



# **Workplace Relations and Other Legislation Amendment Act 1997**

**No. 198, 1997**





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**An Act to amend the *Workplace Relations Act 1996*,  
and for related purposes**



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## An Act to amend the *Workplace Relations Act 1996*, and for related purposes

[Assented to 11 December 1997]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Workplace Relations and Other  
Legislation Amendment Act 1997*.

### 2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Schedule 7 commences on a day to be fixed by Proclamation.

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- (3) If Schedule 7 does not commence under subsection (2) within the period of 6 months beginning on the day when this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Awards and arbitration**

### ***Workplace Relations Act 1996***

#### **1 Paragraph 143(1A)(b)**

Omit “order”, substitute “award”.

#### **2 At the end of section 170MZ**

Add:

- (8) Part VIII (compliance) applies in relation to awards under subsection 170MX(3) in the same way as it applies to awards as defined in subsection 4(1).

#### **3 At the end of section 170N**

Add:

- (2) Subsection (1) does not prevent the Commission exercising its arbitration powers to deal with an application to vary an award by making a safety net wage adjustment.

### ***Workplace Relations and Other Legislation Amendment Act 1996***

#### **4 Subitem 50(3) of Schedule 5**

After “Principal Act”, insert “, or varied under item 49 of this Schedule,”.

## Schedule 2—AWAs and the Employment Advocate

### *Workplace Relations Act 1996*

#### **1 At the end of subsection 83BH(3)**

Add:

; or (c) a place of business in which the authorised officer has reasonable cause to believe that a breach of Part VID (AWAs) or Part XA (freedom of association) has occurred, is occurring or is likely to occur.

#### **2 Paragraph 83BH(4)(c)**

Repeal the paragraph, substitute:

(c) interview any person;

#### **3 Paragraph 83BH(4)(e)**

Repeal the paragraph.

#### **4 Subsection 83BH(6)**

After “under”, insert “paragraph (4)(d) or”.

#### **5 After subsection 83BH(7)**

Insert:

(7A) An authorised officer may, without force, enter a place of business in which a person ordinarily performs work or conducts business if the authorised officer has reasonable cause to believe that the person has information relevant to compliance purposes.

(7B) An authorised officer must not enter a place of business under subsection (7A) if he or she has reasonable cause to believe that the person concerned is not in that place.

(7C) An authorised officer who enters a place of business under subsection (7A) may interview the person concerned in that place.

**6 Subsection 83BS(4) (after paragraph (b) of the definition of *AWA official*)**

Insert:

- (ba) a member of the staff assisting the Employment Advocate under section 83BD; or

**7 Subparagraph 143(3)(b)(i)**

Repeal the subparagraph, substitute:

- (i) in the case of a decision or determination relating to an AWA—the decision or determination, edited so as not to disclose the identity of either party to the AWA; and
- (ia) in the case of any other decision or determination—the decision or determination; and

**8 Subsection 170VN(2)**

Repeal the subsection, substitute:

- (2) The Employment Advocate must issue a receipt to the person who filed the document if:
  - (a) the Employment Advocate is satisfied that the filing requirements for the document have been met; or
  - (b) the Employment Advocate is not satisfied that the filing requirements in paragraphs 170VO(1)(a) and (c) for the document have been met in all respects, but he or she is satisfied that the failure to meet those filing requirements has not disadvantaged, and will not disadvantage, a party to the AWA.

**9 Subsection 170VN(3)**

Omit “14 days”, substitute “21 days”.

**10 Subsection 170VT(2)**

Repeal the subsection.

**11 Subsection 170VV(4) (definition of *penalty provision*)**

Omit “subsection 170VT(1)”, substitute “section 170VT”.

**12 Subsection 170WF(1)**

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After “AWA” (wherever occurring), insert “or ancillary document”.

**13 Subsection 170WG(2)**

After “AWA”, insert “or ancillary document”.

**14 At the end of section 170WHA**

Add:

- (2) If the Employment Advocate so requests, a person authorised in writing by a party to an AWA for that purpose may help the party in relation to the approval, variation or termination of the AWA by explaining, to the Employment Advocate, the party’s understanding of the effect of the AWA or an ancillary document. Such a person must not be allowed to make submissions or to be heard for any other purpose.

