

2002

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*As read a third time*

**Workplace Relations Amendment  
(Registration and Accountability of  
Organisations) Bill 2002**

**No.     , 2002**

**A Bill for an Act to amend the *Workplace Relations Act 1996* to provide for the registration of associations of employers and of employees, to regulate those associations after registration, and for related purposes**



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1       THIS Bill originated in the House of  
2       Representatives; and, having this day passed,  
3       is now ready for presentation to the Senate  
4       for its concurrence.

5                               I.C. HARRIS  
6       *Clerk of the House of Representatives*

7       House of Representatives  
8       18 September 2002

9       **A Bill for an Act to amend the *Workplace Relations***  
10      ***Act 1996* to provide for the registration of**  
11      **associations of employers and of employees, to**  
12      **regulate those associations after registration, and**  
13      **for related purposes**

14      The Parliament of Australia enacts:

15      **1 Short title**

16                               This Act may be cited as the *Workplace Relations Amendment*  
17                               (*Registration and Accountability of Organisations*) Act 2002.

## Section 2

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### 1 **2 Commencement**

- 2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, on the day or at the  
4 time specified in column 2 of the table.

5

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsection (3)	

- 6 Note: This table relates only to the provisions of this Act as originally  
7 passed by the Parliament and assented to. It will not be expanded to  
8 deal with provisions inserted in this Act after assent.

- 9 (2) Column 3 of the table is for additional information that is not part  
10 of this Act. This information may be included in any published  
11 version of this Act.
- 12 (3) If a provision covered by item 2 of the table does not commence  
13 within the period of 6 months beginning on the day on which this  
14 Act receives the Royal Assent, it commences on the first day after  
15 the end of that period.

### 16 **3 Schedule(s)**

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

1  
2 **Schedule 1—Amendment of the Workplace**  
3 **Relations Act 1996**

4 **1 After section 4**

5 Insert:

6 **4A Schedule 1B**

7 Schedule 1B has effect.

8 **2 After Schedule 1A**

9 Insert:

10 **Schedule 1B—Registration and**  
11 **Accountability of Organisations**

12 Note: See section 4A

13 **Chapter 1—Objects of Schedule and general**  
14 **provisions**

15 **1 Simplified outline of Chapter**

16 This Chapter sets out the objects of the Schedule and contains  
17 other provisions that are relevant to the Schedule as a whole.

18 It includes definitions of terms that are used throughout the  
19 Schedule. However, not all definitions are in this Chapter.  
20 Definitions of terms that are used only in a particular area of the  
21 Schedule, or only in one section of the Schedule, are generally  
22 defined in that area or section.

23 **5 Objects of Schedule**

24 The principal objects of this Schedule are to:

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- 1 (a) ensure that employee and employer organisations registered  
2 under this Schedule are representative of and accountable to  
3 their members, and are able to operate effectively; and  
4 (b) encourage members to participate in the affairs of  
5 organisations to which they belong; and  
6 (c) encourage the efficient management of organisations and  
7 high standards of accountability of organisations to their  
8 members; and  
9 (d) provide for the democratic functioning and control of  
10 organisations.

11 Note: The Workplace Relations Act contains many provisions that affect the  
12 operation of this Schedule. For example, provisions of the Workplace  
13 Relations Act deal with the powers and functions of the Commission  
14 and of Registrars. Decisions made under this Schedule may be subject  
15 to procedures and rules (for example about appeals) that are set out in  
16 the Workplace Relations Act.

17 **5A Schedule binds Crown**

- 18 (1) This Schedule binds the Crown in each of its capacities.  
19 (2) However, this Schedule does not make the Crown liable to be  
20 prosecuted for an offence.

21 **6 Definitions**

22 In this Schedule, unless the contrary intention appears:

23 **AEC** means the Australian Electoral Commission.

24 Note: Section 11 is also relevant to this definition.

25 **approved auditor** has the meaning given by the regulations.

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

- 27 (a) the person who is the holder of the position of auditor of the  
28 reporting unit under section 256; or  
29 (b) where a firm is the holder of the position—each person who  
30 is, from time to time, a member of the firm and is an  
31 approved auditor.

1                   **Australian Accounting Standards** means the accounting  
2 standards:

- 3                   (a) issued by the Australian Accounting Standards Board; or  
4                   (b) issued by CPA Australia and by The Institute of Chartered  
5 Accountants in Australia and adopted by the Australian  
6 Accounting Standards Board;

7 as in force, or applicable, from time to time, as modified by  
8 regulations made for the purpose of this definition.

9                   **Australian Auditing Standards** means the auditing and assurance  
10 standards issued by CPA Australia and The Institute of Chartered  
11 Accountants in Australia as in force, or applicable, from time to  
12 time.

13                   **AWA** means an Australian workplace agreement under Part VID of  
14 the Workplace Relations Act.

15                   **award** means an award or order that has been reduced to writing  
16 under subsection 143(1) of the Workplace Relations Act, but does  
17 not include an order made by the Commission in a proceeding  
18 under Subdivision B of Division 3 of Part VIA of that Act.

19                   **breach** includes non-observance.

20                   **certified agreement** means an agreement certified under Division 4  
21 of Part VIB of the Workplace Relations Act.

22                   **civil penalty provision** has the meaning given by subsection  
23 305(2).

24                   **collective body** means:

- 25                   (a) in relation to an organisation—the committee of management  
26 or a conference, council, committee, panel or other body of  
27 or within the organisation; and  
28                   (b) in relation to a branch of an organisation—the committee of  
29 management or a conference, council, committee, panel or  
30 other body of or within the branch.

31                   **collegiate electoral system**, in relation to an election for an office  
32 in an organisation, means a method of election comprising a first

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1 stage, at which persons are elected to a number of offices by a  
2 direct voting system, and a subsequent stage or subsequent stages  
3 at which persons are elected by and from a body of persons  
4 consisting only of:  
5 (a) persons elected at the last preceding stage; or  
6 (b) persons elected at the last preceding stage and other persons  
7 (being in number not more than 15% of the number of  
8 persons comprising the body) holding offices in the  
9 organisation (including the office to which the election  
10 relates), not including any person holding such an office  
11 merely because of having filled a casual vacancy in the office  
12 within the last 12 months, or the last quarter, of the term of  
13 the office.

14 **Commission** means the Australian Industrial Relations  
15 Commission established under section 8 of the Workplace  
16 Relations Act.

17 **committee of management:**

- 18 (a) in relation to an organisation, association or branch of an  
19 organisation or association, means the group or body of  
20 persons (however described) that manages the affairs of the  
21 organisation, association or branch; and  
22 (b) in relation to a reporting unit, means the group or body of  
23 persons (however described) that, under the rules of the  
24 reporting unit, is responsible for undertaking the functions  
25 necessary to enable the reporting unit to comply with Part 3  
26 of Chapter 8.

27 **Commonwealth authority** means:

- 28 (a) a body corporate established for a public purpose by or under  
29 a law of the Commonwealth or the Australian Capital  
30 Territory; or  
31 (b) a body corporate:  
32 (i) incorporated under a law of the Commonwealth or a  
33 State or Territory; and  
34 (ii) in which the Commonwealth has a controlling interest.

1           **conduct** includes being (whether directly or indirectly) a party to,  
2           or concerned in, the conduct.

3           **constitutional corporation** means:

- 4           (a) a foreign corporation within the meaning of paragraph 51(xx)  
5           of the Constitution; or  
6           (b) a body corporate that is, for the purposes of paragraph 51(xx)  
7           of the Constitution, a financial corporation formed within the  
8           limits of the Commonwealth; or  
9           (c) a body corporate that is, for the purposes of paragraph 51(xx)  
10          of the Constitution, a trading corporation formed within the  
11          limits of the Commonwealth; or  
12          (d) a body corporate that is incorporated in a Territory; or  
13          (e) a Commonwealth authority.

14          **declaration envelope** means an envelope in the form prescribed by  
15          the regulations on which a voter is required to make a declaration  
16          containing the prescribed information.

17          **demarcation dispute** includes:

- 18          (a) a dispute arising between 2 or more organisations, or within  
19          an organisation, as to the rights, status or functions of  
20          members of the organisations or organisation in relation to  
21          the employment of those members; or  
22          (b) a dispute arising between employers and employees, or  
23          between members of different organisations, as to the  
24          demarcation of functions of employees or classes of  
25          employees; or  
26          (c) a dispute about the representation under this Schedule or the  
27          Workplace Relations Act of the industrial interests of  
28          employees by an organisation of employees.

29          **Deputy Industrial Registrar** means a Deputy Industrial Registrar  
30          appointed under section 75 of the Workplace Relations Act.

31          **direct voting system**, in relation to an election for an office in an  
32          organisation, means a method of election at which:

- 33          (a) all financial members; or

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1 (b) all financial members included in the branch, section, class or  
2 other division of the members of the organisation that is  
3 appropriate having regard to the nature of the office;  
4 are, subject to reasonable provisions in relation to enrolment,  
5 eligible to vote.

6 ***Electoral Commissioner*** has the same meaning as in the  
7 *Commonwealth Electoral Act 1918*.

8 ***electoral official*** means an Australian Electoral Officer or a  
9 member of the staff of the AEC.

10 ***eligibility rules***, in relation to an organisation or association, means  
11 the rules of the organisation or association that relate to the  
12 conditions of eligibility for membership or the description of the  
13 industry or enterprise (if any) in connection with which the  
14 organisation is, or the association is proposed to be, registered.

15 ***employee*** includes any person whose usual occupation is that of  
16 employee, but does not include a person who is undertaking a  
17 vocational placement within the meaning of section 4 of the  
18 Workplace Relations Act.

19 ***employer*** includes:

- 20 (a) a person who is usually an employer; and  
21 (b) an unincorporated club.

22 ***employing authority***, in relation to a class of employees, means the  
23 person or body, or each of the persons or bodies, prescribed as the  
24 employing authority in relation to the class of employees.

25 ***Employment Advocate*** means the Employment Advocate referred  
26 to in Part IVA of the Workplace Relations Act.

27 ***enterprise*** means:

- 28 (a) a business that is carried on by a single employer; or  
29 (b) an operationally distinct part of such a business; or  
30 (c) 2 or more operationally distinct parts of the same business  
31 carried on by the same employer.



1           **enterprise association** means an association referred to in  
2 paragraph 18(1)(c).

3           **enterprise organisation** means an enterprise association that is  
4 registered as an organisation under this Schedule.

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

- 6           (a) an officer or employee of the reporting unit or the  
7           organisation of which the reporting unit is a part; or  
8           (b) a partner, employer or employee of an officer or employee of  
9           the reporting unit or the organisation of which the reporting  
10          unit is a part; or  
11          (c) a liquidator in respect of property of the reporting unit or the  
12          organisation of which the reporting unit is a part; or  
13          (d) a person who owes more than \$5,000 to the reporting unit or  
14          the organisation of which the reporting unit is a part.

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

17          **exempt public sector superannuation scheme** has the same  
18 meaning as in the *Superannuation Industry (Supervision) Act 1993*.

19          **Federal Court** means the Federal Court of Australia.

20          **financial records** includes the following to the extent that they  
21 relate to finances or financial administration:

- 22          (a) a register;  
23          (b) any other record of information;  
24          (c) financial reports or financial records, however compiled,  
25          recorded or stored;  
26          (d) a document.

27          **financial year**, in relation to an organisation, means:

- 28          (a) the period of 12 months commencing on 1 July in any year;  
29          or  
30          (b) if the rules of the organisation provide for another period of  
31          12 months as the financial year of the organisation—the  
32          other period of 12 months.

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1 Note: Section 240 provides for a different financial year in special  
2 circumstances.

3 **Full Bench** means a Full Bench of the Commission.

4 **general purpose financial report** means the report prepared in  
5 accordance with section 253.

6 **independent contractor** is confined to a natural person.

7 **industrial action** has the meaning given by section 7.

8 **industrial dispute** has the meaning given by section 8.

9 **Industrial Registrar** means the Industrial Registrar appointed  
10 under section 67 of the Workplace Relations Act.

11 **Industrial Registry** means the Australian Industrial Registry  
12 established under section 62 of the Workplace Relations Act.

13 **irregularity**, in relation to an election or ballot, includes:

14 (a) a breach of the rules of an organisation or branch of an  
15 organisation; and

16 (b) an act or omission by means of which:

17 (i) the full and free recording of votes by all persons  
18 entitled to record votes and by no other persons; or

19 (ii) a correct ascertainment or declaration of the results of  
20 the voting;

21 is, or is attempted to be, prevented or hindered; and

22 (c) a contravention of section 190.

23 **office** has the meaning given by section 9.

24 **officer**, in relation to an organisation, or a branch of an  
25 organisation, means a person who holds an office in the  
26 organisation or branch (including such a person when performing  
27 duties as a designated officer under Part 3 of Chapter 8).

28 **old IR agreement** means an agreement certified or approved under  
29 any of the following provisions of the Workplace Relations Act:

- 1 (a) section 115, as in force immediately before the  
 2 commencement of the Schedule to the *Industrial Relations*  
 3 *Legislation Amendment Act 1992*; or  
 4 (b) Division 3A of Part VI, as in force immediately before the  
 5 commencement of Schedule 2 to the *Industrial Relations*  
 6 *Reform Act 1993*; or  
 7 (c) Part VIB, as in force immediately before the commencement  
 8 of item 1 of Schedule 9 to the *Workplace Relations and*  
 9 *Other Legislation Amendment Act 1996*.

10 ***one-tier collegiate electoral system*** means a collegiate electoral  
 11 system comprising only one stage after the first stage.

12 ***operating report*** means the report prepared under section 254.

13 ***organisation*** means an organisation registered under this Schedule.

14 Note: Organisations registered under the Workplace Relations Act  
 15 immediately before this Schedule commenced are taken to be  
 16 registered under this Schedule (see the *Workplace Relations*  
 17 *Legislation Amendment (Registration and Accountability of*  
 18 *Organisations) (Consequential Provisions) Act 2002*).

19 ***postal ballot*** means a ballot for the purposes of which:

- 20 (a) a ballot paper, a declaration envelope, and another envelope  
 21 in the form prescribed by the regulations, are sent by prepaid  
 22 post to each person entitled to vote; and  
 23 (b) facilities are provided for the return of the completed ballot  
 24 paper by post by the voter without expense to the voter.

25 ***prescribed*** includes prescribed by Rules of the Commission made  
 26 under section 48 of the Workplace Relations Act.

27 ***President*** means the President of the Commission.

28 ***Presidential Member*** means the President, a Vice President, a  
 29 Senior Deputy President or a Deputy President, of the  
 30 Commission.

31 ***public sector employment*** has the same meaning as in the  
 32 Workplace Relations Act.

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1                    **Registrar** means the Industrial Registrar or a Deputy Industrial  
2                    Registrar.

3                    **registry** means the Principal Registry or another registry  
4                    established under section 64 of the Workplace Relations Act.

5                    **Registry official** means:

- 6                    (a) a Registrar; or  
7                    (b) a member of the staff of the Industrial Registry.

8                    **reporting guidelines** mean the guidelines issued under section 255.

9                    **reporting unit** has the meaning given by section 242.

10                  **State industrial authority** means:

- 11                  (a) a board or court of conciliation or arbitration, or tribunal,  
12                  body or persons, having authority under a State Act to  
13                  exercise any power of conciliation or arbitration in relation to  
14                  industrial disputes within the limits of the State; or  
15                  (b) a special board constituted under a State Act relating to  
16                  factories; or  
17                  (c) any other State board, court, tribunal, body or official  
18                  prescribed for the purposes of this definition.

19                  **superannuation entity** has the same meaning as in the  
20                  *Superannuation Industry (Supervision) Act 1993*.

21                  **this Schedule** includes regulations made under this Schedule.

22                  **Workplace Relations Act** means the *Workplace Relations Act 1996*  
23                  and regulations made under section 359 of that Act but does not  
24                  include this Schedule or regulations made under section 359 of this  
25                  Schedule.

26                  **6A References to provisions in this Schedule**

27                                    In this Schedule, a reference to a provision is a reference to a  
28                                    provision of this Schedule, unless the contrary intention appears.

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**7 Meaning of industrial action**

(1) In this Schedule, *industrial action* means:

(a) the performance of work in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of the work, where:

(i) the terms and conditions of the work are prescribed, wholly or partly, by an award or an order of the Commission, by a certified agreement, old IR agreement or AWA, by an award, determination or order made by another tribunal under a law of the Commonwealth or otherwise by or under a law of the Commonwealth; or

(ii) the work is performed, or the practice is adopted, in connection with an industrial dispute; or

(b) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, in accordance with the terms and conditions prescribed by an award or an order of the Commission, by a certified agreement, or old IR agreement or AWA, by an award, determination or order made by another tribunal under a law of the Commonwealth or otherwise by or under a law of the Commonwealth; or

(c) a ban, limitation or restriction on the performance of work, or on acceptance of or offering for work, that is adopted in connection with an industrial dispute; or

(d) a failure or refusal by persons to attend for work or a failure or refusal to perform any work at all by persons who attend for work, if:

(i) the persons are members of an organisation and the failure or refusal is in accordance with a decision made, or direction given, by an organisation, the committee of management of the organisation, or an officer or a group of members of the organisation acting in that capacity; or

(ii) the failure or refusal is in connection with an industrial dispute; or

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- 1 (iii) the persons are employed by the Commonwealth or a  
2 constitutional corporation; or  
3 (iv) the persons are employed in a Territory;  
4 but does not include:  
5 (e) action by employees that is authorised or agreed to by the  
6 employer of the employees; or  
7 (f) action by an employer that is authorised or agreed to by or on  
8 behalf of employees of the employer; or  
9 (g) action by an employee if:  
10 (i) the action was based on a reasonable concern by the  
11 employee about an imminent risk to his or her health or  
12 safety; and  
13 (ii) the employee did not unreasonably fail to comply with a  
14 direction of his or her employer to perform other  
15 available work, whether at the same or another  
16 workplace, that was safe and appropriate for the  
17 employee to perform.
- 18 (2) For the purposes of this Schedule:  
19 (a) conduct is capable of constituting *industrial action* even if  
20 the conduct relates to part only of the duties that persons are  
21 required to perform in the course of their employment; and  
22 (b) *industrial action* includes a course of conduct consisting of a  
23 series of industrial actions.

24 **8 Meaning of *industrial dispute***

- 25 (1) In this Schedule, *industrial dispute* means:  
26 (a) an industrial dispute (including a threatened, impending or  
27 probable industrial dispute):  
28 (i) extending beyond the limits of any one State; and  
29 (ii) that is about matters pertaining to the relationship  
30 between employers and employees; or  
31 (b) a situation that is likely to give rise to an industrial dispute of  
32 the kind referred to in paragraph (a);  
33 and includes:

- 1 (c) a demarcation dispute (whether or not, in the case of a  
 2 demarcation dispute involving an organisation or the  
 3 members of an organisation in that capacity, the dispute  
 4 extends beyond the limits of any one State); and  
 5 (d) a part of an industrial dispute; and  
 6 (e) an industrial dispute so far as it relates to a matter in dispute;  
 7 and  
 8 (f) a question arising in relation to an industrial dispute.

9 *Additional operation of Schedule—extension to industrial issues*

- 10 (2) Without affecting its operation apart from this section, this  
 11 Schedule also has effect as if a reference to an **industrial dispute**  
 12 included a reference to an industrial issue.  
 13 (3) In this section, **industrial issue** has the meaning that it is given by  
 14 section 5 of the Workplace Relations Act for the purposes of that  
 15 section.

16 *Additional operation of Schedule—extension to Victorian disputes*

- 17 (4) Subsection (5) has effect only for so long, and in so far, as the  
 18 **Commonwealth Powers (Industrial Relations) Act 1996** of  
 19 Victoria refers to the Parliament of the Commonwealth a matter or  
 20 matters that result in the Parliament of the Commonwealth having  
 21 sufficient legislative power for that subsection to have effect.  
 22 (5) Without affecting its operation apart from this section, this  
 23 Schedule also has effect as if the definition of **industrial dispute** in  
 24 subsection (1) were replaced by the following:  
 25 **industrial dispute** means:  
 26 (a) an industrial dispute (including a threatened, impending or  
 27 probable industrial dispute):  
 28 (i) within the limits of Victoria; and  
 29 (ii) that is about matters pertaining to the relationship  
 30 between employers and employees; or  
 31 (b) a situation that is likely to give rise to an industrial dispute of  
 32 the kind referred to in paragraph (a);

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1 and includes a demarcation dispute.

2 **9 Meaning of *office***

- 3 (1) In this Schedule, *office*, in relation to an organisation or a branch  
4 of an organisation means:
- 5 (a) an office of president, vice president, secretary or assistant  
6 secretary of the organisation or branch; or
  - 7 (b) the office of a voting member of a collective body of the  
8 organisation or branch, being a collective body that has  
9 power in relation to any of the following functions:
    - 10 (i) the management of the affairs of the organisation or  
11 branch;
    - 12 (ii) the determination of policy for the organisation or  
13 branch;
    - 14 (iii) the making, alteration or rescission of rules of the  
15 organisation or branch;
    - 16 (iv) the enforcement of rules of the organisation or branch,  
17 or the performance of functions in relation to the  
18 enforcement of such rules; or
  - 19 (c) an office the holder of which is, under the rules of the  
20 organisation or branch, entitled to participate directly in any  
21 of the functions referred to in subparagraphs (b)(i) and (iv),  
22 other than an office the holder of which participates only in  
23 accordance with directions given by a collective body or  
24 another person for the purpose of implementing:
    - 25 (i) existing policy of the organisation or branch; or
    - 26 (ii) decisions concerning the organisation or branch; or
  - 27 (d) an office the holder of which is, under the rules of the  
28 organisation or branch, entitled to participate directly in any  
29 of the functions referred to in subparagraphs (b)(ii) and (iii);  
30 or
  - 31 (e) the office of a person holding (whether as trustee or  
32 otherwise) property:
    - 33 (i) of the organisation or branch; or
    - 34 (ii) in which the organisation or branch has a beneficial  
35 interest.
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- 1 (2) In this Schedule, a reference to an *office* in an association or  
2 organisation includes a reference to an office in a branch of the  
3 association or organisation.

