

##### **578A Requirement to give copy of civil penalty order to chief executive (associations incorporation)**

- (1) This section applies if a civil penalty order—
  - (a) is made against an incorporated association or an officer of an incorporated association; and
  - (b) either—
    - (i) no appeal against the decision to make the civil penalty order is started during the period for starting an appeal; or
    - (ii) an appeal against the decision to make the civil penalty order has been decided or withdrawn, and the order has not been set aside on appeal.
- (2) The registrar must give the chief executive (associations incorporation) a copy of the civil penalty order.
- (3) The copy of the civil penalty order must be given—

- 
- (a) if subsection (1)(b)(i) applies—as soon practicable after the period for starting an appeal ends; or
  - (b) if subsection (1)(b)(ii) applies—as soon as practicable after the appeal, and any appeal of the decision on appeal, is decided or withdrawn.

**55 Insertion of new ch 11, pt 8A**

Chapter 11—

*insert—*

**Part 8A Particular applications  
under the Associations  
Incorporation Act 1981**

**578B Purpose of part**

The purpose of this part is to make provision for an objection process in relation to a relevant incorporation Act application, including—

- (a) consultation with organisations and State peak councils; and
- (b) the giving of a notice to the chief executive (incorporations Act) objecting to the application on the objection ground; and
- (c) if an objection is contested, the making of a declaration by the commission about whether the objection ground is established in relation to the application.

**578C What is a *relevant incorporation Act application* and who is the *applicant***

- (1) A *relevant incorporation Act application* is—

[s 55]

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- (a) an application under the *Associations Incorporation Act 1981*, section 9 for incorporation of an association; or
  - (b) an application by an incorporated association under the *Associations Incorporation Act 1981*, section 48 for registration of an amendment of its rules.
- (2) The **applicant**, for a relevant incorporation Act application, is—
- (a) for an application mentioned in subsection (1)(a)—the appointed person for the application under the *Associations Incorporation Act 1981*, section 7(1); or
  - (b) for an application mentioned in subsection (1)(b)—the incorporated association that made the application.

### **578D What is the *objection ground***

- (1) The ***objection ground***, for a relevant incorporation Act application, is the ground that, if the application were granted, it would be reasonable for the incorporated association to be mistaken for—
- (a) an organisation; or
  - (b) an entity that has functions that are the same as, or comparable to, the functions of an organisation; or
  - (c) an entity that is lawfully able to further, protect or represent the industrial interests of its members or other persons under this Act.
- (2) The incorporated association mentioned in subsection (1) is—

- (a) for a relevant incorporation Act application that is an application for incorporation of an association—the incorporated association that would come into existence if the application were granted; or
- (b) for a relevant incorporation Act application that is an application for registration of an amendment of the rules of an incorporated association—the incorporated association that made the application.

### **578E Registrar must give notice of relevant incorporation Act application**

- (1) This section applies if the chief executive (incorporation Act) gives the registrar a copy of a relevant incorporation Act application under the *Associations Incorporation Act 1981*, section 10A or 48A.
- (2) The registrar must give each organisation and each State peak council (each a *recipient*)—
  - (a) a notice that complies with subsection (3); and
  - (b) a copy of the relevant incorporation Act application.
- (3) The notice must state the following matters—
  - (a) whether the relevant incorporation Act application is an application for—
    - (i) an association’s incorporation; or
    - (ii) registration of an amendment of an incorporated association’s rules;
  - (b) that the recipient may object to the relevant incorporation Act application;
  - (c) the objection ground on which the recipient may object to the application;

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---

- (d) that an objection must be made in the approved form and filed on or before the day stated in the notice (the *cut off day* for objections).
- (4) The cut off day for objections stated in the notice must be at least 14 days after the day the notice is given to the recipient.

### **578F No objections received**

- (1) This section applies if—
- (a) the registrar has complied with section 578E(2) in relation to a relevant incorporation Act application; and
  - (b) no objections to the application are filed on or before the cut off day for objections stated in a notice given under section 578E.
- (2) The registrar must give the chief executive (incorporation Act) and the applicant for the relevant incorporation Act application a notice stating—
- (a) no objections were made to the application; and
  - (b) the objection ground is not established for the application.

### **578G Notice of intended action to relevant incorporation Act application**

- (1) This section applies if—
- (a) the registrar has complied with section 578E(2) in relation to a relevant incorporation Act application; and
  - (b) 1 or more persons to whom a notice was given under that section (each an *objector*) files an objection to the application before



the cut off day for objections stated in the notice.

- (2) Within 14 days after the cut off day for objections, the registrar must—
  - (a) consider the objections filed and whether the objection ground is established for the relevant incorporation Act application; and
  - (b) give the applicant for the relevant incorporation Act application and each objector a notice stating—
    - (i) whether or not the registrar proposes to give the chief executive (incorporation Act) a notice objecting to the application (the *proposed action*); and
    - (ii) if the applicant or objector does not agree with the proposed action, the applicant or objector may apply to the commission for a declaration about whether the objection ground is, or is not, established for the application; and
    - (iii) an application mentioned in subparagraph (ii) must be made on or before the day stated in the notice.
- (3) The day stated in the notice under subsection (2)(b)(iii) must be at least 14 days after the day the notice is given to the applicant or objector.
- (4) For subsection (2)(b)(i), the registrar may propose to object to the relevant incorporation Act application only if the registrar is satisfied the objection ground is established for the application.

### **578H Application for declaration**

- (1) A recipient of a notice under section 578G(2)(b) about a relevant incorporation Act application

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may apply to the commission for the making of a declaration about whether the objection ground is, or is not, established for the application.

- (2) The application must be made on or before the day stated in the notice.

### **578I Making of declaration by commission**

- (1) The registrar must, at least 7 days before an application under section 578H is heard, give notice of the application to—
  - (a) the applicant for the relevant incorporation Act application; and
  - (b) each organisation and each State peak council.
- (2) Each entity given notice of the hearing under subsection (1) is entitled to be heard on the application.
- (3) The commission—
  - (a) must hear the objection in the way prescribed by regulation; and
  - (b) may make a declaration that the objection ground is, or is not, established for the relevant incorporation Act application.

### **578J Notice of declaration made by commission**

The registrar must give notice of a declaration made by the commission under section 578I to—

- (a) the applicant for the relevant incorporation Act application; and
- (b) if the applicant for the declaration is not the applicant for the relevant incorporation Act application—the applicant for the declaration; and

- (c) each entity that was heard on the application for the declaration.

**578K Notice to chief executive (incorporation Act)—objection**

- (1) The registrar must give the chief executive (incorporation Act) a notice stating that the objection ground is established for a relevant incorporation Act application if—
  - (a) the commission makes a declaration under section 578I that the objection ground is established for the application; or
  - (b) both of the following apply—
    - (i) the registrar gives a notice under section 578G(2) stating that the registrar proposes to give the chief executive (incorporation Act) a notice objecting to the application;
    - (ii) no application is made to the commission under section 578H for a declaration.
- (2) The registrar must give the notice as soon as practicable after—
  - (a) the declaration is made; or
  - (b) the day stated in the notice given under section 578G(2) for making an application for a declaration.
- (3) The chief executive must give a copy of the notice to the applicant for the relevant incorporation Act application.

**578L Notice to chief executive (incorporation Act)—no objection**

- (1) The registrar must give the chief executive

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(incorporation Act) a notice stating that the objection ground is not established for the relevant incorporation Act application if—

- (a) the commission makes a declaration under section 578I that the objection ground is not established for the application; or
  - (b) both of the following apply—
    - (i) the registrar gives a notice under section 578G(2) stating that the registrar does not propose to give the chief executive (incorporation Act) a notice objecting to the application;
    - (ii) no application is made to the commission under section 578H for a declaration.
- (2) The registrar must give the notice as soon as practicable after—
- (a) the declaration is made; or
  - (b) the day stated in the notice given under section 578G(2) for making an application for a declaration.
- (3) The chief executive must give a copy of the notice to the applicant for the relevant incorporation Act application.

**56 Amendment of s 607 (Registration criteria for all applications)**

(1) Section 607(1)—

*insert—*

- (da) the applicant does not have an officer—
  - (i) who is the subject of an order made under section 483D; or

- (ii) against whom a civil penalty order was made in the previous 5 years; or
    - (iii) who was an officer of a cancelled incorporated association;
  - (db) the applicant is free from control by, or improper influence from, a person who was an officer of a cancelled incorporated association;
- (2) Section 607(1)(da) to (e)—  
*renumber* as section 607(1)(e) to (g).
- (3) Section 607—  
*insert*—
- (1A) For subsection (1)(e)(iii) and (f), a person was an officer of a cancelled incorporated association if—
    - (a) the incorporation of an incorporated association was cancelled—
      - (i) under the *Associations Incorporation Act 1981*, section 93B; and
      - (ii) in the previous 5 years; and
    - (b) the person was an officer of the incorporated association immediately before its incorporation was cancelled.
- (4) Section 607(2), ‘subsection (1)(e)’—  
*omit, insert*—  
subsection (1)(g)
- (5) Section 607(1A) and (2)—  
*renumber* as section 607(2) and (3).

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**57 Amendment of s 608 (Additional criteria for registration as employee organisation)**

- (1) Section 608(1)(a), from ‘influence from’—  
*omit, insert—*  
influence from—  
(i) an employer; or  
(ii) an employer organisation; or  
(iii) another entity that represents the interests of employers or has members who are employers;
- (2) Section 608(1)—  
*insert—*  
(ca) the application was made—  
(i) within 12 months after the applicant gained its 20th member who is an employee; or  
(ii) within 4 weeks after the applicant gained its 100th member who is an employee;  
(e) the applicant is not the subject of an order made under section 483B;  
(f) the applicant is free from control by, or improper influence from—  
(i) an entity the subject of an order made under section 483B; or  
(ii) an officer, member or employee of an entity mentioned in subparagraph (i).
- (3) Section 608(1)(ca) to (f)—  
*renumber* as section 608(1)(d) to (g).
- (4) Section 608(2), ‘or (d)’—  
*omit, insert—*

, (d) or (e)

**58 Amendment of s 878 (General deregistration grounds)**

Section 878(g), from ‘influence from’—

*omit, insert—*

influence from—

- (i) an employer; or
- (ii) an employer organisation; or
- (iii) another entity that represents the interests of employers or has members who are employers.

**59 Omission of ch 15, pt 3 (Other provisions for health employees)**

Chapter 15, part 3—

*omit.*

**60 Amendment of s 975 (Proceedings)**

(1) Section 975(2)—

*omit.*

(2) Section 975(3) to (5)—

*renumber* as section 975(2) to (4).

**61 Insertion of new ss 981A and 981B**

After section 981—

*insert—*

**981A Disclosure of information to assess achievement of Act’s main purpose**

- (1) The chief executive may ask the registrar, or another chief executive, for statistical or other

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information to help the chief executive to assess the extent to which the main purpose of this Act is being achieved.

