



# **Fair Work (Registered Organisations) Amendment Act 2016**

**No. 79, 2016**

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

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



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

[Assented to 24 November 2016]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Fair Work (Registered Organisations) Amendment Act 2016*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 November 2016
2. Schedules 1 and 2	A day or days to be fixed by Proclamation. However, if any of the provisions 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.	Schedule 1: 1 May 2017 (F2017N00032) Schedule 2: 2 May 2017 (F2017N00032)

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—The Registered Organisations Commissioner**

### **Part 1—Amendments**

#### ***Fair Work Act 2009***

##### **1 Subsection 576(2) (note)**

Omit “additional functions”, substitute “an additional function”.

##### **2 Paragraph 604(1)(b)**

Repeal the paragraph, substitute:

(b) made under the Registered Organisations Act by:

- (i) the General Manager (including a delegate of the General Manager); or
- (ii) the Registered Organisations Commissioner (including a delegate of the Commissioner);

##### **3 Subsection 607(1)**

Omit “or the General Manager”, substitute “, the General Manager or the Registered Organisations Commissioner”.

##### **4 Subparagraph 613(2)(a)(ii)**

Omit “and”, substitute “or”.

##### **5 At the end of paragraph 613(2)(a)**

Add:

- (iii) a decision of the Registered Organisations Commissioner (including a delegate of the Commissioner) under the Registered Organisations Act; and

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

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

Insert:

**Commission** means the Registered Organisations Commission established by section 329DA.

**Commissioner** means the Registered Organisations Commissioner holding office under Part 3A of Chapter 11.

## **7 Section 6**

Insert:

**directions contravention** means a contravention of one of the following:

- (a) subsection 297(2) or (3);
- (b) subsection 298(2) or (3);
- (c) subsection 299(2) or (3);
- (d) subsection 300(2) or (3);
- (e) subsection 301(2) or (3);
- (f) subsection 302(2) or (3);
- (g) subsection 303(2).

## **8 Section 6 (definition of *FWA Member*)**

Repeal the definition.

## **9 Section 13 (heading)**

Repeal the heading, substitute:

## **13 Additional function of the FWC**

### **10 Subsection 13(1)**

Omit all the words after “FWC”, substitute “include keeping a register of organisations”.

### **11 Subsection 26(1)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

### **12 Subsection 28(1A)**

Omit “General Manager”, substitute “Commissioner”.

### **13 Subsection 28(1A) (note)**

Omit “General Manager”, substitute “Commissioner”.

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**14 Section 31**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**15 Subsection 38(4)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**16 Paragraph 73(3)(a)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**17 Subsection 77(2)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**18 Subsection 95(3A)**

After “request the General Manager”, insert “or the Commissioner”.

**19 Paragraph 95(3A)(a)**

After “General Manager”, insert “or the Commissioner, as the case requires,”.

**20 Subsections 95(3B) and (3C)**

After “General Manager”, insert “or the Commissioner”.

**21 Paragraph 110(a)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**22 Subsection 114(2)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**23 Subsection 151(3)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**24 Paragraph 151(10)(b)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**25 Subsections 152(4) and 154(4)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**26 Paragraph 160(a)**

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

**27 Subsection 183(1)**

Omit “FWC”, substitute “Commissioner”.

**28 Subsection 183(4)**

Omit “General Manager”, substitute “Commissioner”.

**29 Subsection 184(2)**

Omit “General Manager”, substitute “Commissioner”.

**30 Section 186 (heading)**

Repeal the heading, substitute:

**186 Commissioner may permit organisation or branch to conduct its elections for office**

**31 Section 186**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**32 Subsection 187(3)**

Omit “FWC”, substitute “Commissioner”.

**33 Section 189 (heading)**

Repeal the heading, substitute:

**189 Commissioner to arrange for conduct of elections**

**34 Subsection 189(1)**

Omit “FWC”, substitute “Commissioner”.

**35 Subsection 189(2)**

Omit “General Manager”, substitute “Commissioner”.

**36 Paragraph 189(3)(a)**

Omit “FWC”, substitute “Commissioner”.

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**37 Paragraphs 189(3)(a) and (b)**

Omit “General Manager”, substitute “Commissioner”.

**38 Subsection 189(3)**

Omit “General Manager must”, substitute “Commissioner must”.

**39 Paragraph 192(2)(b)**

Omit “FWC”, substitute “Commissioner”.

**40 Paragraph 197(1)(a)**

Omit “General Manager”, substitute “Commissioner”.

**41 Subparagraph 198(6)(b)(i)**

Omit “FWC”, substitute “Commissioner”.

**42 Section 202 (heading)**

Repeal the heading, substitute:

**202 Federal Court may authorise Commissioner to take certain action**

**43 Subsections 202(1) and (2)**

Omit “General Manager”, substitute “Commissioner”.

**44 Paragraph 202(5)(b)**

Omit “General Manager”, substitute “Commissioner”.

**45 Subsection 203(1)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**46 Subsection 203(1)**

Omit “of the FWC”, substitute “assisting the Commissioner”.

**47 Subsection 203(1)**

Omit “343A”, substitute “343B”.

**48 Paragraph 203(6)(b)**

Omit “of the FWC”, substitute “assisting the Commissioner”.

**49 Paragraph 203(6)(b)**

Omit “General Manager”, substitute “Commissioner”.

**50 Paragraph 203(6)(b)**

Omit “343A”, substitute “343B”.

**51 Paragraph 203(6)(c)**

Omit “General Manager”, substitute “Commissioner”.

**52 Paragraph 206(4)(c)**

Omit “General Manager”, substitute “Commissioner”.

**53 Section 207 (heading)**

Repeal the heading, substitute:

**207 Commissioner to make arrangements for conduct of elections  
etc.**

**54 Section 207**

Omit “General Manager”, substitute “Commissioner”.

**55 Subsection 215(5)**

Omit “General Manager”, substitute “Commissioner”.

**56 Section 229**

Omit “General Manager” (wherever occurring), substitute  
“Commissioner”.

**57 Section 233 (heading)**

Repeal the heading, substitute:

**233 Obligation to lodge information with the Commissioner**

**58 Subsections 233(1) and (2)**

Omit “FWC”, substitute “Commissioner”.

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**59 Subsections 234(3) and (4)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**60 Section 235 (heading)**

Repeal the heading, substitute:

**235 Commissioner may authorise access to certain records**

**61 Subsection 235(1)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**62 Section 236 (heading)**

Repeal the heading, substitute:

**236 Commissioner may direct organisation to deliver copy of records**

**63 Section 236**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**64 Subsection 237(1)**

Omit “General Manager”, substitute “Commissioner”.

**65 Subsections 237(1), (2) and (4)**

Omit “FWC”, substitute “Commissioner”.

**66 Subsections 241(1) and (2)**

Omit “General Manager”, substitute “Commissioner”.

**67 At the end of section 246**

Add:

- (3) In satisfying himself or herself as mentioned in paragraph (2)(a), the General Manager must consult with the Commissioner.

**68 After subsection 247(1)**

Insert:

- (1A) In satisfying himself or herself as mentioned in paragraphs (1)(a) and (b), the General Manager must consult with the Commissioner.

**69 After subsection 249(5)**

Insert:

- (5A) In satisfying himself or herself as mentioned in paragraph (5)(a), the General Manager must consult with the Commissioner.

**70 After subsection 249(6)**

Insert:

- (6A) In satisfying himself or herself as mentioned in paragraph (6)(a), the General Manager must consult with the Commissioner.

**71 Subsections 255(1) and (4) and 257(11)**

Omit “General Manager”, substitute “Commissioner”.

**72 Subsection 261(2)**

Omit “FWC”, substitute “Commissioner”.

**73 Subsections 265(5) and 266(1)**

Omit “General Manager”, substitute “Commissioner”.

**74 Section 268 (heading)**

Repeal the heading, substitute:

**268 Reports etc. to be lodged with the Commissioner**

**75 Section 268**

Omit “General Manager”, substitute “Commissioner”.

**76 Section 268**

Omit “FWC”, substitute “Commissioner”.

**77 Paragraph 269(2)(a)**

Omit “General Manager”, substitute “Commissioner”.

**78 Paragraph 269(2)(c)**

Omit “FWC”, substitute “Commissioner”.

**79 Subsection 270(1)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**80 Paragraph 270(3)(c)**

Omit “FWC” (wherever occurring), substitute “Commissioner”.

**81 Subsection 270(7)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**82 Section 271**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**83 Section 272 (heading)**

Repeal the heading, substitute:

**272 Information to be provided to members or Commissioner**

**84 Subsections 272(1) and (4) and 278(2)**

Omit “General Manager”, substitute “Commissioner”.

**85 Subsections 310(1) and (2)**

Repeal the subsections, substitute:

*Application other than for order relating to directions  
contravention*

- (1) The following may apply for an order under this Part, other than an order relating to a directions contravention:
- (a) the Commissioner, or a person authorised in writing by the Commissioner to make the application;

- (b) the General Manager, or a person authorised in writing by the General Manager to make the application.

Note: For the meaning of *directions contravention*, see section 6.

*Application for order relating to directions contravention*

- (2) The Minister, or a person authorised in writing by the Minister to make the application, may apply for an order under this Part relating to a directions contravention.

**86 Section 317**

After:

Part 3 provides that if a person is a party to certain kinds of proceedings under this Act, the Commonwealth may, in some circumstances, give the person financial assistance. Division 2 of Part 3 contains a rule about the ordering of costs by a court.

insert:

Part 3A establishes the Registered Organisations Commission and Registered Organisations Commissioner, provides for the terms and conditions of appointment of the Commissioner and makes provision for staff to assist the Commissioner. The Registered Organisations Commission Special Account is also established by the Part.

**87 Section 317**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**88 After Part 3 of Chapter 11**

Insert:



## **Part 3A—Registered Organisations Commissioner and Registered Organisations Commission**

### **Division 1—Establishment, functions and powers of Commissioner**

#### **329AA Establishment**

There is to be a Registered Organisations Commissioner.

#### **329AB Functions of the Commissioner**

The Commissioner has the following functions:

- (a) to promote:
  - (i) efficient management of organisations and high standards of accountability of organisations and their office holders to their members; and
  - (ii) compliance with financial reporting and accountability requirements of this Act;  
including by providing education, assistance and advice to organisations and their members;
- (b) to monitor acts and practices to ensure they comply with the provisions of this Act providing for the democratic functioning and control of organisations;
- (c) such other functions as are conferred on the Commissioner by this Act or by another Act;
- (d) to do anything incidental to or conducive to the performance of any of the above functions.

#### **329AC Powers of Commissioner**

The Commissioner has the power to do all things necessary or convenient to be done for the purposes of performing his or her functions.

Note: The expenditure of relevant money (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) must comply with the requirements in that Act.

## **Division 2—Terms and conditions of appointment of Commissioner**

### **329BA Appointment**

- (1) The Commissioner is to be appointed by the Minister by written instrument.
- (2) Before the Minister appoints a person as the Commissioner, the Minister must be satisfied that the person:
  - (a) has suitable qualifications or experience; and
  - (b) is of good character.
- (3) The Commissioner is to be appointed on a full-time basis.

### **329BB Term of appointment**

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

### **329BC Acting Commissioner**

The Minister may appoint an individual to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

### **329BD Remuneration**

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed.

- (2) The Commissioner is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **329BE Leave of absence**

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **329BF Outside employment**

The Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's approval.

### **329BG Disclosure of interests**

- (1) A disclosure by the Commissioner under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the Commissioner is taken not to have complied with section 29 of that Act if the Commissioner does not comply with subsection (1) of this section.

### **329BH Other terms and conditions**

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **329BI Resignation**

- (1) The Commissioner may resign his or her appointment by giving the Minister a signed notice of resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **329BJ Termination of appointment**

- (1) The Minister may terminate the appointment of the Commissioner:
  - (a) for misbehaviour; or
  - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Commissioner if:
  - (a) the Commissioner:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Commissioner engages in paid employment contrary to section 329BF; or
  - (d) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or with rules made for the purposes of that section.

## **Division 3—Staff and consultants**

### **329CA Staff**

- (1) The staff assisting the Commissioner are to be persons engaged under the *Public Service Act 1999* and made available for the
-

purpose by the Fair Work Ombudsman (within the meaning of the Fair Work Act).

- (2) When performing services for the Commissioner, the persons:
  - (a) are subject to the directions of the Commissioner; and
  - (b) are not subject to the directions of the Fair Work Ombudsman (within the meaning of the Fair Work Act).

### **329CB Other persons assisting the Commissioner**

The Commissioner may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions.

### **329CC Consultants**

- (1) The Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Commissioner.
- (2) The consultants are to be engaged on terms and conditions that the Commissioner determines in writing.

## **Division 4—Establishment and function of the Registered Organisations Commission**

### **329DA Establishment**

The Registered Organisations Commission is established by this section.

Note: The Commission does not have a legal identity separate from the Commonwealth.

### **329DB Constitution of the Commission**

The Commission consists of:

- (a) the Commissioner; and
- (b) any staff assisting the Commissioner as mentioned in subsection 329CA(1).

### **329DC Function of the Commission**

The Commission's function is to assist the Commissioner in the performance of the Commissioner's functions.

### **329DD Commission has privileges and immunities of the Crown**

The Commission has the privileges and immunities of the Crown.