**15 Section 170WHC**

Repeal the section, substitute:

**170WHC Industrial Registrar not to publish AWA determinations**

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

**16 At the end of section 285B**

Add:

- (5) In this section:  
*ancillary document* has the same meaning as it has in Part VID.

## **Schedule 3—The no-disadvantage test**

### ***Workplace Relations Act 1996***

#### **1 Paragraph 170XA(2)(b)**

Omit “other”.

#### **2 Subsection 170XE(2)**

Repeal the subsection, substitute:

- (2) Upon application, the Employment Advocate must determine, and inform the employer in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.
- (3) For the purposes of subsection (2), the Employment Advocate must determine:
  - (a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the AWA; or
  - (b) if the Employment Advocate is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in the same kind of work as that of the person under the AWA.

#### **3 Subsection 170XF(1)**

Omit “may”, substitute “, as the case requires, must”.

#### **4 Subsection 170XF(2)**

Repeal the subsection, substitute:

- (2) Upon application, the Commission must determine, and inform the employer or organisation in writing, that an award or awards are appropriate for the purpose of deciding whether the agreement passes the no-disadvantage test.

- (3) For the purposes of subsection (2), the Commission must determine:
- (a) an award or awards under this Act regulating terms or conditions of employment of employees engaged in the same kind of work as that of those persons under the agreement; or
  - (b) if the Commission is satisfied that there is no such award under this Act—a State award or State awards regulating terms or conditions of employment of employees engaged in the same kind of work as that of those persons under the agreement.

## **Schedule 4—Termination of employment**

### ***Workplace Relations Act 1996***

#### **1 Subsection 152(1A)**

Repeal the subsection, substitute:

- (1A) If a State law provides protection for an employee against harsh, unjust or unreasonable termination of employment (however described in the law), subsection (1) is not intended to affect the provisions of that law that provide that protection, so far as those provisions are able to operate concurrently with the award.

#### **2 Subsection 170CE(7)**

After “subsection (1)”, insert “or (3)”.

#### **3 After subsection 170CE(7)**

Insert:

- (7A) An application under subsection (2) or (4) must be lodged within 21 days after the employee is given notice of the decision to terminate the employee’s employment.

#### **4 Subsection 170CE(9)**

Repeal the subsection, substitute:

- (9) An application under subsection (1), (2), (3) or (4) may be discontinued by the applicant in accordance with rules made under section 48. The applicant may do so whether or not the employer and the employee have agreed to settle the matter.

#### **5 Paragraph 170CH(8)(a)**

Repeal the paragraph, substitute:

- (a) the total amount of remuneration:  
(i) received by the employee; or  
(ii) to which the employee was entitled;

(whichever is higher) for any period of employment with the employer during the period of 6 months immediately before the termination (other than any period of leave without full pay); and

**6 Subsection 170LZ(3)**

Repeal the subsection, substitute:

- (3) If a State law provides protection for an employee against harsh, unjust or unreasonable termination of employment (however described in the law), subsection (1) is not intended to affect the provisions of that law that provide that protection, so far as those provisions are able to operate concurrently with the certified agreement.

**7 Subsection 170VQ(5)**

Repeal the subsection.

**8 Subsection 170VR(3)**

Repeal the subsection, substitute:

- (3) If a State law provides protection for an employee against harsh, unjust or unreasonable termination of employment (however described in the law), subsection (1) is not intended to affect the provisions of that law that provide that protection, so far as those provisions are able to operate concurrently with the AWA.

## **Schedule 5—Freedom of association**

### ***Workplace Relations Act 1996***

#### **1 Subsection 4(1A)**

After “in this Act”, insert “(except in Part XA)”.

#### **2 After paragraph 45(1)(e)**

Insert:

- (eaa) a decision of a member of the Commission to certify an agreement under Division 4 of Part VIB (but only on the ground that under subsection 170LU(2A) the Commission should have refused to certify the agreement);
- (eba) a decision of a member of the Commission to vary, or not to vary, an award or certified agreement under section 298Z;

#### **3 After paragraph 45(3)(b)**

Insert:

- (ba) in the case of an appeal under paragraph (1)(eea):
  - (i) a person bound by the certified agreement; or
  - (ii) an employee whose employment is subject to the certified agreement; or
  - (iii) the Employment Advocate;
- (baa) in the case of an appeal under paragraph (1)(eba) in relation to an award:
  - (i) an organisation or party bound by the award; or
  - (ii) an employee whose employment is subject to the award; or
  - (iii) the Employment Advocate;
- (bab) in the case of an appeal under paragraph (1)(eba) in relation to a certified agreement:
  - (i) a person bound by the certified agreement; or
  - (ii) an employee whose employment is subject to the certified agreement; or
  - (iii) the Employment Advocate;

#### **4 After subsection 170LU(2)**

Insert:

- (2A) Despite section 170LT, the Commission must refuse to certify an agreement if the Commission is satisfied that it contains provisions that:
- (a) require or permit, or purport to require or permit; or
  - (b) have the effect, or purport to have the effect, of requiring or permitting;  
any conduct that:
  - (c) would contravene Part XA (whether or not the provisions would in any case be void because of section 298Y); or
  - (d) would, but for section 298C, contravene Part XA.

#### **5 Application of item 4**

The amendment made by item 4 applies for the purpose of any consideration by the Commission, after the commencement of the item, of whether to certify an agreement, even if the application for certification was made before that commencement.

#### **6 At the end of subsection 170MD(7)**

Add:

- ; or (e) section 298Z (which deals with the removal of preference clauses).

#### **7 At the end of section 298B**

Add:

- (5) It is declared that a reference in this Part, or in regulations made for the purposes of this Part, to an independent contractor is not confined to a natural person.

#### **8 Application of items 1 and 7**

For the purposes of the application of Part XA of the *Workplace Relations Act 1996* in respect of any conduct occurring after the commencement of this item, the amendments made by items 1 and 7 are taken to have been in force at all times since the commencement of that Part.

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**9 After section 298Y**

Insert in Division 7 of Part XA:

**298Z Removal of preference clauses from awards and certified agreements**

- (1) Where, on application by a person mentioned in subsection (2), the Commission is satisfied that an award contains objectionable provisions, the Commission must vary the award so as to remove the objectionable provisions.
- (2) The application may be made by:
  - (a) an organisation or party bound by the award; or
  - (b) an employee whose employment is subject to the award; or
  - (c) the Employment Advocate.
- (3) Where, on application by a person mentioned in subsection (4), the Commission is satisfied that a certified agreement contains objectionable provisions, the Commission must vary the agreement so as to remove the objectionable provisions.
- (4) The application may be made by:
  - (a) a person bound by the certified agreement; or
  - (b) an employee whose employment is subject to the certified agreement; or
  - (c) the Employment Advocate.
- (5) In this section:

*objectionable provisions* are provisions that:

  - (a) require or permit, or purport to require or permit; or
  - (b) have the effect, or purport to have the effect, of requiring or permitting;

any conduct that would contravene this Part, whether or not those provisions would in any case be void because of section 298Y.

**10 Application of section 298Z**

- (1) Section 298Z of the *Workplace Relations Act 1996* applies to an agreement that was:

(a) entered into before the commencement of Schedule 8 to the *Workplace Relations and Other Legislation Amendment Act 1996*; and

(b) covered by Division 2 of Part VIB of the *Workplace Relations Act 1996* as then in force;

as if the agreement were a certified agreement. Section 298Z so applies in spite of anything in section 170MK of the *Workplace Relations Act 1996* as in force before the commencement of Schedule 8 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

- (2) Section 298Z of the *Workplace Relations Act 1996* applies to an enterprise flexibility agreement that is in force at the commencement of this Schedule as if the enterprise flexibility agreement were a certified agreement. Section 298Z so applies in spite of anything in section 170NL of the *Workplace Relations Act 1996* as in force before the commencement of Schedule 8 to the *Workplace Relations and Other Legislation Amendment Act 1996*.

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## Schedule 6—Registered organisations

### *Workplace Relations Act 1996*

#### **1 Subsection 253ZI(1) (definition of *amalgamated organisation*)**

Repeal the definition, substitute:

*amalgamated organisation*, in relation to an amalgamation, means the organisation of which members of a de-registered organisation became members under paragraph 253Q(3)(d), but does not include any such organisation that was subsequently de-registered under Division 7.

