



Workplace Relations and Other Legislation Amendment Act 1996

No. 60, 1996

**An Act to amend the *Industrial Relations Act 1988*,
and for other purposes**

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Workplace Relations and Other Legislation Amendment Act 1996

No. 60, 1996

An Act to amend the *Industrial Relations Act 1988*, and for other purposes

[Assented to 25 November 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Workplace Relations and Other
Legislation Amendment Act 1996*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), the items of the Schedules, other than Schedule 5, item 1 of Schedule 9, item 90 of Schedule 16 and the items of Schedules 12 and 19, commence on a day or days to be fixed by Proclamation.
 - (3) If an item of a Schedule does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
 - (4) Schedule 5 commences on 1 January 1997.
 - (5) Item 1 of Schedule 9 is taken to have commenced immediately before item 19 of Schedule 8 commences.
 - (6) Item 1 of Schedule 12 commences immediately after the commencement of item 3 of Schedule 10.
 - (7) If item 41 of Schedule 5 and item 3 of Schedule 6 commence on the same day, item 3 of Schedule 6 commences immediately after item 41 of Schedule 5.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Definition

In a Schedule to this Act, unless the contrary intention appears:

Workplace Relations Act means:

- (a) so far as the context relates to a time before the day on which this Act receives the Royal Assent—the *Industrial Relations Act 1988* as in force at that time; or
- (b) otherwise—the *Workplace Relations Act 1996*.

Note: Schedule 19 to this Act changes the short title of the *Industrial Relations Act 1988* to the *Workplace Relations Act 1996*.

Schedule 1—The principal object of the Workplace Relations Act 1996

Workplace Relations Act 1996

1 Section 3

Repeal the section, substitute:

3 Principal object of this Act

The principal object of this Act is to provide a framework for cooperative workplace relations which promotes the economic prosperity and welfare of the people of Australia by:

- (a) encouraging the pursuit of high employment, improved living standards, low inflation and international competitiveness through higher productivity and a flexible and fair labour market; and
- (b) ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and employees at the workplace or enterprise level; and
- (c) enabling employers and employees to choose the most appropriate form of agreement for their particular circumstances, whether or not that form is provided for by this Act; and
- (d) providing the means:
 - (i) for wages and conditions of employment to be determined as far as possible by the agreement of employers and employees at the workplace or enterprise level, upon a foundation of minimum standards; and
 - (ii) to ensure the maintenance of an effective award safety net of fair and enforceable minimum wages and conditions of employment; and
- (e) providing a framework of rights and responsibilities for employers and employees, and their organisations, which supports fair and effective agreement-making and ensures that they abide by awards and agreements applying to them; and
- (f) ensuring freedom of association, including the rights of employees and employers to join an organisation or association of their choice, or not to join an organisation or association; and

Schedule 1 The principal object of the Workplace Relations Act 1996

- (g) ensuring that employee and employer organisations registered under this Act are representative of and accountable to their members, and are able to operate effectively; and
- (h) enabling the Commission to prevent and settle industrial disputes as far as possible by conciliation and, where appropriate and within specified limits, by arbitration; and
- (i) assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers; and
- (j) respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; and
- (k) assisting in giving effect to Australia's international obligations in relation to labour standards.

Schedule 2—Panels of the Commission

Workplace Relations Act 1996

1 Subsection 4(1) (definition of *relevant Presidential Member*)

Omit “is a member”, substitute “has been given the responsibility by the President for organising and allocating the work”.

2 At the end of section 36

Add:

- (2) When exercising powers under this section and section 37, the President must have regard to the improved:

- (a) efficiency of the Commission; and
- (b) cooperation between the Commission and State industrial authorities;

that may be achieved by the Commission’s powers and functions being exercised and performed, in relation to a particular matter, by members of State industrial authorities who hold secondary offices as members of the Commission.

- (3) If application is made under section 111AAA for the Commission to cease dealing with the whole or part of an industrial dispute in relation to particular employees, the President must give consideration to arranging for the matter to be heard by a member of a State industrial authority who holds a secondary office as a member of the Commission or, if the application is to be heard by a Full Bench, by a Full Bench which includes such a member.

3 Subsections 37(1) and (2)

Repeal the subsections, substitute:

- (1) The President may assign an industry or group of industries to a panel of members of the Commission consisting of at least one Presidential Member and at least one Commissioner and, subject to this Act and any direction of the President, the powers of the Commission in relation to that industry (other than powers exercisable by a Full Bench) shall, as far as practicable, be exercised by a member or members of the panel.

Schedule 2 Panels of the Commission

- (1A) Even though an industry has been assigned to a panel, the President may direct that the powers of the Commission in relation to a particular matter relating to that industry are to be exercised by:
 - (a) a member of the Commission who is not a member of that panel; or
 - (b) members of the Commission, some or all of whom are not members of that panel.
- (2) If more than one Presidential Member is assigned to a panel, the President must nominate one of the Presidential Members to organise and allocate the work of the panel.

Schedule 3—The Employment Advocate

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

authorised officer means an authorised officer appointed under Part IVA.

Employment Advocate means the Employment Advocate referred to in Part IVA.

2 After Part IV

Insert:

Part IVA—The Employment Advocate

Division 1—Functions, powers etc. of the Employment Advocate

83BA The Employment Advocate

There is to be an Employment Advocate.

83BB Functions

- (1) The Employment Advocate has the following functions:
 - (a) providing assistance and advice to employees about their rights and obligations under this Act;
 - (b) providing assistance and advice to employers (especially employers in small business) about their rights and obligations under this Act;
 - (c) providing advice to employers and employees, in connection with AWAs, about the relevant award and statutory entitlements and about the relevant provisions of this Act;
 - (d) performing functions under Part VID, including functions relating to the filing and approval of AWAs and ancillary documents;
 - (e) investigating alleged breaches of AWAs, alleged contraventions of Part VID and any other complaints relating to AWAs;
 - (f) investigating contraventions of Part XA;

- (g) providing free legal representation to a party in a proceeding under Part VID or Part XA, if the Employment Advocate considers this would promote the enforcement of the provisions of those Parts;
 - (h) providing aggregated statistical information to the Minister;
 - (i) any other functions given to the Employment Advocate by this Act or any other Act;
 - (j) any other functions prescribed by the regulations.
- (2) In performing his or her functions, the Employment Advocate must have particular regard to:
- (a) the needs of workers in a disadvantaged bargaining position (for example: women, people from a non-English speaking background, young people, apprentices, trainees and outworkers); and
 - (b) assisting workers to balance work and family responsibilities; and
 - (c) promoting better work and management practices through Australian workplace agreements.

83BC Minister's directions to Employment Advocate

- (1) The Minister may, by notice published in the *Gazette*, give directions specifying the manner in which the Employment Advocate must exercise or perform the powers or functions of Employment Advocate (other than powers or functions relating to the approval of AWAs and ancillary documents).
- (2) The Employment Advocate must comply with the directions.
- (3) A direction by the Minister is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

83BD Staff

The staff necessary to assist the Employment Advocate are to be persons appointed or employed under the *Public Service Act 1922* and made available for the purpose by the Secretary to the Department.

83BE Delegation by Employment Advocate

- (1) The Employment Advocate may, by instrument in writing, delegate any of the Employment Advocate's powers or functions to:

- (a) a person who is appointed or employed by the Commonwealth; or
 - (b) a person who is appointed or employed by a State or Territory.
- (2) The Employment Advocate's functions under Part VID relating to the approval of AWAs and ancillary documents can only be delegated to a member of the staff referred to in section 83BD.
 - (3) The Employment Advocate may, by written instrument, delegate a function referred to in paragraph 83BB(a), (b) or (c) to any person.
 - (4) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Employment Advocate.

83BF Annual report

- (1) As soon as practicable after the end of each financial year, the Employment Advocate must prepare and give to the Minister a report on the operations of the Employment Advocate during that year.
- (2) The report must include details of directions given by the Minister during the financial year under section 83BC.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament.

Division 2—Authorised officers

83BG Appointment of authorised officers

- (1) The Employment Advocate may, by instrument in writing, appoint as an authorised officer:
 - (a) a person who is appointed or employed by the Commonwealth; or
 - (b) a person who is appointed or employed by a State or Territory.
- (2) In exercising powers or performing functions as an authorised officer, an authorised officer must comply with any directions of the Employment Advocate.
- (3) The Employment Advocate must issue to an authorised officer an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the authorised officer.

Schedule 3 The Employment Advocate

- (4) If a person to whom an identity card has been issued ceases to be an authorised officer, the person must immediately return the identity card to the Employment Advocate.
- (5) A person must not contravene subsection (4) without a reasonable excuse.

Penalty: 1 penalty unit.
- (6) An authorised officer must carry the identity card at all times when exercising powers or performing functions as an authorised officer.

83BH Powers of authorised officers

- (1) An authorised officer may exercise powers under this section for the following purposes (*compliance purposes*):
 - (a) for the purpose of ascertaining whether the terms of an AWA have been complied with, or are being complied with;
 - (b) for the purpose of ascertaining whether the provisions of Part VID or Part XA have been complied with, or are being complied with;
 - (c) for the purpose of ascertaining whether other provisions of this Act that are prescribed by the regulations have been complied with, or are being complied with.
- (2) The powers may be exercised at any time during ordinary working hours or at any other time at which it is necessary to do so for compliance purposes.
- (3) An authorised officer may, without force, enter:
 - (a) a place of business in which the authorised officer has reasonable cause to believe that work to which an AWA applies is being performed or has been performed; or
 - (b) a place of business in which the authorised officer has reasonable cause to believe that there are documents relevant to compliance purposes.
- (4) An authorised officer may do any of the following in a place referred to in subsection (3):
 - (a) inspect any work, material, machinery, appliance, article or facility;
 - (b) as prescribed by the regulations, take samples of any goods or substances;
 - (c) interview any employee;

- (d) require a person who has the custody of, or access to, a document to produce the document to the authorised officer within a specified period;
 - (e) inspect and copy any document produced to the authorised officer.
- (5) If a person fails to comply with a requirement under subsection (4) to produce a document, an authorised officer may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).
- (6) Where a document is produced to an authorised officer under subsection (5), the authorised officer may:
- (a) inspect and copy the document; and
 - (b) if the authorised officer gives a receipt to the person who produced the document—retain the document for as long as necessary for the purpose of exercising powers or performing functions as an authorised officer.
- (7) While an authorised officer retains a document, the authorised officer must permit the document to be inspected and copied, at any reasonable time, by:
- (a) the person otherwise entitled to possession of the document; or
 - (b) a person authorised by the person otherwise entitled to possession of the document.
- (8) Before entering a place under this section, an authorised officer must announce that he or she is authorised to enter the place. If the occupier or another person who apparently represents the occupier is present, the authorised officer must produce his or her identity card to that person for inspection.
- (9) In this section:
- copy*, in relation to a document, includes take extracts from the document.

Division 3—Appointment, conditions of appointment etc. of Employment Advocate

83BI Appointment of Employment Advocate

- (1) The Employment Advocate is to be appointed by the Governor-General for a term of up to 5 years.

- (2) The Employment Advocate holds office on a full-time basis.

83BJ Remuneration and allowances

- (1) The Employment Advocate is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the Employment Advocate is to be paid the remuneration that is prescribed by the regulations.
- (2) The Employment Advocate is to be paid such allowances as are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

83BK Outside employment

The Employment Advocate must not engage in any paid employment outside the duties of the office without the Minister's written approval.

83BL Recreation leave etc.

- (1) Subject to section 87E of the *Public Service Act 1922*, the Employment Advocate has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Employment Advocate other leave of absence on such terms and conditions as the Minister determines. The terms and conditions may include terms and conditions relating to remuneration.

83BM Resignation

The Employment Advocate may resign by giving the Governor-General a signed resignation notice.

83BN Disclosure of interests

The Employment Advocate must give written notice to the Minister of all interests, pecuniary or otherwise, that the Employment Advocate has or acquires and that could conflict with the proper performance of the Employment Advocate's functions.

83BO Termination of appointment

- (1) The Governor-General may terminate the appointment of the Employment Advocate for physical or mental incapacity, misbehaviour, incompetence or inefficiency.
- (2) The Governor-General must terminate the appointment of the Employment Advocate if the Employment Advocate does any of the following:
 - (a) is absent from duty (except on leave of absence) for 14 consecutive days, or for 28 days in any period of 12 months;
 - (b) becomes bankrupt;
 - (c) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (d) compounds with his or her creditors;
 - (e) assigns his or her remuneration for the benefit of his or her creditors;
 - (f) contravenes section 83BN, without a reasonable excuse;
 - (g) engages in paid employment outside the duties of the office, without the Minister's written approval.
- (3) If the Employment Advocate is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;the Governor-General may, with the consent of the Employment Advocate, retire the Employment Advocate from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the Employment Advocate is taken to have been retired from office on the ground of invalidity if:
 - (a) the Employment Advocate is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) the Commonwealth Superannuation Board of Trustees No. 2 gives a certificate under section 54C of the *Superannuation Act 1976*.
- (5) For the purposes of the *Superannuation Act 1990*, the Employment Advocate is taken to have been retired from office on the ground of invalidity if:
 - (a) the Employment Advocate is removed or retired from office on the ground of physical or mental incapacity; and

- (b) the Commonwealth Superannuation Board of Trustees No. 1 gives a certificate under section 13 of the *Superannuation Act 1990*.

83BP Acting appointment

- (1) The Minister may appoint a person to act as Employment Advocate:
 - (a) if there is a vacancy in the office of Employment Advocate, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Employment Advocate is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

83BQ Other terms and conditions of appointment

The Employment Advocate holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General in writing.

Division 4—Miscellaneous

83BR Complementary State laws

- (1) A complementary State law may confer functions and powers on the Employment Advocate or an authorised officer.
- (2) In this section:
 - AWA provisions* means this Part, Part VID and the other provisions of this Act so far as they relate to this Part or Part VID.
 - complementary State law* means a law of a State that applies the AWA provisions as a law of the State, with:
 - (a) the modifications required by the regulations; and
 - (b) any other modifications permitted by the regulations.

modifications includes additions, omissions and substitutions.

83BS Identity of AWA parties not to be disclosed

- (1) A person (the *entrusted* person) must not disclose protected information that the entrusted person knows, or has reasonable grounds to believe, will identify another person (the *AWA party*) as being, or having been, a party to an AWA.

Penalty: Imprisonment for 6 months.

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure is made by the entrusted person in the course of performing functions or duties as an AWA official;
 - (b) the disclosure is authorised by the regulations;
 - (c) the disclosure is required or permitted by another Act;
 - (d) the disclosure is authorised in writing by the AWA party.
- (3) For the purposes of determining the burden of proof in proceedings for an offence against subsection (1), the exceptions in subsection (2) are taken to be part of the description of the offence.
- (4) In this section:

AWA official means:

- (a) the Employment Advocate; or
- (b) a delegate of the Employment Advocate; or
- (c) an authorised officer.

protected information means information that was acquired by the entrusted person:

- (a) in the course of performing functions or duties as an AWA official; or
- (b) from an AWA official who disclosed the information as authorised by the regulations.

83BT Publication of AWAs etc. by Employment Advocate

Subject to section 83BS, the Employment Advocate may publish or make available copies of, or extracts from, AWAs or ancillary documents.

3 After section 304

Insert:

304A False representation of appointment as an authorised officer

A person must not falsely represent himself or herself to be an authorised officer.

Penalty: Imprisonment for 6 months.

4 After section 305

Insert:

305A Obstructing an authorised officer

A person must not:

- (a) intentionally hinder or obstruct a person whom he or she knows is an authorised officer; or
- (b) without reasonable excuse, contravene a requirement made by an authorised officer under paragraph 83BH(4)(d) or subsection 83BH(5); or
- (c) make a statement (whether orally or in writing) to an authorised officer that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

Schedule 4—Representation rights of organisations of employees

Part 1—Amendments

Workplace Relations Act 1996

1 Section 118

Repeal the section.

2 Subsection 118A(1)

Omit “202(3)”, substitute “202(6)”.

3 Subsection 118A(1)

After “orders”, insert “in relation to a demarcation dispute”.

Note: The heading to section 118A is replaced by the heading “Orders about representation rights of organisations of employees”.

4 Subsection 118A(1A)

Omit “may make an order under subsection (1) in relation to a demarcation dispute only if”, substitute “must not make an order unless”.

5 After subsection 118A(1A)

Insert:

- (1B) The Commission must not make an order unless the Commission is satisfied that:
- (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:
 - (i) is preventing, obstructing or restricting the performance of work; or
 - (ii) is harming the business of an employer; or
 - (b) the consequences referred to in subparagraph (a)(i) or (ii):
 - (i) have ceased, but are likely to recur; or
 - (ii) are imminent;
- as a result of such conduct or threatened conduct.

6 Subsection 118A(2)

Repeal the subsection, substitute:

- (2) In considering whether to make an order, the Commission must have regard to the wishes of the employees who are affected by the dispute, and, where the Commission considers it appropriate, is also to have regard to:
- (a) the effect of any order on the operations (including operating costs, work practices, efficiency and productivity) of an employer who is a party to the dispute or who is a member of an organisation that is a party to the dispute; and
 - (b) any agreement or understanding of which the Commission becomes aware that deals with the right of an organisation of employees to represent under this Act the industrial interests of a particular class or group of employees; and
 - (c) the consequences of not making an order for any employer, employees or organisation involved in the dispute; and
 - (d) any other order made by the Commission, in relation to another demarcation dispute involving the organisation to which the order under this section would relate, that the Commission considers to be relevant.

Note: Under section 135, the Commission may order that a vote of the members of the organisation concerned in the dispute be taken by secret ballot for the purpose of finding out their attitudes to the dispute.

7 Subsection 118A(3)

Omit “under subsection (1)”.

8 Subsections 118A(5), (6) and (7)

Repeal the subsections, substitute:

- (5) An organisation to which an order applies must comply with the order.
- (6) The Court may, on application by the Minister or a person or organisation affected by an order made under subsection (1), make such orders as it thinks fit to ensure compliance with that order.

9 Subsection 204(6B)

Repeal the subsection, substitute:

- (6B) A designated Presidential Member may also refuse to consent to an alteration of the eligibility rules of an organisation if he or she:

- (a) is satisfied that the alteration would change the effect of any order made by the Commission under section 118A about the right of the organisation to represent under this Act the industrial interests of a particular class or group of employees; and
 - (b) considers that such a change would give rise to a serious risk of a demarcation dispute which would prevent, obstruct or restrict the performance of work in an industry, or harm the business of an employer.
- (6C) Subsections (6A) and (6B) do not limit the grounds on which a Presidential Member may refuse to consent to an alteration of the eligibility rules of an organisation.

10 Paragraph 204(8)(a)

Omit "118A(6) or".

Part 2—Transitional provisions

11 Transitional—applications under section 118A of the Workplace Relations Act in respect of which the substantive hearing has not begun

- (1) This item applies to an application made under section 118A of the Workplace Relations Act but in respect of which the Commission had not begun the substantive hearing before the commencement of this item.
- (2) After the commencement of this item, the application has effect as if it were an application made under section 118A of the Workplace Relations Act as amended by this Schedule.

12 Transitional—applications under section 118A of the Workplace Relations Act in respect of which the substantive hearing has begun

- (1) This item applies to an application made under section 118A of the Workplace Relations Act and in respect of which the Commission had begun the substantive hearing before the commencement of this item.
- (2) Despite the amendments made to section 118A of the Workplace Relations Act by this Schedule, that section as in force immediately before the commencement of this item continues to apply in relation to the hearing of the application.
- (3) An order made as a result of the hearing of the application has effect as if it had been made under section 118A of the Workplace Relations Act as amended by this Schedule.

13 Transitional—orders under section 118A of the Workplace Relations Act

- (1) This item applies to an order that was in force under section 118A of the Workplace Relations Act immediately before the commencement of this item.
- (2) The order continues in force, after the commencement of this item, as if it had been made under section 118A of the Workplace Relations Act as amended by this Schedule.

Schedule 5—Awards

Part 1—Amendments

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

allowable award matters means the matters covered by subsection 89A(2).

2 Subsection 4(1)

Insert:

exceptional matters order means an order made by the Commission on a matter that is allowed to be included in an industrial dispute because of subsection 89A(7).

3 Subsection 4(1) (definition of *paid rates award*)

Repeal the definition.

4 Subsection 4(1) (definition of *paid rates dispute*)

Repeal the definition.

5 Subsection 4(1) (definition of *paid rates functions and powers*)

Repeal the definition.

6 Subsection 4(1)

Insert:

regular part-time employee means an employee who:

- (a) works less than full-time ordinary hours; and
- (b) has reasonably predictable hours of work; and
- (c) receives, on a pro-rata basis, equivalent pay and conditions to those specified in an award or awards for full-time employees who do the same kind of work.

7 Subsection 4(1)

Insert:

State employment agreement means an agreement:

- (a) between an employer and one or more of the following:
 - (i) an employee of the employer;
 - (ii) a trade union; and
- (b) that regulates wages and conditions of employment of one or more of the employees; and
- (c) that is made under a law of a State that provides for such agreements; and
- (d) that prevails over an inconsistent State award.

8 Section 88A

Repeal the section, substitute:

88A Objects of Part

The objects of this Part are to ensure that:

- (a) wages and conditions of employment are protected by a system of enforceable awards established and maintained by the Commission; and
- (b) awards act as a safety net of fair minimum wages and conditions of employment; and
- (c) awards are simplified and suited to the efficient performance of work according to the needs of particular workplaces or enterprises; and
- (d) the Commission's functions and powers in relation to making and varying awards are performed and exercised in a way that encourages the making of agreements between employers and employees at the workplace or enterprise level.

9 Before section 89

Insert in Division 1:

88B Performance of Commission's functions under this Part

- (1) The Commission must perform its functions under this Part in a way that furthers the objects of the Act and, in particular, the objects of this Part.
- (2) In performing its functions under this Part, the Commission must ensure that a safety net of fair minimum wages and conditions of employment is established and maintained, having regard to the following:

- (a) the need to provide fair minimum standards for employees in the context of living standards generally prevailing in the Australian community;
 - (b) economic factors, including levels of productivity and inflation, and the desirability of attaining a high level of employment;
 - (c) when adjusting the safety net, the needs of the low paid.
- (3) In performing its functions under this Part, the Commission must have regard to the following:
- (a) the need for any alterations to wage relativities between awards to be based on skill, responsibility and the conditions under which work is performed;
 - (b) the need to support training arrangements through appropriate trainee wage provisions;
 - (c) the need to provide a supported wage system for people with disabilities;
 - (d) the need to apply the principle of equal pay for work of equal value without discrimination based on sex;
 - (e) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

10 Subparagraph 89(a)(ii)

Omit "where necessary", substitute "as a last resort and within the limits specified in this Act".

11 After section 89

Insert:

89A Scope of industrial disputes

Industrial dispute normally limited to allowable award matters

- (1) For the following purposes, an industrial dispute is taken to include only matters covered by subsections (2) and (3):
- (a) dealing with an industrial dispute by arbitration;
 - (b) preventing or settling an industrial dispute by making an award or order;
 - (c) maintaining the settlement of an industrial dispute by varying an award or order.

Allowable award matters

- (2) For the purposes of subsection (1) the matters are as follows:
- (a) classifications of employees and skill-based career paths;
 - (b) ordinary time hours of work and the times within which they are performed, rest breaks, notice periods and variations to working hours;
 - (c) rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage system;
 - (d) piece rates, tallies and bonuses;
 - (e) annual leave and leave loadings;
 - (f) long service leave;
 - (g) personal/carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
 - (h) parental leave, including maternity and adoption leave;
 - (i) public holidays;
 - (j) allowances;
 - (k) loadings for working overtime or for casual or shift work;
 - (l) penalty rates;
 - (m) redundancy pay;
 - (n) notice of termination;
 - (o) stand-down provisions;
 - (p) dispute settling procedures;
 - (q) jury service;
 - (r) type of employment, such as full-time employment, casual employment, regular part-time employment and shift work;
 - (s) superannuation;
 - (t) pay and conditions for outworkers, but only to the extent necessary to ensure that their overall pay and conditions of employment are fair and reasonable in comparison with the pay and conditions of employment specified in a relevant award or awards for employees who perform the same kind of work at an employer's business or commercial premises.
- (3) The Commission's power to make an award dealing with matters covered by subsection (2) is limited to making a minimum rates award.

Limitations on Commission's powers

- (4) The Commission's power to make or vary an award in relation to matters covered by paragraph (2)(r) does not include:
 - (a) the power to limit the number or proportion of employees that an employer may employ in a particular type of employment; or
 - (b) the power to set maximum or minimum hours of work for regular part-time employees.
- (5) Paragraph (4)(b) does not prevent the Commission from including in an award:
 - (a) provisions setting a minimum number of consecutive hours that an employer may require a regular part-time employee to work; or
 - (b) provisions facilitating a regular pattern in the hours worked by regular part-time employees.
- (6) The Commission may include in an award provisions that are incidental to the matters in subsection (2) and necessary for the effective operation of the award.

Exceptional matters may be included in industrial dispute

- (7) Subsection (1) does not exclude a matter (the *exceptional matter*) from an industrial dispute if the Commission is satisfied of all the following:
 - (a) a party to the dispute has made a genuine attempt to reach agreement on the exceptional matter;
 - (b) there is no reasonable prospect of agreement being reached on the exceptional matter by conciliation, or further conciliation, by the Commission;
 - (c) it is appropriate to settle the exceptional matter by arbitration;
 - (d) the issues involved in the exceptional matter are exceptional issues;
 - (e) a harsh or unjust outcome would apply if the industrial dispute were not to include the exceptional matter.

Anti-discrimination clause

- (8) Nothing in this section prevents the Commission from including a model anti-discrimination clause in an award.

Note: A model anti-discrimination clause was established by the Commission in the Full Bench decision dated 9 October 1995 (print M5600).

Interpretation

- (9) In this section, *outworker* means an employee who, for the purposes of the business of the employer, performs work at private residential premises or at other premises that are not business or commercial premises of the employer.

12 Section 90AA

Repeal the section.

13 Section 90AB

Repeal the section.

14 Section 92A

Repeal the section.

15 Section 95

Repeal the section, substitute:

95 No automatic flow-on of terms of certain agreements

The Commission does not have power to include terms in an award that are based on the terms of a certified agreement unless the Commission is satisfied that including the terms in the award:

- (a) would not be inconsistent with principles established by a Full Bench that apply in relation to determining wages and conditions of employment; and
- (b) would not be otherwise contrary to the public interest.

16 After section 98

Insert in Division 1:

98A Commission to avoid technicalities and facilitate fair conduct of proceedings

The Commission must perform its functions in a way that avoids unnecessary technicalities and facilitates the fair and practical conduct of any proceedings under this Act.

17 Subsection 100(2)

Repeal the subsection, substitute:

- (2) If the Presidential Member does not refer the alleged industrial dispute for conciliation:
 - (a) the Presidential Member must publish reasons for not doing so; and
 - (b) the Commission must deal with the alleged industrial dispute by arbitration.

18 Section 106

Repeal the section, substitute:

106 Allowable award matters to be dealt with by Full Bench

- (1) After the commencement of this section, a Full Bench of the Commission may establish principles about the making or varying of awards in relation to each of the allowable award matters.
- (2) After such principles (if any) have been established, the power of the Commission to make or vary an award is exercisable only by a Full Bench unless the contents of the award:
 - (a) give effect to determinations of a Full Bench made after the commencement of this section; or
 - (b) are consistent with principles established by a Full Bench after the commencement of this section.
- (3) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.
- (4) After making such investigation (if any) as is necessary, the member must provide a report to the President or Full Bench, as the case may be.

19 Subsection 108(2A)

Repeal the subsection.

20 Subsection 109(1)

Repeal the subsection, substitute:

- (1) The Minister may apply to the President for a review by a Full Bench of an award or order, or a decision relating to the making of an award or order, made by a member of the Commission if it appears to the Minister that the award, order or decision is contrary to the public interest.

21 Subparagraph 111(1)(g)(ii)

Omit "State arbitrator", substitute "State industrial authority".

22 Subsections 111(1A), (1B) and (1C)

Repeal the subsections.

23 Subsection 111(1D)

Repeal the subsection, substitute:

- (1D) The Commission must decide as quickly as it can whether to make an interim award if the Commission considers that such an award may be necessary to protect, for an interim period, the wages and conditions of employment of the employees whom the award would cover.

24 Subsections 111(1F), (1G), (1H) and (4)

Repeal the subsections.

25 After section 111

Insert:

111AAA Commission to cease dealing with industrial dispute in certain circumstances

- (1) If the Commission is satisfied that a State award or State employment agreement governs the wages and conditions of employment of particular employees whose wages and conditions of employment are the subject of an industrial dispute, the Commission must cease dealing with the industrial dispute in relation to those employees, unless the Commission is satisfied that ceasing would not be in the public interest.
- (2) In determining the public interest for the purposes of subsection (1), the Commission must give primary consideration to:
 - (a) the views of the employees referred to in subsection (1); and
 - (b) the views of the employer or employers of those employees.
- (3) The Commission must inform itself as quickly as it can about the views referred to in subsection (2), and may inform itself in such manner as it thinks fit.
- (4) In this section:
cease dealing, in relation to an industrial dispute, means:

- (a) to dismiss the whole or a part of a matter to which the industrial dispute relates; or
- (b) to refrain from further hearing or from determining the industrial dispute or part of the industrial dispute.

26 Subsection 113(4A)

Repeal the subsection.

27 At the end of section 113A

Add:

- (2) This section is not limited by subsection 89A(6).

28 Subsection 113B(2)

Repeal the subsection, substitute:

- (2) The Commission does not have power to vary the award for that purpose unless it is satisfied that the variation:
 - (a) would only deal with allowable award matters; and
 - (b) would be a minimum rates award; and
 - (c) if it included a variation to rates of pay provided in the award, would provide for minimum rates of pay consistent with sections 88A and 88B.

29 Subsection 113B(3)

Repeal the subsection.

30 Subsection 113B(4)

Repeal the subsection, substitute:

- (4) An organisation of employees is entitled to be heard on the application if, and only if:
 - (a) it is a party to the award; and
 - (b) it has a member or members whose employment would be regulated by the variation.

31 Section 120

Omit "In making an award", substitute "Subject to section 89A, in making an award".

32 After section 120:

Insert:

120A Orders of Commission on exceptional matters

- (1) Each exceptional matters order must relate only to a single matter.

Note 1: An exceptional matters order is an order made by the Commission on a matter that is allowed to be included in an industrial dispute because of subsection 89A(7).

Note 2: Exceptional matters orders are published under section 143, in the same way as other orders of the Commission.

- (2) The Commission must not make an exceptional matters order unless the Commission is satisfied that making the order is in the public interest, and consistent with the objects of this Act.
- (3) The Commission must not make an exceptional matters order that would apply to more than a single business unless the Commission is satisfied that such an order is an appropriate manner of settling the matter in dispute.
- (4) An exceptional matters order must be made by a Full Bench, unless the order relates to a single business (within the meaning of Part VIB).
- (5) An exceptional matters order ceases to be in force 2 years after it is made, and cannot be extended.

120B Commission to report on junior rates of pay

- (1) Before 22 June 1999, a Full Bench must prepare a report for the Minister on the feasibility of replacing junior rates with non-discriminatory alternatives.
- (2) The report must include assessments of:
 - (a) whether it is desirable to replace junior rates with non-discriminatory alternatives; and
 - (b) the consequences for youth employment of abolishing junior rates; and
 - (c) the utility of junior rates:
 - (i) for different types of employment; and
 - (ii) for different industries; and
 - (iii) in the school-to-work transition.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable after the Minister receives it.
- (4) In this section, *junior rates* means junior rates of pay.

33 After section 127

Insert:

127AA Awards and orders dealing with rights of entry

- (1) A provision of an award or order that requires or authorises an officer or employee of an organisation:
 - (a) to enter premises:
 - (i) occupied by an employer who is bound by the award or order; or
 - (ii) in which work to which the award or order applies is being carried on; or
 - (b) to inspect or view any work, material, machinery, appliance, article, document or other thing on such premises; or
 - (c) to interview an employee on such premises;is unenforceable.
- (2) This section does not apply to an order made under section 285G.

34 Subsection 128(1)

Omit "the Commission may", substitute:

other than by:

- (d) facilitating the entering into of a State employment agreement; or
 - (e) approving a State employment agreement;
- the Commission may

35 After subsection 143(1A)

Insert:

- (1B) The Commission must, if it considers it appropriate, ensure that a decision or determination covered by subsection (1):
 - (a) does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level; and
 - (b) does not prescribe work practices or procedures that restrict or hinder the efficient performance of work; and
 - (c) does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.

- (1C) The Commission must ensure that a decision or determination covered by subsection (1):
- (a) where appropriate, contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply; and
 - (b) where appropriate, contains provisions enabling the employment of regular part-time employees; and
 - (c) is expressed in plain English and is easy to understand in structure and content; and
 - (d) does not contain provisions that are obsolete or that need updating; and
 - (e) where appropriate, provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities; and
 - (f) does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (1D) A decision or determination covered by subsection (1) does not discriminate against an employee for the purposes of paragraph (1C)(f) merely because:
- (a) it provides for a junior rate of pay; or
 - (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.
- (1E) Paragraph (1D)(a) does not apply to a decision or determination made by the Commission more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.

36 Subsection 143(2A)

Repeal the subsection, substitute:

- (2A) The Commission must ensure that a decision or determination covered by subsection (2) is expressed in plain English and is easy to understand in structure and content.

37 At the end of paragraph 148(2)(a)

Add "or".

38 Paragraph 148(2)(b)

Omit "or".

39 Paragraph 148(2)(c)

Repeal the paragraph.

40 Section 150A

Repeal the section.

41 At the end of section 152

Add:

(2) If:

- (a) but for this subsection, an award would become binding on an employer in respect of an employee at a particular time; and
- (b) immediately before that time, the wages and conditions of employment of the employee were regulated by a State employment agreement;

then the award is not binding on any person in respect of the employee, while the wages and conditions of employment of the employee continue to be regulated by the agreement.

- (3) If, at a particular time, a State employment agreement that is made after the commencement of this subsection would regulate wages and conditions of employment of an employee but for the fact that an award is binding on an employer in respect of the employee, then:
 - (a) the award does not prevent the agreement from coming into force and regulating the wages and conditions of employment of the employee; and
 - (b) while the agreement continues to regulate those wages and conditions, the award is not binding on any person in respect of the employee.

Schedule 5 Awards

- (4) In subsection (3), *award* does not include an award made under subsection 170MX(3).
- (5) Subsections (2) and (3) do not apply to a State employment agreement unless the agreement is one that was approved by a State industrial authority under a State Act that required the authority, before approving the agreement, to be satisfied:
 - (a) that the employees covered by the agreement are not disadvantaged in comparison to their entitlements under the relevant award; and
 - (b) that the agreement was genuinely made, or that the agreement was not made under duress or that the agreement was made without coercion; and
 - (c) that the agreement covers all the employees whom it would be reasonable for the agreement to cover, having regard to matters (if any) specified in the State Act (such as the nature of the work performed under the agreement and the relationship between the employees in the part of the business covered by the agreement and the remainder of the employees in the business).

42 Part VIC

Repeal the Part.

43 Subparagraph 178(4)(a)(i)

Omit "\$500", substitute "\$5,000 for a body corporate or \$1,000 in other cases".

44 Subparagraph 178(4)(a)(ii)

Omit "\$1,000", substitute "\$10,000 for a body corporate or \$2,000 in other cases".

45 Paragraph 178(4)(b)

Omit "\$500", substitute "\$10,000 for a body corporate or \$2,000 in other cases".

Part 2—Transitional provisions

46 Interpretation

In this Part:

interim period means the period of 18 months beginning on the day on which section 89A of the Principal Act commences.

Principal Act means the Workplace Relations Act.

special consent provisions has the meaning given by item 48.

termination time, in relation to special consent provisions, means the end of the period that is specified in the award under section 147 of the Principal Act.

47 Exercise of Commission's powers under this Part

In exercising its powers under this Part, the Commission is to have regard to the desirability of assisting parties to awards to agree on appropriate variations to their awards, rather than have parts of awards cease to have effect under item 50 at the end of the interim period.

48 Special consent provisions

For the purposes of this Part, *special consent provisions* are provisions of an award that give effect to a decision of the Commission that is expressed to be made in accordance with one or more of the following principles:

- (a) the Enterprise Bargaining Principle adopted by the Commission in the National Wage Case decision of October 1991 (Dec 1150/91, Print K0300);
- (b) the Enterprise Awards Principle adopted by the Commission in its Review of the Wage Fixing Principles decision of October 1993 (Dec 1300/93, Print K9700);
- (c) Principle 2.2 (Consent Award or Award Variation to Give Effect to an Enterprise Agreement), adopted by the Commission in its Review of the Wage Fixing Principles decision of August 1994 (Dec 1408/94, Print L4700) and incorporated without amendment in wages principles established by the Commission in its Safety Net Adjustment & Section 150A Review decision of October 1995 (Dec 2120/95, Print M5600).

49 Variation of awards during the interim period

- (1) If one or more of the parties to an award apply to the Commission for a variation of the award under this item, the Commission may, during the interim period, vary the award so that it only deals with allowable award matters.
- (2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.
- (3) Special consent provisions cannot be varied under this item before the termination time for those provisions.
- (4) The Commission may only deal with the application by arbitration if it is satisfied that the applicant or applicants have made reasonable attempts to reach agreement with the other parties to the award about how the award should be varied and the treatment of matters that are not allowable award matters.
- (5) If:
 - (a) the award provides for rates of pay that, in the opinion of the Commission:
 - (i) are not operating as minimum rates; or
 - (ii) were made on the basis that they were not intended to operate as minimum rates; and
 - (b) the application under this item seeks to have such rates of pay varied so that they are expressed as minimum rates of pay;

the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.
- (6) If the Commission varies the award under subitem (5), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.
- (7) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:

- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
 - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
 - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (8) The Commission must also review the award to determine whether or not it meets the following criteria:
- (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
 - (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
 - (c) it is expressed in plain English and is easy to understand in both structure and content;
 - (d) it does not contain provisions that are obsolete or that need updating;
 - (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
 - (f) it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (9) If the Commission determines that the award does not meet the criteria set out in subitem (7) or (8), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

50 Parts of awards cease to have effect at the end of the interim period

- (1) At the end of the interim period, each award ceases to have effect to the extent that it provides for matters other than allowable award matters.
- (2) For the purposes of this item, an exceptional matters order is taken to relate wholly to allowable award matters.

- (3) For the purposes of this item, an award that is made under subsection 170MX(3) of the Principal Act is taken to provide wholly for allowable award matters.
- (4) If the termination time for special consent provisions is after the end of the interim period, then this item and item 51 apply to the special consent provisions as if a reference to the end of the interim period were instead a reference to the termination time.

51 Variation of awards after the end of the interim period

- (1) As soon as practicable after the end of the interim period, the Commission must review each award:
 - (a) that is in force; and
 - (b) that the Commission is satisfied has been affected by item 50.
- (2) The Commission must vary the award to remove provisions that ceased to have effect under item 50.
- (3) When varying the award under subitem (2), the Commission may also vary the award so that, in relation to an allowable award matter, the award is expressed in a way that reasonably represents the entitlements of employees in respect of that matter as provided in the award as in force immediately before the end of the interim period.
- (4) If, immediately before the end of the interim period, the award provided for rates of pay that, in the opinion of the Commission:
 - (a) were not operating as minimum rates of pay; or
 - (b) were made on the basis that they were not intended to operate as minimum rates;the Commission may vary the award so that it provides for minimum rates of pay consistent with sections 88A and 88B of the Principal Act and the limitation on the Commission's power in subsection 89A(3) of that Act.
- (5) If the Commission varies the award under subitem (4), it must include in the award provisions that ensure that overall entitlements to pay provided by the award are not reduced by that variation, unless the Commission considers that it would be in the public interest not to include such provisions.

- (6) The Commission must, if it considers it appropriate, review the award to determine whether or not it meets the following criteria:
- (a) it does not include matters of detail or process that are more appropriately dealt with by agreement at the workplace or enterprise level;
 - (b) it does not prescribe work practices or procedures that restrict or hinder the efficient performance of work;
 - (c) it does not contain provisions that have the effect of restricting or hindering productivity, having regard to fairness to employees.
- (7) The Commission must also review the award to determine whether or not it meets the following criteria:
- (a) where appropriate, it contains facilitative provisions that allow agreement at the workplace or enterprise level, between employers and employees (including individual employees), on how the award provisions are to apply;
 - (b) where appropriate, it contains provisions enabling the employment of regular part-time employees;
 - (c) it is expressed in plain English and is easy to understand in both structure and content;
 - (d) it does not contain provisions that are obsolete or that need updating;
 - (e) where appropriate, it provides support to training arrangements through appropriate trainee wages and a supported wage system for people with disabilities;
 - (f) it does not contain provisions that discriminate against an employee because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (8) If the Commission determines that the award does not meet the criteria set out in subitem (6) or (7), the Commission may take whatever steps it considers appropriate to facilitate the variation of the award so that it does meet those criteria.

52 Corporations not bound by State awards

- (1) If:
- (a) a constitutional corporation is bound by an award in respect of an employee; and

- (b) the award is varied under subitem 49(1) or wholly or partly ceases to have effect because of item 50; and
- (c) as a result of the award being varied, or ceasing to have effect, as mentioned in paragraph (b), the corporation would (apart from this item) become bound by a State award in respect of the employee;

then the corporation is not bound by the State award in relation to the employee unless it becomes bound as a result of an application by the corporation to the relevant State industrial authority.

