



# **Fair Work (Registered Organisations) Amendment Act 2012**

**No. 93, 2012**

**An Act to amend the *Fair Work (Registered  
Organisations) Act 2009*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Fair Work (Registered Organisations) Amendment Act 2012

No. 93, 2012

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## **An Act to amend the *Fair Work (Registered Organisations) Act 2009*, and for related purposes**

[Assented to 29 June 2012]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Fair Work (Registered Organisations) Amendment Act 2012*.

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## 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
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2012
2. Schedule 1, Part 1	The day this Act receives the Royal Assent.	29 June 2012
3. Schedule 1, Part 2	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments**

### **Part 1—Amendments commencing on Royal Assent**

#### ***Fair Work (Registered Organisations) Act 2009***

##### **1 At the end of section 5 (before the note)**

Add:

- (5) Parliament recognises and respects the role of employer and employee organisations in facilitating the operation of the workplace relations system.

##### **2 Section 6**

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

##### **3 After Subdivision BA of Division 4 of Part 2 of Chapter 5**

Insert:

#### **Subdivision BB—Approved training**

##### **154C Approved training**

- (1) The General Manager may approve training provided by:
  - (a) an organisation; or
  - (b) a peak council; or
  - (c) a body or person the General Manager is satisfied has appropriate skills and expertise to provide the training;if the General Manager is satisfied that the training covers one or more of the duties of officers of organisations and branches of organisations that relate to the financial management of organisations and branches of organisations.
- (2) If the approval is made in writing, the approval is not a legislative instrument.

#### **4 Transitional—approved training**

The General Manager must, before the commencement of Part 2 of this Schedule, approve, under section 154C of the *Fair Work (Registered Organisations) Act 2009*, training that covers all duties of officers of organisations and branches of organisations that relate to the financial management of organisations and branches of organisations.

#### **5 After paragraph 305(2)(zk)**

Insert:

(zka) subsections 337AA(1), (2) and (3) (power to require information etc.);

#### **6 Subsection 306(1)**

Omit “In”, substitute “Subject to subsection (1A), in”.

#### **7 Paragraph 306(1)(a)**

Omit “100”, substitute “300”.

#### **8 Paragraph 306(1)(b)**

Omit “20”, substitute “60”.

#### **9 After subsection 306(1)**

Insert:

(1A) In respect of conduct in contravention of subsection 337AA(1), (2) or (3), the Federal Court may make an order imposing on the person or organisation whose conduct contravened the subsection a pecuniary penalty of not more than:

- (a) in the case of a body corporate—150 penalty units; or
- (b) in any other case—30 penalty units.

#### **10 Application—pecuniary penalty orders**

The amendments of section 306 of the *Fair Work (Registered Organisations) Act 2009* made by this Schedule apply to orders made on or after the commencement of this item.

#### **11 Section 335 (heading)**

Repeal the heading, substitute:



**335 Conduct of investigations—general power to require information etc.**

**12 Paragraphs 335(2)(a) and (b)**

After “General Manager”, insert “or a person or body to whom the General Manager has delegated conduct of the investigation”.

**13 Paragraph 335(2)(c)**

After “General Manager” (first occurring), insert “or a person or body to whom the General Manager has delegated conduct of the investigation”.

**14 Paragraph 335(2)(c)**

After “General Manager” (second occurring), insert “or the delegate (as the case may be)”.

**15 After section 335**

Insert:

**335A Conduct of investigations—additional power to require information etc.**

- (1) This section applies to a person (the *first person*) if:
- (a) the General Manager has required another person, under subsection 335(2), to do one or more of the following in relation to an investigation:
    - (i) give information;
    - (ii) produce documents;
    - (iii) attend before the General Manager or delegate; and
  - (b) after considering any information, documents or answers given or produced in response to the requirement, the General Manager reasonably believes that the first person:
    - (i) has information or a document that is relevant to the investigation; or
    - (ii) is capable of giving evidence which the General Manager has reason to believe is relevant to the investigation; and
  - (c) the General Manager has reason to believe that none of the persons referred to in paragraphs 335(1)(a), (b) and (c):