## 4 **10 Forging and uttering**

### 5 *Forging*

- 6 (1) For the purposes of this Schedule, a person is taken to have *forged*  
7 a document if the person:  
8 (a) makes a document which is false, knowing it to be false; or  
9 (b) without authority, alters a genuine document in a material  
10 particular;  
11 with intent that:  
12 (c) the false or altered document may be used, acted on, or  
13 accepted, as genuine, to the prejudice of another person; or  
14 (d) another person may, in the belief that it is genuine, be  
15 induced to do or refrain from doing an act.
- 16 (2) For the purposes of this Schedule, if a person:  
17 (a) makes a document which is false, knowing it to be false; or  
18 (b) without authority, alters a genuine document in a material  
19 particular;  
20 with intent that a computer, a machine or other device should  
21 respond to the false or altered document as if it were genuine:  
22 (c) to the prejudice of another person; or  
23 (d) with the result that another person would be induced to do or  
24 refrain from doing an act;  
25 the first-mentioned person is taken to have *forged* the document.

### 26 *Uttering*

- 27 (3) For the purposes of this Schedule, a person is taken to *utter* a  
28 forged document if the person:  
29 (a) uses or deals with it; or  
30 (b) attempts to use or deal with it; or  
31 (c) attempts to induce another person to use, deal with, act upon,  
32 or accept it.

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1       **11 Actions and opinions of AEC**

2               (1) In this Schedule, a reference to a ballot or election being  
3               conducted, or a step in a ballot or election being taken, by the *AEC*  
4               is a reference to the ballot or election being conducted, or the step  
5               being taken, by:

- 6                     (a) an electoral official; or  
7                     (b) a person authorised on behalf of the AEC to do so.

8               (2) In this Schedule, a reference to the opinion or other state of mind  
9               of the *AEC*, in relation to the exercise of a function, is a reference  
10              to the opinion or other state of mind of a person authorised to carry  
11              out the function on behalf of the AEC.

12       **12 Membership of organisations**

13               In this Schedule, unless the contrary intention appears, a reference  
14               to:

- 15                     (a) a person who is eligible to become a member of an  
16                     organisation; or  
17                     (b) a person who is eligible for membership of an organisation;  
18               includes a reference to a person who is eligible merely because of  
19               an agreement made under rules of the organisation made under  
20               subsection 151(1).

21       **13 Functions of the Industrial Registry**

- 22               (1) The functions of the Industrial Registry include:  
23                     (a) keeping a register of organisations; and  
24                     (b) providing advice and assistance to organisations in relation to  
25                     their rights and obligations under this Schedule.

26               Note:       Other functions of the Industrial Registry are set out in section 63 of  
27                               the Workplace Relations Act.

- 28               (2) Subject to this Schedule, the register of organisations is to be kept  
29               in whatever form the Industrial Registrar considers appropriate.

**14 President may establish Organisations Panel**

- (1) The President may establish a panel (the *Organisations Panel*) of members of the Commission to exercise the powers of the Commission under this Schedule.
- (2) The Organisations Panel is to consist of:
- (a) a Presidential Member whose duties include organising and allocating the work of the Panel; and
  - (b) one or more other members of the Commission assigned to the Panel by the President.
- (3) A member of the Organisations Panel may be a member of one or more panels referred to in section 37 of the Workplace Relations Act.
- Note: Section 37 of the Workplace Relations Act provides for the setting up of Commission panels for particular industries.
- (4) The fact that a person is a member of the Organisations Panel does not affect any powers, function or duties that have been, or may be, given to the person by or under any other provision of this Schedule or the Workplace Relations Act.
- (5) Even if the President establishes an Organisations Panel, he or she may direct that the powers of the Commission in relation to a particular matter arising under this Schedule are to be exercised by:
- (a) a member of the Commission who is not a member of the Panel; or
  - (b) members of the Commission, some or all of whom are not members of the Panel.

**15 Disapplication of Part 2.5 of *Criminal Code***

Part 2.5 of the *Criminal Code* does not apply to offences against this Schedule.

Note 1: Section 6 of this Schedule defines *this Schedule* to include the regulations.

Note 2: For the purposes of this Schedule (and the regulations), corporate responsibility is dealt with by section 344, rather than by Part 2.5 of the *Criminal Code*.

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1 **16 Operation of offence provisions**

2 If a maximum penalty is specified:

3 (a) at the foot of a section of this Schedule (other than a section  
4 that is divided into subsections); or

5 (b) at the foot of a subsection of this Schedule;

6 then:

7 (c) a person who contravenes the section or subsection is guilty  
8 of an offence punishable, on conviction, by a penalty not  
9 exceeding the specified penalty; or

10 (d) the offence referred to in the section or subsection is  
11 punishable, on conviction, by a penalty not exceeding the  
12 specified penalty.

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## **Chapter 2—Registration and cancellation of registration**

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4

### **Part 1—Simplified outline of Chapter**

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#### **17 Simplified outline**

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This Chapter deals with the types of employer and employee associations that can be registered and the conditions for their registration (see Part 2). Part 2 also prohibits certain kinds of discriminatory conduct by employers and organisations in relation to the formation and registration of employee associations.

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This Chapter also provides that an organisation's registration can be cancelled by the Federal Court or by the Commission. It sets out the grounds and procedures for cancellation, and the consequences of cancellation (see Part 3).

Section 18

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2 **Part 2—Registration**

3 **Division 1—Types of associations that may apply for**  
4 **registration**

5 **18 Employer and employee associations may apply**

- 6 (1) Any of the following associations may apply for registration as an  
7 organisation:
- 8 (a) an association of which some or all of the members are  
9 employers who are capable of being engaged in an industrial  
10 dispute and the other members (if any) are:
- 11 (i) officers of the association; or  
12 (ii) persons (other than employees) who carry on business;  
13 or  
14 (iii) persons who, when admitted to membership, were  
15 employers and who have not resigned and whose  
16 membership has not been terminated;
- 17 (b) an association of which some or all of the members are  
18 employees who are capable of being engaged in an industrial  
19 dispute and the other members (if any) are:
- 20 (i) officers of the association; or  
21 (ii) persons specified in subsection (3); or  
22 (iii) independent contractors who, if they were employees  
23 performing work of the kind which they usually perform  
24 as independent contractors, would be employees eligible  
25 for membership of the association;
- 26 (c) an association (an *enterprise association*) of which some or  
27 all of the members are employees performing work in the  
28 same enterprise and the other members (if any) are:
- 29 (i) officers of the association; or  
30 (ii) persons specified in subsection (3); or  
31 (iii) independent contractors who, if they were employees  
32 performing work of the kind which they usually perform

- 1 as independent contractors, would be employees eligible  
2 for membership of the association.
- 3 (2) Subsection (1) does not apply in relation to an association that has  
4 members referred to in subparagraph (1)(a)(ii) or (iii), (b)(ii) or  
5 (iii) or (c)(ii) or (iii) unless the association is effectively  
6 representative of the members who are employers or employees, as  
7 the case may be.
- 8 (3) The persons specified for the purpose of subparagraphs (1)(b)(ii)  
9 and (c)(ii) are persons (other than employees) who:
- 10 (a) are, or are able to become, members of an industrial  
11 organisation of employees within the meaning of the  
12 *Industrial Relations Act 1996* of New South Wales; or
- 13 (b) are employees for the purposes of the *Industrial Relations*  
14 *Act 1999* of Queensland; or
- 15 (c) are employees for the purposes of the *Industrial Relations*  
16 *Act 1979* of Western Australia; or
- 17 (d) are employees for the purposes of the *Industrial and*  
18 *Employee Relations Act 1994* of South Australia.

Section 19

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2 **Division 2—Registration criteria**

3 **19 Criteria for registration of associations other than enterprise**  
4 **associations**

- 5 (1) The Commission must grant an application for registration made  
6 by an association (other than an enterprise association) that, under  
7 section 18, may apply for registration as an organisation if, and  
8 only if:
- 9 (a) the association:
    - 10 (i) is a genuine association of a kind referred to in  
11 section 18; and
    - 12 (ii) is an association for furthering or protecting the interests  
13 of its members; and
  - 14 (b) in the case of an association of employees—the association is  
15 free from control by, or improper influence from, an  
16 employer or by an association or organisation of employers;  
17 and
  - 18 (c) in the case of an association of employers—the members  
19 who are employers have, in the aggregate, throughout the 6  
20 months before the application, employed on an average taken  
21 per month at least 50 employees; and
  - 22 (d) in the case of an association of employees—the association  
23 has at least 50 members who are employees; and
  - 24 (e) the Commission is satisfied that the association would  
25 conduct its affairs in a way that meets the obligations of an  
26 organisation under this Schedule and the Workplace  
27 Relations Act; and
  - 28 (f) the rules of the association make provision as required by this  
29 Schedule to be made by the rules of organisations; and
  - 30 (g) the association does not have the same name as that of an  
31 organisation or a name that is so similar to the name of an  
32 organisation as to be likely to cause confusion; and
  - 33 (h) a majority of the members present at a general meeting of the  
34 association, or an absolute majority of the committee of  
35 management of the association, have passed, under the rules
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Section 19

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- 1                   of the association, a resolution in favour of registration of the  
2                   association as an organisation; and
- 3                   (i) the registration of the association would further the objects  
4                   set out in section 5 of this Schedule and section 3 of the  
5                   Workplace Relations Act; and
- 6                   (j) subject to subsection (2), there is no organisation to which  
7                   members of the association might belong or, if there is such  
8                   an organisation, it is not an organisation:
- 9                   (i) to which the members of the association could more  
10                  conveniently belong; and
- 11                  (ii) that would more effectively represent those members.
- 12                  (2) If:
- 13                   (a) there is an organisation to which the members of the  
14                   association might belong; and
- 15                   (b) the members of the association could more conveniently  
16                   belong to the organisation; and
- 17                   (c) the organisation would more effectively represent those  
18                   members than the association would;
- 19                  the requirements of paragraph (1)(j) are taken to have been met if  
20                  the Commission accepts an undertaking from the association that  
21                  the Commission considers appropriate to avoid demarcation  
22                  disputes that might otherwise arise from an overlap between the  
23                  eligibility rules of the organisation and the eligibility rules of the  
24                  association.
- 25                  (3) Without limiting the matters that the Commission may take into  
26                  account in considering, under subparagraph (1)(j)(ii), the  
27                  effectiveness of the representation of an organisation or  
28                  association, the Commission must take into account whether the  
29                  representation would be consistent with the objects set out in  
30                  section 5 of this Schedule and section 3 of the Workplace Relations  
31                  Act.
- 32                  (4) In applying paragraph (1)(e), the Commission must have regard to  
33                  whether any recent conduct by the association or its members  
34                  would have provided grounds for an application under section 28  
35                  had the association been registered when the conduct occurred.

Section 20

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1       **20 Criteria for registration of enterprise associations**

2               (1) The Commission must grant an application for registration made  
3               by an enterprise association that, under section 18, may apply for  
4               registration as an organisation if, and only if:

5               (a) the association:

6                       (i) is a genuine association of a kind referred to in  
7                       section 18; and

8                       (ii) is an association for furthering or protecting the interests  
9                       of its members; and

10              (b) the association is free from control by, or improper influence  
11              from:

12                       (i) any employer, whether at the enterprise in question or  
13                       otherwise; or

14                       (ii) any person or body with an interest in that enterprise; or

15                       (iii) any organisation, or any other association of employers  
16                       or employees; and

17              (c) the association has at least 50 members who are employees;  
18              and

19              (d) the Commission is satisfied that the association would  
20              conduct its affairs in a way that meets the obligations of an  
21              organisation under this Schedule and the Workplace  
22              Relations Act; and

23              (e) the rules of the association make provision as required by this  
24              Schedule to be made by the rules of organisations; and

25              (f) the association does not have the same name as that of an  
26              organisation or a name that is so similar to the name of an  
27              organisation as to be likely to cause confusion; and

28              (g) the Commission is satisfied that a majority of the persons  
29              eligible to be members of the association support its  
30              registration as an organisation; and

31              (h) a majority of the members present at a general meeting of the  
32              association, or an absolute majority of the committee of  
33              management of the association, have passed, under the rules  
34              of the association, a resolution in favour of registration of the  
35              association as an organisation; and

1 (i) the registration of the association would further the objects  
2 set out in section 5 of this Schedule and section 3 of the  
3 Workplace Relations Act.

4 (1A) For the purposes of paragraph (1)(b), if a person or body has an  
5 interest in the enterprise in question, the Commission may decide  
6 that, despite the interest, the association is free from control by, or  
7 improper influence from, the person or body.

8 Note: The Commission could conclude that the association was free from  
9 control etc. by the person if, for example, the nature of the person's  
10 interest was not such as to give the person a major say in the conduct  
11 of the enterprise or if the person did not have a significant  
12 management role in the association.

13 (1B) For the purposes of paragraph (1)(b), if an employer meets or will  
14 meet costs and expenses of the association, or provides or will  
15 provide services to the association, this assistance must be taken  
16 into account when considering whether the association is free from  
17 control by, or improper influence from the employer.

18 (2) In applying paragraph (1)(d), the Commission must have regard to  
19 whether any recent conduct by the association or its members  
20 would have provided grounds for an application under section 28  
21 had the association been registered when the conduct occurred.

Section 21

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**Division 3—Prohibited conduct in relation to formation or registration of employee associations**

3

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**21 Prohibited conduct—employers**

5

(1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:

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(a) dismiss an employee;

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(b) injure an employee in his or her employment;

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(c) alter the position of an employee to the employee's prejudice;

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(d) discriminate against an employee.

13

(2) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:

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(a) terminate a contract for services that he or she has entered into with an independent contractor;

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18

(b) injure an independent contractor in relation to the terms and conditions of the contract for services;

19

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(c) alter the position of an independent contractor to the independent contractor's prejudice;

21

22

(d) discriminate against an independent contractor.

23

(3) Conduct referred to in subsection (1) or (2) is for a *prohibited reason* if it is carried out because the employee or independent contractor has done, or has omitted to do, any act:

24

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26

(a) under this Schedule that relates to the formation or registration of an association referred to in paragraph 18(1)(b) or (c); or

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28

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(b) in connection with, or in preparation for, such an act or omission.

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(4) The following are examples of acts or omissions to which subsection (3) applies:

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- 1 (a) making an application for registration of an employee  
2 association under paragraph 18(1)(b) or (c);  
3 (b) supporting the registration of an employee association (for  
4 example, by supporting, or supporting the making of, an  
5 application for its registration);  
6 (c) participating, or encouraging a person to participate, in  
7 proceedings before the Commission in relation to such an  
8 application;  
9 (d) not participating, or encouraging a person not to participate,  
10 in such proceedings;  
11 (e) becoming a member, or encouraging a person to become a  
12 member, of an employee association.

13 **22 Prohibited conduct—organisations**

- 14 (1) An organisation, or an officer or member of an organisation, must  
15 not take, or threaten to take, industrial action whose aim, or one of  
16 whose aims, is to coerce a person to breach section 21.
- 17 (2) An organisation, or an officer or member of an organisation, must  
18 not, for a prohibited reason, or for reasons that include a prohibited  
19 reason, take or threaten to take, any action whose aim, or one of  
20 whose aims, is to prejudice a person in the person's employment,  
21 or an independent contractor in the contractor's engagement.
- 22 (3) Conduct referred to in subsection (2) is for a *prohibited reason* if it  
23 is carried out because the person has done, or has omitted to do,  
24 any act:
- 25 (a) under this Schedule that relates to the formation or  
26 registration of an association referred to in paragraph  
27 18(1)(b) or (c); or  
28 (b) in connection with, or in preparation for, such an act or  
29 omission.
- 30 (4) The examples set out in subsection 21(4) are examples of acts or  
31 omissions to which subsection (3) of this section applies.
- 32 (5) An organisation, or an officer or member of an organisation, must  
33 not impose, or threaten to impose, a penalty, forfeiture or disability

**Chapter 2** Registration and cancellation of registration

**Part 2** Registration

**Division 3** Prohibited conduct in relation to formation or registration of employee associations

**Section 23**

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1 of any kind on a member of the organisation because the member  
2 concerned does or proposes to do, for a prohibited reason, an act or  
3 omission referred to in subsection 21(3).

4 **23 Powers of Federal Court in relation to prohibited conduct**

- 5 (1) The Federal Court may, if the Court considers it appropriate in all  
6 the circumstances, make one or more of the following orders in  
7 respect of conduct that contravenes section 21 or 22:
- 8 (a) an order imposing on a person whose conduct contravenes  
9 that section a penalty of not more than:
    - 10 (i) in the case of a body corporate—100 penalty units; or
    - 11 (ii) in any other case—20 penalty units;
  - 12 (b) an order requiring the person not to carry out a threat made  
13 by the person, or not to make any further threat;
  - 14 (c) injunctions (including interim injunctions), and any other  
15 orders, that the Court considers necessary to stop the conduct  
16 or remedy its effects;
  - 17 (d) any other consequential orders.
- 18 (2) An application for an order under subsection (1) may be made by:
- 19 (a) a person against whom the conduct is being, has been, or is  
20 threatened to be, taken; or
  - 21 (b) any other person prescribed by the regulations.

22 **24 Certain actions considered to be done by organisation or**  
23 **employer**

- 24 (1) For the purposes of this Division:
- 25 (a) action done by one of the following bodies or persons is  
26 taken to have been done by an organisation:
    - 27 (i) the committee of management of the organisation;
    - 28 (ii) an officer or agent of the organisation acting in that  
29 capacity;
    - 30 (iii) a member or group of members of the organisation  
31 acting under the rules of the organisation;

Section 24

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- 1 (iv) a member of the organisation, who performs the  
2 function of dealing with an employer on behalf of other  
3 members of the organisation, acting in that capacity;  
4 and  
5 (b) action done by an agent of an employer acting in that  
6 capacity is taken to have been done by the employer.
- 7 (2) Subparagraphs (1)(a)(iii) and (iv) and paragraph (1)(b) do not  
8 apply if:  
9 (a) in relation to subparagraphs (1)(a)(iii) and (iv):  
10 (i) a committee of management of the organisation; or  
11 (ii) a person authorised by the committee; or  
12 (iii) an officer of the organisation;  
13 has taken reasonable steps to prevent the action; or  
14 (b) in relation to paragraph (1)(b), the employer has taken  
15 reasonable steps to prevent the action.
- 16 (3) In this section:  
17 *officer*, in relation to an organisation, includes:  
18 (a) a delegate or other representative of the organisation; and  
19 (b) an employee of the organisation.

Section 25

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2 **Division 4—Registration process**

3 **25 Applicant for registration may change its name or alter its rules**

- 4 (1) The Commission may, on the application of an association  
5 applying to be registered as an organisation, grant leave to the  
6 association, on such terms and conditions as the Commission  
7 considers appropriate, to change its name or to alter its rules:  
8 (a) to enable it to comply with this Schedule; or  
9 (b) to remove a ground of objection taken by an objector under  
10 the regulations or by the Commission; or  
11 (c) to correct a formal error in its rules (for example, to remove  
12 an ambiguity, to correct spelling or grammar, or to correct an  
13 incorrect reference to an organisation or person).

14 Note: Paragraph (a)—in order for an organisation to comply with this  
15 Schedule, its rules must not be contrary to the Workplace Relations  
16 Act (see paragraph 142(a) of this Schedule).

- 17 (2) An association granted leave under subsection (1) may change its  
18 name, or alter its rules, even though the application for registration  
19 is pending.
- 20 (3) Rules of an association as altered in accordance with leave granted  
21 under subsection (1) are binding on the members of the  
22 association:  
23 (a) in spite of anything in the other rules of the association; and  
24 (b) subject to any further alterations lawfully made.

25 **26 Registration**

- 26 (1) When the Commission grants an application by an association for  
27 registration as an organisation, the Industrial Registrar must  
28 immediately enter, in the register kept under paragraph 13(1)(a),  
29 such particulars in relation to the association as are prescribed and  
30 the date of the entry.



- 1 (2) An association is to be taken to be registered under this Schedule  
2 when the Industrial Registrar enters the prescribed particulars in  
3 the register under subsection (1).
- 4 (3) On registration, an association becomes an organisation.
- 5 (4) The Industrial Registrar must issue to each organisation registered  
6 under this Schedule a certificate of registration in the prescribed  
7 form.
- 8 Note: Certificates of registration issued under the Workplace Relations Act  
9 continue in force (see the *Workplace Relations Legislation*  
10 *Amendment (Registration and Accountability of Organisations)*  
11 *(Consequential Provisions) Act 2002*).
- 12 (5) The certificate is, until proof of cancellation, conclusive evidence  
13 of the registration of the organisation specified in the certificate.
- 14 (6) The Industrial Registrar may, as prescribed, issue to an  
15 organisation a copy of, or a certificate replacing, the certificate of  
16 registration issued under subsection (4) or that certificate as  
17 amended under section 160.

## 18 **27 Incorporation**

- 19 An organisation:
- 20 (a) is a body corporate; and  
21 (b) has perpetual succession; and  
22 (c) has power to purchase, take on lease, hold, sell, lease,  
23 mortgage, exchange and otherwise own, possess and deal  
24 with, any real or personal property; and  
25 (d) must have a common seal; and  
26 (e) may sue or be sued in its registered name.

