

Queensland

Industrial Relations Act 2016

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Industrial Relations and Other Legislation Amendment Bill 2026. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

An enacted but uncommenced amendment included in the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024* No. 40 has also been incorporated in this indicative reprint.

Amendments to this Act are also included in the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2026. These proposed amendments are not included in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Industrial Relations and Other Legislation Amendment Bill 2026—14 October 2026.

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Industrial Relations Act 2016

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Industrial Relations Act 2016

An Act relating to industrial relations in Queensland

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Industrial Relations Act 2016*.

2 Commencement

(1) Chapter 19, part 8, other than the following provisions, commences on assent—

(a) sections 1118 to 1124;

(b) sections 1126 to 1128;

(c) section 1151;

(d) section 1152, to the extent it inserts new section 289.

(2) The remaining provisions of this Act commence on a day to be fixed by proclamation.

3 Main purpose of Act

The main purpose of this Act is to provide for a framework for cooperative industrial relations that—

(a) is fair and balanced; and

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(b) supports the delivery of high quality services, economic prosperity and social justice for Queenslanders; and

(c) encourages productivity in workplaces and supports fair wages and employment conditions.

4 How main purpose is primarily achieved

The main purpose of this Act is to be achieved primarily by—

(a) supporting a productive, competitive and inclusive economy, with strong economic growth, high employment, employment security, improved living standards and low inflation; and

(b) promoting high-performing, apolitical State government and local government sectors that are responsive to democratically-decided priorities and focused on the delivery of public services in a professional and non-partisan way; and

(c) promoting and facilitating security in employment and consultation about employment matters, technological change and organisational change; and

(d) providing for a fair and equitable framework of employment standards, awards, determinations, orders and agreements; and

(e) promoting productive and cooperative workplace relations including by recognising mutual obligations of trust and confidence in the employment relationship; and

(f) providing for a guaranteed safety net of fair, relevant and enforceable minimum employment conditions through the Queensland Employment Standards; and

(g) ensuring wages and employment conditions provide fair standards in relation to living standards prevailing in the community; and

(h) promoting collective bargaining, including by—

(i) providing for good faith bargaining; and

(ii) establishing the primacy of collective agreements over individual agreements; and

(i) preventing and eliminating sexual harassment, sex or gender-based harassment, discrimination, bullying and other unfair treatment in employment; and

(j) ensuring equal remuneration for work of equal or comparable value; and

(k) promoting diversity and inclusion in the workforce, including by providing a right for employees to request flexible working arrangements to help balance their work and family responsibilities; and

(l) supporting employees experiencing domestic and family violence by conferring leave entitlements and protection from discrimination; and

(m) encouraging fairness and representation at work, and the prevention of discrimination, by recognising the right to freedom of association, the right to organise and the right to be represented; and

(n) encouraging representation of employees and employers by organisations that are registered under this Act; and

(o) being responsive to emerging labour market trends and work patterns; and

(p) providing for effective, responsive and accessible mechanisms to support negotiations and resolve industrial disputes; and

(q) establishing an independent court and tribunal to facilitate fair, balanced and productive industrial relations; and

(r) assisting in giving effect to Australia's international obligations in relation to labour standards.

Examples of ILO conventions ratified by Australia—

- the Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87
- the Right to Organise and Collective Bargaining Convention, 1949, No. 98

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- the Equal Remuneration Convention, 1951, No. 100
- the Discrimination (Employment and Occupation) Convention, 1958, No. 111
- the Employment Policy Convention, 1964, No. 122
- the Termination of Employment Convention, 1982, No. 158
- the Part-Time Work Convention, 1994, No. 175

5 Act binds all persons

(1) This Act binds all persons, including the State.

(2) Nothing in this Act makes the State liable to be prosecuted for an offence.

Part 2 Interpretation

6 Definitions

The dictionary in schedule 5 defines particular words used in this Act.

7 Who is an *employer*

(1) An ***employer*** is a person who—

(a) is not a national system employer within the meaning of the Commonwealth Fair Work Act; and

(b) employs, or usually employs, 1 or more individuals.

(2) Also, ***employer*** includes the following persons—

(a) for chapter 2, part 3, divisions 9, 11 and 12, a national system employer within the meaning of the Commonwealth Fair Work Act, section 14, including a national system employer mentioned in section 30N of that Act;

(b) a person for whose calling or business an outworker works;

(c) for a proceeding for an offence or for payment or recovery of amounts—a former employer;

(d) a person declared to be an employer under section 465.

8 Who is an *employee*

(1) An ***employee*** is an individual who is employed, or usually employed, by an employer.

(2) Also, ***employee*** includes the following persons—

(a) for chapter 2, part 3, divisions 9, 11 and 12, a national system employee within the meaning of the Commonwealth Fair Work Act, section 13, including a national system employee mentioned in section 30M of that Act;

(b) for chapter 7, a worker under the *Work Health and Safety Act 2011*, section 7, other than a worker under the Commonwealth Fair Work Act who may apply for an order under chapter 6, part 6-4B of that Act in relation to the bullying;

(c) a person who is a member of a class of persons declared to be employees under section 465;

(d) for a proceeding for an offence or for payment or recovery of amounts—a former employee;

(e) an outworker;

(f) an apprentice;

(g) a trainee.

9 What is an *industrial matter*

(1) An ***industrial matter*** is a matter that affects or relates to—

(a) work done or to be done; or

(b) the privileges, rights or functions of—

(i) employers or employees; or

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(ii) persons who have been, or propose to be, or who may become, employers or employees; or

(c) a matter the court or commission considers has been, is, or may be a cause or contributory cause of an industrial action or industrial dispute.

(2) However, a matter is not an industrial matter if it is the subject of a proceeding for—

(a) an indictable offence; or

(b) a public service appeal.

(3) Also, a matter is not an industrial matter if it affects or relates to a conversion decision under the *Public Sector Act 2022*, section 129.

(4) Without limiting subsection (1) or affecting subsection (2) or (3), a matter is an industrial matter if it relates to a matter mentioned in schedule 1.

Part 3 General overview of scope of Act

10 Purpose of part

(1) This part gives an overview of the scope of this Act.

(2) Without limiting subsection (1), it is declared that this part does not confer entitlements or impose liabilities.

11 Definition for part

In this part—

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

12 Who this Act applies to generally

(1) Generally speaking—

(a) the Commonwealth Fair Work Act applies to many employers and employees in Queensland; and

(b) this Act applies to employers and employees only to the extent the Commonwealth Fair Work Act does not apply to them.

Note—

The Commonwealth Fair Work Act applies to the following employers and their employees—

- employers who are trading or financial corporations (see paragraph 51(xx) of the Commonwealth Constitution)
- other private sector employers in relation to whom the State has referred its legislative power over industrial relations matters to the Commonwealth (see the Queensland referral Act).

(2) The following are examples of entities to whom this Act generally applies—

(a) the State government, and entities related to the State government, and their employees;

Examples—

- departments
- public service entities mentioned in the *Public Sector Act 2022*, section 9(b)
- other statutory bodies established under Queensland law for a public purpose, such as a parents and citizens association established under the *Education (General Provisions) Act 2006*

Note—

For more detail, see the definition *public sector employer* in the Queensland referral Act, section 3(1).

(b) local governments, and entities established under local government legislation, and their employees.

Note—

For more detail, see the definition *local government sector employer* in the Queensland referral Act, section 3(1).

(3) Also, this Act generally applies to other employers, and their employees, if—

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(a) the employers are declared by Queensland law not to be national system employers for the Commonwealth Fair Work Act; and

(b) the declaration is endorsed by the Minister under the Commonwealth Fair Work Act.

Note—

See also chapter 16 and the Commonwealth Fair Work Act, section 14(2).

13 Who this Act applies to—particular provisions

(1) The provisions of the Queensland Employment Standards about long service leave, jury service leave and emergency service leave may apply to employers and employees who are generally covered by the Commonwealth Fair Work Act.

Note—

See also—

- the Commonwealth Fair Work Act, section 27(2)
- the Queensland referral Act, section 3(1), definition *excluded subject matter*.

(2) Provisions of chapter 11, part 3, division 4 about civil remedies under the *Fair Work Act 2009* (Cwlth), chapter 4, part 4-1 apply to employers and employees who are generally covered by that Act.

Chapter 2 Modern employment conditions

Part 1 Preliminary

14 Definitions for chapter

In this chapter—

applicable industrial instrument means any of the following—

(a) a modern award;

(b) a certified agreement or bargaining award;

(c) an arbitration determination.

long term casual employee see section 15.

ordinary hours of work, for an employee, means—

(a) the employee's ordinary hours of work as provided for under an applicable industrial instrument that applies to the employee; or

(b) if paragraph (a) does not apply—the hours agreed by the employee and the employee's employer as the employee's ordinary hours of work.

relevant industrial instrument, in relation to an employee, means an applicable industrial instrument that applies to the employee.

short term casual employee means a casual employee, other than a long term casual employee.

15 Meaning of *long term casual employee*

(1) For this chapter, a ***long term casual employee*** is a casual employee engaged by a particular employer, on a regular and systematic basis, for 1 or more periods of employment during

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the 1 year immediately before the employee seeks to access an entitlement under this chapter.

(2) The periods of employment mentioned in subsection (1) include periods before and after the commencement of this section.

Part 2 Interaction of elements of industrial relations system

16 What part is about

This part explains—

(a) how elements of the industrial relations system interact with each other; and

(b) how particular elements of the industrial relations system prevail over other elements.

17 Relationship between Queensland Employment Standards and other laws

The Queensland Employment Standards have effect despite an inconsistency with another law of the State, unless the other law provides an employee with a benefit that is at least as favourable for the employee as the Queensland Employment Standards.

18 Relationship between Queensland Employment Standards and industrial instruments

(1) An industrial instrument may not include a provision that displaces, or is otherwise inconsistent with, the Queensland Employment Standards, unless the provision is at least as favourable for an employee as the Queensland Employment Standards.

(2) The Queensland Employment Standards have effect subject to provisions included in an industrial instrument mentioned in subsection (1).

19 Relationship of modern award with certified agreement

(1) A modern award may apply to an employee in relation to particular employment at the same time as a certified agreement applies to the employee in relation to the employment.

(2) If both a modern award and certified agreement apply to an employee in relation to particular employment, the certified agreement prevails to the extent of any inconsistency.

(3) While a project agreement operates, it operates to the exclusion of any certified agreement.

20 Relationship of modern award with contract of employment

(1) A modern award prevails over a relevant contract to the extent of any inconsistency.

(2) The contract must be interpreted, and takes effect, as if it were amended to the extent necessary to make the contract consistent with the modern award.

(3) However, there is no inconsistency only because the contract provides for employment conditions at least as favourable for the employee as the modern award.

(4) In this section—

relevant contract means a contract of employment that is—

(a) in force when the modern award comes into operation; or

(b) made while the modern award is in operation.

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Part 3 Queensland Employment Standards

Division 1 Preliminary

21 Meaning of *Queensland Employment Standards*

(1) This part provides for minimum standards of employment of employees that apply to employees and which can not be displaced except under this chapter.

(2) The minimum standards relate to the following matters—

(a) minimum wage—division 2;

(b) maximum weekly hours—division 3;

(c) a right to request flexible working arrangements—division 4;

(d) annual leave—division 5;

(e) personal leave, including sick leave, carer's leave, bereavement leave, compassionate leave and cultural leave—division 6;

(f) domestic and family violence leave—division 7;

(g) parental leave—division 8;

(h) long service leave—division 9;

(i) public holidays—division 10;

(j) emergency service leave—division 11;

(k) jury service leave—division 12;

(l) notice of termination and redundancy pay—division 13;

(m) superannuation contributions—division 13A;

(n) information statements—division 14.

(3) Divisions 2 to 14 are the ***Queensland Employment Standards***.

Division 2 Minimum wage

22 Entitlement to minimum wage

(1) An employee is entitled to a wage that is not less than the Queensland minimum wage.

(2) This section does not apply to an employee who is excluded under section 459(2) from the operation of the full bench's general ruling declaring the Queensland minimum wage.

Division 3 Maximum weekly hours

23 Maximum weekly hours

(1) An employer must not ask or require an employee to work more than the following number of hours in a week—

(a) for a full-time employee—38 hours;

(b) for an employee who is not a full-time employee—the lesser of—

(i) 38 hours; or

(ii) the employee's ordinary hours of work.

(2) However, the employer may ask or require an employee to work additional hours if the hours are reasonable under section 26.

(3) The employee may refuse to work additional hours beyond the number of hours mentioned in subsection (1)(a) or (b) if working the additional hours is not reasonable under section 26.

(4) The hours an employee works in a week under subsection (1)(a) or (b) are taken to include any hours of leave, or absence, whether paid or unpaid, that the employee takes in the week and that are authorised—

(a) by the employee's employer; or

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(b) under a term or condition of the employee's employment; or

(c) under a law of the State or an industrial instrument.

24 Applicable industrial instruments may provide for averaging of hours of work

(1) An applicable industrial instrument may include terms providing for the averaging of hours of work over a stated period.

(2) However, the average weekly hours over the period stated in the applicable industrial instrument must not exceed—

(a) for a full-time employee—38 hours; or

(b) for an employee who is not a full-time employee—the lesser of—

(i) 38 hours; or

(ii) the employee's ordinary hours of work.

(3) An applicable industrial instrument may provide for average weekly hours that exceed the hours mentioned in subsection (2)(a) or (b) only if the excess hours are reasonable under section 26.

(4) If an employee works hours in a week in excess of the hours mentioned in subsection (2)(a) or (b)—

(a) the hours are additional hours under section 23; and

(b) the employee may only work the additional hours under section 23.

Note—

In deciding whether the employee may work the additional hours under section 23, regard must be had to the averaging terms under section 26(i).

25 Averaging of hours of work for employees not covered by applicable industrial instruments

(1) An employer and an employee who are not covered by an applicable industrial instrument may agree in writing to an averaging arrangement under which hours of work over a stated period of not more than 26 weeks are averaged.

(2) However, the average weekly hours over the period stated in the arrangement must not exceed—

(a) for an employee employed on a full-time basis—38 hours; or

(b) for an employee employed on a part-time or casual basis—the lesser of—

(i) 38 hours; or

(ii) the employee's ordinary hours of work.

(3) The arrangement may provide for average weekly hours in excess of the hours mentioned in subsection (2)(a) or (b) only if the excess hours are reasonable under section 26.

(4) If an employee works hours in a week in excess of the hours mentioned in subsection (2)(a) or (b)—

(a) the hours are additional hours under section 23; and

(b) the employee may only work the additional hours under section 23.

Note—

In deciding whether the employee may work the additional hours under section 23, regard must be had to an averaging arrangement under section 26(i).

26 Deciding whether additional hours are reasonable

In deciding whether additional hours are reasonable or not reasonable, the following matters must be taken into account—

(a) any risk to the employee's health and safety from working the additional hours;

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(b) the employee's personal circumstances, including family responsibilities;

(c) the needs of the workplace in which the employee is employed;

(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, working additional hours;

(e) any notice given by the employer of any request or requirement to work the additional hours;

(f) any notice given by the employee of the employee's intention to refuse to work the additional hours;

(g) the usual patterns of work in the calling in which the employee works;

(h) the nature of the employee's role, and the employee's level of responsibility;

(i) whether the additional hours are in accordance with averaging terms included under section 24 in an applicable industrial instrument that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 25;

(j) any other relevant matter.

Division 4 Flexible working arrangements

27 Request for flexible working arrangements

(1) An employee may ask the employee's employer for a change in the way the employee works, including—

(a) the employee's ordinary hours of work; and

(b) the place where the employee works; and

(c) a change to the way the employee works, for example, the use of different equipment as a result of a disability, illness or injury.

(2) The request must—

(a) be in writing; and

(b) state the change in the way the employee works in sufficient detail to allow the employer to make a decision about the request; and

(c) state the reasons for the change.

28 Decision about request for flexible working arrangements

(1) The employer may decide to—

(a) grant the request; or

(b) grant the request in part or subject to conditions; or

(c) refuse the request.

(2) The employer may grant the request in part or subject to conditions, or refuse the request, only on reasonable grounds.

(3) The employer must give the employee written notice about its decision within 21 days after receiving the request.

(4) If the employer decides to grant the request in part or subject to conditions or to refuse the request, the written notice about the decision must state—

(a) the written reasons for the decision, outlining the reasonable grounds for granting the request in part or subject to conditions or for the refusal; and

(b) that the commission has jurisdiction to hear and decide a dispute over the request under chapter 6.

29 Deemed refusal of request for flexible working arrangements

If the employer does not give the written notice about the employer's decision within 21 days after receiving the

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request, the employer is taken to have decided to refuse the request.

Note—

The commission has jurisdiction to hear and decide a dispute over the request under chapter 6.

Division 5 Annual leave

Subdivision 1 Entitlement to annual leave

30 Application of subdivision

This subdivision does not apply to—

(a) casual employees; or

(b) pieceworkers; or

(c) school-based apprentices or trainees.

31 Entitlement

(1) For each completed year of employment with an employer, an employee is entitled to—

(a) if the employee is not a shift worker—at least 4 weeks annual leave; or

(b) if the employee is a shift worker—at least 5 weeks annual leave.

(2) Annual leave is exclusive of a public holiday that falls during the leave.

(3) However, if an employee is entitled to additional annual leave as compensation for working on a particular public holiday, annual leave is inclusive of the particular public holiday.

(4) Annual leave accumulates.

(5) This section does not confer an entitlement or an additional entitlement in relation to employment before 4 June 1999.

(6) In this section—

shift worker means an employee who—

(a) is employed in a calling in which shifts are worked 24 hours a day, 7 days a week; and

(b) works a rotating roster that includes each of the shifts.

32 Working out completed year of employment

(1) This section applies for working out a completed year of employment for section 31.

(2) The following periods when an employee is absent without pay are not to be taken into account—

(a) a period of more than 3 months when an employee is absent with the employer's approval;

(b) a period when an employee is absent without the employer's approval, unless the employee is absent for not more than 3 months because of illness or injury that is certified by a doctor.

Subdivision 2 Taking annual leave

33 When annual leave may be taken

(1) An employee and employer may agree when the employee is to take annual leave.

(2) The employer must not unreasonably refuse to agree when the employee is to take the leave.

(3) If the employee and employer can not agree, the employer—

(a) may decide when the employee is to take leave; and

(b) must give the employee at least 8 weeks written notice of the starting date of the leave.

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(4) An employee and employer may agree that the employee take all or any part of the employee's annual leave before becoming entitled to it.

(5) If the employee takes leave before becoming entitled to it, the employee is only entitled, at the end of the completed year of employment, to the balance of the leave that would be due at the end of the year.

34 Terms that may be included in applicable industrial instruments

An applicable industrial instrument may include the following—

(a) terms requiring an employee to take annual leave in particular circumstances, but only if the requirement is reasonable;

(b) terms otherwise dealing with the taking of annual leave.

Subdivision 3 Payment for annual leave

35 Payment for annual leave

(1) Unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.

(2) The employer must pay for the leave—

(a) at the ordinary rate being paid to the employee immediately before the leave is taken; or

(b) if, immediately before taking the leave, the employee is being paid at a higher rate than the ordinary rate—at the higher rate.

(3) If an employee is entitled to receive an amount representing commission in the employee's annual leave payment, the employer must pay the default average commission unless—

(a) a relevant industrial instrument, or a contract between the employer and employee, otherwise provides; or

(b) the commission, on application, considers the default average commission would not represent a fair amount in the circumstances.

(4) If, on application under subsection (3)(b), the commission considers the default average commission would not represent a fair amount in the circumstances, the commission may make the order it considers appropriate in the circumstances.

(5) In this section—

default average commission means the amount worked out by the following formula—

$$\mathbf{dac} = \frac{\mathbf{c}}{\mathbf{d}} \times \mathbf{ld}$$

where—

dac means the default average commission.

c means the lesser of the following total commissions—

(a) total commissions payable to the employee in the 1 year before the leave is taken;

(b) total commissions payable to the employee during the employee's period of employment.

d means the lesser of the following—

(a) 365.25;

(b) the number of days in the employee's period of employment.

ld means the number of days in the period starting on the day the leave starts and ending on the day before the employee is to return to work.

36 Annual leave loading

(1) In addition to the employee's annual leave entitlement under this division, the employee is entitled to receive a further

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amount of at least 17½% of the amount payable under section 35(2)(a).

(2) However, if the employee's employer pays the employee a prescribed additional amount and the amount—

(a) is less than 17½% of the amount payable under section 35(2)(a)—the employee is entitled to receive a further amount so the employee receives the amount the employee is entitled to under subsection (1); or

(b) is at least 17½% of the amount payable under section 35(2)(a)—the employee is not entitled to receive an amount under subsection (1).

(3) In this section—

prescribed additional amount means an amount, however described, in addition to the employee's annual leave entitlement under this division.

Example of how a prescribed additional amount might be described—

annual leave bonus, annual leave loading

Subdivision 4 Cashing out annual leave

37 Requirements for cashing out annual leave

(1) Annual leave may not be cashed out except under this section.

(2) An employer and an employee may agree to the employee cashing out a particular amount of the employee's annual leave.

(3) The employer and employee must not agree to the employee cashing out an amount of annual leave if the cashing out would result in the employee's accrued annual leave entitlement being less than 4 weeks.

(4) Each cashing out of a particular amount of annual leave must be by a separate agreement in writing.

(5) The employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the annual leave that has been forgone.

Subdivision 5 Payment on termination of employment

38 Payment for annual leave on termination of employment

(1) This section applies if an employee's employment is terminated by the employee or employer.

(2) If the employee has not taken all the annual leave the employee is entitled to, the employee is presumed to have taken the leave from the day the termination takes effect (the ***termination day***).

(3) The employer must pay the employee for the annual leave not taken, including—

(a) any public holiday during the period the employee is presumed to have taken the leave; and

(b) any annual leave loading the employee is entitled to under section 36.

(4) If the employee has worked part of a year, the employer must pay the employee the proportionate annual leave for the part of the year the employee worked, including any annual leave loading the employee is entitled to under section 36.

(5) The employer must pay the employee at least the ordinary rate being paid to the employee immediately before the termination day, unless an applicable industrial instrument states otherwise.

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Division 6 Personal leave

Subdivision 1 Sick leave

39 Application of subdivision

This subdivision does not apply to—

(a) casual employees; or

(b) pieceworkers; or

(c) school-based apprentices or trainees.

40 Entitlement to sick leave

(1) An employee is entitled to at least 10 days sick leave on full pay for each completed year of employment with an employer.

(2) An employee's entitlement to paid sick leave accumulates—

(a) progressively during a year of employment according to the employee's ordinary hours of work; and

(b) from year to year.

(3) Sick leave may be taken for part of a day.

Notes—

1 An employee is ordinarily required to work for 7.6 hours on a particular day and on that day becomes sick after working 3 hours. The employee may take sick leave for the remaining 4.6 hours that the employee is unable to work because of the sickness.

2 An employee is ordinarily required to perform work for 38 hours a week over 5 days, but has come to an arrangement with the employer to work 9.5 hours a day for 4 days a week. If the employee is unable to work because of sickness on a day, the employee may take 9.5 hours sick leave, which equates to 11/4 days sick leave.

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

(5) This section does not confer an entitlement or an additional entitlement in relation to employment before the commencement of this section.

(6) In this section—

day, for an employee who is paid on the basis of the number of hours worked, means—

(a) for an employee for whom an applicable industrial instrument provides sick leave—a day within the meaning of the instrument to the extent it relates to sick leave; or

(b) otherwise—one-fifth of the number of the employee's ordinary hours of work for a week, averaged over each completed 6 weeks of employment with the employer.

41 Requirement for employee to give notice etc.

(1) An employee's entitlement under section 40 is conditional on—

(a) the employee promptly notifying the employer of—

(i) any illness that will cause the employee to be absent from work; and

(ii) the approximate period for which the employee will be absent; and

(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.

(2) This section does not apply if—

(a) an applicable industrial instrument provides otherwise; or

(b) the employee and employer agree otherwise.

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Subdivision 2 Carer's leave

42 Entitlement—employees other than casual employees

(1) This section does not apply to a casual employee.

(2) An employee may take up to 10 days of sick leave each year on full pay (***carer's leave***) to care for or support—

(a) a person who is a member of the employee's immediate family or household—

(i) when the person is ill; or

(ii) because an unexpected emergency arises in relation to the person; or

(b) a person who has experienced domestic violence.

(3) If the employee has exhausted the entitlement under subsection (2), the employee may take up to an additional 2 days unpaid carer's leave each time the employee needs to take the leave.

(4) The employee may take additional unpaid carer's leave with the employer's agreement.

(5) Carer's leave may be taken for part of a day.

(6) In this section—

sick leave includes sick leave accrued before the commencement of this section.

43 Entitlement—long term casual employees

(1) This section applies to a long term casual employee.

(2) The employee is entitled to 10 days of leave (also ***carer's leave***) in each year to care for or support—

(a) a person who is a member of the employee's immediate family or household—

(i) when the person is ill; or

(ii) because an unexpected emergency arises in relation to the person; or

(b) a person who has experienced domestic violence.

(3) The employee may take additional carer's leave if the employer agrees.

(4) Carer's leave may be taken for part of a day.

(5) The employer must not fail to re-engage the employee only because the employee has taken carer's leave under this section.

(6) Leave taken under this section is unpaid.

44 Entitlement—short term casual employees

(1) This section applies to a short term casual employee.

(2) The employee is entitled to leave work or to be unavailable to attend work for up to 2 days (also ***carer's leave***) each time the employee needs to care for or support—

(a) a person who is a member of the employee's immediate family or household—

(i) when the person is ill; or

(ii) because an unexpected emergency arises in relation to the person; or

(b) a person who has experienced domestic violence; or

(c) members of the employee's immediate family or household because of the birth of a child.

(3) The employee may leave work or be unavailable to attend work to take carer's leave for additional periods if the employer agrees.

(4) Carer's leave may be taken for part of a day.

(5) The employer must not fail to re-engage the employee only because the employee has taken carer's leave under this section.

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(6) However, the rights of an employer not to re-engage the employee are not otherwise affected.

45 Employee to provide evidence to employer

(1) If an employee takes carer's leave to care for or support a person who is ill for more than 2 consecutive days, the employee must, if required by the employer, give the employer sufficient evidence to satisfy a reasonable person that the person is ill with an illness requiring care or support by another person.

(2) If an employee takes carer's leave to care for or support a person who has experienced domestic violence, the employee must, if required by the employer, give the employer—

(a) a statutory declaration evidencing that the leave is necessary; or

(b) evidence mentioned in section 45(3)(a) to (d).

(3) The employee must give the employer—

(a) notice of the intention to take carer's leave; and

(b) the name of the person requiring care and the person's relationship to the employee; and

(c) the reason for taking the leave; and

(d) the period the employee estimates the employee will be absent; and

(e) if the reason for taking the leave is because an unexpected emergency has arisen—the nature of the emergency.

(4) The information mentioned in subsection (3)(a) to (e) must be given to the employer—

(a) if practicable, before the employee takes the leave; or

(b) otherwise, at the first reasonable opportunity.

(5) An employer who receives evidence under this section about a person who has experienced domestic and family violence

must not disclose the evidence to someone else unless the disclosure is required or permitted under an Act.

Subdivision 3 Bereavement and compassionate leave

46 Application of subdivision

This subdivision does not apply to pieceworkers.

47 Entitlement—employees other than casual employees

(1) This section applies to an employee, other than a casual employee.

(2) The employee is entitled to—

(a) at least 2 days bereavement leave on full pay on each occasion when—

(i) a member of the employee's immediate family or household dies; or

(ii) the employee, or the employee's spouse, is pregnant and the pregnancy ends other than by the birth of a living child; and

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

(3) Also, the employee is entitled to 2 days compassionate leave on full pay on each occasion when a member of the employee's immediate family or household—

(a) contracts or develops a personal illness that poses a serious threat to the person's life; or

(b) sustains a personal injury that poses a serious threat to the person's life.

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Not authorised—indicative only

48 Entitlement—casual employees

(1) A long term casual employee is entitled to—

(a) at least 2 days unpaid bereavement leave on each occasion when—

(i) a member of the employee's immediate family or household dies; or

(ii) the employee, or the employee's spouse, is pregnant and the pregnancy ends other than by the birth of a living child; and

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

(2) A short term casual employee is entitled to be unavailable to attend work for—

(a) at least 2 days on unpaid bereavement leave on each occasion when—

(i) a member of the employee's immediate family or household dies; or

(ii) the employee, or the employee's spouse, is pregnant and the pregnancy ends other than by the birth of a living child; and

(b) if the employee reasonably requires extra time to travel to and from the funeral or other ceremony for the death—an amount of unpaid bereavement leave equal to the time reasonably required for the travel.

(3) Also, a casual employee is entitled to 2 days unpaid compassionate leave on each occasion when a member of the employee's immediate family or household—

(a) contracts or develops a personal illness that poses a serious threat to the person's life; or

(b) sustains a personal injury that poses a serious threat to the person's life.

(4) The employer must not fail to re-engage a casual employee only because the employee has taken bereavement leave or compassionate leave under this section.

(5) However, the rights of an employer not to re-engage a casual employee are not otherwise affected.

49 Evidence to be provided by employee

(1) An employee who takes bereavement leave must give the employer a copy of the funeral notice or other evidence of the death the employer reasonably requires.

(2) An employee who takes compassionate leave must give the employer sufficient evidence to satisfy a reasonable person that the employee was taking compassionate leave because a member of the employee's family or household's life was threatened by personal illness or personal injury.

50 Additional leave

An employee may take additional leave as unpaid bereavement leave or compassionate leave if the employer agrees.

Subdivision 4 Cultural leave

51 Entitlement

(1) This section applies to an employee who is required by Aboriginal tradition or Island custom to attend an Aboriginal or Torres Strait Islander ceremony.

(2) The employee may take up to 5 days unpaid cultural leave in each year, if the employer agrees.

(3) The employer must not unreasonably refuse the leave.

(4) In considering the employee's request for leave, the employer must consider at least the following—

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(a) the employer's capacity to reorganise work arrangements to accommodate the employee's request;

(b) the impact of the employee's absence on the delivery of customer service;

(c) the particular circumstances of the employee;

(d) the impact of a refusal on the employee, including the employee's ability to balance work and family responsibilities.

(5) The employee must, if practicable, give the employer—

(a) reasonable notice of the intention to take cultural leave before taking the leave; and

(b) the reason for taking the leave; and

(c) the period that the employee estimates the employee will be absent.

(6) If it is not practicable for the employee to give the notice before taking the leave, the employee must give the employer notice of the matters in subsection (5)(b) and (c) at the first opportunity.

(7) It is declared that leave provided under this section is a welfare measure for the purposes of the *Anti-Discrimination Act 1991*, section 104.

Division 7 Domestic and family violence leave

52 Entitlement to domestic and family violence leave

(1) An employee, including a casual employee, is entitled to 10 days of domestic and family violence leave on full pay in a year if—

(a) the employee has experienced domestic violence; and

(b) the employee needs to take domestic and family violence leave as a result of the domestic violence.

(2) Without limiting subsection (1), the employee may need to take domestic and family violence leave if the employee is—

(a) recovering from an injury caused by the violence; or

(b) attending an appointment related to the violence, including an appointment to attend counselling, to obtain legal advice, for medical treatment or with police officers; or

(c) preparing for a court appearance related to the violence; or

(d) attending court for a proceeding related to the violence; or

(e) finding housing that is necessary because of the violence; or

(f) organising child care or the education of a child that is necessary because of the violence.

(3) If an employee has exhausted the entitlement under subsection (1) the employee may, with the employer's agreement, take additional days of unpaid domestic and family violence leave.

(4) Domestic and family violence leave may be taken for part of a day.

(5) An employee's entitlement to domestic and family violence leave under subsection (1) does not accumulate from year to year.

(6) The employer must not fail to re-engage a casual employee only because the employee has taken domestic and family violence leave.

(7) In this section—

day, for an employee mentioned in subsection (1) who is paid on the basis of the number of hours worked, means one-fifth of the number of the employee's ordinary hours of work for a week, averaged over each completed 6 weeks of employment with the employer.

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53 Requirement for employee to give notice

(1) An employee's entitlement to domestic and family violence leave is conditional on the employee giving the employer notice of—

(a) the employee's absence from work; and

(b) if it is possible to notify the employer before the leave is taken—the approximate period the employee will be absent.

(2) The employee must give the employer notice under subsection (1)—

(a) before or on the day the employee is to take the leave; or

(b) if it is not possible to notify the employer before the leave is taken—during the leave or as soon as possible after the leave ends.

54 Employer may request evidence

(1) An employer may ask an employee to give the employer evidence that the employee has experienced domestic violence and needs to take leave as a result.

(2) The employee must comply with the request.

(3) Without limiting subsection (2), the employee may comply with the request by giving the employer—

(a) evidence from the police; or

(b) evidence of a legal proceeding or a court report; or

(c) evidence from a doctor or other health practitioner; or

(d) a report from a counsellor; or

(e) written advice or a statutory declaration from the employee.

(4) An employer who receives evidence under this section must not disclose the evidence to someone else unless the disclosure is required or permitted under an Act.

Division 8 Parental and related leave

Subdivision 1 Preliminary

55 Application of division

This division does not apply to—

(a) short term casual employees; or

(b) seasonal employees; or

(c) pieceworkers.

56 Explanation of types of parental leave

(1) This division provides for parental leave.

(2) The types of parental leave are as follows—

(a) birth-related leave, for—

(i) an employee who is pregnant; or

(ii) an employee whose spouse gives birth;

Notes—

1 Birth-related leave for a pregnant employee may be taken by a pregnant employee in connection with the child's birth or to enable the employee to be responsible for the care of the child.

2 Birth-related leave for an employee whose spouse gives birth may be short (in connection with the child's birth) or long (to enable the employee to be responsible for the care of the child).

(b) adoption leave, for an employee who adopts a child;

Note—

Adoption leave may be short (in connection with the child's adoption) or long (to enable the employee to be responsible for the care of the child).

(c) surrogacy leave, for an employee who is an intended parent under a surrogacy arrangement;

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Note—

Surrogacy leave may be short (when the child born as a result of the surrogacy arrangement starts residing with the employee) or long (to enable the employee to be responsible for the care of the child).

(d) cultural parent leave, for an employee who is a cultural parent under a cultural recognition order under the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*.

Note—

Cultural parent leave may be short (in connection with the transfer of parentage to the cultural parent) or long (to enable the employee to be responsible for the care of the child).

57 Definitions for division

In this division—

adoption leave means short adoption leave or long adoption leave.

birth-related leave means short birth-related leave or long birth-related leave.

child means—

(a) for adoption leave—a child who is under the age of 16 years, but does not include a child who, immediately before the child was adopted by the employee—

(i) had been living with the employee for a continuous period of at least 6 months; or

(ii) was the employee's stepchild or the child or stepchild of the employee's spouse; or

(b) for surrogacy leave—a child born as a result of a surrogacy arrangement; or

(c) for cultural parent leave—a child who is under the age of 16 years, but does not include a child who, immediately before the child's parentage was transferred to the employee, had been living with the employee for a continuous period of at least 6 months.

cultural parent see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 10.

cultural parent leave means short cultural parent leave or long cultural parent leave.

cultural recognition order see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, schedule 1.

intended cultural parent means a cultural parent whose application for a cultural recognition order has not been decided.

intended parent, for a surrogacy arrangement, see the *Surrogacy Act 2010*, section 9.

long adoption leave means leave taken by an employee to enable the employee to be responsible for the care of a child adopted by the employee.

long birth-related leave means—

(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

(b) leave taken by an employee whose spouse has given birth to a child to enable the employee to be responsible for the care of the employee's child.

long cultural parent leave means leave taken by an employee to enable the employee to be responsible for the care of a child whose parentage is transferred to the employee under a cultural recognition order.

long parental leave means—

(a) long birth-related leave; or

(b) long adoption leave; or

(c) long surrogacy leave; or

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(d) long cultural parent leave.

long surrogacy leave means leave taken by an employee to enable the employee to be responsible for the care of the employee's surrogate child.

parental leave means long parental leave or short parental leave.

short adoption leave means leave taken by an employee who is responsible for the care of an adopted child after the child is adopted by the employee.

short birth-related leave means leave taken by an employee who is responsible for the care of a child in connection with the birth of the child of the employee's spouse—

(a) after the birth of the child; or

(b) at the time the pregnancy ends other than by the birth of a living child or stillborn child.

short cultural parent leave means leave taken by an employee who is responsible for the care of a child after the child's parentage is transferred to the employee under a cultural recognition order.

short parental leave means—

(a) short birth-related leave; or

(b) short adoption leave; or

(c) short surrogacy leave; or

(d) short cultural parent leave.

short surrogacy leave means leave taken by an employee who is responsible for the care of the employee's surrogate child after the child starts residing with the employee.

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.

surrogacy arrangement see the *Surrogacy Act 2010*, section 7.

surrogacy leave means long surrogacy leave or short surrogacy leave.

surrogate child, of an employee, means a child born as a result of a surrogacy arrangement in which the employee has agreed to become permanently responsible for the custody and guardianship of the child.

Subdivision 2 Parental leave entitlement

58 Application of subdivision

(1) This subdivision applies to—

(a) an employee, other than a long term casual employee, who has had at least 12 months continuous service with the employer; and

(b) a long term casual employee.

(2) 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.

(3) In this section—

continuous service means service, including a period of authorised leave or absence, under an unbroken contract of employment.

59 Entitlement to birth-related leave

(1) A pregnant employee is entitled to an unbroken period of up to 52 weeks unpaid birth-related leave.

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(2) For the birth of a child of an employee's spouse, the employee is entitled to—

(a) a total of 8 weeks unpaid short birth-related leave; or

(b) an unbroken period of up to 52 weeks unpaid long birth-related leave.

(3) The employee's short birth-related leave—

(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

(b) may be taken in an unbroken period or broken periods; and

(c) if the employee takes short birth-related leave other than immediately after the birth of the child—must be for a minimum 2-week period.

60 Entitlement to adoption leave

(1) For the adoption of a child, an employee is entitled to—

(a) a total of 8 weeks unpaid short adoption leave; or

(b) an unbroken period of up to 52 weeks unpaid long adoption leave.

(2) The employee's short adoption leave—

(a) if the employee's spouse is taking long adoption leave—may be taken concurrently with the employee's spouse's long adoption leave; and

(b) may be taken in an unbroken period or broken periods; and

(c) if the employee takes short adoption leave other than immediately after the adoption of the child—must be taken for a minimum 2-week period.

61 Entitlement to surrogacy leave

(1) An employee who is an intended parent under a surrogacy arrangement is entitled to—

(a) a total 8 weeks unpaid short surrogacy leave; or

(b) an unbroken period of up to 52 weeks unpaid long surrogacy leave.

(2) The employee's short surrogacy leave—

(a) if the employee's spouse is taking long surrogacy leave—may be taken concurrently with the employee's spouse's long surrogacy leave; and

(b) may be taken in an unbroken period or broken periods; and

(c) if the employee takes short surrogacy leave other than immediately after the employee's surrogate child starts residing with the employee—must be for a minimum 2-week period.

61A Entitlement to cultural parent leave

(1) An employee who is a cultural parent under a cultural recognition order is entitled to—

(a) a total of 8 weeks unpaid short cultural parent leave; or

(b) an unbroken period of up to 52 weeks unpaid long cultural parent leave.

(2) The employee's short cultural parent leave—

(a) if the employee's spouse is taking long cultural parent leave—may be taken concurrently with the employee's spouse's long cultural parent leave; and

(b) may be taken in an unbroken period or broken periods; and

(c) if the employee takes short cultural parent leave other than immediately after the transfer of the child's parentage to the employee—must be taken for a minimum 2-week period.

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62 Maximum period of parental leave

(1) Parental leave must not extend—

(a) beyond 52 weeks after—

(i) the child was born; or

(ii) the child was adopted; or

(iii) the child started residing with the employee under the surrogacy arrangement; or

(iv) the child's parentage was transferred to the employee under a cultural recognition order; or

(b) if an application for an extension of parental leave under section 73 is agreed to—beyond 104 weeks after—

(i) the child was born; or

(ii) the child was adopted; or

(iii) the child started residing with the employee under the surrogacy arrangement; or

(iv) the child's parentage was transferred to the employee under a cultural recognition order.

(2) However, if an employee takes long parental leave and the employee's spouse takes short parental leave concurrently with the employee, the parental leave the employee is allowed to take under subsection (1) is reduced by the amount of leave concurrently taken by the employee's spouse.

(3) The maximum period of parental leave allowed under subsection (1) or (2) is the ***maximum period of parental leave***.

(4) This section applies despite sections 59 to 61.

Subdivision 3 Notices and information

63 Employee notice—intention of pregnant employee to take birth-related leave

(1) This section applies if a pregnant employee wants to take birth-related leave.

(2) The employee must give the employer—

(a) at least 10 weeks written notice of intention to take the leave; and

(b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.

(3) The employee must, before starting the leave, give the employer—

(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

(b) a statutory declaration by the employee stating the period of any parental leave sought by the employee's spouse.

(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.

64 Employee notice—intention of pregnant employee's spouse to take birth-related leave

(1) This section applies if an employee whose spouse is pregnant or has given birth to a child wants to take birth-related leave.

(2) The employee must give the employer—

(a) for long birth-related leave—at least 10 weeks written notice of intention to take the leave; and

(b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.

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(3) The employee must, before starting the leave, give the employer—

(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

(b) for long birth-related leave—a statutory declaration by the employee stating—

(i) the period of any birth-related leave sought by the employee's spouse; and

(ii) that the employee is seeking the leave because the employee is to be responsible for the care of the child.

(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.

65 Employee notice—intention to take adoption leave

(1) This section applies if an employee wants to take adoption leave.

(2) The employee must give the employer—

(a) for long adoption leave—written notice of any approval to adopt a child at least 10 weeks before the expected date of adoption (the ***expected adoption date***); and

(b) written notice of the dates on which the employee wants to start and end the leave, as soon as practicable after the employee is notified of the expected adoption date but, in any case, at least 14 days before starting the leave.

(3) The employee must, before starting the leave, give the employer—

(a) a statement from an adoption agency of the expected adoption date; and

(b) for long adoption leave—a statutory declaration by the employee stating—

(i) the period of any adoption leave sought by the employee's spouse; and

(ii) that the employee is seeking the leave because the employee is to be responsible for the care of the child.

(4) In this section—

adoption agency means an agency, body, office or court, authorised by a Commonwealth law or State law to perform functions about adoption.

66 Employee notice—intention to take surrogacy leave

(1) This section applies if an employee wants to take surrogacy leave.

(2) The employee must give the employer—

(a) for long surrogacy leave—written notice of intention to take the leave at least 10 weeks before the expected date when the employee's surrogate child is to start residing with the employee under the surrogacy arrangement (the ***expected residence date***); and

(b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.

(3) The employee must, before starting the leave, give the employer a statutory declaration by the employee stating—

(a) the employee is an intended parent under a surrogacy arrangement; and

(b) the expected residence date; and

(c) for long surrogacy leave—

(i) the period of leave sought by the employee; and

(ii) the period of any surrogacy leave sought by the employee's spouse; and

(iii) that the employee is seeking the leave because the employee is to be responsible for the care of the child.

Not authorised—indicative only

Not authorised—indicative only

66A Employee notice—intention to take cultural parent leave

(1) This section applies if an employee wants to take cultural parent leave.

(2) The employee must give the employer—

(a) for long cultural parent leave—written notice of intention to take the leave at least 10 weeks before the expected date when a cultural recognition order will be made transferring a child's parentage to the employee (the ***expected parental transfer date***); and

(b) at least 4 weeks written notice of the dates on which the employee wants to start and end the leave.

(3) The employee must, before starting the leave, give the employer a statutory declaration by the employee stating—

(a) the employee is an intended cultural parent; and

(b) the expected parental transfer date; and

(c) for long cultural parent leave—

(i) the period of leave sought by the employee; and

(ii) the period of any cultural parent leave sought by the employee's spouse; and

(iii) that the employee is seeking the leave because the employee is to be responsible for the care of the child.

67 Reasons not to give notice or documents

(1) An employee does not fail to comply with section 63, 64, 65 or 66 if the failure was caused by—

(a) the child being born, or the pregnancy otherwise terminating, before the expected date of birth; or

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

(c) the child starting to reside with the employee before the expected residence date; or

(d) another reason that was reasonable in the circumstances.

(2) However, the employee must give the employer—

(a) notice of the period of the leave within 2 weeks after the child's birth or adoption or the child starts residing with the employee; and

(b) in the case of the birth of a living child—a health practitioner's certificate stating the date on which the child was born; and

(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.

68 Consequences of failure to give notice of intention to take parental leave

(1) This section applies if an employee fails to comply with section 63, 64, 65 or 66.

(2) Despite subdivision 2, the employer is not required to provide the parental leave until the employee complies with the section.

69 Employee notice—change to situation

An employee must notify the employer of any change in the information provided under section 63, 64, 65 or 66 within 2 weeks after the change.

70 Employee to advise employer about particular changes

(1) This section applies to an employee who is absent on parental leave.

(2) The employee must advise the employer of any change in the employee's contact details, including any change of address.

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Note—

Advice given under subsection (2) may be used by an employer for section 72 to advise the employee about significant change at the workplace.

(3) The employee must also take reasonable steps to advise the employer of any significant change affecting the following as soon as possible after the change happens—

(a) the length of the employee's parental leave;

(b) the date the employee intends to return to work;

(c) an earlier decision to return to work on a full-time basis or to apply to return to work on a part-time basis.

71 Employer to advise about parental leave entitlements

(1) Subsection (2) applies to an employer on becoming aware—

(a) an employee or an employee's spouse is pregnant; or

(b) an employee is adopting a child; or

(c) an employee is an intended parent under a surrogacy arrangement; or

(d) an employee is a cultural parent who is applying for a cultural recognition order.

(2) The employer must inform the employee of—

(a) the employee's parental leave entitlement under this division; and

(b) the employee's obligations to notify the employer of any matter under this division.

(3) An employer can not rely on an employee's failure to give a notice or other document required by this division unless the employer establishes that subsection (2) has been complied with.

72 Employer's obligation to advise about significant change at the workplace

(1) This section applies if an employer decides to implement significant change at a workplace.

(2) The employer must take reasonable action to advise each employee who is absent from the workplace on parental leave about the proposed change before it is implemented.

(3) The advice must inform the employee of the change and any effect it will have on the position the employee held before starting parental leave, including, for example, the status or level of responsibility attached to the position.

(4) The employer must give the employee a reasonable opportunity to discuss any significant effect the change will have on the employee's position.

Subdivision 4 Application to extend parental leave or work part-time

73 Application for extension of parental leave

(1) An employee entitled to parental leave under subdivision 2, or who is taking parental leave, may apply to the 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.

(2) An employee may not make more than 1 application under subsection (1) within a 12-month period in relation to a particular instance of parental leave, unless the employer agrees.

74 Application to work part-time

(1) An employee on parental leave may apply to the employer to return to work on a part-time basis.

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(2) 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.

(3) An employee may not make more than 1 application under this section within a 12-month period, unless the employer agrees.

75 Application for extension or part-time work

(1) An application mentioned in section 73 or 74 must—

(a) be in writing; and

(b) be made—

(i) for an application for extension of short parental leave—at least 2 business days before the leave ends; or

(ii) for an application for extension of long parental leave—at least 4 weeks before the leave ends; or

(iii) for an application to return to work on a part-time basis—at least 7 weeks before the leave ends; or

(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

(c) state the application is an application for extension of parental leave under section 73 or an application to return or change to work on a part-time basis under section 74, as appropriate; and

(d) state the dates the extension, or return or change to work on a part-time basis, being applied for is to start and end; and

(e) state the impact refusal of the application might have on the employee and the employee's dependants; and

(f) for an application for extension of long parental leave or to return or change to work on a part-time basis—be

accompanied by a statutory declaration by the employee stating—

(i) for an application for extension of long parental leave—that the employee is seeking the extension so the employee can continue to be responsible for the care of the child; or

(ii) for an application to return or change to work on a part-time basis—that the employee is seeking to work on a part-time basis so the employee can be responsible for the care of the child when not at work.

(2) The period for which an application may be made under section 74 can not extend beyond the day the child in relation to whom parental leave was taken is required to be enrolled for compulsory schooling under the *Education (General Provisions) Act 2006*.

76 Employer's decision on application for extension or part-time work

(1) In deciding whether to agree to an application under section 73 or 74, the employer must consider the following—

(a) the particular circumstances of the employee that give rise to the application, particularly circumstances relating to the employee's role as the child's caregiver;

(b) the impact refusal of the application might have on the employee and the employee's dependants;

(c) the effect that agreeing to the application would have on the conduct of the employer's business, including, for example—

(i) any additional cost the employer would incur; and

(ii) the employer's capacity to reorganise work arrangements; and

(iii) the availability of competent replacement staff; and

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Not authorised—indicative only

(iv) any loss of efficiency in the conduct of the employer's business; and

(v) the impact of the employee's absence or temporary absence on the delivery of customer service.

(2) The employer must not refuse an application under section 73 or 74 unless the employer has given the employee a reasonable opportunity to discuss the application.

(3) The employer must not unreasonably refuse an application under section 73 or 74.

(4) The employer must advise the employee, in writing, of the employer's decision—

(a) if the application is for an extension of short parental leave—as soon as possible after receiving the application but before the short parental leave ends; or

(b) for any other application—within 14 days after receiving the application.

(5) If the employer refuses the application, the employer must provide the employee with written reasons for refusing the application.

Subdivision 5 Other provisions affecting duration of parental leave

77 Spouses not to take long parental leave at same time

(1) An employee is not entitled to long parental leave when the employee's spouse is on long parental leave.

(2) If the employee contravenes subsection (1), the period of parental leave the employee is entitled to is reduced by the period for which the employee and the employee's spouse were on parental leave in contravention of subsection (1).

78 Cancelling parental leave

(1) Parental leave applied for but not started is automatically cancelled if—

(a) the employee withdraws the application for leave by written notice to the employer; or

(b) the pregnancy ends other than by the birth of a living child or stillborn child; or

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

(d) a child does not start residing with the employee under the surrogacy arrangement; or

(e) a cultural recognition order transferring the parentage of a child to the employee is not made.

(2) Subsection (3) applies if, while an employee is on parental leave—

(a) the pregnancy ends other than by the birth of a living child; or

(b) the child in relation to whom the employee is on parental leave dies; or

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

(d) the residence of the child with the employee under the surrogacy arrangement does not start or continue; or

(e) a cultural recognition order transferring the parentage of a child to the employee is discharged.

(3) The employee is entitled to resume work at a time nominated by the employer within 2 weeks after the day on which the employee gives the employer a written notice stating—

(a) the employee intends to resume work; and

(b) the reason for the resumption.

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

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Not authorised—indicative only

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

(b) late term pregnancy leave under section 85AA; or

(c) 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

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

79 Parental leave with other leave

(1) An employee may take any annual leave or long service leave to which the employee is entitled instead of or together with parental leave.

(2) However, the total period of leave can not extend beyond the maximum period of parental leave.

(3) While the employee is on unpaid parental leave, the employee is not entitled to paid sick leave or other paid leave, unless the employer agrees.

(4) In this section—

other paid leave means paid leave authorised by any of the following—

(a) a law;

(b) an applicable industrial instrument;

(c) a contract of employment.

80 Working on a keeping in touch day during period of parental leave

(1) An employee may work for the employee's employer on a day (a ***keeping in touch day***) during the employee's unpaid parental leave if—

(a) the purpose of performing the work is to enable the employee to keep in touch with the employee's

employment to facilitate a return to the employment after the end of the period of parental leave; and

(b) the employer and employee agree to the employee performing the work for the employer on the day; and

(c) the day is not within—

(i) if the employee is asked by the employer to work on the day—14 days after the child was born, adopted or started residing with the employee under a surrogacy arrangement or cultural recognition order; or

(ii) otherwise—42 days after the child was born, adopted or started residing with the employee under a surrogacy arrangement or cultural recognition order; and

(d) the employee has not worked 10 or more keeping in touch days for the employer or another entity during the relevant leave period.

Note—

The employer will be obliged, under the applicable industrial instrument or contract of employment, to pay the employee for performing work on a keeping in touch day.

(2) If the employee works on a keeping in touch day, the period of the parental leave is not broken or extended by the employee working on the keeping in touch day.

(3) The period the employee works on the keeping in touch day is not relevant for this section.

(4) In this section—

relevant leave period means—

(a) means a period of unpaid parental leave taken by the employee; or

(b) if an application for an extension of parental leave under section 73 is agreed to—the period agreed under section 73.

Not authorised—indicative only

Not authorised—indicative only

Note—

See the *Paid Parental Leave Act 2010* (Cwlth), sections 48 to 50 for how working on a keeping in touch day within the meaning of that Act affects an employee's eligibility for paid parental leave under that Act.

81 Interruption of parental leave by return to work

(1) An employee and employer may agree that the employee break the period of parental leave by returning to work for the employer, whether on a full-time, part-time or casual basis.

(2) The period of parental leave can not be extended by the return to work beyond the maximum period of parental leave under section 62.

82 Extending period of parental leave by notice

(1) An employee may extend the period of parental leave by written notice given to the employer at least 14 days—

(a) before the start of the parental leave; or

(b) if the parental leave has been started—before the parental leave ends.

(2) The notice must state when the extended period of parental leave ends.

(3) The total period of parental leave can not be extended under subsection (1) beyond the total period mentioned in section 62(1)(a).

(4) Parental leave may be extended under subsection (1) only once.

83 Shortening period of parental leave

If the employer agrees, an employee may shorten parental leave by written notice given to the employer at least 14 days before the employee wants to return to work.

84 Effect on parental leave of employee ceasing to be responsible for the care of the child

(1) This section applies if—

(a) during a substantial period starting on or after the start of an employee's long parental leave the employee is no longer responsible for the care of the child; and

(b) considering the length of the period and any other relevant circumstances, it is reasonable to expect the employee will not be responsible for the care of the child within a reasonable period.

(2) The employer may notify the employee of the day, at least 4 weeks after the employer gives the notice, on which the employee must return to work.

(3) If the employee returns to work, the employer must cancel the rest of the leave.

Subdivision 6 Other entitlements

85 Special pregnancy-related leave and sick leave

(1) This section applies if—

(a) an employee's pregnancy ends before the expected date of birth, other than by the birth of a living child or stillborn child; or

(b) before an employee starts birth-related leave, the employee suffers illness related to the employee's pregnancy.

(2) For as long as a health practitioner certifies leave is necessary, the employee is entitled to the following types of leave—

(a) unpaid leave (***special pregnancy-related leave***);

(b) paid sick leave, either instead of, or as well as, special pregnancy-related leave.

Not authorised—indicative only

Not authorised—indicative only

85AA Late term pregnancy leave

(1) A pregnant employee is entitled to unpaid leave (***late term pregnancy leave***) for a period immediately before the employee starts birth-related leave.

(2) Late term pregnancy leave can not start earlier than 6 weeks before the expected date of birth.

(3) The employee must, before starting the leave, give the employer at least 4 weeks written notice of intention to take the leave.

(4) The employee may withdraw the notice of intention to take late term pregnancy leave by written notice to the employer before the leave starts.

(5) Subject to subsection (6), late term pregnancy leave must be taken as a single continuous period continuing until the employee starts birth-related leave.

(6) Late term pregnancy leave may be interrupted by special pregnancy-related leave or sick leave under section 85.

(7) If, while an employee is taking late term pregnancy leave, the pregnancy ends other than by the birth of a living child, the employee is entitled to resume work at a time nominated by the employer within 2 weeks after the day on which the employee gives the employer a written notice stating—

(a) that the employee intends to resume work; and

(b) the reason for the resumption.

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.

86 Special adoption leave

An employee who is seeking to adopt a child is entitled to up to 2 days unpaid leave to attend compulsory interviews or examinations as part of the procedure for adoption.

87 Special surrogacy leave

An employee who is an intended parent under a surrogacy arrangement is entitled to up to 2 days unpaid leave to attend compulsory interviews or court hearings associated with the surrogacy arrangement.

87A Special cultural recognition order leave

(1) An employee who is a birth parent or a cultural parent under an application for a cultural recognition order is entitled to up to 2 days unpaid leave to prepare material and give to the commissioner information associated with the application.

(2) In this section—

birth parent see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, section 9.

commissioner see the *Meriba Omasker Kaziw Kazipa (Torres Strait Islander Traditional Child Rearing Practice) Act 2020*, schedule 1.

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, and any late term pregnancy leave the employee has taken under section 85AA, total less than 52 weeks.

Not authorised—indicative only

Not authorised—indicative only

(2) The maximum number of days of unpaid flexible parent leave the employee is entitled to in relation to the child is—

(a) 100 days; or

(b) if a greater number of days is prescribed by regulation, the prescribed number of days.

(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 under subdivision 2 and any late term pregnancy leave the employee has taken under section 85AA;

(ii) the total number of days of flexible parental leave taken in relation to the 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.

88 Return to work after parental leave etc.

(1) This section applies to an employee who returns to work after—

(a) parental leave; or

Not authorised—indicative only

Not authorised—indicative only

(b) special pregnancy-related leave or sick leave under section 85.

(2) The employee is entitled to be employed in—

(a) the position held by the employee immediately before starting parental leave; or

(b) if the employee worked part-time because of the pregnancy before starting birth-related leave—the position held by the employee immediately before starting part-time work; or

(c) if the employee was transferred to a safe job under section 89 before starting birth-related leave—the position held by the employee immediately before the transfer.

(3) If the position mentioned in subsection (2) no longer exists but there are other positions available that the employee is qualified for and is capable of performing, the employee is entitled to be employed in a position that is, as nearly as possible, comparable in status and remuneration to that of the employee's former position.

(4) An employer must make a position to which the employee is entitled available to the employee.

(5) If a long term casual employee's hours were reduced because of the pregnancy before starting birth-related leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

89 Transfer to a safe job

(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) The assessment of the risk is to be made on the basis of—

(a) a health practitioner's certificate given by the employee to the employer; and

(b) the employer's duties under the *Work Health and Safety Act 2011*.

(3) The employer must temporarily adjust the employee's working conditions or hours of work to avoid exposure to the risk.

(4) If an adjustment is not feasible or can not reasonably be required to be made, the employer must transfer the employee to other appropriate work that—

(a) will not expose the employee to the risk; and

(b) is, as nearly as possible, comparable in status and remuneration to that of the employee's present work.

(5) If a transfer is not feasible or can not reasonably be required to be made, the employer must grant the employee birth-related leave, or any available paid sick leave, for as long as a health practitioner certifies the leave is necessary to avoid exposure to the risk.

90 Continuity of service

(1) Parental leave and flexible parental leave do not break an employee's continuity of service.

(2) Parental leave and flexible parental leave are not to be taken into account in working out the employee's period of service, other than—

(a) to decide the employee's entitlement to a later period of parental leave or a period of flexible parental leave; or

(b) as expressly provided in—

(i) this Act; or

(ii) an applicable industrial instrument; or

(iii) a contract of employment.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

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

91 Dismissal because of pregnancy or parental leave

(1) An employer must not dismiss an employee because—

(a) the employee or the employee's spouse is pregnant or has applied to adopt a child; or

(b) the employee or the employee's spouse has given birth to a child or adopted a child; or

(c) the employee is an intended parent under a surrogacy arrangement or the employee's surrogate child has started residing with the employee under a surrogacy arrangement; or

(d) the employee is a cultural parent who has applied for a cultural recognition order or the child who is the subject of a cultural recognition order has started residing with the employee under the order; or

(e) the employee has applied for, or is absent on, parental leave.

(2) This section does not affect any other rights of—

(a) an employer to dismiss an employee; or

(b) a dismissed employee.

92 Replacement employees

(1) The employer must, before a replacement employee starts employment, give the replacement employee a written notice informing the replacement employee of—

(a) the temporary nature of the employment; and

(b) the parent's right to return to work.

(2) In this section—

replacement employee means—

(a) a person who is specifically employed because an employee (the ***parent***)—

(i) starts parental leave; or

(ii) is transferred to a safe job under section 89; or

(b) a person replacing an employee who is temporarily promoted or transferred to replace the parent.

Division 9 Long service leave

Note—

See section 13 for the application of this division.

Subdivision 1 Preliminary

93 Definitions for division

In this division—

continuous service, of an employee, means—

(a) in section 107—the period of continuous service the employee is taken to have had with an employer under section 107(2)(b); or

(b) elsewhere—the employee's continuous service with the same employer, whether wholly in the State or partly in and partly outside the State.

owner, of a meat works, includes a person who carries on the business of the works.

period between seasons includes the period between—

(a) the end of 1 season and the start of the next season; and

(b) for a particular employee—the day the employee stops employment in 1 season and the day the employee starts employment in the next season.

Not authorised—indicative only

Not authorised—indicative only

season means a period, whether falling completely in 1 calendar year or partly in 1 calendar year and partly in the next calendar year, when—

(a) for the sugar industry—

(i) sugar cane is delivered to, and crushed at, a sugar mill; or

(ii) sugar cane is harvested, or farm work is performed, in the sugar industry; or

(b) for a meat works—stock are delivered to, and slaughtered at, the works.

Subdivision 2 Relationship of this division with continuity of service provisions

94 Application of pt 4 for particular purposes

To remove any doubt, it is declared that the provisions of part 4 apply for working out an employee's rights and entitlements to long service leave under this division, an applicable industrial instrument or a federal industrial instrument.

Subdivision 3 Entitlement

95 Entitlement—employees other than seasonal employees

(1) This section applies to an employee, other than a seasonal employee.

Note—

For provisions applicable to seasonal employees, see subdivisions 7 and 8.

(2) The employee is entitled to long service leave, on full pay, of—

(a) if the employee has completed 10 years continuous service—8.6667 weeks; and

(b) after 10 years service, if the employee has completed at least a further 5 years continuous service—a period that bears to 8.6667 weeks the proportion that the employee's further period of continuous service bears to 10 years.

(3) An employee who has completed at least 7 years continuous service is entitled to a proportionate payment for long service leave on the termination of the employee's service.

(4) However, if the employee's service is terminated before the employee has completed 10 years continuous service, the employee is entitled to a proportionate payment only if—

(a) the employee's service is terminated because of the employee's death; or

(b) the employee terminates the service because of—

(i) the employee's illness; or

(ii) a domestic or other pressing necessity; or

(c) the termination is because the employer—

(i) dismisses the employee because of the employee's illness; or

(ii) dismisses the employee for another reason other than the employee's conduct, capacity or performance; or

(iii) unfairly dismisses the employee; or

(d) the termination is because of the passing of time and—

(i) the employee had a reasonable expectation that the employment with the employer would continue until the employee had completed at least 10 years continuous service; and

(ii) the employee was prepared to continue the employment with the employer.

Not authorised—indicative only

Not authorised—indicative only

(5) Long service leave is exclusive of a public holiday that falls during the period of the leave.

(6) An employee who is entitled to long service leave other than under this Act is entitled to leave that is at least as favourable as the entitlement under this section.

(7) In this section—

illness includes injury, incapacity or other medical condition.

proportionate payment means a payment equal to the employee's full pay for a period that represents the same proportion of 8.6667 weeks that the employee's period of continuous service bears to 10 years.

96 Continuity of service—service before 23 June 1990

(1) This section applies to service of an employee, other than a casual employee, before 23 June 1990.

(2) The repealed *Industrial Conciliation and Arbitration Act 1961*, sections 17, 18, 19 and 20, apply for—

(a) working out the employee's continuous service before 23 June 1990; and

(b) calculating the employee's entitlement to long service leave in relation to continuous service before 23 June 1990.

Subdivision 4 Taking long service leave

97 Taking long service leave

(1) The commission may insert provisions in an applicable industrial instrument—

(a) about when, the way in which, and the conditions on which, long service leave may be taken; or

(b) requiring that leave in the nature of long service leave taken, before the provisions take effect, by an employee

to whom the instrument applies must be deducted from the long service leave to which the employee is entitled under the provisions.

(2) An employee and employer may agree when the employee will take long service leave.

(3) If the employee and employer can not agree, the employer may—

(a) decide when the employee will take long service leave; and

(b) give the employee at least 3 months written notice of the date on which the employee must take at least 4 weeks long service leave.

Subdivision 5 Payment for long service leave etc. for employees generally

98 Rate of payment

(1) An employer must pay an employee for long service leave at the following rate—

(a) if the employee is, immediately before taking the leave, being paid at a higher rate than the ordinary rate—the higher rate;

(b) otherwise—the ordinary rate being paid to the employee immediately before the leave is taken.

(2) An employer must not reduce an employee's usual rate, before an employee starts long service leave, with intent to avoid the employer's obligation under subsection (1)(a).

(3) If satisfied an employer has contravened subsection (2), the commission may order the employer to pay the employee at the usual rate even though the employee was not being paid the usual rate immediately before starting leave.

(4) If, during the employee's long service leave—

Not authorised—indicative only

Not authorised—indicative only

(a) the ordinary rate is increased above the higher rate—the employer must pay the employee at the increased rate for the part of the leave period to which the increased rate applies; or

(b) the ordinary rate is reduced—the employer may pay the employee at the reduced rate for the part of the leave period to which the reduced rate applies.

(5) If the employee is a seasonal employee, this section applies subject to section 107.

(6) In this section—

usual rate means the rate—

(a) at which the employee is being paid for ordinary time; and

(b) that is higher than the ordinary rate.

99 Payment for commission

(1) If an employee is entitled to receive an amount representing commission in the employee's long service leave payment, the employer must pay the default average commission.

(2) Subsection (1) does not apply if—

(a) a relevant industrial instrument, a federal award or federal agreement that applies to the employee, or a contract between the employer and employee otherwise provides; or

(b) the commission, on application, considers the default average commission would not represent a fair amount in the circumstances.

(3) If, on application under subsection (2)(b), the commission considers the default average commission would not represent a fair amount in the circumstances, the commission may make the order it considers appropriate in the circumstances.

(4) In this section—

default average commission means the commission worked out using the following formula—

$$\frac{\mathbf{C}}{\mathbf{52.179}} \times \mathbf{W} = \mathbf{DAC}$$

where—

C means the total commission payable to the employee in the 1 year before the leave is taken.

DAC means the default average commission.

W means the number of weeks leave for which payment is being made.

100 Disputes about payment—piecework rates

(1) This section applies if a dispute arises between an employee who is paid at piecework rates and the employer about the rate the employee should be paid for long service leave.

(2) The commission may decide the rate payable.

101 Other matters relating to payment for long service leave

(1) An employee and employer may agree on when, and the way in which, the employee will be paid for long service leave.

(2) The commission may decide any matter relating to payment for long service leave that the employee and employer can not agree on.

(3) An amount payable for long service leave becomes payable at a time agreed between the employee and employer or, if they can not agree, at a time decided by the commission.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 6 Casual or regular part-time employees

102 Definition for subdivision

In this subdivision—

casual employee means an employee who is employed more than once by the same employer over a period.

103 Continuity of service—casual employees

(1) This section applies to a casual employee.

(2) The employee's service is continuous service with the employer even though—

(a) the employment is broken; or

(b) any of the employment is not full-time employment; or

(c) the employee is employed by the employer under 2 or more contracts of employment; or

(d) the employee would, apart from this section, be taken to be engaged in casual employment; or

(e) the employee has engaged in other employment during the period.

(3) However, the continuous service ends if the employment is broken by more than 3 months between the end of 1 contract of employment and the start of the next contract of employment.

(4) In working out the length of the employee's continuous service—

(a) the following service must not be taken into account—

(i) service by the employee before 23 June 1990;

(ii) if the employee obtained the entitlement only because of the enactment of the repealed *Industrial Relations Reform Act 1994*, section 17—the

employee's service between 23 June 1990 and 30 March 1994; and

(b) subject to subsection (3), a period when the employee was not employed by the employer must be taken into account.

(5) Subsection (4)(a)(i) does not affect the employee's entitlement to long service leave under—

(a) an award made before 23 June 1990; or

(b) the repealed *Industrial Conciliation and Arbitration Act 1961*.

(6) This section does not limit any other entitlement to long service leave the employee may have.

104 Taking long service leave—casual or regular part-time employees

(1) This section applies to a casual employee or regular part-time employee.

(2) The employer may agree with the employee that the employee's entitlement to long service leave may be taken in the form of its full-time equivalent.

Example—

An employee—

(a) is entitled to be paid for 247 hours long service leave; and

(b) works under an award that provides for a full-time working week of 38 ordinary working hours.

The employee and the employer may agree that the employee take 61/2 weeks leave (247 ÷ 38 = 61/2).

105 Payment for long service leave

(1) This section applies to an employee who is entitled to long service leave if the employee was a casual employee or regular part-time employee at any time during the employee's continuous service to which the long service leave relates.

Not authorised—indicative only

Not authorised—indicative only

(2) The minimum amount payable to the employee for long service leave is worked out using the formula—

$$\frac{\textbf{actual service}}{\textbf{52}} \times \frac{\textbf{8.6667}}{\textbf{10}} \times \textbf{hourly rate}$$

Example—

An employee who worked 15,600 ordinary working hours over a 10-year period and is being paid an hourly rate of $12 is entitled to be paid—

$$\frac{\textbf{15600}}{\textbf{52}} \times \frac{\textbf{8.6667}}{\textbf{10}} \times \textbf{\$12} = \textbf{\$3120.01}$$

(3) In this section—

actual service means the total ordinary working hours actually worked by an employee during the employee's period of continuous service.

hourly rate means the hourly rate for ordinary time payable to the employee—

(a) if the employee takes the long service leave—on the day the employee's leave starts; or

(b) if the employee's employment is terminated—on the day the termination takes effect.

Subdivision 7 Seasonal employees in sugar industry and meat works

106 Application of subdivision

This subdivision applies to the following seasonal employees—

(a) an employee employed in seasonal employment in the sugar industry;

(b) an employee employed in or about meat works in seasonal employment by the meat works owner.

107 Entitlement to long service leave

(1) The employee is entitled to long service leave on full pay of at least the number of weeks worked out using the following formula—

$$\textbf{entitlement} \times \frac{\textbf{actual service}}{\textbf{10}}$$

where—

entitlement means the entitlement to long service leave of an employee under section 95.

service means actual service expressed as a part of a year.

Example—

An employee who worked half of each year, over a 10-year period, is entitled to half the entitlement, that is, half of 8.6667 weeks leave ($8.6667 \times {}^{5}/_{10} = 4.3334$).

(2) In working out the length of the employee's continuous service—

(a) service with the employer of the employee engaged in harvesting sugar cane or farm work in the sugar industry before 23 June 1990 must not be taken into account; and

(b) a period between seasons when the employee is not employed by the employer must be taken into account if—

(i) in 1 season—the employee's service with the employer continued until the end of the season or until an earlier day when the employee's employment was terminated by the employer; and

(ii) in the next season—the employee's service with the same employer started on the season's opening or on a later day in the season when the employer required the employee to start employment.

(3) If the employee is employed by the employer between seasons, the part of the period between seasons when the employee is employed must be taken into account in working out the length of the employee's actual service.

Not authorised—indicative only

Not authorised—indicative only

(4) If the employee is entitled to long service leave other than under this Act, the employee is entitled to leave that is at least as favourable as the entitlement under this section.

(5) In this section—

actual service means the total ordinary time in years actually worked by the employee during the employee's period of continuous service.

108 Taking long service leave

(1) The employee may take long service leave between seasons.

(2) If the employee takes long service leave between seasons, the leave is taken to have started when the employee last ceased employment with the employer.

Subdivision 8 Other seasonal employees

109 Entitlement of other seasonal employees

The commission may decide the entitlement to long service leave of an employee—

(a) who is employed in seasonal employment, other than an employee to whom subdivision 7 applies; or

(b) who is employed in other periodic employment that is not defined as casual employment by a relevant industrial instrument, federal award or federal agreement.

Subdivision 9 Miscellaneous provisions

110 Payment instead of long service leave

(1) An employee may be paid for all or part of an entitlement to long service leave instead of taking the leave or part of the leave under subsection (2) or (3).

(2) The payment may be made if—

(a) a relevant industrial instrument or federal industrial instrument provides for the employee to be paid for all or part of the entitlement; and

(b) the employee and employer agree by a signed agreement the payment may be made; and

(c) the payment is made in accordance with the industrial instrument.

(3) If no relevant industrial instrument or federal industrial instrument provides for the employee to be paid for all or part of the entitlement, the payment may be made only if the employee and employer agree by a signed agreement the payment may be made.

(4) The full bench must not make a general ruling that allows an employee to be paid for an entitlement to long service leave instead of taking the leave.

(5) In this section—

employee includes a registered worker under each of the following Acts—

(a) the *Building and Construction Industry (Portable Long Service Leave) Act 1991*;

(b) the *Community Services Industry (Portable Long Service Leave) Act 2020*;

(c) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

entitlement to long service leave includes an entitlement to long service leave under each of the following Acts—

(a) the *Building and Construction Industry (Portable Long Service Leave) Act 1991*;

(b) the *Community Services Industry (Portable Long Service Leave) Act 2020*;

(c) the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

Not authorised—indicative only

Not authorised—indicative only

111 Payment instead of long service leave on death

(1) This section applies if an employee entitled to long service leave dies—

(a) before taking the leave; or

(b) after starting, but before finishing, the leave.

(2) The employer must pay the employee's legal personal representative any amount payable for the employee's entitlement to long service leave that has not already been paid.

(3) If the employer does not do so, the employee's legal personal representative or an inspector may recover the amount as unpaid wages.

112 Continuity not broken by service in Reserve Forces

(1) An employee's service in the reserve forces is taken to be continuous service with the employer who employed the employee immediately before the employee starting service with the forces.

(2) In this section—

reserve forces means the Air Force Reserve, Army Reserve or Naval Reserve within the meaning of the *Defence Act 1903* (Cwlth).

113 Recognition of certain exemptions

(1) This division does not apply to an employer if—

(a) the commission exempted the employer, under the repealed *Industrial Conciliation and Arbitration Act 1961*, from the application of long service leave provisions in that Act or an award; and

(b) the exemption is in force.

(2) On application, the commission may revoke the exemption.

114 Person who is both employer and employee

(1) This section applies to a person who, in performing duties in a calling, is an employee.

(2) The person is entitled to long service leave under this part despite the person being an employer within the meaning of this Act because of—

(a) the person's engagement in the calling; or

(b) the position the person holds in the calling.

Division 10 Public holidays

115 Definitions for division

In this division—

ordinary working day means a day on which an employee would ordinarily be required to work.

show holiday means—

(a) a public holiday appointed for an annual agricultural, horticultural or industrial show under the *Holidays Act 1983*, section 4; or

(b) for a district in which a holiday is not appointed for an annual agricultural, horticultural or industrial show—the ordinary working day agreed on by the employer and employee that is to be treated as a show holiday for all purposes.

116 Entitlement to be absent on public holiday

(1) An employee is entitled to be absent from the employee's employment on a day, or part of a day, that is a public holiday in the place where the employee is based for work purposes.

(2) However, the employee's employer may ask the employee to work on a public holiday if the request is reasonable.

Not authorised—indicative only

Not authorised—indicative only

(3) If the employer asks the employee to work on a public holiday, the employee may refuse the request if—

(a) the request is unreasonable; or

(b) the refusal is reasonable.

(4) In deciding whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account—

(a) the nature of the employer's calling or business, including its operational requirements;

(b) the nature of the work performed by the employee;

(c) the employee's personal circumstances, including family responsibilities;

(d) whether the employee could reasonably expect that the employer might ask the employee to work on the public holiday;

(e) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(f) the type of employment of the employee, including, for example, whether the employment is full-time, part-time or casual, or involves shift work;

(g) the period of notice given by the employer before the public holiday in making the request;

(h) for a refusal of a request—the period of notice given by the employee before the public holiday in refusing the request;

(i) any other relevant matter.

117 Payment for public holiday

(1) Subsection (2) applies if—

(a) under this part, an employee is absent from employment on a day, or part of a day, that is a public holiday; and

(b) the employee would ordinarily have been required to work on the day or the part of the day.

(2) The employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work on the day or the part of the day.

(3) An employee, while employed by the same employer, is only entitled to be paid under subsection (2) for a show holiday once in each calendar year.

(4) If an employee does work on a public holiday, the employer must pay the employee—

(a) if an applicable industrial instrument applies to the employee—the penalty rates provided for under the instrument; or

(b) otherwise—at the rate of pay that would be paid to the employee if the public holiday was not a public holiday.

(5) In this section—

base rate of pay means the rate of pay payable to the employee for the employee's ordinary hours of work, but not including any of the following—

(a) incentive-based payments and bonuses;

(b) loadings;

(c) monetary allowances;

(d) overtime or penalty rates;

(e) any other separately identifiable amounts.

Division 11 Emergency service leave

Note—

See section 13 for the application of this division.

Not authorised—indicative only

Not authorised—indicative only

118 Entitlement

(1) An employee is entitled to unpaid emergency service leave if—

(a) the employee engages in an activity (a ***voluntary emergency management activity***) that involves dealing with an emergency or natural disaster for a recognised emergency management entity; and

(b) the employee is a member of the recognised emergency management entity; and

(c) either—

(i) the body asked the employee to engage in the voluntary emergency management activity; or

(ii) the body did not ask the employee to engage in the voluntary emergency management activity, but would have if the circumstances had allowed the request to be made.

(2) The employee is entitled to the period of emergency service leave that is reasonable in the circumstances for—

(a) the employee to travel to and from the voluntary emergency management activity; and

(b) the employee to engage in the voluntary emergency management activity; and

(c) the employee to rest immediately after engaging in the voluntary emergency management activity.

(3) If an employee intends to take, or is taking, emergency service leave, the employee must advise the employee's employer as soon as possible in writing stating—

(a) that the employee is to take, or is taking, emergency service leave; and

(b) the likely duration of the leave.

(4) An employee who takes emergency service leave must give the employer sufficient evidence to satisfy a reasonable person that the employee took the emergency service leave

because the employee was engaged in a voluntary emergency management activity.

(5) In this section—

recognised emergency management entity means an entity that—

(a) has a role or function under a plan prepared by the Commonwealth or a State for coping with an emergency or natural disaster; or

(b) is or is part of a fire-fighting, civil defence or rescue entity; or

(c) is or is part of an entity that has a substantial purpose that involves—

(i) securing the safety of persons or animals in an emergency or natural disaster; or

(ii) protecting property in an emergency or natural disaster; or

(iii) responding to an emergency or natural disaster; or

(d) is not an entity that was established for a purpose to entitle an employee to take emergency service leave.

Division 12 Jury service leave

Note—

See section 13 for the application of this division.

119 Entitlement

(1) If the employee is required to attend for jury service, the employee—

(a) is entitled to take leave (***jury service leave***) to perform jury service; and

(b) must, as soon as is practicable, tell the employer—

Not authorised—indicative only

Not authorised—indicative only

(i) the employee is required to attend for jury service; and

(ii) about the period for which the employee is required to perform jury service.

(2) If the employee is given an attendance document in relation to the jury service, the employee must give the employer the document.

(3) For the period of jury service leave, the employer must pay the employee the difference between the following—

(a) the amount stated in the employee's attendance document as the amount received as remuneration and allowances, other than meal allowances;

(b) the ordinary rate the employee would have been paid if the employee had not taken jury service leave.

(4) The amount payable under subsection (3) must be paid on or before the first pay day that is practicable after the employee gives the employer the employee's attendance document.

(5) Subsection (6) applies if—

(a) the employee is not required to serve on a jury for a day or part of a day after attending for jury service; and

(b) the employee would ordinarily be working for all or part of the remaining day.

(6) The employee must, if practicable, present for work at the earliest reasonable opportunity.

(7) In this section—

attendance document, in relation to jury service performed by an employee, means a document, or a copy of a document, stating the following matters under the *Jury Act 1995*—

(a) the employee's attendance under a requirement to attend for jury service;

(b) the number of days of attendance;

(c) the amount received as remuneration and allowances, other than meal allowances.

required to attend for jury service means the employee—

(a) is given a summons under the *Jury Act 1995*, section 27 requiring the employee to attend for jury service; or

(b) is instructed under the *Jury Act 1995*, section 38 to attend for jury service.

Division 13 Notice of termination and redundancy

Subdivision 1 Notice of termination

120 Application of subdivision

This subdivision does not apply to any of the following—

(a) a casual employee;

(b) an employee engaged by the hour or day;

(c) an employee engaged for a specific period or task;

(d) an employee during the first 3 months of employment with an employer (the ***probationary period***) unless the employee and employer agree in writing that the employee serve—

(i) a period of probation that is shorter than the probationary period; or

(ii) no period of probation;

(e) an employee serving a period of probation that is longer than the probationary period if the period decided by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment;

(f) an employee—

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Not authorised—indicative only

(i) to whom an applicable industrial instrument does not apply; and

(ii) who is not a public service officer employed on tenure under the *Public Sector Act 2022*; and

(iii) whose annual wages immediately before the dismissal are equal to or more than the high income threshold under the Commonwealth Fair Work Act, section 333;

(g) an employee participating in a labour market program.

121 What employer must do to dismiss employee

(1) An employer may dismiss an employee only if—

(a) the employee has been—

(i) given the period of notice required by section 123; or

(ii) paid the compensation required by section 124; or

(b) the employee engages in misconduct of a type that would make it unreasonable to require the employer to continue the employment during the period of notice.

(2) For subsection (1)(b), misconduct includes the following—

(a) theft;

(b) assault;

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

(d) fraud;

(e) other misconduct prescribed by regulation.

(3) However, subsection (1)(b) does not apply if the employee can show that, in the circumstances, the conduct was not conduct that made it unreasonable to continue the employment during the period of notice.

122 Employer's failure to give notice or pay compensation

(1) If an employer dismisses an employee to whom section 121(1)(a) applies without giving the required notice or paying the required compensation—

(a) on an application under section 317—the commission may order the employer to pay the employee the compensation that the employer was required to pay under section 124; or

(b) otherwise—the commission or a magistrate may order the employer to pay the employee the compensation the employer was required to pay under section 124.

(2) An application for an order under subsection (1)(a) may be made by—

(a) the employee who has been dismissed; or

(b) with the employee's consent—an organisation whose rules entitle the organisation to represent the employee's industrial interests; or

(c) an inspector.

(3) The application must be made within 6 years after the day on which the employee is dismissed.

(4) A regulation may exclude from the operation of this section dismissals happening in stated circumstances that relate to the transfer of the employer's business.

123 Minimum period of notice required from employers

(1) The minimum period of notice is—

(a) if the employee's continuous service is—

(i) not more than 1 year—1 week; and

(ii) more than 1 year, but not more than 3 years—2 weeks; and

(iii) more than 3 years, but not more than 5 years—3 weeks; and

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Not authorised—indicative only

(iv) more than 5 years—4 weeks; and

(b) increased by 1 week if the employee—

(i) is 45 years of age or over; and

(ii) has completed at least 2 years of continuous service with the employer.

(2) A regulation may prescribe matters that must be disregarded when working out continuous service under subsection (1).

124 Minimum amount of compensation required

(1) The minimum compensation payable to an employee is at least equal to the total of the amounts the employer would have been liable to pay the employee if the employee's employment had continued until the end of the required notice period.

(2) The total must be worked out on the basis of—

(a) the ordinary working hours worked by the employee; and

(b) the amounts payable to the employee for the hours, including, for example, allowances, loadings and penalties; and

(c) any other amounts payable under the employee's contract of employment.

(3) A regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under a contract of employment mentioned in subsection (2)(c), to an employee whose wages before dismissal were decided wholly or partly on the basis of commission or piece rates.

Subdivision 2 Redundancy pay

125 Application of this subdivision

(1) This subdivision applies to an employee if—

(a) an applicable industrial instrument applies to the employee; and

(b) the employee's employment is terminated because the employer no longer requires the job done by the employee to be done by anyone.

(2) However, this subdivision does not apply if the employee's employment is terminated because of the ordinary and customary turnover of labour.

(3) Also, this subdivision does not apply to any of the following employees—

(a) a casual employee;

(b) an employee whose period of continuous service with the employer is less than 1 year;

(c) an employee employed for a fixed period, for a fixed task, or for the duration of a particular season;

(d) an employee participating in a labour market program;

(e) another employee prescribed by regulation or an applicable industrial instrument as an employee to whom this division does not apply.

Note—

In relation to an employee whose employment is terminated due to the transfer of the employee's calling, see part 4.

(4) Subsection (3)(c) does not prevent this subdivision applying to an employee if a substantial reason for employing the employee as mentioned in the subsection was to avoid the application of this division.

126 Entitlement to redundancy pay

(1) The employee is entitled to be paid an amount (***redundancy pay***) equal to the total amount payable to the employee for the redundancy pay period worked out using the following table—

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Not authorised—indicative only

Employee's years of continuous service with the employer	Redundancy pay period
at least 1 year but not more than 2 years	4 weeks
more than 2 years but not more than 3 years	6 weeks
more than 3 years but not more than 4 years	7 weeks
more than 4 years but not more than 5 years	8 weeks
more than 5 years but not more than 6 years	9 weeks
more than 6 years but not more than 7 years	10 weeks
more than 7 years but not more than 8 years	11 weeks
more than 8 years but not more than 9 years	12 weeks
more than 9 years but not more than 10 years	13 weeks
more than 10 years but not more than 11 years	14 weeks
more than 11 years but not more than 12 years	15 weeks
more than 12 years	16 weeks

(2) The amount of the employee's redundancy pay must be worked out on the basis of the employee's weeks pay for the employee's ordinary hours of work.

(3) This section applies subject to section 127.

127 Variation of redundancy pay by commission

(1) This section applies if—

(a) an employee is entitled under this division to be paid an amount of redundancy pay; and

(b) the employer—

(i) obtains other acceptable employment for the employee; or

(ii) can not pay the amount.

(2) On application by the employer, the commission may make an order reducing the amount of the redundancy pay to a stated amount the commission considers appropriate.

(3) For subsection (2), the amount may be zero.

(4) The amount of redundancy pay to which the employee is entitled under this division is the amount stated in the order.

Division 13A Superannuation contributions

127A Employer's obligation to make superannuation contributions

An employer must make contributions to a superannuation fund for the benefit of an employee so the employer is not liable to pay superannuation guarantee charge under the *Superannuation Guarantee Charge Act 1992* (Cwlth) in relation to the employee.

127B Reduction of employer's liability to the extent of superannuation charge payments

(1) The obligation to make contributions for an employee under section 127A does not apply to an employer to the extent that—

(a) a charge payment has been made by or on behalf of the employer in respect of the employee under part 8 of the SGA Act; and

(b) the employee is a benefiting employee; and

(c) the commissioner is required to pay, or otherwise deal with, a shortfall component for the benefit of the employee under part 8 of the SGA Act.

(2) A term used in this section that is defined in part 8 of the SGA Act has the meaning given under that part.

(3) In this section—

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Not authorised—indicative only

commissioner means the Commissioner of Taxation under the SGA Act, section 6(1).

SGA Act means the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

Division 14 Information statements

128 Chief executive to prepare and publish information statement

(1) The chief executive must prepare an information statement and publish the statement on the department's website.

(2) The information statement must contain information about the following—

(a) the Queensland Employment Standards;

(b) applicable industrial instruments, including how bargaining awards and certified agreements are made;

(c) freedom of association;

(d) the role of the commission;

(e) termination and redundancy;

(f) the rights of particular persons to enter workplaces under this Act;

(g) any other matter prescribed by regulation.

129 Employer to give particular information to employees when they start working for employer

(1) An employer must give each employee the following documents before, or as soon as practicable after, the employee starts working for the employer—

(a) the information statement published under section 128;

(b) if an industrial instrument applies to the employee—another document stating the industrial instrument that applies to the employee.

(2) However, subsection (1) does not apply to an employer if—

(a) the employee starts working for the employer for a second time; and

(b) the employer has given the information statement and the document to the employee in the previous 12 months.

Part 4 Continuity of service and employment

130 Definitions for part

In this part—

service includes employment.

transferred employee see section 132(1).

131 How part applies

(1) This part applies for working out an employee's rights and entitlements under this chapter, an applicable industrial instrument or a federal industrial instrument by prescribing when the employee's continuity of service is not broken.

(2) An employee is not entitled to claim the benefit of a right or entitlement more than once for the same period of service.

(3) However, when working out the minimum period of notice required to be given under section 123 to a transferred employee, a period of notice previously given in relation to the transfer of the calling, whether given before or after the commencement of this subsection, is to be disregarded.

Not authorised—indicative only

Not authorised—indicative only

132 Continuity of service—transfer of calling

(1) This section applies to a person (a ***transferred employee***) who—

(a) becomes an employee of an employer (the ***new employer***) because of the transfer of a calling to the new employer from another employer (the ***former employer***); or

(b) is dismissed by an employer (also the ***former employer***) before the transfer of a calling if—

(i) the person is employed by another employer (also the ***new employer***) after the transfer of a calling; and

(ii) the employee—

(A) was dismissed by the former employer within 1 month immediately before the transfer; and

(B) is re-employed by the new employer within 3 months after the dismissal.

(2) The transfer of the calling is taken not to break the transferred employee's continuity of service.

(3) A period of service with the former employer, including service before the commencement, is taken to be a period of service with the new employer.

(4) In relation to the transfer, the transferred employee is not an employee to whom part 3, division 13, subdivision 2 applies, unless an applicable industrial instrument mentioned in section 125(1)(a) provides otherwise.

(5) In this section—

dismissed includes stood down.

133 Continuity of service—apprentices or trainees

(1) This section applies if—

(a) an employee, while employed with the employer, starts an apprenticeship or traineeship; or

(b) the employer—

(i) continues to employ an apprentice or trainee (the ***employee***) on the completion of the apprenticeship or traineeship; or

(ii) re-employs the employee within 3 months after completion of the employee's apprenticeship or traineeship.

