



Fair Work (Registered Organisations) Amendment (Administration) Act 2024

No. 74, 2024

**An Act to make provision in relation to a scheme
for the administration of the Construction and
General Division of the Construction, Forestry and
Maritime Employees Union and its branches and in
relation to actions under the scheme**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	2
2	Commencement	2
3	Schedules	2
Schedule 1—Amendments		3
	<i>Fair Work Act 2009</i>	3
	<i>Fair Work (Registered Organisations) Act 2009</i>	8



Fair Work (Registered Organisations) Amendment (Administration) Act 2024

No. 74, 2024

**An Act to make provision in relation to a scheme
for the administration of the Construction and
General Division of the Construction, Forestry and
Maritime Employees Union and its branches and in
relation to actions under the scheme**

[Assented to 22 August 2024]

The Parliament of Australia enacts:

No. 74, 2024

*Fair Work (Registered Organisations) Amendment (Administration)
Act 2024*

1

1 Short title

This Act is the *Fair Work (Registered Organisations) Amendment (Administration) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	23 August 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Fair Work Act 2009

1A Section 12

Insert:

removed person: see subsections 177A(1) and (2).

1B After section 177

Insert:

177A Restrictions on removed persons being bargaining representatives

Definition of removed persons

- (1) A person is a *removed person* if:
- (a) any of the following events has happened as a result of a scheme determined under subsection 323B(1) of the Registered Organisations Act (a scheme for the administration of the Construction and General Division of the CFMEU and its branches):
 - (i) the person is removed (however described and including by having their office vacated) or suspended as an officer (within the meaning of this Act), or the person's role as an officer otherwise comes to an end;
 - (ii) the person's employment, as a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches, is terminated or otherwise comes to an end, or is suspended;
 - (iii) the person is removed (however described) or suspended as a workplace delegate, or the person's role as a workplace delegate otherwise comes to an end; and
 - (b) if the event involved suspension—the suspension has not ended.

- (2) A person is also a *removed person* if:
- (a) on or after 1 July 2024 and before the Construction and General Division and its branches are placed under administration by force of subsection 323A(1) of the Registered Organisations Act, the person, by the person's own choice:
 - (i) ceases to be an officer (within the meaning of this Act) of the Construction and General Division or any of its branches; or
 - (ii) ceases to be a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches; or
 - (iii) ceases to be a workplace delegate for members of the Construction and General Division or any of its branches; and
 - (b) during the period of the administration, the administrator formed the opinion that, if the person had not made the choice, the administrator would have taken action under the scheme of administration to ensure the person ceased to be an officer, employee or workplace delegate (as applicable).

Removed person must not be bargaining representative without a certificate

- (3) A removed person must not do any of the following, whether in their personal capacity or any other capacity:
- (a) be a bargaining representative of an employee or employer;
 - (b) purport to be a bargaining representative of an employee or employer;
 - (c) hold out that the person is a bargaining representative of an employee or employer.

Note: This subsection is a civil remedy provision (see Part 4-1).

- (4) Subsection (3) does not apply if the removed person holds a certificate granted under subsection (7).
- (5) If, in proceedings for a pecuniary penalty order against a removed person for a contravention of subsection (3), the person wishes to

rely on the exception in subsection (4), the person bears an evidential burden in relation to the matter.

- (6) Subsection (3) has effect despite subsection 176(1) and section 177. However, subsection (3) does not prevent an employee who will be covered by the agreement concerned from appointing themselves under paragraph 176(1)(c) as their own bargaining representative for the agreement.

Certificate to be a bargaining representative

- (7) The FWC may, on application in writing by a removed person, grant the person a certificate to be a bargaining representative, if satisfied that the person is a fit and proper person to be a bargaining representative.
- (8) In deciding whether the removed person is a fit and proper person to be a bargaining representative, the FWC must have regard to the following matters:
- (a) the reasons the person became a removed person, including whether the person engaged or allegedly engaged in a kind of conduct described in subparagraph 141(1)(c)(i), (ii) or (iii) of the Registered Organisations Act;
 - (b) whether the person has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving:
 - (i) fraud or dishonesty; or
 - (ii) intentional use of violence against another person; or
 - (iii) intentional damage or destruction of property;
 - (c) the general character of the person.
- (9) The FWC may also have regard to any other matters the FWC considers relevant.
- (10) The FWC must not grant the certificate:
- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) of the Registered Organisations Act and the period of the disqualification has not ended; or
 - (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an

office in an organisation under subsection 215(1) of the Registered Organisations Act.