Section 28

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## Part 3—Cancellation of registration

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### 28 Application for cancellation of registration

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(1) An organisation or person interested, or the Minister, may apply to the Federal Court for an order cancelling the registration of an organisation on the ground that:

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(a) the conduct of:

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(i) the organisation (in relation to its continued breach of an award, an order of the Commission, a certified agreement or an old IR agreement or its continued failure to ensure that its members comply with and observe an award, an order of the Commission, a certified agreement or an old IR agreement or in any other respect); or

(ii) a substantial number of the members of the organisation (in relation to their continued breach of an award, an order of the Commission, a certified agreement or an old IR agreement or in any other respect);

has prevented or hindered the achievement of an object of this Schedule or the Workplace Relations Act; or

(b) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the organisation, has engaged in industrial action that has prevented, hindered or interfered with:

(i) trade or commerce between Australia and a place outside Australia; or

(ii) trade or commerce between the States; or

(iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or

(iv) the provision of any public service by the Commonwealth or a State or Territory or an authority of the Commonwealth or a State or Territory; or

(c) the organisation, or a substantial number of the members of the organisation or of a section or class of members of the

- 1 organisation, has or have been, or is or are, engaged in  
2 industrial action that has had, is having or is likely to have a  
3 substantial adverse effect on the safety, health or welfare of  
4 the community or a part of the community; or
- 5 (d) the organisation, or a substantial number of the members of  
6 the organisation or of a section or class of members of the  
7 organisation, has or have failed to comply with an injunction  
8 granted under subsection 127(6) or (7) of the Workplace  
9 Relations Act; or
- 10 (e) the organisation, or a substantial number of the members of  
11 the organisation or of a section or class of members of the  
12 organisation, has or have failed to comply with an injunction  
13 granted under section 187AD of the Workplace Relations  
14 Act.
- 15 (2) An organisation in relation to which an application is made under  
16 subsection (1) must be given an opportunity of being heard by the  
17 Court.
- 18 (3) If the Court:
- 19 (a) finds that a ground for cancellation set out in the application  
20 has been established; and
- 21 (b) does not consider that it would be unjust to do so having  
22 regard to the degree of gravity of the matters constituting the  
23 ground and the action (if any) that has been taken by or  
24 against the organisation in relation to the matters;
- 25 the Court must, subject to subsection (4) and section 29, cancel the  
26 registration of the organisation.
- 27 (4) If:
- 28 (a) the Court finds that a ground for cancellation set out in the  
29 application has been established; and
- 30 (b) that finding is made, wholly or mainly, because of the  
31 conduct of a particular section or class of members of the  
32 organisation;
- 33 the Court may, if it considers it just to do so, instead of cancelling  
34 the registration of the organisation under subsection (3), by order:

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- 1 (c) determine alterations of the eligibility rules of the  
2 organisation so as to exclude from eligibility for membership  
3 of the organisation persons belonging to the section or class;  
4 or  
5 (d) where persons belonging to the section or class are eligible  
6 for membership under an agreement of the kind referred to in  
7 section 151—declare that the persons are excluded from  
8 eligibility for membership in spite of anything in the  
9 agreement.
- 10 (5) If the Court cancels the registration of an organisation, the Court  
11 may direct that an application by the former organisation to be  
12 registered as an organisation is not to be dealt with under this  
13 Schedule before the end of a specified period.
- 14 (6) An alteration of rules determined by order under subsection (4)  
15 takes effect on the date of the order or on such other day as is  
16 specified in the order.
- 17 (7) A finding of fact by the Court in proceedings under section 127 or  
18 Part VIIIA of the Workplace Relations Act is admissible as prima  
19 facie evidence of that fact in an application made on a ground  
20 specified in paragraph (1)(d) or (e), as the case requires.

**29 Orders where cancellation of registration deferred**

- 22 (1) If the Federal Court finds that a ground of an application under  
23 subsection 28(1) has been established, the Court may, if it  
24 considers it just to do so, instead of cancelling the registration of  
25 the organisation concerned under subsection 28(3) or making an  
26 order under subsection 28(4), exercise one or more of the powers  
27 set out in subsection (2) of this section.
- 28 (2) The powers that may be exercised by the Court, by order, under  
29 subsection (1) are as follows:
- 30 (a) the power to suspend, to the extent specified in the order, any  
31 of the rights, privileges or capacities of the organisation or of  
32 all or any of its members, as such members, under this  
33 Schedule, the Workplace Relations Act or any other Act  
34 under awards or orders made under this Schedule, the

- 1 Workplace Relations Act or any other Act or under certified  
2 agreements or old IR agreements;
- 3 (b) the power to give directions as to the exercise of any rights,  
4 privileges or capacities that have been suspended;
- 5 (c) the power to make provision restricting the use of the funds  
6 or property of the organisation or a branch of the  
7 organisation, and for the control of the funds or property for  
8 the purpose of ensuring observance of the restrictions.
- 9 (3) If the Court exercises a power set out in subsection (2), it must  
10 defer the determination of the question whether to cancel the  
11 registration of the organisation concerned until:
- 12 (a) the orders made in the exercise of the power cease to be in  
13 force; or
- 14 (b) on application by a party to the proceeding, the Court  
15 considers that it is just to determine the question, having  
16 regard to any evidence given relating to the observance or  
17 non-observance of any order and to any other relevant  
18 circumstance;
- 19 whichever is earlier.
- 20 (4) An order made in the exercise of a power set out in subsection (2)  
21 has effect in spite of anything in the rules of the organisation  
22 concerned or a branch of the organisation.
- 23 (5) An order made in the exercise of a power set out in subsection (2):
- 24 (a) may be revoked by the Court, by order, on application by a  
25 party to the proceeding concerned; and
- 26 (b) unless sooner revoked, ceases to be in force:
- 27 (i) 6 months after it came into force; or
- 28 (ii) such longer period after it came into force as is ordered  
29 by the Court on application by a party to the proceeding  
30 made while the order remains in force.

31 **30 Cancellation of registration on technical grounds etc.**

- 32 (1) The Commission may cancel the registration of an organisation:
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Section 30

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- 1 (a) on application by the organisation made under the  
2 regulations; or  
3 (b) on application by an organisation or person interested or by  
4 the Minister, if the Commission has satisfied itself, as  
5 prescribed, that the organisation:  
6 (i) was registered by mistake; or  
7 (ii) is no longer effectively representative of the members  
8 who are employers or employees, as the case requires;  
9 or  
10 (iii) is not free from control by, or improper influence from,  
11 a person or body referred to in paragraph 19(1)(b) or  
12 20(1)(b), as the case requires; or  
13 (iv) subject to subsection (6), if the organisation is an  
14 enterprise association—the enterprise to which it relates  
15 has ceased to exist; or  
16 (c) on the Commission’s own motion, if:  
17 (i) the Commission has satisfied itself, as prescribed, that  
18 the organisation is defunct; or  
19 (ii) the organisation is an organisation of employees and has  
20 fewer than 50 members who are employees.
- 21 (2) Before the Commission cancels the registration of an organisation  
22 under:  
23 (a) paragraph (1)(b) on application by a person interested or by  
24 the Minister; or  
25 (b) paragraph (1)(c);  
26 the Commission must give the organisation an opportunity to be  
27 heard.
- 28 (3) The Commission may also cancel the registration of an  
29 organisation if:  
30 (a) the Commission is satisfied that the organisation has  
31 breached an undertaking referred to in subsection 19(2); and  
32 (b) the Commission does not consider it appropriate to amend  
33 the eligibility rules of the organisation under section 157.
- 34 (4) A cancellation under subsection (3) may be made:  
35 (a) on application by an organisation or person interested; or
-

- 1 (b) on application by the Minister; or  
2 (c) on the Commission's own motion.
- 3 (5) For the purposes of subparagraph (1)(b)(iv), the enterprise to which  
4 an organisation relates has ceased to exist if:
- 5 (a) in the case of an organisation that relates only to an  
6 operationally distinct part or parts of the business that  
7 constitutes the enterprise—that part or those parts have  
8 ceased to exist, or the whole of the business has ceased to  
9 exist; or
- 10 (b) in the case of an organisation that relates to the whole of the  
11 business that constitutes the enterprise—the whole of the  
12 business has ceased to exist.
- 13 (6) Subparagraph (1)(b)(iv) does not apply if:
- 14 (a) some or all of the business of the enterprise in question is  
15 now conducted by another enterprise; and
- 16 (b) all the alterations that are necessary to enable the  
17 organisation to operate as an enterprise association in relation  
18 to the other enterprise have been made; and
- 19 (c) the Commission is satisfied that the organisation still meets  
20 the requirements of subsection 20(1).

21 The Commission must give the organisation a reasonable  
22 opportunity to alter its rules as provided in paragraph (b) before the  
23 Commission considers cancelling the registration of the  
24 organisation on the ground referred to in subparagraph (1)(b)(iv).

### 25 **31 Cancellation to be recorded**

26 If the registration of an organisation under this Schedule is  
27 cancelled, the Industrial Registrar must enter the cancellation, and  
28 the date of cancellation, in the register kept under paragraph  
29 13(1)(a).

### 30 **32 Consequences of cancellation of registration**

31 The cancellation of the registration of an organisation under this  
32 Schedule has the following consequences:

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- 1 (a) the organisation ceases to be an organisation and a body  
2 corporate under this Schedule, but does not because of the  
3 cancellation cease to be an association;
- 4 (b) the cancellation does not relieve the association or any of its  
5 members from any penalty or liability incurred by the  
6 organisation or its members before the cancellation;
- 7 (c) from the cancellation, the association and its members are not  
8 entitled to the benefits of any award, order of the  
9 Commission, certified agreement or old IR agreement that  
10 bound the organisation or its members;
- 11 (d) the Commission may, on application by an organisation or  
12 person interested, make such order as the Commission  
13 considers appropriate about the other effects (if any) of such  
14 an award, order or agreement on the association and its  
15 members;
- 16 (e) 21 days after the cancellation, such an award, order or  
17 agreement ceases, subject to any order made under  
18 paragraph (d), in all other respects to have effect in relation  
19 to the association and its members;
- 20 (f) the Federal Court may, on application by a person interested,  
21 make such order as it considers appropriate in relation to the  
22 satisfaction of the debts and obligations of the organisation  
23 out of the property of the organisation;
- 24 (g) the property of the organisation is, subject to any order made  
25 under paragraph (f), the property of the association and must  
26 be held and applied for the purposes of the association under  
27 the rules of the organisation so far as they can still be carried  
28 out or observed.



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## **Part 4—Commission's powers under this Chapter**

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### **33 Powers exercisable by Presidential Member**

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The powers of the Commission under this Chapter are exercisable  
only by a Presidential Member.

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Section 34

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## **Chapter 3—Amalgamation and withdrawal from amalgamation**

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### **Part 1—Simplified outline of Chapter**

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#### **34 Simplified outline**

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The procedure for the amalgamation of 2 or more organisations is set out in Part 2 of this Chapter.

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The 2 main elements of the amalgamation procedure are an application to the Commission seeking approval for a ballot to be held on the question of amalgamation, and the holding of a ballot conducted by the Australian Electoral Commission.

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Part 2 also sets out the consequences of an amalgamation (for example, in relation to assets and liabilities of the organisations forming the new amalgamated organisation). It also enables the validation of certain acts done for the purposes of an amalgamation.

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The procedure that enables part of an amalgamated organisation to withdraw from it is set out in Part 3 of this Chapter.

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The main elements of the procedure to withdraw are an application to the Federal Court for approval to hold a ballot on the question, and the holding of the ballot.

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23

Part 3 also sets out the consequences of a withdrawal from amalgamation (for example, in relation to assets and liabilities of the amalgamated organisation and the constituent part). It also enables the validation of certain acts done for the purposes of a withdrawal from amalgamation.

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2 **Part 2—Amalgamation of organisations**

3 **Division 1—General**

4 **35 Definitions**

5

In this Part:

6

*alternative provision* means a provision of the kind mentioned in subsection 41(1).

7

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*amalgamated organisation*, in relation to a completed amalgamation, means the organisation of which members of the de-registered organisations have become members under paragraph 73(3)(d).

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*amalgamation day*, in relation to a completed amalgamation, means the day fixed under subsection 73(2) in relation to the amalgamation.

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*asset* means property of any kind, and includes:

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- (a) any legal or equitable estate or interest (whether present or future, vested or contingent, tangible or intangible) in real or personal property of any description; and
- (b) any chose in action; and
- (c) any right, interest or claim of any kind in, or in relation to, property (whether arising under an instrument or otherwise, and whether liquidated or unliquidated, certain or contingent, accrued or accruing).

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*authorised person*, in relation to a completed amalgamation, means the secretary of the amalgamated organisation or a person authorised, in writing, by the committee of management of the amalgamated organisation.

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*charge* means a charge created in any way, and includes a mortgage and an agreement to give or execute a charge or mortgage (whether on demand or otherwise).

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1                    ***closing day***, in relation to a ballot for a proposed amalgamation,  
2                    means the day, from time to time, fixed under section 58 as the  
3                    closing day of the ballot.

4                    ***commencing day***, in relation to a ballot for a proposed  
5                    amalgamation, means the day, from time to time, fixed under  
6                    section 58 as the commencing day of the ballot.

7                    ***completed amalgamation*** means a proposed amalgamation that has  
8                    taken effect.

9                    ***debenture*** has the same meaning as in section 9 of the  
10                    *Corporations Act 2001*.

11                    ***defect*** includes a nullity, omission, error or irregularity.

12                    ***de-registered organisation***, in relation to a completed  
13                    amalgamation, means an organisation that has been de-registered  
14                    under this Part.

15                    ***de-registration***, in relation to an organisation, means the  
16                    cancellation of its registration.

17                    ***holder***, in relation to a charge, includes a person in whose favour a  
18                    charge is to be given or executed (whether on demand or  
19                    otherwise) under an agreement.

20                    ***instrument*** means an instrument of any kind, and includes:

- 21                    (a) any contract, deed, undertaking or agreement; and  
22                    (b) any mandate, instruction, notice, authority or order; and  
23                    (c) any lease, licence, transfer, conveyance or other assurance;  
24                    and  
25                    (d) any guarantee, bond, power of attorney, bill of lading,  
26                    negotiable instrument or order for the payment of money;  
27                    and

28                    (e) any mortgage, charge, lien or security;  
29                    whether express or implied and whether made or given orally or in  
30                    writing.

31                    ***instrument to which this Part applies***, in relation to a completed  
32                    amalgamation, means an instrument:

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- 1 (a) to which a de-registered organisation is a party; or  
2 (b) that was given to, by, or in favour of, a de-registered  
3 organisation; or  
4 (c) in which a reference is made to a de-registered organisation;  
5 or  
6 (d) under which any money is or may become payable, or any  
7 other property is to be, or may become liable to be,  
8 transferred, conveyed or assigned, to or by a de-registered  
9 organisation.

10 ***interest:***

- 11 (a) in relation to a company—includes an interest in a managed  
12 investment scheme, within the meaning of the *Corporations*  
13 *Act 2001*, made available by the company; and  
14 (b) in relation to land—means:  
15 (i) a legal or equitable estate or interest in the land; or  
16 (ii) a right, power or privilege over, or in relation to, the  
17 land.

18 ***invalidity*** includes a defect.

19 ***irregularity*** includes a breach of the rules of an organisation, but in  
20 Division 7 does not include an irregularity in relation to a ballot.

21 ***liability*** means a liability of any kind, and includes an obligation of  
22 any kind (whether arising under an instrument or otherwise, and  
23 whether liquidated or unliquidated, certain or contingent, accrued  
24 or accruing).

25 ***proceeding to which this Part applies***, in relation to a completed  
26 amalgamation, means a proceeding to which a de-registered  
27 organisation was a party immediately before the amalgamation  
28 day.

29 ***proposed alternative amalgamation***, in relation to a proposed  
30 amalgamation, means an amalgamation proposed to be made under  
31 an alternative provision.

32 ***proposed amalgamated organisation***, in relation to a proposed  
33 amalgamation, means the organisation or proposed organisation of

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1 which members of the proposed de-registering organisations are  
2 proposed to become members under this Part.

3 **proposed amalgamation** means the proposed carrying out of  
4 arrangements in relation to 2 or more organisations under which:

- 5 (a) an organisation is, or 2 or more organisations are, to be  
6 de-registered under this Part; and  
7 (b) members of the organisation or organisations to be  
8 de-registered are to become members of another organisation  
9 (whether existing or proposed).

10 **proposed de-registering organisation**, in relation to a proposed  
11 amalgamation, means an organisation that is to be de-registered  
12 under this Part.

13 **proposed principal amalgamation**, in relation to a proposed  
14 amalgamation, means:

- 15 (a) if the scheme for the amalgamation contains an alternative  
16 provision—the amalgamation proposed to be made under the  
17 scheme otherwise than under an alternative provision; or  
18 (b) in any other case—the proposed amalgamation.

19 **36 Procedure to be followed for proposed amalgamation etc.**

20 (1) For the purpose of implementing the scheme for a proposed  
21 amalgamation, the procedure provided by this Part is to be  
22 followed.

23 (2) Where it appears to the Commission that the performance of an act,  
24 including:

- 25 (a) the de-registration of an organisation; and  
26 (b) the registration of an organisation; and  
27 (c) the giving of consent to:  
28 (i) a change in the name of an organisation; or  
29 (ii) an alteration of the eligibility rules of an organisation;

30 is sought for the purposes of a proposed amalgamation, the  
31 Commission may perform the act only in accordance with this Part.

- 1 (3) If any difficulty arises, or appears likely to arise, in the application  
2 of this Schedule for the purpose of implementing the scheme for a  
3 proposed amalgamation, the Commission may give directions and  
4 make orders to resolve the difficulty.
- 5 (4) Directions and orders under subsection (3):  
6 (a) have effect subject to any order of the Federal Court; and  
7 (b) have effect despite anything in:  
8 (i) the regulations or the Rules of the Commission; or  
9 (ii) the rules of an organisation or any association proposed  
10 to be registered as an organisation.

11 **37 Exercise of Commission's powers under this Part**

12 The powers of the Commission under this Part are exercisable only  
13 by a Presidential Member.

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2 **Division 2—Preliminary matters**

3 **38 Federations**

4 *Application for recognition as federation*

5 (1) The existing organisations concerned in a proposed amalgamation  
6 may jointly lodge in the Industrial Registry an application for  
7 recognition as a federation.

8 (2) The application must:

9 (a) be lodged before an application is lodged under section 44 in  
10 relation to the amalgamation; and

11 (b) include such particulars as are prescribed.

12 *Grant of application*

13 (3) If the Commission is satisfied that the organisations intend to lodge  
14 an application under section 44 in relation to the amalgamation  
15 within the prescribed period, the Commission must grant the  
16 application for recognition as a federation.

17 *Registration of federation*

18 (4) If the application is granted, the Industrial Registrar must enter in  
19 the register kept under paragraph 13(1)(a) such details in relation to  
20 the federation as are prescribed.

21 *Representation rights of federation*

22 (5) On registration, the federation may, subject to subsection (6) and  
23 the regulations, represent its constituent members for all of the  
24 purposes of this Schedule and the Workplace Relations Act.

25 (6) Subsection (5) does not authorise the federation to become a party  
26 to an award or to become bound by a certified agreement or old IR  
27 agreement.



1                                    *Federation may vary its composition*

- 2                    (7) After the federation is registered, it may vary its composition by:
- 3                            (a) including, with the approval of the Commission, another
- 4    organisation within the federation if the other organisation
- 5    intends to become concerned in the amalgamation; or
- 6                            (b) releasing, with the approval of the Commission, an
- 7    organisation from the federation.

8                                    *When federation ceases to exist*

- 9                    (8) The federation ceases to exist:
- 10                            (a) on the day on which the amalgamation takes effect; or
- 11                            (b) if an application under section 44 is not lodged in relation to
- 12    the amalgamation within the prescribed period—on the day
- 13    after the end of the period; or
- 14                            (c) if it appears to a Full Bench, on an application by a
- 15    prescribed person, that the industrial conduct of the
- 16    federation, or an organisation belonging to the federation, is
- 17    preventing or hindering the attainment of an object of this
- 18    Schedule or the Workplace Relations Act—on the day the
- 19    Full Bench so determines.

20                                    *Federation does not limit representation rights of organisations*

- 21                    (9) Nothing in this section limits the right of an organisation belonging to
- 22    a federation to represent itself or its members.

23                    **39 Use of resources to support proposed amalgamation**

- 24                    (1) An existing organisation concerned in a proposed amalgamation
- 25    may, at any time before the closing day of the ballot for the
- 26    amalgamation, use its financial and other resources in support of
- 27    the proposed principal amalgamation and any proposed alternative
- 28    amalgamation if:
- 29    (a) the committee of management of the organisation has
- 30    resolved that the organisation should so use its resources; and
- 31    (b) the committee of management has given reasonable notice of
- 32    its resolution to the members of the organisation.

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- 1                   (2) Subsection (1) does not limit by implication any power that the  
2                   existing organisation has, apart from that subsection, to use its  
3                   financial and other resources in support of, or otherwise in relation  
4                   to, the amalgamation.

1

2 **Division 3—Commencement of amalgamation procedure**

3 **40 Scheme for amalgamation**

- 4 (1) There is to be a scheme for every proposed amalgamation.
- 5 (2) The scheme must contain the following matters:
- 6 (a) a general statement of the nature of the amalgamation,  
7 identifying the existing organisations concerned and  
8 indicating:
- 9 (i) if one of the existing organisations is the proposed  
10 amalgamated organisation—that fact; and
- 11 (ii) if an association proposed to be registered as an  
12 organisation is the proposed amalgamated  
13 organisation—that fact and the name of the association;  
14 and
- 15 (iii) the proposed de-registering organisations;
- 16 (b) if it is proposed to change the name of an existing  
17 organisation—particulars of the proposed change;
- 18 (c) if it is proposed to alter the eligibility rules of an existing  
19 organisation—particulars of the proposed alterations;
- 20 (d) if it is proposed to alter any other rules of an existing  
21 organisation—particulars of the proposed alterations;
- 22 (e) if an association is proposed to be registered as an  
23 organisation—the eligibility and other rules of the  
24 association;
- 25 (f) such other matters as are prescribed.
- 26 (3) Subsection (2) does not limit by implication the matters that the  
27 scheme may contain.

28 **41 Alternative scheme for amalgamation**

- 29 (1) Where 3 or more existing organisations are concerned in a  
30 proposed amalgamation, the scheme for the amalgamation may  
31 contain a provision to the effect that, if:
-

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- 1 (a) the members of one or more of the organisations do not  
2 approve the amalgamation; and
- 3 (b) the members of 2 or more of the organisations (in this  
4 subsection called the *approving organisations*) approve, in  
5 the alternative, the amalgamation so far as it involves:  
6 (i) the other of the approving organisations; or  
7 (ii) 2 or more of the other approving organisations; and
- 8 (c) where one of the existing organisations is the proposed  
9 amalgamated organisation—that organisation is one of the  
10 approving organisations;  
11 there is to be an amalgamation involving the approving  
12 organisations.
- 13 (2) If the scheme for a proposed amalgamation contains an alternative  
14 provision, the scheme must also contain particulars of:  
15 (a) the differences between the proposed principal amalgamation  
16 and each proposed alternative amalgamation; and  
17 (b) the differences between the rules of any association proposed  
18 to be registered as an organisation, and any proposed  
19 alterations of the rules of the existing organisations, under the  
20 proposed principal amalgamation and each proposed  
21 alternative amalgamation.

22 **42 Approval by committee of management**

- 23 (1) The scheme for a proposed amalgamation, and each alteration of  
24 the scheme, must be approved, by resolution, by the committee of  
25 management of each existing organisation concerned in the  
26 amalgamation.
- 27 (2) Despite anything in the rules of an existing organisation, approval,  
28 by resolution, by the committee of management of the scheme, or  
29 an alteration of the scheme, is taken to be sufficient compliance  
30 with the rules, and any proposed alteration of the rules contained in  
31 the scheme, or the scheme as altered, is taken to have been  
32 properly made under the rules.