- (2) Subitem (1) does not operate so that a State award, or part of a State award, prevails over an award of the Commission.

53 Matters to be dealt with by Full Bench

- (1) After the commencement of this Part, a Full Bench may establish principles about varying awards under this Part.
- (2) After such principles (if any) have been established, the power of the Commission to vary an award under this Part is exercisable only by a Full Bench unless the contents of the award:
 - (a) give effect to determinations of a Full Bench under this Part; or
 - (b) are consistent with principles established by a Full Bench under this item.

54 Certain provisions not discriminatory

- (1) A provision of an award does not discriminate against an employee for the purposes of paragraph 49(8)(f) or 51(7)(f) merely because:
 - (a) it provides for a junior rate of pay; or
 - (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.
- (2) Paragraph (1)(a) does not apply to a decision or determination made by the Commission under this Part more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the

paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.

55 Transitional—repeal of subsection 111(1A)

The repeal of subsection 111(1A) of the Principal Act does not apply to any proceedings before the Commission that commenced before the commencement of the repeal.

Schedule 6—Termination of employment

Part 1—Amendments

Workplace Relations Act 1996

1 At the end of section 5

Add:

- (8) If a law of a State (the *relevant State law*) provides that a provision of this Act applies (subject to any necessary modifications to section 170CB) as a law of that State for the purpose of enabling the Commission to perform functions or exercise powers with respect to the termination of employment of employees who are, or who were before the termination, Federal award employees as defined in section 170CD employed in that State:
- (a) nothing in this Act affects the operation of the relevant State law; and
 - (b) the Commission may perform those functions or exercise those powers.
- (9) If a law of a State (the *relevant State law*) also provides that a provision of this Act applies (subject to any necessary modifications) as a law of that State for the purpose of enabling the Court to perform functions or exercise powers with respect to the termination of employment of employees who are, or who were before the termination, Federal award employees as defined in section 170CD employed in that State in connection with orders of the Commission to the extent that those orders are made in the exercise of the provisions of this Act as applied by the relevant State law, then:
- (a) the Court may perform those functions or exercise those powers in connection with those orders; and
 - (b) nothing in this Act affects the operation of the relevant State law.

2 Section 152

Omit “Where a State law, or an order, award, decision or determination of a State industrial authority,”, substitute “Subject to this section, if a State law or a State award”.

3 At the end of section 152

Add:

- (1A) If a State law or a State award makes provision in respect of the termination of an employee's employment, any provision in a Federal award that also makes provision in respect of the termination of employment of the employee is not to be taken to show an intention to cover the field to the exclusion of that State law or State award.

Note: The heading to section 152 is altered by omitting ", awards etc" and substituting "and State awards".

4 Subsection 153(1)

Omit "or an order, award, decision or determination of a State industrial authority", substitute "or a State award".

Note: The heading to section 153 is altered by omitting "orders, awards etc" and substituting "laws and State awards".

5 Subdivisions A, B, C and CA of Division 3 of Part VIA

Repeal the Subdivisions, substitute:

Subdivision A—Object, application and definitions

170CA Object

- (1) The principal object of this Division is:
- (a) to establish procedures for conciliation in relation to certain matters relating to the termination or proposed termination of an employee's employment in certain circumstances; and
 - (b) to provide, if the conciliation process is unsuccessful, for recourse to arbitration or to a court depending on the grounds on which the conciliation was sought; and
 - (c) to provide for remedies appropriate to a case where, on arbitration, a termination is found to be harsh, unjust or unreasonable; and
 - (d) to provide for sanctions where, on recourse to a court, a termination or proposed termination is found to be unlawful; and
 - (e) by those procedures, remedies and sanctions, and by orders made in the circumstances set out in Subdivisions D and E, to assist in giving effect to the Termination of Employment Convention.
- (2) The procedures and remedies referred to in paragraphs (1)(a) and (b), and the manner of deciding on and working out such remedies, are intended to ensure that, in the consideration of an application in

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respect of a termination of employment, a “fair go all round” is accorded to both the employer and employee concerned.

Note: The expression “fair go all round” was used by Sheldon J in *in re Loty and Holloway v Australian Workers' Union* [1971] AR (NSW) 95.

170CB Application

- (1) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground that that termination was harsh, unjust or unreasonable, if the employee concerned was, before the termination:
 - (a) a Commonwealth public sector employee; or
 - (b) a Territory employee; or
 - (c) a Federal award employee who was employed by a constitutional corporation; or
 - (d) a Federal award employee who was a waterside worker, maritime employee or flight crew officer, employed in the course of, or in relation to, trade or commerce between Australia and a place outside Australia, between the States, within a Territory, between a State and a Territory, or between 2 Territories.
- (2) Subdivision B applies, in so far as it relates to an application to the Commission for relief in relation to the termination of employment of an employee on the ground of a contravention of all or any of sections 170CK, 170CL, 170CM and 170CN, if the employee concerned is an employee in relation to whose termination of employment Subdivision C applies in accordance with this section.
- (3) Subdivisions C, D and E apply in relation to the termination of employment of an employee.
- (4) Without prejudice to their effect apart from this subsection, Subdivisions C, D and E also apply in relation to the termination of employment of:
 - (a) a Commonwealth public sector employee; or
 - (b) a Territory employee; or
 - (c) an employee who was employed by a constitutional corporation; or
 - (d) an employee who was a waterside worker, maritime employee or flight crew officer, employed in the course of, or in relation to, trade or commerce between Australia and a place outside Australia, between the States, within a

Territory, between a State and a Territory, or between 2 Territories.

- (5) Without prejudice to their effect apart from this subsection, Subdivisions C, D and E also apply in relation to the termination of employment of an employee for the purpose of assisting in giving effect to the Termination of Employment Convention.
- (6) Without prejudice to its effect apart from this subsection, section 170CK also applies in relation to the termination of employment of an employee for the purpose of giving effect to the conventions referred to in that section.

170CC Regulations may exclude employees

- (1) The regulations may exclude from the operation of specified provisions of this Division specified classes of employees included in any of the following classes:
 - (a) employees engaged under a contract of employment for a specified period of time or a specified task;
 - (b) employees serving a period of probation or qualifying period;
 - (c) employees engaged on a casual basis for a short period;
 - (d) employees whose terms and conditions of employment are governed by special arrangements providing particular protection in respect of termination of employment either generally or in particular circumstances;
 - (e) employees in relation to whom the operation of the provisions causes or would cause substantial problems because of:
 - (i) their particular conditions of employment; or
 - (ii) the size or nature of the undertakings in which they are employed.
- (2) Without limiting, by implication, the class of persons that may be prescribed for the purposes of paragraph (1)(e), the regulations may identify as a class of employees for the purposes of that paragraph employees not employed under award conditions and to whom subsection (3) or (4) applies.
- (3) This subsection applies to an employee if:
 - (a) the employee's remuneration immediately before the termination of employment was not wholly or partly determined on the basis of commission or piece rates; and
 - (b) the rate of remuneration applicable to the employee immediately before the termination exceeds a rate specified,

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or worked out in a manner specified, in the regulations (the *specified rate*).

- (4) This subsection applies to an employee if:
- (a) the employee's remuneration immediately before the termination of employment was wholly or partly determined on the basis of commission or piece rates; and
 - (b) in accordance with the regulations, the rate of remuneration that is taken to be applicable to the employee immediately before the termination exceeds the specified rate.

170CD Definitions

- (1) In this Division:

Commonwealth public sector employee means a person in employment:

- (a) as an officer or employee of the Australian Public Service; or
- (b) by or in the service of a Commonwealth authority; or
- (c) by authority of a law of the Commonwealth.

Note: Commonwealth authority is defined in subsection 4(1).

Federal award employee means an employee any of whose terms and conditions of employment are governed by an award, a certified agreement or an AWA.

termination or termination of employment means termination of employment at the initiative of the employer.

Territory employee means any person employed in a Territory other than Norfolk Island.

- (2) An expression used in Subdivision C, D or E of this Division has the same meaning as in the Termination of Employment Convention.
- (3) For the purposes of this Division, an employee is taken to be employed under award conditions if both wages and conditions of employment of the employee are regulated by awards, certified agreements or AWAs, that bind the employer of the employee.

Subdivision B—Application to Commission for relief in respect of termination of employment

170CE Application to Commission to deal with termination under this Subdivision

- (1) Subject to subsection (5), an employee whose employment has been terminated by the employer may apply to the Commission for relief in respect of the termination of that employment:
 - (a) on the ground that the termination was harsh, unjust or unreasonable; or
 - (b) on the ground of an alleged contravention of section 170CK, 170CL, 170CM or 170CN; or
 - (c) on any combination of grounds in paragraph (b) or on a ground or grounds in paragraph (b) and the ground in paragraph (a).
- (2) Subject to subsection (6), an employee whose employment is proposed to be terminated by the employer may apply to the Commission for relief on the ground of an alleged contravention of section 170CL.
- (3) Subject to subsection (6), if:
 - (a) an employee's employment has been terminated by the employer; and
 - (b) a trade union's rules entitle it to represent the industrial interests of the employee;the union may, on behalf of the employee, apply to the Commission for relief on the ground or grounds of an alleged contravention of one or more of sections 170CK, 170CM and 170CN.
- (4) Subject to subsection (6), if an employee's employment has been terminated, or is proposed to be terminated, by the employer:
 - (a) an inspector; or
 - (b) a trade union:
 - (i) whose members include the employee; and
 - (ii) whose rules entitle it to represent the industrial interests of the employee; or
 - (c) an officer or employee of such a union—if the union's rules authorise the officer or employee to act on the union's behalf; may apply to the Commission for relief on the ground of an alleged contravention of section 170CL.

- (5) An application under subsection (1) may not be made:
 - (a) on the ground referred to in paragraph (1)(a) or on grounds that include that ground—unless, under subsection 170CB(1), Subdivision B applies to that application; or
 - (b) on a ground referred to in paragraph (1)(b)—unless Subdivision C applies to that application.
- (6) An application under subsection (2), (3) or (4) may not be made on a ground referred to in that subsection unless Subdivision C applies to that application.
- (7) An application under subsection (1) must be lodged within 21 days after the day on which the termination took effect.
- (8) The Commission may accept an application that is lodged out of time if the Commission considers that it would be unfair not to do so.
- (9) An application under subsection (1) may be discontinued by the employee in accordance with rules made under section 48. The employee may do so whether or not the employer and the employee have agreed to settle the matter.

170CF Conciliation

- (1) When an application is lodged with the Commission, the Commission must attempt to settle the matter to which the application relates by conciliation.
- (2) If the Commission is satisfied that all reasonable attempts to settle the matter by conciliation are, or are likely to be, unsuccessful so far as concerns at least one ground of the application, the Commission:
 - (a) must issue a certificate in writing stating that it is so satisfied in respect of that ground or each such ground; and
 - (b) must indicate to the parties the Commission's assessment of the merits of the application in so far as it relates to that ground or to each such ground; and
 - (c) if the Commission thinks fit, may recommend that the applicant elect not to pursue a ground or grounds of the application (whether or not also recommending other means of resolving the matter).

170CFA Elections to proceed to arbitration or to begin court proceedings

- (1) If the certificate given by the Commission under subsection 170CF(2) identifies only the ground referred to in paragraph 170CE(1)(a) as a ground where conciliation is, or is likely to be, unsuccessful, the applicant must elect either to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable or not to proceed.
- (2) If the certificate given by the Commission under subsection 170CF(2) identifies only:
 - (a) the ground referred to in paragraph 170CE(1)(a); and
 - (b) the ground of an alleged contravention of section 170CM;as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both, or neither of the following:
 - (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
 - (d) to begin proceedings in a court of competent jurisdiction for an order under section 170CR in respect of the alleged contravention of section 170CM.
- (3) If the certificate given by the Commission under subsection 170CF(2) identifies:
 - (a) the ground referred to in paragraph 170CE(1)(a); and
 - (b) a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL and 170CN;as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either or neither of the following:
 - (c) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
 - (d) to begin proceedings in the Court for an order under section 170CR in respect of the alleged contravention, or of any one or more of the alleged contraventions.
- (4) If the certificate given by the Commission under subsection 170CF(2) identifies only a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL, 170CM and 170CN as the ground or grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect to do either, both or neither of the following:
 - (a) so far as concerns an alleged contravention of a section or sections other than section 170CM—to begin proceedings in the Court for an order under section 170CR in respect of the

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- alleged contravention, or of any one or more of the alleged contraventions;
- (b) so far as concerns an alleged contravention of section 170CM—to begin proceedings in a court of competent jurisdiction for an order under section 170CR in respect of the alleged contravention.
- (5) If the certificate given by the Commission under subsection 170CF(2) identifies:
- (a) the ground referred to in paragraph 170CE(1)(a); and
 - (b) the ground of an alleged contravention of section 170CM; and
 - (c) a ground or grounds of an alleged contravention of one or more of sections 170CK, 170CL and 170CN;
- as grounds where conciliation is, or is likely to be, unsuccessful, the applicant must elect:
- (d) to do either or both of the things permitted in subsection (2); or
 - (e) to do either or both of the things permitted in subsection (4); or
 - (f) to do none of those things.
- (6) An election under subsection (1), (2), (3), (4) or (5) must:
- (a) be made in writing; and
 - (b) be lodged with the Commission not later than 7 days after the day of issue of the certificate by the Commission under subsection 170CF(2) in relation to the application.
- (7) If an applicant fails to lodge with the Commission an election under subsection (1), (2), (3), (4) or (5) within the period required under subsection (6), the application concerned is taken to have been discontinued by the applicant at the end of that period for all purposes other than the making of an election out of time in accordance with subsection (8).
- (8) The Commission may accept an election that is lodged out of time if the Commission considers that it would be unfair not to do so, and, if the Commission accepts such an election, the original application is taken not to have been discontinued in spite of subsection (7).

170CG Arbitration

- (1) If:

- (a) the Commission has issued a certificate under subsection 170CF(2) regarding conciliation of an application relating to a termination of employment; and
 - (b) the applicant has made an election under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration to determine whether the termination was harsh, unjust or unreasonable;
- the Commission may so proceed to arbitrate the matter.
- (2) Neither the making of an election under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration nor the commencement of that arbitration prevents further conciliation of the matter being attempted, or the parties from settling the matter, at any time before an order is made under section 170CH.
 - (3) In determining, for the purposes of the arbitration, whether a termination was harsh, unjust or unreasonable, the Commission must have regard to:
 - (a) whether there was a valid reason for the termination related to the capacity or conduct of the employee or to the operational requirements of the employer's undertaking, establishment or service; and
 - (b) whether the employee was notified of that reason; and
 - (c) whether the employee was given an opportunity to respond to any reason related to the capacity or conduct of the employee; and
 - (d) if the termination related to unsatisfactory performance by the employee—whether the employee had been warned about that unsatisfactory performance before the termination; and
 - (e) any other matters that the Commission considers relevant.

170CH Remedies on arbitration

- (1) Subject to this section, the Commission may, on completion of the arbitration, make an order that provides for a remedy of a kind referred to in subsection (3), (4) or (6) if it has determined that the termination was harsh, unjust or unreasonable.
- (2) The Commission must not make an order under subsection (1) unless the Commission is satisfied, having regard to all the circumstances of the case including:
 - (a) the effect of the order on the viability of the employer's undertaking, establishment or service; and
 - (b) the length of the employee's service with the employer; and

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- (c) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated; and
 - (d) the efforts of the employee (if any) to mitigate the loss suffered by the employee as a result of the termination; and
 - (e) any other matter that the Commission considers relevant;
- that the remedy ordered is appropriate.
- (3) If the Commission considers it appropriate, the Commission may make an order requiring the employer to reinstate the employee by:
 - (a) reappointing the employee to the position in which the employee was employed immediately before the termination.
 - (b) appointing the employee to another position on terms and conditions no less favourable than those on which the employee was employed immediately before the termination.
 - (4) If the Commission makes an order under subsection (3) and considers it appropriate to do so, the Commission may also make:
 - (a) any order that the Commission thinks appropriate to maintain the continuity of the employee's employment; and
 - (b) subject to subsection (5)—any order that the Commission thinks appropriate to cause the employer to pay to the employee an amount in respect of the remuneration lost, or likely to have been lost, by the employee because of the termination.
 - (5) If, as a result of an application under section 170CP, a court has awarded an amount of damages for a failure to give notice of a termination as required by section 170CM, any amount ordered to be paid by the Commission under paragraph (4)(b) in respect of the termination is to be reduced accordingly.
 - (6) If the Commission thinks that the reinstatement of the employee is inappropriate, the Commission may, if the Commission considers it appropriate in all the circumstances of the case, make an order requiring the employer to pay the employee an amount ordered by the Commission in lieu of reinstatement.
 - (7) Subject to subsection (8), in determining an amount for the purposes of an order under subsection (6), the Commission must have regard to all the circumstances of the case including:
 - (a) the effect of the order on the viability of the employer's undertaking, establishment or service; and
 - (b) the length of the employee's service with the employer; and

- (c) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated; and
 - (d) the efforts of the employee (if any) to mitigate the loss suffered by the employee as a result of the termination; and
 - (e) any other matter that the Commission considers relevant.
- (8) In fixing an amount under subsection (6) for an employee who was employed under award conditions immediately before the termination, the Commission must not fix an amount that exceeds the total of the following amounts:
- (a) the total amount of remuneration received (other than remuneration received for any period of leave without full pay) by the employee for any period of employment with the employer during the period of 6 months immediately before the termination; and
 - (b) if the employee was on leave without pay or without full pay while so employed during any part of that period—the amount of remuneration taken to have been received by the employee for the period of leave in accordance with the regulations.
- (9) In fixing an amount under subsection (6) for an employee who was not employed under award conditions immediately before the termination, the Commission must not fix an amount that exceeds:
- (a) the total of the amounts determined under subsection (8) if the employee were an employee covered by the subsection; or
 - (b) the amount of \$32,000, as indexed from time to time in accordance with a formula prescribed by the regulations;
- whichever is the lower amount.
- (10) For the avoidance of doubt, an order by the Commission under paragraph (4)(b) or under subsection (6) may permit the employer concerned to pay the amount required in instalments specified in the order.

170CI Orders made on arbitration are binding

Subject to any right of appeal to a Full Bench of the Commission, an order made by the Commission under section 170CH is final and binding between the parties.

170CJ Commission may order payment of costs

- (1) If the Commission is satisfied that a person or organisation made an application under section 170CE vexatiously or without reasonable cause, the Commission may, on an application by the employer under this section, make an order for costs against the person or organisation.
- (2) If:
 - (a) the Commission has begun arbitrating a matter the subject of an application under section 170CE; and
 - (b) the Commission is satisfied that a party to the proceeding has acted unreasonably in failing to discontinue the matter before the Commission or to agree to terms of settlement that could lead to the discontinuance of the matter before the conclusion of the arbitration;the Commission may, on an application under this section by the other party to the proceeding, make an order for costs against the first-mentioned party.
- (3) If:
 - (a) a person or organisation has made an application under section 170CE; and
 - (b) the person or organisation elects, under subsection 170CFA(1), (2), (3) or (5) to proceed to arbitration; and
 - (c) after the making of that election the person or organisation discontinues the matter before the Commission;the Commission may, on an application made under this section by the employer, make an order for costs against the person or organisation if the Commission is satisfied that the person or organisation has acted unreasonably in failing to discontinue the application at an earlier time.
- (4) An application for an order for costs under this section must be made within 14 days after the determination or discontinuance of the proceedings before the Commission arising under an application under section 170CE.
- (5) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in respect of an application to the Commission under section 170CE.
- (6) Without limiting, by implication, the generality of the items of expenditure for which the schedule may provide, those items may include:
 - (a) legal and professional costs and disbursements; and

- (b) expenses arising from the representation of a party by a person or organisation other than on a legal professional basis; and
 - (c) expenses of witnesses.
- (7) If a schedule of costs is prescribed for the purposes of subsection (5), then, in awarding costs under this section, the Commission:
- (a) is not limited to the items of expenditure appearing in the schedule; but
 - (b) if an item does appear in the schedule—must not award costs in respect of that item at a rate or of an amount in excess of the rate or amount appearing in the schedule.

Subdivision C—Unlawful termination of employment by employer

170CK Employment not to be terminated on certain grounds

- (1) In addition to the principal object of this Division set out in section 170CA, the additional object of this section is to make provisions that are intended to assist in giving effect to:
- (a) the Convention concerning Discrimination in respect of Employment and Occupation, a copy of the English text of which is set out in Schedule 1 to the *Human Rights and Equal Opportunity Commission Act 1986*; and
 - (b) the Family Responsibilities Convention.
- (2) Except as provided by subsection (3) or (4), an employer must not terminate an employee's employment for any one or more of the following reasons, or for reasons including any one or more of the following reasons:
- (a) temporary absence from work because of illness or injury within the meaning of the regulations;
 - (b) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
 - (c) non-membership of a trade union;
 - (d) seeking office as, or acting or having acted in the capacity of, a representative of employees;
 - (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

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- (f) race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
 - (g) refusing to negotiate in connection with, make, sign, extend, vary or terminate an AWA;
 - (h) absence from work during maternity leave or other parental leave.
- (3) Subsection (2) does not prevent a matter referred to in paragraph (2)(f) from being a reason for terminating employment if the reason is based on the inherent requirements of the particular position concerned.
- (4) Subsection (2) does not prevent a matter referred to in paragraph (2)(f) from being a reason for terminating a person's employment as a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed, if the employer terminates the employment in good faith to avoid injury to the religious susceptibilities of adherents of that religion or creed.

170CL Employer to notify CES of proposed terminations in certain cases

- (1) This section applies if an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons.
- (2) As soon as practicable after so deciding and before terminating an employee's employment because of the decision, the employer must give to the Commonwealth Employment Service a written notice of the intended terminations that sets out:
- (a) the reasons for the terminations; and
 - (b) the number and categories of employees likely to be affected; and
 - (c) the time when, or the period over which, the employer intends to carry out the terminations.
- (3) The employer must not terminate an employee's employment pursuant to the decision unless the employer has complied with subsection (2).

170CM Employer to give notice of termination

- (1) Subject to subsection (8), an employer must not terminate an employee's employment unless:
 - (a) the employee has been given the required period of notice (see subsections (2) and (3)); or
 - (b) the employee has been paid the required amount of compensation instead of notice (see subsections (4) and (5)); or
 - (c) the employee is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue the employment of the employee concerned during the required period of notice (see subsection (7)).
- (2) The required period of notice is to be worked out as follows:
 - (a) first work out the period of notice using the table at the end of this subsection; and
 - (b) then increase the period of notice by 1 week if the employee:
 - (i) is over 45 years old; and
 - (ii) has completed at least 2 years of continuous service with the employer.

Employee's period of continuous service with the employer	Period of notice
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks

- (3) For the purposes of subsection (2), the regulations may prescribe events or other matters that must be disregarded, or must in prescribed circumstances be disregarded, in ascertaining a period of continuous service.
- (4) The required amount of compensation instead of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period.

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- (5) That total must be worked out on the basis of:
 - (a) the employee's ordinary hours of work (even if they are not standard hours); and
 - (b) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and
 - (c) any other amounts payable under the employee's contract of employment.
- (6) The regulations may make provision for or in relation to amounts that are taken to be payable under a contract of employment for the purposes of paragraph (5)(c) in relation to an employee whose remuneration before the termination was determined wholly or partly on the basis of commission or piece rates.
- (7) Without limiting the generality of the reference to serious misconduct in paragraph (1)(c), the regulations may identify:
 - (a) particular conduct; or
 - (b) conduct in particular circumstances;that falls within that reference.
- (8) The regulations may exclude from the operation of this section terminations of employment occurring in specified circumstances that relate to the succession, assignment or transmission of the business of the employer concerned.

170CN Employer not to contravene Commission order about employment termination

An employer must not terminate an employee's employment in contravention of an order in force under section 170FA.

170CO Contravention of this Subdivision not an offence

A contravention of section 170CK, 170CL, 170CM or 170CN is not an offence.

170CP Application to courts in relation to alleged contravention of section 170CK, 170CL, 170CM or 170CN

- (1) Subject to subsection (5), an employee may apply under this section to the Court for an order under section 170CR in respect of an alleged contravention of one or more of sections 170CK, 170CL and 170CN by his or her employer.

- (2) Subject to subsection (5), an employee may apply under this section to the Court or to a court of competent jurisdiction as defined in section 177A for an order under section 170CR in respect of an alleged contravention of section 170CM by his or her employer.
- (3) Subject to subsection (5), a trade union that has made an application under section 170CE on behalf of an employee on the ground of an alleged contravention of one or more of sections 170CK, 170CM and 170CN may apply to a court under this section for an order under section 170CR in respect of that alleged contravention or each of those alleged contraventions.
- (4) Subject to subsection (5), an inspector, a trade union, or a trade union officer or employee who has made an application under section 170CE in respect of an alleged contravention of section 170CL may apply to the Court under this section for an order under section 170CR in respect of that alleged contravention.
- (5) An application under subsection (1), (2), (3) or (4) in respect of an alleged contravention of section 170CK, 170CL, 170CM or 170CN may not be made to a court unless the applicant:
 - (a) has received a certificate under subsection 170CF(2) regarding conciliation of an application made wholly or partly on the ground of the alleged contravention; and
 - (b) has elected under section 170CFA to begin proceedings in that court for an order under section 170CR in respect of the alleged contravention.
- (6) The application must be made within 14 days after the lodgment of an election under subsection 170CFA(6).
- (7) A court may accept an application that is lodged out of time if the court considers that it would be unfair not to do so.

170CQ Proof of issues in relation to alleged contravention of section 170CK

In any proceedings under section 170CP relating to a termination of employment in contravention of section 170CK for a reason (a *proscribed reason*) set out in a paragraph of subsection (2) of that section:

- (a) it is not necessary for the employee to prove that the termination was for a proscribed reason; but
- (b) it is a defence in the proceedings if the employer proves that the termination was for a reason or reasons that do not

include a proscribed reason (other than a proscribed reason to which subsection 170CK(3) or (4) applies).

170CR Orders available to courts

- (1) If the Court is satisfied that an employer has contravened section 170CK or 170CN in relation to the termination of employment of an employee, the Court may make one or more of the following orders:
 - (a) an order imposing on the employer a penalty of not more than \$10,000;
 - (b) an order requiring the employer to reinstate the employee;
 - (c) subject to subsection (2), an order requiring the employer to pay to the employee compensation of such amount as the Court thinks appropriate;
 - (d) any other order that the Court thinks necessary to remedy the effect of such a termination;
 - (e) any other consequential orders.
- (2) Subsections 170CH(8), (9) and (10) apply in relation to an order mentioned in paragraph (1)(c) of this section as if a reference to the Commission in those subsections were a reference to the Court.
- (3) If the Court is satisfied that an employer has contravened section 170CL in relation to a decision to terminate the employment of employees, the Court may make either or both of the following orders:
 - (a) an order imposing on the employer a penalty of not more than \$1,000;
 - (b) an order requiring the employer not to terminate the employment of employees pursuant to the decision, except as permitted by the order.
- (4) Subject to subsection (5), if a court to which an application is made under subsection 170CP(2) or (3) is satisfied that an employer has contravened section 170CM in relation to the termination of the employment of an employee, that court may make an order requiring the employer to pay to the employee an amount of damages equal to the amount which, if it had been paid by the employer to the employee when the employment was terminated, would have resulted in the employer not contravening that section.
- (5) If the Commission has made an order under subsection 170CH(4) requiring the employer to pay to the employee an amount in respect of the remuneration lost, or likely to have been lost, by the

employee because of the termination, an order under subsection (4) of this section must not be made.

- (6) A court to which an application is made under section 170CP must not grant an injunction in respect of a proposed contravention of section 170CK, 170CL, 170CM or 170CN.

Note: As well as the remedies provided in this Subdivision for contravention of section 170CK, 170CL, 170CM or 170CN, there are provisions in other parts of the Act that relate, in part, to termination of employment. See, in particular, sections 170MU and 298K.

170CS Costs

- (1) Subject to this section, a party to a proceeding under section 170CP must not be ordered to pay costs incurred by any other party to the proceeding unless the court hearing the matter is satisfied that the first-mentioned party:
- (a) instituted the proceeding vexatiously or without reasonable cause; or
 - (b) caused the costs to be incurred by that other party because of an unreasonable act or omission of the first-mentioned party in connection with the conduct of the proceeding.
- (2) Subsection (1) does not empower a court to award costs in circumstances specified in that subsection if the court does not have the power to do so.
- (3) In this section:
costs includes all legal and professional costs and disbursements and expenses of witnesses.

170CT Small claims procedure

Section 179C applies to a proceeding under section 170CP in respect of an alleged contravention of section 170CM that is started by a person or a trade union in a magistrate's court in the same way as section 179C applies to an action under section 179 that is started in a magistrate's court.

6 Section 170FC

Omit "adequate".

Note: The heading to section 170FC is altered by omitting "adequate".

7 Section 170FD

Omit “,and section 111,”, substitute “(other than section 107) and section 111 (other than paragraph 111(1)(g))”.

8 Section 170GC

Omit “adequate”.

Note: The heading to section 170GC is altered by omitting “adequate”.

9 Section 170GD

Omit “,and section 111,”, substitute “(other than section 107) and section 111 (other than paragraph 111(1)(g))”.

10 Subdivision F of Division 3 of Part VIA

Repeal the Subdivision, substitute:

Subdivision F—Other rights relating to termination of employment

170HA Division not to limit other rights

Subject only to the operation of sections 170HB and 170HC, the provisions of this Division are not intended to limit any rights that a person or trade union may have to appeal against termination of employment or to secure the making of awards or orders relating to termination of employment.

170HB Applications alleging harsh, unjust or unreasonable termination

- (1) An application must not be made under section 170CE in relation to the termination of employment of an employee on the ground that the termination was harsh, unjust or unreasonable, or on grounds that include that ground, if proceedings (the *prior proceedings*) for a remedy in respect of that termination have been commenced by or on behalf of that employee:
 - (a) under another provision of this Act; or
 - (b) under another law of the Commonwealth; or
 - (c) under a law of a State or Territory;alleging that the termination was:
 - (d) harsh, unjust or unreasonable (however described); or
 - (e) unlawful;

for a reason other than a failure by the employer to provide a benefit to which the employee was entitled on the termination.

- (2) Subsection (1) does not prevent an application of the kind referred to in that subsection if the prior proceedings:
 - (a) have been discontinued by the party who began the proceedings; or
 - (b) have failed for want of jurisdiction.
- (3) For the avoidance of doubt, a proceeding under this Act or any other law of the Commonwealth or under a law of a State or Territory seeking compensation, or the imposition of a penalty, because an employer has failed, in relation to a termination of employment, to meet an obligation:
 - (a) to give adequate notice of the termination; or
 - (b) to provide a severance payment as a result of the termination; or
 - (c) to provide any other entitlement payable as a result of the termination;is taken to be a proceeding alleging that the termination was unlawful because of a failure to provide a benefit to which the employee was entitled on the termination.
- (4) If an application of the kind referred to in subsection (1) has been made in respect of a termination, a person is not entitled to take proceedings for any other remedy that, if it had been applied for before the application would, because of the operation of subsection (1), have prevented the application unless the application:
 - (a) is discontinued by the applicant; or
 - (b) fails for want of jurisdiction.

170HC Applications alleging contravention of section 170CK

- (1) An application must not be made under section 170CE on the ground that the termination of an employee's employment constitutes an alleged contravention of section 170CK because it was done for a reason set out in subsection 170CK(2) if proceedings (the *prior proceedings*) for a remedy in respect of that termination have been commenced by or on behalf of that employee:
 - (a) under another provision of this Act; or
 - (b) under another law of the Commonwealth; or
 - (c) under a law of a State or Territory;

alleging that the termination was unlawful because it was done for such a reason.

- (2) Subsection (1) does not prevent an application of the kind referred to in that subsection if the prior proceedings:
 - (a) have been discontinued by the party who began the proceedings; or
 - (b) have failed for want of jurisdiction.
- (3) If an application of the kind referred to in subsection (1) has been made in respect of a termination, a person is not entitled to take proceedings for any other remedy that, if it had been applied for before that application would, because of the operation of subsection (1), have prevented that application unless the application:
 - (a) is discontinued by the applicant; or
 - (b) fails for want of jurisdiction.

11 Subsection 170JC(3)

Repeal the subsection, substitute:

- (3) In addition to any other right that an employee covered by an order under this Part may have under Part VIII (as it applies in accordance with this section):
 - (a) the employee may apply to the Court to enforce the order by injunction or otherwise as the Court thinks fit; and
 - (b) if the order is an order under Subdivision B of Division 3— the employee may apply to a court of competent jurisdiction as defined in section 177A to enforce the order by injunction.

12 Paragraph 170JD(1)(b)

Omit “covered by the order”, substitute “to whom the order relates”.

13 At the end of section 170JF

Add:

- (2) For the avoidance of doubt, an appeal to a Full Bench under section 45 in relation to an order made by the Commission under Subdivision B of Division 3 may be made only on the grounds that the Commission was in error in deciding to make the order.

14 Paragraph 170KA(1)(b)

Omit “, and a copy of the English text of which is set out in Schedule 13”.

15 Subsection 347(1)

After “this Act”, insert “(other than an application under section 170CP)”.

16 Schedules 9, 11 and 13

Repeal the Schedules.

Part 2—Application and transitional provisions

17 Application of amendments

- (1) Subject to this item and other provisions in this Act, the Workplace Relations Act as amended by this Schedule applies to terminations of employment occurring on or after 30 March 1994.
- (2) The Workplace Relations Act as amended by this Schedule does not apply to a termination of employment occurring before the commencement of this Schedule if an application was made in respect of that termination under section 170EA of the Workplace Relations Act as in force at any time before that commencement.
- (3) Subject to Schedule 16 and any provision in an Act, if an application was made under section 170EA of the Workplace Relations Act as in force at any time before the commencement of this Schedule, that Act as so in force continues to be in force in respect of any proceeding arising from that application.
- (4) If, in the continuing application of this Act as in force before the commencement of this Schedule, the Commission decides, after the transfer day as defined for the purposes of Part 3 of Schedule 16, to refer a matter to the Industrial Relations Court of Australia, that matter is to be treated, for the purposes of that Part, as if it had been so referred before that day and item 64 of that Part applies accordingly.
- (5) Item 14 of Schedule 2 to the *Industrial Relations and Other Legislation Amendment Act 1995* continues to have effect in relation to an application made under section 170EA of the Workplace Relations Act as in force before the commencement of this Schedule. However, that item ceases to have effect in relation to a termination of employment for which no application under that section has been made before the commencement of this Schedule.

Schedule 7—Minimum wages, equal remuneration and leave to care for immediate family

Part 1—Amendments

Workplace Relations Act 1996

1 Subsection 4(1) (paragraph (d) of the definition of *Anti-Discrimination Conventions*)

Omit “(a copy of the English text of the Preamble, and Parts II and III, of the Covenant is set out in Schedule 8)”.

2 Subsection 4(1) (definition of *Equal Remuneration Convention*)

Omit “, a copy of the English text of which is set out in Schedule 6”.

3 Subsection 4(1) (definition of *Minimum Wages Convention*)

Repeal the definition.

4 Division 1 of Part VIA

Repeal the Division.

5 Paragraph 170BA(b)

Omit “, and a copy of the English text of which is set out in Schedule 7”.

6 Paragraph 170BA(c)

Omit “, and a copy of the English text of which is set out in Schedule 9”.

7 Section 170BH

Omit “This Division”, substitute “Subject to section 170BHA, this Division”.

8 After section 170BH

Insert:

170BHA Applications under this Division

- (1) An application must not be made under this Division for an order to secure equal remuneration for work of equal value for an employee if proceedings for an alternative remedy:
 - (a) to secure such remuneration for the employee; or
 - (b) against unequal remuneration for work of equal value for the employee;have begun:
 - (c) under another provision of this Act; or
 - (d) under another law of the Commonwealth; or
 - (e) under a law of a State or Territory.
- (2) Subsection (1) does not prevent an application under this Division if the proceedings for the alternative remedy:
 - (a) have been discontinued by the party who initiated the proceedings; or
 - (b) have failed for want of jurisdiction.
- (3) If an application under this Division has been made for an order to secure equal remuneration for work of equal value for an employee, a person is not entitled to take proceedings for an alternative remedy under a provision or law of a kind referred to in subsection (1):
 - (a) to secure such remuneration for the employee; or
 - (b) against unequal remuneration for work of equal value for the employee.
- (4) Subsection (3) does not prevent the taking of proceedings for an alternative remedy if the proceedings under this Division:
 - (a) have been discontinued by the party who initiated the proceedings; or
 - (b) have failed for want of jurisdiction.

9 Division 6 of Part VIA

Repeal the Division.

10 Schedule 5

Repeal the Schedule.

11 Schedules 6 and 7

Repeal the Schedules.

Part 2—Transitional and saving provisions

12 Orders in force under Division 1 of Part VIA

Any order made under Division 1 of Part VIA of the Workplace Relations Act and in force immediately before the repeal of that Division continues in force, on and after that repeal, subject to the terms of Division 4 of that Part, as if the repeal had not taken effect.

13 Application of section 170BHA

- (1) Subsections 170BHA(1) and (2) of the Workplace Relations Act have effect in relation to the prevention of an application being made under Division 2 of Part VIA of that Act on or after the commencement of this Schedule, whether or not the proceedings for an alternative remedy referred to in subsection 170BHA(1) began before that commencement.
- (2) Subsections 170BHA(3) and (4) of the Workplace Relations Act have effect in relation to the prevention of the taking of proceedings for an alternative remedy referred to in subsection 170BHA(3) on or after the commencement of this Schedule, whether or not the application under Division 2 of Part VIA referred to in that subsection was made before that commencement.

Schedule 8—Certified agreements

Part 1—Amendments

Workplace Relations Act 1996

1 Subsection 4(1) (definition of *Bargaining Division*)

Repeal the definition.

2 Subsection 4(1) (definition of *Bargaining Division's functions and powers*)

Repeal the definition.

3 Subsection 4(1) (definition of *certified agreement*)

Omit "Division 2", substitute "Division 4".

4 After section 5

Insert:

5AA Additional operation of Act—certified agreements

- (1) In addition to the application that Division 2 of Part VIB and related provisions of this Act have to agreements about matters pertaining to the relationship between:
 - (a) an employer who is a constitutional corporation or the Commonwealth; and
 - (b) employees employed in a single business or part of a single business of the employer;that Division and those provisions also apply as mentioned in subsections (2) and (3).
- (2) Division 2 of Part VIB and related provisions of this Act apply in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between an employer who is carrying on a single business or a part of a single business in a Territory and employees employed in the single business or part.
- (3) Division 2 of Part VIB and related provisions apply in the same way as mentioned in subsection (1) in relation to an agreement about matters pertaining to the relationship between:

- (a) a waterside employer and waterside workers employed in a single business or part of a single business of the waterside employer; or
 - (b) an employer and maritime employees employed in a single business or part of a single business of the employer; or
 - (c) a flight crew officers' employer and flight crew officers performing duties or being trained in a single business or part of a single business of the employer;
- so far as the matters relate to trade or commerce:
- (d) between Australia and a place outside Australia; or
 - (e) between the States; or
 - (f) within a Territory, between a State and Territory, or between 2 Territories.

5 At the end of section 43

Add:

- (2) If the matter before the Commission is an application under Division 2 or 3 of Part VIB for certification of an agreement, the Commission:
 - (a) must, on application, grant leave to intervene in the matter to any organisation of employees that was requested to represent a person as mentioned in subsection 170LK(4) in relation to the agreement, provided the request was not withdrawn; and
 - (b) except as mentioned in paragraph (a), must not grant leave to intervene in the matter to an organisation of employees other than one that is proposed to be bound by the agreement.

6 Paragraph 45(1)(e)

Omit "Division 2", substitute "Division 4".

7 Paragraph 45(1)(ec)

Repeal the paragraph.

8 Paragraph 45(3)(b)

Omit "party to", substitute "person who made".

9 Paragraph 45(3)(ba)

Repeal the paragraph.

10 Paragraph 103(1)(a)

Omit "Division 2", substitute "Division 4".

11 Subsection 108(8)

Omit "Division 2", substitute "Division 4".

12 Paragraph 111(1)(c)

Omit "Division 2", substitute "Division 4".

13 After subsection 135(2)

Insert:

(2A) If:

- (a) the Commission is required under Part VIB to be satisfied that a valid majority of persons employed at a particular time whose employment is or will be subject to an agreement have genuinely made the agreement or given an approval; and
- (b) the Commission is not so satisfied;

then:

- (c) the Commission may order that a vote be taken by secret ballot (with or without a provision for absent voting), in accordance with directions given by the Commission, of persons employed at the time of the ballot whose employment is or will be subject to the agreement to determine whether they would make the agreement or give the approval; and
- (d) if a majority of the validly cast votes is in favour of making the agreement or giving the approval, the Commission is taken to be satisfied of the requirement.

(2B) If it appears to the Commission that:

- (a) industrial action is being taken or the taking of industrial action is threatened, impending or probable; and
- (b) the industrial action relates to a bargaining period (within the meaning of Division 8 of Part VIB); and
- (c) finding out, in relation to a matter, the attitudes of the employees whose employment will be subject to the proposed agreement concerned might help to stop or to prevent the industrial action, or might help the settlement of the matters giving rise to the industrial action;

the Commission may order that a vote of the employees be taken by secret ballot (with or without a provision for absent voting), in

accordance with directions given by the Commission, for the purpose of finding out their attitudes in relation to the matter.