#### **2 Subsection 253ZI(1) (definition of *constituent member*)**

Repeal the definition, substitute:

*constituent member*, in relation to a constituent part of an amalgamated organisation, means:

- (a) in the case of a separately identifiable constituent part—a member of the amalgamated organisation who is included in that part; or
- (b) in any other case—a member of the amalgamated organisation who would be eligible for membership of the constituent part if:
  - (i) the constituent part; or
  - (ii) the organisation of which the constituent part was a branch;

as the case requires, were still registered as an organisation with the same rules as it had when it was de-registered under Division 7.

#### **3 Subsection 253ZI(1) (definition of *constituent part*)**

Repeal the definition, substitute:

*constituent part*, in relation to an amalgamated organisation, means:

- (a) a separately identifiable constituent part; or
- (b) a part of the membership of the amalgamated organisation that would have been eligible for membership of:
  - (i) an organisation de-registered under Division 7 in connection with the formation of the amalgamated organisation; or
  - (ii) a State or Territory branch of such a de-registered organisation;if the de-registration had not occurred.

#### 4 Subsection 253ZI(1)

Insert:

*separately identifiable constituent part*, in relation to an amalgamated organisation means:

- (a) if an organisation de-registered under Division 7 in connection with the formation of the amalgamated organisation remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part; or
- (b) if a State or Territory branch of such a de-registered organisation under its rules as in force immediately before its de-registration remains separately identifiable under the rules of the amalgamated organisation as a branch, division or part of that organisation—that branch, division or part.

#### 5 Subsection 253ZI(2)

Repeal the subsection, substitute:

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

de-registered under Division 7 in connection with the formation of the amalgamated organisation.

**6 At the end of paragraph 253ZJ(3)(b)**

Add “, whether by a direct voting system or a collegiate electoral system”.

**7 At the end of subsection 253ZJ(3)**

Add:

; or (c) if the application relates to a separately identifiable constituent part—the committee of management of that part.

**8 After section 253ZJ**

Insert:

**253ZJA Outline of proposed withdrawal**

- (1) The application must be accompanied by a written outline of the proposal for the constituent part to withdraw from the amalgamated organisation. Subject to subsection (2), the outline must:
  - (a) provide, in no more than 3,000 words, sufficient information on the proposal to enable the constituent members to make informed decisions in relation to the proposed withdrawal; and
  - (b) address such matters as are prescribed.
- (2) The outline may, if the Court allows, consist of more than 3,000 words.
- (3) The outline must be a fair and accurate representation of the proposed withdrawal and must address any matters prescribed for the purposes of paragraph (1)(b) in a fair and accurate manner.
- (4) If the Court is not satisfied that the outline complies with subsection (3), the Court must order the making of such amendments to the outline as it considers are needed for the outline to comply with that subsection.

**253ZJB Filing the “yes” case**

- (1) The constituent members, or committee of management, making the application may file with the Court a written statement of no more than 2,000 words in support of the proposal for the constituent part to withdraw from the amalgamated organisation.
- (2) The statement must either:
  - (a) accompany the application; or
  - (b) be filed within such later time as the Court allows.
- (3) The Court may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Act.

**253ZJC Filing the “no” case**

- (1) The amalgamated organisation may file with the Court a written statement of no more than 2,000 words in opposition to the proposal for the constituent part to withdraw from the organisation.
- (2) The statement must be filed either:
  - (a) not later than 7 days before the day set down for the hearing of the application in question by the Court; or
  - (b) within such later time as the Court allows.
- (3) The Court may order that the statement be amended, in accordance with the order, to correct factual errors or otherwise to ensure that it complies with this Act.

**253ZJD Provisions relating to outlines and statements of “yes” and “no” cases**

- (1) An outline under section 253ZJA or a statement under section 253ZJB or 253ZJC may, if the Court allows, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.
- (2) The Court may allow an outline under section 253ZJA, or a statement under section 253ZJB or 253ZJC, to be amended by whoever filed the outline or statement with the Court.

**9 After paragraph 253ZL(1)(a)**

Insert:

- (aa) the outline under section 253ZJA accompanying the application, or (if applicable) that outline as amended:
  - (i) is a fair and accurate representation of the proposal for withdrawal from the organisation; and
  - (ii) addresses any matters prescribed for the purposes of paragraph 253ZJA(1)(b) in a fair and accurate manner; and

**10 Subsection 253ZL(2)**

Repeal the subsection, substitute:

- (2) In considering whether to order that a ballot be held, the Court may hear from:
  - (a) an applicant for the ballot; and
  - (b) the amalgamated organisation; and
  - (c) a creditor of the amalgamated organisation; and
  - (d) any other person who would be affected by the withdrawal of the constituent part from the amalgamated organisation.