1 **43 Community of interest declaration**

2 *Existing organisations may apply for declaration*

- 3 (1) The existing organisations concerned in a proposed amalgamation  
4 may jointly lodge in the Industrial Registry an application for a  
5 declaration under this section in relation to the amalgamation.
- 6 (2) The application must be lodged:  
7 (a) before an application has been lodged under section 44 in  
8 relation to the amalgamation; or  
9 (b) with the application that is lodged under section 44 in  
10 relation to the amalgamation.
- 11 (3) If the application is lodged before an application has been lodged  
12 under section 44 in relation to the amalgamation, the Commission:  
13 (a) must immediately fix a time and place for hearing  
14 submissions in relation to the making of the declaration; and  
15 (b) must ensure that all organisations are promptly notified of the  
16 time and place of the hearing; and  
17 (c) may inform any other person who is likely to be interested of  
18 the time and place of the hearing.

19 *Making of declaration*

- 20 (4) If, at the conclusion of the hearing arranged under subsection (3) or  
21 section 53 in relation to the proposed amalgamation, the  
22 Commission is satisfied that there is a community of interest  
23 between the existing organisations in relation to their industrial  
24 interests, the Commission must declare that it is so satisfied.

25 *Pre-conditions to making of declaration*

- 26 (5) The Commission must be satisfied, for the purposes of  
27 subsection (4), that there is a community of interest between  
28 organisations of employees in relation to their industrial interests if  
29 the Commission is satisfied that a substantial number of members  
30 of one of the organisations are:  
31 (a) eligible to become members of the other organisation or each  
32 of the other organisations; or
-

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- 1 (b) engaged in the same work or in aspects of the same or similar  
2 work as members of the other organisation or each of the  
3 other organisations; or  
4 (c) bound by the same awards as members of the other  
5 organisation or each of the other organisations; or  
6 (d) employed in the same or similar work by employers engaged  
7 in the same industry as members of the other organisation or  
8 each of the other organisations; or  
9 (e) engaged in work, or in industries, in relation to which there is  
10 a community of interest with members of the other  
11 organisation or each of the other organisations.
- 12 (6) The Commission must be satisfied, for the purposes of  
13 subsection (4), that there is a community of interest between  
14 organisations of employers in relation to their industrial interests if  
15 the Commission is satisfied that a substantial number of members  
16 of one of the organisations are:  
17 (a) eligible to become members of the other organisation or each  
18 of the other organisations; or  
19 (b) engaged in the same industry or in aspects of the same  
20 industry or similar industries as members of the other  
21 organisation or each of the other organisations; or  
22 (c) bound by the same awards as members of the other  
23 organisation or each of the other organisations; or  
24 (d) engaged in industries in relation to which there is a  
25 community of interest with members of the other  
26 organisation or each of the other organisations.
- 27 (7) Subsections (5) and (6) do not limit by implication the  
28 circumstances in which the Commission may be satisfied, for the  
29 purposes of subsection (4), that there is a community of interest  
30 between organisations in relation to their industrial interests.
- 31 *Circumstances in which declaration ceases to be in force*
- 32 (8) If:  
33 (a) an application for a declaration under this section in relation  
34 to a proposed amalgamation is lodged before an application
-

- 1                           has been lodged under section 44 in relation to the  
2                           amalgamation; and  
3                           (b) a declaration is made under this section in relation to the  
4                           amalgamation; and  
5                           (c) an application is not lodged under section 44 in relation to  
6                           the amalgamation within 6 months after the declaration is  
7                           made;  
8                           the declaration ceases to be in force.
- 9                           (9) The Commission may revoke a declaration under this section if the  
10                           Commission is satisfied that there is no longer a community of  
11                           interest between the organisations concerned in relation to their  
12                           industrial interests.
- 13                           (10) However, before the Commission revokes the declaration, it must:  
14                                 (a) give reasonable notice of its intention to revoke to each of the  
15                                 organisations that applied for the declaration; and  
16                                 (b) give each of those organisations an opportunity to be heard.

17                           **44 Application for approval for submission of amalgamation to**  
18                           **ballot**

- 19                           (1) The existing organisations concerned in a proposed amalgamation,  
20                           and any association proposed to be registered as an organisation  
21                           under the amalgamation, must jointly lodge in the Industrial  
22                           Registry an application for approval for the submission of the  
23                           amalgamation to ballot.
- 24                           (2) The application must be accompanied by:  
25                                 (a) a copy of the scheme for the amalgamation; and  
26                                 (b) a written outline of the scheme.
- 27                           (3) Subject to section 62, the outline must, in no more than 3,000  
28                           words, provide sufficient information on the scheme to enable  
29                           members of the existing organisations to make informed decisions  
30                           in relation to the scheme.

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1       **45 Holding office after amalgamation**

2               (1) The rules of:

3                     (a) an association proposed to be registered as an organisation  
4                               that is the proposed amalgamated organisation under a  
5                               proposed amalgamation; or

6                     (b) an existing organisation that is the proposed amalgamated  
7                               organisation under a proposed amalgamation;

8               may, despite section 143, make provision in relation to:

9                     (c) the holding of office in the proposed amalgamated  
10                               organisation by persons holding office in any of the proposed  
11                               de-registering organisations immediately before the  
12                               amalgamation takes effect; and

13                    (d) in a case to which paragraph (b) applies—the continuation of  
14                               the holding of office by persons holding office in the  
15                               proposed amalgamated organisation immediately before the  
16                               amalgamation takes effect;

17               but the rules may not permit an office to be held under  
18               paragraph (c) or (d) for longer than:

19                    (e) the period that equals the unexpired part of the term of the  
20                               office held by the person immediately before the day on  
21                               which the amalgamation takes effect; or

22                    (f) the period that ends 2 years after that day;

23               whichever ends last, without an ordinary election being held in  
24               relation to the office.

25               (2) Where:

26                    (a) a person holds an office in an organisation, being an office  
27                               held under rules made under subsection (1); and

28                    (b) that organisation is involved in a proposed amalgamation;  
29               the rules of the proposed amalgamated organisation must not  
30               permit the person to hold an office in the proposed amalgamated  
31               organisation after the amalgamation takes effect, without an  
32               ordinary election being held in relation to the office, for longer  
33               than the period that equals the unexpired part of the term of the  
34               office mentioned in paragraph (a) immediately before the day on  
35               which the amalgamation takes effect.



- 1 (3) The rules of an organisation that is the proposed amalgamated  
2 organisation under a proposed amalgamation must, subject to this  
3 section, make reasonable provision for the purpose of  
4 synchronising elections for offices in the organisation held under  
5 paragraph (1)(c) with elections for other offices in the organisation.
- 6 (4) Section 145 does not apply to an office held under rules made  
7 under subsection (1).
- 8 (5) Section 146 applies to an office held under rules made under  
9 paragraph (1)(c).
- 10 (6) In this section:
- 11 *ordinary election* means an election held under rules that comply  
12 with section 143.

#### 13 **46 Application for exemption from ballot**

- 14 (1) The proposed amalgamated organisation under a proposed  
15 amalgamation may lodge in the Industrial Registry an application  
16 for exemption from the requirement that a ballot of its members be  
17 held in relation to the amalgamation.
- 18 (2) The application must be lodged with the application that is lodged  
19 under section 44 in relation to the amalgamation.

#### 20 **47 Application for ballot not conducted under section 65**

- 21 (1) An existing organisation concerned in a proposed amalgamation  
22 may lodge in the Industrial Registry an application for approval of  
23 a proposal for the submission of the amalgamation to a ballot of its  
24 members that is not conducted under section 65.
- 25 (2) The application must be lodged with the application that is lodged  
26 under section 44 in relation to the amalgamation.

#### 27 **48 Lodging “yes” case**

- 28 (1) Subject to section 60, an existing organisation concerned in a  
29 proposed amalgamation may lodge a written statement of not more

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- 1                    than 2,000 words in support of the proposed principal  
2                    amalgamation and each proposed alternative amalgamation.
- 3                    (2) The statement must be lodged with the application that is lodged  
4                    under section 44 in relation to the amalgamation.

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2 **Division 4—Role of AEC**

3 **49 Ballots to be conducted by AEC**

4 All ballots under this Part are to be conducted by the AEC.

5 **50 Notification of AEC**

6 (1) Where an application is lodged under section 44 in relation to a  
7 proposed amalgamation, the Industrial Registrar must immediately  
8 notify the AEC of the application.

9 (2) On being notified of the application, the AEC must immediately  
10 take such action as it considers necessary or desirable to enable it  
11 to conduct as quickly as possible any ballots that may be required  
12 in relation to the amalgamation.

13 **51 Providing information etc. to electoral officials**

14 (1) An electoral official who is authorised, in writing, by the AEC for  
15 the purposes of a proposed amalgamation may, where it is  
16 reasonably necessary for the purposes of any ballot that may be  
17 required or is required in relation to the amalgamation, by written  
18 notice, require an officer or employee of the organisation  
19 concerned or a branch of the organisation concerned:

- 20 (a) to give to the electoral official, within the period (being a  
21 period of not less than 7 days after the notice is given), and in  
22 the manner, specified in the notice, any information within  
23 the knowledge or in the possession of the person; and  
24 (b) to produce or make available to the electoral official, at a  
25 reasonable time (being a time not less than 7 days after the  
26 notice is given) and place specified in the notice, any  
27 documents:  
28 (i) in the custody or under the control of the person; or  
29 (ii) to which the person has access.

**Chapter 3** Amalgamation and withdrawal from amalgamation

**Part 2** Amalgamation of organisations

**Division 4** Role of AEC

**Section 52**

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1 (2) An officer or employee of an organisation or branch of an  
2 organisation commits an offence if he or she fails to comply with a  
3 requirement made under subsection (1).

4 Maximum penalty: 30 penalty units.

5 (3) An offence against subsection (2) is an offence of strict liability.

6 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

7 (4) Subsection (2) does not apply if the person has a reasonable  
8 excuse.

9 Note: A defendant bears an evidential burden in relation to the matter  
10 mentioned in subsection (4), see subsection 13.3(3) of the *Criminal*  
11 *Code*.

12 (5) A person is not excused from giving information or producing or  
13 making available a document under this section on the ground that  
14 the information or the production or making available of the  
15 document might tend to incriminate the person or expose the  
16 person to a penalty.

17 (6) However:

18 (a) giving the information or producing or making available the  
19 document; or

20 (b) any information, document or thing obtained as a direct or  
21 indirect consequence of giving the information or producing  
22 or making available the document;

23 is not admissible in evidence against the person in criminal  
24 proceedings or proceedings that may expose the person to a  
25 penalty, other than proceedings under, or arising out of, subsection  
26 52(3).

27 (7) If any information or document specified in a notice under  
28 subsection (1) is kept in electronic form, the electoral official may  
29 require it to be made available in that form.

30 **52 Declaration by secretary etc. of organisation**

31 (1) If a requirement is made under subsection 51(1) in relation to the  
32 register, or part of the register, kept by an organisation under

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1 section 230, the secretary or other prescribed officer of the  
2 organisation must make a declaration, in accordance with  
3 subsection (2), that the register has been maintained as required by  
4 subsection 230(2).

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

6 (2) The declaration must be:

- 7 (a) signed by the person making it; and  
8 (b) given to the returning officer, and lodged in the Industrial  
9 Registry, as soon as practicable but no later than the day  
10 before the first day of voting in the relevant election.

11 (3) A person must not, in a declaration for the purposes of  
12 subsection (1), make a statement if the person knows, or is reckless  
13 as to whether, the statement is false or misleading.

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

Section 53

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2 **Division 5—Procedure for approval of amalgamation**

3 **53 Fixing hearing in relation to amalgamation etc.**

4 Where an application is lodged under section 44 in relation to a  
5 proposed amalgamation, the Commission:

6 (a) must immediately fix a time and place for hearing  
7 submissions in relation to:

8 (i) the granting of an approval for the submission of the  
9 amalgamation to ballot; and

10 (ii) if an application for a declaration under section 43 was  
11 lodged with the application—the making of a  
12 declaration under section 43 in relation to the  
13 amalgamation; and

14 (iii) if an application was lodged under section 46 for  
15 exemption from the requirement that a ballot be held in  
16 relation to the amalgamation—the granting of the  
17 exemption; and

18 (iv) if an application was lodged under section 47 for  
19 approval of a proposal for the submission of the  
20 amalgamation to a ballot that is not conducted under  
21 section 65—the granting of the approval; and

22 (b) must ensure that all organisations are promptly notified of the  
23 time and place of the hearing; and

24 (c) may inform any other person who is likely to be interested of  
25 the time and place of the hearing.

26 **54 Submissions at amalgamation hearings**

27 (1) Submissions at a hearing arranged under subsection 43(3) or  
28 section 53 may only be made under this section.

29 (2) Submissions may be made by the applicants.

30 (3) Submissions may be made by another person only with the leave of  
31 the Commission and may be made by the person only in relation to  
32 a prescribed matter.

1 **55 Approval for submission to ballot of amalgamation not involving**  
2 **extension of eligibility rules etc.**

3 *Approval must be given if certain conditions satisfied*

- 4 (1) If, at the conclusion of the hearing arranged under section 53 in  
5 relation to a proposed amalgamation, the Commission is satisfied  
6 that:
- 7 (a) the amalgamation does not involve the registration of an  
8 association as an organisation; and
  - 9 (b) a person who is not eligible for membership of an existing  
10 organisation concerned in the amalgamation would not be  
11 eligible for membership of the proposed amalgamated  
12 organisation immediately after the amalgamation takes  
13 effect; and
  - 14 (c) any proposed alteration of the name of an existing  
15 organisation concerned in the amalgamation will not result in  
16 the organisation having a name that is the same as the name  
17 of another organisation or is so similar to the name of another  
18 organisation as to be likely to cause confusion; and
  - 19 (d) any proposed alterations of the rules of an existing  
20 organisation comply with, and are not contrary to, this  
21 Schedule, the Workplace Relations Act, awards, certified  
22 agreements and old IR agreements, and are not contrary to  
23 law; and
  - 24 (e) any proposed de-registration of an existing organisation  
25 complies with this Schedule and is not otherwise contrary to  
26 law;

27 the Commission must approve the submission of the amalgamation  
28 to ballot.

29 *Approval generally refused if conditions not satisfied*

- 30 (2) If the Commission is not satisfied, the Commission must, subject  
31 to subsections (3) and (7), refuse to approve, under this section, the  
32 submission of the amalgamation to ballot.

**Chapter 3** Amalgamation and withdrawal from amalgamation

**Part 2** Amalgamation of organisations

**Division 5** Procedure for approval of amalgamation

**Section 55**

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1 *Approval may be given if conditions will be satisfied later*

2 (3) If, apart from this subsection, the Commission would be required  
3 to refuse to approve the submission of the amalgamation to ballot,  
4 the Commission may:

5 (a) permit the applicants to alter the scheme for the  
6 amalgamation, including any proposed alterations of the rules  
7 of the existing organisations concerned in the amalgamation;  
8 or

9 (b) accept an undertaking by the applicants to alter the scheme  
10 for the amalgamation, including any proposed alterations of  
11 the rules of the existing organisations concerned in the  
12 amalgamation;

13 and, if the Commission is satisfied that the matters mentioned in  
14 subsection (1) will be met, the Commission must approve the  
15 submission of the amalgamation to ballot.

16 *Permission to alter amalgamation scheme*

17 (4) A permission under paragraph (3)(a):

18 (a) may, despite anything in the rules of an existing organisation  
19 concerned in the proposed amalgamation, authorise the  
20 organisation to alter the scheme (including any proposed  
21 alterations of the rules of the organisation) by resolution of  
22 its committee of management; and

23 (b) may make provision in relation to the procedure that, despite  
24 anything in those rules, may be followed, or is to be  
25 followed, by the committee of management in that regard;  
26 and

27 (c) may be given subject to conditions.

28 *Powers of Commission if conditions or undertakings breached*

29 (5) If:

30 (a) the Commission:

31 (i) gives a permission under paragraph (3)(a) subject to  
32 conditions; or

33 (ii) accepts an undertaking under paragraph (3)(b); and

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- 1 (b) the conditions are breached or the undertaking is not fulfilled  
2 within the period allowed by the Commission;  
3 the Commission may:  
4 (c) amend the scheme for the amalgamation, including any  
5 proposed alterations of the rules of the existing organisations  
6 concerned in the proposed amalgamation; or  
7 (d) give directions and orders:  
8 (i) in relation to the conduct of the ballot for the  
9 amalgamation; or  
10 (ii) otherwise in relation to the procedure to be followed in  
11 relation to the amalgamation.

- 12 (6) Subsection (5) does not limit by implication the powers that the  
13 Commission has apart from that subsection.

14 *Powers of Commission to adjourn proceeding*

- 15 (7) If, apart from this subsection, the Commission would be required  
16 to refuse to approve the submission of the amalgamation to ballot,  
17 the Commission may adjourn the proceeding.  
18 (8) Subsection (7) does not limit by implication the power of the  
19 Commission to adjourn the proceeding at any stage.

20 **56 Objections in relation to amalgamation involving extension of**  
21 **eligibility rules etc.**

- 22 (1) Objection to a matter involved in a proposed amalgamation may  
23 only be made to the Commission under this section.  
24 (2) Objection may be made to the Commission in relation to the  
25 amalgamation only if the Commission has refused to approve,  
26 under section 55, the submission of the amalgamation to ballot.  
27 (3) Objection may be made by a prescribed person on a prescribed  
28 ground.  
29 (4) The Commission is to hear, as prescribed, all objections duly made  
30 to the amalgamation.

Section 57

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1 **57 Approval for submission to ballot of amalgamation involving**  
2 **extension of eligibility rules etc.**

3 *Approval must be given if certain conditions satisfied*

- 4 (1) If, after the prescribed time allowed for making objections under  
5 section 56 in relation to a proposed amalgamation and after hearing  
6 any objections duly made to the amalgamation, the Commission:  
7 (a) finds that no duly made objection is justified; and  
8 (b) is satisfied that, so far as the amalgamation involves:  
9 (i) the registration of an association; or  
10 (ii) a change in the name of an organisation; or  
11 (iii) an alteration of the rules of an organisation; or  
12 (iv) the de-registration of an organisation under this Part;  
13 it complies with, and is not contrary to, this Schedule, the  
14 Workplace Relations Act, awards, certified agreements and  
15 old IR agreements and is not otherwise contrary to law;  
16 the Commission must approve the submission of the amalgamation  
17 to ballot.

18 *Approval generally refused if conditions not satisfied*

- 19 (2) If the Commission is not satisfied, the Commission must, subject  
20 to subsections (3) and (8), refuse to approve, under this section, the  
21 submission of the amalgamation to ballot.

22 *Approval may be given if conditions will be satisfied later*

- 23 (3) If, apart from this subsection, the Commission would be required  
24 to refuse to approve the submission of the amalgamation to ballot,  
25 the Commission may:  
26 (a) permit the applicants to alter the scheme for the  
27 amalgamation, including:  
28 (i) the rules of any association proposed to be registered as  
29 an organisation in relation to the amalgamation; or  
30 (ii) any proposed alterations of the rules of the existing  
31 organisations concerned in the amalgamation; or

- 1 (b) accept an undertaking by the applicants to alter the scheme  
2 for the amalgamation, including:  
3 (i) the rules of any association proposed to be registered as  
4 an organisation in relation to the amalgamation; or  
5 (ii) any proposed alterations of the rules of the existing  
6 organisations concerned in the amalgamation;  
7 and, if the Commission is satisfied that the matters mentioned in  
8 subsection (1) will be met, the Commission must approve the  
9 submission of the amalgamation to ballot.

10 *Permission to alter amalgamation scheme*

- 11 (4) A permission under subparagraph (3)(a)(i):  
12 (a) may, despite anything in the rules of any association  
13 proposed to be registered as an organisation in relation to the  
14 proposed amalgamation, authorise the existing organisations  
15 concerned in the amalgamation to alter the scheme so far as it  
16 affects that association (including any of its rules) by  
17 resolution of their committees of management; and  
18 (b) may make provision in relation to the procedure that, despite  
19 anything in the rules of the existing organisations or the rules  
20 of the association, may be followed, or is to be followed, by  
21 the committees of management in that regard; and  
22 (c) may be given subject to conditions.
- 23 (5) A permission under subparagraph (3)(a)(ii):  
24 (a) may, despite anything in the rules of an existing organisation  
25 concerned in the proposed amalgamation, authorise the  
26 organisation to alter the scheme (including any proposed  
27 alterations of the rules of the organisation, but not including  
28 the scheme so far as it affects any association proposed to be  
29 registered as an organisation in relation to the proposed  
30 amalgamation) by resolution of its committee of  
31 management; and  
32 (b) may make provision in relation to the procedure that, despite  
33 anything in those rules, may be followed, or is to be  
34 followed, by the committee of management in that regard;  
35 and
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1 (c) may be given subject to conditions.

2 *Powers of Commission if conditions or undertakings breached*

3 (6) If:

4 (a) the Commission:

5 (i) gives a permission under paragraph (3)(a) subject to  
6 conditions; or

7 (ii) accepts an undertaking under paragraph (3)(b); and

8 (b) the conditions are breached or the undertaking is not fulfilled  
9 within the period allowed by the Commission;

10 the Commission may:

11 (c) amend the scheme for the amalgamation, including:

12 (i) the rules of any association proposed to be registered as  
13 an organisation in relation to the amalgamation; or

14 (ii) any proposed alterations of the rules of the existing  
15 organisations concerned in the amalgamation; or

16 (d) give directions and orders:

17 (i) in relation to the conduct of the ballot for the  
18 amalgamation; or

19 (ii) otherwise in relation to the procedure to be followed in  
20 relation to the amalgamation.

21 (7) Subsection (6) does not limit by implication the powers that the  
22 Commission has apart from that subsection.

23 *Powers of Commission to adjourn proceeding*

24 (8) If, apart from this subsection, the Commission would be required  
25 to refuse to approve the submission of the amalgamation to ballot,  
26 the Commission may adjourn the proceeding.

27 (9) Subsection (8) does not limit by implication the power of the  
28 Commission to adjourn the proceeding at any stage.