- (2) The registrar or other chief executive may give the requested information to the chief executive.
- (3) Nothing in this section permits the chief executive to ask for, or requires or permits the registrar or other chief executive to give, confidential information.
- (4) In this section—

*confidential information* includes information that—

  - (a) identifies, or is likely to lead to the identification, of an individual; and
  - (b) is commercially sensitive; and
  - (c) is of a private or confidential nature.

**981B Requirement to give notice of conviction and penalty to chief executive (associations incorporation)**

- (1) This section applies if—
  - (a) an incorporated association or an officer of an incorporated association is convicted of an offence against this Act; and
  - (b) a penalty is imposed for the conviction; and
  - (c) either—
    - (i) no appeal against the conviction or penalty is started during the period for starting an appeal; or
    - (ii) an appeal against the conviction or penalty has been decided or withdrawn, and the conviction or penalty has not been set aside on appeal.



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- (2) The registrar must give the chief executive (associations incorporation) a written notice about the conviction and the penalty imposed.
  - (3) The notice must be given—
    - (a) if no appeal against the conviction or penalty is started during the period for starting an appeal—as soon practicable after the period for starting an appeal ends; or
    - (b) if an appeal against the conviction or penalty is started—as soon as practicable after the appeal, and any appeal of the decision on appeal, is decided or withdrawn.

## **62 Insertion of new ch 18, pt 6**

Chapter 18—

*insert—*

### **Part 6 Transitional provisions for Industrial Relations and Other Legislation Amendment Act 2022**

#### **1093 Declaration about sick leave being exclusive of public holidays**

- (1) To remove any doubt, it is declared that sick leave under section 40 is, and always has been, exclusive of a public holiday that falls during the leave.
- (2) Section 40, as in force from the commencement, and subsection (1) do not affect an existing industrial instrument, or a replacement industrial instrument, to the extent the instrument provides for the effect on an employee's entitlement to sick leave if a public holiday falls during a period of

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sick leave taken by the employee.

- (3) An *existing industrial instrument* is an industrial instrument—
  - (a) in effect before the commencement; and
  - (b) that provides for the effect on an employee's entitlement to sick leave if a public holiday falls during a period of sick leave taken by the employee.
- (4) A *replacement industrial instrument*, in relation to an existing industrial instrument, is an industrial instrument—
  - (a) made after the commencement; and
  - (b) that covers the same, or substantially the same, employees as the existing industrial instrument; and
  - (c) that provides for the effect on an employee's entitlement to sick leave if a public holiday falls during a period of sick leave taken by the employee to be the same, or substantially the same, as under the existing industrial instrument.

#### **1094 Required evidence for personal leave taken or started before commencement**

- (1) This section applies in relation to the following leave under chapter 2, part 3, division 6—
  - (a) sick leave to which section 41 applies, taken by an employee before the commencement;
  - (b) carer's leave to which section 45(1) applies, taken by an employee before the commencement;
  - (c) birth-related leave started by an employee before the commencement.
- (2) Former section 41, 45, 63 or 64 continues to apply

in relation to the evidence the employee is required to give the employer for the leave as if the *Industrial Relations and Other Legislation Amendment Act 2022* had not been enacted.

(3) In this section—

*former*, for a provision of this Act, means the provision as in force from time to time before the commencement.

### **1095 Entitlement to adoption leave and cultural parent leave in relation to child over 5 years**

(1) This section applies if—

- (a) an employee adopts a child aged over 5 years; or
- (b) the parentage of a child aged over 5 years is transferred to an employee under a cultural recognition order.

(2) Chapter 2, part 3, division 8, as in force from the commencement, applies in relation to parental leave for the adoption or transfer of parentage, regardless of whether the adoption happened, or the cultural recognition order was made, before or after the commencement.

### **1096 Application to work part-time after taking parental leave**

An employee may make an application under section 74(2), as in force from the commencement, regardless of whether the employee returned to work as mentioned in that section before or after the commencement.

### **1097 Entitlement to birth-related leave after birth of stillborn child**

Section 85A, as in force from the commencement, applies in relation to the birth of a stillborn child after the commencement, regardless of whether the pregnancy that ends by the birth started before or after the commencement.

### **1098 Entitlement to flexible parental leave**

Section 87B, as in force from the commencement, applies to an employee regardless of whether the employee became entitled to the parental leave under chapter 2, part 3, division 8, subdivision 2 mentioned in that section before or after the commencement.

### **1099 Unpaid wages held by clerk of a Magistrates Court before commencement**

- (1) This section applies if, immediately before the commencement, the clerk of a Magistrates Court held an amount paid to the clerk by an employer as wages payable to a former employee under former section 375.
- (2) The clerk must pay the amount to the public trustee.
- (3) The public trustee must deal with the amount as unclaimed moneys under the *Public Trustee Act 1978*.
- (4) In this section—

***former section 375*** means section 375 as in force from time to time before the commencement.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

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### **1100 Existing applications for orders about right to represent group of employees**

- (1) This section applies to an application for an order under section 479 made, but not decided, before the commencement.
- (2) Former chapter 11, part 2, division 4, subdivision 10 continues to apply to the application as if the *Industrial Relations and Other Legislation Amendment Act 2022* had not been enacted.
- (3) In this section—  
*former chapter 11, part 2, division 4, subdivision 10* means chapter 11, part 2, division 4, subdivision 10 as in force from time to time before the commencement.

### **1101 Health employment overpayments and health employment transition loans**

- (1) The repeal of chapter 15, part 3 by the *Industrial Relations and Other Legislation Amendment Act 2022* does not affect the validity of an agreement between a health employer and a health employee, or a health employer and a former health employee, entered into before the commencement, about—
  - (a) the recovery, by the employer, of an amount paid by the employer to the employee or former employee in relation to employment, or purportedly in relation to employment, to which the employee or former employee was not entitled (an *overpayment*); or
  - (b) a loan made by the employer to the employee or former employee mentioned in repealed section 949(1).
- (2) However, an unrecoverable outstanding amount may not be recovered by the State as a debt due to the State.

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- (3) An *unrecoverable outstanding amount* is an amount of an overpayment mentioned in subsection (1)(a), or a loan mentioned in subsection (1)(b), if—
- (a) the overpayment or loan was made before 14 August 2012; and
  - (b) immediately before the commencement—
    - (i) the amount of the overpayment or loan had not been recovered by a health employer; and
    - (ii) the health employee had not agreed in writing to repay the amount of the overpayment or loan to a health employer; and
    - (iii) the health employee had not repaid any of the amount of the overpayment or loan to a health employer.
- (4) For subsection (3)(b)(iii), a deduction from an amount payable to a health employee under repealed chapter 15, part 3 does not count as an amount repaid by the employee.
- (5) In this section—
- health employee* see repealed section 947.
- health employer* see repealed section 947.

### **1102 Existing appointment of agent to represent party or person in proceedings**

- (1) This section applies if a party or person appointed an agent under former section 529 to represent the party or person in proceedings and, immediately before the commencement, the proceedings had not ended.
- (2) Former section 529 continues to apply in relation to the appointment of the agent to represent the

party or person in the proceedings as if the *Industrial Relations and Other Legislation Amendment Act 2022* had not been enacted.

(3) In this section—

*former section 529* means section 529 as in force from time to time before the commencement.

### **63 Amendment of sch 1 (Industrial matters)**

(1) Schedule 1—

*insert—*

25A sexual harassment or sex or gender-based harassment of an employee in the workplace or otherwise in the course of the employee's employment

(2) Schedule 1, items 25A to 30—

*renumber* as schedule 1, items 26 to 31.

### **64 Amendment of sch 3 (Civil penalties)**

Schedule 3, entry for chapter 8, '293(1) (Misrepresentations),'—

*omit, insert—*

293(1) (Misrepresentations—engaging in industrial activity), 293A(2) (Misrepresentations—right to represent),

### **65 Amendment of sch 5 (Dictionary)**

(1) Schedule 5, definitions *amount in relation to employment, association, continuing health employee, discrimination, doctor's certificate, eligible association, expected placement date, final payment, health employee, health employer, industrial association, industrial cause, maternity leave, party, both mentions, Queensland Health, registered*

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*employee organisation, right to represent, special maternity leave and untaken leave—*

*omit.*

(2) Schedule 5—

*insert—*

***applicant***, for a relevant incorporation Act application, for chapter 11, part 8A, see section 578C(2).

***association*** means an unincorporated entity formed or carried on to protect and promote its members' interests.

***chief executive (associations incorporation)*** means the chief executive of the department in which the *Associations Incorporation Act 1981* is administered.

***discrimination*** means discrimination that would contravene the *Anti-Discrimination Act 1991*.

***eligible for registration under chapter 12***, for chapter 11, part 2, division 4, subdivision 10A, see section 483A.

***expected adoption date*** see section 65(2)(a).

***health practitioner*** means a person registered to practise a health profession, other than as a student, under the Health Practitioner Regulation National Law.

***health practitioner's certificate*** means a certificate signed by a health practitioner.

***incorporated association*** means an incorporated association under the *Associations Incorporation Act 1981*.

***industrial cause*** includes—

- (a) an industrial matter; and
- (b) an industrial dispute; and



- (c) a work-related matter under the *Anti-Discrimination Act 1991*; and
- (d) another matter within the jurisdiction of the commission.

***industrial organisation*** means any of the following—

- (a) an employee organisation;
- (b) an association of employees that is eligible for registration under chapter 12 within the meaning of section 483A(1);
- (c) an employer organisation;
- (d) an association of employers that is eligible for registration under chapter 12 within the meaning of section 483A(2);
- (e) a branch of an organisation or association mentioned in paragraph (a), (b), (c) or (d).

***objection ground***, for a relevant incorporation Act application, for chapter 11, part 8A, see section 578D.

***party***—

- (a) in relation to a bargaining instrument or proposed bargaining instrument, for chapter 4, see section 168; or
- (b) to an industrial dispute, means any of the parties between which the industrial dispute exists.

***relevant incorporation Act application***, for chapter 11, part 8A, see section 578C(1).

***sex or gender-based harassment*** means the harassment of a person (the ***harassed person***), on the basis of the harassed person's sex or gender, by another person who—

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- (a) engages in unwelcome conduct of a demeaning nature in relation to the harassed person on the basis of—
  - (i) the harassed person’s sex or gender; or
  - (ii) a characteristic a person of the harassed person’s sex or gender generally has; or
  - (iii) a characteristic often imputed to a person of the harassed person’s sex or gender; or
  - (iv) a sex or gender the harassed person is presumed to have, or to have had at any time, by the person engaging in the conduct; or
  - (v) a sex or gender the harassed person has had, even if the harassed person did not have that sex or gender at the time of the conduct; and
- (b) engages in the conduct—
  - (i) with the intention of offending, humiliating or intimidating the harassed person; or
  - (ii) in circumstances in which a reasonable person would have anticipated the possibility that the harassed person would be offended, humiliated or intimidated by the conduct.