(2) The period of the apprenticeship or traineeship does not break the employee's continuity of service.

134 Continuity of service—generally

(1) Service with a partnership and an employer who was, or becomes, a member of the partnership is taken to be continuous service with the same employer.

(2) An employee's continuity of service with an employer is not broken if the employee's service is temporarily lent or let on hire by the employer to another employer.

(3) An employee's continuity of service with an employer is not broken by an absence, including through illness or injury—

(a) on paid leave approved by the employer; or

(b) on unpaid leave approved by the employer.

(4) An employee's continuity of service with an employer is not broken if—

(a) the employee's employment is terminated by the employer or employee because of illness or injury; and

(b) the employer re-employs the employee; and

(c) the employee has not been employed in a calling, whether on the employee's own account or as an employee, between the termination and the re-employment.

Not authorised—indicative only

Not authorised—indicative only

(5) An employee's continuity of service with an employer is not broken if—

(a) the employee's employment is terminated by the employer or employee; and

(b) the employer re-employs the employee within 3 months after the termination.

(6) An employee's continuity of service with an employer is not broken if—

(a) the employee's employment is interrupted or terminated by the employer with intent to avoid an obligation under this part, an applicable industrial instrument or contract of employment; or

(b) the employee's employment is interrupted or terminated by the employer as a direct or indirect result of an industrial dispute, and the employer re-employs the employee.

(7) An employee's continuity of service is not broken if—

(a) the employee's employment is interrupted or terminated by the employer because of slackness of trade or business; and

(b) the employer re-employs the employee.

(8) Service with a corporation and any of the corporation's subsidiaries is taken to be continuous service with the same employer.

(9) However, a period for which the employee is away from work under subsection (3)(b), (4), (5), (6)(b) or (7) is not service under this part unless—

(a) this Act or an applicable industrial instrument provides otherwise; or

(b) the commission directs otherwise.

(10) In this section—

subsidiary has the meaning given by the Corporations Act.

terminate includes stand down.

Part 5 Wages and employment conditions for apprentices and trainees

135 Apprentice's and trainee's employment conditions

(1) An apprentice or trainee is entitled to the same employment conditions as those fixed by the industrial instrument applicable to employees in the workplace where the apprentice or trainee is employed.

(2) An apprentice or trainee is entitled to wages at—

(a) if an industrial instrument applying to employees in the workplace where the apprentice or trainee is employed or placed states a rate payable to apprentices or trainees—the rate stated in the instrument; or

(b) otherwise—the rate fixed by the commission, being a proportion of the wages payable for the relevant calling to employees in the workplace where the apprentice or trainee is employed or placed.

Examples—

1 An apprentice plumber is placed by a group training organisation in the workplace of a host employer where a federal award applies. The apprentice is entitled to the rate of wages stated in the federal award rather than a State award.

2 An apprentice carpenter is placed by a group training organisation in the workplace of a host employer where a certified agreement applies. The certified agreement does not state the rate of wages payable to an apprentice. The apprentice is entitled to wages at the rate fixed by the commission, being a proportion of the wages payable to a qualified carpenter under the certified agreement.

(3) If an industrial instrument provides for a tradesperson in a calling to be paid an allowance in addition to wages, an apprentice in the calling is entitled to be paid—

(a) if, under the instrument, the allowance is taken to be part of the tradesperson's wages—the percentage of the allowance that the apprentice's wages bear to the tradesperson's wages; or

Not authorised—indicative only

Not authorised—indicative only

(b) if, under the instrument, the allowance is not taken to be part of the tradesperson's wages—the full allowance.

(4) If an industrial instrument provides for a tradesperson in a calling to be paid an allowance that is assessed as a percentage of the tradesperson's wages, an apprentice in the calling is entitled to be paid the percentage of the allowance that the apprentice's wages bear to the tradesperson's wages.

(5) Subsection (4) applies whether or not, under the instrument, the allowance is taken to be part of the tradesperson's wages.

(6) In this section—

industrial instrument includes a federal industrial instrument.

workplace, for an apprentice or trainee employed by a group training organisation, includes the workplace of the host employer with whom the apprentice or trainee is placed.

136 Order setting minimum wages and conditions

(1) The commission may make an order fixing minimum wages and employment conditions for the following employees, whether or not they are employed under an industrial instrument—

(a) apprentices or trainees;

(b) different classes of apprentices or trainees.

(2) In making an order, the commission may consider any matter it considers relevant, including—

(a) the age, competency, or method of progression through training of the apprentices or trainees; and

(b) an industrial instrument.

(3) Despite section 135, if there is an inconsistency between an order and an industrial instrument (other than a certified agreement), the order prevails to the extent of the inconsistency.

(4) The commission may make an order—

(a) of the commission's own initiative; or

(b) on application by—

(i) the chief executive (training); or

(ii) an organisation; or

(iii) a State peak council; or

(iv) the Minister; or

(v) another entity with an interest in apprentices or trainees.

(5) In this section—

industrial instrument includes a federal award or federal agreement.

137 Order setting tool allowance

(1) The commission may make an order requiring an apprentice's employer to provide the apprentice with—

(a) tools relevant to the calling the apprentice is engaged in; or

(b) an amount to enable the apprentice to buy the tools (a ***tool allowance***).

(2) The order may state—

(a) the particular tools to be provided and the circumstances in which the tools are to be provided; or

(b) the circumstances in which a tool allowance must be provided.

(3) The commission may make an order—

(a) of the commission's own initiative; or

(b) on application by—

(i) the chief executive (training); or

(ii) an organisation; or

(iii) a State peak council; or

(iv) the Minister; or

Not authorised—indicative only

Not authorised—indicative only

(v) another entity with an interest in apprentices.

(4) An employer must not contravene an order.

Maximum penalty—40 penalty units.

(5) An offence against subsection (4) may consist of—

(a) a single failure to provide the apprentice with the relevant tools, or tool allowance, for a level of the apprenticeship; or

(b) a failure to provide the apprentice with the relevant tools, or tool allowance, for the term of the apprenticeship.

(6) The offence starts on the day of the failure and continues until the apprentice has been provided with the relevant tools or tool allowance.

(7) A complaint, or a series of complaints, may be made for any period over which the offence continues.

(8) If a magistrate finds an employer guilty of an offence against subsection (4), the magistrate must, in addition to a penalty the magistrate may impose, order the employer to—

(a) provide the apprentice with the tools required to be provided under the commission's order; or

(b) pay to the Magistrates Court the amount—

(i) stated in the commission's order; or

(ii) equivalent to the cost of the tools required to be provided under the commission's order.

(9) The magistrate may express the order in the alternative so the employer may decide how to comply with the order.

(10) The court must pay an amount paid under subsection (8)(b) to the apprentice.

138 Wages payable to former apprentices or trainees

(1) This section applies if—

(a) an employee was engaged as an apprentice or trainee; and

(b) the employer continued to employ the employee after the end of the probationary period; and

(c) either—

(i) the employer dismisses the employee; or

(ii) the employer does not sign a training contract.

(2) The employee is entitled to the higher of the following for the period after the end of the probationary period—

(a) the wages that would have been payable under the relevant industrial instrument had the employee continued to be employed as an apprentice or trainee;

(b) the wages payable under the relevant industrial instrument applicable to the type of work the employee performed.

(3) This section does not apply to an employee if a training contract between the employee and employer has been sent to the chief executive (training) for registration.

139 Reinstatement to previous position

(1) This section applies if—

(a) an apprenticeship or traineeship is started with an employer; and

(b) immediately before the apprenticeship or traineeship started, the person training as the apprentice or trainee was employed in a position (the ***previous position***) by the employer; and

(c) any of the following events happen—

(i) the chief executive (training) refuses to register the person's training contract;

(ii) the training contract is cancelled;

Not authorised—indicative only

Not authorised—indicative only

(iii) the apprenticeship or traineeship ends before the probationary period for the apprenticeship or traineeship ends;

(iv) the person completes the apprenticeship or traineeship.

(2) The person is taken to be immediately reinstated with the employer in the person's previous position.

(3) The reinstated person is not excluded from the operation of chapter 8, part 2 only because of the apprenticeship or traineeship.

Part 6 Labour market programs

140 Orders for wages and employment conditions

(1) The commission may make an order fixing wages and employment conditions for employees who participate in a labour market program.

(2) In making an order, the commission may consider any matter the commission considers relevant, including—

(a) the objectives of the program; and

(b) any attribute of the participants that affects their ability to get employment, including, for example—

(i) the age and competency of the participants; and

(ii) any disability or incapacity of the participants; and

(c) the kind of work done in the program; and

(d) the experience to be gained by the participants; and

(e) any relevant industrial instrument; and

(f) any remuneration or benefit the participants are receiving from the Commonwealth or the State.

(3) The commission may make an order—

(a) of the commission's own initiative; or

(b) on application by—

(i) the chief executive (training); or

(ii) the Minister.

Chapter 3 Modern awards

Part 1 Preliminary

141 General requirements for commission exercising powers

(1) In exercising its powers under this chapter, the commission must ensure a modern award—

(a) provides for fair and just wages and employment conditions that are at least as favourable as the Queensland Employment Standards; and

(b) generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.

(2) For subsection (1), the commission must have regard to the following—

(a) relative living standards and the needs of low-paid employees;

(b) the need to promote social inclusion through increased workforce participation;

(c) the need to promote flexible modern work practices and the efficient and productive performance of work;

(d) the need to ensure equal remuneration for work of equal or comparable value;

(e) the need to provide penalty rates for employees who—

(i) work overtime; or

(ii) work unsocial, irregular or unpredictable hours; or

Not authorised—indicative only

Not authorised—indicative only

(iii) work on weekends or public holidays; or

(iv) perform shift work;

(f) the efficiency and effectiveness of the economy, including productivity, inflation and the desirability of achieving a high level of employment.

142 General requirement about minimum wages

(1) To the extent the commission's powers under this chapter relate to setting, varying or revoking minimum wages in a modern award, the commission must establish and maintain minimum wages that are fair and just.

(2) For subsection (1), the commission must have regard to the following—

(a) the prevailing employment conditions of employees covered by the modern award;

(b) the matters mentioned in section 141(2)(a) to (d) and (f);

(c) providing a comprehensive range of fair minimum wages to—

(i) young employees; and

(ii) employees engaged as apprentices and trainees; and

(iii) employees with a disability.

Part 2 Content of modern awards

143 Content of modern awards

(1) The commission must ensure a modern award—

(a) does not include a provision that discriminates against an employee; and

Note—

See, however, subsection (2).

(b) does not include a provision that displaces, or is otherwise inconsistent with, the Queensland Employment Standards, unless the provision is at least as favourable for an employee as the Queensland Employment Standards; and

(c) provides for equal remuneration for work of equal or comparable value; and

Note—

In relation to the making of a modern award, see the further requirements under chapter 5, part 2, division 1.

(d) does not include an objectionable term within the meaning of section 301; and

(e) is stated in plain English and its structure and content is easy to understand; and

(f) does not include provisions that are obsolete; and

(g) includes a provision requiring an employer to consult employees before making a decision likely to be of particular significance to employees; and

Note—

See also subsection (3) for further requirements relating to the consultation provision mentioned in paragraph (g).

(h) includes provisions stating the employers, employees and organisations the award applies to; and

(i) provides fair standards for employees in the context of living standards generally prevailing in the community; and

(j) is suited to the efficient performance of work according to the needs of particular enterprises, industries or workplaces; and

(k) whenever possible—

(i) contains facilitative provisions about how the provisions of the award are to apply; and

(ii) contains provisions enabling the employment of regular part-time employees; and

Not authorised—indicative only

Not authorised—indicative only

(iii) provides support for training arrangements; and

(iv) contains facilitative provisions about work and family responsibilities; and

(l) takes into account employees' family responsibilities.

(2) A modern award does not discriminate against an employee only because it provides for minimum wages for any of the following—

(a) all young employees;

(b) all employees with a disability;

(c) all employees engaged as apprentices or trainees;

(d) a class of employees mentioned in paragraph (a), (b) or (c).

(3) For subsection (1)(g), the provision must state a consultation process to be followed that enables the employer to properly consider the views of employees and relevant employee organisations before making or implementing a final decision.

(4) In this section—

facilitative provisions, about a matter, means provisions allowing agreement to be reached at the workplace or enterprise level, between employers and employees (including individual employees), for the matter.

relevant employee organisation means an employee organisation that—

(a) is covered, or will be covered, by the modern award; or

(b) is entitled to represent the industrial interests of employees who are, or will be, covered by the modern award.

144 Dispute resolution procedure

(1) The commission must ensure a modern award includes a dispute resolution procedure.

(2) The dispute resolution procedure must be—

(a) agreed on by the parties to the modern award; or

(b) if the parties can not agree, a procedure considered appropriate by the commission.

(3) Without limiting subsection (1), the procedure must include—

(a) consultation at the workplace; and

(b) the involvement of relevant organisations; and

(c) any other matter prescribed by regulation.

Part 3 Making, varying and revoking modern awards

147 Commission's power to make or vary modern awards

(1) The commission may do either of the following to provide for fair and just employment conditions—

(a) make a modern award;

(b) make an order varying a modern award.

(2) The commission may exercise a power under this section—

(a) on its own initiative; or

(b) on the application of any of the following persons—

(i) the Minister;

(ii) an organisation;

(iii) an employer;

(iv) an employee; or

(c) on a review of a modern award under part 5.

148 When variation takes effect

(1) This section applies to an order varying a modern award.

(2) The order takes effect on the day stated in the order.

Not authorised—indicative only

Not authorised—indicative only

(3) The stated day must not be earlier than the day on which the order is made, unless—

(a) the variation removes an ambiguity or uncertainty or corrects an error; and

(b) the commission is satisfied exceptional circumstances justify stating an earlier day; and

(c) the order does not adversely affect an employee.

(4) The order does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after the day the order takes effect under subsection (2).

(5) The retrospective operation of the order does not affect the validity of an approval, given by the commission before the order was made, of an application under chapter 4 to certify or amend a certified agreement.

(6) A person can not be punished for contravening the modern award or a certified agreement before the order was made if, but for the retrospective operation of the order, the conduct would not have contravened the modern award or certified agreement.

149 Variation of modern awards to correct minor errors etc.

(1) The registrar may, on an application under the rules or on the registrar's own initiative, vary a modern award to—

(a) correct minor or technical errors; or

(b) reflect a change to the name of a party or update another reference that has become outdated.

(2) The variation takes effect when it is approved by the commissioner nominated by the president to approve variations for this section.

150 Commission's power to revoke modern awards

(1) To provide for fair and just employment conditions, the commission may make an order revoking a modern award.

(2) However, the commission must not make the order unless satisfied no employees will be adversely affected by the revocation of the award.

(3) The commission may make the order—

(a) on its own initiative; or

(b) on the application of any of the following persons—

(i) the Minister;

(ii) an organisation;

(iii) an employer;

(iv) an employee; or

(c) on a review of the modern award under part 5.

(4) This section does not apply to the revocation of a modern award on the making of a bargaining award under chapter 4, part 5.

Part 4 Coverage and operation of modern awards

151 Contravention of modern awards

A person must not contravene a provision of a modern award.

Notes—

1 This section is a civil penalty provision.

2 A person does not contravene a provision of a modern award unless the award applies to the person—see section 152.

Not authorised—indicative only

Not authorised—indicative only

152 Significance of application of modern awards

(1) A modern award does not impose obligations, or confer entitlements, on a person unless the award applies to the person.

(2) A person does not contravene a provision of a modern award unless the award applies to the person.

153 Who a modern award *applies to*

(1) A modern award ***applies to*** an employee, employer or organisation if the award is in operation and—

(a) the award states that it applies to the employee, employer or organisation; or

(b) the award applies to the employee, employer or organisation under any of the following—

(i) a provision of this Act;

(ii) an order made by the commission under this Act;

(iii) an order of a court.

(2) However, a modern award does not apply to an employee, employer or organisation if a provision of this Act provides that the award does not apply to the employee, employer or organisation.

(3) Without limiting subsection (1), it is declared that a modern award may state it applies to a stated establishment or operation of a stated employer.

(4) A reference in this Act to a modern award applying to an employee is a reference to the award applying to the employee in relation to particular employment.

154 Application to successors

(1) If a modern award applies only to a stated employer, the award applies to—

(a) the employer and any successor of the employer; and

(b) all employees of the employer and any successor.

(2) However, if a modern award applies only to a stated establishment or operation of a stated employer, the award applies to—

(a) the employer and any successor of the employer; and

(b) all employees of the employer and any successor of the employer in the establishment or operation.

155 When modern awards operate

(1) A modern award starts operating on the day stated in the award as the day on which it comes into operation.

(2) The stated day must not be earlier than the day the modern award is made.

(3) A modern award continues in effect until it is revoked.

Part 5 Review of modern awards

156 Commission's power to review modern awards

(1) The commission may review a modern award—

(a) on its own initiative; or

(b) on the application of—

(i) a person to whom the award applies; or

(ii) an employee organisation that represents a person mentioned in subparagraph (i).

(2) An application mentioned in subsection (1)(b) may include a request to vary a provision of the modern award about wages or employment conditions.

Not authorised—indicative only

Not authorised—indicative only

157 Review on application by Queensland Human Rights Commission

(1) The Queensland Human Rights Commission may apply to the commission for a review of a modern award on the grounds it is discriminatory.

(2) If an application is made under subsection (1), the commission must—

(a) review the modern award; and

(b) if it considers the award requires a person to do an act that would be unlawful under the *Anti-Discrimination Act 1991* if the act were not done under the award—make an order varying the award so it no longer requires the person to do the unlawful act.

Part 6 Technical matters

158 Definition for part

In this part—

relevant instrument means—

(a) a modern award; or

(b) an order varying or revoking a modern award.

159 Formal requirements of relevant instruments

(1) A relevant instrument must—

(a) be in writing; and

(b) be signed by the member of the commission making the instrument; and

(c) state the day on which it is signed.

(2) Also, a modern award must—

(a) have a unique title; and

(b) have a table of contents; and

(c) be expressed in plain English and be easy to understand in structure and content.

160 Publication of relevant instruments

(1) This section applies if the commission makes a relevant instrument.

(2) As soon as practicable after making the relevant instrument, the commission must give the registrar—

(a) a copy of the instrument; and

(b) written reasons for the instrument.

(3) As soon as practicable after the registrar receives a copy of the relevant instrument under subsection (2), the registrar must—

(a) give the parties to whom the relevant modern award applies, or will or did apply, notice of the making of the instrument; and

(b) ensure a copy of the instrument and the written reasons for the instrument are published on the QIRC website.

(4) The registrar must give the notice under subsection (3)(a)—

(a) in the way prescribed by regulation; or

(b) if there is no prescribed way—in the way the registrar considers appropriate.

161 Publication of varied awards

(1) This section applies if—

(a) the commission makes an order under this chapter or section 458 varying a modern award; or

(b) the registrar varies a modern award under section 149.

(2) The registrar must, as soon as practicable after the determination is made, publish the award as varied on the QIRC website.

Not authorised—indicative only

Not authorised—indicative only

162 Interpretation of relevant instrument

(1) A term used in a relevant instrument has the same meaning as it has—

(a) in this Act; or

(b) subject to paragraph (a), under the *Acts Interpretation Act 1954*.

(2) Subsection (1) applies subject to a contrary intention in the instrument.

Chapter 4 Collective bargaining

Part 1 Preliminary

Division 1 Purpose and application

163 Purpose of chapter

The purpose of this chapter is—

(a) to facilitate collective bargaining by employees and employers, in good faith and with a view to reaching agreement, as the primary basis under this Act on which wages and employment conditions are decided; and

(b) if the negotiating parties can not reach agreement, to provide for—

(i) the commission to help the parties reach agreement or, if agreement can not be reached, to reduce the matters in dispute; and

(ii) the matter to be arbitrated by the commission if conciliation is not successful; and

(iii) the balloting of employees by the employer in particular circumstances despite 1 or more negotiating parties not reaching agreement; and

(c) if the negotiating parties reach agreement, to enable the parties to—

(i) make an agreement and apply to the commission for the agreement to be certified; or

(ii) in particular circumstances, apply to the commission for the making of a bargaining award and revocation of the modern award that covers the negotiating parties; and

(d) to enable the employer to apply to the commission, in particular circumstances, for certification of an agreement approved by a majority of relevant employees despite 1 or more negotiating parties not reaching agreement; and

(e) to recognise the right of negotiating parties to take protected industrial action, if particular requirements are satisfied, as part of the collective bargaining process.

Division 2 Some basic concepts about collective bargaining

164 What is a *certified agreement*

(1) A ***certified agreement*** is a written agreement—

(a) about industrial matters relating to—

(i) an employer; and

(ii) a group of employees of the employer, whether all employees or a category of employees; and

(iii) the employee organisations covered by the agreement; and

Not authorised—indicative only

Not authorised—indicative only

Note—

An employee organisation is a body that is registered as an organisation under chapter 12—see schedule 5, definition *organisation*.

(b) that has been certified under part 5.

(2) A certified agreement covers all employees in the group, even employees who were employed after the agreement was made.

165 Who may make certified agreements

A certified agreement may be made between—

(a) an employer; and

(b) either—

(i) 1 or more employee organisations that represent, or are entitled to represent, any employees of the employer who are, or are eligible to be, members of the organisation; or

Note—

See also section 174A in relation to direct ballot agreements and employee organisations that are non-approving parties.

(ii) if subparagraph (i) does not apply, the employees of the employer at the time the agreement is made.

166 What is a *bargaining award*

A ***bargaining award*** is an award made under part 5 that covers the following persons stated in the bargaining award—

(a) an employer;

(b) a group of employees of the employer, whether all employees or a category of employees;

(c) an employee organisation that represents, or is entitled to represent, any employees—

(i) who are, or are entitled to be, members of the organisation; and

(ii) who are covered by the bargaining award.

167 Requirements for making bargaining awards

A bargaining award may be made only if—

(a) all of the parties who will be covered by the bargaining award consent to the making of the bargaining award; and

(b) immediately before the bargaining award is made, an award is in effect under which the only employers and employees covered are the employers and employees who will be covered by the bargaining award.

Division 3 Other definitions

168 Definitions for chapter

In this chapter—

applies to, for a bargaining instrument, see section 220.

arbitration determination means a determination made under part 3, division 2.

bargaining award see section 166.

bargaining instrument means—

(a) a certified agreement; or

(b) a bargaining award.

certified agreement see section 164.

covers, for a bargaining instrument, see section 221.

designated award, for a person to whom a certified agreement will apply, means an award the commission has decided under section 213 is appropriate for deciding whether the agreement passes the no-disadvantage test under part 5, division 3.

Not authorised—indicative only

Not authorised—indicative only

direct ballot agreement see section 174A(3).

employer includes—

(a) a multi-employer; and

(b) for a project—an employer organisation for whom the agreement is made.

group of employees includes—

(a) employees of a single employer; and

(b) employees of a multi-employer; and

(c) employees of an employer who are engaged in a project, including a proposed project; and

(d) employees proposed to be employed in a new business by an employer, other than a multi-employer.

multi-employer means 2 or more employers who are associated because they—

(a) are related bodies corporate within the meaning of the Corporations Act; or

(b) are engaged in a joint venture or common enterprise; or

(c) undertake similar work.

multi-employer agreement means a certified agreement made with a multi-employer.

negotiating party means—

(a) a person who is negotiating under this chapter; or

(b) a person who has received a notice of intention under section 169 and refuses to negotiate, other than a person in relation to whom section 170 applies.

non-approving party, in relation to a direct ballot agreement, see section 174A(5).

part 5 application see section 191.

party, in relation to a bargaining instrument or proposed bargaining instrument, means a person or organisation that is or will be covered by the instrument.

peace obligation period see section 174(2).

project includes construction.

project agreement means a certified agreement for a project or proposed project.

proposed bargaining instrument—

(a) in relation to a part 5 application, means the agreement or proposed bargaining award that is the subject of the application; or

(b) generally, means a proposed agreement or bargaining award being negotiated under this chapter.

protected industrial action, for part 8, see section 233(1).

relevant award—

(a) in relation to a person to whom a certified agreement will apply, means a modern award or bargaining award—

(i) regulating any employment condition of persons engaged in the same kind of work as the work performed by persons covered by the agreement; and

(ii) that, immediately before the day the agreement was certified, covers the person's employer; or

(b) in relation to a person who will be covered by a proposed bargaining award, means a modern award or bargaining award that, immediately before the proposed bargaining award is made, covers only the persons who will be covered by the proposed bargaining award.

relevant employee, for a bargaining instrument, means an employee who will be covered by the instrument.

relevant employee organisation, in relation to a bargaining instrument or proposed bargaining instrument, means—

(a) if a modern award or bargaining award covers an employer under the bargaining instrument or proposed bargaining instrument, or would cover the employer

Not authorised—indicative only

Not authorised—indicative only

apart from an award under the Commonwealth Fair Work Act—an employee organisation that is covered by the award; or

(b) if paragraph (a) does not apply—an employee organisation that is entitled to represent the industrial interests of employees of the employer.

scope order see section 184(1).

Part 2 Collective bargaining process

169 Notice of intention to bargain

(1) This section applies if a person (the ***proposer***) proposes to negotiate with a view to a bargaining instrument being made.

(2) The proposer must give each of the following persons a written notice (a ***notice of intention***) of the proposer's intention to start negotiating—

(a) the other proposed parties to the negotiations;

(b) if the negotiations relate to a project agreement—all relevant employee organisations and the commission.

(3) The proposer must give the notice of intention at least 14 days before the negotiations are proposed to start.

(4) If an existing bargaining instrument or arbitration determination applies to the parties, the proposer must not give the notice of intention more than 6 months before the nominal expiry date.

(5) Subsection (4) applies subject to the provisions of the bargaining instrument.

170 Notice of intention to be party to bargaining

(1) This section applies if—

(a) a proposer gives a notice of intention; and

(b) the negotiations—

(i) relate to a project agreement; or

(ii) involve a multi-employer agreement; and

(c) a person who receives the notice of intention wants to be a party to the negotiations; and

(d) for negotiations relating to a project—the person mentioned in paragraph (c) is an organisation.

(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 notice of intention.

(4) An agreement, or application under part 5 for the making of a bargaining award, may only be made within the period mentioned in subsection (3) if the other proposed parties to the negotiations, and all relevant employee organisations, have given a notice under subsection (2).

170A Relevant employee's entitlement to representation

(1) This section applies if, during negotiations under this chapter, a relevant employee asks a relevant employee organisation of which the employee is a member to represent the employee in negotiating with the employer about the proposed bargaining instrument.

(2) The employer must give the employee organisation a reasonable opportunity to represent the relevant employee in the negotiations before—

(a) for a proposed agreement—the agreement is made; or

(b) for a proposed bargaining award—an application is made under part 5 for the making of the bargaining award.

(3) Subsection (2) stops applying if, after the request mentioned in subsection (1) is made—

Not authorised—indicative only

Not authorised—indicative only

(a) the relevant employee withdraws the request; or

(b) the employee stops being a relevant employee.

Note—

See also section 242 in relation to certificates about requested representation.

171 Proposed bargaining instrument to be given to employees for approval

(1) This section applies if, during negotiations under this chapter, the negotiating parties propose to—

(a) make a certified agreement, other than an excluded instrument; or

(b) seek the making of a bargaining award.

(1A) Also, this section applies if—

(a) negotiations under this chapter relate to a proposed agreement, other than an excluded instrument, between an employer and 1 or more employee organisations; and

(b) the employer—

(i) has reached agreement with at least 1 employee organisation but can not reach agreement with any of the other negotiating parties; and

(ii) wishes to proceed with the proposed agreement despite not reaching agreement with all of the negotiating parties.

(2) The employer must take reasonable steps to ensure—

(a) each relevant employee has, or has ready access to, the proposed bargaining instrument or a copy of the proposed instrument at least 14 days before the day the relevant employees are asked to approve the proposed instrument; and

(b) the terms of the proposed instrument, including the procedures for preventing and settling disputes, and the

effect of the terms are explained to each relevant employee before approval is given; and

(c) for an agreement with employees—each relevant employee is informed that the employee may make a request mentioned in section 170A(1).

(3) The employer must not ask relevant employees to approve the proposed instrument until—

(a) if subsection (1A) applies—the day that is 28 days after the day the peace obligation period ended; or

(b) otherwise—the day that is 21 days after the later of the following—

(i) the day the notice of intention for the negotiations was given;

(ii) the day a scope order in relation to the proposed instrument came into effect.

(4) Also, the employer must not ask relevant employees to approve the proposed bargaining instrument in the circumstances mentioned in subsection (1A) after arbitration of the instrument starts.

(5) If the proposed instrument is amended for any reason, the steps in subsections (2) and (3) must be taken again for the instrument as amended.

(6) If the proposed instrument is amended only by adding an employer (a ***new employer***) as a party, the steps need only be taken in relation to the new employer's employees.

(7) However, the steps need not be taken if the commission is satisfied the proposed bargaining instrument was amended only—

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect a relevant employee's interests.

(8) In this section—

excluded instrument means—

Not authorised—indicative only

Not authorised—indicative only

(a) a certified agreement to be made with an employee organisation for employees proposed to be employed in a new business; or

(b) a project agreement to be made before the project commences.

172 Negotiations relating to projects

(1) This section applies if 2 or more employee organisations have given notice, under section 170(2), that the organisations want to be party to negotiations relating to a project or proposed project.

(2) The employer must negotiate with the single bargaining unit, through a person nominated by the single bargaining unit to represent the unit.

(3) An organisation may withdraw as a party to the negotiations by giving written notice to—

(a) the other organisations that comprise the single bargaining unit; and

(b) the proposer; and

(c) the commission.

(4) In this section—

single bargaining unit means all employee organisations that have given notice, under section 170(2), that they want to be party to the negotiations.

173 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 bargaining meetings;

(b) disclose relevant information, other than confidential or commercially sensitive information, in a timely way;

(c) genuinely consider proposals made by other parties and—

(i) respond in a timely way; and

(ii) give reasons for the party's response;

(d) not engage in capricious or unfair conduct that undermines freedom of association or the collective bargaining process.

(3) 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.

(4) 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.

(5) Subsection (1) does not require a negotiating party—

(a) to make concessions during the negotiations; or

(b) to reach agreement on the terms of a proposed bargaining instrument.

(6) If the employer asks the relevant employees to approve a proposed agreement in the circumstances mentioned in

Not authorised—indicative only

Not authorised—indicative only

section 171(1A), the making of the request does not, of itself, contravene the requirement to negotiate in good faith.

(7) Subject to subsections (1) to (6), the negotiating parties may make an agreement about procedures or principles for the conduct of the bargaining process.

174 Peace obligation period to assist negotiations

(1) To enable negotiating parties to reach agreement about the matters that are the subject of the negotiations, during the peace obligation period the parties can not—

(a) take industrial action for the purpose of—

(i) supporting or advancing claims made in the course of the negotiations; or

(ii) responding to industrial action by the employer or the relevant employees; or

(b) ask the commission to help the parties to reach agreement under part 3, division 1.

(1A) Also, during the peace obligation period the employer can not ask the relevant employees to approve a proposed agreement in the circumstances mentioned in section 171(1A).

Note—

See also section 171(3).

(2) In this section—

peace obligation period means the period—

(a) starting on either—

(i) the day the notice of intention for the negotiations is given; or

(ii) if a scope order for a proposed bargaining instrument comes into operation and the instrument is a scoped out instrument—the day stated in an order under section 187A(2); and

(b) ending on the later of the following days—

(i) the nominal expiry date of any existing bargaining instrument;

(ii) 21 days after the period started.

scoped out instrument see section 187A.

174A Direct ballot agreements

(1) This section applies, during negotiations under this chapter for an agreement with 1 or more employee organisations, if—

(a) the employer asks relevant employees to approve the agreement in the circumstances mentioned in section 171(1A); and

(b) the agreement is approved by a valid majority of the relevant employees at the time in a properly conducted ballot; and

(c) at least 7 days before a part 5 application to certify the agreement is made, the employer gives each employee organisation that is a negotiating party an election invitation.

(2) An employee organisation mentioned in subsection (1)(c) may, by written notice given to the employer before the part 5 application is made, elect—

(a) to agree on the terms of the agreement; or

(b) to withdraw as a party to the agreement.

(3) The agreement is a ***direct ballot agreement*** if at least 1 of the employee organisations elects to agree on the terms of the agreement under subsection (2)(a).

(4) If an employee organisation elects to withdraw as a party to the agreement under subsection (2)(b), the organisation must give a copy of the notice to—

(a) the commission; and

(b) each other negotiating party.

Not authorised—indicative only

Not authorised—indicative only

(5) If an employee organisation does not make an election under subsection (2), the organisation is a ***non-approving party*** in relation to the agreement.

Note—

A non-approving party is covered by the direct ballot agreement—see section 221(2).

(6) The direct ballot agreement does not cover an employee organisation that elects to withdraw as a party to the agreement under subsection (2)(b).

(7) In this section—

election invitation means a written notice stating—

(a) that the agreement has been approved by a valid majority of the relevant employees at the time in a properly conducted ballot; and

(b) each employee organisation that is a negotiating party may, before a part 5 application to certify the agreement is made, elect—

(i) to agree on the terms of the agreement; or

(ii) to withdraw as a party to the agreement; and

(c) how an employee organisation may make the election; and

(d) if an employee organisation does not make the election—that the employee organisation will be a non-approving party in relation to the agreement.

Part 3 Conciliation and arbitration by commission

Division 1 Conciliation

175 Application of division

(1) This division applies if—

(a) both of the following periods have ended—

(i) the peace obligation period;

(ii) the period of 28 days after the last day of the peace obligation period; and

(b) a negotiating party asks the commission to help the negotiating parties reach agreement by giving written notice of the request to—

(i) the commission; and

(ii) each other negotiating party.

(2) However, this division stops applying if the negotiating parties notify the commission that the parties intend to resume negotiating without the commission's help.

(3) For this Act, the day conciliation of the matter starts is the day the request mentioned in subsection (1)(b) is given.

Note—

Industrial action organised, or engaged in, while the commission is conciliating the matter under this division is not protected industrial action—see section 234.

176 Commission's role in conciliation

(1) The commission's objective in conciliating the matter under this division is to help the negotiating parties—

(a) reach agreement on all matters or as many matters as possible; and

Not authorised—indicative only

Not authorised—indicative only

(b) comply with the requirement under section 173 to negotiate in good faith.

(2) To achieve the objective, the commission may—

(a) give advice or make recommendations to the parties about the conduct of the negotiations; or

(b) give directions about action to be taken, or not to be taken, to ensure a party complies with the requirement mentioned in subsection (1)(b); or

(c) if the commission considers that holding a conference is desirable—by attendance notice, require a person to attend a conference at a stated time and place.

(3) A person given an attendance notice must comply with the notice.

Note—

This subsection is a civil penalty provision.

(4) Things said or done in the conciliation may not be admitted into evidence for any proceeding or otherwise disclosed.

176A Direct ballot may be conducted during conciliation

(1) This section applies if the negotiations relate to a proposed agreement between an employer and 1 or more employee organisations.

(2) Subject to subsection (3), the employer may ask the relevant employees to approve the proposed agreement in the circumstances mentioned in section 171(1A) during conciliation of the matter.

(3) Before making the request, the employer must give written notice of the proposed request to the commissioner conciliating the matter.

177 Referral to arbitration by conciliating member

(1) This section applies if—

(a) the commissioner conciliating the matter (the ***conciliating member***) considers—

(i) a negotiating party has tried to negotiate with the other parties; or

(ii) if the negotiating parties have been negotiating—the parties have tried to reduce the scope of the matters at issue between the parties; and

(b) the conciliating member is satisfied—

(i) the period of 3 months after the nominal expiry date of an existing bargaining instrument or arbitration determination that applies to the parties has ended; or

(ii) at any time after the day conciliation of the matter starts, there is no reasonable likelihood that further conciliation or negotiation will result in the negotiating parties reaching agreement on the matters at issue within a reasonable period.

(1A) For subsection (1)(b)(ii), the conciliating member must consider the views of the negotiating parties in deciding whether there is no reasonable likelihood that further conciliation or negotiation will result in the negotiating parties reaching agreement on the matters at issue within a reasonable period.

(2) The conciliating member may refer the matter to arbitration by giving written notice of the referral to the president and each negotiating party.

(3) The notice of the referral must not include any information other than—

(a) the names of the negotiating parties; and

(b) a statement that conciliation has not been successful and the matter is referred to arbitration.

Not authorised—indicative only

Not authorised—indicative only

178 Consent application for arbitration

(1) All of the negotiating parties may apply to the commission for arbitration of the matter.

(2) The application must state—

(a) whether the negotiating parties agree on the aspects of the matter that are at issue between the parties; and

(b) if the parties agree—the aspects of the matter that are at issue between the parties; and

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

(3) The commission must consider the application and decide to grant or refuse to grant the application.

(4) The commission may grant the application only if satisfied—

(a) a negotiating party has tried to negotiate with the other parties; or

(b) if the negotiating parties have been negotiating—the parties have tried to reduce the scope of the matters at issue between the parties.

(5) The commission may make the interlocutory orders, or other orders, it considers appropriate, including, for example, an order requiring the negotiating parties to undertake—

(a) further negotiation with a view to reducing the scope of the matters to be arbitrated; or

(b) further conciliation.

Examples of reasons the commission might make an order under subsection (5)—

- to reduce the scope of the matters at issue
- failure of a negotiating party to bargain in good faith as required under section 173
- failure of a negotiating party to bargain as required under an agreement made by the negotiating parties under section 173(7)

Division 2 Arbitration

179 Application of division

This division applies if—

(a) the matter is referred to arbitration by the conciliating member under section 177; or

(b) an application for arbitration of the matter made under section 178 is granted by the commission.

Note—

Industrial action organised, or engaged in, while the commission is arbitrating the matter under this division is not protected industrial action—see section 234.

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.

180 Commission to arbitrate disputed matters

(1) The commission must determine the matters in dispute by arbitration.

(2) To determine the matters in dispute, the commission—

(a) may give directions or make orders of an interlocutory nature; and

(b) without limiting paragraph (a), before making an arbitration determination may order an increase in wages payable to employees; and

(c) may make any other order, or exercise another power, the commission considers appropriate to determine the disputed matters.

(3) The commission must ensure an arbitration determination—

Not authorised—indicative only

Not authorised—indicative only

(a) includes the provisions and other matters it would be required to include if the determination were a proposed bargaining instrument the subject of a part 5 application; and

(b) includes any increase in wages ordered by the commission under subsection (2)(b) or agreed by the parties during the arbitration.

(4) In determining the matters in dispute, the commission must consider at least the following—

(a) the merits of the case;

(b) the interests of the employees and employers to whom the proposed arbitration determination will apply;

(c) the significance to the employees or employers of particular terms of an existing bargaining instrument or arbitration determination;

(d) the public interest, including the effect of the proposed arbitration determination on the delivery of public services;

(e) the extent to which the proposed arbitration determination will support workplace productivity;

(f) for a matter involving a public sector employer—

(i) the likely effect of the proposed arbitration determination on the State's economy and the community; and

(ii) the State's financial position and fiscal strategy; and

(iii) the financial position of the public sector employer;

(g) the extent to which the conduct of the negotiating parties was reasonable during the negotiations;

(h) the extent to which the negotiating parties have complied with the requirement under section 173 to negotiate in good faith;

(i) incentives to continue to negotiate at a later time.

(5) In this section—

public sector employer see the Fair Work (Commonwealth Powers) and Other Provisions Act 2009, section 3(1).

181 Arbitration determination may include agreed matters

(1) An arbitration determination by the commission may include provision for a matter agreed between the negotiating parties before or during the arbitration.

(2) However, the commission may not exercise any powers under this division in relation to a matter mentioned in subsection (1).

182 Commission must publish reasons

(1) The commission must publish its reasons when determining the disputed matters under this division.

(2) The reasons must address each of the things the commission considered under section 180(4).

183 Operation of arbitration determinations

(1) An arbitration determination must state, as its nominal expiry date, a date that is—

(a) agreed by the negotiating parties or, if the parties can not agree, ordered by the commission; but

(b) no later than 4 years after the date on which the determination is made.

(2) The arbitration determination has effect subject to any conditions stated in the determination.

(3) The arbitration determination operates until it is terminated under part 7, division 3.

(4) While the arbitration determination operates, the determination—

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(a) prevails, to the extent of any inconsistency, over an award or an order made under section 136; and

(b) can not be amended.

Part 4 Scope orders

184 Applications for scope orders

(1) A negotiating party may apply to the commission for an order under section 185 (a ***scope order***) in relation to a proposed bargaining instrument if the negotiating party has concerns the instrument—

(a) will not cover appropriate employees; or

(b) will cover employees whom it is inappropriate for the instrument to cover.

(2) The application—

(a) may be made any time after the notice of intention for the negotiations has been given; but

(b) may not be made after part 3, division 2 starts applying in relation to the negotiating parties.

185 Making scope orders

(1) The commission may make an order providing for the matters mentioned in section 186 in relation to a proposed bargaining instrument if satisfied—

(a) an application for the order has been made under section 184; and

(b) the negotiating party who made the application has not contravened the requirement to negotiate in good faith under section 173; and

(c) the group of employees to be covered by the proposed bargaining instrument to be stated in the scope order was fairly chosen; and

(d) it is reasonable in all the circumstances to make the order.

(2) For subsection (1)(c), if the group of employees does not include all employees of each employer who will be covered by the proposed bargaining instrument, in deciding whether the group was fairly chosen the commission must consider whether the group is geographically, operationally or organisationally distinct.

(3) Without limiting subsection (1)(d), the commission may be satisfied that making the scope order is reasonable in all the circumstances only if satisfied the order—

(a) will promote the fair and efficient conduct of the negotiations; and

(b) will not adversely affect the business or operational needs of any employer to be covered by the proposed bargaining instrument, having regard to—

(i) the nature of the work performed by the group of employees mentioned in subsection (1)(c); and

(ii) the likely financial effects of the order on the employer, including effects on productivity.

(4) The scope order may relate to more than 1 proposed bargaining instrument.

186 Matters to be stated in scope orders

A scope order in relation to a proposed bargaining instrument must state—

(a) the employer, or employers, to be covered by the instrument; and

(b) the employees to be covered by the instrument; and

(c) the employee organisations to be parties to the instrument.

Not authorised—indicative only

Not authorised—indicative only

187 Power to make or vary other orders etc.

(1) This section applies if the commission makes a scope order in relation to a proposed bargaining instrument.

(2) The commission may take the action it considers appropriate to give effect to the scope order, including, for example—

(a) making other orders, determinations or instruments;

(b) varying other orders, determinations or instruments made by the commission;

(c) taking any other action.

187A Order to be made about peace obligation period in particular circumstances

(1) This section applies if—

(a) the commission makes a scope order in relation to a proposed bargaining instrument (the ***scoped out instrument***); and

(b) the employees stated in the order—

(i) comprise some, but not all, of the employees in relation to whom the notice of intention for the negotiations was given; and

(ii) because of the scope order, will not be covered by the proposed bargaining instrument that was the subject of the notice of intention.

(2) The commission must make an order about the starting day of the peace obligation period for the scoped out instrument.

(3) For subsection (2), the starting day must be—

(a) if the commission considers it is appropriate to enable the parties to the scoped out instrument to reach agreement about the matters being negotiated after the scope order comes into operation—the day after the day the scope order comes into operation; or

(b) otherwise—the day the notice of intention mentioned in subsection (1)(b) was given.

(4) This section does not limit section 187.

188 Duration of scope order

A scope order in relation to a proposed bargaining instrument—

(a) takes effect on the day the order is made; and

(b) continues in force until the earliest of the following times—

(i) if the order is revoked by the commission—the time stated in the instrument revoking the order;

(ii) when the proposed bargaining instrument is certified or made by the commission under part 5;

(iii) when an arbitration determination covering the employees stated in the scope order is made;

(iv) when the negotiating parties agree the negotiations have ended.

Part 5 Certifying agreements and making bargaining awards

Division 1 Making and hearing applications

189 Application for certification of agreement

(1) An application for the commission to certify an agreement may be made by a party to the agreement.

(2) For an agreement made between a single employer and 1 or more employee organisations, the application may be made even though the agreement has not been signed by or for all of the parties if—

(a) either—

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Not authorised—indicative only

(i) all parties have agreed on the terms of the agreement; or

(ii) the agreement is a direct ballot agreement and all parties other than non-approving parties have agreed on the terms of the agreement; and

(b) the agreement has been approved by a valid majority of the relevant employees at the time in a properly conducted ballot.

(3) If an agreement has been signed by or for all the parties, other than a non-approving party in relation to a direct ballot agreement, the application must be made within 21 days after the agreement is signed.

189A Commission may make order simplifying application process

(1) The commission may, on an application by a party to an agreement, make an order providing for a form requirement to be taken to be satisfied for the purposes of an application to certify the agreement.

(2) The order is subject to any conditions stated in it.

(3) For subsection (1), a ***form requirement*** is a requirement under this part about the form in which information about the agreement must be provided to the commission.

Example of a requirement about the form in which information must be provided—

a requirement for the information to be given to the commission by an affidavit or using an approved form

(4) Despite subsection (1), the commission may make an order under this section only if satisfied—

(a) none of the parties to the agreement objects to the making of the order; and

(b) if the order is complied with, the commission will be sufficiently informed to enable it to certify the agreement.

Not authorised—indicative only

190 Application for making of bargaining award

(1) This section applies to an application for the commission to do both of the following—

(a) make a bargaining award;

(b) terminate the relevant modern award.

(2) The application may be made by a party to the proposed bargaining award.

(3) The application may be made only if—

(a) all the parties have agreed on the terms of the proposed bargaining award; and

(b) the proposed bargaining award has been approved by a valid majority of the relevant employees at the time in a properly conducted ballot.

191 Notice of hearing

The registrar must, at least 7 days before an application under section 189 or 190 (a ***part 5 application***) will be heard, place a notice in the registry stating details of—

(a) the names of the parties to the proposed bargaining instrument; and

(b) the relevant award or designated award; and

(c) the hearing date.

192 Entities that may be heard on application

(1) An employee organisation is entitled to be heard on a part 5 application if the organisation will be a party to the proposed bargaining instrument, including because the organisation is a non-approving party in relation to a direct ballot agreement.

(2) As soon as practicable after the part 5 application is made, the commission must notify each employee organisation mentioned in subsection (1) that—

(a) the application has been made; and

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(b) the organisation is entitled to be heard on the application.

(3) An employee organisation that will not be a party to the proposed bargaining instrument may be heard on the part 5 application only by leave of the commission.

(4) The commission may give leave to an employee organisation mentioned in subsection (3) 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 the commission's decision to grant, or refuse to grant, the application.

(5) This section does not affect another right of an employee organisation, or any other person, to be heard on, or to intervene in, an application.

Division 2 Deciding applications

Subdivision 1 Commission's decision on applications

193 Requirements for commission's decision

(1) The commission must grant a part 5 application if—

(a) each requirement under subdivision 2 is satisfied for the application; and

(b) the commission is not required under subdivision 3 to refuse to grant the application.

(2) If subsection (1) does not apply, the commission must refuse to grant the application.

(3) Subsection (2) applies subject to section 194.

194 Opportunity to take action before commission refuses to grant application

(1) Before refusing to grant a part 5 application, the commission must give the persons who will be covered by the proposed bargaining instrument an opportunity to take action that may be necessary to enable the commission to grant the application.

(2) The commission may conciliate the industrial matter concerned with a view to helping the persons concerned to take the action necessary to enable the commission to grant the application.

Subdivision 2 Requirements for granting applications

195 Compliance with bargaining process requirements

The commission must be satisfied that—

(a) the things required by sections 169, 170A, 171 and 172 were done, and, in particular, the terms of the proposed bargaining instrument were explained in a way that was appropriate having regard to the persons' particular circumstances and needs; and

(b) the employer did not coerce, or attempt to coerce, an employee—

(i) not to make a request mentioned in section 170A(1); or

(ii) to withdraw the request.

196 Proposed bargaining instrument to be in writing and signed by parties

(1) The commission must be satisfied the proposed bargaining instrument—

(a) is in writing; and

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(b) is signed by or for all the parties.

(2) Subsection (1)(b) does not apply if the commission is satisfied, in the particular circumstances, that—

(a) although the proposed bargaining instrument has not been signed by or for all the parties, all parties have agreed on the terms of the instrument; and

(b) the part 5 application was made within a reasonable time after the instrument was approved by a valid majority of the relevant employees at the time in a properly conducted ballot.

(3) Also, subsection (1)(b) does not apply if the commission is satisfied that—

(a) the proposed bargaining instrument is a direct ballot agreement; and

(b) all parties other than non-approving parties have—

(i) signed the agreement; or

(ii) agreed on the terms of the agreement; and

(c) the part 5 application—

(i) was made within a reasonable time after the agreement was approved by a valid majority of the relevant employees at the time in a properly conducted ballot; and

(ii) identifies which of the parties are non-approving parties.

(4) For subsections (2) and (3), in deciding whether all parties, other than non-approving parties in relation to a direct ballot agreement, have agreed on the terms of the proposed bargaining instrument, the commission may consider—

(a) whether the parties negotiated in good faith as required under section 173; and

(b) any other evidence supporting or not supporting the alleged agreement.

(5) To remove any doubt, it is declared that a party may sign the proposed bargaining instrument by electronic signature.

197 Approval by relevant employees

The commission must be satisfied a valid majority of the relevant employees employed at the time approved the proposed bargaining instrument.

198 Provisions and other information to be included

(1) The commission must be satisfied the proposed bargaining instrument—

(a) includes a provision requiring an employer to consult employees before making a decision likely to be of particular significance to the employees; and

(b) states a nominal expiry date that is—

(i) for a project agreement—the day the project ends; or

(ii) otherwise—no later than 4 years after the day the instrument will come into operation; and

(c) includes or is accompanied by—

(i) the information required under section 250; and

(ii) any other information prescribed by regulation.

(2) For subsection (1)(a), the provision must state a consultation process to be followed that enables the employer to properly consider the views of employees and relevant employee organisations before making or implementing a final decision.

199 No-disadvantage test

The commission must be satisfied the proposed bargaining instrument passes the no-disadvantage test under division 3.

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200 Agreements—requirements about parties

(1) The commission must be satisfied—

(a) for a project agreement—each employee organisation that has given notice of wanting to be a party to the negotiations under section 170(2), and that has not withdrawn as a party under section 172(3), is a party to the agreement; or

(b) for an agreement to be made with an employee organisation, other than an agreement for a new business—each relevant employee organisation is a party to the agreement; or

(c) for an agreement for a new business—

(i) the agreement was made before the employment of any of the persons in the new business at the new workplace who will be covered by the agreement; and

(ii) the agreement has been made with 1 or more employee organisations that are entitled to represent the industrial interests of the persons.

(2) Subsection (1)(b) does not apply if the commission is satisfied a relevant employee organisation—

(a) has been given the opportunity to be a party to the agreement, but does not want to be a party; or

(b) has no members who are to be covered by the agreement; or

(c) for a direct ballot agreement—has withdrawn as a party to the agreement under section 174A(2)(b).

201 Equal remuneration

The commission must be satisfied—

(a) for a multi-employer agreement or project agreement—the agreement 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

(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.

202 Proposed bargaining awards—requirement about relevant modern award

(1) This section applies if the proposed bargaining instrument is a bargaining award.

(2) The commission must be satisfied a modern award or bargaining award is in effect under which the only employers and employees covered are the employers and employees who will be covered by the proposed bargaining award.

203 Consistency with scope order

(1) This section applies if a scope order in relation to the proposed bargaining instrument is in effect.

(2) The commission must be satisfied the instrument is not inconsistent with the order.

Subdivision 3 Refusal to grant applications

204 Inconsistency with equal remuneration orders etc.

The commission must refuse to grant a part 5 application if the commission considers a provision of the proposed bargaining instrument—

(a) is inconsistent with a provision of chapter 5, part 3; or

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(b) is inconsistent with an order by the commission under a provision mentioned in paragraph (a); or

(c) seeks to prohibit or restrict an application being made under chapter 5, part 3.

205 Objectionable terms

The commission must refuse to grant a part 5 application if the commission considers a provision of the proposed bargaining instrument is an objectionable term within the meaning of section 301.

206 Contravention of ch 8, pt 1, div 4

(1) The commission must refuse to grant a part 5 application if the commission is satisfied—

(a) the employer has, in connection with negotiating the proposed bargaining instrument, contravened a provision of chapter 8, part 1, division 4; or

(b) the employer has caused an entity to engage, in connection with negotiations for the proposed bargaining instrument, in conduct that, had the employer engaged in the conduct, would be a contravention by the employer of a provision of chapter 8, part 1, division 4; or

(c) an entity has, for the employer, 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.

207 Discriminatory provisions

(1) The commission must refuse to grant a part 5 application if the commission considers a provision of the proposed bargaining instrument is a discriminatory provision.

(2) Subsection (1) does not apply only because a provision of the proposed bargaining instrument provides for minimum wages for any of the following—

(a) all young employees;

(b) all employees with a disability;

(c) all employees engaged as apprentices or trainees;

(d) a class of employees mentioned in paragraph (a), (b) or (c).

208 Displacement of Queensland Employment Standards

(1) The commission must refuse to grant a part 5 application if the commission considers a provision of the proposed bargaining instrument displaces, or is otherwise inconsistent with, the Queensland Employment Standards.

(2) Subsection (1) does not apply to a provision that is at least as favourable for an employee as the Queensland Employment Standards.

209 Employees covered by the proposed bargaining instrument

(1) The commission must refuse to grant a part 5 application if—

(a) the proposed bargaining instrument applies only to a group or category of employees; and

(b) the commission considers the instrument defines the group or category in a way that results in other employees not being covered by the instrument, if it would be reasonable for the other employees to be covered by the instrument; and

(c) the commission considers it unfair the other employees are not covered by the instrument.

(2) For subsection (1)(b), in deciding whether it would be reasonable for the other employees to be covered by the

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Not authorised—indicative only

proposed bargaining instrument, the commission must consider—

(a) the nature of the work performed by the other employees; and

(b) the organisational and operational relationships between the group or category and the other employees.

Division 3 No-disadvantage test

210 When proposed bargaining instrument passes the no-disadvantage test

(1) A proposed bargaining instrument passes the no-disadvantage test if the instrument does not disadvantage employees in relation to the employees' employment conditions.

(2) A proposed bargaining instrument disadvantages employees only if the commission considers the proposed bargaining instrument would result in a reduction in the employees' entitlements or protections.

(3) Subsection (2) applies subject to sections 211 and 212.

(4) Subsection (2) does not apply if the commission considers that, in the context of the employment conditions considered as a whole, the reduction is not against the public interest.

(5) If the president considers exceptional circumstances exist, the president may require the registrar to give the commission a report comparing the proposed bargaining instrument with the employees' entitlements or protections.

(6) In this section—

entitlements or protections means the entitlements or protections under—

(a) a relevant award, designated award, or order under chapter 2, part 5; or

(b) chapter 2, part 3.

211 Special case—employee eligible for supported wage system

(1) This section applies if a proposed bargaining instrument provides for the payment of wages to an employee who is eligible for the supported wage system at a rate not less than the rate set in accordance with that system for the employee.

Note—

See the Supported Wage Award—State 2012.

(2) The proposed bargaining instrument does not disadvantage the employee in relation to the employee's employment conditions only because of the reduction of the employee's wages.

212 Special case—employee undertaking approved apprenticeship or traineeship

(1) This section applies if—

(a) a proposed bargaining instrument provides for the payment of wages to an employee undertaking approved training (a ***training employee***) in a particular trade, occupation or work (the ***particular work***); and

(b) there is a relevant award, designated award or order providing for the payment of wages to employees undertaking benchmark training for—

(i) the particular work; or

(ii) a trade, occupation or work that is similar to the particular work.

(2) The proposed bargaining instrument is taken to disadvantage the training employee in the employee's employment conditions if the proposed bargaining instrument provides for the payment of wages to the employee at a rate less than the rate payable to an employee (a ***benchmark employee***) undertaking benchmark training under the relevant award, designated award or order, as adjusted under subsection (3).

(3) For subsection (2), the rate payable to a benchmark employee is to be adjusted to take into account the proportionate

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Not authorised—indicative only

difference, as decided by the approving authority, between the productive time of—

(a) a training employee; and

(b) a benchmark employee.

(4) Subsection (5) applies if the proposed bargaining instrument adopts, as the qualification for a wage level, a criterion decided by the approving authority (the ***decided criterion***) instead of a specified criterion applying under the relevant award, designated award or order (the ***award criterion***).

(5) For this section, the relevant award, designated award or order is taken to have effect as if the decided criterion were substituted for the award criterion.

(6) This section does not apply to a trainee covered by—

(a) the Training Wage Award—State 2012; or

(b) the National Training Wage Schedule of a modern award under the Commonwealth Fair Work Act.

(7) In this section—

approved training means training for an apprentice or trainee approved by the approving authority.

benchmark training means training for an apprentice or trainee in a particular trade, occupation or work if that is recognised under an award or under an order made under section 136.

213 Deciding designated awards

(1) This section applies if—

(a) an employer, or an employee organisation, proposes to make a certified agreement; and

(b) there is no relevant award for some or all of the persons to whom the agreement will apply.

(2) The employer or organisation must apply to the commission for a decision under subsection (3).

(3) On application, the commission must decide that an award that regulates employment conditions of employees engaged in a similar kind of work as the person under the proposed agreement is appropriate for deciding whether the agreement passes the no-disadvantage test.

(4) The commission must give the employer or organisation in written notice of the commission's decision.

Division 4 Other provisions

214 Procedures for preventing and settling disputes

The procedures for preventing and settling disputes contained in a bargaining instrument may, with the commission's approval, authorise the commission to settle a dispute.

215 Publication of bargaining instruments

(1) This section applies if the commission grants a part 5 application.

(2) As soon as practicable after granting the application, the commission must give the registrar—

(a) a copy of the bargaining instrument certified or made by the commission; and

(b) written reasons for the certification or making of the instrument.

(3) As soon as practicable after the registrar receives a copy of the bargaining instrument under subsection (2), the registrar must—

(a) give the parties to whom the instrument will apply notice of—

(i) the making of the instrument; and

(ii) if the instrument is a bargaining award—notice of the revocation of the relevant modern award; and

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Not authorised—indicative only

(b) ensure a copy of the instrument is published on the QIRC website.

Part 6 Effect of bargaining instruments

216 When certified agreements operate

(1) A certified agreement starts operating when it is certified.

(2) A certified agreement continues to operate until the agreement is terminated under section 227 or 228.

217 When bargaining awards operate

(1) A bargaining award starts operating on the day stated in the award as the day on which the award comes into operation.

(2) The stated day must not be earlier than the day on which the bargaining award is made.

(3) A bargaining award continues to operate until—

(a) after the nominal expiry date, the award is replaced by another bargaining award; or

(b) the award stops having effect as a bargaining award under section 229.

218 Contravening bargaining instruments

A person must not contravene a bargaining instrument.

Notes—

1 This section is a civil penalty provision.

2 A person does not contravene a bargaining instrument unless the instrument applies to the person—see section 219.

Not authorised—indicative only

219 Significance of application of bargaining instrument

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

(2) A person does not contravene a bargaining instrument unless the instrument applies to the person.

220 Who a bargaining instrument *applies to*

(1) A bargaining instrument ***applies to*** an employee, employer or organisation if—

(a) the instrument is in operation; and

(b) the instrument covers the employee, employer or organisation.

(2) However, a bargaining instrument does not apply to an employee, employer or organisation if this Act provides that the instrument does not apply to the employee, employer or organisation.

(3) A reference in this Act to a bargaining instrument applying to an employee is a reference to the instrument applying to the employee in relation to particular employment.

221 Who is covered by a bargaining instrument

(1) A bargaining instrument ***covers*** an employee or employer if the instrument states that it covers (however described) the employee or employer.

(2) A bargaining instrument ***covers*** an employee organisation if—

(a) either—

(i) the instrument is made with the organisation; or

(ii) the instrument is a direct ballot agreement and the organisation is a non-approving party; or

(b) for an instrument made between employees and the employer—

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(i) before the instrument is certified or made, the organisation gives the commission and employer notice that the organisation wants the instrument to apply to it; and

(ii) the organisation satisfies the commission the organisation is a relevant employee organisation and has at least 1 member to whom the instrument applies and who has asked the organisation to give the notice; and

(iii) the instrument itself, or a decision of the commission certifying or making the instrument, states that the instrument covers the organisation.

(3) A bargaining instrument also ***covers*** an employee, employer or employee organisation if this Act, or an order made under this Act, provides or has the effect that the instrument covers the employee, employer or organisation.

(4) However, a bargaining instrument does not ***cover*** an employee, employer or employee organisation if any of the following provides or has the effect that the instrument does not cover the employee, employer or organisation—

(a) another provision of this Act;

(b) an order made by the commission under another provision of this Act;

(c) an order of a court.

(5) Despite subsections (1) to (3), a bargaining instrument that has stopped operating does not ***cover*** an employee, employer or employee organisation.

(6) A reference in this Act to a bargaining instrument covering an employee is a reference to the instrument covering the employee in relation to particular employment.

222 Application of bargaining instrument to successor employers

(1) This section applies if—

(a) a bargaining instrument applies to an employer; and

(b) at a later time a new employer becomes the successor (whether or not immediate) of the whole or a part of the business of the employer to whom the instrument applies.

(2) From the later time—

(a) the bargaining instrument applies to the new employer, to the extent the instrument relates to the whole or part of the business; and

(b) the bargaining instrument stops applying to the previous employer, to the extent the instrument relates to the whole or part of the business; and

(c) a reference in this chapter to the employer includes a reference to the new employer, and stops referring to the previous employer, to the extent the context relates to the whole or part of the business.

Part 7 Extending, amending and terminating bargaining instruments etc.

Division 1 Extension of bargaining instruments

223 Extension of nominal expiry date

(1) On or before the nominal expiry date of a bargaining instrument, the following persons may apply to the commission to extend the bargaining instrument's nominal expiry date—

(a) if the instrument applies to 1 or more organisations—the employer and 1 or more of the organisations;

(b) otherwise—the employer.

Not authorised—indicative only

Not authorised—indicative only

(2) However, the nominal expiry date can not be extended beyond—

(a) for a project agreement—the date on which the project ends; or

(b) for another bargaining instrument—4 years after the date on which the instrument came into operation.

(3) The extension has no effect unless the commission approves the extension.

(4) The commission must approve the extension if, and must not approve the extension unless, satisfied a valid majority of the relevant employees at the time approved the extension.

(5) The extension takes effect when the commission's approval takes effect.

(6) This section does not apply to—

(a) an agreement made with an employee organisation for employees proposed to be employed in a new business; or

(b) a bargaining instrument to which section 210(4) applies.

Division 2 Amendment of bargaining instruments

224 Power to amend bargaining instruments

A bargaining instrument may only be amended under—

(a) this division; or

(b) section 223.

225 Amendment on application

(1) The following persons may apply to the commission to amend a bargaining instrument—

(a) if the instrument applies to 1 or more organisations—the employer and 1 or more of the organisations to which the instrument applies;

(b) if the amendment amends the parties to a multi-party agreement—the person who wants to become a party to the agreement;

(c) otherwise—the employer.

(2) The commission must approve the amendment if, and must not approve the amendment unless, satisfied—

(a) the amendment has been approved by—

(i) for an amendment mentioned in subsection (1)(b)—the approving parties; or

(ii) for any other amendment—a valid majority of the relevant employees at the time; and

(b) the commission would be required to certify or make the instrument as amended if it were an instrument for which an application for certification or making were made under part 5.

(3) In applying subsection (2)(b)—

(a) a requirement about a majority of persons approving the instrument is taken to be satisfied; and

(b) section 194 is to be disregarded.

(4) The amendment takes effect when the commission's approval takes effect.

(5) The commission may, on application by a person to whom a bargaining instrument applies, amend the instrument—

(a) to remove ambiguity; or

(b) to include, omit or amend a term, however described, allowing an employer to stand down an employee; or

(c) in another way, if—

(i) the approving parties have agreed to the amendment; and

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Not authorised—indicative only

(ii) the commission is satisfied the amendment does not disadvantage the relevant employees; and

(iii) the commission is satisfied exceptional circumstances have arisen in the workplace that necessitate the amendment.

(6) This section does not apply to an amendment to add or omit a party to a bargaining instrument, other than an amendment mentioned in subsection (1)(b).

(7) In this section—

approving parties means—

(a) for an instrument that applies to an employer and an employee organisation—the employer and organisation; or

(b) for another instrument—the employer and a valid majority of the relevant employees at the time.

226 Amendment of parties to bargaining award by consent

(1) This section applies if an employer, or an employee organisation, to whom a bargaining award does not apply (the ***proposed new party***) would like the award to apply to the proposed new party.

(2) All the parties to the award, and the proposed new party, may apply to the commission to amend the bargaining award so the award applies to the proposed new party.

(3) The commission may approve the amendment if satisfied—

(a) if the proposed new party is an employer—the bargaining instrument should apply to the employer; or

(b) if the proposed new party is an employee organisation—the organisation is entitled to represent the industrial interests of employees covered by the bargaining award.

Division 3 Termination of certified agreements and arbitration determinations

227 Termination on or before nominal expiry date

(1) On or before the nominal expiry date of a certified agreement or arbitration determination, the employer and the organisations to which the agreement or determination applies may apply to the commission to terminate the agreement or determination.

(2) The commission must approve the termination if, and must not approve the termination unless, satisfied a valid majority of the relevant employees at the time approve the termination.

(3) The termination takes effect when the commission's approval takes effect.

228 Termination after nominal expiry date

(1) After the nominal expiry date of a certified agreement or arbitration determination, the following persons may apply to the commission to terminate the agreement or determination—

(a) the employer;

(b) a valid majority of the relevant employees;

(c) an employee organisation to which the agreement or determination applies and that has at least 1 member who is a relevant employee.

(2) The person who intends to apply to terminate the agreement or determination must give all other persons to whom the agreement or determination applies notice of the intention.

(3) The commission must approve the termination if, and must refuse to approve the termination unless, satisfied subsection (2) has been complied with and—

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(a) for an agreement or determination that provides that it may be terminated if particular conditions are met—the conditions have been met; or

(b) for an agreement or determination that does not provide for the way it may be terminated—

(i) the other parties to the agreement or determination agree to it being terminated; and

(ii) termination of the agreement or determination is not contrary to the public interest.

(4) The termination takes effect when the commission's approval takes effect.

Division 4 Termination of bargaining awards

229 Termination of bargaining awards and conversion into modern awards

(1) This section applies if, after the nominal expiry date of a bargaining award, either of the following events (each a ***conversion event***) happens—

(a) the commission certifies a certified agreement that applies to any of the parties to the bargaining award;

(b) an arbitration determination is made that applies to any of the parties to the bargaining award.

(2) When the conversion event happens, the bargaining award—

(a) stops having effect as a bargaining award; and

(b) is taken to be, and starts operating as, a modern award.

(3) Subsection (2)(b) applies despite section 155.

(4) Despite section 153, the modern award that takes effect under subsection (2) applies to the employees, employers and organisations to whom the bargaining award applied immediately before the conversion event happened.

(5) Sections 143 to 147 and 160 do not apply in relation to the modern award taking effect under subsection (2)(b).

230 Publication of modern award

(1) This section applies if a modern award takes effect under section 229.

(2) As soon as practicable after the modern award takes effect, the registrar must—

(a) give the parties to whom the modern award applies notice of—

(i) the taking effect of the modern award; and

(ii) the revocation of the bargaining award that applied to the parties immediately before the modern award took effect; and

(b) ensure a copy of the modern award is published on the QIRC website.

Part 8 Protected industrial action

Division 1 Preliminary

231 Definition for part

In this part—

protected industrial action see section 233(1).

232 Right to take protected industrial action

A negotiating party for a proposed bargaining instrument has a right to take protected industrial action for the proposed instrument, subject to this part.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Process for taking protected industrial action

233 When industrial action is protected industrial action

(1) Industrial action is ***protected industrial action*** for a proposed bargaining instrument if the industrial action—

(a) meets the requirements of this section; and

(b) is not industrial action to which section 234 applies.

(2) The industrial action must be—

(a) organised, or engaged in, by a protected person for the purpose of—

(i) supporting or advancing claims made in relation to the proposed instrument; or

(ii) responding to industrial action mentioned in paragraph (b)(i) by an employer who will be covered by the proposed instrument; or

(b) organised, or engaged in, by an employer who will be covered by the proposed instrument for the purpose of—

(i) supporting or advancing claims made in relation to the proposed instrument; or

(ii) responding to industrial action mentioned in paragraph (a)(i) by an employee who will be covered by the proposed instrument.

(3) The following persons have not contravened, before the industrial action starts, the requirement to negotiate in good faith under section 173—

(a) if the industrial action is a strike by an employee who will be covered by the proposed instrument—the negotiating party for the employee;

(b) if the industrial action is a lockout by an employer who will be covered by the proposed instrument—the employer.

(4) If the industrial action is engaged in by employees, the employees likely to be engaging in the industrial action have, before the industrial action is engaged in, been approved by the registrar under section 235 to engage in the industrial action.

(5) Before the industrial action is engaged in, notice of the industrial action must have been given under section 236.

(6) In this section—

protected person, for a proposed bargaining instrument, means—

(a) an employee organisation that is a negotiating party for the proposed instrument; or

(b) an officer or employee of that employee organisation acting in that capacity; or

(c) an employee who is a member of that employee organisation and will be covered by the proposed instrument.

234 When industrial action is not protected industrial action

(1) Industrial action is not protected industrial action for a proposed bargaining instrument if the industrial action is engaged in—

(a) on or before the nominal expiry date of any existing bargaining instrument or arbitration determination that will be replaced by the proposed instrument; or

(b) during any peace obligation period for the proposed instrument; or

(c) during conciliation or arbitration for the proposed instrument; or

(d) after a part 5 application has been made by a negotiating party in relation to the proposed instrument; or

(e) while an order of the commission suspending the industrial action is in effect under division 4; or

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(f) if the industrial action has been terminated by an order of the commission under division 4 or a declaration by the Minister under division 5.

(2) The following persons must not engage in industrial action to which subsection (1) applies—

(a) an employee who will be covered by the proposed instrument;

(b) an employee organisation that is a negotiating party for the proposed instrument;

(c) an officer or employee of that employee organisation acting in that capacity;

(d) an employer who will be covered by the proposed instrument.

Note—

This subsection is a civil penalty provision.

235 Approval to engage in industrial action

(1) For section 233(4), the registrar must, on application by an employee organisation, approve the employees likely to be engaging in the proposed industrial action doing so if satisfied that—

(a) before making the application, the employee organisation followed the process approved under subsection (2) and the result was that a majority of employees who participated in the process expressed support for the industrial action; and

(b) the employees are members of the employee organisation; and

(c) the employees will be covered by the proposed bargaining agreement the subject of the industrial action; and

(d) the employees are not proposing to engage in the industrial action—

(i) before the end of the nominal expiry date of any existing bargaining instrument or arbitration determination that will be replaced by the proposed bargaining instrument; or

(ii) during any peace obligation period for the proposed bargaining instrument.

(2) For subsection (1)(a), the employee organisation must provide its members likely to be engaging in the proposed industrial action with a process, approved by the registrar, to express their democratic views about the industrial action.

(3) An approval remains in force for the period stated by the registrar.

236 Notice of industrial action must be given

(1) For section 233(5), the protected person or employer intending to take the industrial action must give written notice of the intention to all of the negotiating parties for the proposed bargaining instrument at least 3 working days before the day the intended action starts.

(2) However, an employer may, instead of giving written notice, take any other reasonable steps to notify employees of the intended action.

(3) Notice under this section must indicate—

(a) the nature of the intended action; and

(b) the day on which the intended action will start.

(4) Notice under this section may be given before the end of any peace obligation period for the proposed bargaining instrument, as long as the intended action does not start during that period.

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Division 3 Consequences of protected industrial action

237 Legal effect of protected industrial action

(1) No legal proceedings lie under any law for action taken for protected industrial action except proceedings for action resulting in any of the following—

(a) personal injury;

(b) wilful or reckless destruction of, or damage to, property;

(c) the unlawful taking, keeping or use of property.

(2) Despite subsection (1), proceedings for defamation may be brought for anything that happens during protected industrial action.

(3) If protected industrial action is the lockout of an employee by an employer—

(a) the employer may refuse to pay the employee remuneration for the period of the lockout; but

(b) the continuity of the employee's employment, for the purposes prescribed by regulation, is not affected by the lockout.

238 Employer must not prejudice employee for engaging in protected industrial action

(1) An employer must not do any of the following wholly or partly because an employee is proposing to engage in, is engaging in, or has engaged in, protected industrial action—

(a) dismiss the employee, injure the employee in the employee's employment or change the employee's position to the employee's prejudice; or

(b) threaten to dismiss the employee, injure the employee in the employee's employment or change the employee's position to the employee's prejudice.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply to any of the following actions taken by the employer—

(a) standing down the employee;

(b) refusing to pay the employee, or reducing payments made to the employee under division 3A;

(c) action that is itself protected industrial action.

(3) In proceedings under chapter 11, part 8 for an alleged contravention of subsection (1), it is to be presumed the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage in, was engaging in, or had engaged in protected industrial action, unless the contrary is proved.

239 Remedies if employee prejudiced for engaging in protected industrial action

(1) The commission may order an employer who contravenes section 238(1)—

(a) if the contravention was dismissing the employee—

(i) to reinstate the employee to the position the employee occupied immediately before the dismissal; or

(ii) to re-employ the employee in a position at least as favourable as that position; and

(b) to pay the employee who is dismissed, injured or prejudiced compensation for loss suffered because of the dismissal, injury or prejudice.

(2) The rights of and relating to reinstatement and re-employment that are conferred on an employee by this section do not limit any other rights of the employee.

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Not authorised—indicative only

Division 3A Payment of employees engaging in protected industrial action

239A Application of division

(1) This division applies in relation to the payment of wages, allowances and remuneration by an employer to an employee who engages in protected industrial action.

(2) This division is not intended to prevent an employer refusing, as permitted under the common law, to pay an employee because the employee has failed or refused to perform work, whether fully or partially.

239B Protected industrial action for which employee not entitled to payment

(1) This section applies if an employee engages in protected industrial action that involves—

(a) a failure or refusal by the employee to attend for work; or

(b) a failure or refusal by the employee who attends for work to perform any work at all.

(2) The employee is not entitled to be paid for any day during the period of the protected industrial action.

239C Protected industrial action for which employer may reduce payment

(1) This section applies if an employee engages in, or proposes to engage in—

(a) protected industrial action that does not involve—

(i) a failure or refusal by the employee to attend for work; or

(ii) a failure or refusal by the employee who attends for work to perform any work at all; or

(iii) a refusal by the employee to work a period of overtime requested or required by the employer; or

(b) protected industrial action that involves a refusal mentioned in paragraph (a)(iii) that contravenes an industrial instrument that applies to the employee.

(2) The employer may reduce the amount paid to the employee in accordance with subsections (3) to (5) for each day (a ***relevant day***) on which the employee engages in the protected industrial action.

(3) The employer may reduce the amount paid to the employee for the relevant day by a proportion that—

(a) is reasonable, having regard to the nature and extent of the protected industrial action; and

(b) is worked out by carrying out the steps mentioned in subsection (4).

(4) For subsection (3)(b), the steps are as follows—

(a) identifying the work that is the subject of the protected industrial action;

(b) estimating the time the employee would usually spend performing the work during the relevant day;

(c) calculating the time estimated under paragraph (b) as a percentage of the employee's usual hours of work for the relevant day.

(5) The employer must not reduce the amount paid to the employee under this section if the employer has not given the employee a notice in accordance with section 239D of the proposed reduction.

239D Requirement to give notice before refusing to make, or reducing, payment

(1) This section applies if the employer proposes to refuse to pay, or reduce the amount paid, to an employee under this division.

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(2) The employer must give the employee a written notice stating that, for each day on which the employee engages in the protected industrial action, either—

(a) the employee will not be paid; or

(b) the amount paid to the employee will be reduced by a stated proportion.

(3) If the notice states that the amount paid to the employee for the day will be reduced by a stated proportion, the notice must also state the basis on which the proportion has been worked out.

Division 4 Suspension or termination by commission of protected industrial action

240 Suspension or termination if significant economic harm to employers or employees

(1) The commission may, on application by a person mentioned in subsection (3), make an order to suspend or terminate protected industrial action for a proposed bargaining instrument being engaged in if satisfied of the following—

(a) if section 233(2)(a) applies—the industrial action is causing, or threatening to cause, significant economic harm to—

(i) an employer who will be covered by the proposed instrument; or

(ii) an employee who will be covered by the proposed instrument; or

(b) if section 233(2)(b) applies—the industrial action is causing, or threatening to cause, significant economic harm to an employee who will be covered by the proposed instrument;

(c) if the industrial action is threatening to cause significant economic harm—the harm is imminent;

(d) the industrial action has been protracted;

(e) the dispute about the terms of the proposed instrument will not be resolved in the reasonably foreseeable future.

(2) For subsection (1)(a) and (b), the factors relevant to deciding whether protected industrial action is causing, or threatening to cause, significant economic harm to an employer or employee include the following—

(a) the source, nature and degree of harm suffered or likely to be suffered;

(b) the likelihood the harm will continue to be caused or will be caused;

(c) the capacity of the employer or employee to bear the harm;

(d) the views of the employer or employee;

(e) the views of the negotiating parties for the proposed bargaining instrument;

(f) whether the negotiating parties for the proposed instrument have met the requirement to negotiate in good faith under section 173;

(g) if the commission is considering making an order to terminate the industrial action—

(i) whether the negotiating parties are genuinely unable to reach agreement on the terms of the proposed instrument; and

(ii) whether there is any reasonable prospect of agreement being reached;

(h) the objective of promoting and facilitating bargaining for the proposed instrument.

(3) For subsection (1), an application may be made by—

(a) a negotiating party for the proposed bargaining instrument; or

(b) the Minister; or

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(c) a person prescribed by regulation.

241 Suspension or termination if life, property, health or welfare is endangered

(1) The commission must, on application by a person mentioned in subsection (2), suspend or terminate protected industrial action for a proposed bargaining instrument being engaged in, or threatened to be engaged in, if satisfied the industrial action has threatened, is threatening or would threaten—

(a) to endanger the life, personal safety or health, or welfare of the State's population or part of it; or

(b) to cause significant damage to the State's economy or an important part of it.

(2) For subsection (1), an application may be made by—

(a) a negotiating party for the proposed bargaining instrument; or

(b) the Minister; or

(c) a person prescribed by regulation.

(3) The commission must, as far as practicable, decide an application under this section within 5 days after it is made.

(4) If the commission is unable to decide the application in that time, the commission must, before the time ends, make an interim order to suspend the protected industrial action to which the application relates.

(5) The interim order continues in force until the application is decided.

241A Suspension or termination if serious disruption to delivery of public services

(1) The commission must, on application by a person mentioned in subsection (3), suspend or terminate protected industrial action for a proposed bargaining instrument being engaged in, or threatened to be engaged in, if satisfied—

(a) the industrial action is causing, or is threatening to cause, serious disruption to the delivery of a public service; and

(b) the disruption is causing, or would cause, harm to persons who will not be covered by the proposed instrument; and

(c) the industrial action is contrary to the public interest.

(2) For subsection (1)(c), the factors relevant to deciding whether the protected industrial action is contrary to the public interest include the following—

(a) the main purpose of this Act and the purpose of this chapter;

(b) the nature of the public services that are being or will be disrupted by the industrial action;

(c) the source, nature and degree of the harm mentioned in subsection (1)(b);

(d) the likelihood the harm will continue to be caused or will be caused.

(3) For subsection (1), an application may be made by—

(a) a negotiating party for the proposed bargaining instrument; or

(b) the Minister; or

(c) another person prescribed by regulation.

(4) In this section—

harm means a detrimental effect of a significant nature on a person's physical, psychological or emotional wellbeing.

Division 5 Termination by Minister

241B Power of Minister to terminate protected industrial action

(1) This section applies if the Minister is satisfied that—

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(a) protected industrial action for a proposed bargaining instrument is being engaged in, or is threatened, impending or probable; and

(b) the industrial action has threatened, is threatening or would threaten—

(i) to endanger the life, personal safety or health, or welfare of the State's population or part of it; or

(ii) to cause significant damage to the State's economy or an important part of it; or

(iii) to significantly disrupt the delivery of a public service and the disruption is contrary to the public interest; or

(iv) to otherwise have a significant effect that is contrary to the public interest.

(2) The Minister may, on the Minister's own initiative, terminate the protected industrial action by written declaration.

(3) The declaration takes effect on the later of the following days—

(a) the day the declaration is made;

(b) the day section 241C(2)(b) is complied with.

(4) The declaration is a statutory instrument, but is not subordinate legislation.

241C Publishing declaration etc.

(1) This section applies if the Minister makes a declaration under section 241B(2).

(2) The Minister must—

(a) publish the declaration in the gazette; and

(b) give a copy of the declaration to—

(i) the commission; and

(ii) each negotiating party that is an employer; and

(iii) if the protected industrial action the subject of the declaration is for a proposed bargaining instrument that is an agreement with 1 or more employee organisations—the employee organisations who are negotiating parties.

(3) If the proposed bargaining instrument is an agreement with employees, the employer must give a copy of the declaration to the relevant employees.

241D Ministerial directions related to declaration

(1) This section applies if a declaration under section 241B(2) is in effect in relation to a proposed bargaining instrument.

(2) The Minister may give a written direction to a relevant person requiring the person to take, or not to take, stated action if satisfied the direction is reasonably required to remove or reduce the threat mentioned in section 241B(1)(b).

(3) For subsection (2), a ***relevant person*** is—

(a) an employee who will be covered by the proposed instrument; or

(b) an employee organisation that is a negotiating party for the proposed instrument; or

(c) an officer or employee of an employee organisation mentioned in paragraph (b) acting in that capacity; or

(d) an employer who will be covered by the proposed instrument.

(4) The direction is a statutory instrument, but is not subordinate legislation.

241E Contravention of Ministerial direction

A person to whom a direction is given under section 241D(2) must not contravene the direction.

Note—

This section is a civil penalty provision.

Not authorised—indicative only

Not authorised—indicative only

Part 9 General

242 Certificate as to requested representation

(1) An employee organisation may apply to the registrar for a certificate stating that an employee has asked the organisation, under section 170A(1), to represent the employee in negotiating with the employer under this chapter.

(2) An employer may apply to the registrar for a certificate stating that the employer need not negotiate with an employee organisation under this chapter because of a circumstance mentioned in section 170A(3).

(3) A certificate must identify the organisation, the employer and any proposed bargaining instrument.

(4) A certificate must not identify any of the employees concerned.

(5) The certificate is, for all purposes of this Act, evidence of the matters stated in it.

243 Secret ballot on valid majority

(1) This section applies if—

(a) the commission is required under this chapter to be satisfied a valid majority of the persons employed at a particular time—

(i) have made or terminated a bargaining instrument; or

(ii) have given an approval in relation to a bargaining instrument; and

(b) the commission is not satisfied.

(2) The commission may order a vote be taken by secret ballot, in accordance with the commission's directions, of employees to whom the bargaining instrument applies or will apply to find out whether the employees would make or terminate the bargaining instrument or give the approval.

(3) An order under subsection (2) may include a provision for absent voting.

(4) If a majority of the validly cast votes is in favour of making or terminating the bargaining instrument, or giving the approval, the commission is taken to be satisfied of the requirement.

(5) Before a vote is taken, the commission may revoke an order under subsection (2) if the commission becomes satisfied the requirement mentioned in subsection (1)(a) has been met.

(6) In this section—

bargaining instrument includes a proposed bargaining instrument.

243A Conduct of ballot by electoral commission

(1) This section applies in relation to a ballot required under this chapter for the commission to be satisfied that a valid majority of persons employed at a particular time—

(a) have made or terminated a bargaining instrument; or

(b) have approved a proposed bargaining instrument.

(2) The electoral commission may, on request by a relevant party, conduct the ballot for the employer.

(3) If the ballot is conducted by the electoral commission under subsection (2), the costs of the ballot are payable by the relevant party who made the request.

(4) In this section—

electoral commission means the Electoral Commission of Queensland.

relevant party means—

(a) the employer; or

(b) an employee organisation that is a party to the bargaining instrument, or proposed bargaining instrument, mentioned in subsection (1).

Not authorised—indicative only

Not authorised—indicative only

244 Coercion

(1) A person must not take, or refrain from taking, industrial action or other action with intent to coerce someone else to agree, or not to agree, to—

(a) making, amending or terminating, or extending the nominal expiry date of, a bargaining instrument; or

(b) approving anything mentioned in paragraph (a).

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply to industrial action that is protected industrial action.

(3) An employer must not coerce, or attempt to coerce, an employee of the employer—

(a) not to make a request mentioned in section 170A(1) in relation to a proposed bargaining instrument; or

(b) to withdraw the request.

Note—

This subsection is a civil penalty provision.

(4) A person must not coerce, or attempt to coerce, an employee—

(a) not to express to an organisation the employee's views about proposed industrial action before it is engaged in; or

(b) to express to an organisation views about proposed industrial action before it is engaged in that are different from the employee's views.

Note—

This subsection is a civil penalty provision.

(5) In this section—

take or refrain from taking includes threaten to take or refrain from taking.

Note—

See also chapter 6, part 4 in relation to particular disputes relating to industrial action.

Chapter 5 Equal remuneration

Part 1 Preliminary

245 Purpose of chapter

The purpose of this chapter is—

(a) to require the commission, in making modern awards, to ensure—

(i) the value of work is identified appropriately; and

(ii) equal remuneration for work of equal or comparable value is provided for; and

(b) to ensure the commission, in certifying or making bargaining instruments, is informed about the steps taken by the parties to provide for equal remuneration for work of equal or comparable value; and

(c) to enable the commission, in performing functions in relation to bargaining instruments and other instruments affecting wages, to obtain information from the parties about equal remuneration for work of equal or comparable value; and

(d) to enable the commission to make orders, on application, to ensure employees receive equal remuneration for work of equal or comparable value.

246 Definition for chapter

In this chapter—

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wage-related information, for employees covered by a proposed bargaining instrument or an instrument mentioned in section 7(1), means information about each of the following matters—

(a) the distribution of the employees by gender;

(b) the difference between the average weekly full-time equivalent earnings of male employees and female employees covered by the instrument (the ***gender pay gap***);

(c) any major factors identified as contributing to the gender pay gap;

(d) if appropriate, the projected effect of the instrument on the gender pay gap;

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

Part 2 Instruments affecting wages

Division 1 Making of modern awards

247 Application of division

This division applies, for the purposes of section 143(1)(c), in relation to the making of a modern award under chapter 3.

248 Requirements for commission—ensuring modern award provides for equal remuneration

(1) The commission must be satisfied—

(a) the work to which the award relates is appropriately valued; and

(b) the award provides for equal remuneration for work of equal or comparable value.

(2) For subsection (1)(a), the commission must assess the current value of the work that is the subject of the modern award, having regard to—

(a) the nature of the work, skill and responsibility required; and

(b) the conditions under which the work is performed; and

(c) any other matters the commission considers relevant.

(3) The assessment of the current value of the work must be free of assumptions based on gender.

(4) For subsection (1)(b)—

(a) comparisons within and between occupations and industries—

(i) may be used, but are not required, to establish whether the work has been undervalued on a gender basis; and

(ii) are not restricted to similar work; and

(b) discrimination on the basis of gender is not necessary to establish the work has been undervalued; and

(c) the commission must consider previous valuations of the work and whether historically the work has been undervalued; and

(d) the commission may have regard to other industrial instruments or federal industrial instruments.

249 Commission to make order if test not passed

(1) This section applies if the commission is not satisfied the modern award provides for equal remuneration for work of equal or comparable value.

(2) The commission must make an order under part 3 to ensure the modern award provides for equal remuneration for work of equal or comparable value.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Bargaining instruments and other instruments

250 Requirement for application relating to proposed bargaining instrument

(1) This section applies to an application for the certification of an agreement, or the making of a bargaining award, under chapter 4, part 5.

(2) The application must be accompanied by an affidavit that—

(a) contains the wage-related information for the employees who are or will be covered by the proposed bargaining instrument; and

(b) states the steps taken by the parties to the instrument to provide for equal remuneration for work of equal or comparable value in the instrument; and

(c) for a provision that allows differential treatment of wages for different groups of employees—states the justification for including the provision in the instrument.

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

(4) In this section—

proposed bargaining instrument see section 168.

251 Commission may give directions about wage-related information

(1) This section applies if the commission is performing any of the following functions under this Act—

(a) making an order varying a modern award;

(b) certifying an agreement or making a bargaining award;

(c) making an order varying a certified agreement or bargaining award, if the variation—

(i) relates to equal remuneration for work of equal or comparable value; or

(ii) otherwise affects wages;

(d) making an arbitration determination;

(e) making an order under chapter 6 in relation to an industrial dispute, if the order—

(i) relates to equal remuneration for work of equal or comparable value; or

(ii) otherwise affects wages;

(f) making an order under chapter 2, part 5.

(2) In performing the function, the commission may direct any of the relevant parties to obtain and give the commission, at a stated time or within a stated period, wage-related information in relation to the proposed instrument.

(3) The direction may require the information to be given by an affidavit—

(a) in the form required under the rules; and

(b) signed by the party to whom the direction is given.

(4) A party to whom a direction is given under subsection (2) must comply with the direction.

Note—

This subsection is a civil penalty provision.

(5) If the president considers exceptional circumstances exist, the president may require the registrar to give the commission a report comparing the proposed instrument mentioned in subsection (1) with the entitlements of the employees who are or will be covered by the proposed instrument.