(11) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

(12) In this section:

CFMEU has the same meaning as in the Registered Organisations Act.

Construction and General Division has the same meaning as in the Registered Organisations Act.

1C Subsection 539(2) (before table item 5A)

Insert:

5AC	177A(3)	(a) an employee;	(a) the Federal Court;	600 penalty units
		(b) a bargaining representative for the proposed enterprise agreement;	(b) the Federal Circuit and Family Court of Australia (Division 2);	
		(c) an inspector;	(c) an eligible State or Territory court	
		(d) the General Manager;		
		(e) the administrator of a scheme determined under subsection 323B (1) of the Registered Organisations Act		

1D Subsection 539(2) (cell at table item 25, column 1)

Repeal the cell, substitute:

482(3)
 483(4)
 483B(4)
 483C(5)
 483D(4)
 483E(5)
 494(1)
 495(1)
 496
 497
 498
 499
 500
 501
 502(1)

1E Subsection 539(2) (after table item 25)

Insert:

25A	503(1)	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2)	for a contravention by a removed person—600 penalty units; or otherwise—60 penalty units
25B	504 506 509 521C(3) 521D(3)	(a) a person affected by the contravention; (b) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2)	60 penalty units

1F After paragraph 675(2)(a)

Insert:

(aaa) an order under subsection 177A(7) (certificate to be a bargaining representative);

Fair Work (Registered Organisations) Act 2009

1 Section 6

Insert:

administrator means a person appointed under section 323C to be the administrator of a scheme determined under subsection 323B(1).

CFMEU has the meaning given by clause 1 of Schedule 3.

Construction and General Division means the Construction and General Division as defined in the rules of the CFMEU at the commencement of section 323A.

removed person has the meaning given by section 323MA.

2 After subsection 308(2)

Insert:

(2A) Without limiting subsection (1), the orders in relation to a contravention of subsection 323L(3) may include an order requiring a person to comply, either wholly or partly, with the notice mentioned in subsection 323L(3).

3 After subsection 310(1)

Insert:

(1A) In addition to the persons mentioned in subsection (1), an application for an order under this Part relating to any of the following may also be made by the administrator of a scheme determined under subsection 323B(1), in their capacity as the administrator:

- (a) a contravention of a civil penalty provision in Part 2A of Chapter 11;
- (b) a contravention of section 285, 286, 287 or 288 by a person who is or has been an officer or employee of the CFMEU or

any of its branches, divisions or parts working in the Construction and General Division or any of its branches.

Note: This allows the administrator to apply for any orders under this Part (including injunctions and other orders under section 308), as long as the orders relate to the specified kinds of contraventions.

4 Section 317

After:

Part 2 contains provisions validating certain invalidities in relation to registered organisations.

insert:

Part 2A contains provisions for a scheme for the administration of the Construction and General Division of the CFMEU and its branches.

5 After Part 2 of Chapter 11

Insert:

Part 2A—Administration of the Construction and General Division of the CFMEU and its branches

Division 1—Scheme for administration

323A Construction and General Division and its branches are placed under administration

- (1) By force of this subsection, the Construction and General Division, and each of its branches, is placed under administration from the earliest time at which both of the following are in force:
 - (a) a legislative instrument made under subsection 323B(1);
 - (b) the appointment of an administrator under section 323C.

- (2) The administration ends on the fifth anniversary of the day it began (unless ended sooner under section 323D).

323B Scheme for the administration of the Construction and General Division and its branches

- (1) The Minister may, in writing, determine a scheme for the administration of the Construction and General Division and its branches, if the Minister is satisfied that, having regard to the Parliament's intention in enacting this Act (see section 5), it is in the public interest for the Division and its branches to be placed under administration.
- (2) An instrument made under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (3) Without limiting subsection (1), the scheme must provide for the following:
- (a) the person who is to be appointed as the administrator of the scheme under section 323C;
 - (b) suspension or removal of officers;
 - (c) declarations that offices are vacant;
 - (d) the timing of elections of officers;
 - (e) the taking of disciplinary actions by the administrator, including expulsion of members and disqualification of officers for up to 5 years, and including in circumstances not provided for by the rules of the CFMEU or the Construction and General Division;
 - (f) the termination of employment of employees of the Construction and General Division or its branches;
 - (g) the making of an alteration of the rules of the Construction and General Division by the administrator in circumstances where, because of the administration, the alteration cannot be made in accordance with any provision made by this Act (other than this Part) or the rules;
 - (h) giving reports to the Minister or General Manager;
 - (i) delegation by the administrator of the administrator's functions or powers;