**sexual harassment** means sexual harassment that would contravene the *Anti-Discrimination Act 1991* or the *Sex Discrimination Act 1984* (Cwlth).

**special pregnancy-related leave**, for chapter 2, part 3, division 8, see section 85.

**stillborn child**, for chapter 2, part 3, division 8, see section 57.

- (3) Schedule 5, definition *demarcation dispute*, paragraph (c), ‘association or’—

*omit.*

- (4) Schedule 5, definition *remuneration*, paragraph (b), ‘service’—

*omit, insert—*

employment

## **Division 3                      Amendments commencing on proclamation**

### **66            Insertion of new ch 10A**

After chapter 10—

*insert—*

## **Chapter 10A Independent couriers**

### **Part 1                      Preliminary**

#### **406A Definitions for chapter**

In this chapter—

*applied provision* means a provision of this Act (other than a provision of this chapter) that a provision of this chapter states is an applied provision.

*applies to*, for a contract instrument, see section 406H.

*certification application* means an application under section 406ZC to certify an agreement proposed to be a negotiated agreement.

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**contract** includes—

- (a) an arrangement or understanding; and
- (b) a collateral contract relating to a contract.

**contract determination** see section 406N(1)(a).

**contract instrument** means—

- (a) a contract determination; or
- (b) a negotiated agreement.

**courier service contract** see section 406D.

**courier vehicle** means—

- (a) a motor vehicle within the meaning of the *Transport Operations (Road Use Management) Act 1995*; or
- (b) a bicycle, including a bicycle that has an auxiliary motor; or
- (c) a scooter within the meaning of the *Transport Operations (Road Use Management) Act 1995*.

**covers**, for a contract instrument, see section 406I.

**independent courier** see section 406B.

**negotiated agreement** see section 406V(1).

**negotiating party**, in relation to negotiations under part 4 with a view to a negotiated agreement being made, means—

- (a) a person who is a party to the negotiations; or
- (b) a person who has given notice under section 406X of the person's intention to be a party to the negotiations; or
- (c) another person who has received a notice of intention to start negotiations under section 406W and refuses to negotiate.

***principal contractor*** see section 406C.

***proposed negotiated agreement*** means—

- (a) in relation to negotiations under part 4—the negotiated agreement proposed to be made as a result of the negotiations; or
- (b) in relation to a certification application—the agreement the subject of the application.

***relevant contract determination***, in relation to a proposed negotiated agreement, see section 406ZD(2).

***relevant employee organisation***—

- (a) in relation to a proposed negotiated agreement—see section 406W(4); or
- (b) in relation to a negotiated agreement—means an employee organisation or federal organisation of employees the agreement applies to; or
- (c) in relation to an independent courier—means an employee organisation or federal organisation of employees of which the independent courier is a member.

***scope order***, in relation to a proposed negotiated agreement, see section 406ZB(1).

***unfair contract*** see section 406ZU.

***unfairly terminated***, for a courier service contract, see section 406ZX.

***valid majority*** means a majority of the independent couriers who are covered by a negotiated agreement, or who will be covered by a proposed negotiated agreement, who cast a valid vote to give an approval in relation to the agreement or proposed agreement, after the principal contractor has given the independent couriers a reasonable opportunity to decide

whether they want to give the approval.

#### **406B Who is an *independent courier***

- (1) An *independent courier* is a person who provides a service transporting goods using a courier vehicle if, in the course of providing the service, the courier vehicle is driven only by—
  - (a) if the person is an individual—the individual; or
  - (b) if the person is a partnership—a partner in the partnership; or
  - (c) if the person is a corporation—
    - (i) an executive officer of the corporation; or
    - (ii) a member of the family of an executive officer of the corporation.
- (2) It does not matter whether—
  - (a) a person mentioned in subsection (1)(b) or (c) is employed by the independent courier or engaged in another way; or
  - (b) a person other than the independent courier is temporarily employed, or temporarily engaged in another way, to provide the service, and drive the courier vehicle in the course of providing the service, while the independent courier is sick, taking leave or otherwise temporarily unavailable.
- (3) In this section—

*drive*, a courier vehicle, includes ride the vehicle.

*executive officer*, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

#### **406C Who is a *principal contractor***

A *principal contractor* is a person who—

- (a) carries on a business that includes arranging for goods to be transported by independent couriers; and
- (b) in carrying on the business, uses 2 or more independent couriers to transport the goods.

#### **406D What is a *courier service contract***

- (1) A *courier service contract* is a contract between a principal contractor and an independent courier—
  - (a) under which the independent courier transports goods under arrangements made by the principal contractor; and
  - (b) that is not a contract of employment.
- (2) A *courier service contract* includes a contract declared to be a courier service contract by an order of the commission under section 406E.
- (3) Without limiting subsection (1) or (2), a courier service contract may be a franchise arrangement.

#### **406E Declaration that contract is courier service contract**

The commission may make an order declaring that a contract is a courier service contract if satisfied the contract—

- (a) has the effect of avoiding the provisions of this chapter; and
- (b) provides for, or affects, the remuneration and working conditions of an independent courier who transports goods under arrangements made by another person; and

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- (c) is not a contract of employment between the independent courier and another person.

## **Part 2                    General provisions for contract instruments**

### **Division 1            General requirements for commission exercising powers**

#### **406F Criteria and considerations for commission exercising powers**

- (1) In exercising its powers under this chapter, the commission must ensure a contract instrument provides for remuneration and working conditions for independent couriers, for the work performed to provide services transporting goods under the instrument, that—
  - (a) are fair and just; and
  - (b) are comparable to the remuneration and working conditions an employee would receive under an industrial instrument or this Act for performing similar work; and
  - (c) generally reflect the prevailing minimum remuneration and working conditions of independent couriers covered, or to be covered, by the instrument.
- (2) For subsection (1), the commission must consider the following matters—
  - (a) whether the remuneration provided for by the contract instrument represents, for the work performed by an independent courier under the instrument—



- (i) fair recovery for the costs likely to be incurred by the independent courier to perform the work; and
  - (ii) a fair return for the independent courier's work and capital investment likely to be required to perform the work;
- (b) the market for the services to transport goods;
  - (c) the level of financial risk assumed by the independent courier to provide the services;
  - (d) the certainty and security of the services the independent courier is required to provide under the instrument;
  - (e) whether the contract instrument allows the independent courier to use the courier's courier vehicle and other equipment to provide services for another principal contractor, or for the courier's personal use;
  - (f) the matters mentioned in section 141(2);
  - (g) the value of the annual leave, personal leave, long service leave and other leave to which an employee mentioned in subsection (1)(b) is entitled under an industrial instrument or this Act.
- (3) The commission may also consider any other matters the commission considers relevant.
  - (4) Section 141(2) is an applied provision for the commissioner exercising powers under this chapter.

*Note—*

See section 406ZZF about interpreting an applied provision.

## **Division 2            Effect of contract instruments**

### **406G Contravening contract instruments**

- (1) A person must not contravene a contract instrument that applies to the person.

*Note—*

This subsection is a civil penalty provision.

- (2) A contract instrument does not impose obligations, or confer entitlements, on a person unless the instrument applies to the person.

### **406H Who a contract instrument *applies to***

- (1) A contract instrument *applies to* a principal contractor, independent courier, organisation or federal organisation if—
  - (a) the instrument is in operation; and
  - (b) the instrument covers the principal contractor, independent courier, organisation or federal organisation.
- (2) However, a contract determination does not *apply to* a principal contractor or independent courier to the extent an exemption under section 406R excludes the principal contractor or independent courier from the operation of the determination.
- (3) A reference in this Act to a contract instrument applying to an independent courier is a reference to the instrument applying to the independent courier in relation to a particular class of courier service contracts.

### **406I Who a contract instrument covers**

- (1) This section applies in relation to a contract

instrument that is in operation.

- (2) A contract instrument ***covers*** a principal contractor, independent courier, organisation or federal organisation if—
  - (a) the instrument states that it covers (however described) the principal contractor, independent courier, organisation or federal organisation; or
  - (b) this Act, or an order made under this Act, has the effect that the instrument covers the principal contractor, independent courier, organisation or federal organisation.
- (3) However, a contract instrument does not ***cover*** a principal contractor, independent courier, organisation or federal organisation if another provision of this Act, or an order made under this Act, provides or has the effect that the instrument does not cover the principal contractor, independent courier, organisation or federal organisation.
- (4) A negotiated agreement also ***covers*** an employee organisation or federal organisation of employees if—
  - (a) the agreement is made with the organisation or federal organisation; or
  - (b) a decision of the commission certifying the agreement states that the agreement covers the organisation or federal organisation.
- (5) A negotiated agreement to which a group of independent couriers is a party ***covers*** all of the independent couriers in the group, including independent couriers who enter a courier service contract with the principal contractor after the negotiated agreement is made.
- (6) A reference in this Act to a contract instrument covering an independent courier is a reference to

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the instrument covering the independent courier in relation to a particular class of courier service contracts.

#### **406J Application of contract determination to successor principal contractors**

To the extent a contract determination applies to a stated principal contractor, the determination applies to—

- (a) the principal contractor and any successor of the principal contractor; and
- (b) each independent courier who enters a courier service contract with the principal contractor and any successor.

#### **406K Application of negotiated agreement to successor principal contractors**

- (1) This section applies if—
  - (a) a negotiated agreement applies to a principal contractor; and
  - (b) at a later time, a new principal contractor becomes the successor (whether or not immediate) of the whole or part of the business of the principal contractor.
- (2) From the later time—
  - (a) to the extent the negotiated agreement applies to the whole or part of the business, the negotiated agreement—
    - (i) applies to the new principal contractor; and
    - (ii) does not apply to the previous principal contractor; and

- (b) a reference in this chapter to the principal contractor, to the extent the context relates to the whole or part of the business—
  - (i) is a reference to the new principal contractor; and
  - (ii) is not a reference to the previous principal contractor.

### **Division 3            Interaction of contract instruments and courier service contracts**

#### **406L Relationship of contract determination with negotiated agreement**

- (1) A contract determination may apply to an independent courier in relation to a particular class of courier service contracts at the same time a negotiated agreement applies to the independent courier in relation to the same class of courier service contracts.
- (2) If both a contract determination and negotiated agreement apply to an independent courier in relation to a class of courier service contracts, the negotiated agreement applies to the extent of any inconsistency.

#### **406M Relationship of contract instrument with courier service contract**

- (1) This section applies to a courier service contract—
  - (a) in effect when a contract instrument came into operation; or

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- (b) entered into after a contract instrument came into operation.
- (2) The contract instrument prevails over the courier service contract to the extent of any inconsistency.
- (3) The courier service contract must be interpreted, and takes effect, as if it were amended to the extent necessary to make the contract consistent with the contract instrument.
- (4) However, there is no inconsistency only because the courier service contract provides for working conditions at least as favourable for the independent courier as the contract instrument.