(6) In this section—

function includes power.

relevant parties means the parties to the proposed instrument mentioned in subsection (1) to which the performance of the function relates.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Equal remuneration orders

252 Orders requiring equal remuneration

(1) The commission may make any order it considers appropriate to ensure employees covered by the order receive equal remuneration for work of equal or comparable value.

Examples of orders the commission may make—

- orders reclassifying work
- orders establishing new career paths
- orders implementing changes to incremental scales
- orders providing for wage increases
- orders providing for new allowances
- orders about reassessing definitions and descriptions of work to properly reflect the value of the work

(2) Without limiting subsection (1), the order may provide for an increase in remuneration rates, including minimum rates.

253 Orders on application etc.

(1) The commission may make an order under this part on application by—

(a) an employee to be covered by the order; or

(b) an organisation whose rules entitle it to represent the industrial interests of employees to be covered by the order; or

(c) a State peak council; or

(d) the Minister; or

(e) the human rights commissioner under the *Anti-Discrimination Act 1991*.

(2) Also, the commission must make an order under this part on its own initiative if required to do so under section 249.

254 Requirements about making of order on application

(1) This section applies if an application for an order under this part is made under section 253.

(2) The commission must make the order if, and must not make the order unless, it is satisfied the employees to be covered by the order do not receive equal remuneration for work of equal or comparable value.

255 Immediate or progressive introduction of equal remuneration

The order may introduce equal remuneration for work of equal or comparable value—

(a) immediately; or

(b) progressively in stated stages.

256 Employer not to reduce remuneration

(1) An employer must not reduce an employee's remuneration because an application or order has been made under this part.

(2) A purported reduction by an employer is of no effect.

257 Part does not limit other rights

(1) This part does not limit a right a person or organisation may otherwise have to secure equal remuneration for work of equal or comparable value.

(2) Subsection (1) is subject to section 258.

258 Applications under this part

(1) An application can not be made under section 253 for an order to secure equal remuneration for work of equal or comparable value for an employee if there are current proceedings for an alternative remedy under—

(a) another provision of this Act; or

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Not authorised—indicative only

(b) another Act.

(2) If an application under section 253 has been made, the person who made the application can not start proceedings for an alternative remedy under a provision or Act mentioned in subsection (1).

(3) Subsection (2) does not prevent proceedings being started for an alternative remedy if the proceedings under this part have—

(a) been discontinued by the party who started the proceedings; or

(b) failed for want of jurisdiction.

(4) In this section—

alternative remedy means an alternative remedy—

(a) to secure the remuneration for the employee; or

(b) against unequal remuneration for work of equal or comparable value for the employee.

Part 4 Miscellaneous

259 Commission may make statement of policy about operation of chapter

(1) The commission may make a statement of policy about the operation of this chapter.

(2) This section does not limit section 461.

Chapter 6 Industrial disputes

Part 1 Preliminary

260 Definitions for chapter

In this chapter—

dispute means an industrial dispute.

show cause notice see section 265(7).

Part 2 Notice of industrial dispute

261 Notice must be given to registrar

(1) Subsection (2) applies if an industrial dispute—

(a) exists between—

(i) an employer organisation or employer; and

(ii) an employee organisation or employee; and

(b) remains unresolved after the parties to the dispute have genuinely attempted to settle the dispute.

(2) Each party to the dispute must immediately give the registrar written notice of the dispute.

(3) The notice—

(a) may be given by letter, facsimile, email or other means of written communication; and

(b) must state each of the following—

(i) the names of the parties to the dispute;

(ii) the place where the dispute exists;

(iii) the subject matter of the dispute;

(iv) anything else required by the rules.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Action for preventing or settling industrial disputes

262 Action on industrial dispute

(1) This section applies if—

(a) notice of a dispute has been given by a party under section 261(2); or

(b) whether or not a notice of a dispute has been given under section 261—the commission considers it is in the public interest to take action under this section in relation to the dispute.

(2) Subsection (1)(b) applies irrespective of whether the parties are attempting to resolve the dispute.

(3) The commission may take the steps it considers appropriate for the prevention or prompt settlement of the dispute, by—

(a) conciliation in the first instance; and

(b) if the commission considers conciliation has failed and the parties are unlikely to resolve the dispute—arbitration.

(4) Without limiting subsection (3), the commission may do 1 or more of the following—

(a) direct any industrial action in relation to the dispute to stop or not happen;

(b) make orders, or give directions, of an interlocutory nature;

(c) exercise the commission's powers under section 473 (whether or not application under that section has been made) to grant an interim injunction;

(d) make another order or exercise another power the commission considers appropriate for the prevention of, or the prompt settlement of, the dispute.

(5) For proceedings for the dispute—

(a) the commission may name a party to the dispute as having carriage of the proceedings; and

(b) the party named has the carriage of the proceedings accordingly.

(6) This section does not affect the operation of an industrial instrument that imposes a duty on a party to the instrument in relation to industrial disputes.

263 Mediation by commission

The commission may act as mediator in an industrial cause, whether or not it is within the jurisdiction of the commission—

(a) on the request of the parties directly involved in the cause; or

(b) if the commissioner is satisfied mediation of the cause is desirable in the public interest.

264 Compulsory conference

(1) This section applies if the commission, when taking action under section 262 in relation to a dispute, considers that holding a conference is desirable to prevent or settle the dispute.

(2) The commission may, by attendance notice, require a person to attend a conference at a stated time and place.

(3) A person may be required to attend the conference even though not directly involved in the dispute if the commission considers the person's presence would be conducive to the prevention of, or the prompt settlement of, the dispute.

(4) A person required to attend must—

(a) attend the conference at the stated time and place; and

(b) continue to attend as directed by the commission.

Note—

This subsection is a civil penalty provision.

Not authorised—indicative only

Not authorised—indicative only

265 Enforcing commission's orders

(1) The commission may direct an order about a dispute to—

(a) an organisation; or

(b) a person in a capacity as an officer or agent of an organisation; or

(c) any other person.

(2) If an order may be directed to an organisation or a person, the commission may direct the order to the person only after considering whether it would be more appropriate to direct the order to the organisation.

(3) An order must—

(a) if the order is made against a person—state the person's name; and

(b) state a time for complying with the order; and

(c) direct any of the following to file an affidavit with the registrar within a stated time—

(i) the organisation or person to whom the order is directed;

(ii) the party to the proceedings who sought the order;

(iii) any other party to the proceedings the commission considers appropriate.

(4) An affidavit under subsection (3)(c) must state whether there has been compliance with the order and, if the order has not been complied with, the steps the person is aware of that have been taken to comply.

(5) The commission may extend a time stated under subsection (3)(b) or (c).

(6) At the end of the time stated or extended for filing an affidavit, the registrar must—

(a) examine all affidavits filed; and

(b) if not all affidavits required to be filed have been filed by that time—make all necessary further inquiries; and

(c) having examined the affidavits filed and made the inquiries necessary, decide whether there has been substantial compliance with the order.

(7) If the registrar is not satisfied that there has been substantial compliance with the order, the registrar must issue a notice (a ***show cause notice***) under the rules calling on the organisation or person to whom the order was directed to show cause to the full bench at a stated time why the organisation or person should not be dealt with under section 266.

(8) In this section—

full bench means the full bench constituted by 3 or more members, 1 of whom must be the president, vice-president or a deputy president (court).

266 Remedies on show cause notice

(1) If an organisation issued with a show cause notice does not show cause at the stated time, the full bench may do 1 or more of the following—

(a) impose on the organisation a penalty of not more than 1,000 penalty units;

(b) amend a bargaining instrument to which the organisation is a party;

(c) if the organisation is an employee organisation—suspend the date of operation of a wage increase otherwise payable to members of the organisation or to a class of the members;

(d) change the organisation's rules to exclude from eligibility for membership persons belonging to a particular class or section of the membership;

(e) make the orders it considers appropriate—

(i) to restrict the use of the organisation's property; and

(ii) to control the organisation's property to ensure the restrictions are complied with;

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Not authorised—indicative only

(f) suspend the organisation's registration for a stated period;

(g) deregister the organisation;

(h) make the other orders it considers appropriate—

(i) to secure the organisation's compliance with the commission's order; or

(ii) to punish the organisation for not complying with the commission's order;

(i) order the organisation to pay the costs of the show cause proceedings.

(2) If a person issued with the notice does not show cause at the stated time, the full bench may do 1 or more of the following—

(a) impose on the person a penalty of not more than 40 penalty units;

(b) make the other orders it considers appropriate—

(i) to secure the person's compliance with the commission's order; or

(ii) to punish the person for not complying with the commission's order;

(c) order the person to pay the costs of the show cause proceedings.

(3) All persons concerned must comply with an order or direction made or given by the full bench.

(4) In this section—

organisation includes a branch of an organisation.

stated time means the time stated in the notice to show cause under section 265(7) or the time to which the proceedings are adjourned.

Part 4 Industrial action

267 Indemnity against agent's unauthorised actions

An organisation or association of persons is not liable for anything said or done by its agent, during or in connection with industrial action, if—

(a) the agent acted without the knowledge of the governing body of the organisation or association; and

(b) the governing body could not, by the exercise of reasonable diligence, have prevented the action.

268 Industrial action taken with intention to coerce payment

(2) An employee must not organise or engage in, or threaten to organise or engage in, industrial action against an employer with intent to coerce the employer to pay the employee for a period when the employee engages in industrial action.

(3) An employee organisation, or an officer, member or employee of the organisation, must not organise or engage in, or threaten to organise or engage in, industrial action against an employer with intent to coerce the employer to pay an employee for a period when the employee engages in industrial action.

(4) For subsection (3), action is taken to have been done by an organisation if it is done by—

(a) the organisation's management committee; or

(b) an officer, employee or agent of the organisation acting in that capacity; or

(c) a member or group of members of the organisation acting under the organisation's rules; or

(d) a member of the organisation, who performs the function of dealing with an employer on behalf of the member and other members of the organisation, acting in that capacity.

Not authorised—indicative only

Not authorised—indicative only

(5) Subsection (4)(c) or (d) does not apply if any of the following persons has taken reasonable steps to prevent the action—

(a) the organisation's management committee;

(b) a person authorised by the committee;

(c) an officer of the organisation.

(6) A contravention of subsection (2) or (3) is not an offence, but the commission may make an order for the contravention.

(7) This section applies subject to chapter 4, part 8.

Note—

See also chapter 4, part 8, division 3A in relation to the payment of an employee who is engaging in protected industrial action.

269 Orders for contravention of s 268

(1) The commission may, on application, make an order for a contravention of section 268.

(2) An application may be made by any of the following—

(a) the Minister;

(b) a person or organisation who has an interest in the matter;

(c) the employer against whom the industrial action was organised, engaged in or threatened;

(d) a person prescribed by regulation.

(3) The commission may, if it considers it appropriate in all the circumstances, make 1 or more of the following orders—

(a) an order imposing on a person or organisation who contravenes section 268 a penalty of not more than 135 penalty units;

(b) an order requiring a person or organisation who contravenes section 268 to pay the employer against whom the industrial action was organised, engaged in or threatened compensation of an amount the commission considers appropriate;

(c) an injunctive order (including an interim injunction), and any other order, the commission considers necessary to stop the contravention or remedy its effects;

(d) another consequential order.

271 Right to refuse work if imminent health or safety risk

This Act does not prevent an employee from refusing to perform work if—

(a) the refusal is based on a reasonable concern by the employee about an imminent risk to the employee's health or safety; and

(b) the employee does not unreasonably contravene a direction of the employee's employer to perform other available work (whether at the same or another workplace) that is safe and appropriate for the employee to perform.

Chapter 7 Employees bullied in the workplace

272 When is an employee *bullied in the workplace*

(1) An employee is ***bullied in the workplace*** if—

(a) while the employee is at work, an individual or group of individuals repeatedly behaves unreasonably towards—

(i) the employee; or

(ii) a group of employees of which the employee is a member; and

(b) that behaviour creates a risk to the health and safety of the employee.

Not authorised—indicative only

Not authorised—indicative only

Note—

For the meaning of employee for this chapter, see section 8(2).

(2) To remove any doubt, it is declared that subsection (1) does not apply to reasonable management action carried out in a reasonable manner.

273 Application for a commission order to stop bullying

An employee who reasonably believes the employee has been bullied in the workplace may apply to the commission for an order under section 275.

274 Commission to deal with applications promptly

The commission must start to deal with an application under section 273 within 14 days after the application is made.

Note—

For example, the commission may, under section 451, start to inform itself of the matter or decide to hold a conference or conduct a hearing about the matter.

275 Commission may make orders to stop bullying

(1) This section applies if—

(a) an employee has made an application under section 273; and

(b) the commission is satisfied that—

(i) the employee has been bullied in the workplace; and

(ii) there is a risk that the employee will continue to be bullied in the workplace.

(2) The commission may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the employee from being bullied in the workplace.

(3) In considering the terms of an order, the commission must take into account—

(a) if the commission is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another entity—those outcomes; and

(b) if the commission is aware of any procedure available to the employee to resolve grievances or disputes—that procedure; and

(c) if the commission is aware of any final or interim outcomes arising out of any procedure available to the employee to resolve grievances or disputes—those outcomes; and

(d) any other matter the commission considers relevant.

276 Contravening an order to stop bullying

A person must not contravene an order under section 275.

Note—

This section is a civil penalty provision.

277 Actions under work health and safety laws permitted

The *Work Health and Safety Act 2011*, section 115 and a provision of a corresponding WHS law (within the meaning of that Act) that corresponds to section 115 of that Act do not apply in relation to an application under section 273.

Note—

Ordinarily, if an employee who is a worker under the *Work Health and Safety Act 2011* makes an application under section 273 for an order to stop the worker from being bullied in the workplace, section 115 of that Act and a corresponding provision of a corresponding WHS law would prohibit a proceeding from being commenced, or an application from being made or continued, under that law in relation to the bullying. This section removes that prohibition.

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Not authorised—indicative only

Chapter 8 Rights and responsibilities of employees, employers, organisations etc.

Part 1 General protections

Division 1 Introduction

278 Purposes of part

(1) The purposes of this part are as follows—

(a) to protect workplace rights;

(b) to protect freedom of association by ensuring that persons are—

(i) free to become, or not become, members of industrial organisations; and

(ii) free to be represented, or not represented, by industrial organisations; and

(iii) free to participate, or not participate, in lawful industrial activities;

(c) to provide protection from workplace discrimination;

(d) to provide effective relief for persons who have been discriminated against, victimised or otherwise adversely affected as a result of contraventions of this part.

(2) The protections contained in subsection (1) are provided to a person (whether an employee, an employer or otherwise).

279 Definitions

In this part—

action includes omission.

adverse action see section 282.

engages in industrial activity see section 290.

process or proceedings under an industrial law or industrial instrument see section 283.

workplace right see section 284.

Division 2 Application of this part

280 Action to which this part applies

Subject to section 281, this part applies to the following action—

(a) action taken by an employer;

(b) action that affects, is capable of affecting or is taken with intent to affect the activities, relationships or business of an employer;

(c) action that consists of advising, encouraging or inciting, or action taken with intent to coerce, an employer—

(i) to take, or not take, particular action in relation to another person; or

(ii) to threaten to take, or not take, particular action in relation to another person.

281 Action to which this part does not apply

This part does not apply to—

(a) action mentioned in section 280 if the Commonwealth Fair Work Act, chapter 3, part 3–1 applies to the action; or

(b) an action for unfair dismissal.

Note—

See part 2 for actions for unfair dismissal.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Workplace rights

282 Meaning of *adverse action*

(1) ***Adverse action*** is taken by an employer against an employee if the employer—

(a) dismisses the employee; or

(b) injures the employee in the employee's employment; or

(c) alters the position of the employee to the employee's prejudice; or

(d) discriminates between the employee and other employees of the employer.

(2) ***Adverse action*** is taken by a prospective employer against a prospective employee if the prospective employer—

(a) refuses to employ the prospective employee; or

(b) discriminates against the prospective employee in the terms or conditions on which the prospective employer offers to employ the prospective employee.

(3) ***Adverse action*** is taken by an employee against an employer if the employee—

(a) ceases work in the service of the employer; or

(b) takes industrial action against the employer.

(4) ***Adverse action*** is taken by an industrial organisation, or an officer or member of an industrial organisation, against a person if the organisation, or the officer or member of the organisation—

(a) organises or takes industrial action against the person; or

(b) takes action that has the effect, directly or indirectly, of prejudicing the person in the person's employment or prospective employment; or

(c) if the person is a member of the organisation—imposes a penalty, forfeiture or disability of any kind on the

member (other than in relation to an amount legally owed to the organisation by the member).

(5) ***Adverse action*** includes—

(a) threatening to take action covered by subsections (1) to (4); and

(b) organising to take action covered by subsections (1) to (4).

(6) ***Adverse action*** does not include action that is authorised under—

(a) this Act or any other law of the State; or

(b) a law of the Commonwealth.

(7) Without limiting subsection (6), ***adverse action*** does not include an employer standing down an employee who is engaged in protected industrial action and employed under a contract of employment that provides for the employer to stand down the employee in the circumstances.

283 Meaning of *process or proceedings under an industrial law or industrial instrument*

Each of the following is a ***process or proceedings under an industrial law or industrial instrument***—

(a) any conference conducted, or hearing held, by the commission or the court;

(b) court proceedings under an industrial law or industrial instrument;

(c) protected industrial action;

(d) a process under section 235(2) for employees to express their democratic views about proposed industrial action before it is engaged in;

(e) certifying, making, amending or terminating a bargaining instrument under chapter 4;

(f) agreeing to cash out paid annual leave;

Not authorised—indicative only

Not authorised—indicative only

(g) making a request under chapter 2, part 3, division 4;

(h) dispute settlement for which provision is made by, or under, an industrial law or industrial instrument;

(i) any other process or proceedings under an industrial law or industrial instrument.

284 Meaning of *workplace right*

(1) A person has a ***workplace right*** if the person—

(a) has a right to the benefit of, or has a role or responsibility under, an industrial law, industrial instrument or order made by an industrial body; or

(b) is able to start, or participate in, a process or proceedings under an industrial law or industrial instrument; or

(c) is able to make a complaint or inquiry—

(i) to an entity having the capacity under an industrial law to seek compliance with that law or an industrial instrument; or

(ii) if the person is an employee—in relation to the person's employment.

(2) In this section—

industrial body means—

(a) the commission; or

(b) the court, or another court or commission (however called), exercising industrial law functions and powers corresponding to the commission's functions and powers.

285 Protection

(1) A person must not take adverse action against another person—

(a) because the other person—

(i) has a workplace right; or

(ii) has, or has not, exercised a workplace right; or

(iii) proposes to or proposes not to, or has at any time proposed to or proposed not to, exercise a workplace right; or

(b) to prevent the exercise of a workplace right by the other person.

Note—

This subsection is a civil penalty provision.

(2) A person must not take adverse action against another person (the ***second person***) because a third person has exercised, or proposes to or has at any time proposed to exercise, a workplace right for the second person's benefit or for the benefit of a class of persons to which the second person belongs.

Note—

This subsection is a civil penalty provision.

286 Prospective employees taken to have workplace rights

(1) A prospective employee is taken to have the workplace rights the person would have if the person were employed in the prospective employment by the prospective employer.

(2) Despite section 284(1)(a), a prospective employer does not contravene section 285(1) if the prospective employer refuses to employ a prospective employee because the prospective employee would be entitled to the benefit of a bargaining instrument that the prospective employer is bound by under section 222 because of the transfer of the whole or part of a business to the prospective employer from another employer.

287 Coercion

(1) A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person or a third person—

Not authorised—indicative only

Not authorised—indicative only

(a) to exercise or not exercise, or to propose to exercise or not exercise, a workplace right; or

(b) to exercise, or to propose to exercise, a workplace right in a particular way.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply to protected industrial action.

288 Undue influence or pressure

An employer must not exert undue influence or undue pressure on an employee in relation to a decision by the employee—

(a) to make or not make an agreement or arrangement under the Queensland Employment Standards; or

(b) to make or not make an agreement or arrangement under a term of an industrial instrument; or

(c) to agree or not agree to a deduction from amounts payable to the employee in relation to the performance of work.

Note 1—

This section is a civil penalty provision.

Note 2—

This section can apply to decisions whether to agree to performing work on keeping in touch days—see section 80.

289 Misrepresentations

(1) A person must not knowingly or recklessly make a false or misleading representation to another person about—

(a) the workplace rights of the other person or a third person; or

(b) the exercise, or the effect of the exercise, of a workplace right by the other person or a third person.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

Division 4 Industrial activities

290 Meaning of *engages in industrial activity*

A person ***engages in industrial activity*** if the person—

(a) becomes or does not become, or remains or stops being, an officer or member of an industrial organisation; or

(b) does or does not—

(i) become involved in establishing an industrial organisation; or

(ii) organise or promote a lawful activity for, or on behalf of, an industrial organisation; or

(iii) encourage, or participate in, a lawful activity organised or promoted by an industrial organisation; or

(iv) comply with a lawful request made by, or a lawful requirement of, an industrial organisation; or

(v) represent or advance the views, claims or interests of an industrial organisation; or

(vi) pay a fee (however described) to an industrial organisation or to someone instead of an industrial organisation; or

(vii) seek to be represented by an industrial organisation; or

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.

Not authorised—indicative only

Not authorised—indicative only

(c) 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

(d) organises or promotes an unlawful activity for, or on behalf of, an industrial organisation; or

(e) encourages, or participates in, an unlawful activity organised or promoted by an industrial organisation; or

(f) complies with an unlawful request made by, or an unlawful requirement of, an industrial organisation; or

(g) takes part in industrial action that is not protected industrial action.

291 Protection

A person must not take adverse action against another person because the other person—

(a) is or is not, or was or was not, an officer or member of an industrial organisation; or

(b) engages, or has at any time engaged or proposed to engage, in industrial activity within the meaning of section 290(a) or (b); or

(c) does not engage, or has at any time not engaged or proposed to not engage, in industrial activity within the meaning of section 290(d) to (g).

Note—

This section is a civil penalty provision.

292 Coercion

A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce

the other person or a third person to engage in industrial activity.

Note—

This section is a civil penalty provision.

293 Misrepresentations—engaging in industrial activity

(1) A person must not knowingly or recklessly make a false or misleading representation to another person about either of the following—

(a) the other person's or a third person's obligation to engage in industrial activity;

(b) the other person's or a third person's obligation to disclose whether a person—

(i) is or is not, or was or was not, an officer or member of an industrial organisation; or

(ii) is or is not engaging, or has or has not engaged, in industrial activity.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply if the person to whom the representation is made would not be expected to rely on it.

293A Misrepresentations—right to represent (entity other than organisation)

(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.

Not authorised—indicative only

Not authorised—indicative only

(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.

293B Misrepresentations—person ineligible to be member (organisation)

An organisation, or an officer or employee of the organisation, must not knowingly make a false or misleading representation to another person that the organisation has the right to represent the industrial interests of a person who is not eligible to be a member of the organisation.

Note—

This section is a civil penalty provision.

294 Inducements—membership action

(1) An employer must not induce an employee to take, or propose to take, membership action.

Note—

This subsection is a civil penalty provision.

(2) A person takes ***membership action*** if the person becomes, does not become, remains or stops being an officer or member of an industrial organisation.

Division 5 Other protections

295 Discrimination

(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, sex work activity, gender identity, sexuality, family responsibilities or

association with, or in relation to, a person identified on the basis of any of these attributes.

Note—

This subsection is a civil penalty provision.

(2) However, subsection (1) does not apply to action that is—

(a) not unlawful under an anti-discrimination law; or

(b) taken because of the inherent requirements of the particular position concerned; or

(c) if the action is taken against a staff member of an institution conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, taken—

(i) in good faith; and

(ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.

(3) Each of the following is an ***anti-discrimination law***—

(a) the *Age Discrimination Act 2004* (Cwlth);

(b) the *Disability Discrimination Act 1992* (Cwlth);

(c) the *Racial Discrimination Act 1975* (Cwlth);

(d) the *Sex Discrimination Act 1984* (Cwlth);

(e) the *Anti-Discrimination Act 1991*.

296 Domestic violence

(1) An employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because someone has committed, or is committing, domestic violence against the person.

Note—

This subsection is a civil penalty provision.

(2) For subsection (1), it is not necessary that the person have the benefit of, or be named as the aggrieved under, any of the following—

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(a) a domestic violence order;

(b) a police protection direction;

(c) a police protection notice;

(d) an application for a domestic violence order.

(3) In this section—

aggrieved has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

domestic violence order has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

police protection direction has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

police protection notice has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

297 Temporary absence—illness or injury

(1) An employer must not dismiss an employee because the employee is temporarily absent from work—

(a) because of prescribed illness or prescribed injury; or

(b) for any of the following reasons if, having regard to all the circumstances, the period of absence is reasonable—

(i) the employee is an SES member under the *State Emergency Service Act 2024* and is absent for the purpose of performing an SES function under that Act in an emergency situation;

(ii) the employee is a member of a rural fire brigade under the *Fire Services Act 1990* and is absent for the purpose of performing a function of a rural fire brigade under that Act in an emergency situation;

(iii) the employee is an honorary ambulance officer under the *Ambulance Service Act 1991* and is absent for the purpose of performing a function of an honorary ambulance officer under that Act in an emergency situation.

Note—

This subsection is a civil remedy provision.

(2) In this section—

prescribed means prescribed by regulation.

298 Bargaining services fees

(1) An industrial organisation, or an officer or member of an industrial organisation, must not demand payment of a bargaining services fee from any person.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply if the bargaining services fee is payable to the industrial organisation under a contract for the provision of bargaining services.

(3) In this section—

bargaining services means services provided by, or for, an industrial organisation in relation to a bargaining instrument or proposed bargaining instrument, including in relation to bargaining for, or certifying, making, amending or terminating, the bargaining instrument or proposed bargaining instrument.

bargaining services fee—

(a) means a fee (however described) payable to—

(i) an industrial organisation; or

(ii) someone instead of an industrial organisation; but

(b) does not include a membership fee.

demand includes—

(a) purport to demand; and

(b) do anything that would—

(i) have the effect of demanding; or

(ii) purport to have the effect of demanding.

Not authorised—indicative only

Not authorised—indicative only

299 Coverage by particular instruments

(1) A person must not discriminate against an employer because—

(a) employees of the employer are covered, or not covered, by—

(i) provisions of the Queensland Employment Standards; or

(ii) a particular type of industrial instrument (including a particular kind of industrial instrument within a type of industrial instrument); or

(iii) a bargaining instrument that does, or does not, cover an employee organisation, or a particular employee organisation; or

(b) it is proposed that employees of the employer be covered, or not be covered, by—

(i) a particular type of industrial instrument (including a particular kind of industrial instrument within a type of industrial instrument); or

(ii) a bargaining instrument that does, or does not, cover an employee organisation or a particular employee organisation.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply to protected industrial action.

300 Coercion—allocation of duties etc. to particular person

A person must not organise or take, or threaten to organise or take, any action against another person with intent to coerce the other person or a third person to—

(a) employ, or not employ, a particular person; or

(b) allocate, or not allocate, particular duties or responsibilities to a particular employee; or

(c) designate a particular employee as having, or not having, particular duties or responsibilities.

Note—

This section is a civil penalty provision.

301 Objectionable terms

(1) A term of an industrial instrument, or an agreement or arrangement (whether written or unwritten), has no effect to the extent that it is an objectionable term.

(2) In this section—

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

(a) a contravention of this part;

(b) the payment of a bargaining services fee as defined under section 298.

permit includes require.

Division 6 Sham arrangements

302 Misrepresenting employment as independent contracting arrangement

(1) An employer who employs, or proposes to employ, an individual must not represent to the individual that the contract of employment under which the individual is, or would be, employed by the employer is a contract for services under which the individual performs, or would perform, work as an independent contractor.

Note—

This subsection is a civil penalty provision.

(2) Subsection (1) does not apply if the employer proves that, when the representation was made, the employer—

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(a) did not know the contract was a contract of employment rather than a contract for services; and

(b) was not reckless as to whether or not that was the case.

303 Dismissing to engage as independent contractor

(1) This section applies if an individual—

(a) is an employee of an employer; and

(b) performs particular work for the employer.

(2) The employer must not dismiss or threaten to dismiss the employee to engage the employee as an independent contractor to perform the same, or substantially the same, work under a contract for services.

Note—

This section is a civil penalty provision.

304 Misrepresentation to engage as independent contractor

An employer who employs, or has at any time employed, an individual to perform particular work must not make a statement that the employer knows is false in order to persuade or influence the individual to enter into a contract for services under which the individual will perform, as an independent contractor, the same, or substantially the same, work for the employer.

Note—

This section is a civil penalty provision.

Division 7 Ancillary rules

305 Multiple reasons for action

For this part, a person takes action for a particular reason if the reasons for the action include that reason.

306 Reason for action to be presumed unless proved otherwise

(1) Subsection (2) applies if—

(a) in an application in relation to a contravention of a provision of this part, it is alleged that a person took, or is taking, action for a particular reason or with a particular intent; and

(b) taking that action for that reason or with that intent would be a contravention of the provision.

(2) It is presumed that the action was, or is being, taken for that reason or with that intent, unless the person proves otherwise.

(3) Subsection (2) does not apply in relation to orders for an interim injunction.

307 Advising, encouraging, inciting or coercing action

A person is taken to contravene a provision of this part if—

(a) for a particular reason, the person advises, encourages or incites, or takes any action with intent to coerce, another person to take action; and

(b) the action, if taken by the other person for that reason, would contravene the provision.

308 Actions of industrial organisations

(1) For this part, each of the following is taken to be action of an industrial organisation—

(a) action taken by the committee of management of the industrial organisation;

(b) action taken by an officer or agent of the industrial organisation acting in that capacity;

(c) action taken by a member, or group of members, of the industrial organisation if the action is authorised by—

(i) the rules of the organisation; or

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(ii) the committee of management of the organisation; or

(iii) an officer or agent of the organisation acting in that capacity;

(d) action taken by a member of the industrial organisation who performs the function of dealing with an employer on behalf of the member and other members of the industrial organisation, acting in that capacity;

(e) if the industrial organisation is an unincorporated industrial organisation that does not have a committee of management—action taken by a member, or group of members, of the industrial organisation.

(2) Subsections (1)(c) and (d) do not apply if all reasonable steps to prevent the action have been taken by—

(a) the committee of management of the industrial organisation; or

(b) a person authorised by the committee; or

(c) an officer of the industrial organisation.

(3) If, for this part, it is necessary to establish the state of mind of an industrial organisation in relation to particular action, it is enough to show—

(a) that the action was taken by a person, or a group, mentioned in subsection (1)(a) to (d); and

(b) that the person, or a person in the group, had that state of mind.

Division 8 Compliance

309 Application for commission to deal with a dispute

(1) This section applies if—

(a) a person has been dismissed or has been affected by another contravention of this part; and

(b) the person or an organisation that has a right to represent the industrial interests of the person claims that the person has been dismissed or has been affected by another contravention of this part.

(2) The person or organisation may apply to the commission for the commission to deal with the dispute.

310 Time for application

(1) An application relating to dismissal must be made within—

(a) 21 days after the dismissal took effect; or

(b) if the commission allows a further period under subsection (2)—the further period.

(2) The commission may allow a further period if the commission is satisfied there are exceptional circumstances, taking into account—

(a) the reason for the delay; and

(b) any action taken by the person to dispute the dismissal; and

(c) prejudice to the employer (including prejudice caused by the delay); and

(d) the merits of the application; and

(e) fairness as between the person and other persons in a similar position.

(3) An application relating to a contravention of this part (other than dismissal) must be made within 6 years after the contravention occurs.

311 Application fees

(1) The application must be accompanied by the fee prescribed by regulation.

(2) A regulation may prescribe—

(a) a fee for making the application to the commission; and

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(b) the circumstances in which all or part of the fee may be waived or refunded.

312 Conciliation before application heard

(1) If an application is made under section 309, the commission must hold a conference to attempt to settle it by conciliation before it hears the application.

(2) The commission may, by written notice, require the applicant, employee or employer to attend the conference at a stated time and place.

(3) If the commission is satisfied all reasonable attempts to settle the matter by conciliation have been, or are likely to be, unsuccessful, it must issue a written certificate to that effect.

(4) Also, if the commission considers, taking into account all the material before it, that arbitration of the dispute under section 313 would not have a reasonable prospect of success, the commission must advise the parties accordingly.

313 Arbitration when conciliation unsuccessful

If the commission considers all reasonable attempts to settle the matter by conciliation have been made, but have been unsuccessful, the commission may hear and decide the application by—

(a) making an order under section 314; or

(b) dismissing the application.

314 Orders on deciding application

(1) Without limiting the commission's jurisdiction to make orders, the commission may make 1 or more of the following orders on deciding an application mentioned in section 313—

(a) an order for reinstatement of the person;

(b) an order for the payment of compensation to the person;

(c) an order for payment of an amount to the person for remuneration lost;

(d) an order to maintain the continuity of the person's employment;

(e) an order to maintain the period of the person's continuous service with the employer;

(f) an order granting an interim or other injunction or make any other order it considers appropriate to prevent, stop, or remedy the effects of, a contravention of this part.

(2) A person to whom an order under subsection (1) applies must not contravene a term of the order.

Note—

This subsection is a civil penalty provision.

Part 1A Protection for whistleblowers

Division 1 Preliminary

314A Purpose of part

The purpose of this part is to promote the making of protected disclosures about wrongdoing by or for organisations by providing for protection from reprisals.

314B Application of part

This part does not limit or otherwise affect—

(a) part 1; or

(b) the operation of the *Public Interest Disclosure Act 2010*, chapter 4; or

(c) a provision of another Act or law in relation to reprisals.

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314C Definitions for part

In this part—

detriment includes—

(a) harm, injury or prejudice to safety, including psychological harm; or

(b) property damage or loss; or

(c) intimidation or harassment; or

(d) adverse discrimination, disadvantage or adverse treatment about career, profession, employment, trade or business; or

(e) financial loss; or

(f) damage to reputation, including, for example, personal, professional or business reputation.

disclosable conduct means an act or omission that—

(a) contravenes, or may contravene, a provision of any of the following—

(i) an industrial law;

(ii) the Commonwealth Fair Work Act;

(iii) the Commonwealth Registered Organisations Act;

(iv) the *Competition and Consumer Act 2010* (Cwlth); or

(b) constitutes, or may constitute, an offence against a law of the State or the Commonwealth.

discloser, for a protected disclosure, see section 314D(1).

protected disclosure see section 314D.

reprisal means a reprisal under section 314G(5).

314D What is a *protected disclosure*

(1) A disclosure of information by a person (the ***discloser***) is a ***protected disclosure*** if—

(a) the discloser is any of the following—

(i) an officer or former officer of an organisation or a branch of an organisation;

(ii) an employee or former employee of an organisation or a branch of an organisation;

(iii) a member or former member of an organisation or a branch of an organisation;

(iv) a person who is a party to, or was a party to, a contract for the supply of goods or services to, or has entered into any other transaction with—

(A) an organisation or a branch of an organisation; or

(B) an officer or employee of an organisation or a branch of an organisation who is, or was, acting on behalf of the organisation or branch;

(v) an employee or former employee of a person mentioned in subparagraph (iv);

(vi) any other person prescribed by regulation; and

(b) the disclosure is made in writing to—

(i) the registrar; or

(ii) an inspector; and

(c) the discloser has reasonable grounds to suspect the information indicates 1 or more instances of disclosable conduct by—

(i) the organisation or the branch of the organisation; or

(ii) an officer or employee, or a former officer or employee, of the organisation or the branch of the organisation.

(2) A disclosure is taken to have been made by the discloser to a person mentioned in subsection (1)(b) if the disclosure is

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made to the person by a lawyer acting on the discloser's behalf.

Division 2 Investigation of protected disclosures

314E Protected disclosure made to registrar

(1) If a protected disclosure is made to the registrar, the registrar must—

(a) as soon as practicable, decide whether to refer the making of the protected disclosure to an inspector for investigation of the information the subject of the disclosure under chapter 13, part 2; and

(b) within 14 days after the day the disclosure is made, inform the discloser or, if the disclosure was made by a lawyer acting on the discloser's behalf, the lawyer, of the registrar's decision under paragraph (a); and

(c) if the information the subject of the protected disclosure constitutes, or may constitute, an offence punishable by imprisonment—refer the information to a police officer.

(2) However, the registrar must refer the making of the protected disclosure to an inspector unless—

(a) the registrar considers the information disclosed does not amount to disclosable conduct; or

(b) the registrar is satisfied the information the subject of the protected disclosure is the same, or substantially the same, as information that is being or has been investigated under chapter 13, part 2; or

(c) it is impracticable for the information the subject of the disclosure to be investigated.

Example for paragraph (c)—

It is impracticable for the information to be investigated because the discloser has not provided the discloser's contact details.

314F Protected disclosures made or referred to inspector

(1) If a protected disclosure is made to an inspector, the inspector must, within 14 days after the disclosure was made—

(a) give the discloser or the discloser's lawyer written notice acknowledging the making of the disclosure; and

(b) inform the registrar of the making of the disclosure.

(2) If a protected disclosure is made, or the making of a protected disclosure is referred under section 314E, to an inspector, the inspector must—

(a) commence the investigation within 30 days after the protected disclosure was made or referred to the inspector; and

(b) complete the investigation—

(i) within 90 days after the protected disclosure was made or referred to the inspector; or

(ii) within an extended period decided by the chief inspector; and

(c) inform the registrar and the discloser, or the discloser's lawyer, of—

(i) the inspector's findings; and

(ii) any action the inspector intends to take in relation to the information the subject of the protected disclosure.

(3) If the chief inspector decides to extend the period for completing the investigation under subsection (2)(b)(ii), the inspector must inform the discloser or the discloser's lawyer of the extended period.

(4) Also, if a protected disclosure is made to an inspector and the information the subject of the protected disclosure constitutes, or may constitute, an offence punishable by imprisonment the inspector must refer the information to a police officer.

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Not authorised—indicative only

Division 3 Protection from reprisals

314G Reprisal and grounds for reprisal

(1) A person must not cause, or attempt or conspire to cause, detriment to another person because, or in the belief that, the other person has made or intends to make a protected disclosure.

(2) An attempt to cause detriment includes an attempt to induce a person to cause detriment.

(3) Also, a person must not use threats or intimidation to attempt to persuade another person not to make a protected disclosure.

(4) Despite subsections (1) and (3), a person does not take a reprisal against another person to the extent the person takes administrative action that is reasonable to protect the other person from detriment.

(5) A contravention of subsection (1) or (3) is a reprisal or the taking of a reprisal.

(6) A ground mentioned in subsection (1) or (3) as the ground for a reprisal is the unlawful ground for the reprisal.

(7) For the contravention mentioned in subsection (5) to happen, it is sufficient if the unlawful ground is a substantial ground for the act or omission that is the reprisal, even if there is another ground for the act or omission.

314H Offence for taking reprisal

A person must not take a reprisal.

Maximum penalty—200 penalty units.

314I Damages entitlement for reprisal

(1) A reprisal is a tort and a person who takes a reprisal is liable in damages to a person to whom detriment is caused as a result.

(2) Any appropriate remedy that may be granted by a court for a tort may be granted by a court for the taking of a reprisal.

(3) If the claim for damages goes to trial in the Supreme Court or the District Court, the claim must be decided by a judge sitting without a jury.

(4) The right of a person to bring proceedings for damages under this section does not affect any other right or remedy available to the person arising from the reprisal.

314J Commission may make orders to prevent, stop or remedy effects of reprisal

(1) The commission may, on application, make 1 or more orders mentioned in subsection (2) the commission considers appropriate to prevent, stop or remedy the effects of a reprisal.

(2) For subsection (1), the commission may make any of the following orders—

(a) an order for compensation for loss, damage or injury;

(b) an order requiring an apology be made to the person the subject of the reprisal;

(c) if the reprisal has adversely affected the person's employment—

(i) an order for reinstatement of the person; or

(ii) an order for payment of an amount to the person for lost remuneration; or

(iii) an order to maintain continuity of the person's employment; or

(iv) an order to maintain the period of the person's continuous service with the employer;

(d) an injunctive order, including an interim injunction;

(e) any other order the commission considers appropriate to prevent, stop or remedy the effects of the reprisal.

(3) An application may be made by—

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Not authorised—indicative only

(a) a person claiming that detriment has been, or may be, caused to the person from the reprisal; or

(b) the registrar; or

(c) the chief inspector; or

(d) an inspector.

(4) The commission must start to deal with an application made under this section within 14 days after the application is made.

(5) In considering the terms of an order, the commission must take into account—

(a) if the commission is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another entity—those outcomes; and

(b) any other matter the commission considers relevant.

(6) A reference in this section to a reprisal includes a reference to the taking of a reprisal.

(7) This section does not limit the commission's jurisdiction to make orders or grant injunctions.

314K Contravention of injunctive order

A person must not contravene an injunctive order under section 314J(2)(d).

Note—

This section is a civil penalty protection.

314L Protection from liability if protected disclosure made

(1) If a person makes a protected disclosure—

(a) the person is not subject to any civil or criminal liability, or any liability arising by way of administrative process including disciplinary action, for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

(2) Without limiting subsection (1)—

(a) the person has qualified privilege in relation to the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

(3) For subsection (2)(a), ***qualified privilege***, in relation to the disclosure, means the person—

(a) has qualified privilege in relation to the disclosure in proceedings for defamation; and

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person in relation to the disclosure.

(4) This section does not limit or otherwise affect any right, privilege or immunity a person has, other than under this section, as a defendant in proceedings for defamation.

(5) In this section—

malice includes ill will to the person concerned or any other improper motive.

Part 2 Dismissals

Division 1 Exclusions

315 Employees to whom this part does not apply

(1) Section 316 does not apply to any of the following—

(a) an employee during the first 3 months of employment with an employer (the ***probationary period***), unless the

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Not authorised—indicative only

employee and employer agree in writing that the employee serve—

(i) a period of probation that is shorter than the probationary period; or

(ii) no period of probation; or

(b) an employee serving a period of probation that is longer than the probationary period, if the period decided, by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment;

(c) a short term casual employee;

(d) an employee engaged for a specific period or task, unless—

(i) the main purpose of engaging the employee in that way is, or was at the time of the employee's engagement, to avoid the employer's obligations under division 2; or

(ii) the employee is participating in a labour market program and is dismissed before the period ends or the task is complete;

(e) an employee—

(i) who is not employed under an industrial instrument; and

(ii) who is not a public service officer employed on tenure under the *Public Sector Act 2022*; and

(iii) whose annual wages immediately before the dismissal are equal to or more than the amount of the high income threshold under the *Fair Work Act 2009* (Cwlth), section 333.

(2) Subsection (3) applies in deciding—

(a) the probationary period for subsection (1)(a); or

(b) whether an employee is a short term casual employee for subsections (1)(c) and (9).

(3) Periods of employment with a former employer that are taken to be service with a new employer because of section 132 must be taken into account.

(4) Division 3 does not apply to—

(a) a casual employee; or

(b) an employee engaged by the hour or day;

(c) an employee engaged for a specific period or task; or

(d) an employee during the first 3 months of employment with an employer (the ***probationary period***) unless the employee and employer agree in writing that the employee serve—

(i) a period of probation that is shorter than the probationary period; or

(ii) no period of probation; or

(e) an employee serving a period of probation that is longer than the probationary period if the period decided, by written agreement between the employee and employer before the employment started, is a reasonable period having regard to the nature and circumstances of the employment; or

(f) an employee—

(i) who is not employed under an industrial instrument; and

(ii) who is not a public service officer employed on tenure under the *Public Sector Act 2022*; and

(iii) whose annual wages immediately before the dismissal are equal to or more than the amount of the high income threshold under the *Fair Work Act 2009* (Cwlth), section 333.

(5) Division 3 does not apply to an employee with less than 1 year of continuous service.

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(6) A regulation may exclude particular employees from the operation of particular provisions of this part.

(7) Without limiting subsection (6), the regulation may identify as a class of employees the employees whose wages or salary immediately before dismissal was more than an amount, or an amount worked out in a way, prescribed by the regulation.

(8) Divisions 3 to 5 do not apply to an employee participating in a labour market program.

(9) In this section—

short term casual employee means a casual employee, other than a casual employee who—

(a) is engaged—

(i) by a particular employer on a regular and systematic basis; and

(ii) for several periods of employment during a period of at least 6 months; and

(b) apart from the employer's decision not to offer the person further employment, had a reasonable expectation of further employment by the employer.

Division 2 Unfair dismissals

316 When is a dismissal unfair

A dismissal is unfair if it is harsh, unjust or unreasonable.

317 Application for reinstatement

(1) If it is claimed that an employee has been unfairly dismissed, an application for reinstatement may be made to the commission for the dismissal to be dealt with under this part.

(2) The application must be made within—

(a) 21 days after the dismissal takes effect; or

(b) if the commission allows a further period on an application made at any time—the further period.

(3) An application may be made by—

(a) an employee; or

(b) with the employee's consent, an organisation whose rules entitle it to represent the employee's industrial interests.

(4) The registrar may reject an application if the registrar considers the dismissed employee is a person mentioned in section 315(1) as a person to whom section 316 does not apply.

(5) If the registrar rejects the application, the registrar must, by written notice, notify the applicant—

(a) that the application has been rejected; and

(b) of the reasons why the registrar considers the dismissed employee is a person mentioned in section 315(1) as a person to whom section 316 does not apply.

(6) The applicant may, by written notice given within 21 days after the registrar's notice is received, inform the registrar that the applicant wishes the application to proceed.

(7) If the applicant does so, the commission must deal with the application, despite the registrar's rejection.

(8) The commission and registrar must deal with an application as quickly as possible.

318 Conciliation before application heard

(1) The commission must hold a conference to attempt to settle an application under section 317 by conciliation before it hears the application.

(2) The commission may, by written notice, require the applicant, employee or employer to attend the conference at a stated time and place.

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Not authorised—indicative only

(3) If the commission is satisfied all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as it relates to at least 1 ground of the application or because the applicant is a person to whom section 316 does not apply, it—

(a) must issue a written certificate stating that the commission—

(i) is so satisfied for a stated ground; or

(ii) considers the applicant is a person to whom section 316 does not apply; and

(b) must inform the parties to the conciliation of—

(i) the commission's assessment of the merits of the application in relation to the stated ground or in relation to how the applicant is a person to whom section 316 does not apply; and

(ii) the possible consequences of further proceeding on the application; and

(c) may recommend the application be discontinued, whether or not it also recommends another way of resolving the matter.

(4) The application lapses if the applicant has not, within 6 months after the applicant has been informed by the commission under subsection (3)—

(a) taken any action in relation to the application; or

(b) discontinued the application.

(5) The parties may seek further conciliation, or settle the matter, at any time before an order is made under section 321 or 322.

(6) The president may delegate the functions of the commission under this section to the registrar or a deputy registrar.

319 Arbitration when conciliation unsuccessful

If the commission considers all reasonable attempts 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 321 or 322; or

(b) dismissing the application.

320 Matters to be considered in deciding an application

(1) In deciding whether a dismissal was harsh, unjust or unreasonable, the commission must consider—

(a) whether the employee was notified of the reason for dismissal; and

(b) whether the dismissal related to—

(i) the operational requirements of the employer's undertaking, establishment or service; or

(ii) the employee's conduct, capacity or performance; and

(c) if the dismissal relates to the employee's conduct, capacity or performance—

(i) whether the employee had been warned about the conduct, capacity or performance; or

(ii) whether the employee was given an opportunity to respond to the claim about the conduct, capacity or performance; and

(d) any other matters the commission considers relevant.

(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.

Not authorised—indicative only

Not authorised—indicative only

321 Remedies—reinstatement or re-employment

(1) This section applies if the commission is satisfied an employee was unfairly dismissed.

(2) The commission may order the employer to reinstate the employee to the employee's former position on conditions at least as favourable as the conditions on which the employee was employed immediately before dismissal.

(3) If the commission considers reinstatement would be impracticable, the commission may order the employer to re-employ the employee in another position that the employer has available and that the commission considers suitable.

(4) The commission may also—

(a) make an order it considers necessary to maintain the continuity of the employee's employment or service; and

(b) order the employee to repay any amount paid to the employee by, or for, the employer on the dismissal; and

(c) order the employer to pay the employee the remuneration lost, or likely to have been lost, by the employee because of the dismissal, after taking into account any employment benefits or wages received by the employee since the dismissal.

(5) This section does not limit the commission's power to make an interim or interlocutory order.

322 Remedies—compensation

(1) If, and only if, the commission considers reinstatement or re-employment would be impracticable, the commission may order the employer to pay the employee an amount of compensation decided by the commission.

(2) The commission must not award an amount of compensation that is more than—

(a) if the employee was employed under an industrial instrument—the wages the employer would have been

liable to pay the employee for the 6 months immediately after the dismissal, paid at the rate the employee received immediately before the dismissal; or

(b) if the employee was not employed under an industrial instrument—the lesser of the wages under paragraph (a) and an amount equal to half the amount of the high income threshold under the *Fair Work Act 2009* (Cwlth), section 333.

(3) The commission must take into account any amount paid to the employee by the employer on the dismissal.

(4) This section does not limit the commission's power to make an interim or interlocutory order.

323 Further orders if employer fails to reinstate

(1) If an employer wilfully contravenes an order to reinstate or re-employ an employee, the commission may—

(a) further order the employer to pay the employee—

(i) an amount of not more than the monetary value of 50 penalty units; and

(ii) an amount for lost wages; and

(b) make further orders until the employer complies with an order under section 321 or this section.

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

324 Effect of order on leave

If the commission makes an order under section 321, the interruption to the employee's continuity of employment or service caused by the dismissal must be disregarded when working out the employee's entitlement—

(a) to annual, sick, family or long service leave; or

(b) under this part.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Requirements for dismissal

Subdivision 1 Orders giving effect to article 12 of Termination of Employment Convention

325 When this subdivision applies

This subdivision applies to an application about severance allowance or other separation benefits.

326 Orders about severance allowance and other separation benefits

(1) The commission may make an order about severance allowance or other separation benefits on application by—

(a) an employee; or

(b) an organisation whose rules entitle it to represent the employee's industrial interests.

(2) An employer must not contravene the order.

(3) If an employer contravenes the order, the commission may—

(a) make any of the orders it may make under section 321(2), (3) or (4); or

(b) order the employer to pay the employee an amount of not more than the monetary value of 135 penalty units.

(4) In this section—

severance allowance or other separation benefits means severance allowance or other separation benefits under article 12 of the Termination of Employment Convention 1982.

327 Time for making application under this subdivision

An application for an order under this subdivision must be made—

(a) before, or within 21 days after, the dismissal takes effect; or

(b) within a further period the commission allows on an application made at any time.

Subdivision 2 Order giving effect to article 13 of Termination of Employment Convention

328 When this subdivision applies

This subdivision applies if an employer decides to dismiss 15 or more employees for an economic, technological or structural reason.

329 Employer must give notice of proposed dismissals

(1) The employer may dismiss the employees only if the employer, as soon as practicable after making the decision, notifies—

(a) the Commonwealth department or agency whose primary function is helping unemployed people find work; and

(b) each employee organisation of which any of the employees is a member.

(2) The notice must state—

(a) the number and categories of employees being dismissed; and

(b) the reasons for the dismissals; and

(c) the time when, or the period over which, the employer intends to carry out the dismissals.

(3) If satisfied an employer has dismissed, or proposes to dismiss, an employee without giving the notice, the commission may make any or all of the following orders—

Not authorised—indicative only

Not authorised—indicative only

(a) any of the orders it may make under section 321(2), (3) or (4);

(b) an order imposing on the employer a penalty of not more than 16 penalty units;

(c) an order that the employer pay the employee an amount of not more than the monetary value of 135 penalty units;

(d) an order declaring the dismissal ineffective until the employer has given the notice.

(4) An application for an order may be made by—

(a) an employee, including a dismissed employee; or

(b) an organisation whose rules entitle it to represent the employee's industrial interests; or

(c) an inspector.

(5) The commission may order that a penalty, or part of a penalty, under subsection (3)(b) be paid to any person who may have made the application, other than an officer or employee of the State or a public service officer.

(6) If a part of a penalty is ordered to be paid to a person under subsection (5), that part of the penalty must be paid first.

(7) The remainder of the penalty must then be paid to the consolidated fund.

(8) A failure to give a notice is not an offence.

330 Employer must consult with employee organisations about dismissals

(1) The employer must give each employee organisation of which any of the employees is a member an opportunity to consult with the employer on ways to—

(a) avoid or minimise the dismissals; and

(b) minimise the adverse effects of the dismissals, for example, by finding alternative employment.

(2) The employer must do so as soon as practicable after making the decision to dismiss employees, but in any case before dismissing any of the employees.

(3) If the employer does not give the organisation an opportunity to consult as required, the commission may make the orders it considers appropriate to put employees, and their organisations, in the same position, as nearly as can be done, as if the employer had done so.

(4) The commission may make an order on application from an employee or organisation that is to be affected by the order.

(5) Subsections (1) and (2) do not apply to an organisation if the employer could not reasonably be expected to have known, at the time of the decision, that the organisation's rules give it a right to represent the industrial interests of a dismissed employee.

331 Time for making application under this subdivision

An application for an order under this subdivision must be made—

(a) before, or within 21 days after, the dismissal takes effect; or

(b) if the commission allows a further period on an application made at any time—within the further period.

Division 4 Stand-down of employees

332 Employee stood down in December then re-employed in January

(1) This section applies to an employee, other than a casual employee, who—

(a) is stood down by an employer during December; and

(b) is re-employed by the employer before the end of the next January; and

Not authorised—indicative only

Not authorised—indicative only

(c) was employed by the employer for a continuous period of at least 2 weeks immediately before being stood down.

(2) The employer must pay the employee at the ordinary rate payable to the employee immediately before the stand-down for the Christmas Eve (from 6p.m. to midnight), Christmas Day, Boxing Day, and New Year's Day public holidays between the stand-down and the re-employment.

(3) In this section—

stand-down includes dismissal.

333 Permissible stand-down of employee

(1) An employer may stand down an employee on a day, or for part of a day, when the employee can not be usefully employed because of something that happened—

(a) for which the employer is not responsible; or

(b) over which the employer has no control.

(2) The employer may stand down the employee without pay, unless an industrial instrument provides otherwise.

Division 5 General

334 Part does not limit other rights

This part does not limit a right a person or organisation may otherwise have to—

(a) appeal against a dismissal; or

(b) have an industrial instrument or order about a dismissal made.

335 Inconsistent instruments and orders

An industrial instrument or order that is inconsistent with an order under this part does not apply to the extent the inconsistency detrimentally affects the rights of employees concerned.

Chapter 9 Records and wages

Part 1 Employers records

Division 1 Definitions

336 Definitions for part

In this part—

authorised officer means a person who holds an authorised officer's authority.

authorised officer's authority see section 337(3).

industrial instrument employee means a person who—

(a) is or has been employed by an employer; and

(b) works or has worked under an industrial instrument or permit.

non-industrial instrument employee means a person who—

(a) is or has been employed by an employer; and

(b) works or has worked other than under an industrial instrument or a permit.

time and wages record—

Not authorised—indicative only

Not authorised—indicative only

(a) for an industrial instrument employee—means a time and wages record required to be kept under section 339; and

(b) for a non-industrial instrument employee—means a time and wages record required to be kept under section 340.

Division 2 Authorised officers

Subdivision 1 Authorised officer's authorities

337 Application for, and grant of, authority

(1) An organisation, with the consent of an officer or employee of the organisation, may apply to the registrar to authorise the officer or employee to exercise the powers of an authorised officer under this part.

(2) The authority must be applied for in the approved form.

(3) The registrar may grant an authority under this section (an ***authorised officer's authority***) to the officer or employee if the registrar is satisfied the officer or employee is a fit and proper person to hold the authority.

(4) The registrar may impose the conditions on the authorised officer's authority that the registrar considers appropriate.

Note—

See section 560 in relation to the circumstances in which a person aggrieved by a decision of the registrar under this section may appeal against the decision.

Subdivision 2 Fit and proper persons

338 Application of subdivision

This subdivision applies in relation to an officer or employee of an organisation for the purposes of deciding—

(a) an application by the organisation for an authorised officer's authority to be granted to the officer or employee under section 337; or

(b) an application by the organisation for renewal of an authorised officer's authority held by the officer or employee under section 338K; or

(c) if the officer or employee holds an authorised officer's authority—whether the officer or employee continues to be a fit and proper person to hold the authority.

338A Deciding whether officer or employee is or continues to be fit and proper person

(1) In deciding whether the officer or employee is or continues to be a fit and proper person to hold an authorised officer's authority, the registrar must have regard to the following matters—

(a) whether the officer or employee has completed relevant training within the last 3 years;

(b) whether the officer or employee has previously held an authorised officer's authority or an equivalent authority;

(c) if the officer or employee has previously held an authorised officer's authority or an equivalent authority (each ***the previous authority***)—

(i) whether the previous authority was revoked or suspended; and

(ii) if conditions were imposed on the previous authority—the conditions;

Not authorised—indicative only

Not authorised—indicative only

(d) whether the officer or employee holds an equivalent authority;

(e) if the officer or employee holds an equivalent authority—

(i) whether the authority is or has been suspended; and

(ii) if conditions are or have been imposed on the authority—the conditions;

(f) whether the officer or employee is disqualified under another Act or law from applying for an equivalent authority;

(g) whether the officer or employee has a conviction for an offence against an industrial law, other than a spent conviction for an offence against a law of the State;

(h) whether the officer or employee has a conviction for an offence against a law of the State, other than a spent conviction, or another jurisdiction that—

(i) involves unlawful entry onto premises; or

(ii) involves fraud or dishonesty; or

(iii) is a violent offence;

(i) whether the officer or employee has been liable to pay a penalty for the contravention of an industrial law;

(j) whether, under an administration scheme established under section 876E(2)(a), the officer or employee has—

(i) been suspended, or removed from office, as an officer of the C&G division; or

(ii) been subject to disciplinary action as a member, officer or former officer of the C&G division; or

(iii) been an employee of the C&G division whose employment has been terminated;

(k) any other matter the registrar considers relevant in deciding whether the officer or employee is or continues

to be a fit and proper person to hold an authorised officer's authority.

(2) Subsection (3) applies if the registrar reasonably believes—

(a) the officer or employee is under the control of, or substantially influenced by, another person; and

(b) the other person would not be a fit and proper person to hold an authorised officer's authority.

(3) The registrar must decide that the officer or employee is not, or does not continue to be, a fit and proper person to hold the authority.

(4) In this section—

C&G division see section 876C.

corresponding law means a law, or provisions of a law, of another jurisdiction that provides for the same or similar matters as—

(a) this part; or

(b) the *Work Health and Safety Act 2011*, part 7.

equivalent authority means—

(a) a WHS entry permit under the *Work Health and Safety Act 2011*; or

(b) an entry permit under the Commonwealth Fair Work Act; or

(c) another authority that—

(i) under a corresponding law, permits a person who is an officer or employee, however called, of an organisation to enter a workplace for a lawful purpose under that law; and

(ii) is prescribed by regulation.

relevant training means—

(a) training, provided or approved by the registrar, in relation to the powers of an authorised officer under division 5; or

Not authorised—indicative only

Not authorised—indicative only

(b) other training prescribed by regulation.

338B Registrar may make inquiries

The registrar may make inquiries to decide whether the officer or employee is or continues to be a fit and proper person to hold an authorised officer's authority.

338C Registrar may request criminal history

(1) For the purposes of section 338B, the registrar may ask the police commissioner for—

(a) a written report about the criminal history of the officer or employee; and

(b) a brief description of the circumstances of a conviction mentioned in the officer or employee's criminal history.

(2) The police commissioner must comply with the request.

(3) However—

(a) the registrar may make the request under subsection (1) only if the officer or employee has given the registrar written consent for the request; and

(b) the duty to comply applies only to information in the possession of the police commissioner or to which the police commissioner has access.

(4) If the officer or employee does not give the written consent to the registrar, the officer or employee is taken not to be or not to continue to be a fit and proper person to hold an authorised officer's authority.

(5) The registrar must ensure information provided by the police commissioner under subsection (2) is destroyed as soon as practicable after the information is no longer needed for the purpose for which it was requested.

(6) The registrar must give the officer or employee a copy of information given to the registrar under subsection (2).

(7) This section does not limit any other inquiry that may be made under section 338B.

(8) In this section—

criminal history, of a person, means the person's criminal history as defined under the *Criminal Law (Rehabilitation of Offenders) Act 1986*, other than spent convictions.

338D Registrar may request other information from chief inspector

(1) For the purposes of section 338B, the registrar may ask the chief inspector for information in relation to the officer or employee that is likely to be held by the chief inspector.

(2) The chief inspector must comply with a request under subsection (1).

(3) However, the duty to comply applies only to information in the possession of the chief inspector or to which the chief inspector has access.

(4) This section does not limit any other inquiry that may be made under section 338B.

Subdivision 3 Term, revocation and suspension of authorities

338E Term of authority

(1) An authorised officer's authority—

(a) has effect for a term of 3 years; and

(b) comes into effect on the day it is granted.

(2) However, an authorised officer's authority stops having effect if—

(a) the authority is revoked or suspended under this subdivision; or

Not authorised—indicative only

Not authorised—indicative only

(b) the organisation that applied for the authority gives notice to the registrar under section 338I(1) that the organisation surrenders the authority; or

(c) if the holder of the authority holds an entry permit under the Commonwealth Fair Work Act—the entry permit is revoked.

(3) An authorised officer's authority that is suspended stops having effect only for the period of the suspension.

338F Application by employer to revoke or suspend authority—abuse of power

(1) A person mentioned in subsection (2) may apply, in writing, to the commission for an authorised officer's authority to be revoked or suspended if the person reasonably suspects the officer has abused the officer's powers.

(2) For subsection (1), the persons are as follows—

(a) an employer;

(b) an inspector;

(c) the registrar.

(3) If the commission is reasonably satisfied the authorised officer has abused the officer's powers, the commission may, after considering any representations made under section 338H(2)(a)—

(a) revoke the authorised officer's authority; or

(b) suspend the authorised officer's authority for the period stated in subsection (5); or

(c) impose conditions on the authorised officer's authority the commission considers appropriate.

(4) For this section, an authorised officer has abused the officer's powers if the officer has—

(a) contravened a condition of the authority; or

(b) entered an employer's workplace other than under section 348; or

(c) contravened section 348(5); or

(d) exercised the officer's power to enter in an unreasonable or vexatious way; or

(e) made unreasonable, vexatious or inappropriate use of information obtained from inspecting a record made available because of the officer's powers as an authorised officer.

(5) For subsection (3)(b), the period is—

(a) if the officer has never held an authorised officer's authority that was revoked or suspended under subsection (3)—a minimum of 3 months; or

(b) if, under subsection (3), 1 or more authorised officer authorities previously held by the officer were revoked or suspended under subsection (3) on not more than 1 occasion—a minimum of 12 months; or

(c) if, under subsection (3), 1 or more authorised officer authorities previously held by the officer were revoked or suspended on more than 1 occasion—a minimum of 2 years.

(6) Despite subsection (3), the commission may revoke or suspend the authorised officer's authority only if the proposed action stated in the show cause notice given under section 338H was revocation or suspension of the authority, as applicable.

338G Revocation or suspension of authority on commission's initiative

(1) This section applies if the commission considers a person who holds an authorised officer's authority is no longer a fit and proper person to hold the authority.

Note—

See subdivision 2 in relation to deciding whether the person continues to be a fit and proper person to hold an authorised officer's authority.

(2) The commission may, after considering any representations made under section 338H(2)(a)—

Not authorised—indicative only

Not authorised—indicative only

(a) revoke the authorised officer's authority; or

(b) suspend the authorised officer's authority for the period stated in subsection (3); or

(c) impose conditions on the authorised officer's authority the commission considers appropriate.

(3) For subsection (2)(b), the period is—

(a) if the officer has never held an authorised officer's authority that was revoked or suspended under subsection (2)—a minimum of 3 months; or

(b) if, under subsection (2), 1 or more authorised officer authorities previously held by the officer were revoked or suspended on not more than 1 occasion—a minimum of 12 months; or

(c) if, under subsection (2), 1 or more authorised officer authorities previously held by the officer were revoked or suspended on more than 1 occasion—a minimum of 2 years.

(4) Despite subsection (2), the commission may revoke or suspend the authorised officer's authority only if the proposed action stated in the show cause notice given under section 338H was revocation or suspension of the authority, as applicable.

338H Requirements before deciding to revoke, suspend or impose conditions on authority

(1) This section applies if the commission proposes to revoke, suspend or impose conditions on an authorised officer's authority under section 338F or 338G.

(2) The commission—

(a) must give each of the following persons a notice (a ***show cause notice***) inviting the person to show why the authority should not be revoked, suspended or have conditions imposed (the ***proposed action***)—

(i) the holder of the authorised officer authority;

(ii) the organisation that applied for the authority; and

(b) may, if the commission considers it appropriate, immediately suspend the authority until the commission decides to—

(i) revoke, suspend or impose conditions on the authority under section 338F or 338G; or

(ii) take no action in relation to the authority.

(3) For subsection (2)(a), the show cause notice must state each of the following—

(a) the proposed action;

(b) the grounds for the proposed action;

(c) the facts and circumstances forming the basis for the grounds;

(d) if the proposed action is to suspend the authority—the proposed period of the suspension;

(e) if the proposed action is to impose conditions on the authority—the proposed conditions;

(f) that representations may be made to the commission about the proposed action within 21 days after the day the show cause notice is given to the person;

(g) how the representations may be made;

(h) if the commission has suspended the authority under subsection (2)(b)—that the authority is suspended until the commission decides to—

(i) revoke, suspend or impose conditions on the authority; or

(ii) take no action in relation to the authority.

338I Surrender of authority by organisation

(1) The organisation that applied for the grant of an authorised officer's authority may give written notice to the registrar that the organisation surrenders the authority.

Not authorised—indicative only

Not authorised—indicative only

(2) The organisation must give a notice mentioned in subsection (1) to the registrar if the holder of the authority—

(a) requests that the authority be surrendered by the organisation; or

(b) ceases to be an officer or employee of the organisation.

(3) Also, the organisation may give a notice mentioned in subsection (1) at any time because the organisation does not wish the holder to continue to hold the authority.

(4) If the organisation gives a notice under subsection (1) in the circumstances mentioned in subsection (3), the organisation must give a copy of the notice to the holder.

338J Return of authority to registrar

(1) Subsection (2) applies if an authorised officer's authority is in the physical possession of the holder or the organisation who applied for the authority.

(2) The organisation must return the authority to the registrar no later than 14 days after the day the authority stops having effect under section 338E(2).

Maximum penalty for subsection (2)—16 penalty units.

(3) If the authority was returned to the registrar under subsection (2) during a period of suspension that has ended, the organisation may apply to the registrar for the authority to be returned to—

(a) the holder of the authority; or

(b) the organisation.

Subdivision 4 Renewal of authorities

338K Application for renewal

(1) An organisation may, before an authorised officer's authority expires, apply to the registrar to renew the authority.

(2) Subsection (3) applies if—

(a) an application is made under subsection (1); and

(b) the registrar has not decided the application before the authorised officer's authority expires.

(3) The authority continues in effect until the registrar decides the application or the application is withdrawn, whichever happens first.

(4) The application must be in the approved form.

(5) The registrar may renew the authorised officer's authority if the registrar is satisfied the officer or employee continues to be a fit and proper person to hold the authority.

(6) The registrar may impose the conditions on the renewed authorised officer's authority that the registrar considers appropriate.

338L Term

(1) Renewal of an authority under this subdivision extends the term of the authority by a period of 3 years, starting on—

(a) if the application for the renewal is granted before the authority expires—the day after the day the authority would have expired but for the renewal; or

(b) otherwise—the day the application for the renewal is granted.

(2) Section 338E(2) and (3) applies to an authority renewed under this subdivision.

Subdivision 5 Register of authorised officers

338M Register of authorised officers

(1) The registrar must keep a register of authorised officers.

(2) The register must include the following information for each authorised officer—

Not authorised—indicative only

Not authorised—indicative only

(a) the officer's name;

(b) the name of the organisation of which the authorised officer is an officer or employee;

(c) the day the authorised officer's authority held by the officer expires;

(d) if conditions are imposed on the authority—the conditions;

(e) if the authority is suspended—the day the period of suspension ends;

(f) any other information prescribed by regulation.

(3) The register may contain any information about an authorised officer the registrar considers appropriate for inclusion in the register.

(4) The register must be kept in the way the registrar considers appropriate, including, for example, in an electronic form.

(5) The registrar must publish information contained in the register on the QIRC website.

Division 3 Employers to keep certain records

339 Time and wages record—industrial instrument employees

(1) An employer must keep a time and wages record that contains the following particulars for each industrial instrument employee—

(a) the employee's full name and address;

(b) the employee's date of birth;

(c) for each pay period—

(i) the employee's designation; and

(ii) the name of the industrial instrument or permit under which the employee is working; and

(iii) the number of hours worked by the employee during each day and week, the times at which the employee started and stopped work, and details of work breaks including meal breaks; and

(iv) if the industrial instrument or permit provides for—

(A) a weekly, daily or hourly wage rate—details of the wage rate for each week, day, or hour at which the employee is paid; or

(B) piecework rates—details of the piecework performed and the rate at which payment is made to the employee; and

(v) the gross and net wages paid to the employee; and

(vi) details of any deductions made from the wages; and

(vii) contributions made by the employer to a superannuation fund;

(d) if an employee's entitlement to long service leave is worked out under section 103—the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year;

(e) details of sick leave credited or approved, and sick leave payments to the employee;

(f) the date the employee became an employee of the employer;

(g) if appropriate, the date the employee stopped employment with the employer;

(h) other particulars necessary to show compliance with the hours of work, wage rates and general employment conditions provided under the instrument, permit or order under chapter 2, part 5.

Maximum penalty—40 penalty units.

(2) The employer must ensure the time and wages record—

Not authorised—indicative only

Not authorised—indicative only

(a) clearly states the employer's full name; and

(b) is kept at, or can be accessed from, a workplace of the employer in Queensland.

Maximum penalty—40 penalty units.

(3) If the industrial instrument does not limit the employee's daily or weekly working hours, particulars of the employee's starting and finishing times each day need not be recorded, unless the instrument requires it.

(4) The employer must keep the record— for 6 years after the date the work to which the record relates is performed.

Maximum penalty—40 penalty units.

(5) If asked by the employee, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(d) for the employee, worked out to the previous 30 June.

Maximum penalty—40 penalty units.

340 Time and wages record—non-industrial instrument employees

(1) An employer must keep a time and wages record that contains the following particulars for each non-industrial instrument employee—

(a) the employee's full name and address;

(b) the employee's date of birth;

(c) for each pay period—

(i) the employee's designation; and

(ii) the number of hours worked by the employee during each day and week; and

(iii) the employee's wage rate; and

Note—

See, however, section 941.

(iv) the gross and net wages paid to the employee; and

(v) details of any deductions made from the wages;

(d) if an employee's entitlement to long service leave is worked out under section 103—the total hours, other than overtime, worked by the employee since the start of the period to which the entitlement relates, worked out to and including 30 June in each year.

Maximum penalty—40 penalty units.

(2) Subsection (1)(b) and (c)(ii) does not apply to an employee who is excluded from the operation of a general ruling for the Queensland minimum wage under section 458(1)(b).

(3) The employer must ensure the time and wages record—

(a) clearly states the employer's full name; and

(b) is kept at, or can be accessed from, a workplace of the employer in Queensland.

Maximum penalty—40 penalty units.

(4) The employer must keep the record for 6 years after the date the work to which the record relates is performed.

Maximum penalty—40 penalty units.

(5) If asked by the employee, the employer must give the employee a certificate stating the total hours recorded under subsection (1)(d) for the employee, worked out to the previous 30 June.

Maximum penalty—40 penalty units.

341 Employee register

(1) An employer must keep an employee register that contains the following particulars for each employee—

(a) the employee's full name and residential address;

(b) for a person who is residing other than at the person's permanent residence when the person becomes an employee—the person's permanent residential address and the address of the person's other residence;

Not authorised—indicative only

Not authorised—indicative only

(c) the calling in which the employee is engaged;

(d) the date the employee became an employee of the employer;

(e) if appropriate, the date the employee stopped employment with the employer.

Maximum penalty—40 penalty units.

(2) If an employer has more than 100 employees and the register is not an alphabetical index, the employer must keep an alphabetical index of the employee's names.

Maximum penalty—40 penalty units.

(3) Within 14 days after a change in an employee's calling, the employer must enter in the register particulars of the change and the date the change happened.

Maximum penalty—40 penalty units.

(4) An employee must tell the employer—

(a) the employee's residential address whenever asked by the employer; and

(b) if the employee changes the employee's residential address—the new address immediately.

Maximum penalty—40 penalty units.

(5) Particulars must be entered in a register opposite and relative to the name of the employee to whom the particulars relate.

(6) If an employer carries on business at more than 1 place, the employer must keep a register for each place.

342 Records and indices to be kept in English

An employer must ensure a record or index kept under this part is kept, or is capable of being produced in, the English language.

343 Notation of wages details

(1) When paying an employee wages, the employer must state how the payment is made up by giving a written statement to the employee in accordance with subsection (2).

Maximum penalty—40 penalty units.

(2) The statement must include the following particulars—

(a) the employer's full name;

(b) the date of payment;

(c) the period covered by the payment;

(d) the number of hours covered by the payment at—

(i) ordinary wage rate; and

(ii) overtime wage rate;

(e) the ordinary hourly rate and the amount paid at that rate;

(f) the overtime hourly rate and the amount paid at that rate;

(g) the gross wages paid;

(h) the net wages paid;

(i) details of any deductions made from the wages;

(j) the amount of contribution paid to a superannuation fund.

(3) The statement may be given on the employee's pay envelope or advice.

Division 4 Power to inspect certain records

344 Inspecting time and wages record—inspector

(1) An inspector may inspect a time and wages record—

(a) at a workplace in the employer's business hours; or

Not authorised—indicative only

Not authorised—indicative only

(b) by asking for electronic access to the time and wages record.

(2) The employer must—

(a) if the inspector asks to inspect the time and wages record at a workplace under subsection (1)(a)—allow the inspector to inspect the record; or

(b) if the inspector asks for electronic access of the time and wages record under subsection (1)(b)—give the inspector electronic access to the record.

Maximum penalty—40 penalty units.

(3) Subsection (4) applies if—

(a) an employer does not produce the time and wages record to the inspector or provide electronic access to the record; or

(b) an inspector is obstructed during the inspection of the time and wages record; or

(c) an inspector wants to inspect the time and wages record of a former employer.

(4) The inspector may, by notice, require the employer or former employer to produce the time and wages record—

(a) at—

(i) a stated workplace of the employer; or

(ii) for an employer who has no official workplace or a former employer—a reasonably convenient place nominated by the inspector; and

(b) at a stated reasonable time.

(5) If the employer or former employer does not produce the record as required by the notice, the employer or former employer is taken to have failed to keep the record, unless the employer has a reasonable excuse.

(6) The notice may be given by post or in another way.

346 Inspecting employee register and index—registrar

(1) The registrar may inspect an employer's employee register and index—

(a) at a workplace in the employer's business hours; or

(b) by requesting electronic access to the time and wages record.

(2) The employer must—

(a) if the registrar inspects the time and wages record at a workplace under subsection (1)(a)—allow the registrar to inspect the record; or

(b) if the registrar requests access to an electronic copy of the time and wages record under subsection (1)(b)—give the registrar electronic access to the record.

Maximum penalty—40 penalty units.

(3) The registrar may, by notice, direct the employer to give the register or index to a stated person, at a stated reasonable time and place, if—

(a) the registrar requires the register or index for a ballot; or

(b) the registrar considers the direction is necessary to ensure an order of the court or commission requiring the register or index to be made available is complied with.

(4) The employer must comply with the direction.

Maximum penalty for subsection (4)—40 penalty units.

347 Inspecting time and wages book—employees

(1) An employee may inspect the time and wages record for the employee's particulars relating to the 12-month period before the inspection.

(2) Unless the employer otherwise agrees, the employee may inspect the record only—

(a) once in any 12-month period; and

Not authorised—indicative only

Not authorised—indicative only

(b) during the employer's business hours, but outside the employee's working time.

(3) The employer may give the particulars to the employee in writing.

Division 5 Entry and inspection of applicable documents—authorised officers

Subdivision 1 Right of entry

348 Right of entry

(1) An authorised officer who is an officer or employee of an organisation may enter a workplace at which an employer carries on a calling of the officer's organisation, during the employer's business hours, to exercise a power under subdivision 2 if the authorised officer is satisfied—.

(a) the exercise of the power is for a purpose that is in the interests of members of the organisation; and

(b) a more appropriate course of action is not available under another law to achieve the purpose of the exercise of the power.

Examples of a more appropriate course of action for paragraph (b)—

- the making of an application under the *Information Privacy Act 2009* or the *Right to Information Act 2009* for access to information or a document
- the use of a process for the discovery of documents in a proceeding

(2) However, the authorised officer may only enter a workplace to exercise a power under subdivision 2 if the authorised officer has given the employer or the employer's representative a written notice in compliance with subsections (3) and (4).

(3) The notice must state the following—

(a) the name of the authorised officer;

(b) the name of the organisation of which the authorised officer is an officer or employee;

(c) the authorised officer intends to enter the workplace under this section;

(d) the purpose of the entry, including—

(i) the powers intended to be exercised; and

(ii) the employees, or class of employees, in relation to whom the powers are intended to be exercised;

(e) the address of the workplace;

(f) the day the authorised officer intends to enter the workplace.

(4) The authorised officer must give the employer or the employer's representative the notice during working hours at least 24 hours, but not more than 14 days, before the day the authorised officer intends to enter the workplace.

(5) On entering the workplace, the authorised officer must first—

(a) notify the employer or the employer's representative that has charge of the workplace of the officer's presence; and

(b) produce the officer's authorisation, if required by the employer or representative.

(6) Subsection (5) does not apply if neither the employer nor the employer's representative having charge of the workplace is present when the authorised officer enters the workplace.

(7) The employer must not refuse an authorised officer entry to the workplace if the officer complies with subsections (2) and (5).

Maximum penalty—27 penalty units.

(8) If the authorised officer does not comply with subsections (2) and (5), the officer may be treated as a trespasser.

Not authorised—indicative only

Not authorised—indicative only

Note—

See also division 2, subdivision 3 for the circumstances in which an authorised officer's authority may be revoked or suspended.

Subdivision 2 Powers after entry

349 Definitions for subdivision

In this subdivision—

member employee means—

(a) an employee who is a member of the organisation of which the authorised officer is an employee or officer; or

(b) a former employee who was, or is, a member of the organisation of which the authorised officer is an employee or officer.

time and wages record means time and wages record required to be kept under section 339 or 340.

350 Right to inspect particular records

(1) After entering a workplace under section 348, an authorised officer may ask—

(a) to inspect an applicable record; or

(b) to be given electronic access to an applicable record; or

(c) to be given a document or other record reasonably required by the officer to verify the accuracy of a record inspected or accessed under paragraph (a) or (b).

(2) Subject to section 354, an employer must comply with the request.

Maximum penalty—27 penalty units.

(3) However, an employer must not comply with the request to the extent that doing so is contrary to a written direction about

the time and wages records of an employee, or a person eligible to be a member employee, given under section 351.

Maximum penalty—27 penalty units.

(4) The officer may make a copy of the record or document, but can not require help from the employer.

(5) If the employer keeps particulars other than those mentioned in section 339 in an applicable record, the employer need not make the other particulars available for inspection under subsection (2).

(6) In this section—

applicable record means the time and wages record of—

(a) a member employee; or

(b) a person who is eligible to become a member employee.

351 Written direction that records not be available for inspection

(1) A member employee, or a person eligible to be a member employee, may give an employer a written direction that a time and wages record for the employee not be available for inspection or electronic access by—

(a) an authorised officer; or

(b) a particular authorised officer.

(2) A person must not threaten or intimidate another person to persuade, or attempt to persuade, the person to give, or refuse to give, a written direction under subsection (1).

Maximum penalty—27 penalty units.

352 Discussing matters with employer or employee

(1) An authorised officer may discuss matters under this Act with the following persons during working or non-working time—

(a) an employer;

Not authorised—indicative only

Not authorised—indicative only

(b) a member employee, or a person eligible to become a member employee.

(2) The officer may discuss any other matter with a member employee, or an employee who is eligible to become a member of the officer's organisation, during non-working time.

(3) A person must not obstruct the officer exercising a power under this section.

Maximum penalty—27 penalty units.

353 Authorised officer must not obstruct an employer or employee

An authorised officer must not wilfully obstruct an employer, or an employee during the employee's working time.

Maximum penalty—27 penalty units.

354 Person must not act as authorised officer without authorisation

A person must not act as an authorised officer unless the person holds a current authorisation.

Maximum penalty—27 penalty units.

Division 6 Providing employee information to employee organisations

354B Authority to give information

(1) An employee may authorise the employee's employer to give information about the employee to an employee organisation.

(2) The authorisation may be given to the employer—

(a) directly by the employee; or

(b) by an employee organisation on behalf of the employee.

(3) The authorisation—

(a) must be in writing and legible; and

(b) must state—

(i) the name of the employee; and

(ii) the name of the employee's employer; and

(iii) the information to which the authorisation applies; and

(iv) the name of the employee organisation that may request the information and to which the information must be given; and

(c) must be signed by the employee, including by electronic signature; and

(d) may be made electronically.

(4) The authorisation has effect until the earliest of the following events happens—

(a) the authorisation is withdrawn by the employee;

(b) the employee's employment with the employer ends;

(c) there is a break in the employee's continuity of employment of longer than 3 months.

(5) The employer must keep an authorisation given under this section at, or in a place where it can be accessed from, a workplace of the employer in Queensland.

Note—

This subsection is a civil penalty provision.

354C Requirement to give information

(1) This section applies if—

(a) an employee has authorised an employer under section 354B to give information about the employee to an employee organisation; and

Not authorised—indicative only

Not authorised—indicative only

(b) the employee organisation gives the employer a written request for the information about the employee.

(2) The employer must, within 15 business days after receiving the request, give the employee organisation—

(a) the information requested to the extent it is held, or able to be accessed, by the employer; or

(b) if some or all of the information requested can not be given because it is not held, or able to be accessed, by the employer or because subsection (3) applies—a notice identifying the information that can not be given and the reason it can not be given.

Note—

This subsection is a civil penalty provision.

(3) Subsection (2)(a) does not apply if giving the information is inconsistent with an Act or law.

(4) The information—

(a) must be given in writing and be legible; and

(b) may be given electronically.

(5) If the employer gives information to the employee organisation under subsection (2)(a), the employer must notify the employee.

(6) If the employee is employed in a department (the ***first department***), the information required to be given to the employee organisation by the first department includes information that—

(a) is held by another department; and

(b) relates to the employee's employment in the first department.

(7) However, if the employee is employed in more than 1 department, the information required to be given by the department to which the request is given is limited to the information about the employee's employment in that department.

(8) In this section—

department includes a public service entity mentioned in the *Public Sector Act 2022*, section 9(b).

354D Unlawful access

A person must not wilfully deceive or mislead an employer in order to gain access under this division to information about an employee.

Maximum penalty—40 penalty units.

Part 2 Wages and occupational superannuation

Division 1 Interpretation

355 Definitions for part

In this part—

attachment notice means an attachment notice serviced on a prime contractor under section 360.

contracted work means work that is, or is to be, performed under a contract or undertaking (whether written or unwritten).

employer, in division 2, means the person—

(a) with whom a prime contractor has contracted to perform work; or

(b) who has an obligation to a prime contractor to perform work.

prime contractor means—

(a) a person (the ***contractor***) who contracts with someone else for the performance of work by the other person, or

Not authorised—indicative only

Not authorised—indicative only

at whose request, or on whose credit or behalf and with whose knowledge and consent, work is performed; or

(b) a person, claiming under the contractor, whose rights are acquired after the work begins.

subcontractor means a person who contracts with an employer to perform work to discharge the employer's obligation to a prime contractor.

356 References to service

A reference in this part to service on a person includes reference to service on the person's agent.

Division 2 Protection for wages

357 Wages are first charge on amounts payable to employer

(1) Wages payable to employees employed on any contracted work are, subject to the prime contractor's rights as prescribed under this Act, a first charge on the amount payable to the employer by the prime contractor for the work.

(2) Until a notice of attachment under section 360 is served on the prime contractor, the prime contractor may pay the employer all amounts payable for the contracted work.

358 Assignment of amount payable ineffectual against claims for wages

(1) This section applies to an assignment by an employer of amounts that have become, or are to become, payable to the employer by a prime contractor for contracted work.

(2) The assignment is of no effect as against wages payable, or to become payable, to employees employed by the employer in performance of the work.

(3) Subsection (2) does not apply if the assignment is to the employees employed by the employer in performance of the

work concerned for wages payable, or to become payable, to them for performing the work.

(4) In this section—

assignment includes disposition and charge, whether legal or equitable.

359 Amounts paid or payable to employer to be applied in payment of wages

(1) This section applies to amounts paid or payable to an employer by a prime contractor for contracted work.

(2) The amount is not liable to be attached or charged, other than by employees mentioned in subsection (5), until all wages payable, or to become payable, to the employees have been—

(a) properly paid to the employees; or

(b) have been secured to the employees in a way approved by a magistrate.

(3) The employer must apply the amounts received, to the extent necessary, in payment of wages payable, or to become payable, to employees employed by the employer in performance of work for which the amounts are received.

Maximum penalty—40 penalty units.

(4) The employer must keep an accurate written account of the amounts received from the prime contractor, and of the way the amounts have been disbursed or disposed of.

Maximum penalty—40 penalty units.

(5) The employer must produce the account for inspection to an employee—

(a) employed by the employer in performance of work for which the amounts are received; and

(b) whose wages are more than 8 days in arrears and are not paid when demanded; and

(c) who asks to see the account.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—40 penalty units.

(6) The employer must allow the employee to make a copy of the account.

Maximum penalty—40 penalty units.

360 Attachment notices

An employee, whose wages remain unpaid for 24 hours after the wages are payable and have been demanded by the employee, may serve the prime contractor with an attachment notice in the approved form.

361 Effect of attachment notice

(1) This section applies if an attachment notice is served on the prime contractor.

(2) The prime contractor must keep from the amounts payable, or to become payable, by the prime contractor to the employer for the contracted work an amount sufficient to satisfy—

(a) the claim for wages stated in the notice; and

(b) all further claims for wages stated in notices of attachment served on the prime contractor within 7 days after the service of the first notice.

(3) At the end of the 7 day period, the amount claimed as wages and stated in the notices is attached in the prime contractor's hands, and must be kept by the prime contractor until—

(a) a magistrate orders to whom, and in what way, the amount must be paid; or

(b) the prime contractor deals with the amount under subsection (4); or

(c) the notices are withdrawn.

(4) After being served with a notice, the prime contractor may pay the amount to which the notice relates to a clerk of the Magistrates Court until—

(a) a magistrate makes an order in relation to the amount; or

(b) the notice is withdrawn.

(5) The payment—

(a) must be accompanied by the notice or a copy of it; and

(b) is a full discharge of the prime contractor from liability for the amount paid and costs of proceedings for the amount.

(6) An amount paid to a clerk of the Magistrates Court may be paid out only—

(a) on the order of a magistrate; or

(b) if the relevant attachment notice is withdrawn.

(7) A prime contractor who fails to keep, or to pay under subsection (4), an amount required by subsection (2) or (3) to be kept is personally liable to each employee in the amount of the employee's claim for wages stated in the employee's attachment notice served on the prime contractor.

(8) An employee who has served an attachment notice on a prime contractor may withdraw the notice by giving notice of withdrawal to—

(a) the prime contractor; and

(b) the employer to whom amounts are payable, or are to become payable, by the prime contractor.

362 Orders for payment by prime contractor or clerk of the court

(1) Subsection (2) applies if an employee who served an attachment notice on a prime contractor obtains judgment from a magistrate against the employer for the claim for wages.

(2) The magistrate may order the judgment be satisfied, wholly or partly, by payment of a stated amount—

(a) from amounts paid to the clerk of the Magistrates Court under section 361(4); or

Not authorised—indicative only

Not authorised—indicative only

(b) if no amount was paid to the clerk under section 361(4) or the amount paid was not enough to cover the amount ordered to be paid by the magistrate—by the prime contractor.

(3) In deciding the amount that should be ordered to be paid for an employee's claim, the magistrate must take into account the existence of claims for wages of other employees of the employer of which the magistrate has knowledge.

(4) Subject to an appeal against the magistrate's decision, the clerk or prime contractor must pay the amount stated in the relevant order to the employee from the amounts—

(a) paid to the clerk under section 361(4); or

(b) attached and kept in the hands of the prime contractor.

(5) Payment must be made within 21 days after a copy of the order is served on the clerk or prime contractor.

(6) If an appeal is started and notice of it is served, the clerk or prime contractor must continue to keep or hold the amounts from which payment is to be made until the appeal is finally decided or discontinued.

(7) The prime contractor is not liable for an amount that is more than the greater of the following amounts—

(a) the amount actually payable by the prime contractor to the employer when the order is served;

(b) the amount actually payable by the prime contractor to the employer when payment is made under the order.

363 Employees to be paid according to when attachment notices are served

(1) An amount attached in the hands of a prime contractor, or paid to a clerk of the Magistrates Court, is to be paid in priority according to the order of the service of the relevant attachment notices.

(2) However, for this section, all notices served within 7 days after the service of the first notice are—

(a) taken to have been served simultaneously with the first notice; and

(b) accorded equal priority to distribution of the amount attached or paid.

(3) The claims for wages of all employees who are taken to have served notices simultaneously must be paid in full, unless the amounts attached in the hands of the prime contractor or held by the clerk are insufficient for the purpose.

