Fair Work (Registered Organisations) Amendment Bill 2014

No.  , 2014
(Employment)

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

The Parliament of Australia enacts:

1 **Short title**

   This Act may be cited as the *Fair Work (Registered Organisations) Amendment Act 2014*.

2 **Commencement**

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

<table>
<thead>
<tr>
<th>Provision(s)</th>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
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<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation.</td>
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<td>However, if the provision(s) do not commence before Schedule 2 commences,</td>
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<td>they commence immediately before that Schedule commences.</td>
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<td>3. Schedule 2</td>
<td>1 July 2014.</td>
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</table>

1. Note: This table relates only to the provisions of this Act as originally enacted.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. (2) Any information in column 3 of the table is not part of this Act.

3. 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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:
Schedule 1  The Registered Organisations Commissioner

Part 1  Amendments

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”.

Fair Work (Registered Organisations) Amendment Bill 2014 No.  , 2014
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)”.
Schedule 1  The Registered Organisations Commissioner

Part 1  Amendments

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”.

6  Fair Work (Registered Organisations) Amendment Bill 2014  No.  , 2014
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”.

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Schedule 1  The Registered Organisations Commissioner
Part 1  Amendments

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”.

8 Fair Work (Registered Organisations) Amendment Bill 2014 No. , 2014
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.
Schedule 1  The Registered Organisations Commissioner
Part 1  Amendments

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”.

10  Fair Work (Registered Organisations) Amendment Bill 2014  No. , 2014
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;
Schedule 1  The Registered Organisations Commissioner

Part 1  Amendments

1. (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 public money must comply with the requirements in the Financial Management and Accountability Act 1997.
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 to the Minister

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

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.
Schedule 1  The Registered Organisations Commissioner

Part 1  Amendments

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 329BG.

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.
Schedule 1  The Registered Organisations Commissioner
Part 1  Amendments

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 Financial Management and Accountability Act 1997.

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 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 21 of the Financial Management and Accountability Act 1997 (debts from 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

Annual report to be given to Minister

(1) The Commissioner must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the Commissioner’s operations during that year.

Note: See also section 34C of the Acts Interpretation Act 1901, which contains provisions about annual reports.
Contents of annual report

(2) The Commissioner must include the following in the report in relation to that year:

(a) details of the number and types of investigations conducted by the Commissioner under Part 4 of Chapter 11;

(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);

(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”.

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No. 2014 Fair Work (Registered Organisations) Amendment Bill 2014 21
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”.

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*Fair Work (Registered Organisations) Amendment Bill 2014 No. , 2014*
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:
(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.

136 Commissioner’s first annual report

If this Schedule commences before the end of the financial year ending on 30 June 2014, the Commissioner’s report required by section 329FC of the Act for that year must be included as part of the Fair Work Ombudsman’s report required by section 686 of the Fair Work Act 2009 for that year.

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

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*Fair Work (Registered Organisations) Act 2009*

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

Repeal the definition.

2 **Section 6**

Insert:

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

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.

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

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.

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:

(iiia) 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.
Schedule 2  Increased disclosure requirements, investigation powers and penalties

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1  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.

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.
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44  At the end of subsection 192(3)
   Add:
   Civil penalty: 100 penalty units.

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.

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”.

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:
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   Civil penalty: 60 penalty units.

66 Subsection 231(2) (note)
   Repeal the note.

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)**  
Renumber as Note 1.

85 **Subsection 253(3) (note 3)**  
Renumber as Note 2.
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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.

90  Subsection 256(1) (note)
Repeal the note.

91  At the end of subsection 256(1)
Add:
Civil penalty: 100 penalty units.
92 Subsection 256(3) (note)
   Repeal the note.

93 At the end of subsection 256(3)
   Add:
      Civil penalty: 60 penalty units.

94 Subsection 256(4) (note)
   Repeal the note.

95 At the end of subsection 256(4)
   Add:
      Civil penalty: 60 penalty units.

96 Subsection 256(5) (note)
   Repeal the note.

97 At the end of subsection 256(5)
   Add:
      Civil penalty: 60 penalty units.

98 Subsection 256(6) (note)
   Repeal the note.

99 At the end of subsection 256(6)
   Add:
      Civil penalty: 60 penalty units.

100 Subsection 257(10) (note)
   Repeal the note.

101 At the end of subsection 257(10)
   Add:
      Civil penalty: 100 penalty units.
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102 Subsection 257(11) (note)
   Repeal the note.

103 At the end of subsection 257(11)
   Add:
   
   Civil penalty: 100 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: 100 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: 60 penalty units.

110 Subsection 263(3) (note)
   Repeal the note.

111 At the end of subsection 263(3)
   Add:
   
   Civil penalty: 60 penalty units.

112 Subsection 263(5) (note)
   Repeal the note.
113 At the end of subsection 263(5)
   Add:
   Civil penalty: 60 penalty units.

114 Subsection 264(3) (note)
   Repeal the note.

115 At the end of subsection 264(3)
   Add:
   Civil penalty: 60 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.
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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.
Schedule 2  Increased disclosure requirements, investigation powers and penalties

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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:
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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”. 
Schedule 2 Increased disclosure requirements, investigation powers and penalties
Part 1 Amendments

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 officers.

It 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.

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 with 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 and relatives

Disclosure by officers

(1) Each officer of an organisation must, in accordance with subsection (3), disclose to the organisation details of any material personal interest in a matter that relates to the affairs of the organisation that:

(a) the officer has or acquires; or

(b) a relative of the officer has or acquires.
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 with subsection (3), disclose to the branch details of any material personal interest in a matter that relates to the affairs of the branch that:
(a) the officer has or acquires; or
(b) a relative of the officer has or acquires.

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

(3) A disclosure under subsection (1) or (2) 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.

Disclosure by organisation or branch

(4) An organisation must, for a financial year and in accordance with subsection (6), disclose to the members of the organisation and its branches details of interests disclosed to the organisation under subsection (1) during the financial year.

(5) A branch of an organisation must, for a financial year and in accordance with subsection (6), disclose to the members of the branch details of interests disclosed to the branch under subsection (2) during the financial year.

Manner of disclosure

(6) A disclosure under subsection (4) or (5) 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).
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.

(3) Neither subsection (1) nor (2) applies if subsection (4) allows the officer to be present and take part in a decision with respect to the matter.

(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).

(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(1) or (2) 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 officers of the organisation or the
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branch, and by the organisation or branch, under Division 2 for the financial year.

Division 4—Training in relation to financial duties

293K  Officers to undertake approved training

(1) 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.

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”.

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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:
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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”.

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:
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.

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.

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:
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; (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
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(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
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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:
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(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.
231 **Subsection 337C(6) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

232 **Section 337G**

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

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;

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.

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”.
Schedule 2 Increased disclosure requirements, investigation powers and penalties

Part 1 Amendments

241 Subsection 356(6) (penalty)

1 Omit “Maximum penalty”, substitute “Penalty”.

2
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*.

243 Application of Division 3A of Part 2 of Chapter 5 in relation to the 2013-14 financial year

Division 3A of Part 2 of Chapter 5 of the Act has effect in relation to the financial year ending on 30 June 2014 as if it had not been repealed by this Schedule.

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.

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.