-
- (j) the engagement or employment of persons by the administrator to assist in performing the administrator's functions;
 - (k) obligations for the administrator to cooperate with any inquiry into conduct of the CFMEU, or officers or employees or former officers or employees of the CFMEU or any of its branches, divisions or parts, being undertaken by any law enforcement agency or regulator (including the Fair Work Ombudsman or the FWC);
 - (l) matters ancillary or incidental to matters mentioned in the previous paragraphs in this subsection.

Note: The scheme and things done under it have effect despite anything in this Act, Part 2-4 of the Fair Work Act or the rules of the CFMEU or any branch, division or part of it (see section 323F).

- (4A) The scheme may provide for any other matters the Minister considers appropriate.
- (4) The Minister is not required to observe any requirements of the natural justice hearing rule in making a decision under this section.

323C Appointment etc. of administrator

- (1) As soon as practicable after a scheme is determined under subsection 323B(1), the General Manager must, in writing, appoint a person to be the administrator of the scheme.
- (2) The General Manager may, by writing, terminate the appointment of the administrator and appoint another person as the administrator.
- (3) If the scheme provides for the person who is to be appointed, the General Manager:
 - (a) must appoint that person; and
 - (b) must not terminate that person's appointment otherwise than in accordance with any requirements specified in the scheme.

323D Variation and revocation of scheme

- (1) If:
-

- (a) the administrator requests the Minister to vary a scheme determined under subsection 323B(1) (whether to end the administration for a branch of the Construction and General Division or to make any other changes); and
 - (b) the Minister is satisfied that, having regard to the Parliament's intention in enacting this Act (see section 5), the variation is in the public interest;
- the Minister must, in writing, vary the scheme as requested.
- (1A) If:
- (a) the administrator requests the Minister to revoke a scheme determined under subsection 323B(1); and
 - (b) the Minister is satisfied that, having regard to the Parliament's intention in enacting this Act (see section 5), the revocation is in the public interest;
- the Minister must, in writing, revoke the scheme.
- (1B) The Minister may only vary or revoke the scheme in accordance with subsections (1) and (1A).
- (2) An instrument made under subsection (1) or (1A) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the instrument.
- (2A) However, the Minister must not:
- (a) vary the scheme to end the administration for a branch; or
 - (b) revoke the scheme;
- before the third anniversary of the day the administration began, unless the administrator gives the Minister written notice that the administrator is satisfied that (for variation) the branch, or (for revocation) the Construction and General Division and each of its branches, is functioning lawfully and effectively.
- (3) The Minister is not required to observe any requirements of the natural justice hearing rule in making a decision under this section.

323E 5 year sunset

Sections 323A, 323B, 323C and 323D cease to be in force on the fifth anniversary of the day the administration began under subsection 323A(1).

323F Scheme etc. has effect despite this Act etc.

The following have effect despite anything in this Act, Part 2-4 of the Fair Work Act or the rules of the CFMEU or a branch, division or part of the CFMEU:

- (a) a scheme determined under subsection 323B(1);
- (b) any action taken under the scheme;
- (c) an instrument made under section 323C.

323G Actions under scheme

- (1) Actions of the administrator, including as mentioned in paragraphs 323B(3)(b) and (e), continue in effect:
 - (a) regardless of the end of the administration under subsection 323A(2) or section 323D; and
 - (b) regardless of section 323E; and
 - (c) despite any provision of this Act or the rules of the CFMEU or a branch, division or part of the CFMEU.
- (2) The Minister may, by legislative instrument, make rules prescribing the effect of actions taken under the scheme for the purposes of other laws.

323H Alteration of rules under scheme

- (1) This section applies in relation to an alteration of the rules of the Construction and General Division made under a scheme determined under section 323B(1).
- (2) Section 159 does not apply in relation to the alteration.
- (3) The administrator must, within 35 days after the alteration is made, or any longer period allowed by the General Manager, lodge with the FWC a notice setting out particulars of the alteration.
- (4) The notice must contain a declaration, signed by the administrator, that the alteration was made in accordance with the scheme and that the particulars set out in the notice are true and correct to the best knowledge and belief of the administrator.