(4) If the amounts are insufficient for the purpose, the claims are to abate in equal proportions among themselves.

(5) Subsection (1) is subject to sections 360 to 362.

364 Employee may sue prime contractor

(1) Subsection (2) applies if—

(a) a prime contractor is served with a copy of a magistrate's order made under section 362(2); and

(b) the amount stated in the order and payable by the prime contractor is not paid in accordance with the order.

(2) The employee in whose favour the order is made may, in an Industrial Magistrates Court and in the employee's own name, sue the prime contractor for the amount stated in the order and unpaid, by way of any action or proceedings the employer could have brought against the prime contractor as if—

(a) there had been no attachment of amounts under this part; and

(b) the amounts required by the attachment under section 360 to be kept were payable to the employer and unpaid.

(3) The employee's entitlement is subject to the prime contractor's right to set off against the employee's claim all amounts—

(a) properly paid by the prime contractor to the employer under section 357(2); and

Not authorised—indicative only

Not authorised—indicative only

(b) the employer was, when the notice was served on the prime contractor, liable to pay the prime contractor for a breach, or non-performance, of the contract or undertaking in performance of which the relevant work is or is to be performed.

365 Cessation of attachment not to prejudice prime contractor

(1) This section applies if an order under section 362 stops operating because—

(a) of satisfaction of the employee's claim; or

(b) it is set aside.

(2) A prime contractor who has paid an amount in accordance with the order before receiving notice of the satisfaction or setting aside is not to be prejudiced in relation to the payment because the order stopped operating.

366 Discharge by employee for payment received

An employee who receives an amount for a claim for wages to which an order under section 362 relates must sign a discharge for the amount, in the approved form, if asked by the person making the payment.

367 Remedy of subcontractor's employees

(1) If an employer has let the performance of work to a subcontractor, an employee employed by the subcontractor in that work has the same rights and remedies for a claim for wages against the employer under this division as an employee of the employer has against a prime contractor.

(2) For subsection (1), in applying this division (other than section 355 and this section) 'employer' is substituted for 'prime contractor' and 'subcontractor' is substituted for 'employee'.

368 Prime contractor's right to reimbursement

(1) This section applies if—

(a) a prime contractor has paid a claim for wages payable to an employee of the employer, in satisfaction of the prime contractor's obligations under this division; and

(b) either of the following happens—

(i) for an employer who is a corporation—winding-up proceedings are commenced;

(ii) for an employer who is an individual—the employer's assets are distributed in insolvency of the employer or in a composition with the employer's creditors.

(2) The prime contractor is taken to have a claim for wages against the employer's assets, which is a preferential claim, as if the prime contractor were an employee of the employer to whom wages were payable by the employer.

(3) This section applies only to the extent a State law may validly apply to the distribution of assets.

369 Magistrate may hear claim for wages ex parte

A magistrate may hear and decide proceedings for a claim for wages in the absence of a person to whom the originating process is directed on proof, on oath or affirmation, of the service of the process.

Division 3 Paying and recovering wages

370 Definitions for division

In this division—

fixed rate means the rate applicable under—

(a) for an apprentice or trainee—section 135; or

Not authorised—indicative only

Not authorised—indicative only

(b) for an employee under an industrial instrument or permit—the industrial instrument or permit; or

(c) for an employee who is entitled to the Queensland minimum wage and in relation to whom paragraph (a) or (b) does not apply—a general ruling for the Queensland minimum wage.

rate includes price.

371 Wages etc. to be paid without deduction

(1) If an employer employs an employee to perform work for a fixed rate, the employer must pay the employee the fixed rate without deduction, other than a deduction authorised by—

(a) a relevant industrial instrument; or

(b) this division; or

(c) the employee's consent.

(2) An employer must pay an apprentice or trainee the fixed rate without deduction, other than a deduction mentioned in subsection (1)(a), (b) or (c), until the apprentice or trainee is suspended or the apprentice's or trainee's training contract is cancelled.

(3) Subsection (4) applies if—

(a) an employer employs an employee to perform work for a rate agreed between the employer and the employee; and

(b) either—

(i) the rate for the work is not fixed by a relevant industrial instrument or permit; or

(ii) the fixed rate is less than the agreed rate.

(4) The employer must pay the employee the agreed rate without deduction, other than a deduction authorised by this division or the employee's consent.

(5) If an employee's consent authorising a deduction to be made from wages is not written, before making the deduction, the

employer must give the employee written acknowledgement of the consent.

(6) A contract or authority is void to the extent it provides for a deduction to be made from wages in contravention of this section.

372 Paying apprentices or trainees for supervised training

(1) Time spent by an apprentice or trainee undertaking supervised training is taken to be—

(a) time worked for the employer; and

(b) ordinary working hours when calculating the apprentice's or trainee's wages and employment conditions.

Example of paragraph (b)—

A trainee is required to work 38 ordinary working hours a week under an award. In a particular week, the trainee spends 30 hours working for the employer and 10 hours at college. The trainee is entitled to be paid 38 hours ordinary time (which includes 10 hours ordinary time for the time spent at college) and 2 hours overtime.

(2) Subsection (1) applies irrespective of the way the supervised training is delivered.

Examples of ways supervised training can be delivered—

block release, day release, workplace-delivered training or correspondence

(3) Despite subsection (1), wages are not payable for time spent by an apprentice or trainee undertaking supervised training when the apprentice or trainee is—

(a) a school-based apprentice or trainee; or

(b) the subject of a decision of the approving authority under section 212.

(4) In this section—

supervised training, for an apprentice or trainee, means training up to the maximum period required, under the

Not authorised—indicative only

Not authorised—indicative only

Further Education and Training Act 2014, to be delivered by a supervising registered training organisation during the apprenticeship or traineeship.

373 Paying wages

(1) An employer must pay each employee's wages at least monthly to the employee.

Maximum penalty—16 penalty units.

(2) An employer must pay each employee's wages—

(a) in Australian currency; or

(b) with the employee's written consent—

(i) wholly or partly to the employee's credit in an account with a financial institution nominated by the employee; or

(ii) by cheque of a type mentioned in subsection (5), draft, money order or electronic fund transfer; or

(c) in another way allowed under a relevant industrial instrument.

Maximum penalty—16 penalty units.

(3) If wages are to be paid in cash and the amount is not a multiple of 5c, the amount may be rounded to the nearest amount that is a multiple of 5c, even if this involves a reduction.

(4) If an employer pays an employee's wages other than in cash, the employer must pay the employee's wages without deduction of any charge made because of the way payment is made.

Maximum penalty—16 penalty units.

(5) Except with the employee's written consent, a cheque by which wages are paid—

(a) must be payable to a bearer on demand; and

(b) must not be crossed.

(6) If wages are payable to an employee when the employee stops employment with the employer, the employer must pay the wages to the employee within 3 days after the employment stops, or for a shorter period stated in an industrial instrument, unless—

(a) section 375 applies; or

(b) the employer has complied with an inspector's demand under section 915.

Maximum penalty—40 penalty units.

(7) If an employee accepts for wages a cheque, draft or money order that is dishonoured, the employee may recover from the employer by action in a court of competent jurisdiction as a debt payable to the employee—

(a) the wages payable; and

(b) a reasonable amount for damages suffered by the employee because of the dishonour.

(8) A contract or authority is void to the extent it provides for payment of wages other than under this section.

374 Contract not to stipulate mode of spending wages

(1) An employer must not, directly or indirectly, impose as a condition, express or implied, of an employee's employment a provision about the place where, way in which, or person with whom an employee's wages, or a part of the wages, are to be spent, unless the condition is consistent with a requirement under this division.

Maximum penalty—16 penalty units.

(2) An employer must not dismiss an employee because the employee's wages, or a part of the wages, are spent, or not spent, at a place, in a way, or with a person.

Not authorised—indicative only

Not authorised—indicative only

375 Payment of unpaid wages if employee's whereabouts unknown

(1) Subsection (2) applies if—

(a) an employer can not comply with section 373 because the former employee's whereabouts are unknown to the employer and can not be discovered by the employer with reasonable diligence; and

(b) the inability continues for 30 days after cessation of employment by the former employee.

(2) The employer, immediately at the end of the 30 days, must pay the wages payable to the former employee to the public trustee.

Maximum penalty—40 penalty units.

(3) The receipt of the public trustee for the payment is a full discharge to the employer for the amount stated in the receipt.

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

(5) This section does not apply if the employer has complied with an inspector's demand made under section 915.

(6) In this section—

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

376 Overpaid wages

(1) This division does not prevent an employer recovering an amount paid to an employee that the employee is not entitled to because of absence from work.

(2) Without limiting the employer's right to recover, the employer may recover an amount to which the employee is not entitled by deducting amounts from the employee's wages for a subsequent pay period or periods.

(3) Deductions under subsection (2)—

(a) must start within 1 year after the payment; and

(b) may extend over a period of 6 years after the payment.

(4) A deduction can not be made in an amount that would reduce the wages payable to the employee for a pay period to less than an amount prescribed by a regulation.

377 Deduction of wages in lieu of notice of termination

(1) This section applies if—

(a) an industrial instrument requires an employee to give notice of termination of employment for a stated period; and

(b) an employee ceases the employment without giving the employer the notice for the stated period.

(2) The employer may deduct from the employee's wages an amount stated by the instrument to be forfeited or payable to the employer if notice of termination is not given for the period stated.

378 Child may recover unpaid wages

A child may bring proceedings under this Act for the child's wages in the same way, and to the same extent, as if the child were an adult.

379 Recovery of unpaid wages etc.

(1) An application may be made to a magistrate for an order for payment of—

(a) an employee's unpaid wages; or

(b) an apprentice's unpaid tool allowance under section 137; or

(c) remuneration lost by an apprentice or trainee because the employer has contravened section 371(2).

(2) The application may be made by—

(a) the employee; or

Not authorised—indicative only

Not authorised—indicative only

(b) an employee organisation of which the employee is a member, acting for the employee; or

(c) a person authorised by the employee to make the application, acting for the employee; or

(d) an inspector.

(3) The application must be made within 6 years after the amount claimed became payable.

(4) On hearing the application, the magistrate—

(a) must order the employer to pay the employee the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and

(b) may make an order for the payment despite an express or implied provision of a contract, certified agreement or bargaining award to the contrary; and

(c) may order the payment to be made on the terms the magistrate considers appropriate; and

(d) may award costs to either party in an amount assessed by the magistrate.

(5) A person can not make an application under this section if an application has been made under section 475 or 396 for the same matter.

380 Enforcement of magistrate's order

(1) This section applies to an order of a magistrate for payment by an employer of—

(a) wages found to be payable; or

(b) an unpaid tool allowance required to be paid under an order made under section 137(8); or

(c) contributions to an approved superannuation fund found to be payable; or

(d) remuneration lost by an apprentice or trainee because the employer contravened section 371(2); or

(e) costs in proceedings relating to unpaid amounts mentioned in paragraphs (a) to (d).

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

(3) Also, an amount ordered to be paid, including costs, may be recovered by the person from the employer as a debt.

(4) For subsection (3), the order requiring payment may be filed in the registry of a Magistrates Court under the *Magistrates Courts Act 1921*, and on being filed—

(a) is taken to be an order properly made by a Magistrates Court; and

(b) without limiting subsection (2), may be enforced as an order made by the Magistrates Court.

(5) The magistrate may give particulars of the order mentioned in subsection (1) to the court registrar for registering the particulars prescribed by regulation, in relation to the unpaid amount payable under the order, under the *State Penalties Enforcement Act 1999*, section 34.

(6) In this section—

court registrar, in relation to a magistrate, means the clerk of the court of the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

Division 6 Occupational superannuation

394 Contributing occupational superannuation

(1) An employer must contribute, for eligible employees, to the approved superannuation fund at the level required by the relevant industrial instrument.

Maximum penalty—40 penalty units.

(2) The offence is a continuing offence that may be charged in 1 or more complaints for 1 or more periods.

Not authorised—indicative only

Not authorised—indicative only

(3) An employer does not commit an offence if the employer—

(a) contributed—

(i) to a complying superannuation fund at a level required by a relevant industrial instrument; but

(ii) to a fund that is not the approved superannuation fund; and

(b) the employer did not knowingly contravene the instrument.

(4) If the commission makes an order under section 395(2), an employer who fails to contribute in accordance with the order is taken to fail to make the contribution under the relevant industrial instrument, whether or not the order was directed to that employer.

(5) The court by which a defendant is found guilty of an offence against subsection (1) may make, in relation to the defendant, an order a magistrate is authorised by section 396 to make on an application under that section, and that section applies and extends accordingly.

395 Power to order contribution to particular fund

(1) This section applies if—

(a) an industrial matter relates to an allegation an employer has been, or is, contributing to a complying superannuation fund for employees at a level required by a relevant industrial instrument; but

(b) the fund is not the approved superannuation fund.

(2) The commission, on its own initiative or on application by an inspector, organisation or employee concerned, may—

(a) decide which complying superannuation fund the employer should have been, or should be, contributing to in order to comply with the relevant industrial instrument; and

(b) order the employer to contribute accordingly.

(3) If the commission considers it appropriate, the commission may make its order to operate from the date when a particular employee became eligible for payment of contribution to the fund decided by the commission.

(4) The commission may recognise all or any of the contributions made by an employer to a complying superannuation fund up to and including the date of the commission's decision as having met the requirements, or a part of the requirements, of a relevant industrial instrument, relating to employers' contribution to the approved superannuation fund.

396 Recovery of unpaid superannuation contribution

(1) An application may be made to a magistrate for an order for payment of contributions to the approved superannuation fund payable for an eligible employee that are unpaid.

(2) The application may be made by—

(a) an employee who is an eligible employee on whose behalf an employer is required to contribute to an approved superannuation fund; or

(b) an employee organisation of which the employee is a member, acting for the employee; or

(c) an inspector.

(3) The application must be made within 6 years after the amount claimed became payable.

(4) On hearing the application, the magistrate must order the employer to pay the employee—

(a) the amount the magistrate finds to be payable and unpaid to the employee within the 6 years before the date of the application; and

(b) an amount the magistrate considers appropriate, based on the return that would have accrued in relation to the contribution had it been properly paid to the fund.

(5) The magistrate may award costs to either party in an amount assessed by the magistrate.

Not authorised—indicative only

Not authorised—indicative only

(6) The magistrate may only make an order about the payment of the amount that the commission may make under section 477(1) or (2).

(7) A person can not make an application under this section if an application has been made under chapter 11, part 2, division 4, subdivision 9 for the same matter.

Chapter 10 Fees charged by private employment agents

Part 1 Preliminary

397 Definitions for chapter

In this chapter—

claimant, for part 3, division 2, see section 403.

fee includes charge, expense of any kind and reward.

finder's fee means a fee for finding, or attempting to find, work for a person looking for work.

manager see section 399.

model means a person whose work is to—

(a) pose for a painter, photographer, sculptor or other artist; or

(b) put on articles of clothing or accessories, including, for example, jewellery, hats and shoes, and display them to customers, the public or for advertising purposes; or

(c) display a hairstyle or other personal body ornamentation or decoration.

performer means a person whose work is to compete in sport or to act, dance, mime, perform, play, sing or speak in advertising or entertainment.

private employment agent see section 398.

publish includes—

(a) publish in writing or in any other form of media; and

(b) cause to be published.

work seeker see section 400(1) or (2).

398 Meaning of *private employment agent*

(1) A person is a ***private employment agent*** if the person, in the course of carrying on business and for gain—

(a) offers to find—

(i) casual, part-time, temporary, permanent or contract work for a person; or

(ii) a casual, part-time, temporary, permanent or contract worker for a person; or

(b) negotiates the terms of contract work for a model or performer; or

(c) administers a contract for a model or performer and arranges payments under it; or

(d) provides career advice for a model or performer.

(2) However, a person is not a ***private employment agent*** only because the person publishes—

(a) for another person, an advertisement about employment opportunities; or

(b) an advertisement offering employment opportunities with the person.

(3) Also, a person is not a ***private employment agent*** if, for an agreed rate of payment to the person—

Not authorised—indicative only

Not authorised—indicative only

(a) the person makes a worker of the person available to perform work, whether under a contract of employment or contract for services, for a client of the person; and

(b) the worker works under the client's direction; and

(c) the person is responsible for performing the obligations owed by a person to the worker, including paying the worker for the work.

399 Meaning of *manager*

(1) A private employment agent is a ***manager*** of a model or performer if the agent, under a written agreement with the model or performer, provides for the model or performer at least 4 management services.

(2) A private employment agent may be a ***manager*** of a model or performer whether or not any agreement between them states the agent is the sole provider of management services for the model or performer.

(3) However, a private employment agent is not a ***manager*** of a model or performer only because of a written agreement under which the agent helps the model or performer find modelling or performing work.

(4) For this section, ***management service***—

(a) includes any of the following services—

(i) handling business affairs for the model or performer;

(ii) providing accounting advice for the model or performer;

(iii) publicising and promoting the model or performer;

(iv) providing services ancillary to a performance by the model or performer;

(v) providing continuing career or artistic advice for the model or performer;

(vi) representing the model or performer in negotiations with media, entertainment industry workers or the public; but

(b) does not include a service mentioned in section 398(1)(a), (b) or (c).

Part 2 Requirements about payment of fees to private employment agents

400 When fees are or are not payable to private employment agent

(1) A private employment agent must not directly or indirectly demand or receive a finder's fee from a person looking for work (a ***work seeker***) other than a model or performer.

Maximum penalty—16 penalty units.

(2) A private employment agent must not directly or indirectly demand or receive a finder's fee from a person looking for work who is a model or performer (also a ***work seeker***) unless—

(a) the agent gives the work seeker a written notice stating the particulars prescribed by regulation; and

(b) the fee payable is not more than the percentage prescribed by regulation of the gross amount payable to the work seeker for the work, excluding any allowances or payments prescribed by regulation; and

(c) the amount payable to the work seeker is at least the amount payable under an applicable industrial instrument.

Maximum penalty—16 penalty units.

(3) Subsection (2) does not apply if—

(a) the private employment agent is also the manager of the work seeker; and

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Not authorised—indicative only

(b) the fee is payable under a written agreement between the manager and the work seeker.

(4) In this section—

industrial instrument includes a federal industrial instrument.

Part 3 Recovery of fees

Division 1 Orders for repayment by magistrates

401 Magistrate may order repayment of fees—criminal proceedings

(1) This section applies if a magistrate hears and decides a complaint for an offence against section 400(1) or (2).

(2) Subsection (3) applies if—

(a) the magistrate finds the defendant guilty; and

(b) the magistrate finds, on the balance of probabilities, a fee to have been received in contravention of section 400(1) or (2); and

(c) the fee has not been repaid to the work seeker; and

(d) the defendant is not liable to repay the fee to the work seeker under an existing order under section 402 or 405.

(3) The magistrate must order the defendant to repay the fee to the work seeker.

(4) If the magistrate does not find the defendant guilty, the magistrate may order the defendant to repay to the work seeker the amount the magistrate finds, on the balance of probabilities, the defendant has received from the work seeker.

(5) The magistrate may make an order under this section—

(a) despite an express or implied provision of an agreement to the contrary; and

(b) on the terms the magistrate considers appropriate.

402 Magistrate may order repayment of fees—civil proceedings

(1) An application may be made to a magistrate for an order for the repayment of a fee received by a private employment agent in contravention of section 400(1) or (2) from a person (***claimant***).

(2) The application may be made by—

(a) the claimant; or

(b) an employee organisation, of which the claimant is a member, acting for the claimant; or

(c) another person authorised to act for the claimant; or

(d) an inspector.

(3) The application must be made within 6 years after the claimant gave the agent the fee.

(4) On hearing the application, the magistrate—

(a) must order the agent to repay to the claimant the amount the magistrate finds to be the fee the agent has received from the claimant in contravention of section 400(1) or (2) if—

(i) the fee has not been repaid to the claimant; and

(ii) the agent is not liable to repay the fee to the claimant under an existing order under section 401 or 405; and

(b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and

(c) may order the repayment to be made on the terms the magistrate considers appropriate; and

Not authorised—indicative only

Not authorised—indicative only

(d) may order 1 party to pay costs to another party in an amount assessed by the magistrate.

(5) A person can not make an application under this section if an application has been made under section 403 about the same matter.

Division 2 Orders for repayment on application to commission

403 Application to commission

(1) An application may be made to the commission for an order for the repayment of a fee received by a private employment agent in contravention of section 400(1) or (2) from a person (***claimant***).

(2) An application can not be made to the commission if the total fee claimed under subsection (1) is more than $20,000.

(3) The application may be made by any of the following persons—

(a) the claimant;

(b) an employee organisation, of which the claimant is a member, acting for the claimant;

(c) another person authorised to act for the claimant;

(d) an inspector.

(4) The application must be made within 6 years after the claimant gave the agent the fee.

(5) A person can not make an application under this section if an application has been made under section 402 about the same matter.

404 Remission to a magistrate

(1) This section applies if a presidential member considers an application made under section 403 could be more conveniently heard by a magistrate, having regard to—

(a) the difficulty or expense of producing witnesses; or

(b) another good and sufficient reason, for example, cost.

(2) The presidential member may, either before or after the start of a hearing, remit the application to a magistrate.

(3) A magistrate may hear and decide the application as if it had been brought before the commission and the magistrate's decision and order is taken to be a decision and order of the commission.

405 Hearing of application by commission or magistrate

On hearing an application made under section 403, the commission or magistrate—

(a) must order the agent to repay to the claimant the amount the commission or magistrate finds to be the fee the agent has received from the claimant in contravention of section 400(1) or (2) if—

(i) the fee has not been repaid to the claimant; and

(ii) the agent is not liable to repay the fee to the claimant under an existing order under division 1; and

(b) may make an order for the repayment despite an express or implied provision of an agreement to the contrary; and

(c) may order the repayment to be made on the terms the commission or magistrate considers appropriate; and

(d) may order 1 party to pay costs to another party in an amount assessed by the commission or magistrate.

Not authorised—indicative only

Not authorised—indicative only

Part 4 Enforcement

406 Enforcement of magistrate's orders

(1) This section applies if, under part 3, division 1, a magistrate orders—

(a) a private employment agent to repay a fee received by the agent in contravention of section 400(1) or (2) to a work seeker mentioned in section 401 or a claimant mentioned in section 402; or

(b) costs of a party under section 402.

(2) The order is enforceable under the *Justices Act 1886* as an order for payment of money made by a magistrate under that Act.

(3) Also, an amount ordered to be paid to the work seeker or claimant by the agent may be recovered by the work seeker or claimant from the agent as a debt.

(4) For subsection (3), the order requiring payment may be filed in the registry of a Magistrates Court, and on being filed—

(a) is taken to be an order properly made by a Magistrates Court; and

(b) may be enforced as a money order made by the Magistrates Court.

(5) The magistrate may give particulars of the order mentioned in subsection (1) to the registrar for the purpose of registering the particulars prescribed by regulation, in relation to the unpaid amount payable under the order, under the *State Penalties Enforcement Act 1999*, section 34.

(6) In this section—

registrar, in relation to a magistrate, means the clerk of the court of the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

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.

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.

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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.

Not authorised—indicative only

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

Not authorised—indicative only

(b) provides for, or affects, the remuneration and working conditions of an independent courier who transports goods under arrangements made by another person; and

(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—

Not authorised—indicative only

Not authorised—indicative only

(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,

Not authorised—indicative only

Not authorised—indicative only

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 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.

Not authorised—indicative only

Not authorised—indicative only

(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

(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;

(d) an employee organisation, federal organisation of employees, or State peak council of which independent

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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—

(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.

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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 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—

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(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 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.

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(3) A notice under subsection (2) must be given within 21 days after the person receives the 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—

(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.

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(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 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)—

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(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 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

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(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 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

(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

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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

(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.

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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—

(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.

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(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.

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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 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.

Not authorised—indicative only

Not authorised—indicative only

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—

(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.

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Not authorised—indicative only

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—

(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.

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.

Not authorised—indicative only

Not authorised—indicative only

(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.

Not authorised—indicative only

Not authorised—indicative only

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.

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 stated opposite in column 2—

Column 1	Column 2
an employer	a principal contractor

Not authorised—indicative only

Not authorised—indicative only

Column 1	Column 2
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

(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.

Not authorised—indicative only

Not authorised—indicative only

Chapter 11 Industrial tribunals and registry

Part 1 Industrial court of Queensland

Division 1 Preliminary

407 Continuance

The Industrial Court of Queensland (the ***court***) is established as a superior court of record in Queensland.

408 Official seal

The court has an official seal that must be judicially noticed.

409 Membership

(1) The members of the court are—

(a) the president; and

(b) the vice-president; and

(c) each deputy president (court).

(2) Each member of the court is a judge of the court.

410 Constitution

The court is constituted by the president, the vice-president or a deputy president (court) sitting alone.

411 Finances of court

The court is part of the department for the purposes of the *Financial Accountability Act 2009*.

Division 2 Members

Subdivision 1 President

412 Functions of the president

(1) The president has the functions given to the president under this Act or another Act.

(2) The functions of the president include—

(a) managing and administering the court, including deciding who constitutes the court for a proceeding; and

(b) preparing and giving the annual report to the Minister under section 594.

(3) The president has the power to do all things necessary or convenient to be done for the performance of the president's functions.

(4) The president may delegate a function of the president to the vice-president or a deputy president (court).

413 Appointment of president

(1) The Governor in Council may, by gazette notice, appoint a person who is a Supreme Court judge as president of the court.

(2) The person is appointed on a full-time basis unless the gazette notice states the appointment is on a part-time basis.

414 Effect of appointment as president

(1) The appointment of, or service by, a Supreme Court judge as president does not affect—

(a) the judge's tenure of office as a judge; or

Not authorised—indicative only

Not authorised—indicative only

(b) the judge's rank, title, status, precedence, salary, annual or other allowances, or other rights or privileges as the holder of the office of a judge.

(2) The president may perform the functions of office of both president and a Supreme Court judge.

(3) The Supreme Court judge's service as president is taken to be service as a Supreme Court judge for all purposes.

(4) The appointment of, or service by, a Supreme Court judge as president does not entitle the judge to any salary or allowance in addition to the judge's salary or allowance as the holder of the office of a judge.

(5) However, the Supreme Court judge is entitled to be paid expenses reasonably incurred by the judge in performing the functions of the office of president.

(6) This section applies despite any other Act.

415 When president holds office

(1) The president holds office until the earlier of the following—

(a) the president turns 70;

(b) the president resigns by signed notice given to the Governor;

(c) the president stops being a Supreme Court judge.

(2) If the president stops holding office while hearing a matter, the Governor in Council may, without reappointing the person as president, continue the person in office for the time necessary to enable the hearing to be completed.

(3) A person continued in office under subsection (2) may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

416 Acting president

(1) This section applies if the president temporarily can not perform the functions of office.

(2) The Governor in Council may, by gazette notice, appoint a person who is a Supreme Court judge to act as the president.

(3) If the Governor in Council does not appoint a person under subsection (2), the vice-president of the court may act as the president.

(4) A person who has acted as president may attend sittings of the court to give a decision in, or otherwise complete, proceedings heard by the person while acting as president.

(5) The person's decision is taken to be the president's decision in the proceedings.

(6) Section 414 applies to a person appointed under subsection (2) while the person acts as president as if the person were appointed as president.

Subdivision 2 Vice-president

417 Functions of vice-president

(1) The vice-president of the court has the functions given to the vice-president under this Act or another Act.

(2) Subject to section 412, the vice-president is responsible to the president for the administration of the court and for ensuring the orderly and expeditious exercise of the jurisdiction and powers of the court.

(3) The vice-president is subject to the direction of the president in performing the vice-president's functions.

(4) The vice-president has the power to do all things necessary or convenient to be done for the performance of the vice-president's functions.

(5) The vice-president may delegate a function of the vice-president to a deputy president (court).

Not authorised—indicative only

Not authorised—indicative only

418 Appointment of vice-president

(1) The Governor in Council may, by commission, appoint a person as the vice-president of the court.

(2) The person must—

(a) be a lawyer of at least 5 years standing; and

(b) have suitable experience, qualifications and standing in the community to be appointed as the vice-president of the court.

(3) The person can not be—

(a) a member of the Executive Council or Legislative Assembly; or

(b) a director of a corporation engaged in a calling; or

(c) an auditor of a corporation engaged in a calling or of a business; or

(d) a person who participates in any capacity in the management of—

(i) a corporation engaged in a calling; or

(ii) a business.

419 When vice-president holds office

(1) The vice-president of the court holds office until the earlier of the following—

(a) the vice-president turns 70;

(b) the vice-president resigns by signed notice given to the Governor;

(c) the vice-president becomes a member of the Executive Council or Legislative Assembly;

(d) the vice-president does any of the following without the prior written consent of the Minister—

(i) acts as a director of a corporation engaged in a calling; or

(ii) acts as an auditor of a corporation engaged in a calling or of a business;

(iii) participates in any capacity in the management of a corporation engaged in a calling or the management of a business.

(e) the vice-president is removed from office under section 423.

(2) If the vice-president stops holding the office because of subsection (1)(a) or (b) while hearing a matter, the Governor in Council may, without reappointing the person as the vice-president of the court, continue the person in the office for the time necessary to enable the hearing of the matter to be completed.

(3) A person continued in office under subsection (2) may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

420 Acting vice-president

(1) This section applies if the vice-president temporarily can not perform the functions of office.

(2) The Governor in Council may, by gazette notice, appoint a person to act as the vice-president.

(3) The person must be a person who may be appointed as vice-president under section 418.

(4) A person who has acted as vice-president may attend sittings of the court to give a decision in, or otherwise complete, proceedings that were heard by the person while acting as vice-president.

(5) The person's decision in the proceedings is taken to be the decision of the vice-president.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 3 Deputy presidents

421 Deputy presidents (court)

(1) The Governor in Council may, by commission, appoint a person as a deputy president (court) of the court.

(2) The person must—

(a) be a lawyer of at least 5 years standing; and

(b) have suitable experience, qualifications and standing in the community to be appointed as a deputy president (court).

(3) The person can not be—

(a) a member of the Executive Council or Legislative Assembly; or

(b) a director of a corporation engaged in a calling; or

(c) an auditor of a corporation engaged in a calling or of a business; or

(d) a person who participates in any capacity in the management of—

(i) a corporation engaged in a calling; or

(ii) a business.

422 When deputy president (court) holds office

(1) A deputy president (court) holds office until the earlier of the following—

(a) the deputy president turns 70; or

(b) the deputy president resigns by signed notice given to the Governor; or

(c) the deputy president becomes a member of the Executive Council or Legislative Assembly; or

(d) the deputy president does any of the following without the prior written consent of the Minister—

(i) acts as a director of a corporation engaged in a calling;

(ii) acts as an auditor of a corporation engaged in a calling or of a business;

(iii) participates in any capacity in the management of a corporation engaged in a calling or the management of a business; or

(e) the deputy president is removed from office under section 423.

(2) If a deputy president (court) stops holding the office because of subsection (1)(a) or (b) while hearing a matter, the Governor in Council may, without reappointing the person as a deputy president (court), continue the person in the office for the time necessary to enable the hearing of the matter to be completed.

(3) A person continued in office under subsection (2) may exercise the jurisdiction and powers of the court necessary or convenient for the hearing to be completed.

Subdivision 4 Miscellaneous

423 Removal of vice-president or deputy president (court) from office

The Governor may remove the vice-president or a deputy president (court) from office, on an address of the Legislative Assembly, for—

(a) mental or physical incapacity; or

(b) misbehaviour.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Jurisdiction and powers of court

424 Jurisdiction and powers

(1) The court may—

(a) perform all functions and exercise all powers given to the court under this Act or another Act; and

(b) hear and decide, and give its opinion on, a matter referred to it by the commission; and

(c) hear and decide an offence against this Act, unless this Act provides otherwise; and

(d) hear and decide appeals from an industrial magistrate's decision in proceedings for—

(i) an offence against this Act; or

(ii) recovery of damages, or other amounts, under this Act; and

(e) if the court is constituted by the president, exercise the jurisdiction and powers of the Supreme Court to ensure, by prerogative order or other appropriate process—

(i) the commission and magistrates exercise their jurisdictions according to law; and

(ii) the commission and magistrates do not exceed their jurisdictions.

(2) In proceedings, the court may—

(a) make the decisions it considers appropriate, irrespective of specific relief sought by a party; and

(b) give directions about the hearing of a matter.

(3) The court's jurisdiction is not limited, by implication, by a provision of this Act or another Act.

(4) The jurisdiction conferred on the court by this Act or another Act is exclusive of the jurisdiction of another court or tribunal, unless this or the other Act provides otherwise.

425 Limitations on jurisdiction

The court does not have jurisdiction to hear and decide a matter about which another Act excludes—

(a) the jurisdiction of the court about the matter; or

(b) the application of a decision under this Act about the matter.

426 Court's interpretation

The court's interpretation of a provision of this Act, an industrial instrument or permit binds—

(a) the commission; and

(b) magistrates; and

(c) organisations and persons who are subject to this Act, or bound by the industrial instrument or permit.

427 Court may refuse to proceed

(1) This section applies if—

(a) proceedings before the court relate to an industrial instrument; or

(b) an industrial instrument is sought in proceedings before the court.

(2) The court may refuse to hear and decide the proceedings if any of the employees who are, or would be, bound by the instrument are—

(a) involved in an industrial dispute; or

(b) contravening this Act or a decision.

(3) Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision to refuse to hear and decide the proceedings.

Not authorised—indicative only

Not authorised—indicative only

428 Contempt of court

(1) The court has, for itself, all the protection, powers, jurisdiction and authority the Supreme Court has, for that court, in relation to contempt.

(2) The court must comply with the *Uniform Civil Procedure Rules 1999* relating to contempt of court, with necessary changes, including changes prescribed by the rules.

(3) The registrar or another officer of the court may apply to the court for an order that a person be committed to prison for contempt of court.

(4) The court's jurisdiction to punish a contempt of the court may be exercised on the president's own initiative.

(5) The court has jurisdiction to punish an act or omission as a contempt of the court in addition to any penalty that may be imposed for the act or omission.

Part 2 Industrial relations commission

Division 1 Preliminary

429 Continuance

The Queensland Industrial Relations Commission (the ***commission***), is established as a court of record in Queensland.

430 Official seal

The commission has an official seal that must be judicially noticed.

431 Finances of commission

The commission is part of the department for the *Financial Accountability Act 2009*.

432 Composition

(1) The commission consists of the following members—

(a) the president;

(b) the following persons (each a ***commissioner***)—

(i) a person holding office as the vice-president;

(ii) a person holding office as a deputy president;

(iii) a person holding office as an industrial commissioner.

(2) The full bench of the commission (the ***full bench***) is constituted by—

(a) for chapter 12, part 16 or for the hearing of an appeal—a presidential member and 2 or more other members; or

(b) otherwise—3 or more members.

(3) The commission other than the full bench of the commission is constituted by a commissioner sitting alone.

(4) More than 1 full bench or commission may sit at the same time.

(5) The commission's jurisdiction, or existence, is not affected by a vacancy in an office of the commission.

433 Decisions of full bench

A decision of the full bench is the decision of the majority of its members.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Members

Subdivision 1 President

434 President of the commission

(1) The president of the court is also the president of the commission.

(2) The president's service as the president of the commission does not entitle the president to a salary or allowance in addition to the salary or allowance received as the holder of the office of the president of the court.

435 President's administrative functions for the commission

(1) The president is responsible for the administration of the commission and the exercise of the commission's jurisdiction and powers.

(2) Without limiting subsection (1), the president is responsible for deciding the member or members who is or are to constitute the commission, including a full bench of the commission, for a matter or proceeding.

(3) The president has the power to do all things necessary or convenient to be done to perform responsibilities under subsection (1) or (2).

(4) The president may delegate a function mentioned in subsection (1) or (2)—

(a) to the vice president; or

(b) to a deputy president; or

(c) if the vice president or a deputy president is not available—to 1 or more commissioners.

(5) A commissioner must comply with a direction of the president, vice president, a deputy president or a

commissioner given for the performance of a function under subsection (1) or (2).

(6) The president may—

(a) establish panels of members; and

(b) assign an industry or group of industries to each panel.

(7) The powers of the commission in relation to an industry, other than the powers of the full bench, may only be exercised by—

(a) a member of the panel to which the industry is assigned; or

(b) if the president has assigned a particular matter to a member—the member.

(8) If practicable, a panel must consist of at least 1 presidential member and 1 commissioner.

(9) A member of the commission may be a member of more than 1 panel.

436 Other functions of the president

The functions of the president in relation to the commission include—

(a) developing performance measures that apply to members of the commission in carrying out its functions; and

(b) developing a code of conduct for—

(i) members of the commission; and

(ii) persons appearing before the commission.

437 President to consider efficiencies that may be achieved by using dual commissioners

In administering the commission, the president must consider whether the following would be achieved if a dual commissioner were to be given functions and powers in relation to a particular matter—

Not authorised—indicative only

Not authorised—indicative only

(a) an improvement in the efficiency of the commission; and

(b) an improvement in the cooperation between the commission and the Australian commission.

438 Reallocation of commission's work

(1) The president may reallocate the matter of proceedings before a commission constituted by 1 or more of the members to a commission constituted by—

(a) the same member or members together with another member or other members; or

(b) a different member or different members.

(2) The commission to which the matter is reallocated may continue to hear and decide the matter, without re-hearing evidence given before the reallocation.

Subdivision 2 Vice-president

439 Vice-president of the commission

(1) The vice-president of the court is also the vice-president of the commission.

(2) The vice-president's service as the vice-president of the commission does not entitle the vice-president to a salary or allowance in addition to the salary or allowance received as the holder of the office of the vice-president of the court.

Subdivision 3 Deputy presidents and commissioners

440 Deputy presidents (court) also deputy presidents of the commission

(1) A deputy president (court) is also a deputy president of the commission.

(2) The service of a deputy president (court) as a deputy president of the commission does not entitle the deputy president (court) to a salary or allowance in addition to the salary or allowance received as the holder of the office of a deputy president (court).

441 Appointment of other deputy presidents of the commission

(1) The Governor in Council may, by gazette notice, appoint a person as a deputy president of the commission.

(2) The person must be a person who has the experience, qualifications and standing to be appointed as an industrial commissioner under section 442(2).

442 Industrial commissioners

(1) The Governor in Council may, by gazette notice, appoint a person as an industrial commissioner.

(2) The person must have—

(a) a high level of experience in business or industry or a relevant entity; or

(b) suitable experience, qualifications and standing in the community to be appointed as an industrial commissioner.

(3) In this section—

relevant entity means the following—

Not authorised—indicative only

Not authorised—indicative only

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

(b) a department;

(c) an entity established—

(i) under an Act for a public or State purposes; or

(ii) under State authorisation for a public or State purpose.

443 When deputy president or industrial commissioner holds office

(1) A relevant commissioner holds office until the earlier of the following—

(a) the relevant commissioner turns 70;

(b) the relevant commissioner resigns by signed notice given to the Governor;

(c) the relevant commissioner becomes a member of the Executive Council or the Legislative Assembly;

(d) the relevant commissioner becomes a person mentioned in section 445(b), other than with the Minister's written approval;

(e) the relevant commissioner is removed from office under section 446.

(2) However, if a relevant commissioner stops holding office because of subsection (1)(a) or (b) while investigating or hearing a matter, the Governor in Council may, without reappointing the person as a relevant commissioner, continue the person in office for the time necessary to enable the investigation or hearing to be completed.

(3) The person continued in office may exercise the jurisdiction and powers of the commission necessary or convenient for the investigation or hearing to be completed.

444 Acting deputy president or industrial commissioner

(1) This section applies if a relevant commissioner temporarily can not perform the functions of office.

(2) The Governor in Council may, by gazette notice, appoint a person to act as the relevant commissioner.

445 Restrictions on appointment

The following persons can not be appointed as a relevant commissioner—

(a) a member of the Executive Council or Legislative Assembly;

(b) a person who—

(i) acts as a director of a corporation engaged in a calling; or

(ii) acts as an auditor of a corporation engaged in a calling or of a business; or

(iii) participates in any capacity in the management of a corporation engaged in a calling or the management of a business.

446 Removal of deputy president or industrial commissioner from office

The Governor may remove a deputy president appointed under section 441 or an industrial commissioner from office, on an address of the Legislative Assembly, for—

(a) mental or physical incapacity; or

(b) misbehaviour.

Not authorised—indicative only

Not authorised—indicative only

Division 3 The commission

Subdivision 1 Functions

447 Commission's functions

(1) The commission's functions include the following—

(a) establishing and maintaining a system of non-discriminatory modern awards that, together with the Queensland Employment Standards, provide for fair and just conditions of employment for employees;

(b) supervising the bargaining of agreements;

(c) certifying agreements;

(d) making bargaining awards;

(e) making modern awards;

(f) promoting cooperative and productive workplace relations;

(g) taking measures to prevent disputes;

(h) assisting parties to an industrial cause in negotiating or resolving a matter relevant to the cause, whether or not the matter is within the jurisdiction of the commission;

(i) resolving disputes by conciliation of industrial matters and, if necessary, by arbitration or making an order;

(j) resolving disputes in the negotiation of agreements—

(i) by conciliation; or

(ii) by arbitration, including by the making of determinations;

(k) resolving disputes over union coverage by making representation orders;

(l) resolving disputes by performing the functions conferred on the commission under a referral agreement;

(m) resolving other disputes that threaten to harm the community or the economy by conciliation and, if necessary, by arbitration;

(n) dealing with—

(i) applications brought under this Act or another Act, including for public service appeals; or

(ii) claims relating to dismissals;

(o) making declarations about industrial matters;

(p) any other function conferred on the commission under this Act or another Act.

(2) The commission must perform its functions in a way that—

(a) is consistent with the objects of this Act; and

(b) avoids unnecessary technicalities and facilitates the fair and practical conduct of proceedings under this Act.

Subdivision 2 Jurisdiction

448 Commission's jurisdiction

(1) The commission may hear and decide the following matters—

(a) a question of law or fact brought before it or that it considers expedient to hear and decide for the regulation of a calling;

(b) all questions—

(i) arising out of an industrial matter; or

(ii) involving deciding the rights and duties of a person in relation to an industrial matter; or

(iii) it considers expedient to hear and decide about an industrial matter;

(c) an industrial dispute referred to the commission under this Act or another Act by a member who has held a conference at which no agreement has been reached;

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(d) all appeals properly made to it under this Act or another Act;

(e) all matters referred to the commission under this Act or another Act.

(2) The commission may regulate a calling by an award—

(a) on application by an organisation, an employer, or 20 employees (who are not members of an employee organisation and not covered by an award) in a calling; or

(b) on application by the Minister; or

(c) on its own initiative.

(3) The commission—

(a) may hold an inquiry into or about an industrial matter on application by an interested person or on its own initiative; and

(b) must hold an inquiry into or about an industrial matter if the Minister, by notice, directs.

(4) The commission must report the result of the inquiry, and make recommendations, to the Minister.

(5) The commission may consolidate into 1 award all awards that apply to or affect an employer or class of employer in a calling, or the members of an organisation employed by the same employer or class of employer—

(a) on application by an organisation or an employer; or

(b) if the Minister, by notice, directs.

(6) When exercising power under subsection (5), the commission may make the amendments it considers necessary or convenient to give effect to the consolidated award.

(7) No provision of this Act or another Act limits, by implication, the commission's jurisdiction.

(8) In this section—

class includes a section of a class.

449 Limitations on jurisdiction

The commission does not have jurisdiction to hear and decide a matter about which another Act excludes—

(a) the jurisdiction of the commission about the matter; or

(b) the application of a decision under this Act about the matter.

450 Commission's jurisdiction is exclusive

The original and appellate jurisdiction conferred on the commission by this Act or another an Act is exclusive of the jurisdiction of the Supreme Court or another court or tribunal, unless otherwise prescribed under this Act or the other Act.

Subdivision 3 Powers

451 General powers

(1) The commission has the power to do all things necessary or convenient to be done for the performance of its functions.

(2) Without limiting subsection (1), the commission in proceedings may—

(a) give directions about the hearing of a matter; or

(b) make a decision it considers appropriate, irrespective of the relief sought by a party; or

(c) make an order it considers appropriate.

(3) The commission may, by general order or for a particular case, delegate to the registrar—

(a) the working out of a decision of the commission to implement the decision; or

(b) a function relating to the decision, including, for example—

(i) the giving of directions; or

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(ii) the making of orders; or

(iii) the preparation of rosters and schedules; or

(iv) a similar function it considers appropriate.

(4) The full bench may, to assist it in the resolution of proceedings—

(a) refer the whole or part of a question or matter before it to the commission—

(i) for investigation by the commission and the preparation of a report on the investigation; or

(ii) for another action it decides; or

(b) direct 1 or more of its members to carry out an investigation or inspection and prepare a report on the investigation or inspection.

(5) The commission or member must comply with the reference or direction.

452 Exercise of commission's powers

(1) The commission may, unless this Act provides otherwise, exercise its powers—

(a) on its own initiative; or

(b) on application by—

(i) a party to proceedings in which the power is to be exercised; or

(ii) an organisation.

(2) The commission may, on its own initiative—

(a) join 2 or more matters to be heard and decided by the commission, whether any of the matters arise under this Act or another Act; and

(b) hear and decide the matters in 1 proceeding.

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453 Powers not limited

This part does not limit, by implication, another power given to, or possessed by, the commission under this Act or another Act or law.

454 Commission to prevent discrimination in employment

In exercising a power, the commission must not allow discrimination in employment.

455 Commission may refuse to proceed

(1) This section applies if—

(a) proceedings before the commission relate to an industrial instrument; or

(b) an industrial instrument is sought in proceedings before the commission.

(2) The commission may refuse to hear and decide the proceedings if any of the employees who are, or would be, bound by the instrument are—

(a) involved in an industrial dispute; or

(b) contravening this Act or a decision.

(3) Subsection (2) applies whether or not the employees are employees whose employment may be affected by the decision to refuse to hear and decide the proceedings.

456 Commission may stay or dismiss applications in certain circumstances

(1) The commission may stay or dismiss an application or complaint if the act or omission the subject of the application or complaint is being, or has been, dealt with by the commission in another proceeding.

(2) This section applies despite a provision of this Act or another Act that requires the commission to deal with the application or complaint.

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(3) A time limit for doing anything under this Act or another Act in relation to the application or complaint does not run while the application or complaint is stayed.

456A Consolidation of proceedings

(1) This section applies if 2 or more proceedings before the commission—

(a) involve the same or related facts and circumstances; or

(b) the decision in 1 proceeding will decide or affect the other proceeding or proceedings.

(2) The commission may—

(a) order that the proceedings be consolidated; or

(b) order that the proceedings be heard together or in a particular sequence; or

(c) give a direction the commission considers appropriate for the conduct of the proceeding or proceedings.

456B Punishment of contempt

(1) The commission has, for itself, all the protection, powers, jurisdiction and authority the Supreme Court has, for that court, in relation to contempt.

(2) The commission must comply with the *Uniform Civil Procedure Rules 1999* relating to contempt of court, with necessary changes, including changes prescribed by the rules.

(3) The registrar or another officer of the commission may apply to the commission for an order that a person be committed to prison for contempt of the commission.

(4) The commission's jurisdiction and powers to punish a contempt of the commission may be exercised on the application of a person or on the commission's own initiative.

(5) The commission's jurisdiction and powers to punish a contempt of the commission may be exercised only by the

president, the vice-president or a deputy president holding office under section 440(1).

(6) Subsection (7) applies if the commission is constituted by either of the following sitting alone—

(a) a deputy president holding office under section 441(1);

(b) an industrial commissioner.

(7) The deputy president or industrial commissioner may certify the contempt in writing to the president and, for that purpose, it is enough for the deputy president or industrial commissioner to be satisfied there is evidence of contempt.

(8) The commission has jurisdiction to punish an act or omission as a contempt of the commission in addition to any penalty that may be imposed for the act or omission.

Subdivision 4 Miscellaneous

457 Associates

(1) The Chief Justice may, on the recommendation of the president or a member authorised by the president, appoint an associate to the president.

(1A) The president may appoint associates to the vice-president, a deputy president or a commissioner.

(2) An associate holds office on the wages and conditions decided by the Minister.

(3) An associate is to be appointed under this Act, and not under the *Public Sector Act 2022*.

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Division 4 Particular powers of commission

Subdivision 1 General rulings

458 Power to make general rulings

(1) The full bench may make general rulings about—

(a) an industrial matter for employees bound by an industrial instrument if multiple inquiries into the same matter are likely; or

(b) a Queensland minimum wage for all employees.

Note—

See subdivision 1A for provisions about the State wage case.

(2) Before conducting a hearing about the ruling, the full bench must—

(a) give reasonable notice, in the way it considers appropriate, of its intention to conduct the hearing; and

(b) give all interested persons an opportunity to be heard.

(3) This section applies subject to subdivision 1A.

459 Requirements for general rulings

(1) A ruling—

(a) must state a date (the ***stated date***) on and from which it has effect; and

(b) has effect as a decision of the full bench on and from the stated date.

(2) A ruling may exclude from the operation of any of its provisions—

(a) a class of employers or employees; or

(b) employers or employees in a particular locality; or

(c) an industrial instrument or part of an industrial instrument.

(3) As soon as practicable after making a ruling, the registrar must publish a notice of the ruling and the stated date on the QIRC website.

(4) The notice, on and from the stated date, replaces a notice of a ruling on the same subject matter previously published.

(5) The ruling continues in force until the end of the day immediately before the stated date for a subsequent ruling on the same subject matter.

460 Relationship with industrial instruments

(1) If a ruling takes effect while an industrial instrument, other than an industrial instrument or part of an industrial instrument excluded under section 459(2), is in force—

(a) the industrial instrument is taken to be amended so it is consistent with the ruling on and from the stated date; and

(b) the amendment has effect as an industrial instrument on and from the stated date.

(2) The registrar may amend an industrial instrument taken to be amended under subsection (1) as the registrar considers appropriate—

(a) on an application made under the rules; or

(b) on the registrar's own initiative.

(3) This section applies despite chapter 3.

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Subdivision 1A State wage case

460A Requirement to make annual ruling

The full bench must ensure a general ruling about a Queensland minimum wage for all employees is made at least once each year.

460B Adoption of outcomes of FWC's annual wage review

(1) Unless an interested person objects, the full bench must make a ruling mentioned in section 460A adopting the outcomes of a federal wages review without receiving evidence or submissions or conducting a hearing.

(2) At least 21 days before making a ruling under subsection (1), the full bench must give notice in the way the full bench considers appropriate of the following matters—

(a) the terms of the proposed ruling;

(b) that, in the absence of an objection by an interested person, the full bench will make the ruling on its own initiative under this section.

(3) If an objection is made by an interested person, the full bench must conduct a hearing, and receive evidence and submissions, in relation to the objection before making a ruling.

(4) In this section—

federal wages review means an annual wage review conducted and completed by the FWC under the *Fair Work Act 2009* (Cwlth), section 285.

interested person means—

(a) the Minister; or

(b) an employer or employer organisation; or

(c) an employee organisation.

460C Provision about increase of wages in relation to particular employees

(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 directive under the *Public Sector Act 2022*.

(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.

Subdivision 2 Statements of policy

461 Power to make statement of policy

The full bench may make a statement of policy about an industrial matter, whether or not the matter is before the commission.

462 Effect of statement of policy

(1) On application by a party to an award, a stated policy may be given effect by being inserted in the award.

(2) The registrar may give effect to a stated policy by making directions about procedural matters to the extent allowed by the commission.

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(3) A direction by the registrar under subsection (2) binds all persons to which the direction relates.

Subdivision 3 Declarations about industrial matters

463 Power to make declarations about industrial matters

(1) The commission may, on application by an entity mentioned in section 464, make a declaration about an industrial matter.

(2) The commission may make the declaration whether or not consequential relief is or could be claimed.

(3) Subject to chapter 11, part 6, a declaration made by the commission under this section is binding in a proceeding under this Act.

464 Who may apply for declaration

The following may make an application mentioned in section 463—

(a) a person who may be directly affected by the declaration;

(b) an inspector;

(c) an organisation of employees or employers of which a person mentioned in paragraph (a) is a member, if it is acting with the person's written consent;

(d) an organisation of employees or employers who may be directly affected by the declaration.

Subdivision 4 Declaring persons to be employees or employers

465 Power to declare persons to be employees or employers

(1) The full bench may, on application by an entity mentioned in section 466, make an order declaring—

(a) a class of persons who perform work in an industry under a contract for services to be employees; and

(b) a person to be an employer of the employees.

(2) The full bench may make an order only if it considers the class of persons would be more appropriately regarded as employees.

(3) In considering whether to make an order, the full bench may consider—

(a) the relative bargaining power of the class of persons; or

(b) the economic dependency of the class of persons on the contract; or

(c) the particular circumstances and needs of low-paid classes of persons; or

(d) whether the contract is designed to, or does, avoid the provisions of an industrial instrument; or

(e) whether the contract is designed to, or does, exclude the operation of the Queensland minimum wage; or

(f) the particular circumstances and needs of particular classes of persons including women, persons from a non-English speaking background, young persons and outworkers; or

(g) the consequences of not making an order for the class of persons.

(4) In this section—

contract includes—

(a) an arrangement or understanding; and

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(b) a collateral contract relating to a contract.

industrial instrument includes a federal industrial instrument.

466 Who may apply for declaration

The following may apply for a declaration under section 465—

(a) an organisation;

(b) a State peak council;

(c) the Minister.

Subdivision 5 Interpretation of industrial instruments

467 Power to interpret industrial instruments

(1) The commission may give an interpretation of an industrial instrument, on application by an entity mentioned in section 468.

(2) If an application under this section by an inspector relates to an alleged ambiguity, the commission must hear and decide the application in the absence of a statement of agreed facts.

468 Who may apply for an interpretation of an industrial instrument

(1) The following may, under section 467, apply for an interpretation of an industrial instrument, other than a certified agreement or bargaining award—

(a) the Minister;

(b) an organisation;

(c) an employer;

(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;

(e) an inspector.

(2) The following may, under section 467, apply for an interpretation of a certified agreement or bargaining award—

(a) the Minister; or

(b) an organisation, or other person, bound by the agreement or award; or

(c) an employee whose employment is subject to the agreement 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; or

(d) an inspector.

Subdivision 6 Assistance by commission

469 Commission may provide assistance

(1) If the parties to an industrial cause agree in writing, the parties may ask the commission to assist the parties in negotiating or resolving a matter relevant to the industrial cause (a ***facilitation request***), whether or not the matter is within the jurisdiction of the commission.

(2) The facilitation request must be agreed between the parties, and may—

(a) be in the form agreed between the parties; and

(b) include a request about how the matter may be resolved, including, for example, by—

(i) facilitating negotiations or discussions between the parties; or

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(ii) deciding an issue or question relating to the matter; or

(iii) conciliation; or

(iv) arbitration; and

(c) be amended by agreement between the parties at any time.

(3) On receiving a facilitation request, the commission may provide the assistance requested by the parties.

(4) A decision made by the commission in providing the assistance binds the parties to the industrial cause only if the parties agree, in writing, for the decision to bind the parties.

(5) This section does not limit a function or power of the commission under another provision of this Act to conciliate, arbitrate or otherwise decide a matter.

470 Commission may perform dispute resolution functions conferred by agreement of parties to disputes

(1) This section applies if—

(a) there is an industrial dispute between—

(i) an employee organisation; and

(ii) 1 or more employers or employer organisations; and

(b) the parties to the dispute have agreed in writing (the ***referral agreement***) that the dispute, or disputes of a class to which the dispute belongs, is or are to be resolved by the commission.

(2) A party to the dispute may apply to the commission for the commission to perform the functions (the ***dispute resolution functions***) for resolving the dispute under the referral agreement.

(3) If an application is made under subsection (2), the commission may perform the dispute resolution functions.

(4) Without limiting subsections (2) and (3), the dispute resolution functions may include 1 or more of the following—

(a) conciliating the dispute;

(b) arbitrating the dispute;

(c) granting a remedy or other relief of the kind provided for under chapter 8, part 2, division 2 or this part;

(d) deciding another issue or question arising in the dispute.

(5) A decision made by the commission in performing the dispute resolution functions binds the parties to the dispute only if the referral agreement provides for the decision to bind the parties.

(6) This section does not limit a function or power of the commission under another provision of this Act to conciliate, arbitrate or otherwise decide a matter.

Subdivision 7 Amending or voiding contracts

471 Power to amend or declare void contracts

(1) On application by an entity under section 472, the commission may amend or declare void (wholly or partly) a contract if it considers—

(a) the contract is—

(i) a contract of employment that is not covered by an industrial instrument or federal industrial instrument; or

(ii) a contract for services; and

(b) the contract is an unfair contract.

(2) The commission must not—

(a) amend a contract to include an accident pay provision; or

(b) declare a contract wholly or partly void, because it does not contain an accident pay provision.

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(3) In deciding whether to amend or declare void a contract, or part of a contract, the commission may consider—

(a) the relative bargaining power of the parties to the contract and, 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) an industrial instrument, a federal industrial instrument or this Act; or

(d) the Queensland minimum wage; or

(e) anything else the commission considers relevant.

(4) The commission may consider a contract to be an unfair contract—

(a) even if the contract was made before the commencement; and

(b) if it considers the contract—

(i) was an unfair contract when it was entered into; or

(ii) became an unfair contract after it was entered into because of the conduct of the parties, or a variation to the contract or for any other reason it considers sufficient.

(5) The commission may make an order it considers appropriate about payment of an amount for a contract amended or declared void.

(6) In this section—

accident pay provision means a provision for accident pay, or other payment, on account of a worker sustaining an injury.

contract includes—

(a) an arrangement or understanding; and

(b) a collateral contract relating to a contract.

injury means an injury under the *Workers' Compensation and Rehabilitation Act 2003*.

unfair contract means a contract that—

(a) is harsh, unconscionable or unfair; or

(b) is against the public interest; or

(c) provides, or has provided, a total remuneration less than that which a person performing the work as an employee would receive under an industrial instrument or this Act; or

(d) is designed to, or does, avoid the provisions of an industrial instrument.

worker means a worker under the *Workers' Compensation and Rehabilitation Act 2003*.

472 Who may apply for an amendment or declaration

(1) An application for an amendment or declaration for a contract under section 471 may be made by—

(a) a party to the contract; or

(b) for the party required under the contract to provide services—an inspector; or

(c) an organisation of employees or employers of which a party is, or has applied to become, a member, if it is acting with the party's written consent.

(2) However, a person can not make the application if—

(a) an application has been made under section 317 for the same matter; or

(b) the person—

(i) is not a public service officer employed on tenure under the *Public Sector Act 2022*; and

(ii) has an annual wage of equal to or more than the amount of the high income threshold under the Commonwealth Fair Work Act, section 333.

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Not authorised—indicative only

Subdivision 8 Injunctions

473 Power to grant injunctions

(1) On application by a person under section 474, the commission may grant an injunction—

(a) to compel compliance with an industrial instrument, a permit or this Act; or

(b) to restrain or prevent a contravention, or continuance of a contravention, of an industrial instrument, a permit or this Act; or

(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.

(2) The injunction may apply to—

(a) the officers or members of an organisation generally; or

(b) particular officers or members of an organisation; or

(c) a particular employer; or

(d) a particular employee.

(3) The commission must decide how notice of, and service of the injunction on, each of the persons to whom the injunction applies must be given.

(4) Without limiting subsection (3), the commission may order that the notice, and substituted service of the injunction, be given by advertisement.

(5) If a person to whom the injunction applies is given notice of the injunction, the person must comply with the injunction.

(6) If the injunction applies to an organisation, the organisation and each officer of the organisation must ensure the officers and members of the organisation comply with the injunction.

(7) If the officers or members, or a substantial number of the officers or members, of an organisation to whom an injunction

applies contravene the injunction, the organisation and each officer of the organisation is taken to have failed to comply with the injunction.

(8) However, subsection (7) does not apply to the organisation or officer if the organisation or officer proves, on the balance of probabilities, that the organisation or officer took all reasonable steps to ensure the officers or members complied with the injunction.

(9) The commission can not grant an injunction for a proposed contravention of section 316, 326, 329 or 330.

(10) In this section—

injunction includes an interim injunction.

organisation includes a branch of the organisation.

474 Who may apply for an injunction

An application for an injunction under section 473 may be made by—

(a) a party to industrial action or an industrial dispute; or

(b) an applicant for an industrial matter other than a party mentioned in paragraph (a); or

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

(d) a person who is, or is likely to be, directly affected by industrial action or an industrial dispute; or

(e) the registrar; or

(f) the chief inspector; or

(g) an inspector.

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Not authorised—indicative only

Subdivision 9 Recovery of unpaid wages

475 Power to recover unpaid wages and superannuation contribution etc.

(1) On application by a person under section 476, the commission may order payment of the following for the period of 6 years before the date of the application—

(a) an employee's unpaid wages;

(b) an apprentice's unpaid tool allowance under section 137;

(c) remuneration lost by an apprentice or trainee because the employer has contravened section 371(2);

(d) contributions to the approved superannuation fund payable for an eligible employee that are unpaid.

(2) A presidential member may, either before or after the start of a hearing, remit the application to a magistrate if the presidential member considers the application could be more conveniently heard by a magistrate, having regard to, for example, costs or the difficulty or expense of producing witnesses.

(3) If the application is remitted to a magistrate, the magistrate may hear and decide the application as if it had been brought before the commission, and the magistrate's decision is taken to be a decision of the commission.

476 Requirements for application

(1) An application for an order mentioned in section 475 may only be made if the total amount claimed is $100,000 or less.

(2) The application may be made by—

(a) for a claim for occupational superannuation—an employee who is an eligible employee on whose behalf an employer is required to contribute to an approved superannuation fund; or

(b) for any other claim—an employee; or

(c) an employee organisation of which the eligible employee or employee is a member, acting for the employee; or

(d) a person authorised by the eligible employee or employee to make the application, acting for the employee; or

(e) an inspector.

(3) However, a person can not make an application under this section if an application has been made under section 379 or 396 for the same matter.

(4) The application must be made within 6 years after the amount claimed became payable.

(5) In this section—

occupational superannuation includes an amount equal to the return that would have accrued in relation to the occupational superannuation had it been properly paid to an approved superannuation fund.

477 Orders

(1) On hearing the application, the commission or magistrate—

(a) must order the employer to pay the employee—

(i) the amount the commission or magistrate finds to be payable and unpaid to the employee for the 6 years before the date of the application; and

(ii) an amount the commission or magistrate considers appropriate, based on the return that would have accrued in relation to the contributions had it been properly paid to the approved superannuation fund; and

(b) may make an order for the payment despite an express or implied provision of an agreement to the contrary; and

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(c) may order the payment to be made on the terms the commission or magistrate considers appropriate.

(2) For an order about an unpaid contribution, the order must require the contribution to be paid to—

(a) if the employee is employed by the employer—the approved superannuation fund; or

(b) if the employee is no longer employed by the employer—

(i) the approved superannuation fund; or

(ii) a complying superannuation fund; or

(iii) a superannuation fund nominated by the employee; or

(iv) an eligible rollover fund; or

(v) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.

(3) The contribution must be paid into the unclaimed moneys fund if a former employee in relation to whom an order is made—

(a) can not be located after making reasonable attempts; or

(b) does not nominate a superannuation fund for the purpose of the order, if required by the order to do so.

Subdivision 10 Orders about right to represent a group of employees

479 Power of full bench to make orders about rights of employee organisations to represent

On application by an entity under section 480, the full bench may make the following orders about a demarcation dispute—

(a) an order that an employee organisation has the right, to the exclusion of another organisation, to represent the industrial interests of a particular group of employees who are eligible for membership of the organisation;

(b) an order that an employee organisation that does not have the right to represent the industrial interests of a particular group of employees has the right;

(c) an order that an employee organisation does not have the right to represent the industrial interests of a particular group of employees who are eligible for membership of the organisation.

480 Who may apply for order

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

481 Limitations on when order may be made

(1) The full bench may make an order under section 479 only if—

(a) the full bench considers conciliation proceedings would not help in the prevention or settlement of the dispute; or

(b) conciliation proceedings for the dispute are completed, but the dispute has not been fully settled.

(2) Also, the full bench may make the order only if it is satisfied—

(a) the conduct, or threatened conduct, of an organisation to which the order would relate, or of an officer, member or employee of the organisation is—

(i) preventing, obstructing or restricting the performance of work; or

(ii) harming an employer's business; or

(iii) preventing, obstructing or restricting negotiations or discussion between the employer and another

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organisation or the employer and the employer's employees; or

(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.

482 Matters the full bench must consider in making order

In considering whether to make an order, the full bench must consider—

(a) the wishes of employees who would be affected by the order; and

(b) the effect of an order on the operations (including operating costs, work practices, efficiency and productivity) of the employees' employer; and

(c) whether it should consult with appropriate State peak councils or organisations; and

(d) the ability of the organisation to adequately represent the employees' interests; and

(e) an agreement or understanding that deals with an employee organisation's right to represent the industrial interests of a particular group of employees; and

(f) the consequences of not making an order for the employees, employer or organisation; and

(g) another order made by the commission that it considers relevant.

483 Orders and ancillary orders

(1) If the full bench makes an order under this subdivision, it may also make an ancillary order it considers necessary to support the order, including an order prohibiting—

(a) an officer or employee of an organisation from representing a person in a matter before the court, the commission, the full bench or the registrar; and

(b) an organisation from arranging for an agent to represent a person under chapter 6; and

(c) an organisation from holding out membership on the basis of being able to provide representation in stated industrial matters.

(2) An order under this subdivision, and an ancillary order, may—

(a) be subject to conditions; and

(b) apply to an individual or an organisation.

(3) The full bench may, on application by the Minister or a person or organisation 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 individual or organisation to which an order mentioned in subsection (2) or (3) applies must comply with the order.

Maximum penalty—100 penalty units.

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Not authorised—indicative only

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—

(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

Not authorised—indicative only

Not authorised—indicative only

(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.

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.

Subdivision 11 Reopening proceedings

484 Power to reopen proceedings

(1) On application by a person mentioned in section 485, proceedings may be reopened by—

(a) for proceedings taken before the full bench—the full bench; or

(b) otherwise—the commission.

Not authorised—indicative only

Not authorised—indicative only

(2) If the commission reopens proceedings, it may—

(a) revoke or amend a decision or recommendation made by it; and

(b) make the decision or recommendation it considers appropriate.

(3) If a recommendation of the commission has been acted on by the Governor in Council and the commission later revokes or amends the recommendation, the Governor in Council may—

(a) cancel the action taken on the recommendation to accord with the commission's revocation or amendment; or

(b) amend the action to accord with the commission's revocation or amendment.

(4) Failure to give notice to a person of the proceedings reopened under this section, or any part of the proceedings, leading to the making by the commission of a decision binding on the person—

(a) does not invalidate or otherwise affect the decision; but

(b) the person may apply to further reopen the proceedings if—

(i) the person may apply for reopening of proceedings under section 485; and

(ii) the person's failure to participate in the previously reopened proceedings was because of the failure to give the notice.

(5) If the commission grants an application for reopening, it may give the retrospective operation to its decision made in the reopened proceedings it considers appropriate.

485 Who may apply to reopen proceedings

An application for reopening of proceedings may be made by—

(a) the Minister; or

(b) a party to the proceedings; or

(c) for proceedings other than proceedings relating to the making of a certified agreement or bargaining award—

(i) an organisation whose members are bound or affected by, or dissatisfied with, the proceedings; or

(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.

Subdivision 12 Referring matters to full bench or court

486 Referring matter to full bench

(1) The commission may, at any stage of proceedings and on the terms the commission considers appropriate, refer the matter to which the proceedings relate to the full bench.

(2) A commissioner may refer the matter only with the president's approval.

(4) Before the hearing of a matter by the commission starts, a party to the proceedings may apply to the president for the matter to be referred to the full bench.

(6) The full bench may hear and decide a matter referred to it and make the decision it considers appropriate.

Not authorised—indicative only

Not authorised—indicative only

487 Referring question of law to court

(1) The commission may, at any stage of proceedings and on the terms it considers appropriate, refer in writing a question of law relevant to the proceedings for the court's opinion.

(2) The court may—

(a) hear and decide the question of law; and

(b) remit the question of law, with its opinion, to the commission.

(3) The commission must give effect to the court's opinion.

Subdivision 13 Entry and inspection

488 Power to enter and inspect

(1) A member, an officer of the commission or another person with a member's written authority (a ***commission official***), may—

(a) enter a workplace in relation to which—

(i) an industrial dispute exists, is impending or threatened, or is likely to arise; or

(ii) an industrial matter exists; or

(iii) an industrial instrument or permit exists; or

(iv) a member of the commission reasonably suspects an offence against this Act has been, or is being, committed; and

(b) inspect any work, machinery, appliance, materials, article or thing in or on the workplace; and

(c) question a person in or on the workplace about a matter relevant to the commission's concern with the workplace.

(2) A power under subsection (1) may be exercised only during working hours at the workplace.

(3) If a commission official is seeking to exercise a power under subsection (1), a person must not—

(a) refuse or unduly delay the official's entry to the workplace; or

(b) fail to answer a question as required under subsection (1)(c), unless the person has a lawful excuse; or

(c) wilfully give false information or make a false statement to the official.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(4) In this section—

workplace means a place where—

(a) a calling is carried on; or

(b) work has been, or is being, performed; or

(c) another activity has happened, or is happening.

Subdivision 14 Secret ballots

489 Power to conduct a secret ballot

(1) The commission may direct when, where and how a secret ballot is to be conducted.

(2) The registrar must—

(a) comply with the direction; and

(b) for the conduct of the ballot—do the things provided for by the rules.

(3) Public service officers must help the registrar, as required, to conduct the ballot.

(4) The registrar must advertise the result of the ballot in a newspaper circulating in the locality concerned, unless the commission otherwise directs.

Not authorised—indicative only

Not authorised—indicative only

490 Person must not interfere with secret ballot

(1) A person must not, in relation to a secret ballot—

(a) resist or obstruct the registrar, a public service officer, or a person acting under the direction or authority of the registrar, performing a duty imposed, or an action directed or authorised to be done, for the ballot; or

(b) at or near the place where the ballot is being taken—

(i) threaten or intimidate, or obstruct the free passage of, an employee going to or attending at the place to vote at the ballot; or

(ii) threaten or intimidate an employee so that the employee would not vote or would vote in a particular way at the ballot; or

(c) obstruct an employee or another person in the performance of an action directed or authorised to be done for the ballot; or

(d) threaten or intimidate an employee or other person to prevent the employee or another person from performing an action directed or authorised to be done for the ballot; or

(e) vote at the ballot unless the person—

(i) is entitled to vote; and

(ii) has received a ballot paper from the registrar; or

(f) vote at the ballot in another person's name; or

(g) if the person is entitled to vote at the ballot—mark a ballot paper relating to the ballot, other than the ballot paper received by the person from the registrar.

Maximum penalty—40 penalty units.

(2) In this section—

prevent includes attempt to prevent.

resist or obstruct includes attempt to resist or obstruct.

threaten or intimidate includes attempt to threaten or intimidate.

vote includes attempt to vote.

Division 5 Arrangements with other authorities

Subdivision 1 Member may also be member of Australian commission

491 Member may hold other appointment

A member who is appointed as a member of the Australian commission may hold that appointment and the appointment as a member at the same time.

Subdivision 2 Dual commissioners

492 Appointment of Commonwealth official as deputy president or industrial commissioner

(1) The Governor in Council may, by gazette notice, appoint a member of the Australian commission to be a deputy president or an industrial commissioner (each a ***dual commissioner***).

(2) Sections 423 and 446 and 586 do not apply to the appointment of a dual commissioner or to a dual commissioner.

(3) The appointment—

(a) is for the term decided by the Governor in Council and stated in the instrument of appointment; and

(b) may be ended, with the Governor in Council's approval, by notice given by the Minister to the dual commissioner.

(4) A dual commissioner—

Not authorised—indicative only

Not authorised—indicative only

(a) is not entitled to remuneration for performing the functions of a deputy president or an industrial commissioner; but

(b) is entitled to be paid expenses reasonably incurred by the dual commissioner in exercising powers and performing functions as a deputy president or an industrial commissioner.

(5) A dual commissioner stops being a deputy president or an industrial commissioner if the person—

(a) becomes a person mentioned in section 445; or

(b) stops being a member of the Australian commission.

493 Role of dual commissioner

(1) A dual commissioner, as agreed from time to time by the president and the president of the Australian commission—

(a) must perform the functions of a deputy president or an industrial commissioner; and

(b) has, and may exercise for a particular matter, the powers of—

(i) a deputy president or an industrial commissioner; and

(ii) a member of the Australian commission.

(2) A provision of this Act prescribing the functions or powers of a deputy president or an industrial commissioner is subject to subsection (1) in its application to a dual commissioner.

Subdivision 3 References to Commonwealth official

494 Referring matter to Commonwealth official

(1) The president may ask the president of the Australian commission to nominate a member of that commission to deal with an industrial matter before the commission.

(2) If a nomination is made, the president may refer the industrial matter to the nominated member, to be dealt with by the nominated member under this Act.

(3) In dealing with the industrial matter, the nominated member—

(a) has the powers of an industrial commissioner; and

(b) in exercising the powers, is taken to constitute the commission.

(4) The nominated commissioner's decision is taken to be a decision of the commission.

(5) The referral of an industrial matter to a nominated commissioner—

(a) does not derogate from the commission's authority to exercise jurisdiction in relation to the matter; and

(b) may be revoked by the president by notice given to the nominated commissioner.

(6) In this section—

industrial matter includes part of an industrial matter.

Subdivision 4 Conferences and joint sessions with industrial authorities

495 Conferences with industrial authorities

(1) This section applies if—

Not authorised—indicative only

Not authorised—indicative only

(a) the president considers it desirable for a conference to be held with an industrial authority about an industrial matter; and

(b) the industrial authority agrees to the conference.

(2) The president may confer, or direct a commissioner to confer, with the industrial authority to coordinate decisions—

(a) under this Act about the industrial matter; and

(b) by the industrial authority.

496 Joint sessions with industrial authorities

(1) This section applies if—

(a) the president considers proceedings relating to an industrial matter before the commission should be heard in a joint session with an industrial authority; and

(b) the industrial authority agrees to the joint session.

(2) The president may—

(a) hear, or direct a commissioner to hear, the proceedings in a joint session with the industrial authority; or

(b) confer, or direct the commissioner to confer, with the industrial authority about the proceedings and the decision to be made in the proceedings; or

(c) join, or direct the commissioner to join, with the industrial authority in the decision made in the proceedings.

497 Similar matters before full bench and industrial authority

(1) This section applies if—

(a) the president considers an industrial authority has before it an industrial matter similar to an industrial matter before the full bench that should be heard in a joint session; and

(b) the industrial authority agrees to the joint session.

(2) The president may—

(a) if the president is a member of the full bench—participate in a joint session with the industrial authority about the industrial matter; or

(b) otherwise—direct a member of the full bench to participate in joint session with the industrial authority about the industrial matter.

(3) The president or member must report the result of the joint session to the full bench.

498 Adoption of result of joint session

(1) This section applies if the president or member reports the result of the joint session to the full bench under section 497.

(2) The full bench may make a general ruling under section chapter 11, part 2, division 4, subdivision 1 about the industrial matter the subject of the joint session.

(3) Before making the ruling, the full bench must decide whether a further hearing is necessary in relation to the matter.

499 Member's powers in joint session

A member participating in a joint session with an industrial authority, in relation to the industrial matter dealt with in the joint session—

(a) has the powers of the commission; and

(b) must perform the functions of the commission.

500 President may decide matter not to be dealt with in joint session

The president may decide an industrial matter should not be dealt with in a joint session and, if the decision is made after a joint session about the matter starts—

Not authorised—indicative only

Not authorised—indicative only

(a) the member participating in the joint session must immediately stop participating; and

(b) the industrial matter may proceed before the commission or, if appropriate, the full bench.

Subdivision 5 Other functions etc. and arrangements

501 Functions and powers vested in commission by other jurisdictions

(1) The commission may perform the functions and exercise the powers conferred on it under—

(a) the Commonwealth Fair Work Act; or

(b) another Act of a jurisdiction other than Queensland declared for this section by a regulation.

(2) A decision of the commission under authority conferred by subsection (1) is not a decision made by it under this Act.

502 Arrangements with Commonwealth public service

(1) Arrangements may be made under the *Public Sector Act 2022*, section 82 for—

(a) a Commonwealth public servant to perform functions and exercise powers under this Act; and

(b) a Queensland public service employee to perform functions and exercise powers under the Commonwealth Fair Work Act.

(2) An arrangement under subsection (1)(a) is enough authority for a Commonwealth public servant to perform the functions and exercise the powers of a Queensland public service employee under this Act.

(3) In this section—

Commonwealth public servant means—

(a) an officer of the Commonwealth public service; or

(b) a person performing functions and exercising powers under the Commonwealth Fair Work Act.

Part 3 Industrial Magistrates Court

Division 1 Preliminary

503 Industrial Magistrates Court

An Industrial Magistrates Court is a court of record.

504 Constitution

An Industrial Magistrates Court is constituted by a magistrate sitting alone.

Division 2 Industrial magistrates

505 Office of industrial magistrates

Each of the following persons is an industrial magistrate (a ***magistrate***)—

(a) a magistrate;

(b) an acting magistrate.

Division 3 Jurisdiction

506 Magistrate's jurisdiction

(1) A magistrate has jurisdiction—

(a) to exercise powers conferred on, or jurisdiction given to, magistrates by this Act or another Act; and

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Not authorised—indicative only

(b) to hear and decide proceedings about the following matters—

(i) an offence against this Act, unless the offence is one for which this Act makes other provision;

(ii) a claim for wages;

(iii) a claim for damages suffered by an employee because of the employer failing to pay the employee's wages;

(iv) a claim for the repayment of a fee received by a private employment agent in contravention of section 400(1) or (2);

(v) a claim for damages for contravention of an agreement made under an industrial instrument;

(vi) a claim under chapter 9, part 2, division 2.

(2) A magistrate has jurisdiction throughout the State.

(3) In this section—

fee includes charge, expense of any kind and reward.

507 Magistrates' jurisdiction is exclusive

(1) The jurisdiction conferred on a magistrate by this Act or another Act is exclusive of the jurisdiction of another court or tribunal, unless this or the other Act provides otherwise.

(2) Jurisdiction conferred on a magistrate for the following matters is not exclusive of another court's jurisdiction—

(a) a claim for an employee's wages payable under an agreement in which wages are payable at a price or rate higher than that fixed by a relevant industrial instrument or permit or under section 22;

(b) a claim for an employee's wages payable under an agreement in which wages are payable at a price or rate higher than that fixed by a relevant industrial instrument or permit;

(c) a claim for an employee's wages payable under an agreement in which wages are payable at a price or rate that is not fixed by a relevant industrial instrument or permit;

(d) a claim for amounts payable, with an employee's written consent, from an employee's wages;

(e) a claim for the repayment of a fee received by a private employment agent in contravention of section 346(1) or (2).

(3) In this section—

fee includes charge, expense of any kind and reward.

Division 4 Fair work claims

Subdivision 1 Preliminary

507A Purpose of division

The purpose of this division is to provide for the timely, inexpensive and informal resolution of fair work claims in an Industrial Magistrates Court.

Notes—

1 See the *Fair Work Act 2009* (Cwlth), section 539 for the conferral of jurisdiction on eligible State or Territory courts in relation to the contravention of civil remedy provisions under that Act.

2 See also the *Fair Work Act 2009* (Cwlth), chapter 4, part 4-1 and the *Judiciary Act 1903* (Cwlth), section 79 for the practice and procedure of an Industrial Magistrates Court when exercising jurisdiction under the *Fair Work Act 2009* (Cwlth).

507B Definitions for division

In this division—

civil remedy provision see the *Fair Work Act 2009* (Cwlth), section 539(1) and (3).

Not authorised—indicative only

Not authorised—indicative only

fair work claim means a claim in relation to a civil remedy provision.

Subdivision 2 Conciliation

507C Conciliation

(1) This section applies if a person has started a proceeding for a fair work claim in an Industrial Magistrates Court.

(2) The registrar may refer the fair work claim to conciliation.

(3) The referral of the fair work claim to conciliation—

(a) must be done as soon as practicable after the proceeding for the claim is started; and

(b) must be done before the Industrial Magistrates Court hears the claim; and

(c) should preferably be done before a party to the claim files a defence to the claim.

(4) If the registrar refers the fair work claim to conciliation and a party does not wish to participate in conciliation, the party must notify the registrar of that fact—

(a) as soon as practicable; and

(b) before a conciliation conference starts.

(5) If the registrar is notified under subsection (4)—

(a) the conciliation must not proceed; and

(b) the registrar must—

(i) notify the Industrial Magistrates Court that the conciliation is not proceeding and the reason it is not proceeding; and

(ii) refer the matter for hearing by the Industrial Magistrates Court.

(6) The purposes of conciliation are to—

(a) enable the parties to reach agreement on as many matters as possible; and

(b) reduce the scope of the matters at issue between the parties; and

(c) achieve a timely, cost-effective, proportionate and agreed resolution of the fair work claim if possible.

(7) The conciliator appointed for the fair work claim must start conciliating the claim as soon as practicable after being appointed.

507D Conciliators for fair work claims

Each commissioner is a conciliator for fair work claims.

507E Procedure for conciliation process

(1) For a conciliation process, the conciliator—

(a) must decide the procedure to be used; and

(b) may adopt any procedure that will, in the conciliator's opinion, enable the conciliator to perform the conciliator's functions.

Example of a procedure that may be used—

a conciliation conference

(2) The registrar may, at any time of the registrar's own initiative or on the application of a party or the conciliator, give directions about the procedure to be used for a conciliation process.

507F Conciliator to file certificate

(1) As soon as practicable after a conciliation process is finished, the conciliator must file with the registrar a certificate about the conciliation process in the form required under the rules.

(2) For subsection (1), the conciliation process is finished if—

Not authorised—indicative only

Not authorised—indicative only

(a) the parties agree on a resolution of all or part of the fair work claim; or

(b) the conciliator decides the conciliation process is finished.

507G Conciliation agreements

(1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the fair work claim.

(2) The agreement must be written down and signed by or for each party.

507H Orders giving effect to conciliation agreements

(1) A party may apply to the Industrial Magistrates Court for an order giving effect to an agreement reached in a conciliation process.

(2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.

(3) The Industrial Magistrates Court may make any order giving effect to an agreement reached in a conciliation process the court considers appropriate in the circumstances.

507I Admission made in conciliation process

(1) Evidence of anything done or said, or an admission made, during the conciliation process for a fair work claim is admissible at the hearing of the claim or in another civil proceeding or elsewhere only if all the parties agree.

(2) In this section—

civil proceeding does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

Subdivision 3 Other provision

507J Fair work small claim—representation

(1) A party to a fair work small claim may be represented in an Industrial Magistrates Court by an official of an industrial association.

(2) In this section—

fair work small claim means a fair work claim that may be dealt with under the small claims procedure mentioned in the *Fair Work Act 2009* (Cwlth), section 548.

industrial association see the *Fair Work Act 2009* (Cwlth), section 12.

official, of an industrial association, see the *Fair Work Act 2009* (Cwlth), section 12.

Note—

See also the *Fair Work Act 2009* (Cwlth), section 548(8) and *Fair Work Regulations 2009* (Cwlth), regulation 4.01(4).

Part 4 Industrial registry

Division 1 Preliminary

508 Industrial registry

(1) There is an Industrial Registry (the ***registry***).

(2) The registry consists of—

(a) an industrial registrar (the ***registrar***); and

(b) 1 or more deputy industrial registrars (a ***deputy registrar***); and

(c) the other staff mentioned in section 522.

Not authorised—indicative only

Not authorised—indicative only

509 Official seal

The registry has an official seal that must be judicially noticed.

510 Administration

The registrar must manage and administer the registry.

Division 2 Functions

511 Functions of the registry

The registry has the following functions—

(a) to act as the registry for the court, each Industrial Magistrates Court in relation to fair work claims under part 3, division 4 and the commission;

(b) to provide administrative support to the court, each Industrial Magistrates Court in relation to fair work claims under part 3, division 4 and the commission;

(c) any other functions conferred on the registry by this Act.

512 Officers of the court and commission

The registrar, a deputy registrar and the other staff of the registry are officers of the court and the commission.

Division 3 Industrial registrar and staff

Subdivision 1 Registrar

513 Functions and powers of registrar

(1) The registrar—

(a) administers the registry; and

(b) has the functions conferred on the registrar under this Act or another Act.

(2) The registrar has the power to do all things necessary or convenient to be done to perform the registrar's functions.

(3) In performing a function or exercising a power, the registrar must comply with a direction given by the president in relation to the court or the commission.

514 Appointment of registrar

(1) The Governor in Council may, by gazette notice, appoint a person to be the registrar.

(2) The registrar is to be paid the remuneration and allowances decided by the Governor in Council.

(3) The registrar holds office on the terms and conditions decided by the Governor in Council, other than as provided for by this Act.

515 Preservation of registrar's rights if a public service officer

(1) This section applies if the person appointed as the registrar was, immediately before the appointment, a public service officer.

(2) The person keeps the rights the person has accrued because of employment as a public service officer, or that would accrue in the future to the person, as if service as registrar were a continuation of service as a public service officer.

(3) If the person's term of appointment as registrar ends or the person resigns—

(a) the person has the right to be employed as a public service officer—

(i) in the department that is the nearest practical equivalent to the department in which the person was employed as a public service officer

Not authorised—indicative only

Not authorised—indicative only

immediately before the person last stopped being a public service officer; and

(ii) at the classification level at which the person was employed as a public service officer immediately before the person last stopped being a public service officer; and

(iii) for the remuneration payable to a public service officer on the classification level mentioned in subparagraph (ii); and

(iv) to perform duties appropriate to the classification level mentioned in subparagraph (ii); and

(b) the person's service as registrar is taken to be service as a public service officer for working out the person's rights as a public service officer.

(4) If, immediately before the appointment, the person was a member of the scheme under the *Superannuation (State Public Sector) Act 1990*, the person continues to be eligible to be, and to be, a member of the scheme.

516 Leave of absence of registrar

The Minister may grant leave of absence to the registrar on the terms the Minister considers appropriate.

517 Resignation of registrar

The registrar may resign by signed notice given to the Minister.

518 Termination of appointment of registrar

(1) The Governor in Council must end the registrar's appointment if the registrar—

(a) is guilty of misconduct of a kind that would constitute grounds for termination under the *Public Sector Act 2022* if the registrar were a public service officer; or

(b) is absent, without the Minister's leave or without reasonable excuse, for 14 consecutive days or a total of 28 days in any year; or

(c) becomes incapable of performing the functions of office.

(2) The Governor in Council may end the registrar's appointment if the registrar—

(a) is convicted of an indictable offence, whether in Queensland or elsewhere; or

(b) engages in other paid employment.

519 Acting registrar

(1) This section applies if the registrar temporarily can not perform the functions of office.

(2) The Governor in Council may, by gazette notice, appoint a person to act as the registrar.

520 Delegation by registrar

The registrar may delegate a power of the registrar under this Act to—

(a) a deputy registrar; or

(b) an appropriately qualified person nominated by the president; or

(c) for section 346—an appropriately qualified officer of the court or commission.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Deputy registrar and staff of registry

521 Functions of deputy registrars

A deputy registrar helps the registrar in performing the registrar's functions.

522 Staff

The staff of the registry, including a deputy registrar, are appointed under the *Public Sector Act 2022*.

Division 4 QIRC website

523 What is the *QIRC website*

The ***QIRC website*** is the website used by the registrar to provide public access to information about matters relating to the court, the commission and the registry.

524 When matter is published on QIRC website

(1) A matter is published on the QIRC website—

(a) if it is accessible in full on the website; or

(b) if—

(i) notice of its making, issue or other production is accessible on the website; and

(ii) it is made accessible separately in full in another location identified in the notice.

(2) The date on which a matter is published on the QIRC website is the date notified by the registrar (whether as part of the matter or elsewhere) as the date of its publication, being a date that is not earlier than the date on which it was first made accessible under subsection (1).

(3) However, if a matter can not for technical or other reasons be published on the QIRC website at a particular time, the matter—

(a) may be published at that time as mentioned in subsection (4); and

(b) must be published on the QIRC website as soon as practicable; and

(c) is taken to have been published on the QIRC website when it is published as mentioned in subsection (4).

(4) If subsection (3) applies, the registrar may publish the matter in any of the following ways—

(a) in the gazette;

(b) in a newspaper circulating throughout the State;

(c) another way that gives sufficient notice of the matter to the public or the part of the public likely to be affected by or concerned with the matter.

Part 5 Proceedings

Division 1 Definitions

525 Definitions for part

In this part—

administer an oath includes authorise the administering of an oath.

exercising, jurisdiction, includes exercising powers and performing functions.

take, a statutory declaration, includes authorise the taking of a statutory declaration.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Starting proceedings and service of process

526 Organisations may start proceedings

Without limiting the authority of the State or a person to start proceedings, an organisation, in its registered name, may start proceedings for—

(a) contraventions of industrial instruments or permits; or

(b) an offence against this Act; or

(c) recovery of an amount payable to an employee.

527 Starting proceedings

(1) A proceeding in the court or commission or before the registrar may be started on application by—

(a) an organisation or an officer or member of an organisation; or

(b) the Minister; or

(c) a State peak council; or

(d) an inspector; or

(e) an employer; or

(f) a person who has an interest in the matter to which the application relates.

(2) Proceedings may also be started by the commission on its own initiative.

(3) In proceedings, the commission may call before it the persons it considers necessary.

(4) This section does not affect another provision of this Act providing for the starting of particular proceedings, including who may start the proceedings.