## **Division 5—Registered Organisations Commission Special Account**

### **329EA Registered Organisations Commission Special Account**

- (1) The Registered Organisations Commission Special Account (the *Account*) is established by this section.
- (2) The Account is a special account for the purposes of the *Public Governance, Performance and Accountability Act 2013*.

### **329EB Credits to the Account**

There may be credited to the Account amounts equal to the following:

- (a) amounts received by the Commonwealth in connection with the performance of the Commissioner's functions under this Act;
- (b) interest received by the Commonwealth from the investment of amounts debited from the Account;
- (c) amounts received by the Commonwealth in relation to property paid for with amounts debited from the Account;
- (d) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a special account if any of the purposes of the special account is a purpose that is covered by an item in the Appropriation Act.

### **329EC Purposes of the Account**

The purposes of the Account are as follows:

- (a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Commissioner's functions;
- (b) paying any remuneration and allowances payable to any person under this Act (including staff mentioned in section 329CA);
- (c) meeting the expenses of administering the Account.

Note: See section 80 of the *Public Governance, Performance and Accountability Act 2013* (which deals with special accounts).

## **Division 6—Reporting requirements**

### **329FA Directions from the Minister**

- (1) The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) The direction must be of a general nature only.
- (3) The Commissioner must comply with the direction.

### **329FB Minister may require reports**

- (1) The Minister may, in writing, direct the Commissioner to give the Minister specified reports relating to the Commissioner's functions.
- (2) The Commissioner must comply with the direction.
- (3) The direction, or the report (if made in writing), is not a legislative instrument.

### **329FC Annual report**

The annual report prepared by the Fair Work Ombudsman and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include the following in relation to the period:

- (a) details of the number and types of investigations conducted by the Commissioner under Part 4 of Chapter 11 of this Act;
- (b) details of:
  - (i) when each investigation was started; and
  - (ii) if the investigation has been completed—when it was completed; and
  - (iii) if the investigation has not been completed—when it is expected to be completed;
- (c) details of any orders applied for under paragraph 310(1)(a) of this Act;
- (d) details of the types of education activities undertaken by the Commissioner and whether the education activities were provided to:
  - (i) registered employer organisations; or
  - (ii) registered employee organisations; or
  - (iii) members of registered employer organisations; or
  - (iv) members of registered employee organisations;
- (e) any other matter prescribed by the regulations.

### **89 Section 330 (heading)**

Repeal the heading, substitute:

### **330 Commissioner may make inquiries**

### **90 Subsections 330(1) and (2)**

Omit “General Manager”, substitute “Commissioner”.

### **91 Section 331 (heading)**

Repeal the heading, substitute:



**331 Commissioner may conduct investigations**

**92 Section 331**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**93 Subsection 332(1)**

Omit “General Manager must”, substitute “Commissioner must”.

**94 Paragraph 332(1)(a)**

Omit “FWC”, substitute “Commissioner”.

**95 Paragraph 332(1)(b)**

Omit “General Manager”, substitute “Commissioner”.

**96 Subsections 332(2) and (3)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**97 Subsection 333(1)**

Omit “FWC”, substitute “Commissioner”.

**98 Subsection 333(1)**

Omit “General Manager”, substitute “Commissioner”.

**99 Subsections 333(2) and (3)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**100 Sections 334 to 335A**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**101 Section 335B**

Omit “General Manager”, substitute “Commissioner”.

**102 Subsection 335C(1)**

Omit “General Manager”, substitute “Commissioner”.

**103 Subsection 335C(1)**

Omit “of the FWC”, substitute “assisting the Commissioner”.

**104 Subsection 335C(2)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**105 Subsection 336(1) (heading)**

Repeal the heading, substitute:

*Commissioner must notify reporting unit*

**106 Subsection 336(1)**

Omit “General Manager is satisfied”, substitute “Commissioner is satisfied”.

**107 Subsection 336(1)**

Omit “the reporting unit concerned”, substitute “a reporting unit”.

**108 Subsection 336(1)**

Omit “General Manager must”, substitute “Commissioner must”.

**109 Subsection 336(1A) (heading)**

Repeal the heading, substitute:

*Commissioner must make inquiries*

**110 Subsection 336(1A)**

Omit “General Manager”, substitute “Commissioner”.

**111 Subsection 336(2) (heading)**

Repeal the heading, substitute:

*Commissioner may take other action*

**112 Subsection 336(2)**

Omit “General Manager”, substitute “Commissioner”.

**113 Subsections 336(3) and (5)**

Omit “General Manager”, substitute “Commissioner”.

**114 Section 337 (heading)**

Repeal the heading, substitute:

**337 Offences in relation to investigation by Commissioner**

**115 Subsection 337(1)**

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

**116 Before subparagraph 337A(b)(i)**

Insert:

- (ia) the Commissioner or a member of the staff assisting the Commissioner;

**117 Paragraph 337K(3)(a)**

After “subparagraph (1)(b)(ii)”, insert “and to the Commissioner”.

**118 Paragraphs 337K(5)(a) and (b)**

Omit “FWA Member”, substitute “FWC Member”.

**119 Paragraphs 343A(2)(c) to (g)**

Repeal the paragraphs.

**120 Paragraphs 343A(2)(i) to (j)**

Repeal the paragraphs.

**121 Paragraphs 343A(3)(d) to (g)**

Repeal the paragraphs.

**122 Paragraph 343A(3)(h)**

Omit “a provision of Part 4 of that Chapter or”.

**123 Subsection 343A(3A)**

Repeal the subsection.

## **124 After section 343A**

Insert:

### **343B Delegation by Commissioner**

- (1) The Commissioner may, in writing, delegate to a member of the staff assisting the Commissioner all or any of the Commissioner's functions or powers under this Act.
- (2) Despite subsection (1), the Commissioner's functions or powers under the following provisions cannot be delegated:
  - (a) subsection 28(1A);
  - (b) subsection 95(3A), (3B) or (3C);
  - (c) subsection 183(4);
  - (d) section 197;
  - (e) any provision of Part 3 or 4 of Chapter 7 (other than section 202);
  - (f) any provision of Division 1, 2, 3 or 4 of Part 3 of Chapter 8;
  - (g) subsection 278(2);
  - (h) section 310;
  - (j) section 334;
  - (k) section 335 or 335A;
  - (ka) subsection 335C(2);
  - (m) subsection 336(1), (2), (3) or (5).
- (3) Despite subsection (1), the Commissioner's functions or powers under section 330, 331, 332 or 333 can only be delegated to:
  - (a) a member of the staff assisting the Commissioner; or
  - (b) any other person or body the Commissioner 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.

(5) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Commissioner.

**125 Paragraph 347(1)(c)**

Omit “FWC”, substitute “Commissioner”.

**126 Section 348**

After “General Manager”, insert “or the Commissioner”.

**127 Section 349**

Omit “FWC”, substitute “Commissioner”.

**128 Section 349**

Omit “General Manager”, substitute “Commissioner”.

## Part 2—Transitional provisions

### 129 Definitions

In this Part:

*commencement time* means the time when this Schedule commences.

*Commissioner* has the same meaning as in the Act.

*FWC* has the same meaning as in the Act.

*General Manager* has the same meaning as in the Act.

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

### 130 Commissioner to complete certain processes

- (1) This item applies if:
- (a) a process begun under the Act is incomplete at the commencement time; and
  - (b) because of the amendments made by this Schedule, a function or power that the General Manager or the FWC was required, or able, to perform or exercise in relation to the process has become a function or power of the Commissioner.
- (2) For the purposes of completing the process:
- (a) the Commissioner must or may, as the case requires, perform the function or exercise the power; and
  - (b) things done by or in relation to the General Manager or the FWC before the commencement time have effect as if they were done by or in relation to the Commissioner.

### 131 Permission to keep records at premises

A permission given by the General Manager under section 234 (storage of records) of the Act that is in force immediately before the commencement time has effect, after that time, as if it had been given by the Commissioner under that section.

### 132 Certain references to include documents dealt with before the commencement time

After the commencement time:

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- (a) the reference in subsection 236(5) of the Act to a copy of a document received by the Commissioner includes a reference to a copy of a document received by the General Manager under section 236 of the Act before the commencement time; and
- (b) the reference in subsection 237(4) of the Act to a statement lodged with the Commissioner under subsection (1) includes a reference to a statement lodged with the FWC under subsection 237(1) of the Act before the commencement time; and
- (c) the reference in paragraph 347(1)(c) of the Act to a copy of a list lodged with the Commissioner under subsection 233(1) includes a reference to a copy of a list lodged with the FWC under that subsection before the commencement time; and
- (d) the reference in section 348 of the Act to a certificate of the Commissioner includes a reference to a certificate of the General Manager covered by that section before the commencement time; and
- (e) the reference in section 349 of the Act to a list of the officers of an organisation or a branch of an organisation lodged with the Commissioner on behalf of the organisation or a copy of any such list certified by the Commissioner includes a reference to such a list lodged with the FWC on behalf of the organisation or a copy of such a list certified by the General Manager before the commencement time.

### **133 Proceedings in relation to civil penalty provisions**

- (1) This item applies if an application made by the General Manager under Part 2 of Chapter 10 of the Act has not been finally determined before the commencement time.
- (2) If the General Manager and the Commissioner agree, by signed writing, that the Commissioner is substituted for the General Manager as a party to any proceeding arising from the application:
  - (a) the agreement has effect accordingly; and
  - (b) the rights and obligations of the General Manager in relation to such a proceeding become rights and obligations of the Commissioner.

### **134 Other proceedings**

- (1) This item applies if:
- (a) an application made by the General Manager under the Act, other than an application under Part 2 of Chapter 10 of the Act, has not been finally determined before the commencement time; and
  - (b) because of the amendments made by this Schedule, the power to make applications of that kind has become a power of the Commissioner.
- (2) The Commissioner is substituted for the General Manager as a party to any proceeding arising from the application, and the rights and obligations of the General Manager in relation to such a proceeding become rights and obligations of the Commissioner.

### **135 Information sharing**

The Commissioner may, for the purposes of performing or exercising his or her functions or powers under the Act, require the General Manager to disclose to the Commissioner information acquired by the General Manager or a member of the staff of the FWC in the performance or exercise of functions or powers under the Act before the commencement time.

### **137 Minister may make rules about transitional matters**

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by Part 1 of this Schedule.



## **Schedule 2—Increased disclosure requirements, investigation powers and penalties**

### **Part 1—Amendments**

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

##### **1AA Section 6 (definition of *approved auditor*)**

Repeal the definition.

##### **1AB Section 6 (definition of *auditor*)**

Repeal the definition, substitute:

***auditor***, in relation to a reporting unit, means:

- (a) if an individual holds the position of auditor of the reporting unit under section 256—the individual; or
- (b) if a firm holds the position of auditor of the reporting unit under section 256—each person who is, from time to time, a member of the firm and a registered auditor; or
- (c) if a company holds the position of auditor of the reporting unit under section 256—each person who is, from time to time, a director, officer or employee of the company and a registered auditor.

##### **1A Section 6**

Insert:

***authorised official*** means any of the following:

- (a) the Commissioner;
- (b) the General Manager;
- (c) an FWC Member;
- (d) the Director, within the meaning of subsection 4(1) of the *Fair Work (Building Industry) Act 2012*;
- (e) the Fair Work Ombudsman (within the meaning of the Fair Work Act).

*designated publication restriction* has the same meaning as in the *Public Interest Disclosure Act 2013*.

*detriment*, in Part 4A of Chapter 11, has the meaning given by subsection 337BA(2).

*disclosable conduct* means an act or omission that:

- (a) contravenes, or may contravene, a provision of this Act, the Fair Work Act or the *Competition and Consumer Act 2010*; or
- (b) constitutes, or may constitute, an offence against a law of the Commonwealth.

### **1 Section 6 (definition of *disclosure period*)**

Repeal the definition.

### **1B Section 6 (definition of *excluded auditor*)**

Repeal the definition, substitute:

*excluded auditor*, in relation to a reporting unit, means:

- (a) an officer, former officer, employee or former employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (b) a partner, employer or employee of an officer, former officer, employee or former employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (c) a relative of an officer, former officer, employee or former employee of the reporting unit or the organisation of which the reporting unit is a part; or
- (d) a liquidator in respect of property of the reporting unit or the organisation of which the reporting unit is a part; or
- (e) a person who owes more than \$5,000 to the reporting unit or the organisation of which the reporting unit is a part; or
- (f) a person who would not be, or whom a reasonable person would consider would not be, capable of exercising objective and impartial judgement in relation to audits relating to the reporting unit, having regard to all the circumstances.

For the purposes of this definition, *employee* has the same meaning as in Part 3 of Chapter 8.

## 2 Section 6

Insert:

*lawyer* has the meaning given by section 12 of the Fair Work Act.

*officer and related party disclosure statement* has the meaning given by subsection 293J(3).

*plays a significant role* has the meaning given by subsection 256A(4).

## 3 Section 6

Insert:

*proceeding* means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.

*registered auditor* means a person who is registered as an auditor under subsection 255B(2) or (3).

*registered company auditor* means a person registered as an auditor under Part 9.2 of the *Corporations Act 2001*.

## 4 Section 6

Insert:

*serious contravention*, in relation to a contravention of a civil penalty provision by an organisation, a branch of an organisation or a person who is, or was, an officer or employee of an organisation or a branch of an organisation, means a contravention that:

- (a) materially prejudices the interests of the organisation or branch, or the members of the organisation or branch; or
- (b) materially prejudices the ability of the organisation or branch to pay its creditors; or
- (c) is serious.