14 After subsection 136(8)

Insert:

(8A) If:

- (a) the Commission has made an order for a secret ballot under subsection 135(2A); and
- (b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because it has satisfied itself that the requirement mentioned in paragraph (a) of that subsection has been met;

the Commission must revoke the order.

(8B) If:

- (a) the Commission has made an order for a secret ballot under subsection 135(2B); and
- (b) before the vote is taken, the Commission forms the view that the secret ballot should not be proceeded with because it has satisfied itself that:
 - (i) the matters giving rise to the industrial action have been, or are about to be, settled; or
 - (ii) the industrial action has stopped or been prevented, or is about to stop or be prevented;

the Commission must revoke the order.

15 Subsection 137(1)

Omit "or (2)", substitute ", (2), (2A) or (2B)".

16 Paragraph 138(5)(b)

After "the organisation", insert "(if any)".

17 Section 139

Omit "section 135 or", substitute "subsection 135(1), (2) or (2B) or section".

18 Subsection 143(4)

Repeal the subsection, substitute:

- (4) The Industrial Registrar must ensure that the following are published as soon as practicable:

- (a) a decision or determination covered by subsection (1) or (2), except:
 - (i) a decision to certify an ordinary Part VIB agreement; or
 - (ii) a decision or determination that is, in the Commission's opinion, an order affecting such an agreement;
- (b) any written reasons for a decision or determination covered by paragraph (a) that are received by the Registrar;
- (c) a multiple-business agreement a copy of which is given to a Registrar under subparagraph (2)(d)(ia).

(4A) In subsection (4):

multiple-business agreement has the same meaning as in Part VIB.

ordinary Part VIB agreement means an agreement under Division 2 or 3 of Part VIB, other than a multiple-business agreement.

19 Part VIB

Repeal the Part, substitute:

Part VIB—Certified agreements

Division 1—Preliminary

170L Object

The object of this Part is to facilitate the making, and certifying by the Commission, of certain agreements, particularly at the level of a single business or part of a single business.

170LA Functions of Commission

- (1) The Commission must, as far as practicable, perform its functions under this Part in a way that furthers the objects of this Act and, in particular, the object of this Part.
- (2) Section 90 (Commission to take into account the public interest) does not apply to the performance of functions of the Commission under this Part.
- (3) In performing its functions under this Part, the Commission may not act under paragraph 111(1)(g) on the grounds specified in subparagraph (i), (ii) or (iii) of that paragraph.

170LB Single business and single employer

- (1) For the purposes of this Part, a *single business* is:
 - (a) a business, project or undertaking that is carried on by an employer; or
 - (b) the activities carried on by:
 - (i) the Commonwealth, a State or a Territory; or
 - (ii) a body, association, office or other entity established for a public purpose by or under a law of the Commonwealth, a State or a Territory; or
 - (iii) any other body in which the Commonwealth, a State or a Territory has a controlling interest.
- (2) For the purposes of this Part:
 - (a) if 2 or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be one employer; and
 - (b) if 2 or more corporations that are related to each other for the purposes of the Corporations Law each carry on a single business:
 - (i) the corporations may be treated as one employer; and
 - (ii) the single businesses may be treated as one single business.
- (3) For the purposes of this Part, a *part* of a single business includes, for example:
 - (a) a geographically distinct part of the single business; or
 - (b) a distinct operational or organisational unit within the single business.

170LC Additional operation of Part

- (1) In addition to its operation apart from this section to a single business, or part of a single business, of an employer, this Part applies, subject to this section, in the same way to any of the following, or any combination or combinations of the following:
 - (a) one or more single businesses;
 - (b) one or more parts of single businesses;carried on by one or more employers.
- (2) If an application for certification of an agreement by the Commission can only be made under this Part because of subsection (1), the agreement is a *multiple-business agreement*.

- (3) Only a Full Bench may certify a multiple-business agreement under Division 4.
- (4) A Full Bench, under that Division, must not certify a multiple-business agreement unless it is satisfied that it is in the public interest to certify the agreement, having regard to:
 - (a) whether the matters dealt with by the agreement could be more appropriately dealt with by an agreement, other than a multiple-business agreement, under this Part; and
 - (b) any other matter that the Full Bench considers relevant.
- (5) In spite of section 170LY (which deals with the effect of a certified agreement in relation to awards and other certified agreements), a multiple-business agreement has no effect in so far as it is inconsistent with any other agreement that is certified under Division 4 that is not a multiple-business agreement.

Note 1: Section 170LY would nevertheless apply to inconsistencies with awards or orders of the Commission or with other multiple-business agreements.

Note 2: Part VID deals with the relationship between AWAs and all certified agreements.
- (6) Division 8 (other than sections 170NA and 170NB) does not apply in relation to a proposed multiple-business agreement.

170LD Nominal expiry date

For the purposes of this Part, the *nominal expiry date* of a certified agreement is the date specified in the agreement as its nominal expiry date, or that date as extended or further extended under section 170MC.

170LE Valid majority

For the purposes of this Part, a *valid majority* of persons employed at a particular time whose employment is or will be subject to an agreement:

- (a) make or genuinely make the agreement; or
- (b) approve or genuinely approve:
 - (i) the agreement; or
 - (ii) the extension of the nominal expiry date of the agreement; or
 - (iii) the variation or termination of the agreement;

if:

- (c) the employer gives all of the persons so employed a reasonable opportunity to decide whether they want to make the agreement or give the approval; and
- (d) either:
 - (i) if subparagraph (ii) does not apply—a majority of the persons; or
 - (ii) if the decision is made by a vote—a majority of the persons who cast a valid vote;decide, or genuinely decide, that they want to make the agreement or give the approval.

170LF Working day

For the purposes of this Part, a *working day*, in relation to a single business or a part of a single business, is a day on which employees normally perform work in that business or part.

170LG Paid rates award

A *paid rates award* is an award or a State award that:

- (a) includes a statement to the effect that it is a paid rates award; or
- (b) has been regarded by the Commission, or a State industrial authority, as the case may be, as a paid rates award when applying principles for the purposes of determining wages and conditions of employment.

Division 2—Making agreements with constitutional corporations or the Commonwealth

170LH What this Division covers

This Division sets out requirements that must be satisfied for applications to be made to the Commission to certify certain agreements between employers who are constitutional corporations or the Commonwealth and:

- (a) organisations of employees; or
- (b) employees.

170LI Nature of agreement

- (1) For an application to be made to the Commission under this Division, there must be an agreement, in writing, about matters pertaining to the relationship between:

Schedule 8 Certified agreements

- (a) an employer who is a constitutional corporation or the Commonwealth; and
- (b) all persons who, at any time when the agreement is in operation, are employed in a single business, or a part of a single business, of the employer and whose employment is subject to the agreement.

Note: Section 5AA also allows agreements to be made on a different constitutional basis about matters pertaining to the relationship between an employer and employees.

- (2) The agreement must be made in accordance with section 170LJ, 170LK or 170LL.

170LJ Agreement with organisations of employees

- (1) The employer may make the agreement with one or more organisations of employees where, when the agreement is made, each organisation:
 - (a) has at least one member employed in the single business or part whose employment will be subject to the agreement; and
 - (b) is entitled to represent the industrial interests of the member in relation to work that will be subject to the agreement.
- (2) The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement.
- (3) The employer must take reasonable steps to ensure that:
 - (a) at least 14 days before any approval is given, all the persons either have, or have ready access to, the agreement, in writing; and
 - (b) before any approval is given, the terms of the agreement are explained to all the persons.
- (4) An agreement must not be made under this section if it is able to be made under section 170LL (which deals with greenfields agreements).

170LK Agreement with employees

- (1) The employer may make the agreement with a valid majority of the persons employed at the time whose employment will be subject to the agreement.
- (2) The employer must take reasonable steps to ensure that every person employed at the time whose employment will be subject to the agreement has at least 14 days' notice, in writing, of intention

to make the agreement, and the agreement must not be made before those 14 days have passed.

- (3) At or before the time when the notice is given, the employer must take reasonable steps to ensure that every such person either has, or has ready access to, the proposed agreement, in writing.
- (4) The notice must also state that if:
 - (a) any person whose employment will be subject to the agreement is a member of an organisation of employees; and
 - (b) the organisation is entitled to represent the person's industrial interests in relation to work that will be subject to the agreement;the person may request the organisation to represent the person in meeting and conferring with the employer about the agreement.
- (5) If an organisation is so requested to represent such a person, the employer must give the organisation a reasonable opportunity to meet and confer with the employer about the agreement before it is made.
- (6) If at any time after the request is made:
 - (a) the person withdraws the request; or
 - (b) the conditions in paragraphs (4)(a) and (b) cease to be met;the requirement in subsection (5) ceases to apply to the employer.
- (7) Before the agreement is made, the employer must take reasonable steps to ensure that the terms of the agreement are explained to all the persons employed at the time whose employment will be subject to the agreement.
- (8) If a proposed agreement is varied for any reason after the notice is given, the steps in subsections (2), (3), (5) and (7) must again be taken in relation to the proposed agreement as varied.

170LL Greenfields agreement

- (1) If:
 - (a) the single business is a new business that the employer proposes to establish, or is establishing, when the agreement is to be made; and
 - (b) the agreement is to be made before the employment of any of the persons who will be necessary for the normal operation of the business or part and whose employment will be subject to the agreement;

then the employer may make the agreement with one or more organisations of employees meeting the requirements of subsection (2).

- (2) When the agreement is made, each organisation must be entitled to represent the industrial interests of one or more of the persons, whose employment is likely to be subject to the agreement, in relation to work that will be subject to the agreement.

170LM Making the application for certification

- (1) The application for the Commission to certify the agreement must state that it is made under this Division.
- (2) The application must be made no later than 21 days after:
 - (a) if it is made in accordance with section 170LJ—the day on which it is approved as mentioned in subsection 170LJ(2); or
 - (b) if it is made in accordance with section 170LK or 170LL—the day on which it is made.

Division 3—Making agreements about industrial disputes and industrial situations

170LN What this Division covers

This Division sets out requirements that must be satisfied for an application to be made to the Commission to certify certain agreements:

- (a) to settle, further settle or maintain the settlement of, or to prevent, industrial disputes; or
- (b) to prevent industrial situations from giving rise to industrial disputes.

170LO Agreement about industrial dispute

If an employer who is carrying on a single business is or was a party to an industrial dispute, the employer may agree with one or more organisations of employees with whom the employer is or was in dispute on terms for:

- (a) settling or further settling all or any of the matters that are in dispute; or
- (b) maintaining a settlement of all or any of the matters that were in dispute, whether the settlement was made by an award, a certified agreement or otherwise; or

- (c) preventing further industrial disputes between them.

170LP Agreement about industrial situation

If the parties to an industrial situation are, or include, an employer carrying on a single business and one or more organisations of employees, the employer and any of the organisations may agree on terms for preventing the situation from giving rise to an industrial dispute involving them.

170LQ Multiple disputes and situations

A single agreement may deal with 2 or more disputes or situations.

170LR Approval by valid majority of employees

- (1) The agreement must be approved by a valid majority of the persons employed at the time whose employment will be subject to the agreement.
- (2) The employer must take reasonable steps to ensure that:
 - (a) at least 14 days before any approval is given, all the persons either have, or have ready access to, the agreement, in writing; and
 - (b) before any approval is given, the terms of the agreement are explained to all the persons.

170LS Making the application for certification

- (1) The application to the Commission to certify the agreement must state that it is made under this Division.
- (2) The application must be made no later than 21 days after the day on which it is approved as mentioned in subsection 170LR(1).

Division 4—Certifying agreements

170LT Certifying an agreement

- (1) If an application is made to the Commission in accordance with Division 2 or 3 to certify an agreement, the Commission must certify the agreement if, and must not certify the agreement unless, it is satisfied that the requirements of this section are met.
- (2) The agreement must pass the no-disadvantage test (see Part VIE).

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- (3) If:
- (a) the only reason why the Commission must not certify an agreement is that the agreement does not pass the no-disadvantage test; and
 - (b) the Commission is satisfied that certifying the agreement is not contrary to the public interest;
- the agreement is taken to pass the no-disadvantage test.
- (4) An example of a case where the Commission may be satisfied that certifying the agreement is not contrary to the public interest is where making the agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the single business or part.
- (5) If the agreement was made in accordance with section 170LJ or Division 3, a valid majority of persons employed at the time whose employment would be subject to the agreement must have genuinely approved the agreement.
- (6) If the agreement was made in accordance with section 170LK, a valid majority of persons employed at the time whose employment would be subject to the agreement must have genuinely made the agreement.
- (7) The explanation of the terms of the agreement to persons as mentioned in paragraph 170LJ(3)(b), subsection 170LK(7) or paragraph 170LR(2)(b) must have taken place in ways that were appropriate, having regard to the persons' particular circumstances and needs. An example of such a case would be where the persons included:
- (a) women; or
 - (b) persons from a non-English speaking background; or
 - (c) young persons.
- (8) The agreement must include procedures for preventing and settling disputes between:
- (a) the employer; and
 - (b) the employees whose employment will be subject to the agreement;
- about matters arising under the agreement.
- (9) If the agreement was made in accordance with section 170LK, the employer must not have coerced, or attempted to coerce, any employee:

- (a) not to make a request as mentioned in subsection 170LK(4);
or
 - (b) to withdraw such a request.
- (10) The agreement must specify a date as the nominal expiry date of the agreement, and that date cannot be more than 3 years after the date on which the agreement will come into operation.

170LU When Commission to refuse to certify an agreement

- (1) Despite section 170LT, if the application for certification states that it is made under Division 3, the Commission must refuse to certify the agreement unless it is satisfied that the agreement will:
- (a) settle or further settle all or any of the matters that are the subject of the industrial dispute; or
 - (b) maintain a settlement of all or any of the matters that were the subject of the industrial dispute, whether the settlement was made by an award, a certified agreement or otherwise; or
 - (c) prevent further industrial disputes between the persons concerned; or
 - (d) prevent the industrial situation from giving rise to an industrial dispute involving the persons concerned; or
 - (e) assist in doing any of the things mentioned in paragraphs (a) to (d).
- (2) Despite section 170LT, the Commission must refuse to certify an agreement if the Commission thinks that a provision of the agreement is inconsistent with:
- (a) a provision of Division 3 of Part VIA; or
 - (b) an order by the Commission under that Division; or
 - (c) an injunction granted, or any other order made, by the Court under that Division.
- (3) Despite section 170LT, the Commission must refuse to certify an agreement if it is satisfied that:
- (a) the employer has, in connection with negotiating the agreement, contravened section 170NB or Part XA (which deals with freedom of association); or
 - (b) the employer has caused a person or body to engage, in connection with negotiations for an agreement, in conduct that, had the employer engaged in the conduct, would be a contravention by the employer of section 170NB or Part XA; or
 - (c) a person or body has, on behalf of the employer:

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- (i) so engaged in such conduct; or
 - (ii) caused another person or body so to engage in such conduct.
- (4) Subsection (3) does not apply if the Commission is satisfied that the contravention or conduct, and its effects, have been fully remedied.
- (5) Despite section 170LT, the Commission must refuse to certify an agreement if it thinks that a provision of the agreement discriminates against an employee, whose employment will be subject to the agreement, because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (6) For the purposes of subsection (5), a provision of an agreement does not discriminate against an employee merely because:
 - (a) it provides for a junior rate of pay; or
 - (b) it discriminates, in respect of particular employment, on the basis of the inherent requirements of that employment; or
 - (c) it discriminates, in respect of employment as a member of the staff of an institution that is conducted in accordance with the teachings or beliefs of a particular religion or creed:
 - (i) on the basis of those teachings or beliefs; and
 - (ii) in good faith.
- (7) Paragraph (6)(a) does not apply for the purposes of any application of subsection (5) by the Commission more than 3 years after 22 June 1997, except where the Commission decides, on a case-by-case basis, that the paragraph should apply. Decisions by the Commission as to whether the paragraph should apply must be made by the Commission in accordance with principles established by a Full Bench.
- (8) Despite section 170LT, the Commission must refuse to certify an agreement if:
 - (a) the agreement applies only to a part of a single business that is neither of the following:
 - (i) a geographically distinct part of the single business; or
 - (ii) a distinct operational or organisational unit within the single business; and
 - (b) the Commission considers that the agreement defines that part in a way that results in the employment of employees not

being subject to the agreement where it would be reasonable for the employment to be, having regard to:

- (i) the nature of the work performed by the employees whose employment is not subject to the agreement; and
 - (ii) the organisational and operational relationships between that part and the rest of the single business; and
- (c) the Commission considers it unfair that the employment of those employees is not subject to the agreement.

170LV Other options open to Commission instead of refusing to certify an agreement

(1) If, under section 170LT or 170LU, the Commission has grounds to refuse to certify an agreement:

- (a) the Commission may accept an undertaking from one or more of the persons who made the agreement in relation to the operation of the agreement and, if satisfied that the undertaking meets the Commission's concerns, certify the agreement; and
- (b) in any case, before refusing to certify the agreement, the Commission must give the persons who made the agreement an opportunity to take any action that may be necessary to make the agreement certifiable.

(2) If an undertaking is not complied with, the Commission, after giving the persons who made the agreement an opportunity to be heard, may:

- (a) order the one or more persons who gave the undertaking to comply with it; or
- (b) by order, terminate the agreement.

(3) If:

- (a) after doing the things required or permitted by subsection (1), the Commission is still required to refuse to certify the agreement; and
- (b) it is so required only because it is not satisfied as mentioned in subsection 170LU(1);

the Commission may conciliate the industrial dispute or industrial situation concerned with a view to assisting the persons concerned to make the agreement certifiable.

170LW Procedures for preventing and settling disputes

Procedures in a certified agreement for preventing and settling disputes between the employer and employees whose employment will be subject to the agreement may, if the Commission so approves, empower the Commission to do either or both of the following:

- (a) to settle disputes over the application of the agreement;
- (b) to appoint a board of reference as described in section 131 for the purpose of settling such disputes.

Division 5—Effect of certified agreements

170LX When a certified agreement is in operation

- (1) A certified agreement comes into operation when it is certified and, subject to this section, remains in operation at all times afterwards.
- (2) The agreement ceases to be in operation if:
 - (a) its nominal expiry date has passed; and
 - (b) it is replaced by another certified agreement.
- (3) The agreement:
 - (a) ceases to be in operation if it is terminated under section 170LV, 170ME, 170MG, 170MH or 170MHA; and
 - (b) does not operate if subsection 170LY(2) applies.The agreement may also be set aside under subsection 113(2A).

Note: Sections 170LV and 170ME deal with breaches of undertakings. Sections 170MG, 170MH and 170MHA deal with voluntary termination. Subsection 113(2A) deals with discriminatory agreements.

- (4) If:
 - (a) the application for certification of an agreement states that the application is made under Division 2; and
 - (b) at any time when the agreement is in operation, the employer who made the agreement, or any employer who is bound by the agreement under section 170MB (which deals with successor employers), is a constitutional corporation; and
 - (c) at any later time while bound by the agreement, any such employer ceases to be a constitutional corporation;the agreement ceases to apply to the single business or part carried on by that employer.

170LY Effect of a certified agreement in relation to awards and other certified agreements

- (1) While a certified agreement is in operation:
 - (a) subject to this section, it prevails over an award or order of the Commission, to the extent of any inconsistency with the award or order; and
 - (b) it has no effect to the extent of any inconsistency with another agreement certified before it, whose nominal expiry date has not passed.
- (2) If:
 - (a) an award is made under subsection 170MX(3) (which deals with the exercise of arbitration powers on termination of a bargaining period); and
 - (b) before the award is made, or after it is made but before its nominal expiry date passes, a certified agreement is certified; and
 - (c) the employment of at least one employee is subject to both the award and the certified agreement;the certified agreement does not operate at any time while the award operates.
- (3) An exceptional matters order prevails, to the extent of any inconsistency, over a certified agreement that was certified before the order was made.

Note: Part VID deals with the relationship between AWAs and certified agreements.

170LZ Effect of a certified agreement on Commonwealth laws or State laws, awards or agreements

- (1) Subject to this section, a certified agreement prevails over terms and conditions of employment specified in a State law, State award or State employment agreement, to the extent of any inconsistency.
- (2) Provisions in a certified agreement that deal with the following matters operate subject to the provisions of a State law that deals with the matter:
 - (a) occupational health and safety;
 - (b) workers' compensation;
 - (c) apprenticeship;
 - (d) any other matter prescribed by the regulations.

- (3) If a State law, State award or State employment agreement provides a remedy for the termination of an employee's employment, subsection (1) is not intended to affect the provisions of the State law, State award or State employment agreement that relate to termination of employment, so far as those provisions are able to operate concurrently with the certified agreement.
- (4) To the extent of any inconsistency, a certified agreement displaces prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations.
- (5) In this section:

Commonwealth law means an Act or any regulations or other instrument made under an Act.

prescribed conditions means conditions that are identified by the regulations.

State law means a law of a State or Territory (including any regulations or other instrument made under a law of a State or Territory), but does not include a State award or a State employment agreement.

Division 6—Persons bound by certified agreements

170M Persons bound in Division 2 cases

- (1) If the application for certification states that the application is made under Division 2, the certified agreement binds:
 - (a) the employer; and
 - (b) all persons whose employment is, at any time when the agreement is in operation, subject to the agreement.
- (2) If, in accordance with section 170LJ or 170LL, one or more organisations of employees made the agreement with the employer, the agreement also binds the one or more organisations.
- (3) If:
 - (a) the application for certification states that the application is made under Division 2; and
 - (b) in accordance with section 170LK, a valid majority of persons made the agreement with the employer; and
 - (c) before the agreement is certified, an organisation of employees notifies the Commission and the employer in writing that it wants to be bound by the agreement; and

- (d) the organisation satisfies the Commission that it has at least one member:
 - (i) whose employment will be subject to the agreement; and
 - (ii) whose industrial interests the organisation is entitled to represent in relation to work that will be subject to the agreement; and
 - (iii) who requested the organisation to give the notification;the Commission must, by order, determine that the agreement binds the organisation.

170MA Persons bound in Division 3 cases

If the application for certification states that the application is made under Division 3, the certified agreement binds:

- (a) the employer and the one or more organisations of employees concerned; and
- (b) all members of the one or more organisations of employees concerned.

170MB Successor employers bound

- (1) If:
 - (a) an employer is bound by a certified agreement; and
 - (b) at a later time:
 - (i) if the application for certification of the agreement stated that it was made under Division 2—a new employer that is a constitutional corporation or the Commonwealth; or
 - (ii) if the application stated that it was made under Division 3—a new employer;becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned, then, from the later time:
 - (c) the new employer is bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
 - (d) the previous employer ceases to be bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
 - (e) a reference in this Part to the employer includes a reference to the new employer, and ceases to refer to the previous

employer, to the extent that the context relates to the whole or the part of the business.

- (2) Subsection (1) does not affect the rights and obligations of the previous employer that arose before the later time.

Division 7—Extending, varying or terminating certified agreements

170MC Extending the nominal expiry date

- (1) On or before the nominal expiry date of a certified agreement:
- (a) if paragraph (b) does not apply—the employer; or
 - (b) if one or more organisations are bound by the agreement—the employer and the one or more organisations;
- may, in writing, extend the nominal expiry date of the agreement. The extended date cannot be more than 3 years after the date on which the agreement came into operation.
- (2) The extension has no effect unless the Commission approves it.
- (3) The Commission must, by order, approve the extension if, and must not approve the extension unless, it is satisfied that a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve the extension.
- (4) The extension takes effect when the Commission's order takes effect.
- (5) This section does not apply to an agreement:
- (a) to which section 170LL (greenfields agreements) applied; or
 - (b) to which subsection 170LT(3) applied, in circumstances covered by the example in subsection 170LT(4) (short-term business crises).

170MD Varying a certified agreement

- (1) Either:
- (a) if paragraph (b) does not apply—the employer; or
 - (b) if one or more organisations are bound by the agreement—the employer and the one or more organisations;
- may, in writing, vary the agreement.
- (2) The variation has no effect unless the Commission approves it.
- (3) The Commission must, by order, approve the variation if, and must not approve the variation unless, it is satisfied that:

- (a) a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve the variation; and
 - (b) the Commission would be required to certify the agreement as varied if it were a new agreement whose certification was applied for under this Part.
- (4) In applying paragraph (3)(b):
- (a) any requirement about a majority of persons making or approving the agreement is taken to be satisfied; and
 - (b) section 170LV (which deals with undertakings in the context of certifying an agreement) is to be disregarded.
- Note: Section 170ME instead deals with undertakings in relation to the variation.
- (5) The variation takes effect when the Commission's order takes effect.
- (6) The Commission may, on application by any person bound by a certified agreement, by order vary a certified agreement:
- (a) for the purpose of removing ambiguity or uncertainty; or
 - (b) for the purpose of including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee.
- (7) A certified agreement is not able to be varied except in accordance with:
- (a) this section (including as it applies in accordance with section 170MDA); or
 - (b) subsection 113(2A) (which deals with discriminatory agreements); or
 - (c) section 170MC (extending the nominal expiry date); or
 - (d) section 170ME (which deals with undertakings).

Note: Subsection (7) would not apply to an agreement in so far as the obligations under the agreement can change because of the terms of the agreement itself.

170MDA Variation where discrimination between unionists and non-unionists

If:

- (a) one or more employees whose employment is not subject to the agreement request the employer to:
 - (i) vary the agreement so that the employment of the employees is subject to the agreement; and

- (ii) seek the approval of the Commission for the variation under section 170MD; and
 - (b) the employment of the employees would be subject to the agreement if:
 - (i) they were members of an organisation of employees or of a particular organisation of employees; or
 - (ii) they were not members of an organisation of employees or of a particular organisation of employees; and
 - (c) the variation would not cause the agreement to become a multiple-business agreement;
- the employer must comply with the request.
- (2) If, in accordance with the request, the employer seeks the approval of the Commission to the variation under subsection 170MD(3), the Commission must disregard paragraph 170MD(3)(a) in deciding whether to approve the variation.

170ME Other options open to Commission instead of refusing to approve variation of an agreement

- (1) If, under section 170MD, the Commission has grounds to refuse to approve a variation of an agreement:
- (a) the Commission may accept an undertaking from one or more of the persons who varied the agreement in relation to the operation of the agreement as varied and, if satisfied that the undertaking meets the Commission's concerns, approve the variation; and
 - (b) in any case, before refusing to approve the variation, the Commission must give the persons who varied the agreement an opportunity to take any action that may be necessary to allow the variation to be approved.
- (2) If an undertaking is not complied with, the Commission, after giving the persons who varied the agreement an opportunity to be heard, may:
- (a) order the one or more persons who gave the undertaking to comply with it; or
 - (b) by order, vary the agreement so as to undo the effect of the approved variation; or
 - (c) by order, terminate the agreement.

170MG Terminating a certified agreement where valid majority approve at any time

- (1) Either:
 - (a) if paragraph (b) does not apply—the employer; or
 - (b) if one or more organisations are bound by the agreement—the employer and the one or more organisations;may, in writing, terminate the agreement.
- (2) The termination has no effect unless the Commission approves it.
- (3) The Commission must, by order, approve the termination of the agreement if, and must not approve the termination unless, it is satisfied that a valid majority of the employees whose employment is subject to the agreement at the time genuinely approve its termination.
- (4) The termination takes effect when the Commission's order takes effect.

170MH Terminating a certified agreement in public interest after nominal expiry date

- (1) After the nominal expiry date of a certified agreement:
 - (a) the employer; or
 - (b) a majority of the employees whose employment is subject to the agreement; or
 - (c) an organisation of employees that is bound by the agreement and that has at least one member whose employment is subject to the agreement;may apply to the Commission to have the agreement terminated.
- (2) On receiving the application, the Commission must take such steps as it considers appropriate to obtain the views of persons bound by the agreement about whether it should be terminated.
- (3) If, after complying with subsection (2), the Commission considers that it is not contrary to the public interest to terminate the agreement, the Commission must, by order, terminate the agreement.
- (4) The termination takes effect when the Commission's order takes effect.

170MHA Terminating an agreement in a way provided under agreement after nominal expiry date

- (1) If:
 - (a) a certified agreement makes provision for it to be terminated if certain conditions are met; and
 - (b) those conditions are met after the agreement's nominal expiry date has passed;any of the persons mentioned in subsection (2) may apply to the Commission to have the termination approved.
- (2) The persons are:
 - (a) the employer; or
 - (b) an employee whose employment is subject to the agreement; or
 - (c) an organisation of employees that is bound by the agreement and that has at least one member whose employment is subject to the agreement.
- (3) If the Commission is satisfied that the requirements of paragraphs (1)(a) and (b) are complied with, it must, by order, approve the termination.
- (4) If the Commission does so, the agreement terminates when the Commission's order takes effect.

Division 8—Negotiations for certified agreements etc.

170MI Initiation of bargaining period

- (1) If:
 - (a) an employer; or
 - (b) an organisation of employees; or
 - (c) an employee acting on his or her own behalf and on behalf of other employees;

wants to negotiate an agreement under Division 2 or 3 in relation to employees who are employed in a single business or a part of a single business, the employer, organisation or employee (the *initiating party*) may initiate a period (the *bargaining period*) for negotiating the proposed agreement.

Note: This subsection has effect subject to subsections 170MW(10) and 170MZ(7).

- (2) The bargaining period is initiated by the initiating party giving written notice to each other negotiating party (see subsection (3))

and to the Commission stating that the initiating party intends to try:

- (a) to make an agreement with the other negotiating parties under Division 2 or 3; and
 - (b) to have any agreement so made certified under Division 4.
- (3) In this Division, each of the following is a *negotiating party* to a proposed agreement:
- (a) the initiating party;
 - (b) if the initiating party is an employer who intends to try to make an agreement under section 170LJ or 170LL or Division 3—the organisation or organisations who are proposed to be bound by the agreement;
 - (c) if the initiating party is an employer who intends to try to make an agreement under section 170LK—the employees at the time whose employment will be subject to the agreement;
 - (d) if the initiating party is an organisation of employees—the employer who is proposed to be bound by the agreement;
 - (e) if the initiating party is an employee acting on his or her own behalf and on behalf of other employees—the employer who is proposed to be bound by the agreement and the employees whose employment will be subject to the agreement.

170MJ Particulars to accompany notice

The notice is to be accompanied by particulars of:

- (a) the single business or part of the single business to be covered by the proposed agreement; and
- (b) the types of employees whose employment will be subject to the agreement and the other persons who will be bound by the agreement; and
- (c) the matters that the initiating party proposes should be dealt with by the agreement; and
- (d) the industrial dispute (if any) to which the proposed agreement relates; and
- (e) the proposed nominal expiry date of the agreement; and
- (f) any other matters prescribed by the regulations.

170MK When bargaining period begins

The bargaining period begins at the end of 7 days after:

- (a) the day on which the notice was given; or

- (b) if the notice was given to different persons on different days—the later or latest of those days.

170ML Protected action

- (1) This section identifies certain action (*protected action*) to which the provisions in section 170MT (which confers certain legal immunity on protected action) are to apply.
- (2) During the bargaining period:
- (a) an organisation of employees that is a negotiating party; or
 - (b) a member of such an organisation who is employed by the employer; or
 - (c) an officer or employee of such an organisation acting in that capacity; or
 - (d) an employee who is a negotiating party;
- is entitled, for the purpose of:
- (e) supporting or advancing claims made in respect of the proposed agreement; or
 - (f) responding to a lockout by the employer of employees whose employment will be subject to the agreement;
- to organise or engage in industrial action directly against the employer and, if the organisation, member, officer or employee does so, the organising of, or engaging in, that industrial action is protected action.
- (3) Subject to subsection (6), during the bargaining period, the employer is entitled, for the purpose of:
- (a) supporting or advancing claims made by the employer in respect of the proposed agreement; or
 - (b) responding to industrial action by any of the employees whose employment will be subject to the agreement;
- to lock out from their employment all or any of the employees whose employment will be subject to the agreement and, if the employer does so, the lockout is protected action.

Note 1: The existence of this entitlement does not affect any right of the employer to refuse to pay the employee where, under the common law, the employer is permitted to do so because the employee has not performed work as directed.

Note 2: The existence of this entitlement also does not affect any authorisation of the employer to stand-down the employee as a result of a variation of an award under section 126, nor does it affect the Commission's powers under that section to vary an award to give such an authorisation.

- (4) The reference in subsection (3) to the employer locking out employees from their employment is a reference to the employer preventing employees from performing work under their contracts of employment without terminating those contracts.
- (5) If the employer locks out employees from their employment in accordance with subsection (3), the employer is entitled to refuse to pay any remuneration to the employees in respect of the period of the lockout.
- (6) The employer is not entitled to lock out employees from their employment under subsection (3) unless the continuity of the employees' employment for such purposes as are prescribed by the regulations is not affected by the lockout.
- (7) This section has effect subject to the following provisions of this Division.

170MM Industrial action must not involve secondary boycott

- (1) Engaging in industrial action is not protected action if:
 - (a) it is engaged in in concert with one or more persons or organisations that are not protected persons; or
 - (b) it is organised other than solely by one or more protected persons.
- (2) Organising industrial action is not protected action if:
 - (a) it is organised in concert with one or more persons or organisations that are not protected persons; or
 - (b) it is intended to be engaged in other than solely by one or more protected persons.
- (3) In this section:

protected person means:

 - (a) an organisation of employees that is a negotiating party; or
 - (b) a member of such an organisation who is employed by the employer; or
 - (c) an officer or employee of such an organisation acting in that capacity; or
 - (d) an employee who is a negotiating party.

170MN Industrial action etc. must not be taken until after nominal expiry date of certain agreements and awards

- (1) From the time when:
 - (a) a certified agreement; or

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(b) an award under subsection 170MX(3) (which deals with the exercise of arbitration powers on termination of a bargaining period);

comes into operation until its nominal expiry date has passed, an employee, organisation or officer covered by subsection (2) must not, for the purpose of supporting or advancing claims against the employer in respect of the employment of employees whose employment is subject to the agreement or award, engage in industrial action.

- (2) For the purposes of subsection (1), the following are covered by this subsection:
- (a) any employee whose employment is subject to the agreement or award;
 - (b) an organisation of employees that is bound by the agreement or award;
 - (c) an officer or employee of such an organisation acting in that capacity.
- (3) If the employee, organisation or officer contravenes subsection (1), the action concerned is not protected action.
- (4) From the time when:
- (a) a certified agreement; or
 - (b) an award under subsection 170MX(3);
- comes into operation until its nominal expiry date has passed, the employer must not, for the purpose of supporting or advancing claims in respect of the employment of employees whose employment is subject to the agreement or award, lock out such an employee from his or her employment.
- (5) If the employer does so, the lockout is not protected action.
- (6) Engaging in industrial action, or locking out an employee, in contravention of section 170VU is not protected action.

170MO Notice of action to be given

- (1) Any action taken as mentioned in subsection 170ML(2) by:
- (a) an organisation of employees; or
 - (b) a member of such an organisation; or
 - (c) an officer or employee of such an organisation acting in that capacity; or
 - (d) an employee who is a negotiating party;

is not protected action unless the requirements set out in subsection (2) are met.

- (2) The requirements are that:
 - (a) if the action is in response to, and is taken after the start of, a lockout of employees by the employer in respect of the proposed agreement—the organisation, or the employee who is a negotiating party, has given the employer written notice of the intention to take the action; or
 - (b) in any other case—the organisation, or the employee who is a negotiating party, has given the employer at least 3 working days' written notice of the intention to take the action.
- (3) If one or more of the negotiating parties is an organisation of employees, any action taken as mentioned in subsection 170ML(3) by the employer to lock out employees from their employment:
 - (a) is not protected action unless the employer has given the other negotiating party or each of the other negotiating parties:
 - (i) if the lockout is in response to, and takes place after the start of, industrial action organised or engaged in by an organisation that is a negotiating party in respect of the proposed agreement—written notice of the intended lockout; or
 - (ii) in any other case—at least 3 working days' written notice of the intended lockout; and
 - (b) is not protected action in so far as it relates to a particular employee unless:
 - (i) if subparagraph (a)(i) applies—before the lockout begins; or
 - (ii) in any other case—at least 3 working days before the lockout begins;
the employer has given written notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended lockout.
- (4) If one or more of the negotiating parties is an employee whose employment will be subject to the proposed agreement, any action taken as mentioned in subsection 170ML(3) by the employer to lock out employees from their employment is not protected action in so far as it relates to a particular employee unless:
 - (a) if the lockout is in response to, and takes place after the start of, industrial action organised or engaged in by any of the

- employees who are negotiating parties in respect of the proposed agreement—before the lockout begins; or
- (b) in any other case—at least 3 working days before the lockout begins;
- the employer has given written notice to the particular employee, or has taken other reasonable steps to notify the particular employee, of the intended lockout.
- (5) A written notice or other notification under this section must state the nature of the intended action and the day when it will begin.
- (6) A written notice or other notification under this section may be given before the start of the bargaining period.

170MP Negotiation must precede industrial action or lockout

- (1) Engaging in industrial action by a person who is a member of an organisation of employees that is a negotiating party is not protected action unless the organisation has, before the person begins to engage in the industrial action:
- (a) genuinely tried to reach agreement with the employer; and
- (b) if the Commission has made an order in relation to the negotiations—complied with the order in so far as it applies to the organisation.
- (2) Engaging in industrial action by an employee (the *first employee*) who is a negotiating party is not protected action unless, before the first employee begins to engage in the industrial action:
- (a) the first employee, or another employee acting on behalf of the first employee, has genuinely tried to reach agreement with the employer; and
- (b) if the Commission has made an order in relation to the negotiations—the first employee has complied with the order in so far as it applies to the first employee.
- (3) A lockout of employees by an employer is not protected action unless the employer has, before the employer begins the lockout:
- (a) if the employees are members of an organisation or organisations that are negotiating parties—genuinely tried to reach agreement with the organisation or organisations; and
- (b) if the employees are negotiating parties—genuinely tried to reach agreement with the employees; and
- (c) if the Commission has made an order in relation to the negotiations—complied with the order in so far as it applies to the employer.

170MQ What happens if Commission orders a ballot

- (1) If, under subsection 135(2), the Commission has ordered that a vote of members of an industrial organisation be taken by secret ballot in relation to the proposed agreement, the organising of, or engaging in, industrial action by:
 - (a) the organisation; or
 - (b) a member of the organisation; or
 - (c) an officer or employee of the organisation acting in that capacity;after the making of the order is not protected action unless:
 - (d) such a ballot has been taken; and
 - (e) the industrial action has been approved by a majority of the valid votes cast in the ballot.
- (2) If, under subsection 135(2B), the Commission has ordered that a vote of employees be taken by secret ballot in respect of a proposed agreement, the organising of, or engaging in, industrial action by the employees after the making of the order is not protected action unless:
 - (a) such a ballot has been taken; and
 - (b) the industrial action has been approved by a majority of the valid votes cast in the ballot.

170MR Industrial action must be duly authorised

- (1) Engaging in industrial action by members of an organisation of employees that is a negotiating party is not protected action unless, before the industrial action begins:
 - (a) the industrial action is duly authorised by a committee of management of the organisation or by someone authorised by such a committee to authorise the industrial action; and
 - (b) if the rules of the organisation provide for the way in which the industrial action is to be authorised—the industrial action is duly authorised under those rules; and
 - (c) written notice of the giving of the authorisation is given to a Registrar.
- (2) Industrial action is taken, for the purposes of this section, to be duly authorised under the rules of an organisation of employees even though a technical breach has occurred in authorising the industrial action, so long as the person or persons who committed the breach acted in good faith.

- (3) Examples of a technical breach in authorising industrial action are as follows:
- (a) a contravention of the rules of the organisation;
 - (b) an error or omission in complying with the requirements of this Act;
 - (c) participation, by a person not eligible to do so, in the making of a decision by a committee of management, or by members, of the organisation.
- (4) Industrial action is taken, for the purposes of this section, to have been duly authorised under the rules of an organisation of employees, and to have been so authorised before the industrial action began, unless:
- (a) the Court declares in a proceeding that the industrial action was not duly authorised under those rules; and
 - (b) the proceeding was brought in the Court within 6 months after the notification in relation to the industrial action was given to a Registrar under paragraph (1)(c).
- (5) In so far as the rules of an organisation of employees provide for the way in which industrial action that section 170ML entitles the organisation to organise or engage in is to be authorised, the rules do not contravene section 196 unless the manner provided for contravenes that section.

170MS What happens if application to certify agreement is not made within 21 days

Unless an application to the Commission to certify an agreement is made within 21 days after the day when the agreement is made, nothing that was done during the bargaining period by an employee whose employment is subject to the agreement or by a person bound by the agreement is protected action.

170MT Immunity provisions

- (1) An order made by the Commission under section 127 does not apply to protected action.
- (2) Subject to subsection (3), no action lies under any law (whether written or unwritten) in force in a State or Territory in respect of any industrial action that is protected action unless the industrial action has involved or is likely to involve:
- (a) personal injury; or
 - (b) wilful or reckless destruction of, or damage to, property; or

- (c) the unlawful taking, keeping or use of property.
- (3) Subsection (2) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.

170MU Employer not to dismiss employee etc. for engaging in protected action

- (1) An employer must not:
 - (a) dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice; or
 - (b) threaten to dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice;wholly or partly because the employee is proposing to engage, is engaging, or has engaged, in protected action.
- (2) Subsection (1) of this section does not apply to any of the following actions taken by the employer:
 - (a) standing-down the employee;
 - (b) refusing to pay the employee where, under the common law, the employer is permitted to do so because the employee has not performed work as directed;
 - (c) action of the employer that is itself protected action.
- (3) In proceedings under section 170NF for an alleged contravention of subsection (1) of this section, it is to be presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to engage, was engaging, or had engaged, in protected action.