## Part 3                      **Contract determinations**

### **406N Contract determination fixing minimum remuneration and working conditions for independent couriers**

- (1) The commission may, on an application by an entity mentioned in section 406O or its own initiative—
  - (a) make a determination (a *contract determination*) fixing minimum remuneration and working conditions for independent couriers under—
    - (i) a class of courier service contracts; or
    - (ii) different classes of courier service contracts; or
  - (b) make an order varying a contract determination.

*Note—*

See section 406F for the matters the commission must consider in exercising its powers under this chapter in relation to a contract instrument.

- (2) A contract determination must state the class of courier service contracts, or different classes of courier service contracts, for which the determination operates.
- (3) A contract determination may state that it stops operating on a stated day.
- (4) A class of courier service contracts may be identified by reference to a stated principal contractor.

#### **406O Who may apply for contract determination**

- (1) The following entities may, under section 406N, apply for the making or variation of a contract determination for a class of courier service contracts—
  - (a) a principal contractor who engages independent couriers under the class of courier service contracts;
  - (b) 2 or more principal contractors who engage independent couriers under the class of courier service contracts and who—
    - (i) are related bodies corporate within the meaning of the Corporations Act; or
    - (ii) are engaged in a joint venture or common enterprise; or
    - (iii) undertake similar work;
  - (c) an employer organisation, federal organisation of employers, or State peak council of which principal contractors who may be directly affected by the contract determination are members;

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- (d) an employee organisation, federal organisation of employees, or State peak council of which independent couriers who may be directly affected by the contract determination are members.
- (2) An entity who applies for the making or variation of a contract determination for a class of courier service contracts must serve a copy of the application on—
- (a) each other entity mentioned in subsection (1) in relation to the class of courier service contract; and
  - (b) each other person directed by the commission.

#### **406P Notice of application and hearing**

- (1) As soon as practicable after an application for the making or variation of a contract determination is made under section 406O, the registrar must publish on the QIRC website—
- (a) a copy of the application; and
  - (b) a notice stating—
    - (i) details of the class of courier service contracts that the application relates to; and
    - (ii) the hearing date for the application; and
    - (iii) that any person may make a written submission to the commission about the application before the hearing date.
- (2) Also, the registrar must ensure a copy of the notice mentioned in subsection (1)(b) is published at least 21 days before the hearing date—



- (a) in a newspaper circulating throughout the State; and
  - (b) in another newspaper or publication the registrar considers gives sufficient notice of the application to the public or the part of the public likely to be affected by or concerned with the application.
- (3) Publication of the notice under subsection (2) may be in the electronic or online version of a newspaper or other publication.

#### **406Q Entities that may be heard on application**

- (1) A person, organisation, federal organisation or State peak council that will be covered by the proposed contract determination are entitled to be heard on an application for the contract determination.
- (2) Another person may be heard only with the leave of the commission.
- (3) The commission may give leave under subsection (2) only if the commission is satisfied there is a reasonable possibility that, if leave is not given, the commission will not be informed of an issue relevant to deciding the application.
- (4) This section does not affect another right of an organisation, federal organisation or another person to be heard on, or to intervene in, the application.

#### **406R Exemptions from contract determination**

- (1) The commission may, on application, make an order exempting a person, contract, negotiated agreement or other matter from the operation of a contract determination, including, for example—

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- (a) a class of principal contractors or independent couriers; or
  - (b) a class of courier service contracts; or
  - (c) principal contractors or independent couriers in a particular locality.
- (2) The commission may make the order if satisfied the exemption is not contrary to the public interest.
  - (3) An exemption has effect for the period, of not more than 3 years, stated in the exemption.
  - (4) The commission may review, vary or revoke an exemption on application or on its own initiative.

#### **406S When contract determination operates**

- (1) A contract determination starts operating on the day stated in the determination.
- (2) The stated day may be earlier than the day the contract determination is made but must not be earlier than the earliest of the following days—
  - (a) the day the application for the determination was made;
  - (b) the day the commission initiated the proceeding for the determination;
  - (c) the day the commission was given notice of the dispute giving rise to the determination.
- (3) A contract determination continues in operation until—
  - (a) the determination is replaced by another contract determination; or
  - (b) if the determination states a day it stops operating—the stated day; or
  - (c) the determination is revoked under section 406T.

#### **406T Commission's power to revoke contract determination**

- (1) To provide for fair and just remuneration and working conditions for independent couriers, the commission may make an order revoking a contract determination.
- (2) However, the commission must not make the order unless satisfied no independent couriers will be adversely affected by the revocation of the contract determination.
- (3) The commission may make the order—
  - (a) on its own initiative; or
  - (b) on the application of—
    - (i) an organisation or federal organisation that represents, or is entitled to represent, the industrial interests of a person covered by the contract determination; or
    - (ii) a principal contractor covered by the contract determination; or
  - (c) on a review of the contract determination under section 406U.

#### **406U Commission's power to review contract determination**

- (1) The commission may review a contract determination—
  - (a) on its own initiative; or
  - (b) on the application of—
    - (i) a person the determination applies to; or
    - (ii) an organisation or federal organisation that represents, or is entitled to

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represent, a person the determination applies to.

- (2) An application mentioned in subsection (1)(b) may include a request to vary a provision of the contract determination about remuneration or working conditions.

## **Part 4                    Negotiated agreements**

### **Division 1              Preliminary**

#### **406V What is a *negotiated agreement***

- (1) A *negotiated agreement* is a written agreement—
  - (a) about the remuneration and working conditions of independent couriers engaged by a principal contractor in relation to a class of courier service contracts; and
  - (b) that has been certified under division 3.
- (2) A negotiated agreement for a class of courier service contracts is made between—
  - (a) a party or parties representing 1 or more principal contractors under the class of courier service contracts, as mentioned in subsection (3); and
  - (b) a party or parties representing independent couriers engaged under the class of courier service contracts, as mentioned in subsection (4).
- (3) For subsection (2)(a), the party or parties are—
  - (a) 1 principal contractor; or

- (b) 2 or more principal contractors, collectively taken to be 1 party to the negotiated agreement, who—
    - (i) are related bodies corporate within the meaning of the Corporations Act; or
    - (ii) are engaged in a joint venture or common enterprise; or
    - (iii) undertake similar work; or
  - (c) an employer organisation or federal organisation of employers that represents, or is entitled to represent, 1 or more principal contractors.
- (4) For subsection (2)(b), the party or parties are—
- (a) 1 or more employee organisations that represent, or are entitled to represent, the independent couriers who are, or are eligible to be, members of the organisation; or
  - (b) a group of the independent couriers at the time the agreement is made, whether all or a category of the independent couriers, who are collectively taken to be 1 party to the negotiated agreement.

## **Division 2            Negotiation process**

### **406W Notice of intention to negotiate**

- (1) This section applies if a person (the *proposer*) proposes to negotiate with a view to a negotiated agreement being made.
- (2) The proposer must give each other proposed party to the negotiations a written notice of the proposer's intention to start negotiating.
- (3) Without limiting subsection (2), a principal

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contractor who proposes to negotiate with a group of independent couriers must give the notice to each relevant employee organisation.

- (4) A ***relevant employee organisation***, in relation to a proposed negotiated agreement, is each employee organisation or federal organisation of employees that—
  - (a) is to be covered by the proposed agreement; or
  - (b) is entitled to represent the industrial interests of independent couriers who are to be covered by the proposed agreement.
- (5) The notice must be given at least 14 days before the negotiations are proposed to start.
- (6) If an existing negotiated agreement applies to the parties, the notice must not be given more than 6 months before the nominal expiry date of the existing agreement.

#### **406X Notice of intention to be party to negotiations**

- (1) This section applies if—
  - (a) a person (the ***proposer***) gives notice under section 406W of the proposer's intention to start negotiating with a view to making negotiated agreement; and
  - (b) a person who receives the notice wants to be a party to the negotiations.
- (2) The person must give written notice of the person's intention to be a party to the negotiations to—
  - (a) the proposer; and
  - (b) the commission.
- (3) A notice under subsection (2) must be given within 21 days after the person receives the

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proposer's notice under section 406W.

- (4) An agreement proposed to be a negotiated agreement may only be made during the period mentioned in subsection (3) if notice of intention to be a party to the negotiations has been given under subsection (2) by—
  - (a) each proposed party to the negotiations; and
  - (b) each relevant employee organisation for the proposed agreement.

#### **406Y Proposed negotiated agreement to be given to independent couriers for approval**

- (1) This section applies if, during negotiations under this part, the negotiating parties propose to make a negotiated agreement.
- (2) The principal contractor must take reasonable steps to ensure that, at least 14 days before the day the independent couriers who are to be covered by the proposed negotiated agreement are asked to approve the proposed agreement—
  - (a) each independent courier has, or has ready access to, a copy of the proposed agreement; and
  - (b) the terms of the proposed agreement are explained to each independent courier; and
  - (c) for an agreement with a group of independent couriers—each independent courier is informed that the independent courier may be represented in the negotiations by a relevant employee organisation.
- (3) The principal contractor must not ask the independent couriers to approve the proposed negotiated agreement until 21 days after the later of the following—

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- (a) the day notice of intention to start the negotiations was given under section 406W;
  - (b) the day a scope order in relation to the proposed negotiated agreement came into effect.
- (4) If an independent courier is represented in the negotiations by a relevant employee organisation, the principal contractor must give the organisation a reasonable opportunity to represent the independent courier in the negotiations before the proposed negotiated agreement is made.
- (5) Subsection (4) stops applying if—
- (a) the independent courier stops being represented by the relevant employee organisation; or
  - (b) the independent courier stops being an independent courier who will be covered by the proposed negotiated agreement.
- (6) If the proposed negotiated agreement is amended, the steps in subsections (2) and (3) must be taken again for the proposed agreement as amended.
- (7) However, subsection (6) does not apply if the commission is satisfied the amendment was only—
- (a) for a formal or clerical reason; or
  - (b) in another way that does not adversely affect an independent courier's interests.

#### **406Z Parties must negotiate in good faith**

- (1) The negotiating parties must negotiate in good faith.
- (2) Without limiting subsection (1), each party must do the following things—



- (a) attend and participate in negotiating meetings;
  - (b) disclose relevant information, other than confidential or commercially sensitive information, in a timely way;
  - (c) genuinely consider proposals made by other parties, respond in a timely way and give reasons for the party's response;
  - (d) not engage in capricious or unfair conduct that undermines freedom of association or the negotiating process.
- (3) Without limiting subsection (2)(b), the parties must obtain, and disclose as soon as practicable after the start of the negotiations, information relevant to the gender pay gap under the proposed negotiated agreement, including—
- (a) the distribution of the independent couriers by gender; and
  - (b) details of the gender pay gap; and
  - (c) any major factors identified as contributing to the gender pay gap; and
  - (d) if appropriate, the projected effect of the proposed negotiated agreement on the gender pay gap; and
  - (e) other information relevant to the gender pay gap reasonably requested by another party to the negotiations; and
  - (f) other information relevant to the gender pay gap prescribed by regulation.
- (4) For subsection (3), the ***gender pay gap*** under the proposed negotiated agreement is the difference between the average weekly full-time equivalent earnings of male independent couriers and female independent couriers covered by the proposed negotiated agreement.