*takes a reprisal* has the meaning given by section 337BA.

**5 Section 16**

Repeal the section.

**6 Subsection 51(2) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**7 Subsection 52(1) (note)**

Repeal the note.

**8 At the end of subsection 52(1)**

Add:

Civil penalty: 100 penalty units.

**9 Subsection 52(3) (note)**

Repeal the note.

**10 At the end of subsection 52(3)**

Add:

Civil penalty: 100 penalty units.

**11 Subsections 72(1) to (3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**12 At the end of subsection 95(3C)**

Add:

Civil penalty: 100 penalty units.

**13 Subsection 103(4) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**14 Subsection 104(1) (note)**

Repeal the note.

**15 At the end of subsection 104(1)**

Add:

Civil penalty: 100 penalty units.

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**16 Subsection 104(3) (note)**

Repeal the note.

**17 At the end of subsection 104(3)**

Add:

Civil penalty: 100 penalty units.

**18 Subsections 105(1) to (3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**19 After subparagraph 141(1)(b)(ii)**

Insert:

(ia) the keeping of minute books in which are recorded proceedings and resolutions of meetings of committees of management of the organisation and its branches; and

**20 Division 3A of Part 2 of Chapter 5**

Repeal the Division.

**21 Subsection 151(2) (note)**

Repeal the note.

**22 At the end of subsection 151(2)**

Add:

Civil penalty: 60 penalty units.

**23 Subsection 151(11)**

Repeal the subsection, substitute:

(11) If an organisation and a State union agree, in writing, to terminate an agreement entered into under rules made under subsection (1), the organisation must lodge with the FWC a copy of the agreement to terminate.

Civil penalty: 60 penalty units.

(11A) If an organisation and a State union agree, in writing, to terminate an agreement entered into under rules made under subsection (1),

the General Manager must as soon as practicable enter particulars of the termination in the register kept under subsection 13(1).

**24 Subsection 152(3) (note)**

Repeal the note.

**25 At the end of subsection 152(3)**

Add:

Civil penalty: 60 penalty units.

**26 Sections 154C and 154D**

Repeal the sections.

**27 Paragraph 159(4)(a)**

Omit “or section 148D”.

**28 Section 169 (note)**

Repeal the note.

**29 At the end of section 169**

Add:

Civil penalty: 100 penalty units.

**30 Subsection 172(1) (note)**

Repeal the note.

**31 At the end of subsection 172(1)**

Add:

Civil penalty: 60 penalty units.

**32 Section 175 (note)**

Repeal the note.

**33 At the end of section 175**

Add:

Civil penalty: 100 penalty units.

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**34 Section 176 (note)**

Repeal the note.

**35 At the end of section 176**

Add:

Civil penalty: 100 penalty units.

**36 Subsections 185(1) and (2) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**37 Subsection 189(2) (note)**

Repeal the note.

**38 At the end of subsection 189(2)**

Add:

Civil penalty: 60 penalty units.

**39 Section 190 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**40 Subsection 191(2) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**41 Subsection 192(1) (note)**

Repeal the note.

**42 At the end of subsection 192(1)**

Add:

Civil penalty: 100 penalty units.

**43 Subsection 192(3) (note)**

Repeal the note.

**44 At the end of subsection 192(3)**

Add:

Civil penalty: 100 penalty units.

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**45 Subsection 193(2) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**46 Section 194 (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**47 Subsections 195(2) to (6) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**48 Subsection 198(1) (note)**

Repeal the note.

**49 At the end of subsection 198(1)**

Add:

Civil penalty: 100 penalty units.

**50 Subsection 198(4) (note)**

Repeal the note.

**51 At the end of subsection 198(4)**

Add:

Civil penalty: 100 penalty units.

**52 Subsection 198(5) (note)**

Repeal the note.

**53 At the end of subsection 198(5)**

Add:

Civil penalty: 100 penalty units.

**54 Subsection 198(8) (note)**

Repeal the note.

**55 At the end of subsection 198(8)**

Add:

Civil penalty: 100 penalty units.

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**56 Subsections 199(3) and (5) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**57 Subsection 202(5) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**58 Subsection 203(6) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**59 Paragraph 212(b)**

Omit “or subsection 202(5)”, substitute “, subsection 202(5) or section 290A or 337BE”.

**60 Subsection 230(1) (note)**

Repeal the note.

**61 At the end of subsection 230(1)**

Add:

Civil penalty: 60 penalty units.

**62 Subsection 230(2) (note 1)**

Repeal the note.

**63 Subsection 230(2) (note 2)**

Omit “Note 2”, substitute “Note”.

**64 At the end of subsection 230(2) (after note 2)**

Add:

Civil penalty: 60 penalty units.

**65 At the end of subsection 231(1)**

Add:

Civil penalty: 60 penalty units.

**66 Subsection 231(2) (note)**

Repeal the note.

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**67 At the end of subsection 231(2)**

Add:

Civil penalty: 60 penalty units.

**68 Subsection 232(1) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**69 At the end of subsection 233(1)**

Add:

Civil penalty: 60 penalty units.

**70 At the end of subsection 233(2)**

Add:

Civil penalty: 60 penalty units.

**71 Subsection 233(3) (note)**

Repeal the note.

**72 At the end of subsection 233(3)**

Add:

Civil penalty: 100 penalty units.

**73 Subsection 235(2) (note)**

Repeal the note.

**74 At the end of subsection 235(2)**

Add:

Civil penalty: 60 penalty units.

**75 Subsection 236(1) (note)**

Repeal the note.

**76 At the end of subsection 236(1)**

Add:

Civil penalty: 60 penalty units.

**77 Subsection 236(2) (note)**

Repeal the note.

**78 At the end of subsection 236(2)**

Add:

Civil penalty: 60 penalty units.

**79 Subsection 237(1) (note)**

Repeal the note.

**80 At the end of subsection 237(1)**

Add:

Civil penalty: 100 penalty units.

**81 Subsection 237(3) (note)**

Repeal the note.

**82 At the end of subsection 237(3)**

Add:

Civil penalty: 100 penalty units.

**83 Subsection 253(3) (note 1)**

Repeal the note.

**84 Subsection 253(3) (note 2)**

Re-number as Note 1.

**85 Subsection 253(3) (note 3)**

Re-number as Note 2.

**86 At the end of section 253 (after note 3)**

Add:

(4) A reporting unit must not contravene this section.

Civil penalty: 100 penalty units.

**87 Subsection 254(3) (note)**

Repeal the note.

**88 At the end of section 254**

Add:

- (4) A reporting unit must not contravene this section.

Civil penalty: 100 penalty units.

**89 After subsection 255(2)**

Insert:

- (2A) The reporting guidelines for the purposes of section 253 and 270 must require a report that shows the total expenditure incurred by reporting units during the financial year in relation to each of the following:

- (a) remuneration, and other employment-related costs and expenses, in respect of employees;
- (b) advertising;
- (c) operating costs;
- (d) donations to political parties;
- (e) legal costs.

Note: The total expenditure may be shown in diagrammatic form, such as a pie chart.

**89A Before section 256**

Insert:

**Subdivision A—Registration of auditors**

**255A Applications may be made for registration as an auditor**

- (1) A person may apply in writing to the Commissioner for registration as an auditor.
- (2) An application under subsection (1) must:
  - (a) be in a form approved by the Commissioner; and

- (b) if the person is a registered company auditor—include evidence of that status; and
- (c) if the person is not a registered company auditor—contain the information required by the regulations.

### **255B Registration by Commissioner**

- (1) This section applies if a person has made an application under subsection 255A(1) for registration as an auditor.
- (2) If the person is a registered company auditor, the Commissioner must, subject to section 255E, grant the application and register the person as an auditor.
- (3) If the person is not a registered company auditor, the Commissioner must, subject to section 255E, grant the application and register the person as an auditor if the Commissioner is satisfied that:
  - (a) the person meets the requirements of subsection 255C(1) or (2) (educational qualifications, or equivalent qualifications and experience); and
  - (b) the person has either:
    - (i) satisfied all the components of an auditing competency standard approved by the Australian Securities and Investments Commission under section 1280A of the *Corporations Act 2001*; or
    - (ii) had such practical experience in auditing as is prescribed by the regulations for the purposes of this paragraph; and
  - (c) the Commissioner is satisfied that the person is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor.

### **255C Circumstances in which a person meets educational etc. requirements**

- (1) A person meets the requirements of this subsection if the person:
  - (a) holds a degree, diploma or certificate from a university, or other institution in Australia, that is prescribed by regulations made for the purposes of paragraph 1280(2A)(a) of the *Corporations Act 2001*; and

- (b) has, in the course of obtaining that degree, diploma or certificate, passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commissioner to represent a course of study:
    - (i) in accountancy (including auditing) of not less than 3 years duration; and
    - (ii) in commercial law (including company law) of not less than 2 years duration; and
  - (c) has satisfactorily completed a course in auditing prescribed by regulations made for the purposes of paragraph 1280(2A)(c) of the *Corporations Act 2001*.
- (2) A person meets the requirements of this subsection if the person has other qualifications and experience that, in the Commissioner's opinion, are equivalent to the requirements mentioned in subsection (1).

**255D Commissioner must give an opportunity to be heard before refusal and written notice of decision**

- (1) The Commissioner must not refuse to grant an application for registration of a person as an auditor unless the Commissioner has given the person an opportunity to appear at a hearing before the Commissioner and to make submissions and give evidence to the Commissioner in relation to the matter.
- (2) If the Commissioner refuses an application by a person for registration as an auditor, the Commissioner must, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it.

**255E Refusal to grant an application for registration**

- (1) This section applies if a person has made an application for registration as an auditor.
- (2) The Commissioner must refuse to grant the application if:
  - (a) under subsection 215(1), the person is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an organisation; or

- (b) under section 307A, the person is disqualified from holding office in an organisation.
- (3) If the person is not a registered company auditor, the Commissioner must refuse to grant the application if the Commissioner is not satisfied as mentioned in subsection 255B(3) in relation to the person.
- (4) The Commissioner may refuse to grant the application if the person is not resident in Australia.

#### **255F Commissioner must give certificate of registration**

- (1) If the Commissioner grants an application made by a person for registration as an auditor, the Commissioner must give the person a certificate:
  - (a) stating that the person has been registered as an auditor; and
  - (b) specifying the day the application was granted.
- (2) The registration of a person as an auditor:
  - (a) takes effect at the beginning of the day specified in the certificate as the day the application for registration was granted; and
  - (b) remains in force until:
    - (i) the registration is cancelled by the Commissioner; or
    - (ii) the person dies.

#### **255G Cancellation and suspension of registration—general**

- (1) The Commissioner may cancel, or suspend for a specified period, the registration of a person as an auditor if the Commissioner is satisfied that the person:
  - (a) has failed to carry out his or her duties under this Act; or
  - (b) has not performed any audit work, or any significant audit work, during a continuous period of not less than 5 years, and as a result has ceased to have the practical experience necessary for carrying out audits for the purposes of this Act; or
  - (c) is otherwise not a fit and proper person to remain registered as an auditor.

- (2) In determining for the purposes of paragraph (1)(b) whether audit work performed by a person is significant, the Commissioner must have regard to:
  - (a) the nature of the audit; and
  - (b) the extent to which the person was involved in the audit; and
  - (c) the level of responsibility the person assumed in relation to the audit.
- (3) The Commissioner may cancel, or suspend for a specified period, the registration of a person as an auditor if the person requests that his or her registration be cancelled or suspended for that period.
- (4) If the Commissioner cancels, or suspends for a specified period, the registration of a person as an auditor under subsection (1), the Commissioner must notify the Australian Securities and Investments Commission of the cancellation or suspension and the reasons for it.
- (5) The regulations may make further provision for and in relation to the suspension of the registration of a person as an auditor.

**255H Cancellation and suspension of registration—person no longer a registered company auditor**

If a person was registered as an auditor under subsection 255B(2) on the basis that the person was a registered company auditor at the time of registration, the Commissioner may:

- (a) cancel the registration if the person's registration as a registered company auditor is cancelled; or
- (b) suspend the registration for some or all of any period throughout which the person's registration as a registered company auditor is suspended.

**255J Written notice to be given of cancellation or suspension of registration**

- (1) If the Commissioner decides to cancel or suspend the registration of a person as an auditor:
  - (a) the Commissioner must, not later than 14 days after the decision, give the person a written notice setting out the decision and the reasons for it; and



- (b) the decision comes into effect at the end of the day on which that notice is given to the person.
- (2) A failure of the Commissioner to comply with subsection (1) does not affect the validity of the decision.

**255K Registered auditors to advise of material changes in circumstance etc.**

A person who is registered as an auditor under this Subdivision must advise the Commissioner of any change in circumstances that could materially affect the person's registration within 14 days of the change in circumstances.

Civil penalty: 200 penalty units.

**255L Commissioner may request further information**

- (1) The Commissioner may, in writing, request further information from any person for the purposes of making a decision under this Subdivision.
- (2) The Commissioner is not required to make a decision under this Subdivision until any information requested under subsection (1) in relation to the decision has been provided.

**255M Basis of registration**

Registration under this Subdivision is on the basis that:

- (a) the registration may cease or be suspended as provided for by this Subdivision; and
- (b) the registration may cease or be suspended by or under later legislation; and
- (c) no compensation is payable if the registration ceases or is suspended as mentioned in paragraph (a) or (b).