170MV When bargaining period ends

The bargaining period ends if any of the following events occurs:

- (a) an agreement under Division 2 or 3 is made by the employer and any one or more of the other negotiating parties; or
- (b) the initiating party tells the other negotiating party or each of the other negotiating parties in writing that the initiating party no longer wants to reach an agreement under Division 2 or 3 with that other party or those other parties; or
- (c) the Commission terminates the bargaining period.

170MW Power of Commission to suspend or terminate bargaining period

- (1) Subject to subsection (8), the Commission may, by order, suspend or terminate the bargaining period if, after giving the negotiating parties an opportunity to be heard, it is satisfied that any of the circumstances set out in subsections (2) to (7) exists or existed.
- (2) A circumstance for the purposes of subsection (1) is that a negotiating party that, before or during the bargaining period, has organised or taken, or is organising or taking, industrial action to support or advance claims in respect of the proposed agreement:
 - (a) did not genuinely try to reach an agreement with the other negotiating parties before organising or taking the industrial action; or
 - (b) is not genuinely trying to reach an agreement with the other negotiating parties; or
 - (c) has failed to comply with any directions by the Commission that relate to the proposed agreement or to a matter that arose during the negotiations for the proposed agreement; or
 - (d) has failed to comply with a recommendation of the Commission under section 111AA that relates to the proposed agreement or to a matter that arose during the negotiations for the proposed agreement.
- (3) A circumstance for the purposes of subsection (1) is that industrial action that is being taken to support or advance claims in respect of the proposed agreement is threatening:
 - (a) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it; or
 - (b) to cause significant damage to the Australian economy or an important part of it.
- (4) A circumstance for the purposes of subsection (1) is that industrial action is being organised or taken by:
 - (a) an organisation that is a negotiating party; or
 - (b) a member of such an organisation who is employed by the employer; or
 - (c) an officer or employee of such an organisation acting in that capacity;against an employer to support or advance claims in respect of employees:
 - (d) whose employment will be subject to the agreement; and

- (e) who are neither members, nor eligible to become members, of the organisation.
- (5) A circumstance for the purposes of subsection (1) is that industrial action that is being organised or taken by an organisation that is a negotiating party:
- (a) relates, to a significant extent, to a demarcation dispute; or
 - (b) contravenes an order of the Commission that relates, to a significant extent, to a demarcation dispute.
- (6) If the bargaining period relates to employees employed in a part of a single business, a circumstance for the purposes of subsection (1) is that the initiating party is not complying with an award or order, a direction of the Commission, or a certified agreement, in relation to another part of the single business.
- (7) A circumstance for the purposes of subsection (1) is that:
- (a) immediately before the commencement of this section, the wages and conditions of the kind of employees whose employment will be subject to the agreement were determined by a paid rates award, or would have been so determined if a certified agreement, an enterprise flexibility agreement (within the meaning of this Act as then in force) or a State employment agreement had not prevailed over the award; and
 - (b) so far as the wages and conditions of the kind of employees whose employment will be subject to the agreement were, before the commencement of this section, customarily determined by an award or a State award, they were determined by a paid rates award; and
 - (c) there is no reasonable prospect of the negotiating parties reaching an agreement under Division 2 or 3 during the bargaining period.
- (8) The Commission:
- (a) may not make an order under subsection (1), in a circumstance set out in subsection (2), (4), (5), (6) or (7), except on application by a negotiating party; but
 - (b) may make an order under subsection (1), in a circumstance set out in subsection (3):
 - (i) on its own initiative; or
 - (ii) on application by a negotiating party or the Minister.

- (9) Anything done by a negotiating party or any other person in respect of the proposed agreement is not protected action if it is done at a time when the bargaining period is suspended.
- (10) An order under subsection (1) terminating the bargaining period may, if the Commission considers it to be in the public interest, contain a declaration that, during a specified period beginning at the time of the termination, a specified negotiating party or employee of the employer:
 - (a) is not allowed to initiate a new bargaining period in relation to specified matters that are dealt with by the proposed agreement; or
 - (b) may initiate such a bargaining period only on conditions specified in the declaration.

170MX What happens if Commission terminates a bargaining period under subsection 170MW(3) or (7)

- (1) This section applies if a bargaining period is terminated on the ground set out in subsection 170MW(3) or (7).
- (2) As soon as practicable, the Commission must begin to exercise the conciliation powers mentioned in section 170MY:
 - (a) to facilitate the making of an agreement under Division 2 or 3; or
 - (b) otherwise to settle any matter or issue that could be covered by such an agreement.

This subsection applies even if the Commission has already attempted conciliation during the bargaining period.

- (3) If, after exercising conciliation powers as required by subsection (2), the Commission is satisfied that:
 - (a) the negotiating parties have not settled the matters that were at issue during the bargaining period (whether or not by making an agreement); and
 - (b) it is not likely that further conciliation will result in the matters being settled within a reasonable time;the Commission must, if it considers it appropriate, exercise the arbitration powers mentioned in section 170MY to make an award that deals with the matters.
- (4) Despite any other provision of this Act, those arbitration powers may only be exercised by a Full Bench.
- (5) In exercising those arbitration powers, the Full Bench must have regard to the following:

- (a) the matters that were at issue during the bargaining period;
 - (b) the merits of the case;
 - (c) the interests of the negotiating parties and the public interest;
 - (d) how productivity might be improved in the business or part of the business concerned;
 - (e) the extent to which the conduct of the negotiating parties during the bargaining period was reasonable;
 - (f) any relevant principles formulated by a Full Bench for the purposes of this subsection.
- (6) Subsection (5) does not, by implication, limit the matters to which the Full Bench may have regard.

170MY Commission's powers where section 170MX applies

- (1) The Commission has the conciliation and arbitration powers in relation to the matters mentioned in subsections 170MX(2) and (3) that it would have under Part VI in relation to the matters if that Part applied to conciliation and arbitration in relation to the matters instead of in relation to industrial disputes.
- (2) To avoid doubt, the Commission's powers under subsection (1) are not limited by section 89A.

170MZ Awards under section 170MX

- (1) An award under subsection 170MX(3) must specify a date as its nominal expiry date.
- (2) Subject to this section, the award remains in operation at all times after it commences.
- (3) The award has effect subject to any conditions that are specified in the award.
- (4) Before the award's nominal expiry date has passed, the Full Bench must not revoke the award unless it is satisfied that:
 - (a) the employer and the one or more organisations, or a majority of the employees, who are bound by the award have agreed to the revocation (for example, because they propose to make an agreement under Division 2 or 3); and
 - (b) the revocation would not be against the public interest.
- (5) If:
 - (a) the award's nominal expiry date has passed; and
 - (b) either:

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- (i) the employer, or an organisation, bound by the award;
or
 - (ii) a majority of the employees to whom the award applies;
request the Commission in writing to terminate the award;
and
 - (c) the Commission has given the following a reasonable opportunity to be heard in relation to the request:
 - (i) the employer bound by the award;
 - (ii) any organisations bound by the award;
 - (iii) the employees to whom the award applies; and
 - (d) the Commission considers that it is not contrary to the public interest to terminate the award;
- the Commission must terminate the award.
- (6) The award may only be varied for the purpose of:
 - (a) removing ambiguity or uncertainty; or
 - (b) including, omitting or varying a term (however expressed) that authorises an employer to stand-down an employee.
 - (7) Before the award's nominal expiry date has passed, no bargaining period may be initiated under section 170MI for negotiating an agreement in relation to the employment of employees whose employment is dealt with in the award.

170N Commission not to arbitrate during bargaining period

During a bargaining period, the Commission must not exercise its arbitration powers under Part VI in relation to a matter that is at issue between the negotiating parties.

170NA Conciliation in respect of agreements

- (1) The Commission has the conciliation powers in relation to a matter arising under this Part that it would have under Part VI in relation to the matter if that Part applied to conciliation in relation to the matters instead of in relation to industrial disputes.
- (2) If 2 or more organisations of employees are involved in the negotiations or proposed negotiations, the Commission may order that all of the organisations be represented, for the purposes of conciliating the matter, by a single person or group of persons, where the person or persons are authorised by the organisations to represent them (whether generally or in relation to the particular negotiations).

- (3) Subsection (2) does not, by implication, limit the powers mentioned in subsection (1).

170NB Employers not to discriminate between unionist and non-unionist

- (1) An employer must not, in negotiating an agreement under Division 2 or 3, discriminate between employees of the employer:
- (a) because some of those employees are members of an organisation of employees while others are not members of such an organisation; or
 - (b) because some of those employees are members of a particular organisation of employees, while others are not members of that organisation or are members of a different organisation of employees.
- (2) In so far as a purpose of the agreement is to settle some or all of the matters that are the subject of an industrial dispute to which the employer is a party, subsection (1) does not require the agreement to cover:
- (a) matters that are not the subject of that dispute; or
 - (b) employees whose terms and conditions of employment are not the subject of that dispute.
- (3) In so far as a purpose of the agreement is to prevent industrial disputes of a particular kind, subsection (1) does not require the agreement to cover:
- (a) matters that are not likely to be the subject of a dispute of that kind; or
 - (b) employees whose terms and conditions of employment are not likely to be the subject of a dispute of that kind.

Division 9—Prohibition of coercion in relation to agreements

170NC Coercion of persons to make, vary or terminate certified agreements etc.

- (1) A person must not:
- (a) take or threaten to take any industrial action or other action; or
 - (b) refrain or threaten to refrain from taking any action;
- with intent to coerce another person to agree, or not to agree, to:

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(c) making, varying or terminating, or extending the nominal expiry date of, an agreement under Division 2 or 3; or

(d) approving any of the things mentioned in paragraph (c).

Note: The Court has certain remedial powers in relation to a contravention of this section: see Division 10.

- (2) Subsection (1) does not apply to action, or industrial action, that is protected action (within the meaning of Division 8).
- (3) An employer must not coerce, or attempt to coerce, an employee of the employer:
 - (a) not to make a request as mentioned in subsection 170LK(4) in relation to an agreement that the employer proposes to make; or
 - (b) to withdraw such a request.

Division 10—Enforcement and remedies

170ND Penalty provisions

For the purposes of this Division, each of the following is a *penalty provision*:

- (a) section 170MDA;
- (b) section 170MN;
- (c) section 170MU;
- (d) section 170NB;
- (e) section 170NC.

170NE Eligible court

For the purposes of this Division, each of the following is an *eligible court*:

- (a) the Federal Court of Australia;
- (b) a District, County or Local Court;
- (c) a magistrate's court.

170NF Penalties for contravening penalty provisions

- (1) A contravention of a penalty provision is not an offence. However, an eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.
- (2) The penalty cannot be more than \$10,000 for a body corporate or \$2,000 in other cases.

- (3) An application for an order under subsection (1) that relates to a contravention of section 170MDA may be made by:
 - (a) the employees making the request mentioned in that section; or
 - (b) an organisation of employees of which any of the employees making that request is a member; or
 - (c) an inspector; or
 - (d) any other person prescribed by the regulations.
- (4) An application for an order under subsection (1) that relates to a contravention of section 170MN may be made by:
 - (a) any employee whose employment is subject to the certified agreement concerned; or
 - (b) any other person who is bound by the agreement; or
 - (c) any person who is affected by the industrial action or lockout concerned; or
 - (d) any other person prescribed by the regulations.
- (5) An application for an order under subsection (1) that relates to a contravention of section 170MU may be made by:
 - (a) the employee concerned; or
 - (b) an organisation of employees of which that employee is a member; or
 - (c) an inspector; or
 - (d) any other person prescribed by the regulations.
- (6) An application for an order under subsection (1) that relates to a contravention of section 170NB may be made by:
 - (a) any employee who allegedly was disadvantaged because of the discrimination mentioned in subsection 170NB(1); or
 - (b) an organisation of employees of which that employee is a member; or
 - (c) an inspector; or
 - (d) any other person prescribed by the regulations.
- (7) An application for an order under subsection (1) that relates to a contravention of section 170NC may be made by:
 - (a) an employee whose employment is subject to the agreement concerned or will be subject to the proposed agreement concerned; or
 - (b) any other person bound by the agreement concerned or who will be bound by the proposed agreement concerned; or
 - (c) the person who allegedly was intended to be coerced; or

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- (d) an organisation of employees of which that person is a member; or
- (e) an inspector; or
- (f) any other person prescribed by the regulations.

170NG Injunctions

An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.

170NH Reinstatement and compensation where employer contravenes section 170MU

- (1) If an employer contravenes section 170MU, an eligible court may order the employer:
 - (a) if the contravention was constituted by dismissing an employee—to reinstate the person dismissed to the position that the person occupied immediately before the dismissal or to a position no less favourable than that position; and
 - (b) in any case—to pay, to the person dismissed, injured or prejudiced, compensation for loss suffered as a result of the dismissal, injury or prejudice.
- (2) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.

Division 11—Miscellaneous

170NI Complementary State laws

- (1) A complementary State law may confer functions and powers on the Commission.
- (2) In this section:
 - certified agreement provisions* means this Part, and the other provisions of this Act so far as they relate to this Part.
 - complementary State law* means a law of a State that applies the certified agreement provisions as a law of the State, with:
 - (a) the modifications required by the regulations; and
 - (b) any other modifications permitted by the regulations.
 - modifications* includes additions, omissions and substitutions.

20 Section 334A

Repeal the section.

21 Schedule 1 (heading)

Omit "Sections 4 and 5".

22 Schedules 8, 15 and 16

Repeal the Schedules.

Part 2—Application and transitional

23 Application and transitional

- (1) Subject to this item, the amendments made by this Schedule apply to:
- (a) an agreement made after the commencement of this Schedule; and
 - (b) a bargaining period, for a proposed agreement, initiated after the commencement of this Schedule.

New termination provisions apply to pre-commencement certified agreements

- (2) If:
- (a) an agreement was entered into before the commencement of this Schedule and was covered by Division 2 of Part VIB of the *Workplace Relations Act 1996* as then in force; and
 - (b) whether before or after the commencement of this Schedule:
 - (i) the period of operation specified in the agreement; or
 - (ii) if it has been extended or further extended under section 170MJ of that Act as in force at the time—that period as extended or further extended;has ended;

then, after the commencement of this Schedule, section 170MH of that Act as amended by this Schedule, instead of section 170MN of that Act as in force immediately before the commencement of this Schedule, applies to the agreement.

Enterprise flexibility agreements that prevail over certified agreements

- (3) If:
- (a) an enterprise flexibility agreement is continued in force by Schedule 9; and
 - (b) any part (the *post-commencement EFA period*) of the period of operation specified in the agreement, or that period as extended or further extended, occurs after the commencement of this Schedule; and
 - (c) the enterprise flexibility agreement is, during the post-commencement EFA period, to any extent inconsistent with a certified agreement (whether made before or after the commencement of this Schedule); and

(d) the certified agreement was certified after implementation of the enterprise flexibility agreement was approved;
then the enterprise flexibility agreement prevails over the certified agreement, to the extent of the inconsistency, during the post-commencement EFA period.

Certified agreements that prevail over enterprise flexibility agreements

- (4) If:
- (a) an enterprise flexibility agreement is continued in force by Schedule 9; and
 - (b) a certified agreement (whether made before or after the commencement of this Schedule) is at any time after the commencement of this Schedule to any extent inconsistent with the enterprise flexibility agreement; and
 - (c) subitem (3) does not apply to the inconsistency;
- the certified agreement prevails over the enterprise flexibility agreement, to the extent of the inconsistency.

170MX(3) awards and exceptional matters orders prevail over pre- and post-commencement certified agreements

- (5) Subsections 170LY(2) and (3) of the *Workplace Relations Act 1996* as amended by this Schedule apply to certified agreements whether certified before or after the commencement of this Schedule.

Ongoing matters under Bargaining Division

- (6) The Commission may continue to deal with an ongoing matter (see subitem (7)), on and after the day on which this Schedule commences, in the exercise of the functions and powers of the Commission under the *Workplace Relations Act 1996* as amended by this Act.

Meaning of ongoing matters

- (7) In subitem (6), an *ongoing matter* means a matter that the Commission had started to deal with, before the day on which this Schedule commenced, in the exercise of the functions and powers described in the *Workplace Relations Act 1996* (as then in force) as the Bargaining Division's functions and powers.

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Annual report under former section 170RC

- (8) Section 170RC of the *Workplace Relations Act 1996* as in force immediately before the commencement of this Schedule does not require, and is taken never to have required, the Minister to cause a person to review and to report to the Minister in relation to the reporting period ending on 31 December 1996.

Schedule 9—Enterprise flexibility agreements (EFAs)

Part 1—Amendments

Workplace Relations Act 1996

1 Division 3 of Part VIB

Repeal the Division.

Part 2—Transitional

2 Continued operation of EFAs

Pre-commencement EFA continues despite amendments of Act

- (1) Despite the amendments made by Part 1 of this Schedule, a pre-commencement EFA continues to have effect, to the extent provided by the following subitems, as if those amendments had not been made.

Period of operation ending after commencement of amendments

- (2) If the period of operation of the EFA ends after the commencement of this Part:
 - (a) the EFA continues in force until the end of the period of operation; and
 - (b) the EFA further continues in force until terminated by the Commission under subitem (4).

Period of operation ending before commencement of amendments

- (3) If the period of the EFA ended before the commencement of this Part, the EFA continues in force after the commencement of this Part until terminated by the Commission under subitem (4).

Termination by Commission

- (4) The Commission may, on application by a party to an EFA, terminate the EFA if the Commission considers that it is not contrary to the public interest to do so. The termination takes effect at the end of the day on which the Commission makes its determination, or at such later time as is specified in the determination.

Period of operation cannot be extended

- (5) The period of operation of the EFA cannot be extended after the commencement of this Part.

EFA is displaced by Australian workplace agreement

- (6) If an Australian workplace agreement comes into operation in relation to an employee who is bound by the EFA, the EFA ceases to have effect in relation to that employee.

EFA displaced by certain awards or orders

- (7) The following prevail over an EFA, to the extent of any inconsistency:
- (a) an exceptional matters order;
 - (b) an award made under subsection 170MX(3) of the Workplace Relations Act.

Disability Discrimination Act

- (8) For the purposes of the *Disability Discrimination Act 1984*, an EFA is taken to be an award of the kind referred to in:
- (a) the definition of *Commonwealth law* in section 4 of that Act; and
 - (b) section 47 of that Act.

Sex Discrimination Act

- (9) For the purposes of the *Sex Discrimination Act 1984*, an EFA is taken to be an award of the kind referred to in sections 40, 50A and 50B of that Act.

Interpretation

- (10) In this item:
- EFA* means an enterprise flexibility agreement.
 - majority of the employees* means a majority of the employees who are bound by the EFA.
 - period of the EFA* means the period of operation specified in the EFA, or that period as extended or further extended.
 - pre-commencement EFA* means an enterprise flexibility agreement that is in force at the commencement of this Part.

Schedule 10—Australian workplace agreements (AWAs)

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

Australian workplace agreement or *AWA* means an Australian workplace agreement under Part VID.

2 Subsection 4(1)

Insert:

AWA means an Australian workplace agreement under Part VID.

3 Before Part VII

Insert:

Part VID—Australian workplace agreements (AWAs)

Division 1—Preliminary

170VA Interpretation

In this Part, unless the contrary intention appears:

additional approval requirements means the additional approval requirements in section 170VPA.

ancillary document means any of the following:

- (a) a variation agreement;
- (b) an extension agreement;
- (c) a termination agreement;
- (d) a termination notice.

approval notice means an approval notice issued by the Employment Advocate or Commission under Division 5.

approved means approved under Division 5 by the Employment Advocate or Commission.

AWA has a meaning affected by sections 170VB and 170VPJ.

AWA date means the date on which the employer and employee sign the AWA or, if they sign on different dates, the later of those dates.

bargaining agent means a person or group of persons duly appointed as a bargaining agent under section 170VK.

comparable employee, in relation to an AWA, means an employee of the employer who does the same kind of work as the employee who is a party to the AWA.

constitutional trade or commerce means trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) between the States; or
- (c) within a Territory, between a State and a Territory or between 2 Territories.

eligible court means any of the following:

- (a) the Federal Court of Australia;
- (b) a District, County or Local Court;
- (c) a magistrate's court.

employee has a meaning affected by section 170VB.

employer has a meaning affected by section 170VB.

existing employee, in relation to an AWA, means an employee who signed the AWA after commencing the employment to which the AWA relates.

extension agreement means an agreement to extend the nominal expiry date of an AWA.

file, in relation to an AWA or ancillary document, means file with the Employment Advocate.

filing receipt means a receipt issued by the Employment Advocate.

filing requirements means the filing requirements in section 170VO.

new employee, in relation to an AWA, means an employee who signed the AWA before, or at the time of, commencing the employment to which the AWA relates.

no-disadvantage test means the no-disadvantage test set out in Part VIE.

nominal expiry date means the nominal expiry date that applies under section 170VH.

party, in relation to an AWA or ancillary document, means the employer or employee.

period of operation, in relation to an AWA, means the period of operation as determined under section 170VJ.

referral notice means a referral notice issued by the Employment Advocate under Division 5.

refusal notice means a refusal notice issued by the Employment Advocate or Commissioner under Division 5.

relevant or designated award means the relevant or designated award that is used when applying the no-disadvantage test set out in Part VI.

State agreement means an employment agreement made under, or for the purposes of, a law of a State.

sure means not having any doubts.

termination agreement means an agreement to terminate an AWA.

termination notice means a notice of termination under section 170VM.

variation agreement means an agreement to vary an AWA.

verified copy, in relation to a document, means a copy that is certified as being a true copy of the document.

170VB Proposed AWAs and ancillary documents—interpretation

- (1) So far as the context permits, a reference in this Part to an AWA or ancillary document includes a reference to a proposed AWA or ancillary document.
- (2) In relation to a proposed AWA or ancillary document, a reference to the employer or employee is a reference to the person who will be the employer or employee when the AWA or ancillary document starts to operate.

170VC Scope of this Part

An AWA is of no effect unless at least one of the following applies at the time when the AWA is filed:

- (a) the employer is a constitutional corporation;
- (b) the employer is the Commonwealth;
- (c) the employee's primary workplace is in a Territory;
- (d) the employer is a waterside employer, the employee is a waterside worker and the employee's employment is in connection with constitutional trade or commerce;
- (e) the employee is a maritime employee and the employee's employment is in connection with constitutional trade or commerce;

- (f) the employee is a flight crew officer and the employee's employment is in connection with constitutional trade or commerce.

170VCA Functions of Commission

- (1) The Commission must, as far as practicable, perform its functions under this Part in a way that furthers the objects of this Act.
- (2) Section 90 does not apply to the performance of functions of the Commission under this Part.
- (3) In performing its functions under this Part, the Commission may not act under paragraph 111(1)(g) on the grounds specified in subparagraph (i), (ii) or (iii) of that paragraph.

Division 2—General rules about AWAs and ancillary documents

170VD AWAs and ancillary documents only have effect as provided by this Part

An AWA or ancillary document has effect as provided by this Part, and not otherwise. In particular:

- (a) an AWA for a new employee has no effect before a filing receipt is issued for the AWA; and
- (b) an AWA for an existing employee has no effect before an approval notice is issued for the AWA.

170VE Collective agreements

- (1) For the purposes of this Part, 2 or more agreements that have been negotiated collectively may be included in the same document if the same employer is a party to all the agreements. The agreements need not be in the same terms.
- (2) An AWA for a new employee cannot be included in the same document as an AWA for an existing employee.

Division 3—Making, varying or terminating an AWA

170VF Employer and employee may make an AWA

- (1) An employer and employee may make a written agreement, called an Australian workplace agreement, that deals with matters pertaining to the relationship between an employer and employee.

Schedule 10 Australian workplace agreements (AWAs)

- (2) The AWA may be made before commencement of the employment.

170VG Content of AWA

- (1) The employer must ensure that the AWA includes the provisions relating to discrimination that are prescribed by the regulations. If the AWA does not in fact include those provisions, the AWA is taken to include those provisions.
- (2) The employer must ensure that the AWA does not include any provisions that prohibit or restrict disclosure of details of the AWA by either party to another person.
- (3) The employer must ensure that the AWA includes a dispute resolution procedure. If the AWA does not in fact include a dispute resolution procedure, the AWA is taken to include the model procedure that is prescribed by the regulations.
- (4) A dispute resolution procedure that is included in an AWA under subsection (3), or prescribed by the regulations for the purposes of subsection (3), may confer powers on the Commission to settle disputes between the parties to the AWA about the application or interpretation of the AWA. The Commission may exercise those powers.

170VH Nominal expiry date of AWA

- (1) An AWA may specify a date as its nominal expiry date. The date cannot be more than 3 years after the AWA date.
- (2) If no date is specified, then the nominal expiry date is the 3rd anniversary of the AWA date.
- (3) An employer and employee may make a written agreement that extends the nominal expiry date. The extended date cannot be more than 3 years after the AWA date.
- (4) The extension agreement has no effect unless a filing receipt is issued for the extension agreement at least 21 days before the nominal expiry date that is to be extended.
- (5) The extension agreement takes effect on the day after an approval notice is issued for the extension agreement.

170VJ Period of operation of AWA

- (1) An AWA for a new employee starts operating on the later of:
 - (a) the day after a filing receipt is issued for the AWA; or

- (b) the day specified in the AWA as the starting day; or
 - (c) the day the employment commences;
- and stops operating at the earlier of the following times:
- (d) the end of the day when a refusal notice is issued in relation to the AWA;
 - (e) the time when a termination under section 170VM takes effect;
 - (f) the time when another AWA between the employer and employee starts to operate.
- (2) An AWA for an existing employee starts operating on the later of:
- (a) the day after an approval notice is issued for the AWA; or
 - (b) the day specified in the AWA as the starting day;
- and stops operating at the earlier of the following times:
- (c) the time when a termination under section 170VM takes effect;
 - (d) the time when another AWA between the employer and employee starts to operate.

170VK Bargaining agents

- (1) An employer or employee may appoint a person to be his or her bargaining agent in relation to the making, approval, variation or termination of an AWA. The appointment must be made in writing.
- (2) Subject to subsection (3), an employer or employee must not refuse to recognise a bargaining agent duly appointed by the other party for the purposes of subsection (1).
- (3) Subsection (2) does not apply if the person refusing has not been given a copy of the bargaining agent's instrument of appointment before the refusal.
- (4) An employer or employee must not coerce, or attempt to coerce, the other party:
 - (a) to appoint, or not to appoint, a particular person as an authorised bargaining agent; or
 - (b) to terminate the appointment of an authorised bargaining agent.
- (5) In this section:
person includes a group of persons.

170VL Varying the terms of an AWA

- (1) An employer and employee may make a written agreement varying an AWA.
- (2) The variation takes effect on the later of:
 - (a) the day after an approval notice is issued for the variation agreement; or
 - (b) the day specified in the variation agreement as the date of effect.
- (3) Section 170VG applies to the AWA as varied in the same way as that section applies to the original AWA.

170VM Terminating an AWA

Termination by a termination agreement

- (1) The employer and employee may at any time make a written agreement to terminate the AWA.
- (2) A termination under subsection (1) takes effect at the end of the day on which an approval notice is issued for the termination agreement or at such later time as is specified in the termination agreement.

Termination by the Commission

- (3) After the nominal expiry date of an AWA, the Commission may, on application by either party, terminate the AWA if the Commission considers that it is not contrary to the public interest to do so.
- (4) The Commission must issue a copy of its determination to the parties and to the Employment Advocate.
- (5) A termination under subsection (3) takes effect at the end of the day on which the Commission issues copies of its determination, or at such later time as is specified in the determination.

Termination in accordance with the AWA

- (6) After the nominal expiry date of an AWA, the employer or the employee may file a termination notice, stating that the AWA is to be terminated in a manner provided for in the AWA.
- (7) A termination under subsection (6) takes effect at the end of the day on which an approval notice is issued for the termination notice, or at a later time specified in the termination notice.

Division 4—Filing AWAs and ancillary documents with Employment Advocate

170VN Filing AWAs and ancillary documents with Employment Advocate

- (1) An AWA or ancillary document may be filed with the Employment Advocate.
- (2) If the Employment Advocate is satisfied that the filing requirements for the document have been met, the Employment Advocate must issue a receipt to the person who filed the document.
- (3) The Employment Advocate must not issue a filing receipt for an AWA unless the AWA was filed within 14 days after the AWA date.

170VO Filing requirements

AWA

- (1) The filing requirements for an AWA are:
 - (a) the AWA must be signed and dated by each of the parties, and the signatures must be witnessed; and
 - (b) the AWA must be accompanied by a declaration by the employer:
 - (i) declaring that the AWA complies with section 170VG; and
 - (ii) declaring that, before the employee signed the AWA, the employer gave the employee a copy of an information statement prepared by the Employment Advocate; and
 - (iii) declaring whether or not the employer has offered an AWA in the same terms to all comparable employees; and
 - (c) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.
- (2) The information statement prepared by the Employment Advocate for the purposes of subsection (1) must include information about the following matters, but may include other information:
 - (a) Commonwealth statutory entitlements;

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- (b) occupational health and safety law;
- (c) services provided by the Employment Advocate;
- (d) bargaining agents.

Variation agreement

- (3) The filing requirements for a variation agreement are:
 - (a) the variation agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
 - (b) the variation agreement must be accompanied by a declaration by the employer:
 - (i) declaring that the AWA, as varied, complies with section 170VG; and
 - (ii) declaring whether or not the employer has offered a variation agreement in the same terms to all comparable employees who also have an AWA in the same terms with the employer; and
 - (c) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

Extension agreement

- (4) The filing requirements for an extension agreement are:
 - (a) the extension agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
 - (b) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

Termination agreement

- (5) The filing requirements for a termination agreement are:
 - (a) the termination agreement must be signed and dated by each of the parties, and the signatures must be witnessed; and
 - (b) the employer must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

Termination notice

- (6) The filing requirements for a termination notice are:

- (a) the termination notice must be signed and dated by the party or parties filing the notice, and each signature must be witnessed; and
- (b) the party or parties filing the termination notice must have provided any other information that the Employment Advocate requires, by notice published in the *Gazette*, for the purpose of performing his or her functions.

170VP Employer's declaration must be accurate

An employer must not, in a declaration filed with the Employment Advocate for the purposes of this Part, make a statement that the employer knows, or ought reasonably to know, is false or misleading.

Division 5—Approval of AWAs and ancillary documents

Subdivision A—Preliminary

170VPA Additional approval requirements for AWA and ancillary documents

AWA

- (1) The additional approval requirements for an AWA are:
 - (a) the AWA complies with section 170VG; and
 - (b) the employee received a copy of the AWA at least the required number of days before signing the AWA; and
 - (c) the employer explained the effect of the AWA to the employee between:
 - (i) the time the employee first received a copy of the AWA; and
 - (ii) the time when the employee signed the AWA; and
 - (d) the employee genuinely consented to making the AWA; and
 - (e) in a case where the employer failed to offer an AWA in the same terms to all comparable employees—the employer did not act unfairly or unreasonably in failing to do so.

Note: An employer might have valid reasons for not offering an AWA in the same terms to all comparable employees.

For the purposes of this subsection, the *required number of days* is 5 for a new employee and 14 for an existing employee.

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Variation agreement

- (2) The additional approval requirements for a variation agreement are:
- (a) the AWA, as varied, complies with section 170VG; and
 - (b) the employee received a copy of the variation agreement at least 14 days before signing the variation agreement; and
 - (c) the employer explained the effect of the variation agreement to the employee between:
 - (i) the time the employee first received a copy of the variation agreement; and
 - (ii) the time when the employee signed the variation agreement; and
 - (d) the employee genuinely consented to making the variation agreement; and
 - (e) in a case where the employer did not offer a variation agreement in the same terms to all comparable employees who also have an AWA in the same terms—the employer did not act unfairly or unreasonably in not doing so.

Note: An employer might have valid reasons for not offering a variation agreement in the same terms to all comparable employees.

Extension agreement

- (3) The additional approval requirement for an extension agreement is that the employee genuinely consented to making the extension agreement.

Termination agreement

- (4) The additional approval requirement for a termination agreement is that the employee genuinely consented to making the termination agreement.

Termination notice

- (5) The additional approval requirement for a termination notice is that the termination is in accordance with the AWA.

Subdivision B—Approval by Employment Advocate

170VPB Approval of AWA by Employment Advocate

- (1) The Employment Advocate must approve an AWA for which a filing receipt has been issued if:

- (a) the Employment Advocate is sure that the AWA passes the no-disadvantage test; and
- (b) the Employment Advocate is satisfied that the AWA meets the additional approval requirements.

Note: The additional approval requirements are in section 170VPA.

- (2) If the Employment Advocate has concerns about whether the AWA passes the no-disadvantage test, but those concerns are resolved by:
 - (a) a written undertaking given by the employer and accepted by the Employment Advocate; or
 - (b) other action by the parties;the Employment Advocate must approve the AWA.
- (3) If the Employment Advocate has concerns about whether the AWA passes the no-disadvantage test and those concerns are not resolved under subsection (2), the Employment Advocate must refer the AWA to the Commission.
- (4) If the Employment Advocate is not satisfied that the AWA meets the additional approval requirements, the Employment Advocate must refuse to approve the AWA.

170VPC Approval of variation agreement by Employment Advocate

- (1) The Employment Advocate must approve a variation agreement for which a filing receipt has been issued if:
 - (a) the Employment Advocate is sure that the AWA, as varied, passes the no-disadvantage test; and
 - (b) the Employment Advocate is satisfied that the variation agreement meets the additional approval requirements.

Note: The additional approval requirements are in section 170VPA.

- (2) If the Employment Advocate has concerns about whether the AWA, as varied, passes the no-disadvantage test, but those concerns are resolved by:
 - (a) a written undertaking given by the employer and accepted by the Employment Advocate; or
 - (b) other action by the parties;the Employment Advocate must approve the variation agreement.
- (3) If the Employment Advocate has concerns about whether the AWA, as varied, passes the no-disadvantage test and those concerns are not resolved under subsection (2), the Employment Advocate must refer the variation agreement to the Commission.

- (4) If the Employment Advocate is not satisfied that the variation agreement meets the additional approval requirements, the Employment Advocate must refuse to approve the variation agreement.

170VPD Approval of other ancillary documents by Employment Advocate

- (1) This section applies to the following ancillary documents:
 - (a) an extension agreement;
 - (b) a termination agreement;
 - (c) a termination notice.
- (2) The Employment Advocate must approve the ancillary document if the Employment Advocate is satisfied that the ancillary document meets the additional approval requirements for the document concerned. Otherwise, the Employment Advocate must refuse to approve the ancillary document.

170VPE Protocol for referring AWAs and variation agreements to the Commission

- (1) As soon as practicable after the commencement of this section, the President must establish a protocol to provide general guidance to the Employment Advocate concerning the referral of AWAs or variation agreements to the Commission. The terms of the protocol must have the concurrence of the Employment Advocate.
- (2) In deciding whether to refer an AWA or variation agreement to the Commission, the Employment Advocate must apply the protocol.

170VPF Employment Advocate must issue approval, refusal or referral notice

- (1) If the Employment Advocate approves an AWA or ancillary document, the Employment Advocate must issue an approval notice to the employer.
- (2) If the Employment Advocate refuses to approve an AWA or ancillary document, the Employment Advocate must issue a refusal notice to the employer.
- (3) If the Employment Advocate refers an AWA or variation agreement to the Commission, the Employment Advocate must issue a referral notice to the employer, advising of the referral.

- (4) In each approval notice, refusal notice or referral notice issued under this section, the Employment Advocate must identify the relevant or designated award that applies to the AWA to which the notice relates.

Subdivision C—Approval by Commission

170VPFA Withdrawal of AWA or variation agreement

Either party to an AWA (other than an AWA for a new employee) or variation agreement that has been referred to the Commission by the Employment Advocate may withdraw the AWA or variation agreement by notice in writing lodged with the Commission.

170VPG Approval of AWA by Commission

- (1) This section applies to an AWA that is referred to the Commission by the Employment Advocate.
- (2) The Commission must approve the AWA if the Commission is satisfied that the AWA passes the no-disadvantage test.
- (3) If the Commission has concerns about whether the AWA passes the no-disadvantage test, but those concerns are resolved by:
 - (a) a written undertaking given by the employer and accepted by the Commission; or
 - (b) other action by the parties;the Commission must approve the AWA.
- (4) If the Commission considers that it is not contrary to the public interest to approve the AWA, it must approve the AWA (whether or not subsection (2) or (3) requires the Commission to approve the AWA).

Note: An example of a case where the Commission may be satisfied that approving the AWA is not contrary to the public interest is where making the AWA is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, a business or part of a business.

- (5) In any case where the Commission is not required to approve the AWA, the Commission must refuse to approve the AWA.

170VPH Approval of variation agreement by Commission

- (1) This section applies to a variation agreement that is referred to the Commission by the Employment Advocate.

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- (2) The Commission must approve the variation agreement if the Commission is satisfied that the AWA, as varied, passes the no-disadvantage test.
- (3) If the Commission has concerns about whether the AWA, as varied, passes the no-disadvantage test, but those concerns are resolved by:
 - (a) a written undertaking given by the employer and accepted by the Commission; or
 - (b) other action by the parties;the Commission must approve the variation agreement.
- (4) If the Commission considers that it is not contrary to the public interest to approve the variation agreement, it must approve the variation agreement (whether or not subsection (2) or (3) requires the Commission to approve the variation agreement).

Note: An example of a case where the Commission may be satisfied that approving the variation agreement is not contrary to the public interest is where making the variation agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, a business or part of a business.

- (5) In any case where the Commission is not required to approve the variation agreement, the Commission must refuse to approve the variation agreement.

170VPI Commission must issue approval or refusal notice etc.

- (1) If the Commission approves an AWA or a variation agreement, the Commission must:
 - (a) issue an approval notice to the employer; and
 - (b) send a copy of the approval notice to the Employment Advocate; and
 - (c) send the Employment Advocate a copy of the AWA or variation agreement that was approved.

Note: An undertaking accepted in connection with an AWA is deemed to form part of the AWA. Therefore a copy of the undertaking will be sent to the Employment Advocate under this section.

- (2) If the Commission refuses to approve an AWA or a variation agreement, the Commission must:
 - (a) issue a refusal notice to the employer; and
 - (b) send a copy of the refusal notice to the Employment Advocate.

Subdivision D—Miscellaneous

170VPJ Undertakings deemed to be included in AWA

An undertaking accepted by the Employment Advocate or Commission under this Division is taken to be included in the AWA.

170VPK Employment Advocate to issue copies of approved AWAs and ancillary documents

- (1) After an AWA or ancillary document is approved by the Employment Advocate, the Employment Advocate must issue to the employer a copy of the AWA or ancillary document, as approved.
- (2) After an AWA or variation agreement is approved by the Commission, the Employment Advocate must issue to the employer a copy of the AWA or variation agreement, as approved.

Note: An undertaking accepted in connection with an AWA is deemed to form part of the AWA. Therefore a copy of the undertaking will be issued to the employer under this section.

Division 6—Effect of an AWA

170VQ Effect of AWA on awards and agreements

- (1) During its period of operation, an AWA operates to the exclusion of any award that would otherwise apply to the employee's employment. This subsection has effect subject to subsections (2) and (3).
- (2) An AWA is of no effect if it is made:
 - (a) after the commencement of an award that is made under subsection 170MX(3) and applies to the employee's employment; and
 - (b) before the nominal expiry date of the award.
- (3) An AWA does not operate to the exclusion of an exceptional matters order, but prevails over an exceptional matters order to the extent of any inconsistency.
- (4) During its period of operation, an AWA operates to the exclusion of any State award or State agreement that would otherwise apply to the employee's employment.

Schedule 10 Australian workplace agreements (AWAs)

- (5) If a State award provides a remedy for the termination of an employee's employment, subsection (4) is not intended to affect the provisions of the State award that relate to termination of employment, so far as those provisions are able to operate concurrently with the AWA.
- (6) The relationship between an AWA and a certified agreement is as follows:
 - (a) a certified agreement prevails over the AWA to the extent of any inconsistency if:
 - (i) the certified agreement is in operation at the time the AWA comes into operation; and
 - (ii) the nominal expiry date of the certified agreement is after the date on which the AWA comes into operation; and
 - (iii) the certified agreement does not expressly allow a subsequent AWA to operate to the exclusion of the certified agreement or to prevail over the certified agreement to the extent of any inconsistency;
 - (b) a certified agreement that comes into operation after the nominal expiry date of the AWA prevails over the AWA to the extent of any inconsistency;
 - (c) in all other cases, the AWA operates to the exclusion of any certified agreement that would otherwise apply to the employee's employment.

170VR Effect of AWA on other laws

- (1) Subject to this section, an AWA prevails over conditions of employment specified in a State law, to the extent of any inconsistency.
- (2) Provisions in an AWA that deal with the following matters operate subject to the provisions of any State law that deals with the matter:
 - (a) occupational health and safety;
 - (b) workers' compensation;
 - (c) apprenticeship;
 - (d) any other matter prescribed by the regulations.
- (3) If a State law provides a remedy for the termination of an employee's employment, subsection (1) is not intended to affect the provisions of the State law that relate to termination of employment, so far as those provisions are able to operate concurrently with the AWA.