- (5) If particulars of the alteration have been lodged with the FWC, the General Manager may, with the consent of the administrator, amend the alteration for the purpose of correcting a typographical, clerical or formal error.
- (6) The alteration does not take effect unless particulars of the alteration have been lodged with the FWC as required by subsections (3) and (4) and the General Manager has certified that, in the General Manager's opinion, the alteration:
 - (a) has been made in accordance with the scheme; and
 - (b) subject to the scheme and section 323F, complies with and is not contrary to this Act, the Fair Work Act, modern awards and enterprise agreements; and
 - (c) is not otherwise contrary to law.
- (7) If certified under subsection (6), the alteration takes effect on the day of certification.

323HA Complaints procedure

- (1) The administrator of a scheme determined under subsection 323B(1) must, as soon as practicable after appointment as administrator:
 - (a) establish, in writing, a complaints procedure that complies with subsections (2) and (3) (unless a previous administrator has done so); and
 - (b) take reasonable steps to publicise the procedure to members of the Construction and General Division; and
 - (c) make the procedure publicly available.
- (2) The procedure must allow for the making of complaints in respect of conduct:
 - (a) that is or is alleged to be improper, unlawful or criminal; and
 - (b) that is or is alleged to be engaged in by any person who is or has been:
 - (i) an officer or employee of the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches; or

-
- (ii) a workplace delegate (within the meaning of the Fair Work Act) for members of the Construction and General Division or any of its branches; or
 - (iii) a member of the Construction and General Division or any of its branches.

Note: Complaints made under the procedure may qualify for whistleblower protection under Part 4A of this Chapter (see subsection (11) of this section).

- (3) The procedure must allow for the making of complaints to the following **complaint recipients**:
 - (a) the administrator;
 - (b) a person authorised in writing by the administrator to receive complaints.
 - (4) A complaint recipient must not disclose the identity of a complainant to a person who is not a complaint recipient, including in a referral under subsection (5), unless the complainant consents or it is already publicly known that the complainant has made the complaint under the procedure.
 - (5) A complaint recipient may refer a complaint to a law enforcement agency or regulator (including the Fair Work Ombudsman or the General Manager) for investigation.
 - (6) If a complaint is referred to a regulator that is the Fair Work Ombudsman or the General Manager, the regulator must:
 - (a) consider the complaint; and
 - (b) advise the administrator or other complaint recipient, in writing as soon as practicable, as to whether the regulator intends to investigate the complaint; and
 - (c) if the regulator investigates the complaint:
 - (i) report progress and results of the investigation to the administrator or other complaint recipient at 90 day intervals until the investigation is completed; and
 - (ii) advise the administrator or other complaint recipient when the investigation is completed.
 - (7) If the complaint is investigated by a regulator other than the Fair Work Ombudsman or the General Manager, or by a law enforcement agency, the complaint recipient must use best
-

endeavours to obtain reports of the progress of the investigation from time to time and disclose these to the complainant.

- (8) If, because of a want of jurisdiction, no law enforcement agency or regulator investigates a complaint referred under subsection (5), the complaint recipient must use best endeavours to:
- (a) investigate the complaint; and
 - (b) keep the complainant informed of progress; and
 - (c) notify the complainant of the results of the investigation.
- (9) Subsections (7) and (8) do not apply if the administrator reasonably believes that disclosing information to the complainant as required by those subsections may jeopardise the investigation concerned.
- (10) Subsection (8) does not apply if the complaint recipient is satisfied that the complaint is frivolous or vexatious.
- (11) For the purposes of Part 4A of this Chapter (protection for whistleblowers):
- (a) conduct mentioned in subsection (2) is taken to be ***disclosable conduct***; and
 - (b) the making of a complaint in respect of such conduct, in accordance with the procedure established by the administrator, is a disclosure that qualifies for protection under Part 4A of this Chapter (protection for whistleblowers); and
 - (c) a complaint receiver is taken to be a person conducting an investigation under Division 3 of Part 4A for the purposes of section 337CE, but the other provisions in Division 3 of Part 4A do not apply in relation to a complaint made under the procedure; and
 - (d) section 337DA applies in relation to functions and powers exercised by a complaint receiver under the procedure as if the complaint receiver were an authorised official and the functions and powers were conferred by Part 4A.
- (12) Neither of the following is a legislative instrument:
- (a) an instrument made under subsection (1);
 - (b) an instrument made under paragraph (3)(b).