- (i) if subparagraph (b)(i) applies—has the information or the document referred to in that subparagraph, or is likely to give or produce that information or document if required to do so under subsection 335(2); or
  - (ii) if subparagraph (b)(ii) applies—is capable of giving the evidence referred to in that subparagraph, or is likely to give that evidence if required to do so under subsection 335(2).
- (2) For the purposes of making the investigation, the General Manager may, by written notice, require the first person:
  - (a) to give to the General Manager or a person or body to whom the General Manager has delegated conduct of the investigation, within the period (being a period of not less than 14 days after the notice is given) and in the manner specified in the notice, any information within the knowledge or in the possession of the first person; and
  - (b) to produce or make available to the General Manager or a person or body to whom the General Manager has delegated conduct of the investigation, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, any documents in the custody or under the control of the first person, or to which the first person has access; and
  - (c) to attend before the General Manager or a person or body to whom the General Manager has delegated conduct of the investigation, at a reasonable time (being a time not less than 14 days after the notice is given) and place specified in the notice, to answer questions relating to matters relevant to the investigation, and to produce to the General Manager or the delegate (as the case may be) all records and other documents in the custody or under the control of the first person relating to those matters.
- (3) A notice requiring a person to attend must state that the person may be accompanied by another person. The other person may be, but does not have to be, a lawyer.

**335B Investigations to be completed as soon as practicable**

The General Manager must complete an investigation as soon as practicable.

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### **335C Disclosure of information acquired during an investigation**

*Information to which this section applies*

- (1) This section applies to information acquired by the General Manager, or a member of the staff of FWA, in the course of an investigation.

*Disclosure that is necessary or appropriate, or likely to assist administration or enforcement*

- (2) The General Manager may disclose, or authorise the disclosure of, the information if the General Manager reasonably believes:
  - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, of the General Manager; or
  - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

### **16 Application—conduct of investigations**

- (1) The amendments of section 335 of the *Fair Work (Registered Organisations) Act 2009* made by this Schedule apply in relation to investigations begun on or after the commencement of this item.
- (2) Section 335A of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, applies in relation to investigations begun on or after the commencement of this item.

### **17 Application—completion of investigations**

Section 335B of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, applies to investigations begun on or after the commencement of this item.

### **18 Application—disclosure of information acquired during an investigation**

Section 335C of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, applies to information acquired on or after the commencement of this item.

### **19 Before subsection 336(1)**

Insert:

*General Manager must notify reporting unit*

**20 After subsection 336(1)**

Insert:

*General Manager must make inquiries*

- (1A) The General Manager must also, within 12 months of notifying the reporting unit under subsection (1), make inquiries under section 330 as to whether the reporting unit is complying with the provision, guidelines or rule the contravention of which was notified to the reporting unit under subsection (1).

**21 Before subsection 336(2)**

Insert:

*General Manager may take other action*

**22 Subsection 336(2)**

After “(1)”, insert “and (1A)”.

**23 Paragraph 336(2)(c)**

After “Director of Public Prosecutions”, insert “, the Australian Federal Police or a police force of a State or Territory”.

**24 Application—action following an investigation**

The amendments of section 336 of the *Fair Work (Registered Organisations) Act 2009* made by this Schedule apply to investigations begun before, on or after the commencement of this item.

**25 Subparagraph 337(1)(a)(i)**

After “General Manager”, insert “or delegate”.

**26 Paragraph 337(1)(c)**

After “General Manager”, insert “or delegate”.

**27 Subsections 337(4) and (5)**

Repeal the subsections, substitute:

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- (4) A person is not excused from:
- (a) giving information; or
  - (b) producing a document; or
  - (c) answering a question;
- under subsection 335(2) on the ground that the information, the production of the document, or the answer to the question, as the case may be, might tend to incriminate the person or expose the person to a penalty.
- (5) However, in the case of an individual:
- (a) the information given, the document produced, or the answer given; and
  - (b) giving the information, producing the document, or answering the question; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question;
- are not admissible in evidence against the person in:
- (d) criminal proceedings, other than proceedings under, or arising out of, paragraph (1)(b) or (c); or
  - (e) civil proceedings for the recovery of a penalty.