- (4) To the extent of any inconsistency, an AWA prevails over prescribed conditions of employment specified in a Commonwealth law that is prescribed by the regulations.
- (5) In this section:
- Commonwealth law* means an Act or any regulations or other instrument made under an Act.
- prescribed conditions* means conditions that are identified by the regulations.
- State law* means a law of a State or Territory (including any regulations or other instrument made under a law of a State or Territory), but does not include a State award or State agreement.

170VS AWA binds employer's successor

- (1) If:
- (a) an employee who is a party to an AWA becomes an employee of a new employer because the new employer is a successor to the whole or any part of the previous employer's business or undertaking; and
 - (b) at the succession time at least one of the following applies:
 - (i) the new employer is a constitutional corporation;
 - (ii) the new employer is the Commonwealth;
 - (iii) the employee's primary workplace is in a Territory;
 - (iv) the new employer is a waterside employer, the employee is a waterside worker and the employee's employment is in connection with constitutional trade or commerce;
 - (v) the employee is a maritime employee and the employee's employment is in connection with constitutional trade or commerce;
 - (vi) the employee is a flight crew officer and the employee's employment is in connection with constitutional trade or commerce;
- then the new employer replaces the previous employer as a party to the AWA from the succession time.
- (2) The succession does not affect the rights and obligations of the previous employer that arose before the succession.
- (3) In this section:
- successor* means a successor, transmittee or assignee.

170VT Parties must not breach AWA

- (1) A party to an AWA must not breach the AWA.
- (2) If the employee applies for an order under section 170VV in relation to an alleged breach of this section that involves the employee having received wages that are less than the wages required by the minimum conditions, the court may dismiss the application or adjourn the proceedings on the basis that an insufficient period of time has elapsed since the AWA started to operate for a reasonable comparison to be made for the purposes of the minimum conditions.

170VU Industrial action etc. by party to AWA

- (1) During the period of operation of an AWA before its nominal expiry date, the employee must not engage in industrial action in relation to the employment to which the AWA relates.
- (2) During the period of operation of an AWA before its nominal expiry date, the employer must not lock out the employee for the purpose of supporting or advancing claims in respect of the employee's employment.

Division 7—Enforcement and remedies

170VV Penalties for contravening this Part

- (1) An eligible court may make an order imposing a penalty on a person who contravenes a penalty provision.
- (2) The penalty cannot be more than \$10,000 for a body corporate or \$2,000 in other cases.
- (3) An application for an order under subsection (1) that relates to an AWA or ancillary document may be made by a party to the AWA or ancillary document.
- (4) In this section:
penalty provision means subsection 170VK(2) or (4), section 170VP, subsection 170VT(1), section 170VU, subsection 170WE(1), subsection 170WF(1), subsection 170WG(1) or (2) or subsection 170WH(1) or (2).

170VW Damages for breach of AWA

- (1) A party to an AWA who suffers loss or damage as a result of a breach of the AWA by the other party may recover the amount of the loss or damage in an eligible court.
- (2) The action must be brought within 6 years after the date on which the cause of action arose.

170VX Compensation to new employee for shortfall in entitlements

- (1) If an AWA for a new employee stops operating because of the issue of a refusal notice and the amount worked out under paragraph (a) below is less than the amount worked out under paragraph (b) below, the employee is entitled to recover the shortfall from the employer in an eligible court:
 - (a) the total value of the entitlements to which the employee became entitled under the AWA for the period while it was in operation;
 - (b) the total value of the entitlements to which the employee would have been entitled for that period under the relevant or designated award, if the AWA had not been made, in respect of the employment to which the AWA relates.
- (2) If an AWA that has been approved for a new employee includes an undertaking by the employer and the amount worked out under paragraph (a) below is less than the amount worked out under paragraph (b) below, the employee is entitled to recover the shortfall from the employer in an eligible court:
 - (a) the total value of the entitlements to which the employee became entitled under the AWA for the period before it was approved;
 - (b) the total value of the entitlements to which the employee would have been entitled for that period if the AWA, as filed, had included the undertaking by the employer.

170VZ Injunctions

An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, this Part.

170W Interest on judgment etc.

- (1) Section 179A applies to a court exercising powers under section 170VW or 170VX in the same way as that section applies to a court exercising powers under subsection 178(6).

- (2) Section 179B applies to a debt under a judgment or order made under section 170VW or 170VX in the same way as that section applies to a debt under a judgment or order made under section 179.

170WA Small claims procedure

- (1) Section 179C applies to a proceeding under section 170VW or 170VX that is started by a person in a magistrate's court in the same way as that section applies to an action under section 179 that is started in a magistrates's court.
- (2) Subsection (1) of this section does not apply if, in the same proceeding, the person applies for an order under subsection 170VV(1).

Division 8—Limited immunity for industrial action

170WB Interpretation

- (1) In this Division:

AWA industrial action means:

- (a) any industrial action taken by an employee directly against an employer for the purpose of compelling or inducing the employer:
 - (i) to make an AWA, on particular terms and conditions, with the employee; or
 - (ii) to make AWAs, on particular terms and conditions, with the employee and other employees; or
- (b) an employer locking out an employee for the purpose of compelling or inducing the employee to make an AWA, on particular terms and conditions, with the employer.

general industrial action means any action taken by an employer or employee for the purpose of:

- (a) compelling or inducing an employer or employee to accept particular terms or conditions of employment; or
- (b) enforcing compliance with any demand relating to employment.

industrial action means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction

or limitation on, or a delay in, the performance of the work;
or

- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work; or
- (c) a failure or refusal to attend for work or a failure or refusal to perform any work at all.

lock out, in relation to an employee, means prevent the employee from performing work under a contract of employment without terminating the contract.

- (2) In this Division, a reference to taking action includes a reference to:
 - (a) omitting to do something; or
 - (b) bringing about a circumstance.

170WC Limited immunity conferred

- (1) Subject to subsection (2), no action lies under any law (whether written or unwritten) in force in a State or Territory in respect of AWA industrial action unless the action has involved or is likely to involve:
 - (a) personal injury; or
 - (b) wilful or reckless destruction of, or damage to, property; or
 - (c) the unlawful taking, keeping or use of property.
- (2) Subsection (1) does not prevent an action for defamation being brought in respect of anything that occurred in the course of industrial action.
- (3) If an employer locks out an employee under subsection (1), the employer is entitled to refuse to pay any remuneration to the employee in respect of the period of the lockout.
- (4) An employer is not entitled to lock out an employee under subsection (1) unless the continuity of the employee's employment, for such purposes as are prescribed by the regulations, is not affected by the lockout.

170WD Immunity conditional on giving notice

- (1) The immunity conferred by section 170WC in respect of AWA industrial action does not apply unless 3 working days' notice of the intention to take the action was given to the other party in the manner and form required by the regulations.

- (2) Notice need not be given by an employee under subsection (1) if the employer is taking general industrial action.
- (3) Notice need not be given by an employer under subsection (1) if the employee is taking general industrial action.

170WE Employer not to dismiss, prejudice etc. an employee for taking AWA industrial action

- (1) An employer must not:
 - (a) dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice; or
 - (b) threaten to dismiss an employee, injure an employee in his or her employment or alter the position of an employee to the employee's prejudice;wholly or partly because the employee is proposing to take, is taking or has taken, AWA industrial action.
- (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 where, under the common law, the employer is permitted to do so because the employee has not performed work as directed;
 - (c) action of the employer that is itself AWA industrial action to which section 170WC applies.
- (3) In proceedings against an employer under section 170VV for an alleged contravention of subsection (1) of this section, it is to be presumed, unless the employer proves otherwise, that the alleged conduct of the employer was carried out wholly or partly because the employee was proposing to take, was taking or had taken, AWA industrial action.

Division 9—Miscellaneous

170WF Hindering AWA negotiations

- (1) A person who is not a party to negotiations relating to an AWA must not use threats or intimidation with the intention of hindering the negotiations or the making of the AWA. For this purpose *party to negotiations* includes a bargaining agent.
- (2) This section does not apply to conduct by or on behalf of an organisation of employees for the purpose of negotiating a certified

agreement, if the conduct is authorised by another provision of this Act.

170WG Persons must not apply duress or make false statements in connection with AWA etc.

- (1) A person must not apply duress to an employer or employee in connection with an AWA or ancillary document.
- (2) A person must not knowingly make a false or misleading statement to another person with the intention of persuading the other person to make, or not to make, an AWA.

170WH Employer must give copies of documents to employee

- (1) As soon as practicable after an employer receives any of the following documents from the Employment Advocate or Commission, the employer must give the employee a copy of the document:
 - (a) a filing receipt;
 - (b) an approval notice, refusal notice or referral notice;
 - (c) an AWA or ancillary document, as approved.
- (2) The employer must give the employee any other document prescribed by the regulations, within the period required by the regulations.

170WHA Intervention not permitted

A person other than:

- (a) a party to an AWA; or
- (b) a bargaining agent of a party;

must not be allowed to make submissions, or to be heard, in relation to the filing, approval, variation or termination of the AWA.

170WHB Identity of AWA parties not to be disclosed

- (1) A person (the *entrusted person*) must not disclose protected information that the entrusted person knows, or has reasonable grounds to believe, will identify another person (the *AWA party*) as being, or having been, a party to an AWA.

Penalty: Imprisonment for 6 months.

Schedule 10 Australian workplace agreements (AWAs)

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure is made by the entrusted person in the course of performing functions or duties as a Registry official;
 - (b) the disclosure is authorised by the regulations;
 - (c) the disclosure is required or permitted by another Act;
 - (d) the disclosure is authorised in writing by the AWA party.
- (3) For the purposes of determining the burden of proof in proceedings for an offence against subsection (1), the exceptions in subsection (2) are taken to be part of the description of the offence.
- (4) In this section:
- protected information*** means information that was acquired by the entrusted person:
- (a) in the course of performing functions or duties as a Registry official; or
 - (b) from a Registry official who disclosed the information as authorised by the regulations.
- Registry official*** means:
- (a) the Industrial Registrar; or
 - (b) a member of the staff of the Industrial Registry (including a Deputy Industrial Registrar).

170WHC Commission not to publish AWA determinations

The Commission is not obliged under section 143 to publish any determination of the Commission that approves, refuses to approve or terminates an AWA. However, if the Commission does publish such a determination under section 143, the Commission must ensure that the publication does not disclose the identity of either party to the AWA.

170WHD Hearings to be in private

Any hearing by the Commission for the purposes of this Part must be held in private.

170WI Evidence

- (1) The Employment Advocate may issue a verified copy of any document filed with, or issued or approved by, the Employment Advocate or Commission under this Part. The verified copy may

only be issued to a person who is or was a party to the AWA or ancillary document to which the verified copy relates.

- (2) The Employment Advocate may issue a certificate stating any one or more of the following:
- (a) that specified AWAs or ancillary documents are the only such documents that were filed in relation to a specified employer and employee before a date specified in the certificate; or
 - (b) that specified notices are the only such notices that were issued to a specified employer by the Employment Advocate or Commission before a date specified in the certificate; or
 - (c) that a filing receipt, approval notice, refusal notice or referral notice was issued for a specified AWA or ancillary document on a specified day.

The certificate may only be issued to a person who is or was a party to each of the documents to which the certificate relates.

- (3) In all courts and proceedings:
- (a) a verified copy issued by the Employment Advocate is evidence of the document of which it is a verified copy; and
 - (b) a certificate issued by the Employment Advocate under subsection (2) is evidence of the matters stated in the certificate.
- (4) A document that purports to be a verified copy, or certificate, referred to in subsection (3) is taken to be such a copy or certificate, unless the contrary is proved.

170WJ Signature on behalf of body corporate

An AWA or ancillary document may be signed on behalf of a body corporate by a duly authorised officer of the body corporate and need not be made under the body corporate's seal.

170WK AWAs with Commonwealth employees

- (1) A Secretary may act on behalf of the Commonwealth in relation to AWAs with employees in relation to whom the Secretary has the powers of Secretary.

- (2) In this section:

Secretary means a Secretary within the meaning of the *Public Service Act 1922*.

170WL Regulations

The regulations may make provision in relation to the following matters:

- (a) requiring an employer who is a party to an AWA to supply copies of prescribed documents to the employee;
- (b) the qualifications and appointment of bargaining agents;
- (c) the required form of AWAs or ancillary documents (including a requirement that the document be in the English language);
- (d) the witnessing of signatures on AWAs or ancillary documents;
- (e) prescribing fees for the issue by the Employment Advocate of certificates and verified copies;
- (f) the making and retention by employers of records relating to the employment of persons under AWAs, and the inspection of such records.

Schedule 11—Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

Part 1—Amendments relating to agreements and awards

Workplace Relations Act 1996

1 Subsection 4(1) (definition of *award*)

Repeal the definition, substitute:

award means an award or order that has been reduced to writing under subsection 143(1), but does not include an order made by the Commission in a proceeding under Subdivision B of Division 3 of Part VIA.

2 Subsection 4(1) (subparagraph (a)(i) of the definition of *industrial action*)

After “Commission,”, insert “by a certified agreement or AWA,”.

3 Subsection 4(1) (paragraph (b) of the definition of *industrial action*)

After “Commission,”, insert “by a certified agreement or AWA,”.

4 After paragraph 5(7)(a)

Insert:

(aa) certified agreements, to the extent that the agreements are, or are proposed to be, certified in the exercise of the provisions of this Act as applied by the relevant State law; or

5 At the end of subparagraph 33(b)(ii)

Add “or a certified agreement”.

6 Subsection 46(2)

Omit “award or order”, substitute “award, order or decision”.

7 Paragraphs 46(3)(a) and (b)

Omit “award or order” (wherever occurring), substitute “award, order or decision”.

Schedule 11 Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

8 Subsections 84(4) and (4A)

Omit “Act and awards”, substitute “Act, awards and certified agreements”.

9 Subsection 86(1)

After “awards”, insert “and certified agreements”.

10 Subparagraph 86(1)(a)(i)

After “award”, insert “or certified agreement”.

11 Subsection 109(8)

Repeal the subsection.

12 Paragraph 111(1)(f)

Omit “(except a certified agreement or enterprise flexibility agreement)”.

13 Sub-subparagraph 111(1)(g)(v)(A)

After “Commission”, insert “or a certified agreement”.

14 Subsection 111A(1)

After “an award”, insert “or certified agreement”.

15 At the end of subsection 111A(1)

Add “or agreement”.

16 Paragraph 111A(2)(a)

Before “the parties”, insert “in the case of an award—”.

17 After paragraph 111A(2)(a)

Insert:

(aa) in the case of a certified agreement—the persons bound by the agreement, and the employees whose employment is subject to the agreement, are parties to the proceeding on the review, and are entitled to notice of the hearing; and

18 Paragraph 113(2A)(a)

After “award”, insert “or certified agreement”.

19 Paragraph 113(2A)(b)

After “award” (wherever occurring), insert “or agreement”.

20 Subsection 113(2A)

Omit all the words after “by setting aside”, substitute “, setting aside the terms of, or varying, the award or agreement”.

21 Subsection 113(2C)

Omit “the parties to the agreement”, substitute “the persons bound by the agreement and the employees whose employment is subject to the agreement”.

22 Subsection 113(5)

Repeal the subsection, substitute:

(5) In this section:

discriminatory award or agreement means an award or certified agreement that:

- (a) has been referred to the Commission under section 50A of the *Sex Discrimination Act 1984*; and
- (b) requires a person to do any act that would be unlawful under Part II of the *Sex Discrimination Act 1984*, except for the fact that the act would be done in direct compliance with the award or agreement.

For the purposes of this definition, the fact that an act is done in direct compliance with the award or agreement does not of itself mean that the act is reasonable.

23 Paragraph 128(1)(b)

Omit “award or an order of the Commission”, substitute “award, an order of the Commission or a certified agreement”.

24 Subsection 134(5) (paragraph (e) of the definition of *prescribed premises*)

Omit “or” (last occurring).

25 Subsection 134(5) (at the end of the definition of *prescribed premises*)

Add:

; or (g) a certified agreement is in operation.

26 Subsection 143(1A)

Repeal the subsection, substitute:

- (1A) For the purposes of subsection (1), none of the following is an award or an order affecting an award:
- (a) a decision to certify an agreement under Part VIB;
 - (b) an order under section 170MX.

27 Section 145

Repeal the section, substitute:

145 Date of awards

The date of an award is the day when the award was signed under subsection 143(1).

28 Subsections 149(2) and (3)

Repeal the subsections.

29 Section 170JG

After "Commission", insert ", or certified agreement or AWA,".

30 Subsection 178(1)

Omit "award or an order of the Commission breaches a term of the award or order", substitute "award, an order of the Commission or a certified agreement breaches a term of the award, order or agreement".

31 Paragraphs 178(2)(a) and (3)(a)

Omit "award or order", substitute "award, order or agreement".

32 Subsection 178(4)

Omit "award or order" (first occurring), substitute "award, order or agreement".

33 Subparagraphs 178(4)(a)(iia) and (iib)

Repeal the subparagraphs, substitute:

- (iia) if the breach is of a term of a certified agreement and continues for more than one day—the total of:
- (A) \$10,000 for a body corporate or \$2,000 in other cases; and

- (B) \$5,000 for a body corporate, or \$1,000 in other cases, for each day for which the breach continues; and
- (iib) if the breach is of a term of a certified agreement but subparagraph (iia) does not apply—\$10,000 for a body corporate or \$2,000 in other cases; and

34 Subsection 178(4A)

Omit "\$2,500", substitute "\$5,000 for a body corporate, or \$1,000 in other cases".

35 After subsection 178(5)

Insert:

- (5A) A penalty for a breach of a term of a certified agreement may be sued for and recovered by:
- (a) an inspector; or
 - (b) an employee whose employment is subject to the agreement; or
 - (c) a person or organisation that is bound by the agreement; or
 - (d) an organisation:
 - (i) that has at least one member whose employment is subject to the agreement; and
 - (ii) that is entitled to represent the industrial interests of the member in relation to work carried on by the member that is subject to the agreement; or
 - (e) an officer or employee of an organisation mentioned in paragraph (c) or (d), where the officer or employee is authorised, under the rules of the organisation, to sue on behalf of the organisation.

36 Subsections 178(6), (6A) and (8)

Omit "award or order", substitute "award, order or agreement".

37 Subsection 179(1)

Omit "award or order" (first occurring), substitute "award, order or certified agreement".

38 Subsection 179(1)

Omit "award or order" (second occurring), substitute "award, order or agreement".

Schedule 11 Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

39 Paragraph 180(1)(a)

Omit “award or order”, substitute “award, order or certified agreement”.

40 Paragraph 196(a)

After “award”, insert “or certified agreement”.

41 Subparagraphs 196(b)(i) and (ii)

Omit “award or an order of the Commission”, substitute “award, an order of the Commission or a certified agreement”.

42 Subparagraph 198(3)(a)(i)

Omit “and awards”, substitute “, awards and certified agreements”.

43 Paragraph 205(1)(a)

Omit “and awards”, substitute “, awards and certified agreements”.

44 At the end of subsection 236(6)

Add “or to become bound by a certified agreement”.

45 Paragraph 252(1)(d)

Omit “Act and awards”, substitute “Act, awards and certified agreements”.

46 Paragraph 253A(1)(b)

Omit “Act and awards”, substitute “Act, awards and certified agreements”.

47 Sub-subparagraph 253Q(2)(c)(ii)(A)

After “awards”, insert “or certified agreements”.

48 Paragraph 253T(a)

Omit “award or an order of the Commission”, substitute “award, an order of the Commission or a certified agreement”.

49 Paragraph 253T(b)

Omit “award or order” (wherever occurring), substitute “award, order or agreement”.

Note: The heading to section 253T is altered by omitting “awards and orders” and substituting “awards, orders and certified agreements”.

50 Subsection 290(3)

Omit “award or order”, substitute “award, order or certified agreement”.

51 Paragraph 294(1)(a)

Omit “award or an order of the Commission” (wherever occurring), substitute “award, an order of the Commission or a certified agreement”.

52 Paragraph 295(2)(a)

Omit “or under awards or orders made under this Act or any other Act”, substitute “, under awards or orders made under this Act or any other Act or under certified agreements”.

53 Paragraph 298(c)

Omit “award or order of the Commission”, substitute “award, order of the Commission or certified agreement”.

54 Paragraphs 298(d) and (e)

Omit “award or order”, substitute “award, order or agreement”.

55 Section 338

Omit “or an order of the Commission”, substitute “an order of the Commission, or a certified agreement”.

56 Paragraph 353A(1)(a)

After “award”, insert “, a certified agreement or an AWA”.

57 Subsection 353A(2)

After “award”, insert “, a certified agreement or an AWA”.

58 Paragraph 359(2)(f)

Omit “an award or an order of the Commission, of any of the terms of the award or order”, substitute “an award, an order of the Commission or a certified agreement, of any of the terms of the award, order or agreement”.

59 After section 413

Insert:

413A Interpretation of certified agreements

- (1) The Court may give an interpretation of a certified agreement on application by:
 - (a) the Minister; or
 - (b) an organisation or person bound by the certified agreement; or
 - (c) an employee whose employment is subject to the agreement.
- (2) The decision of the Court is final and conclusive and is binding on:
 - (a) the organisations and persons bound by the agreement; and
 - (b) the employees whose employment is subject to the agreement;who have been given an opportunity of being heard by the Court.

Airports (Transitional) Act 1996

60 At the end of subsection 59(4)

Add:

- ; or (c) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
- (d) an Australian Workplace Agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
- (e) an enterprise flexibility agreement (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996*) that continues to have effect because of Part 2 of that Schedule.

Disability Discrimination Act 1992

61 Paragraph 47(1)(c)

Repeal the paragraph, substitute:

- (c) any of the following:
 - (i) an order or award of a court or tribunal having power to fix minimum wages;
 - (ii) a certified agreement (within the meaning of the *Workplace Relations Act 1996*);
 - (iii) an Australian workplace agreement (within the meaning of the *Workplace Relations Act 1996*);

to the extent that the order, award or agreement has specific provisions relating to the payment of rates of salary or wages to persons, where:

- (iv) if the persons were not in receipt of the salary or wages, they would be eligible for a disability support pension; and
- (v) the salary or wages are determined by reference to the capacity of the person.

Sex Discrimination Act 1984

62 At the end of subsection 40(1)

Add:

; or (f) a certified agreement (within the meaning of the *Workplace Relations Act 1996*).

63 Subsection 50A(1)

After "award", insert "or certified agreement".

Note: The heading to section 50A of the *Sex Discrimination Act 1984* is altered by inserting "and certified agreements" after "awards".

64 Subsection 50A(3)

After "award" (wherever occurring), insert "or agreement".

65 Subsection 50A(4)

After "award", insert "or agreement".

66 Subsection 50A(7)

After "award", insert "or agreement".

67 Subsection 50A(9)

Insert:

certified agreement has the same meaning as in the *Workplace Relations Act 1996*.

68 Subsection 50A(9) (definition of *discriminatory act under an award*)

Omit "made under the *Industrial Relations Act 1988*", substitute "or a certified agreement".

Schedule 11 Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

69 Subsection 50A(9) (definition of *discriminatory act under an award*)

After “with the award”, insert “or agreement”.

70 Subsection 50B(1)

After “award”, insert “or certified agreement”.

Note: The heading to section 50B of the *Sex Discrimination Act 1984* is altered by adding at the end “or certified agreement”.

71 Paragraph 50B(2)(b)

After “award”, insert “or agreement”.

**Part 2—Amendments relating to the repeal of
Division 3 of Part VIB of the *Workplace
Relations Act 1996***

Workplace Relations Act 1996

72 Subsection 4(1) (definition of *agreement*)

Repeal the definition.

73 Subsection 4(1) (definition of *employer*)

Repeal the definition, substitute:

employer includes:

- (a) a person who is usually an employer; and
- (b) an unincorporated club.

74 Subsection 4(1) (definition of *enterprise flexibility agreement*)

Repeal the definition.

75 Paragraph 45(1)(eaa)

Repeal the paragraph.

76 Paragraph 45(3)(baa)

Repeal the paragraph.

77 Paragraph 111(1)(ca)

Repeal the paragraph.

78 Subsection 113(2D)

Repeal the subsection.

79 Subparagraph 143(2)(b)(iii)

Omit “, or approve implementation of,”.

80 Subparagraph 143(2)(b)(iv)

Omit “or an enterprise flexibility agreement”.

Schedule 11 Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

81 Subparagraph 143(2)(d)(ia)

Omit “, or approve implementation of,”.

82 Subparagraph 143(3)(a)(ia)

Omit “, or approve implementation of,”.

83 Subparagraph 143(3)(b)(ii)

Omit “, or approve implementation of,”.

84 Subsections 149(4) and (5)

Repeal the subsections.

85 Subsection 178(4A)

Omit “or enterprise flexibility agreement”.

Part 3—Other amendments relating to agreements etc.

Workplace Relations Act 1996

86 After section 291

Insert:

291A Certificate as to requested representation or invitation

- (1) If a Registrar is satisfied:
 - (a) on application by an organisation of employees, that an employee has made a request in accordance with subsection 170LK(4) for the organisation to represent the employee in meeting and conferring with an employer about a proposed agreement; or
 - (b) on application by an employer, that, after making such a request, the requirement in subsection 170LK(5) for the employer to give a reasonable opportunity to the organisation to meet and confer about the proposed agreement, has, because of subsection 170LK(6), ceased to apply to the employer;the Registrar may issue a certificate to that effect.
- (2) The certificate must not identify any of the employees concerned. However, it must identify the organisation, the employer and the proposed agreement.
- (3) The certificate is, for all purposes of this Act, evidence that the employee or employees made the request or that the requirement has ceased to apply.

87 After section 358

Insert:

358A Reports about developments in making agreements

- (1) For:
 - (a) the period from the commencement of this section until the end of 31 December 1997; and
 - (b) the period of 2 years starting on 1 January 1998 and each following period of 2 years;

Schedule 11 Consequential amendments relating to certified agreements, AWAs and enterprise flexibility agreements

the Minister must cause a person to review and report to the Minister in writing about:

- (c) developments, in Australia during that period, in bargaining for the making of agreements covered by Parts VIB and VID; and
 - (d) in particular, the effects that such bargaining has had in Australia during that period on the employment (including wages and conditions of employment) of women, part-time employees, persons from a non-English speaking background and young persons.
- (2) The person who reviews and reports as mentioned in subsection (1) must be someone who, in the Minister's opinion, is suitably qualified and appropriate to do so.
 - (3) The person preparing the report must give it to the Minister as soon as practicable, and in any event within 6 months, after the end of the period to which it relates.
 - (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
 - (5) Subsections 34C(4) to (7) of the *Acts Interpretation Act 1901* apply to a report under this section as if it were a periodic report as defined in subsection 34C(1) of that Act.

Part 4—Application and transitional

88 Certified agreements

Part 2 of Schedule 8 applies to the amendments made by this Schedule, so far as they relate to certified agreements, in the same way as that Part applies to the amendments made by Part 1 of Schedule 8.

89 Enterprise flexibility agreements

Part 2 of Schedule 9 applies to the amendments made by this Schedule, so far as they relate to enterprise flexibility agreements, in the same way as that Part applies to the amendments made by Part 1 of Schedule 9.

Schedule 12—Amendments relating to no-disadvantage test

Workplace Relations Act 1996

1 After Part VID

Insert:

Part VIE—No-disadvantage test

170X Interpretation

In this Part, unless the contrary intention appears:

agreement means:

- (a) a certified agreement; or
- (b) an AWA.

approved apprenticeship means an apprenticeship approved by an approving authority for the purposes of section 170XD.

approved traineeship means a traineeship other than:

- (a) a National Training Wage traineeship; or
- (b) a Career Start traineeship; or
- (c) an Australian Traineeship System traineeship;

approved by an approving authority for the purposes of section 170XC.

approving authority means any person or unincorporated body that:

- (a) is a State or Territory training authority that exercises approval powers in relation to traineeships or apprenticeships; or
- (b) is an Industry Training Advisory Body; or
- (c) meets the criteria prescribed for the purposes of this definition;

and is declared in writing to be an approving authority for the purposes of this Part by:

- (d) the Minister for Employment, Education, Training and Youth Affairs; or
- (e) the Minister for Schools, Vocational Education and Training.

award includes a State award, but does not include:

- (a) an exceptional matters order; or
- (b) an award under section 170MX.

designated award, in relation to a person to whom an agreement will apply, means an award that the Employment Advocate under section 170XE, or the Commission under section 170XF, has determined to be appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

initial day means:

- (a) in relation to an AWA—the day on which it was made; or
- (b) in relation to a certified agreement—the day on which it was certified by the Commission.

relevant award, in relation to a person to whom an agreement will apply, means an award:

- (a) regulating any term or condition of employment of persons engaged in the same kind of work as that of the person under the agreement; and
- (b) that, immediately before the initial day of the agreement, is binding on the person's employer.

170XA When does an agreement pass the no-disadvantage test?

- (1) An agreement passes the no-disadvantage test if it does not disadvantage employees in relation to their terms and conditions of employment.
- (2) Subject to sections 170XB, 170XC and 170XD, an agreement disadvantages employees in relation to their terms and conditions of employment only if its approval or certification would result, on balance, in a reduction in the overall terms and conditions of employment of those employees under:
 - (a) relevant awards or designated awards; and
 - (b) any other law of the Commonwealth, or of a State or Territory, that the Employment Advocate or the Commission (as the case may be) considers relevant.

170XB Special case—employee eligible for the Supported Wage System

If an agreement provides for the payment of wages to an employee who is eligible for the Supported Wage System at a rate that is not less than the rate set in accordance with that System for the employee, the approval or certification of the agreement is not to be taken to result in a reduction of the employee's wages.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

170XC Special case—employee undertaking approved traineeship

- (1) If an agreement provides for the payment of wages to an employee undertaking an approved traineeship at a rate that is not less than the appropriate percentage of the rate (*benchmark rate*) that would be applicable to the employee under the relevant award or designated award (as the case may be) if:
 - (a) that award applied to him or her; and
 - (b) he or she were not undertaking the traineeship;the approval or certification of the agreement is not to be taken to result in a reduction of the employee's wages.
- (2) For the purposes of subsection (1), the *appropriate percentage of the benchmark rate* is such percentage of that rate as is determined in writing by the approving authority having regard to the reduction in the productive time of an employee undertaking the approved traineeship due to time spent in training.
- (3) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority instead of the criterion applying under the relevant award or designated award (as the case may be), that award is taken, for the purposes of this section, to have effect as if the criterion determined by the approving authority were substituted for the last-mentioned criterion.

170XD Special case—employee undertaking approved apprenticeship

- (1) This section applies if:
 - (a) an agreement provides for the payment of wages to an employee undertaking an approved apprenticeship in a particular trade, occupation or kind of work; and
 - (b) there is a relevant award or designated award regulating the payment of wages to employees undertaking an apprenticeship (*benchmark apprenticeship*) in the same trade, occupation or kind of work.
- (2) The approval or certification of the agreement is to be taken to result in a reduction of the employee's wages only if the agreement provides for the payment of wages to employees undertaking the approved apprenticeship at a rate that is less than the rate applicable under the relevant award or designated award (as the case may be) to employees undertaking the benchmark apprenticeship adjusted (if necessary) as provided in subsection (3).

- (3) For the purposes of subsection (2), the rate that is applicable to an employee undertaking the benchmark apprenticeship is to be adjusted to take into account the proportionate difference, as determined by the approving authority, between the productive time of an employee under the approved apprenticeship and the productive time of an employee under the benchmark apprenticeship.
- (4) If the agreement adopts, as the qualification for a wage level, a criterion determined by the approving authority instead of the criterion applying under the relevant award or designated award (as the case may be), that award is taken, for the purposes of this section, to have effect as if the criterion determined by the approving authority were substituted for the last-mentioned criterion.

170XE Determination of designated award or awards for the purposes of an AWA

- (1) If:
 - (a) an employer proposes to make an AWA with a person; and
 - (b) there is no relevant award in relation to the person;the employer must apply in writing to the Employment Advocate for the making of a determination under subsection (2).
- (2) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards (being an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the AWA) are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

170XF Determination of designated award or awards for the purposes of a certified agreement

- (1) If:
 - (a) an employer or organisation of employees proposes to make a certified agreement; and
 - (b) there is no relevant award in relation to some or all of the persons to whom the agreement will apply;the employer or organisation may apply in writing to the Commission for the making of a determination under subsection (2).
- (2) Upon application, the Commission must determine, and inform the employer or organisation in writing, that an award or awards (being an award or awards under this Act regulating terms or conditions of employment of persons engaged in the same kind of

Schedule 12 Amendments relating to no-disadvantage test

work as that of those persons under the agreement) are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

2 At the end of paragraphs 359(2)(a) to (e)

Add "and".

3 After paragraph 359(2)(f)

Insert:

(fa) the delegation, by an approving authority that is a State or Territory training authority, of any of its functions and powers under Part VIE; and

Schedule 13—Industrial action

Part 1—Amendments

Workplace Relations Act 1996

1 Subsection 4(1) (definition of *bans clause*)

Repeal the definition.

2 Subsection 4(1) (at the end of the definition of *industrial action*)

Add:

or (g) action by an employee if:

- (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
- (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

3 Section 124

Repeal the section, substitute:

124 Commission not to deal with claims for payments in relation to periods of industrial action

- (1) The Commission does not have power to deal with a claim for the making of any payment to employees in relation to a period during which those employees engaged, or engage, in industrial action.
- (2) Subsection (1) applies to a claim for the making of a payment in relation to a period, whether before or after the making of the claim, or before or after the commencement of this section.

4 Section 125

Repeal the section.

5 Section 127

Repeal the section, substitute:

127 Orders to stop or prevent industrial action

- (1) If it appears to the Commission that industrial action is happening, or is threatened, impending or probable, in relation to:
 - (a) an industrial dispute; or
 - (b) the negotiation or proposed negotiation of an agreement under Division 2 of Part VIB; or
 - (c) work that is regulated by an award or a certified agreement;the Commission may, by order, give directions that the industrial action stop or not occur.
- (2) The Commission may make such an order of its own motion, or on the application of:
 - (a) a party to the industrial dispute (if any); or
 - (b) a person who is directly affected, or who is likely to be directly affected, by the industrial action; or
 - (c) an organisation of which a person referred to in paragraph (b) is a member.
- (3) The Commission must hear and determine an application for an order under this section as quickly as practicable.
- (4) The powers conferred on the Commission by subsection (1) are in addition to, and not in derogation of, the powers conferred on the Commission by the rest of this Act.
- (5) A person or organisation to whom an order under subsection (1) is expressed to apply must comply with the order.
- (6) The Court may, on the application of a person or organisation affected by an order under subsection (1), grant an injunction on such terms as the Court considers appropriate if it is satisfied that another person or organisation:
 - (a) has engaged in conduct that constitutes a contravention of subsection (5); or
 - (b) is proposing to engage in conduct that would constitute such a contravention.
- (7) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (6).

6 Division 8 of Part VI (heading)

Repeal the heading.

7 Sections 165 and 166

Repeal the sections.

8 At the end of subsection 166A(2)

Add:

; or (d) conduct that is in breach of a direction given by the Commission or a State industrial authority.

9 At the end of section 166A

Add:

(7) If:

- (a) the conduct stops before the end of the 72 hours referred to in paragraph (6)(c); and
 - (b) after the conduct stopped, other conduct occurred; and
 - (c) in the Commission's opinion, the other conduct is substantially related to the first-mentioned conduct;
- then, for the purposes of paragraph (6)(c):
- (d) the other conduct is taken to be part of the first-mentioned conduct; and
 - (e) the period of the first-mentioned conduct is taken to include the period of the other conduct.

10 Section 167

Repeal the section.

11 Division 2 of Part VIII

Repeal the Division.

12 After Part VIII

Insert:

Part VIIIA—Payments in relation to periods of industrial action

187AA Payments not to be made or accepted in relation to periods of industrial action

- (1) An employer must not make a payment to an employee in relation to a period during which the employee engaged, or engages, in industrial action if:

Schedule 13 Industrial action

- (a) the employer or employee was or is a member of an organisation during that period; or
- (b) the employer was or is a constitutional corporation bound by an award, a certified agreement or an AWA during that period; or
- (c) the industrial action was taken, or is being taken, in connection with work regulated by an award, a certified agreement or an AWA; or
- (d) the industrial action was taken, or is being taken, in relation to an industrial dispute; or
- (e) the industrial action was or is of a kind referred to in paragraph (a), (b) or (c) of the definition of *industrial action* in subsection 4(1); or
- (f) the industrial action was taken, or is being taken, in a Territory.

Note: For *constitutional corporation*, see subsection 4(1).

- (2) An employee must not accept a payment from an employer if the employer would contravene subsection (1) by making the payment.
- (3) A contravention of subsection (1) or (2) is not an offence.

187AB Organisations not to take action for payments in relation to periods of industrial action

- (1) An organisation, or an officer, member or employee of an organisation, must not:
 - (a) make a claim for an employer to make a payment to an employee in relation to a period during which the employee engaged, or engages, in industrial action; or
 - (b) organise or engage in, or threaten to organise or engage in, industrial action against an employer with intent to coerce the employer to make such a payment.
- (2) For the purposes of subsection (1), action done by one of the following bodies or persons is taken to have been done by an organisation:
 - (a) the committee of management of the organisation;
 - (b) an officer, employee or agent of the organisation acting in that capacity;
 - (c) a member or group of members of the organisation acting under the rules of the organisation;

- (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.
- (3) Paragraphs (2)(c) and (d) do not apply if:
 - (a) a committee of management of the organisation; or
 - (b) a person authorised by the committee; or
 - (c) an officer of the organisation;has taken reasonable steps to prevent the action.
- (4) A contravention of subsection (1) is not an offence.

187AC Applications to the Court

- (1) An application may be made to the Court for orders under section 187AD in respect of contraventions of section 187AA or 187AB.
- (2) The application may be made by:
 - (a) the Minister; or
 - (b) a person who has an interest in the matter; or
 - (c) any other person prescribed by the regulations.
- (3) In the case of a contravention of section 187AB, the application may also be made by the employer in question.
- (4) A regulation prescribing persons for the purposes of paragraph (2)(c) may limit its application to specified circumstances.

187AD Orders that the Court may make

- (1) In respect of contraventions of section 187AA or 187AB, the Court may, if the Court considers it appropriate in all the circumstances of the case, make one or more of the following orders:
 - (a) an order imposing on a person who contravened or is contravening that section a penalty of not more than \$10,000;
 - (b) if the person contravened or is contravening section 187AB—an order requiring the person to pay to an employer compensation of such amount as the Court thinks appropriate;
 - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the contravention or remedy its effects;
 - (d) any other consequential orders.
- (2) The Court must not make an order under paragraph (1)(b) requiring compensation to be paid to an employer who has

contravened subsection 187AA(1) in connection with the contravention referred to in that paragraph.

13 At the end of paragraph 294(1)(a)

Add "or".

14 At the end of subsection 294(1)

Add:

- ; or (d) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have failed to comply with an injunction granted under subsection 127(6) or (7); or
- (e) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has or have failed to comply with an injunction granted under section 187AD.

15 At the end of section 294

Add:

- (7) A finding of fact by the Court in proceedings under section 127 or Part VIIIA is admissible as prima facie evidence of that fact in an application made on a ground specified in paragraph (1)(d) or (e), as the case requires.

Part 2—Transitional provision

16 Bans clauses

Despite items 1, 4, 6, 7 and 11, sections 125 and 166 and Division 2 of Part VIII of the Workplace Relations Act, as in force immediately before the commencement of those items, continue to apply in relation to a bans clause that was in force immediately before that commencement.

Schedule 14—Registered organisations

Part 1—Amendments

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

enterprise association means an association referred to in paragraph 188(1)(c).

2 Subsection 134(3)

After “person”, insert “, who is not an officer or employee of an organisation,”.

3 At the end of paragraphs 187A(a) and (b)

Add “and”.

4 Paragraphs 187A(d) and (e)

Repeal the paragraphs.

5 Before section 188

Insert:

187B Interpretation

In this Division, unless the contrary intention appears:

enterprise means:

- (a) a business that is carried on by a single employer; or
- (b) an operationally distinct part of such a business; or
- (c) 2 or more operationally distinct parts of the same business carried on by the same employer.

6 At the end of subsection 188(1)

Add:

- ; (c) an association of which some or all of the members are employees performing work in the same enterprise and the other members (if any) are:
 - (i) officers of the association; or
 - (ii) persons specified in Schedule 3; or

(iii) independent contractors who, if they were employees performing work of the kind which they usually perform as independent contractors, would be employees eligible for membership of the association.

7 Subsection 188(2)

Omit “or (b)(ii) or (iii)”, substitute “, (b)(ii) or (iii) or (c)(ii) or (iii)”.

8 Subsection 189(1)

After “association” (first occurring), insert “(other than an enterprise association)”.

9 After paragraph 189(1)(a)

Insert:

(aa) in the case of an association of employees—the association is free from control by, or improper influence from, an employer or by an association or organisation of employers; and

10 Paragraphs 189(1)(b) and (c)

Omit “100”, substitute “50”.

11 Paragraph 189(1)(d)

Repeal the paragraph, substitute:

(d) the designated Presidential Member is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and

12 At the end of paragraphs 189(1)(a), (b), (c), (e), (f) and (g)

Add “and”.

13 Paragraph 189(1)(j)

Repeal the paragraph, substitute:

(j) subject to subsection (2), there is no organisation to which members of the association might belong, or, if there is such an organisation, it is not an organisation:

- (i) to which the members of the association could more conveniently belong; and
- (ii) that would more effectively represent those members.