- (5) Subject to subsections (1) and (2), the negotiating parties may make an agreement about procedures or principles for the conduct of the negotiations.

#### **406ZA Conciliation and arbitration by commission**

- (1) A negotiating party may ask the commission to help the parties reach agreement.
- (2) The commission has jurisdiction to—
  - (a) conciliate the matter to help the negotiating parties reach agreement on all matters or as many matters as possible; and
  - (b) determine, by arbitration, matters in dispute following conciliation.
- (3) Chapter 4, part 3—

- (a) is an applied provision for this section; and

*Note—*

See section 406ZZF about interpreting an applied provision.

- (b) without limiting section 406ZZF, applies for this section as if the reference in section 180(3)(a) to a proposed bargaining instrument the subject of a part 5 application were a reference to the proposed negotiated agreement for the certification application.
- (4) If the commission makes an arbitration determination under chapter 4, part 3, the determination is taken to be a negotiated agreement certified by the commission under division 3.

#### **406ZB Scope orders**

- (1) A negotiating party may apply to the commission for an order providing for the matters mentioned in subsection (2) in relation to a proposed

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negotiated agreement (a *scope order*) if the negotiating party has concerns the proposed negotiated agreement—

- (a) will not cover appropriate independent couriers; or
  - (b) will cover independent couriers whom it is inappropriate for the agreement to cover.
- (2) A scope order in relation to a proposed negotiated agreement must state—
- (a) the principal contractor, or principal contractors, to be covered by the agreement; and
  - (b) the independent couriers to be covered by the agreement; and
  - (c) the organisations or federal organisations to be parties to the agreement.
- (3) Chapter 4, part 4 (other than sections 184(1) and 186)—
- (a) is an applied provision for this section; and

*Note—*

See section 406ZZF about interpreting an applied provision.

- (b) without limiting section 406ZZF, applies for this section as if the application referred to in section 184(2) were the application under subsection (1).

## **Division 3      Certifying negotiated agreements**

### **Subdivision 1    Making and hearing applications**

### **406ZC Application for certification of negotiated agreement**

- (1) A party to an agreement proposed to be a negotiated agreement may apply to the commission to certify the agreement.
- (2) The application must be made within 21 days after—
  - (a) the day the agreement is signed by or for all of the parties; or
  - (b) the day the agreement was approved by the independent couriers who will be covered by the agreement as required under section 406ZH.

### **406ZD Notice of hearing**

- (1) The registrar must, at least 7 days before a certification application will be heard, place a notice in the registry stating details of—
  - (a) the names of the parties to the agreement proposed to be a negotiated agreement; and
  - (b) a relevant contract determination for the proposed negotiated agreement; and
  - (c) the hearing date.
- (2) A ***relevant contract determination*** for a proposed negotiated agreement is a contract determination that—
  - (a) regulates any working conditions of the independent couriers engaged in the same kind of work as the work performed by the independent couriers to be covered by the proposed agreement; and
  - (b) immediately before the day the proposed agreement is certified, covers a principal

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contractor who engages independent couriers mentioned in paragraph (a).

#### **406ZE Entities that may be heard on application**

- (1) The following are entitled to be heard on a certification application—
  - (a) a person who will be covered by the proposed negotiated agreement;
  - (b) an organisation or federal organisation that will be a party to the proposed agreement.
- (2) Another organisation or federal organisation may be heard only with the leave of the commission.
- (3) The commission may give leave under subsection (2) only if the commission is satisfied there is a reasonable possibility that, if leave is not given, the commission will not be informed of an issue relevant to deciding the application.
- (4) This section does not affect another right of an organisation, federal organisation or another person to be heard on, or to intervene in, the application.

## **Subdivision 2 Deciding applications**

#### **406ZF Requirements for commission's decision**

- (1) The commission must grant a certification application if—
  - (a) each requirement under section 406ZG is satisfied for the application; and
  - (b) the commission is not required to refuse to grant the application under section 406ZL, 406ZM or 406ZN.
- (2) If subsection (1) does not apply, the commission

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must refuse to grant the certification application.

- (3) Before refusing to grant the certification application, the commission must give persons who will be covered by the proposed negotiated agreement an opportunity to take action that may be necessary to enable the commission to grant the application.
- (4) The commission may conciliate an industrial matter concerned with a view to helping the persons take the action necessary to enable the commission to grant the application.

#### **406ZG Requirements for granting application**

- (1) The commission must be satisfied about the following matters in relation to the proposed negotiated agreement—
  - (a) notice of intention to start negotiating the agreement was given under section 406W;
  - (b) the principal contractor took the reasonable steps required under section 406Y;
  - (c) the principal contractor did not coerce, or attempt to coerce, an independent courier not to be represented, or to stop being represented, by a relevant employee organisation as mentioned in section 406Y(2)(c);
  - (d) the agreement is agreed by parties as required under section 406ZH;
  - (e) the agreement states—
    - (i) the parties to the agreement; and
    - (ii) for an agreement to which a group of independent couriers is a party—the name of each member of the group; and

- (iii) the class of courier service contracts to which the agreement relates; and
  - (iv) a nominal expiry date that is no later than 4 years after the day the agreement will come into operation;
  - (f) the agreement passes the no-disadvantage test under section 406ZI;
  - (g) the agreement passes the equal remuneration test under section 406ZK;
  - (h) subject to subsection (2), each relevant employee organisation is a party to the agreement;
  - (i) if a scope order in relation to the agreement is in effect—the agreement is not inconsistent with the scope order;
  - (j) the agreement is stated in plain English and its structure and content is easy to understand.
- (2) Subsection (1)(h) does not apply in relation to a relevant employee organisation if the commission is satisfied the organisation—
- (a) has been given the opportunity to be a party to the proposed negotiated agreement, but does not want to be a party; or
  - (b) has no members who are to be covered by the proposed negotiated agreement.

#### **406ZH Proposed negotiated agreement agreed by all parties**

- (1) An agreement that is proposed to be a negotiated agreement is agreed by all of the parties if—
- (a) the agreement is signed by or for all of the parties; or

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- (b) the commission is satisfied all parties have agreed on the terms of the agreement and the agreement was approved by—
  - (i) for an agreement to which a group of independent couriers is a party—at least 65% of the independent couriers who will be covered by the agreement in a secret ballot; or
  - (ii) otherwise—a valid majority of the independent couriers who will be covered by the agreement in a properly conducted ballot.
- (2) In deciding whether all parties have agreed on the terms of the agreement, the commission may consider—
  - (a) whether the parties negotiated in good faith as required under section 406Z; and
  - (b) any other evidence supporting or not supporting the alleged agreement.

#### **406ZI No-disadvantage test**

- (1) The commission must be satisfied the proposed negotiated agreement does not disadvantage independent couriers in relation to their working conditions.
- (2) The agreement disadvantages independent couriers only if the commission considers the agreement would result in—
  - (a) a reduction in the independent couriers' entitlements and protections under—
    - (i) a relevant contract determination; or
    - (ii) a contract determination decided by the commission under section 406ZJ(3) for the proposed agreement; or



- (b) remuneration and working conditions that—
  - (i) are not fair and just; or
  - (ii) are less favourable than the remuneration and working conditions an employee would receive under an industrial instrument or this Act for performing similar work.

*Note—*

See section 406F for the matters the commission must consider in exercising its powers under this chapter in relation to a contract instrument.

- (3) Subsection (2) does not apply if the commission considers that, in the context of the remuneration and working conditions as a whole, the reduction or less favourable conditions are not against the public interest.
- (4) If the president considers exceptional circumstances exist, the president may require the registrar to give the commission a report comparing the proposed negotiated agreement with—
  - (a) a relevant contract determination; or
  - (b) a contract determination decided by the commission under section 406ZJ(3) for the proposed agreement; or
  - (c) the remuneration and working conditions an employee would receive under an industrial instrument or this Act for performing similar work.

### **406ZJ Deciding relevant contract determination**

- (1) This section applies if—
  - (a) a principal contractor, organisation or federal organisation proposes to make a negotiated agreement; and

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- (b) there is no relevant contract determination for some or all of the independent couriers to whom the agreement will apply.
- (2) The principal contractor, organisation or federal organisation must apply to the commission for a decision under subsection (3).
- (3) On application, the commission must decide that a contract determination that regulates the remuneration and working conditions of independent couriers engaged in similar work as the independent couriers under the proposed agreement is appropriate for deciding whether the agreement passes the no-disadvantage test under section 406ZI.

#### **406ZK Equal remuneration test**

The commission must be satisfied, in relation to the independent couriers to be covered by the agreement—

- (a) a proposed negotiated agreement provides for equal remuneration for work of equal or comparable value; and
- (b) a principal contractor to whom the proposed negotiated agreement applies has implemented, is implementing or, if the agreement is certified, will implement equal remuneration for work of equal or comparable value.

#### **406ZL Refusal to grant application—generally**

- (1) The commission must refuse to grant a certification application for an agreement proposed to be a negotiated agreement if the commission considers—
  - (a) a provision of the agreement—

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- (i) is inconsistent with an equal remuneration order; or
  - (ii) seeks to prohibit or restrict an application being made for an equal remuneration order; or
  - (b) a provision of the agreement is an objectionable term; or
  - (c) a provision of the agreement is discriminatory.
- (2) For subsection (1)(c), a provision of the agreement is not discriminatory only because it provides for minimum remuneration for—
- (a) all independent couriers under 21 years; or
  - (b) all independent couriers with disability; or
  - (c) a class of independent couriers mentioned in paragraph (a) or (b).
- (3) The commission has jurisdiction to make an equal remuneration order in relation to the agreement.
- (4) Chapter 5, part 3 and chapter 8, part 1 are applied provisions for this section.

*Note—*

See section 406ZZF about interpreting an applied provision.

- (5) In this section—

***equal remuneration order*** means an order made under chapter 5, part 3.

***objectionable term*** means a term that permits, or has the effect of permitting, or purports to permit or have the effect of permitting—

- (a) a contravention of chapter 8, part 1; or
- (b) the payment of a bargaining services fee within the meaning of section 298.