## **28 Application—subsections 337(4) and (5)**

The amendments of subsections 337(4) and (5) of the *Fair Work (Registered Organisations) Act 2009* made by this Schedule apply in relation to notices given under section 335 of that Act on or after the commencement of this item.

## **29 At the end of Part 4 of Chapter 11**

Add:

### **337AA Additional power to require information etc.—civil penalty provisions**

#### *Civil penalty provisions*

- (1) A person must comply with a requirement made of the person under subsection 335A(2).

Note: This subsection is a civil penalty provision (see section 305).

- (2) A person must not give information, or produce a document, in purported compliance with a requirement under subsection 335A(2), if the person knows, or is reckless as to whether, the information or document is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

- (3) A person must not, when attending before a person in accordance with a requirement under subsection 335A(2), make a statement (whether orally or in writing) if the person knows, or is reckless as to whether, the statement is false or misleading.

Note: This subsection is a civil penalty provision (see section 305).

*Reasonable excuse*

- (4) Subsection (1) does not apply if the person has a reasonable excuse.
- (5) Subsection (4) places an evidential burden on the defendant to show a reasonable excuse.

*Self-incrimination*

- (6) A person is not excused from:
- (a) giving information; or
  - (b) producing a document; or
  - (c) answering a question;
- under subsection 335A(2) on the ground that the information, the production of the document, or the answer to the question, as the case may be, might tend to incriminate the person or expose the person to a penalty.
- (7) However, in the case of an individual:
- (a) the information given, the document produced, or the answer given; and
  - (b) giving the information, producing the document, or answering the question; and
  - (c) any information, document or thing obtained as a direct or indirect consequence of giving the information, producing the document or answering the question;
- are not admissible in evidence against the person in:
- (d) criminal proceedings; or

- (e) civil proceedings for the recovery of a penalty, other than proceedings under, or arising out of, subsection (2) or (3).

### **30 Section 343A (heading)**

Repeal the heading, substitute:

### **343A Delegation by General Manager**

#### **31 Paragraph 343A(2)(b)**

After “subsection”, insert “154C(1),”.

#### **32 After paragraph 343A(2)(i)**

Insert:

- (ia) section 335 or 335A;
- (ib) subsection 335C(2);

#### **33 Paragraph 343A(2)(j)**

Omit “subsection 336(2)”, substitute “subsection 336(1), (2), (3) or (5)”.

#### **34 Before paragraph 343A(3)(a)**

Insert:

- (aa) subsection 154C(1);

#### **35 Paragraph 343A(3)(h)**

Omit “other than section 334 or subsection 336(2) or 337K(4)”, substitute “other than a provision of Part 4 of that Chapter or subsection 337K(4)”.

#### **36 After subsection 343A(3)**

Insert:

- (3A) Despite subsection (1), the General Manager’s functions or powers under section 330, 331, 332 or 333 can only be delegated to:
  - (a) a member of the staff of FWA who is an SES employee or an acting SES employee, or who is in a class of employees prescribed by the regulations; or

- (b) any other person or body the General Manager is satisfied has substantial or significant experience or knowledge in at least one of the following fields:
  - (i) accounting;
  - (ii) auditing;
  - (iii) financial reporting;
  - (iv) conducting compliance audits or investigations;
  - (v) a field prescribed by the regulations for the purposes of this subparagraph.

Note: The expressions *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

### **37 Application—Delegation by General Manager**

- (1) Paragraph 343A(2)(ia) of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, applies in relation to investigations begun on or after the commencement of this item.
- (2) The amendment of paragraph 343A(2)(j) of the *Fair Work (Registered Organisations) Act 2009* made by this Schedule applies in relation to investigations concluded on or after the commencement of this item.
- (3) Subsection 343A(3A) of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, applies in relation to an inquiry or investigation begun on or after the commencement of this item.