528 Service of process

(1) Subsection (2) applies if, for a proceeding, any of the following (each a ***relevant person***) considers service of a document can not be effected promptly by personal service—

(a) for proceedings in the court—

(i) the president; or

(ii) the vice-president; or

(iii) a deputy president (court); or

(iv) the registrar;

(b) for proceedings in the commission—

(i) the commission; or

(ii) the registrar.

(2) The relevant person may order—

(a) substituted service of the document; or

(b) notice of the document be given by letter, fax, email or advertisement in an appropriate newspaper, or by another means, instead of service.

(3) Service or notice in accordance with the order is sufficient service of the person required to be served.

(4) Unless otherwise ordered by the relevant person, the following is taken to be service of a document on all employers who have employees engaged in the calling, or any related calling, relevant to the purpose of the document—

(a) service of the document on an employer organisation;

(b) substituted service or notice of the document in accordance with an order under subsection (2).

Not authorised—indicative only

Not authorised—indicative only

Division 3 Conduct of proceedings

529 Representation of parties generally

(1) A party to proceedings before an industrial tribunal, 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.

(2) However, a party or person may not be represented under subsection (1)(e) by a person who directly or indirectly demands or receives a fee for representing the party or person.

(3) 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.

(4) In this section—

industrial tribunal means—

(a) the Court of Appeal, court, full bench, commission or Industrial Magistrates Court; or

(b) for proceedings before the registrar, including interlocutory proceedings—the registrar; or

(c) for proceedings before a conciliator—the conciliator.

proceedings—

(a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and

(b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

530 Legal representation

(1A) This section applies in relation to proceedings other than a proceeding for a public service appeal.

(1) A party to proceedings before an industrial tribunal, or person ordered or permitted to appear or to be represented in the proceedings, may be represented by a lawyer only if—

(a) all parties consent; or

(b) the industrial tribunal gives leave; or

(c) the proceedings are for the prosecution of an offence.

(2) However, the person or party must not be represented by a lawyer—

(a) in proceedings before the commission under section 403 or 475; or

(b) in proceedings remitted to the Industrial Magistrates Court under section 404(2) or 475(2).

(3) Despite subsection (1), a party or person may be represented by a lawyer in making a written submission to the commission in relation to—

(a) the making or variation of a modern award under chapter 3; and

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Not authorised—indicative only

(b) the making of a general ruling about the Queensland minimum wage under section 458.

(4) An industrial tribunal may give leave under subsection (1) only if—

(a) it 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 the party's or person's interests in the proceedings; 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.

Examples of when it may be unfair not to allow a party or person to be represented by a lawyer—

- a party is a small business and has no specialist human resources staff, while the other party is represented by an officer or employee of an industrial organisation or another person with experience in industrial relations advocacy
- a person is from a non-English speaking background or has difficulty reading or writing

(5) For this section, a party or person 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) an employee or officer of an entity representing the party or person, if the entity is—

(i) an organisation; or

(ii) a State peak council; or

(iii) another entity that only has members who are employers.

(6) In proceedings before the Industrial Magistrates Court for the prosecution of an offence, the person represented can not be awarded costs of the representation.

(7) In this section—

industrial tribunal means—

(a) the Court of Appeal, court, full bench, commission or Industrial Magistrates Court; or

(b) for proceedings before the registrar, including interlocutory proceedings—the registrar; or

(c) for proceedings before a conciliator—the conciliator.

proceedings—

(a) means proceedings under this Act or another Act being conducted by the court, the commission, an Industrial Magistrates Court or the registrar; and

(b) includes conciliation being conducted under part 3, division 4 or part 5, division 5A by a conciliator.

530A Representation—public service appeals

(1) This section applies in relation to a proceeding for a public service appeal.

(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.

(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.

531 Decisions of the commission and magistrates

(1) Subsections (2) and (3) do not apply to proceedings for—

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Not authorised—indicative only

(a) the recovery of amounts, other than a relevant amount; or

(b) an offence against this Act.

(2) In proceedings, the commission or Industrial Magistrates Court—

(a) is not bound by rules of evidence; and

(b) may inform itself in the way it considers appropriate in the exercise of its jurisdiction.

(3) Also, the commission or Industrial Magistrates Court is to be guided in its decisions by equity, good conscience and the substantial merits of the case having regard to the interests of—

(a) the persons immediately concerned; and

(b) the community as a whole.

(4) In proceedings, the commission may admit evidence given before, and the findings of, the Queensland Human Rights Commission as evidence.

(5) In making a decision, other than a decision made under chapter 4, part 3, division 2, the commission must consider the public interest, and in doing so must consider—

(a) the main purpose of this Act; and

(b) the likely effects of the commission's decision on the community, economy, industry, the particular industry concerned and industry generally.

(6) In this section—

relevant amount means—

(a) an amount of not more than $100,000 ordered under section 379 or 396; or

(b) an amount ordered under section 405 or 475.

532 Competence and compellability of witnesses

A party to proceedings in the court or commission is competent, and may be compelled, to give evidence in the proceedings as a witness to the same extent as a witness in civil proceedings in the Supreme Court.

533 Intervention

(1) The Minister may intervene—

(a) in proceedings before an industrial tribunal; or

(b) in proceedings before another court or tribunal that relate to—

(i) the jurisdiction or powers of the court, the commission, a magistrate or the registrar; or

(ii) a matter for which the jurisdiction or powers mentioned in subparagraph (i) may be exercised; or

(iii) the interpretation of this Act.

(2) A State peak council may intervene in proceedings before the commission if any of the State peak council's members has a sufficient interest in the proceedings.

(3) On intervening under this section, the Minister or State peak council becomes a party to the proceedings.

(4) In this section—

industrial tribunal means the court, the commission, an Industrial Magistrates Court or the registrar.

534 Adjournment by registrar

If a member of the commission can not attend at the time appointed for hearing proceedings, the registrar may adjourn the court or commission, and any business for the day, to a day and time the registrar considers convenient.

Not authorised—indicative only

Not authorised—indicative only

535 State employee to give information

(1) A person employed by the State must, if the court or commission asks, give the court or commission information the person has knowledge of in an official capacity.

(2) The person must comply with the request despite an obligation under an Act or law not to disclose information, unless the Act or law allows, justifies or excuses a refusal to give it in evidence in legal proceedings.

Division 4 Powers

536 Interlocutory proceedings

For conducting proceedings under this Act or another Act, the court, commission or registrar may make orders or give directions the court, commission or registrar considers just and necessary in relation to interlocutory matters to be taken before the hearing of the proceedings, including matters about the following—

(a) naming and joinder of parties;

(b) persons to be served with notice of proceedings;

(c) calling of persons to attend in proceedings;

(d) particulars of the claims of the parties;

(e) the issues to be referred to the court or commission;

(f) admissions, discovery, interrogatories or inspection of documents or property;

(g) examination of witnesses;

(h) costs of the interlocutory proceedings;

(i) place, time and mode of hearing of the cause.

537 Power to order inquiry or taking of evidence

(1) The commission, by order, may direct—

(a) the registrar to conduct an inquiry into a matter the commission requires information about for the exercise of the commission's jurisdiction; or

(b) an appropriately qualified person to take evidence for the commission about an industrial cause.

(2) The registrar or appropriately qualified person must comply promptly with the direction and report, or give a record of evidence taken, to the commission.

(3) The registrar may call persons to attend before the registrar and examine parties and witnesses for—

(a) conducting an inquiry mentioned in subsection (1); or

(b) disposing of another matter referred to the registrar under this Act.

(4) A person directed to take evidence under subsection (1) has all the powers of the commission for—

(a) calling witnesses; and

(b) requiring production of records.

538 Power to administer oath

In exercising jurisdiction, the following persons may take evidence on oath or statutory declaration, and for that purpose, administer an oath or take a statutory declaration—

(a) a person constituting the court, the commission or an Industrial Magistrates Court;

(b) the registrar;

(c) a person directed by the commission to take evidence for the commission.

539 Powers incidental to exercise of jurisdiction

Except as otherwise provided for by this Act or the rules, the court, commission or registrar may—

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(a) at or before a hearing, take steps to find out whether all persons who are to be bound by a decision to be made in proceedings have been called to attend or given notice of, the proceedings; and

(b) direct, for proceedings—

(i) who the parties to the proceedings are; and

(ii) by whom the parties may be represented; and

(iii) persons to be called to attend the proceedings, if the persons have not been called and it appears the persons should attend the proceedings; and

(iv) parties to be joined or struck out; and

(v) who may be heard and on what conditions; and

(c) hear and decide an industrial cause in the way that appears best suited for the purpose; and

(d) allow claims in the proceedings to be amended on terms that appear fair and just; and

(e) correct, amend or waive an error, defect or irregularity in the proceedings, whether substantive or formal; and

(f) give directions under a decision that the court, commission or registrar considers necessary for, or conducive and appropriate to, the effective implementation of the decision; and

(g) hear and decide an industrial cause in the absence of a party, or person who has been called to attend or served with a notice to appear, at the proceedings; and

(h) sit at any time and in any place for hearing and deciding an industrial cause, and adjourn a sitting to any time and place; and

(i) refer technical matters, accounting matters, or matters involving expert knowledge to an expert, and admit the expert's report in evidence; and

(j) extend a prescribed or stated time, before or after expiry of the time; and

(k) waive compliance with the rules.

540 Power to obtain data and expert evidence

(1) If the commission wants expert evidence based on facts or figures to decide an industrial cause, it may—

(a) order the following persons to give it returns of the facts or figures—

(i) an organisation that is, or any of whose members are, a party to the proceedings;

(ii) an employer who is, or a group of employers who are, a party to the proceedings; and

(b) allow a person selected by it as an expert to prepare, from the returns, reports directed to matters that the commission seeks to be informed on.

(2) A person giving returns or preparing reports under subsection (1) must include in the return or report—

(a) all particulars relevant to the cause; and

(b) the particulars the commission asks for.

(3) However, the person must not, without the commission's leave, otherwise divulge to another person—

(a) the name of the organisation that gave the return; or

(b) business information of a private or confidential nature extracted from the return.

Maximum penalty—20 penalty units.

(4) A schedule, as far as possible, must extend beyond 1 year's operation of a business or industry.

Not authorised—indicative only

Not authorised—indicative only

Division 5 Decisions and enforcement

541 Decisions generally

(1) The court or commission may, in an industrial cause do either or both of the following—

(a) make a decision it considers just, and include provision for preventing or settling the industrial dispute or dealing with the industrial matter to which the cause relates, without being restricted to any specific relief claimed by the parties to the cause;

(b) order a party to the cause to pay another party the expenses, including witness expenses, it considers appropriate.

(2) Also, the court or commission may, in a proceeding for any matter before the court or commission, dismiss the proceeding, or refrain from hearing, further hearing, or deciding the proceeding, if the court or commission considers—

(a) the proceeding is trivial; or

(b) the applicant has unreasonably failed to discontinue the proceeding after a settlement agreement has been concluded; or

(c) further proceedings by the court or commission are not necessary or desirable in the public interest; or

(d) the proceeding is frivolous or vexatious.

(3) Further, without limiting subsection (2), if the applicant fails unreasonably to comply with a step required under this Act, another Act or the rules or any direction or order of the court or the commission, the court or commission may dismiss the proceeding for want of prosecution.

(4) The president may delegate to the registrar the power of the court or commission under subsection (2)(b) or (3) to dismiss a proceeding.

541A Orders about further applications after dismissal

(1) This section applies if the court or commission dismisses a proceeding (the ***substantive proceeding***), or refrains from hearing, further hearing or deciding a proceeding (also the ***substantive proceeding***) under section 541(2).

(2) The court or commission may make an order that the applicant in the proceeding must not make a further application to the court or commission of a stated type without the permission of the court or commission.

(3) The commission must be constituted by a full bench to give an order under subsection (2).

(4) The court or commission must not make an order under subsection (2) unless—

(a) the applicant has been given a reasonable opportunity to make submissions to the court or commission in relation to whether the order should be made; and

(b) the court or commission has taken into account any submissions made.

(5) The court or commission may make an order under subsection (2)—

(a) on its own initiative; or

(b) on application by a party to a matter dealt with by the substantive proceeding.

(6) An order under subsection (2) has effect despite any other provision of this Act or any other Act.

(7) An application made in contravention of an order made under subsection (2) is of no effect.

(8) Section 554 does not apply in relation to a decision made by the court or commission under subsection (2).

(9) The court or the full bench may vary or set aside an order made under subsection (2)—

(a) on its own initiative; or

(b) on application by the person subject to the order.

Not authorised—indicative only

Not authorised—indicative only

542 Reserved decisions

(1) The court or commission may reserve its decision in proceedings.

(2) If a decision is reserved—

(a) it may be pronounced at—

(i) a continuation or resumption of the court or commission; or

(ii) a subsequent sitting of the court or commission; or

(b) the court or commission may give its written decision, signed by the person or each of the persons constituting the court or commission, to the registrar.

(3) The registrar must file a written decision in the registry and give a copy of it to each of the parties to the industrial cause.

(4) A written decision has effect when the decision is filed as if it had been pronounced by the court or commission.

543 Commission decisions must be in plain English

The commission must ensure the commission's written decisions are—

(a) in plain English; and

(b) structured in a way that makes a decision as easy to understand as the subject matter allows.

544 Decisions of court or commission

(1) In the exercise of its jurisdiction, the court or commission may—

(a) make the decisions it considers necessary—

(i) in the interests of justice in proceedings before it; and

(ii) for the execution of another decision of the court or commission; and

(b) enforce its own decisions; and

(c) direct the issue of a writ or process; and

(d) impose and enforce a penalty allowed or prescribed by this Act or another Act in the same way a Supreme Court judgment is enforced.

(2) A decision of the court or commission must be made and enforced in the same way as a judgment or order of the Supreme Court.

(3) For subsection (2), the Uniform Civil Procedures Rules must be complied with to the extent reasonably possible, with the amendments the court or commission approves.

(4) The registrar, deputy registrars, sheriff, bailiffs and officers of the Supreme Court or Magistrates Courts (***court officers***) are taken to be officers of the court and commission for—

(a) a decision, including the enforcement of a decision, of the court or commission; and

(b) imposing functions or conferring powers on court officers under the rules.

545 General power to award costs

(1) A person must bear the person's own costs in relation to a proceeding before the court or commission.

(2) However, the court or commission may, on application by a party to the proceeding, order—

(a) a party to the proceeding to pay costs incurred by another party if the court or commission is satisfied—

(i) the party made the application or responded to the application vexatiously or without reasonable cause; or

(ii) it would have been reasonably apparent to the party that the application or response to the application had no reasonable prospect of success; or

Not authorised—indicative only

Not authorised—indicative only

(iii) the party caused costs, including witness expenses and other expenses, to be incurred by the other party because of an unreasonable act or omission in connection with the conduct of the proceeding; or

(b) a representative of a party (the ***represented party***) to pay costs incurred by another party to the proceeding if the court or commission is satisfied the representative caused the costs to be incurred—

(i) because the representative encouraged the represented party to start, continue or respond to the proceeding and it should have been reasonably apparent to the representative that the person had no reasonable prospect of success in the proceeding; or

(ii) because of an unreasonable act or omission of the representative in connection with the conduct or continuation of the proceeding.

(3) The court or commission may order a party to pay another party an amount reasonably payable to a person who is not a lawyer, for representing the other party.

546 Recovery of amounts under orders

(1) If the court or commission in proceedings orders an amount be paid, as a penalty or otherwise, the registrar may issue a certificate under the seal of the court or commission, stating—

(a) the amount payable; and

(b) who must pay the amount; and

(c) to whom the amount must be paid; and

(d) any conditions about the payment.

(2) The amount may be recovered as a debt.

(3) When the certificate is filed in a court of competent jurisdiction in an action for recovery of the debt, the order

evidenced by the certificate is enforceable as an order made by the court in which the certificate is filed.

(4) This section does not limit other ways in which amounts may be recovered on an order of the court or commission.

(5) In this section—

registrar means either—

(a) the registrar under this Act; or

(b) for an order made by a magistrate on remission from the commission under section 405 or 475, the registrar of the Magistrates Court.

547 Recovering amounts from organisations

(1) This section applies for the recovery of—

(a) a penalty imposed on an organisation under this Act; or

(b) an amount ordered to be paid by an organisation under this Act.

(2) Process may be issued and executed against the organisation's property, whether the property is vested in trustees or is otherwise held for the organisation, as if the organisation, as a corporation, were the absolute owner of the property.

(3) In this section—

property of an organisation means property that the organisation has—

(a) legal title to; or

(b) a beneficial interest in, to the extent of the interest.

Not authorised—indicative only

Not authorised—indicative only

Division 5A Conciliation of unpaid amount claims

547A Purpose of division

The purpose of this division is to provide for the timely, inexpensive and informal resolution of unpaid amount claims in the commission or an Industrial Magistrates Court.

547B Definitions for division

In this division—

industrial tribunal, for an unpaid amount claim, means—

(a) for a claim started by an application to a magistrate—the magistrate; or

(b) for a claim started by an application to the commission—the commission.

unpaid amount claim means a claim that may be made by application under section 379, 396 or 476.

547C Conciliation

(1) This section applies if a person has started a proceeding for an unpaid amount claim.

(2) The registrar may refer the unpaid amount claim to conciliation.

(3) The referral of the unpaid amount claim—

(a) must be done as soon as practicable after the proceeding for the claim has started; and

(b) must be done before the industrial tribunal for the claim hears it; and

(c) should preferably be done before a party to the claim files a defence to the claim.

(4) If the registrar refers the unpaid amount claim to conciliation and a party does not wish to participate in conciliation, the party must notify the registrar of that fact—

(a) as soon as practicable; and

(b) before a conciliation conference starts.

(5) If the registrar is notified under subsection (4)—

(a) the conciliation must not proceed; and

(b) the registrar must—

(i) notify the industrial tribunal for the unpaid amount claim that the conciliation is not proceeding and the reason it is not proceeding; and

(ii) refer the matter for hearing by the industrial tribunal.

(6) The purposes of conciliation are to—

(a) enable the parties to reach agreement on as many matters as possible; and

(b) reduce the scope of the matters at issue between the parties; and

(c) achieve a timely, cost-effective, proportionate and agreed resolution of the unpaid amount claim if possible.

(7) The conciliator appointed for the unpaid amount claim must start conciliating the claim as soon as practicable after being appointed.

547D Conciliators for unpaid amount claims

Each commissioner is a conciliator for unpaid amount claims.

547E Procedure for conciliation process

(1) For a conciliation process, the conciliator—

(a) must decide the procedure to be used; and

Not authorised—indicative only

Not authorised—indicative only

(b) may adopt any procedure that will, in the conciliator's opinion, enable the conciliator to perform the conciliator's functions.

Example of a procedure that may be used—

a conciliation conference

(2) The registrar may, at any time of the registrar's own initiative or on the application of a party or the conciliator, give directions about the procedure to be used for the conciliation process.

547F Conciliator to file certificate

(1) As soon as practicable after a conciliation process is finished, the conciliator must file with the registrar a certificate about the conciliation process in the form required under the rules.

(2) For subsection (1), the conciliation process is finished if—

(a) the parties agree on a resolution of all or part of the unpaid amount claim; or

(b) the conciliator decides the conciliation process is finished.

547G Conciliation agreements

(1) This section applies if, in a conciliation process, the parties agree on a resolution of all or part of the unpaid amount claim.

(2) The agreement must be written down and signed by or for each party.

547H Orders giving effect to conciliation agreements

(1) A party to an unpaid amount claim may apply to the industrial tribunal for the claim for an order giving effect to an agreement reached in a conciliation process.

(2) However, a party may apply for the order only after the conciliator's certificate about the conciliation process is filed with the registrar.

(3) The industrial tribunal may make any order giving effect to an agreement reached in a conciliation process the industrial tribunal considers appropriate in the circumstances.

547I Admission made in conciliation process

(1) Evidence of anything done or said, or an admission made, during the conciliation process for an unpaid amount claim is admissible at the hearing of the claim or in another civil proceeding or elsewhere only if all the parties agree.

(2) In this section—

civil proceeding does not include a civil proceeding founded on fraud alleged to be connected with, or to have happened during, the conciliation process.

Division 6 Proceedings under Anti-Discrimination Act 1991

548 Costs provisions

(1) The provisions for costs in schedule 2 apply to a proceeding—

(a) heard by the commission under the *Anti-Discrimination Act 1991*; or

(b) for an appeal to the court under part 6 against a decision of the commission in relation to a proceeding mentioned in paragraph (a).

(2) If a provision of schedule 2 is inconsistent with any other provision of this Act, the schedule prevails to the extent of the inconsistency.

Not authorised—indicative only

Not authorised—indicative only

Division 7 Protections and immunities

549 Protections and immunities

(1) A member of the court or commission or a magistrate has, in the exercise of jurisdiction for this Act or another Act, the protection and immunities of a Supreme Court judge exercising the jurisdiction of a judge.

(2) A member of the court or commission, a magistrate or the registrar (the ***official***) has, in proceedings for defamation for a publication made to or by the official in the official's official capacity, a defence of absolute privilege if the publication was made in good faith.

(3) The burden of proving the absence of good faith lies with a person who alleges the absence.

Division 8 Rules and practice

550 Rules committee

(1) The president must establish a rules committee consisting of the following members—

(a) the president;

(b) the vice-president;

(c) each deputy president.

(2) The president is the chairperson of the rules committee.

(3) The functions of the rules committee include—

(a) developing and reviewing the rules under this Act; and

(b) approving forms under section 989; and

(c) any other function conferred on the rules committee under this Act.

(4) The rules committee may conduct its business and proceedings at meetings in the way it decides.

(5) However—

(a) the chairperson has a deliberative vote and, in the event of an equality of votes, a casting vote; and

(b) the rules committee must consult with—

(i) for a rule relating to the Industrial Magistrates Court—the Chief Magistrate; or

(ii) for a rule relating to the registry—the registrar.

551 Rules

(1) The Governor in Council may make rules under this Act.

(2) The rules may only be made with the consent of the rules committee.

(3) Rules may be made about the following matters—

(a) regulating the practice and procedure to be followed and used—

(i) for proceedings in the court, commission or Industrial Magistrates Court and before the registrar; and

(ii) subject to section 544, for making and recording decisions and actions of the court, commission or registrar; and

(iii) for the performance by the commission of a function conferred on it under a referral agreement; and

(iv) for the exercise of jurisdiction conferred on the commission under the *Anti-Discrimination Act 1991*, the *Public Sector Act 2022* or another Act;

(b) publishing decisions and other actions of the court, commission or registrar and the effect of the publication;

(c) recovering fines and penalties imposed;

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(d) enforcing orders for attachment or imprisonment and orders made by the court or commission for the payment of amounts;

(e) fees and expenses payable to witnesses;

(f) fees payable in relation to proceedings in the court or commission or before the registrar, and the party by whom the fees must be paid;

(g) service of process, notices, orders or other things on parties and other persons;

(h) electronic filing, receiving, serving, issuing or sending documents and material for use in, or in connection with, proceedings before the court, commission or Industrial Magistrates Court, including, electronic representations or equivalents of seals, stamps and signatures and their validity;

(i) the functions and powers of officers of the court or commission;

(j) delegating the jurisdiction of the commission as permitted by this Act;

(k) requiring organisations or other entities to give returns, lists of officers or members and other statistical information to the registrar;

(l) providing for all matters necessary or expedient to be provided for to allow for—

(i) the full and effective exercise of the jurisdiction and powers of the court, commission, Industrial Magistrates Court and registrar; and

(ii) giving effect to the decisions, convictions and actions made, recorded, or done by the court, the commission, a magistrate, the registrar, or an officer of the court or commission.

(4) Rules made under this section are subordinate legislation.

552 Directions about practice

(1) Subject to this Act and the rules, the practice and procedure of the court, the commission, an Industrial Magistrates Court or the registrar is as directed by a member of the court, a member of the commission, a magistrate or the registrar.

(2) If a person wishes to take a step in an industrial cause or a proposed cause and this Act or the rules do not provide or sufficiently provide for it, application for directions may be made to the appropriate person mentioned in subsection (1).

Division 9 Exercise of powers and application of procedures

553 General application of provisions

The provisions of this Act providing for the powers of and procedures before the court, the commission or an Industrial Magistrates Court apply in relation to the jurisdiction of the court, the commission or an Industrial Magistrates Court under this Act or another Act, unless the contrary intention appears.

Part 6 Appeals

Division 1 Appeals to Court of Appeal

554 Appeal from court or commission in certain circumstances

(1) A person aggrieved by a decision of the court or the full bench may appeal to the Court of Appeal on the ground of—

(a) error of law; or

(b) excess, or want, of jurisdiction.

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(2) Also, a person aggrieved by a decision of the full bench may appeal against the decision to the Court of Appeal, with the Court of Appeal's leave, on a ground other than—

(a) error of law; or

(b) excess, or want, of jurisdiction.

(3) However, subsections (1) and (2) do not apply to a person aggrieved by a determination of the commission under chapter 4, part 3, division 2.

(4) If a person may appeal a decision of the full bench under both subsections (1) and (2), the person may only appeal against the decision with the Court of Appeal's leave on a ground mentioned in subsection (2).

(5) In this section—

full bench means the full bench constituted by at least 3 members 1 of whom is a presidential member.

555 What Court of Appeal may do

(1) On an appeal under section 554, the Court of Appeal may—

(a) dismiss the appeal; or

(b) allow the appeal, set aside the decision and substitute another decision; or

(c) allow the appeal and amend the decision; or

(d) allow the appeal, suspend the operation of the decision and remit the matter (with or without directions) to the court or full bench to act according to law.

Division 2 Appeals to court

556 Appeal from magistrate

A person aggrieved by a decision of a magistrate may appeal against the decision to the court.

557 Appeal from commission

(1) The Minister or another person aggrieved by a decision of the commission may appeal against the decision to the court on the ground of—

(a) error of law; or

(b) excess, or want, of jurisdiction.

(2) Also, the Minister or another person aggrieved by a decision of the commission may appeal against the decision to the court, with the court's leave, on a ground other than—

(a) error of law; or

(b) excess, or want, of jurisdiction.

(3) However, subsections (1) and (2) do not apply to the Minister or another person aggrieved by a determination of the commission under chapter 4, part 3, division 2.

(4) If a person may appeal a decision of the commission under both subsections (1) and (2), the person may only appeal against the decision with the court's leave on a ground mentioned in subsection (2).

(5) In this section—

commission means the commission, other than the full bench within the meaning of section 554(5).

558 What court may do

(1) On an appeal under section 556 or 557, the court may—

(a) dismiss the appeal; or

(b) allow the appeal, set aside the decision and substitute another decision; or

(c) allow the appeal and amend the decision; or

(d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the commission or an Industrial Magistrates Court to act according to law.

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Not authorised—indicative only

(2) Also, the court may direct an industrial magistrate to issue a warrant for the appellant's arrest if—

(a) under the decision that was appealed, the appellant was sentenced to a term of imprisonment; and

(b) the appellant was released from custody by a magistrate under the rules made under section 551; and

(c) after the appeal is decided, discontinued or struck out, the appellant is still required to serve all or part of the term of imprisonment.

(3) The industrial magistrate must comply with the direction.

(4) When arrested, the appellant must be taken to a corrective services facility within the meaning of the *Corrective Services Act 2006* to serve the unexpired portion of the term of imprisonment to which the appellant was sentenced.

559 President must hear and decide particular appeals from full bench

If an appeal is made under section 557 against a decision of the full bench—

(a) the appeal must be heard and decided by the court constituted by the president; and

(b) an interlocutory proceeding relating to the appeal may be heard and decided by the vice-president or a deputy president (court).

Division 3 Appeals to full bench

560 Appeal from registrar

(1) A person aggrieved by a decision of the registrar may appeal against the decision to the full bench on the ground of—

(a) error of law; or

(b) excess, or want, of jurisdiction.

(2) Also, a person aggrieved by a decision of the registrar may appeal against the decision to the full bench, with the full bench's leave, on a ground other than—

(a) error of law; or

(b) excess, or want, of jurisdiction.

(3) For an appeal against a decision of the registrar relating to a general ruling under section 460(2), the full bench must be constituted in the same way as it was when the general ruling under section 458 was made.

561 What full bench may do

On an appeal under section 560, the full bench may—

(a) dismiss the appeal; or

(b) allow the appeal, set aside the decision and substitute another decision; or

(c) allow the appeal and amend the decision; or

(d) allow the appeal, suspend the operation of the decision and remit the matter, with or without directions, to the registrar to act according to law.

Division 4 Appeals to commission

562 Appeal against stand-downs

(1) An employee stood down by an employer under section 333, may appeal to the commission against the stand-down.

(2) If the employee is a member of an employee organisation, the organisation may start and conduct the appeal for the employee.

(3) The commission may—

(a) dismiss the appeal; or

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(b) allow the appeal and order the employee be paid, within a stated period, the wages lost by the employee because of the stand-down; or

(c) if the employee remains stood down at the time of the commission's decision—

(i) allow the appeal; and

(ii) order the employer to provide for the resumption of work by the employee, immediately or on a stated day; and

(iii) make an order about payment of wages mentioned in paragraph (b).

(4) If the commission makes an order under subsection (3)(b), it may include in the order provisions for its enforcement, other than by imprisonment, as if—

(a) the commission were an Industrial Magistrates Court; and

(b) the member who makes the order were a magistrate.

(5) The order may be filed with the clerk of a Magistrates Court and on filing may be enforced as an order made by a magistrate.

562A Commission may decide not to hear particular public service appeals

(1) The commission may decide it will only hear an appeal against a directive decision, a fair treatment decision or a transfer decision under the *Public Sector Act 2022* if the commission is satisfied—

(a) the appellant has used the procedures required to be used by the employee in relation to the decision under a directive under that Act, including a directive made under section 110 of that Act; and

(b) for a fair treatment decision under the *Public Sector Act 2022*—it would not be unreasonable to require the

appellant to comply with the procedures mentioned in paragraph (a).

(2) The commission may decide it will only hear an appeal against a promotion decision under the *Public Sector Act 2022* if the commission is satisfied, by oral or written submissions, that the appellant has an arguable case for the appeal.

(3) The commission may decide it will not hear a public service appeal against a decision if—

(a) the appellant has made an application to a court or tribunal relating to the decision, whether or not the application has been fully decided; or

(b) the commission reasonably believes, after asking the appellant to establish by oral or written submissions that the appellant has an arguable case for the appeal, that the appeal—

(i) is frivolous or vexatious; or

(ii) is misconceived or lacks substance; or

(iii) should not be heard for another compelling reason.

562B Public service appeal to commission is by way of review

(1) This section applies to a public service appeal made to the commission.

(2) The commission must decide the appeal by reviewing the decision appealed against.

(3) The purpose of the appeal is to decide whether the decision appealed against was fair and reasonable.

(4) For an appeal against a promotion decision or a disciplinary decision under the *Public Sector Act 2022*, the commission—

(a) must decide the appeal having regard to the evidence available to the decision maker when the decision was made; but

(b) may allow other evidence to be taken into account if the commission considers it appropriate.

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562C Public service appeals—decision on appeal

(1) In deciding a public service appeal, the commission may—

(a) confirm the decision appealed against; or

(b) for an appeal against a promotion decision—set the decision aside, and return the matter to the decision maker with a copy of the decision on appeal and any directions permitted under a directive made by the Public Sector Commissioner that the commission considers appropriate; or

(c) for another appeal—set the decision aside, and substitute another decision or return the matter to the decision maker with a copy of the decision on appeal and any directions considered appropriate.

(2) In deciding an appeal against a promotion decision, the commission may set the decision aside only if the commission finds that the recruitment or selection process was deficient, having regard to whether the process complied with the *Public Sector Act 2022*, a regulation or a directive made by the Public Sector Commissioner under that Act.

Division 5 General

563 Definition for div 5

In this division—

industrial tribunal means the Court of Appeal, court, full bench or commission.

564 Time limit for appeal

(1) An appeal against a decision to an industrial tribunal must be started, as required under the rules, within the appeal period.

(2) However, on an application made during or after the appeal period, the industrial tribunal may allow an appeal to be started within a longer period.

(3) In this section—

appeal period, for an appeal against a decision to an industrial tribunal, means the period within 21 days after—

(a) if the decision is given at a hearing—the announcement of the decision at the hearing; or

(b) if the decision is given through the registrar—the release of the decision; or

(c) if the decision is a promotion decision—the decision is publicly notified under the *Public Sector Act 2022*; or

(d) if, under another Act, the decision is given in another way—the decision is given in the other way.

565 When leave for appeal must be given

If an application for leave to appeal is made under section 554, 557 or 560, the Court of Appeal, court or full bench—

(a) must give leave if it is satisfied it is in the public interest to do so; and

(b) may not give leave other than under paragraph (a).

566 Stay of decision appealed against

(1) On an appeal, the industrial tribunal may order that the decision being appealed be wholly or partly stayed pending—

(a) the determination of the appeal; or

(b) a further order of the industrial tribunal.

(2) This section does not apply to an appeal under the *Workers' Compensation and Rehabilitation Act 2003*, chapter 13, part 3 against a decision to allow an application for compensation under that Act.

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567 Nature of appeal

(1) An appeal to an industrial tribunal, other than a public service appeal to the commission, is by way of re-hearing on the record.

(2) However, the industrial tribunal may hear evidence afresh or additional evidence if the industrial tribunal considers it appropriate to effectively dispose of the appeal.

Part 7 Offence proceedings

568 When offence proceedings must be started

(1) Subject to subsection (2), proceedings for an offence against this Act must be started—

(a) within 1 year after the offence was committed; or

(b) within 6 months after the offence comes to the complainant's knowledge, but within 18 months after the offence was committed.

(2) Proceedings for an offence against section 137, 394 or 928 must be started within 6 months after the offence comes to the complainant's knowledge, but within 6 years after the offence was committed.

569 Where offence proceedings are to be heard and decided

(1) Proceedings for an offence against this Act are to be heard and decided by the court or a magistrate, within the limits of the court's or magistrate's jurisdiction.

(2) Proceedings before a magistrate are to be heard and decided summarily under the *Justices Act 1886*, but the Industrial Magistrates Court where the proceedings are started must be constituted by a magistrate sitting alone.

(3) If the parties to proceedings before a magistrate agree, by notice signed by the parties or their representatives, that the proceedings should be started or continued before another

magistrate at an agreed place in the State other than the place where the proceedings are to be heard and decided under the *Justices Act 1886*—

(a) the other magistrate at the agreed place is authorised to hear and decide the proceedings; and

(b) jurisdiction is conferred on the other magistrate.

(4) If the agreement is made after the proceedings have started, the magistrate must—

(a) adjourn the proceedings to the magistrate at the agreed place; and

(b) send the record of the proceedings before the magistrate to the clerk of the Magistrates Court at the agreed place.

(5) For the adjourned proceedings, evidence heard or produced in the proceedings before it was adjourned is taken to have been heard or produced before the magistrate to whom the proceedings were adjourned, unless the parties otherwise agree.

Part 8 Civil penalties

Division 1 Preliminary

570 Definitions for part

In this part—

civil penalty order see section 574(2).

civil penalty provision means a subsection, or a section that is not divided into subsections, if a note to the subsection or section states it is a civil penalty provision.

Note—

See schedule 3, column 1 for a list of civil penalty provisions in this Act.

industrial tribunal means—

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(a) the commission; or

(b) a magistrate.

relevant industrial tribunal, for a civil penalty provision, means the industrial tribunal mentioned for the provision in column 3 of schedule 3.

571 Contraventions of civil penalty provision

(1) A contravention of a civil penalty provision is not an offence.

(2) A person involved in a contravention of a civil penalty provision is taken to have contravened the provision.

(3) For this section, a person is ***involved in*** a contravention of a civil penalty provision only if the person—

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced the contravention, whether by threats, promises or otherwise; or

(c) has been in any way, by act or omission, directly or indirectly knowingly concerned in or party to the contravention; or

(d) has conspired with others to effect the contravention.

Division 2 Applications for civil penalty orders

572 Applications for orders in relation to contraventions of civil penalty provisions

A person mentioned in column 2 of schedule 3 for a civil penalty provision may apply to the relevant industrial tribunal for an order in relation to a contravention, or alleged contravention, of the provision.

573 When applications must be made

An application under section 572 must be made within 6 years after the day on which the contravention of the civil penalty provision occurred or allegedly occurred.

Division 3 Making and effect of civil penalty orders

574 Power of relevant industrial tribunal to make civil penalty orders

(1) The relevant industrial tribunal for a civil penalty provision may, on an application under section 572, order a person to pay a penalty the tribunal considers is appropriate if satisfied the person has contravened the provision.

(2) An order made under subsection (1) is a ***civil penalty order***.

(3) To remove any doubt, it is declared that the relevant industrial tribunal may make a civil penalty order in addition to 1 or more orders under another provision of this Act unless otherwise provided.

(4) This section applies subject to section 575.

575 Amount of penalty

A penalty payable under a civil penalty order must not be more than—

(a) if the person is an individual—the maximum number of penalty units mentioned in column 4 of schedule 3 for the civil penalty provision; or

(b) if the person is a corporation—5 times the maximum number of penalty units mentioned in column 4 of schedule 3 for the civil penalty provision.

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576 Who penalty is payable to

The relevant industrial tribunal may order that the penalty, or a part of the penalty, payable under a civil penalty order must be paid to—

(a) the State; or

(b) a particular organisation; or

(c) a particular person.

577 Recovery of penalty as a debt

A penalty payable under a civil penalty order may be recovered as a debt due to the person to whom the penalty is payable.

578 Civil double jeopardy

If a civil penalty order is made against a person, the person is not liable to be ordered to pay a civil penalty under another provision of an Act in relation to the conduct that constituted the contravention of the civil penalty provision.

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.

Division 4 Miscellaneous

578AA Other orders for contravention of s 876K or 876P

(1) This section applies if a person contravenes the civil penalty provision in section 876K(2) or 876P(1).

(2) On an application under section 572, the relevant industrial tribunal may make any other order the tribunal considers appropriate.

(3) Without limiting subsection (2), the relevant industrial tribunal may make an order requiring a person to comply, wholly or partly, with a notice given to the person under section 876K(1).

(4) This section applies whether or not a civil penalty order is made in relation to the contravention.

578AB Expiry

This division expires on the day chapter 12, part 15A expires.

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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—

(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—

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(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;

(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.

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578H Application for declaration

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

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(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.

Part 9 Evidentiary matters

579 Evidentiary provisions affecting proceedings

In proceedings—

(a) the appointment as inspector of a person claiming to be, or stated to be, an inspector, and the authority of an inspector to take proceedings or do any act, must be presumed, until the contrary is proved; and

(b) a signature purporting to be of an inspector is taken as the signature it purports to be, until the contrary is proved; and

(c) a document purporting to be a copy of a notice or order issued under this Act by an inspector is admissible as evidence of the issue of the notice or order and of the things in it; and

(d) a document purporting to be a copy of an organisation's officers register last filed with the registrar, certified by

the registrar, is admissible as evidence of the things in it; and

(e) a document purporting to be a copy of an organisation's rules last filed with the registrar, certified by the registrar, is admissible as evidence of the things in it; and

(f) the limits of a district or part of the State, or of a road, stated in a complaint or other document made for the proceedings must be presumed, until the contrary is proved; and

(g) judicial notice of the existence of industrial action, or of a proposed industrial action, may be taken.

580 Confidential material tendered in evidence

(1) Subsection (2) applies if records, tendered to the court or commission, relate to—

(a) a person's trade secrets; or

(b) the financial position of a party or witness.

(2) The records can not, without the consent of the person, party or witness, be inspected by a person other than—

(a) a member of the court or the commission; or

(b) an expert witness for the records.

(3) Subsection (2) does not apply to records relating to the financial position of a party or witness who claims that the financial position of a business or industry does not permit the payment of wages, or the granting of conditions—

(a) claimed in the proceedings in which the records are tendered; or

(b) under a proposed industrial instrument or order to which the proceedings relate.

(4) If the court or commission directs that information relating to a person's trade secrets or financial position be given in

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Not authorised—indicative only

evidence, the evidence must be taken in private, if the person asks.

(5) The court, commission or registrar may direct—

(a) a report, or part of a report, of proceedings in an industrial cause not be published; or

(b) evidence given, records tendered or things exhibited in proceedings for an industrial cause be withheld from release or search.

(6) The direction may prohibit the publication, release or search absolutely, or except on conditions ordered by the court, commission or registrar.

(7) The direction may be given if the court, commission or registrar considers—

(a) disclosure of the matter would not be in the public interest; or

(b) persons, other than parties to the cause, do not have a sufficient legitimate interest in being informed of the matter.

(8) A person must not give as evidence, or publish, material in contravention of this section or of a direction under this section.

Maximum penalty—16 penalty units.

(9) In this section—

expert witness, for records, means a person appointed by the court or commission as an expert to examine and report on the records.

581 Evidentiary value of official records

(1) The following are admissible in proceedings as evidence of a decision or action—

(a) a copy of the decision, or of a record of other action, of the court or commission, purporting to bear the seal of the court or commission;

(b) a document purporting to be an extract printed from the QIRC website that contains notice of a decision or other action of the court or commission.

(2) In proceedings—

(a) a document purporting to be an extract printed from the QIRC website that contains notice of a declaration of a general ruling published under section 458, or an amendment of an award or certified agreement—

(i) is admissible as evidence of the making or approval of the declaration or amendment; and

(ii) for the period for which the declaration or amendment remains in force, is evidence of the matters in the notice; and

(b) a copy of a certified agreement, certified as a true copy by the registrar, is admissible as evidence of—

(i) the agreement; and

(ii) its execution as shown in the copy; and

(iii) its certification by the commission; and

(c) a copy of a permit issued by the commission or the registrar, certified as a true copy by the registrar, is admissible as evidence of the permit; and

(d) a certificate issued by the registrar about an organisation's registration is evidence of the matters in the certificate; and

(e) a certificate issued by the registrar that a stated person was, at a stated time either of the following, is evidence of the matters stated—

(i) an authorised industrial officer or another stated officer of a stated organisation;

(ii) a member of a stated organisation; and

(f) a certificate issued by the registrar stating the following matters is evidence of the matter—

Not authorised—indicative only

Not authorised—indicative only

(i) that a specified website is currently used, or was used during a stated period or on a stated day, to provide public access to information about matters relating to the court, the commission and the registry;

(ii) that a stated matter was published on the QIRC website on a stated day;

(iii) that a stated matter on the QIRC website was, on a stated day, published in a particular way;

(iv) that a document on the QIRC website was in force at a stated time or during a stated period.

582 Proof of certain facts by statement

In proceedings, a statement in a complaint or other process by which the proceedings are started about the following matters is evidence of the matters stated—

(a) that a calling was, at or about a stated time, transferred from 1 person to another;

(b) that a stated person is or is not, or was or was not, at a stated time, an officer or member of an organisation;

(c) that a stated person is liable to pay, but has not paid, a contribution to the approved superannuation fund.

583 Evidentiary value of certificate of trustee of superannuation fund

(1) In proceedings, a trustee's certificate stating, for a period of relevant service of an eligible employee concerned in the proceedings, the following matters is evidence of the matters stated—

(a) an amount was paid as contribution to a complying superannuation fund of which the trustee is a trustee;

(b) an amount worked out on the rate of return that stated contributions would have attracted to the fund.

(2) In this section—

trustee's certificate means a certificate given, or purporting to have been given, by a trustee of a complying superannuation fund.

Part 10 Miscellaneous

Division 1 General appointment provisions for members of court and commission

584 Definition for division

In this division—

relevant member means a member of the court or the commission other than the president.

585 Appointment of members on full-time or part-time basis

(1) This section applies to a person appointed to 1 of the following offices (each a ***relevant office***)—

(a) the office of the vice-president;

(b) the office of a deputy president;

(c) the office of an industrial commissioner.

(2) The person is appointed to the relevant office on a full-time basis unless the appointment is stated, in the instrument of appointment, to be on a part-time basis.

(3) A person appointed to a relevant office on a full-time basis may, by written agreement with the Minister, perform the functions of the office on a part-time basis.

(4) An appointment or agreement to perform the functions of a relevant office on a part-time basis must state the percentage of the office the person is to perform.

Not authorised—indicative only

Not authorised—indicative only

(5) A person appointed to a relevant office on a part-time basis may, by written agreement with the Minister, perform the functions of the office on a full-time basis.

(6) A person appointed to a relevant office on a part-time basis may hold another office, perform other duties or engage in employment only with the written approval of the Minister.

(7) The Minister may give a written approval mentioned in subsection (6) only if the Minister is satisfied holding the other office, performing the other duties or engaging in the employment is compatible with, and does not give rise to a conflict of interest in relation to, the relevant office.

586 Remuneration of members other than under the Judicial Remuneration Act 2007

(1) If a relevant member performs the functions of the office of a member on a part-time basis under an appointment or agreement, the salary and allowances payable to the relevant member are worked out by multiplying the percentage of full-time service represented by the part-time service stated in the appointment or agreement by the salary and allowances payable to a member who performs the functions of the office on a full-time basis.

Example for subsection (1)—

The annual salary of a full-time member is $200,000 and the allowances are $5,000. The salary of a relevant member who is appointed on a 50% part-time basis will be $100,000 and the allowances will be $2,500.

(2) A person acting as the president, the vice president, a deputy president or an industrial commissioner is entitled to the salary and allowances payable to the president, the vice president, a deputy president or a commissioner.

587 Benefits—Pensions Act

(1) The Pensions Act, other than sections 2A, 2AA and 15, applies with necessary changes to a member of the court or

commission (each a ***member***) and a member's spouse or child in the way it applies to a judge and a judge's spouse or child.

(2) For subsection (1), a reference in the Pensions Act to a judge may, if the context permits, be taken to be a reference to a member.

(3) In working out a person's length of service as a member for subsection (1), the following periods must be taken into account—

(a) a period when the person has served as a member, whether under—

(i) a first appointment as a member or a renewal of the appointment; or

(ii) a subsequent appointment;

(b) a period when the person has served as an acting member.

588 Benefits for part-time members

(1) This section applies if a relevant member performs the functions of the office on a part-time basis under an appointment or agreement.

(2) For the pensions Act, sections 3, 4 and 5, the period served by the relevant member is taken to be the total number of years, including any part of a year, that the person serves as a relevant member regardless of whether the person performs the functions of the office on a full-time or part-time basis.

(3) For the Pensions Act, sections 3, 4 and 5, the salary of the relevant member is taken to be the amount worked out using the formula—

$$\mathbf{FTS} \times \frac{\mathbf{PS}}{\mathbf{TS}}$$

where—

Not authorised—indicative only

Not authorised—indicative only

FTS means the salary payable to a relevant member who performs the functions of the office on a full-time basis under section 586.

PS means the sum of the period served on a full-time basis and each period of equivalent full-time service of the relevant member.

TS means the total number of years, including any part of a year, that the person serves as a relevant member regardless of whether the person performs the functions of the office on a full-time or part-time basis.

Example of TS—

A person works as a commissioner full-time for 5 years 6 months and then works part-time on a 50% part-time basis for 5 years. The TS of the person is 10 $^{1}/_{2}$ years (5 $^{1}/_{2}$ years plus 5 years).

(4) The amount of the salary of the relevant member worked out under subsection (3) is to be worked out to 2 decimal places and rounded up or down to the nearest whole dollar amount.

(5) If the sum of the period served on a full-time basis and each period of equivalent full-time service for a relevant member is 10 years or more—

(a) subsection (3) does not apply to the relevant member for the Pensions Act, sections 3, 4 and 5; and

(b) the salary of the relevant member for the Pensions Act, sections 3, 4 and 5 is taken to be the salary payable to a relevant member who performs the functions of the office on a full-time basis under section 586.

(6) In this section—

equivalent full-time service, for each period of part-time service, means the period of service multiplied by the percentage of full-time service represented by the part-time service stated in the appointment or agreement.

589 Benefits—Superannuation (State Public Sector) Act 1990

(1) Section 586 does not confer an entitlement on a member of the court or commission or a member's spouse or child, if—

(a) for a member who was first appointed to the commission before the commencement of the *Industrial Relations Act 1999*—immediately before the commencement of that Act, the member was not a member to whom the Pensions Act applied; or

(b) otherwise—

(i) the member is a member of the scheme and properly elects to continue as a member of the scheme; or

(ii) the member is not a member of the scheme and properly elects to be a member of the scheme.

(2) An election by a member under subsection (1)(b) must be made by giving signed notice to each of the following within 3 months after being first appointed as a member—

(a) the trustee under the *Superannuation (State Public Sector) Act 1990*; and

(b) the chief executive.

(3) In this section—

scheme means the scheme under the *Superannuation (State Public Sector) Act 1990*.

590 Leave under the Pensions Act

(1) The Pensions Act, section 15 applies with necessary changes to a member of the court or commission in the way it applies to a judge.

(2) For subsection (1), a reference in the Pensions Act, section 15—

(a) to a judge may, if the context permits, be taken to be a reference to a member; and

Not authorised—indicative only

Not authorised—indicative only

(b) to the prescribed authority is taken to be a reference to—

(i) if the member is the president—the Chief Justice; or

(ii) otherwise—the president.

(3) In working out a person's length of service as a member for subsection (1), the following periods must be taken into account—

(a) a period when the person has served as a member, whether under—

(i) a first appointment as a member or a renewal of the appointment; or

(ii) a subsequent appointment;

(b) a period when the person has served as an acting member.

591 Other leave

(1) The Chief Justice may grant leave, other than leave mentioned in the Pensions Act, section 15, to the president on the terms the Chief Justice considers appropriate.

(2) The president may grant leave, other than leave mentioned in the Pensions Act, section 15, to any other member.

592 Leave for part-time members

If a relevant member performs the functions of the office of a member on a part-time basis under an appointment or agreement, the entitlement to leave of the relevant member is worked out by multiplying the percentage of full-time service represented by the part-time service stated in the appointment or agreement by the entitlement to the leave of a relevant member who performs the functions of the office on a full-time basis.

593 Other terms and conditions

A member of the court or commission holds office on the terms and conditions decided by the Governor in Council, other than as provided for by this Act or the *Judicial Remuneration Act 2007*.

Division 2 President's annual report

594 President's annual report

(1) As soon as practicable after the end of each financial year, the president must prepare and give to the Minister a report for the year about—

(a) the operation of this Act; and

(b) in particular, the performance of the functions of the court, commission and registry.

(2) The registrar must prepare, and give to the president, a report for the year on the working of the registry for inclusion in the president's report under subsection (1).

(3) The Minister must table a copy of the report in the Legislative Assembly within 14 days after the Minister receives it.

Chapter 12 Industrial organisations and associated entities

Part 1 Preliminary

595 Definitions for chapter

In this chapter—

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amalgamation means the carrying out, under part 14, of arrangements for 2 or more organisations, associations or corporations, under which—

(a) an organisation is, or 2 or more organisations are, to be deregistered; and

(b) members of the organisation or organisations to be deregistered are to become members of another organisation, whether existing or proposed.

approved auditor, in relation to a reporting unit, means a person who—

(a) is a registered company auditor within the meaning of the Corporations Act, section 9; and

(b) is not an officer or member of the reporting unit or the organisation of which the reporting unit is part; and

(c) is not employed by the reporting unit or the organisation of which the reporting unit is part.

auditor, in relation to a reporting unit, means—

(a) the person who is the holder of the position of auditor of the reporting unit under section 766; or

(b) if a firm is the holder of the position—each person who is a member of the firm and is an approved auditor.

ballot records, for an election or ballot, means any ballot envelopes, papers or other records that have been prepared or used for the election or ballot.

branch, of an organisation, means a constituent part of the organisation, however called, that has a management committee or officers.

casual vacancy means a vacancy in an office because of the death, removal or resignation from office of the office holder.

certified, in relation to a document, means certified by declaration by the secretary, or another officer, of an organisation prescribed by regulation.

committee meeting, for an organisation, means a meeting of its management committee.

corporation see section 596.

counterpart federal body see section 597.

defect includes error, irregularity, nullity and omission.

demarcation dispute undertaking from an organisation or applicant for registration means an undertaking from it to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and another organisation's eligibility rules.

deregistered organisation means a former organisation whose registration has been cancelled.

deregistration, for an organisation, means the cancellation of its registration.

designated officer see section 753(1).

disclosure notice see section 716(2).

election means an election for an office for an organisation or branch of an organisation.

electoral commission means the Electoral Commission of Queensland.

electoral officer means the electoral commissioner, the deputy electoral commissioner or a member of the staff of the electoral commission.

eligibility rules of an organisation or applicant for registration means its rules about eligibility for its membership.

file a document means file it with the registrar.

financial hardship payment, for an organisation, means a payment by the organisation to relieve a member or the member's dependant from severe financial hardship.

financial records, of a reporting unit, means financial records of the reporting unit kept under section 762(1).

financial year, of an organisation, see section 598.

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Not authorised—indicative only

general meeting, of an organisation or applicant for registration, means a general meeting of its members.

general purpose financial report means the general purpose financial report prepared under section 763.

irregularity includes—

(a) a contravention of an organisation's rules; and

(b) for an election or ballot, an act or omission by which the following is, or is attempted to be, prevented—

(i) the full and free recording of votes by all persons who may record a vote and by no other persons;

(ii) a correct working out or declaration of the results of the voting.

management committee, for an organisation, branch of an organisation, reporting unit or applicant for registration, means the body of persons, however described, that manages its affairs.

membership subscription, for an organisation, means a subscription, due or other amount payable under its rules for membership or membership renewal.

members register, for an organisation, means the current register of its members required to be kept under section 732(1).

model election rules means the model election rules under section 642.

office, for an organisation, branch of an organisation or applicant for registration, see section 599.

officer, of an organisation, branch of an organisation or association or corporation applying for registration, means a person who holds an office in the organisation, branch, association or corporation.

officers register, for an organisation, means the current register of its officers required to be kept under section 732(2).

ordinary election means an election held under rules under part 4.

postal ballot means a ballot by which—

(a) a ballot paper is sent by prepaid post to each person who may vote in the ballot; and

(b) facilities are provided for returning the completed ballot paper by post by each voter without cost to the voter.

president, of an organisation, branch of an organisation or applicant for registration, means—

(a) its president; or

(b) its chief executive officer; or

(c) another officer of the organisation, branch or applicant for registration, however described, who has the functions of its president or chief executive officer.

register, when used as a noun, means the register the registrar keeps under section 614(1) of—

(a) organisations; and

(b) a copy of each organisation's rules.

registration means registration under this chapter as an organisation.

reporting unit, of an organisation, means a reporting unit under section 752(2) or (3).

reporting unit's organisation means the organisation of which a reporting unit is the whole or a part under section 752(2) or (3).

required number of members of an organisation means the number of its members that is the lesser of 5% of the membership or 250.

rules application see section 646.

secretary, of an organisation, for the signing of a document to be filed means—

Not authorised—indicative only

Not authorised—indicative only

(a) the person who holds the office of secretary of the organisation; or

(b) if no-one holds the office of secretary of the organisation—the person authorised by the organisation under its rules to sign documents for the organisation.

withdrawal means the withdrawal, under part 14, of a constituent part from an amalgamated organisation.

596 Meaning of *corporation* for ch 12

(1) In this chapter, ***corporation*** means—

(a) a corporation under the Corporations Act, section 57A; or

(b) an incorporated association under the *Associations Incorporation Act 1981*; or

(c) a body incorporated under a law of the State, another State or the Commonwealth, other than—

(i) a federal organisation; or

(ii) an organisation registered under a law of another State about the registration of industrial organisations or unions.

(2) Except for this chapter (other than sections 618 and 624 and part 4) and the *State Penalties Enforcement Act 1999*, parts 3 to 5, an organisation incorporated under section 611 is not a corporation.

597 Meaning of *counterpart federal body* for ch 12

(1) In this chapter, a federal organisation or a branch or part of a federal organisation (***federal body***) is a ***counterpart federal body*** of an organisation (***State body***) if—

(a) a substantial number of members of the State body are—

(i) members or eligible to be members of the federal body; or

(ii) engaged in the same work, in aspects of the same work or in similar work as members of the federal body; or

(iii) employed in the same or similar work by employers engaged in the same industry as members of the federal body; or

(iv) engaged in work or in industries for which there is a community of interest between the federal body and the State body; or

(b) there is an agreement in force under the Commonwealth Registered Organisations Act, section 151, between the federal body and the State body.

(2) If subsection (1)(a) or (b) applies to more than 1 State body for the same federal body, the federal body is a counterpart federal body of each of the State bodies.

598 Meaning of *financial year* for ch 12

(1) In this chapter, a ***financial year*** of an organisation means—

(a) the period of 1 year starting on 1 July; or

(b) if the organisation's rules provide for another period of 1 year as its financial year—the other period.

(2) If an organisation's rules change so that the period of its financial year changes, the time from the end of the financial year before the change and the start of the first financial year after the change is taken to be a financial year of the organisation.

(3) The period from when an organisation is registered to the start of its first financial year under subsection (1) is not included in a financial year of the organisation.

599 Meaning of *office* for ch 12

In this chapter, ***office***, for an organisation, branch of an organisation or applicant for registration, (each an ***industrial organisation***) means—

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Not authorised—indicative only

(a) the office of president, vice president, secretary or assistant secretary of the industrial organisation; or

(b) the office of a member of the management committee of the industrial organisation; or

(c) the office of a voting member of any other collective body that may do any of the following—

(i) manage the affairs of the industrial organisation;

(ii) decide the policy of the industrial organisation;

(iii) make, amend or repeal the rules of the industrial organisation;

(iv) enforce the rules of the industrial organisation; or

(d) an office for which the holder may under the rules of the industrial organisation manage the organisation's affairs and enforce its rules, other than a holder only taking part under directions of a collective body or other person to put into effect—

(i) the organisation's existing policy; or

(ii) decisions concerning the organisation; or

(e) an office for which the holder may under the industrial organisation's rules decide the organisation's policy and make, amend or repeal its rules; or

(f) the office of a person holding, whether as trustee or otherwise, the property of the industrial organisation or property the organisation has a beneficial interest in.

600 Exemptions

(1) An organisation, or an officer of an organisation or branch of an organisation, may apply to the registrar for an exemption under this section from a stated obligation imposed by this chapter on a branch of the organisation or an officer of the organisation or branch.

(2) However, an application may not be made under this section if an application for the exemption may be made under another provision of this chapter.

(3) The registrar must exempt the branch of the organisation or the officer of the organisation or branch from the obligation if the registrar is satisfied that the branch or officer does not have a role in managing the affairs or controlling the finances of the organisation or branch.

Part 2 Registration

Division 1 Registration applications

601 Application is to commission

A registration application may only be made to the commission.

602 Who may apply

(1) An association may apply for registration as an employee organisation or employer organisation.

(2) A corporation may only apply for registration as an employer organisation.

603 General requirements for applications

(1) A registration application must be—

(a) signed by the applicant's president and secretary; and

(b) accompanied by the following—

(i) the proposed address under section 613(1) of the applicant's proposed registered office;

(ii) 2 copies of the rules the applicant proposes to have as an organisation;

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Not authorised—indicative only

(iii) a copy of the register that will, on its registration, be the applicant's officers register;

(iv) a list of any trustees of the applicant;

(v) the appropriate fee under the rules; and

(c) filed.

(2) Notice of the application must be published by the applicant in the way prescribed by regulation.

604 Additional requirements for employee organisation application

If the application is for registration as an employee organisation, the application must be accompanied by the following—

(a) a copy of a resolution in favour of the applicant's registration passed under the applicant's rules—

(i) by a majority of its members present at a general meeting of the organisation; or

(ii) in another way allowed under the applicant's rules;

(b) a list stating the applicant's members on the day the resolution was made;

(c) a list stating the callings of the applicant's members or callings to which the applicant's eligibility rules relate;

(d) a list stating each locality in which the applicant's members exercise their callings.

605 Additional requirements for employer organisation applications

(1) If the application is for registration as an employer organisation, the application must be accompanied by the following—

(a) a list stating the name of, and the place or places where business is carried on by, each employer member of the applicant;

(b) if the applicant has more than 1 member, a copy of a resolution in favour of registration of the applicant passed under the applicant's rules—

(i) by a majority of the employer members; or

(ii) in another way allowed under the applicant's rules;

(c) a list stating the callings in which employees are employed by the employer members;

(d) a statement of particulars of—

(i) the control of the applicant's property; and

(ii) investment of the applicant's funds, as distinct from the property and funds of the members of the applicant.

(2) In this section—

member includes shareholder.

rules includes constitution.

Division 2 Hearing of registration applications

606 Right to object

(1) A person may object to a registration application if the person—

(a) has an appropriate interest in the matter; and

(b) gives notice to the commission in the time and way prescribed by regulation.

(2) The commission must hear the objection in the way prescribed by regulation.

Not authorised—indicative only

Not authorised—indicative only

607 Registration criteria for all applications

(1) The commission may grant the application only if satisfied of the following—

(a) the applicant exists to further or protect its members' interests;

(b) the applicant would, if registered, comply with the obligations of an organisation under this chapter and would not contravene chapter 8;

(c) the rules the applicant proposes to have as an organisation—

(i) comply with parts 3 and 4; and

(ii) are not contrary to this Act or another law;

(d) the applicant's name—

(i) is not the same as an organisation's name or so similar to an organisation's name as to be likely to cause confusion; and

(ii) will, if the applicant is registered, comply with section 612;

(e) 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;

(f) the applicant is free from control by, or improper influence from, a person who was an officer of a cancelled incorporated association;

(g) registration of the applicant would not be inconsistent with the objects of this Act.

(2) 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.

(3) For subsection (1)(g), the commission must consider whether recent conduct by the applicant or its members would have been an industrial conduct ground under part 16 if the applicant had been registered when the conduct happened.

608 Additional criteria for registration as employee organisation

(1) If the application is for registration as an employee organisation, the commission must also be satisfied of the following—

(a) the applicant is free from control by, or improper 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;

(b) either—

(i) there is no organisation to which the applicant's members might belong; or

(ii) there is no organisation to which the members could conveniently belong that would effectively represent them in a way consistent with the objects of this Act;

(c) the applicant has at least 20 members who are employees;

(d) the application was made—

Not authorised—indicative only

Not authorised—indicative only

(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's members who are not employees are—

(i) officers of the applicant; or

(ii) independent contractors who, if they were employees performing work of the kind that they usually perform as independent contractors, would be employees eligible for membership of the applicant;

(f) the applicant is not the subject of an order made under section 483B;

(g) 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).

(2) Despite subsection (1)(c), (d) or (e), the commission may grant the application if satisfied special circumstances justify the applicant's registration.

609 Additional criteria for registration as employer organisation

(1) If the application is for registration as an employer organisation, the commission must also be satisfied of the following—

(a) the applicant has employer members;

(b) either—

(i) there is no organisation to which the applicant's members might belong; or

(ii) there is no organisation to which the members could conveniently belong that would effectively represent them in a way consistent with the objects of this Act;

(c) the applicant effectively represents its employer members in a way that is consistent with the objects of this Act;

(d) each member of the applicant who is not an employer—

(i) is an officer of the applicant; or

(ii) was an employer on becoming a member; or

(iii) carries on a business;

(e) the applicant's members have, in total, employed a monthly average of at least 20 employees in the 6 months before the application was made.

(2) Despite subsection (1)(e), the commission may grant the application if satisfied special circumstances justify the applicant's registration.

Division 3 Grant of application

610 Grant of application

(1) If the commission grants a registration application, the applicant immediately becomes an organisation.

(2) The rules for which the application was granted take effect as the organisation's rules.

(3) The registrar must, as soon as practicable—

(a) enter the organisation's name and the day it became an organisation in the register; and

(b) give the organisation a certificate of registration in the approved form; and

(c) register the applicant's rules.

Not authorised—indicative only

Not authorised—indicative only

611 Incorporation on registration if not already incorporated

If an organisation was not a corporation immediately before it became an organisation, on registration it—

(a) is incorporated under its registered name; and

(b) has perpetual succession; and

(c) may purchase, take on lease or hire, hold, sell, lease, let, mortgage, exchange, accept or dispose of by way of gift, own, possess, and otherwise deal with property; and

(d) may have a common seal; and

(e) may sue and be sued.

Division 4 Registered name and office

612 Registered name of organisation that is not a corporation

(1) If an organisation was not a corporation immediately before it became an organisation, its registered name must include the words—

(a) if the organisation is an employee organisation—'industrial organisation of employees' or 'industrial union of employees'; or

(b) if the organisation is an employer organisation—'industrial organisation of employers' or 'industrial union of employers'.

(2) The name must state the locality in which most of the organisation's members live or carry on their business or calling.

613 Registered office

(1) An organisation must have a registered office in the State to which all notices to it may be given.

Maximum penalty—100 penalty units.

(2) The organisation must give notice to the registrar of a change in the address of its registered office within 7 days after the change happens.

Maximum penalty—100 penalty units.

Division 5 Miscellaneous

614 Registrar's functions for register and rules

(1) The registrar must keep a register of—

(a) organisations; and

(b) a copy of each organisation's rules.

(2) The register must be kept in the way the registrar considers appropriate, including, for example, in an electronic form.

(3) The registrar must publish information contained in the register on the QIRC website.

615 Change of callings

(1) On an application by an organisation made in the way prescribed by regulation, the commission may, by order, change its list of callings.

(2) If the list of callings is changed under subsection (1), the organisation's list of callings is taken to be the changed list.

(3) In this section—

list of callings means the list stating the callings that accompanied the organisation's registration application.

Not authorised—indicative only

Not authorised—indicative only

Part 3 General contents of rules

Division 1 Requirement to have rules

616 Organisation must have complying rules

An organisation must have rules about the matters required under this part and part 4.

Note—

See section 614 for the requirement for the registrar to publish a copy of the organisation's rules on the QIRC website.

Division 2 General requirements for contents

617 Requirements for all organisations

(1) An organisation's rules must state the following—

(a) the organisation's objectives;

(b) the organisation's eligibility rules;

(c) how and when—

(i) a person may become a member of the organisation; or

(ii) a person may resign from membership of the organisation; or

(iii) a person's membership of the organisation ends, other than by resignation;

(d) the functions and powers of the organisation's committees, branch committees, office holders and branch office holders;

(e) how meetings of the organisation's committees, branches and members may be called;

(f) how the organisation's committees are controlled by the members of the organisation;

(g) how committees of the organisation's branches are controlled by members of the branch;

(h) how documents may be signed for the organisation;

(i) that notice must be given by a stated authorised office holder to the commission of the existence or likelihood of industrial disputes, in the way required under section 261;

(j) how the organisation's property is controlled and its funds are invested;

(k) any conditions for spending the organisation's funds;

(l) that, unless exempted under part 12, the organisation's accounts must be audited yearly or in another more frequent period;

(m) that, unless exempted under part 12, the organisation must keep a members register, arranged according to branches if it has branches;

(n) how the rules may be amended;

(o) that applicants for membership of the organisation must be informed in writing of—

(i) a member's financial obligations; and

(ii) how and when a member may resign from membership.

(2) In this section—

committee, of an organisation or branch of an organisation, means—

(a) its management committee; or

(b) any other collective body of its members or officers, however described, that may do any of the following—

(i) manage its affairs;

(ii) decide its policy;

Not authorised—indicative only

Not authorised—indicative only

(iii) make, amend or repeal its rules;

(iv) enforce its rules.

618 Additional requirements for organisation that is not a corporation

If an organisation is not a corporation, its rules must also state—

(a) that an elected officer of the organisation may be removed from office only on the ground that the officer has ceased to be eligible to hold the office or has been found guilty under the rules of—

(i) misappropriation of the organisation's property; or

(ii) a substantial contravention of the rules; or

(iii) gross misbehaviour or gross neglect of duty in the office; and

(b) the procedure for removing an elected officer.

619 Rules must give conditions for loans, grants and donations

(1) An organisation's rules must state that the organisation or a branch of the organisation must not make donations, grants or loans totalling more than $1,000 (the ***payment***) to the same person unless the management committee of the organisation or branch—

(a) has approved the payment; and

(b) is satisfied the payment is not otherwise prohibited under the organisation's rules; and

(c) if the payment is a loan—it is made on satisfactory terms.

(2) Despite subsection (1), the rules may allow the organisation or a branch of the organisation to make a financial hardship payment of not more than $3,000 if it is made on condition that, if the organisation's management committee at its next

meeting does not approve the payment, it must be repaid as decided by the committee.

(3) In deciding whether to approve the payment, the management committee of the organisation or branch of the organisation must consider whether it was made under the rules and on satisfactory terms.

(4) For this section, a loan is made on ***satisfactory terms*** if the management committee of the organisation or branch is satisfied—

(a) the security to be provided for the loan is sufficient; and

(b) the proposed arrangements to repay the loan are satisfactory.

Division 3 Permitted contents

620 Permitted contents—general

An organisation's rules may—

(a) state the industry for which the organisation is formed; and

(b) make other provision that does not contravene this Act.

621 Filling casual vacancies

(1) An organisation's rules may provide for filling a casual vacancy in an office for the organisation.

(2) However, the rules must not allow the filling of a casual vacancy other than by ordinary election, if the unexpired part of the term of the office for the organisation is longer than the greater of—

(a) 1 year; or

(b) three-quarters of the term of the office.

Not authorised—indicative only

Not authorised—indicative only

(3) If a person fills a casual vacancy in an office for an organisation under this section, the person is taken to have been elected to the office.

(4) In this section—

term, of the office, means the period for which the person last elected to the office by an ordinary election, other than by an ordinary election to fill a casual vacancy, may hold the office without being re-elected.

622 Mortality benefit fund

(1) An organisation's rules may provide for an amount to be paid on the death of a member of the organisation to an eligible nominee of the member nominated by the member.

(2) Despite the rules, the member may, by giving notice to the organisation, cancel the nomination or change the nominee to another eligible nominee.

(3) In this section—

eligible nominee, of the member, means—

(a) any person, other than a person mentioned in paragraph (b) or (c), who is not an officer or employee of the organisation; or

(b) a spouse of the member; or

(c) a child, grandchild, grandparent, nephew, niece, parent or sibling of the member.

Division 4 Restrictions on contents

623 General restrictions

(1) An organisation's rules must not—

(a) contravene this Act, another law or an industrial instrument; or

(b) prevent members of the organisation from—

(i) complying with this Act or another law, an industrial instrument or decision; or

(ii) entering into a written agreement under an industrial instrument or decision; or

(c) impose on the organisation's members, or applicants for membership, conditions, obligations or restrictions that are oppressive, unreasonable or unjust.

(2) An eligibility rule does not contravene subsection (1)(c) only because it requires reasonable minimum standards for the conduct of the businesses or callings of the organisation's members or applicants for membership.

624 Maximum office term for organisation that is not a corporation

(1) If an organisation is not a corporation, its rules must not allow an officer of the organisation to hold the office for more than 4 years (the ***maximum term***) without re-election.

(2) However, the rules may extend the maximum term for a period of not more than 1 year to synchronise elections for other offices for the organisation.

Note—

This section applies to an organisation if it is incorporated only because of section 611. See section 596(2).

Part 4 Election rules

Division 1 Preliminary

625 Part does not apply to corporations

This part does not apply to a corporation.

Note—

This part applies to an organisation if it is incorporated only because of section 611. See section 596(2).

Not authorised—indicative only

Not authorised—indicative only

626 Meaning of *collegiate electoral system* for part

In this part, a ***collegiate electoral system*** means a system for the election of an organisation's officers under which—

(a) persons are elected to a number of offices for the organisation by a direct voting system; and

(b) at a subsequent stage or stages, persons are elected to offices for the organisation by an electoral college consisting of the persons elected at the last preceding stage.

627 Meaning of *direct voting system* for part

(1) In this part, a ***direct voting system***, for an office for an organisation or a branch of an organisation, means an electoral system in which, subject to provisions in the organisation's rules about voting enrolment—

(a) for an office for the organisation—all eligible members of an organisation may vote for candidates for election to the office; or

(b) for an office for a branch of the organisation—all eligible members of the branch may vote for candidates for election to the office.

(2) In this section—

eligible member means a member mentioned in section 633(c).

Division 2 General requirements

628 General requirement of transparency

An organisation's rules about elections must, as far as practicable, ensure—

(a) the processes under which the organisation's elections are conducted are transparent; and

(b) no irregularities can happen in an election for the organisation or a branch of the organisation.

629 Rules must provide for elections

An organisation's rules must provide for elections for all elected offices for the organisation or a branch of the organisation.

630 Direct voting or collegiate electoral system must be used

An organisation's rules must provide for the election of its elected officers by a direct voting system or a collegiate electoral system.

Division 3 Direct voting systems

Subdivision 1 Preliminary

631 Application of division

This division applies if an organisation's rules provide for the election of elected officers by a direct voting system.

Subdivision 2 Requirements for direct voting systems

632 General requirements for direct voting system

The organisation's rules must state the following—

(a) who may nominate as a candidate for election;

(b) how a person may nominate and become a candidate;

(c) the times for nominations to open and to close;

Not authorised—indicative only

Not authorised—indicative only

(d) that nominations must be called in a stated way that is reasonably likely to notify the organisation's members—

(i) that nominations have been called; and

(ii) of how to nominate;

(e) that if a nomination for election for an office for the organisation is rejected as defective, other than because the person is not qualified to hold the office or because the nomination was made after the closing time—

(i) the nominee must be notified of the defect; and

(ii) if practicable, the nominee must be given an opportunity to remedy the defect;

(f) that a candidate must be declared elected if the number of candidates for election is not more than the number of officers to be elected for the organisation;

(g) that, if at the closing time there are more candidates for election than the number of officers to be elected for the organisation, a ballot must be conducted to decide the election.

633 Required contents—ballots

The organisation's rules must also state the following—

(a) that a ballot to decide an election must be a secret postal ballot, secret electronic ballot or another type of secret ballot approved by the registrar under subdivision 3;

(b) how the ballot is to be conducted;

(c) that a person (***eligible member***) may vote in the ballot only if the person was a financial member of the organisation on a stated day during the period—

(i) starting no earlier than 60 days before the opening time for nominations; and

(ii) ending no later than 30 days before the opening time;

(d) that the person conducting the ballot must, when nominations for the election close, prepare a list or roll of the eligible members;

(e) the appointment, conduct and functions of scrutineers to represent the candidates in the ballot;

(f) that an eligible member may cast an absentee vote and how the member may cast the vote;

(g) the method of voting and deciding the result of the ballot, by either a first-past-the-post system or a preferential system;

(h) that a candidate or a member of the organisation has the right, up to 30 days after the declaration of the result of the election, free of charge—

(i) to inspect the list or roll of persons who may vote in the ballot at the organisation's registered office when it is open for business; and

(ii) to be given a copy of the whole or a requested part of the list or roll.

634 Compulsory voting permitted

The organisation's rules may require compulsory voting in a ballot required for an election.

Subdivision 3 Alternative types of secret ballot

635 Approval application

(1) An organisation may apply to the registrar for approval for ballots to decide elections for its elected officers not to be postal ballots.

(2) The application must include particulars of proposed amendments to the organisation's rules that provide for secret ballots that are not postal ballots.

Not authorised—indicative only

Not authorised—indicative only

636 Consideration of application

The registrar may grant the approval only if satisfied—

(a) the proposed amendments—

(i) are not contrary to this Act or to another law; and

(ii) have been made under the organisation's rules; and

(b) a ballot under the proposed amendments—

(i) is likely to have a higher participation by the organisation's members than a postal ballot; and

(ii) will give members who are eligible to vote an adequate opportunity of voting without intimidation.

637 Grant of approval

If the registrar grants the approval, the proposed amendments take effect from—

(a) the day the registrar gives the organisation notice of the approval; or

(b) a later day stated in the notice.

638 Cancellation of approval

The registrar may cancel the approval only if—

(a) the organisation applies for the cancellation; or

(b) the registrar is no longer satisfied a ballot under the organisation's rules—

(i) is likely to have a higher participation by the organisation's members than a postal ballot; and

(ii) will give members who are eligible to vote an adequate opportunity of voting without intimidation.

Division 4 Collegiate electoral systems

Subdivision 1 Preliminary

639 Application of division

This division applies if an organisation's rules provide for the election of elected officers by a collegiate electoral system.

Subdivision 2 Requirements for collegiate electoral systems

640 Restriction on persons who may be elected by electoral college

At least 80% of the persons elected by an electoral college must be elected at the stage in the collegiate electoral system that immediately preceded the stage for which the electoral college is formed.

641 Requirements for second or subsequent stage

The organisation's rules must state the following for an election at the second or a subsequent stage of a collegiate electoral system—

(a) who may nominate as a candidate for election;

(b) how a person may nominate and become a candidate;

(c) that a candidate must be declared elected if the number of candidates for election is not more than the number of officers to be elected for the organisation;

(d) that, if there are more candidates than the number of officers to be elected for the organisation, a secret ballot must be conducted to decide the election;

(e) that if a ballot must be conducted—

Not authorised—indicative only

Not authorised—indicative only

(i) how the ballot must be conducted; and

(ii) the methods of voting and deciding the result of the ballot; and

(iii) that a person who may vote in the ballot (a ***voter***) may vote by an absentee or proxy vote; and

(iv) how a voter may vote by an absentee or proxy vote; and

(v) that scrutineers may be appointed for candidates for election; and

(vi) the functions of scrutineers.

Division 5 Model election rules

642 Model election rules

A regulation may make model election rules under this division for organisations.

643 Model election rules may be adopted

An organisation may, by a resolution under its rules, adopt all or part of the model election rules, with or without change.

644 Adoption without change

(1) If an organisation resolves to adopt all the model election rules without change, its secretary may give the registrar notice of the resolution.

(2) The registrar must register the model election rules as an amendment of the organisation's rules.

(3) The amendment takes effect when it is registered.

645 Effect of adoption without change

If an organisation adopts the model election rules without change, its rules are taken to comply with this part.

Part 5 Validity and compliance with rules

646 Powers of commission

(1) The commission may, on application (a ***rules application***)—

(a) decide whether an organisation's rules comply with section 623; or

(b) direct a person obliged to give effect to or comply with an organisation's rules to give effect to or comply with the rules.

(2) However, a direction must not be made if it invalidates—

(a) an election or purported election; or

(b) a step for an election or purported election.

(3) In deciding the rules application, the commission may declare—

(a) the whole, or a part of, the rules comply with or contravene section 623; or

(b) the rules contravene section 623 in a stated way.

647 Who may apply

A rules application may be made only by a member of the organisation or another person prescribed by regulation.

648 Financial help for rules application

(1) A member of an organisation may apply to the Minister for financial help if the member—

Not authorised—indicative only

Not authorised—indicative only

(a) has made, or proposes to make, a rules application under this part; and

(b) applies within 3 months after the rules application has been decided.

(2) The Minister may direct that financial help from the State be given to the member for the cost of the rules application if satisfied—

(a) there are, or were, reasonable grounds for making the application; and

(b) the application is proposed to be, or was, made in good faith.

(3) The Minister must decide the amount of the financial help.

649 Applicant must take reasonable steps to resolve the matter within the organisation

The commission may refuse to hear an application for directions in relation to a rules application until satisfied the applicant has taken all reasonable steps to resolve the matter within the organisation.

650 Interim orders

(1) The commission may make an interim order in relation to a rules application if it considers appropriate to do so.

Example—

If the rules application is for a direction, the commission may make an order to help resolve the matter within the organisation.

(2) An interim order ends—

(a) when the proceedings end; or

(b) at an earlier time stated in the order; or

(c) if the order is discharged by the commission.

651 Hearing application

The commission may adjourn the hearing for a rules application for a stated period on conditions it considers appropriate to give the organisation an opportunity to amend its rules.

652 Effect of declaration

If the commission declares the whole or a part of a rule contravenes section 623, the rule or the part of the rule, is void from the making of the declaration.

653 Direction must be complied with

If the commission directs a person to give effect to or comply with an organisation's rules, the person must comply with the direction unless the person has a reasonable excuse for not complying with the direction.

Maximum penalty—100 penalty units.

Part 6 Amendment of rules

Division 1 Amendments by commission or registrar

654 Breach of demarcation dispute undertaking

(1) This section applies if an organisation has given a demarcation dispute undertaking to the commission and the organisation has breached the undertaking.

(2) The commission may amend the organisation's rules in a way it considers necessary to remove an overlap between the organisation's eligibility rules and another organisation's eligibility rules.

Not authorised—indicative only

Not authorised—indicative only

655 When registrar may amend rules

The registrar may amend an organisation's rules as follows—

(a) on the registrar's own initiative, if the registrar considers the rules do not comply with section 623;

(b) if, under section 638, the registrar has cancelled an approval under section 637 and the amendment is to provide that, if a ballot is necessary for an election for an office for the organisation, it must be a secret postal ballot;

(c) to omit a provision declared, under section 646(3)(a), to be in contravention of section 623;

(d) to amend a provision declared, under section 646(3)(b), to contravene section 623 in a stated way so that the provision no longer contravenes section 623 in the stated way;

(e) to give effect to an order under section 696(2)(b) or 723(e);

(f) to correct a formal or clerical error.

656 Amendment to cure noncompliance if rule declared void

(1) This section applies if—

(a) the court declares the whole or a part of a rule of an organisation contravenes section 623 or contravenes section 623 in a stated way; and

(b) the organisation's rules have not been amended so as to comply with section 623 within 3 months after the declaration is made.

(2) The appropriate entity may amend the rules to comply with section 623 for the matters that gave rise to the declaration.

(3) In this section—

appropriate entity means—

(a) for eligibility rules of an organisation—the commission; or

(b) for other rules of an organisation—the registrar.

657 How amendment must be made

(1) An amendment under this division may only be made by an order, direction or written decision (***instrument***).

(2) The amendment takes effect from the date of the instrument.

(3) The registrar must give the organisation a copy of the instrument as soon as practicable after the instrument is made.

Division 2 Amendments by organisation

Subdivision 1 Name or eligibility rule amendments

658 Application of subdivision

(1) This subdivision applies if an organisation proposes to amend its name or eligibility rules.

(2) This subdivision does not apply if the amendment is made under section 655 or 656 or is proposed to be made for an amalgamation or withdrawal.

(3) In this section—

amend includes replace.

659 Requirements for amendment

The proposed amendment may be made only if it has been—

(a) proposed under the organisation's rules; and

(b) approved under this subdivision.

Not authorised—indicative only

Not authorised—indicative only

660 Approval to change 'union' to 'organisation' in name

If an organisation's name contains the word 'union', the registrar may, by order, approve the replacement of the word with 'organisation' or the words 'industrial organisation'.

661 Approval for other name amendment

(1) This section applies to an amendment of an organisation's name other than an amendment mentioned in section 660.

(2) The commission may, by order, approve the amendment only if satisfied the name as amended—

(a) has been proposed under the organisation's rules; and

(b) is not—

(i) the same as another organisation's name; or

(ii) so similar to another organisation's name as to be likely to cause confusion.

(3) Approval may be given wholly or in part.

662 Approval for eligibility rule amendment

(1) The commission may, by order, approve an amendment to an eligibility rule only if satisfied—

(a) the amendment has been proposed under the organisation's rules; and

(b) there is no organisation to which persons to whom the amendment would apply could conveniently belong that would effectively represent them in a way consistent with the objects of this Act.

(2) The commission may refuse to approve an amendment to an eligibility rule if satisfied—

(a) the amendment—

(i) would contravene an agreement or understanding to which the organisation is a party; and

(ii) deals with the organisation's right to represent; or

(b) the amendment—

(i) would change the effect of a full bench order under section 479 about the organisation's right to represent; and

(ii) would give rise to a serious risk of a demarcation dispute that would prevent or restrict the performance of work in an industry, or harm an employer's business.

(3) Subsection (2) does not limit the grounds on which approval may be refused.

(4) Approval may be given wholly or in part.

(5) In this section—

right to represent, of an organisation, means a right of the organisation to represent the industrial interests of a particular class or group of persons.

663 When amendment takes effect

If an amendment of an organisation's name or eligibility rules is approved, the amendment takes effect on the day the order is made or a later day stated in the order.

664 Registrar must record amendment

As soon as practicable after an amendment of an organisation's name or eligibility rules takes effect, the registrar must—

(a) for an amendment of the organisation's name—

(i) enter the name as amended in the register; and

(ii) give the organisation a replacement certificate of registration in the approved form; and

Not authorised—indicative only

Not authorised—indicative only

(b) for an amendment of the organisation's eligibility rules—enter particulars of the amendment in the register.

Subdivision 2 Other rule amendments

665 Application of subdivision

This subdivision applies if an organisation proposes to amend its rules, other than by amending its name or eligibility rules, or by, under section 644, adopting the model election rules without change.

666 When amendment may be made

(1) An amendment may be made only if the registrar has approved it.

(2) The registrar may approve an amendment only if satisfied it—

(a) does not contravene section 623 or another law; and

(b) has been proposed under the organisation's rules.

667 When amendment takes effect

(1) If the registrar approves an amendment, the registrar must register the amendment as soon as practicable.

(2) An amendment takes effect when it is registered.

Part 7 Conduct of elections

Division 1 Preliminary

668 Application of divs 2–4

Divisions 2 to 4 do not apply to a corporation.

Division 2 Preparatory steps

669 Organisation or branch must file prescribed election information

(1) If an organisation or a branch of an organisation proposes to conduct an election, the organisation or branch must file the information prescribed by regulation for the election in the registry.

(2) The information must be filed before the day prescribed by regulation.

(3) However, the registrar may, on application, allow the information to be filed before a later stated day.

670 Registrar must arrange for elections

The registrar must arrange for an election to be conducted by the electoral commission if—

(a) the information prescribed by regulation is filed; and

(b) the registrar is satisfied the election is required to be held under the rules of the relevant organisation or branch of an organisation.

Division 3 Conduct of elections

671 Electoral commission to conduct elections

An election must only be conducted by the electoral commission.

672 Organisation's rules generally to be complied with

Subject to sections 672A and 673, the rules of the organisation or branch of an organisation for which an election or a step in an election is being conducted must be complied with.

Not authorised—indicative only

Not authorised—indicative only

672A Prescribed procedures for electronically assisted voting

(1) The electoral commission may make procedures about how an elector may cast an electronically assisted vote for an election.

(2) The procedures must provide for the following—

(a) the registration of electors;

(b) the authentication of each electronically assisted vote;

(c) the recording of each elector who uses electronically assisted voting;

(d) ensuring the secrecy of each electronically assisted vote;

(e) the secure transmission of each electronically assisted vote to the electoral commission, and secure storage of each electronically assisted vote by the electoral commission, until printing;

(f) the printing, for scrutiny and counting, of a ballot paper for each electronically assisted vote;

(g) the secure delivery of each printed ballot paper to the returning officer.

(3) The procedures—

(a) do not take effect until approved by a regulation; and

(b) must be tabled in the Legislative Assembly with the regulation approving the procedures; and

(c) must be published on the electoral commission's website.

673 Action or directions by electoral officer

(1) The electoral officer conducting an election or a step in an election may take action, and give directions, the officer considers necessary—

(a) to ensure no irregularities happen in the election; or

(b) to remedy a procedural defect that appears to the electoral officer to exist in the rules.

(2) The election or step is not invalid only because the rules of the organisation or branch of an organisation are contravened by the action or direction.

674 Substitute electoral officer

The electoral commissioner must arrange for another electoral officer to complete an election, or a step in an election, if the electoral officer conducting the election or taking the step—

(a) dies or can not complete the election or take the step; or

(b) stops being qualified to conduct the election or take the step.

675 Death of candidate

(1) An election must be discontinued and a new election held if—

(a) 2 or more candidates are nominated for the election; and

(b) 1 of the candidates dies before the close of the ballot.

(2) Subsection (1) applies despite anything in the rules of an organisation or branch of an organisation.

676 Election result report

(1) The electoral commission must, within 14 days after the declaration of the result of an election, give the registrar a written election result report for the election stating the particulars prescribed by regulation.

(2) A contravention of this section does not invalidate the election.

677 Payment of election costs

The costs of an election or a step in the election conducted by the electoral commission under this part are payable by the organisation or branch of the organisation for which the election or step is conducted.

Not authorised—indicative only

Not authorised—indicative only

678 Ballot records must be kept

(1) This section applies despite the rules of an organisation or a branch of an organisation.

(2) The electoral commission must do everything necessary to ensure all ballot records for an election for an office for the organisation or branch of the organisation are kept by the commission for 1 year after the election.

Division 4 Offences about conduct of elections

679 Using organisation's resources for election purposes

An organisation must not use, or permit its employees, agents, members or officers to use, the organisation's property or resources to help a candidate for an election against another candidate for the election.

Maximum penalty—80 penalty units.

680 Obstructing conduct of election

A person must not obstruct another person conducting an election.

Maximum penalty—80 penalty units.

681 Failing to comply with electoral officer's direction

A person to whom a direction is given by an electoral officer under this part must comply with the direction, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—80 penalty units.

682 Obstructing electoral officer's direction

A person must not obstruct another person complying with a direction by an electoral officer under this part.

Maximum penalty—80 penalty units.

683 Offences about ballots

A person must not, without lawful authority or excuse, do any of the following about a ballot for an election—

(a) obtain or possess a ballot paper if the person does not have the right to obtain or possess it;

(b) pretend to be and vote as someone else;

(c) amend, deface, destroy, interfere with, or remove a ballot record for the election;

(d) vote in the ballot if the person does not have the right to vote;

(e) vote more than once;

(f) forge a ballot record for the election;

(g) utter a ballot record for the election knowing the record to be forged;

(h) give a ballot record for the election to someone else;

(i) put a ballot record for the election in a ballot box or other container used for the ballot (also a ***ballot box***) if the person does not have the right to vote;

(j) deliver or post a ballot record for the election to another person performing functions for the ballot if the person does not have the right to deliver or post the record;

(k) destroy, interfere with, open, or remove a ballot box.

Maximum penalty—80 penalty units.