***permit*** includes require.

#### **406ZM Refusal to grant application—contravention of industrial action provision**

- (1) The commission must refuse to grant a certification application if the commission is satisfied that, in connection with negotiations for the proposed negotiated agreement—
  - (a) the principal contractor has contravened an industrial activity provision; or
  - (b) the principal contractor has caused an entity to engage in conduct that, had the principal contractor engaged in the conduct, would be a contravention by the principal contractor of an industrial activity provision; or
  - (c) an entity has, for the principal contractor, engaged in conduct mentioned in paragraph (b) or caused another entity to engage in the conduct.
- (2) Subsection (1) does not apply if the commission is satisfied the contravention or conduct, and its effects, have been fully remedied.
- (3) Chapter 8, part 1, division 4 is an applied provision for this section.

*Note—*

See section 406ZZF about interpreting an applied provision.

- (4) In this section—

***industrial activity provision*** means a provision of chapter 8, part 1, division 4.

#### **406ZN Refusal to grant application—independent couriers covered by proposed negotiated agreement**

- (1) The commission must refuse to grant a certification application for an agreement proposed to be a negotiated agreement if—

- (a) the agreement applies only to a group or category of independent couriers engaged by a principal contractor; and
  - (b) the commission considers—
    - (i) the agreement defines the group or category in a way that results in other independent couriers not being covered by the proposed negotiated agreement; and
    - (ii) it would be reasonable for the other independent couriers to be covered by the proposed negotiated agreement; and
    - (iii) it is unfair that the other independent couriers are not covered by the proposed negotiated agreement.
- (2) For subsection (1)(b)(ii), in deciding whether it would be reasonable for the other independent couriers to be covered by the proposed negotiated agreement, the commission must consider—
- (a) the nature of the work performed by the other independent couriers; and
  - (b) the geographical, organisational and operational relationship between the group or category and the other independent couriers.

### **Subdivision 3 Other provisions**

#### **406ZO Provisions for preventing and settling disputes**

The procedures for preventing and settling disputes contained in a negotiated agreement may, with the commission's approval, authorise

the commission to settle a dispute.

#### **406ZP Publication of negotiated agreements**

- (1) As soon as practicable after granting a certification application for a proposed negotiated agreement, the commission must give the registrar—
  - (a) a copy of the negotiated agreement certified by the commission; and
  - (b) written reasons for the certification.
- (2) As soon as practicable after the registrar receives a copy of the negotiated agreement, the registrar must—
  - (a) give notice of certification of the agreement to the parties; and
  - (b) ensure a copy of the agreement is published on the QIRC website.

#### **406ZQ When negotiated agreements operate**

A negotiated agreement—

- (a) starts operating when it is certified; and
- (b) continues to operate until it is terminated under section 406ZS or 406ZT.

### **Division 4            Amending and terminating negotiated agreements**

#### **406ZR Amendment on application**

- (1) An application to amend a negotiated agreement may be made by—

- (a) if the agreement applies to 1 or more relevant employee organisations—the principal contractor and each relevant employee organisation the agreement applies to; or
  - (b) if the amendment amends the parties to the agreement—the person who wants to become a party to the agreement; or
  - (c) otherwise—the principal contractor.
- (2) The commission must approve the amendment if, and must not approve the amendment unless, satisfied—
- (a) the amendment is approved as required under subsection (3) or (4); and
  - (b) the commission would be required to certify the negotiated agreement as amended if it were an agreement for which a certification application were made.
- (3) An amendment that amends the parties to the agreement must be approved by—
- (a) the principal contractor; and
  - (b) either—
    - (i) for a negotiated agreement that applies to a relevant employee organisation—the relevant employee organisation; or
    - (ii) for a negotiated agreement to which a group of independent couriers is a party—at least 65% of the independent couriers covered by the agreement in a secret ballot.
- (4) Any other amendment must be approved by—
- (a) for an agreement to which a group of independent couriers is a party—at least

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- 65% of the independent couriers covered by the agreement in a secret ballot; or
- (b) otherwise—a valid majority of the independent couriers covered by the agreement in a properly conducted ballot.
- (5) In applying subsection (2)(b)—
- (a) the requirement in section 406ZG(1)(d) about the agreement being agreed by all of the parties is taken to be satisfied; and
- (b) section 406ZF(3) and (4) is to be disregarded.
- (6) The amendment takes effect when the commission’s approval takes effect.

#### **406ZS Termination on or before nominal expiry date**

- (1) On or before the nominal expiry date of a negotiated agreement, all of the parties to which the agreement applies may apply to the commission to terminate the agreement.
- (2) The commission must approve the termination if, and must not approve the termination unless, satisfied the termination is approved by—
- (a) for a negotiated agreement to which a group of independent couriers is a party—at least 65% of the independent couriers covered by the agreement in a secret ballot; or
- (b) otherwise—a valid majority of the independent couriers covered by the agreement in a properly conducted ballot.
- (3) The termination takes effect when the commission’s approval takes effect.



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### **406ZT Termination after nominal expiry date**

- (1) After the nominal expiry date of a negotiated agreement, the following persons may apply to the commission to terminate the agreement—
  - (a) the principal contractor;
  - (b) an employer organisation or federal organisation of employers the agreement applies to, if the organisation or federal organisation has at least 1 member who is a principal contractor;
  - (c) for a negotiated agreement to which a group of independent couriers is a party—at least 65% of the independent couriers covered by the agreement in a secret ballot;
  - (d) if paragraph (c) does not apply—a valid majority of the independent couriers covered by the agreement in a properly conducted ballot;
  - (e) a relevant employee organisation the agreement applies to, if the organisation has at least 1 member who is an independent courier.
- (2) The person who intends to apply to terminate the negotiated agreement must give all of the other persons the agreement applies to notice of the intention at least 3 months before making the application.
- (3) The commission must approve the termination if, and must refuse to approve the termination unless, satisfied subsection (2) has been complied with and either—
  - (a) for an agreement that provides that it may be terminated if particular conditions are met—the conditions have been met; or
  - (b) for another agreement—

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- (i) the other parties to the agreement agree to it being terminated; or
  - (ii) termination of the agreement is not contrary to the public interest.
- (4) The termination takes effect when the commission's approval takes effect.

## **Part 5                    Individual courier    service contracts**

### **Division 1                Amending or voiding    courier service contracts**

#### **406ZU What is an *unfair contract***

- (1) A courier service contract is an *unfair contract* if the contract—
- (a) is harsh, unconscionable or unfair; or
  - (b) is against the public interest; or
  - (c) provides, or has provided, a total remuneration for performing the work stated in the contract less than that which—
    - (i) a person performing the work an independent courier would receive under a contract instrument; or
    - (ii) an employee performing the work would receive under an industrial instrument or this Act; or
  - (d) is designed to, or does, avoid the provisions of a contract instrument.
- (2) However, a courier service contract is not an *unfair contract* under subsection (1)(c) if the

commissioner considers that, in the context of the remuneration and working conditions provided for by the contract as a whole, the reduction in remuneration is not against the public interest.

#### **406ZV Power to amend or declare void unfair courier service contracts**

- (1) On application by an entity under section 406ZW, the commission may amend or declare void (wholly or partly) a courier service contract to the extent the commission considers—
  - (a) the contract is inconsistent with a contract instrument; or
  - (b) the contract is an unfair contract.
- (2) In deciding whether to amend or declare void the courier service contract, or part of the courier service contract, the commission may consider—
  - (a) the relative bargaining power of—
    - (i) the parties to the contract; and
    - (ii) if applicable, a person acting for the parties; or
  - (b) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, a party to the contract; or
  - (c) a contract instrument; or
  - (d) an industrial instrument, a federal industrial instrument or this Act; or
  - (e) anything else the commission considers relevant.
- (3) The commission may consider the courier service contract to be an unfair contract if it considers the contract—

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- (a) was an unfair contract when it was entered into; or
  - (b) became an unfair contract after it was entered into because of the conduct of the parties or an amendment of the contract, or for another reason the commission considers sufficient.
- (4) The commission may make an order it considers appropriate about payment of an amount for a courier service contract amended or declared void.

#### **406ZW Who may apply for amendment or declaration**

An application to amend or declare void a courier service contract under section 406ZV may be made by—

- (a) a party to the contract; or
- (b) for the independent courier—an inspector; or
- (c) for a party to the contract who is, or has applied to become, a member of an organisation or federal organisation—the organisation or federal organisation acting with the party’s written consent.

## **Division 2            Unfair termination of courier service contracts**

#### **406ZX When is courier service contract *unfairly terminated***

A courier service contract is *unfairly terminated* if termination of the contract is harsh, unjust or unreasonable.

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### **406ZY Unfair termination of courier service contract**

- (1) This section applies if it is claimed that an independent courier's courier service contract with a principal contractor was unfairly terminated by the principal contractor.
- (2) An application (an *unfair termination application*) for reinstatement or compensation may be made to the commission by—
  - (a) the independent courier; or
  - (b) with the independent courier's consent, an organisation or federal organisation that is entitled to represent the industrial interests of the independent courier.
- (3) The application must be made within—
  - (a) 21 days after the day the termination takes effect; or
  - (b) if the commission allows a further period on an application made at any time—the further period.
- (4) The commission must deal with the application as quickly as possible.

### **406ZZ Conciliation before application heard**

- (1) The commission must hold a conference to attempt to settle an unfair termination application by conciliation before it hears the application.
- (2) Section 318 is an applied provision for this section.

*Note—*

See section 406ZZF about interpreting an applied provision.

### **406ZZA Arbitration when conciliation unsuccessful**

- (1) If the commission considers all reasonable steps to settle an application by conciliation have been made, but have been unsuccessful, the commission may hear and decide the application by—
  - (a) making an order under section 406ZZB or 406ZZC; or
  - (b) dismissing the application.
- (2) In deciding whether termination of the courier service contract was harsh, unjust or unreasonable, the commission must consider the following matters—
  - (a) how long the independent courier provided services transporting goods for the principal contractor under the contract or otherwise;
  - (b) whether the independent courier was notified of the reasons for termination;
  - (c) whether the termination related to—
    - (i) the operational requirements of the principal contractor's business or service; or
    - (ii) the independent courier's conduct, capacity or performance;
  - (d) if the termination relates to the independent courier's conduct, capacity or performance—
    - (i) whether the independent courier had been warned about the conduct, capacity or performance; or
    - (ii) whether the independent courier was given an opportunity to respond to the

claim about the conduct, capacity or performance;

- (e) any other matters the commission considers relevant.

#### **406ZZB Remedies—reinstatement of courier service contract**

- (1) This section applies if the commission considers an independent courier's courier service contract was unfairly terminated by the principal contractor.
- (2) The commission may order the principal contractor to reinstate the courier service contract for the independent courier on conditions at least as favourable as the conditions of the terminated courier service contract, immediately before it was terminated.
- (3) Reinstatement of the courier service contract includes re-engagement under a new courier service contract.
- (4) The commission may also make an order it considers appropriate about—
  - (a) payment of an amount for—
    - (i) the termination; and
    - (ii) the period between the termination and reinstatement under subsection (2); or
  - (b) a period after the termination of the courier service contract to be treated as a period of engagement under relevant courier service contracts.
- (5) This section does not limit the commission's power to make an interim or interlocutory order.