323J Costs of administration

Except to the extent (if any) specified otherwise in a scheme determined under subsection 323B(1), costs of the administration, including costs incurred by the administrator in acting under the scheme and this Act, are to be borne by the CFMEU.

323K Functions of administrator

- (1) While the Construction and General Division and its branches are under administration, the administrator:
 - (a) has control of the property and affairs of the Division and its branches; and
 - (b) may manage that property and those affairs; and
 - (c) may dispose of any of that property; and
 - (d) may perform any function, and exercise any power, that the Division or its branches, or any officers of the Division or its branches, could perform or exercise if it were not under administration.
- (2) Nothing in subsection (1) limits the generality of anything else in it.
- (2A) To avoid doubt, in performing functions and exercising powers as administrator, the administrator may undertake investigations into past practices of the Construction and General Division and its branches.
- (3) The administrator also has the function of promoting compliance by the Construction and General Division with the laws (including workplace laws) of the Commonwealth, the States and the Territories.
- (4) In relation to the obligations this Act imposes on officers and employees of the CFMEU and its branches, divisions and parts, the administrator must also:
 - (a) ensure that officers and employees have complied (including before this Part commenced) and continue to comply with the obligations; and
 - (b) to the extent that officers or employees have not complied with the obligations (including before this

Part commenced)—as far as reasonably practicable, ensure they are held accountable for having not done so.

- (5) In performing functions and exercising powers as administrator, the administrator must:
 - (a) be satisfied the administrator is acting in the best interests of the members of the Construction and General Division and its branches; and
 - (b) have regard to the objects of the CFMEU as defined in the rules of the CFMEU at the commencement of section 323A, so far as they are lawful.
- (6) References to the property of the Division and its branches include references to property of the CFMEU that, immediately before this Act commenced, was solely or predominantly used for the benefit or the purposes of the Construction and General Division or any of its branches.
- (7) Subsection (1) does not apply in relation to a branch for which the administration has ended under subsection 323D(1).

323L Provision of assistance to administrator

- (1) The administrator may, for the purposes of performing the functions or exercising the powers of an administrator, by notice in writing given to a person mentioned in subsection (2), require the person to do either or both of the following, before the end of the period specified in the notice (which must not be less than 14 days):
 - (a) produce to the administrator documents in the person's possession, custody, power or control that the administrator reasonably requires to perform the functions or exercise the powers;
 - (b) provide the administrator with any other information or assistance the administrator reasonably requires to perform the functions or exercise the powers.
- (2) The persons are the following:
 - (a) an officer or employee, or former officer or employee, of the CFMEU or any of its branches, divisions or parts;

-
- (b) an agent or former agent of the CFMEU or any of its branches, divisions or parts;
 - (c) a person that provides or formerly provided services, under a contract or agreement, to the CFMEU or any of its branches, divisions or parts;
 - (d) a person prescribed by the regulations.
- (3) A person to whom a notice is given must comply with the notice.
- Civil penalty: 600 penalty units.
- (4) Subsection (3) does not apply if:
- (a) the person has a reasonable excuse; and
 - (b) the person notifies the administrator of the reasonable excuse before the end of the period specified in the notice.
- (5) The person bears an evidential burden in relation to the matters in subsection (4).

323M Administrator's remuneration etc.

- (1) The administrator is entitled to receive remuneration for necessary work properly performed by the administrator in relation to the administration.
- (2) The remuneration is to be paid from the funds of the CFMEU.
- (3) The General Manager may, in writing, make any determinations the General Manager considers appropriate to provide for and in relation to remuneration the administrator is entitled to receive for necessary work properly performed by the administrator in relation to the administration.
- (4) In making a determination under this section, the General Manager must have regard to whether the remuneration is reasonable, taking into account:
 - (a) the period during which the work is likely to be performed by the administrator; and
 - (b) the complexity (or otherwise) of the work likely to be performed by the administrator; and