**255N Regulations**

- (1) The regulations may make provision for and in relation to the registration of auditors.

- (2) Without limiting subsection (1), the regulations may make provision for and in relation to the following:
- (a) information relating to the matters to which the Commissioner must have regard in deciding whether to register a person as an auditor;
  - (b) the keeping of a register;
  - (c) fees in respect of applications for registration;
  - (d) matters relating to the suspension and cancellation of registration;
  - (e) the delegation, by a person on whom functions or powers are conferred by regulations made for the purposes of this Subdivision, of any such functions or powers.

### **Subdivision B—Audits**

#### **90 Subsection 256(1) (note)**

Repeal the note.

#### **91 At the end of subsection 256(1)**

Add:

Civil penalty: 200 penalty units.

#### **92 Subsections 256(2) and (3)**

Repeal the subsections, substitute:

- (2) The position of auditor of a reporting unit is to be held by:
- (a) an individual who is a registered auditor; or
  - (b) a firm, at least one of whose members is a registered auditor;  
or
  - (c) a company, at least one of whose directors, officers or employees is a registered auditor.
- (3) An individual must not accept appointment as auditor of a reporting unit unless:
- (a) the individual is a registered auditor; and
  - (b) the individual is not an excluded auditor in relation to the reporting unit.

Civil penalty: 200 penalty units.

**93 Paragraph 256(4)(a)**

Omit “an approved auditor”, substitute “a registered auditor”.

**94 Subsection 256(4) (note)**

Repeal the note.

**95 At the end of subsection 256(4)**

Add:

Civil penalty: 200 penalty units.

**96 Subsection 256(5)**

Repeal the subsection, substitute:

(4A) A company must not accept appointment as auditor of a reporting unit unless:

- (a) at least one director, officer or employee of the company is a registered auditor; and
- (b) no director, officer or employee of the company is an excluded auditor in relation to the reporting unit.

Civil penalty: 200 penalty units.

(5) An individual who holds the position of auditor of a reporting unit must resign the appointment if the individual:

- (a) ceases to be a registered auditor; or
- (b) becomes an excluded auditor in relation to the reporting unit.

Civil penalty: 200 penalty units.

**97 Paragraph 256(6)(a)**

Omit “an approved auditor” (wherever occurring), substitute “a registered auditor”.

**98 Subsection 256(6) (note)**

Repeal the note.

**99 At the end of subsection 256(6)**

Add:

Civil penalty: 200 penalty units.

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**99A After subsection 256(6)**

Insert:

- (6A) A company that holds the position of auditor of a reporting unit must resign the appointment if:
- (a) there is no longer any director, officer or employee of the company who is a registered auditor; or
  - (b) a director, officer or employee of the company becomes an excluded auditor in relation to the reporting unit.

Civil penalty: 200 penalty units.

**99B After section 256**

Insert:

**256A Limited term to play significant role in audit of a reporting unit**

- (1) An individual must not play a significant role in the audit of a reporting unit:
- (a) for more than 5 consecutive financial years; or
  - (b) for more than 5 out of 7 consecutive financial years.

Civil penalty: 200 penalty units.

- (2) Paragraph (1)(b) does not apply to an individual, in relation to a reporting unit and a series of 7 consecutive financial years, if the Commissioner declares in writing that, in all the circumstances, it is not appropriate for that paragraph to apply to the individual in relation to the reporting unit and that series of 7 consecutive financial years.
- (3) A declaration made under subsection (2) is not a legislative instrument.
- (4) An individual *plays a significant role* in the audit of a reporting unit for a financial year if:
- (a) the individual holds the position of auditor of the reporting unit for the financial year; or
  - (b) if a firm or company holds the position of auditor of the reporting unit for the financial year—the individual is a registered auditor who, on behalf of the firm or company:

- (i) participates in the preparation of an audit report in relation to a financial report of the reporting unit for the financial year or any part of the financial year; or
- (ii) participates in the conduct of an audit in relation to the reporting unit for the financial year or any part of the financial year.

**100 Subsection 257(10) (note)**

Repeal the note.

**101 At the end of subsection 257(10)**

Add:

Civil penalty: 200 penalty units.

**102 Subsection 257(11) (note)**

Repeal the note.

**103 At the end of subsection 257(11)**

Add:

Civil penalty: 200 penalty units.

**104 Subsection 258(1) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**105 Section 259 (note)**

Repeal the note.

**106 At the end of section 259**

Add:

Civil penalty: 200 penalty units.

**107 Subsections 260(3) and (4) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**108 Subsection 263(2) (note)**

Repeal the note.

**109 At the end of subsection 263(2)**

Add:

Civil penalty: 200 penalty units.

**110 Subsection 263(3) (note)**

Repeal the note.

**111 At the end of subsection 263(3)**

Add:

Civil penalty: 200 penalty units.

**112 Subsection 263(5) (note)**

Repeal the note.

**113 At the end of subsection 263(5)**

Add:

Civil penalty: 200 penalty units.

**114 Subsection 264(3) (note)**

Repeal the note.

**115 At the end of subsection 264(3)**

Add:

Civil penalty: 200 penalty units.

**116 Subsection 265(1) (note)**

Repeal the note.

**117 At the end of subsection 265(1)**

Add:

Civil penalty: 100 penalty units.

**118 Subsection 265(4) (note)**

Repeal the note.

**119 At the end of subsection 265(4)**

Add:

Civil penalty: 100 penalty units.

**120 Subsection 265(5) (note)**

Repeal the note.

**121 At the end of subsection 265(5)**

Add:

Civil penalty: 100 penalty units.

**122 Subsection 266(1) (note)**

Repeal the note.

**123 At the end of subsection 266(1)**

Add:

Civil penalty: 60 penalty units.

**124 Section 267 (note)**

Repeal the note.

**125 At the end of section 267**

Add:

Civil penalty: 100 penalty units.

**126 Section 268**

After “general meeting”, insert “, or meeting of the committee of management,”.

**127 Paragraph 268(c)**

Omit “a meeting”, insert “a general meeting, or presented to a meeting of the committee of management, as the case requires,”.

**128 Section 268 (note)**

Repeal the note.

**129 At the end of section 268**

Add:

Civil penalty: 100 penalty units.

**130 Subsection 270(4) (note)**

Repeal the note.

**131 At the end of subsection 270(4)**

Add:

Civil penalty: 100 penalty units.

**132 Subsection 270(5) (note)**

Repeal the note.

**133 At the end of subsection 270(5)**

Add:

Civil penalty: 100 penalty units.

**134 Subsection 270(6) (note)**

Repeal the note.

**135 At the end of subsection 270(6)**

Add:

Civil penalty: 100 penalty units.

**136 Subsection 270(7) (note)**

Repeal the note.

**137 At the end of subsection 270(7)**

Add:

Civil penalty: 100 penalty units.

**138 Subsection 272(3) (note)**

Repeal the note.



**139 At the end of subsection 272(3)**

Add:

Civil penalty: 60 penalty units.

**140 Subsection 272(5) (note)**

Repeal the note.

**141 At the end of subsection 272(5)**

Add:

Civil penalty: 60 penalty units.

**142 Subsection 274(1) (note)**

Repeal the note.

**143 At the end of subsection 274(1)**

Add:

Civil penalty: 60 penalty units.

**144 At the end of subsection 276(1)**

Add:

Civil penalty: 60 penalty units.

**145 Subsection 276(2) (note)**

Repeal the note.

**146 At the end of subsection 276(2)**

Add:

Civil penalty: 60 penalty units.

**147 Section 281**

After:

Part 2 sets out the general duties of officers and employees in relation to the financial management of an organisation or a branch of an organisation.

insert:

Part 2A sets out disclosure obligations about remuneration paid to officers and material personal interests of officers.

Part 2A also restricts officers from taking part in making decisions in relation to matters in which they have a material personal interest, requires the preparation of officer and related party disclosure statements and requires officers to undertake approved training in relation to their financial duties.

**148 Subsection 285(1) (note)**

Repeal the note.

**149 At the end of subsection 285(1)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**150 Subsection 286(1) (note)**

Repeal the note.

**151 At the end of subsection 286(1)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**152 Subsection 286(2) (note)**

Repeal the note.

**153 At the end of subsection 286(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**154 Subsection 287(1) (note)**

Repeal the note.

**155 At the end of subsection 287(1)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**156 Subsection 287(2) (note)**

Repeal the note.

**157 At the end of subsection 287(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**158 Subsection 288(1) (note 1)**

Omit "1".

**159 Subsection 288(1) (note 2)**

Repeal the note.

**160 At the end of subsection 288(1) (after note 2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**161 Subsection 288(2) (note)**

Repeal the note.

**162 At the end of subsection 288(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**163 After section 290**

Insert:

**290A Good faith, use of position and use of information—criminal offences**

*Good faith—officers of organisations and branches*

- (1) An officer of an organisation or a branch commits an offence if he or she:
- (a) is reckless; or
  - (b) is intentionally dishonest;
- and fails to exercise his or her powers or discharge his or her duties:
- (c) in good faith in the best interests of the organisation; or
  - (d) for a proper purpose.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

*Use of position—officers and employees of organisations and branches*

- (2) An officer or employee of an organisation or a branch commits an offence if the officer or employee uses his or her position dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the organisation; or
  - (b) reckless as to whether the use may result in himself or herself or someone else directly or indirectly gaining an advantage, or causing detriment to the organisation.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

*Use of information—officers and employees of organisations and branches*

- (3) A person who obtains information because he or she is, or has been, an officer or employee of an organisation or a branch commits an offence if he or she uses the information dishonestly:
- (a) with the intention of directly or indirectly gaining an advantage for himself or herself, or someone else, or causing detriment to the organisation; or
  - (b) reckless as to whether the use may result in himself or herself or someone else directly or indirectly gaining an advantage, or causing detriment to the organisation.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

**164 Section 291 (heading)**

Repeal the heading, substitute:

**291 Interaction of sections 285 to 289 and 290A with other laws etc.**

**165 Section 291**

After “289”, insert “and 290A”.

**166 After Part 2 of Chapter 9**

Insert:

**Part 2A—Disclosure obligations**

**Division 1—Preliminary**

**293A Simplified outline**

This Part sets out disclosure obligations about remuneration paid to officers and material personal interests of disclosing officers (see subsection 293C(1)).

It also restricts disclosing officers from taking part in making decisions in relation to matters in which they have a material personal interest, requires the preparation of officer and related

party disclosure statements and requires officers to undertake approved training in relation to their financial duties.

## **Division 2—Disclosure obligations and restrictions on taking part in making decisions**

### **293B Disclosure of remuneration paid to officers**

#### *Disclosure by officers*

- (1) Each officer of an organisation must, in accordance with section 293BA or 293BB, disclose to the organisation details 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.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (2) Each officer of a branch of an organisation must, in accordance section 293BA or 293BB, disclose to the branch details 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.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

### **293BA Immediate disclosure**

The disclosure is in accordance with this section if it is made in writing to the committee of management of the organisation or branch, as the case may be, as soon as practicable after the remuneration is paid to the officer.

### **293BB Standing disclosure of remuneration**

- (1) The disclosure is in accordance with this section if:
  - (a) remuneration is to be paid to the officer, under a contract or other arrangement, on a regular basis during the financial year; and
  - (b) the officer gives to the members of the committee of management of the organisation or branch, as the case may be, standing notice of the amounts of remuneration that the officer expects to be paid during the financial year; and
  - (c) the requirements set out in subsections (2) to (5) are met.
- (2) The standing notice must be given at any time before, or as soon as practicable after, the first payment is made to the officer.
- (3) If, during the financial year, an amount of remuneration paid to the officer under the contract or arrangement exceeds the amount notified in the standing notice, the officer must, as soon as practicable, notify the committee of management of the organisation or branch, as the case may be, of the excess.
- (4) If, at the end of the financial year, the total amount (the *final total*) of remuneration paid to the officer under the contract or arrangement is more, or less, than the total amount notified under paragraph (2)(b), the officer must, as soon as practicable after the end of the financial year, notify the committee of management of the organisation or branch, as the case may be, of the final total.
- (5) Notice under this section must be given in writing.

**293BC Disclosure of certain remuneration and benefits by organisations and branches**

- (1) An organisation must, for a financial year, disclose to the members of the organisation and its branches details of the following in accordance with subsection (3):
  - (a) the identity of each officer of the organisation who, when all officers of the organisation are ranked by relevant remuneration for the financial year (from highest to lowest), is ranked no lower than fifth;
  - (b) for each of those officers:
    - (i) the actual amount of the officer's relevant remuneration for the financial year; and
    - (ii) the value and form of the officer's relevant non-cash benefits for the financial year.
  
- (2) A branch of an organisation must, for a financial year, disclose to the members of the branch, details of the following in accordance with subsection (3):
  - (a) the identity of each officer of the branch who, when all officers of the branch are ranked by relevant remuneration for the financial year (from highest to lowest), is ranked no lower than fifth;
  - (b) for each of those officers:
    - (i) the actual amount of the officer's relevant remuneration for the financial year; and
    - (ii) the value and form of the officer's relevant non-cash benefits for the financial year.

*Manner of disclosure*

- (3) A disclosure under subsection (1) or (2) must be made as part of the officer and related party disclosure statement required under Division 3.

Note: Failure to prepare an officer and related party disclosure statement is a contravention of a civil penalty provision (see section 293J).