### **406ZZC Remedies—compensation**

- (1) If, and only if, the commission considers reinstatement under section 406ZZB would be impracticable, the commission may order the principal contractor to pay the independent courier an amount of compensation decided by the commission.
- (2) The commission must not award an amount of compensation that is more than the amount of remuneration paid to the independent courier during the 6 months immediately before the termination of the contract.
- (3) The commission must take into account any amount paid to the independent courier by the principal contractor on termination of the courier service contract.
- (4) This section does not limit the commission's power to make an interim or interlocutory order.

### **406ZZD Further orders if principal contractor fails to reinstate**

- (1) If a principal contractor wilfully contravenes an order to reinstate a courier service contract for an independent courier, the commission may—
  - (a) further order the principal contractor to pay the independent courier—
    - (i) an amount of not more than the monetary value of 50 penalty units; and
    - (ii) an amount for lost remuneration; and
  - (b) make further orders until the principal contractor complies with an order under section 406ZZB or this section.
- (2) This section does not affect another provision of this Act allowing proceedings to be taken against the principal contractor.



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## Part 6                      General provisions

### 406ZZE Dispute resolution

- (1) This section applies in relation to a dispute that—
  - (a) exists between—
    - (i) a principal contractor, employer organisation or federal organisation of employers; and
    - (ii) an independent courier, employee organisation or federal organisation of employees; and
  - (b) is about—
    - (i) the interpretation or enforcement of a contract instrument, unless this Act otherwise provides; or
    - (ii) another matter that would be an industrial dispute if the principal contractor were an employer and the independent courier were an employee.
- (2) Chapter 6—
  - (a) is an applied provision for the dispute; and  
*Note—*  
See section 406ZZF about interpreting an applied provision.
  - (b) without limiting section 406ZZF, applies for the dispute as if a reference to an industrial dispute were a reference to the dispute.

### 406ZZF Interpretation of applied provisions

- (1) An applied provision applies for a provision of this chapter, or a stated purpose, as if a reference in the applied provision to a term stated in column 1 of the table below were a reference to the term

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stated opposite in column 2—

<b>Column 1</b>	<b>Column 2</b>
an employer	a principal contractor
an employee	an independent courier
a modern award	a contract determination
a certified agreement or bargaining instrument	a negotiated agreement
a proposed certified agreement or proposed bargaining instrument	a proposed negotiated agreement
an industrial instrument	a contract instrument
a negotiating party for a proposed certified agreement or proposed bargaining instrument	a negotiating party under section 406A for a proposed negotiated agreement
an employer organisation that is, or is to be, a party to an industrial instrument	an employer organisation or federal organisation of employers that is, or is to be, a party to a contract instrument
an employee organisation that is, or is to be, a party to an industrial instrument	an employee organisation or federal organisation of employees that is, or is to be, a party to a contract instrument

- (2) For a provision of this chapter that relates to a negotiated agreement or a proposed negotiated agreement, the applied provision applies as if—
- (a) there were a peace obligation period for the negotiations and the period had ended; and
  - (b) a reference to the requirement under section 173 to negotiate in good faith were a reference to the requirement to negotiate in good faith under section 406Z; and
  - (c) a reference to the proposed bargaining instrument being certified or made by the

commission under chapter 4, part 5 were a reference to the proposed negotiated agreement being certified under part 4, division 3.

- (3) For a provision of this chapter that relates to work of equal or comparable value, the applied provision applies as if a reference to remuneration included the fees, allowances and other amounts payable, or other benefits made available, to an independent courier under a courier service contract.
- (4) Without limiting subsection (1), (2) or (3)—
  - (a) a reference in an applied provision to another provision that applies for this chapter is a reference to the other provision as it applies for this chapter; and
  - (b) an applied provision also applies with other necessary changes.

#### **406ZZG Authorisation for competition legislation**

- (1) The following things are specifically authorised for the *Competition and Consumer Act 2010* (Cwlth), section 51(1)(b) and the Competition Code of Queensland—
  - (a) a courier service contract;
  - (b) a contract determination;
  - (c) a negotiated agreement;
  - (d) anything done by a person—
    - (i) to negotiate, enter into or perform a courier service contract; or
    - (ii) to negotiate with a view to a negotiated agreement being made; or

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- (iii) to comply with a contract determination or negotiated agreement; or
  - (iv) to comply with this chapter.
- (2) Anything authorised to be done by subsection (1) is authorised only to the extent it would otherwise contravene the *Competition and Consumer Act 2010* (Cwlth) or the Competition Code of Queensland.

**67 Amendment of s 595 (Definitions for chapter)**

Section 595, definitions *Commonwealth Registered Organisations Act* and *federal organisation*—  
*omit.*

**68 Amendment of sch 3 (Civil penalties)**

Schedule 3—  
*insert—*

**Chapter 10A—Independent couriers**

- |   |  |                |                  |
|---|--|----------------|------------------|
| s 406G(1)<br>(Contravening contract instrument) | (a) an independent courier to whom the contract instrument applies   | the commission | 27 penalty units |
|   | (b) an employee organisation or federal organisation of employees of which an independent courier mentioned in paragraph (a) is a member |                |                  |

(c) an inspector

**69 Amendment of sch 5 (Dictionary)**

(1) Schedule 5, definitions *Commonwealth Registered Organisations Act*, *covers*, *federal organisation*, *negotiating party*, *relevant employee organisation*, *scope order* and *valid majority*—

*omit.*

(2) Schedule 5—

*insert*—

***applied provision***, for chapter 10A, see section 406A.

***certification application***, for chapter 10A, see section 406A.

***Commonwealth Registered Organisations Act*** means the *Fair Work (Registered Organisations) Act 2009* (Cwlth).

***contract***, for chapter 10A, see section 406A.

***contract determination***, for chapter 10A, see section 406N(1)(a).

***contract instrument***, for chapter 10A, see section 406A.

***courier service contract***, for chapter 10A, see section 406D.

***courier vehicle***, for chapter 10A, see section 406A.

***covers***—

(a) in relation to a bargaining instrument, see section 221; or

(b) in relation to a contract instrument, for chapter 10A, see section 406I.

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***federal organisation*** means an organisation under the Commonwealth Registered Organisations Act.

***independent courier***, for chapter 10A, see section 406B.

***negotiated agreement***, for chapter 10A, see section 406V(1).

***negotiating party***—

- (a) for chapter 4, see section 168; or
- (b) in relation to negotiations under chapter 10A, part 4 with a view to a negotiated agreement being made, for chapter 10A, see section 406A.

***principal contractor***, for chapter 10A, see section 406C.

***proposed negotiated agreement***, for chapter 10A, see section 406A.

***relevant contract determination***, in relation to a proposed negotiated agreement, for chapter 10A, see section 406ZD(2).

***relevant employee organisation***—

- (a) for chapter 4, see section 168; or
- (b) for chapter 10A, see section 406A.

***scope order***—

- (a) for chapter 4, see section 184(1); or
- (b) for chapter 10A, see section 406ZB(1).

***unfair contract***, for chapter 10A, see section 406ZU.

***unfairly terminated***, for a courier service contract, for chapter 10A, see section 406ZX.

***valid majority*** means—

- 
- (a) generally—a majority of the relevant employees who cast a valid vote to give an approval, after the employer has given the employees a reasonable opportunity to decide whether they want to give the approval; or
  - (b) for chapter 10A, see section 406A.
- (3) Schedule 5, definition *applies to*—
- insert*—
- (c) in relation to a contract instrument, for chapter 10A, see section 406H.

## **Part 3                      Amendment of other legislation**

### **Division 1                      Amendment of Anti-Discrimination Act 1991**

#### **70            Act amended**

This division amends the *Anti-Discrimination Act 1991*.

#### **71            Insertion of new s 190**

After section 189—

*insert*—

##### **190 Interim orders protecting complainant's interests (tribunal)**

- (1) This section applies if a complaint has been referred to, but not yet determined by, the tribunal.
- (2) The complainant may apply to the tribunal for an order prohibiting a person from doing an act that might prejudice an order the tribunal might make

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after a hearing.

- (3) A party may apply to the tribunal for an order varying or revoking an order made under subsection (2).
- (4) This section does not limit the tribunal's powers under the relevant tribunal Act.

## 72 Insertion of new ch 11, pt 7

Chapter 11—

*insert—*

### **Part 7**

### **Transitional provision for Industrial Relations and Other Legislation Amendment Act 2022**

#### **279 Application of s 190 to existing complaints**

Section 190 applies for a complaint mentioned in that section, regardless of whether the complaint was made, or referred to the tribunal, before or after the commencement.

## **Division 2**

### **Amendment of Associations Incorporation Act 1981**

## **73 Act amended**

This division amends the *Associations Incorporation Act 1981*.

## **74 Amendment of s 5 (Eligibility for incorporation)**

Section 5(1)(b)(iii), from 'that is' to 'that Act'—



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*omit.*

## **75 Amendment of s 9 (Application for incorporation)**

Section 9—

*insert—*

- (4) Further, the application must be accompanied by a statutory declaration by the appointed person stating whether the association has an industrial purpose.

## **76 Insertion of new s 10A**

After section 10—

*insert—*

### **10A Chief executive must advise industrial registrar about particular applications**

- (1) This section applies in relation to an association's application for incorporation if—
  - (a) the application states that the association has an industrial purpose; or
  - (b) the chief executive is otherwise satisfied the association has an industrial purpose.
- (2) The chief executive must—
  - (a) give a copy of the application to the industrial registrar; and
  - (b) give the applicant written notice stating—
    - (i) a copy of the application has been given to the industrial registrar under this section; and
    - (ii) that the chief executive will be required to refuse the application if the industrial registrar gives a notice under the *Industrial Relations Act 2016*,

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section 578K stating that the objection ground is established for the application.

- (3) The chief executive must not decide the application under section 12 before the industrial registrar has given the chief executive a notice about the application under the *Industrial Relations Act 2016*, section 578F, 578K or 578L.

**77 Amendment of s 12 (Chief executive to make decision about application)**

Section 12—

*insert—*

- (3) However, the chief executive must refuse the application if the industrial registrar gives the chief executive a notice under the *Industrial Relations Act 2016*, section 578K stating that the objection ground is established for the application.

**78 Amendment of s 48 (Application to register amendment of rules)**

- (1) Section 48(6)(b), from ‘stating’—

*omit, insert—*

stating—

- (i) the amendment complies with this Act; and  
(ii) whether the effect of the amendment is to give the incorporated association an industrial purpose.

- (2) Section 48—

*insert—*

- (8A) However, the chief executive must refuse the application if the industrial registrar gives the

chief executive a notice under the *Industrial Relations Act 2016*, section 578K stating that the objection ground is established for the application.