29 **58 Fixing commencing and closing days of ballot**

30 (1) If the Commission approves, under section 55 or 57, the  
31 submission of a proposed amalgamation to ballot, the Commission

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- 1 must, after consulting with the Electoral Commissioner, fix a day  
2 as the commencing day of the ballot and a day as the closing day of  
3 the ballot.
- 4 (2) The commencing day must be a day not later than 28 days after the  
5 day on which the approval is given unless:
- 6 (a) the Commission is satisfied that the AEC requires a longer  
7 period to make the arrangements necessary to enable it to  
8 conduct the ballot; or
- 9 (b) the existing organisations concerned in the amalgamation  
10 request the Commission to fix a later day.
- 11 (3) If the scheme for the amalgamation contains a proposed alternative  
12 provision, a single day is to be fixed as the commencing day, and a  
13 single day is to be fixed as the closing day, for all ballots in  
14 relation to the proposed amalgamation.
- 15 (4) The Commission may, after consulting with the Electoral  
16 Commissioner, vary the commencing day or the closing day.
- 17 (5) Subsection (4) does not limit by implication the powers of the  
18 person conducting a ballot under this Part.

### 19 **59 Roll of voters for ballot**

- 20 The roll of voters for a ballot for a proposed amalgamation is the  
21 roll of persons who, on the day on which the Commission fixes the  
22 commencing day and closing day of the ballot or 28 days before  
23 the commencing day of the ballot (whichever is the later):
- 24 (a) have the right under the rules of the existing organisation  
25 concerned to vote at such a ballot; or
- 26 (b) if the rules of the existing organisation concerned do not then  
27 provide for the right to vote at such a ballot—have the right  
28 under the rules of the organisation to vote at a ballot for an  
29 election for an office in the organisation that is conducted by  
30 a direct voting system.

Section 60

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1       **60 “Yes” case and “no” case for amalgamation**

2                               *“Yes” statement may be altered*

- 3               (1) If an existing organisation concerned in a proposed amalgamation  
4                   lodges a statement under section 48 in relation to the  
5                   amalgamation, the Commission may permit the organisation to  
6                   alter the statement.

7                               *Members of organisation may lodge “no” statement*

- 8               (2) Not later than 7 days before the day fixed under section 53 for  
9                   hearing submissions in relation to the amalgamation, members of  
10                  the organisation (being members whose number is at least the  
11                  required minimum number) may lodge in the Industrial Registry a  
12                  written statement of not more than 2,000 words in opposition to the  
13                  proposed principal amalgamation and any proposed alternative  
14                  amalgamation.

15                              *“No” statement may be altered*

- 16               (3) The Commission may permit a statement lodged under  
17                  subsection (2) to be altered.

18                              *“Yes” and “no” statements to be sent to voters*

- 19               (4) Subject to subsections (5), (6) and (7), a copy of the statements  
20                  mentioned in subsections (1) and (2), or, if those statements have  
21                  been altered or amended, those statements as altered or amended,  
22                  must accompany the ballot paper sent to the persons entitled to  
23                  vote at a ballot for the amalgamation.

24                              *2 or more “no” statements must be combined*

- 25               (5) If 2 or more statements in opposition to the amalgamation are duly  
26                  lodged in the Industrial Registry under subsection (2):  
27                  (a) the Commission must prepare, or cause to be prepared, in  
28                  consultation, if practicable, with representatives of the  
29                  persons who lodged each of the statements, a written  
30                  statement of not more than 2,000 words in opposition to the

- 1 amalgamation based on both or all the statements and, as far  
2 as practicable, presenting fairly the substance of the  
3 arguments against the amalgamation contained in both or all  
4 the statements; and  
5 (b) the statement prepared by the Commission must accompany  
6 the ballot paper for the amalgamation as if it had been the  
7 sole statement lodged under subsection (2).

8 *Commission may correct factual errors in statements*

- 9 (6) The Commission may amend a statement mentioned in  
10 subsection (1) or (2) to correct factual errors or to ensure that the  
11 statement complies with this Schedule.

12 *Statements may include photos etc. if Commission approves*

- 13 (7) A statement mentioned in subsection (1) or (2) may, if the  
14 Commission approves, include matter that is not in the form of  
15 words, including, for example, diagrams, drawings, illustrations,  
16 photographs and symbols.  
17 (8) A statement prepared under subsection (5) may include matter that  
18 is not in the form of words, including, for example, diagrams,  
19 drawings, illustrations, photographs and symbols.

20 *Certain statements not required to be sent to voters*

- 21 (9) Subsection (4) and paragraph (5)(b) do not apply to a ballot that is  
22 not conducted under section 65.

23 Note: Ballots conducted under section 65 are secret postal ballots.

24 *Definition*

- 25 (10) In this section:

26 **required minimum number**, in relation to an organisation, means:

- 27 (a) 5% of the total number of members of the organisation on the  
28 day on which the application was lodged under section 44 in  
29 relation to the proposed amalgamation concerned; or  
30 (b) 1,000;
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1                                   whichever is the lesser.

2       **61 Alteration and amendment of scheme**

3                                   *Permission to alter amalgamation scheme*

4                   (1) The Commission may, at any time before the commencing day of  
5                   the ballot for a proposed amalgamation, permit the existing  
6                   organisations concerned in the amalgamation to alter the scheme  
7                   for the amalgamation, including:

- 8                                   (a) the rules of any association proposed to be registered as an  
9                                   organisation in relation to the amalgamation; or  
10                                  (b) any proposed alterations of the rules of the existing  
11                                  organisations concerned in the amalgamation.

12                                  *Permission relating to rules of new organisations*

13                   (2) A permission under paragraph (1)(a):

- 14                                  (a) may, despite anything in the rules of any association  
15                                  proposed to be registered as an organisation in relation to the  
16                                  proposed amalgamation, authorise the existing organisations  
17                                  concerned in the amalgamation to alter the scheme so far as it  
18                                  affects that association (including any of its rules) by  
19                                  resolution of their committees of management; and  
20                                  (b) may make provision in relation to the procedure that, despite  
21                                  anything in the rules of the existing organisations or the rules  
22                                  of the association, may be followed, or is to be followed, by  
23                                  the committees of management in that regard; and  
24                                  (c) may be given subject to conditions.

25                                  *Permission relating to rules of existing organisations*

26                   (3) A permission under paragraph (1)(b):

- 27                                  (a) may, despite anything in the rules of an existing organisation  
28                                  concerned in a proposed amalgamation, authorise the  
29                                  organisation to amend the scheme (including any proposed  
30                                  alterations of the rules of the organisation, but not including  
31                                  the scheme so far as it affects any association proposed to be  
32                                  registered as an organisation in relation to the proposed



- 1 amalgamation) by resolution of its committee of  
2 management; and  
3 (b) may make provision in relation to the procedure that, despite  
4 anything in those rules, may be followed, or is to be  
5 followed, by the committee of management in that regard;  
6 and  
7 (c) may be given subject to conditions.

8 *Powers of Commission if conditions breached*

- 9 (4) If:  
10 (a) the Commission gives a permission under subsection (1)  
11 subject to conditions; and  
12 (b) the conditions are breached;  
13 the Commission may:  
14 (c) amend the scheme for the amalgamation, including:  
15 (i) the rules of any association proposed to be registered as  
16 an organisation in relation to the amalgamation; or  
17 (ii) any proposed alterations of the rules of the existing  
18 organisations concerned in the amalgamation; or  
19 (d) give directions and orders:  
20 (i) in relation to the conduct of the ballot for the  
21 amalgamation; or  
22 (ii) otherwise in relation to the procedure to be followed in  
23 relation to the amalgamation.  
24 (5) Subsection (4) does not limit by implication the powers that the  
25 Commission has apart from that subsection.

26 *Outline of scheme must change if scheme changes*

- 27 (6) If the scheme for the amalgamation is altered or amended (whether  
28 under this section or otherwise), the outline of the scheme must be  
29 altered or amended to the extent necessary to reflect the alterations  
30 or amendments.

Section 62

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1       **62 Outline of scheme for amalgamation**

- 2                   (1) The outline of the scheme for a proposed amalgamation may, if the  
3                   Commission approves, consist of more than 3,000 words.
- 4                   (2) The outline may, if the Commission approves, include matter that  
5                   is not in the form of words, including, for example, diagrams,  
6                   drawings, illustrations, photographs and symbols.
- 7                   (3) The Commission:
- 8                   (a) may, at any time before the commencing day of the ballot for  
9                   the amalgamation, permit the existing organisations  
10                  concerned in the amalgamation to alter the outline; and
- 11                  (b) may amend the outline to correct factual errors or otherwise  
12                  to ensure that it complies with this Schedule.

13       **63 Exemption from ballot**

- 14                   (1) If:
- 15                   (a) an application was lodged under section 46 for exemption  
16                   from the requirement that a ballot be held in relation to a  
17                   proposed amalgamation; and
- 18                   (b) the total number of members that could be admitted to  
19                   membership of the proposed amalgamated organisation on,  
20                   and because of, the amalgamation does not exceed 25% of  
21                   the number of members of the applicant organisation on the  
22                   day on which the application was lodged;
- 23                   the Commission must, at the conclusion of the hearing arranged  
24                   under section 53 in relation to the amalgamation, grant the  
25                   exemption unless the Commission considers that, in the special  
26                   circumstances of the case, the exemption should be refused.
- 27                   (2) If the exemption is granted, the members of the applicant  
28                   organisation are taken to have approved the proposed principal  
29                   amalgamation and each proposed alternative amalgamation (if  
30                   any).

1 **64 Approval for ballot not conducted under section 65**

2 If:

- 3 (a) an application was lodged under section 47 for approval of a  
4 proposal for submission of a proposed amalgamation to  
5 ballot that is not conducted under section 65; and  
6 (b) the proposal provides for:  
7 (i) the ballot to be by secret ballot of the members of the  
8 organisation; and  
9 (ii) the ballot to be held at duly constituted meetings of the  
10 members; and  
11 (iii) the ballot to be conducted by the AEC; and  
12 (iv) the members to be given at least 21 days' notice of the  
13 meetings, the matters to be considered at the meetings  
14 and their entitlement to an absent vote; and  
15 (v) the distribution or publication of:  
16 (A) the outline of the scheme for the amalgamation;  
17 and  
18 (B) the statements mentioned in subsections 60(1)  
19 and (2); and  
20 (vi) absent voting; and  
21 (vii) the ballot to be otherwise conducted in accordance with  
22 the regulations; and  
23 (c) the Commission is satisfied, after consulting with the  
24 Electoral Commissioner:  
25 (i) that the proposal is practicable; and  
26 (ii) that approval of the proposal is likely:  
27 (A) to result in participation by members of the  
28 organisation that is fuller than the participation  
29 that would have been likely to have resulted if  
30 the ballot were conducted under section 65; and  
31 (B) to give the members of the organisation an  
32 adequate opportunity to vote on the  
33 amalgamation without intimidation;

Section 65

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1                   the Commission must, at the conclusion of the hearing arranged  
2                   under section 53 in relation to the amalgamation, approve the  
3                   proposal.

4                   **65 Secret postal ballot of members**

5                   *Ballot on proposed principal amalgamation*

6                   (1) If the Commission approves, under section 55 or 57, the  
7                   submission of a proposed amalgamation to ballot, the AEC must,  
8                   in relation to each of the existing organisations concerned in the  
9                   amalgamation, conduct a secret postal ballot of the members of the  
10                  organisation on the question whether they approve the proposed  
11                  principal amalgamation.

12                  *Ballot at same time on proposed alternative amalgamation*

13                  (2) If the scheme for the amalgamation contains a proposed alternative  
14                  provision, the AEC must also conduct, at the same time and in the  
15                  same way as the ballot under subsection (1), a ballot of the  
16                  members of each of the existing organisations on the question or  
17                  questions whether, if the proposed principal amalgamation does  
18                  not take place, they approve the proposed alternative amalgamation  
19                  or each proposed alternative amalgamation.

20                  *Same ballot paper to be used for both ballots*

21                  (3) If, under subsection (2), the AEC is required to conduct 2 or more  
22                  ballots of the members of an organisation at the same time, the  
23                  same ballot paper is to be used for both or all the ballots.

24                  *Counting of votes in alternative amalgamation ballot*

25                  (4) A person conducting a ballot under subsection (2) need not count  
26                  the votes in the ballot if the person is satisfied that the result of the  
27                  ballot will not be required to be known for the purposes of this  
28                  Schedule.

1 *Copy of outline to be sent to voters*

- 2 (5) A copy of the outline of the scheme for the amalgamation as  
3 lodged under this Part, or, if the scheme has been altered or  
4 amended, a copy of the outline of the scheme as altered or  
5 amended, is to accompany the ballot paper sent to a person entitled  
6 to vote at the ballot.

7 *Conduct of ballot*

- 8 (6) In a ballot conducted under this section, each completed ballot  
9 paper must be returned to the AEC as follows:  
10 (a) the ballot paper must be in the declaration envelope provided  
11 to the voter with the ballot paper;  
12 (b) the declaration envelope must be in another envelope that is  
13 in the form prescribed by the regulations.
- 14 (8) Subject to this section, a ballot conducted under this section is to  
15 be conducted as prescribed.

16 *Organisation may be exempt from requirements of this section*

- 17 (9) This section does not apply to an existing organisation concerned  
18 in the amalgamation if:  
19 (a) the Commission has granted the organisation an exemption  
20 under section 63 from the requirement that a ballot be held in  
21 relation to the proposed amalgamation; or  
22 (b) the Commission has approved under section 64 a proposal by  
23 the organisation for the submission of the amalgamation to a  
24 ballot that is not conducted under this section.

25 **66 Determination of approval of amalgamation by members**

26 Where the question of a proposed amalgamation is submitted to a  
27 ballot of the members of an existing organisation concerned in the  
28 amalgamation, the members of the organisation approve the  
29 amalgamation if, and only if:

- 30 (a) where a declaration under section 43 is in force in relation to  
31 the proposed amalgamation—more than 50% of the formal  
32 votes cast in the ballot are in favour of the amalgamation; or
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- 1 (b) in any other case:  
2 (i) at least 25% of the members on the roll of voters cast a  
3 vote in the ballot; and  
4 (ii) more than 50% of the formal votes cast are in favour of  
5 the amalgamation.

6 **67 Further ballot if amalgamation not approved**

- 7 (1) If:  
8 (a) the question of a proposed amalgamation is submitted to a  
9 ballot of the members of an existing organisation; and  
10 (b) the members of the organisation do not approve the  
11 amalgamation;  
12 the existing organisations concerned in the amalgamation may  
13 jointly lodge in the Industrial Registry a further application under  
14 section 44 for approval for the submission of the amalgamation to  
15 ballot.  
16 (2) If the application is lodged within 12 months after the result of the  
17 ballot is declared, the Commission may order:  
18 (a) that any step in the procedure provided by this Part be  
19 dispensed with in relation to the proposed amalgamation; or  
20 (b) that a fresh ballot be conducted in place of an earlier ballot in  
21 the amalgamation;  
22 and the Commission may give such directions and make such  
23 further orders as the Commission considers necessary or desirable.  
24 (3) Subsection (2) does not by implication require a further application  
25 under section 44 to be lodged within the 12 month period  
26 mentioned in that subsection.

27 **68 Post-ballot report by AEC**

- 28 (1) After the completion of a ballot under this Part, the AEC must give  
29 a report on the conduct of the ballot to:  
30 (a) the Federal Court; and  
31 (b) the Industrial Registrar; and  
32 (c) each applicant under section 44.

- 1 (2) The report must include details of the prescribed matters.
- 2 (3) If the AEC is of the opinion that the register of members, or the  
3 part of the register, made available to the AEC for the purposes of  
4 the ballot contained, at the time of the ballot:
- 5 (a) an unduly large proportion of members' addresses that were  
6 not current; or
- 7 (b) an unduly large proportion of members' addresses that were  
8 workplace addresses;
- 9 this fact must be included in the report.
- 10 (4) Subsection (3) applies only in relation to postal ballots.

## 11 **69 Inquiries into irregularities**

- 12 (1) Not later than 30 days after the result of a ballot under this Part is  
13 declared, application may be made to the Federal Court, as  
14 prescribed, for an inquiry by the Court into alleged irregularities in  
15 relation to the ballot.
- 16 (2) If the Court finds that there has been an irregularity that may  
17 affect, or may have affected, the result of the ballot, the Court may:
- 18 (a) if the ballot has not been completed—order that a step in  
19 relation to the ballot be taken again; or
- 20 (b) in any other case—order that a fresh ballot be conducted in  
21 place of the ballot in which the irregularity happened;
- 22 and may make such further orders as it considers necessary or  
23 desirable.
- 24 (3) The regulations may make provision with respect to the procedure  
25 for inquiries by the Court into alleged irregularities in relation to  
26 ballots under this Part, and for matters relating to, or arising out of,  
27 inquiries.

## 28 **70 Approval of amalgamation**

- 29 (1) If the members of each of the existing organisations concerned in a  
30 proposed amalgamation approve the proposed principal

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1 amalgamation, the proposed principal amalgamation is approved  
2 for the purposes of this Part.

3 (2) If:

- 4 (a) the scheme for a proposed amalgamation contains an  
5 alternative provision; and  
6 (b) the members of one or more of the existing organisations  
7 concerned in the amalgamation do not approve the proposed  
8 principal amalgamation; and  
9 (c) the members of 2 or more of the organisations (in  
10 paragraph (d) called the *approving organisations*) approve a  
11 proposed alternative amalgamation; and  
12 (d) where one of the existing organisations is the proposed  
13 amalgamated organisation—that organisation is one of the  
14 approving organisations;  
15 the proposed alternative amalgamation is approved for the  
16 purposes of this Part.

17 **71 Expenses of ballot**

18 The expenses of a ballot under this Part are to be borne by the  
19 Commonwealth.

20 **72 Offences in relation to ballot**

21 *Interference with ballot papers*

- 22 (1) A person commits an offence in relation to a ballot if the person:  
23 (a) impersonates another person with the intention of:  
24 (i) securing a ballot paper to which the impersonator is not  
25 entitled; or  
26 (ii) casting a vote; or  
27 (b) does an act that results in a ballot paper or envelope being  
28 destroyed, defaced, altered, taken or otherwise interfered  
29 with; or  
30 (c) fraudulently puts a ballot paper or other paper:  
31 (i) into a ballot box or other ballot receptacle; or  
32 (ii) into the post; or
-



- 1 (d) delivers a ballot paper or other paper to a person other than a  
2 person receiving ballot papers for the purposes of the ballot;  
3 or  
4 (e) records a vote that the person is not entitled to record; or  
5 (f) records more than one vote; or  
6 (g) forges a ballot paper or envelope, or utters a ballot paper or  
7 envelope that the person knows to be forged; or  
8 (h) provides a ballot paper without authority; or  
9 (i) obtains a ballot paper which the person is not entitled to  
10 obtain; or  
11 (j) has possession of a ballot paper which the person is not  
12 entitled to possess; or  
13 (k) does an act that results in a ballot box or other ballot  
14 receptacle being destroyed, taken, opened or otherwise  
15 interfered with.

16 Maximum penalty: 30 penalty units.

17 *Hindering the ballot, threats and bribes etc.*

- 18 (2) A person commits an offence in relation to a ballot if the person:  
19 (a) hinders or obstructs the taking of the ballot; or  
20 (b) uses any form of intimidation or inducement to prevent from  
21 voting, or to influence the vote of, a person entitled to vote at  
22 the ballot; or  
23 (c) threatens, offers or suggests, or uses, causes or inflicts, any  
24 violence, injury, punishment, damage, loss or disadvantage  
25 with the intention of influencing or affecting:  
26 (i) any vote or omission to vote; or  
27 (ii) any support of, or opposition to, voting in a particular  
28 manner; or  
29 (iii) any promise of any vote, omission, support or  
30 opposition; or  
31 (d) gives, or promises or offers to give, any property or benefit  
32 of any kind with the intention of influencing or affecting  
33 anything referred to in subparagraph (c)(i), (ii) or (iii); or

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- 1 (e) asks for or obtains, or offers or agrees to ask for or obtain,  
2 any property or benefit of any kind (whether for that person  
3 or another person), on the understanding that anything  
4 referred to in subparagraph (c)(i), (ii) or (iii) will be  
5 influenced or affected in any way; or  
6 (f) counsels or advises a person entitled to vote to refrain from  
7 voting.

8 Maximum penalty: 30 penalty units.

9 *Secrecy of vote*

10 (3) A person (the *relevant person*) commits an offence in relation to a  
11 ballot if:

- 12 (a) the relevant person requests, requires or induces another  
13 person:  
14 (i) to show a ballot paper to the relevant person; or  
15 (ii) to permit the relevant person to see a ballot paper;  
16 in such a manner that the relevant person can see the vote  
17 while the ballot paper is being marked or after it has been  
18 marked; or  
19 (b) in the case where the relevant person is a person performing  
20 duties for the purposes of the ballot—the relevant person  
21 shows another person, or permits another person to have  
22 access to, a ballot paper used in the ballot, otherwise than in  
23 the performance of the duties.

24 Maximum penalty: 30 penalty units.

1

2 **Division 6—Amalgamation taking effect**

3 **73 Action to be taken after ballot**

- 4 (1) The scheme of a proposed amalgamation that is approved for the  
5 purposes of this Part takes effect in accordance with this section.
- 6 (2) If the Commission is satisfied that:
- 7 (a) the period, or the latest of the periods, within which  
8 application may be made to the Federal Court under  
9 section 69 in relation to the amalgamation has ended; and
- 10 (b) any application to the Federal Court under section 69 has  
11 been disposed of, and the result of any fresh ballot ordered by  
12 the Court has been declared; and
- 13 (c) there are no proceedings (other than civil proceedings)  
14 pending against any of the existing organisations concerned  
15 in the amalgamation in relation to:
- 16 (i) contraventions of this Schedule, the Workplace  
17 Relations Act or other Commonwealth laws; or
- 18 (ii) breaches of:
- 19 (A) awards or certified agreements or old IR  
20 agreements; or
- 21 (B) orders made under this Schedule, the  
22 Workplace Relations Act or other  
23 Commonwealth laws; and
- 24 (d) any obligation that an existing organisation has under a law  
25 of the Commonwealth that is not fulfilled by the time the  
26 amalgamation takes effect will be regarded by the proposed  
27 amalgamated organisation as an obligation it is bound to  
28 fulfil under the law concerned;
- 29 the Commission must, after consultation with the existing  
30 organisations, by notice published as prescribed, fix a day (in this  
31 Division called the *amalgamation day*) as the day on which the  
32 amalgamation is to take effect.
- 33 (3) On the amalgamation day:

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- 1 (a) if the proposed amalgamated organisation is not already  
2 registered—the Industrial Registrar must enter, in the register  
3 kept under paragraph 13(1)(a), such particulars in relation to  
4 the organisation as are prescribed, and the date of the entry;  
5 and  
6 (b) any proposed alteration of the rules of an existing  
7 organisation concerned in the amalgamation takes effect; and  
8 (c) the Commission must de-register the proposed de-registering  
9 organisations; and  
10 (d) the persons who, immediately before that day, were members  
11 of a proposed de-registering organisation become, by force of  
12 this section and without payment of entrance fee, members of  
13 the proposed amalgamated organisation.
- 14 (4) If:
- 15 (a) the Commission has been given an undertaking, for the  
16 purposes of paragraph (2)(d), that an amalgamated  
17 organisation will fulfil an obligation; and  
18 (b) after giving the amalgamated organisation an opportunity to  
19 be heard, the Commission determines that the organisation  
20 has not complied with the undertaking;  
21 the Commission may make any order it considers appropriate to  
22 require the organisation to comply with the undertaking.