14 Subsections 189(2) and (3)

Repeal the subsections, substitute:

(2) If:

- (a) there is an organisation to which the members of the association might belong; and
- (b) the members of the association could more conveniently belong to the organisation; and
- (c) the organisation would more effectively represent those members than the association would;

the requirements of paragraph (1)(j) are taken to have been met if the designated Presidential Member accepts an undertaking from the association that the designated Presidential Member considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of the organisation and the eligibility rules of the association.

- (3) Without limiting the matters that the designated Presidential Member may take into account in considering, under subparagraph (1)(j)(ii), the effectiveness of the representation of an organisation or association, the designated Presidential Member must take into account whether the representation would be consistent with the objects of this Act.
- (4) A designated Presidential Member shall grant an application for registration made by an enterprise association that, under section 188, may apply for registration as an organisation if, and only if:
 - (a) the association:
 - (i) is a genuine association of a kind referred to in paragraph 188(1)(c); and
 - (ii) is an association for furthering or protecting the interests of its members; and
 - (b) the association is free from control by, or improper influence from:
 - (i) any employer, whether at the enterprise in question or otherwise; or
 - (ii) any person or body with an interest in that enterprise; or
 - (iii) any organisation, or any other association of employers or employees; and
 - (c) the association has at least 50 members who are employees; and

- (d) the designated Presidential Member is satisfied that the association would conduct its affairs in a way that meets the obligations of an organisation under this Act; and
 - (e) the rules of the association make provision as required by this Act to be made by the rules of organisations; and
 - (f) the association does not have the same name as that of an organisation or a name that is so similar to the name of an organisation as to be likely to cause confusion; and
 - (g) the designated Presidential Member is satisfied that a majority of the persons eligible to be members of the association support its registration as an organisation; and
 - (h) a majority of the members present at a general meeting of the association, or an absolute majority of the committee of management of the association, have passed, under the rules of the association, a resolution in favour of registration of the association as an organisation; and
 - (i) the registration of the association would further the objects of this Act.
- (5) In applying paragraph (1)(d) or (4)(d), the designated Presidential Member must have regard to whether any recent conduct by the association or its members would have provided grounds for an application under section 294 had the association been registered when the conduct occurred.

15 Subsection 195(2)

Repeal the subsection.

16 After section 203

Insert:

203A Designated Presidential Member may determine alteration of rules where there has been a breach of an undertaking

- (1) If:
 - (a) in the course of an organisation being registered under section 189, an undertaking was given under subsection 189(2) to avoid demarcation disputes that might otherwise arise from an overlap between its eligibility rules and the eligibility rules of another organisation; and
 - (b) the first-mentioned organisation has breached the undertaking;

a designated Presidential Member may, by instrument, determine such alterations of the rules of the organisation as are, in the Presidential Member's opinion, necessary to remove the overlap.

- (2) The designated Presidential Member must give the organisation and the other organisation an opportunity, as prescribed, to be heard on the matter.
- (3) Alterations determined under subsection (1) take effect on the date of the instrument.

17 Subsection 204(4)

Omit "another organisation to which those persons might conveniently belong", substitute "another organisation:

- (a) to which those persons might more conveniently belong; and
- (b) that would more effectively represent those members."

18 Subsections 204(5) and (6)

Repeal the subsections, substitute:

- (5) However, subsection (4) does not apply if the designated Presidential Member accepts an undertaking from the organisation seeking the alteration that the designated Presidential Member considers appropriate to avoid demarcation disputes that might otherwise arise from an overlap between the eligibility rules of that organisation and the eligibility rules of the other organisation.

19 Subsection 204(9)

Repeal the subsection.

20 Section 233

Repeal the section.

21 After Division 7 of Part IX

Insert:

Division 7A—Withdrawal from amalgamations

Subdivision A—General

253ZH Object of Division

The object of this Division is to provide for:

- (a) certain organisations that have taken part in amalgamations under Division 7 to be reconstituted and re-registered; and
 - (b) branches of organisations of that kind to be formed into organisations and registered;
- in a way that is fair to the members of the organisations concerned and the creditors of those organisations.

253ZI Definitions

- (1) In this Division, unless the contrary intention appears:
- amalgamated organisation** means an organisation of employees that was formed under Division 7, but does not include an organisation that was subsequently de-registered under that Division.
- asset** has the same meaning as in Division 7.
- ballot** means a ballot conducted under Subdivision B.
- constituent member**, in relation to a constituent part of an amalgamated organisation, means a member of the amalgamated organisation who would be eligible for membership of the constituent part if:
- (a) the constituent part; or
 - (b) the organisation of which the constituent part was a branch; as the case requires, were still registered as an organisation with the same rules as it had when it was de-registered under Division 7.
- constituent part**, in relation to an amalgamated organisation, means a part of the membership of the amalgamated organisation that would have been eligible for membership of:
- (a) an organisation de-registered under Division 7 in connection with the formation of that amalgamated organisation; or
 - (b) a State or Territory branch of such an organisation; if the de-registration had not occurred.
- liability** has the same meaning as in Division 7.
- newly registered organisation** means an organisation registered under section 253ZQ.
- (2) For the purposes of this Division, an organisation is taken to have been de-registered under Division 7 in connection with the formation of an amalgamated organisation if the de-registration occurred as a result of the registration under paragraph 253Q(3)(a) of:
- (a) the amalgamated organisation; or

- (b) another organisation that was subsequently de-registered under Division 7 as a result of the registration under that paragraph of:
 - (i) the amalgamated organisation; or
 - (ii) an organisation that, through one or more previous applications of this subsection, is taken to have been de-registered under Division 7 in connection with the formation of the amalgamated organisation.

Subdivision B—Ballots for withdrawal from amalgamated organisations

253ZJ Applications to the Court for ballots

- (1) An application may be made to the Court for a ballot to be held, to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation, if:
 - (a) the constituent part became part of the organisation as a result of an amalgamation under Division 7 after 1 February 1991; and
 - (b) the amalgamation occurred no less than 2 years prior to the date of the application; and
 - (c) the application is made:
 - (i) if the amalgamation occurred before the commencement of this Division—no more than 3 years after that commencement; or
 - (ii) if the amalgamation occurred after the commencement of this Division—no more than 5 years after the amalgamation occurred.
- (2) However, an application cannot be made if:
 - (a) during the last 12 months, the Court has rejected an application for a ballot to be held in relation to the constituent part of the organisation; or
 - (b) a ballot was held that rejected the withdrawal of the constituent part.
- (3) The application may be made by:
 - (a) the prescribed number of constituent members; or
 - (b) a committee of management elected entirely or substantially by the constituent members.
- (4) The application must be in the prescribed form and must contain such information as is prescribed.

253ZK Notifying of applications for ballots

- (1) If an application is made under section 253ZJ, the Registrar of the Court must immediately notify the Australian Electoral Commission of the application.
- (2) On being notified of the application, the Australian Electoral Commission must immediately take such action as it considers necessary or desirable to enable it to conduct, as quickly as possible, any ballot that may be required as a result of the application.

253ZL Orders for ballots

- (1) The Court must order that a vote of the constituent members be taken by secret ballot, to decide whether the constituent part of the amalgamated organisation should withdraw from the organisation, if the Court is satisfied that:
 - (a) the application for the ballot is validly made under section 253ZJ; and
 - (b) the proposal for withdrawal from the organisation complies with any requirements specified in the regulations.
- (2) In considering whether to order that a ballot be held, the Court must have regard to any submissions made to it by persons authorised by the regulations to make submissions for the purposes of this section.
- (3) If the Court orders that a ballot be held, it may make such orders as it thinks fit in relation to the conduct of the ballot.

253ZM Conduct of ballots

All ballots are to be conducted by the Australian Electoral Commission in accordance with the regulations.

253ZN Providing information etc. to electoral officials

An electoral official may, if:

- (a) it is reasonably necessary for the purposes of a ballot that may be, or is, required to be held; and
 - (b) the official is authorised by the Australian Electoral Commission under this section for the purposes of the ballot;
- require (by written notice) an officer or employee of the amalgamated organisation concerned or of a branch of the organisation:

- (c) to give to the official, within a reasonable period (of not less than 7 days), and in a reasonable manner, specified in the notice, any information within the knowledge or in the possession of the person; and
- (d) to produce or make available to the official, at a reasonable time and place specified in the notice, any documents in the custody or under the control of the person, or to which he or she has access.

253ZO Notifying of results of ballots

Notice of the result of a ballot held must be given in accordance with the regulations.

Subdivision C—Giving effect to ballots

253ZP Determining the day of withdrawal

- (1) If more than 50% of the formal votes cast in a ballot are in favour of a constituent part of an amalgamated organisation withdrawing from the organisation, the Court must, on the application of the constituent part:
 - (a) determine the day on which the withdrawal is to take effect; and
 - (b) make such orders as are necessary to apportion the assets and liabilities of the amalgamated organisation between the amalgamated organisation and the constituent part; and
 - (c) make such other orders as it thinks fit in connection with giving effect to the withdrawal.
- (2) In making an order under paragraph (1)(b), the Court must have regard to:
 - (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a State or Territory branch, was de-registered under Division 7 in connection with the formation of the amalgamated organisation; and
 - (b) any change in the net value of those assets or liabilities that has occurred since the amalgamation; and
 - (c) the interests of the creditors of the amalgamated organisation.

253ZQ Registration of constituent part

The Industrial Registrar must, with effect from the day determined under paragraph 253ZP(1)(a):

- (a) register the constituent part as an organisation in the register kept under paragraph 63(1)(a); and
- (b) enter in the register such other particulars in relation to the organisation as are prescribed.

253ZR Members of amalgamated organisation may join registered organisation

A person who is a member of the amalgamated organisation from which the constituent part withdrew to form a newly registered organisation may become a member of the newly registered organisation without payment of entrance fee if the person is eligible for membership of it.

253ZS Orders of the Commission, awards etc.

- (1) This section applies to an order of the Commission, an award or a certified agreement that was, immediately before the day the registration takes effect, binding on the amalgamated organisation in relation to the constituent part of the organisation and its members.
- (2) On and from the day the registration takes effect, the order, award or certified agreement:
 - (a) becomes binding on the newly registered organisation and its members; and
 - (b) has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the order, award or certified agreement to the amalgamated organisation included references to the newly registered organisation.
- (3) In this section:
 - award* includes an enterprise flexibility agreement that:
 - (a) has effect under this Act immediately before the day on which the registration takes effect; or
 - (b) continues to have effect under Schedule 9 to the *Workplace Relations and Other Legislation Amendment Act 1996* immediately before that day.

253ZT Other matters

The regulations may provide for any other matters relating to giving effect to the withdrawal of constituent parts from amalgamated organisations, including any matter related to:

Schedule 14 Registered organisations

- (a) the transfer of assets and liabilities of an amalgamated organisation to a newly registered organisation; and
- (b) the extent to which a newly registered organisation is bound or otherwise affected by any agreements, arrangements or other instruments binding on or otherwise affecting an amalgamated organisation; and
- (c) the extent to which an amalgamated organisation continues, after a registration under section 253ZQ takes effect, to be bound or otherwise affected by any agreements, arrangements or other instruments binding on or otherwise affecting the amalgamated organisation; and
- (d) the extent to which a newly registered organisation becomes a party to any proceedings to which an amalgamated organisation is a party; and
- (e) the extent to which an amalgamated organisation continues to be a party to any proceedings to which the amalgamated organisation was a party immediately before a registration under section 253ZQ takes effect; and
- (f) the appointment of officers of an amalgamated organisation as officers of a newly registered organisation, and the consequences of such appointments.

253ZU Subdivision applies despite laws and agreements prohibiting transfer etc.

- (1) This Subdivision applies, and must be given effect to, despite anything in:
 - (a) any other Commonwealth, State or Territory law; or
 - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Nothing done by this Subdivision, and nothing done by a person because of, or for a purpose connected with or arising out of, this Subdivision:
 - (a) is to be regarded as:
 - (i) placing an organisation or other person in breach of contract or confidence; or
 - (ii) otherwise making an organisation or other person guilty of a civil wrong; or
 - (b) is to be regarded as placing an organisation or other person in breach of:
 - (i) any Commonwealth, State or Territory law; or

- (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
 - (c) is taken to release any surety, wholly or in part, from all or any of the surety's obligations.
- (3) Without limiting subsection (1), if, apart from this section, the consent of a person would be necessary in order to give effect to this Subdivision in a particular respect, the consent is taken to have been given.

Subdivision D—Miscellaneous

253ZV Court may resolve difficulties

- (1) If any difficulty arises in relation to the application of this Division to a particular matter, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.
- (2) An order made under subsection (1) has effect despite:
 - (a) any Commonwealth, State or Territory law; or
 - (b) the rules of an organisation or any association proposed to be registered as an organisation.

22 Subparagraph 264(2)(b)(i)

Omit "3 months", substitute "2 weeks".

23 Subsection 264(7)

Omit the subsection.

24 After section 264

Insert:

264A Recovery of arrears

- (1) Legal proceedings for the recovery of an amount payable by a person in relation to the person's membership of an organisation must not be commenced after the end of the period of 12 months starting on the day on which the amount became payable.
- (2) The amount ceases to be payable at the end of the period if legal proceedings to recover the amount have not been commenced by then.

- (3) Subsections (1) and (2) apply only to amounts that become payable on or after the commencement of those subsections.

25 Paragraphs 271(1)(a) and (b)

After “this section”, insert “or section 271A”.

26 Paragraph 271(1)(b)

Before “this Division”, insert “subject to section 271A,”.

27 After section 271

Insert:

271A Exemption from this Division of certain branches

- (1) If, on the application of a branch of an organisation, a Registrar is satisfied, after considering such circumstances (if any) as are prescribed, that the branch did not have any financial affairs in a financial year, the Registrar may issue to the branch a certificate to that effect in respect of the financial year.
- (2) The certificate exempts the branch from the requirements of this Division in respect of the financial year.
- (3) The application must be made to the Registrar within 90 days, or such longer period as the Registrar allows, after the end of the financial year.

28 Subsections 280(7), (8) and (9)

Repeal the subsections.

29 After section 280

Insert:

280A Registrar may conduct other investigations

A Registrar may, in the circumstances set out in the regulations, or if the Registrar is otherwise satisfied that there are reasonable grounds for doing so, investigate whether:

- (a) the accounts of an organisation contain any deficiency, failure or shortcoming; or
- (b) a provision of this Division has been contravened; or
- (c) a regulation made for the purposes of this Division has been contravened; or

- (d) a rule of an organisation relating to its finances or financial administration has been contravened.

280B Investigations under sections 280 and 280A

- (1) For the purpose of making an investigation under section 280 or 280A, a Registrar may, by written notice, require a person to whom subsection (2) applies:
 - (a) to provide the Registrar with specified information relevant to the investigation; or
 - (b) to attend before the Registrar to answer questions relating to matters relevant to the investigation, and to produce to the Registrar all records and other documents in the custody or under the control of the officer, employee or person relating to those matters.
- (2) This subsection applies to:
 - (a) an officer or employee of the organisation concerned; and
 - (b) a former officer or employee of the organisation, who is a member of the organisation; and
 - (c) a person who held the position of auditor of the organisation during the period that is the subject of the investigation.
- (3) If, at the conclusion of an investigation under section 280 or 280A, the Registrar is satisfied that the organisation concerned has contravened:
 - (a) a provision of this Act; or
 - (b) a rule of the organisation relating to the finances or financial administration of the organisation;the Registrar must notify the organisation accordingly.
- (4) The notice must include a request that the organisation take specified action, within a specified period, to rectify the matter.
- (5) The organisation must comply with that request.
- (6) The Court may, on application by the Registrar, make such orders as it thinks fit to ensure that the organisation complies with subsection (5).
- (7) The Registrar must not take proceedings under this Act against the organisation in relation to a matter that is the subject of the notice unless the organisation has refused or failed to comply with the request made in the notice.

30 Subsection 281(5)

After “(inclusive)”, insert “and section 280B”.

31 Subsection 285(1)

Repeal the subsection, substitute:

- (1) If, on the application of an organisation made after the end of a financial year, a Registrar is satisfied that the organisation's income for the year did not exceed:
 - (a) in the case of a financial year that, because of subsection 270(1), is a period other than 12 months—such amount as the Registrar considers appropriate in the circumstances; or
 - (b) in any other case—\$20,000 or such higher amount as is prescribed;the Registrar must issue to the organisation a certificate to that effect.

32 After Division 11 of Part IX

Insert:

Division 11A—Entry and inspection of premises etc. by organisations

285A Permits

- (1) A Registrar may, on application by an organisation in accordance with the regulations, issue to an officer or employee of the organisation a permit in the form prescribed for the purposes of this section.
- (2) The permit:
 - (a) remains in force until it expires or is revoked under this section; and
 - (b) expires at the earlier of:
 - (i) 3 years after the day on which it was issued; or
 - (ii) the time at which the person to whom it was issued ceases to be an officer or employee of the organisation concerned.
- (3) A Registrar may, on application in accordance with the regulations, revoke the permit if he or she is satisfied that the person to whom it was issued has, in exercising powers under this

Division, intentionally hindered or obstructed any employer or employee or otherwise acted in an improper manner.

- (4) An application for the revocation of a permit must set out the grounds on which the application is made.
- (5) A person to whom a permit has been issued under this section must, within 14 days after the expiry or revocation of the permit, return the permit to the Registrar.
- (6) If one or more permits issued to a person under this section have been revoked, the Registrar must take the fact into account when deciding whether to issue a further permit under this section to the person.

285B Investigating suspected breaches of Act etc.

- (1) This section applies if a person who holds a permit in force under this Division suspects that a breach has occurred, or is occurring, of:
 - (a) this Act; or
 - (b) an award, an order of the Commission, or a certified agreement, that is in force and binds the organisation of which the person is an officer or employee.
- (2) For the purpose of investigating the suspected breach, the person may enter, during working hours, any premises where employees work who are members of the organisation of which the person is an officer or employee.
- (3) After entering the premises, the person may, for the purpose of investigating the suspected breach:
 - (a) require the employer of the employees to allow the person, during working hours, to inspect and, if the person wishes, to make copies of any of the following that are kept by the employer on the premises and are relevant to the suspected breach:
 - (i) any time sheets; or
 - (ii) any pay sheets; or
 - (iii) any other documents, other than an AWA, an ancillary document or a document that shows some or all of the content of an AWA or of an ancillary document; and
 - (b) during working hours, inspect or view any work, material, machinery, or appliance, that is relevant to the suspected breach; and

- (c) during working hours, interview any employees who are:
 - (i) members of the organisation of which the person is an officer or employee; or
 - (ii) eligible to become members of that organisation; about the suspected breach.
- (4) For the purpose of investigating the suspected breach, the person may (regardless of whether the person exercises powers under subsection (2) or (3)) require the employer of the employees mentioned in subsection (2):
 - (a) to produce documents of the kind mentioned in any of subparagraphs (3)(a)(i) to (iii) at the premises at which the employees work or at some other agreed place; and
 - (b) if the documents are to be produced at the premises at which the employees work—to allow the person, during working hours, to enter the premises and:
 - (i) inspect the documents; and
 - (ii) if the person wishes to do so—make copies of the documents; and
 - (c) if the documents are to be produced at some other place—to allow the person, at an agreed time, to inspect the documents at that place and, if the person wishes to do so, to make copies of them.

285C Discussions with employees

- (1) A person who holds a permit in force under this Division may enter premises in which:
 - (a) work is being carried on to which an award applies that is binding on the organisation of which the person holding the permit is an officer or employee; and
 - (b) employees who are members, or eligible to become members, of that organisation work;for the purposes of holding discussions with any of those employees who wish to participate in those discussions.
- (2) The person may only enter the premises during working hours and may only hold the discussions during the employees' meal-time or other breaks.

285D Conduct not authorised under sections 285B and 285C

- (1) If:

- (a) a person proposes to enter, or is on, premises in accordance with section 285B or 285C; and
- (b) the occupier of the premises requires the person to show his or her permit;

the person is not entitled under that section to enter or remain on the premises unless he or she shows the occupier the permit.

- (2) A person is only entitled to enter premises, and exercise powers, under section 285B or 285C if the person has given the occupier of the premises at least 24 hours' notice of the person's intention to do so.
- (3) A person is not, in exercising any powers under section 285B or 285C, entitled to enter any part of premises used for residential purposes, except with the permission of the occupier.

285E Conduct in relation to sections 285B and 285C attracting civil penalties

- (1) A person exercising powers under section 285B or 285C must not intentionally hinder or obstruct any employer or employee.
- (2) The occupier of premises must not refuse or unduly delay entry to the premises by a person entitled to enter the premises under section 285B or 285C.
- (3) An employer must not refuse or fail to comply with a requirement under paragraph 285B(3)(a) or subsection 285B(4).
- (4) A person must not otherwise intentionally hinder or obstruct a person exercising powers under section 285B or 285C. To avoid doubt, a failure to agree on a place or a time as mentioned in paragraph 285B(4)(a) or (c) does not constitute hindering or obstructing a person exercising such powers.

285F Civil penalties

- (1) In this section:
 - eligible court* means:
 - (a) the Federal Court of Australia; or
 - (b) a District, County or Local Court; or
 - (c) a magistrate's court.
 - penalty provision* means subsection 285A(5) or 285E(1), (2), (3) or (4).
- (2) If a person contravenes a penalty provision, the contravention is not an offence. However, an eligible court may make an order

imposing a penalty on a person who contravenes a penalty provision.

- (3) The penalty cannot be more than \$10,000 for a body corporate or \$2,000 in other cases.
- (4) An application for an order under subsection (2) may be made by any person.
- (5) An eligible court may grant an injunction requiring a person not to contravene, or to cease contravening, a penalty provision.

285G Powers of Commission

- (1) In spite of section 89A, the Commission may exercise its powers under Part VI of this Act to prevent and settle industrial disputes about the operation of this Division, but must not make an order for that purpose conferring powers that are additional to, or inconsistent with, powers exercisable under this Division.
- (2) However the Commission does have power, for the purpose of preventing or settling the industrial dispute, to revoke a permit issued to a person under section 285A. If it does so, it may make any order that it considers appropriate, for the purpose of preventing or settling the industrial dispute, about the issue of any further permit to the person, or of any permit or further permit to any other person, under that section.

33 Section 286

Repeal the section.

34 At the end of paragraph 296(b)

Add:

- or (iii) is not free from control by, or improper influence from, a person or body referred to in paragraph 189(1)(aa) or (4)(b), as the case requires; or
- (iv) subject to subsection (5), if the organisation is an enterprise association—the enterprise to which it relates has ceased to exist;

35 Subparagraph 296(c)(ii)

Omit “100”, substitute “50”.

36 At the end of section 296

Add:

- (2) A designated Presidential Member may also cancel the registration of an organisation if:
- (a) the designated Presidential Member is satisfied that the organisation has breached an undertaking referred to in subsection 189(2); and
 - (b) the designated Presidential Member does not consider it appropriate to amend the eligibility rules of the organisation under section 203A.
- (3) A cancellation under subsection (2) may be made:
- (a) on application by an organisation or person interested; or
 - (b) on application by the Minister; or
 - (c) on the designated Presidential Member's own motion.
- (4) For the purposes of subparagraph (1)(b)(iv), the enterprise to which an organisation relates has ceased to exist if:
- (a) in the case of an organisation that relates only to an operationally distinct part or parts of the business that constitutes the enterprise—that part or those parts have ceased to exist, or the whole of the business has ceased to exist; or
 - (b) in the case of an organisation that relates to the whole of the business that constitutes the enterprise—the whole of the business has ceased to exist.
- (5) Subparagraph (1)(b)(iv) does not apply if:
- (a) some or all of the business of the enterprise in question is now conducted by another enterprise; and
 - (b) all the alterations that are necessary to enable the organisation to operate as an enterprise association in relation to the other enterprise have been made; and
 - (c) the designated Presidential Member is satisfied that the organisation still meets the requirements of subsection 189(4).

The Presidential Member must give the organisation a reasonable opportunity to alter its rules as provided in paragraph (b) before the designated Presidential Member considers cancelling the registration of the organisation on the ground referred to in subparagraph (1)(b)(iv).

37 Paragraph 306(a)

Omit "or 286(1)".

Schedule 14 Registered organisations

38 Paragraph 306(b)

Omit “or 286(1)”, substitute “or section 285B or 285C”.

39 Section 309

Repeal the section.

40 Section 329

Omit “280(7)” (wherever occurring), substitute “280B(1)”.

Part 2—Transitional provision

41 Transitional—notices under subsections 280(7) and (8) of the Workplace Relations Act

- (1) A notice given by a Registrar under subsection 280(7) of the Workplace Relations Act to an officer or employee of an organisation before the commencement of item 28 is, after that commencement, taken to have been given under subsection 280B(1) of the Workplace Relations Act.
- (2) A notice given by a Registrar under subsection 280(8) of the Workplace Relations Act to an organisation before the commencement of item 28 is, after that commencement, taken to have been given under subsection 280B(3) of the Workplace Relations Act.

Schedule 15—Freedom of association

Workplace Relations Act 1996

1 Subsection 4(1) (definition of *industrial action*)

Before “means”, insert “(except in Part XA)”.

2 Subsection 4(1) (at the end of paragraph (d) of the definition of *industrial action*)

Add:

, if:

- (i) the persons are members of an organisation and the failure or refusal is in accordance with a decision made, or direction given, by an organisation, the committee of management of the organisation, or an officer or a group of members of the organisation acting in that capacity; or
- (ii) the failure or refusal is in connection with an industrial dispute; or
- (iii) the persons are employed by the Commonwealth or a constitutional corporation; or
- (iv) the persons are employed in a Territory;

3 Subsection 4(1) (definition of *industrial dispute*)

Before “means”, insert “(except in Part XA)”.

4 After section 93A

Insert:

94 Limitation on powers of Commission relating to discrimination and preference

The Commission does not have power to include terms in an award that require or permit, or have the effect of requiring or permitting, any conduct that would contravene Part XA..

5 Section 122

Repeal the section.

6 After Part X

Insert:

Part XA—Freedom of association

Division 1—Preliminary

298A Objects of Part

As well as the objects set out in section 3, this Part has these objects:

- (a) to ensure that employers, employees and independent contractors are free to join industrial associations of their choice or not to join industrial associations; and
- (b) to ensure that employers, employees and independent contractors are not discriminated against or victimised because they are, or are not, members or officers of industrial associations.

298B Definitions

(1) In this Part, unless the contrary intention appears:

conduct includes an omission.

industrial action means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
 - (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
 - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or

Schedule 15 Freedom of association

- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work;

but does not include:

- (e) action by employees that is authorised or agreed to by the employer of the employees; or
- (f) action by an employer that is authorised or agreed to by or on behalf of employees of the employer; or
- (g) action by an employee if:
 - (i) the action was based on a reasonable concern by the employee about an imminent risk to his or her health or safety; and
 - (ii) the employee did not unreasonably fail to comply with a direction of his or her employer to perform other available work, whether at the same or another workplace, that was safe and appropriate for the employee to perform.

industrial association means:

- (a) an association of employees and/or independent contractors, or an association of employers, that is registered or recognised as such an association (however described) under an industrial law; or
 - (b) an association of employees and/or independent contractors a principal purpose of which is the protection and promotion of their interests in matters concerning their employment, or their interests as independent contractors, as the case requires; or
 - (c) an association of employers a principal purpose of which is the protection and promotion of their interests in matters concerning employment and/or independent contractors;
- and includes a branch of such an association, and an organisation.

industrial body means:

- (a) the Commission; or
- (b) a court or commission, however designated, exercising under an industrial law powers and functions corresponding to those conferred on the Commission by this Act.

industrial dispute means:

- (a) an industrial dispute (including a threatened, impending or probable industrial dispute) that is about matters pertaining to the relationship between employers and employees; or

- (b) a situation that is likely to give rise to an industrial dispute of the kind referred to in paragraph (a); or
- (c) a dispute arising between 2 or more industrial associations, or within an industrial association, as to the rights, status or functions of members of the associations or association in relation to the employment of those members; or
- (d) a dispute arising between employers and employees, or between members of different industrial associations, as to the demarcation of functions of employees or classes of employees; or
- (e) a dispute about the representation under an industrial law of the industrial interests of employees by an industrial association of employees.

industrial instrument means an award or agreement, however designated, that:

- (a) is made under or recognised by an industrial law; and
- (b) concerns the relationship between an employer and the employer's employees, or provides for the prevention or settlement of a dispute between an employer and the employer's employees.

industrial law means this Act or a law, however designated, of the Commonwealth or of a State or Territory that regulates the relationships between employers and employees or provides for the prevention or settlement of disputes between employers and employees.

officer, in relation to an industrial association, includes:

- (a) a delegate or other representative of the association; and
- (b) an employee of the association.

organisation includes a branch of an organisation.

- (2) For the purposes of this Part, action done by one of the following bodies or persons is taken to have been done by an industrial association:
 - (a) the committee of management of the industrial association;
 - (b) an officer or agent of the industrial association acting in that capacity;
 - (c) a member or group of members of the industrial association acting under the rules of the association;
 - (d) a member of the industrial association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.

- (3) Paragraphs (2)(c) and (d) do not apply if:
 - (a) a committee of management of the industrial association; or
 - (b) a person authorised by the committee; or
 - (c) an officer of the industrial association;has taken reasonable steps to prevent the action.
- (4) For the purposes of this Part:
 - (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
 - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

Division 2—Conduct to which this Part applies

298C Application of this Part

This Part applies only to the extent provided in this Division.

298D Organisations

This Part applies to:

- (a) conduct by an organisation; and
- (b) conduct by an officer of an organisation acting in that capacity; and
- (c) conduct carried out with a purpose or intent relating to a person's membership or non-membership of an organisation.

298E Industrial action

This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation in industrial action within the meaning of subsection 4(1).

Note: This section does not use the broader definition of *industrial action* set out in section 298B.

298F Matters arising under this Act

- (1) This Part applies to conduct carried out with a purpose or intent relating to a person's participation or non-participation (in any capacity) in:
 - (a) any proceedings under this Act; or
 - (b) any other activity for which this Act provides.

- (2) This Part applies to conduct carried out with a purpose or intent relating to:
 - (a) the fact that an award, a certified agreement or an AWA applies to a person's employment; or
 - (b) the fact that the person is bound by an award, a certified agreement or an AWA.

298G Constitutional corporations

- (1) This Part applies to:
 - (a) conduct by a constitutional corporation; and
 - (b) conduct that adversely affects a constitutional corporation.
- (2) For the purpose of paragraph (1)(b), conduct is taken to affect adversely a constitutional corporation only if:
 - (a) the constitutional corporation is the person, referred to in the provision of this Division in question, against whom the conduct has been, is being or would be carried out; or
 - (b) the person so referred to is an employee of the constitutional corporation, or has been engaged by the constitutional corporation as an independent contractor, and the conduct affects the person in that capacity.

Note: For *constitutional corporation*, see subsection 4(1).

298H Territories

This Part applies to conduct in a Territory.

298J Operation of State and Territory laws

Subject to section 298W, to the extent that this Part applies by virtue of the operation of section 298G or 298H, it is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

Division 3—Conduct by employers etc.

298K Dismissal etc. of members of industrial associations etc.

- (1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
 - (a) dismiss an employee;
 - (b) injure an employee in his or her employment;

- (c) alter the position of an employee to the employee's prejudice;
 - (d) refuse to employ another person;
 - (e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person.
- (2) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:
- (a) terminate a contract for services that he or she has entered into with an independent contractor;
 - (b) injure the independent contractor in relation to the terms and conditions of the contract for services;
 - (c) alter the position of the independent contractor to the independent contractor's prejudice;
 - (d) refuse to engage another person as an independent contractor;
 - (e) discriminate against another person in the terms or conditions on which the person offers to engage the other person as an independent contractor.

298L Prohibited reasons

- (1) Conduct referred to in subsection 298K(1) or (2) is for a *prohibited reason* if it is carried out because the employee, independent contractor or other person concerned:
- (a) is, has been, proposes to become or has at any time proposed to become an officer, delegate or member of an industrial association; or
 - (b) is not, or does not propose to become, a member of an industrial association; or
 - (c) in the case of a refusal to engage another person as an independent contractor:
 - (i) has one or more employees who are not, or do not propose to become, members of an industrial association; or
 - (ii) has not paid, or does not propose to pay, a fee (however described) to an industrial association; or
 - (d) has refused or failed to join in industrial action; or
 - (e) in the case of an employee—has refused or failed to agree or consent to, or vote in favour of, the making of an agreement to which an industrial association of which the employee is a member would be a party; or

- (f) has made, proposes to make or has at any time proposed to make an application to an industrial body for an order under an industrial law for the holding of a secret ballot; or
- (g) has participated in, proposes to participate in or has at any time proposed to participate in a secret ballot ordered by an industrial body under an industrial law; or
- (h) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
- (i) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
 - (i) compliance with that law; or
 - (ii) the observance of a person's rights under an industrial instrument; or
- (j) has participated in, proposes to participate in or has at any time proposed to participate in a proceeding under an industrial law; or
- (k) has given or proposes to give evidence in a proceeding under an industrial law; or
- (l) in the case of an employee, or an independent contractor, who is a member of an industrial association that is seeking better industrial conditions—is dissatisfied with his or her conditions; or
- (m) in the case of an employee or an independent contractor—has absented himself or herself from work without leave if:
 - (i) the absence was for the purpose of carrying out duties or exercising rights as an officer of an industrial association; and
 - (ii) the employee or independent contractor applied for leave before absenting himself or herself and leave was unreasonably refused or withheld; or
- (n) as an officer or member of an industrial association, has done, or proposes to do, an act or thing for the purpose of furthering or protecting the industrial interests of the industrial association, being an act or thing that is:
 - (i) lawful; and
 - (ii) within the limits of an authority expressly conferred on the employee, independent contractor or other person by the industrial association under its rules.

(2) If:

- (a) a threat is made to engage in conduct referred to in subsection 298K(1) or (2); and
- (b) one of the prohibited reasons in subsection (1) of this section refers to a person doing or proposing to do a particular act, or not doing or proposing not to do a particular act; and
- (c) the threat is made with the intent of dissuading or preventing the person from doing the act, or coercing the person to do the act, as the case requires;

the threat is taken to have been made for that prohibited reason.

298M Inducements to cease membership etc. of industrial associations etc.

An employer, or a person who has engaged an independent contractor, must not (whether by threats or promises or otherwise) induce an employee, or the independent contractor, (as the case requires) to stop being an officer or member of an industrial association.

Division 4—Conduct by employees etc.

298N Cessation of work

An employee or independent contractor must not cease work in the service of his or her employer, or of the person who engaged the independent contractor, (as the case requires) because the employer or person:

- (a) is an officer or member of an industrial association; or
- (b) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
- (c) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
 - (i) compliance with that law; or
 - (ii) the observance of a person's rights under an industrial instrument; or
- (d) has participated in, proposes to participate in or has at any time proposed to participate in any proceedings under an industrial law; or
- (e) has given evidence in a proceeding under an industrial law.

Division 5—Conduct by industrial associations etc.

298P Industrial associations acting against employers

- (1) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer because the employer is an officer or member of an industrial association.
- (2) An industrial association, or an officer or member of an industrial association, must not organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer or person:
 - (a) to become a member of an industrial association of employers; or
 - (b) to cease to be an officer or member of such an association; or
 - (c) not to become an officer or member of such an association.
- (3) An industrial association, or an officer or member of an industrial association, must not:
 - (a) advise, encourage or incite an employer; or
 - (b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;to take action in relation to a person that would, if taken, contravene section 298K.
- (4) An industrial association, or an officer or member of an industrial association, must not, because a member of the association has refused or failed to comply with a direction given by the association:
 - (a) advise, encourage or incite an employer; or
 - (b) organise or take, or threaten to organise or take, industrial action against an employer with intent to coerce the employer;to prejudice the member in the member's employment or possible employment.
- (5) For the purposes of subsection (4), a direction given by one of the following bodies or persons is taken to have been given by an industrial association:
 - (a) the committee of management of the association;
 - (b) an officer or agent of the association acting in that capacity;

- (c) a member or group of members of the association authorised to give the direction by:
 - (i) the rules of the association; or
 - (ii) the committee of management of the association; or
 - (iii) an officer or agent of the association acting in that capacity;
- (d) a member of the association, who performs the function of dealing with an employer on behalf of the member and other members of the association, acting in that capacity.

298Q Industrial associations acting against employees etc.

An industrial association, or an officer or member of an industrial association, must not take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment with intent:

- (a) to coerce the person to join in industrial action; or
- (b) to dissuade or prevent the person from making an application to an industrial body for an order under an industrial law for the holding of a secret ballot.

298R Industrial associations acting against members

An industrial association, or an officer or member of an industrial association, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the association:

- (a) with intent to coerce the member to join in industrial action; or
- (b) because the member has refused or failed to join in industrial action; or
- (c) because the member has made, proposes to make or has at any time proposed to make an application to an industrial body for an order under an industrial law for the holding of a secret ballot; or
- (d) has participated in, proposes to participate in or has at any time proposed to participate in a secret ballot ordered by an industrial body under an industrial law.

298S Industrial associations acting against independent contractors etc.

- (1) In this section:
discriminatory action, in relation to an eligible person, means:

- (a) a refusal to make use of, or to agree to make use of, services offered by the eligible person; or
- (b) a refusal to supply, or to agree to supply, goods or services to the eligible person.

eligible person means a person who is not an employee, but who:

- (a) is eligible to join an industrial association; or
 - (b) would be eligible to join an industrial association if he or she were an employee.
- (2) An industrial association, or an officer or member of an industrial association, must not:
- (a) advise, encourage or incite a person (whether an employer or not) to take discriminatory action against an eligible person because the eligible person is not a member of an industrial association; or
 - (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take discriminatory action against an eligible person because the eligible person is not a member of an industrial association; or
 - (c) take, or threaten to take, industrial action against an eligible person with intent to coerce the person to join an industrial association.

Division 6—Remedies for breaches of this Part

298T Applications to the Court

- (1) Subject to subsection (4), an application may be made to the Court for orders under section 298U in respect of conduct in contravention of this Part.
- (2) The application may be made by:
 - (a) the person, referred to in the provision in question, against whom the conduct has been, is being or would be carried out; or
 - (b) in the case of a contravention of this Part by virtue of the operation of section 298D, 298E or 298F—an organisation of which the person is a member; or
 - (c) in the case of a contravention of this Part by virtue of the operation of section 298G or 298H—an industrial association of which the person is a member; or
 - (d) the Employment Advocate; or
 - (e) any other person prescribed by the regulations.

- (3) A regulation prescribing persons for the purpose of paragraph (2)(e) may limit its application to specified circumstances.
- (4) An application cannot be made in respect of conduct in contravention of this Part by virtue of the operation of section 298G or 298H if:
 - (a) an application has already been made for a remedy in respect of the conduct under a law of a State or Territory; and
 - (b) that application has not failed for lack of jurisdiction.
- (5) The reference in paragraph (4)(a) to a remedy is taken not to include the imposition of a criminal penalty.

298U Orders that the Federal Court may make

In respect of conduct in contravention of this Part, the Court may, if the Court considers it appropriate in all the circumstances of the case, make one or more of the following orders:

- (a) an order imposing on a person or industrial association whose conduct contravened or is contravening the provision in question a penalty of not more than:
 - (i) in the case of a body corporate—\$10,000; or
 - (ii) in any other case—\$2,000;
- (b) an order requiring the person or industrial association to reinstate an employee, or to re-engage an independent contractor;
- (c) an order requiring the person or industrial association to pay to an employee or independent contractor, or to a prospective employee or independent contractor, compensation of such amount as the Court thinks appropriate;
- (d) an order requiring the person or industrial association not to carry out a threat made by the person or association, or not to make any further threat;
- (e) injunctions (including interim injunctions), and any other orders, that the Court thinks necessary to stop the conduct or remedy its effects;
- (f) any other consequential orders.

298V Proof not required of the reason for, or the intention of, conduct

If:

- (a) in an application under this Division relating to a person's or an industrial association's conduct, it is alleged that the

conduct was, or is being, carried out for a particular reason or with a particular intent; and

- (b) for the person or industrial association to carry out the conduct for that reason or with that intent would constitute a contravention of this Part;

it is presumed, in proceedings under this Division arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the person or industrial association proves otherwise.

Division 7—Miscellaneous

298W Effect on other laws

- (1) This section applies if a person's or industrial association's conduct contravenes:
 - (a) this Part by virtue of the operation of section 298G or 298H; and
 - (b) a provision of an industrial law of a State or Territory, being a provision that deals with discrimination or preference in employment.
- (2) If an application is made under Division 6 in respect of the conduct, an application cannot be made, under the industrial law of the State or Territory or any other law, in respect of that conduct.
- (3) Subsection (2) does not preclude a person or industrial association being prosecuted for an offence, or any applications being made in connection with such a prosecution.
- (4) If an application is made under the industrial law of the State or Territory in respect of the conduct, an application cannot be made under Division 6 in respect of that conduct.
- (5) Subsection (4) does not preclude an application being made under Division 6 if the application under the industrial law of the State or Territory was made in connection with the prosecution of the person or industrial association for an offence.

298X Contravention of this Part not an offence

A contravention of this Part is not an offence.

298Y Provisions of industrial instruments requiring or permitting conduct in contravention of this Part

A provision of an industrial instrument, or an agreement or arrangement (whether written or unwritten), is void to the extent that it requires or permits, or has the effect of requiring or permitting, any conduct that would contravene this Part.

7 Sections 334, 335 and 336

Repeal the sections.