684 Disadvantaging candidates etc.

(1) A person must not cause, inflict or procure a disadvantage to anyone or anything because of, or to induce—

(a) a candidature or withdrawal of a candidature in an election; or

Not authorised—indicative only

Not authorised—indicative only

(b) a vote or omission to vote in an election; or

(c) support for or opposition to a candidate in an election; or

(d) a promise of a vote, omission to vote, support or opposition for or to a candidate in an election.

Maximum penalty—80 penalty units.

(2) In this section—

cause a disadvantage includes offering, suggesting and threatening a disadvantage.

disadvantage includes damage, detriment, injury, loss, punishment and violence.

685 Unauthorised access to ballot paper

A person must not, without lawful authority or excuse—

(a) ask, require or induce another person to show to the person, or permit the person to see, a ballot paper so the person can see the vote recorded in the ballot paper—

(i) while the paper is being marked; or

(ii) after it has been marked; or

(b) if the person is performing functions for an election—show to anyone else, or permit anyone else access to, a ballot paper used in the election or ballot, other than to perform the functions.

Maximum penalty—80 penalty units.

Division 5 Election may be conducted for corporation

685A Corporation may request election be conducted

(1) This section applies if an organisation is a corporation.

(2) The electoral commission may, on request by the corporation, conduct an election for the corporation.

(3) The costs of an election or a step in the election conducted by the electoral commission under subsection (2) are payable by the corporation.

Part 8 Election inquiries

Division 1 Preliminary

686 Part does not apply to corporations

This part does not apply to a corporation.

Note—

This part applies to an organisation if it is incorporated only because of section 611. See section 596(2).

Division 2 Applications and referrals to commission

687 Commission may conduct election inquiry

The commission may, on an application referred to it by the registrar under this part, conduct an inquiry (***election inquiry***) about a claimed irregularity in an election.

688 Who may apply

An application for an election inquiry may be made only by—

(a) a financial member of the organisation in which the election was conducted; or

(b) a person who was a financial member of the organisation within 1 year before the application is made.

Not authorised—indicative only

Not authorised—indicative only

689 Requirements for application

The application—

(a) may be filed only during the period that—

(i) starts on the day the information, prescribed by regulation, for the election is filed under section 669(1); and

(ii) ends—

(A) 6 months after the election has ended; or

(B) if the registrar, on application, allows the application to be filed before a later stated day—on the later stated day; and

(b) must state—

(i) the election for which the application is made; and

(ii) the irregularity that is claimed to have happened; and

(iii) the facts relied on to support the application; and

(c) must be accompanied by an affidavit by the applicant stating the facts claimed in the application are true to the best of the applicant's knowledge and belief.

690 Referral to commission

(1) The registrar may refer the application to the commission only if satisfied—

(a) there are reasonable grounds to inquire whether there has been an irregularity in the election that may have affected, or may affect, the election result; and

(b) the circumstances justify an election inquiry.

(2) In deciding whether to refer the application, the registrar may consider other relevant information of which the registrar has knowledge.

(3) An election inquiry is taken to have been started in the commission when the application is referred.

Division 3 Investigations and interim orders

691 Commission may authorise registrar to investigate

(1) The commission may, by order, before or after the registrar's decision to refer the application, authorise the registrar to do any of the following—

(a) inspect ballot records for the election;

(b) take possession of the ballot records;

(c) enter a place of business used or occupied by the organisation or branch of the organisation at which the registrar reasonably believes the ballot records are held, using necessary and reasonable help;

(d) require a person to give to the registrar ballot records in the person's possession or under the person's control or to keep the ballot records until—

(i) the election inquiry is completed; or

(ii) an earlier time ordered by the commission.

(2) If a person is required, under subsection (1)(d), to give ballot records for the election to the registrar, the person must comply with the requirement, unless the person has a reasonable excuse for not complying with the requirement.

Maximum penalty—80 penalty units.

(3) A person must not obstruct the registrar when exercising a power under this section.

Maximum penalty—80 penalty units.

692 Interim orders

After the registrar refers the application, the commission may make an interim order—

(a) stopping any further steps to—

(i) conduct the election; or

Not authorised—indicative only

Not authorised—indicative only

(ii) give effect to the election result; or

(b) stopping a person from acting in an office the election inquiry is about, if the person has—

(i) assumed the office; or

(ii) continued to act in the office; or

(iii) claims to occupy the office; or

(c) directing a person who holds, or who last held before the election, an office for which the election is held to act or continue to act in the office; or

(d) directing a member of the organisation or branch of the organisation or another stated person to act in an office for which the election is held, if the commission considers a direction under paragraph (c) would—

(i) not be practicable; or

(ii) affect the efficient conduct of the affairs of the organisation or branch; or

(iii) be inappropriate having regard to the nature of the inquiry; or

(e) consequential to, or amending or discharging, another interim order.

693 Person acting under interim order

If a person is acting, or continuing to act, in an office under an interim order, the person is taken to hold the office—

(a) while the order is in force; and

(b) despite the rules of the organisation or branch of the organisation.

694 When interim order ends

An interim order ends—

(a) at the completion of the election inquiry and everything the commission ordered, other than under an interim order, during the inquiry; or

(b) the day stated in the order for it to end; or

(c) if the order is discharged by the commission.

Division 4 Conduct of election inquiries

695 Commission's functions and powers for inquiry

(1) For an election inquiry, the commission must inquire into and decide—

(a) if an irregularity has happened in the election; and

(b) other questions it considers necessary about the conduct and results of the election.

(2) The commission may make orders it considers necessary for the inquiry, including, for example, a recount of votes for the election.

696 Orders if irregularity found

(1) This section applies if the commission finds an irregularity has happened, or is likely to happen, in an election.

(2) The commission may make an order—

(a) for a fresh election or the repeat of a step in the election, including, for example, calling for and submitting nominations; or

(b) amending the election rules of the relevant organisation or branch of the organisation in a way it considers necessary to correct a procedural defect in the rules; or

(c) directing safeguards it considers appropriate to stop irregularities in the election, fresh election or repeat step; or

Not authorised—indicative only

Not authorised—indicative only

(d) appointing a returning officer to act with any returning officer appointed under the rules; or

(e) providing for the powers of a returning officer appointed under paragraph (d).

(3) Also, the commission may, by order, if it finds the election result may have been, or may be, affected by the irregularity or a similar irregularity, declare—

(a) the election, or a step taken in or for it, to be void; or

(b) a person apparently elected in the election not to have been elected; or

(c) a person to have been elected at the election instead of a person declared not to have been elected.

(4) The commission may make any other order that is consequential to an order under this section.

697 Enforcing orders

The commission may make an order in the nature of an injunction, either mandatory or restrictive, it considers necessary to enforce an order or perform its functions or exercise its powers under this part.

Division 5 Offences about election inquiries

698 Disadvantaging applicant for inquiry

(1) A person must not cause, inflict or procure a disadvantage to another person because the other person has applied for an election inquiry.

Maximum penalty—80 penalty units.

(2) In this section—

disadvantage includes damage, detriment, injury, loss, punishment and violence.

699 Obstructing orders being carried out

A person must not obstruct the carrying out of an order of the commission under this part.

Maximum penalty—80 penalty units.

Division 6 Miscellaneous

700 Financial help for application

(1) An applicant for an election inquiry may apply to the Minister for financial help.

(2) The Minister may direct that financial help from the State be given to the applicant for the cost of the application for an election inquiry, including witness expenses, if—

(a) the commission found an irregularity happened in the election and the Minister considers the circumstances justify the payment; or

(b) the commission certifies the applicant acted reasonably in applying for the inquiry; or

(c) after considering the commission's findings at the inquiry, it is not just the applicant who should pay any of the costs.

(3) The Minister must decide the amount of the financial help.

701 Costs of fresh election ordered by inquiry

(1) If the commission orders a fresh election under this part, the State must pay the costs of the fresh election.

Example of a cost—

the cost of premises used for the fresh election

(2) In this section—

fresh election includes—

(a) a step in an election; and

Not authorised—indicative only

Not authorised—indicative only

(b) a safeguard for an election or step in an election, not allowed for under the rules of the organisation or branch of the organisation for which the election was or was to be held.

Part 9 Officers

Division 1 Preliminary

702 Definitions for part

In this part—

candidate means a candidate for election or appointment to an office for an organisation.

convicted of a disqualifying offence means being found guilty of a disqualifying offence, on a plea of guilty or otherwise, whether or not a conviction was recorded.

convicted person—

(a) means a person who—

(i) has been convicted on indictment of a disqualifying offence; or

(ii) without limiting subparagraph (i), has served or is serving a prison term for a violent offence; and

(b) includes a person convicted, before this part commenced, of an offence that, apart from the non-commencement of this part, would have been a disqualifying offence.

disqualification period see section 709(1).

disqualifying offence means an offence—

(a) against an Act or a law of the State or another jurisdiction, involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more; or

(b) against this chapter involving a failure to keep ballot records, to comply with a direction or to give information or documents for an election or ballot; or

(c) against section 680, 849, 896 or 897; or

(d) involving the formation, registration or management of an association, corporation or organisation; or

(e) that is a violent offence.

elected, to an office for an organisation, includes appointed to fill a casual vacancy in the office.

violent offence means an offence involving the—

(a) intentional use of violence towards another person; or

(b) causing of death or injury to a person; or

(c) damage or destruction of property.

Division 2 Disqualifications from candidature or holding office

Subdivision 1 Disqualifications

703 Children

A child is not eligible to be a candidate or to be elected as a management committee member, treasurer or trustee of an organisation.

704 Convicted persons—candidature

A person convicted of a disqualifying offence may be a candidate or elected to an office in an organisation only if—

(a) the person has made an application under subdivision 2 for leave to hold the office and—

(i) was given leave to hold the office; or

Not authorised—indicative only

Not authorised—indicative only

(ii) the court fixed a disqualification period for the person and the period has ended; or

(b) 5 years has elapsed since the later of the following—

(i) the conviction;

(ii) if the person served a prison term for the offence—the person's release from prison.

705 Convicted persons—holding office

(1) This section applies if a person who holds an office for an organisation is convicted of a disqualifying offence.

(2) The person ceases to hold the office for the organisation 28 days after the conviction unless, within that time, the person makes an application under subdivision 2 for leave to hold the office.

(3) However, if the person makes an application for leave within that time, the person ceases to hold the office for the organisation—

(a) 3 months after the conviction, if the application has not been decided and the court has not extended that time; or

(b) if the court has extended that time—at the end of the extended time.

(4) The court may extend the time only if—

(a) an application for the extension is made before the time mentioned in subsection (3)(a); or

(b) if it has previously extended the time—the application for the further extension is made before the end of the time as extended.

Subdivision 2 Applications for leave to hold office

706 Prospective candidates

(1) This section applies if a person who wants to be a candidate for an office for an organisation has, within 5 years, been—

(a) convicted of a disqualifying offence; or

(b) released from prison after serving a prison term for a conviction for a disqualifying offence.

(2) The person may apply to the court for leave to hold the office for the organisation.

(3) The court must not grant the leave if the applicant has already made an application under this section for leave to hold the office despite the conviction.

707 Existing office holders

(1) If a person holding an office for an organisation is convicted of a disqualifying offence, the person may apply to the court for leave to hold the office or another stated office.

(2) The court may grant the leave only if—

(a) the application is made within 28 days after the conviction; and

(b) the person has not already made an application under this section for leave to hold the office despite the conviction.

708 Consideration of applications for leave

In deciding an application for leave made under this subdivision, the court must consider—

(a) the nature of the disqualifying offence in relation to which leave is sought; and

(b) the circumstances and the nature of the applicant's involvement in the commission of the offence; and

Not authorised—indicative only

Not authorised—indicative only

(c) the applicant's general character and fitness to be involved in the management of organisations, having regard to the offence; and

(d) any other matter it considers appropriate.

709 Disqualification period may be given if leave refused

(1) If the court decides to refuse an application for leave made under this subdivision, it may fix a period (a ***disqualification period***) during which the applicant is disqualified from holding office for any organisation.

(2) However, the court must not fix a disqualification period that starts before or ends more than 5 years after the later of the following—

(a) the conviction that is the subject matter of the application;

(b) if the person served a prison term for the conviction—the person's release from prison.

710 Leave or fixing of disqualification period does not affect division

The granting of leave, or the fixing of a disqualification period for a conviction, under this subdivision does not affect the operation of this division for another conviction.

Subdivision 3 Miscellaneous

711 Declaration about eligibility or ceasing to hold office

(1) An organisation, a member of the organisation or the registrar may apply to the court for a declaration that, because of this division, a person—

(a) is not, or was not, eligible to be a candidate or to be elected to an office for the organisation; or

(b) has ceased to hold an office for the organisation.

(2) Despite anything in the organisation's rules, the court may make an order it considers appropriate to give effect to the declaration.

712 Certificate evidence for division

(1) For an application under this division, a certificate stating the following about a person and purporting to be by an appropriate officer of a court of the State or another jurisdiction is evidence the person was—

(a) convicted by the court of a stated offence on a stated day;

(b) acquitted by the court of a stated offence, or that a stated charge against the person was dismissed by the court, on a stated day.

(2) A certificate purporting to be by a person in charge of a prison is evidence that a stated person was released from the prison on a stated day.

(3) In this section—

appropriate officer, of a court, means a registrar or other officer with registration functions for the court.

Division 3 Officers' duties

713 Application of division

This division applies to an officer of an organisation in the performance of the officer's functions or the exercise of the officer's powers.

714 Duty of honesty, good faith and proper purpose

The officer must act—

(a) honestly; and

Not authorised—indicative only

Not authorised—indicative only

(b) in good faith in the best interests of the organisation; and

(c) for a proper purpose.

Maximum penalty—3,091 penalty units or 5 years imprisonment.

715 Duty of reasonable care and diligence

The officer must exercise the degree of care and diligence that a reasonable person in the officer's position would be reasonably expected to exercise.

Maximum penalty—3,091 penalty units or 5 years imprisonment.

716 Officers with material personal interests

(1) This section applies if the officer has a material personal interest in a matter involving the organisation's financial management or procurement activities.

(2) The officer must, by written notice (a ***disclosure notice***), disclose the nature of the interest to the organisation's management committee as soon as practicable after the relevant facts come to the officer's knowledge.

Maximum penalty—3,091 penalty units or 5 years imprisonment.

(3) If the matter is to be considered at a meeting of the organisation or a committee of the organisation at which the officer is present, the officer must not—

(a) vote on the matter; or

(b) remain at the meeting when the matter is being considered or voted on.

Maximum penalty—3,091 penalty units or 5 years imprisonment.

(4) In this section—

procurement activities means activities relating to—

(a) the purchase of goods and services; or

(b) the carrying out of work.

services includes auditing services and legal services.

717 Other duties not affected

This division does not—

(a) limit a law about the exercise of an officer's powers or performance of an officer's functions; or

(b) prevent the taking of proceedings about a contravention of an officer's duty to an organisation.

Part 10 Membership

Division 1 Eligibility and admission to membership

718 Eligibility

A person is eligible to become a member of an organisation if the person—

(a) by the nature of the person's occupation or employment, engages in a calling for which the organisation is registered; and

(b) complies with the organisation's rules about membership.

719 Obligation to admit

(1) An organisation must admit to membership a person who is eligible to become a member—

(a) within 3 months after the person applies to become a member; or

Not authorised—indicative only

Not authorised—indicative only

(b) if a question or dispute has, within the 3 months, been referred to the commission for decision under division 2—within 1 month after the commission decides the person is, or is eligible to become, a member.

Maximum penalty—100 penalty units

(2) In this section—

admit to membership means—

(a) do what is necessary under the organisation's rules to ensure the person is a member of the organisation; or

(b) record in the organisation's members register the particulars required under section 733 for the person's membership of the organisation.

720 Obligation to give union card

(1) If a person is admitted to membership of an organisation or a person's membership of an organisation is renewed, the organisation must give a union card to the person as soon as practicable after the admission or renewal.

Maximum penalty—100 penalty units.

(2) The giving of a union card under this section does not prevent the organisation making an application under division 2 or the commission making a decision or order under division 2.

(3) In this section—

union card means a document issued by an organisation acknowledging a person is a member of the organisation.

721 Children

A child—

(a) may be or become a member of an organisation, unless its rules provide otherwise; and

(b) if the child is a member of an organisation—

(i) has the rights of a member of an organisation under this part and the organisation's rules; and

(ii) may execute instruments and give receipts under the rules.

Division 2 Membership disputes

722 Commission may decide

The commission may, on the application of an organisation or a person who has applied for membership of an organisation, decide a question or dispute about the following—

(a) whether a person is, or is eligible to become, a member of the organisation;

(b) when a person became a member or must be treated by the organisation and its members as if the person had become a member;

(c) the qualifications of a membership applicant;

(d) the reasonableness of a membership subscription, fine or levy, or other requirement of its members, for the organisation under its rules.

723 Deciding application

On hearing the application, the commission may do any of the following—

(a) declare a person is or is not a member of the organisation;

(b) decide a membership applicant may become a member of the organisation;

(c) order the organisation to admit a membership applicant to its membership and record the applicant as a member in its members register;

Not authorised—indicative only

Not authorised—indicative only

(d) order the organisation to treat an applicant for membership as if the applicant had been a member of the organisation from a stated day;

(e) order an amendment or repeal of a rule of the organisation.

Division 3 Membership subscriptions

724 Obligation to give receipt

(1) This section applies if a person pays an organisation a membership subscription for the person's membership or membership renewal of the organisation.

(2) The organisation must give the person a written receipt for the payment within 1 month after the payment was made.

Maximum penalty for subsection (2)—100 penalty units.

Division 4 Resignation

725 Division applies despite rules

This division applies despite an organisation's rules.

726 Resignation

(1) A member of an organisation may resign from membership of the organisation under this section or the organisation's rules.

(2) The person's membership ends if the person gives the organisation a notice stating the person resigns from the organisation.

(3) The person's membership ends—

(a) if the notice states a day or time after the notice is given when the resignation takes effect—on the day or time; or

(b) otherwise—when the notice is given.

727 Resignation if membership subscription unpaid for 2 years

(1) A person's membership of an organisation ends if the person—

(a) owes the organisation a membership subscription; and

(b) has owed the subscription for 2 years.

(2) For subsection (1), a person is taken not to owe a subscription if the person has—

(a) entered into an agreement with the organisation to pay the subscription; and

(b) complied with, and continues to comply with, the agreement.

Division 5 Liabilities of member to organisation

728 Meaning of *member's liability* for division

In this division, a ***member's liability*** to an organisation means an amount payable to the organisation under its rules by a member or former member of the organisation.

Examples of a member's liability—

- membership fee
- fine
- levy
- subscription

729 Recovering member's liabilities

(1) A member's liability to an organisation may only be sued for and recovered before a magistrate.

Not authorised—indicative only

Not authorised—indicative only

(2) Proceedings to recover a member's liability to an organisation must be started within 3 years from when the member's liability first become payable.

(3) If proceedings to recover a member's liability to an organisation are not started under subsection (2), the member's liability is not recoverable.

730 Limit on liability after resignation

If a person's membership of an organisation has ended, the person—

(a) continues to be liable for a member's liability that—

(i) became payable within 1 year before the membership ended; and

(ii) is recoverable under section 729; and

(b) is not liable for a member's liability that became payable—

(i) more than 1 year before the membership ended; or

(ii) after the membership ended.

Part 11 Records and accounts

Division 1 Preliminary

731 Definitions for part

In this part—

loans, grants and donations register, for a financial year of an organisation, means the register of loans, grants and donations the organisation is required under section 748 to keep relation to the financial year.

remuneration register, for a financial year of an organisation, means the remuneration register the organisation is required under section 746 to prepare for the financial year.

Division 2 Registers of members and officers

732 Members register and officers register

(1) An organisation must, for each year, keep a written register (the ***members register***) stating each person who is or was a member of the organisation during the whole or part of the year.

Maximum penalty—40 penalty units.

(2) An organisation must, for each year, keep a written register (the ***officers register***) stating each person who is or was an officer of the organisation during the whole or part of the year.

Maximum penalty—40 penalty units.

733 Requirements for members register

(1) An organisation must record in the members register the following for each person who is or was a member of the organisation during the whole or part of the year—

(a) the person's name;

(b) for an employee organisation—the person's residential address;

(c) for an employer organisation—the person's business address;

(d) the day the person became a member;

(e) if the person's membership ends—the day it ended.

Maximum penalty—40 penalty units.

(2) If an organisation has more than 100 members, it must keep the members register in a way that allows the names recorded in the register to be read alphabetically.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—40 penalty units.

734 Officers register—required particulars

An organisation must record in the officers register the following for each person who is or was an officer of the organisation during the whole or part of the year—

(a) the person's name and address;

(b) each office the person holds or held;

(c) the day the person was elected or appointed to each office;

(d) if the person ceases to hold an office—the day the office holding ceased.

Maximum penalty—40 penalty units.

735 Annual obligation to file officers register

An organisation must, before 31 March in each year, file a copy of its officers register as at the start of the year.

Maximum penalty—40 penalty units.

736 Obligation to file officers register on change of office holder

An organisation must file a copy of its officers register within 30 days after a person becomes or ceases to be an officer of the organisation.

Maximum penalty—40 penalty units.

737 Inspection of registers

(1) When an organisation's office is open for business, its members register and officers register must be open for inspection, free of charge, at the office by—

(a) the registrar, or a person with the registrar's written authority; or

(b) the organisation's members, or a person with a member's written authority.

(2) A copy of an organisation's officers register filed with the registrar may be inspected by any person who pays the fee prescribed under the rules of court.

738 Registrar's directions about registers

(1) The registrar may give a written direction to an organisation to—

(a) give the registrar its members register or officers register; or

(b) correct its members register or officers register in a stated way the registrar considers is necessary to ensure compliance with this part.

(2) The organisation must comply with the direction, unless it has a reasonable excuse for not complying with the direction.

Maximum penalty for subsection (2)—40 penalty units.

739 Members and officers registers to be kept for 7 years

(1) An organisation must keep each members register kept by it for at least 7 years after the period to which the register relates.

Maximum penalty—40 penalty units.

(2) An organisation must keep each officers register kept by it for at least 7 years after the period to which the register relates.

Maximum penalty—40 penalty units.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Financial policies, training and registers

740 Financial policies

(1) An organisation must have a policy, complying with the requirements prescribed by regulation, for each of the following—

(a) decision-making about, and reporting of, the organisation's financial matters;

(b) authorisations and delegations relating to the organisation's spending;

(c) the organisation's credit cards, including—

(i) issuing, using and cancelling credit cards; and

(ii) accountability for, reporting about, and audit of, the use of credit cards;

(d) the organisation's contracting activities, including the following—

(i) tender and selection processes;

(ii) reviewing significant contracts;

(iii) disclosing the identity of, and arrangements with, key service providers;

(e) travel and accommodation, including—

(i) spending by the organisation; and

(ii) receipt of hospitality benefits by its officers or employees from other entities;

(f) spending on, and receipt of, entertainment and hospitality;

Examples of entertainment and hospitality—

- providing food or beverages to a person visiting the organisation in an official capacity
- providing food or beverages for a conference, course, meeting, seminar, workshop or another forum held by the

organisation for its officers, members, employees or other persons

- paying for an officer or employee of the organisation to attend a function as part of the officer's or employee's official duties or obligations

(g) gifts, including giving, receiving and disposing of gifts;

(h) how complaints about financial matters are dealt with;

(i) another matter relating to the financial management or accountability of the organisation prescribed by regulation.

Maximum penalty—85 penalty units.

(2) In this section—

contracting activities means activities for the making of a contract for—

(a) the carrying out of work; or

(b) the supply of goods or services; or

(c) the lease of land; or

(d) the disposal of assets.

741 Financial management training

(1) This section applies if the registrar approves financial management training for this section.

(2) The organisation must ensure each of its financial management officers completes, within 6 months after the relevant day—

(a) the approved financial management training; or

(b) training approved by—

(i) the general manager of the Fair Work Commission; and

(ii) the registrar for the purposes of this section.

Maximum penalty—40 penalty units.

Not authorised—indicative only

Not authorised—indicative only

(3) Subsection (2) does not apply in relation to a financial management officer who is exempt under subsection (4).

(4) The registrar may exempt a financial management officer from completing training mentioned in subsection (2) if satisfied the officer—

(a) holds relevant or suitable qualifications in financial management; or

(b) is a member of an appropriate professional body for financial managers; or

(c) has sufficient relevant experience in financial management; or

(d) has completed training required by the Commonwealth Registered Organisations Act that corresponds, or substantially corresponds, with the training mentioned in subsection (2).

(5) The registrar must publish information about financial management training approved for this section on the QIRC website.

(6) In this section—

financial management officer, for an organisation, means an officer who holds an office that includes performing functions or exercising powers relating to the organisation's financial management.

relevant day means—

(a) if the officer is a financial management officer on the day the training is approved—that day; or

(b) otherwise—the day the officer becomes, or again becomes, a financial management officer.

742 Register of gifts, hospitality and other benefits given and received must be kept

(1) An organisation must, for each financial year, keep a written register stating the particulars mentioned in subsection (2) for each of the following (each a ***benefit***)—

(a) any of the following given in the year by the organisation to a person other than an officer or employee of the organisation—

(i) a gift that has a value of more than—

(A) $150; or

(B) if a higher value is prescribed by regulation—the higher value;

(ii) a contribution, whether financial or non-financial, for the cost of travel undertaken or accommodation used by the person;

(b) an amount or a non-cash benefit given in the year by the organisation to an officer or employee, other than an amount or benefit given—

(i) as remuneration; or

(ii) for the costs of travel undertaken or accommodation used by the officer or employee in an official capacity;

(c) any of the following received in the year by an officer or employee of the organisation from an entity other than the organisation—

(i) a gift received by the officer or employee in an official capacity that has a value of more than—

(A) $150; or

(B) if a higher value is prescribed by regulation—the higher value;

(ii) a sponsored hospitality benefit.

Maximum penalty—40 penalty units.

(2) The register must state the following particulars for each benefit—

(a) the name of the recipient of the benefit;

(b) the name of the entity who gave the benefit;

(c) a description of the benefit;

Not authorised—indicative only

Not authorised—indicative only

(d) the value of the benefit;

(e) the date the benefit was given.

(3) If an officer or employee of the organisation receives a benefit mentioned in subsection (1)(c), the officer or employee must, within 30 days after the receipt, notify the organisation of the receipt.

Maximum penalty—40 penalty units.

(4) For subsection (1)(c), a person does not receive a gift in an official capacity if—

(a) the gift was given to the person by another person who is the first person's spouse, other family member or friend; and

(b) there could not be a perception of a conflict of interest, financial or otherwise, relating to the gift.

(5) An organisation must keep each register of benefits kept by it for at least 7 years after the period to which the register relates.

Maximum penalty—40 penalty units.

743 Material personal interests disclosure register

(1) This section applies if a disclosure notice is given to an organisation's management committee by an officer of the organisation under section 716.

(2) The organisation must keep, for at least 7 years after the date the disclosure notice was given, a written register of the following for the disclosure notice—

(a) the name of the officer;

(b) the date the disclosure notice was given;

(c) a copy of the disclosure notice.

Maximum penalty—40 penalty units.

744 Inspection of policies and registers

(1) A policy kept under section 740, or a register kept under section 742 or 743, by an organisation may be inspected by any of the following persons—

(a) the registrar;

(b) a member of the organisation's management committee;

(c) a member of the organisation;

(d) another person permitted by law to inspect the policy or register.

(2) A person mentioned in subsection (1) may, in writing, ask the organisation to make the policy or register available for inspection, free of charge, during the organisation's business hours.

(3) The organisation must comply with a request made under subsection (2).

Maximum penalty—40 penalty units.

Division 4 Remuneration register

745 Highest paid officers and board member officers of an organisation

(1) For this division—

(a) if an organisation has fewer than 5 officers in a financial year—all of the officers of the organisation are the highest paid officers of the organisation for the year; and

(b) if an organisation has 5 or more officers in a financial year—the 5 most highly paid officers of the organisation for the year are the highest paid officers of the organisation for the year; and

(c) an officer of an organisation is a board member officer of the organisation if the officer is a member of a board and—

Not authorised—indicative only

Not authorised—indicative only

(i) the membership is a function of the officer's office with the organisation; or

(ii) the organisation nominated the officer to be a member of the board.

(2) For subsection (1)(b), an officer of an organisation is more highly paid than another officer of the organisation for the initial year or a financial year if the first officer is paid more remuneration for the year than the other officer.

746 Organisation must prepare remuneration register

(1) As soon as practicable after the end of each financial year, an organisation must prepare a remuneration register that complies with subsection (2) to the extent to which the particulars mentioned in the subsection are known to, or can be reasonably ascertained by, the organisation.

Maximum penalty—20 penalty units.

(2) The remuneration register must include the following information for each of the highest paid officers of the organisation for the preceding financial year—

(a) the remuneration paid to the officer in the year;

(b) any non-cash benefit, including the value of the benefit, given to the officer by the organisation, other than as remuneration, in the year;

(c) any amount paid to the officer in the officer's capacity as a board member officer in the year, other than an amount paid to the officer for the costs of travel or accommodation for the officer to attend a board meeting, unless the amount paid to the officer is given by the officer to the organisation.

747 Remuneration register to be kept for 7 years

An organisation must keep each remuneration register prepared by it for at least 7 years after the period to which the register relates.

Maximum penalty—40 penalty units.

Division 5 Loans, grants and donations register

748 Organisation must keep loans, grants and donations register

(1) An organisation must, for each financial year, keep a written register stating the particulars mentioned in subsection (3) for each occasion it makes a loan, or gives a grant or donation, to an entity (each ***a payment***) of more than $1,000 in the year.

Maximum penalty—40 penalty units.

(2) For subsection (1), a payment of more than $1,000 is made to an entity in a financial year if—

(a) 1 or more payments are made to the entity in the financial year; and

(b) all of the payments added together are more than $1,000.

(3) The register must state the following for each payment—

(a) the amount of the payment and the reason for making it;

(b) if the payment was not a financial hardship payment—

(i) the name and address of the entity to whom it was made; and

(ii) if it was a loan—the arrangements to repay the loan.

749 Loans, grants and donations register to be kept for 7 years

An organisation must keep each loans, grants and donations register kept by it for at least 7 years after the period to which the register relates.

Maximum penalty—40 penalty units.

Not authorised—indicative only

Not authorised—indicative only

Division 6 Accounts and audit

Subdivision 1 Preliminary

750 Exemptions from certain Australian Accounting Standards

(1) The registrar may, by written notice, decide that particular Australian Accounting Standards do not apply in relation to an organisation or to a class of organisations.

(2) In considering whether a particular Australian Accounting Standard should not apply in relation to an organisation or organisations, the registrar must have regard to the cost to the organisation or organisations of complying with the standard and the information needs of the members of the organisation or organisations.

Subdivision 2 Reporting units

751 Application of division

This division applies in relation to reporting units.

752 What is a *reporting unit*

(1) A reporting unit may be all of an organisation or a part of an organisation.

(2) If an organisation is not divided into branches of the organisation, the ***reporting unit*** is all of the organisation.

(3) If an organisation is divided into branches of the organisation, each branch will be a ***reporting unit*** unless a certificate issued by the registrar under section 755 stating that the organisation is, for compliance with this division, divided into reporting units on an alternative basis is in force.

(4) For subsection (3), the alternative basis on which the organisation may be divided into reporting units is—

(a) all of the organisation; or

(b) a combination of 2 or more branches of the organisation.

(5) Each branch of an organisation must be in 1, and only 1, reporting unit.

(6) For this division, so much of an organisation that is divided into branches of the organisation as would not, apart from this subsection, be included in any branch, is taken to be a branch of the organisation.

753 Designated officers

(1) A ***designated officer***, for a reporting unit, is an officer of the reporting unit who, under the rules of the reporting unit, is responsible (whether alone or with others) for carrying out the functions necessary to enable the reporting unit to comply with this division.

(2) For subsection (1), an officer of a reporting unit is—

(a) if the reporting unit is all of an organisation—an officer for the organisation; or

(b) if a reporting unit is not all of an organisation—an officer of the branch, or one of the branches, that constitutes the reporting unit.

(3) If a provision of this division requires a designated officer to perform a function, the rules of the reporting unit must identify an officer as the designated officer for the performance of the function.

(4) If the rules of the reporting unit do not identify an officer as the designated officer for the performance of a function, the designated officer for the performance of that function is taken to be the secretary of the organisation.

Not authorised—indicative only

Not authorised—indicative only

754 Members, staff and journals etc. of reporting units

(1) For the application of this division in relation to a reporting unit that is all of an organisation—

(a) the members of the organisation are taken to be members of the reporting unit; and

(b) employees of the organisation are taken to be employees of the reporting unit; and

(c) the organisation's rules are taken to be the rules of the reporting unit; and

(d) the financial affairs and records of the organisation are taken to be the financial affairs and records of the reporting unit; and

(e) conduct and activities of the organisation are taken to be conduct and activities of the reporting unit; and

(f) a journal published by the organisation is taken to be a journal published by the reporting unit.

(2) For the application of this division in relation to a reporting unit that is not all of an organisation—

(a) the members of the organisation constituting the branch or branches of the organisation that make up the reporting unit are taken to be members of the reporting unit; and

(b) employees of the organisation employed in relation to the branch or branches of the organisation that make up the reporting unit (whether or not they are also employed in relation to any other branch) are taken to be employees of the reporting unit; and

(c) if the reporting unit consists of 1 branch of the organisation—the rules of the branch are taken to be the rules of the reporting unit; and

(d) if the reporting unit consists of more than 1 branch of the organisation—the rules of the branches (including any rules certified under section 756, or decided under section 757, to give effect to the establishment of the

reporting unit) are taken to be the rules of the reporting unit; and

(e) the financial affairs and records of the branch or branches of the organisation that make up the reporting unit are taken to be the financial affairs and records of the reporting unit; and

(f) conduct and activities of the branch or branches of the organisation that make up the reporting unit are taken to be conduct and activities of the reporting unit; and

(g) if the reporting unit consists of 1 branch of the organisation—a journal published by the branch is taken to be a journal published by the reporting unit; and

(h) a journal published by the organisation is taken to be a journal published by the reporting unit.

755 Certificate about reporting units

(1) The registrar may issue to an organisation divided into branches a certificate stating that the organisation is, for compliance with this division, to be divided into reporting units on an alternative basis as mentioned in section 752(3).

(2) A certificate may be issued on application by an organisation or on the registrar's own initiative.

756 Certificate about reporting units—application by organisation

(1) An application by an organisation for a certificate under section 755 must—

(a) be made as prescribed by regulation; and

(b) include an application for the registrar to certify the changes to the organisation's rules that are required to give effect to the establishment of the proposed reporting units.

Not authorised—indicative only

Not authorised—indicative only

Examples of the changes that may be required—

- changes to designate officers from the branches of the organisation to be the management committee for the reporting unit to comply with this division
- changes to designate officers from the branches of the organisation to undertake the duties that are necessary to enable the reporting unit to comply with this division

(2) If an organisation applies for a certificate, the registrar must issue the certificate and certify the rule changes if the registrar is satisfied—

(a) the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to the members; and

(b) the changes to the rules—

(i) comply with, and are not contrary to, this Act, modern awards or enterprise agreements; and

(ii) are not otherwise contrary to law; and

(iii) have been made under the organisation's rules.

757 Certificate about reporting units—registrar initiative

(1) The registrar may only issue a certificate under section 755 on the registrar's own initiative if the registrar—

(a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this division, it is most appropriate for the organisation to be divided into reporting units on the basis set out in the certificate; and

(b) is satisfied the level of financial information that would be available to members under the proposed division into reporting units would be adequate and would be relevant to the members; and

(c) has complied with the procedure prescribed by regulation.

(2) Subsection (3) applies if, in the registrar's opinion, the rules of an organisation need to be changed to give effect to the establishment of the proposed reporting units under subsection (1).

(3) The registrar may, by instrument, decide the changes to the rules that are, in the registrar's opinion, necessary to give effect to the establishment of the proposed reporting units.

(4) However, before deciding to change the rules the registrar must give the organisation an opportunity, as prescribed by regulation, to be heard on the matter.

758 Certificate about reporting units—years certificate applies to

A certificate issued under section 755 is in force, and has effect according to its terms, for—

(a) the first financial year starting after the certificate is issued; and

(b) each subsequent financial year unless, before the start of the financial year, the certificate is revoked under section 759.

759 Certificate about reporting units—revocation of certificate

(1) The registrar may at any time, by written notice, revoke a certificate issued to an organisation under section 755.

(2) If a certificate is revoked, each branch of the organisation will be a reporting unit.

(3) A certificate may be revoked on application by an organisation or on the registrar's own initiative.

(4) An application by an organisation for the revocation of a certificate must—

(a) be made as prescribed by regulation; and

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Not authorised—indicative only

(b) include an application for the registrar to certify the changes to the organisation's rules required to give effect to each branch of the organisation being a reporting unit.

(5) If an organisation applies for a revocation, the registrar must revoke the certificate and certify the rule changes if the registrar is satisfied—

(a) the level of financial information that would be available to members with each branch of the organisation being a reporting unit would be adequate and would be relevant to the members; and

(b) the changes to the rules—

(i) comply with, and are not contrary to, this Act, the Commonwealth Fair Work Act, modern awards or enterprise agreements; and

(ii) are not otherwise contrary to law; and

(iii) have been made under the organisation's rules.

(6) The registrar may only revoke a certificate on the registrar's own initiative if the registrar—

(a) is satisfied that, to improve compliance with the accounting, auditing and reporting requirements of this division, it is most appropriate for each branch of the organisation to be a reporting unit; and

(b) has complied with the procedure prescribed by regulation.

(7) Subsection (8) applies if—

(a) the registrar intends to revoke a certificate on registrar's own initiative; and

(b) in the registrar's opinion, the rules of an organisation need to be changed to give effect to each branch of the organisation being a reporting unit.

(8) The registrar may, by instrument, after giving the organisation an opportunity, as prescribed by regulation, to be heard on the matter, decide the changes of the rules that are, in the

registrar's opinion, necessary to give effect to each branch being a reporting unit.

760 Certificate about reporting units—rule changes

(1) A change to an organisation's rules under section 756, 757 or 759 takes effect on the day that the change is certified or decided.

(2) To remove any doubt, it is declared the change may include changes to the duties of an office for the organisation, branch or reporting unit (even if during a particular term of office).

761 Certificate about reporting units—later certificate revokes earlier certificate

A certificate issued to an organisation under section 755 is taken to be revoked if a later certificate is issued to the organisation under that section.

Subdivision 3 Accounting obligations

762 Reporting unit to keep accurate financial records

(1) A reporting unit's organisation must ensure the reporting unit—

(a) keeps financial records that correctly record and explain the transactions and financial position of the reporting unit, including the records prescribed by regulation; and

(b) keeps its financial records in a way that will enable a general purpose financial report to be prepared from the records under section 763; and

(c) keeps its financial records in a way that will enable the accounts of the reporting unit to be conveniently and properly audited under this division.

(2) If an organisation consists of 2 or more reporting units, the organisation must ensure the financial records for each of the

Not authorised—indicative only

Not authorised—indicative only

reporting units are, as far as practicable, kept in a consistent way.

Maximum penalty—100 penalty units.

Notes—

1 This would involve, for example, the adoption of consistent accounting policies and a common chart of accounts for all reporting units in the organisation.

2 This requirement is subject to subsection (4) which allows reporting units to keep some records on a cash basis.

(3) An organisation's financial records may, so far as they relate to the organisation's receipts and payments, be kept on a cash basis or accrual basis, at the option of the organisation.

(4) If an organisation keeps its financial records on an accrual basis, it may keep the financial records for its membership subscriptions separately on a cash basis.

(5) An organisation must keep the financial records for 7 years after the completion of the transactions to which the records relate.

Maximum penalty—100 penalty units.

763 Reporting unit to prepare general purpose financial report

(1) A reporting unit's organisation must ensure that, as soon as practicable after the end of each financial year, the reporting unit prepares a general purpose financial report, in accordance with the Australian Accounting Standards and this section, from its financial records for the financial year.

Maximum penalty—100 penalty units.

(2) The general purpose financial report must consist of—

(a) financial statements containing—

(i) a profit and loss statement, or other operating statement; and

(ii) a balance sheet; and

(iii) a statement of cash flows; and

(iv) any other statements required by the Australian Accounting Standards; and

(b) notes to the financial statements containing—

(i) notes required by the Australian Accounting Standards; and

(ii) any information required by the reporting guidelines under section 765(2)(c); and

(c) a report showing the total expenditure incurred by the reporting unit during the financial year in relation to each of the following—

(i) remuneration and other employment-related expenses in relation to employees;

(ii) advertising costs;

(iii) operating costs;

(iv) donations to political parties;

(v) legal costs and other expenses related to litigation or other legal matters; and

(d) any other reports or statements required by the reporting guidelines under section 765(2)(e).

(3) The financial statements and notes for a financial year must give a true and fair view of the reporting unit's financial position and performance.

(4) Subsection (3) does not affect the obligation for a financial report to comply with the Australian Accounting Standards.

Note—

If the financial statements and notes prepared in compliance with the Australian Accounting Standards would not give a true and fair view, additional information must be included in the notes to the financial statements under subsection (2)(b).

Not authorised—indicative only

Not authorised—indicative only

764 Reporting unit to prepare operating report

(1) A reporting unit's organisation must ensure that, as soon as practicable after the end of each financial year, the reporting unit's management committee prepares an operating report for the financial year in accordance with this section.

Maximum penalty—100 penalty units.

(2) The operating report must—

(a) contain a review of the reporting unit's principal activities during the year, the results of the activities and any significant changes in the nature of the activities during the year; and

(b) give details of any significant changes in the reporting unit's financial affairs during the year; and

(c) give details of the right of members to resign from the reporting unit under section 726; and

(d) if subsection (3) applies, give details (including details of the position held) of any officer or member of the reporting unit who is—

(i) a trustee of a superannuation entity or an exempt public sector superannuation scheme; or

(ii) a director of a company that is a trustee of a superannuation entity or an exempt public sector superannuation scheme; and

(e) include a copy of the remuneration register the organisation is required under section 746 to keep for the financial year; and

(f) include a copy of the loans, grants and donations register the organisation is required under section 748 to keep for the financial year; and

(g) contain any other information that the reporting unit considers is relevant; and

(h) contain any information prescribed by regulation.

(3) For subsection (2)(d), this subsection applies if a criterion for the officer or member being the trustee or director of a superannuation entity or superannuation scheme as mentioned in that paragraph is that the officer or member is an officer or member of a registered organisation.

(4) To remove any doubt, it is declared that the operating report may be prepared by the management committee or a designated officer.

765 Reporting guidelines

(1) The registrar must, by gazette notice, issue reporting guidelines for sections 763 and 785.

(2) The reporting guidelines for section 763 must—

(a) provide the way in which a reporting unit must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the employers making payroll deductions of membership subscriptions for organisations; and

(b) provide the way in which a reporting unit must disclose the total amount of legal costs and other expenses related to litigation or other legal matters paid by the reporting unit during a financial year; and

(c) specify any other information required to be included in a general purpose financial report; and

(d) specify the form of a report or statement required to be included in a general purpose financial report under section 763(2)(d); and

(e) specify the form and content of any other reports or statements required to be included in a general purpose financial report.

(3) The reporting guidelines for section 785 must—

(a) provide the way in which a reporting unit must disclose the total amount paid by the reporting unit during a financial year to employers as consideration for the

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Not authorised—indicative only

employers making payroll deductions of membership subscriptions for organisations; and

(b) require the general purpose financial report to be prepared under section 785(5) to show the total expenditure incurred by a reporting unit during a financial year in relation to each of the following—

(i) remuneration and other employment-related expenses in relation to employees;

(ii) advertising costs;

(iii) operating costs;

(iv) donations to political parties;

(v) legal costs and other expenses related to litigation or other legal matters; and

(c) specify—

(i) the form of the general purpose financial report to be prepared under section 785(5); and

(ii) any other content of the report.

(4) Reporting guidelines may also contain any other requirements relating to the disclosure of information by reporting units that the registrar considers appropriate.

(5) Chapter 11, part 6 does not apply in relation to reporting guidelines or the issuing of reporting guidelines.

Subdivision 4 Auditors

766 Auditors of reporting units

(1) A reporting unit's organisation must ensure there is an auditor of the reporting unit at any time an auditor is required for the operation of this division in relation to the reporting unit.

Maximum penalty—100 penalty units.

(2) The position of auditor of a reporting unit must be held by—

(a) a person who is an approved auditor; or

(b) a firm, at least 1 of whose members is an approved auditor.

(3) A person must not accept appointment as auditor of a reporting unit unless—

(a) the person is an approved auditor; and

(b) the person is not an excluded auditor in relation to the reporting unit.

Maximum penalty—100 penalty units.

(4) A member of a firm must not accept appointment of the firm as auditor of a reporting unit unless—

(a) at least 1 member of the firm is an approved auditor; and

(b) no member of the firm is an excluded auditor in relation to the reporting unit.

Maximum penalty—100 penalty units.

(5) A person who holds the position of auditor of a reporting unit must resign the appointment if the person—

(a) stops being an approved auditor; or

(b) becomes an excluded auditor in relation to the reporting unit.

Maximum penalty—100 penalty units.

(6) A member of a firm that holds the position of auditor of a reporting unit must take whatever steps are open to the member to ensure the firm resigns the appointment if the member—

(a) stops being an approved auditor and is or becomes aware that no other member of the firm is an approved auditor; or

(b) becomes an excluded auditor in relation to the reporting unit; or

(c) becomes aware another member of the firm is an excluded auditor in relation to the reporting unit.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—100 penalty units.

(7) The auditor of a reporting unit must try to comply with each requirement of this Act that applies to the auditor in that capacity.

(8) In this section—

excluded auditor, in relation to a reporting unit, means—

(a) an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or

(b) a partner, employer or employee of an officer or employee of the reporting unit or the organisation of which the reporting unit is a part; or

(c) a liquidator in relation to property of the reporting unit or the organisation of which the reporting unit is a part; or

(d) a person who owes more than $5,000 to the reporting unit or the organisation of which the reporting unit is a part.

767 Auditor's powers

(1) An auditor of a reporting unit must—

(a) audit the financial report of the reporting unit for each financial year; and

(b) make a report for the year to the reporting unit in accordance with section 768.

Maximum penalty—100 penalty units.

(2) An auditor, or a person authorised by an auditor for this subsection—

(a) is entitled at all reasonable times to full and free access to all records and other documents of the reporting unit relating directly or indirectly to the receipt or payment of amounts, or to the acquisition, receipt, custody or disposal of assets, by the reporting unit; and

(b) is entitled to seek from any designated officer, or employee of the reporting unit, the information and explanations that the auditor or authorised person wants for the audit.

(3) If an auditor asks an officer, employee or member of an organisation to produce records or other documents under subsection (2)(a), the request must—

(a) be in writing; and

(b) state the nature of the records or other documents to be produced; and

(c) state how and where the records or other documents are to be produced; and

(d) state a period (of at least 14 days after the notice is given) within which the records or other documents are to be produced.

(4) A person authorised for subsection (2) can not exercise a power under that subsection until the auditor gives the reporting unit a notice setting out the person's name and address.

768 Auditor's report

(1) The auditor's report must state whether in the auditor's opinion the general purpose financial report is presented fairly in accordance with any of the following that apply to the reporting unit—

(a) the Australian Accounting Standards;

(b) any other requirements imposed by this division.

(2) If, in the auditor's opinion, the general purpose financial report does not comply, the auditor's report must—

(a) state why the general purpose financial report does not comply; and

Not authorised—indicative only

Not authorised—indicative only

(b) to the extent it is practicable to do so, quantify the effect that noncompliance has on the general purpose financial report; and

(c) if it is not possible to quantify the effect fully, state why it is not possible.

(3) The auditor's report must also describe—

(a) any defect or irregularity in the general purpose financial report; and

(b) any deficiency, failure or shortcoming in relation to the matters mentioned in subsection (2) or section 762.

(4) The form and content of the auditor's report must be in accordance with the Australian Auditing Standards.

(5) The auditor's report must be—

(a) dated on the day the auditor signs the report; and

(b) given to the reporting unit within a reasonable time after the auditor receives the general purpose financial report.

(6) The auditor must immediately report the matter, in writing, to the registrar if the auditor—

(a) suspects on reasonable grounds there has been a contravention of this Act or reporting guidelines; and

(b) considers the matter can not be adequately dealt with by comment in a report or by reporting the matter to the reporting unit's management committee.

Maximum penalty for subsection (6)—100 penalty units.

769 Audit report must not be knowingly false or misleading

An auditor must not, in a report under section 768, make a statement if the auditor knows, or is reckless as to whether, the statement is false or misleading.

Maximum penalty—100 penalty units.

770 Auditor must notify registrar of contravention

An auditor performing auditor's functions for an organisation must immediately notify the registrar if the auditor—

(a) becomes aware a provision of this part has been contravened; and

(b) is of the opinion the matter can not be adequately dealt with by comment in the auditor's audit report.

Maximum penalty—100 penalty units.

771 Obstruction etc. of auditors

(1) An officer, employee or member of an organisation or branch of the organisation must not—

(a) hinder or obstruct the auditor of a reporting unit from taking action under section 767(2); or

(b) fail to comply with a request under section 767(2) by an auditor of a reporting unit to produce a record or other document in the custody or under the control of the officer, employee or member or to provide information or explanations.

Maximum penalty—30 penalty units.

(2) It is a defence to an offence against subsection (1)(b) if the officer, employee or member of the organisation or branch of the organisation had a reasonable excuse for not complying.

Note—

A defendant bears an evidential burden in relation to the matters mentioned in this subsection.

(3) It is not a reasonable excuse for subsection (2) that producing a record or other document under this section, or giving information or an explanation, might tend to incriminate the person or expose the person to a penalty.

(4) However, the following is not admissible in evidence against the person in a criminal proceeding or a proceeding that may expose the person to a penalty—

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Not authorised—indicative only

(a) the record or other document produced or the information or explanation;

(b) any information, document or thing obtained as a direct or indirect result of producing the record or other document giving the information or explanation.

(5) It is a defence to an offence against subsection (1) if the officer, employee or member of the organisation or branch of the organisation did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom that subsection applied.

Note—

A defendant bears an evidential burden in relation to the matters mentioned in this subsection.

(6) In a prosecution for an offence against subsection (1), it is not necessary to prove the defendant knew the auditor was an auditor.

(7) In this section—

auditor includes a person authorised by the auditor for section 767(2).

772 Reporting unit to forward notices etc. to auditor

(1) This section applies if a member of a reporting unit, or the reporting unit's management committee, has a right to receive notice of, or a communication about, a financial reporting meeting of the reporting unit or committee.

(2) A reporting unit's organisation must ensure the reporting unit gives notice of the financial reporting meeting to the auditor advising that the auditor's report, or a general purpose financial report to which the report relates, is to be presented at the meeting.

Maximum penalty—100 penalty units.

(3) In this section—

financial reporting meeting, of a reporting unit or its management committee, means a meeting of the reporting unit or committee at which the auditor's report, or a general purpose financial report to which the report relates, is to be presented or considered.

773 Auditor has a right to attend meetings at which report presented or considered

(1) An auditor, or a person authorised by an auditor for this section, has a right to attend, and be heard at, any part of a meeting of a reporting unit, or its management committee, at which—

(a) the auditor's report, or a general purpose financial report to which the report relates, is to be presented or considered; or

(b) there is to be conducted any business of the meeting that relates to—

(i) the auditor in that capacity; or

(ii) a person authorised by the auditor, in the person's authorised capacity.

(2) A person authorised for subsection (1) can not exercise a power under that subsection until the auditor gives the reporting unit notice of the person's name and address.

(3) An officer, employee or member of an organisation or branch of the organisation—

(a) must give notice of a meeting the auditor of a reporting unit has a right to attend to the auditor; and

(b) must not otherwise hinder or obstruct the auditor of a reporting unit from attending a part of the meeting the auditor has a right to attend.

Maximum penalty—30 penalty units.

(4) If, during the part of a meeting the auditor has a right to attend, the auditor indicates to the chairperson of the meeting that the auditor wishes to be heard, the chairperson must, as

Not authorised—indicative only

Not authorised—indicative only

soon as practicable after having received the indication, allow the auditor an opportunity to be heard.

Maximum penalty—20 penalty units.

(5) It is a defence to an offence against a subsection of this section if the person did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

Note—

A defendant bears an evidential burden in relation to the matters mentioned in this subsection.

(6) In a prosecution for an offence against this section, it is not necessary to prove the defendant knew that the auditor was an auditor.

(7) In subsections (3) to (6)—

auditor includes a person authorised by the auditor for this section.

774 Auditors and other persons to enjoy qualified privilege in particular circumstances

(1) An auditor of a reporting unit is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to a statement the auditor makes in the course of duties as auditor, whether the statement is made orally or in writing.

(2) A person is not, in the absence of malice, liable to an action for defamation at the suit of a person in relation to the publishing of a document prepared by an auditor of a reporting unit in the course of duties as auditor and required under this Act to be filed.

(3) This section does not limit or affect any right, privilege or immunity a defendant has in an action for defamation.

775 Fees and expenses of auditors

A reporting unit must pay the reasonable fees and expenses of an auditor of the reporting unit.

776 Removal of auditor

(1) An auditor of a reporting unit may only be removed during the auditor's term of appointment—

(a) if the auditor was appointed by the reporting unit's management committee—by resolution passed at a meeting of the committee by an absolute majority of its members; or

(b) if the auditor was appointed by a general meeting of the reporting unit's members—by resolution passed at a general meeting by a majority of the members of the reporting unit voting at the meeting.

(2) A designated officer of the reporting unit must take all reasonable steps to give written notice of the intention to remove the auditor to each member of the reporting unit.

Maximum penalty—100 penalty units.

(3) The designated officer must ensure the notice is given—

(a) with any time limits stated in the rules of the reporting unit; or

(b) if no time limits are stated in the rules, within a reasonable time before the resolution is moved.

Maximum penalty—100 penalty units.

(4) A designated officer of the reporting unit must give the auditor reasonable notice of the resolution to remove the auditor.

Maximum penalty—100 penalty units.

(5) A designated officer of the reporting unit must ensure the auditor is given the opportunity—

(a) to make written representations; and

Not authorised—indicative only

Not authorised—indicative only

(b) if subsection (1)(a) applies—to make oral representations to the management committee.

Maximum penalty—100 penalty units.

(6) If it is proposed to remove the auditor under subsection (1)(b) and the auditor makes written representations, the auditor may require the reporting unit to give a copy of the written representations to each member of the reporting unit.

(7) A designated officer of the reporting unit must ensure the reporting unit complies with a requirement under subsection (6) unless the written representations are longer than the limit prescribed by regulation.

Maximum penalty for subsection (7)—100 penalty units.

777 Resignation of auditor

(1) An auditor of a reporting unit may resign by giving written notice to the reporting unit.

(2) The resignation takes effect on the day stated in the notice or, if no day is stated, the day the notice is given to the reporting unit.

(3) If the auditor asks the reporting unit to allow the auditor to explain the auditor's reasons for resigning, the reporting unit's organisation must ensure the reporting unit does 1 of the following—

(a) distributes to the reporting unit's members written reasons for resignation prepared by the auditor;

(b) gives the auditor the opportunity to explain the reasons to a general meeting of the reporting unit.

Maximum penalty—100 penalty units.

(4) The reporting unit's management committee may choose which method is used.

Subdivision 5 Reporting requirements

778 Copies of full report or concise report to be given to members

(1) A designated officer of the reporting unit must give to its members, free of charge, 1 of the following—

(a) a full report consisting of—

(i) a copy of the auditor's report in relation to the inspection and audit of the reporting unit's financial records for a financial year; and

(ii) a copy of the general purpose financial report to which the report relates; and

(iii) a copy of the operating report to which the report relates;

(b) a concise report for the financial year that complies with subsection (3).

Maximum penalty—100 penalty units.

(2) However, a concise report may only be given if the unit's management committee resolves that a concise report may be given.

(3) A concise report for a financial year consists of—

(a) a concise financial report for the year drawn up as prescribed by regulation; and

(b) the operating report for the year; and

(c) a statement by the auditor—

(i) that the concise financial report has been audited; and

(ii) whether, in the auditor's opinion, the concise financial report complies with the relevant Australian Accounting Standards; and

(d) a copy of anything included under section 768(1) to (5) in the auditor's report on the full report; and

Not authorised—indicative only

Not authorised—indicative only

(e) a statement that the report is a concise report and that a copy of the full report and auditor's report will be sent to the member free of charge if requested.

779 Member may ask for a copy of full report or auditor's report

If, having received a concise report, a member asks for a copy of the full report or auditor's report, a designated officer of the reporting unit must send the copy to the member within 28 days after the request is made.

Maximum penalty—100 penalty units.

780 When copy of full report or concise report must otherwise be given

(1) A designated officer of a reporting unit must give to its members a report under section 778(1) within—

(a) if a general meeting of members of the reporting unit to consider the reports is held within 6 months after the end of the financial year—the period starting at the end of the financial year and ending 21 days before the general meeting; or

(b) otherwise—5 months after the end of the financial year.

Maximum penalty—100 penalty units.

(2) The registrar may, on the reporting unit's application, extend the period during which the meeting mentioned in subsection (1)(a) may be held, or the period stated in subsection (1)(b), by no more than a month.

781 Copy of full report or concise report may be published in journal

(1) If a reporting unit publishes a journal of the reporting unit that is available to its members free of charge, a designated officer of the reporting unit is taken to have complied with section 778(1) if—

(a) the full report is published in the journal; or

(b) a concise report as described in section 778(3) is prepared and published in the journal.

(2) If a reporting unit consists of 2 or more branches of an organisation and 1 of the branches publishes a journal of the branch that is available to its members free of charge, a designated officer of the reporting unit is taken to have complied with section 778(1) in relation to the members if—

(a) the full report is published in the journal; or

(b) a concise report as described in section 778(3) is prepared and published in the journal.

782 Obligation to present to general or committee meeting

An organisation must present its audit report and general purpose financial report for a financial year to a general meeting or a meeting of the organisation's management committee within—

(a) 5 months after the end of the financial year; or

(b) if the registrar has extended the time to hold the meeting—the extended time.

Maximum penalty—40 penalty units.

783 Comments by committee members not to be false or misleading

(1) This section applies if a member of a reporting unit's management committee—

(a) comments on a matter dealt with in a full report or in a concise report—

(i) to members of the reporting unit; or

(ii) to a general meeting of the members of the reporting unit or a meeting of the reporting unit's management committee; or

Not authorised—indicative only

Not authorised—indicative only

(b) publishes comments on the matter in a journal.

(2) The member must not, in the comments, make a statement if the member knows, or is reckless as to whether, the statement is false or misleading.

Maximum penalty—100 penalty units.

784 Reports etc. to be lodged with registrar

A designated officer of a reporting unit must, within 14 days (or any longer period the registrar allows) after the meeting referred to in section 782, file—

(a) a copy of the full report; and

(b) if a concise report was given to members—a copy of the concise report; and

(c) a statutory declaration by a designated officer that the documents lodged are copies of the documents given to members and presented to a meeting under section 782.

Maximum penalty—100 penalty units.

Subdivision 6 Reduced reporting requirements for particular reporting units

785 Organisations with receipts of less than a particular amount

(1) This section applies to an organisation reporting unit (an ***ORU***) if the registrar, on application by the ORU made after the end of a financial year, is satisfied the ORU's receipts for the financial year were below the prescribed income threshold.

(2) The registrar must issue to the ORU a certificate to the effect that the ORU's receipts were below the prescribed income threshold for the financial year.

(3) This division, other than sections 778 to 782, applies to the ORU in relation to the financial year.

(4) However, in applying this division to the ORU in relation to the financial year—

(a) a reference to a general purpose financial report prepared or to be prepared under section 763 applies as if it were a reference to a general purpose financial report prepared under subsection (5); and

(b) the reference in section 787(6) to a general purpose financial report prepared under section 763 applies as if it were a reference to a general purpose financial report prepared under subsection (5).

(5) Within the period prescribed by regulation after the end of the financial year, the ORU must prepare, from its financial records for the year, a general purpose financial report as required by the reporting guidelines under section 765(3)(b) and (c).

Maximum penalty—100 penalty units.

(6) After the making to the ORU of the auditor's report under section 767 in relation to the auditor's inspection and audit of the financial records kept by the ORU for the financial year, and before the end of the financial year immediately following that financial year, the ORU must present a copy of the report and copies of the general purpose financial report to which the auditor's report relates to a meeting of its members.

Maximum penalty—100 penalty units.

(7) If a member of the ORU asks the ORU to give the member a copy of the auditor's report and the general purpose financial report, the ORU must give a copy of each of the reports to the member, free of charge, within 14 days after being asked.

Maximum penalty—100 penalty units.

(8) The ORU must, within 90 days (or a longer period the registrar allows) after the making to the ORU of the report under section 767, file—

(a) copies of the auditor's report and the general purpose financial report; and

Not authorised—indicative only

Not authorised—indicative only

(b) a certificate, in the form prescribed by regulation, by a designated officer, that the information contained in the general purpose financial report is correct.

Maximum penalty—100 penalty units.

(9) In this section—

organisation reporting unit means a reporting unit that is all of an organisation.

prescribed income threshold, for a financial year, means—

(a) for a financial year that, because of section 598(2), is a period other than 12 months—the amount the registrar considers appropriate in the circumstances being not more than the amount prescribed under paragraph (b); or

(b) for any other financial year—the amount prescribed by regulation or, if no amount is prescribed, $100,000.

786 Exemption from this part of particular reporting units

(1) If, on the application of a reporting unit, the registrar is satisfied, after considering any circumstances that are prescribed by regulation, that the reporting unit did not have any financial affairs in a financial year, the registrar may issue to the reporting unit a certificate to that effect for the financial year.

(2) The certificate exempts the reporting unit from the requirements of this part for the financial year.

(3) The application must be made to the registrar within 90 days, or a longer period the registrar allows, after the end of the financial year.

Subdivision 7 Members' access to financial records

787 Information to be given to members or registrar

(1) A member of a reporting unit, or the registrar, may apply to the reporting unit for stated information, prescribed by regulation, about the reporting unit to be made available to the person making the application.

(2) The application must—

(a) be in writing; and

(b) state the period, which must be at least 14 days after the application is made, within which the information must be made available; and

(c) state the way in which the information must be made available.

(3) The reporting unit's organisation must ensure the reporting unit complies with the application.

Maximum penalty—100 penalty units.

(4) The registrar may only make an application under subsection (1) if asked by a member of the reporting unit.

(5) The registrar must provide the information obtained as a result of the application to any member of the reporting unit who asks for it.

(6) A reporting unit's organisation must ensure that, when the reporting unit prepares a general purpose financial report under section 763, a concise report under section 778 or a report under section 785(5), it includes in the report a notice drawing attention to subsections (1), (2) and (3) and setting out the subsections.

Maximum penalty—100 penalty units.

(7) Without limiting the information that may be prescribed under subsection (1), the information prescribed must include details (including the amount) of any fees paid by the

Not authorised—indicative only

Not authorised—indicative only

reporting unit for payroll deduction services provided by a person who is an employer of—

(a) the member making the application for information; or

(b) the member at whose request the application was made.

788 Order for inspection of financial records

(1) On application by a member of a reporting unit, the commission may make an order—

(a) authorising the applicant to inspect the financial records of the reporting unit stated in the order; or

(b) authorising another person (whether a member or not) to inspect the financial records of the reporting unit stated in the order on the applicant's behalf.

(2) However, the commission may only make the order if it is satisfied—

(a) the applicant is acting in good faith; and

(b) there are reasonable grounds for suspecting a contravention of—

(i) a provision of this division; or

(ii) the reporting guidelines; or

(iii) a regulation made for this division; or

(iv) a rule of a reporting unit relating to its finances or financial administration; and

(c) it is reasonable to expect an examination of the financial records will help in deciding if there is a contravention.

(3) Also, the commission may only make an order authorising the inspection of financial records that relate to the suspected contravention mentioned in subsection (2)(b).

(4) A person authorised to inspect the financial records may make copies of the financial records unless the commission orders otherwise.

789 Frivolous or vexatious applications

(1) A person must not make an application under section 788 that is vexatious or without reasonable cause.

(2) If the commission considers an application under section 788 to be vexatious or without reasonable cause, the commission must dismiss the application as soon as practicable.

790 Ancillary orders

If the commission makes an order under section 788, the commission may make any other orders it considers appropriate, including the following—

(a) an order limiting the use a person who inspects the financial records may make of information obtained during the inspection;

(b) an order limiting the right of a person who inspects the financial records to make copies under section 788(4);

(c) an order that the reporting unit is not required to provide the names and addresses of its members.

791 Disclosure of information acquired in inspection

(1) An applicant who inspects the financial records under section 788, or a person who inspects the financial records for an applicant, must not disclose information obtained during the inspection unless the disclosure is to—

(a) a member of the commission or the registrar; or

(b) if the inspection is made for an applicant—the applicant.

Maximum penalty—20 penalty units.

(2) A person who receives information under subsection (1)(a) or (b) must not disclose the information other than to another person covered by the subsection.

Maximum penalty for subsection (2)—20 penalty units.

Not authorised—indicative only

Not authorised—indicative only

792 Reporting unit or management committee may allow member to inspect books

A reporting unit's management committee, or the reporting unit by a resolution passed at a general meeting of the reporting unit, may authorise a member to inspect financial records of the reporting unit.

793 Registrar to be advised of contraventions of division or rules etc. found during inspection

(1) If, as a result of inspecting the financial records of a reporting unit, a person reasonably believes a relevant contravention may have occurred, the person must give the registrar—

(a) written notice to that effect; and

(b) any relevant information obtained during the inspection.

Maximum penalty—100 penalty units.

(2) If the registrar receives a notice under subsection (1) and is satisfied there are reasonable grounds for believing that there has been a relevant contravention, the registrar must investigate the matter under section 795.

(3) In this section—

relevant contravention means a contravention of—

(a) a provision of this division; or

(b) the reporting guidelines; or

(c) a regulation made for this division; or

(d) a rule of a reporting unit relating to its finances or financial administration.

794 Constitution of the commission

For this subdivision, the commission must be constituted by the president, a vice president or a deputy president.

Subdivision 8 Registrar's investigations and audits

795 Registrar's investigations

(1) The registrar must investigate an organisation's finances or financial administration—

(a) if an audit report for the organisation states—

(i) there was an accounting deficiency in the organisation's accounts; or

(ii) another matter the registrar considers should be investigated; or

(b) if asked by the required number of members of the organisation; or

(c) if required to under section 793(2).

(2) The registrar may also conduct an investigation—

(a) if satisfied there are reasonable grounds to conduct an investigation; or

(b) in another circumstance prescribed by regulation.

796 Registrar's directions for investigation

(1) The registrar may direct an auditor, employee or officer, or a former auditor, employee or officer, of the organisation to give the registrar—

(a) information relevant to the investigation within the person's knowledge or possession; or

(b) documents relevant to the investigation over which the person has control or custody.

(2) A person to whom a direction is given by the registrar under subsection (1) must comply with the direction, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

Not authorised—indicative only

Not authorised—indicative only

(3) It is a reasonable excuse for the person not to comply with the direction if doing so might tend to incriminate the person.

797 Notice of contravention to organisation

(1) This section applies if the registrar considers the investigation has revealed a contravention of this Act or a rule of the organisation about its finances or financial administration.

(2) The registrar may by notice—

(a) advise the organisation of the contravention; and

(b) require it to take stated action, within a stated period, to remedy the contravention.

798 Court may order compliance with notice

If the organisation does not comply with the notice under section 797(2), the court may, on the application of the registrar, make an order it considers appropriate to remedy the contravention stated in the notice.

799 Registrar's examinations

(1) The registrar may engage an auditor (the ***registrar's auditor***) to examine an organisation's accounting records for a financial year or other period for the organisation if the registrar considers—

(a) the organisation has not kept accounting records; or

(b) the organisation has an accounting deficiency in its accounts; or

(c) the organisation's property has been misappropriated or improperly applied; or

(d) the organisation, or an officer of the organisation, has committed an offence in relation to the organisation's property.

(2) The registrar's auditor must examine the organisation's accounting records and give the registrar an audit report.

800 Powers of registrar's auditor

The registrar's auditor, or an appropriately qualified person authorised in writing by the auditor, has the functions and powers of an organisation's auditor.

801 Costs of examination by registrar's auditor

(1) The costs of or associated with an examination by a registrar's auditor must be paid by the organisation for which the examination is carried out if demanded by the registrar.

(2) The registrar may recover the amount of the costs not paid on demand as a debt.

Part 12 Exemptions

Division 1 Exemptions for organisations with counterpart federal bodies

Subdivision 1 Exemption from holding election

802 Exemption if federal election held

(1) An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from holding an election for a stated office or offices of the organisation or organisations (***stated office***).

(2) The registrar may grant the exemption only if satisfied as follows—

(a) the applicant has a counterpart federal body;

Not authorised—indicative only

Not authorised—indicative only

(b) the counterpart federal body has held an election (the ***federal election***) for an office (the ***federal office***) under the Commonwealth Registered Organisations Act;

(c) the applicant's rules provide the stated office is a corresponding office to the federal office;

(d) the stated office will be filled by a person (the ***elected person***) elected in the federal election to the federal office;

(e) if the eligibility rules of the applicant and the counterpart federal body differ—the interests of the applicant's members who were ineligible to vote in the federal election have not been disadvantaged.

(3) If the exemption is granted—

(a) the elected person is taken to have been elected to the stated office; and

(b) the applicant's rules for the election of the elected person to the stated office are taken to be complied with; and

(c) section 629 does not apply to the rules for the election.

(4) In this section—

corresponding office, to a federal office, means an office, however described, similar to the federal office.

803 Obligation to notify change in federal election result

(1) This section applies if—

(a) an organisation has been granted an exemption under section 802; and

(b) an order under the Commonwealth Registered Organisations Act has changed the federal election result about which the exemption was given.

(2) The organisation must give the registrar notice of the change as soon as practicable after it becomes aware of the change.

Maximum penalty—100 penalty units.

(3) The organisation is taken to become aware of the change if an officer of the organisation becomes aware of it.

Subdivision 2 Exemption from keeping members or officers register

804 Exemption

(1) An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from keeping a members register or an officers register.

(2) The registrar may grant the exemption only if satisfied the applicant has a counterpart federal body and—

(a) for an exemption from keeping a members register—

(i) its members are, when the application is made, recorded as members of the body in the body's register of members under the Commonwealth Registered Organisations Act; and

(ii) the body has complied with the requirements under the Commonwealth Registered Organisations Act about keeping its register of members and other records for its members; or

(b) for an exemption from keeping an officers register—

(i) its officers are all officers of the body; and

(ii) the body has complied with the requirements under the Commonwealth Registered Organisations Act about keeping and filing records for its officers.

(3) An exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

805 Effect of exemption

(1) While an exemption from keeping a members register is in force for an organisation, its counterpart federal body's

Not authorised—indicative only

Not authorised—indicative only

register of members is taken to be the organisation's members register.

(2) While an exemption from keeping an officers register is in force for an organisation, its counterpart federal body's register of officers is taken to be the organisation's officers register.

806 Obligation to file copy of federal officers register

(1) This section applies if the registrar has, under section 804, granted an exemption to an organisation exempting it from keeping an officers register.

(2) The organisation must, within 14 days after any records relating to offices, and persons holding the offices, for its counterpart federal body are lodged with the FWC under the Commonwealth Registered Organisations Act, file a copy of the records certified by the president or secretary of the body as being a true copy of the records.

Maximum penalty—100 penalty units.

807 Obligation to give notice of change or contravention

(1) This section applies to an organisation that has been granted an exemption under section 804 if any of the following events happen—

(a) it no longer has a counterpart federal body;

(b) if it was exempted from keeping a members register—

(i) its members are not recorded as members of the counterpart federal body of the organisation for which the exemption was granted in the body's register of members under the Commonwealth Registered Organisations Act; or

(ii) the body has contravened a requirement of the Commonwealth Registered Organisations Act about keeping or filing records for its members;

(c) if it was exempted from keeping an officers register—

(i) not all of its officers are officers of the counterpart federal body of the organisation for which the exemption was granted; or

(ii) the body has contravened a requirement of the Commonwealth Registered Organisations Act about keeping or filing records for its officers.

(2) The organisation must give the registrar notice of the happening of the event as soon as practicable after it becomes aware of the happening of the event.

Maximum penalty—100 penalty units.

(3) The organisation is taken to become aware of the happening of the event if an officer of the organisation becomes aware of it.

Subdivision 3 Exemption from accounting or audit obligations

808 Exemption

(1) An organisation, or 2 or more organisations jointly, may apply to the registrar for an exemption from the whole or part of part 11, division 6, subdivisions 3 and 4.

(2) The registrar may grant the exemption only if satisfied—

(a) the applicant has a counterpart federal body; and

(b) the Commonwealth Registered Organisations Act imposes accounting and audit obligations on the counterpart federal body of the applicant that are an adequate substitute for each provision from which the applicant would be exempted; and

(c) the counterpart federal body has complied with the provisions of the Commonwealth Registered Organisations Act that correspond, or substantially correspond, with the provisions from which the organisation would be exempted; and

Not authorised—indicative only

Not authorised—indicative only

(d) if the exemption is granted—the applicant will continue to be financially accountable to its members.

(3) An exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

809 Effect of exemption

While an exemption from the whole or part of part 11, division 6, subdivisions 3 and 4 is in force for an organisation, each provision from which the organisation is exempted does not apply to the organisation.

810 References to audit report for pt 11, div 6, sdiv 5

(1) This section applies if—

(a) the registrar has, under section 808, granted an exemption to an organisation from the requirement to appoint an auditor to inspect and audit the organisation's accounting records and make a report under part 11, division 6, subdivision 4; and

(b) the Commonwealth Registered Organisations Act requires the counterpart federal body of the organisation to appoint an auditor to inspect and audit the counterpart federal body's accounting records and make a report.

(2) A reference in part 11, division 6, subdivision 5 to an organisation's audit report is taken to be a reference to the audit report prepared for the counterpart federal body under the Commonwealth Registered Organisations Act.

811 Obligation to notify registrar of contravention of Commonwealth Act

(1) This section applies if the counterpart federal body of an organisation has contravened a provision of the Commonwealth Registered Organisations Act that corresponds, or substantially corresponds, with the provision

for which the organisation was granted an exemption under section 808.

(2) The organisation must give the registrar notice of the contravention as soon as practicable after it becomes aware of the occurrence of the contravention.

Maximum penalty—100 penalty units.

(3) The organisation is taken to become aware of the occurrence of the contravention if an officer of the organisation becomes aware of it.

Division 3 Exemption from accounting or audit obligations for employer organisation that is corporation

820 Who may apply

An employer organisation that is a corporation may apply to the registrar for an exemption from the whole or part of part 11, division 6, subdivisions 3 and 4.

821 Grant of exemption

(1) The registrar may grant the exemption only if satisfied—

(a) another Act or law imposes accounting and audit obligations on the employer organisation that are an adequate substitute for the provisions from which the organisation would be exempted; and

Examples of other laws that impose accounting and audit obligations—

- the Corporations Act, chapter 2M
- the *Associations Incorporation Act 1981*

(b) the organisation has complied with the provisions of the other Act or law that correspond, or substantially correspond, with the provisions from which the organisation would be exempted; and

Not authorised—indicative only

Not authorised—indicative only

(c) if the exemption is granted—the organisation will continue to be financially accountable to its members.

(2) An exemption remains in force for the period stated in it or, if no period is stated, until it is cancelled.

(3) While an exemption is in force, each provision from which the employer organisation is exempted does not apply to the organisation.

822 References to audit report for pt 11, div 6, sdiv 5

(1) This section applies if—

(a) the registrar has, under section 821, granted an exemption for an employer organisation from the requirement to appoint an auditor to inspect and audit the organisation's accounting records and make a report under part 11, division 6, subdivision 4; and

(b) another Act or law requires the organisation or its counterpart federal body to appoint an auditor to inspect and audit the organisation's accounting records and make a report.

(2) A reference in part 11, division 6, subdivision 5 to an employer organisation's audit report is taken to be a reference to the audit report prepared for the organisation under the other Act or law.

823 Obligation to notify registrar of contravention of other law

(1) This section applies if an employer organisation has contravened a provision of another Act or law that corresponds, or substantially corresponds, with the provision for which the employer organisation was granted an exemption under section 821.

(2) The employer organisation must give the registrar notice of the contravention as soon as practicable after it becomes aware of the happening of the contravention.

Maximum penalty—100 penalty units.

(3) The employer organisation is taken to become aware of the happening of the contravention if an officer of the organisation becomes aware of it.

Division 4 Cancellation of exemptions

824 Cancellation grounds

(1) An exemption under this part may be cancelled by the registrar only—

(a) if the holder of the exemption asks for its cancellation; or

(b) on a ground mentioned in subsection (2).

(2) The grounds are as follows—

(a) for an exemption under section 802—

(i) the organisation no longer has a counterpart federal body; or

(ii) the making of an order mentioned in section 803(1)(b) changing the federal election result about which the exemption was given;

(b) for an exemption under section 804 from keeping an officers register—the holder has contravened section 806;

(c) the occurrence of a contravention or an event for which the holder must, under division 1, give the registrar notice;

(d) for an exemption under section 821—the registrar is no longer satisfied under section 821(1).

Not authorised—indicative only

Not authorised—indicative only

825 Alternatives to cancellation for federal election exemption

(1) This section applies if the registrar considers an exemption under section 802 may be cancelled because an order mentioned in section 803(1)(b) has been made.

(2) The registrar may—

(a) amend the exemption instead of cancelling it; or

(b) cancel it and grant another exemption instead to reflect the terms of the order.

Part 13 Validations

Division 1 Preliminary

826 Definitions for part

In this part—

act includes decision.

collective body, of an organisation, means—

(a) its management committee; or

(b) a conference, council, committee, panel or other body of or within the organisation.

invalidity includes defect.

organisation includes a branch of an organisation.

Division 2 Validations

827 Limitation on validations if substantial injustice

(1) This division operates to validate an act or event only if the operation does not or will not cause substantial injustice to—

(a) the organisation to which the act or event applies or concerns; or

(b) a member or creditor of the organisation; or

(c) a person dealing with, or who has dealt with, the organisation.

(2) However, subsection (1) does not apply to sections 829 and 830.

828 Validation of certain acts done in good faith

(1) This section applies to an act done in good faith by an organisation, a collective body or officer of an organisation or a purported collective body or officer of an organisation.

(2) The act is not invalid only because—

(a) of an invalidity discovered later in—

(i) the election or appointment of a collective body or officer of the organisation; or

(ii) the organisation's rules; or

(iii) making, amending or repealing a rule of the organisation; or

(b) of an absence of quorum or other procedural irregularity; or

(c) the organisation has a counterpart federal body.

(3) In this section—

(a) an act is taken to be done in good faith unless proved otherwise; and

(b) a person who has purported to be a member of a collective body is taken to have done so in good faith unless proved otherwise; and

(c) knowledge of facts from which an invalidity arose is not by itself knowledge of the invalidity; and

Not authorised—indicative only

Not authorised—indicative only

(d) an invalidity is taken not to be discovered until known by a majority of the members of the management committee of the organisation.

(4) This section—

(a) does not affect the operation of part 7 or an election inquiry under part 8; and

(b) does not validate an expulsion, suspension, fine or penalty for a member of the organisation if that act would not have been valid had this section not been enacted; and

(c) applies to an action done—

(i) before or after this section commences; or

(ii) concerning an association that became an organisation after the act was done.

829 Certain acts by person purporting to act in an office

(1) This section applies if—

(a) a person was apparently elected to an office for an organisation in an election; and

(b) the person has purported to act in the office since the election; and

(c) the commission declares the person's election void.

(2) The person's acts while purporting to act in the office for the organisation that could have been validly done if the person were properly elected are valid.

830 Election not invalid because of compliance with order

An election or a step in an election conducted under an order of the commission is valid despite a contravention of the rules of an organisation or branch of the organisation for which the election or step was conducted.

832 Validation of certain events after 4 years

(1) This section applies to each of the following events 4 years after the event happens—

(a) the election or appointment, or purported election or appointment, to an office for an organisation;

(b) a making or amendment, or purported making or amendment, of a rule of an organisation.

(2) The event is taken to have been done under the organisation's rules.

(3) However, this section does not affect a decision by the court or another court, the commission or the registrar made about the event before the 4 years ends.

(4) This section applies to an event happening—

(a) before or after this section commences; or

(b) to an association before it became an organisation.

(5) In this section—

decision includes a decree, sentence, verdict and a similar act.

833 Counterpart federal body not a ground for challenge

(1) In proceedings, the validity of the following about an organisation can not be challenged or in any way affected only because of a ground mentioned in subsection (2)—

(a) the organisation's existence or registration;

(b) the election of an officer of the organisation;

(c) a rule of the organisation;

(d) a decision made by or about the organisation;

(e) the operation of a rule or a decision mentioned in paragraph (c) or (d).

(2) The grounds are as follows—

(a) the organisation has a counterpart federal body;

Not authorised—indicative only

Not authorised—indicative only

(b) a person is a member of the organisation and its counterpart federal body and the organisation did not receive a separate membership application or fee from the member;

(c) the organisation has the same, or substantially the same, rules as its counterpart federal body;

(d) the organisation did not keep separate members or officers registers or accounting or other records from its counterpart federal body.

834 Amalgamations and withdrawals

(1) This section applies if no proceedings have been taken to challenge—

(a) an amalgamation within 6 months after the amalgamation day for the amalgamation; or

(b) a withdrawal within 6 months after the withdrawal day for the withdrawal.

(2) The following are taken to be, and to have always been, valid—

(a) the amalgamation or withdrawal;

(b) anything else done or purporting to have been done—

(i) concerning the amalgamation or withdrawal; or

(ii) on which the validity of the amalgamation or withdrawal depends.

(3) Subsection (2) has effect despite an order of the court, another court or tribunal, the commission or the registrar made before the end of the 6 months.

(4) In this section—

amalgamation includes a purported amalgamation and anything done or purporting to have been done under part 14 to give effect to an amalgamation or purported amalgamation.

amalgamation day see section 838.

withdrawal includes a purported withdrawal and anything done or purporting to have been done under part 14 to give effect to a withdrawal or purported withdrawal.

withdrawal day see section 838.

Division 3 Orders about invalidity or its effects

835 Commission may decide

(1) The commission may, on application, decide whether an invalidity has happened in—

(a) the management or administration of an organisation's affairs; or

(b) the election or appointment of an officer of an organisation; or

(c) the making, amending or repealing of a rule of an organisation.

(2) In deciding the application, the commission may declare whether or not an invalidity has happened.

836 Who may apply

The application may be made only by—

(a) the organisation; or

(b) a member of the organisation; or

(c) another person the commission considers has a sufficient interest in the subject matter of the application.

837 Orders about effects of invalidity

(1) This section applies if, on the hearing of the application, the commission declares an invalidity has happened.

Not authorised—indicative only

Not authorised—indicative only

(2) The commission may make an order it considers appropriate—

(a) to remedy the invalidity or to cause it to be remedied; or

(b) to change or prevent, or cause to change or prevent, the effects of the invalidity; or

(c) to validate an act, matter or thing made invalid by or because of the invalidity.

(3) The commission may also make another order consequential on an order under subsection (2).

(4) The commission must not make an order under this section if the order would cause substantial injustice to—

(a) the organisation that the invalidity concerns; or

(b) a member or creditor of the organisation; or

(c) a person dealing with or who has dealt with the organisation.

Part 14 Amalgamations and withdrawals

Division 1 Preliminary

838 Definitions for part

In this part—

amalgamated organisation means an organisation amalgamated under division 2.

amalgamation ballot means a ballot for a proposed amalgamation under division 2.

amalgamation day, for an amalgamation or proposed amalgamation, means the day the amalgamation takes effect or is to take effect.

constituent part, for an amalgamated organisation, means a part of the membership of the amalgamated organisation that would have been eligible for membership of an organisation deregistered for the formation of the amalgamated organisation had the deregistration of the organisation not happened.

existing organisation means an organisation concerned in a proposed amalgamation.

newly registered organisation means an organisation registered under section 847.

proposed amalgamated organisation, for a proposed amalgamation, means the existing organisation or proposed organisation that members of the proposed deregistering organisations propose to become members of under division 2.

proposed deregistering organisation, for a proposed amalgamation, means an organisation that is, under division 2, to be deregistered as part of the amalgamation.

withdrawal ballot means a ballot for a proposed withdrawal.

withdrawal day, for a withdrawal or proposed withdrawal, means the day the withdrawal is to take effect.

Division 2 Amalgamations

839 Amalgamation permitted only under this division

An amalgamation may be carried out only under this division.

840 Commission to approve proposed amalgamation

The commission may, by order, approve an amalgamation only if—

(a) the procedure for carrying out an amalgamation prescribed by regulation has been complied with; and

Not authorised—indicative only

Not authorised—indicative only

(b) the rules of the proposed amalgamated organisation for the proposed amalgamation comply with parts 3 and 4.

841 Additional regulation-making powers for amalgamations

A regulation may provide for the following—

(a) the joint representation of the members of existing organisations for an amalgamation until the amalgamation day for the amalgamation;

(b) for an amalgamation ballot by proposed members of the proposed amalgamated organisation for the proposed amalgamation;

(c) how an amalgamation ballot must be conducted;

(d) that the commission may inquire into any claimed irregularity in an amalgamation ballot and its powers for the inquiry;

(e) for when an approved amalgamation takes effect;

(f) the effect of an amalgamation on decisions that bound a proposed deregistering organisation for the amalgamation on the amalgamated organisation or its members;

(g) substituting a proposed amalgamated organisation for a proposed deregistering organisation for the proposed amalgamation in pending proceedings;

(h) substituting an amalgamated organisation for an organisation that was deregistered on the amalgamation of the amalgamated organisation in pending proceedings;

(i) any other matter necessary to give effect to an amalgamation.

842 Effect of amalgamation

(1) This section applies on the amalgamation day for an amalgamation.

(2) If the proposed amalgamated organisation for the proposed amalgamation is not already registered, the registrar must—

(a) enter in the register its name and the amalgamation day; and

(b) give it a certificate of registration in the approved form.

(3) If the amalgamated organisation was not incorporated before the entry in the register, section 611 applies to the organisation as if the commission had granted a registration application under part 2 on the amalgamation day.

(4) Despite part 6, a proposed amendment of the rules of an existing organisation for the amalgamation takes effect.

(5) If there is a proposed deregistering organisation for the proposed amalgamation—

(a) sections 888 to 890 and 893 apply to the organisation as if a deregistration order had been made for it; and

(b) its property and liabilities vest in the amalgamated organisation; and

(c) its members become members of the amalgamated organisation, without requirement to pay an entrance fee.

(6) The amalgamated organisation must take all necessary steps to give effect to the amalgamation.

843 Holding office after amalgamation

(1) This section applies to the rules of an amalgamated organisation or proposed amalgamated organisation for a proposed amalgamation if the organisation is not a corporation.

(2) Despite parts 3 and 4, the rules may allow an officer (an ***existing officer***) of a proposed deregistering organisation for the proposed amalgamation, or of an existing organisation, who holds office immediately before the amalgamation day for the amalgamation to be an officer of the proposed amalgamated organisation for the proposed amalgamation.

Not authorised—indicative only

Not authorised—indicative only

(3) However, the rules must not allow the existing officer to hold office for the amalgamated organisation without an ordinary election for more than the longer of—

(a) the existing officer's unexpired term immediately before the amalgamation day for the amalgamation; or

(b) 2 years from the amalgamation day.

(4) The rules must make reasonable provision for synchronising the election with elections for other offices for the organisation.

(5) Section 621 applies to an office for an amalgamated organisation held by an existing officer of a deregistered organisation for the amalgamation.

(6) Section 624 does not apply to an office for an amalgamated organisation held by an existing officer.

Division 3 Withdrawing from amalgamation

844 Requirements for withdrawal

A constituent part for an amalgamated organisation may withdraw from the amalgamated organisation only if—

(a) the constituent part became part of the organisation because of an amalgamation under this division or the repealed Act, chapter 12, part 15; and

(b) the amalgamation happened not more than 2 years before the proposed withdrawal; and

(c) the withdrawal is carried out under this division.

845 Commission to approve proposed withdrawal

The commission may, by order, approve a withdrawal of the constituent part for the amalgamated organisation only if—

(a) the procedure for carrying out a withdrawal prescribed by regulation has been complied with; and

(b) the rules of the organisation the constituent part proposes to become (the ***proposed organisation***) comply with parts 3 and 4.

846 Additional regulation-making powers for withdrawals

A regulation may provide for the following—

(a) a proposed withdrawal to be submitted to a ballot of members of the constituent part for the amalgamated organisation seeking the withdrawal;

(b) how a ballot must be conducted;

(c) that the commission may inquire into any claimed irregularity in a withdrawal ballot and its powers for the inquiry;

(d) for when an approved withdrawal takes effect;

(e) the appointment of officers of an amalgamated organisation as officers of a newly registered organisation, and the results of the appointments;

(f) any other matter necessary to give effect to a withdrawal.

847 Registration of constituent part on withdrawal

(1) On the withdrawal day for a withdrawal the registrar must—

(a) enter in the register the withdrawal and the proposed organisation's name as an organisation; and

(b) give the organisation a certificate of registration in the approved form.

(2) Section 611 applies to the organisation as if the commission had granted an application for its registration under part 2 on the withdrawal day for the withdrawal.

Not authorised—indicative only

Not authorised—indicative only

848 Members of constituent part may join newly registered organisation

(1) This section applies to a person who is a member of the amalgamated organisation from which a constituent part withdrew to form a newly registered organisation.