23 **74 Assets and liabilities of de-registered organisation become assets**  
24 **and liabilities of amalgamated organisation**

- 25 (1) On the amalgamation day, all assets and liabilities of a  
26 de-registered organisation cease to be assets and liabilities of that  
27 organisation and become assets and liabilities of the amalgamated  
28 organisation.
- 29 (2) For all purposes and in all proceedings, an asset or liability of a  
30 de-registered organisation existing immediately before the  
31 amalgamation day is taken to have become an asset or liability of  
32 the amalgamated organisation on that day.

1 **75 Resignation from membership**

2 When the day on which the proposed amalgamation is to take  
3 effect is fixed, section 174 has effect in relation to resignation from  
4 membership of a proposed de-registering organisation as if the  
5 reference in subsection 174(2) to 2 weeks were a reference to one  
6 week or such lesser period as the Commission directs.

7 **76 Effect of amalgamation on awards, orders and certified**  
8 **agreements**

9 On and from the amalgamation day:

- 10 (a) an award, an order of the Commission or a certified  
11 agreement or old IR agreement that was, immediately before  
12 that day, binding on a proposed de-registering organisation  
13 and its members becomes, by force of this section, binding  
14 on the proposed amalgamated organisation and its members;  
15 and  
16 (b) the award, order or agreement has effect for all purposes  
17 (including the obligations of employers and organisations of  
18 employers) as if references in the award, order or agreement  
19 to a de-registered organisation included references to the  
20 amalgamated organisation.

21 **77 Effect of amalgamation on agreement under section 151**

- 22 (1) Unless the scheme of a proposed amalgamation otherwise  
23 provides, an agreement in force under section 151 to which a  
24 de-registered organisation was a party continues in force on and  
25 from the amalgamation day as if references in the agreement to the  
26 de-registered organisation were references to the amalgamated  
27 organisation.
- 28 (2) The Industrial Registrar must enter in the register kept under  
29 paragraph 13(1)(a) particulars of the effect of the amalgamation on  
30 the agreement.

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1       **78 Instruments**

- 2                   (1) On and after the amalgamation day, an instrument to which this  
3                   Part applies continues, subject to subsection (2), in full force and  
4                   effect.
- 5                   (2) The instrument has effect, in relation to acts, omissions,  
6                   transactions and matters done, entered into or occurring on or after  
7                   that day as if a reference in the instrument to a de-registered  
8                   organisation were a reference to the amalgamated organisation.

9       **79 Pending proceedings**

- 10                   Where, immediately before the amalgamation day, a proceeding to  
11                   which this Part applies was pending in a court or before the  
12                   Commission:
- 13                   (a) the amalgamated organisation is, on that day, substituted for  
14                   each de-registered organisation as a party; and  
15                   (b) the proceeding is to continue as if the amalgamated  
16                   organisation were, and had always been, the de-registered  
17                   organisation.

18       **80 Division applies despite laws and agreements prohibiting transfer  
19       etc.**

- 20                   (1) This Division applies, and must be given effect to, despite anything  
21                   in:
- 22                   (a) the Workplace Relations Act or any other Commonwealth,  
23                   State or Territory law; or  
24                   (b) any contract, deed, undertaking, agreement or other  
25                   instrument.
- 26                   (2) Nothing done by this Division, and nothing done by a person  
27                   because of, or for a purpose connected with or arising out of, this  
28                   Division:
- 29                   (a) is to be regarded as:
- 30                   (i) placing an organisation or other person in breach of  
31                   contract or confidence; or

- 1 (ii) otherwise making an organisation or other person guilty  
2 of a civil wrong; or  
3 (b) is to be regarded as placing an organisation or other person in  
4 breach of:  
5 (i) any Commonwealth, State or Territory law; or  
6 (ii) any contractual provision prohibiting, restricting or  
7 regulating the assignment or transfer of any asset or  
8 liability or the disclosure of any information; or  
9 (c) is taken to release any surety, wholly or in part, from all or  
10 any of the surety's obligations.
- 11 (3) Without limiting subsection (1), where, but for this section, the  
12 consent of a person would be necessary in order to give effect to  
13 this Division in a particular respect, the consent is taken to have  
14 been given.

15 **81 Amalgamated organisation to take steps necessary to carry out**  
16 **amalgamation**

- 17 (1) The amalgamated organisation must take such steps as are  
18 necessary to ensure that the amalgamation, and the operation of  
19 this Division in relation to the amalgamation, are fully effective.
- 20 (2) The Federal Court may, on the application of an interested person,  
21 make such orders as it considers appropriate to ensure that  
22 subsection (1) is given effect to.

23 **82 Certificates in relation to land and interests in land**

- 24 Where:
- 25 (a) land or an interest in land becomes, under this Division, land  
26 or an interest in land of the amalgamated organisation; and  
27 (b) a certificate that:  
28 (i) is signed by an authorised person; and  
29 (ii) identifies the land or interest, whether by reference to a  
30 map or otherwise; and

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- 1 (iii) states that the land or interest has, under this Division,  
2 become land or an interest in land of the amalgamated  
3 organisation;  
4 is lodged with the Registrar-General, Registrar of Titles or  
5 other proper officer of the State or Territory in which the  
6 land is situated;  
7 the officer with whom the certificate is lodged may:  
8 (c) deal with, and give effect to, the certificate as if it were a  
9 grant, conveyance, memorandum or instrument of transfer of  
10 the land (including all rights, title and interest in the land) or  
11 the interest in the land, as the case may be, to the  
12 amalgamated organisation that had been properly executed  
13 under the law of the State or Territory; and  
14 (d) register the matter in the same way as dealings in land or  
15 interests in land of that kind are registered.

**83 Certificates in relation to charges**

16  
17 Where:

- 18 (a) the amalgamated organisation under an amalgamation  
19 becomes, under this Division, the holder of a charge; and  
20 (b) a certificate that:  
21 (i) is signed by an authorised person; and  
22 (ii) identifies the charge; and  
23 (iii) states that the amalgamated organisation has, under this  
24 Division, become the holder of the charge;  
25 is lodged with the Australian Securities and Investments  
26 Commission;  
27 that Commission may:  
28 (c) register the matter in the same way as assignments of charges  
29 are registered; and  
30 (d) deal with, and give effect to, the certificate as if it were a  
31 notice of assignment of the charge that had been properly  
32 lodged with that Commission.



1 **84 Certificates in relation to shares etc.**

2 Where:

3 (a) the amalgamated organisation becomes, under this Division,  
4 the holder of a share, debenture or interest in a company; and

5 (b) a certificate that:

6 (i) is signed by an authorised person; and

7 (ii) identifies the share, debenture or interest; and

8 (iii) states that the amalgamated organisation has become,  
9 under this Division, the holder of the share, debenture or  
10 interest;

11 is delivered to the company;

12 the company must take all steps necessary to register or record the  
13 matter in the same way as transfers of shares, debentures or  
14 interests in the company are registered or recorded.

15 **85 Certificates in relation to other assets**

16 Where:

17 (a) an asset (other than an asset to which section 82, 83 or 84  
18 applies) becomes, under this Division, an asset of the  
19 amalgamated organisation; and

20 (b) a certificate that:

21 (i) is signed by an authorised person; and

22 (ii) identifies the asset; and

23 (iii) states that the asset has, under this Division, become an  
24 asset of the amalgamated organisation;

25 is given to the person or authority who has, under  
26 Commonwealth, State or Territory law, responsibility for  
27 keeping a register in relation to assets of that kind;

28 the person or authority may:

29 (c) register the matter in the same way as transactions in relation  
30 to assets of that kind are registered; and

31 (d) deal with, and give effect to, the certificate;

32 as if the certificate were a proper and appropriate instrument for  
33 transactions in relation to assets of that kind.

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1       **86 Other matters**

2                               The regulations may provide for any other matters relating to  
3                               giving effect to an amalgamation.

4       **87 Federal Court may resolve difficulties**

5                               (1) Where any difficulty arises in relation to the application of this  
6                               Division to a particular matter, the Federal Court may, on the  
7                               application of an interested person, make such order as it considers  
8                               proper to resolve the difficulty.

9                               (2) An order made under subsection (1) has effect despite anything  
10                               contained in this Schedule, the Workplace Relations Act or in any  
11                               other Commonwealth law or any State or Territory law.

1

2 **Division 7—Validation**

3 **88 Validation of certain acts done in good faith**

4 (1) Subject to this section and to section 90, an act done in good faith  
5 for the purposes of a proposed or completed amalgamation by:

- 6 (a) an organisation or association concerned in the  
7 amalgamation; or  
8 (b) the committee of management of such an organisation or  
9 association; or  
10 (c) an officer of such an organisation or association;

11 is valid despite any invalidity that may later be discovered in or in  
12 connection with the act.

13 (2) For the purposes of this section:

- 14 (a) an act is treated as done in good faith until the contrary is  
15 proved; and  
16 (b) a person who has purported to be a member of the committee  
17 of management, or an officer, is to be treated as having done  
18 so in good faith until the contrary is proved; and  
19 (c) an invalidity in the making or altering of the scheme for the  
20 amalgamation is not to be treated as discovered before the  
21 earliest time proved to be a time when the existence of the  
22 invalidity was known to a majority of members of the  
23 committee of management or to a majority of the persons  
24 purporting to act as the committee of management; and  
25 (d) knowledge of facts from which an invalidity arises is not of  
26 itself treated as knowledge that the invalidity exists.

27 (3) This section applies:

- 28 (a) to an act whenever done (including an act done before the  
29 commencement of this section); and  
30 (b) to an act done to or by an association before it became an  
31 organisation.

32 (4) Nothing in this section affects:

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- 1 (a) the operation of an order of the Federal Court made before  
2 the commencement of this section; or  
3 (b) the operation of section 69, 81 or 87 or Part 2 of Chapter 11  
4 (validation provisions for organisations).

5 **89 Validation of certain acts after 4 years**

- 6 (1) Subject to subsection (2) and section 90, after the end of 4 years  
7 from the day an act is done for the purposes of a proposed or  
8 completed amalgamation by:  
9 (a) an organisation or association concerned in the  
10 amalgamation; or  
11 (b) the committee of management of such an organisation or  
12 association; or  
13 (c) an officer of such an organisation or association;  
14 the act is taken to have complied with this Part and the rules of the  
15 organisation or association.
- 16 (2) The operation of this section does not affect the validity or  
17 operation of an order, judgment, decree, declaration, direction,  
18 verdict, sentence, decision or similar judicial act of the Federal  
19 Court or any other court made before the end of that 4 years.
- 20 (3) This section applies:  
21 (a) to an act whenever done (including an act done before the  
22 commencement of this section); or  
23 (b) to an act done to or by an association before it became an  
24 organisation.

25 **90 Orders affecting application of section 88 or 89**

- 26 (1) Where, on an application for an order under this section, the  
27 Federal Court is satisfied that the application of section 88 or 89 in  
28 relation to an act would do substantial injustice, having regard to  
29 the interests of:  
30 (a) the organisation or association concerned; or  
31 (b) members or creditors of the organisation or association  
32 concerned; or
-

- 1 (c) persons having dealings with the organisation or association  
2 concerned;  
3 the Court must, by order, declare accordingly.
- 4 (2) Where a declaration is made, section 88 or 89, as the case requires,  
5 does not apply, and is taken never to have applied, in relation to the  
6 act specified in the declaration.
- 7 (3) The Court may make an order under subsection (1) on the  
8 application of the organisation or association concerned, a member  
9 of the organisation or association concerned or any other person  
10 having a sufficient interest in relation to the organisation or  
11 association concerned.

12 **91 Federal Court may make orders in relation to consequences of**  
13 **invalidity**

- 14 (1) An organisation or association, a member of an organisation or  
15 association or any other person having a sufficient interest in  
16 relation to an organisation or association may apply to the Federal  
17 Court for a determination of the question whether an invalidity has  
18 occurred in a proposed or completed amalgamation concerning the  
19 organisation or association.
- 20 (2) On an application under subsection (1), the Court may make such  
21 determination as it considers proper.
- 22 (3) Where, in a proceeding under subsection (1), the Court finds that  
23 an invalidity of the kind mentioned in that subsection has occurred,  
24 the Court may make such orders as it considers appropriate:  
25 (a) to rectify the invalidity or cause it to be rectified; or  
26 (b) to negative, modify or cause to be modified the consequences  
27 in law of the invalidity; or  
28 (c) to validate any act, matter or thing that is made invalid by or  
29 because of the invalidity.
- 30 (4) Where an order is made under subsection (3), the Court may give  
31 such ancillary or consequential directions as it considers  
32 appropriate.

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- 1                   (5) The Court must not make an order under subsection (3) without  
2                   satisfying itself that such an order would not do substantial  
3                   injustice to:  
4                   (a) the organisation or association concerned; or  
5                   (b) any member or creditor of the organisation or association  
6                   concerned; or  
7                   (c) any person having dealings with the organisation or  
8                   association concerned.
- 9                   (6) This section applies:  
10                  (a) to an invalidity whenever occurring (including an invalidity  
11                  occurring before the commencement of this section); and  
12                  (b) to an invalidity occurring in relation to an association before  
13                  it became an organisation.

1

2 **Part 3—Withdrawal from amalgamations**

3 **Division 1—General**

4 **92 Object of Part**

5 The object of this Part is to provide for:

6 (a) certain organisations that have taken part in amalgamations  
7 (either under this Schedule or the Workplace Relations Act  
8 as in force before the commencement of this Part) to be  
9 reconstituted and re-registered; and

10 (b) branches of organisations of that kind to be formed into  
11 organisations and registered;

12 in a way that is fair to the members of the organisations concerned  
13 and the creditors of those organisations.

14 **93 Definitions etc.**

15 (1) In this Part, unless the contrary intention appears:

16 *amalgamated organisation*, in relation to an amalgamation, means  
17 the organisation of which members of a de-registered organisation  
18 became members under paragraph 73(3)(d) but does not include  
19 any such organisation that was subsequently de-registered under  
20 Part 2.

21 *asset* has the same meaning as in Part 2.

22 *authorised person*, in relation to a completed withdrawal from  
23 amalgamation, means a person authorised by the rules or the  
24 committee of management of the newly registered organisation.

25 *ballot* means a ballot conducted under Division 2.

26 *charge* has the same meaning as in Part 2.

27 *completed withdrawal from amalgamation* means a proposed  
28 withdrawal from amalgamation that has taken effect.

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1                    **constituent member**, in relation to a constituent part of an  
2 amalgamated organisation, means:  
3                    (a) in the case of a separately identifiable constituent part—a  
4 member of the amalgamated organisation who is included in  
5 that part; or  
6                    (b) in any other case—a member of the amalgamated  
7 organisation who would be eligible for membership of the  
8 constituent part if:  
9                    (i) the constituent part; or  
10                    (ii) the organisation of which the constituent part was a  
11 branch;  
12 as the case requires, were still registered as an organisation  
13 with the same rules as it had when it was de-registered under  
14 Part 2.

15                    **constituent part**, in relation to an amalgamated organisation,  
16 means:  
17                    (a) a separately identifiable constituent part; or  
18                    (b) a part of the membership of the amalgamated organisation  
19 that would have been eligible for membership of:  
20                    (i) an organisation de-registered under Part 4 in connection  
21 with the formation of the amalgamated organisation; or  
22                    (ii) a State or Territory branch of such a de-registered  
23 organisation;  
24 if the de-registration had not occurred.

25                    **debenture** has the same meaning as in Part 2.

26                    **holder**, in relation to a charge, has the same meaning as in Part 2.

27                    **instrument** has the same meaning as in Part 2.

28                    **instrument to which this Part applies**, in relation to a completed  
29 withdrawal from amalgamation, means an instrument that  
30 immediately before the withdrawal day is an instrument:

31                    (a) to which the amalgamated organisation from which a  
32 constituent part has withdrawn to form a newly registered  
33 organisation is a party; or



- 1 (b) that was given to, by, or in favour of, the amalgamated  
2 organisation; or  
3 (c) in which a reference is made to the amalgamated  
4 organisation; or  
5 (d) under which any right or liability accrues or may accrue to  
6 the amalgamated organisation in relation to the constituent  
7 part of the organisation and its members.

8 *interest* has the same meaning as in Part 2.

9 *invalidity* has the same meaning as in Part 2.

10 *irregularity* includes a breach of the rules of an organisation, but in  
11 Division 4 does not include an irregularity in relation to a ballot.

12 *liability* has the same meaning as in Part 2.

13 *newly registered organisation* means an organisation registered  
14 under section 110.

15 *proceeding to which this Part applies*, in relation to a completed  
16 withdrawal from amalgamation, means a proceeding to which an  
17 amalgamated organisation was a party immediately before the  
18 withdrawal day.

19 *proposed withdrawal from amalgamation* means the proposed  
20 carrying out of arrangements in relation to an amalgamated  
21 organisation under which a separately identifiable constituent part  
22 of the organisation is to withdraw from the organisation.

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

- 25 (a) if an organisation de-registered under Part 2 in connection  
26 with the formation of the amalgamated organisation remains  
27 separately identifiable under the rules of the amalgamated  
28 organisation as a branch, division or part of that  
29 organisation—that branch, division or part; or  
30 (b) if a State or Territory branch of such a de-registered  
31 organisation under its rules as in force immediately before its  
32 de-registration remains separately identifiable under the rules



1  
2 **Division 2—Ballots for withdrawal from amalgamated**  
3 **organisations**

4 **94 Applications to the Federal Court for ballots**

5 (1) An application may be made to the Federal Court for a secret  
6 postal ballot to be held, to decide whether a constituent part of an  
7 amalgamated organisation should withdraw from the organisation,  
8 if:

9 (a) the constituent part became part of the organisation as a  
10 result of an amalgamation under:

11 (i) Division 7 of Part IX of the Workplace Relations Act  
12 (as in force before the commencement of this Part) after  
13 1 February 1991; or

14 (ii) Part 2 of this Chapter; and

15 (b) the amalgamation occurred after 31 December 1996; and

16 (c) the application is made at least 2 years, but no more than 5  
17 years, after the amalgamation occurred.

18 (2) However, an application cannot be made if:

19 (a) during the last 12 months, the Court has rejected an  
20 application for a ballot to be held in relation to the  
21 constituent part of the organisation; or

22 (b) a ballot was held that rejected the withdrawal of the  
23 constituent part.

24 (3) The application may be made by:

25 (a) the prescribed number of constituent members; or

26 (b) a committee of management elected entirely or substantially  
27 by the constituent members, whether by a direct voting  
28 system or a collegiate electoral system; or

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

31 (4) The application must be in the prescribed form and must contain  
32 such information as is prescribed.

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- 1 (5) A constituent member of an amalgamated organisation who is not a  
2 financial member is taken not to be a constituent member for the  
3 purposes of subsection (3).

4 **95 Outline of proposed withdrawal**

- 5 (1) The application must be accompanied by a written outline of the  
6 proposal for the constituent part to withdraw from the  
7 amalgamated organisation. Subject to subsection (2), the outline  
8 must:  
9 (a) provide, in no more than 3,000 words, sufficient information  
10 on the proposal to enable the constituent members to make  
11 informed decisions in relation to the proposed withdrawal;  
12 and  
13 (b) address such matters as are prescribed.
- 14 (2) The outline may, if the Federal Court allows, consist of more than  
15 3,000 words.
- 16 (3) The outline must be a fair and accurate representation of the  
17 proposed withdrawal and must address any matters prescribed for  
18 the purposes of paragraph (1)(b) in a fair and accurate manner.
- 19 (4) If the Federal Court is not satisfied that the outline complies with  
20 subsection (3), the Court must order the making of such  
21 amendments to the outline as it considers are needed for the outline  
22 to comply with that subsection.

23 **96 Filing the “yes” case**

- 24 (1) The applicant or applicants may file with the Federal Court a  
25 written statement of no more than 2,000 words in support of the  
26 proposal for the constituent part to withdraw from the  
27 amalgamated organisation.
- 28 (2) The statement must either:  
29 (a) accompany the application; or  
30 (b) be filed within such later time as the Court allows.

- 1 (3) The Court may order that the statement be amended, in accordance  
2 with the order, to correct factual errors or otherwise to ensure that  
3 it complies with this Schedule.

4 **97 Filing the “no” case**

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

15 **98 Provisions relating to outlines and statements of “yes” and “no”**  
16 **cases**

- 17 (1) An outline under section 95 or a statement under section 96 or  
18 97 may, if the Federal Court allows, include matter that is not in  
19 the form of words, including, for example, diagrams, drawings,  
20 illustrations, photographs and symbols.
- 21 (2) The Court may allow an outline under section 95, or a statement  
22 under section 96 or 97, to be amended by whoever filed the outline  
23 or statement with the Court.

24 **99 Notifying of applications for ballots**

- 25 (1) If an application is made under section 94, the Registrar of the  
26 Federal Court must immediately notify the AEC of the application.
- 27 (2) On being notified of the application, the AEC must immediately  
28 take such action as it considers necessary or desirable to enable it  
29 to conduct, as quickly as possible, any ballot that may be required  
30 as a result of the application.

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1       **100 Orders for ballots**

- 2               (1) The Federal Court must order that a vote of the constituent  
3               members be taken by secret postal ballot, to decide whether the  
4               constituent part of the amalgamated organisation should withdraw  
5               from the organisation, if the Court is satisfied that:
- 6                     (a) the application for the ballot is validly made under  
7                     section 94; and
- 8                     (b) the outline under section 95 relating to the application:
- 9                         (i) is a fair and accurate representation of the proposal for  
10                         withdrawal from the organisation; and
- 11                         (ii) addresses any matters prescribed for the purposes of  
12                         paragraph 95(1)(b) in a fair and accurate manner; and
- 13                     (c) the proposal for withdrawal from the organisation complies  
14                     with any requirements specified in the regulations.
- 15               (2) In considering whether to order that a ballot be held, the Court may  
16               hear from:
- 17                     (a) an applicant for the ballot; and
- 18                     (b) the amalgamated organisation; and
- 19                     (c) a creditor of the amalgamated organisation; and
- 20                     (d) any other person who would be affected by the withdrawal of  
21                     the constituent part from the amalgamated organisation.
- 22               (3) If the Court orders that a ballot be held, it may make such orders as  
23               it thinks fit in relation to the conduct of the ballot.