### **38 Transitional—alteration of rules (general)**

- (1) Subsection 159(1) of the *Fair Work (Registered Organisations) Act 2009* applies, during the transition period, in relation to the lodgement during that period of particulars of an eligible alteration of the rules of an organisation as if Part 2 of this Schedule had commenced at the same time as this item.
- (2) Subsection 159(3) of the *Fair Work (Registered Organisations) Act 2009* applies, during the transition period, in relation to the certification during that period of an eligible alteration of the rules of an organisation as if all the words after “subsection (1)” were omitted and the following was substituted:

takes effect on the later of:

- (a) the day of certification; and



(b) the day Part 2 of Schedule 1 to the *Fair Work (Registered Organisations) Amendment Act 2012* commences.

(3) In this item:

***eligible alteration***: an alteration of the rules of an organisation is an ***eligible alteration*** if the only purpose of the alteration is to comply with the following provisions of the *Fair Work (Registered Organisations) Act 2009*, as in force immediately after the commencement of Part 2 of this Schedule:

- (a) paragraph 141(1)(ca);
- (b) Division 3A of Part 2 of Chapter 5;
- (c) Subdivision BB of Division 4 of Part 2 of Chapter 5.

***transition period*** means the period:

- (a) beginning on the commencement of this Part; and
- (b) ending immediately before the commencement of Part 2 of this Schedule.

### **39 Transitional—alteration of rules (exemption from section 148C)**

- (1) An organisation may lodge with FWA an application (an ***early application***) under this item, for the purposes of section 148D of the *Fair Work (Registered Organisations) Act 2009* as inserted by Part 2 of this Schedule, at any time during the period:
  - (a) beginning on the commencement of this Part; and
  - (b) ending immediately before section 148D commences.
- (2) An organisation may make an early application if it considers that, from the time section 148D commences, special circumstances will exist in relation to the organisation that mean that a rule that complies with section 148C of the *Fair Work (Registered Organisations) Act 2009* as inserted by Part 2 of this Schedule will be too onerous.
- (3) An early application must be accompanied by the statement, particulars and evidence referred to in subsection 148D(2).
- (4) If, in relation to an early application, the General Manager is satisfied of the matters referred to in subsection 148D(3) (as if Part 2 of this Schedule had already commenced), the General Manager may grant to the organisation an exemption from section 148C, that takes effect from the later of:

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- (a) the time the General Manager grants the exemption; and
  - (b) the time Part 2 of this Schedule commences.
- (5) An exemption granted in respect of an early application is, from the time the exemption takes effect, taken to be an exemption granted under section 148D.
- (6) To avoid doubt, subsection 604(1) of the *Fair Work Act 2009* does not apply in relation to a decision of the General Manager under this item.
- (7) This item applies in relation to a branch of an organisation as if references to an organisation were references to a branch of an organisation.

## **Part 2—Amendments commencing on Proclamation**

### ***Fair Work (Registered Organisations) Act 2009***

#### **40 Section 6**

Insert:

***child***: without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

#### **41 Section 6**

Insert:

***control*** has the same meaning as in the *Corporations Act 2001*.

#### **42 Section 6**

Insert:

***de facto partner*** of a person has the meaning given by the *Acts Interpretation Act 1901*.

#### **43 Section 6**

Insert:

***disclosure period*** has the meaning given by section 148E.

#### **44 Section 6**

Insert:

***entity*** has the same meaning as in Chapter 2E of the *Corporations Act 2001*.

#### **45 Section 6**

Insert:

***non-cash benefit*** means property or services in any form other than money, but does not include a computer, mobile phone or

other electronic device that is used only or mainly for work purposes.

**46 Section 6**

Insert:

*parent*: without limiting who is a parent of a person for the purposes of this Act, someone is the *parent* of a person if the person is his or her child because of the definition of *child* in this section.

**47 Section 6**

Insert:

*related party* has the meaning given by section 9B.

**48 Section 6**

Insert:

*relative*, in relation to a person, means:

- (a) a parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister of the person; or
- (b) the spouse of the first-mentioned person.

**49 Section 6**

Insert:

*remuneration*:

- (a) includes pay, wages, salary, fees, allowances, leave, benefits or other entitlements; but
- (b) does not include a non-cash benefit.

**50 Section 6**

Insert:

*spouse* of a person includes a de facto partner of the person.