Schedule 16—Transfer of jurisdiction from the Industrial Relations Court of Australia to the Federal Court of Australia

Part 1—Amendment of Acts having effect on commencement of this Part

Administrative Appeals Tribunal Act 1975

1 Subparagraph 44(3)(b)(ii)

Omit “Chief Judge”, substitute “Chief Justice”.

Commonwealth Electoral Act 1918

2 Section 5 (definition of *eligible Judge*)

Omit “Chief Judge”, substitute “Chief Justice”.

3 Subsection 6(4)

Omit “Chief Judge”, substitute “Chief Justice of the Federal Court of Australia”.

Federal Court of Australia Act 1976

4 Section 4 (definition of *Chief Judge*)

Repeal the definition.

5 Section 4

Insert:

Chief Justice means the Chief Justice of the Court, and includes a Judge for the time being performing the duties and exercising the powers of Chief Justice.

6 Section 4 (definition of *Division*)

Repeal the definition.

7 Section 4 (definition of *Full Court*)

Omit “in a Division of the Court”.

8 Part II (heading)

Repeal the heading, substitute:

Part II—Federal Court of Australia

Division 1—Constitution of the Court

9 Subsection 5(3)

Repeal the subsection, substitute:

- (3) The Court consists of a Chief Justice, and such other Judges as from time to time hold office in accordance with this Act.

10 Subsection 6(3)

Repeal the subsection.

11 Section 7

Omit “, and, while performing those duties and exercising those powers, shall, for the purposes of this Act, be deemed not to be attached to either Division of the Court”.

12 Section 13

Repeal the section.

13 Subsection 14(1)

Omit “, in either Division,”.

14 Subsection 14(2)

Repeal the subsection, substitute:

- (2) A Full Court consists of 3 or more Judges sitting together or, to the extent permitted by subsection (3), of 2 Judges sitting together.

15 Subsection 15(2)

Omit “Chief Judge of the Federal Court of Australia” (wherever occurring), substitute “Chief Justice of the Federal Court of Australia”.

16 Subsection 15(3)

Omit “Chief Judge of the Federal Court of Australia”, substitute “Chief Justice of the Federal Court of Australia”.

17 Section 15A

Omit “Chief Judge” (first occurring), substitute “Chief Justice”.

Note: The heading to section 15A is altered by omitting “Chief Judge” (first occurring) and substituting “Chief Justice”.

18 Division 1 of Part IIA (heading)

Omit “*Chief Judge*”, substitute “*Chief Justice*”.

19 After section 18

Insert:

Division 2—Judicial Registrars

18AA Judicial Registrars

- (1) The Governor-General may appoint one or more Judicial Registrars.
- (2) A Judicial Registrar may be appointed either on a full-time basis or a part-time basis.

18AB Powers of Judicial Registrars

- (1) The Rules of Court may delegate to the Judicial Registrars, either generally or as otherwise provided in the Rules, all or any of the Court’s powers in relation to proceedings in the Court that involve:
 - (a) a claim under the *Workplace Relations Act 1996* for an amount of not more than the amount specified in the Rules; or
 - (b) a claim under the *Workplace Relations Act 1996* that the termination of an employee’s employment was unlawful, or that the proposed termination of an employee’s employment would be unlawful, under any law (including an unwritten law) of the Commonwealth or of a State or Territory; or
 - (c) an application under section 170JC of the *Workplace Relations Act 1996* for enforcement of an order of the Australian Industrial Relations Commission.
- (2) For the purposes of paragraph (1)(a), the Rules may specify an amount of not more than:
 - (a) \$10,000; or
 - (b) such greater amount as the regulations prescribe.

Schedule 16 Transfer of jurisdiction from the Industrial Relations Court of Australia to the Federal Court of Australia

- (3) Without limiting subsection (1), Rules of Court made in respect of that subsection:
 - (a) may delegate to the Judicial Registrars powers that could be delegated to the Registrar of the Court; and
 - (b) may so delegate powers by reference to powers that have been delegated to the Registrar of the Court under section 35A of this Act.
- (4) A power delegated to the Judicial Registrars is, when exercised by a Judicial Registrar, taken to have been exercised by the Court or a Judge, as the case requires.
- (5) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.
- (6) The provisions of this Act, the regulations and the Rules of Court, and of other laws of the Commonwealth, that relate to the exercise of a power by the Court apply, in relation to an exercise of the power by a Judicial Registrar under a delegation under subsection (1), as if a reference to the Court or a Judge, or to a court exercising jurisdiction under this Act, were a reference to a Judicial Registrar.
- (7) As well as the powers delegated under subsection (1), the Judicial Registrars have such other powers as are conferred on them by this Act, the regulations or the Rules of Court.

18AC Review of decisions of Judicial Registrars

- (1) A party to proceedings may apply to the Court to review a Judicial Registrar's exercise in the proceedings of a power delegated under section 18AB. An application must be made within the period prescribed by the Rules of Court or such further period as is allowed in accordance with the Rules.
- (2) On an application under subsection (1) or of its own motion, the Court may review a Judicial Registrar's exercise of a power so delegated. The Court may make whatever order it considers appropriate in relation to the matter in relation to which the power was exercised.
- (3) On the application of a party or of its own motion, the Court may refer to a Full Court of the Court an application under subsection (1).

18AD Exercise by Court of delegated powers

- (1) If:
 - (a) an application for the exercise of a power delegated under section 18AB is to be, or is being, heard by a Judicial Registrar; and
 - (b) the Judicial Registrar considers that it is not appropriate for him or her to determine the application;
he or she must not hear, or continue to hear, the application, and must instead notify the Registrar of that fact so that the Registrar may make appropriate arrangements for the Court to hear the application.
- (2) If a Judicial Registrar proposes to exercise in a particular case a power delegated under section 18AB but has not begun to exercise the power in that case, a Judge may order that the power be exercised in that case by a Judge.
- (3) An order under subsection (2) may only be made on application by a person who would be a party to the proceedings before the Judicial Registrar in relation to the proposed exercise of the power.
- (4) If an application is made under subsection (3), the Judicial Registrar must not exercise the power in that case until the application has been determined.

18AE Independence of Judicial Registrars

Despite anything else in this Act or in any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under section 18AB.

18AF Qualification for appointment etc.

A person may be appointed as a Judicial Registrar only if the person has been enrolled for at least 5 years as a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

18AG Term of office

- (1) The instrument appointing a Judicial Registrar must specify as the date of effect of the appointment a day that is not earlier than the day when the instrument is signed.
- (2) Subject to this Act, a Judicial Registrar holds office for the term (not exceeding 5 years) specified in the instrument of appointment.

- (3) Subject to this Act, a Judicial Registrar is eligible for re-appointment.

18AH Remuneration and allowances

- (1) A Judicial Registrar is to be paid such remuneration as the Remuneration Tribunal determines.
- (2) A Judicial Registrar is to be paid such allowances as the regulations prescribe.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) Remuneration and allowances payable to the Judicial Registrars are to be paid out of money appropriated by the Parliament for the purposes of the Court.

18AI Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, a person appointed as a full-time Judicial Registrar has such recreation leave entitlements as the Remuneration Tribunal determines.
- (2) The Chief Justice may grant a person appointed as a full-time Judicial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the Attorney-General's approval, determines.

18AJ Resignation

A Judicial Registrar may resign by delivering to the Governor-General a signed resignation. A resignation takes effect on the day when the Governor-General receives it, or on such later day as it specifies.

18AK Termination of appointment

- (1) The Governor-General may terminate a Judicial Registrar's appointment for misbehaviour or physical or mental incapacity.
- (2) The Governor-General must terminate a Judicial Registrar's appointment if the Judicial Registrar becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit.
- (3) The Governor-General may, with the consent of a Judicial Registrar who is:

- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
- retire the Judicial Registrar from office on the ground of incapacity.
- (4) In spite of anything contained in this section, if the Judicial Registrar:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her maximum retiring age within the meaning of that Act;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (5) In spite of anything contained in this section, if the Judicial Registrar:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- he or she is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

18AL Oath or affirmation of office

Before proceeding to discharge the duties of his or her office, a Judicial Registrar must take an oath, or make an affirmation, before a Judge of the Court in the following form:

"I,, do swear that I will well and truly serve in the office of Judicial Registrar of the Federal Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, So help me God!"

or

"I,, do solemnly and sincerely promise and declare that (*as above, omitting the words "So help me God"*)."

18AM Other terms and conditions of appointment

A Judicial Registrar holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as the Governor-General determines in writing.

20 Subsection 20(1)

Omit “in either Division”.

21 Subsection 25(6)

Omit “sitting in either Division”.

22 Subsection 25(6)

Omit “of the Court in that Division”.

23 Subsection 26(2)

Repeal the subsection, substitute:

- (2) Subject to any other Act, the jurisdiction of the Court under subsection (1):
- (a) if the court stating the case or reserving the question is a court of summary jurisdiction—may be exercised by one Judge or by a Full Court; or
 - (b) if the court stating the case or reserving the question is not a court of summary jurisdiction—must be exercised by a Full Court.

24 Subsection 31(1)

Omit “and, where the contempt relates to the exercise of jurisdiction in a Division of the Court, the jurisdiction to punish that contempt shall be exercised in that Division of the Court”.

25 Subsection 32A(1)

Omit “the General Division of”.

26 Subsection 34(3)

Repeal the subsection.

27 Subsections 59(3) and (4)

Omit “under this section”, substitute “under this Act”.

28 Section 4 (definition of *judge*), subsection 6(5), sections 7, 8 and 9, subsection 15(1), sections 16, 18A, 18B, 18C, 18D, 18F, 18G, 18J, 18L, 18M, 18N, 18S, 18T, 18U, 18W, 18Y, 25, 32ZF, 36, 37E, 37L, 53AA and 53AB and the Schedule

Omit “Chief Judge”, substitute “Chief Justice”.

Note: The headings to sections 7 and 18W are altered by omitting “Chief Judge” and substituting “Chief Justice”.

High Court of Australia Act 1979

29 Subsection 30(5)

Omit “Chief Judge”, substitute “Chief Justice”.

Workplace Relations Act 1996

30 Subsection 4(1) (definition of *Court*)

Repeal the definition, substitute:

Court means the Federal Court of Australia.

31 Subsection 4(1) (definition of *Federal Court*)

Repeal the definition.

32 Part XIV (heading)

Repeal the heading.

33 Divisions 1, 2, 3 and 4 of Part XIV

Repeal the Divisions.

34 Division 5 of Part XIV (heading)

Repeal the heading, substitute:

**Part XIV—Jurisdiction of the Federal Court of
Australia**

35 Subdivision A of Division 5 of Part XIV (heading)

Repeal the heading, substitute:

Division 1—Original jurisdiction

36 Paragraph 412(1)(f)

Omit “, other than a prosecution under section 407 or 485”.

37 Subsection 412(4)

Repeal the subsection.

38 Subsection 415(1)

Repeal the subsection.

39 Paragraphs 415(2)(a) and (b)

Repeal the paragraphs.

40 Subsection 415(2)

After “jurisdiction of the Court”, insert “under this Act”.

41 Subsection 415(2)

Renumber the subsection as subsection (1).

42 Subsection 415(3)

Renumber the subsection as subsection (2).

43 Subsection 415(3)

Omit “(2)”, substitute “(1)”.

44 Paragraph 416(1)(b)

Omit “; and”.

45 Paragraph 416(1)(c)

Repeal the paragraph.

46 Sections 417, 418 and 419

Repeal the sections.

47 Subdivision B of Division 5 of Part XIV (heading)

Repeal the heading, substitute:

Division 2—Appellate jurisdiction

48 Section 420

Repeal the section.

49 Section 421

Repeal the section, substitute:

421 Appeal to the Court from certain judgments

In spite of section 24 of the *Federal Court Act 1976*, an appeal does not lie to a Full Court from a judgment by a single Judge in an inquiry referred to in section 219 or 253M except in accordance with leave given by the Court.

50 Sections 423, 424, 425, 426, 427 and 428

Repeal the sections.

51 Subdivisions C and D of Division 5 of Part XIV

Repeal the Subdivisions.

52 Divisions 6 and 7 of Part XIV

Repeal the Divisions.

53 Division 8 of Part XIV (heading)

Repeal the heading, substitute:

Division 3—Representation and intervention

54 Subsection 469(10) (definition of *relevant proceeding*)

Repeal the definition, substitute:

relevant proceeding means proceedings under section 46, 82, 153, 413 or 413A.

55 Divisions 9 and 10 of Part XIV

Repeal the Divisions.

Native Title Act 1993

56 Subsection 83(1) and section 222

Omit “Chief Judge”, substitute “Chief Justice”.

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57 Section 253 (definition of *Chief Judge*)

Repeal the definition.

58 Section 253

Insert:

Chief Justice means the Chief Justice of the Federal Court of Australia.

Part 2—Amendment of Acts having effect on commencement of this Part

Crimes Act 1914

59 Paragraph 15A(1A)(a)

Omit “, or by the Industrial Relations Court of Australia,”.

Judiciary Act 1903

60 Paragraph 23(2)(a)

Omit “, a decision of the Industrial Relations Court of Australia or of a
Judge of that Court”.

61 Paragraph 39B(2)(aa)

Repeal the paragraph.

Part 3—Transitional and saving provisions

Division 1—Preliminary

62 Definitions

In this Part:

completion day means the day, on or after which the Industrial Relations Court has disposed of all the proceedings in that Court, that is fixed by Proclamation to be the day on which Part 2 of this Schedule commences.

Federal Court means the Federal Court of Australia.

Industrial Relations Court means the Industrial Relations Court of Australia.

proceeding means a proceeding in a court, whether or not between parties, and includes:

- (a) an incidental proceeding in the course of, or in connection with, a proceeding; and
- (b) an appeal.

transfer day means the day on which the Federal Court is invested with jurisdiction under Division 2 of this Part, being the day on which Part 1 of this Schedule commences.

Division 2—Transfer of jurisdiction and proceedings to the Federal Court

63 Transfer of jurisdiction

- (1) This item applies to jurisdiction and powers vested in or exercisable by the Industrial Relations Court or a Judge of that Court immediately before the transfer day in relation to an act or omission occurring before the transfer day, except in relation to matters for which:
 - (a) the Industrial Relations Court had begun the substantive hearing in proceedings in that Court; or
 - (b) proceedings had been completed in the Industrial Relations Court before that day.
- (2) On and after the transfer day, the jurisdiction and powers to which this item applies:
 - (c) cease to be vested in or exercisable by the Industrial Relations Court or a Judge of that Court; and

(b) are, subject to subitem (3), vested in the Federal Court.

- (3) In spite of subitem (2), the Federal Court has jurisdiction in relation to a matter that was remitted by the High Court to the Industrial Relations Court before the transfer day only if a Judge of the High Court has further remitted the matter to the Federal Court under item 65.

64 Transfer of proceedings

- (1) Subject to subitem (4), this item applies to proceedings commenced in the Industrial Relations Court but in respect of which the Industrial Relations Court had not begun the substantive hearing before the transfer day.
- (2) On the transfer day, proceedings to which this item applies are transferred to the Federal Court.
- (3) If proceedings to which this item applies are transferred under subitem (2):
- (a) all documents filed in the Industrial Relations Court in relation to the proceedings are to be transmitted to the Federal Court; and
 - (b) any money lodged with the Industrial Relations Court in relation to the proceedings is to be transferred to the Federal Court and is taken to be money lodged with the Federal Court in relation to the proceedings; and
 - (c) everything done in or in relation to the proceedings in the Industrial Relations Court is taken to have been done in the Federal Court.
- (4) This item does not affect a matter that was remitted by the High Court to the Industrial Relations Court before the transfer day under section 44 of the *Judiciary Act 1903*.

65 Matters remitted under the *Judiciary Act 1903*

If:

- (a) a matter had been remitted by the High Court to the Industrial Relations Court under section 44 of the *Judiciary Act 1903* before the transfer day; and
- (b) the Industrial Relations Court had not begun the substantive hearing in respect of the matter;

then:

Schedule 16 Transfer of jurisdiction from the Industrial Relations Court of Australia to the Federal Court of Australia

- (c) a party may apply to a Judge of the High Court sitting in Chambers for a direction that the matter be remitted instead to the Federal Court; or
- (d) in any case, a Judge of the High Court may direct that the matter be remitted instead to the Federal Court.

66 New trials ordered by Federal Court

For the avoidance of doubt, if, in an appeal from a decision of the Industrial Relations Court to the Federal Court (whether that decision is made before or after the transfer day), the Federal Court grants a new trial, that new trial is to be a new trial in the Federal Court.

67 Rules of Court

- (1) The Rules of the Industrial Relations Court as in force under section 486 of the Workplace Relations Act in force immediately before the transfer day are to be taken, on and after that day, also to be Rules of the Federal Court made under section 59 of the *Federal Court of Australia Act 1976*, and, as so included, may be amended or revoked under the last-mentioned section.
- (2) This item does not affect the operation of item 71.

Division 3—Jurisdiction of the Industrial Relations Court

68 Industrial Relations Court remains in existence

- (1) In spite of the amendment of the Workplace Relations Act by this Schedule, the Industrial Relations Court continues in existence as if Part XIV of that Act as in force immediately before the commencement of this Schedule continued to be in force on and after that commencement.
- (2) Subitem (1) has effect subject to the other provisions in this Part.

69 Limited jurisdiction of the Industrial Relations Court

- (1) This item applies to proceedings commenced in the Industrial Relations Court in respect of which the Industrial Relations Court had begun the substantive hearing before the transfer day.
- (2) On and after the transfer day:
 - (a) the Industrial Relations Court continues to have jurisdiction to deal with the proceedings to which this item applies as if this Act had not been enacted; and

- (b) subject to subitem (3), the Workplace Relations Act as in force immediately before the transfer day continues to have effect in relation to the Industrial Relations Court's exercise of its jurisdiction in relation to the proceedings.
- (3) For the purposes of this item, section 428 of the Workplace Relations Act as in force under paragraph (2)(b) of this item has effect as if the following subsections were added at the end of that section:
- (3) In an appeal from a court of a State or Territory to the Court, the Court may grant a new trial under this section only in the Federal Court of Australia or a court of that State or Territory.
- (4) In an appeal from a single Judge of the Court, the Court may grant a new trial under this section only in the Federal Court of Australia.

70 Orders of the Industrial Relations Court

- (1) The Federal Court has the same powers in respect of an order of the Industrial Relations Court (whether made before or after the transfer day) as if it were an order of the Federal Court.
- (2) Subitem (1) does not apply to an order while the order is the subject of proceedings to which item 69 applies.

71 Rules of Court

In spite of the repeal of section 486 of the Workplace Relations Act by this Schedule, Rules of Court under that section as in force immediately before the transfer day continue to be in force on and after that day as if that section had not been repealed.

Division 4—The appointments and duties of Judges and Judicial Registrars of the Industrial Relations Court

72 Terms and conditions of appointment of Judges of the Industrial Relations Court

- (1) The Chief Justice and other Judges of the Industrial Relations Court continue to hold office as Judges of that Court, on and after the transfer day, as if sections 361, 362, 363, 364, 365, 366, 367 and 408 of the Workplace Relations Act as in force immediately before that day had not been repealed.

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- (2) Section 363 of the Workplace Relations Act as continued in force under subitem (1) ceases to be so in force on and after the completion day.

73 Judicial Registrars of Industrial Relations Court taken to be appointed to Federal Court

A person appointed as a Judicial Registrar of the Industrial Relations Court is taken, by force of this item, to have been appointed by the Governor-General under section 18AA of the *Federal Court of Australia Act 1976* as a Judicial Registrar of the Federal Court:

- (a) for the balance of the term of that person's appointment as a Judicial Registrar of the Industrial Relations Court; and
- (b) on the same terms and conditions as attached to that last-mentioned appointment.

74 Judicial Registrars of the Industrial Relations Court to continue to hold that office

- (1) Despite the repeal of Division 3 of Part XIV of the Workplace Relations Act:
- (a) a Judicial Registrar of the Industrial Relations Court immediately before that repeal continues to hold that office for the balance of the term of his or her appointment or until the completion day, whichever first occurs, on the terms and conditions (other than terms and conditions relating to remuneration and allowances) originally attaching to that appointment; and
 - (b) the provisions of that Division continue to apply in relation to the performance by that person of his or her functions as a Judicial Registrar of the Industrial Relations Court for so long as he or she continues to hold that office;
- as if that Division had not been repealed.
- (2) In calculating the remuneration and allowances payable to a Judicial Registrar of the Industrial Relations Court, all duties of the Judicial Registrar performed on or after the transfer day by the Judicial Registrar in his or her capacity as Judicial Registrar of the Industrial Relations Court are to be treated as if they were duties performed by the Judicial Registrar in his or her capacity as Judicial Registrar of the Federal Court.

Division 5—The appointment and duties of the Registrar of the Industrial Relations Court

75 Registrar of Industrial Relations Court taken to be appointed to Federal Court

- (1) The person holding the office of Registrar of the Industrial Relations Court immediately before the transfer day is taken, by force of this item, to have been duly appointed under section 18N of the *Federal Court of Australia Act 1976* as a Deputy Registrar of the Federal Court:
 - (a) for the balance of that person's appointment as the Registrar of the Industrial Relations Court; and
 - (b) on:
 - (i) the same terms and conditions (other than terms and conditions relating to remuneration and allowances) as attached to the last-mentioned appointment and as varied by the Chief Judge of the Federal Court with the agreement of that person from time to time; and
 - (ii) the same terms and conditions relating to remuneration and allowances applicable to the Registrar of the Administrative Appeals Tribunal from time to time.
- (2) Despite subsection 18N(4) of the *Federal Court of Australia Act 1976*, the person taken to have been appointed as a Deputy Registrar under subitem (1) is not taken to have been so appointed under the *Public Service Act 1922*.
- (3) The Registrar of the Federal Court may issue any necessary directions concerning the performance by that person of functions of a Deputy Registrar of the Federal Court.
- (4) Nothing in this item enables the Registrar of the Federal Court to terminate the appointment of that person as a Deputy Registrar of the Federal Court under section 18N of the *Federal Court of Australia Act 1976*.

76 Registrar of Industrial Relations Court to continue to hold that office

- (1) Despite the repeal of sections 390 to 392 and sections 394 to 399 of the *Workplace Relations Act*:

Schedule 16 Transfer of jurisdiction from the Industrial Relations Court of Australia to the Federal Court of Australia

- (a) the person holding office as Registrar of the Industrial Relations Court immediately before the repeal of those sections continues to hold that office for the balance of the term of his or her appointment or until the completion day, whichever first occurs, on the terms and conditions (other than terms and conditions relating to remuneration and allowances) originally attaching to his or her appointment; and
 - (b) those sections continue to apply in relation to the performance by that person of his or her functions as Registrar of the Industrial Relations Court for so long as he or she continue to hold that office;
- as if those sections had not been repealed.
- (2) In calculating the remuneration and allowances payable to the Registrar of the Industrial Relations Court, all duties performed on or after the transfer day by the Registrar in his or her capacity as Registrar of the Industrial Relations Court are to be treated as if they were duties performed by the Registrar in his or her capacity as Deputy Registrar of the Federal Court.

Division 6—The transfer of officers of the Industrial Relations Court to the Federal Court

77 Transfer of personnel from the Industrial Relations Court to the Federal Court

- (1) Subject to this item, persons appointed or employed under the *Public Service Act 1922* whether as officers of the Industrial Relations Court or as other registry staff are, by force of this item, transferred, on the transfer day, to the Federal Court to perform such duties as the Registrar of the Federal Court directs.
- (2) Persons appointed as Deputy Sheriffs of the Industrial Relations Court are taken to hold office (until the Registrar of the Federal Court otherwise directs) as Deputy Sheriffs of the Federal Court and, for that purpose, in addition to any other powers and functions, continue to have, in relation to the exercise of the industrial relations jurisdiction of the Federal Court, the powers and functions conferred on them, or exercisable by them, in their capacity as officers of the Industrial Relations Court.

(3) In this item:

industrial relations jurisdiction, in relation to the Federal Court, means the jurisdiction vested in the Court under item 63 of this Schedule or under Part XIV of the Workplace Relations Act.

Division 7—The management of the Industrial Relations Court

78 Chief Justice of Industrial Relations Court to continue to be responsible for management of that Court

Despite the repeal of sections 363 and 389 of the Workplace Relations Act, the Chief Justice, or in the circumstances identified in section 363, the acting Chief Justice of the Industrial Relations Court, continues to have, until the completion day, the responsibility imposed, and the powers conferred, by those sections in relation to the management of the administrative affairs of the Industrial Relations Court as if those sections had not been repealed.

79 Places of sitting, constitution and conduct of business of the Industrial Relations Court

Despite the repeal of sections 369 to 374 of the Workplace Relations Act, those sections continue to apply, until the completion day, in relation to the places of sitting of the Industrial Relations Court, the manner of its constitution for the purpose of exercising its jurisdiction in respect of matters still to be dealt with by the Court and the conduct of its business, as if those sections had not be repealed.

80 Powers of other officers and staff may be performed by officers and staff of Federal Court

Despite the repeal of sections 401 and 402 of the Workplace Relations Act, the functions of the Industrial Relations Court ordinarily performed by District Registrars, Deputy Registrars and Deputy District Registrars, Sheriffs, Deputy Sheriffs and other staff of the Industrial Relations Court may be performed by officers and staff of the Federal Court made available for the purpose.

81 Provision of resources by the Federal Court

On and after the transfer day, the Chief Judge of the Federal Court may arrange with the Chief Justice of the Industrial Relations Court for staff, facilities and any other necessary support to be made available to the Industrial Relations Court for the purposes of the Industrial Relations Court.

82 Sections 405 and 406 to continue in force in respect of part year to completion day

Despite the repeal of sections 405, 406 and 407 of the Workplace Relations Act, those sections continue to be in force in respect of the part of the financial year in which the completion day occurs that precedes that day as if that part of the year had been a whole financial year and those sections had not been repealed.

83 Delegations of administrative powers of Chief Justice

The Chief Justice of the Industrial Relations Court may, in writing, delegate to any one or more of the Judges of that Court all or any of his or her powers under section 389 of the Workplace Relations Act as continued in force under this Act, and any delegation made under section 408 of that Act has effect, on and after the repeal of that section, as if it were a delegation under this item.

Division 8—Abolition of the Industrial Relations Court

84 Abolition of the Industrial Relations Court

On the day fixed by Proclamation, being a day on which no person holds office as a Judge of the Industrial Relations Court, that Court is abolished by force of this item.

Division 9—Restyling the office of Chief Judge of the Federal Court of Australia

85 Instrument of appointment

The instrument appointing the present Chief Judge of the Federal Court of Australia to that office has effect on and after the day on which Part 1 of this Schedule commences, as if it were an instrument duly appointing that person to the office of Chief Justice of that Court.

86 Acts or things done

Any act or thing done by the Chief Judge of the Federal Court of Australia before the day on which Part 1 of this Schedule commences has effect, on and after that day, as if it were an act or thing done by the Chief Justice of that Court.

87 Instruments made or issued

- (1) Any order, determination or other instrument (however described) made or issued by the Chief Judge of the Federal Court of Australia before the day on which Part 1 of this Schedule commences has effect, on and

after that day, as if it were an order, determination or other instrument made or issued by the Chief Justice of that Court.

- (2) Any reference in a determination or other instrument made in relation to the Chief Judge of the Federal Court of Australia before the day on which Part 1 of this Schedule commences has effect, on and after that day, as if it were a reference to the Chief Justice of that Court.

88 Applications and proceedings

Any application (however described) made to, or any proceedings begun against, the Chief Judge of the Federal Court of Australia before the day on which Part 1 of this Schedule commences has effect, on and after that day, as if it were an application made to, or proceedings begun against the Chief Justice of that Court.

89 Reference to Chief Judge in other Acts

Any reference in an Act:

- (a) that refers to the Chief Judge of the Federal Court of Australia; and
- (b) that is not expressly amended by this Act;

is to be taken, on and after the day on which Part 1 of this Schedule commences, to be a reference to the Chief Justice of that Court.

Part 4—Contingent amendments of the Federal Court of Australia Act 1976 concerning Judicial Registrars

90 Consequences of certain prior amendments of Federal Court of Australia Act 1976

If, on any day before item 19 of this Schedule commences, the *Federal Court of Australia Act 1976* is amended by any Act inserting a new section 18AA providing for the appointment of Judicial Registrars of the Federal Court of Australia and a new section 18AB allowing those Judicial Registrars to exercise specified powers, then, with effect from that day or the day this Act receives the Royal Assent, whichever last occurs, items 19 and 27 are omitted from this Schedule and the following items are substituted for item 19:

19 After subsection 18AB(1)

Insert:

- (1A) The Rules of Court may also delegate to the Judicial Registrars, either generally or as otherwise provided by the Rules, all or any of the Court's powers in relation to proceedings in the Court that involve:
- (a) a claim under the *Workplace Relations Act 1996* for an amount of not more than the amount specified in the Rules; or
 - (b) a claim under the *Workplace Relations Act 1996* that the termination of an employee's employment was unlawful, or that the proposed termination of an employee's employment would be unlawful, under any law (including an unwritten law) of the Commonwealth or of a State or Territory; or
 - (c) an application under section 170JC of the *Workplace Relations Act 1996* for enforcement of an order of the Australian Industrial Relations Commission.
- (1B) For the purposes of paragraph (1A)(a), the Rules may specify an amount of not more than:
- (a) \$10,000; or
 - (b) such greater amount as the regulations prescribe.

19A Subsections 18AB(2), (5) and (6)

After "subsection (1)" (wherever occurring), insert "or (1A)".

19B Subsection 18AI(2)

Omit "Judge" (wherever occurring), substitute "Justice".

Schedule 17—Boycotts

Part 1—Main amendments

Trade Practices Act 1974

1 Section 45D

Repeal the section, substitute:

45D Secondary boycotts for the purpose of causing substantial loss or damage

- (1) In the circumstances specified in subsection (3) or (4), a person must not, in concert with a second person, engage in conduct:
- (a) that hinders or prevents:
 - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
 - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and
 - (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing substantial loss or damage to the business of the fourth person.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.
- (3) Subsection (1) applies if the fourth person is a corporation.
- (4) Subsection (1) also applies if:
- (a) the third person is a corporation and the fourth person is not a corporation; and
 - (b) the conduct would have or be likely to have the effect of causing substantial loss or damage to the business of the third person.

45DA Secondary boycotts for the purpose of causing substantial lessening of competition

- (1) In the circumstances specified in subsection (3), a person must not, in concert with a second person, engage in conduct:
- (a) that hinders or prevents:
 - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
 - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and
 - (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.
- (3) Subsection (1) applies if:
- (a) the third person or the fourth person is a corporation, or both of them are corporations; and
 - (b) the conduct would have or be likely to have the effect of causing substantial loss or damage to the business of one of those persons who is a corporation.

45DB Boycotts affecting trade or commerce

- (1) A person must not, in concert with another person, engage in conduct for the purpose, and having or likely to have the effect, of preventing or substantially hindering a third person (who is not an employer of the first person) from engaging in trade or commerce involving the movement of goods between Australia and places outside Australia.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

45DC Involvement and liability of employee organisations

Certain organisations taken to be acting in concert

- (1) If 2 or more persons (the *participants*), each of whom is a member or officer of the same organisation of employees, engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with another person, then, unless the organisation proves otherwise, the organisation is taken for the purposes of sections 45D, 45DA and 45DB:
- (a) to engage in that conduct in concert with the participants; and
 - (b) to have engaged in that conduct for the purposes for which the participants engaged in it.

Consequences of organisation contravening subsection 45D(1), 45DA(1) or 45DB(1)

- (2) The consequences of an organisation of employees engaging, or being taken by subsection (1) to engage, in conduct in concert with any of its members or officers in contravention of subsection 45D(1), 45DA(1) or 45DB(1) are as set out in subsections (3), (4) and (5).

Loss or damage taken to have been caused by organisation's conduct

- (3) Any loss or damage suffered by a person as a result of the conduct is taken, for the purposes of this Act, to have been caused by the conduct of the organisation.

Taking proceedings if organisation is a body corporate

- (4) If the organisation is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organisation in respect of the conduct.

Taking proceedings if organisation is not a body corporate

- (5) If the organisation is not a body corporate:

Schedule 17 Boycotts

- (a) a proceeding in respect of the conduct may be brought under section 77, 80 or 82 against an officer of the organisation as a representative of the organisation's members and the proceeding is taken to be a proceeding against all the persons who were members of the organisation at the time when the conduct was engaged in; and
- (b) subsection 76(2) does not prevent an order being made in a proceeding mentioned in paragraph (a) that was brought under section 77; and
- (c) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in paragraph (a) that was brought under section 77 is the penalty applicable under section 76 in relation to a body corporate; and
- (d) except as provided by paragraph (a), a proceeding in respect of the conduct must not be brought under section 77 or 82 against any of the members or officers of the organisation; and
- (e) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in paragraph (a) that was brought under section 77 or 82, process may be issued and executed against the following property or interests as if the organisation were a body corporate and the absolute owner of the property or interests:
 - (i) any property of the organisation or of any branch or part of the organisation, whether vested in trustees or however otherwise held;
 - (ii) any property in which the organisation or any branch or part of the organisation has a beneficial interest, whether vested in trustees or however otherwise held;
 - (iii) any property in which any members of the organisation or of a branch or part of the organisation have a beneficial interest in their capacity as members, whether vested in trustees or however otherwise held; and
- (f) if paragraph (e) applies, no process is to be issued or executed against any property of members or officers of the organisation or of a branch or part of the organisation except as provided in that paragraph.

45DD Situations in which boycotts permitted

*Dominant purpose of conduct relates to employment matters—
conduct by a person*

- (1) A person does not contravene, and is not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in conduct if the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person.

*Dominant purpose of conduct relates to employment matters—
conduct by employee organisation and employees*

- (2) If:
 - (a) an employee, or 2 or more employees who are employed by the same employer, engage in conduct in concert with another person who is, or with other persons each of whom is:
 - (i) an organisation of employees; or
 - (ii) an officer of an organisation of employees; and
 - (b) the conduct is only engaged in by the persons covered by paragraph (a); and
 - (c) the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of the employee, or any of the employees, covered by paragraph (a);

the persons covered by paragraph (a) do not contravene, and are not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in the conduct.

*Dominant purpose of conduct relates to environmental protection
or consumer protection*

- (3) A person does not contravene, and is not involved in a contravention of, subsection 45D(1), 45DA(1) or 45DB(1) by engaging in conduct if:
 - (a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and
 - (b) engaging in the conduct is not industrial action.

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Note 1: If an environmental organisation or a consumer organisation is a body corporate:

- (a) it is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption; and
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

- (a) it is not a "person" and is therefore not subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) (consequently, this exemption does not cover the organisation as such); but
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1), 45DA(1) and 45DB(1) and who may also be covered by this exemption.

Meaning of industrial action—basic definition

(4) In subsection (3), **industrial action** means:

- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
 - (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
 - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
- (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
- (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
- (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, **industrial body**, **industrial dispute** and **industrial instrument** have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*.

Meaning of industrial action—further clarification

- (5) For the purposes of subsection (3):
- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
 - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

Subsections (1), (2) and (3) do not protect people not covered by them

- (6) In applying subsection 45D(1), 45DA(1) or 45DB(1) to a person who is not covered by subsection (1), (2) or (3) in respect of certain conduct, disregard the fact that other persons may be covered by one of those subsections in respect of the same conduct.

Defences to contravention of subsection 45DB(1)

- (7) In a proceeding under this Act in relation to a contravention of subsection 45DB(1), it is a defence if the defendant proves:
- (a) that a notice in respect of the conduct concerned has been duly given to the Commission under subsection 93(1) and the Commission has not given a notice in respect of the conduct under subsection 93(3) or (3A); or
 - (b) that the dominant purpose for which the defendant engaged in the conduct concerned was to preserve or further a business carried on by him or her.

Each person to prove defence

- (8) If:
- (a) a person engages in conduct in concert with another person; and
 - (b) the other person proves a matter specified in paragraph (7)(a) or (b) in respect of that conduct;

in applying subsection 45DB(1) to the first person, ignore the fact that the other person has proved that matter.

Note: Section 170MT of the *Workplace Relations Act 1996* limits the right to bring actions under this Act in respect of industrial action that is protected action for the purposes of that section.

45E Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services

Situations to which section applies

- (1) This section applies in the following situations:
- (a) a *supply situation*—in this situation, a person (the *first person*) has been accustomed, or is under an obligation, to supply goods or services to another person (the *second person*); or
 - (b) an *acquisition situation*—in this situation, a person (the *first person*) has been accustomed, or is under an obligation, to acquire goods or services from another person (the *second person*).

Despite paragraphs (a) and (b), this section does not apply unless the first or second person is a corporation or both of them are corporations.

Note : For the meanings of *accustomed to supply* and *accustomed to acquire*, see subsections (5) and (7).

Prohibition in a supply situation

- (2) In a supply situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
- (a) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person; or
 - (b) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person, except subject to a condition:
 - (i) that is not a condition to which the supply of such goods or services by the first person to the second person has previously been subject because of a provision in a contract between those persons; and
 - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

Prohibition in an acquisition situation

- (3) In an acquisition situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
- (a) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person; or
 - (b) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person, except subject to a condition:
 - (i) that is not a condition to which the acquisition of such goods or services by the first person from the second person has previously been subject because of a provision in a contract between those persons; and
 - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

No contravention if second person gives written consent to written contract etc.

- (4) Subsections (2) and (3) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

Meaning of accustomed to supply

- (5) In this section, a reference to a person who has been ***accustomed to supply*** goods or services to a second person includes (subject to subsection (6)):
- (a) a regular supplier of such goods or services to the second person; or
 - (b) the latest supplier of such goods or services to the second person; or
 - (c) a person who, at any time during the immediately preceding 3 months, supplied such goods or services to the second person.

Exception to subsection (5)

(6) If:

- (a) goods or services have been supplied by a person to a second person under a contract between them that required the first person to supply such goods or services over a period; and
- (b) the period has ended; and
- (c) after the end of the period, the second person has been supplied with such goods or services by another person and has not also been supplied with such goods or services by the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to supply such goods or services to the second person.

Meaning of accustomed to acquire

(7) In this section, a reference to a person who has been *accustomed to acquire* goods or services from a second person includes (subject to subsection (8)):

- (a) a regular acquirer of such goods or services from the second person; or
- (b) a person who, when last acquiring such goods or services, acquired them from the second person; or
- (c) a person who, at any time during the immediately preceding 3 months, acquired such goods or services from the second person.

Exception to subsection (7)

(8) If:

- (a) goods or services have been acquired by a person from a second person under a contract between them that required the first person to acquire such goods or services over a period; and
- (b) the period has ended; and
- (c) after the end of the period, the second person has refused to supply such goods or services to the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first person is

not to be taken to be a person who has been accustomed to acquire such goods or services from the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EA Provisions contravening section 45E not to be given effect

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

- (a) contravened subsection 45E(2) or (3); or
- (b) would have contravened subsection 45E(2) or (3) if:
 - (i) section 45E had been in force when the contract or arrangement was made, or the understanding was arrived at; and
 - (ii) the words “is in writing and” and “written” were not included in subsection 45E(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EB Sections 45D to 45EA do not affect operation of other provisions of Part

Nothing in section 45D, 45DA, 45DB, 45DC, 45DD, 45E or 45EA affects the operation of any other provision of this Part.

2 Subsection 51(2)

After “section”, insert “45D, 45DA, 45DB, 45E, 45EA or”.

3 At the end of subsection 76(1)

Add:

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (*Boycott conduct* is defined in subsection 87AA(2).)

4 Subsection 76(1A)

Repeal the subsection, substitute:

- (1A) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed:
 - (a) for each act or omission to which this section applies that relates to section 45D, 45DB, 45E or 45EA—\$750,000; and

- (b) for each other act or omission to which this section applies—
\$10,000,000.

5 After subsection 76(1B)

Insert:

- (2) Nothing in subsection (1) authorises the making of an order against an individual because the individual has contravened or attempted to contravene, or been involved in a contravention of, section 45D, 45DA, 45DB, 45E or 45EA.

6 At the end of section 76

Add:

- (4) The single pecuniary penalty that may be imposed in accordance with subsection (3) in respect of conduct that contravenes provisions to which the 2 limits in subsection (1A) apply is an amount up to the higher of those limits.

7 At the end of subsection 80(1)

Add:

Note: Section 87AA provides that, if boycott conduct is involved in proceedings, the Court must have regard to certain matters in exercising its powers under this Part. (*Boycott conduct* is defined in subsection 87AA(2).)

8 After section 80

Insert:

80AA Division 7 of Part VI of the Workplace Relations Act does not prevent granting of injunction

Nothing in Division 7 of Part VI of the *Workplace Relations Act 1996* prevents the Court granting an injunction under section 80.