24       **101 Financial members only eligible to vote**

- 25               A constituent member of an amalgamated organisation is not  
26               eligible to vote in a ballot under this Division unless the person:
- 27                     (a) is a financial member of the organisation; or
- 28                     (b) is in a class of members prescribed for the purposes of this  
29                     section.

1 **102 Conduct of ballots**

- 2 (1) All ballots are to be conducted by the AEC in accordance with the  
3 regulations. The expenses of conducting such a ballot are to be  
4 borne by the Commonwealth.
- 5 (2) The ballot paper sent to the constituent members of a constituent  
6 part of an amalgamated organisation in connection with a proposal  
7 for the constituent part to withdraw from the amalgamated  
8 organisation must be accompanied by:
- 9 (a) a copy of the outline under section 95 relating to the  
10 proposed withdrawal; and
  - 11 (b) if there is a statement under section 96 in support of the  
12 proposed withdrawal—a copy of that statement; and
  - 13 (c) if there is a statement under section 97 in opposition to the  
14 proposed withdrawal—a copy of that statement; and
  - 15 (d) the declaration envelope and other envelope required for the  
16 purposes of the postal ballot.
- 17 (3) In a ballot conducted under this section, each completed ballot  
18 paper must be returned to the AEC as follows:
- 19 (a) the ballot paper must be in the declaration envelope provided  
20 to the voter with the ballot paper;
  - 21 (b) the declaration envelope must be in another envelope that is  
22 in the form prescribed by the regulations.

23 **103 Providing information etc. to electoral officials**

- 24 (1) An electoral official may, if:
- 25 (a) it is reasonably necessary for the purposes of a ballot that  
26 may be, or is, required to be held; and
  - 27 (b) the official is authorised by the AEC under this section for  
28 the purposes of the ballot;
- 29 require (by written notice) an officer or employee of the  
30 amalgamated organisation concerned or of a branch of the  
31 organisation:
- 32 (c) to give to the official, within the period (of not less than 7  
33 days after the notice is given) and in the manner specified in

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- 1                   the notice, any information within the knowledge or in the  
2                   possession of the person; and
- 3                   (d) to produce or make available to the official, at a reasonable  
4                   time (being a time not less than 7 days after the notice is  
5                   given) and place specified in the notice, any documents in the  
6                   custody or under the control of the person, or to which he or  
7                   she has access.
- 8                   (2) An officer or employee of an organisation or branch of an  
9                   organisation commits an offence if he or she fails to comply with a  
10                  requirement made under subsection (1).
- 11                  (3) An offence against subsection (2) is an offence of strict liability.
- 12                  Note:        For *strict liability*, see section 6.1 of the *Criminal Code*.
- 13                  (4) Subsection (2) does not apply if the person has a reasonable  
14                  excuse.
- 15                  Note:        A defendant bears an evidential burden in relation to the matter  
16                  mentioned in subsection (4), see subsection 13.3(3) of the *Criminal*  
17                  *Code*.
- 18                  Maximum penalty: 30 penalty units.
- 19                  (5) A person is not excused from giving information or producing or  
20                  making available a document under this section on the ground that  
21                  the information or the production or making available of the  
22                  document might tend to incriminate the person or expose the  
23                  person to a penalty.
- 24                  (6) However:
- 25                       (a) giving the information or producing or making available the  
26                       document; or
- 27                       (b) any information, document or thing obtained as a direct or  
28                       indirect consequence of giving the information or producing  
29                       or making available the document;
- 30                  is not admissible in evidence against the person in criminal  
31                  proceedings or proceedings that may expose the person to a  
32                  penalty, other than proceedings under, or arising out of, subsection  
33                  104(3).



- 1 (7) If any information or document specified in a notice under  
2 subsection (1) is kept in electronic form, the electoral official may  
3 require it to be made available in that form.

4 **104 Declaration by secretary etc. of organisation**

- 5 (1) If a requirement is made under subsection 103(1) in relation to the  
6 register, or part of the register, kept by an organisation under  
7 section 230, the secretary or other prescribed officer of the  
8 organisation must make a declaration, in accordance with  
9 subsection (2), that the register has been maintained as required by  
10 subsection 230(2).

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

- 12 (2) The declaration must be:  
13 (a) signed by the person making it; and  
14 (b) given to the returning officer, and lodged in the Industrial  
15 Registry, as soon as practicable but no later than the day  
16 before the first day of voting in the relevant election.
- 17 (3) A person must not, in a declaration for the purposes of  
18 subsection (1), make a statement if the person knows, or is reckless  
19 as to whether, the statement is false or misleading.

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

21 **105 Offences in relation to ballots**

22 *Interference with ballot papers*

- 23 (1) A person commits an offence in relation to a ballot if the person:  
24 (a) impersonates another person with the intention of:  
25 (i) securing a ballot paper to which the impersonator is not  
26 entitled; or  
27 (ii) casting a vote; or  
28 (b) does an act that results in a ballot paper or envelope being  
29 destroyed, defaced, altered, taken or otherwise interfered  
30 with; or  
31 (c) fraudulently puts a ballot paper or other paper:
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- 1 (i) into a ballot box or other ballot receptacle; or  
2 (ii) into the post; or  
3 (d) delivers a ballot paper or other paper to a person other than a  
4 person receiving ballot papers for the purposes of the ballot;  
5 or  
6 (e) records a vote that the person is not entitled to record; or  
7 (f) records more than one vote; or  
8 (g) forges a ballot paper or envelope, or utters a ballot paper or  
9 envelope that the person knows to be forged; or  
10 (h) provides a ballot paper without authority; or  
11 (i) obtains a ballot paper which the person is not entitled to  
12 obtain; or  
13 (j) has possession of a ballot paper which the person is not  
14 entitled to possess; or  
15 (k) does an act that results in a ballot box or other ballot  
16 receptacle being destroyed, taken, opened or otherwise  
17 interfered with.

18 Maximum penalty: 30 penalty units.

19 *Hindering the ballot, threats and bribes etc.*

- 20 (2) A person commits an offence in relation to a ballot if the person:  
21 (a) hinders or obstructs the taking of the ballot; or  
22 (b) uses any form of intimidation or inducement to prevent from  
23 voting, or to influence the vote of, a person entitled to vote at  
24 the ballot; or  
25 (c) threatens, offers or suggests, or uses, causes or inflicts any  
26 violence, injury, punishment, damage, loss or disadvantage  
27 with the intention of influencing or affecting:  
28 (i) any vote or omission to vote; or  
29 (ii) any support of, or opposition to, voting in a particular  
30 manner; or  
31 (iii) any promise of any vote, omission, support or  
32 opposition; or

- 1 (d) gives, or promises or offers to give, any property or benefit  
2 of any kind with the intention of influencing or affecting  
3 anything referred to in subparagraph (c)(i), (ii) or (iii); or  
4 (e) asks for or obtains, or offers or agrees to ask for or obtain,  
5 any property or benefit of any kind (whether for that person  
6 or another person), on the understanding that anything  
7 referred to in subparagraph (c)(i), (ii) or (iii) will be  
8 influenced or affected in any way; or  
9 (f) counsels or advises a person entitled to vote to refrain from  
10 voting.

11 Maximum penalty: 30 penalty units.

12 *Secrecy of vote*

- 13 (3) A person (the *relevant person*) commits an offence in relation to a  
14 ballot if:  
15 (a) the relevant person requests, requires or induces another  
16 person:  
17 (i) to show a ballot paper to the relevant person; or  
18 (ii) to permit the relevant person to see a ballot paper;  
19 in such a manner that the relevant person can see the vote  
20 while the ballot paper is being marked or after it has been  
21 marked; or  
22 (b) in the case where the relevant person is a person performing  
23 duties for the purposes of the ballot—the relevant person  
24 shows another person, or permits another person to have  
25 access to, a ballot paper used in the ballot, otherwise than in  
26 the performance of the duties.

27 Maximum penalty: 30 penalty units.

28 **106 Certificate showing particulars of the ballot**

- 29 (1) Within 14 days after the closing day of a ballot, the electoral  
30 official conducting the ballot must prepare, date and sign a  
31 certificate showing, in relation to the ballot:  
32 (a) the total number of persons on the roll of voters; and  
33 (b) the total number of ballot papers issued; and
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- 1 (c) the total number of ballot papers received by the electoral  
2 official; and
- 3 (d) the total number of votes in favour of the question set out on  
4 the ballot paper; and
- 5 (e) the total number of votes not in favour of the question set out  
6 on the ballot paper; and
- 7 (f) the total number of informal ballot papers.
- 8 (2) Immediately after signing a certificate referred to in subsection (1),  
9 the electoral official must give a copy of the certificate to:
- 10 (a) the Federal Court; and
- 11 (b) the Industrial Registrar; and
- 12 (c) if the applicant was a person mentioned in paragraph  
13 94(3)(b) or (c)—each applicant; and
- 14 (d) the amalgamated organisation from which the constituent  
15 part withdrew or sought to withdraw.
- 16 (3) Immediately after signing a certificate referred to in subsection (1),  
17 the electoral official must make a copy of the certificate available  
18 in any way that it considers appropriate to each applicant under  
19 paragraph 94(3)(a).

**107 Post-ballot report by AEC**

- 21 (1) After the completion of the ballot, the AEC must give a report on  
22 the conduct of the ballot to:
- 23 (a) the Federal Court; and
- 24 (b) the Industrial Registrar; and
- 25 (c) if the applicant was a person mentioned in paragraph  
26 94(3)(b) or (c)—each applicant; and
- 27 (d) the amalgamated organisation from which the constituent  
28 part withdrew or sought to withdraw.
- 29 (2) After the completion of the ballot, the AEC must make a report on  
30 the conduct of the ballot available in any way that it considers  
31 appropriate to each applicant under paragraph 94(3)(a).
- 32 (3) The report must include details of the prescribed matters.

- 1 (4) If the AEC is of the opinion that the register of members, or the  
2 part of the register, made available to the AEC for the purposes of  
3 the ballot, contained at the time of the ballot:  
4 (a) an unduly large proportion of members' addresses that were  
5 not current; or  
6 (b) an unduly large proportion of members' addresses that were  
7 workplace addresses;  
8 this fact must be included in the report.

9 **108 Inquiries into irregularities**

- 10 (1) Not later than 30 days after the result of a ballot under this Part is  
11 declared, application may be made to the Federal Court, as  
12 prescribed, for an inquiry by the Court into alleged irregularities in  
13 relation to the ballot.
- 14 (2) If the Court finds that there has been an irregularity that may  
15 affect, or may have affected, the result of the ballot, the Court may:  
16 (a) if the ballot has not been completed—order that a step in  
17 relation to the ballot be taken again; or  
18 (b) in any other case—order that a fresh ballot be conducted in  
19 place of the ballot in which the irregularity happened;  
20 and may make such further orders as it considers necessary or  
21 desirable.
- 22 (3) The regulations may make provision with respect to the procedure  
23 for inquiries by the Court into alleged irregularities in relation to  
24 ballots under this Part, and for matters relating to, or arising out of,  
25 inquiries.

1

2 **Division 3—Giving effect to ballots**

3 **109 Determining the day of withdrawal**

- 4 (1) If more than 50% of the formal votes cast in a ballot are in favour  
5 of a constituent part of an amalgamated organisation withdrawing  
6 from the organisation, the Federal Court must, on application:  
7 (a) determine the day on which the withdrawal is to take effect;  
8 and  
9 (b) make such orders as are necessary to apportion the assets and  
10 liabilities of the amalgamated organisation between the  
11 amalgamated organisation and the constituent part; and  
12 (c) make such other orders as it thinks fit in connection with  
13 giving effect to the withdrawal.
- 14 (2) In making an order under paragraph (1)(b), the Court must have  
15 regard to:  
16 (a) the assets and liabilities of the constituent part before it, or  
17 the organisation of which it was a State or Territory branch,  
18 was de-registered under Part 2 in connection with the  
19 formation of the amalgamated organisation; and  
20 (b) any change in the net value of those assets or liabilities that  
21 has occurred since the amalgamation; and  
22 (c) the interests of the creditors of the amalgamated organisation.
- 23 (3) An application to the Court under subsection (1) may be made by:  
24 (a) the prescribed number of constituent members; or  
25 (b) a person authorised to make the application by the prescribed  
26 number of constituent members; or  
27 (c) a committee of management elected entirely or substantially  
28 by the constituent members, whether by a direct voting  
29 system or a collegiate electoral system; or  
30 (d) if the application relates to a separately identifiable  
31 constituent part—the committee of management of that part;  
32 or  
33 (e) a person who is:

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- 1 (i) either a constituent member or a member of a  
2 committee of management referred to in paragraph (c)  
3 or (d); and  
4 (ii) authorised to make the application by a committee of  
5 management referred to in paragraph (c) or (d).
- 6 (4) A constituent member of an amalgamated organisation who is not a  
7 financial member is taken not to be a constituent member for the  
8 purposes of subsection (3).
- 9 (5) The application must be in the prescribed form and must contain  
10 such information as is prescribed.
- 11 (6) The regulations may prescribe the manner in which an  
12 authorisation for the purposes of paragraph (3)(b) and  
13 subparagraph (e)(ii) must be made.

14 **110 Registration of constituent part**

15 The Industrial Registrar must, with effect from the day determined  
16 under paragraph 109(1)(a):

- 17 (a) register the constituent part as an organisation in the register  
18 kept under paragraph 13(1)(a); and  
19 (b) enter in the register such other particulars in relation to the  
20 organisation as are prescribed.

21 **111 Choice of organisation following withdrawal of separately**  
22 **identifiable constituent part**

- 23 (1) This section applies in the case of a withdrawal from amalgamation  
24 under this Part by a separately identifiable constituent part of an  
25 amalgamated organisation.
- 26 (2) As soon as practicable after the constituent part is registered as an  
27 organisation under section 110, the amalgamated organisation must  
28 send a written statement in accordance with subsection (3) to each  
29 person who, immediately before that registration, was a member of  
30 the amalgamated organisation attached to the constituent part.
- 31 (3) The statement must:
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- 1 (a) inform the person of the withdrawal from amalgamation of  
2 the constituent part; and
- 3 (b) invite the person to give written notice, within a period of 28  
4 days after being sent the statement (the *notice period*), to the  
5 amalgamated organisation or to the newly registered  
6 organisation that:
- 7 (i) the person wants to remain a member of the  
8 amalgamated organisation; or
- 9 (ii) the person wants to become a member of the newly  
10 registered organisation; and
- 11 (c) explain the effect of responding, or failing to respond, to the  
12 invitation.
- 13 (4) As soon as practicable after the amalgamated organisation receives  
14 a notice under paragraph (3)(b), it must notify the newly registered  
15 organisation of the receipt.
- 16 (5) As soon as practicable after the newly registered organisation  
17 receives a notice under paragraph (3)(b), it must notify the  
18 amalgamated organisation of the receipt.
- 19 (6) If a person referred to in subsection (2) gives written notice in  
20 accordance with paragraph (3)(b), within the notice period, that he  
21 or she wants to become a member of the newly registered  
22 organisation, he or she:
- 23 (a) ceases, by force of this subsection, to be a member of the  
24 amalgamated organisation with effect from the day on which  
25 the notice is received by the amalgamated organisation or the  
26 newly registered organisation (as the case may be); and
- 27 (b) becomes, by force of this subsection and without payment of  
28 entrance fee, a member of the newly registered organisation  
29 with effect from the day after the day referred to in  
30 paragraph (a).
- 31 (7) If a person referred to in subsection (2):
- 32 (a) gives written notice in accordance with paragraph (3)(b)  
33 within the notice period that he or she wants to remain a  
34 member of the amalgamated organisation; or



Section 111

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- 1 (b) fails to give written notice in accordance with  
2 paragraph (3)(b) within the notice period;  
3 he or she remains a member of the amalgamated organisation.
- 4 (8) A person who ceases to be a member of the amalgamated  
5 organisation because of the operation of subsection (6):  
6 (a) is not liable to make any payment because the person gave no  
7 notice, or insufficient notice, of ceasing to be such a member  
8 under the rules of the organisation; and  
9 (b) otherwise, remains liable for such payments as are due in  
10 accordance with those rules.
- 11 (9) Notwithstanding paragraph (7)(b), if a person to whom that  
12 paragraph would apply, at any time before the day upon which the  
13 constituent part is registered as an organisation under section 110,  
14 gives notice in writing to the amalgamated organisation or to the  
15 applicant for a ballot under section 94 that he or she wishes to  
16 become a member of the newly registered organisation upon its  
17 registration under section 110, that person:  
18 (a) ceases, by force of this subsection, to be a member of the  
19 amalgamated organisation with effect from the day after the  
20 end of the notice period; and  
21 (b) becomes, by force of this subsection and without payment of  
22 entrance fee, a member of the newly registered organisation  
23 with effect from the day after the day referred to in  
24 paragraph (a).
- 25 (10) As soon as practicable after the end of the notice period, the  
26 amalgamated organisation must notify the newly registered  
27 organisation of any notices under subsection (9) it has received.
- 28 (11) As soon as practicable after the end of the notice period, the newly  
29 registered organisation must notify the amalgamated organisation  
30 of any notices under subsection (9) the applicant under section 94  
31 has received.

Section 112

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1     **112 Members of amalgamated organisation may join newly**  
2             **registered organisation**

3             A person who is a member of the amalgamated organisation from  
4             which the constituent part withdrew to form a newly registered  
5             organisation may become a member of the newly registered  
6             organisation without payment of entrance fee if the person is  
7             eligible for membership of it.

8     **113 Orders of the Commission, awards etc.**

- 9             (1) This section applies to an order of the Commission, an award, a  
10            certified agreement or an old IR agreement that was, immediately  
11            before the day the registration takes effect, binding on the  
12            amalgamated organisation in relation to the constituent part of the  
13            organisation and its members.
- 14            (2) On and from the day the registration takes effect, the order, award,  
15            certified agreement or old IR agreement:
- 16               (a) becomes binding on the newly registered organisation and its  
17               members; and
- 18               (b) has effect for all purposes (including the obligations of  
19               employers and organisations of employers) as if references in  
20               the order, award or agreement to the amalgamated  
21               organisation included references to the newly registered  
22               organisation.

23     **114 Effect of withdrawal on agreement under section 151**

- 24            (1) An agreement:
- 25               (a) in force under section 151 immediately before the day on  
26               which registration of a newly registered organisation takes  
27               effect; and
- 28               (b) to which the amalgamated organisation from which a  
29               constituent part has withdrawn to form the newly registered  
30               organisation is a party;
- 31            continues in force on and from that day as if references in the  
32            agreement to the amalgamated organisation included a reference to  
33            the newly registered organisation.
-

- 1 (2) The Industrial Registrar must enter in the register kept under  
2 paragraph 13(1)(a) particulars of the effect of the withdrawal from  
3 amalgamation on the agreement.

4 **115 Instruments**

- 5 (1) On and after the withdrawal day, an instrument to which this Part  
6 applies continues, subject to subsection (2), in full force and effect.
- 7 (2) Subject to section 109, the instrument has effect, in relation to acts,  
8 omissions, transactions and matters done, entered into or occurring  
9 on or after that day as if a reference in the instrument to the  
10 amalgamated organisation from which a constituent part has  
11 withdrawn to form a newly registered organisation included a  
12 reference to the newly registered organisation.

13 **116 Pending proceedings**

14 If an amalgamated organisation from which a constituent part has  
15 withdrawn to form a newly registered organisation was,  
16 immediately before the withdrawal day, a party to a proceeding  
17 that:

- 18 (a) was pending at that day; and  
19 (b) concerns, wholly or in part, the interests of the constituent  
20 members of the constituent part;

21 then, on and after that day, the newly registered organisation:

- 22 (c) in the case of proceedings that concern wholly the interests of  
23 the constituent members—is substituted for the amalgamated  
24 organisation in those proceedings and has the same rights and  
25 obligations in the proceedings as the amalgamated  
26 organisation had; and  
27 (d) in the case of proceedings that concern in part the interests of  
28 the constituent members—becomes a party to the  
29 proceedings and has the same rights and obligations in the  
30 proceedings as the amalgamated organisation has.

Section 117

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1       **117 Division applies despite laws and agreements prohibiting**  
2                   **transfer etc.**

3               (1) This Division applies, and must be given effect to, despite anything  
4               in:

- 5                   (a) the Workplace Relations Act or any other Commonwealth,  
6                   State or Territory law; or  
7                   (b) any contract, deed, undertaking, agreement or other  
8                   instrument.

9               (2) Nothing done by this Division, and nothing done by a person  
10              because of, or for a purpose connected with or arising out of, this  
11              Division:

- 12                   (a) is to be regarded as:  
13                       (i) placing an organisation or other person in breach of  
14                       contract or confidence; or  
15                       (ii) otherwise making an organisation or other person guilty  
16                       of a civil wrong; or  
17                   (b) is to be regarded as placing an organisation or other person in  
18                   breach of:  
19                       (i) any Commonwealth, State or Territory law; or  
20                       (ii) any contractual provision prohibiting, restricting or  
21                       regulating the assignment or transfer of any asset or  
22                       liability or the disclosure of any information; or  
23                   (c) is taken to release any surety, wholly or in part, from all or  
24                   any of the surety's obligations.

25               (3) Without limiting subsection (1), if, apart from this section, the  
26               consent of a person would be necessary in order to give effect to  
27               this Division in a particular respect, the consent is taken to have  
28               been given.

29       **118 Amalgamated organisation, constituent part and newly**  
30                   **registered organisation to take necessary steps**

31               (1) The following must take such steps as are necessary to ensure that  
32               the withdrawal from amalgamation, and the operation of this

- 1 Division in relation to the withdrawal from amalgamation, are fully  
2 effective:
- 3 (a) the amalgamated organisation concerned;  
4 (b) the constituent part concerned;  
5 (c) the newly registered organisation concerned.
- 6 (2) The Federal Court may, on the application of an interested person,  
7 make such orders as it considers appropriate to ensure that  
8 subsection (1) is given effect to.