*Relevant remuneration*

- (4) For the purposes of this section, the **relevant remuneration** of an officer of an organisation or a branch of an organisation for a financial year is the sum of the following:
- (a) any remuneration disclosed to the organisation or the branch by the officer under subsection 293B(1) or (2), during the financial year;
  - (b) any remuneration paid, during the financial year, to the officer by the organisation or the branch.

*Relevant non-cash benefits*

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

### **293C Disclosure of material personal interests of officers**

*Disclosure by officers*

- (1) This section applies to each officer (a **disclosing officer**) of an organisation or a branch of an organisation whose duties include duties that relate to the financial management of the organisation or branch.
- (2) A disclosing officer of an organisation must, in accordance with subsection (5), disclose to the committee of management of the organisation details of any material personal interest that the officer has or acquires in a matter that relates to the affairs of the organisation.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (3) A disclosing officer of a branch must, in accordance with subsection (5), disclose to the committee of management of the branch details of any material personal interest that the officer has or acquires in a matter that relates to the affairs of the branch.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (4) A disclosing officer does not need to disclose an interest under subsection (2) or (3) if:
- (a) the interest:
    - (i) arises because the disclosing officer is a member, or a representative of a member, of an organisation or a branch and the interest is held in common with the other members of the organisation or branch; or
    - (ii) arises in relation to the officer's remuneration as an officer of the organisation or branch; or
    - (iii) relates to a contract the organisation or branch is proposing to enter into that is subject to approval by the members of the organisation or branch and will not impose any obligation on the organisation or branch if it is not approved by the members; or
    - (iv) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related party of the organisation or branch that is a body corporate and arises merely because the officer is on the Board of the related party; or
  - (b) the officer has given a standing notice of the nature and extent of the interest under section 293D and the notice is still effective in relation to the interest.
- (5) A disclosure made under subsection (2) or (3) must:
- (a) be made as soon as practicable after the interest is acquired; and
  - (b) provide details of:
    - (i) the nature and extent of the interest; and
    - (ii) the relation of the interest to the affairs of the organisation or branch; and
  - (c) be made:
    - (i) at a meeting of the committee of management (either orally or in writing); or
    - (ii) to the members of the committee of management individually in writing.

The disclosure is made under subparagraph (c)(ii) when it has been given to every member of the committee of management.

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*Committee of management must record details of disclosure in minutes of meeting*

- (6) An organisation or a branch contravenes this subsection if a committee of management of the organisation or branch (as the case may be) fails to record details of a disclosure made under subsection (2) or (3):
- (a) if the disclosure is made at a meeting of the committee of management of the organisation or branch—in the minutes of the meeting of the committee of management at which the disclosure is made; or
  - (b) in any other case—in the minutes of the first meeting of the committee of management after the disclosure is made.

Civil penalty: 100 penalty units.

- (7) An organisation or a branch contravenes this subsection if a committee of management of the organisation or branch (as the case may be) fails, within 28 days of being requested in writing to do so by a member of the organisation or branch, to provide to the member details of disclosures made to the committee of management under subsection (2) or (3).

Civil penalty: 100 penalty units.

**293D Officer may give members of committee of management standing notice about an interest**

*Power to give notice*

- (1) An officer of an organisation who has an interest in a matter may give to the members of the committee of management of the organisation standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the organisation at the time the notice is given.

Note: The standing notice may be given to the members of the committee of management before the interest becomes a material personal interest.

- (2) The standing notice must:
- (a) give details of the nature and extent of the interest; and
  - (b) be given:

- (i) at a meeting of the committee of management (either orally or in writing); or
- (ii) to the members of the committee of management individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every member of the committee of management.

*Standing notice must be tabled at meeting if given to members of the committee of management individually*

- (3) If the standing notice is given to the members of the committee of management individually in writing, it must be tabled at the next meeting of the committee of management after it is given.

*Nature and extent of interest must be recorded in minutes*

- (4) The committee of management must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting of the committee of management at which the standing notice is given or tabled.

*Dates of effect and expiry of standing notice*

- (5) The standing notice:
  - (a) takes effect as soon as it is given; and
  - (b) ceases to have effect if a person who was not a member of the committee of management at the time when the notice was given is appointed as a member of the committee of management.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

*Effect of material increase in nature or extent of interest*

- (6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

*Effect of contravention by officer*

- (7) A contravention of this section by an officer does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.
- (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.

**293E Interaction of section 293C and 293D with other laws**

Sections 293C and 293D have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and
- (b) any provision in an organisation's or branch's rules that restricts an officer or employee from having a material personal interest in a matter involving duties or interests that conflict with their duties or interests as an officer of the organisation or branch.

**293F Restrictions on taking part in making decisions**

- (1) An officer of an organisation who has a material personal interest in a matter that relates to the affairs of the organisation:
  - (a) must not be present during any deliberation by the organisation on the matter; and
  - (b) must not take part in any decision of the organisation with respect to the matter.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (2) An officer of a branch of an organisation who has a material personal interest in a matter that relates to the affairs of the branch:
  - (a) must not be present during any deliberation by the branch on the matter; and
  - (b) must not take part in any decision of the branch with respect to the matter.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

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- (3) Subsections (1) and (2) do not apply if:
  - (a) subsection (4) allows the officer to be present and take part in a discussion with respect to the matter; or
  - (b) the interest does not need to be disclosed under section 293C.
- (4) The officer may be present and take part in a decision with respect to the matter if members of the committee of management of the organisation or branch (as the case may be) who do not have a material personal interest in the matter have passed a resolution that:
  - (a) identifies the officer, the nature and extent of the officer's interest in the matter and its relation to the affairs of the organisation or branch; and
  - (b) states that those members are satisfied that the interest should not disqualify the officer from being present and taking part in a decision with respect to the matter.

*Effect of contravention by officer*

- (5) A contravention by an officer of this section does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**293G Disclosure of payments made by an organisation or a branch**

- (1) An organisation must, for a financial year and in accordance with subsection (3), disclose to the members of the organisation and its branches, details of each payment made by the organisation during the financial year:
  - (a) to a related party of the organisation or of a branch of the organisation; or
  - (b) to a declared person or body of the organisation.
- (2) A branch of an organisation must, for a financial year and in accordance with subsection (3), disclose to the members of the branch each payment made by the branch, during the financial year:
  - (a) to a related party of the branch; or
  - (b) to a declared person or body of the branch.

- (3) A disclosure under subsection (1) or (2) must be made as part of the officer and related party disclosure statement required under Division 3.

Note: Failure to prepare an officer and related party disclosure statement is a contravention of a civil penalty provision (see section 293J).

- (4) Subsections (1) and (2) do not apply to a payment made to a related party if:
- (a) the related party is an officer of the organisation or the branch; and
  - (b) the payment:
    - (i) consists of remuneration paid to the officer by the organisation or the branch; or
    - (ii) is reimbursement for expenses reasonably incurred by the officer in performing the officer's duties as an officer.

Note: Section 293B requires certain disclosures in relation to remuneration.

- (5) 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 from remuneration payable to one or more officers or employees of the organisation or the branch (as the case may be).

*Arm's length terms*

- (5A) Subsections (1) and (2) do not apply to a payment made to a related party if the payment is made on terms that:
- (a) would be reasonable in the circumstances if the organisation, or the branch, and the related party were dealing at arm's length; or
  - (b) are less favourable to the related party than the terms referred to in paragraph (a).

*Small amounts given to related party*

- (5B) Subsections (1) and (2) do not apply to a payment made to a related party if the total of the following amounts is less than or equal to the amount prescribed by the regulations for the purposes of this subsection:
- (a) the amount of the payment;

- (b) the total of all other payments given to the related party, in the financial year, in relation to which subsections (1) and (2) do not apply to the payment because of this subsection.
- (5C) In working out the total of the payments referred to in paragraphs (5B)(a) and (b) disregard:
- (a) amounts that have been repaid; and
  - (b) amounts that fall under any other exception in this section.
- Payments to members that do not discriminate unfairly*
- (5D) Subsections (1) and (2) do not apply to a payment made to a related party if:
- (a) the payment is given to the related party in their capacity as a member of the organisation or the branch; and
  - (b) making the payment does not discriminate unfairly against the other members of the organisation or the branch.
- (6) 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 has disclosed a material personal interest under subsection 293C(2) or (3) or 293D(1); 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 that the officer no longer has the interest.

### **293H Section 293G—order for alternative disclosure arrangement**

- (1) If an organisation considers that it is too onerous for the organisation to comply with section 293G because special circumstances exist in relation to the organisation, the organisation may lodge with the Commissioner an application for an order under this section.
- (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 a proposed alternative arrangement (the ***alternative disclosure arrangement***) 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 Commissioner 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 alternative disclosure arrangement provides 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 alternative disclosure arrangement:
- (i) complies with and is not contrary to this Act (other than section 293G); and
- (ii) is not otherwise contrary to law;
- the Commissioner may, in writing, make an order under this subsection.
- (4) If the Commissioner makes the order under subsection (3):
- (a) the order must set out the alternative disclosure arrangement; and
- (b) the alternative disclosure arrangement takes effect when the Commissioner makes the order; and
- (c) compliance with the alternative disclosure arrangement set out in the order is, for the purposes of this Act, taken to be compliance with section 293G.
- (5) The order remains in force until the earlier of:
- (a) the day the order is revoked under subsection (6); and
- (b) the day 5 years after the day the order was made.
- (6) The Commissioner may revoke the order if the Commissioner:
- (a) either:

- (i) is no longer satisfied of a matter referred to in paragraph (3)(a), (b) or (c); or
  - (ii) is satisfied that the organisation has contravened the alternative disclosure arrangement set out in the order; and
- (b) has given the organisation an opportunity, as prescribed, to show cause why the order should not be revoked.
- (7) Subsection 604(1) of the Fair Work Act does not apply in relation to a decision of the Commissioner under subsection (3).
- Note: Subsection 604(1) of the Fair Work Act provides for appeals from certain decisions of the Commissioner.
- (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.
- (9) An order under subsection (3) is not a legislative instrument.

### **Division 3—Officer and related party disclosure statements**

#### **293J Officer and related party disclosure statements**

- (1) An organisation must:
- (a) as soon as practicable after the end of each financial year, cause an officer and related party disclosure statement to be prepared for the organisation in relation to the financial year in accordance with this section; and
  - (b) within the period of 6 months starting at the end of the financial year:
    - (i) cause the officer and related party disclosure statement to be provided to the members of the organisation and its branches; and
    - (ii) lodge with the Commissioner a copy of the officer and related party disclosure statement provided to the members.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (2) A branch of an organisation must:

- (a) as soon as practicable after the end of each financial year, cause an officer and related party disclosure statement to be prepared for the branch in relation to the financial year in accordance with this section; and
- (b) within the period of 6 months starting at the end of the financial year:
  - (i) cause the officer and related party disclosure statement to be provided to the members of the branch; and
  - (ii) lodge with the Commissioner a copy of the officer and related party disclosure statement provided to the members.

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

- (3) The ***officer and related party disclosure statement*** for an organisation or a branch of an organisation must include details of the disclosures provided by the organisation or the branch under sections 293BC, 293G and 293H for the financial year.

## **Division 4—Training in relation to financial duties**

### **293K Officers to undertake approved training**

- (1) Unless exempted under section 293M, each officer of an organisation or a branch of an organisation whose duties include duties (***financial duties***) that relate to the financial management of the organisation or the branch must undertake training:
  - (a) approved by the Commissioner under section 293L; and
  - (b) that covers each of the officer's financial duties.
- (2) The organisation or branch must ensure that the officer completes the training within 6 months after the person begins to hold the office.

Civil penalty: 100 penalty units.

### **293L Approved training**

- (1) The Commissioner may, for the purposes of section 293K, approve training provided by:
  - (a) an organisation; or

- (b) a peak council; or
  - (c) a body or person the Commissioner is satisfied has appropriate skills and expertise to provide the training;
- if the Commissioner 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.

**293M Commissioner may grant exemption from financial training**

- (1) An organisation or branch of an organisation may, in writing, apply to the Commissioner for an officer of the organisation or the branch to be exempted from the requirement to undertake training under section 293K.
- (2) The Commissioner may grant the exemption if the Commissioner is satisfied that the officer has a proper understanding of the officer's financial duties within the organisation or the branch because of the officer's:
- (a) experience as a company director; or
  - (b) experience as an officer of a registered organisation; or
  - (c) other professional qualifications and experience.
- (3) The Commissioner may grant the exemption subject to any conditions that the Commissioner considers appropriate in the circumstances.

**167 Paragraph 297(1)(a)**

Omit "or the Fair Work Act".

**168 Subsection 297(2) (note)**

Repeal the note.

**169 At the end of subsection 297(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**170 Subsection 297(3) (note)**

Repeal the note.

**171 At the end of subsection 297(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**172 Paragraph 298(1)(a)**

Omit “or the Fair Work Act”.

**173 Subsection 298(2) (note)**

Repeal the note.

**174 At the end of subsection 298(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**175 Subsection 298(3) (note)**

Repeal the note.

**176 At the end of subsection 298(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**177 Paragraph 299(1)(a)**

Omit “or the Fair Work Act”.

**178 Subsection 299(2) (note)**

Repeal the note.

**179 At the end of subsection 299(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**180 Subsection 299(3) (note)**

Repeal the note.

**181 At the end of subsection 299(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**182 Paragraph 300(1)(a)**

Omit “or the Fair Work Act”.