**11 At the end of section 253ZM**

Add:

- (2) The ballot paper sent to the constituent members of a constituent part of an amalgamated organisation in connection with a proposal for the constituent part to withdraw from the amalgamated organisation must be accompanied by:
  - (a) a copy of the outline under section 253ZJA relating to the proposed withdrawal; and
  - (b) if there is a statement under section 253ZJB in support of the proposed withdrawal— a copy of that statement; and
  - (c) if there is a statement under section 253ZJC in opposition to the proposed withdrawal— a copy of that statement.

**12 After section 253ZQ**

Insert:

**253ZQA Choice of organisation following withdrawal of separately identifiable constituent part**

- (1) This section applies in the case of a withdrawal from amalgamation under this Division by a separately identifiable constituent part of an amalgamated organisation.
- (2) As soon as practicable after the constituent part is registered as an organisation under section 253ZQ, the amalgamated organisation must send a written statement in accordance with subsection (3) to each person who, immediately before that registration, was a member of the amalgamated organisation attached to the constituent part.
- (3) The statement must:
  - (a) inform the person of the withdrawal from amalgamation of the constituent part; and
  - (b) invite the person to give written notice, within a period of 28 days after being sent the statement (the *notice period*), to the amalgamated organisation or to the newly registered organisation that:
    - (i) the person wants to remain a member of the amalgamated organisation; or
    - (ii) the person wants to become a member of the newly registered organisation; and
  - (c) explain the effect of responding, or failing to respond, to the invitation.
- (4) As soon as practicable after the amalgamated organisation receives a notice under paragraph (3)(b), it must notify the newly registered organisation of the receipt. As soon as practicable after the newly registered organisation receives a notice under paragraph (3)(b), it must notify the amalgamated organisation of the receipt.
- (5) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that he or she wants to become a member of the newly registered organisation, he or she:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day upon

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- which the notice is received by the amalgamated organisation or the newly registered organisation (as the case may be); and
- (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (6) If a person referred to in subsection (2):
- (a) gives written notice in accordance with paragraph (3)(b) within the notice period that he or she wants to remain a member of the amalgamated organisation; or
- (b) fails to give written notice in accordance with paragraph (3)(b) within the notice period;
- he or she remains a member of the amalgamated organisation.
- (7) A person who ceases to be a member of the amalgamated organisation because of the operation of subsection (5):
- (a) is not liable to make any payment because the person gave no notice, or insufficient notice, of ceasing to be such a member under the rules of the organisation; and
- (b) otherwise, remains liable for such payments as are due in accordance with those rules.
- (8) Notwithstanding paragraph (6)(b), if a person to whom that paragraph would apply, at any time before the day upon which the constituent part is registered as an organisation under section 253ZQ, gives notice in writing to the amalgamated organisation or to the applicant for a ballot under section 253ZJ that they wish to become a member of the newly registered organisation upon its registration under section 253ZQ, that person:
- (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the day after the end of the notice period; and
- (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a).
- (9) As soon as practicable after the end of the notice period, the amalgamated organisation must notify the newly registered
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organisation of any notices under subsection (8) it has received. As soon as practicable after the end of the notice period, the newly registered organisation must notify the amalgamated organisation of any notices under subsection (8) the applicant under section 253ZJ has received.

### **13 At the end of Subdivision D of Division 7A**

Add:

#### **253ZW Certain actions etc. not to constitute breach of rules of amalgamated organisation**

- (1) Neither of the following constitutes a breach of the rules of an amalgamated organisation:
  - (a) an act done, or omitted to be done, under or for the purposes of this Division, or regulations made for the purposes of this Division;
  - (b) an act done, or omitted to be done, in connection with the proposal of, or preparation for, an act or omission of a kind referred to in paragraph (a).
- (2) The following are examples of acts and omissions to which subsection (1) applies:
  - (a) making an application under section 253ZJ;
  - (b) supporting, or supporting the making of, an application under section 253ZJ;
  - (c) participating in, or encouraging a person to participate in, a ballot under Subdivision B;
  - (d) not participating in a ballot under Subdivision B;
  - (e) encouraging a person not to participate in a ballot under Subdivision B;
  - (f) casting a vote in a particular way in a ballot under Subdivision B;
  - (g) encouraging a person to cast a vote in a particular way in a ballot under Subdivision B;
  - (h) complying with an order or requirement made under this Division or regulations made for the purposes of this Division; or

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- (i) encouraging a person to resign his or her membership of the amalgamated organisation from which the constituent part withdrew to form the newly registered organisation so that the person can become a member of the newly registered organisation.