**51 Section 6:**

Insert:

***stepchild***: without limiting who is a stepchild of a person for the purposes of this Act, someone who is a child of a de facto partner of the person is the ***stepchild*** of the person if he or she would be the person's stepchild except that the person is not legally married to the partner.

## **52 Section 6**

Insert:

***step-parent***: without limiting who is a step-parent of a person for the purposes of this Act, someone who is a de facto partner of a parent of the person is the ***step-parent*** of the person if he or she would be the person's step-parent except that he or she is not legally married to the person's parent.

## **53 After section 6**

Insert:

## **7 Relationships**

For the purposes of this Act, if one person is the child of another person because of the definition of ***child*** in section 6, relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

## **54 After section 9A**

Insert:

### **9B Meaning of *related party***

#### *Control*

- (1) An entity controlled by an organisation is a ***related party*** of the organisation, unless:
- (a) the entity is a branch, sub-branch, division or subdivision of the organisation; or
  - (b) the entity is an association of employers or employees registered under a State or Territory industrial law, and the organisation is a federal counterpart of the association.

*Officers and their spouses*

- (2) The following persons are **related parties** of an organisation:
- (a) officers of the organisation;
  - (b) spouses of the persons referred to in paragraph (a).

*Relatives of officers and spouses*

- (3) Relatives of persons referred to in subsection (2) are **related parties** of the organisation.

*Entities controlled by other related parties*

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a **related party** of the organisation unless the entity is also controlled by the organisation.

*Related party in previous 6 months*

- (5) An entity is a **related party** of an organisation at a particular time if the entity was a related party of the organisation of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

*Entity has reasonable grounds to believe it will become related party in future*

- (6) An entity is a **related party** of an organisation at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the organisation of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

*Acting in concert with related party*

- (7) An entity is a **related party** of an organisation if the entity acts in concert with a related party of the organisation on the understanding that the related party will receive a financial benefit if the organisation gives the entity a financial benefit.

*Application to branches of organisations*

- (8) This section applies in relation to a branch of an organisation as if references to an organisation were references to a branch of an organisation.

**55 After paragraph 141(1)(c)**

Insert:

- (ca) must require the organisation and each of its branches to develop and implement policies relating to the expenditure of the organisation or the branch (as the case may be); and

**56 At the end of Division 1 of Part 2 of Chapter 5**

Add:

**142A Model rules for policies relating to expenditure**

- (1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules dealing with the matters referred to in paragraph 141(1)(ca). An organisation or a branch of an organisation may adopt model rules in whole or in part, and with or without modification.
- (2) A notice under subsection (1) is not a legislative instrument.

**57 After Division 3 of Part 2 of Chapter 5**

Insert:

**Division 3A—Rules relating to disclosure**

**148A Rules to require disclosure of remuneration paid to officers**

*Disclosure by officers*

- (1) The rules of an organisation must require the disclosure, by each officer of the organisation, to the organisation of any remuneration paid to the officer:
  - (a) because the officer is a member of a Board, if:
    - (i) the officer is a member of the Board only because the officer is an officer of the organisation; or
    - (ii) the officer was nominated for the position of member of the Board by the organisation, a branch of the organisation or a peak council; or
  - (b) by a related party of the organisation, in connection with the performance of the officer's duties as an officer.

- (2) The rules of a branch of an organisation must require the disclosure, by each officer of the branch, to the branch of any remuneration paid to the officer:
  - (a) because the officer is a member of a Board, if:
    - (i) the officer is a member of the Board only because the officer is an officer of the branch; or
    - (ii) the officer was nominated for the position of member of the Board by the organisation, a branch of the organisation or a peak council; or
  - (b) by a related party of the branch, in connection with the performance of the officer's duties as an officer.
- (3) Rules made under subsection (1) or (2) must:
  - (a) require that such disclosure is made as soon as practicable after the remuneration is paid to the officer; and
  - (b) provide for the manner of such disclosure.