**183 Subsection 300(2) (note)**

Repeal the note.

**184 At the end of subsection 300(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**185 Subsection 300(3) (note)**

Repeal the note.

**186 At the end of subsection 300(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**187 Paragraph 301(1)(a)**

Omit “or the Fair Work Act”.

**188 Subsection 301(2) (note)**

Repeal the note.

**189 At the end of subsection 301(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**190 Subsection 301(3) (note)**

Repeal the note.

**191 At the end of subsection 301(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**192 Paragraph 302(1)(a)**

Omit “or the Fair Work Act”.

**193 Subsection 302(2) (note)**

Repeal the note.

**194 At the end of subsection 302(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**195 Subsection 302(3) (note)**

Repeal the note.

**196 At the end of subsection 302(3)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**197 Paragraph 303(1)(a)**

Omit “or the Fair Work Act”.

**198 Subsection 303(2) (note)**

Repeal the note.

**199 At the end of subsection 303(2)**

Add:

Civil penalty: 100 penalty units, or 1,200 penalty units for a serious contravention.

**200 Subsection 305(2)**

Repeal the subsection, substitute:

- (2) A *civil penalty provision* is a subsection, or a section that is not divided into subsections, that has set out at its foot a pecuniary penalty, or penalties, indicated by the words “Civil penalty”.

**201 At the end of section 305**

Add:

- (4) The Federal Court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for an order under this Part.

**202 Subsection 306(1)**

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

**203 Paragraph 306(1)(a)**

Omit “300 penalty units”, substitute “5 times the pecuniary penalty specified for the civil penalty provision”.

**204 Paragraph 306(1)(b)**

Omit “60 penalty units”, substitute “the pecuniary penalty specified for the civil penalty provision”.

**205 Subsection 306(1A)**

Repeal the subsection.

**206 Subsection 306(2)**

Omit “, reporting unit”.

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**207 Subsection 306(2)**

Omit “by the person”, substitute “by the person or organisation”.

**208 At the end of section 306**

Add:

- (3) A person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

**209 After section 307**

Insert:

**307A Disqualification orders**

- (1) The Federal Court may make an order disqualifying a person from holding office in an organisation for a period that the Court considers appropriate if:
- (a) the person has contravened a civil penalty provision; and
  - (b) the Court is satisfied that the disqualification is justified.
- (2) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person’s conduct in relation to the management, business and property of any organisation; and
  - (b) any other matter that the Court considers appropriate.

**210 Section 311**

After “the person”, insert “or organisation”.

**211 Section 317**

After:

<p>Part 3A establishes the Registered Organisations Commission and Registered Organisations Commissioner, provides for the terms and conditions of appointment of the Commissioner and makes provision for staff to assist the Commissioner. The Registered Organisations Commission Special Account is also established by the Part.</p>
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insert:

Part 3B sets out the circumstances in which the Commissioner or the General Manager may disclose information obtained in the performance of functions or exercise of powers under this Act.

### **211A Section 317**

Omit:

Part 4A provides protection for officers, employees and members of organisations who disclose information about contraventions of this Act or the Fair Work Act.

substitute:

Part 4A provides protection for certain persons (including officers, employees, members and contractors of organisations) who disclose information about certain contraventions of the law. It also provides for investigation of protected disclosures.

### **212 After Part 3A of Chapter 11**

Insert:

## **Part 3B—Information sharing**

### **329G When information may be disclosed**

*Information to which this section applies*

- (1) This section applies to information acquired by the following in the performance of functions or exercise of powers under this Act:
  - (a) the Commissioner or a member of the staff assisting the Commissioner;
  - (b) the General Manager or a member of the staff of the FWC.

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

- (2) The Commissioner or General Manager may disclose, or authorise the disclosure of, the information if he or she reasonably believes:

- (a) that it is necessary or appropriate to do so in the course of performing or exercising his or her functions or powers (including under the Fair Work Act); 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.

**213 Before section 330**

Insert:

**Division 1—Inquiries**

**214 Before section 331**

Insert:

**Division 2—Investigations**

**215 Section 335 (heading)**

Repeal the heading, substitute:

**335 Conduct of investigations**

**216 Subsection 335(1)**

Repeal the subsection, substitute:

- (1) This section applies if the Commissioner believes on reasonable grounds that a person:
  - (a) has information or a document that is relevant to an investigation; or
  - (b) is capable of giving evidence which the Commissioner has reason to believe is relevant to an investigation.

**217 Subsection 335(2)**

Omit “making an investigation, the Commissioner may, by written notice, require the person”, substitute “the investigation, the Commissioner may, by written notice, require the person to do one or more of the following”.

**218 Paragraph 335(2)(a)**

Omit “person; and”, substitute “person;”.

**219 Paragraph 335(2)(b)**

Omit “access; and”, substitute “access;”.

**220 At the end of subsection 335(2)**

Add:

; (d) to give to the Commissioner such other reasonable assistance in connection with the investigation as is specified in the notice.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337).

**221 Subsection 335(3)**

Omit all the words after “attend”, substitute:

must:

- (a) state the general nature of the matters to which the investigation relates; and
- (b) state that the person may be accompanied by another person who may, but does not have to, be a lawyer; and
- (c) set out the effect of section 337AD (self-incrimination); and
- (d) state whether or not the person will be required to answer questions on oath or affirmation; and
- (e) if the person will be required to answer questions on oath or affirmation—set out the effect of section 335F (attendee’s lawyer).

Note: For questioning on oath or affirmation, see Division 3.

**222 Section 335A**

Repeal the section.

**223 Section 335C**

Repeal the section, substitute:

## **Division 3—Questioning on oath or affirmation**

### **335C When this Division applies**

This Division applies if a person (the *attendee*) is required, for the purposes of an investigation, to attend before another person (the *investigator*) to answer questions on oath or affirmation.

### **335D Requirements made of attendee**

- (1) The investigator may question the attendee on oath or affirmation and may, for that purpose:
  - (a) require the attendee to either take an oath or make an affirmation; and
  - (b) administer an oath or affirmation to the attendee.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337AA).

- (2) The oath or affirmation to be taken or made by the attendee for the purposes of the investigation is an oath or affirmation that the statements that the attendee will make will be true.
- (3) The investigator may require the attendee to answer a question that is put to the attendee at the investigation.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337).

### **335E Questioning to take place in private**

- (1) The questioning must take place in private and the investigator may give directions about who may be present during the questioning, or during a part of it.
- (2) A person must not be present during the questioning unless he or she is:
  - (a) the investigator or the attendee; or
  - (b) the Commissioner or a member of the staff assisting the Commissioner authorised by the Commissioner to be present; or
  - (c) is entitled to be present:
    - (i) because of a direction under subsection (1); or

- (ii) because the person is the attendee's lawyer, or another person accompanying the attendee as mentioned in paragraph 335(3)(a).

Note: Failure to comply with this subsection is an offence (see section 337AA).

### **335F Attendee's lawyer**

- (1) The attendee's lawyer may, at such times during the questioning as the investigator determines:
  - (a) address the investigator; and
  - (b) question the attendee;about matters about which the investigator has questioned the attendee.
- (2) If, in the investigator's opinion, a person is trying to obstruct the questioning by exercising rights under subsection (1), the investigator may require the person to stop addressing the investigator, or questioning the attendee, as the case requires.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337AA).

### **335G Record of statements**

- (1) The investigator may, and must if the attendee so requests, cause a record to be made of statements made during the questioning.
- (2) If a record made under subsection (1) is in writing or is reduced to writing:
  - (a) the investigator may require the attendee to read it, or to have it read to him or her, and may require him or her to sign it; and
  - (b) the investigator must, if requested in writing by the attendee to give to the attendee a copy of the written record, comply with the request without charge but subject to such conditions (if any) as the investigator imposes.

Note: Failure to comply with a requirement made under paragraph (2)(a) is an offence (see section 337AA).

### **335H Copies given subject to conditions**

If a copy is given to a person under subsection 335G(2) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Note: Failure to comply with this section is an offence (see section 337AA).

## **Division 4—Powers in relation to documents**

### **335K Application for warrant to seize documents**

- (1) If the Commissioner has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, documents whose production could be required under section 335, he or she may:
  - (a) lay before a magistrate an information on oath or affirmation setting out those grounds; and
  - (b) apply for the issue of a warrant to search the premises for those documents.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

### **335L Grant of warrant**

- (1) This section applies if, on an application under section 335K, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular documents whose production could be required under section 335.
- (2) The magistrate may issue a warrant authorising a member of the Australian Federal Police, whether or not named in the warrant, together with any person so named, with such assistance, and by such force, as is necessary and reasonable:
  - (a) to enter on or into the premises; and
  - (b) to search the premises; and
  - (c) to break open and search anything, whether a fixture or not, in or on the premises; and

- (d) to take possession of, or secure against interference, documents that appear to be any or all of those documents.
- (3) If the magistrate issues such a warrant, he or she must set out on the information laid before him or her under section 335K for the purposes of the application:
  - (a) which of the grounds set out in the information; and
  - (b) particulars of any other grounds;he or she has relied on to justify the issue of the warrant.
- (4) A warrant under this section must:
  - (a) specify the premises and documents referred to in subsection (1); and
  - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
  - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

### **335M Execution of warrant**

- (1) Before any person enters premises under a search warrant issued under section 335L, a member of the Australian Federal Police must:
  - (a) announce that the member is authorised to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, the member of the Australian Federal Police is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure that the effective execution of the warrant is not frustrated.
- (3) If the occupier of the premises is present at the premises:
  - (a) the member of the Australian Federal Police must make available to the occupier a copy of the warrant; and
  - (b) the occupier is entitled to observe the search being conducted.



- (4) The occupier's right to observe the search being conducted ends if the occupier impedes the search.
- (5) This section does not prevent 2 or more areas of the premises being searched at the same time.
- (6) If documents are seized under the warrant, the member of the Australian Federal Police or a person assisting the member must provide a receipt for the documents.
- (7) If 2 or more documents are seized, they may be covered in the one receipt.

### **335N Powers in relation to documents produced or seized**

- (1) This section applies if:
  - (a) documents are produced to a person under a requirement made under section 335; or
  - (b) under a warrant issued under section 335L, a person:
    - (i) takes possession of documents; or
    - (ii) secures documents against interference; or
  - (c) by virtue of a previous application of subsection (8) of this section, documents are delivered into a person's possession.
- (2) If paragraph (1)(a) applies, the person may take possession of any of the documents.
- (3) The person may inspect, and may make copies of, or take extracts from, any of the documents.
- (4) The person may use, or permit the use of, any of the documents for the purposes of a proceeding.
- (5) The person may retain possession of any of the documents for so long as is necessary:
  - (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or
  - (b) for the purposes of conducting the investigation concerned; or
  - (c) for a decision to be made about whether or not a proceeding to which the documents would be relevant should be begun; or

- (d) for such a proceeding to be begun and carried on.
- (6) No-one is entitled, as against the person, to claim a lien on any of the documents, but such a lien is not otherwise prejudiced.
- (7) While the documents are in the person's possession, the person:
- (a) must permit another person to inspect at all reasonable times such (if any) of the documents as the other person would be entitled to inspect if they were not in the first-mentioned person's possession; and
  - (b) may permit another person to inspect any of the documents.
- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the documents into the possession of the Commissioner or of a person authorised by the Commissioner to receive them.
- (9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the documents under subsection (8), may require:
- (a) if paragraph (1)(a) applies—a person who so produced any of the documents; or
  - (b) in any case—a person who was a party to the compilation of any of the documents;
- to explain any matter about the content of any of the documents or to which any of the documents relate.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337).

### **335P Powers if documents not produced**

If a person fails to produce particular documents in compliance with a requirement made by another person under section 335, the other person may require the first-mentioned person to explain:

- (a) where the documents may be found; and
- (b) who last had possession, custody or control of the documents and where that person may be found.

Note: Failure to comply with a requirement made under this section is an offence (see section 337).

### **335Q Power to require person to identify property of an organisation**

If a person has power under section 335 to require another person to produce documents relating to the affairs of an organisation, whether or not that power is exercised, the first-mentioned person may require the other person:

- (a) to identify property of the organisation; and
- (b) to explain how the organisation has kept account of that property.

Note: Failure to comply with a requirement made under this section is an offence (see section 337).

### **224 Section 336 (heading)**

Repeal the heading, substitute:

## **Division 5—Action following investigations**

### **336 Action in relation to reporting units**

### **225 Before section 337**

Insert:

## **Division 6—Offences**

### **226 Paragraph 337(1)(a)**

Repeal the paragraph, substitute:

- (a) the person fails, intentionally or recklessly, to comply with a requirement under subsection 335(2):
  - (i) to give information or produce a document; or
  - (ii) to attend before the Commissioner or delegate; or
  - (iii) to give to the Commissioner such other reasonable assistance as is specified in a notice under that subsection; or

### **227 At the end of subsection 337(1) (before the penalty)**

Add:

- ; or (d) the person fails, intentionally or recklessly, to comply with:

- (i) a requirement under subsection 335D(3) to answer a question; or
- (ii) a requirement under subsection 335N(9) to explain a matter about the content of a document or to which a document relates; or
- (iii) a requirement under section 335P to explain where documents may be found, and who last had possession, custody or control of the documents and where that person may be found; or
- (iv) a requirement under section 335Q to identify property of an organisation and explain how the organisation has kept account of that property.