- (c) if the remuneration is worked out wholly or partly on a time-cost basis—the time likely to be properly taken by the administrator in performing the work; and
 - (d) any other matters the General Manager considers relevant.
- (5) Nothing in paragraph (4)(c) requires the administrator to keep timesheets or other records of hours worked.
- (6) A determination made under subsection (3) may also provide for, and in relation to, allowances. Subsection (2) applies in relation to any such allowances as if they were remuneration but subsection (4) does not apply.
- (7) A determination made under subsection (3) is not a legislative instrument.
- (8) To avoid doubt:
 - (a) subsections 7(9) and (13) of the *Remuneration Tribunal Act 1973* do not apply in relation to the office of administrator; and
 - (b) neither section 323C (appointment etc. of administrator) nor anything in this section has the effect of making the Commonwealth responsible for payments to the administrator.

Division 2—Persons removed from office etc. as a result of scheme for administration

323MA Application of this Division

- (1) A person is a *removed person* if:
 - (a) any of the following events has happened as a result of a scheme determined under subsection 323B(1):
 - (i) the person is removed (however described and including by having their office vacated) or suspended as an officer, or the person's role as an officer otherwise comes to an end;
 - (ii) the person's employment, as a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or

-
- any of its branches, is terminated or otherwise comes to an end, or is suspended;
 - (iii) the person is removed (however described) or suspended as a workplace delegate (within the meaning of the Fair Work Act), or the person's role as a workplace delegate otherwise comes to an end; and
 - (b) if the event involves suspension—the suspension has not ended.
- (2) A person is also a **removed person** if:
- (a) on or after 1 July 2024 and before the Construction and General Division and its branches are placed under administration by force of subsection 323A(1), the person, by the person's own choice:
 - (i) ceases to be an officer (within the meaning of this Act) of the Construction and General Division or any of its branches; or
 - (ii) ceases to be a person employed by the CFMEU or any of its branches, divisions or parts working in the Construction and General Division or any of its branches; or
 - (iii) ceases to be a workplace delegate for members of the Construction and General Division or any of its branches; and
 - (b) during the period of the administration, the administrator formed the opinion that, if the person had not made the choice, the administrator would have taken action under the scheme of administration to ensure the person ceased to be an officer, employee or workplace delegate (as applicable).
- (3) This Division does not limit the operation of Part 4 of Chapter 7 (disqualification from office).

323MB Removed person must not become an officer or employee etc. in organisation without a certificate

Standing for election or being appointed as officer in an organisation

- (1) A removed person must not:
-

- (a) become a candidate for election to an office in an organisation or a branch of an organisation; or
- (b) be appointed to an office in an organisation or a branch of an organisation.

Civil penalty: 600 penalty units.

- (2) Subsection (1) does not apply if the removed person holds a certificate granted under section 323MC.

Being employed or engaged by organisation

- (3) A removed person must not start to be employed in, or engaged by, an organisation or a branch, division or part of an organisation.

Civil penalty: 600 penalty units.

- (4) Subsection (3) does not apply if the removed person holds a certificate granted under section 323MD.

Evidential burden

- (5) A removed person bears an evidential burden in relation to the matters in subsections (2) and (4).

323MC Certificate to hold office

- (1) The FWC may, on application in writing by a removed person, grant the removed person a certificate to hold office.
 - (2) The FWC may grant the certificate if satisfied that the removed person is a fit and proper person to hold office in an organisation.
 - (3) In deciding whether the removed person is a fit and proper person to hold office in an organisation, the FWC must have regard to the following matters:
 - (a) the reasons the removed person was removed from office, including whether the removed person engaged or allegedly engaged in a kind of conduct described in subparagraph 141(1)(c)(i), (ii) or (iii);
 - (b) whether the removed person has ever been convicted of an offence against a law of the Commonwealth, a State, a Territory or a foreign country involving:
-

-
- (i) fraud or dishonesty; or
 - (ii) intentional use of violence against another person; or
 - (iii) intentional damage or destruction of property;
 - (c) the general character of the removed person;
 - (d) the fitness of the removed person to be involved in the management of organisations.
- (4) The FWC may also have regard to any other matters the FWC considers relevant.
- (5) The FWC must not grant the certificate:
- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) and the period of the disqualification has not ended; or
 - (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1).