**253ZX Amalgamated organisation not to penalise members etc.**

- (1) The amalgamated organisation, or an officer or member of the organisation, must not impose, or threaten to impose, a penalty, forfeiture or disability of any kind on:
  - (a) a member or officer of the organisation; or
  - (b) a branch, or other part, of the organisation;
 because the member, officer, branch or part concerned does, or proposes to do, an act or omission to which section 253ZW applies.
- (2) The Court may, if the Court considers it appropriate in all the circumstances, make one or more of the following orders in respect of conduct that contravenes subsection (1):
  - (a) an order imposing on a person whose conduct contravenes that subsection a penalty of not more than:
    - (i) in the case of a body corporate—\$10,000; or
    - (ii) in any other case—\$2,000;
  - (b) an order requiring the person not to carry out a threat made by the person, or not to make any further threat;
  - (c) injunctions (including interim injunctions), and any other orders, that the Court considers necessary to stop the conduct or remedy its effects;
  - (d) any other consequential orders.
- (3) An application for an order under subsection (2) may be made by:
  - (a) a person against whom the conduct is being, has been, or is threatened to be, taken; or
  - (b) any other person prescribed by the regulations.
- (4) For the purposes of this section, action done by one of the following bodies or persons is taken to have been done by an amalgamated organisation:

- (a) the committee of management of the amalgamated organisation;
  - (b) an officer or agent of the amalgamated organisation acting in that capacity;
  - (c) a member or group of members of the amalgamated organisation acting under the rules of the organisation;
  - (d) a member of the amalgamated organisation, who performs the function of dealing with an employer on behalf of other members of the organisation, acting in that capacity.
- (5) Paragraphs (4)(c) and (d) do not apply if:
- (a) a committee of management of the amalgamated organisation; or
  - (b) a person authorised by the committee; or
  - (c) an officer of the amalgamated organisation;
- has taken reasonable steps to prevent the action.
- (6) In this section:

***amalgamated organisation*** includes a branch of an amalgamated organisation.

***officer***, in relation to an amalgamated organisation, includes:

- (a) a delegate or other representative of the organisation; and
- (b) an employee of the organisation.

#### **14 Application of items 1, 5 and 6**

The amendments made by items 1, 5 and 6 apply for the purposes of any determination of whether an application under section 253ZJ of the *Workplace Relations Act 1996* was properly made, including an application made before the commencement of this Schedule.

#### **15 Commenced ballots for withdrawals from amalgamations**

The amendments made by items 8, 9 and 11 do not apply in relation to any proposal for a constituent part of an amalgamated organisation to withdraw from the organisation if the ballot to decide whether the constituent part should withdraw has commenced under section 253ZM of the *Workplace Relations Act 1996* before the commencement of this Schedule.

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## **16 Applications for withdrawals from amalgamations**

(1) If:

- (a) an application was made, before the commencement of this Schedule, under section 253ZJ of the *Workplace Relations Act 1996*, for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation; and
- (b) a ballot to decide whether the constituent part should withdraw has not commenced under section 253ZM of that Act before the commencement of this Schedule;

the amendments made by items 8, 9 and 11 apply in relation to the proposal for withdrawal, subject to the modifications specified in subitem (2).

(2) The modifications that apply in relation to the proposal for withdrawal are as follows:

- (a) the requirement under subsection 253ZJA(1) of the *Workplace Relations Act 1996* that the application referred to in that subsection must be accompanied by the outline referred to in that subsection is taken to be a requirement that the outline must be filed with the Court within such time as the Court allows;
- (b) the requirement under subsection 253ZJB(2) of that Act is taken to be a requirement that the statement referred to in that subsection must be filed with the Court within such time as the Court allows.