(2) The person may, if the person is eligible for membership, become a member of the newly registered organisation without paying an entrance fee.

Division 4 Offences about amalgamation or withdrawal ballots

849 Obstructing conduct of ballot

A person must not obstruct another person conducting an amalgamation ballot or withdrawal ballot.

Maximum penalty—100 penalty units.

850 Offences about ballots

A person must not, without lawful authority or excuse, do any of the following about an amalgamation ballot or withdrawal ballot—

(a) obtain or possess a ballot paper if the person does not have the right to obtain or possess it;

(b) pretend to be and vote as someone else;

(c) amend, deface, destroy, interfere with, or remove a ballot record;

(d) vote in the ballot if the person does not have the right to vote;

(e) vote more than once;

(f) forge a ballot record;

(g) utter a ballot record knowing it to be forged;

(h) give a ballot record to someone else;

(i) put a ballot record in a ballot box or other container used for the ballot (also a ***ballot box***) if the person does not have the right to vote;

(j) deliver or post a ballot record to another person performing functions for the ballot if the person does not have the right to deliver or post the ballot record;

(k) destroy, interfere with, open, or remove a ballot box.

Maximum penalty—80 penalty units.

851 Disadvantaging another to induce vote or omission to vote

(1) A person must not cause, inflict or procure a disadvantage to anyone or anything because of, or to induce—

(a) a vote or omission to vote in an amalgamation ballot or withdrawal ballot (a ***ballot***); or

(b) a promise of a vote or omission to vote in a ballot.

Maximum penalty—80 penalty units.

(2) In this section—

cause a disadvantage includes offering, suggesting and threatening a disadvantage.

disadvantage includes damage, detriment, injury, loss, punishment and violence.

852 Unauthorised access to ballot paper

A person must not, without lawful authority or excuse—

(a) ask, require or induce another person to show to the person, or permit the person to see, a ballot paper for an amalgamation ballot or withdrawal ballot so the person can see the vote recorded in the ballot paper—

(i) while the paper is being marked; or

Not authorised—indicative only

Not authorised—indicative only

(ii) after it has been marked; or

(b) if the person is performing functions for an amalgamation ballot or withdrawal ballot—show to anyone else, or permit anyone else access to, a ballot paper used in the ballot, other than to perform the functions.

Maximum penalty—80 penalty units.

Division 5 Miscellaneous

853 Using resources for proposed amalgamation

(1) An existing organisation for a proposed amalgamation may use its financial and other resources to support the proposed amalgamation if—

(a) its management committee has resolved to do so; and

(b) the committee has given reasonable notice of its resolution to the organisation's members.

(2) Subsection (1) does not limit an existing organisation's other powers to use its financial and other resources for the proposed amalgamation.

854 Costs of ballot conducted by electoral commission

The costs of an amalgamation ballot or withdrawal ballot conducted by the electoral commission under this part are payable by the entity for whom the ballot is conducted.

855 No action for defamation in certain cases

A civil proceeding for defamation does not lie against any of the following entities for printing or publishing a document for an amalgamation ballot or withdrawal ballot—

(a) the State;

(b) the electoral commission;

(c) an electoral officer;

(d) another person who may, under this chapter, conduct the ballot;

(e) a person asked to act for, or at the direction of, an entity mentioned in paragraphs (a) to (d).

856 Commission may resolve difficulties

(1) A person with sufficient interest may apply to the commission for an order—

(a) if a difficulty arises, or is likely to arise, in carrying out or giving effect to an amalgamation or withdrawal or in applying this part to another matter; or

(b) for the taking of a step necessary to give effect to the amalgamation or withdrawal.

(2) The commission may make an order it considers appropriate to resolve the difficulty or to give effect to a step necessary for the amalgamation or withdrawal.

(3) The order has effect despite the rules of an organisation.

857 Registration of property transferred under this part

(1) This section applies if—

(a) property becomes the property of an amalgamated organisation (a ***transferee***) because of an amalgamation; or

(b) property of an amalgamated organisation becomes the property of a newly registered organisation (also a ***transferee***) because of a withdrawal.

(2) A certificate by an authorised person for a transferee is evidence of the property having become the transferee's property if the certificate—

(a) is signed by the person; and

(b) identifies the property; and

Not authorised—indicative only

Not authorised—indicative only

(c) states the property has, under this part, become the transferee's property.

(3) If the certificate is given to a person with registration functions for that kind of property under a law of the State, the person must do the following as if the certificate were an appropriate instrument of transfer of the property—

(a) register the matter in the same way as transactions for property of that kind are registered;

(b) deal with, and give effect to, the certificate.

Examples of a person with registration functions—

- the registrar of titles
- the Australian Securities and Investments Commission

(4) Subsection (3) applies despite the Corporations Act, chapter 7, part 7.11.

(5) A transfer of the property to the transferee may be registered or given effect to under the law of another State if—

(a) the certificate is given to a person with functions for registration of property of that kind under the other State's law; and

(b) the person is permitted by law to do so.

(6) In this section—

authorised person, for a transferee, means its secretary or a person with its management committee's written authority.

858 Part applies despite laws or instruments

(1) This part applies despite another Act or other instrument.

(2) Nothing done under this part—

(a) makes an organisation or other person liable for a civil wrong or a contravention of a law or for a breach of a confidence or contract; or

Example for a contract—

a contractual provision that prohibits, restricts or regulates assigning or transferring an asset or liability or disclosing information

(b) releases a surety's obligations, wholly or in part.

(3) If apart from this section a person's consent would be necessary to give effect to this part, the consent is taken to have been given.

(4) In this section—

instrument means any written or oral instrument, express or implied.

Examples of an instrument—

- a contract, deed, undertaking or agreement
- a mandate, instruction, notice, authority or order
- a lease, licence, transfer, conveyance or other assurance
- a guarantee, bond, power of attorney, bill of lading, negotiable instrument or order to pay an amount
- a mortgage, lien or security

Part 15 Complaints, investigations and appointment of administrator

Division 1 Complaints

859 Making complaint about organisation or officer

(1) A person may make a complaint to the registrar about an organisation if the person believes—

(a) the organisation, or a branch of the organisation, has stopped functioning effectively; and

(b) there are no effective means under the organisation's rules by which the organisation or branch can function effectively.

Not authorised—indicative only

Not authorised—indicative only

(2) A person may make a complaint to the registrar about an officer of an organisation if the person believes the officer has engaged in misconduct in relation to the organisation.

860 Form of complaint

The complaint must—

(a) be written; and

(b) contain particulars of the allegations on which it is founded; and

(c) be verified by statutory declaration.

861 Dealing with complaints

(1) The registrar must—

(a) promptly assess the complaint; and

(b) deal with the complaint in the way the registrar considers most appropriate.

(2) Without limiting subsection (1)(b), the registrar may take all or any of the following actions—

(a) require the complainant to give further particulars of the complaint;

(b) refer the complaint to an inspector for investigation under chapter 13, part 2;

(c) if the complaint relates to conduct that could, if proved, constitute a contravention of part 11, division 6—investigate the complaint under part 11, division 6, subdivision 8;

(d) if the complaint relates to conduct that could, if proved, constitute an offence against an Act or a law of another State or the Commonwealth—refer the matter of the suspected offence to the commissioner of the police service or the commissioner of a police force or service of another State or the Commonwealth;

(e) notify the Minister of the complaint.

(3) The registrar may take no action, or decide to take no further action, in relation to the complaint only if—

(a) the complaint is not verified by statutory declaration; or

(b) further particulars relating to the complaint are not given under subsection (2)(a); or

(c) the registrar is satisfied—

(i) the complaint is frivolous or vexatious; or

(ii) dealing with the complaint would be an unjustifiable use of resources.

862 Organisation or officer must be advised of complaint

(1) If the registrar decides to take action under section 861(2)(b), (c) or (e), the registrar must, as soon as reasonably practicable after deciding to take the action—

(a) give notice to the organisation or officer of the organisation of the nature of the complaint; and

(b) invite the organisation or officer to make, within the time stated in the notice, written representations to the registrar about the complaint.

(2) The time stated in the notice must be at least 5 business days after the notice is given.

(3) The organisation or officer of the organisation may make written representations to the registrar within the time stated in the notice.

(4) The registrar must consider any representations made by the organisation or officer of the organisation under subsection (3).

(5) If the organisation or officer of the organisation makes representations about a complaint notified to the Minister under section 861(2)(e), the registrar must give a copy of the representations to the Minister.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Investigations

863 Definition for division

In this division—

complaints auditor see section 866(2).

864 Application of division

This division applies if the registrar refers a complaint to an inspector for investigation under chapter 13, part 2.

865 Investigation report

After investigating the complaint, the inspector must give the registrar a written report on the findings of the investigation (the ***investigation report***).

866 Examination of organisation's accounting records

(1) The investigation report may include a recommendation to the registrar that an auditor be appointed to examine the organisation's accounting records for a financial year or another period if the inspector considers—

(a) the organisation has an accounting deficiency; or

(b) the organisation's property has been misappropriated or improperly applied; or

(c) the organisation, or an officer of the organisation, has committed an offence in relation to the organisation's property.

(2) If the registrar decides to implement the recommendation to appoint an auditor (the ***complaints auditor***) to examine the organisation's accounting records for a financial year or another period, the complaints auditor must—

(a) examine the records; and

(b) give the registrar a report on the examination (the ***audit complaint report***).

(3) The complaints auditor, or an appropriately qualified person authorised in writing by the complaints auditor, has the powers and privileges of an organisation's auditor.

Note—

See sections 767 and 774.

(4) If a branch of an organisation keeps accounting records and accounts separate from the organisation's accounting records and accounts, subsections (1) and (2) apply in relation to the branch as if the references to the organisation were a reference to the branch.

867 Cooperating with investigation or audit

(1) An officer or employee of an organisation who is being investigated by an inspector must assist in and cooperate with the investigation unless the officer or employee has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If an organisation is being investigated by an inspector or audited by a complaints auditor, the organisation must ensure the officers and employees of the organisation assist in and cooperate with the investigation or audit unless the organisation has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) For subsection (1), it is a reasonable excuse for an officer or employee of the organisation not to assist in and cooperate with the investigation if doing so might tend to incriminate the officer or employee.

868 Audit costs

The costs of an audit under this division are payable by the State.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Appointment of administrator

869 Definition for division

In this division—

audit complaint report see section 866(2)(b).

870 Court may appoint administrator

(1) This section applies if the court is reasonably satisfied, on the basis of an investigation report or audit complaint report, that—

(a) an organisation, or a branch of an organisation, has stopped functioning effectively; and

(b) there are no effective means under the organisation's rules by which the organisation or branch can function effectively.

(2) Subject to section 871, the court may, on application by the Minister or the registrar, appoint an appropriately qualified person as administrator of the organisation or branch of the organisation.

871 Injustice to organisation or branch and interests of members

The court must not appoint an administrator for an organisation, or a branch of an organisation, unless the court is satisfied—

(a) the appointment of an administrator would not do substantial injustice to the organisation or branch; and

(b) it is in the interests of the members of the organisation or branch that the affairs of the organisation or branch be conducted by an administrator.

872 Primary function of administrator

(1) An administrator for an organisation or a branch of an organisation has, during the administrator's term of office and to the exclusion of any other person, the function of the conduct and management of the affairs of the organisation or branch.

(2) However, the function of the administrator may be limited by the administrator's notice of appointment.

873 Additional functions of administrator

The administrator for an organisation or a branch of an organisation has the following additional functions—

(a) to give the Minister a report, at intervals stated by the Minister, on the financial position of the organisation or branch, its functions and anything else the Minister requires the administrator to include in the report;

(b) to give the Minister a final report on the administration.

874 Powers of administrator

An administrator for an organisation or a branch of an organisation may do anything necessary or convenient to be done for, or in connection with, the administrator's functions.

875 Providing assistance to administrator

(1) An administrator for an organisation or a branch of an organisation may, for performing the administrator's functions, by written notice to an officer or employee or former officer or employee of the organisation or branch, require the person to do the following—

(a) produce to the administrator documents in the person's possession that the administrator reasonably requires to perform the functions;

Not authorised—indicative only

Not authorised—indicative only

(b) provide the other information or assistance the administrator reasonably requires for the performance of the functions.

(2) A person of whom a requirement has been made must comply with it unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(3) It is a reasonable excuse for the person not to comply with the requirement if doing so might tend to incriminate the person.

876 Protection from liability

(1) An administrator for an organisation or a branch of an organisation is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

Part 15A Administration of C&G division of CFMEUQ

Division 1 Preliminary

876A Application of part

This part applies if the Construction and General Division of the CFMEU (federal), and its branches, have been placed under administration under the Commonwealth Registered Organisations Act.

876B Purpose of part

(1) The purpose of this part is to enable the C&G division to be placed under administration to—

(a) protect the public interest; and

(b) ensure the C&G division acts lawfully and appropriately and in the interests of its members; and

(c) complement any corresponding administration scheme that is in effect.

(2) In this section—

corresponding administration scheme means—

(a) the administration scheme for the Construction and General Division of the CFMEU (federal) mentioned in section 876A; or

(b) a scheme for the administration, under the *Industrial Relations Act 1996* (NSW), of the Construction and General Division of the organisation of employees registered under that Act with the registration number EE70.

876C Definitions for part

In this part—

administration notice see section 876E(2).

administration scheme see section 876E(2)(a).

administrator means a person appointed, under an administration notice or a gazette notice under section 876F(2), as the administrator of the C&G division.

CFMEU (federal) means the CFMEU within the meaning of the Commonwealth Registered Organisations Act, schedule 3, clause 1.

CFMEUQ means—

(a) the organisation named, immediately before the commencement, the Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland; or

(b) if the organisation mentioned in paragraph (a) changes its name—the organisation under its new name; or

Not authorised—indicative only

Not authorised—indicative only

(c) if the organisation mentioned in paragraph (a) amalgamates with another organisation under part 14, division 2—the amalgamated organisation.

CFMEUQ rules means the rules of the CFMEUQ to the extent the rules relate to the C&G division.

C&G division means the State Construction and General Division within the meaning of the rules of the CFMEUQ as the rules were in effect immediately before the commencement.

876D C&G division placed under administration

(1) The C&G division is placed under administration on the later of the following days—

(a) the day an administration notice takes effect under section 876G;

(b) the day an administrator is appointed under the administration notice.

(2) The administration ends on the day the administration notice is revoked under section 876H.

Division 2 Making of administration scheme and appointment of administrator

876E Power of Minister to make administration notice

(1) This section applies if the Minister is satisfied it is in the public interest for the C&G division to be placed under administration, having regard to—

(a) the purpose of this part; and

(b) any other matters the Minister considers relevant.

(2) The Minister must, by gazette notice (an ***administration notice***)—

(a) establish a scheme for the administration of the C&G division (the ***administration scheme***); and

(b) appoint a person to be administrator of the scheme.

(3) The administration notice is a statutory instrument, but is not subordinate legislation.

(4) Without limiting subsection (2)(a), the administration scheme may provide for any of the following matters—

(a) the functions and powers of the administrator in relation to the scheme;

(b) the suspension, including suspension without pay, or removal of officers of the C&G division;

(c) the taking of disciplinary action, including the expulsion of members of the C&G division and disqualification of officers and former officers of the C&G division for up to 5 years;

(d) declaring stated offices in the C&G division to be vacant;

(e) terminating the employment of employees;

(f) the filling of positions of officers of the C&G division, including the holding of elections;

(g) altering the CFMEUQ rules;

(h) the engagement of persons to assist the administrator in performing the administrator's functions;

(i) the delegation of the administrator's functions or powers;

(j) requirements about reporting in relation to the administration;

(k) obligations of the administrator to cooperate with an inquiry by a law enforcement agency or regulatory body into—

(i) the CFMEUQ or the C&G division; or

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Not authorised—indicative only

(ii) officers or employees, or former officers or former employees, of the CFMEUQ or the C&G division;

(l) matters that are ancillary or incidental to the matters mentioned in any of paragraphs (a) to (k).

(5) To remove any doubt, it is declared that the administration scheme may provide for the taking of disciplinary action in circumstances not provided for in the CFMEUQ rules.

(6) The disqualification of an officer or former officer of the C&G division under the administration scheme is not limited by part 9, division 2.

(7) The Minister is not required to provide procedural fairness in making the administration notice.

876F Period of administrator's appointment etc.

(1) The administration notice may provide for—

(a) the period of the administrator's appointment; and

(b) the terms of the administrator's appointment, including the remuneration the Minister considers appropriate.

(2) The Minister may, by gazette notice, do any of the following—

(a) terminate the appointment of the administrator;

(b) appoint another person as the administrator;

(c) vary the terms of the administrator's appointment.

876G When administration notice takes effect

The administration notice takes effect on—

(a) the day the notice is published in the gazette; or

(b) if a later day is stated in the notice—the stated day.

876H Variation and revocation of administration notice

(1) The Minister may, by gazette notice—

(a) vary the administration notice, including to vary the administration scheme; or

(b) revoke the administration notice.

(2) However, the administration notice must not be revoked earlier than the day that is 3 years after the day the scheme started unless—

(a) the administrator is satisfied the C&G division is functioning lawfully and appropriately and in the interests of its members; and

(b) the administrator gives the Minister a written notice stating the administrator is satisfied of the matter mentioned in paragraph (a).

(3) In deciding whether to vary or revoke the administration notice, the Minister must have regard to—

(a) the purpose of this part; and

(b) any other matter the Minister considers relevant.

(4) The Minister must obtain the consent of the administrator before varying or revoking the administration notice.

(5) The Minister is not required to provide procedural fairness in varying or revoking the administration notice.

876I Interaction with chapter and CFMEUQ rules

(1) This section applies if the administration notice or administration scheme is inconsistent with—

(a) a provision of this chapter; or

(b) the CFMEUQ rules.

(2) The administration notice or administration scheme prevails to the extent of the inconsistency and is not limited by the provision of this chapter or the CFMEUQ rules.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Functions and powers of administrator

876J Functions and powers of administrator

(1) While the C&G division is under administration, the administrator—

(a) has conduct and management of the affairs of the C&G division; and

(b) has control of, and may manage, the property of the C&G division; and

(c) may dispose of property of the C&G division; and

(d) may perform any function, or exercise any power, the C&G division could perform or exercise if it were not under administration.

(2) To remove any doubt, it is declared that in performing functions and exercising powers as administrator, the administrator may undertake investigations into past practices of the C&G division.

(3) The administrator also has the functions of—

(a) promoting compliance by the C&G division with the laws, including workplace laws, of the State and the Commonwealth; and

(b) ensuring officers and employees of the C&G division have complied (including before the commencement), and continue to comply, with their obligations under this chapter; and

(c) to the extent an officer or employee of the C&G division has not complied with an obligation under this chapter (including before the commencement)—as far as reasonably practicable, ensuring the officer or employee is held accountable for the noncompliance.

(4) In performing functions and exercising powers as administrator, the administrator must have regard to—

(a) the purpose of this part; and

(b) the objectives of the CFMEUQ as stated in the rules of the CFMEUQ as in effect on the commencement and to the extent the rules are lawful.

(5) A reference in this section to property of the C&G division includes a reference to property of the CFMEUQ that, immediately before the commencement, was solely or predominantly used for the benefit or purposes of the C&G division.

876K Providing assistance to administrator

(1) The administrator may, for performing the administrator's functions, by written notice to a relevant person, require the person to do the following—

(a) give the administrator documents in the person's possession that are reasonably required by the administrator to perform the functions;

(b) give the administrator any other information or assistance reasonably required by the administrator for the performance of the functions.

(2) A relevant person who is given a notice under subsection (1) must comply with the notice unless the person has a reasonable excuse.

Notes—

1 This subsection is a civil penalty provision.

2 See also section 571 in relation to persons involved in a contravention of a civil penalty provision.

(3) It is a reasonable excuse for the relevant person not to comply with the notice if doing so might tend to incriminate the person.

(4) In this section—

relevant person means—

(a) an officer, agent or employee of the CFMEUQ or any of its divisions; or

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Not authorised—indicative only

(b) a former officer, agent or employee of the CFMEUQ or any of its divisions; or

(c) a person who provides, or provided, services to the CFMEUQ or the C&G division under a contract or agreement; or

(d) a person prescribed by regulation.

876L Reporting to Minister

(1) The administrator must give the Minister a report about the operation of the administration scheme—

(a) no later than 6 months after the administration notice takes effect under section 876G; and

(b) within 28 days after the end of each subsequent 6-month period until the administration notice is revoked under section 876H.

(2) The Minister must table a copy of a report in the Legislative Assembly within 15 sitting days after the Minister receives the report.

876M Protection from liability

(1) The administrator is not civilly liable for an act done, or omission made, honestly and without negligence under this part.

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

876N Actions of administrator under administration scheme

(1) Actions of the administrator, including actions mentioned in section 876E(4)(b) and (c), have effect—

(a) regardless of the ending of the administration under section 876D(2); and

(b) after the expiry of this part; and

(c) despite any provision of this chapter or the CFMEUQ rules.

(2) A regulation may prescribe the effect of actions taken under the administration scheme for the purposes of other laws.

(3) This section does not limit the *Acts Interpretation Act 1954*, sections 20 and 20A.

876O Application of pt 15, div 3

Part 15, division 3 does not apply in relation to the administrator in performing functions or exercising powers under this part.

Division 4 Other provisions for operation of administration scheme

876P Anti-avoidance provision

(1) A person must not, without a reasonable excuse, engage in conduct if, as a result of the conduct—

(a) another person is prevented from taking action under the administration scheme; or

(b) the administrator is prevented from effectively administering the administration scheme.

Maximum penalty—6,000 penalty units or 2 years imprisonment.

Notes—

1 This subsection is a civil penalty provision.

2 See also section 571 in relation to persons involved in a contravention of a civil penalty provision.

3 See also the Criminal Code, section 7 and section 937 of this Act in relation to parties to an offence against this subsection.

(2) A criminal proceeding may be started against a person for a contravention of subsection (1) regardless of whether a civil penalty has been imposed on the person for the contravention.

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Not authorised—indicative only

(3) However, a civil penalty must not be imposed on a person on the grounds of a contravention of subsection (1) if the person has been convicted of an offence against subsection (1).

(4) This section applies despite section 571(1).

(5) In this section—

conduct includes a course of conduct.

convicted means found guilty, or having a plea of guilty accepted, by a court whether or not a conviction is recorded.

876Q Disclosure of information to administrator by registrar or inspector

(1) This section applies to a person who is or was either of the following (each an ***official***)—

(a) the registrar;

(b) an inspector.

(2) The official may disclose to the administrator, for the purposes of the administration scheme, information about the C&G division that is in the official's possession or control.

(3) The administrator may use information disclosed under this section for the purposes of the administration scheme.

(4) A person who, acting honestly, discloses or uses information under this section is not liable, civilly, criminally or under an administrative process, for the disclosure or use.

876R Costs of administration

Subject to the administration notice, the costs of the administration, including the costs incurred by the administrator in acting under the administration scheme, are payable by the C&G division.

876S Alteration of CFMEUQ rules under administration scheme

(1) This section applies if an alteration of the CFMEUQ rules is made under the administration scheme.

(2) The administrator must, within 35 days after the alteration is made or a longer period decided by the registrar, file written notice of the particulars of the alteration.

(3) The notice must include a declaration by the administrator that—

(a) the alteration was made in accordance with the administration scheme; and

(b) the particulars stated in the notice are true and correct to the best of the administrator's knowledge and belief.

(4) The registrar may, with the administrator's consent, amend the alteration to correct a typographical, clerical or formal error.

(5) The alteration does not take effect unless—

(a) subsections (2) and (3) have been complied with for the alteration; and

(b) the registrar has certified that, in the registrar's opinion, the alteration—

(i) complies with, and is not contrary to, this Act, the Commonwealth Fair Work Act, modern awards and enterprise agreements; and

(ii) is not otherwise contrary to law; and

(iii) has been made in accordance with the administration scheme.

(6) The alteration takes effect on the day it is certified under subsection (5).

(7) This section applies despite part 6.

Not authorised—indicative only

Not authorised—indicative only

876T Decision about excluded matter final

(1) Unless the Supreme Court decides that a decision about an excluded matter is affected by jurisdictional error, the decision—

(a) is final and conclusive; and

(b) can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, another court, a tribunal or another entity); and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

(2) The *Judicial Review Act 1991*, part 5 applies to a decision about an excluded matter to the extent it is affected by jurisdictional error.

(3) In this section—

excluded matter means a decision to make, vary or revoke an administration notice.

Division 5 Expiry

876U Expiry

This part expires on the day that is 5 years after the day this section commences.

Part 16 Deregistration

Division 1 Preliminary

877 Definitions for part

In this part—

deregistration order see section 878.

industrial conduct ground means a ground mentioned in section 878(a) or (b).

members, of an organisation, means—

(a) a substantial number of the organisation's members; or

(b) a section or class of its members.

small organisation means—

(a) an employee organisation that has fewer than 20 members who are employees; or

(b) an employer organisation whose employer members have, in total, employed a monthly average of fewer than 20 employees during any 6-month period.

Division 2 General deregistration provisions

Subdivision 1 Bringing deregistration proceedings

878 General deregistration grounds

The full bench may order the deregistration of an organisation (a ***deregistration order***) on any of the following grounds—

(a) achieving the objects of the Act has been prevented by—

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Not authorised—indicative only

(i) the organisation's or its members' continued contravention of an order of the commission or an industrial instrument (an ***instrument***); or

(ii) the organisation's continued failure to ensure its members do not contravene an instrument; or

(iii) any other conduct by the organisation or its members;

(b) the organisation or its members have been, or are, engaging in industrial action that has, is having, or is likely, to have a substantial adverse effect on the safety, health or welfare of the community or a part of the community;

(c) the organisation was registered by mistake;

(d) the organisation's rules—

(i) do not allow a person who is eligible to become a member of the organisation to join it with reasonable ease; or

(ii) impose unreasonable conditions on a person's continuing membership of the organisation; or

(iii) are harsh or oppressive; or

(iv) provide for the organisation to end on the happening of an event and the event has happened;

(e) the administration of the organisation's rules is harsh or oppressive;

(f) a majority of the organisation's members have agreed to its deregistration;

(g) if the organisation is an employee organisation, it is not free from control by, or improper 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.

879 Who may bring deregistration proceedings

(1) Each of the following may apply to the full bench for a deregistration order on a ground mentioned in section 878—

(a) an organisation;

(b) the Minister;

(c) the registrar;

(d) another person given leave by the full bench.

(2) The full bench may give leave only if it considers the person has sufficient interest to make the application.

(3) The full bench may, of its own initiative, bring proceedings for a deregistration order—

(a) on a ground mentioned in section 878(c) or (d)(iv); or

(b) because the organisation has failed to comply with a demarcation dispute undertaking and amendment of its eligibility rules is inappropriate.

(4) The registrar may also apply for a deregistration order on the ground the organisation is defunct.

Subdivision 2 Deciding deregistration proceedings

880 Hearing on ground other than industrial conduct

If a ground on which the proceedings are based includes a ground other than an industrial conduct ground, the full bench may make a deregistration order if satisfied the ground has been made out.

881 Hearing on industrial conduct ground

(1) This section applies if at the hearing of the application a ground on which the proceedings are based is an industrial conduct ground.

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Not authorised—indicative only

(2) The full bench must make a deregistration order if it—

(a) finds the ground has been made out; and

(b) does not consider the deregistration of the organisation unjust, after considering—

(i) the significance of the circumstances forming the ground; and

(ii) the action taken by or against the organisation about the ground.

(3) However, if the full bench finds the industrial conduct ground is made out entirely or mainly because of conduct by a section or class of the organisation's membership, it may instead of making a deregistration order—

(a) order amendments of the organisation's eligibility rules to exclude persons from the section or class from membership eligibility; or

(b) exclude a stated person from the organisation's membership.

(4) A deregistration order may also prohibit the deregistered organisation from applying for registration before a stated day.

882 Deferral of deregistration for industrial conduct

(1) This section applies if the full bench must, apart from this section, make a deregistration order under section 881.

(2) The full bench may defer its decision on making the deregistration order and make an order (a ***deferral order***)—

(a) suspending to a stated extent, the rights, privileges or capacities of the organisation or all or any of its members as members, under—

(i) this Act; or

(ii) an order of the commission; or

(iii) an award or certified agreement; or

(b) directing how a suspended right, privilege or capacity may be exercised; or

(c) restricting the organisation or its branches in using their funds or property and controlling the funds or property to enforce the restriction.

(3) If a deferral order is made, the full bench must defer its decision on making the deregistration order until—

(a) if a party to the proceedings applies, the court considers it is just to make the decision considering—

(i) evidence given about compliance with the order; and

(ii) other relevant circumstances; or

(b) the order ends.

(4) A deferral order has effect despite the rules of the organisation or its branches.

883 When deferral order ends

(1) A deferral order ends—

(a) 6 months after it takes effect, if the full bench has not extended the order before that time; or

(b) if the full bench has extended the order—at the end of the extension; or

(c) if it is discharged by the full bench.

(2) The full bench may discharge or extend a deferral order only on the application of a party to the deregistration proceedings.

(3) An application for an extension may only be made before the deferral order ends.

(4) If an application for an extension is made before the deferral order ends, the order is taken to be extended until the application is decided by the full bench.

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Not authorised—indicative only

884 Incidental orders or directions

If the full bench makes a deregistration order, it may also make—

(a) an order or direction it considers appropriate to give effect to the deregistration; or

(b) an order under section 892(2), whether or not an application has been made for the order.

Division 3 Small organisations

885 Commission may review

The commission may review an organisation to inquire whether the organisation is or may be a small organisation.

886 Deregistration proceedings by commission

(1) If the commission considers an organisation is or may be a small organisation, it may bring deregistration proceedings under this division against the organisation.

(2) However, the commission must not bring proceedings under this division more than once a year against the same organisation.

887 Deciding proceedings

(1) The commission must make a deregistration order if satisfied the organisation is a small organisation.

(2) However, the commission may decide not to make the order if satisfied there are special circumstances and the organisation's continued registration is in the public interest.

Example of special circumstances—

The organisation is an employee organisation and the commission is satisfied the organisation will in the near future, if its registration is continued, have more than 20 members who are employees.

Division 4 Effects of deregistration

888 Application and purpose of division

(1) This division applies on the making of a deregistration order.

(2) This division provides for the effects of the order on the deregistered organisation under the order and on other persons.

889 When deregistration takes effect

(1) The deregistered organisation stops being an organisation when the deregistration order is made.

(2) The registrar must record the deregistration of the organisation and date of the order in the register.

890 Effect on corporate status

(1) If the deregistered organisation was a corporation under another law, the deregistered organisation continues to be incorporated, but only under the other law.

(2) If the deregistered organisation was incorporated only because of its registration—

(a) it stops being incorporated and becomes an association; and

(b) its name is taken to be changed to omit the words required to be included in its registered name under section 612(1); and

(c) its rules continue in force to the extent the rules can still be carried out or complied with.

891 No release of liabilities

The deregistration of the organisation does not act to satisfy a liability or penalty incurred by the deregistered organisation or any of its members before the deregistration.

Not authorised—indicative only

Not authorised—indicative only

892 Effect on property

(1) If the deregistered organisation was incorporated only because of its registration, property owned by it immediately before the deregistration must be—

(a) held and used under its rules, to the extent the rules can still be carried out or complied with; and

(b) applied for the purposes of the deregistered organisation under its rules.

(2) Despite subsection (1), the full bench may, if an interested person applies, make an order it considers appropriate to satisfy the deregistered organisation's liabilities from the property.

(3) In this section—

rules of the deregistered organisation means its rules as in force immediately before its deregistration.

893 Effect on certain instruments

(1) If an award, order of the commission or certified agreement (the ***instrument***) bound the deregistered organisation and its members before the deregistration of the organisation—

(a) from the deregistration, the deregistered organisation and its members do not have the right to a benefit under the instrument; and

(b) the instrument stops having any effect for the deregistered organisation 21 days after the deregistration.

(2) Despite subsection (1)(b), the commission may make an order it considers appropriate about the effect, if any, of the instrument on the deregistered organisation and its members.

Part 17 Miscellaneous

894 Hearing to be given before making decision

(1) The court, commission or registrar (the ***industrial tribunal***) must, before making a decision under this chapter, give the following persons an opportunity to be heard about whether the decision should be made—

(a) a person who applied for the decision or from whose application the decision is proposed to be made;

(b) a person in relation to whom the decision is sought or may be made;

(c) a person who may object to the making of the decision who has objected in the way required under this chapter;

(d) an organisation the decision concerns;

(e) any other person the industrial tribunal considers should be heard or who has a sufficient interest in the making of the decision.

(2) However, subsection (1) does not apply if the industrial tribunal considers the decision may be made without prejudicing the rights of a person or for other sufficient reason.

(3) A regulation may provide for—

(a) objections to the making of a decision under this chapter; or

(b) the way in which the opportunity to be heard must be given.

(4) In this section—

decision includes—

(a) an amendment of a rule of an organisation, other than a correction of a formal or clerical error; and

(b) a referral.

Not authorised—indicative only

Not authorised—indicative only

895 Notice of registrar's or Minister's decisions

(1) This section applies if the registrar makes any of the following decisions—

(a) a decision to refuse an application made to the registrar under this chapter;

(b) a decision under section 638, to cancel an approval under section 637, or under part 12, to cancel or amend an exemption under that part, if the holder of the approval or exemption has not asked for the cancellation or amendment;

(c) a decision to amend an organisation's rules under section 655;

(d) a decision to refuse, under section 690, to refer an application for an election inquiry to the commission.

(2) The registrar must promptly give an applicant, a person who held a cancelled or amended exemption or an organisation as mentioned in subsection (1), a notice stating the following—

(a) the decision;

(b) the reasons for the decision;

(c) that the person or organisation to whom the notice is given may appeal to the full bench against the decision within 21 days;

(d) how to start an appeal.

(3) Subsection (4) applies if the Minister makes a decision under section 648(3) or 700(3) for an amount of financial help to be given to a person.

(4) The Minister must promptly give a person to be given financial help as mentioned in subsection (3), a notice stating the following—

(a) the decision;

(b) the reasons for the decision;

(c) that the person to whom the notice is given may appeal to the full bench against the decision within 21 days;

(d) how to start an appeal.

896 Falsely obtaining organisation's property

A person must not obtain possession of an organisation's property by false representation or imposition.

Maximum penalty—100 penalty units.

897 Wrongfully applying organisation's property

A person in possession of an organisation's property must not—

(a) wilfully withhold the property from a person who has the right to possess it; or

(b) fraudulently misapply the property; or

(c) wilfully apply the property to a use not authorised under the organisation's rules.

Maximum penalty—100 penalty units.

Chapter 13 Enforcement

Part 1 Preliminary

898 Definitions for chapter

In this chapter—

identity card, for a provision about inspectors, means an identity card issued under section 904.

occupier, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

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(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

place includes the following—

(a) premises;

(b) vacant land;

(c) a place in Queensland waters;

(d) a place held under more than 1 title or by more than 1 owner;

(e) the land or water where a building or structure, or a group of buildings or structures, is situated.

premises includes—

(a) a building or other structure; and

(b) a part of a building or other structure; and

(c) premises held under more than 1 title or by more than 1 owner.

public place means a place, or part of a place—

(a) that the public is entitled to use, that is open to members of the public or that is used by the public, whether or not on payment of money; or

Examples—

a beach, a park, a road

(b) the occupier of which allows, whether or not on payment of money, members of the public to enter.

Examples—

a saleyard, a showground

Part 2 Appointment

899 Appointment of inspectors

(1) The Governor in Council may, by gazette notice, appoint a person as the chief inspector.

(2) The chief executive may, by instrument in writing, appoint a person as an inspector.

(3) However, a person may be appointed as an inspector only if—

(a) the person is—

(i) a public service officer or employee; or

(ii) an inspector under the *Further Education and Training Act 2014*; or

(iii) a person with the qualifications prescribed by regulation; and

(b) the Governor in Council or chief executive making the appointment is satisfied the person is appropriately qualified.

(4) While the person is an inspector, the person is also an inspector for—

(a) the *Child Employment Act 2006*; and

(b) the *Pastoral Workers' Accommodation Act 1980*; and

(c) the *Trading (Allowable Hours) Act 1990*; and

(d) the *Workers' Accommodation Act 1952*.

(5) An inspector is employed under the *Public Sector Act 2022*.

900 Functions

(1) An inspector has the following functions—

(a) to ensure industrial instruments, permits and orders are, as far as possible, complied with;

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Not authorised—indicative only

(b) to investigate and, when necessary, take action to deal with alleged contraventions of this Act;

(c) to investigate complaints made under section 859 about organisations or officers of organisations;

(d) to investigate information the subject of protected disclosures made, or referred, to the inspector under chapter 8, part 1A, division 2;

(e) to inform employees and employers of their rights and obligations under this Act;

(f) perform other functions—

(i) given to an inspector under this Act or another Act; or

(ii) prescribed by regulation.

(2) Also, an inspector's functions include investigating and monitoring compliance with chapter 12, part 11.

(3) For subsection (2), an investigation may be undertaken regardless of whether the registrar has investigated the matter under chapter 12, part 11, division 6, subdivision 8.

(4) In performing the inspector's functions, the inspector must, when appropriate, have particular regard to—

(a) the needs of employees in a disadvantaged bargaining position (including, for example, women, people from a non-English speaking background, young people, apprentices, trainees and outworkers); and

(b) helping employees to balance work and family responsibilities.

901 Appointment conditions and limit on powers

(1) An inspector holds office on any conditions stated in—

(a) the inspector's instrument of appointment; or

(b) a signed notice given to the inspector; or

(c) a regulation.

(2) The instrument of appointment, signed notice given to the inspector or regulation may limit the inspector's powers.

(3) In exercising a power, the inspector is subject to the chief inspector's direction.

(4) In this section—

signed notice means a notice signed by—

(a) for the chief inspector—the Governor in Council; or

(b) for another inspector—the chief executive.

902 When office ends

(1) The office of a person as an inspector ends if any of the following happens—

(a) the term of office stated in a condition of office ends;

(b) under another condition of office, the office ends;

(c) the inspector's resignation under section 903 takes effect.

(2) Subsection (1) does not limit the ways the office of a person as an inspector ends.

(3) In this section—

condition of office means a condition under which the inspector holds office.

903 Resignation

(1) An inspector may resign by signed notice given to the chief executive.

(2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Identity cards

904 Issue of identity card

(1) The chief executive must issue an identity card to each inspector.

(2) The identity card must—

(a) contain a recent photo of the inspector; and

(b) contain a copy of the inspector's signature; and

(c) identify the person as an inspector under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

905 Production or display of identity card

(1) In exercising a power in relation to a person in the person's presence, an inspector must—

(a) produce the inspector's identity card for the person's inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

(3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 910(1)(b) or (2)(b).

906 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within

21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Part 4 General

907 Reference to exercise of powers

(1) This section applies if—

(a) a provision of this Act refers to the exercise of a power by an inspector; and

(b) there is no reference to a specific power.

(2) The reference is to the exercise of all or any inspectors' powers under this Act or a warrant, to the extent the powers are relevant.

908 Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

(a) produced from an electronic document; or

(b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

909 Exercising powers as an inspector under the Child Employment Act 2006

For the exercise of a power under this Act as an inspector under the *Child Employment Act 2006*—

(a) a reference in this Act to an ***employee*** includes a child to whom that Act applies; and

Not authorised—indicative only

Not authorised—indicative only

(b) a reference in this Act to an ***employer*** includes a person who engages, or arranges for, a child to whom that Act applies to perform work at the direction of the person, whether the child works for gain or reward or on a voluntary basis.

Part 5 Powers

910 Power to enter places

(1) An inspector may, without the occupier's consent, enter—

(a) a public place; or

(b) a workplace when—

(i) the workplace is open for carrying on business; or

(ii) the workplace is otherwise open for entry.

(2) If the workplace is on or near residential premises, an inspector may, without the occupier's consent, do any of the following—

(a) enter the land around the premises to an extent that is reasonable to contact the occupier;

(b) enter part of the premises the inspector reasonably considers members of the public are ordinarily allowed to enter to contact the occupier;

(c) enter that part of the premises the inspector reasonably believes clothing outwork is being, has recently been, or is about to be carried on.

(3) However, if it is practicable to do so before entering land or premises under subsection (2), the inspector must first inform the occupier of the inspector's intention to enter the land or premises.

(4) In this section—

branch, of an organisation, see section 595.

residential premises means premises usually occupied as a private dwelling house.

workplace—

(a) means a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be carried on; and

(b) includes a place of business used or occupied by an organisation or branch of an organisation.

911 General powers after entering workplaces

(1) This section applies to an inspector who enters a workplace under section 910.

(2) However, if an inspector enters a workplace to get the occupier's consent to enter the workplace, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.

(3) For monitoring or enforcing compliance with this Act, the inspector may do any of the following—

(a) search any part of the workplace;

(b) inspect, examine, photograph or film any part of the place or anything at the workplace;

(c) place an identifying mark in or on anything at the place;

(d) take an extract from, or copy, a document at the workplace;

(e) produce an image or writing at the workplace from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(f) take to, into or onto the workplace any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this part;

Not authorised—indicative only

Not authorised—indicative only

(g) remain at the place for the time necessary to achieve the purpose of the entry;

(h) require a person at the workplace to give the inspector reasonable help to exercise a power mentioned in paragraphs (a) to (g).

(4) When making a requirement under subsection (3)(h), the inspector must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) If the inspector takes a thing containing an electronic document to another place the inspector must return the thing to the workplace as soon as practicable.

(7) In this section—

inspect, a thing, includes open the thing and examine its contents.

912 Power to require documents to be produced

(1) An inspector may require a person to make available for inspection by an inspector, or to produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—

(a) a document issued to the person under this Act; or

(b) a document required to be kept by the person under this Act; or

(c) a document relating to an employee, including, for example, a time sheet or pay sheet; or

(d) a document relating to a matter under chapter 12.

(2) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) For an electronic document, compliance with the requirement requires the making available or production of a clear written reproduction of the electronic document.

(4) The inspector may keep the document to copy it.

(5) If the inspector copies it, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document.

(6) The person must comply with a requirement under subsection (5) unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(7) The inspector must return the document to the person as soon as practicable after copying it.

(8) However, if the inspector requires a person to certify the copy of the document under subsection (4), the inspector may keep the document until the person complies with the requirement.

(9) To remove any doubt, it is declared that the powers of an inspector under this section—

(a) are additional to the powers under section 344; and

(b) do not limit, and are not limited by, any other powers of an inspector under this Act.

913 Power to require information

(1) This section applies if an inspector reasonably believes—

(a) any of the following—

(i) this Act is not being complied with;

(ii) an industrial instrument, permit or order is not being, or will not be, complied with; or

(iii) an industrial instrument, permit or order should be given operation in relation to a calling; and

(b) any of the following persons may be able to give information about a matter mentioned in paragraph (a)—

Not authorised—indicative only

Not authorised—indicative only

(i) an employer in a calling;

(ii) a person found in or on a place in or on which the inspector reasonably suspects a calling is, has been, or is about to be, carried on;

(iii) an officer of an organisation or a branch of an organisation.

(2) An inspector may, during business hours, require the person to answer questions about the matter.

(3) The power to question a person includes the power to question the person in private.

(4) When making the requirement, the inspector must warn the person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.

(5) The relevant person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) It is a reasonable excuse for an individual to fail to comply with the requirement if doing so might tend to incriminate the individual.

914 Power to require name and address

(1) This section applies if an inspector—

(a) finds a person committing an offence against this Act; or

(b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or

(c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.

(2) The inspector may require the person to state the person's name and residential address.

(3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the

circumstances, it would be reasonable to expect the person to—

(a) be in possession of evidence of the correctness of the stated name or address; or

(b) otherwise be able to give the evidence.

(4) When making the requirement, the inspector must warn the person it is an offence not to comply with the requirement, unless the person has a reasonable excuse.

(5) The inspector may require the person to give evidence of the correctness of the stated name or address if the officer reasonably suspects the stated name or address is false.

(6) A person must comply with a requirement made to the person under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(7) A person may not be convicted of an offence under subsection (6) unless the person is found guilty of the offence in relation to which the requirement was made.

Part 6 Powers to claim and deal with unpaid amounts

915 Paying employee's wages etc. to inspector

(1) An inspector may, by written demand, require an employer, within a stated time, to—

(a) pay to the inspector an employee's unpaid wages, including an unpaid tool allowance required to be paid under an order made under section 137; and

(b) for an eligible employee, pay to a complying superannuation fund—

Not authorised—indicative only

Not authorised—indicative only

(i) the unpaid contributions payable under a relevant industrial instrument for the employee by the employer; and

(ii) an amount based on the return that would have accrued had the contribution been properly paid to the fund.

(2) The employer must comply with the demand.

Maximum penalty—40 penalty units.

(3) If an amount mentioned in subsection (1)(b) is not paid into a complying superannuation fund within the time stated in the written demand, the amount must be paid to the inspector.

(4) However, the employer need not comply with the written demand to the extent it relates to unpaid wages for which an order for recovery could not be made on an application under section 379.

(5) In proceedings for an offence against subsection (2), the magistrate may order the employer to pay the employee the amount the magistrate finds, on the balance of probabilities, is payable to the employee—

(a) in addition to the penalty the magistrate may impose; and

(b) whether or not the magistrate finds the employer guilty.

(6) If the magistrate finds an employer guilty of an offence against subsection (2) for failing to comply with subsection (1)(b), the magistrate may make, in relation to the employer, an order that a magistrate may make on an application made under section 396.

(7) If an order is made, section 396 applies to it.

(8) In this section—

employee includes a former employee.

916 Inspector's obligation for amounts paid on demand

(1) An inspector who is paid an amount mentioned in section 915(3) must immediately give the payer a receipt for the amount.

(2) The receipt is a full discharge to the employer complying with the demand under section 915(2)for the amount stated in the receipt.

(3) The inspector must pay the amount to—

(a) for a superannuation contribution—

(i) if the employee is employed by the employer—the approved superannuation fund; or

(ii) if the employee is no longer employed by the employer—an entity mentioned in subsection (4); or

(b) otherwise—the employee.

(4) For subsection (3)(a)(ii), the entities are—

(a) the approved superannuation fund for the employer; or

(b) a complying superannuation fund; or

(c) a superannuation fund nominated by the employee; or

(d) an eligible rollover fund; or

(e) if the amount is less than the amount of total benefits that may revert to an employee under the *Superannuation Industry (Supervision) Act 1993* (Cwlth)—the employee.

(5) If the inspector has not complied with subsection (3) for the amount within 30 days after receiving it, the inspector must pay the amount immediately to the department.

(6) The department must pay the amount to an entity in the same way the inspector is required under subsection (3).

(7) However, the department must pay the amount into the unclaimed moneys fund if—

Not authorised—indicative only

Not authorised—indicative only

(a) the department can not locate the employee after making reasonable inquiries; or

(b) the employee has not complied with a request by an inspector to nominate a superannuation fund for subsection (3).

(8) In this section—

employee includes a former employee.

superannuation contribution means—

(a) an employer's contribution to an approved superannuation fund to the credit of an eligible employee, which is unpaid; or

(b) an amount mentioned in section 915(1)(b)(ii).

Part 7 Miscellaneous

917 Obstructing inspectors

(1) A person must not obstruct an inspector exercising a power, or a person helping an inspector exercising a power, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(2) If a person has obstructed an inspector, or a person helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct an obstruction.

(3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

918 Impersonating inspectors

A person must not pretend to be an inspector.

Maximum penalty—40 penalty units.

919 Validity of inspector's conduct despite administrative contravention

The failure of an inspector to comply with section 905 or 910—

(a) does not affect the lawfulness or effect of an act done or omission made by the inspector for this Act; but

(b) makes the inspector liable to disciplinary action.

Chapter 14 General offences

920 Disobeying penalty orders

(1) A person must obey a penalty order, unless the person has a reasonable excuse.

Maximum penalty—the penalty provided for in the order.

(2) In this section—

penalty order means an order of the court or commission that provides for payment of a penalty if the order is disobeyed.

921 Improper conduct towards member, magistrate or registrar

(1) A person must not—

(a) interrupt an industrial tribunal's proceedings; or

(b) create, take part in, or continue a disturbance in or near a place where an industrial tribunal's proceedings are being conducted; or

Not authorised—indicative only

Not authorised—indicative only

(c) wilfully insult an official, including by using insulting language; or

(d) by writing or speech, use words intended to—

(i) improperly influence an official; or

(ii) improperly influence a witness before an industrial tribunal; or

(iii) bring an official or industrial tribunal into disrepute.

Maximum penalty—100 penalty units or 1 year's imprisonment.

(2) A person who commits an offence under this section before an industrial tribunal may, by the tribunal's order, be excluded from the place where the tribunal is sitting.

(3) The making of an order under subsection (2) does not affect the offender's liability to be punished for the offence.

(4) A person acting under the industrial tribunal's authority may enforce the tribunal's order, using necessary reasonable force.

(5) In this section—

industrial tribunal means the commission, an Industrial Magistrates Court or the registrar.

official means a member, a magistrate or the registrar exercising jurisdiction or powers or performing functions under this Act or another Act.

922 Contempt by witness

(1) A person must not, without lawful authority or excuse—

(a) if called to appear before an industrial tribunal—disobey the attendance notice requiring the appearance; or

(b) if appearing before an industrial tribunal, whether or not in response to an attendance notice—

(i) refuse to be sworn or to make an affirmation or declaration as a witness; or

(ii) refuse to answer a question the person is required by the tribunal to answer; or

(iii) refuse to produce records the person is required by the tribunal to produce.

Maximum penalty—40 penalty units.

(2) In this section—

industrial tribunal means the commission, an Industrial Magistrates Court or the registrar.

923 False or misleading statements

(1) A person must not state anything to an official for this Act that the person knows is false or misleading in a material particular.

Maximum penalty—40 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was 'false or misleading' to the person's knowledge.

(3) A person must not be prosecuted for an offence against this section if the person can be prosecuted for an offence against section 488.

(4) In this section—

official means—

(a) an inspector; or

(b) the registrar.

924 False or misleading documents

(1) A person must not, for this Act, give an official a document containing information the person knows is false or misleading in a material particular.

Not authorised—indicative only

Not authorised—indicative only

Maximum penalty—40 penalty units.

(2) Subsection (1) does not apply to a person if the person, when giving the document—

(a) informs the official, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

(3) A person must not make an entry in a document required or permitted to be made or kept under this Act knowing the entry to be false or misleading in a material particular.

Maximum penalty—40 penalty units.

(4) It is enough for a complaint against a person for an offence against subsection (1) or (3) to state that the statement made was 'false or misleading' to the person's knowledge.

(5) A person must not be prosecuted for an offence against this section if the person can be prosecuted for an offence under section 488.

(6) In this section—

official means any of the following—

(a) an inspector;

(b) an authorised industrial officer;

(c) the registrar.

925 Obstructing officers

(1) A person must not—

(a) obstruct an officer exercising a power, or performing a function, under this Act or another Act; or

(b) if lawfully required by an officer to produce or exhibit a document, or to allow a document to be examined—fail to comply with the request, unless the person has a reasonable excuse; or

(c) wilfully mislead an officer in a way likely to affect the performance of the officer's function; or

(d) if lawfully asked a question for this Act or another Act by an officer—fail to answer the question truthfully and to the best of the person's knowledge, information and belief.

Maximum penalty—40 penalty units.

(2) A person must not be prosecuted for an offence against subsection (1) if the person can be prosecuted for an offence under section 488.

(3) In this section—

officer means an officer of the court or commission.

926 False pretences relating to employment

(1) A person must not—

(a) pretend someone else has been employed by the person for a period, or in a capacity, other than that for, or in, which the other person was employed; or

(b) assert in writing that someone else has been employed by the person for a period, or in a capacity, knowing the assertion to be false; or

(c) assert in writing another matter relating to the person's employment of someone else, knowing the assertion to be false in a material particular.

Maximum penalty—40 penalty units.

(2) A person must not—

(a) forge a document that purports to be a discharge from, or a record of, previous employment; or

(b) use a document that purports to be a discharge from, or a record of, previous employment, knowing the document is not genuine or is false; or

(c) pretend, or falsely claim, when seeking employment, to be a person named in a genuine document, that purports

Not authorised—indicative only

Not authorised—indicative only

to be a discharge from, or a record of, previous employment, as a person to whom the document was given; or

(d) seek to obtain employment by assuming someone else's name, living or dead, with intent to deceive.

Maximum penalty—40 penalty units.

(3) Subsection (4) applies in relation to a calling if, under a relevant industrial instrument or a general ruling for the Queensland minimum wage, an employee's wages depends wholly or partly on the employee's age, experience or duration of previous employment.

(4) A person must not give information, or make a statement, about the particulars the person knows is false—

(a) when seeking employment in the calling; or

(b) while an employee in the calling.

Maximum penalty—16 penalty units.

(5) A person's liability to be dealt with for an offence under subsection (1) or (2) does not affect the person's liability to be dealt with under the Criminal Code for forgery or false pretences.

(6) However, the person must not be dealt with under both this Act and the Criminal Code for the same conduct.

927 Avoiding Act's obligations

(1) An employer, with intent to avoid an obligation under this Act to pay an employee for a public holiday or leave, must not—

(a) dismiss the employee; or

(b) if the employee's entitlement to long service leave is worked out under section 103—interrupt the employee's continuity of service.

Maximum penalty—40 penalty units.

(2) If the Industrial Magistrates Court finds an employer has contravened subsection (1) in relation to long service leave, it

must order the defendant to pay the dismissed employee a proportionate amount of long service leave on the basis of 8.6667 weeks leave for 10 years service.

(3) The order is in addition to any order it may make imposing a penalty.

(4) In this section—

dismiss includes stand down.

leave means annual, sick, family or long service leave.

obligation under this Act includes an obligation under an industrial instrument.

928 Non-payment of wages

(1) An employer must pay the wages payable to an employee under this Act, a relevant industrial instrument or permit—

(a) to the employee; or

(b) in accordance with the employee's written direction.

Maximum penalty—200 penalty units.

(2) An offence against subsection (1) may consist of—

(a) a single failure to pay wages due on a particular day; or

(b) a failure to pay wages due over a period of time.

(3) The offence starts on the day of the failure and continues until the wages are paid.

(4) A complaint or a series of complaints may be made for any period over which the offence continues.

(5) However, a complaint may only relate to offences that started within 6 years before the complaint is made.

(6) A magistrate may hear and decide a complaint for an offence under this section, and in addition to any penalty the magistrate may impose—

Not authorised—indicative only

Not authorised—indicative only

(a) if the magistrate finds the defendant guilty—must order the defendant to pay the employee the amount the magistrate finds to be payable to the employee; or

(b) if the magistrate does not find the defendant guilty—may order the defendant to pay the employee the amount the magistrate finds, on the balance of probabilities, to be payable to the employee.

(7) A magistrate may make the order—

(a) despite an express or implied provision of an agreement to the contrary; and

(b) on the terms the magistrate considers appropriate.

(8) In this section—

wages includes remuneration payable to an apprentice or trainee under section 371(2).

929 Accepting reduced wages

(1) An employee must not agree with an employer to accept wages that, to the employee's knowledge, are reduced wages.

Maximum penalty—16 penalty units.

(2) The return by or for an employee to or for the employer of a part of wages paid under a relevant industrial instrument or permit for work performed by the employee is evidence the employee has entered into an agreement mentioned in subsection (1).

930 Publishing statement about employment on reduced wages

(1) A person must not publish or cause to be published, whether or not for reward, a statement that can be reasonably interpreted to state that a person is ready and willing to—

(a) employ a person on reduced wages; or

(b) be employed on reduced wages.

Maximum penalty—16 penalty units.

(2) Proceedings for an offence against subsection (1) may be started against a publisher of the statement only if—

(a) the publisher has been warned by an inspector that the publication of the statement, or of a statement substantially similar, is an offence against this Act; and

(b) the publisher has published, or caused the publication of, the statement after receiving the warning; and

(c) the Minister's consent to the proceedings is obtained.

(3) A proprietor of a newspaper or advertising medium is taken to have published the statement with knowledge of its unlawfulness, unless the proprietor shows that the proprietor—

(a) had taken all reasonable precautions against committing the offence; and

(b) had reasonable grounds to believe, and did believe, the publication to be lawful; and

(c) had no reason to suspect the publication was unlawful.

(4) In this section—

publish includes—

(a) exhibit; and

(b) broadcast; and

(c) publish to a person.

publisher means—

(a) the printer or proprietor of a newspaper; or

(b) the distributor or seller of a newspaper; or

(c) the printer, maker, operator or proprietor of an advertising device or advertising medium; or

(d) the printer of a document uttered for advertising purposes; or

Not authorised—indicative only

Not authorised—indicative only

(e) a person acting under the authority of a person mentioned in paragraphs (a) to (d).

931 Offence to offer or accept premiums

(1) This section applies subject to section 400.

(2) A person must not—

(a) offer an employment premium; or

(b) demand an employment premium; or

(c) ask for an employment premium; or

(d) accept, or agree to accept, an employment premium.

Maximum penalty—16 penalty units.

(3) If a court finds a person (the ***defendant***) guilty of accepting an employment premium, it must, in addition to any penalty order it may make, order the defendant to pay an amount, equivalent to the amount or value of the premium, to the person from whom the defendant accepted the premium.

(4) In this section—

employment premium includes a consideration, gift, allowance or forbearance for the employment of a person.

932 Contraventions of industrial instruments

(1) A person must not contravene an industrial instrument.

Maximum penalty—

(a) for a first offence—

(i) if the offender is an employer that is a body corporate or an organisation—80 penalty units; or

(ii) if the offender is an employer that is not a body corporate or organisation—16 penalty units; or

(iii) if the offender is an employee—16 penalty units; or

(b) for a second or subsequent offence consisting of a contravention of the same provision of the instrument—

(i) if the offender is an employer that is a body corporate or an organisation—100 penalty units; or

(ii) if the offender is an employer that is not a body corporate or organisation—20 penalty units; or

(iii) if the offender is an employee—20 penalty units.

(2) For subsection (1), a second or subsequent offence is taken to be a first offence if more than 1 year has passed since the commission of the last similar offence of which the person was found guilty.

(3) An employer who pays, directly or by an agent, an employee, and an employee who receives from an employer, or the employer's agent, reduced wages is each taken to have contravened the industrial instrument for subsection (1).

(4) If an employee returns to an employer, or the employer's agent, a part of wages paid to the employee under an industrial instrument—

(a) the employee is taken to have received reduced wages; and

(b) the employer, or the employer's agent, is taken to have paid reduced wages.

(5) Subsection (4) does not apply if the return is in discharge, or partial discharge, of a lawful debt or obligation of the employee.

(6) A magistrate may hear and decide a complaint for an offence against this section.

(7) Subsection (8) applies if the magistrate finds that—

(a) the defendant contravened an industrial instrument; and

(b) the contravention resulted in an amount being unpaid.

(8) The magistrate must order the defendant to pay an entity the amount the magistrate finds is payable.

Not authorised—indicative only

Not authorised—indicative only

Note—

However, if a civil penalty order has been made against the defendant in relation to the contravention, the defendant is not liable to pay a further amount under this subsection—see section 578.

(9) However, even if the magistrate does not find the defendant guilty of a contravention of an industrial instrument, the magistrate may order the defendant to pay an entity the amount that the magistrate, on the balance of probabilities, finds is payable.

(10) The magistrate may order the amount to be paid in the way the magistrate considers appropriate.

(11) The magistrate may make an order under subsection (8) or (9) in addition to any penalty the magistrate may impose.

(12) An order must not be made for payment of an amount that became payable more than 6 years before the proceedings were brought.

(13) An order for the payment of an amount must not be made under this section if the order may be made under another section of this Act.

933 Injunction restraining contraventions

(1) This section applies if a person has been found guilty of an offence involving the contravention of an industrial instrument or permit or this Act.

(2) If satisfied the contravention consisted of the person's wilful action or default, the court, on application made to it, may grant an injunction restraining the person from—

(a) continuing the contravention; or

(b) committing further contraventions of the instrument or permit or this Act, whether similar to or different from the contraventions the person has been found guilty of.

(3) The person must obey the injunction.

Maximum penalty for subsection (3)—200 penalty units.

934 Copy of industrial instrument to be displayed

(1) This section applies to a workplace where an industrial instrument applies.

(2) The employer must display a copy of the instrument, in a conspicuous place at the workplace where it is easily read by the employees in the workplace.

Maximum penalty—20 penalty units.

(3) In this section—

workplace includes a factory, workroom or shop.

935 Certificate of employment on termination

(1) A person whose employment with an employer has been terminated may ask the employer for a certificate, signed by the employer, about the particulars prescribed by regulation.

(2) On receiving the request, the employer must give the person the certificate.

Maximum penalty—20 penalty units.

(3) In this section—

terminated means terminated by the employer or employee.

936 Confidentiality of information

A person must not disclose information acquired when performing functions or exercising powers under this Act to someone else, unless the disclosure is—

(a) made for this Act when performing a function under this Act; or

(b) authorised by—

(i) the Minister; or

(ii) a court order, for hearing and deciding proceedings before the court; or

(iii) a regulation; or

Not authorised—indicative only

Not authorised—indicative only

(c) required or permitted by another Act.

Maximum penalty—16 penalty units.

937 Persons considered parties to offences

(1) This section applies to an organisation or person who—

(a) takes part in the commission of an offence under this Act; or

(b) counsels or procures or aids the commission of an offence under this Act; or

(c) encourages the commission of an offence under this Act; or

(d) is concerned, directly or indirectly, in the commission of an offence under this Act;

(2) The organisation or person is taken to have committed the offence and to be liable to the penalty prescribed for the offence.

(3) This section does not limit the Criminal Code, section 7.

938 Attempt to commit offence

(1) A person who attempts to commit an offence against this Act—

(a) commits an offence; and

(b) is liable to the same penalty as if the offence attempted had been committed.

(2) In this section—

attempt to commit an offence see the Criminal Code, section 4.

939 References to making false or misleading statements

A reference to a person making a statement knowing that it is false or misleading includes a reference to the person making

the statement being reckless about whether the statement is false or misleading.

940 References to engaging in conduct

A reference to a person engaging in conduct includes a reference to the person being, directly or indirectly, a party to or concerned in the conduct.

Chapter 15 Application to State and employees of the State

Part 1 General provisions

941 Application of particular provisions subject to rulings etc.

(1) This section applies to—

(a) a public service employee who is subject to a directive under the *Public Sector Act 2022* providing for the same matter as the excluded provision; or

(b) a staff member under the *Ministerial and Other Office Holder Staff Act 2010* who is subject to a directive under that Act providing for the same matter as the excluded provision.

(2) The directive applies to the public service employee or staff member instead of the excluded provision.

(3) In this section—

excluded provision means section 339(1)(c)(iii).

Not authorised—indicative only

Not authorised—indicative only

942 Protection of public property and officers

(1) Execution or attachment can not be made against property or revenues of the State or a department to enforce—

(a) an industrial instrument; or

(b) a decision of the court, the commission or a magistrate.

(2) A person who is a State employer is not personally liable under a relevant industrial instrument or for a contravention of a relevant industrial instrument.

(3) In this section—

execution or attachment includes process in the nature of execution or attachment.

State employer means a person who is—

(a) an employer of employees in a department; or

(b) taken to be an employer of employees in a department for this Act.

943 References to State do not include related State entities

(1) This Act binds a related State entity as it binds an employer other than the State.

(2) A reference to the State in section 942 does not include a reference to a related State entity.

(3) In this section—

related State entity means an instrumentality or body, other than a public sector unit, that is taken by an Act, or otherwise under law—

(a) to be, or to represent, the State; or

(b) to have the rights, privileges or immunities of the State.

944 Representation of public sector units

(1) A public sector unit, or a person in a public sector unit, who is concerned as an employer in an industrial cause must be represented in an industrial tribunal by—

(a) the unit's chief executive; or

(b) an officer or employee of the unit authorised by the chief executive.

(2) This section does not limit another provision of this Act that allows the unit or person to be represented by a lawyer or agent.

(3) In this section—

industrial tribunal means the court, commission or Industrial Magistrates Court.

945 Industrial cause affecting diverse employees

(1) Subsection (2) applies if the Minister decides an industrial cause affects, or is likely to affect, employees in more than 1 public sector unit.

(2) The chief executive of the department is taken to be—

(a) the employer of all employees who are, or are likely to be, affected; and

(b) a party to the cause and to proceedings in the court, the commission or an Industrial Magistrates Court in the cause.

(3) Any other person who would, apart from subsection (2), be employers of all or any of the employees is taken not to be an employer of the employees.

(4) An agreement made by the chief executive as employer, or order made in proceedings to which the chief executive is a party, binds all persons, and their employees, to whom the agreement or order purports to apply.

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Part 2 Prescribed Hospital and Health Services and employees

946 How Act applies to prescribed Services and their employees

Schedule 4 states the way this Act is modified for prescribed Services under the *Hospital and Health Boards Act 2011* and their employees.

Note—

The *Hospital and Health Boards Act 2011* provides for the establishment of Hospital and Health Services, and for particular Hospital and Health Services to become prescribed Services.

Chapter 16 Employers declared not to be national system employers

Part 1 Declarations

953 Employers declared not to be national system employers

This part applies for the purposes of the Commonwealth Fair Work Act, section 14(2).

954 Brisbane City Council

The Brisbane City Council is declared not to be a national system employer for the purposes of the Commonwealth Fair Work Act.

955 Declaration of other employers by regulation

(1) This section applies to an employer that, under the Commonwealth Fair Work Act, section 14(2), may be declared by or under a law of the State not to be a national system employer.

(2) A regulation may declare the employer not to be a national system employer for the purposes of the Commonwealth Fair Work Act.

(3) A regulation may revoke a declaration made under subsection (2).

956 Relevant day

The Minister may, by gazette notice, fix a relevant day for the purposes of the declaration made by section 954 or a declaration made under section 955(2).

Note—

Under the Commonwealth Fair Work Act, section 14(2), an endorsement under the section by the Minister under the Commonwealth Fair Work Act must be in force before a particular employer is not a national system employer as specified by the declaration. The fixing of a relevant day allows the timing of this endorsement to be taken into account for the purpose of applying the provisions of part 2.

Part 2 Change from federal to State system

957 Definitions for part

In this part—

declared employee means a person employed by a declared employer.

declared employer means an employer declared not to be a national system employer under section 955(2).

federal industrial authority means—

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(a) the Australian Industrial Relations Commission under the repealed *Workplace Relations Act 1996* (Cwlth); or

(b) FWC.

national fair work legislation means—

(a) the Commonwealth Fair Work Act; or

(b) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

new State instrument, for a particular employer, means the industrial instrument taken to exist on the relevant day under section 960 in relation to the employees of the employer.

old federal instrument, for a particular employer, means the federal industrial instrument mentioned in section 960 as applying to or purporting to apply to the employees of the employer immediately before the relevant day.

relevant day means—

(a) for the Brisbane City Council and employees of the Brisbane City Council—the day fixed under section 956 for the declaration under section 954; or

(b) for a declared employer and employees of the declared employer—the day fixed under section 956 for the declaration under section 955(2) that the employer is not to be a national system employer.

terms includes conditions, restrictions and other provisions.

958 Brisbane City Council

(1) This section applies to employees of the Brisbane City Council to whom the BCC federal agreement relates immediately before the relevant day.

(2) From the relevant day, the *Brisbane City Council Transitional Enterprise Bargaining Certified Agreement 2009* is taken to apply to Brisbane City Council, its employees and any employee organisation that is a party to the agreement.

(3) In this section—

BCC federal agreement means the *Brisbane City Council Transitional Enterprise Bargaining Certified Agreement 6 Extension 11* under the Commonwealth Fair Work Act.

959 Declared employers—operation of existing industrial instrument

(1) A regulation may provide that, from the relevant day, an existing industrial instrument applies to employees of a particular declared employer.

(2) If a regulation is made under subsection (1), from the relevant day the industrial instrument applies to—

(a) the declared employer; and

(b) the declared employees; and

(c) an organisation that is a party to the instrument.

(3) A regulation may declare the industrial instrument, or any matter relating to the industrial instrument, to be valid for the purposes of the operation of this section.

960 Declared employers—new State instruments

(1) This section applies—

(a) to the extent sections 954 and 955 do not provide for declared employees of particular declared employers; and

(b) if, immediately before the relevant day, a federal industrial instrument applies to or purports to apply to the declared employees.

(2) On the relevant day, an industrial instrument applies to the declared employer and declared employees is taken to exist under this Act.

(3) If a new State instrument is taken to exist because of subsection (2)—

(a) the instrument is taken to be a certified agreement; and

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(b) the instrument is taken to have been certified under this Act on the relevant day; and

(c) subject to this section, the instrument is taken to have the same terms as the old federal instrument including those terms as added to or modified by—

(i) terms of a federal award incorporated into the old federal instrument; or

(ii) orders of a federal industrial authority; or

(iii) another instrument under the national fair work legislation or the repealed *Workplace Relations Act 1996* (Cwlth); and

(d) this Act applies in relation to the instrument subject to any modifications or exclusions prescribed by regulation for this subsection; and

(e) the commission may, on an application under subsection (4)(a), amend or revoke any term of the instrument if the commission is satisfied it is fair and reasonable to do so in the circumstances.

(4) An amendment or revocation of a term of a new State instrument under subsection (3)(e)—

(a) may be made on application by the Minister, a declared employer, a declared employee or an organisation; and

(b) may, to achieve the final effect of an amendment, be provided to take effect—

(i) immediately; or

(ii) progressively, in specified stages.

(5) Despite subsections (1) to (4), a new State instrument applies subject to chapter 2.

(6) A new State instrument is taken to have a nominal expiry date that is the earlier of the following—

(a) a day that is 2 years from the relevant day;

(b) the day that, immediately before the relevant day, was the expiry day of the old federal instrument.

961 Ability to carry over matters

The commission may, in connection with the operation of this part, or any matter arising directly or indirectly out of the operation of this part—

(a) accept, recognise, adopt or rely on any step taken under, or for, the national fair work legislation; and

(b) accept or rely on any matter or thing (including in the nature of evidence presented for the purposes of any proceedings) that has been presented, filed or provided under, or for, the national fair work legislation; and

(c) give effect in any other way to any other thing done under, or for, the national fair work legislation.

962 References in new State instruments to federal authority manager

(1) If a term of a new State instrument is expressed to confer a power or function on a federal industrial authority, from the relevant day the term has effect as if it conferred the power or function instead on the commission.

(2) If a term of a new State instrument is expressed to confer a power or function on the federal authority manager, from the relevant day the term has effect as if it conferred the power or function instead on the registrar.

(3) This section has effect subject to—

(a) a contrary intention in this Act; and

(b) a regulation.

(4) In this section—

federal authority manager means—

(a) the registrar or deputy registrar of the Australian Industrial Commission under the repealed *Workplace Relations Act 1996* (Cwlth); or

(b) the General Manager under the Commonwealth Fair Work Act.

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963 References in new State instruments to provisions of Commonwealth laws

(1) If a term of a new State instrument is expressed to refer to a provision of the Commonwealth Fair Work Act or the repealed *Workplace Relations Act 1996* (Cwlth), from the relevant day the term is taken to refer instead to the corresponding provision of this Act.

(2) This section has effect subject to—

(a) a contrary intention in this Act; and

(b) a regulation.

(3) In this section—

corresponding provision of this Act, to a provision of the Commonwealth Fair Work Act or the repealed *Workplace Relations Act 1996* (Cwlth), means—

(a) if paragraph (b) does not apply—a provision of this Act that is of similar effect to the provision of the Commonwealth Fair Work Act or the repealed *Workplace Relations Act 1996* (Cwlth); or

(b) a provision of this Act declared by regulation to be a corresponding provision.

964 References in new State instruments to federal organisations

(1) This section applies if a term of a new State instrument is expressed to refer to a federal organisation.

(2) From the relevant day, the term is taken to refer instead to an organisation under this Act of which the federal organisation is a counterpart federal body.

(3) If the federal organisation is not a counterpart federal body of an organisation under this Act, the federal organisation is taken to be an organisation under this Act for the representation in the State system of the employees of the declared employer.

(4) Subsection (3) stops applying to the federal organisation when the new State instrument stops applying to the relevant declared employer.

(5) This section has effect subject to—

(a) a contrary intention in this Act; and

(b) a regulation.

965 Counting service under old federal instrument

(1) Subsection (2) applies for deciding the entitlements of a declared employee under a new State instrument.

(2) Service of the declared employee with a declared employer before the relevant day that counted under the old federal instrument also counts as service of the declared employee with the declared employer under the new State instrument.

(3) If, before the relevant day, the declared employee has already had the benefit of an entitlement, the amount of which was calculated by reference to a period of service, the period of service can not be counted again under subsection (2) for calculating the declared employee's entitlements of that type under the new State instrument.

966 Accruing entitlements—leave accrued immediately before relevant day

(1) This section applies to the following types of leave, however described, accruing to an employee (the ***leave***)—

(a) annual leave;

(b) sick leave, personal leave or carer's leave;

(c) long service leave.

(2) If a declared employee to whom a new State instrument applies had, immediately before the relevant day, an accrued entitlement to an amount of the leave, the accrued leave is taken to have accrued under the new State instrument.

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(3) It does not matter whether the leave accrued under the old federal instrument, under the national fair work legislation or this Act.

(4) A regulation may deal with other matters relating to how a new State instrument applies to any other accrued entitlement that, immediately before the relevant day, a declared employee had under the old federal instrument or the Commonwealth Fair Work Act.

967 Leave taken under old federal instrument

(1) If a declared employee was, immediately before the relevant day, taking a period of leave under the old federal instrument or under the Commonwealth Fair Work Act, the employee is entitled to continue on that leave under the new State instrument or this Act for the remainder of the period.

(2) If a declared employee has, before the relevant day, taken a step under the old federal instrument or the Commonwealth Fair Work Act that the employee is required to take so the employee can, from the relevant day, take a period of leave under the old federal instrument or the Commonwealth Fair Work Act, the employee is taken to have taken the step under the new State instrument or this Act.

(3) A regulation may deal with other matters relating to how a new State instrument applies to leave that, immediately before the relevant day, is being, or is to be, taken by a declared employee under the old federal instrument or the Commonwealth Fair Work Act.

Chapter 17 General provisions

Part 1 Queensland Industrial Relations Consultative Committee

Division 1 Establishment and purpose

968 Establishment

The Queensland Industrial Relations Consultative Committee (the ***consultative committee***) is established.

969 Purpose

(1) The purpose of the consultative committee is to provide a regular and organised means for representatives of the State, local government and employees, and any invited representatives, to consult together on—

(a) achieving the main purpose of this Act as stated in section 3; and

(b) the legislation, policies, strategies and other instruments relating to that purpose.

(2) The consultative committee's purpose may be achieved by, for example—

(a) reviewing the appropriateness of, and any proposed changes to, this Act and the legislation, policies, strategies and other instruments relating to the main purpose of this Act; and

(b) considering whether proposed changes to this Act or the legislation, policies, strategies and other instruments relating to the main purpose of this Act have been adequately consulted on; and

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(c) considering current and emerging trends in industrial relations at State, national and international levels and the relevance of those trends to industrial relations in Queensland; and

(d) considering any other matter relevant to this Act or the legislation, policies, strategies and other instruments relating to the main purpose of this Act.

(3) In achieving its purpose, the consultative committee must have regard to the following—

(a) meetings of the consultative committee are to be conducted on a non-political basis;

(b) the consultative committee is not to interfere with the proper performance of the functions of the Court of Appeal, court, commission, an Industrial Magistrates Court, the registrar or an inspector;

(c) the views of members expressed at meetings of the consultative committee are to be confidential, other than to the extent—

(i) a member is required to report on the meetings to the organisation that nominated the member; or

(ii) the members agree the views should be the subject of a public announcement.

Division 2 Membership

970 Membership of consultative committee

(1) The consultative committee consists of—

(a) the Minister, who is the chairperson of the consultative committee; and

(b) the Public Sector Commissioner; and

(c) either—

(i) the chief executive officer of LGAQ Ltd.; or

(ii) a person nominated by the LGAQ Ltd.; and

(d) 2 persons appointed to senior departmental offices, each of the offices having been nominated by the Minister for this section; and

(e) 3 persons nominated by the Queensland Council of Unions; and

(f) 1 person nominated by the Australian Workers' Union of Employees, Queensland.

(2) The Minister must appoint—

(a) if the LGAQ Ltd. nominates a person under subsection (1)(c)(ii)—the nominated person; and

(b) the members mentioned in subsection (1)(e) and (f); and

(c) 1 of the members as deputy chairperson.

(3) In this section—

senior departmental office means the office of a chief executive of a department or senior executive of the public service under the *Public Sector Act 2022*.

971 Resignation of members

The following members may resign by signed written notice given to the Minister—

(a) a member nominated by the LGAQ Ltd. under section 970(1)(c)(ii);

(b) a member nominated under section 970(1)(e) or (f).

972 Termination of appointment of members

(1) This section applies to a member nominated under section 970(1)(c)(ii), (e) or (f).

(2) The Minister must terminate the appointment of the member if—

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(a) the organisation that nominated the member asks for the termination; or

(b) the Minister is satisfied the organisation that nominated the member—

(i) has ceased to exist; and

(ii) has not merged with or been replaced by another organisation.

973 Substitute members

(1) A member mentioned in section 970(1)(a), (b), (c)(i) or (d) may nominate a person to attend a meeting of the consultative committee in the member's place.

(2) An organisation that nominates a member under section 970(1)(c)(ii), (e) or (f) may nominate another person to attend a meeting of the consultative committee in the member's place.

(3) A person who attends a meeting of the consultative committee in the place of a member has, and may exercise, at the meeting all the rights of the member.

974 Invited representatives

(1) The Minister may, after consulting with the members of the consultative committee, invite an entity to nominate a representative (an ***invited representative***) to participate in meetings of the consultative committee or a subcommittee.

(2) The invited representative—

(a) may participate in meetings of the consultative committee or a subcommittee but does not become a member of the consultative committee or subcommittee; and

(b) stops being entitled to participate in meetings of the consultative committee or subcommittee when the Minister decides to end the nomination.

Division 3 Proceedings of consultative committee

975 Proceedings

(1) The Minister may convene a meeting of the consultative committee at any time and place decided by the Minister.

(2) The Minister presides at all meetings of the consultative committee at which the Minister is present.

(3) If the Minister is absent, the person nominated to attend in the Minister's place under section 973(1) presides.

(4) Subject to this section, the consultative committee may conduct its meetings as it considers appropriate.

976 Subcommittees

The consultative committee may establish a subcommittee to consider and report to the consultative committee on any matter relevant to a purpose of the consultative committee.

Part 2 Other provisions

977 Employees working in Queensland and another State

(1) This section applies if an employer—

(a) has a workplace, or is present, in Queensland; and

(b) engages in Queensland an employee whose employment is, with the employer's consent, performed partly in Queensland and partly in another State.

(2) An industrial instrument that applies to the employer and employee for the employment performed in Queensland also applies for the employment performed in the other State.

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978 Students' work permits

(1) A student who is undertaking a tertiary study course may apply to the registrar for the issue of a permit to work in a calling for a particular period.

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

(3) The permit must state—

(a) the period of work; and

(b) the student's wage rate; and

(c) any conditions it is subject to.

(4) On issuing a permit, the registrar must promptly notify the secretary of an employee organisation in the calling of—

(a) the issue of the permit; and

(b) the permit's conditions.

(5) The permit has effect despite an industrial instrument.

979 Aged or infirm persons permits

(1) A person mentioned in subsection (3) may apply to the commission for a permit for an aged or infirm person, who is alleged to be unable to earn the minimum wage for a calling, to work in the calling for less than the minimum wage.

(2) For subsection (1), the minimum wage is the greater of—

(a) the Queensland minimum wage; or

(b) the minimum wage provided for by a relevant industrial instrument; or

(c) the minimum wage decided by the commission, after considering—

(i) the Queensland minimum wage; and

(ii) an industrial instrument that regulates employment conditions of employees engaged in a similar kind of work as the aged or infirm person.

(3) The application may be made by—

(a) the aged or infirm person; or

(b) an inspector.

(4) On receiving an application, the registrar must promptly notify the secretary of an employee organisation in the calling of—

(a) the application; and

(b) the time when the commission will hear any objection to the issue of the permit.

(5) The commission must promptly hear any objection to the issue of the permit from the organisation's authorised representative.

(6) The commission may issue the permit, with or without conditions.

(7) The organisation may apply, at any time under the rules, to the commission to cancel the permit.

(8) The permit has effect despite an industrial instrument.

980 Incorporating amendments in industrial instruments

If an industrial instrument is varied, the registrar may reprint the instrument in a form certified as correct by the registrar.

981 Obsolete industrial instrument

(1) The registrar, after making inquiry, may publish on the QIRC website notice of an intention to declare a stated industrial instrument obsolete.

(2) A person may, within the stated time and in the stated way, file an objection notice with the commission.

(3) The commission must hear and decide the objection.

(4) If no objection is filed within the stated time, or all objections filed are dismissed, the registrar may, by notice published on the QIRC website, declare that the instrument is obsolete.

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(5) The instrument stops having effect on publication of the notice.

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 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.

(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.

982 Protection from liability

(1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this or another Act mentioned in section 899(4).

(2) If subsection (1) prevents civil liability attaching to a person, the liability attaches instead to the State.

(3) This section does not apply to an official if the official is a prescribed person under the *Public Sector Act 2022*, section 267.

Note—

For protection from civil liability in relation to the chief executive and other prescribed persons under the *Public Sector Act 2022*, section 267, see the *Public Sector Act 2022*, section 269.

(4) In this section—

official means—

(a) the Minister; or

(b) the registrar; or

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(c) another officer of the court or commission; or

(d) an inspector; or

(e) a person acting under the direction of an inspector.

983 Payments to financially distressed

(1) Subsection (2) applies if a person is—

(a) suffering hardship because an employer has failed to pay the person the whole or part of wages; and

(b) unlikely to be able to lawfully recover the whole or a substantial part of the unpaid wages.

(2) The Governor in Council may authorise payment of an amount, not more than the person is unlikely to recover, to the person from the consolidated fund.

(3) The payment does not relieve the employer from liability to pay the unpaid wages.

(4) If the person later receives remuneration in full or part satisfaction of the employer's liability, the person must immediately pay the department, for payment to the consolidated fund, an amount equal to the lesser of—

(a) the value of the remuneration received, as assessed by the Minister; or

(b) the amount of the payment made to the person and not previously repaid by the person under this subsection.

(5) The amount payable to the department under subsection (4) may be recovered as a debt.

(6) In this section—

remuneration means remuneration, in money or kind.

984 Notices and applications to be written

If a person must give a notice or make an application under this Act, the notice or application must be written, unless otherwise provided.

985 Electronic Transactions (Queensland) Act 2001 does not apply to this Act

The *Electronic Transactions (Queensland) Act 2001* does not apply to the giving of a document under this Act.

986 Giving documents electronically

(1) This section applies if a person (the ***sender***) is required or permitted to give a document, including, for example, a written notice, to another person (the ***receiver***) under this Act, other than a document to be given, filed, received, issued or sent in a proceeding before the court, commission or Industrial Magistrates Court.

Note—

Under section 551, the rules may provide for the filing, receiving, issuing or sending electronic documents by the court, commission or Industrial Magistrates Court.

(2) Unless the contrary intention appears, the sender may satisfy the requirement or permission by giving the notice or other document electronically to the receiver in a way that the receiver is able to receive the document.

(3) A sender is taken to have sent a written notice or other document electronically—

(a) when the notice or document leaves the information system under the control of the sender; or

(b) if the notice or document has not left an information system under the control of the sender—when the notice or document is received by the sender.

(4) A receiver is taken to have received a written notice or other document sent electronically—

(a) if the receiver has designated an electronic address for receiving documents—when the notice or document is capable of being retrieved by the receiver at the electronic address; or

(b) if the receiver has another electronic address where documents may be received—

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(i) when the notice or document has become capable of being retrieved by the receiver at the electronic address; and

(ii) when the receiver has become aware that the notice or document has been sent to that address.

987 Inaccurate descriptions

A misnomer, inaccurate description or omission (an ***inaccuracy***) in or from a document given under this Act does not prevent or limit the operation of this Act in relation to the subject matter of the inaccuracy, if the subject matter is sufficiently clear to be understood.

988 Application of Act generally

(1) If a provision of this Act does not apply to a person or a class of person, a decision is inoperative to the extent it purports to apply to the person or a member of the class about the provision's subject matter.

(2) In its application, this Act does not create a right, privilege or benefit for a person for a period of service as an employee if, for the period, a similar right, privilege or benefit was given to or received by the person under a corresponding provision of the repealed Act.

989 Approved forms

(1) The rules committee may approve, for this Act, forms for use by or in the court, commission, Industrial Magistrates Court or registry.

(2) When acting under subsection (1), the rules committee must consult with—

(a) for a form relating to the Industrial Magistrates Court—the Chief Magistrate; or

(b) for a form relating to the registry—the registrar.

(3) The chief executive may approve, for this Act, forms for use other than in circumstances mentioned in subsection (1).

990 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may be made about any of the following—

(a) requiring an employer who is a party to a bargaining instrument to supply information for statistical purposes;

(b) regulating the conduct of persons, other than lawyers, who act for parties in an industrial cause;

(c) regulating the conduct of persons, other than lawyers, who appear in proceedings—

(i) in the court; or

(ii) before the commission or registrar;

(d) imposing a penalty of not more than 20 penalty units for contravention of a provision of a regulation.

Chapter 18 Repeal and transitional provisions

Part 1 Repeal

991 Act repealed

The Industrial Relations Act 1999, No. 33 is repealed.

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Part 2 Transitional provisions for repeal of Industrial Relations Act 1999

Division 1 Preliminary

992 Definitions for part

In this part—

continuing ch 2 employee means an employee mentioned in section 1005(a).

continuing ch 2A employee means an employee mentioned in section 1005(b).

continuing employee see section 1005.

introduction day means the day the Bill for this Act was introduced into the Legislative Assembly.

old, in relation to a provision, means a provision of the repealed Act.

pre-commencement employment conditions see section 1008(1).

pre-modernisation certified agreement means a certified agreement that, immediately before the commencement, was a pre-modernisation industrial instrument under the repealed Act.

pre-modernisation industrial instrument has the meaning given under old section 71BA.

Division 2 Existing industrial instruments

Subdivision 1 Awards

993 Modern awards

(1) A modern award that was in operation under the repealed Act immediately before the commencement is, on the commencement, taken to be a modern award under chapter 3.

(2) Until the modern award is varied under this Act for the first time—

(a) old chapter 2A, part 3, as it was in force immediately before the commencement, continues to apply to the award; and

(b) chapter 3, parts 1 and 2 of this Act do not apply to the award.

994 Review and variation of modern awards under old ch 20, pt 20, div 2

(1) This section applies if the review and variation of a modern award under old chapter 20, part 20, division 2 (the ***repealed review provisions***) was started, but not completed, before the commencement.

(2) The review and variation of the modern award must be completed under the repealed review provisions as if this Act had not commenced.

995 Requirement to partition modern award for local government

(1) This section applies in relation to whichever of the following modern awards (the ***relevant award***) was in effect under the repealed Act immediately before the commencement—

(a) the Queensland Local Government Industry Award—State 2014;

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Not authorised—indicative only

(b) a modern award that replaced the award mentioned in paragraph (a);

(c) a modern award that replaced the modern award mentioned in paragraph (b).

(2) As soon as practicable after the commencement, the registrar must partition the relevant award by—

(a) terminating the relevant award; and

(b) making 3 replacement modern awards (the ***replacement awards***).

(3) The replacement awards must each cover a group of employees described in the ministerial request as Stream A, Stream B or Stream C in relation to the Queensland Local Government Industry Award—State 2014.

(4) In partitioning the relevant award, the registrar may make any necessary provision to ensure wages and employment conditions for employees are not affected by the partitioning.

(5) A party to the relevant award is not entitled to be heard in relation to the partitioning of the award.

(6) When the registrar partitions the relevant award—

(a) the relevant award is taken to be revoked by the commission under chapter 3; and

(b) the replacement awards are taken to be modern awards made under chapter 3.

(7) As soon as practicable after partitioning the relevant award, the registrar must—

(a) give the parties to whom each replacement award applies notice of the making of the award; and

(b) publish the replacement awards on the QIRC website.

(8) Despite subsection (6)—

(a) section 150 does not apply to the revocation of the relevant award; and

(b) chapter 3, parts 1 and 2 and chapter 5, part 2, division 1 do not apply to the making of the replacement awards.

(9) If the relevant award is the Queensland Local Government Industry Award—State 2014, despite subsection (2) the registrar must not partition the relevant award until the review and variation of the award under old chapter 20, division 2 has been completed.

(10) In this section—

ministerial request means the variation notice given by the Minister to the commission under old section 140CA(1) on 6 June 2016.

replaced includes superseded.

996 Applications to vary modern award

(1) This section applies if an application to vary a modern award was made under old chapter 5A, but not decided, before the commencement.

(2) The application must continue to be dealt with under the repealed Act as if this Act had not commenced.

997 Pre-modernisation awards

(1) This section applies to an award other than a modern award, that, immediately before the commencement—

(a) was in operation under the repealed Act; and

(b) applied to an employee because of the operation of old section 824.

(2) On the commencement, the award is revoked.

(3) Subsection (4) applies if—

(a) immediately before the commencement, an employee was entitled to wages or a condition of employment under the award; and

Not authorised—indicative only

Not authorised—indicative only

(b) on the commencement, the wages or conditions of employment to which the employee would, but for this section, be entitled under the QES or a certified agreement are less favourable to the employee than the wages or condition of employment mentioned in paragraph (a).

(4) On the commencement, the certified agreement that applies to the employee is taken to be varied to include provision for the wages or condition of employment mentioned in subsection (3)(a).