### **228 Subsection 337(1) (penalty)**

Repeal the penalty, substitute:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

### **229 Subsections 337(2) to (5)**

Repeal the subsections, substitute:

- (2) Paragraphs (1)(a) and (d) do not apply to the extent that the person has a reasonable excuse.
- (3) Subparagraphs (1)(d)(ii) and (iii) do not apply to the extent that the person has explained the matter to the best of his or her knowledge or belief.
- (4) Subparagraph (1)(d)(iv) does not apply to the extent that the person has, to the extent that the person is capable of doing so, performed the acts referred to in paragraphs 335Q(a) and (b).

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) to (4) (see subsection 13.3(3) of the *Criminal Code*).

### **230 Section 337AA**

Repeal the section, substitute:

#### **337AA Strict liability offences**

- (1) A person commits an offence of strict liability if the person:

- (a) fails to comply with a requirement under subsection 335D(1) to take an oath or make an affirmation; or
- (b) contravenes subsection 335E(2) (questioning to take place in private); or
- (c) fails to comply with a requirement under paragraph 335G(2)(a) in relation to a record of statements made during questioning; or
- (d) contravenes section 335H (conditions on use of copies of records of statements made during questioning).

Penalty: 60 penalty units.

- (2) A person commits an offence of strict liability if the person fails to comply with a requirement under subsection 335F(2) to stop addressing an investigator, or questioning an attendee.

Penalty: 60 penalty units.

- (3) Subsections (1) and (2) do not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

### **337AB Obstructing person acting under this Part**

- (1) A person must not:
  - (a) engage in conduct that results in the obstruction or hindering of a person in the exercise of a power under this Part; or
  - (b) engage in conduct that results in the obstruction or hindering of a person who is executing a warrant issued under section 335L.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

- (3) The occupier, or person in charge, of premises that a person enters under a warrant issued under section 335L must not intentionally or recklessly fail to provide to that person all reasonable facilities

and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

### **337AC Concealing documents relevant to investigation**

- (1) If the Commissioner, or a person or body to whom the Commissioner has delegated the conduct of an investigation, is investigating, or is about to investigate, a matter, a person must not:
- (a) in any case—engage in conduct that results in the concealment, destruction, mutilation or alteration of a document relating to that matter; or
  - (b) if a document relating to that matter is in a particular State or Territory—engage in conduct that results in the taking or sending of the document out of that State or Territory or out of Australia.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant intended neither to defeat the purposes of the investigation, nor to delay or obstruct the investigation, or any proposed investigation under this Part.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (2) (see section 13.4 of the *Criminal Code*).

### **337AD Self-incrimination**

- (1) For the purposes of this Part, it is not a reasonable excuse for a person to refuse or fail:
- (a) to give information; or
  - (b) to produce a document; or
  - (c) to sign a record;
- in accordance with a requirement made of the person, that the information, producing the document or signing the record might tend to incriminate the person or make the person liable to a penalty.
- (2) Subsection (3) applies if:
- (a) before:

- (i) giving information; or
  - (ii) producing a document; or
  - (iii) signing a record;
- pursuant to a requirement made under this Part, a person (other than a body corporate) claims that the information, producing the document or signing the record might tend to incriminate the person or make the person liable to a penalty; and
- (b) the information, producing the document or signing the record might in fact tend to incriminate the person or make the person so liable.
- (3) The information, or the fact that the person has produced the document or signed the record, is not admissible in evidence against the person in:
- (a) a criminal proceeding; or
  - (b) a proceeding for the imposition of a penalty;
- other than a proceeding in respect of:
- (c) in the case of giving information or producing a document—whether the information or document is false or misleading; or
  - (d) in the case of signing a record—whether any statement contained in the record is false or misleading.

### **337AE Legal professional privilege**

- (1) This section applies if:
  - (a) under this Part, a person requires a lawyer:
    - (i) to give information; or
    - (ii) to produce a document; and
  - (b) giving the information would involve disclosing, or the document contains, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.

- (2) The lawyer is entitled to refuse to comply with the requirement unless the person to whom, or by or on behalf of whom, the communication was made, consents to the lawyer complying with the requirement.
- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:
  - (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
  - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and
  - (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the document, or the part of the document, containing the communication.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

## **Division 7—Evidentiary use of certain material**

### **337AF Statements made on oath or affirmation during an investigation—proceedings against attendee**

- (1) A statement that a person makes on oath or affirmation during an investigation is admissible in evidence against the person in a proceeding unless:
  - (a) because of subsection 337AD(3), the statement is not admissible in evidence against the person in the proceeding; or
  - (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement; or
  - (c) the statement is qualified or explained by some other statement made by the person on oath or affirmation during the investigation, evidence of the other statement is not tendered in the proceeding and the person objects to the admission of evidence of the first-mentioned statement; or
  - (d) the statement discloses matter in respect of which the person could claim legal professional privilege in the proceeding if this subsection did not apply in relation to the statement, and



the person objects to the admission of evidence of the statement.

- (2) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.
- (3) If a written record of statements made by a person during questioning is signed by the person under subsection 335G(2) or authenticated in any other prescribed manner, the record is, in a proceeding, prima facie evidence of the statements it records, but nothing in this Part limits or affects the admissibility in the proceeding of other evidence of statements made during the questioning.

### **337AG Statements made on oath or affirmation during an investigation—other proceedings**

If direct evidence by a person (the *absent witness*) of a matter would be admissible in a proceeding, a statement that the absent witness made on oath or affirmation during an investigation and that tends to establish that matter is admissible in the proceeding as evidence of that matter:

- (a) if it appears to the court or tribunal that:
  - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
  - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or
  - (iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or
- (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

**337AH Weight of evidence admitted under section 337AG**

- (1) This section applies if evidence of a statement made by a person made on oath or affirmation during an investigation is admitted under section 337AG in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
  - (a) how long after the matters to which it related the statement was made; and
  - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
  - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
  - (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
  - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.
- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

**337AJ Objection to admission of statements made on oath or affirmation during an investigation**

- (1) A party (the *adducing party*) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
  - (a) will apply to have admitted in evidence in the proceeding specified statements made on oath or affirmation during an investigation; and

- (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.
- (2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.
- (3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
  - (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
  - (b) specifying, in relation to each of those statements, the grounds of objection.
- (4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.
- (5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:
  - (a) the notice under subsection (1) and any writing that subsection (2) required to accompany that notice; and
  - (b) the notice under subsection (3).
- (6) If subsection (5) is complied with, the court or tribunal may either:
  - (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
  - (b) defer determination of the objections until the hearing.
- (7) If a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:
  - (a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
  - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

### **337AK Copies of, or extracts from, certain documents**

- (1) A copy of, or an extract from, a document relating to the affairs of an organisation is admissible in evidence in a proceeding as if the copy were the original document, or the extract were the relevant

part of the original document, whether or not the copy or extract was made under section 335N.

- (2) A copy of, or an extract from, a document is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the document, or of the relevant part of the document.
- (3) For the purposes of subsection (2), a person who has compared:
- (a) a copy of a document with the document; or
  - (b) an extract from a document with the relevant part of the document;
- may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the document or relevant part, as the case may be.

### **337AL Material otherwise admissible**

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

## **Division 8—Miscellaneous**

### **337AM Evidence of authority**

A person (the *investigator*) who is about to make, or has made, a requirement of another person under this Part must, if the other person requests evidence of the investigator's authority to make the requirement, produce to the other person:

- (a) a written authorisation issued to the investigator by the Commissioner; and
- (b) such other evidence (if any) of the investigator's authority to make the requirement as the Commissioner determines.

### **337AN Application of Evidence Act**

Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1995* apply to questioning on oath or affirmation for the purposes of an investigation in the same way that they apply

to a proceeding to which that Act applies under section 4 of that Act.

### **337AP Allowances and expenses**

- (1) A person who, pursuant to a requirement made under section 335, attends before the Commissioner or a person or body to whom the Commissioner has delegated the conduct of an investigation, is entitled to the prescribed allowances and expenses (if any).
- (2) The Commissioner may pay such amount as he or she thinks reasonable on account of the costs and expenses (if any) that a person incurs in complying with a requirement made under this Part.

### **337AQ Compliance with Part**

A person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made, or purporting to have been made, under this Part.

### **230A Before section 337A**

Insert:

## **Division 1—Protected disclosures**

### **230B Section 337A**

Before “A disclosure of information”, insert “(1)”.

### **230C Subparagraph 337A(a)(i)**

After “officer”, insert “or former officer”.

### **230D Subparagraph 337A(a)(ii)**

After “employee”, insert “or former employee”.

### **230E Subparagraph 337A(a)(iii)**

After “member”, insert “or former member”.

**230F Subparagraph 337A(a)(iii)**

Omit “and”.

**230G At the end of paragraph 337A(a)**

Add:

- (iv) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an organisation or a branch of an organisation;
- (v) a person who has or had a contract for the supply of services or goods to, or any other transaction with, an officer or employee of an organisation or of a branch of an organisation who is or was acting on behalf of the organisation or branch;
- (vi) an officer, former officer, employee or former employee of a person referred to in subparagraph (iv) or (v); and

**230H Paragraphs 337A(c) to (e)**

Repeal the paragraphs, substitute:

- (c) the discloser has reasonable grounds to suspect that the information indicates one or more instances of disclosable conduct by:
  - (i) the organisation or a branch of the organisation; or
  - (ii) an officer or employee of the organisation or of a branch of the organisation.

**230J At the end of section 337A**

Add:

- (2) A disclosure is taken to have been made by a person mentioned in paragraph (1)(a) (the *discloser*) to a person mentioned in paragraph (1)(b) (the *official*) if the disclosure is made to the official by a lawyer on the discloser’s behalf.
- (3) A disclosure of information by a person (the *discloser*) qualifies for protection under this Part if:
  - (a) the discloser is a person mentioned in paragraph (1)(a) in relation to an organisation or a branch of an organisation; and
  - (b) the disclosure is made to the discloser’s lawyer; and

- (c) the discloser has reasonable grounds to suspect that the information indicates one or more instances of disclosable conduct by:
  - (i) the organisation or a branch of the organisation; or
  - (ii) an officer or employee of the organisation or of a branch of the organisation.

### **230K Before section 337B**

Insert:

## **Division 2—Protections**

### **231 Sections 337C and 337D**

Repeal the sections, substitute:

#### **337BA What constitutes taking a reprisal**

- (1) A person (the *first person*) *takes a reprisal* against another person (the *second person*) if:
  - (a) the first person causes (by act or omission) any detriment to the second person; and
  - (b) when the act or omission occurs, the first person:
    - (i) believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; or
    - (ii) should have known that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part.
- (2) In this Part, *detriment* includes (without limitation) any of the following:
  - (a) dismissal of an employee;
  - (b) injury of an employee in his or her employment;
  - (c) alteration of an employee's position to his or her detriment;
  - (d) discrimination between an employee and other employees of the same employer;
  - (e) harassment or intimidation of a person;

- (f) harm or injury to a person, including psychological harm;
  - (g) damage to a person's property;
  - (h) damage to a person's reputation.
- (3) Despite subsection (1), a person does not take a reprisal against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

### **337BB Civil remedies**

- (1) If the Federal Court or Federal Circuit Court is satisfied, on the application of a person mentioned in subsection (4) (the *applicant*), that another person (the *respondent*) took or threatened to take, or is taking or threatening to take, a reprisal against a person (the *target*), the Court may make any one or more of the following orders:
- (a) an order requiring the respondent to compensate the target for loss, damage or injury as a result of the reprisal or threat;
  - (b) an order granting an injunction, on such terms as the Court thinks appropriate, to prevent, stop or remedy the effects of the reprisal or threat;
  - (c) an order requiring the respondent to apologise to the target for taking, or threatening to take, the reprisal;
  - (d) if the target is or was employed in a particular position with the respondent and the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the target's employment—an order that the target be reinstated in that position or a position at a comparable level;
  - (e) if the Court thinks it is appropriate—an order requiring the respondent to pay exemplary damages to the target;
  - (f) any other order the Court thinks appropriate.
- (2) However, the Court must not make an order under subsection (1) if the respondent satisfies the Court that the belief or suspicion mentioned in subparagraph 337BA(1)(b)(i) is not any part of the reason for taking the reprisal.
- (3) Notwithstanding subsection (2), the Court may make an order under subsection (1) if satisfied that:



- (a) the target made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part; and
  - (b) the respondent was under a duty to prevent, refrain from, or take reasonable steps to ensure other persons under the respondent's control prevented or refrained from, any act or omission likely to result in detriment to the target; and
  - (c) the respondent failed in part or whole to fulfil that duty.
- (4) Any of the following persons may make an application under subsection (1):
- (a) the target;
  - (b) the Commissioner;
  - (c) the General Manager;
  - (d) the Director, within the meaning of subsection 4(1) of the *Fair Work (Building Industry) Act 2012*;
  - (e) the Fair Work Ombudsman (within the meaning of the Fair Work Act).
- (5) If the reprisal wholly or partly consists, or consisted, of the respondent terminating, or purporting to terminate, the target's employment, the Court must, in making an order mentioned in paragraph (1)(a), consider the period, if any, the target is likely to be without employment as a result of the reprisal. This subsection does not limit any other matter the Court may consider.
- (6) If the Federal Court or Federal Circuit Court has power under subsection (1) to make an order against a respondent in relation to conduct that constituted or constitutes taking or threatening to take a reprisal against a target, the Court may make any other orders that it thinks appropriate against any other person who has:
- (a) aided, abetted, counselled or procured the conduct; or
  - (b) induced the conduct, whether through threats or promises or otherwise; or
  - (c) failed to fulfil a duty to prevent, refrain from, or take reasonable steps to ensure other persons under the person's control prevented or refrained from, the conduct; or
  - (d) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct; or
  - (e) conspired with others to effect the conduct.