*Disclosure by organisation or branch*

- (4) The rules of an organisation must require the disclosure, to the members of the organisation and its branches, of:
  - (a) the identity of each officer of the organisation who, when all officers of the organisation are ranked by relevant remuneration for the disclosure period (from highest to lowest), is ranked no lower than fifth; and
  - (b) for each of those officers:
    - (i) the information in relation to the officer's relevant remuneration for the disclosure period that is required by rules made under subsection (6); and
    - (ii) the information in relation to the officer's relevant non-cash benefits for the disclosure period that is required by rules made under subsection (7).
- (5) The rules of a branch of an organisation must require the disclosure, to the members of the branch, of:
  - (a) the identity of each officer of the branch who, when all officers of the branch are ranked by relevant remuneration for the disclosure period (from highest to lowest), is ranked no lower than second; and
  - (b) for both of those officers:



- (i) the information in relation to the officer's relevant remuneration for the disclosure period that is required by rules made under subsection (6); and
- (ii) the information in relation to the officer's relevant non-cash benefits for the disclosure period that is required by rules made under subsection (7).

*Information in relation to relevant remuneration*

- (6) For the purposes of subparagraph (4)(b)(i) or (5)(b)(i), the rules of an organisation or branch must require the disclosure of at least one of the following in relation to the relevant remuneration for a disclosure period of each of the officers to whom the subparagraph applies:
  - (a) the actual amount of the officer's relevant remuneration;
  - (b) the information specified in the rules as being the information considered by the organisation or branch (as the case may be) to be an appropriate disclosure in relation to the officer's relevant remuneration.

*Information in relation to relevant non-cash benefits*

- (7) For the purposes of subparagraph (4)(b)(ii) or (5)(b)(ii), the rules of an organisation or branch must require the disclosure of at least one of the following in relation to the relevant non-cash benefits for a disclosure period of each of the officers to whom the subparagraph applies:
  - (a) the value of the officer's non-cash benefits;
  - (b) the form of the officer's non-cash benefits;
  - (c) the information specified in the rules as being the information considered by the organisation or branch (as the case may be) to be an appropriate disclosure in relation to the officer's relevant non-cash benefits.

*Frequency and manner of disclosure*

- (8) Rules made under subsection (4) or (5) must require the disclosures to be made:
  - (a) in relation to:
    - (i) each financial year; or
    - (ii) each shorter period specified in the rules; and

- (b) within 6 months after the end of the financial year or shorter period, or within such longer period as the General Manager allows; and
- (c) in the manner specified in the rules.

*Relevant remuneration*

- (9) For the purposes of this section, the **relevant remuneration** of an officer of an organisation or a branch of an organisation for a disclosure period is the sum of the following:
  - (a) any remuneration disclosed to the organisation or the branch (as the case may be) by the officer, under rules made under subsection (1) or (2), during the disclosure period;
  - (b) any remuneration paid, during the disclosure period, to the officer by the organisation or the branch (as the case may be).

*Relevant non-cash benefits*

- (10) For the purposes of this section, the **relevant non-cash benefits** of an officer of an organisation or branch of an organisation for a disclosure period are the non-cash benefits provided to the officer, at any time during the disclosure period, in connection with the performance of the officer's duties as an officer, by the organisation or branch (as the case may be) or by a related party of the organisation or branch (as the case may be).

**148B Rules to require disclosure of material personal interests of officers and relatives**

*Disclosure by officers*

- (1) The rules of an organisation must require the disclosure, by each officer of the organisation, to the organisation of any material personal interests in a matter that relates to the affairs of the organisation that:
  - (a) the officer has or acquires; or
  - (b) a relative of the officer has or acquires.
- (2) The rules of a branch of an organisation must require the disclosure, by each officer of the branch, to the branch of any material personal interests in a matter that relates to the affairs of the branch that:

- (a) the officer has or acquires; or
  - (b) a relative of the officer has or acquires.
- (3) Rules made under subsection (1) or (2) must:
  - (a) require that such disclosure is made as soon as practicable after the interest is acquired; and
  - (b) provide for the manner of such disclosure.

*Disclosure by organisation or branch*

- (4) The rules of an organisation must require the disclosure, to the members of the organisation and its branches, of any interests disclosed to the organisation, under rules made under subsection (1), during the disclosure period.
- (5) The rules of a branch of an organisation must require the disclosure, to the members of the branch, of any interests disclosed to the branch, under rules made under subsection (2), during the disclosure period.