80AB Stay of injunctions

- (1) The Court may stay the operation of an injunction granted under section 80 if:
- (a) the injunction is in respect of conduct that constitutes or would constitute a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA or an associated contravention; and
 - (b) there is a proceeding in respect of a dispute relating to the conduct pending before:

- (i) the Australian Industrial Relations Commission under Division 7 of Part VI of the *Workplace Relations Act 1996*; or
 - (ii) a court, tribunal or authority of a State or Territory under a prescribed provision of a law of the State or Territory; and
 - (c) the conduct relates to the supply of goods or services to, or the acquisition of goods or services from, a person who is or becomes a party to the proceeding referred to in paragraph (b); and
 - (d) any of the following has applied for the stay:
 - (i) a Minister of the Commonwealth;
 - (ii) if subparagraph (b)(ii) applies—a Minister of the State or Territory concerned;
 - (iii) a party to the proceeding for the injunction; and
 - (e) the Court considers that granting the stay:
 - (i) would be likely to facilitate the settlement of the dispute by conciliation; and
 - (ii) would, in all the circumstances, be just.
- (2) An order staying the operation of the injunction may be expressed to have effect for a specified period and may be varied or rescinded by the Court at any time.
- (3) If the proceeding referred to in paragraph (1)(b) is terminated because the Australian Industrial Relations Commission, or the State or Territory court, tribunal or authority, has settled the dispute to which the conduct relates by conciliation, the Court must not make any order in relation to the costs of the proceedings in respect of the granting of the injunction or in relation to the costs of any proceedings for the rescission of the injunction.
- (4) Nothing in this section affects other powers of the Court.
- (5) In this section:
- associated contravention*** means:
- (a) attempting to contravene subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA; or
 - (b) aiding, abetting, counselling or procuring a person to contravene any of those provisions; or
 - (c) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to contravene any of those provisions; or

- (d) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of any of those provisions; or
 - (e) conspiring with others to contravene any of those provisions.
- injunction* includes an interim injunction.

9 After section 87A

Insert:

87AA Special provision relating to Court's exercise of powers under this Part in relation to boycott conduct

- (1) In exercising its powers in proceedings under this Part in relation to boycott conduct, the Court is to have regard to any action the applicant in the proceedings has taken, or could take, before an industrial authority in relation to the boycott conduct. In particular, the Court is to have regard to any application for conciliation that the applicant has made or could make.
- (2) In this section:
 - boycott conduct* means conduct that constitutes or would constitute:
 - (a) a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3) or section 45EA; or
 - (b) attempting to contravene one of those provisions; or
 - (c) aiding, abetting, counselling or procuring a person to contravene one of those provisions; or
 - (d) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to contravene one of those provisions; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of one of those provisions; or
 - (f) conspiring with others to contravene one of those provisions.

industrial authority means:

- (a) the Australian Industrial Relations Commission; or
- (b) a State industrial authority as defined in subsection 4(1) of the *Workplace Relations Act 1996*.

10 Section 45D of the Schedule

Repeal the section, substitute:

45D Secondary boycotts for the purpose of causing substantial loss or damage

- (1) A person must not, in concert with a second person, engage in conduct:
- (a) that hinders or prevents:
 - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
 - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and
 - (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing substantial loss or damage to the business of the fourth person.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

45DA Secondary boycotts for the purpose of causing substantial lessening of competition

- (1) A person must not, in concert with a second person, engage in conduct:
- (a) that hinders or prevents:
 - (i) a third person supplying goods or services to a fourth person (who is not an employer of the first person or the second person); or
 - (ii) a third person acquiring goods or services from a fourth person (who is not an employer of the first person or the second person); and
 - (b) that is engaged in for the purpose, and would have or be likely to have the effect, of causing a substantial lessening of competition in any market in which the fourth person supplies or acquires goods or services.

Note 1: Conduct that would otherwise contravene this section can be authorised under subsection 88(7).

Note 2: This section also has effect subject to section 45DD, which deals with permitted boycotts.

- (2) A person is taken to engage in conduct for a purpose mentioned in subsection (1) if the person engages in the conduct for purposes that include that purpose.

Note: This version of Part IV does not contain an equivalent of section 45DB of the *Trade Practices Act 1974*.

45DC Involvement and liability of employee organisations

Certain organisations taken to be acting in concert

- (1) If 2 or more persons (the *participants*), each of whom is a member or officer of the same organisation of employees, engage in conduct in concert with one another, whether or not the conduct is also engaged in in concert with another person, then, unless the organisation proves otherwise, the organisation is taken for the purposes of sections 45D and 45DA:
- (a) to engage in that conduct in concert with the participants; and
 - (b) to have engaged in that conduct for the purposes for which the participants engaged in it.

Consequences of organisation contravening subsection 45D(1) or 45DA(1)

- (2) The consequences of an organisation of employees engaging, or being taken by subsection (1) to engage, in conduct in concert with any of its members or officers in contravention of subsection 45D(1) or 45DA(1) are as set out in subsections (3), (4) and (5).

Loss or damage taken to have been caused by organisation's conduct

- (3) Any loss or damage suffered by a person as a result of the conduct is taken, for the purposes of this Act, to have been caused by the conduct of the organisation.

Taking proceedings if organisation is a body corporate

- (4) If the organisation is a body corporate, no action under section 82 to recover the amount of the loss or damage may be brought against any of the members or officers of the organisation in respect of the conduct.

Taking proceedings if organisation is not a body corporate

- (5) If the organisation is not a body corporate:
- (a) a proceeding in respect of the conduct may be brought under section 77, 80 or 82 against an officer of the organisation as a

- representative of the organisation's members and the proceeding is taken to be a proceeding against all the persons who were members of the organisation at the time when the conduct was engaged in; and
- (b) subsection 76(2) does not prevent an order being made in a proceeding mentioned in paragraph (a) that was brought under section 77; and
 - (c) the maximum pecuniary penalty that may be imposed in a proceeding mentioned in paragraph (a) that was brought under section 77 is the penalty applicable under section 76 in relation to a body corporate; and
 - (d) except as provided by paragraph (a), a proceeding in respect of the conduct must not be brought under section 77 or 82 against any of the members or officers of the organisation; and
 - (e) for the purpose of enforcing any judgment or order given or made in a proceeding mentioned in paragraph (a) that was brought under section 77 or 82, process may be issued and executed against the following property or interests as if the organisation were a body corporate and the absolute owner of the property or interests:
 - (i) any property of the organisation or of any branch or part of the organisation, whether vested in trustees or however otherwise held;
 - (ii) any property in which the organisation or any branch or part of the organisation has a beneficial interest, whether vested in trustees or however otherwise held;
 - (iii) any property in which any members of the organisation or of a branch or part of the organisation have a beneficial interest in their capacity as members, whether vested in trustees or however otherwise held; and
 - (f) if paragraph (e) applies, no process is to be issued or executed against any property of members or officers of the organisation or of a branch or part of the organisation except as provided in that paragraph.

45DD Situations in which boycotts permitted

*Dominant purpose of conduct relates to employment matters—
conduct by a person*

- (1) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if the dominant purpose for which the conduct is engaged

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in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of that person or of another person employed by an employer of that person.

*Dominant purpose of conduct relates to employment matters—
conduct by employee organisation and employees*

- (2) If:
- (a) an employee, or 2 or more employees who are employed by the same employer, engage in conduct in concert with another person who is, or with other persons each of whom is:
 - (i) an organisation of employees; or
 - (ii) an officer of an organisation of employees; and
 - (b) the conduct is only engaged in by the persons covered by paragraph (a); and
 - (c) the dominant purpose for which the conduct is engaged in is substantially related to the remuneration, conditions of employment, hours of work or working conditions of the employee, or any of the employees, covered by paragraph (a);

the persons covered by paragraph (a) do not contravene, and are not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in the conduct.

*Dominant purpose of conduct relates to environmental protection
or consumer protection*

- (3) A person does not contravene, and is not involved in a contravention of, subsection 45D(1) or 45DA(1) by engaging in conduct if:
- (a) the dominant purpose for which the conduct is engaged in is substantially related to environmental protection or consumer protection; and
 - (b) engaging in the conduct is not industrial action.

Note 1: If an environmental organisation or a consumer organisation is a body corporate:

- (a) it is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption; and
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

Note 2: If an environmental organisation or a consumer organisation is not a body corporate:

- (a) it is not a "person" and is therefore not subject to the prohibitions in subsections 45D(1) and 45DA(1) (consequently, this exemption does not cover the organisation as such); but
- (b) each of its members is a "person" who may be subject to the prohibitions in subsections 45D(1) and 45DA(1) and who may also be covered by this exemption.

Meaning of industrial action—basic definition

- (4) In subsection (3), *industrial action* means:
- (a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:
 - (i) the terms and conditions of the work are prescribed, wholly or partly, by an industrial instrument or an order of an industrial body; or
 - (ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or
 - (b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an industrial instrument or by an order of an industrial body; or
 - (c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or
 - (d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work.

For this purpose, *industrial body*, *industrial dispute* and *industrial instrument* have the meanings given by subsection 298B(1) of the *Workplace Relations Act 1996*.

Meaning of industrial action—further clarification

- (5) For the purposes of subsection (3):
- (a) conduct is capable of constituting industrial action even if the conduct relates to part only of the duties that persons are required to perform in the course of their employment; and
 - (b) a reference to industrial action includes a reference to a course of conduct consisting of a series of industrial actions.

Subsections (1), (2) and (3) do not protect people not covered by them

- (6) In applying subsection 45D(1) or 45DA(1) to a person who is not covered by subsection (1), (2) or (3) in respect of certain conduct, disregard the fact that other persons may be covered by one of those subsections in respect of the same conduct.

Note: Section 170MT of the *Workplace Relations Act 1996* limits the right to bring actions under the Competition Code in respect of industrial action that is protected action for the purposes of that section.

45E Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services

Situations to which section applies

- (1) This section applies in the following situations:
- (a) a **supply situation**—in this situation, a person (the **first person**) has been accustomed, or is under an obligation, to supply goods or services to another person (the **second person**); or
 - (b) an **acquisition situation**—in this situation, a person (the **first person**) has been accustomed, or is under an obligation, to acquire goods or services from another person (the **second person**).

Note: For the meanings of **accustomed to supply** and **accustomed to acquire**, see subsections (5) and (7).

Prohibition in a supply situation

- (2) In a supply situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
- (a) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person; or
 - (b) preventing or hindering the first person from supplying or continuing to supply such goods or services to the second person, except subject to a condition:
 - (i) that is not a condition to which the supply of such goods or services by the first person to the second person has

- previously been subject because of a provision in a contract between those persons; and
- (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

Prohibition in an acquisition situation

- (3) In an acquisition situation, the first person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
 - (a) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person; or
 - (b) preventing or hindering the first person from acquiring or continuing to acquire such goods or services from the second person, except subject to a condition:
 - (i) that is not a condition to which the acquisition of such goods or services by the first person from the second person has previously been subject because of a provision in a contract between those persons; and
 - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

No contravention if second person gives written consent to written contract etc.

- (4) Subsections (2) and (3) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

Meaning of accustomed to supply

- (5) In this section, a reference to a person who has been **accustomed to supply** goods or services to a second person includes (subject to subsection (6)):
 - (a) a regular supplier of such goods or services to the second person; or
 - (b) the latest supplier of such goods or services to the second person; or

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- (c) a person who, at any time during the immediately preceding 3 months, supplied such goods or services to the second person.

Exception to subsection (5)

- (6) If:
 - (a) goods or services have been supplied by a person to a second person under a contract between them that required the first person to supply such goods or services over a period; and
 - (b) the period has ended; and
 - (c) after the end of the period, the second person has been supplied with such goods or services by another person and has not also been supplied with such goods or services by the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has been supplied with goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to supply such goods or services to the second person.

Meaning of accustomed to acquire

- (7) In this section, a reference to a person who has been *accustomed to acquire* goods or services from a second person includes (subject to subsection (8)):
 - (a) a regular acquirer of such goods or services from the second person; or
 - (b) a person who, when last acquiring such goods or services, acquired them from the second person; or
 - (c) a person who, at any time during the immediately preceding 3 months, acquired such goods or services from the second person.

Exception to subsection (7)

- (8) If:
 - (a) goods or services have been acquired by a person from a second person under a contract between them that required the first person to acquire such goods or services over a period; and
 - (b) the period has ended; and
 - (c) after the end of the period, the second person has refused to supply such goods or services to the first person;

then, for the purposes of the application of this section in relation to anything done after the second person has refused to supply goods or services as mentioned in paragraph (c), the first person is not to be taken to be a person who has been accustomed to acquire such goods or services from the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EA Provisions contravening section 45E not to be given effect

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

- (a) contravened subsection 45E(2) or (3); or
- (b) would have contravened subsection 45E(2) or (3) if:
 - (i) section 45E had been in force when the contract or arrangement was made, or the understanding was arrived at; and
 - (ii) the words "is in writing and" and "written" were not included in subsection 45E(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

45EB Sections 45D to 45EA do not affect operation of other provisions of Part

Nothing in section 45D, 45DA, 45DC, 45DD, 45E or 45EA affects the operation of any other provision of this Part.

11 Subsection 51(2) of the Schedule

After "section", insert "45D, 45DA, 45E, 45EA or".

Part 2—Consequential amendments

Jurisdiction of Courts (Cross-vesting) Act 1987

12 Subsection 3(1) (paragraph (a) of the definition of *special federal matter*)

After "*Trade Practices Act 1974*", insert "(other than under section 45D, 45DA, 45DB, 45E or 45EA)".

13 Paragraph 4(4)(c)

After "section", insert "45D, 45DA, 45DB, 45E, 45EA,".

Trade Practices Act 1974

14 Subsection 4(1)

Insert:

organisation of employees means an organisation that exists or is carried on for the purpose, or for purposes that include the purpose, of furthering the interests of its members in relation to their employment.

15 Section 4F

Add at the end:

- (2) This section does not apply for the purposes of subsections 45D(1), 45DA(1), 45DB(1), 45E(2) and 45E(3).

16 Paragraph 6(2)(a)

After "than in", insert "section 45DB or".

17 Paragraph 6(2)(b)

After "45D", insert "to 45EB (other than section 45DB)".

18 Paragraph 6(2)(ea)

Repeal the paragraph, substitute:

- (ea) subsections 45D(3), 45D(4) and 45DA(3) were repealed, the words "In the circumstances specified in subsections (3) and (4)" were omitted from subsection 45D(1) and the words "In the circumstances specified in subsection (3)" were omitted from subsection 45DA(1);

19 After paragraph (6)(2)(ea)

Insert:

(eb) the second sentence in subsection 45E(1) were omitted;

20 Paragraph 6(2)(h)

After "(ca)", insert ", (eb)".

21 Subsection 88(7)

After "45D", insert ", 45DA or 45DB".

22 After subsection 88(7)

Insert:

(7A) Subject to this Part, the Commission may, on application by a person, grant an authorisation to the person to engage in conduct to which section 45E or 45EA would or might apply. While the authorisation remains in force, that section does not apply in relation to the person engaging in that conduct.

23 Subparagraph 90(8)(a)(ii)

After "subsection 88(7)", insert "or (7A)".

24 Paragraph 90(10)(a)

After "(7),", insert "(7A),".

Workplace Relations Act 1996

25 Subsection 4(1)

Insert:

boycott means a contravention of subsection 45D(1), 45DA(1), 45DB(1), 45E(2) or 45E(3), or section 45EA, of the *Trade Practices Act 1974*.

26 Subsection 4(1)

Insert:

boycott conduct means conduct that constitutes or would constitute:

- (a) a boycott; or
- (b) attempting to commit a boycott; or

- (c) aiding, abetting, counselling or procuring a person to commit a boycott; or
- (d) inducing, or attempting to induce, a person (whether by threats, promises or otherwise) to commit a boycott; or
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the committing by a person of a boycott; or
- (f) conspiring with others to commit a boycott.

27 Division 7 of Part VI

Repeal the Division, substitute:

Division 7—Disputes relating to boycotts

156 Application of Division

This Division applies to a dispute:

- (a) that relates to a boycott or a threatened, impending or probable boycott; and
- (b) in relation to which either of the following subparagraphs applies:
 - (i) the dispute relates, or may relate, to work done or to be done under an award or a certified agreement;
 - (ii) the dispute involves an organisation of employees or a member or officer of such an organisation.

157 Notification of disputes

- (1) If a person applies to the Court under section 80 of the *Trade Practices Act 1974* for an injunction restraining another person from engaging in boycott conduct in relation to which there is a dispute to which this Division applies, either person may notify the President or a Registrar of the dispute.
- (2) The Minister may notify the President or a Registrar of a dispute to which this Division applies or may apply.
- (3) If a Registrar is notified of a dispute under this section, the Registrar must inform the President.

158 Powers of Commission

- (1) Subject to subsection (2), if:

- (a) a person notifies the President or a Registrar under subsection 157(1) of a dispute to which this Division applies; or
- (b) the Minister notifies the President or a Registrar under subsection 157(2) of a dispute to which this Division applies or may apply; or
- (c) the President otherwise becomes aware of a dispute to which this Division applies;

the Commission is empowered to settle the dispute by conciliation.

(2) If:

- (a) the dispute relates to a boycott, or a threatened, impending or probable boycott, in relation to which there are proceedings pending before the Court; and
- (b) the Australian Competition and Consumer Commission is a party to the proceedings;

the Commission is not empowered to settle the dispute under subsection (1) unless the Australian Competition and Consumer Commission consents, by written notice given to the Commission, to the Commission exercising its powers under that subsection in relation to the dispute.

159 Exercise of powers

If the Commission is empowered under subsection 158(1) to settle a dispute to which this Division applies by conciliation, the President must refer it to a Presidential Member for conciliation.

160 Parties

- (1) The parties to a proceeding before the Commission in relation to a dispute to which this Division applies are:
 - (a) if the dispute arose in relation to the employment of members of an organisation of employees—that organisation; and
 - (b) employers of such employees; and
 - (c) organisations of which any such employers are members; and
 - (d) if the dispute relates to conduct in relation to the supply of goods or services to, or the acquisition of goods or services from, a person who is not already a party—that person; and
 - (e) any Minister who notifies the Commission that he or she wishes to become a party; and
 - (f) such other persons as the Presidential Member concerned, by order, specifies.

- (2) A Registrar must give notice of the proceeding to:
 - (a) every person who is a party to the proceeding under paragraph (1)(d), (e) or (f); and
 - (b) every other person that the Presidential Member directs is to be given notice.
- (3) Subsection (1) does not affect the operation of sections 43 and 44.

161 Application of other provisions of Act

Subject to this Division, the provisions of this Act relating to an industrial dispute (other than the provisions that relate to arbitration powers or to the making of awards or certifying of agreements) apply in relation to a proceeding before the Commission in relation to a dispute to which this Division applies as if:

- (a) a reference to an industrial dispute were a reference to the dispute to which this Division applies; and
- (b) a reference to the parties to an industrial dispute were a reference to the parties to the proceeding before the Commission; and
- (c) any other necessary changes were made.

162 Trade Practices Act and application laws not affected

- (1) This Division does not affect the operation of the *Trade Practices Act 1974*.
- (2) This Division is not intended to exclude the operation of any application law, as defined in section 150A of the *Trade Practices Act 1974*, to the extent that the application law is capable of operating concurrently with this Division.

163 Interpretation

Unless the contrary intention appears, expressions used in or in relation to this Division that are used in the *Trade Practices Act 1974* have, in this Act, the same respective meanings as those expressions have in the *Trade Practices Act 1974*.

28 Section 164

Repeal the section.

Part 3—Transitional and saving provisions

29 Definitions

In this Part:

amended TP Act means the *Trade Practices Act 1974* as in force after the commencement.

amended WR Act means the *Workplace Relations Act* as in force after the commencement.

commencement means the commencement of this Schedule.

Commission has the same meaning as in the amended WR Act.

conduct includes threatened, impending or probable conduct.

jurisdiction transfer day means the transfer day as defined in Part 3 of Schedule 16.

old TP Act means the *Trade Practices Act 1974* as in force immediately before the commencement.

old WR Act means the *Workplace Relations Act* as in force immediately before the commencement.

30 Conciliation proceedings in progress under Division 7 of Part VI of old WR Act

If:

- (a) before the commencement, the Commission was exercising conciliation powers under Division 7 of Part VI of the old WR Act in relation to a dispute about conduct; and
- (b) that conduct continues after the commencement; and
- (c) paragraphs 156(a) and (b) of the amended WR Act are satisfied in relation to the dispute;

the Commission may exercise conciliation powers under the amended WR Act in relation to the dispute as if the Commission had been notified of the dispute under section 157 of the amended WR Act.

31 If certificate under section 163D of old WR Act granted in relation to conduct that ended before commencement

If, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct ended before the commencement:

- (a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and

- (b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the "Court" is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and
- (c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that ended before the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to that conduct.

32 If certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

- (1) This item applies if, before the commencement, the Commission granted a certificate under section 163D of the old WR Act in relation to a dispute about conduct and the conduct continues after the commencement.
- (2) In relation to so much of the conduct as occurred before the commencement:
 - (a) the old WR Act continues to apply to that conduct as though the amendments made by this Schedule had not been made; and
 - (b) subject to paragraph (c), a reference in Division 7 of Part VI of the old WR Act as so applying to the "Court" is to be taken, on and after the jurisdiction transfer day, to be a reference to the Federal Court of Australia; and
 - (c) if, under Part 3 of Schedule 16, the Industrial Relations Court continues to have jurisdiction in relation to proceedings begun before the jurisdiction transfer day in relation to that conduct, that Court may, in accordance with that Part of that Schedule, continue to exercise jurisdiction in the proceedings.
- (3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

33 If no certificate under section 163D of old WR Act granted in relation to conduct that continues after commencement

If:

- (a) before the commencement, there was a dispute about conduct to which Division 7 of Part VI of the old WR Act applied; and
- (b) no certificate under section 163D of the old WR Act was granted in relation to the dispute before the commencement; and
- (c) the conduct continues after the commencement;

then, in relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct had started on the commencement.

Note: If no certificate was granted under section 163D of the old WR Act in relation to conduct that continues after the commencement, then (subject to item 30) no relief is available under the old WR Act or the amended TP Act in relation to so much of the conduct as occurred before the commencement.

34 If conduct to which section 45D of old TP Act applied ended before commencement

If conduct to which section 45D of the old TP Act applied ended before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.

35 If conduct to which section 45D of old TP Act applied continues after commencement

- (1) This item applies if conduct to which section 45D of the old TP Act applied started before the commencement and continues after the commencement.
- (2) In relation to so much of the conduct as occurred before the commencement, the old TP Act continues to apply to that conduct as though the amendments made by this Schedule had not been made.
- (3) In relation to so much of the conduct as occurs after the commencement, the amended TP Act applies as if that conduct started on the commencement.

36 Power to vary or rescind orders and injunctions made under repealed provisions

- (1) An order or injunction:
- (a) made by a court before the commencement under or in relation to a repealed provision; or
 - (b) made by a court after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;

may, subject to subsection (2), be varied or rescinded by the court after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

- (2) If the court that made the order or injunction is or was the Industrial Relations Court of Australia, the power to vary or rescind the order or injunction given by subsection (1) is, on or after the jurisdiction transfer day, to be exercised by the Federal Court of Australia, unless Part 3 of Schedule 16 provides for the Industrial Relations Court of Australia to continue to exercise jurisdiction in proceedings for the variation or rescission of the order or injunction.

- (3) In this section:

repealed provision means:

- (a) a provision of Division 7 of Part VI of the old WR Act; or
- (b) section 45D of the old TP Act.

37 Power to vary or revoke decisions of Commission made under repealed provisions

- (1) A decision of the Commission:
- (a) made before the commencement under or in relation to a repealed provision; or
 - (b) made after the commencement under or in relation to a repealed provision as the provision continues to apply because of this Part;

may be varied or revoked by the Commission after the commencement, despite the repeal of the provision, as if the amendments made by this Schedule had not been made.

- (2) In this section:

decision includes an order, direction or determination.

repealed provision means a provision of Division 7 of Part VI of the old WR Act.

Schedule 18—The Australian Trade Union Training Authority

Part 1—Amendments

Trade Union Training Authority Act 1975

1 Section 3

Repeal the section, substitute:

3 Interpretation

In this Act, unless the contrary intention appears:

Administrator means the Administrator of the Authority.

Authority means the Australian Trade Union Training Authority established by this Act.

Secretary means the person for the time being holding, or performing the duties of, the office of Secretary to the Department.

2 Section 5

Repeal the section, substitute:

5 Functions of the Authority

The functions of the Authority are to:

- (a) wind up the Authority's operations; and
- (b) dispose of the Authority's assets.

3 Paragraph 7(2)(b)

After "acquire", insert "personal property".

4 Paragraph 7(2)(c)

Repeal the paragraph.

5 Paragraph 7(2)(e)

Omit "to the College or to a Trade Union Training Centre,".

6 Paragraph 7(2)(f)

Repeal the paragraph, substitute:

- (f) to dispose of investments.

7 Section 7A

Repeal the section.

8 Subsections 8(1) and (2)

Omit "Executive Council", substitute "Administrator".

9 Part III (heading)

Repeal the heading, substitute:

Part III—Administrator

10 Section 8A

Repeal the section, substitute:

8A Administrator

- (1) There is to be an Administrator of the Australian Trade Union Training Authority.
- (2) The Administrator is responsible for the conduct of the affairs of the Authority and the performance of its functions.

11 Section 8B

Omit "Executive Officer", substitute "Administrator".

Note: The heading to section 8B is altered by omitting "Executive Officer" and substituting "Administrator".

12 Section 8C

Repeal the section.

13 Section 8D

Repeal the section, substitute:

8D Appointment etc. of Administrator

- (1) The Commonwealth may enter into a contract with a person under which the person is appointed the Administrator.
- (2) The terms and conditions of appointment are as set out in the contract.

14 Sections 8E, 8F, 8G, 8H, 8J and 8K

Repeal the sections.

15 Section 8L

Omit "Minister" (wherever occurring), substitute "Secretary".

16 Section 8L

Omit "Executive Officer" (wherever occurring), substitute "Administrator".

Note: The heading to section 8L is altered by omitting "Executive Officer" and substituting "Administrator".

17 Subsection 8L(6)

Repeal the subsection.

18 Parts IV and V

Repeal the Parts.

19 Subsection 41(1)

Omit "The", substitute "Subject to subsection (3), the".

20 Subsections 41(1) and (2)

Omit "Executive Officer" (wherever occurring), substitute "Administrator".

21 At the end of section 41

Add:

- (3) The Administrator must not appoint an officer or engage an employee without the Secretary's approval.

22 Subsection 44(1)

Omit "sub-section (2)", substitute "subsections (2) and (3)".

23 At the end of section 44

Add:

- (3) The Authority must pay to the Commonwealth any money that the Authority receives:
- (a) as payments of amounts owed to the Authority; or
 - (b) from disposal of the Authority's assets.

24 Section 47

After "Minister", insert ", or an officer of the Department authorised by the Minister".

25 Paragraph 47(a)

Omit "or receipt".

26 Paragraph 47(a)

Omit "\$50,000", substitute "\$5,000".

27 Paragraph 47(b)

Omit "for a period exceeding 10 years".

28 At the end of section 47

Add:

; or (c) enter into a contract involving the disposal of real property.

29 Section 51

Repeal the section.

30 Section 52

Repeal the section, substitute:

52 Delegation of Administrator's functions and powers

The Secretary may, by signed instrument, delegate to an officer of the Department all or any of the Administrator's functions and powers under this Act.

31 Sections 53 and 54

Repeal the sections.

32 Subsection 58(2)

Omit "College and at each of the Trade Union Training Centres", substitute "Australian Trade Union Training College, and at each of the Trade Union Training Centres, formerly established under this Act".

Part 2—Transitional provision relating to the amendments

33 Engagement, arrangements and contracts

Any engagement, arrangement or contract entered into by or on behalf of the Authority and in force immediately before the commencement of this Part has effect on and after that commencement as if any reference in it to:

- (a) the Executive Officer; or
- (b) the Chairperson of the Executive Council of the Authority;

were (except in relation to matters that occurred before that day) a reference to the Administrator.

Part 3—Repeal

Trade Union Training Authority Act 1975

34 The whole of the Act

Repeal the Act.

Part 4—Transitional provisions relating to the repeal

35 Definition

In this Part, unless the contrary intention appears:

commencing day means the day on which this Part comes into operation.

36 Transfer of assets, liabilities etc.

- (1) Any rights, property or assets that immediately before the commencing day were vested in the Authority are vested in the Commonwealth on the commencing day.
- (2) On the commencing day, the Commonwealth becomes liable to pay and to discharge any debts, liabilities or obligations of the Authority that existed immediately before that day.

37 Engagements, arrangements and contracts

- (1) Subject to subitem (2), any engagement, arrangement or contract entered into by or on behalf of the Authority and in force immediately before the commencing day continues in force despite the repeal of the *Trade Union Training Authority Act 1975*.
- (2) This item does not apply to an engagement, arrangement or contract that constitutes a contract of employment or a contract for services.
- (3) An engagement, arrangement or contract that continues in force under subsection (1) has effect on and after the commencing day as if:
 - (a) any reference in it to the Authority were (except in relation to matters that occurred before that day) a reference to the Commonwealth; and
 - (b) any reference in it to the Administrator, the Executive Officer or the Chairperson of the Executive Council of the Authority were (except in relation to matters that occurred before that day) a reference to the Minister or a person authorised by the Minister.

38 Exemption from taxation

- (1) An instrument or a document that was made, executed or given because of, or for a purpose connected with or arising out of, the operation of

this Part is not liable to stamp duty or other tax under a law of the Commonwealth or of a State or Territory if the document has been certified under subsection (2).

- (2) The Secretary, or an officer of the Department authorised by the Secretary for the purpose, may certify that an instrument or document was made, executed or given because of, or for a purpose connected with or arising out of, the operation of this Part.

39 Report on operations of Authority

As soon as practicable after the commencing day, the Minister must cause to be prepared:

- (a) a report of the Authority's operations during the period that started at the end of the last period in respect of which a report of the operations of the Authority were furnished to the Minister and that ended immediately before the commencing day; and
- (b) financial statements in respect of that period in such form as the Minister for Finance approves.

40 Audit of financial statements

- (1) The Minister must cause the financial statements prepared in accordance with item 39 to be given to the Auditor-General.
- (2) The Auditor-General must report to the Minister:
 - (a) whether, in the Auditor-General's opinion, the statements are based on proper accounts and records; and
 - (b) whether the statements are in agreement with the accounts and records and, in the Auditor-General's opinion, show fairly the financial transactions and the state of the affairs of the Authority; and
 - (c) whether, in the Auditor-General's opinion, the receipt, expenditure and investment of money, and the acquisition and disposal of assets, by the Authority during the period to which the statements relate have been in accordance with the *Trade Union Training Authority Act 1975*; and
 - (d) as to such other matters arising out of the statements as the Auditor-General thinks should be reported to the Minister.

41 Reports and financial statements to be laid before Parliament

The Minister must cause copies of the report and financial statements referred to in item 39, together with a copy of the Auditor-General's report under item 40, to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the Auditor-General's report.

42 Appropriation

- (1) This item applies if, by an Act, money has been appropriated before the commencing day for expenditure by the Authority under the *Trade Union Training Authority Act 1975* in the financial year in which the commencing day occurs.
- (2) So much of that money as has not been expended before the commencing day is appropriated for expenditure in that year by the Department:
 - (a) in the discharge of the liability imposed upon the Commonwealth by subitem 36(2); and
 - (b) in the making of payments required to be made under the engagements, arrangements and contracts referred to in item 37; and
 - (c) in the discharge of costs, expenses and other obligations incurred in the performance by the Department of functions that could have been performed by the Authority if the *Trade Union Training Authority Act 1975* had not been repealed; and
 - (d) in the payment of expenses associated with termination payments for persons who held offices or positions under, or who were employed under, the *Trade Union Training Authority Act 1975*.

Schedule 19—The short title of the Industrial Relations Act 1988

Part 1—Amendment of the short title of the Industrial Relations Act 1988

Industrial Relations Act 1988

1 Section 1

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Part 2—Amendment of other Acts

Administrative Appeals Tribunal Act 1975

2 Paragraph 8A(1)(b)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Administrative Decisions (Judicial Review) Act 1977

3 Paragraph (a) of Schedule 1

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Affirmative Action (Equal Employment Opportunity for Women) Act 1986

4 Subsection 3(1) (paragraph (a) of the definition of *trade union*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Australian Federal Police Act 1979

5 Subsection 26F(4)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

6 Subsections 34(5) and 39D(1)

Omit “*Industrial Relations Act 1988*” (wherever occurring), substitute “*Workplace Relations Act 1996*”.

Note: The heading to section 39D is altered by omitting “*Industrial Relations Act*” and substituting “*Workplace Relations Act 1996*”.

***Builders Labourers' Federation (Cancellation of
Registration—Consequential Provisions) Act 1986***

7 Section 3 (paragraph (a) of the definition of award)

Omit "Industrial Relations Act", substitute "Workplace Relations Act".

8 Section 3 (definition of *industrial dispute*)

Omit "Industrial Relations Act", substitute "Workplace Relations Act".

9 Section 3 (definition of *Industrial Relations Act*)

Repeal the definition.

10 Section 3

Insert:

Workplace Relations Act means the *Workplace Relations Act 1996*.

**11 Section 3 (subparagraph (b)(i) of the definition of
non-registered association)**

Omit "Industrial Relations Act", substitute "Workplace Relations Act".

Christmas Island Act 1958

12 Subsections 8F(1) and (3)

Omit "*Industrial Relations Act 1988*" (wherever occurring), substitute "*Workplace Relations Act 1996*".

Note: The heading to section 8F is altered by omitting "*Industrial Relations Act 1988*" and substituting "*Workplace Relations Act 1996*".

Cocos (Keeling) Islands Act 1955

13 Subsection 8F(1)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Note: The heading to section 8F is altered by omitting "*Industrial Relations Act 1988*" and substituting "*Workplace Relations Act 1996*".

Commonwealth Electoral Act 1918

14 Section 5 (definition of *electoral matters*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

15 Subsection 287(1) (definition of *registered industrial organisation*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Crimes Act 1914

16 Section 85ZL (subparagraph (c)(ii) of the definition of *Commonwealth authority*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Defence Act 1903

17 Section 58F (definition of *Commission*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Disability Discrimination Act 1992

18 Subsection 4(1) (definition of *registered organisation*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Note: The heading to section 20 is altered by omitting “*Industrial Relations Act*” and substituting “*Workplace Relations Act 1996*”.

Income Tax Assessment Act 1936

19 Subsection 27A(1) (paragraph (c) of the definition of *registered organization*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

20 Subsection 116E(1) (paragraph (c) of the definition of *registered organization*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Insurance Act 1973

21 Subsection 3(1) (paragraph (e) of the definition of *insurance business*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Insurance (Deposits) Act 1932

22 Subsection 3(1) (paragraph (e) of the definition of *insurance business*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Judiciary Act 1903

23 Paragraph 39B(2)(a)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Jurisdiction of Courts (Cross-vesting) Act 1987

24 Paragraph 4(4)(b)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Life Insurance Act 1995

25 Paragraph 11(3)(b)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Long Service Leave (Commonwealth Employees) Act 1976

26 Paragraphs 12(11)(a) and 15(1)(c)

Omit “*Industrial Relations Act 1988*” (wherever occurring), substitute “*Workplace Relations Act 1996*”.

27 Subsection 15(4) (definition of *maritime employee*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Meat and Live-stock Industry Act 1995

28 Section 52 (paragraph (a) of the definition of *trade union*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Merit Protection (Australian Government Employees) Act 1984

29 Paragraphs 40(b) and 48(b)

Omit “*Industrial Relations Act 1988*” (wherever occurring), substitute “*Workplace Relations Act 1996*”.

Moomba-Sydney Pipeline System Sale Act 1994

30 Subsection 3(1) (definition of *award*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

National Crime Authority Act 1984

31 Schedule 1

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Naval Defence Act 1910

32 Subsection 42A(7)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Navigation Act 1912

33 Section 135, paragraph 138(2)(b) and section 292

Omit "*Industrial Relations Act 1988*" (wherever occurring), substitute "*Workplace Relations Act 1996*".

Northern Territory (Self-Government) Act 1978

34 Section 53

Omit "*Industrial Relations Act 1988*" (wherever occurring), substitute "*Workplace Relations Act 1996*".

Note: The heading to section 53 is altered by omitting "*Industrial Relations Act*" and substituting "*Workplace Relations Act 1996*".

Occupational Health and Safety (Commonwealth Employment) Act 1991

35 Subsection 5(1) (definition of *reviewing authority*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Occupational Health and Safety (Maritime Industry) Act 1993

36 Section 4 (paragraph (a) of the definition of *registered union*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Occupational Superannuation Standards Act 1987

37 Subsection 3(1) (paragraph(c) of the definition of registered organisation)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Petroleum (Submerged Lands) Act 1967

38 Clause 2 of Schedule 7 (paragraph (a) of the definition of registered union)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Public Service Act 1922

39 Subsection 7(1) (paragraph (a) of the definition of industrial award)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

40 Paragraph 61(3)(a)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

41 Section 82C (definition of State industrial authority)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Remuneration and Allowances Act 1990

42 Paragraph 3(b)

Omit “*Industrial Relations Act 1988* as amended by Part 3”, substitute “*Workplace Relations Act 1996*”.

Seafarers Rehabilitation and Compensation Act 1992

43 Section 3 (definition of certified agreement)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

44 Subsection 78(7) (definition of *certified agreement*)

Repeal the definition.

Seat of Government (Administration) Act 1910

45 Section 5

Omit "*Industrial Relations Act 1988*" (wherever occurring), substitute "*Workplace Relations Act 1996*".

Note: The heading to section 5 is altered by omitting "*Industrial Relations Act*" and substituting "*Workplace Relations Act 1996*".

Sex Discrimination Act 1984

46 Subsection 4(1) (definition of *registered organization*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Note: The heading to section 19 is altered by omitting "*Industrial Relations Act 1988*" and substituting "*Workplace Relations Act 1996*".

47 Section 109

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

States Grants (Tertiary Education Assistance) Act 1984

48 Sub-subparagraph 5(3)(d)(i)(B)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Superannuation Act 1976

49 Subsection 51(2BB) (paragraph (a) of the definition of *approved organisation*)

Omit "*Industrial Relations Act 1988*", substitute "*Workplace Relations Act 1996*".

Superannuation Guarantee (Administration) Act 1992

50 Section 5B

Omit “*Industrial Relations Act 1988*” (wherever occurring), substitute “*Workplace Relations Act 1996*”.

Superannuation Industry (Supervision) Act 1993

51 Section 10 (paragraph (c) of the definition of *registered organisation*)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Supply and Development Act 1939

52 Subsection 10(6)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

United States Naval Communication Station (Civilian Employees) Act 1968

53 Paragraph 4(b)

Omit “*Industrial Relations Act 1988*”, substitute “*Workplace Relations Act 1996*”.

Schedule 20—Miscellaneous

Workplace Relations Act 1996

1 Title

Omit “the prevention and settlement of certain industrial disputes”, substitute “workplace relations”.

2 Subsection 4(1) (at the end of the definition of *employee*)

Add “, but does not include a person who is undertaking a vocational placement”.

3 Subsection 4(1) (at the end of paragraph (a) of the definition of *magistrate’s court*)

Add “or”.

4 Subsection 4(1) (paragraph (b) of the definition of *magistrate’s court*)

Omit “or” (last occurring).

5 Subsection 4(1) (paragraph (c) of the definition of *magistrate’s court*)

Repeal the paragraph.

6 Subsection 4(1) (definition of *Vice President*)

Repeal the definition, substitute:

Vice President means a Vice President of the Commission.

7 Subsection 4(1)

Insert:

vocational placement means a placement that is:

- (a) undertaken with an employer for which a person is not entitled to be paid any remuneration; and
- (b) undertaken as a requirement of an education or training course; and
- (c) authorised under a law or an administrative arrangement of the Commonwealth, a State or a Territory.

8 Subsection 17(1)

Omit all the words after “may appoint”, substitute “a person who is qualified to be appointed as the President to act in that office”.

9 Subsections 17(1A) and (1B)

Repeal the subsections.

10 Subsection 17(3)

Repeal the subsection, substitute:

- (3) For the purpose of subsection (1) only, a person is not disqualified from appointment as the President merely because the person has reached the age of 65.

11 At the end of section 17A

Add:

- (3) For the purpose of subsection (1) only, a person is not disqualified from appointment as a Vice President merely because the person has reached the age of 65.

12 Paragraph 38(1)(a)

Repeal the paragraph, substitute:

- (a) a Vice President; and

13 At the end of subparagraph 111(1)(g)(v)

Add:

or (C) has contravened a recommendation of the Commission under section 111AA;

14 Before section 111A

Insert:

111AA Recommendations by consent

(1) If:

- (a) the Commission is exercising powers of conciliation in relation to a particular matter; and
- (b) all the parties request the Commission to conduct a hearing and make recommendations about particular aspects of the matter on which they are unable to reach agreement (which may be all aspects of the matter); and
- (c) the Commission is satisfied that all the parties:
- (i) have made a genuine attempt to agree about those aspects of the matter; and
- (ii) have agreed to comply with the Commission's recommendations;

the Commission must conduct a hearing and make recommendations about those aspects of the matter.

- (2) This section does not prevent the Commission from making recommendations in other circumstances.

15 Section 177

Repeal the section.

16 Section 304

Omit "\$500 or imprisonment for 6 months, or both", substitute "Imprisonment for 6 months".

17 Section 305

Repeal the penalty, substitute:

Penalty: Imprisonment for 6 months.

18 Section 320

Repeal the section.

19 Section 356

Omit "a penalty under section 170EF, 178 or 311", substitute "a monetary penalty under this Act (other than a penalty for an offence)".

20 Paragraphs 357(1)(aa) and (a)

Repeal the paragraphs, substitute:

- (a) imposed a monetary penalty under this Act (other than a penalty for an offence); or

21 At the end of paragraphs 357(1)(b) and (ba)

Add "or".

22 Paragraph 357(1)(c)

Repeal the paragraph.

*[Minister's second reading speech made in—
House of Representatives on 23 May 1996
Senate on 11 September 1996]*