## **17 Application of section 253ZW to acts etc. before commencement**

Section 253ZW of the *Workplace Relations Act 1996* applies to acts or omissions that took place before the commencement of this Schedule but after the commencement of Division 7A of Part IX of the *Workplace Relations Act 1996* in the same way that it applies to acts or omissions that took place after the commencement of this Schedule.

## **18 Applications, and commenced ballots, for withdrawals from amalgamations**

- (1) Subject to subitem (2), the amendments made by items 2, 3, 4, 7 and 12 apply in relation to any application made before the commencement of this Schedule for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation.
- (2) The amendments made by items 2, 3, 4, 7 and 12:
  - (a) do not apply to the extent (if any) that they would, apart from this paragraph, invalidate the application; and
  - (b) do not apply in relation to any proposal for a constituent part of an amalgamated organisation to withdraw from the organisation if the ballot to decide whether the constituent part should withdraw has commenced under section 253ZM of the *Workplace Relations Act 1996* before the commencement of this Schedule.

## **Schedule 7—Matters referred by Victoria**

### ***Workplace Relations Act 1996***

#### **1 Section 170MB**

Repeal the section, substitute:

#### **170MB Successor employers bound**

(1) If:

- (a) an employer is bound by a certified agreement; and
- (b) the application for certification of the agreement stated that it was made under Division 3; and
- (c) at a later time, a new employer becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;

then, from the later time:

- (d) the new employer is bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
- (e) the previous employer ceases to be bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
- (f) a reference in this Part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent that the context relates to the whole or the part of the business.

(2) If:

- (a) an employer is bound by a certified agreement; and
- (b) the application for certification of the agreement stated that it was made under Division 2; and
- (c) at a later time, a new employer that is a constitutional corporation or the Commonwealth becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;

then, from the later time:

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- (d) the new employer is bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
  - (e) the previous employer ceases to be bound by the certified agreement, to the extent that it relates to the whole or the part of the business; and
  - (f) a reference in this Part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent that the context relates to the whole or the part of the business.
- (3) This section does not affect the rights and obligations of the previous employer that arose before the later time.

**2 Subsection 494(1)**

Omit “subsection (2)”, substitute “this section”.

**3 At the end of section 494**

Add:

- (3) Division 2 of Part VIB and related provisions of this Act also have effect as if subsection 170MB(2) were repealed and the following provision substituted:
- (2) If:
- (a) an employer is bound by a certified agreement; and
  - (b) the application for certification of the agreement stated that it was made under Division 2 or under Division 2 as it operates because of section 494; and
  - (c) at a later time, a new employer that is a constitutional corporation, or the Commonwealth, or an employer (within the meaning of Part XV) in Victoria, becomes the successor, transmittee or assignee (whether immediate or not) of the whole or a part of the business concerned;
- then, from the later time:
- (d) the new employer is bound by the certified agreement, to the extent that it relates:
    - (i) to the whole or the part of the business; and

- (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria; and
- (e) the previous employer ceases to be bound by the certified agreement, to the extent that it relates:
  - (i) to the whole or the part of the business; and
  - (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria; and
- (f) a reference in this Part to the employer includes a reference to the new employer, and ceases to refer to the previous employer, to the extent that the context relates:
  - (i) to the whole or the part of the business; and
  - (ii) in the case of a new employer (within the meaning of Part XV) in Victoria—to employees (within the meaning of Part XV) in Victoria.

#### **4 Subsection 495(1)**

Omit “subsection (2)”, substitute “this section”.

#### **5 Paragraph 495(2)(b)**

Repeal the paragraph, substitute:

(b) an employee (within the meaning of this Part) in Victoria;  
and so have effect as if the following paragraph were added at the end of section 170VC:

- (g) the employer is an employer (within the meaning of Part XV) in Victoria and the employee is an employee (within the meaning of Part XV) in Victoria.

#### **6 At the end of section 495**

Add:

- (3) Section 170VS also has effect in relation to an AWA made under Part VID as if the following subparagraph were inserted after subparagraph 170VS(1)(b)(vi):
  - (vii) the new employer is an employer (within the meaning of Part XV) in Victoria and the employee is an employee (within the meaning of Part XV) in Victoria;

**Schedule 7** Matters referred by Victoria

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*[Minister's second reading speech made in the—  
House of Representatives on 26 June 1997  
Senate on 24 September 1997]*

(118/97)