Subdivision 2 Existing certified agreements and determinations

998 Existing certified agreements and arbitration determinations

(1) A certified agreement or arbitration determination that is in force under the repealed Act immediately before the commencement continues in force as a certified agreement or arbitration determination under this Act.

(2) A certified agreement mentioned in subsection (1) can not be amended under section 223 or chapter 4, part 7, division 2.

999 Existing arbitrations

(1) This section applies if, before the commencement—

(a) the requirement under old section 149(4) to determine a matter by arbitration started to apply; and

(b) the commission had not made a determination for the matter under old section 150.

(2) For subsection (1), it does not matter whether or not the commission started to hear the matter before the commencement.

(3) The commission must determine the matter by arbitration under the repealed Act.

(4) However, if the employer and 1 or more parties reach agreement on a proposed bargaining instrument before the commission determines the matter by arbitration—

(a) the parties must take steps under chapter 4 of this Act to have the instrument certified or made; and

(b) if an application is made under section 189 or 190 of this Act, a step taken in compliance with a requirement under the repealed Act in relation to the instrument is deemed to have been taken for the purposes of this Act; and

Examples of steps that may have been taken under the repealed Act—

- the giving of a notice of intention under the repealed Act
- approval of the instrument by the relevant employees

(c) the arbitration ends when the instrument is certified or made.

1000 Existing applications for certification

(1) This section applies if—

(a) before the commencement, an application had been made to the commission under old section 153 to certify an agreement; and

(b) immediately before the commencement, the commission had not—

(i) certified the agreement under old section 156; or

(ii) refused to certify the agreement under old section 157; or

(iii) otherwise finally dealt with the application.

(2) The commission must decide the application under old chapter 6, division 2.

(2A) If the commission grants the application, the agreement is taken to have been certified under this Act.

Not authorised—indicative only

Not authorised—indicative only

(3) This section does not apply if—

(a) the application was made on or after the introduction day; and

(b) the agreement was made with employees, before the introduction day, under old section 147A.

1001 Application for certification—proposed agreement negotiated with employee organisation and approved by employees

(1) This section applies if, on or after the introduction day—

(a) an agreement was made with employees under old section 147A; and

(b) an application was made to the commission under old section 153 to certify the agreement.

(2) If the application was not decided by the commission before the commencement, the application is taken to have been withdrawn on the commencement.

(3) If the commission certified the agreement before the commencement—

(a) on the commencement its nominal expiry date becomes the day that is 3 months from the day this section commences; and

(b) the nominal expiry date mentioned in paragraph (a) can not be extended under chapter 4, part 7, division 1.

Subdivision 3 Other instruments and orders

1002 Existing equal remuneration orders and applications

(1) An order made under old chapter 2, part 5 or old chapter 2A, part 4 that was in effect immediately before the commencement is taken to have been made under chapter 5, part 3.

(2) An application for an order under old chapter 2, part 5 or old chapter 2A, part 4 that was made, but not decided, before the commencement must continue to be decided under the old part.

(3) If an application mentioned in subsection (2) is granted, the order made on the application is taken to have been made under chapter 5, part 3.

1003 Application of ch 5, pt 2, div 2 to local government sector

(1) Chapter 5, part 2, division 2 does not apply to certification of an agreement for employees of a local government sector employer, if the application for certification of the agreement is made before 1 January 2019.

(2) However, subsection (1) does not apply if the commission decides, on an application by a party to the agreement, to apply section 250 in relation to the application to certify the agreement.

(3) In this section—

local government sector employer see the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*, section 3(1).

1004 Orders under old ss 137, 138 and 140

(1) This section applies to any of the following orders in effect immediately before the commencement—

(a) a minimum wage order under old section 137;

(b) a tool allowance order under old section 138;

(c) an order fixing wages and employment conditions under old section 140.

(2) On the commencement, the order continues in effect as if it were made under chapter 2, part 5 or 6 of this Act.

Not authorised—indicative only

Not authorised—indicative only

Division 3 Conditions of employment for continuing employees

1005 Application of division

This division applies to an employee (a ***continuing employee***) if, immediately before the commencement—

(a) a pre-modernisation industrial instrument applied to the employee in relation to particular employment; or

(b) old chapter 2A applied to the employee in relation to particular employment.

1006 Conditions of employment for continuing employees

(1) On the commencement, the Queensland Employment Standards under this Act start applying to the continuing employee.

(2) Also, if the employee is a continuing ch 2 employee and, immediately before the commencement, a modern award made under the repealed Act covered the employee but did not apply to the employee under old section 824—

(a) on the commencement, the modern award starts applying to the employee; and

(b) the pre-modernisation certified agreement or arbitration determination that applied to the employee immediately before the commencement, as it continues in force under section 998, continues to apply to the employee from the commencement.

(3) However, if a pre-modernisation certified agreement or arbitration determination mentioned in subsection (2)(b) includes a provision that is inconsistent with the Queensland Employment Standards, the provision is of no effect.

(4) Subsection (3) does not apply to a provision that is at least as favourable to the continuing employee than the Queensland Employment Standards.

Not authorised—indicative only

1007 Continuation of working time provision for an employee under old s 9 or 9A

(1) Despite section 1006, section 9 of the repealed Act continues to apply to an industrial instrument or federal industrial instrument that—

(a) was in force immediately before the commencement; and

(b) was made on or before 1 September 2005, other than a certified agreement if the application to certify the agreement was made after 1 September 2005; and

(c) was a pre-modernisation industrial instrument.

(2) Despite section 1006, section 9A of the repealed Act continues to apply to an industrial instrument or federal industrial instrument that—

(a) was in force immediately before the commencement; and

(b) was made after 1 September 2005, other than a certified agreement if the application to certify the agreement was made on or before 1 September 2005; and

(c) was a pre-modernisation industrial instrument.

1008 Leave accrued or approved before commencement

(1) The continuing employee retains all leave entitlements accrued before the commencement under any of the following (the ***pre-commencement employment conditions***)—

(a) old chapter 2 or 2A;

(b) an industrial instrument under the repealed Act.

(2) Subsection (3) applies if, before the commencement, the employee's employer approved leave relating to a period on or after the commencement.

(3) The leave is taken to have been approved for the purposes of the Queensland Employment Standards, or an industrial instrument applicable to the employee, under this Act.

Not authorised—indicative only

1009 Working out leave entitlements

(1) This section applies if—

(a) a provision of old chapter 2 or 2A conferred an entitlement on the employee in relation to a particular type of leave; and

(b) the entitlement was worked out under the provision—

(i) for a completed year of employment; or

(ii) in relation to a year.

(2) For working out the employee's entitlement to the leave during the year in which the commencement falls, regard must be had to leave of that type taken during the year under the pre-commencement employment conditions.

(3) Also, for working out the employee's entitlement to leave, regard must be had to the period of the employee's employment with the employer before the commencement.

1010 Notices etc. given before commencement

(1) This section applies if—

(a) before the commencement, the continuing employee or the employee's employer gave a notice or other document in compliance with a requirement under the pre-commencement employment conditions; and

Examples—

a notice about parental leave given by a continuing ch 2 employee in compliance with old section 19, 20, 21 or 21A

a notice about parental leave given by a continuing ch 2A employee in compliance with old section 71GH, 71GI, 71GJ or 71GK

(b) the notice or other document is relevant to a matter or circumstance occurring on or after the commencement; and

(c) there is a requirement under this Act, or an industrial instrument under this Act, that has substantially the

same effect as the requirement mentioned in paragraph (a).

(2) If the context permits, the employee or employer is taken to have complied with the requirement mentioned in subsection (1)(c).

1011 Annual leave—order about payment for commission

(1) This section applies if, before the commencement, the commission made an order in relation to the continuing employee on an application under old section 13(4) or 71EF(4).

(2) From the commencement, the order continues to have effect as if it had been made under section 35(4).

(3) Subsection (2) does not apply if an industrial instrument under this Act provides that the employee is not entitled to receive an amount representing commission in the employee's annual leave payment.

1012 Annual leave—leave loading payments made before commencement

An amount, however described, paid to the continuing employee before the commencement in addition to the employee's annual leave entitlement under old chapter 2 or 2A is taken to be a prescribed additional amount for section 36(2).

1013 Parental leave started under repealed Act

(1) This section applies if, immediately before the commencement, the continuing employee was on parental leave under the pre-commencement employment conditions.

(2) From the commencement, the employee is taken to be on the following type of parental leave under this Act—

Not authorised—indicative only

Not authorised—indicative only

(a) if the parental leave mentioned in subsection (1) was maternity leave, adoption leave or surrogacy leave—leave of the same name;

(b) if the parental leave mentioned in subsection (1) was long parental leave under old chapter 2 other than maternity leave—long birth-related leave;

(c) if the parental leave mentioned in subsection (1) was long birth-related leave under old chapter 2A—long birth-related leave;

(d) if the parental leave mentioned in subsection (1) was short parental leave under old chapter 2—short birth-related leave;

(e) if the parental leave mentioned in subsection (1) was short birth-related leave under old chapter 2A—short birth-related leave.

(3) A reference in chapter 2, part 3 to a type of parental leave includes, if the context permits, a reference to the corresponding type of parental leave under the pre-commencement employment conditions.

(4) Section 68 does not apply to the employee in relation to the parental leave.

(5) The employee may apply under chapter 2, part 3, division 8, subdivision 4 even if the person started parental leave before the commencement.

(6) From the commencement—

(a) an extension of the parental leave under old section 29(1) or 71GZ(1) is taken to be an extension under section 82(1); and

(b) if an application was made under old section 29A, 29B, 71GR or 71GS, but not decided by the employer, before the commencement—the application is taken to have been made under chapter 2, part 3, division 8, subdivision 4; and

(c) if the employee was transferred to a safe job under old section 36 or 71GZG before starting maternity

leave—for section 88, the employee is taken to be have been transferred to a safe job under section 89.

1014 Parental leave—application of obligation to advise about significant change

Section 72 applies to a decision made, but not implemented, before the commencement.

1015 Long service leave—agreement or notice under old s 45 or 71HD

(1) This section applies if, before the commencement—

(a) the employer and employee made an agreement under old section 45(2) or 71HD(2) in relation to long service leave, if any part of the leave was to be taken on or after the commencement; or

(b) the employer gave the employee a notice under old section 45(3) or 71HD(3) relating to long service leave, if any part of the leave was required to be taken on or after the commencement.

(2) The agreement or notice is taken to have been made or given under section 97.

1016 Long service leave—order about payment for commission

(1) This section applies if, before the commencement, the commission made an order in relation to the employee on an application made under old section 46(7) or 71HF(2)(b).

(2) From the commencement, the order continues to have effect as if it had been made under section 99(3).

(3) However, subsection (2) does not apply if an industrial instrument under this Act provides that the employee is not entitled to receive an amount representing commission in the employee's long service leave payment.

Not authorised—indicative only

Not authorised—indicative only

1017 Long service leave—decision by commission about piecework rates

(1) This section applies if the employee was paid piecework rates and, before the commencement, the commission decided under old section 46(8) or 71HG the rate the employee should be paid for long service leave.

(2) From the commencement, the decision continues to have effect as if it had been made under section 100.

1018 Long service leave—existing decisions or agreements about entitlement to, payment for, or taking of, leave

(1) This section applies to any of the following in effect immediately before the commencement—

(a) an agreement made by an employee and employer, or a decision made by the commission, under old section 46(9), (10) or (11) or 71HH;

(b) an agreement made under old section 48 or 71HK;

(c) a decision made by the commission under old section 52 or 71HP;

(d) an agreement made by an employee and employer, or an order made by the commission, under old section 53(2) or (3), or 71HQ(2) or (3).

(2) From the commencement, the agreement, decision or order continues to have effect as if it had been made under the following provisions of this Act—

(a) if subsection (1)(a) applies—section 101;

(b) if subsection (1)(b) applies—section 104;

(c) if subsection (1)(c) applies—section 109;

(d) if subsection (1)(d) applies—section 110.

(3) Subsection (2) applies subject to a provision in an industrial instrument under this Act about the payment for, or taking of, the employee's long service leave.

Division 4 Dismissals

1019 Provision for old chapter 3, part 4, division 1AA (Redundancy repayments)

Old chapter 3, part 4, division 1AA continues to apply, despite its repeal, to an employee to whom it applied immediately before the commencement.

Division 5 Freedom of association

1020 Provision for old chapter 4 (Freedom of association)

Old chapter 4 continues to apply, despite its repeal, after the commencement in relation to conduct to which it applies that was engaged in, or was proposed to be engaged in, before the commencement, and chapter 8 does not apply.

Division 6 Existing collective bargaining processes

1021 Application of division

This division applies if, before the commencement—

(a) a notice of intention to negotiate a certified agreement was given under old section 143; and

(b) an application to certify the agreement was not made to the commission under old section 153; and

(c) the requirement under old section 149(4) to determine the matter by arbitration had not started to apply.

1021A Continuation of bargaining under this Act

(1) From the commencement, chapter 4 applies in relation to the negotiations for the proposed agreement.

Not authorised—indicative only

Not authorised—indicative only

(2) For subsection (1), a step taken in relation to the proposed agreement under a provision of the repealed Act has effect, if the context permits, as if the step had been taken under this Act.

Examples of steps taken under the repealed Act—

- the giving of the notice of intention under old section 143
- the giving of a notice under old section 143(4) or (5) in relation to a project agreement or multi-employer agreement
- the making of a request by the negotiating parties under old section 148 that the commission help the parties negotiate the agreement

(3) Subsection (2) does not apply to the making of an agreement with employees under old section 147A.

1021B Taking of protected industrial action under this Act

(1) This section applies if, immediately before the commencement—

(a) a negotiating party was taking protected industrial action under the repealed Act in relation to the proposed agreement; or

(b) had a negotiating party taken industrial action in relation to the proposed agreement, the industrial action would have been protected industrial action under the repealed Act.

(2) From the commencement, the negotiating party is taken to satisfy the requirements under chapter 4, part 8 of this Act for taking protected industrial action in relation to the proposed agreement.

(3) To remove any doubt, it is declared that old section 150A does not apply to the taking of protected industrial action under this Act.

Note—

Under chapter 4, part 8 of this Act, protected industrial action may be taken during conciliation—see section 233.

(4) This section does not limit section 1021A.

1021C Continuation of protected action ballot process under repealed Act

(1) This section applies if—

(a) a PABO application was not decided immediately before the commencement; or

(b) both of the following apply—

(i) a protected action ballot order was made under the repealed Act in relation to the proposed agreement;

(ii) immediately before the commencement, the protected action ballot required to be conducted under the order had not been conducted.

(2) Chapter 6 and schedule 4 of the repealed Act continue to apply for—

(a) deciding the PABO application mentioned in subsection (1)(a) and, if the application is granted, conducting the protected action ballot; or

(b) conducting the protected action ballot mentioned in subsection (1)(b).

(3) Protected industrial action may be taken in relation to the proposed agreement under the repealed Act.

(4) However, the 30-day period mentioned in section 176(3)(e)(i) of the repealed Act can not be extended under section 176(7) of that Act.

(5) This section does not prevent protected industrial action being taken for the proposed agreement under this Act.

(6) This section applies despite section 1021A.

(7) In this section—

PABO application means an application made under the repealed Act by a negotiating party for the making of a protected action ballot order in relation to proposed industrial action for the proposed agreement.

Not authorised—indicative only

Not authorised—indicative only

1021D Continuation of conciliation etc.

(1) This section applies if, immediately before the commencement, the commission was helping the parties negotiate under old chapter 6, division 1, subdivision 2.

(2) From the commencement—

(a) the conciliation process continues under chapter 4, part 3 of this Act; and

(b) protected industrial action may be taken under chapter 4, part 8 of this Act.

(3) For section 177, conciliation of the matter started when conciliation started under the repealed Act.

(4) An order made by the commission before the commencement under old section 148A continues in effect despite the repeal of the repealed Act.

(5) This section does not limit section 1021A.

Division 7 Industrial tribunals and registry

1022 Continuation of members of court, commission and registry

(1) This section applies to a person who, immediately before the commencement, was appointed under the repealed Act to the office of—

(a) the president of the court;

(b) the vice-president of the court;

(c) a deputy president (court);

(d) a deputy president of the commission;

(e) an industrial commissioner;

(f) an associate to the president, vice-president, a deputy president or an industrial commissioner;

(g) the registrar.

(2) The person's appointment to the office continues under this Act on the same terms and conditions of appointment that applied to the person immediately before the commencement, including a term about when the appointment ends.

1023 Existing proceedings

(1) This section applies if—

(a) before the commencement, a person started a proceeding under the repealed Act; and

(b) immediately before the commencement, the proceeding had not ended.

(2) The repealed Act continues to apply to the proceeding, and the proceeding must be heard and decided, as if the *Industrial Relations Act 2016* had not commenced.

1024 Proceedings not yet started

(1) This section applies if—

(a) immediately before the commencement, a person could, under the repealed Act, have started a proceeding within a particular period; and

(b) on the commencement, the person has not started the proceeding.

(2) The *Industrial Relations Act 2016* does not apply to the proceeding.

(3) The person may, within the period mentioned in paragraph (1)(a), start the proceeding under the repealed Act, and the proceeding must be heard and decided, as if the *Industrial Relations Act 2016* had not commenced.

1025 Application of rules made under repealed Act

The rules made under old section 338, as in force immediately before the commencement, continue to have effect as if they were rules made under section 551.

Not authorised—indicative only

Not authorised—indicative only

Division 8 Enforcement

1026 Continued appointment of inspectors

(1) This section applies to a person who, immediately before the commencement, was appointed as an inspector under the repealed Act.

(2) The person continues as an inspector under this Act on the same terms of appointment that applied to the person immediately before the commencement.

Division 9 Records and wages

1027 Authorised industrial officers taken to be authorised under this Act

(1) This section applies to an authority issued by the registrar under old section 364 that, immediately before the commencement, was still in force or had been suspended.

(2) The authority is taken to have been issued under section 337.

(3) The authority continues to be subject to any conditions that applied to the authority immediately before the commencement as if the conditions were imposed under this Act.

(4) If the authority was, immediately before the commencement, suspended under old section 365 for a period, the authority continues to be suspended for the period.

1028 Applications under old s 365(1) continued

(1) This section applies to an application made under old section 365(1) that, immediately before the commencement—

(a) had not been finally decided by the commission; or

(b) had been finally decided by the commission but for which the period for an appeal or review of the decision had not finished; or

(c) the application had been finally decided by the commission but for which an appeal or review of the commission's decision had not been finally decided.

(2) The application is taken to have been made under section 338.

(3) Without limiting subsection (2), an appeal or review in relation to a decision by the commission about the application may be started or continued as if the application and the decision about the application, had been made under this Act.

1029 Notices taken to be issued under this Act

A notice issued under a provision of the repealed Act mentioned in column 1 that was in force immediately before the commencement is taken to have been issued under the provision set out opposite the former provision in column 2—

Provision of the repealed Act	Provision of this Act
section 371	section 344
section 373A	section 345
section 374	section 346

1030 Written objection taken to be made under this Act

(1) A written objection made and not revoked before the commencement, is taken to have been made under section 344.

(2) In this section—

written objection means a written request made by a member employee or a person eligible to be a member employee under old section 373 that a time and wages record for the employee not be made available to authorised industrial officers or a particular authorised industrial officer.

Not authorised—indicative only

Not authorised—indicative only

1031 Continuation of agreement about contributions to superannuation fund

(1) An employer may continue to contribute to another superannuation fund in accordance with an agreement under repealed section 405.

(2) In this section—

repealed section 405 means the *Industrial Relations Act 1999*, section 405 as in force immediately before 1 April 2005.

Division 10 Private employment agents' fees

1032 Orders and applications under old ch 11A

(1) Old chapter 11A continues to apply, despite its repeal, in relation to fees received by private employment agents in contravention of old section 408D(1) or (2) before the commencement.

(2) Without limiting subsection (1)—

(a) an application made under old section 408F or 408G, but not decided, before the commencement may continue to be dealt with under old chapter 11A; and

(b) an application may be made under old section 408F or 408G in relation to a fee mentioned in subsection (1); and

(c) old section 408H—

(i) continues to apply to an order made under old section 408E or 408G before the commencement; or

(ii) applies to an order made under old section 408E or 408G on or after the commencement as the section is continued in effect under subsection (1).

Division 11 Industrial organisations and associated entities

Subdivision 1 Provisions for old ch 12, pt 1

1033 Organisations under repealed Act to continue

A body that was an organisation under the repealed Act immediately before the commencement is taken to be an organisation under this Act.

Subdivision 2 Provisions for old ch 12, pt 2

1034 Provision for old s 415 (General requirements for applications)

A registration application filed under the old section 415 but not decided before the commencement must be decided as if it had been filed under section 603 of this Act.

1035 Provision for old s 426 (Registrar's functions for register and rules)

(1) The register of organisations kept by the registrar under old section 426 immediately before the commencement is taken to be the register of organisations kept by the registrar under section 614(1) of this Act.

(2) A copy of an organisation's rules kept by the registrar under old section 426 immediately before the commencement is taken to be the copy of the organisation's rules kept by the registrar under section 614(2) of this Act.

1036 Provision for old s 427 (Change of callings)

A application filed by an organisation under old section 427 to change its list of callings but not decided before the

Not authorised—indicative only

Not authorised—indicative only

commencement must be dealt with as if it had been filed under section 615 of this Act.

Subdivision 3 Provisions for old ch 12, pt 3

1037 Provision for old s 428 (Organisation must have complying rules)

(1) An organisation's rules for matters required of it under old chapter 12, parts 3 and 4 as in force immediately before the commencement continue to be the organisation's rules for matters required of it under chapter 12, parts 3 and 4 of this Act.

Subdivision 4 Provisions for old ch 12, pt 4

1038 Provision for old s 447 (Approval application)

A application filed by an organisation under old section 447 for approval for ballots to decide the result of its elections for its elected officers not to be postal ballots but not decided before the commencement must be dealt with as if it had been filed under section 635 of this Act.

Subdivision 5 Provisions for old ch 12, pt 5

1039 Provision for old s 459 (Powers of commission)

An application made under old section 459 but not decided before the commencement must be dealt with as if it had been made under section 646 of this Act.

1040 Provision for old s 461 (Financial help for application)

An application made under old section 461 but not decided before the commencement must be dealt with as if it had been made under section 648 of this Act.

Subdivision 6 Provisions for old ch 12, pt 6

1041 Provision for old s 466 (Breach of demarcation dispute undertaking)

A demarcation dispute undertaking given by an organisation to the commission and in force immediately before the commencement continues in force according to its terms.

1042 Provision for old s 468 (Amendment to cure noncompliance if rule declared void)

(1) This section applies if—

(a) the court made a declaration mentioned in old section 468(1)(a) about a contravention of old section 435; and

(b) the organisation's rules have not been amended to address the contravention within 3 months after the declaration is made.

(2) The appropriate tribunal may amend the rules to comply with section 623 for the matters that gave rise to the declaration.

(3) In this section—

appropriate tribunal means—

(a) for an organisation's eligibility rules—the commission; or

(b) for other rules—the registrar.

Not authorised—indicative only

Not authorised—indicative only

1043 Provision for old s 472 (Approval to change 'union' to 'organisation' in name)

An application made for an order under old section 472 but not decided before the commencement must be dealt with as if it had been made for an order under section 660 of this Act.

1044 Provision for old s 473 (Approval for other name amendment)

An application made for an order under old section 473 but not decided before the commencement must be dealt with as if it had been made for an order under section 661 of this Act.

1045 Provision for old s 474 (Approval for eligibility rule amendment)

An application made for an order under old section 474 but not decided before the commencement must be dealt with as if it had been made for an order under section 662 of this Act.

1046 Provision for old s 478 (When amendment may be made)

An application made for an approval under old section 478 but not decided before the commencement must be dealt with as if it had been made for an approval under section 666 of this Act.

Subdivision 7 Provisions for old ch 12, pt 7

1047 Provision for old s 482 (Registrar must arrange for elections)

An election arranged by the registrar under old section 482 before the commencement to be conducted after the commencement may be conducted as if it had been arranged under section 670 of this Act.

Subdivision 8 Provisions for old ch 12, pt 8

1048 Provision for old s 502 (Referral to commission)

An election inquiry started in the commission under old section 502 but not completed before the commencement may be completed after the commencement as if it had been started under section 690 of this Act.

1049 Provision for old s 503 (Commission may authorise registrar to investigate)

An order of the commission authorising the registrar to do anything mentioned in old section 503(1) that had not been completed before the commencement may be acted on and completed as if the order had been made by the commission under section 691 of this Act.

1050 Provision for old s 512 (Financial help for application)

An application made under old section 512 but not decided before the commencement must be dealt with as if it had been made under section 700 of this Act.

Subdivision 9 Provisions for old ch 12, pt 9

1051 Provision for old s 519 (Prospective candidates)

An application made under old section 519 but not decided before the commencement must be dealt with as if it had been made under section 706 of this Act.

1052 Provision for old s 520 (Existing office holders)

An application made under old section 520 but not decided before the commencement must be dealt with as if it had been made under section 707 of this Act.

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1053 Provision for old s 524 (Declaration about eligibility or ceasing to hold office)

An application made under old section 524 but not decided before the commencement must be dealt with as if it had been made under section 711 of this Act.

Subdivision 10 Provisions for old ch 12, pt 10

1054 Provision for old s 535 (Recovering member's liabilities)

An application made under old section 535 but not decided before the commencement must be decided with as if it had been made under section 722 of this Act.

Subdivision 11 Provisions for old ch 12, pt 12

1055 Provision for old s 554 (Obligation to keep accounting records)

Old section 554 continues, despite its repeal, to have effect after the commencement in relation to each organisation to which it applies until its effect, according to its terms, in relation to the organisation is spent.

1056 Provision for old s 555 (Obligation to prepare accounts)

A reporting unit's general purpose financial report prepared under section 763 of this Act for the first financial year ending after the commencement may consist of the accounts and statements that the reporting unit would be required to prepare under old section 555 were that section to apply to the reporting unit.

1057 Provision for old s 557A (Register of gifts, hospitality and other benefits given and received must be kept)

A register of benefits kept by an organisation under old section 557A immediately before the commencement is taken to be a register of benefits kept by the organisation under section 742 of this Act.

1058 Provision for old s 557H (Financial registers must be kept for 7 years)

Old section 557H continues, despite its repeal, to have effect after the commencement until its effect, according to its terms, is spent.

1059 Provision for old s 557I (Inspection of financial registers)

Old section 557I continues, despite its repeal, to have effect after the commencement until its effect, according to its terms, is spent.

1060 Provision for old s 557Y (Financial disclosure statements must be kept for 7 years)

Old section 557Y continues, despite its repeal, to have effect after the commencement until its effect, according to its terms, is spent.

1061 Provision for old s 557Z (Inspection of financial disclosure statements)

Old section 557Z continues, despite its repeal, to have effect after the commencement until its effect, according to its terms, is spent.

1062 Provision for old s 566 (Obligation to publish audit report and financial disclosure statement)

A prosecution for a contravention of old section 566 may be brought or continued, and punishment imposed, under the

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section after the commencement despite the repeal of the section.

1063 Provision for old s 569 (False or misleading statements about reports or statements)

A prosecution for a contravention of old section 569 may be brought or continued, and punishment imposed, under the section after the commencement despite the repeal of the section.

1064 Provision for old s 570 (Report and statement must be filed and published)

A prosecution for a contravention of old section 570 may be brought or continued, and punishment imposed, under the section after the commencement despite the repeal of the section.

1065 Provision for old s 571 (Grounds for registrar's investigation)

(1) This section applies if, immediately before the commencement, the registrar had started an investigation under old section 571 but had not reported the results of the investigation to the chief executive as required under old section 574A.

(2) Despite the repeal of the repealed Act, that Act continues to apply in relation to the investigation.

1066 Provision for old s 575 (Registrar's examinations and audits

(1) This section applies if, immediately before the commencement, a registrar's auditor had started an examination under old section 575 but had not given the registrar an audit report as required under that section.

(2) Despite the repeal of the repealed Act, that Act continues to apply in relation to the examination.

Subdivision 12 Provisions for old ch 12, pt 13

1067 Provision for old s 580 (Exemption if federal election held)

An exemption granted under old section 580 and in force immediately before the commencement continues to have effect, after the commencement, as if it had been granted under section 802.

1068 Provision for old s 582 (Exemption)

An exemption granted under old section 582 and in force immediately before the commencement continues to have effect, after the commencement, as if it had been granted under section 804.

1069 Provision for old s 590 (Who may apply)

An application for exemption filed under old section 590 but not decided before the commencement is taken to have been filed under section 820.

1070 Provision for old s 591 (Grant of exemption)

An exemption granted under old section 591 and in force immediately before the commencement continues to have effect as if it had been granted under section 821.

1071 Provision for old s 594 (Who may apply)

An application for exemption filed under old section 594 but not decided before the commencement is taken to have been filed under section 812.

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1072 Provision for old s 596 (Publication of application)

(1) This section applies if—

(a) a notice stating details of an application for exemption has been filed under old section 594 has been published under old section 596; and

(b) the application has not been decided.

(2) The notice stating details of the application is taken to have been published under section 814.

1073 Provision for old s 599 (Obligation to appoint returning officer)

(1) This section applies if an organisation or branch complied, or partly complied, with old section 599 but the election for which nominations were called did not take place before the commencement.

(2) The organisation or branch is taken to have complied, or partly complied, with section 817 to the same extent it had complied, or partly complied, with old section 599.

Subdivision 13 Provisions for old ch 12, pt 14

1074 Provision for old s 612 (Amalgamations and withdrawals)

(1) This section applies to an amalgamation or withdrawal to which old section 612 would have applied if it had not been repealed.

(2) Section 834 applies to the amalgamation or withdrawal with any necessary changes.

1075 Provision for old s 613 (Commission may decide)

An application made to the commission under old section 613 but not decided before the commencement is taken to have been made to the commission under section 835.

Subdivision 14 Provisions for old ch 12, pt 15

1076 Provision for old s 617 (Amalgamation permitted only under div 2)

Anything done for old section 617 in relation to an amalgamation started but not finished before the commencement is taken to have been done for section 845.

1077 Provision for old s 622 (Requirements for withdrawal)

Anything done for old section 622 in relation to a withdrawal started but not finished before the commencement is taken to have been done for section 844.

Subdivision 15 Provisions for old ch 12, pt 15A

1078 Provision for old s 636A (Making complaint about organisation or officer)

(1) This section applies to a complaint made to the chief executive under old section 636A but not finalised at the commencement.

(2) The chief executive, and others, may deal with the complaint as if it had been made under section 859.

(3) Subsection (4) applies if—

(a) something was done or happened in relation to the complaint under a provision of the repealed Act (the ***old provision***); and

(b) a provision of this Act is a corresponding provision to the old provision.

(4) The thing that was done or happened under the old provision is taken to have been done or to have happened under the corresponding provision for the purpose of dealing with the complaint under this Act.

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(5) Subsection (4) does not apply to a thing that was done or happened in relation to the complaint if the thing was, or is alleged to be, a contravention of an old provision.

(6) For this section, a provision of this Act (the ***new provision***) is a ***corresponding provision*** to an old provision if the new provision deals with its subject matter in a similar way to the way the same subject matter was dealt with by the old provision.

Subdivision 16 Provisions for old ch 12, pt 16

1079 Provision for old ch 12, pt 16, div 2

(1) This section applies if an application for the deregistration of an organisation had been filed under old chapter 12, part 16, division 2 but not finally decided before the commencement.

(2) The application must be decided, and any deregistration has effect, as if the repealed Act had not been repealed.

1080 Provision for old ch 12, pt 16, div 3

(1) This section applies if the commission has brought deregistration proceedings against an organisation under old chapter 12, part 16, division 3 but the proceedings had not finished before the commencement.

(2) The proceedings must be decided, and any deregistration has effect, as if the repealed Act had not been repealed.

Division 12 Other provisions

1081 Provision for old s 664A

Old section 664A continues to apply to an act or omission constituting an offence under that section that happened before the commencement.

1082 Existing declarations of employers not to be national system employers under old s 692

(1) A declaration made by regulation under old section 692(3) and in effect immediately before the commencement is taken to have been made under section 955 of this Act.

(2) A relevant day fixed under old section 692(5) for the declaration made by old section 692(2), or a declaration made under old section 692(3), continues in effect as if it had been fixed under section 956 of this Act.

(3) An industrial instrument taken to exist under old section 692D(2) continues to exist for the purposes of section 960 of this Act.

1083 Existing permits

(1) A permit issued under old section 695 or 696 that was in effect immediately before the commencement continues in effect under the corresponding provision of this Act.

(2) For subsection (1), the corresponding provision of this Act is—

(a) for a permit under old section 695—section 978; or

(b) for a permit under old section 696—section 979.

1084 References to repealed Act

A reference in an Act or document to the repealed Act may, if the context permits, be taken to be a reference to this Act.

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Part 3 Transitional provision for Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Act 2017

1086 Existing appeals under Workers' Compensation and Rehabilitation Act 2003

(1) This section applies to an appeal started under the *Workers' Compensation and Rehabilitation Act 2003*, chapter 13, part 3 but not decided before the commencement, if the appeal is against a decision to allow an application for compensation under that Act.

(2) Section 566 applies to the appeal.

(3) However, this section does not affect an order that the decision be wholly or partly stayed made before the commencement.

Part 4 Transitional provisions for Community Services Industry (Portable Long Service Leave) Act 2020

1087 Existing proceedings not affected by ch 15A, pt 2

(1) This section applies in relation to a proceeding that—

(a) started, but was not completed, before the commencement; and

(b) relates to employees' wage entitlements before the commencement.

(2) Chapter 15A, part 2 does not affect the outcome of the proceeding.

1088 No double payment of 2019 wage adjustment

(1) This section applies if—

(a) on the commencement, a certified agreement is varied under chapter 15A, part 3; and

(b) after the commencement, another agreement (the ***replacement agreement***) is certified under chapter 4 that covers the employees who were covered by the certified agreement mentioned in paragraph (a).

(2) The replacement agreement must not provide for an additional wage increase in relation to 2019.

(3) This section applies despite chapter 4.

1089 Application of modified collective bargaining process

Chapter 15A, part 5 applies in relation to an application to certify an agreement if the application is made on or after the commencement, regardless of when the agreement was made.

Part 5 Transitional provisions for Criminal Code and Other Legislation (Wage Theft) Amendment Act 2020

1091 Application of provisions about fair work claims

Chapter 11, part 3, division 4 only applies to a proceeding for a fair work claim that is started after the commencement.

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1092 Application of provisions about conciliation of unpaid amount claims

Chapter 11, part 5, division 5A only applies to a proceeding for an unpaid amount claim that is started after the commencement.

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 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

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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*.

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).

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(2) However, an unrecoverable outstanding amount may not be recovered by the State as a debt due to the State.

(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.

Part 7 Transitional provision for Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2024

1103 Entitlement to late term pregnancy leave and increased period of flexible parental leave

(1) Section 85AA as in force from the commencement applies in relation to a pregnant employee regardless of whether the pregnancy started before or after the commencement.

(2) Section 87B as in force from the commencement applies in relation 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.

Part 8 Transitional provisions for Industrial Relations and Other Legislation Amendment Act 2026

Division 1 Preliminary

1104 Definitions for part

In this part—

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amendment Act means the *Industrial Relations and Other Legislation Amendment Act 2026*.

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

introduction day means the day the Bill for the amendment Act was introduced into the Legislative Assembly.

new, in relation to a provision of this Act, means the provision as in force from the commencement.

Division 2 Modern awards

1105 Applications for flow-on of provisions made on or before introduction day

(1) This section applies if—

(a) an application was made under former section 145 or 146 on or before the introduction day; and

(b) the application had not been decided by the commission immediately before the commencement.

(2) The application must be decided under former chapter 3, part 2 as if the amendment Act had not been enacted.

1106 Flow-on applications made after introduction day taken to have been withdrawn

(1) This section applies to an application made after the introduction day under former section 145 or 146.

(2) On the commencement, the application is taken to have been withdrawn.

Division 3 Collective bargaining

1107 Existing negotiations—commission not conciliating or arbitrating

(1) This section applies in relation to negotiations for a proposed bargaining instrument if—

(a) the notice of intention for the negotiations was given before the commencement; and

(b) immediately before the commencement—

(i) the parties had not reached agreement on a proposed bargaining instrument; and

(ii) conciliation of the matter by the commission had not started under former section 175.

(2) From the commencement, new chapter 4 applies in relation to the proposed bargaining instrument, including, for example, for the purposes of—

(a) conducting a ballot in the circumstances mentioned in new section 171(1A); and

(b) conciliation or arbitration of the matter by the commission; and

(c) the making of a scope order in relation to the proposed instrument; and

(d) certification or making of the proposed bargaining instrument; and

(e) the taking of protected industrial action by a negotiating party.

1108 Existing negotiations in conciliation

(1) This section applies in relation to negotiations for a proposed bargaining instrument if—

(a) the notice of intention for the negotiations was given before the commencement; and

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(b) immediately before the commencement—

(i) the parties had not reached agreement on a proposed bargaining instrument; and

(ii) the commission was conciliating the matter under former chapter 4, part 3, division 1.

(2) From the commencement, former chapter 4 continues to apply in relation to the proposed bargaining instrument.

(3) However—

(a) new sections 171(1A) and (3), 173(6), 174A and 176A apply in relation to the proposed bargaining instrument; and

(b) if the matter is referred to arbitration under former section 177 or an application for arbitration is granted by the commission under former section 178—new chapter 4, part 3, division 2 applies for the arbitration; and

(c) new chapter 4, part 5 applies for certifying or making the proposed bargaining instrument; and

(d) if a negotiating party engages in protected industrial action under former chapter 4, part 8—the Minister may terminate the action under new chapter 4, part 8, division 5.

(4) Subsections (2) and (3) do not apply to the extent a scope order is made, after the commencement, under former chapter 4, part 4 for a proposed bargaining instrument (a ***scoped out instrument***) if the employees stated in the scope order—

(a) comprise some, but not all, of the employees in relation to whom the notice of intention mentioned in subsection (1)(a) was given; and

(b) because of the scope order, will not be covered by the proposed bargaining instrument that was the subject of the notice of intention.

(5) New chapter 4 applies in relation to the scoped out instrument.

1109 Existing negotiations in arbitration

(1) This section applies in relation to negotiations for a proposed bargaining instrument if—

(a) the notice of intention for the negotiations was given before the commencement; and

(b) immediately before the commencement—

(i) the parties had not reached agreement on a proposed bargaining instrument; and

(ii) the commission was arbitrating the matter under former chapter 4, part 3, division 2.

(2) From the commencement, former chapter 4, part 3, division 2 continues to apply for the arbitration of the matter.

Note—

See also section 1114 in relation to legal representation for the arbitration.

Division 4 Appointments and proceedings

1110 Vice-president appointed before commencement

(1) This section applies to a person who, immediately before the commencement, held an appointment as vice-president of the court.

(2) The gazette notice by which the person was appointed under former section 418 is taken to be a commission under new section 418.

1111 Deputy-president (court) appointed before commencement

(1) This section applies to a person who, immediately before the commencement, held an appointment as a deputy president (court) of the court.

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(2) The instrument by which the person was appointed under former section 421 is taken to be a commission under new section 421.

1112 Consolidation of proceedings

New section 456A applies in relation to 2 or more proceedings before the commission whether the proceedings were started before or after the commencement.

1113 Punishment of contempt by commission

New section 456B applies in relation to a contempt of the commission committed after the commencement relating to a proceeding before the commission whether the proceeding was started before or after the commencement.

1114 Representation of parties in proceedings

New sections 529 and 530 apply in relation to proceedings mentioned in the sections whether the proceedings were started before or after the commencement.

1115 Dismissal etc. of proceedings

New section 541(2) applies in relation to a proceeding before the court or commission whether the proceeding was started before or after the commencement.

1116 Power to award costs

(1) New section 545 applies in relation to a proceeding before the court or commission only if the proceeding is started after the commencement.

(2) Despite the amendment of section 545 by the amendment Act, former section 545 continues to apply in relation to proceedings before the court or commission that were started before the commencement.

Division 5 Registered organisations

Subdivision 1 Whistleblower protection

1117 Protected disclosures

(1) New chapter 8, part 1A applies in relation to a protected disclosure made after the commencement, whether the disclosable conduct to which the disclosure relates happened before or after the commencement.

(2) However, if a protected disclosure relates to disclosable conduct that happened more than 2 years before the day of the commencement—

(a) for a disclosure made to the registrar under new section 314E—the registrar must take no further action in relation to the disclosable information; or

(b) for a disclosure made to an inspector under new section 314F—the inspector must take no further action in relation to the disclosable information.

(3) If a protected disclosure relates to disclosable conduct that happened before the commencement—

(a) new sections 314G to 314I do not apply in relation to the taking of a reprisal; and

(b) the commission may make an order under new section 314J in relation to a reprisal; and

(c) new section 314K applies in relation to a contravention of an injunctive order under new section 314J(2)(d); and

(d) new section 314L applies in relation to the person who made the disclosure.

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Subdivision 2 Authorised officers

1118 Existing authorities

(1) This section applies to an authority in effect under former section 337 immediately before the commencement.

(2) From the commencement, the authority—

(a) continues in effect as an authorised officer's authority under new chapter 9, part 1, division 2 until the earlier of—

(i) the day that is the end of the term of the authority stated in the authority; or

(ii) 31 December 2027; and

(b) is subject to the conditions to which it was subject immediately before the commencement.

(3) However, the authority may be suspended or revoked, and the commission may impose conditions on the authority, under new chapter 9, part 1, division 2, subdivision 3.

(4) The authority may be renewed under new chapter 9, part 1, division 2, subdivision 4.

(5) This section applies subject to section 1121.

1119 Existing authority suspended—suspension ending before 31 December 2027

(1) This section applies if—

(a) before the commencement, an authority was suspended under former section 338; and

(b) the period of the suspension had not ended before the commencement; and

(c) if the amendment Act had not commenced, the period of the suspension would have ended before 31 December 2027.

(2) From the commencement, the authority continues to be suspended until the end of the period of the suspension.

(3) Section 1118(2) to (4) applies in relation to the authority as if a reference in the section to the commencement were a reference to the day after the period of the suspension ends.

1120 Existing authority suspended—suspension ending on or after 31 December 2027

(1) This section applies if—

(a) before the commencement, an authority was suspended under former section 338; and

(b) the period of the suspension had not ended before the commencement; and

(c) if the amendment Act had not commenced, the period of the suspension would have ended on or after 31 December 2027.

(2) On the commencement, the authority is taken to be revoked.

1121 Existing application for authority

(1) This section applies to an application made, but not decided, under former section 337(1) before the commencement.

(2) The application is taken to be an application under new section 337(1).

(3) Anything done in relation to the application under former section 337 is taken to have been done in relation to the application under new section 337.

(4) If the officer or employee to whom the application relates refuses to give written consent for a request under new section 338C(1), the application is taken to have been withdrawn.

(5) Subsection (4) applies despite new section 338C(4).

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Not authorised—indicative only

1122 Existing application for suspension or revocation of authority

(1) This section applies in relation to an application made, but not decided, under former section 338(1) before the commencement.

(2) From the commencement, former section 338 continues to apply, despite the commencement of the amendment Act, for deciding the application.

(3) Despite former section 338(2)(b), if the commission decides to suspend the authority the period of the suspension must be—

(a) the period mentioned in new section 338F(5); or

(b) if a shorter period is considered appropriate by the commission—the shorter period.

(4) If the commission decides to suspend the authority under former section 338 as it continues to apply under subsection (2), the suspension takes effect as if it were a suspension under new section 338F.

1123 Application of fit and proper person test

For applying new section 338A, the registrar must have regard to the matters mentioned in new section 338A(1) regardless of whether the matters arose before or after the commencement.

1124 Application of new ss 338F and 338G

For applying new sections 338F(5) and 338G(3), a reference in those sections to revocation or suspension of an authority includes a reference to revocation or suspension of an authority under former section 338 before the commencement.

Subdivision 3 Electoral commission exemptions

1125 Existing exemptions under former ch 12, pt 12, div 2

(1) This section applies if, immediately before the commencement, an exemption was in effect under former chapter 12, part 12, division 2.

(2) The exemption continues to apply, as if the amendment Act had not commenced, for the period of 6 months from the day of the commencement.

(3) Subsection (2) does not prevent the exemption otherwise ending under former section 824 before the end of the 6-month period.

1126 Existing application for exemption

(1) This section applies if—

(a) an application was made under former section 812 no later than the introduction day; and

(b) the application had not been decided by the registrar immediately before the commencement.

(2) Also, this section applies if an application is made after the introduction day under former section 812.

(3) On the commencement, the application is taken to have been withdrawn.

Subdivision 4 Other provisions

1127 Application of reporting amendments

New sections 763 and 765 apply in relation to the financial year starting on 1 July 2027 and later financial years.

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Not authorised—indicative only

1128 Application of amendments about costs of elections conducted by electoral commission

New section 677 applies only in relation to an election, or a step in an election, if the information prescribed by regulation for the election under section 669 is filed in the registry after the commencement.

1129 Proceedings for particular repealed offences

(1) This section applies in relation to an offence against a relevant former provision committed by a person before the commencement.

(2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the relevant former provision had not been repealed by the amendment Act.

(3) Subsection (2) applies despite the Criminal Code, section 11.

(4) In this section—

relevant former provision means former section 337(5), 817(1), 818 or 819.

Division 6 Other provisions

1130 Transitional regulation-making power

(1) A regulation (a ***transitional regulation***) may make provision about a matter for which—

(a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition—

(i) from the operation of this Act as in force immediately before the commencement; and

(ii) to the operation of this Act as in force from the commencement; and

(b) this Act does not provide or sufficiently provide.

(2) A transitional regulation may have retrospective operation to a day not earlier than the day this section commences.

(3) A transitional regulation must declare it is a transitional regulation.

1131 Expiry of division and transitional regulation

This division and any transitional regulation under section 1130 expire on the day that is 1 year after the day this section commences.

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Schedule 1 Industrial matters

section 9(3)

1 wages, allowances or remuneration of persons employed, or to be employed, during ordinary working hours, on overtime, on special work or on public holidays

2 a person's entitlements under the Queensland Employment Standards, a modern award, a bargaining award or a certified agreement, unless this Act otherwise provides

3 equal remuneration for work of equal or comparable value

4 whether piecework will be allowed

5 whether employees are to be given particular leave on full pay

6 whether and on what conditions employees may board and lodge with their employers, including where it is necessary for employers to provide the board and lodging at a reasonable standard, where it would be impractical not to

7 whether monetary allowances will be paid by employers to employees for standing back or waiting time caused—

(a) by the conditions of the employer's calling; or

(b) by the intermittent nature of industrial operations; or

(c) otherwise

8 the length of notice to be given by an employer or employee to the other before terminating employment, and wages to be paid or deducted instead of notice

9 occupational superannuation

10 the hours of work, the time to be worked to entitle employees to a particular wage, allowance, remuneration or price, or what time will be taken to be overtime

11 claims to restrict work before or after particular hours

12 providing for shorter hours, higher wages, or other conditions for persons employed under abnormal conditions or in

abnormal workplaces, and deciding what are abnormal conditions or workplaces

13 the age, qualification or status of employees, or the mode and conditions of employment or non-employment, including whether a person should be disqualified for employment

14 employment of young employees or of a person or class of persons, or the disqualification of a person for employment because of age or impairment

15 the number or proportion of aged, impaired or infirm persons or other employees that may be employed by an employer, or the lowest prices or rates payable to them

16 a claim to dismiss or to refuse to employ a particular person or class of person, or whether a particular person or class of person, ought to be continued or reinstated in the employment of a particular employer, considering the public interest, despite common law rights of employers or employees

17 the right to dismiss, or to refuse to employ, reinstate or re-employ a particular person, or class of person, in a particular calling

18 custom or usage about employment conditions, either generally or in a particular calling or locality

19 the interpretation or enforcement of an industrial instrument or a permit, unless this Act otherwise provides

20 the subject matter of an industrial dispute, and a matter that has caused, or the court or commission considers is likely to cause, disagreement or friction between employers and employees

21 what is fair and just, considering the interests of the persons immediately concerned and the community, according to the standard of the average good employer and the average competent and honest employee in all matters relating to the relations of employers and employees, whether or not the relationship of employer and employee exists or existed—

(a) at or before the making of a relevant application to the court or commission; or

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(b) at the making or enforcement of a decision of the court or commission

22 the regulation of relations between employer and employee, or between employees, and to that end the imposition of conditions on—

(a) the conduct of a calling; and

(b) the provision of benefits to persons engaged in a calling

23 a demarcation dispute

24 the authorised payment by an employer of an employee's membership fees of an organisation of employees

25 the surveillance of employees in the workplace

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

27 discrimination in employment, including in remuneration or other employment conditions

28 claims to have protective clothing or appliances, hot or cold water, or sanitary or bathing accommodation provided for the use of employees

29 fixing standards of normal temperatures or atmospheric purity in workplaces, above or below ground

30 balancing work and family responsibilities

31 matters relating to the relationship between employers and organisations

32 payment for all or part of an entitlement to long service leave instead of taking the leave

Schedule 2 Costs provisions for proceedings under Anti-Discrimination Act 1991

section 548

1 Definitions for schedule

In this schedule—

commission, for an appeal to the court under chapter 11, part 6 against a decision of the commission in relation to a proceeding heard by the commission under the *Anti-Discrimination Act 1991*, includes the court.

proceeding means a proceeding mentioned in section 548.

2 Each party usually bears own costs

Other than as provided under this schedule, each party to the proceeding must bear the party's own costs for the proceeding.

3 Limitation for children

(1) The commission must not award costs against a child.

(2) Subsection (1) does not prevent the commission making an order under section 5 of this schedule against a representative of a child.

4 Costs against party in interests of justice

(1) The commission may make an order requiring a party to the proceeding to pay all or a stated part of the costs of another party to the proceeding if the commission considers the interests of justice require it to make the order.

(2) In deciding whether to award costs under subsection (1) the commission may have regard to the following—

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(a) whether a party to the proceeding is acting in a way that unnecessarily disadvantages another party to the proceeding;

(b) the nature and complexity of the proceeding;

(c) the relative strengths of the claims made by each of the parties to the proceeding;

(e) the financial circumstances of the parties to the proceeding;

(f) anything else the commission considers relevant.

5 Costs against representative in interests of justice

(1) If the commission considers a representative of a party to the proceeding, rather than the party, is responsible for unnecessarily disadvantaging another party to the proceeding as mentioned in section 4(2)(a) of this schedule, the commission may make a costs order requiring the representative to pay a stated amount to the other party as compensation for the unnecessary costs.

(2) Before making an order under subsection (1), the commission must give the representative a reasonable opportunity to be heard in relation to making the order.

6 Costs against intervening parties

(1) If the Attorney-General intervenes in the proceeding for the State, the commission may make a costs order requiring the State to pay a stated amount to a party to the proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

(2) If the commission gives leave to a person to intervene in the proceeding, the commission may make a costs order requiring the person to pay a stated amount to a party to the proceeding as compensation for all or a part of the costs reasonably incurred by the party as a result of the intervention.

7 Other power to award costs

The rules may authorise the commission to award costs in other circumstances, including, for example, the payment of costs in the proceeding if an offer to settle the complaint or other matter that is the subject of the proceeding has been made but not accepted.

8 Costs awarded at any stage

If the commission may award costs under a provision of this schedule, the costs may be awarded at any stage of the proceeding or after the proceeding has ended.

9 Fixing or assessing costs

(1) If the commission makes a costs order under a provision of this schedule, the commission must fix the costs if possible.

(2) If it is not possible to fix the costs having regard to the nature of the proceeding, the commission may make an order requiring the costs to be assessed under the rules.

(3) The rules may provide that costs must be assessed by reference to a scale under the rules applying to a court.

10 Staying proceeding

(1) Subsection (2) applies if the commission makes a costs order under a provision of this schedule before the proceeding ends.

(2) The commission may make an order requiring the costs to be paid before it continues with the proceeding.

(3) Subsection (4) applies if a party has been ordered to pay the costs of another party under this schedule, and the party, before paying the costs, starts another proceeding before the commission against the other party.

(4) The commission may make an order staying the other proceeding until the costs are paid.

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11 Security

(1) This section applies if, under a provision of this schedule, the commission may award a party's costs for the proceeding.

(2) On the application of a party (***applicant party***) to the proceeding against whom a claim is made or an outcome or decision sought in the proceeding, the commission may make an order—

(a) requiring another party to the proceeding to give security for the applicant party's costs within the period stated in the order; and

(b) staying the proceeding, or the part of the proceeding against the applicant party, until the security is given.

(3) If the security is not given within the period stated in the order, the commission may make an order dismissing the proceeding, or the part of the proceeding against the applicant party.

(4) In deciding whether to make an order under subsection (1), the commission may have regard to any of the following matters—

(a) the financial circumstances of the parties to the proceeding;

(b) the prospects of success or merits of the proceeding or the part of the proceeding against the applicant party;

(c) the genuineness of the proceeding or the part of the proceeding against the applicant party;

(d) anything else the commission considers relevant.

Schedule 3 Civil penalties

sections 570, definition *relevant industrial tribunal*, 572 and 576

Editor's note—

Schedule 3 incorporates an uncommenced amendment—see 2024 Act No. 40 s 15A(2).

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
Chapter 3—Modern awards			
s 151 (Contravention of modern awards)	(a) an employee to whom the modern award applies (b) an employee organisation of which an employee mentioned in paragraph (a) is a member (c) an inspector	the commission	27 penalty units
Chapter 4—Collective bargaining			
s 176(3) (Commission's role in conciliation)	a person affected by the contravention	the commission	27 penalty units

Not authorised—indicative only

Civil remedy provision	Applicants		Industrial tribunal	Maximum penalty for an individual
s 218 (Contravening bargaining instruments)	(a)	an employee to whom the bargaining instrument applies	the commission	27 penalty units
	(b)	an employee organisation of which an employee mentioned in paragraph (a) is a member		
	(c)	an inspector		
s 234(2) (When industrial action is not protected industrial action)	(a)	an employee whose employment is, or will be, subject to the bargaining instrument	a magistrate	27 penalty units
	(b)	another person covered, or who will be covered, by the instrument		
	(c)	a person prescribed by regulation		

Not authorised—indicative only

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
s 238(1) (Employer must not prejudice employee for engaging in protected industrial action)	(a) the employee concerned (b) an employee organisation of which the employee is a member (c) an inspector (d) a person prescribed by regulation	a magistrate	27 penalty units
s 241E (Contravention of Ministerial direction)	(a) an inspector (b) an employer or employer organisation that is a negotiating party (c) an employee or employee organisation that is a negotiating party	the commission	27 penalty units

Not authorised—indicative only

Not authorised—indicative only

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
s 244(1), (3) and (4) (Coercion)	(a) an employee whose employment is, or will be, subject to the bargaining instrument (b) another person covered, or who will be covered, by the instrument (c) the person who allegedly was intended to be coerced (d) an employee organisation of which the person is a member (e) an inspector (f) a person prescribed by regulation	a magistrate	27 penalty units
Chapter 5—Equal remuneration			

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
s 251(4) (Commission may give directions about wage-related information)	(a) a person affected by the contravention (b) an employee organisation of which a person mentioned in paragraph (a) is a member (c) an employer organisation (d) an inspector	the commission	27 penalty units
Chapter 6—Industrial disputes			
s 264(4) (Compulsory conference)	a person affected by the contravention	the commission	27 penalty units
Chapter 7—Employees bullied in the workplace			
s 276 (Contravening an order to stop bullying)	(a) a person affected by the contravention (b) an industrial organisation entitled to represent the industrial interests of a person mentioned in paragraph (a) (c) an inspector	the commission	90 penalty units

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Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
Chapter 8—Rights and responsibilities of employees, employers, organisations etc.			
ss 285(1) and (2) 287(1) (Coercion), (Protection), 288 (Undue influence or pressure), 289(1) (Misrepresentations), 291 (Protection), 292 (Coercion), 293(1) (Misrepresentations—engaging in industrial activity), 293A(2) (Misrepresentations—right to represent (entity other than organisation)), 293B (Misrepresentations—person ineligible to be member (organisation)), 294(1) (Inducements—membership action), 295(1) (Discrimination), 296(1) (Domestic violence), 297(1) (Temporary absence—illness or injury), 298(1) (Bargaining service fees), 299(1) (Coverage by particular instruments), 300 (Coercion—allocation of duties etc. to particular person),	(a) a person affected by the contravention (b) an industrial organisation entitled to represent the industrial interests of a person mentioned in paragraph (a) (c) an inspector	the commission	90 penalty units

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
302(1) (Misrepresenting employment as independent contracting arrangement), 303 (Dismissing to engage as independent contractor), 304 (Misrepresentation to engage as independent contractor) and 314(2) (Orders on deciding application)			
s 314K (Contravention of injunctive order)	(a) a person affected by the contravention (b) the registrar (c) the chief inspector (d) an inspector	the commission	90 penalty units
Chapter 9—Records and wages			
s 354B(5) (Authority to give information)	(a) a person affected by the contravention (b) an employee organisation of which a person mentioned in paragraph (a) is a member (c) an inspector	the commission	27 penalty units

Not authorised—indicative only

Not authorised—indicative only

Civil remedy provision	Applicants	Industrial tribunal	Maximum penalty for an individual
s 354C(2) (Requirement to give information)	(a) a person affected by the contravention (b) an employee organisation of which a person mentioned in paragraph (a) is a member (c) an inspector	the commission	27 penalty units
Chapter 10A—Independent couriers			
s 406G(1) (Contravening contract instrument)	(a) an independent courier to whom the contract instrument applies (b) an employee organisation or federal organisation of employees of which an independent courier mentioned in paragraph (a) is a member (c) an inspector	the commission	27 penalty units

Schedule 4 Application of Act to prescribed Hospital and Health Services and their employees

section 946

Part 1 Preliminary

1 Definitions for schedule

In this schedule—

chief executive means the chief executive of the department in which the *Hospital and Health Boards Act 2011* is administered.

health service employee see the *Hospital and Health Boards Act 2011*, schedule 2.

health system employer means—

(a) the department in which the *Hospital and Health Boards Act 2011* is administered; or

(b) a prescribed Service.

prescribed Service see the *Hospital and Health Boards Act 2011*, schedule 2.

2 Chief executive to be employer for particular purposes

(1) This section applies to a health service employee employed by a prescribed Service.

(2) For chapters 3 to 6, the chief executive is taken to be the employer of the employee instead of the prescribed Service.

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Part 2 Modification of ch 3—Modern awards

3 Modern award covers prescribed Services and employees

(1) This section applies to modern awards applying to health service employees employed by a prescribed Service.

(2) Despite the chief executive being a party to the modern award, the award covers prescribed Services and their employees.

Part 3 Modification of chapter 4—Collective bargaining

4 How s 174 (Peace obligation period to assist negotiations) applies

(1) This section applies to negotiations between the chief executive and the health service employees employed by a prescribed Service or an employee organisation representing the employees.

(2) For section 174, the prescribed Service has the same obligations as the negotiating parties during the peace obligation period.

5 How s 175 (Application of division) applies

For section 175(1)(b), a prescribed Service is also taken to be a negotiating party if authorised by the chief executive.

6 How s 221 (Who is covered by a bargaining instrument) applies

(1) This section applies to a certified agreement or bargaining award between the chief executive and the health service

employees of the prescribed Services or an employee organisation representing the employees.

(2) For section 221, the certified agreement or bargaining award covers the prescribed Services.

7 How s 222 (Application of bargaining instrument to successor employers) applies

Section 222(2)(b) and (c) apply subject to the modifications contained in this schedule.

Part 4 Modification of chapter 6—Industrial disputes

8 When chief executive taken to be party to industrial dispute

(1) This section applies if section 261(1) applies in relation to a dispute involving a prescribed Service as an employer.

Note—

For the application of this section, it does not matter whether the dispute was started by the prescribed Service.

(2) The prescribed Service must give the chief executive written notice of the dispute—

(a) at the same time as the registrar is first given notice of the dispute under section 261(2) or when the prescribed Service first becomes aware the registrar has been given notice under that section; and

(b) in a way mentioned in section 261(3).

(3) The chief executive is taken to be a party for proceedings for the dispute instead of the prescribed Service unless the chief executive, or an authorised delegate of the chief executive, gives the prescribed Service written notice that the prescribed Service is to be a party to the dispute.

(4) In deciding whether to give a written notice under subsection (3), the chief executive is to have regard to

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whether the subject of the dispute may affect the terms and conditions of employment of health service employees in more than 1 health system employer.

(5) If the prescribed Service is to be a party to the dispute, the prescribed Service must give the commission a copy of the written notice given by the chief executive or authorised delegate under subsection (3) as soon as practicable after receiving the notice.

9 When chief executive may intervene in industrial dispute

(1) This section applies if—

(a) the chief executive has given a prescribed Service written notice under section 8(3) of this schedule that the prescribed Service is to be a party to an industrial dispute; and

(b) during the proceedings the chief executive considers the subject of the dispute may affect the terms and conditions of employment of health service employees in more than 1 health system employer.

(2) The chief executive may intervene in the proceedings.

(3) On intervention, the chief executive becomes a party to the proceedings.

Part 5 Modification of chapter 8—Rights and responsibilities of employees, employers, organisations etc.

10 How s 320 (Matters to be considered in deciding an application) applies

(1) This section applies if the dismissal of a health service employee by a health system employer relates to the employee's conduct, capacity or performance at another health system employer.

(2) For section 320, the commission may decide that a dismissal was not harsh, unjust or unreasonable even though the dismissal related to the employee's conduct, capacity or performance at another health system employer.

Part 6 Modification of other provisions

11 Who makes application to commission as employer

(1) This section applies to a provision of this Act (other than a provision of chapters 3 to 6) under which an application may be made to the commission by an employer about a matter.

(2) If the application relates to health service employees employed by a prescribed Service, the chief executive is taken to be the employer instead of the prescribed Service and may make the application for the matter.

(3) However, the chief executive may give the prescribed Service written notice that the prescribed Service may make the application as the employer.

(4) In deciding whether to give a written notice under subsection (3), the chief executive must have regard to whether the subject of the application may affect the terms and conditions of employment of health service employees in more than 1 health system employer.

(5) If the prescribed Service makes the application, the prescribed Service must give the commission a copy of the chief executive's written notice under subsection (3) when making the application.

12 Who is party to proceedings as employer before commission

(1) This section applies to a proceeding in the commission for a matter (other than a proceeding under chapters 3 to 6) if the proceeding relates to health service employees employed by a prescribed Service.

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(2) The chief executive is taken to be the employer for the proceeding instead of the prescribed Service unless—

(a) the chief executive has given written notice under section 11(3) of this schedule that a prescribed Service may make application for a matter the subject of the proceeding; or

(b) if paragraph (a) does not apply—the chief executive gives the prescribed Service written notice that the prescribed Service is the employer for the proceeding.

(3) In deciding whether to give a written notice under subsection (2)(b), the chief executive must have regard to whether the matter may affect the terms and conditions of employment of health service employees in more than 1 health system employer.

(4) The prescribed Service must give the commission a copy of the chief executive's written notice under subsection (2)(b) as soon as practicable after receiving the notice.

13 Commission's orders may bind prescribed Services even if chief executive is taken to be employer or party for proceeding

(1) This section applies to a proceeding before the commission if the chief executive is a party to the proceeding because the chief executive is taken to be the employer of health service employees instead of a prescribed Service.

(2) The commission may make orders, give directions or do anything else it may do under this Act in relation to the prescribed Service as if the prescribed Service was a party to the proceeding.

(3) Subsection (2) does not limit the orders, directions or other action the commission may take in relation to the chief executive.

Schedule 5 Dictionary

section 6

act, for chapter 12, part 13, see section 826.

action, for chapter 8, part 1, includes omission.

administer, for chapter 11, part 5, see section 525.

administrator, for an organisation or a branch of an organisation, means an administrator appointed for the organisation or branch under section 870.

adoption leave, for chapter 2, part 3, division 8, see section 57.

adverse action, for chapter 8, part 1, see section 282.

amalgamated organisation, for chapter 12, part 14, see section 838.

amalgamation, for chapter 12, see section 595.

amalgamation ballot, for chapter 12, part 14, see section 838.

amalgamation day, for chapter 12, part 14, see section 838.

applicable industrial instrument, for chapter 2, see section 14.

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

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

applies to—

(a) in relation to a modern award, see section 153; or

(b) in relation to a bargaining instrument, see section 220; or

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

apprentice see the *Further Education and Training Act 2014*, schedule 1.

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apprenticeship see the *Further Education and Training Act 2014*, schedule 1.

apprenticeship contract see the *Further Education and Training Act 2014*, schedule 1.

approved auditor, for chapter 12, see section 595.

approved form means a form approved by the rules committee or chief executive under section 989.

approved superannuation fund means a complying superannuation fund nominated in an industrial instrument.

approving authority means the chief executive (training).

arbitration determination see section 168.

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

attachment notice, for chapter 9, part 2, see section 355.

attendance notice means a notice in the approved form issued by the court, the commission, an Industrial Magistrates Court or the registrar requiring a person to attend at a stated time and place until excused, for 1 or more of the following—

(a) to give evidence;

(b) to produce a stated document or thing;

(c) another purpose specified in the notice.

audit complaint report, for chapter 12, part 15, see section 866.

auditor, for chapter 12, see section 595.

audit report, for chapter 12, means a report prepared under section 768.

Australian commission means FWC.

authorised officer, for chapter 9, part 1, see section 336.

authorised officer's authority, for chapter 9, part 1, see section 336.

award—

(a) generally, means—

(i) a modern award; or

(ii) a bargaining award; or

(iii) an award continued in force under this Act; and

(b) for chapter 4, part 5, division 3—includes a federal award.

ballot records, for chapter 12, see section 595.

bargaining award see section 166.

bargaining instrument see section 168.

birth-related leave, for chapter 2, part 3, division 8, see section 57.

board member officer means an officer of an organisation who is a board member officer under section 745(1)(c).

branch, for chapter 12, see section 595.

bullied in the workplace, for chapter 7, see section 272.

business hours of an employer means the hours of operation of the employer's business.

calling means—

(a) a craft, manufacture, occupation, trade, undertaking or vocation; or

(b) a section of something mentioned in paragraph (a).

candidate, for chapter 12, part 9, see section 702.

carer's leave, for chapter 2, part 3, division 6, subdivision 2, see section 42, 43 or 44.

casual employee, for chapter 2, part 3, division 9, subdivision 6, see section 102.

casual vacancy, for chapter 12, see section 595.

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

certified, in relation to a document, for chapter 12, see section 595.

certified agreement see section 164.

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chief executive, for schedule 4, see schedule 4, section 1.

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

chief executive (training) means the chief executive of the department in which the *Further Education and Training Act 2014* is administered.

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

civil penalty order, for chapter 11, part 8, see section 574(2).

civil penalty provision see section 570.

civil remedy provision, for chapter 11, part 3, division 4, see section 507B.

claimant, for chapter 10, part 3, division 2, see section 403.

claim for wages means a claim—

(a) for an employee's wages payable under an industrial instrument or permit or under section 22; or

(b) for an employee's wages payable under an agreement in which wages are payable at a price or rate higher than that fixed by a relevant industrial instrument or permit; or

(c) for an employee's wages payable under an agreement in which wages are payable at a price or rate that is not fixed by a relevant industrial instrument or permit; or

(d) for amounts payable, with an employee's written consent, from an employee's wages; or

(e) under chapter 9, part 2, division 2; or

(f) for amounts payable for a tool allowance under section 137; or

(g) for damages for contravention of an agreement made under an industrial instrument; or

(h) for damages suffered by an employee because the employer fails to pay the employee's wages; or

(i) for compensation under section 121.

collective body, for chapter 12, part 13, see section 826.

collegiate electoral system, for chapter 12, part 4, see section 626.

commission—

(a) generally—see section 429; or

(b) for schedule 2—see schedule 2, section 1.

commissioner see section 432(1)(b).

committee meeting, for chapter 12, see section 595.

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

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

complaints auditor, for chapter 12, part 15, division 2, see section 866(2).

complying superannuation fund see the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

conciliating member, for chapter 4, see section 177.

constituent part, for chapter 12, part 14, see section 838.

construction means building and construction, civil and engineering construction or demolition work.

consultative committee, for chapter 17, part 1, see section 968.

continuous service, for chapter 2, part 3, division 9, see section 93.

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

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

contracted work, for chapter 9, part 2, see section 355.

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

convicted of a disqualifying offence, for chapter 12, part 9, see section 702.

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convicted person, for chapter 12, part 9, see section 702.

corporation, for chapter 12, see section 596.

counterpart federal body, for chapter 12, see section 597.

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

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

court see section 407.

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.

cultural parent for chapter 2, part 3, division 8, see section 57.

cultural parent leave for chapter 2, part 3, division 8, see section 57.

cultural recognition order for chapter 2, part 3, division 8, see section 57.

decision means—

(a) a decision of the court, the commission, a magistrate or the registrar; or

(b) an award, declaration, determination, direction, judgment, order or ruling; or

(c) an agreement approved, certified, or amended by the commission and an extension of the agreement; or

(d) a bargaining award made or amended by the commission.

declared employee, for chapter 16, part 2, see section 957.

declared employer, for chapter 16, part 2, see section 957.

defect, for chapter 12, see section 595.

demarcation dispute includes—

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

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

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

demarcation dispute undertaking, for chapter 12, see section 595.

deputy president means—

(a) a deputy president (court); or

(b) a person appointed as a deputy president of the commission under section 441.

deputy president (court) means a person appointed as a deputy president (court) of the court under section 421.

deputy registrar see section 508(2)(b).

deregistered organisation, for chapter 12, see section 595.

deregistration, for chapter 12, see section 595.

deregistration order, for chapter 12, part 16, see section 878.

designated award, for chapter 4, see section 168.

designated officer, of a reporting unit, for chapter 12, see section 753(1).

detriment, for chapter 8, part 1A, see section 314C.

direct ballot agreement, for chapter 4, see section 174A(3).

direct voting system, for chapter 12, part 4, see section 627.

disclosable conduct, for chapter 8, part 1A, see section 314C.

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discloser, for a protected disclosure, for chapter 8, part 1A, see section 314D(1).

disclosure notice, for chapter 12, see section 716(2).

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

dispute, for chapter 6, see section 260.

disqualification period, for chapter 12, part 9, see section 709(1).

disqualifying offence, for chapter 12, part 9, see section 702.

domestic violence has the meaning given by the *Domestic and Family Violence Protection Act 2012*.

dual commissioner see section 492.

elected, for chapter 12, part 9, see section 702.

election, for chapter 12, see section 595.

electoral commission, for chapter 12, see section 595.

electoral officer, for chapter 12, see section 595.

eligibility rules, for chapter 12, see section 595.

eligible employee means an employee who, under a relevant industrial instrument, is an eligible employee for entitlement to occupational superannuation benefits.

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

eligible rollover fund see the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

employee, generally, see section 8.

employee organisation means an organisation of employees.

employee with a disability means an employee who—

(a) is qualified for a disability support pension under the *Social Security Act 1991* (Cwlth), section 94 or 95; or

(b) would be qualified for a disability support pension but for section 94(1)(e) or 95(1)(c) of that Act.

employer—

(a) generally—see section 7; and

(b) for chapter 4—see section 168; and

(c) for chapter 9, part 2—see also section 355.

employer organisation means an organisation of employers.

engages in industrial activity, for chapter 8, part 1, see section 290.

equal remuneration for work of equal or comparable value means equal remuneration for male and female employees for work of equal or comparable value.

exercising, for chapter 11, part 5, see section 525.

existing organisation, for chapter 12, part 14, see section 838.

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

expected residence date see section 66(2)(a).

fair work claim see section 507B.

family responsibilities of an employee means the employee's responsibilities to care for or support—

(a) a dependent child of the employee; or

(b) any other immediate family member who is in need of care or support.

federal agreement means—

(a) an enterprise agreement or an individual flexibility arrangement under the Commonwealth Fair Work Act; or

(b) an Australian workplace agreement, or a certified agreement, under the repealed *Workplace Relations Act 1996* (Cwlth) continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

federal award means—

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(a) a modern award under the Commonwealth Fair Work Act; or

(b) an award under the repealed *Workplace Relations Act 1996* (Cwlth) continued in existence under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

federal industrial authority, for chapter 16, part 2, see section 957.

federal industrial instrument means—

(a) a fair work instrument under the Commonwealth Fair Work Act; or

(b) an instrument given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2; or

(c) a Division 2B State instrument under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

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

fee, for chapter 10, see section 397.

file, for chapter 12, see section 595.

financial hardship payment, for chapter 12, see section 595.

financial records, for chapter 12, see section 595.

financial year, for chapter 12, see section 598.

finder's fee, for chapter 10, see section 397.

fixed rate, for chapter 9, part 2, division 3, see section 370.

full bench see section 432(2).

full pay means payment in full for the time an employee is absent from work.

FWC means the Fair Work Commission under the Commonwealth Fair Work Act.

general meeting, for chapter 12, see section 595.

general purpose financial report, for chapter 12, see section 595.

group of employees, for chapter 4, see section 168.

group training organisation see the *Further Education and Training Act 2014*, schedule 1.

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.

health service employee, for schedule 4, see schedule 4, section 1.

health service employer, for schedule 4, see schedule 4, section 1.

highest paid officer means an officer of an organisation who is 1 of the organisation's highest paid officers under section 745(1)(a) or (b).

host employer means a person who contracts with a group training organisation for the training of apprentices and trainees.

identity card, for chapter 13, see section 898.

immediate family includes—

(a) the employee's spouse; and

(b) a child, ex-nuptial child, stepchild, adopted child, foster child, ex-foster child, parent, grandparent, grandchild or sibling of the employee or employee's spouse.

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

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

industrial action means a lockout or strike.

industrial authority means a commission, court, board, tribunal or other entity having authority under the law of the Commonwealth or another State to exercise powers of

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conciliation, determination or arbitration for industrial matters or industrial disputes.

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 commissioner means a person appointed as an industrial commissioner under section 442.

industrial conduct ground, for chapter 12, part 16, see section 877.

industrial dispute means—

(a) a dispute, including a threatened or probable dispute, about an industrial matter; or

(b) a situation that is likely to give rise to a dispute about an industrial matter.

industrial instrument means—

(a) an award; or

(b) a certified agreement; or

(c) an arbitration determination; or

(d) an order under chapter 2, part 5 or 6.

industrial instrument employee for chapter 9, part 1, see section 336.

industrial law means—

(a) this Act; or

(b) another Act regulating the relationships between employers and employees.

industrial matter see section 9.

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).

industrial relations commission means the Queensland Industrial Relations Commission established under section 429.

industrial tribunal, for chapter 11, part 5, division 5A, for an unpaid amount claim, see section 547B.

industrial tribunal, for chapter 11, part 6, division 5, see section 563.

inspector means a person, including the chief inspector, who holds an appointment as an inspector under section 899.

intended cultural parent for chapter 2, part 3, division 8, see section 57.

intended parent, for chapter 2, part 3, division 8, see section 57.

invalidity, for chapter 12, part 13, see section 826.

investigation report, for chapter 12, part 15, see section 865.

invited representative, for chapter 17, part 1, see section 974.

irregularity, for chapter 12, see section 595.

joint session means proceedings in which a member sits with a member of an industrial authority.

labour market program means a labour market program approved by the Minister.

late term pregnancy leave, for chapter 2, part 3, division 8, see section 85AA(1).

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LGAQ Ltd., for chapter 17, part 1 means the LGAQ Ltd. under the *Local Government Act 2009*, section 287(2).

loans, grants and donations register, for chapter 12, part 11, see section 731.

lockout means an employer's action in closing a workplace, or suspending or discontinuing the employer's business, or any branch of it, or an employer's failure to continue to employ a number of employees, with intent—

(a) to compel or induce employees to agree to employment conditions or to comply with demands made on them by the employer, or another employer, contrary to this Act; or

(b) to cause loss or inconvenience to employees; or

(c) to incite, instigate, aid, abet or procure another lockout; or

(d) to help another employer to compel or induce employees to agree to employment conditions or comply with demands made by the other employer.

long adoption leave, for chapter 2, part 3, division 8, see section 57.

long birth-related leave, for chapter 2, part 3, division 8, see section 57.

long cultural parent leave for chapter 2, part 3, division 8, see section 57.

long parental leave, for chapter 2, part 3, division 8, see section 57.

long surrogacy leave, for chapter 2, part 3, division 8, see section 57.

long term casual employee, for chapter 2, see section 15.

magistrate see section 505.

management committee, for chapter 12, see section 595.

manager, for chapter 10, see section 399.

maximum period of parental leave, for chapter 2, part 3, see section 62.

meat works means a place where livestock are slaughtered or meat is boned.

member—

(a) of the court means the president, the vice-president or a deputy president (court); or

(b) of the commission means a commissioner.

member employee, for chapter 9, part 1, division 5, subdivision 2, see section 349.

members, for chapter 12, part 16, see section 877.

membership subscription, for chapter 12, see section 595.

member's liability, for chapter 12, part 10, division 5, see section 728.

members register, for chapter 12, see section 595.

misconduct, of an officer of an organisation or a branch of an organisation, means—

(a) conduct that could, if proved, constitute an offence against an Act or a law of another State or the Commonwealth; or

(b) gross misbehaviour or gross neglect of duty in the office.

model, for chapter 10, see section 397.

model election rules, for chapter 12, see section 595.

modern award means—

(a) an award made under chapter 3; or

(b) an award taken to have been made under section 229.

multi-employer, for chapter 4, see section 168.

multi-employer agreement, for chapter 4, see section 168.

national fair work legislation, for chapter 16, part 2, see section 957.

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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.

new business means the ongoing operation, once established, of a single business the employer—

(a) proposes to establish at a new workplace; or

(b) is establishing at a new workplace; or

(c) is relocating to a new workplace;

but does not include the construction of the new workplace.

newly registered organisation, for chapter 12, part 14, see section 838.

new State instrument, for chapter 16, part 2, see section 957.

non-approving party, in relation to a direct ballot agreement, for chapter 4, see section 174A(5).

non-industrial instrument employee, for chapter 9, part 1, see section 336.

notice of intention, for chapter 4, see section 169.

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

obstruct includes assault, hinder, intimidate, resist and threaten to obstruct.

occupier, for chapter 13, see section 898.

office, for chapter 12, see section 599.

officer, for chapter 12, see section 595.

officers register, for chapter 12, see section 595.

old federal instrument, for chapter 16, part 2, see section 957.

ordinary election, for chapter 12, see section 595.

ordinary hours of work for chapter 2, see section 14.

ordinary rate, for an employee under an industrial instrument, federal award or federal agreement, means—

(a) for sections 35(2)(a) and 98(1)(b), if the employee is a public service employee—the rate the instrument, award or agreement states is payable for ordinary time in relation to the employee's substantive position; or

(b) otherwise—the rate the instrument, award or agreement states is payable for ordinary time.

ordinary working day, for chapter 2, part 3, division 10, see section 115.

organisation means a body registered under chapter 12 as an organisation.

outworker means a person engaged, for someone else's calling or business, in or about a private residence or other premises that are not necessarily business or commercial premises, to—

(a) pack, process, or work on articles or material; or

(b) carry out clerical work.

owner, for chapter 2, part 3, division 9, see section 93.

parental leave, for chapter 2, part 3, division 8, see section 57.

part 5 application, for chapter 4, see section 168.

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.

pay an employee includes pay, with the employee's written consent, on account of the employee.

peace obligation period, for chapter 4, see section 174(2).

pensions Act means the *Judges (Pensions and Long Leave) Act 1957*.

performer, for chapter 10, see section 397.

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period between seasons, for chapter 2, part 3, division 9, see section 93.

permit means—

(a) a students permit; or

(b) an aged or infirm persons permit.

pieceworker means a person employed in a calling on piecework rates.

place—

(a) generally, means—

(i) any land, building, structure, vehicle, vessel or aircraft; or

(ii) any part of a thing mentioned in subparagraph (i); and

(b) for chapter 13—see section 898.

postal ballot, for chapter 12, see section 595.

premises, for chapter 13, see section 898.

prescribed Service, for schedule 4, see schedule 4, section 1.

president, for chapter 12, see section 595.

presidential member means the president, the vice president or a deputy president.

prime contractor, for chapter 9, part 2, see section 355.

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

private employment agent, for chapter 10, see section 398.

probationary period, for chapter 2, part 5, see the *Further Education and Training Act 2014*, schedule 1.

proceeding, for schedule 2, see schedule 2, section 1.

process or proceedings under an industrial law or industrial instrument, for chapter 8, part 1, see section 283.

project, for chapter 4, see section 168.

project agreement, for chapter 4, see section 168.

promotion decision see the *Public Sector Act 2022*, section 129.

proposed amalgamated organisation, for chapter 12, part 14, see section 838.

proposed bargaining instrument, for chapter 4, see section 168.

proposed deregistering organisation, for chapter 12, part 14, see section 838.

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

protected disclosure, for chapter 8, part 1A, see section 314D.

protected industrial action, for chapter 4, part 8, see section 233(1).

public holiday means—

(a) the following days—

- New Year's Day (1 January)
- Australia Day (26 January)
- Good Friday
- Easter Saturday (the day after Good Friday)
- Easter Sunday (the Sunday after Good Friday)
- Easter Monday (the Monday after Good Friday)
- Anzac Day (25 April)
- Labour Day (the first Monday in May)
- Birthday of the Sovereign (the first Monday in October)
- Christmas Day (25 December)
- Boxing Day (26 December)
- another day appointed as a public holiday under the *Holidays Act 1983*, sections 2 and 11 to 15; or

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(b) a day appointed under the *Holidays Act 1983* to be a substitute holiday for a day mentioned in paragraph (a); or

(c) a show holiday; or

(d) for working out a person's entitlements under this Act or an industrial instrument—the part-day that is a public holiday under the *Holidays Act 1983*, section 2(3).

public place, for chapter 13, see section 898.

Public Sector Commissioner means the Public Sector Commissioner appointed under the *Public Sector Act 2022*, section 212(1).

public service appeal means an appeal against a decision under the *Public Sector Act 2022*, chapter 3, part 10.

publish, for chapter 10, see section 397.

published, in relation to the QIRC website, means published as provided under section 524.

QIRC website see section 523.

Queensland Employment Standards see section 21(3).

Queensland Human Rights Commission means the Queensland Human Rights Commission established under the *Anti-Discrimination Act 1991*.

Queensland minimum wage means the wage declared by the full bench under section 458 to be the Queensland minimum wage.

Queensland referral Act, for chapter 1, part 3, see section 11.

rate, for chapter 9, part 2, division 3, see section 370.

record means any document containing data.

reduced wages means—

(a) for a person to whom an industrial instrument or permit applies—wages at a rate less than that provided for under the industrial instrument or permit; or

(b) for a person to whom section 22 applies—wages at a rate less than the Queensland minimum wage.

redundancy pay see section 126(1).

referral agreement see section 470(1)(b).

register, for chapter 12, see section 595.

registrar see section 508(2)(a).

registrar's auditor, for chapter 12, part 11, see section 799.

registration, for chapter 12, see section 595.

registry see section 508(1).

regular part-time employee means an employee who—

(a) works less than full-time ordinary working hours; and

(b) has reasonably predictable hours of work; and

(c) is entitled to receive, on a proportionate basis, equivalent wages and employment conditions to those specified in an industrial instrument for full-time employees who do the same type of work.

relevant award, for chapter 4, see section 168.

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

relevant day, for chapter 16, part 2, see section 957.

relevant employee, for chapter 4, see section 168.

relevant employee organisation—

(a) for chapter 4, see section 168; or

(b) for chapter 10A, see section 406A.

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

relevant industrial instrument, for chapter 2, see section 14.

relevant industrial tribunal, for chapter 11, part 8, see section 570.

relevant instrument, for chapter 3, part 6, see section 158.

relevant member, for chapter 11, part 1, division 1, see section 584.

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remuneration for a provision relating to work of equal or comparable value, includes—

(a) the wage or salary payable to an employee; and

(b) amounts payable or other benefits made available to an employee under a contract of employment.

remuneration register, for chapter 12, part 11, see section 731.

repealed Act means the repealed *Industrial Relations Act 1999*.

reporting unit, for chapter 12, see section 595.

reporting unit's organisation, for chapter 12, see section 595.

reprisal, for chapter 8, part 1A, see section 314C.

required number, for chapter 12, see section 595.

rules application, for chapter 12, see section 646.

rules committee means the rules committee established under section 550.

school-based apprentice or trainee means an apprentice or trainee who—

(a) is a student studying at a secondary school or tertiary institution; and

(b) has entered into an arrangement about the apprenticeship or traineeship with the school or institution and the employer.

scope order—

(a) for chapter 4, see section 184(1); or

(b) for chapter 10A, see section 406ZB(1).

season, for chapter 2, part 3, division 9, see section 93.

seasonal employment means employment related to a season.

secretary, for chapter 12, see section 595.

service, for chapter 2, part 4, see section 130.

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—

(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).

short adoption leave, for chapter 2, part 3, division 8, see section 57.

short birth-related leave, for chapter 2, part 3, division 8, see section 57.

short cultural parent leave for chapter 2, part 3, division 8, see section 57.

short parental leave, for chapter 2, part 3, division 8, see section 57.

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short surrogacy leave, for chapter 2, part 3, division 8, see section 57.

short term casual employee, for chapter 2, see section 14.

show cause notice, for chapter 6, see section 265(7).

show holiday, for chapter 2, part 3, division 10, see section 115.

small organisation, for chapter 12, part 16, see section 877.

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

spouse, of an employee, includes a former spouse of the employee.

State peak council means an association that is effectively representative of a significant number of organisations that represent employers or employees in a range of callings.

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

strike—

1 *Strike* means the conduct of 2 or more employees employed or formerly employed by an employer, if—

(a) the conduct is any of the following—

(i) a wilful failure to perform work required under the employees' contracts of employment;

(ii) the performance of work by the employees in a way that it is not customarily performed;

(iii) the adoption of a practice or strategy by the employees resulting in a restriction, limitation or delay in the performance of work or a restriction or limitation of the product of work;

(iv) a ban, restriction or limitation on the performance of work or accepting or offering work;

(v) a wilful failure of the employees to attend work that is not allowed by the employer;

(vi) a wilful failure of the employees to perform work in a way that is not allowed by the employer; and

(b) the conduct occurs because of a combination, agreement or understanding, express or implied, entered into by the employees for any of the following purposes—

(i) to compel or induce an employer to agree to employment conditions;

(ii) to compel or induce an employer to employ or stop employing a person or class of persons;

(iii) to compel or induce an employer to comply with demands made by the employees or any other employee;

(iv) to help employees in the employment of another employer to compel or induce the other employer in a way mentioned in subparagraph (i), (ii) or (iii);

(v) to cause loss or inconvenience to an employer in the conduct of business;

(vi) to incite, instigate, aid, abet or procure another strike.

2 Also, *strike* includes conduct capable of constituting a strike under paragraph (a) even though the conduct relates to only part of the functions the employees must perform in their employment.

3 However, *strike* does not include action by an employee if—

(a) the action was based on a reasonable concern by the employee about an imminent risk to the employee's health or safety; and

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(b) the employee did not unreasonably contravene a direction of the employee's employer to perform other available work at the employee's workplace, or another workplace, that was safe and appropriate for the employee to perform.

subcontractor, for chapter 9, part 2, see section 355.

successor includes assignee and transmittee.

surrogacy arrangement, for chapter 2, part 3, division 8, see section 57.

surrogacy leave, for chapter 2, part 3, division 8, see section 57.

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

take, for chapter 11, part 5, see section 525.

terms, for chapter 16, part 2, see section 957.

time and wages record—

(a) for chapter 9, part 1, see section 336; or

(b) for chapter 9, part 1, division 5, subdivision 2, see section 349.

trainee see the *Further Education and Training Act 2014*, schedule 1.

traineeship see the *Further Education and Training Act 2014*, schedule 1.

traineeship contract see the *Further Education and Training Act 2014*, schedule 1.

training contract means—

(a) for an apprentice—an apprenticeship contract; or

(b) for a trainee—a traineeship contract.

transfer of a calling includes the transmission, assurance, conveyance, assignment or succession of the calling—

(a) either by—

(i) operation of law; or

(ii) agreement, including an agreement effected by a third person; and

(b) either before or after the commencement of this Act.

transferred employee, for chapter 2, part 4, see section 132(1).

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

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

unpaid amount claim see section 547B.

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.

vice-president means the person appointed as the vice-president of the court under section 418.

violent offence, for chapter 9, part 1, division 2 and chapter 12, part 9, see section 702.

wage rate includes pay rate and prices for work.

wage-related information, for chapter 5, see section 246.

wages means—

(a) an amount payable to an employee for—

(i) work performed, or to be performed, by the employee; or

(ii) a public holiday; or

(iii) leave the employee is entitled to; or

(iv) termination of employment; or

(b) a salary; or

(c) an amount payable from wages for the employee, with the employee's written consent.

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weeks pay means the ordinary rate for the relevant employee for a week, but does not include overtime, penalty rates, disability allowances, shift allowances, special rates, fares and travelling time allowances, bonuses and other ancillary payments.

withdrawal, for chapter 12, see section 595.

withdrawal ballot, for chapter 12, part 14, see section 838.

withdrawal day, for chapter 12, part 14, see section 838.

working day means a day on which employees normally perform work.

work seeker, for chapter 10, see section 400(1) or (2).

workplace right, for chapter 8, part 11, see section 284.

young employee means a person under 21 years engaged in a calling (other than an apprentice or a person subject to the *Further Education and Training Act 2014*) who receives a lower wage rate than that fixed by an industrial instrument for employees 21 years or over in the calling.