*Frequency and manner of disclosure*

- (6) Rules made under subsection (4) or (5) must require the disclosures to be made:
  - (a) in relation to:
    - (i) each financial year; or
    - (ii) each shorter period specified in the rules; and
  - (b) within 6 months after the end of the financial year or shorter period, or within such longer period as the General Manager allows; and
  - (c) in the manner specified in the rules.

**148C Rules to require disclosure of payments made by an organisation or a branch**

- (1) The rules of an organisation must require the disclosure, to the members of the organisation and its branches, of either or both of the following:
  - (a) each payment made by the organisation, during the disclosure period:
    - (i) to a related party of the organisation or of a branch of the organisation; or

- (ii) to a declared person or body of the organisation;
  - (b) in relation to:
    - (i) each related party of the organisation or a branch of the organisation; and
    - (ii) each declared person or body of the organisation; to which a payment was made by the organisation during the disclosure period—the total of the payments made by the organisation during the disclosure period to that related party or that declared person or body.
  - (2) The rules of a branch of an organisation must require the disclosure, to the members of the branch, of either or both of the following:
    - (a) each payment made by the branch, during the disclosure period:
      - (i) to a related party of the branch; or
      - (ii) to a declared person or body of the branch;
    - (b) in relation to:
      - (i) each related party of the branch; and
      - (ii) each declared person or body of the branch; to which a payment was made by the branch during the disclosure period—the total of the payments made by the branch during the disclosure period to that related party or that declared person or body.
  - (3) Subsections (1) and (2) do not apply to a payment made to a related party if the payment consists of amounts deducted by the organisation or the branch (as the case may be) from remuneration payable to one or more officers or employees of the organisation or the branch (as the case may be).
  - (4) Rules made under subsection (1) or (2) must require the disclosures to be made:
    - (a) in relation to:
      - (i) each financial year; or
      - (ii) each shorter period specified in the rules; and
    - (b) within 6 months after the end of the financial year or shorter period, or within such longer period as the General Manager allows; and
    - (c) in the manner specified in the rules.
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- (5) For the purposes of this section, a person or body is a ***declared person or body*** of an organisation or a branch of an organisation if:
- (a) an officer of the organisation or the branch (as the case may be) has disclosed a material personal interest under rules made under subsection 148B(1) or (2); and
  - (b) the interest relates to, or is in, the person or body; and
  - (c) the officer has not notified the organisation or the branch (as the case may be) that the officer no longer has the interest.

#### **148D Section 148C—exemption for rules**

- (1) If an organisation:
- (a) has a rule that complies with section 148C; but
  - (b) considers that special circumstances exist in relation to the organisation that mean that the rule is too onerous;
- the organisation may lodge with FWA an application for an exemption from section 148C.
- (2) The application must be accompanied by:
- (a) a statement of the special circumstances that exist in relation to the organisation; and
  - (b) particulars of proposed alterations of the rules of the organisation to provide for disclosures, in relation to payments made by the organisation, that are appropriate for the organisation's special circumstances and provide appropriate transparency; and
  - (c) evidence of the organisation's past and current high standards, of financial accountability and control, that are appropriate for the organisation's special circumstances and provide appropriate transparency.
- (3) If the General Manager is satisfied, on application by an organisation under subsection (1):
- (a) that special circumstances exist in relation to the organisation; and
  - (b) that, taking into account the evidence provided in accordance with paragraph (2)(c), the proposed alterations of the rules of the organisation provide for disclosures, in relation to payments made by the organisation, that are appropriate for the organisation's special circumstances and provide appropriate transparency; and