- (3) Section 48(8A) to (11)—  
*renumber* as section 48(9) to (12).

## 79 Insertion of new s 48A

After section 48—

*insert—*

### **48A Chief executive must advise industrial registrar about particular applications**

- (1) This section applies if an incorporated association applies to the chief executive for registration of an amendment of its rules and either—
- (a) the application states that the amendment of the association's rules gives the association an industrial purpose; or
  - (b) the chief executive is otherwise satisfied the effect of the amendment of the association's rules is to give the association an industrial purpose.
- (2) The chief executive must—
- (a) give a copy of the application to the industrial registrar; and
  - (b) give the applicant written notice stating—
    - (i) a copy of the application has been given to the industrial registrar under this section; and
    - (ii) that the chief executive will be required to refuse the application if the industrial registrar gives the chief executive a notice under the *Industrial*

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*Relations Act 2016*, section 578K stating that the objection ground is established for the application.

- (3) The chief executive must not decide the application under section 48(8) before the industrial registrar gives the chief executive a notice about the application under the *Industrial Relations Act 2016*, section 578F, 578K or 578L.

**80 Amendment of s 93 (Cancellation of incorporation by chief executive)**

Section 93, heading, after ‘executive’—

*insert—*

**—generally**

**81 Insertion of new s 93B**

After section 93A—

*insert—*

**93B Cancellation of incorporation by chief executive—adverse order or industrial penalty**

- (1) This section applies if the industrial registrar gives the chief executive notice that an adverse order has been made, or an industrial penalty has been imposed, against an incorporated association or an officer or member of an incorporated association.
- (2) The chief executive must cancel the incorporation of the incorporated association.
- (3) The chief executive must give a written notice about the cancellation to—
  - (a) a person who is last known to the chief executive as the secretary or another officer

of the incorporated association before the cancellation; and

- (b) the industrial registrar.
- (4) A notice under subsection (3) must state—
  - (a) the reason for the cancellation; and
  - (b) for the notice given to the industrial registrar—the name of each person who was known to the chief executive as an officer of the incorporated association immediately before the incorporation was cancelled.
- (5) In this section—

*adverse order* means an order under the *Industrial Relations Act 2016*, section 293A, 483B or 483D.

*industrial penalty* means a penalty, including a civil penalty, under the *Industrial Relations Act 2016*.

## **82 Amendment of s 94 (Vesting of property on cancellation)**

Section 94, ‘pursuant to section 93’—

*omit, insert—*

under section 93 or 93B

## **83 Amendment of s 94A (Definitions for part)**

Section 94A, definitions *deregistered association* and *deregistration*, paragraph (c), ‘section 92C or 93’—

*omit, insert—*

section 92C, 93 or 93B

## **84 Amendment of s 109 (Affected person may apply for review)**

- (1) Section 109(1), ‘, other than under section 106K,’—

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*omit.*

(2) Section 109—

*insert—*

(1A) However, subsection (1) does not apply to a decision under section 10A(1)(b), 12(3), 48(9), 48A(1)(b), 93B(2) or 106K.

(3) Section 109(1A) and (2)—

*renumber* as section 109(2) and (3).

## **85 Insertion of new pt 18, div 5**

Part 18—

*insert—*

### **Division 5 Transitional provision for Industrial Relations and Other Legislation Amendment Act 2022**

#### **163 Existing applications related to industrial purpose**

- (1) This section applies if—
  - (a) an application under section 9 or 48 was made, but not decided, before the commencement; and
  - (b) on the commencement, the application is an application to which section 10A or 48A applies.
- (2) This Act, as in force from the commencement, applies for deciding the application.
- (3) Without limiting subsection (2), the chief executive may, by notice, require the applicant to give the chief executive a statutory declaration

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mentioned in section 9(4) or 48(6)(b)(ii).

**86 Amendment of sch 2 (Dictionary)**

Schedule 2—

*insert—*

***industrial purpose*** means a purpose of furthering, protecting or representing the industrial interests of the members of an industrial association or other persons.

***industrial registrar*** means the registrar under the *Industrial Relations Act 2016*.

***objection ground*** see the *Industrial Relations Act 2016*, section 578D.

**Division 3                      Amendment of Associations  
Incorporation Regulation 1999**

**87 Regulation amended**

This division amends the *Associations Incorporation Regulation 1999*.

**88 Amendment of s 3 (General references)**

Section 3(1)(i)—

*insert—*

(iv) the name of an organisation under the *Industrial Relations Act 2016*;

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## **Division 4                      Amendment of Public Trustee Act 1978**

### **89        Act amended**

This division amends the *Public Trustee Act 1978*.

### **90        Amendment of s 6 (Definitions)**

Section 6—

*insert—*

*employer*, in relation to an amount of unpaid wages, for part 8, division 1, see section 98.

*former employee*, for part 8, division 1, see section 98.

*unpaid wages*, for part 8, division 1, see section 98B.

### **91        Amendment of s 98 (Definitions)**

(1) Section 98—

*insert—*

*employer*, in relation to an amount of unpaid wages—

- (a) has the meaning given by the *Industrial Relations Act 2016*, section 7; or
- (b) if the unpaid wages relate to contracted work within the meaning of the *Industrial Relations Act 2016*, section 355—has the meaning given by the *Industrial Relations Act 2016*, section 355.

*former employee*, in relation to an amount of unpaid wages, means a former employee of an employer within the meaning of the *Industrial Relations Act 2016*, section 8.



*unpaid wages* see section 98B.

(2) Section 98, definition *unclaimed moneys*—  
*insert*—

(d) an amount of unpaid wages.

## 92 Insertion of new s 98B

After section 98A—

*insert*—

### 98B Meaning of *unpaid wages*

*Unpaid wages* are wages payable by an employer to a former employee that are required to be, or have been, paid to the public trustee under the *Industrial Relations Act 2016*, section 375 or 1099.

## 93 Amendment of s 99A (Public trustee's register of unclaimed moneys)

(1) Section 99A(1), after 'this division'—

*insert*—

or the *Industrial Relations Act 2016*, section 375

(2) Section 99A(2)—

*insert*—

(ca) if the moneys are an amount of unpaid wages—

(i) the name of the employer who paid the amount to the public trustee; and

(ii) the following particulars about the former employee to whom the amount was payable—

(A) name;

(B) date of birth;

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(C) last known address;

- (3) Section 99A(2)(ca) and (d)—  
*renumber* as section 99A(2)(d) and (e).

**94 Amendment of s 102 (Unclaimed moneys to be paid to public trustee by accountable person)**

- (1) Section 102(1) and (2), after ‘superannuation benefits’—  
*insert*—

or unpaid wages

- (2) Section 102(1)—  
*insert*—

*Note*—

See also the *Industrial Relations Act 2016*, sections 375 and 1099 in relation to the obligation of an employer to pay unpaid wages to the public trustee.

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## Schedule 1      Other amendments

section 3

**1      Section 20, heading and (4), definition *relevant contract*,  
‘service’—**

*omit, insert—*

employment

**2      Section 56(2)(a)(ii), note 1, ‘(maternity leave)’—**

*omit.*

**3      Section 56(2)(a)(ii), note 1, ‘birth of her child’—**

*omit, insert—*

child’s birth

**4      Section 56(2)(b), ‘with whom an adopted child is  
placed’—**

*omit, insert—*

who adopts a child

**5      Section 56(2)(b), note, ‘placement’—**

*omit, insert—*

adoption

**6      Section 60(2)(c), ‘placement of an adopted child with the  
employee’—**

*omit, insert—*

adoption of the child

- 7 Section 65(2)(a), from ‘of placement’—**  
*omit, insert—*  
of adoption (the *expected adoption date*); and
- 8 Section 65(2)(b) and (3)(a), ‘placement’—**  
*omit, insert—*  
adoption
- 9 Sections 79(4), definition *other paid leave*, paragraph (c), 90(2)(b)(iii) and 124(3), ‘an employment contract’—**  
*omit, insert—*  
a contract of employment
- 10 Sections 103(3), 124(2)(c) and 134(6)(a), ‘employment contract’—**  
*omit, insert—*  
contract of employment
- 11 Section 103(2)(c) and schedule 5, definition *strike*, paragraph 1(a)(i), ‘employment contracts’—**  
*omit, insert—*  
contracts of employment
- 12 Section 178(5), examples, third dot point, ‘section 173(3)’—**  
*omit, insert—*  
section 173(5)
- 13 Section 179, note, ‘full bench’—**  
*omit, insert—*  
commission

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- 14 Sections 180 and 182, heading, ‘Full bench’—**  
*omit, insert—*  
**Commission**
- 15 Sections 180, 181, 182, 183(1)(a), 530(2)(a), 554(3) and 557(3), ‘full bench’—**  
*omit, insert—*  
commission
- 16 Sections 271(a) and (b) and 282(1)(b) and schedule 5, definition *strike*, paragraph 3(b), ‘his or her’—**  
*omit, insert—*  
the employee’s
- 17 Section 278(1)(b)(i) and (ii), ‘industrial associations’—**  
*omit, insert—*  
industrial organisations
- 18 Section 282(4), 308, 599(a) to (f), ‘association’—**  
*omit, insert—*  
organisation
- 19 Section 284(1)(c)(ii), ‘his or her’—**  
*omit, insert—*  
the person’s
- 20 Section 286(1), ‘he or she’—**  
*omit, insert—*  
the person

- 21 Section 291(a), 294(2), 298, ‘industrial association’—**  
*omit, insert—*  
industrial organisation
- 22 Section 291(c), ‘section 290(c) to (f)’—**  
*omit, insert—*  
section 290(d) to (g)
- 23 Section 308, heading, ‘industrial associations’—**  
*omit, insert—*  
industrial organisations
- 24 Chapter 9, part 1, division 6, heading and sections 354B(3)(b)(iv) and 354C(1)(b), (2), (5) and (6), ‘registered’—**  
*omit.*
- 25 Sections 354B(1) and (2)(b) and 354C(1)(a), ‘a registered’—**  
*omit, insert—*  
an
- 26 Section 373(4), ‘are to be paid’—**  
*omit.*
- 27 Section 398(3)(a), ‘service or contract for service’—**  
*omit, insert—*  
employment or contract for services

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- 28 Section 471(1)(a)(i), ‘service’—**  
*omit, insert—*  
employment
- 29 Section 482(e), after ‘right to represent’—**  
*insert—*  
the industrial interests of
- 30 Section 483(1), ‘association or’—**  
*omit.*
- 31 Section 483(1)(b), ‘in relation to making an agreement’—**  
*omit.*
- 32 Section 483(2)(b), ‘, an association’—**  
*omit.*
- 33 Section 483(4), ‘, association’—**  
*omit.*
- 34 Section 599, ‘an *industrial association*’—**  
*omit, insert—*  
an *industrial organisation*
- 35 Section 599(d) and (e), ‘association’s’—**  
*omit, insert—*  
organisation’s