### 337BC Costs only if proceedings instituted vexatiously etc.

- (1) This section applies to proceedings (including an appeal) in a court in relation to a matter arising under section 337BB if the target makes the application under subsection 337BB(1).
- (2) Section 329 does not apply to the proceedings.
- (3) The target must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (4).
- (4) The target may be ordered to pay the costs only if:
  - (a) the court is satisfied that the target instituted the proceedings vexatiously or without reasonable cause; or
  - (b) the court is satisfied that the target's unreasonable act or omission caused the other party to incur the costs.

### 337BD Civil penalties

#### *Taking a reprisal*

- (1) A person (the **first person**) must not take a reprisal against another person if the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for taking the reprisal.

Civil penalty: 100 penalty units.

- (2) In proceedings for a contravention of subsection (1), it is not necessary to prove that a person made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part.

#### *Threatening to take a reprisal*

- (3) A person (the **first person**) must not make a threat to another person (the **second person**) to take a reprisal against the second person or a third person if:
  - (a) the first person:
    - (i) intends the second person to fear that the threat will be carried out; or

- (ii) is reckless as to the second person fearing that the threat will be carried out; and
  - (b) the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for making the threat.
- Civil penalty: 100 penalty units.
- (4) For the purposes of subsection (3), the threat may be:
    - (a) express or implied; or
    - (b) conditional or unconditional.
  - (5) In proceedings for a contravention of subsection (3), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

### **337BE Criminal offences**

#### *Taking a reprisal*

- (1) A person commits an offence if:
  - (a) the person takes a reprisal against another person; and
  - (b) the person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for taking the reprisal.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) In a prosecution for an offence against subsection (1), it is not necessary to prove that a person made, may have made, proposed to make or could have made a disclosure that qualifies for protection under this Part.

#### *Threatening to take a reprisal*

- (3) A person (the **first person**) commits an offence if:
  - (a) the first person makes a threat to another person (the **second person**) to take a reprisal against the second person or a third person; and
  - (b) the first person:

- (i) intends the second person to fear that the threat will be carried out; or
- (ii) is reckless as to the second person fearing that the threat will be carried out; and
- (c) the first person's belief or suspicion that a person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part is the reason, or part of the reason, for making the threat.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (4) For the purposes of subsection (3), the threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (5) In a prosecution for an offence under subsection (3), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

### **337BF Interaction between civil remedies, civil penalties and criminal offences**

To avoid doubt, a person may bring civil proceedings under section 337BB, or civil proceedings for a contravention of subsection 337BD(1) or (3), in relation to the taking of a reprisal, or the threat to take a reprisal, even if a prosecution for a criminal offence against section 337BE in relation to the reprisal or threat has not been brought, or cannot be brought.

Note: Part 2 of Chapter 10 sets out the relationship between civil penalty provisions (including subsections 337BD(1) and (3)) and criminal proceedings (including under section 337BE) arising out of the same conduct.

### **337BG Protections have effect despite other Commonwealth laws**

Section 337B or 337BB has effect despite any other provision of a law of the Commonwealth, unless:

- (a) the provision is enacted after the commencement of this section; and
- (b) the provision is expressed to have effect despite this Part or that section.

## **Division 3—Investigation of protected disclosures**

### **337C Allocation of handling of disclosure**

- (1) If a disclosure that qualifies for protection under this Part is made (other than a disclosure to a lawyer that qualifies for protection under this Part because of subsection 337A(4)), the person to whom the disclosure is made must allocate the handling of the disclosure to one or more authorised officials (which may be or include the person).
- (2) The person must use his or her best endeavours to decide the allocation within 14 days after the disclosure is made.
- (3) The person may, after making a decision under subsection (1) or this subsection allocating the handling of the disclosure to one or more authorised officials, decide to allocate the handling of the disclosure to one or more other authorised officials.
- (4) For the purposes of deciding an allocation, the person may obtain information from such persons, and make such inquiries, as the person thinks fit.

### **337CA Investigation of disclosure**

- (1) If a disclosure that qualifies for protection under this Part is allocated to an authorised official, the authorised official must investigate the disclosure.
- (2) However, the authorised official may decide not to investigate the disclosure, or (if the investigation has started) not to investigate the disclosure further, under this Division in circumstances prescribed by the regulations.
- (3) To avoid doubt, Division 2 continues to apply to the disclosure even if the authorised official decides not to investigate the disclosure, or not to investigate the disclosure further, under this Division.
- (4) The investigation under this Division by the authorised official is to be conducted in accordance with any regulations made for the purposes of section 337CC and otherwise as the authorised official thinks fit.

- (5) The authorised official may, for the purposes of the investigation, obtain information from such persons, and make such inquiries, as the authorised official thinks fit.

**337CB Time limit for investigations under this Division**

- (1) An investigation under this Division must be completed within 90 days after allocation of the handling of the relevant disclosure.
- (2) The Commissioner may extend, or further extend, the 90-day period by such additional period (which may exceed 90 days) as the Commissioner considers appropriate:
- (a) on the Commissioner's own initiative; or
  - (b) on application made by the authorised official; or
  - (c) on application made by the discloser.
- (3) If the 90-day period is extended, or further extended:
- (a) the Commissioner must inform the discloser of the extension or further extension, and of the reasons for the extension or further extension; and
  - (b) the authorised official must, as soon as reasonably practicable after the extension or further extension, inform the discloser of the progress of the investigation.
- (4) Subsection (3) does not apply if contacting the discloser is not reasonably practicable.
- (5) Failure to complete the investigation within the time limit under this section does not affect the validity of the investigation.

**337CC Regulations in relation to allocation and investigation**

- (1) The regulations may prescribe procedures to be followed and other matters in relation to allocation of handling of disclosures that qualify for protection under this Part.
- (2) The regulations may prescribe procedures to be followed and other matters in relation to investigations under this Division, including in relation to the following:
- (a) informing the discloser that an authorised official will investigate a disclosure;

- (b) informing the discloser and the Commissioner of a decision not to investigate a disclosure, or not to investigate a disclosure further, under this Division;
- (c) preparing a report of an investigation;
- (d) adopting a finding of another investigation or inquiry for the purposes of an investigation.

### **337CD Disclosure to enforcement agencies**

- (1) If an authorised official to whom a disclosure is allocated suspects on reasonable grounds that some or all of:
  - (a) the information disclosed; or
  - (b) any other information obtained in the course of investigation of the disclosure;is evidence of the commission of an offence against a law of the Commonwealth, a State or a Territory, the authorised official may disclose the information, to the extent that it is such evidence, to a member of an Australian police force that is responsible for the investigation of the offence.
- (2) However, if the offence is punishable by imprisonment for life or by imprisonment for a period of at least 2 years, the authorised official must so notify such a member.
- (3) If an authorised official to whom a disclosure is allocated suspects on reasonable grounds that some or all of:
  - (a) the information disclosed; or
  - (b) any other information obtained in the course of investigation of the disclosure;is evidence of a contravention of the *Competition and Consumer Act 2010*, the authorised official may disclose the information, to the extent that it is such evidence, to the Australian Competition and Consumer Commission.
- (4) This section does not, by implication, limit a person's power to notify a matter to a member of an Australian police force, the Australian Competition and Consumer Commission or another agency or person.

### **337CE Protection of witnesses etc.**

- (1) A person is not subject to any criminal or civil liability because the person (voluntarily or otherwise) gives information, produces a document or answers a question if:
  - (a) the person does so when requested to do so by a person conducting an investigation under this Division; and
  - (b) the information, document or answer is relevant to the investigation.

Note: The first person may be the person whose disclosure gave rise to the disclosure investigation.

- (2) This section does not apply to liability for an offence against section 137.1, 137.2, 144.1 or 145.1 of the *Criminal Code* that relates to the information, document or answer, as the case may be.
- (3) This section does not apply to proceedings for a breach of a designated publication restriction.
- (4) To avoid doubt, if the information, document or answer relates to the person's own conduct, this section does not affect his or her liability for the conduct.

## **Division 4—Miscellaneous**

### **337D Reference to this Part**

A reference in this Division to this Part includes a reference to regulations made for the purposes of section 337CC.

### **337DA Liability for acts and omissions**

- (1) A person to whom a disclosure that qualifies for protection under this Part is made or an authorised official (or a delegate of an authorised official) is not liable to any criminal or civil proceedings, or any disciplinary action (including any action that involves imposing any detriment), for or in relation to an act or matter done, or omitted to be done, in good faith:
  - (a) in the performance, or purported performance, of any function conferred on the person or authorised official by this Part; or



- (b) in the exercise, or purported exercise, of any power conferred on the person or authorised official by this Part.
- (2) This section does not apply to a breach of a designated publication restriction.

**337DB Concurrent operation of State and Territory laws**

This Part is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Part.

**337DC Law relating to legal professional privilege not affected**

This Part does not affect the law relating to legal professional privilege.

**337DD Other investigative powers etc. not affected**

- (1) This Part does not, by implication, limit the investigative powers conferred on an authorised official by a law of the Commonwealth other than this Part.
- (2) This Part does not detract from any obligations imposed on an authorised official by a law of the Commonwealth other than this Part.

**232 Section 337G**

After “proceedings”, insert “before the FWC”.

**232A Paragraph 343B(2)(f)**

Omit “, 3 or 4”, substitute “or 3, or Subdivision B of Division 4,”.

**233 After paragraph 343B(2)(h)**

Insert:

- (i) subsection 329G(2);

**234 Paragraph 343B(2)(k)**

Omit “or 335A”.

**235 Paragraph 343B(2)(ka)**

Repeal the paragraph.

**236 Before paragraph 343B(2)(m)**

Insert:

(l) section 335K;

**236A After subsection 343B(2)**

Insert:

- (2A) Despite subsection (1), the Commissioner's functions or powers under Subdivision A of Division 4 of Part 3 of Chapter 8 (registration of auditors) can only be delegated to a member of the staff assisting the Commissioner who is an SES employee or an acting SES employee.

**237 After subsection 343B(3)**

Insert:

- (4) Despite subsection (1), functions and powers under Division 3 (questioning on oath or affirmation) can only be delegated to a member of the staff assisting the Commissioner.
- (4A) Despite subsection (1), the Commissioner's functions or powers under section 337CB can only be delegated to a member of the staff assisting the Commissioner who is an SES employee or an acting SES employee, or who is in a class of employees prescribed by the regulations.

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

**238 Subsection 347(1) (note)**

Repeal the note.

**239 At the end of subsection 347(1)**

Add:

Civil penalty: 60 penalty units.

**240 Subsections 350(1) and (2) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

**241 Subsection 356(6) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

## Part 2—Transitional provisions

### 242 Definitions

In this Part:

*commencement time* means the time when this Schedule commences.

*Commissioner* has the same meaning as in the Act.

*General Manager* has the same meaning as in the Act.

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

### 243A Excluded auditors

Without limiting the application of the amendments of the definition of *excluded auditor* made by this Schedule, those amendments apply in relation to a former officer, or former employee, whether the person ceased to be an officer or employee before or after the commencement time.

### 244 Approved training

A person who has undertaken training approved by the General Manager under section 154C of the Act, as in force immediately before the commencement time, is taken, for the purposes of section 293L of that Act as in force after the commencement time, to have undertaken that training as approved by the Commissioner.

### 245 Alternative disclosure arrangements

In satisfying himself or herself as mentioned in subsection 293H(3) of the Act during the period of 12 months immediately after the commencement time, the Commissioner must take into account:

- (a) any exemption granted to the organisation concerned under section 148D of the Act, as in force before the commencement time; and
- (b) the statement, particulars and evidence provided in relation to any such exemption as required by subsection 148D(2) of the Act, as in force before the commencement time.

### **245A Protected disclosures**

- (1) Without limiting the application of the amendments of paragraph 337A(1)(a) of the Act made by this Schedule, those amendments apply in relation to:
  - (a) a former officer, former employee or former member whether the person ceased to be an officer, employee or member before or after the commencement time; and
  - (b) a contract or transaction whether the contract or transaction started, ended or occurred before or after the commencement time.
- (2) A reference in Part 4A of Chapter 11 of the Act, as amended by this Schedule, to a disclosure that qualifies for protection under that Part includes a reference to a disclosure made before the commencement time that qualified for disclosure under that Part as in force at the time the disclosure was made.
- (3) Despite subitem (2), Division 3 of Part 4A of Chapter 11 of the Act, as amended by this Schedule, only applies in relation to disclosures made after the commencement time.
- (4) For the purposes of the definition of *disclosable conduct* in section 6 of the Act:
  - (a) the reference to an act or omission includes an act or omission that occurred before the commencement time; and
  - (b) the reference to the Fair Work Act includes the WR Act (within the meaning of item 3 of Schedule 2 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*), as in force from time to time.

### **246 Minister may make rules about transitional matters**

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by Part 1 of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 31 August 2016  
Senate on 7 November 2016]*

(103/16)

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*Fair Work (Registered Organisations) Amendment Act 2016*

*No. 79, 2016*