- (c) that the proposed alterations of the rules:
    - (i) comply with and are not contrary to this Act (other than section 148C); and
    - (ii) are not otherwise contrary to law; and
    - (iii) have been decided on under the rules of the organisation;the General Manager may grant to the organisation an exemption from section 148C.
  - (4) Proposed alterations of the rules of an organisation referred to in subsection (2) take effect if and when the General Manager grants to the organisation an exemption from section 148C.
  - (5) If the General Manager grants to the organisation an exemption from section 148C, the rule of the organisation that takes effect in accordance with subsection (4) is, for the purposes of this Act other than this section, taken to be a rule made under section 148C.
  - (6) An exemption under subsection (3) remains in force until the earlier of:
    - (a) the day the exemption is revoked under subsection (7); and
    - (b) the day 5 years after the day the exemption was granted.
  - (7) The General Manager may revoke an exemption granted to an organisation under subsection (3):
    - (a) on application by the organisation, if the General Manager is satisfied that the rules of the organisation comply with section 148C; or
    - (b) if the General Manager is no longer satisfied of a matter referred to in paragraph (3)(a), (b) or (c);and the General Manager has given the organisation an opportunity, as prescribed, to show cause why the exemption should not be revoked.
  - (8) If the General Manager revokes an exemption granted to an organisation on the ground specified in paragraph (7)(b), the General Manager may, by instrument, after giving the organisation an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the organisation as are, in the General Manager's opinion, necessary to bring them into conformity with section 148C.
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- (9) An alteration of the rules of an organisation determined under subsection (8) takes effect on the date of the instrument.
- (10) Subsection 604(1) of the Fair Work Act does not apply in relation to a decision of the General Manager under subsection (3).

Note: Subsection 604(1) of the Fair Work Act provides for appeals from certain decisions of the General Manager.
- (11) This section applies in relation to a branch of an organisation as if references to an organisation were references to a branch of an organisation.

#### **148E Disclosure period**

The *disclosure period* for a disclosure required under rules made under this Division is:

- (a) if the rules require the disclosure to be made in relation to a financial year—the financial year; or
- (b) if the rules require the disclosure to be made in relation to a shorter period specified in the rules—the shorter period.

#### **148F Model rules relating to disclosure**

- (1) The Minister may, by notice published in the *Gazette*, issue guidelines containing one or more sets of model rules dealing with the matters referred to in sections 148A, 148B and 148C. An organisation or a branch of an organisation may adopt model rules in whole or in part, and with or without modification.
- (2) A notice under subsection (1) is not a legislative instrument.

#### **58 Transitional—disclosure period**

- (1) This item applies to a disclosure if:
  - (a) the disclosure is by either of the following:
    - (i) an organisation that is, immediately before the commencement of this item, registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*;
    - (ii) a branch of such an organisation; and

- (b) the disclosure is the first disclosure made under a particular rule made under Division 3A of Part 2 of Chapter 5 of the new Act.
- (2) The **disclosure period** for the disclosure is taken to be the period starting on the commencement of this item and ending at the end of:
  - (a) if the particular rule requires the disclosure to be made in relation to a financial year—the financial year in which this item commences; or
  - (b) if the particular rule requires the disclosure to be made in relation to a shorter period specified in the rules—the first of those shorter periods.
- (3) In this item:  
*new Act* means the *Fair Work (Registered Organisations) Act 2009* as in force immediately after the commencement of this item.

## **59 At the end of Subdivision BB of Division 4 of Part 2 of Chapter 5**

Add:

### **154D Rules to require officers to undertake approved training**

- (1) The rules of an organisation or a branch of an organisation must require each officer of the organisation or the branch (as the case may be) whose duties include duties (***financial duties***) that relate to the financial management of the organisation or the branch (as the case may be) to undertake training:
  - (a) approved by the General Manager under section 154C; and
  - (b) that covers each of the officer's financial duties.
- (2) The rules must require the officer to complete the training within 6 months after the person begins to hold the office.

## **60 Transitional—approved training**

- (1) This item applies to a person if, immediately before the commencement of this item, the person holds an office in an organisation or a branch of an organisation.
  - (2) Rules made under subsection 154D(2) of the *Fair Work (Registered Organisations) Act 2009*, as inserted by this Schedule, apply to the
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person as if the requirement to complete the training within 6 months after the person begins to hold the office were instead a requirement to complete the training within 6 months after the commencement of this item.

**61 Paragraph 159(4)(a)**

After “144(1)”, insert “or section 148D”.

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*[Minister’s second reading speech made in—  
House of Representatives on 31 May 2012  
Senate on 25 June 2012]*

(113/12)

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