323MD Certificate to be employed or engaged by an organisation

- (1) The FWC may, on application in writing by a removed person, grant the removed person a certificate to be employed or engaged by an organisation.
- (2) The FWC may grant the certificate if satisfied that the removed person is a fit and proper person to be employed or engaged by an organisation.
- (3) The FWC must not grant the certificate:
- (a) if the removed person has been disqualified under a scheme determined under subsection 323B(1) and the period of the disqualification has not ended; or
 - (b) at any time while the removed person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation under subsection 215(1).

323ME Division not to affect spent convictions scheme

Nothing in this Division affects the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose spent convictions).

Division 3—Other matters relating to the administration

323N Administrator not liable to civil proceedings for actions in good faith etc.

An administrator, or a person acting under the direction of an administrator, is not liable to civil proceedings for loss, damage or injury of any kind suffered by a person in relation to an act done, or omitted to be done, in good faith and either:

- (a) in the performance or exercise, or the purported performance or exercise, of any function or power of the administrator as an administrator under a scheme determined under subsection 323B(1); or
- (b) in preparing for the performance or exercise of any such function or power (including before appointment as an administrator).

323P Anti-avoidance provision

Anti-avoidance provision

- (1) A person contravenes this subsection if:
 - (a) the person engages in conduct or a course of conduct; and
 - (b) as a result of the conduct or course of conduct:
 - (i) another person or body is prevented from taking action under a scheme determined under subsection 323B(1); or
 - (ii) the administrator is prevented from effectively administering a scheme determined under subsection 323B(1).

Civil penalty provision

- (2) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty: 600 penalty units.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

-
- (4) The person bears an evidential burden in relation to the matter in subsection (3).

Offence provision

- (5) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 2 years or 3,000 penalty units.

- (6) For the purposes of subsection (5):
- (a) the physical elements of the offence are set out in subsection (1); and
 - (b) the fault element for paragraph (1)(b) is that the person engages in the conduct or course of conduct for the sole or dominant purpose of bringing about a result mentioned in that paragraph.

323Q Involvement in contravention treated in same way as actual contravention

- (1) A person who is involved in a contravention of a civil penalty provision in this Part is taken to have contravened that provision.

Note: The *Criminal Code* also has provisions that extend liability to a person involved in a contravention of the offence provision in subsection 323P(5) (see Part 2.4 of the *Criminal Code*).

- (2) For the purposes of subsection (1), a person is *involved in* a contravention of the civil penalty provision if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention;
or
 - (b) has induced the contravention, whether by threats or promises or otherwise; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

323R Section 604 of the Fair Work Act does not apply to decisions made for the purposes of this Part

Section 604 of the Fair Work Act does not apply to a decision made for the purposes of this Part, other than a decision made under section 323MC or 323MD.

323S Compensation for acquisition of property

- (1) If the operation of this Part, or an instrument made under this Part, would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia or the Supreme Court of a State or Territory for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

323T Reporting by administrator

- (1) The administrator of a scheme determined under subsection 323B(1) must give the Minister a report about the operation of the scheme:
 - (a) no later than 6 months after the Construction and General Division and its branches are placed under administration by force of subsection 323A(1); and
 - (b) at the end of every subsequent 6 month period until the administration ends.
- (2) A report must include:
 - (a) a statement outlining the administrator's activities under this Part during the preceding 6 month period; and
 - (b) a statement listing any transactions that occurred during the preceding 6 month period involving the Construction and General Division, or any of its branches, if the administrator is of the opinion that the transactions may be unlawful; and

- (c) a copy of a general purpose financial report that is relevant to the Construction and General Division and the preceding 6 month period; and
 - (d) a copy of any other financial records of the Construction and General Division, or any of its branches, that the administrator considers appropriate to include in the report.
- (3) The Minister must table a copy of a report in each House of the Parliament within 15 sitting days of that House after the Minister receives it.

6 At the end of subsection 331(1)

Add:

- ; or (e) a scheme determined under subsection 323B(1) is being effectively implemented.

7 After subparagraph 337A(1)(b)(ii)

Insert:

- (iii) an administrator of a scheme determined under subsection 323B(1), or a person authorised by an administrator under paragraph 323HA(3)(b);

8 After paragraph 343A(2)(h)

Insert:

- (ha) section 323C or 323M;

9 Retrospective application of civil penalty provision

The following provisions of the *Fair Work (Registered Organisations) Act 2009* apply in relation to conduct engaged in on or after 1 July 2024:

- (a) section 323P, other than subsection 323P(5);
- (b) section 323Q.