9 **119 Certificates in relation to land and interests in land**

10 Where:

- 11 (a) land or an interest in land becomes, under this Division, land  
12 or an interest in land of a newly registered organisation; and  
13 (b) a certificate that:  
14 (i) is signed by an authorised person; and  
15 (ii) identifies the land or interest, whether by reference to a  
16 map or otherwise; and  
17 (iii) states that the land or interest has, under this Division,  
18 become land or an interest in land of the newly  
19 registered organisation;  
20 is lodged with the Registrar-General, Registrar of Titles or  
21 other proper officer of the State or Territory in which the  
22 land is situated;  
23 the officer with whom the certificate is lodged may:  
24 (c) register the matter in the same way as dealings in land or  
25 interests in land of that kind are registered; and  
26 (d) deal with, and give effect to, the certificate as if it were a  
27 grant, conveyance, memorandum or instrument of transfer of  
28 the land (including all rights, title and interest in the land) or  
29 the interest in the land, as the case may be, to the newly  
30 registered organisation that had been properly executed under  
31 the law of the State or Territory.

32 **120 Certificates in relation to charges**

33 Where:

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**Chapter 3** Amalgamation and withdrawal from amalgamation

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- 1 (a) a newly registered organisation becomes, under this Division,  
2 the holder of a charge; and  
3 (b) a certificate that:  
4 (i) is signed by an authorised person; and  
5 (ii) identifies the charge; and  
6 (iii) states that the newly registered organisation has, under  
7 this Division, become the holder of the charge;  
8 is lodged with the Australian Securities and Investments  
9 Commission;  
10 that Commission may:  
11 (c) register the matter in the same way as assignments of charges  
12 are registered; and  
13 (d) deal with, and give effect to, the certificate as if it were a  
14 notice of assignment of the charge that had been properly  
15 lodged with that Commission.

16 **121 Certificates in relation to shares etc.**

17 Where:

- 18 (a) a newly registered organisation becomes, under this Division,  
19 the holder of a share, debenture or interest in a company; and  
20 (b) a certificate that:  
21 (i) is signed by an authorised person; and  
22 (ii) identifies the share, debenture or interest; and  
23 (iii) states that the newly registered organisation has  
24 become, under this Division, the holder of the share,  
25 debenture or interest;  
26 is delivered to the company;  
27 the company must take all steps necessary to register or record the  
28 matter in the same way as transfers of shares, debentures or  
29 interests in the company are registered or recorded.

30 **122 Certificates in relation to other assets**

31 Where:

- 1 (a) an asset (other than an asset to which section 119, 120 or 121  
2 applies) becomes, under this Division, an asset of a newly  
3 registered organisation; and  
4 (b) a certificate that:  
5 (i) is signed by an authorised person; and  
6 (ii) identifies the asset; and  
7 (iii) states that the asset has, under this Division, become an  
8 asset of the newly registered organisation;  
9 is given to the person or authority who has, under  
10 Commonwealth, State or Territory law, responsibility for  
11 keeping a register in relation to assets of that kind;  
12 the person or authority may:  
13 (c) register the matter in the same way as transactions in relation  
14 to assets of that kind are registered; and  
15 (d) deal with, and give effect to, the certificate as if the  
16 certificate were a proper and appropriate instrument for  
17 transactions in relation to assets of that kind.

18 **123 Holding office after withdrawal**

- 19 (1) The rules of a newly registered organisation may provide that a  
20 person who:  
21 (a) was elected to office (the *constituent office*) in the  
22 constituent part that withdrew from an amalgamated  
23 organisation to form the new registered organisation; and  
24 (b) held that office immediately before withdrawal day;  
25 holds the equivalent office in the newly registered organisation as  
26 if he or she were elected under the rules of the newly registered  
27 organisation.  
28 (2) However, the rules may not permit a person to hold office after the  
29 later of:  
30 (a) the day that would have been the person's last day of term in  
31 the constituent office if the withdrawal had not occurred; and  
32 (b) the first anniversary of the withdrawal day.

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**Division 3** Giving effect to ballots

Section 124

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1 **124 Other matters**

2                   The regulations may provide for any other matters relating to  
3                   giving effect to the withdrawal of constituent parts from  
4                   amalgamated organisations.

5 **125 Federal Court may resolve difficulties**

- 6                   (1) If any difficulty arises in relation to the application of this Part to a  
7                   particular matter, the Federal Court may, on the application of an  
8                   interested person, make such order as it thinks proper to resolve the  
9                   difficulty.
- 10                  (2) An order made under subsection (1) has effect despite any  
11                  Commonwealth, State or Territory law.



1

2 **Division 4—Validation**

3 **126 Validation of certain acts done in good faith**

4 (1) Subject to this section and to section 128, an act done in good faith  
5 for the purposes of a proposed or completed withdrawal from  
6 amalgamation by:

- 7 (a) the amalgamated organisation concerned; or  
8 (b) the committee of management, or an officer, of that  
9 organisation; or  
10 (c) the constituent part concerned; or  
11 (d) the committee of management, or an officer, of that part; or  
12 (e) the newly registered organisation concerned; or  
13 (f) the committee of management, or an officer, of that  
14 organisation;

15 is valid despite any invalidity that may later be discovered in or in  
16 connection with the act.

17 (2) For the purposes of this section:

- 18 (a) an act is treated as done in good faith until the contrary is  
19 proved; and  
20 (b) a person who has purported to be a member of the committee  
21 of management, or an officer, is to be treated as having done  
22 so in good faith until the contrary is proved; and  
23 (c) an invalidity in the making or altering of the outline of the  
24 proposed withdrawal from amalgamation is not to be treated  
25 as discovered before the earliest time proved to be a time  
26 when the existence of the invalidity was known to a majority  
27 of members of the committee of management or to a majority  
28 of the persons purporting to act as the committee of  
29 management; and  
30 (d) knowledge of facts from which an invalidity arises is not of  
31 itself treated as knowledge that the invalidity exists.

32 (3) This section applies to an act whenever done (including an act  
33 done before the commencement of this section).

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- 1 (4) Nothing in this section affects:  
2 (a) the operation of an order of the Federal Court made before  
3 the commencement of this section; or  
4 (b) the operation of section 108, 118 or 125 or Part 2 of  
5 Chapter 11 (validation provisions for organisations).

6 **127 Validation of certain acts after 4 years**

- 7 (1) Subject to subsection (2) and section 128, after the end of 4 years  
8 from the day an act is done for the purposes of a proposed or  
9 completed withdrawal from amalgamation by:  
10 (a) the amalgamated organisation concerned; or  
11 (b) the committee of management, or an officer, of that  
12 organisation; or  
13 (c) the constituent part concerned; or  
14 (d) the committee of management, or an officer, of that part; or  
15 (e) the newly registered organisation concerned; or  
16 (f) the committee of management, or an officer, of that  
17 organisation;  
18 the act is taken to have complied with this Part and the rules of the  
19 organisation.
- 20 (2) The operation of this section does not affect the validity or  
21 operation of an order, judgment, decree, declaration, direction,  
22 verdict, sentence, decision or similar judicial act of the Federal  
23 Court or any other court made before the end of that 4 years.
- 24 (3) This section applies to an act whenever done (including an act  
25 done before the commencement of this section).

26 **128 Orders affecting application of section 126 or 127**

- 27 (1) Where, on an application for an order under this section, the  
28 Federal Court is satisfied that the application of section 126 or 127  
29 in relation to an act would do substantial injustice, having regard to  
30 the interests of:

- 1 (a) the amalgamated organisation from which a constituent part  
2 withdrew to form a newly registered organisation, or the  
3 constituent part; or  
4 (b) members or creditors of the amalgamated organisation or the  
5 constituent part; or  
6 (c) persons having dealings with the amalgamated organisation  
7 or the constituent part; or  
8 (d) the newly registered organisation; or  
9 (e) members or creditors of the newly registered organisation; or  
10 (f) persons having dealings with the newly registered  
11 organisation;  
12 the Court must, by order, declare accordingly.
- 13 (2) Where a declaration is made, section 126 or 127, as the case  
14 requires, does not apply, and is taken never to have applied, in  
15 relation to the act specified in the declaration.
- 16 (3) The Court may make an order under subsection (1) on the  
17 application of:  
18 (a) the amalgamated organisation; or  
19 (b) the constituent part; or  
20 (c) the newly registered organisation; or  
21 (d) a member of, or any other person having a sufficient interest  
22 in relation to, a body referred to in paragraph (a), (b) or (c).

23 **129 Federal Court may make orders in relation to consequences of**  
24 **invalidity**

- 25 (1) Any of the following may apply to the Federal Court for a  
26 determination of the question whether an invalidity has occurred in  
27 a proposed withdrawal from amalgamation or completed  
28 withdrawal from amalgamation:  
29 (a) the amalgamated organisation concerned;  
30 (b) the constituent part concerned;  
31 (c) the newly registered organisation concerned;  
32 (d) a member of, or any other person having a sufficient interest  
33 in relation to, a body referred to in paragraph (a), (b) or (c).

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---

- 1 (2) On an application under subsection (1), the Court may make such  
2 determination as it considers proper.
- 3 (3) Where, in a proceeding under subsection (1), the Court finds that  
4 an invalidity of the kind mentioned in that subsection has occurred,  
5 the Court may make such orders as it considers appropriate:  
6 (a) to rectify the invalidity or cause it to be rectified; or  
7 (b) to negative, modify or cause to be modified the consequences  
8 in law of the invalidity; or  
9 (c) to validate any act, matter or thing that is made invalid by or  
10 because of the invalidity.
- 11 (4) Where an order is made under subsection (3), the Court may give  
12 such ancillary or consequential directions as it considers  
13 appropriate.
- 14 (5) The Court must not make an order under subsection (3) without  
15 satisfying itself that such an order would not do substantial  
16 injustice to:  
17 (a) the amalgamated organisation; or  
18 (b) a member or creditor of the amalgamated organisation; or  
19 (c) the constituent part; or  
20 (d) a constituent member of the constituent part; or  
21 (e) the newly registered organisation; or  
22 (f) a member or creditor of the newly registered organisation; or  
23 (g) any other person having dealings with the amalgamated  
24 organisation, the constituent part or the newly registered  
25 organisation.
- 26 (6) This section applies to an invalidity whenever occurring (including  
27 an invalidity occurring before the commencement of this section).

1

2 **Division 5—Miscellaneous**

3 **130 Certain actions etc. not to constitute breach of rules of**  
4 **amalgamated organisation**

- 5 (1) Neither of the following constitutes a breach of the rules of an  
6 amalgamated organisation:
- 7 (a) an act done, or omitted to be done, under or for the purposes  
8 of this Part, or regulations made for the purposes of this Part;
  - 9 (b) an act done, or omitted to be done, in connection with the  
10 proposal of, or preparation for, an act or omission of a kind  
11 referred to in paragraph (a).
- 12 (2) The following are examples of acts and omissions to which  
13 subsection (1) applies:
- 14 (a) making an application under section 94;
  - 15 (b) supporting, or supporting the making of, an application under  
16 section 94;
  - 17 (c) participating in, or encouraging a person to participate in, a  
18 ballot under Division 2;
  - 19 (d) not participating in a ballot under Division 2;
  - 20 (e) encouraging a person not to participate in a ballot under  
21 Division 2;
  - 22 (f) casting a vote in a particular way in a ballot under Division 2;
  - 23 (g) encouraging a person to cast a vote in a particular way in a  
24 ballot under Division 2;
  - 25 (h) complying with an order or requirement made under this Part  
26 or regulations made for the purposes of this Part; or
  - 27 (i) encouraging a person to resign his or her membership of the  
28 amalgamated organisation from which the constituent part  
29 withdrew to form the newly registered organisation so that  
30 the person can become a member of the newly registered  
31 organisation.

Section 131

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1     **131 Amalgamated organisation not to penalise members etc.**

- 2             (1) The amalgamated organisation, or an officer or member of the  
3             organisation, must not impose, or threaten to impose, a penalty,  
4             forfeiture or disability of any kind on:  
5                 (a) a member or officer of the organisation; or  
6                 (b) a branch, or other part, of the organisation;  
7             because the member, officer, branch or part concerned does, or  
8             proposes to do, an act or omission referred to in section 130.
- 9             (2) The Federal Court may, if the Court considers it appropriate in all  
10            the circumstances, make one or more of the following orders in  
11            respect of conduct that contravenes subsection (1):  
12                 (a) an order imposing on a person whose conduct contravenes  
13                 that subsection a penalty of not more than:  
14                     (i) in the case of a body corporate—100 penalty units; or  
15                     (ii) in any other case—20 penalty units;  
16                 (b) an order requiring the person not to carry out a threat made  
17                 by the person, or not to make any further threat;  
18                 (c) injunctions (including interim injunctions), and any other  
19                 orders, that the Court considers necessary to stop the conduct  
20                 or remedy its effects;  
21                 (d) any other consequential orders.
- 22             (3) An application for an order under subsection (2) may be made by:  
23                 (a) a person against whom the conduct is being, has been, or is  
24                 threatened to be, taken; or  
25                 (b) any other person prescribed by the regulations.
- 26             (4) For the purposes of this section, action done by one of the  
27             following bodies or persons is taken to have been done by an  
28             amalgamated organisation:  
29                 (a) the committee of management of the amalgamated  
30                 organisation;  
31                 (b) an officer or agent of the amalgamated organisation acting in  
32                 that capacity;  
33                 (c) a member or group of members of the amalgamated  
34                 organisation acting under the rules of the organisation;
-

1 (d) a member of the amalgamated organisation, who performs  
2 the function of dealing with an employer on behalf of other  
3 members of the organisation, acting in that capacity.

4 (5) Paragraphs (4)(c) and (d) do not apply if:

5 (a) a committee of management of the amalgamated  
6 organisation; or

7 (b) a person authorised by the committee; or

8 (c) an officer of the amalgamated organisation;

9 has taken reasonable steps to prevent the action.

10 (6) In this section:

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

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

14 (a) a delegate or other representative of the organisation; and

15 (b) an employee of the organisation.

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2

## **Chapter 4—Representation orders**

3

### **Part 1—Simplified outline**

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5

#### **132 Simplified outline**

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7

8

This Chapter enables the Commission to make orders, in the context of demarcation disputes, about the representation rights of organisations of employees.

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10

The Commission must take certain factors into account before making a representation order (see section 135).



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## **Part 2—Representation orders**

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### **133 Orders about representation rights of organisations of employees**

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(1) Subject to this Chapter and subsection 151(6), the Commission may, on the application of an organisation, an employer or the Minister, make the following orders in relation to a demarcation dispute:

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(a) an order that an organisation of employees is to have the right, to the exclusion of another organisation or other organisations, to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation;

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(b) an order that an organisation of employees that does not have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees is to have that right;

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(c) an order that an organisation of employees is not to have the right to represent under this Schedule or the Workplace Relations Act the industrial interests of a particular class or group of employees who are eligible for membership of the organisation.

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Note: Section 151 deals with agreements between organisations of employees and State unions.

26

27

(2) The Commission may, on application by an organisation, an employer or the Minister, vary an order made under subsection (1).

28

29

### **134 Preconditions for making of orders**

30

(1) The Commission must not make an order unless:

31

(a) it has decided under section 100 of the Workplace Relations Act not to refer the dispute for conciliation; or

32

**Section 135**

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- 1 (b) a conciliation proceeding in relation to the dispute is  
2 completed (within the meaning of section 103 of the  
3 Workplace Relations Act), but the dispute has not been fully  
4 settled.
- 5 (2) The Commission must not make an order unless the Commission is  
6 satisfied that:
- 7 (a) the conduct, or threatened conduct, of an organisation to  
8 which the order would relate, or of an officer, member or  
9 employee of the organisation:
- 10 (i) is preventing, obstructing or restricting the performance  
11 of work; or  
12 (ii) is harming the business of an employer; or
- 13 (b) the consequences referred to in subparagraph (a)(i) or (ii):  
14 (i) have ceased, but are likely to recur; or  
15 (ii) are imminent;  
16 as a result of such conduct or threatened conduct.

17 **135 Factors to be taken into account by Commission**

- 18 In considering whether to make an order under section 133, the  
19 Commission must have regard to the wishes of the employees who  
20 are affected by the dispute and, where the Commission considers it  
21 appropriate, is also to have regard to:
- 22 (a) the effect of any order on the operations (including operating  
23 costs, work practices, efficiency and productivity) of an  
24 employer who is a party to the dispute or who is a member of  
25 an organisation that is a party to the dispute; and
- 26 (b) any agreement or understanding of which the Commission  
27 becomes aware that deals with the right of an organisation of  
28 employees to represent under this Schedule or the Workplace  
29 Relations Act the industrial interests of a particular class or  
30 group of employees; and
- 31 (c) the consequences of not making an order for any employer,  
32 employees or organisation involved in the dispute; and
- 33 (d) any other order made by the Commission, in relation to  
34 another demarcation dispute involving the organisation to

1                               which the order under this section would relate, that the  
2                               Commission considers to be relevant.

3                   Note:       Under section 135 of the Workplace Relations Act, the Commission  
4                               may order that a vote of the members of an organisation concerned in  
5                               the dispute be taken by secret ballot for the purpose of finding out  
6                               their attitudes to the dispute.

7                   **136 Order may be subject to limits**

8                               The order may be subject to conditions or limitations.

9                   **137 Organisation must comply with order**

10                   (1) An organisation to which the order applies must comply with the  
11                               order.

12                   (2) The Federal Court may, on application by the Minister or a person  
13                               or organisation affected by an order made under section 133, make  
14                               such orders as it thinks fit to ensure compliance with that order.

15                   **138 Exercise of Commission's powers under this Chapter**

16                               The powers of the Commission under this Chapter are exercisable  
17                               only by a Full Bench or Presidential Member.

1

2

## **Chapter 5—Rules of organisations**

3

### **Part 1—Simplified outline of Chapter**

4

5

#### **139 Simplified outline**

6

This Chapter sets out the requirements that organisations' rules must comply with (see Part 2).

7

8

Part 3 sets out processes available to members who think that their organisation's rules do not comply with this Chapter, or are not being followed.

9

10

1

2 **Part 2—Rules of organisations**

3 **Division 1—General**

4 **140 Organisations to have rules**

- 5 (1) An organisation must have rules that make provision as required by  
6 this Schedule.
- 7 (2) A rule of an organisation making provision required by this  
8 Schedule to be made may be mandatory or directory.

9 **141 Rules of organisations**

- 10 (1) The rules of an organisation:
- 11 (a) must specify the purposes for which the organisation is  
12 formed and the conditions of eligibility for membership; and
- 13 (b) must provide for:
- 14 (i) the powers and duties of the committees of the  
15 organisation and its branches, and the powers and duties  
16 of holders of offices in the organisation and its  
17 branches; and
- 18 (ii) the manner of summoning meetings of members of the  
19 organisation and its branches, and meetings of the  
20 committees of the organisation and its branches; and
- 21 (iii) the removal of holders of offices in the organisation and  
22 its branches; and
- 23 (iv) the control of committees of the organisation and its  
24 branches respectively by the members of the  
25 organisation and branches; and
- 26 (v) the manner in which documents may be executed by or  
27 on behalf of the organisation; and
- 28 (vi) the manner of notifying the Commission of industrial  
29 disputes; and

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- 1 (vii) the times when, and the terms on which, persons  
2 become or cease (otherwise than by resignation) to be  
3 members; and  
4 (viii) the resignation of members under section 174; and  
5 (ix) the manner in which the property of the organisation is  
6 to be controlled and its funds invested; and  
7 (x) the yearly or other more frequent audit of the accounts;  
8 and  
9 (xi) the conditions under which funds may be spent; and  
10 (xii) the keeping of a register of the members, arranged,  
11 where there are branches of the organisation, according  
12 to branches; and  
13 (xiii) the manner in which its rules may be altered; and  
14 (c) may provide for the removal from office of a person elected  
15 to an office in the organisation only where the person has  
16 been found guilty, under the rules of the organisation, of:  
17 (i) misappropriation of the funds of the organisation; or  
18 (ii) a substantial breach of the rules of the organisation; or  
19 (iii) gross misbehaviour or gross neglect of duty;  
20 or has ceased, under the rules of the organisation, to be  
21 eligible to hold the office; and  
22 (d) must require the organisation to inform applicants for  
23 membership, in writing, of:  
24 (i) the financial obligations arising from membership; and  
25 (ii) the circumstances, and the manner, in which a member  
26 may resign from the organisation.

27 Note 1: Section 166 deals with entitlement to membership of organisations.

28 Note 2: See also section 179 (liability for arrears).

- 29 (2) The rules of an organisation of employees may include provision  
30 for the eligibility for membership of the organisation of  
31 independent contractors who, if they were employees performing  
32 work of the kind which they usually perform as independent  
33 contractors, would be employees eligible for membership of the  
34 organisation.  
35 (3) The rules of an organisation may also provide for any other matter.
-

- 1 (4) In this section:  
2 *committee*, in relation to an organisation or branch of an  
3 organisation, means a collective body of the organisation or branch  
4 that has powers of the kind mentioned in paragraph (1)(b) of the  
5 definition of *office* in section 9.

6 **142 General requirements for rules**

- 7 (1) The rules of an organisation:  
8 (a) must not be contrary to, or fail to make a provision required  
9 by this Schedule, the Workplace Relations Act, an award, a  
10 certified agreement or an old IR agreement, or otherwise be  
11 contrary to law; and  
12 (b) must not be such as to prevent or hinder members of the  
13 organisation from:  
14 (i) observing the law or the provisions of an award, an  
15 order of the Commission, a certified agreement or an  
16 old IR agreement; or  
17 (ii) entering into written agreements under an award, an  
18 order of the Commission, a certified agreement or an  
19 old IR agreement; and  
20 (c) must not impose on applicants for membership, or members,  
21 of the organisation, conditions, obligations or restrictions  
22 that, having regard to the objects of this Schedule and the  
23 Workplace Relations Act and the purposes of the registration  
24 of organisations under this Schedule, are oppressive,  
25 unreasonable or unjust; and  
26 (d) must not discriminate between applicants for membership, or  
27 members, of the organisation on the basis of race, colour,  
28 sex, sexual preference, age, physical or mental disability,  
29 marital status, family responsibilities, pregnancy, religion,  
30 political opinion, national extraction or social origin.
- 31 (2) For the purposes of paragraph (1)(d), rules of an organisation are  
32 taken not to discriminate on the basis of age if the rules do not  
33 prevent the organisation setting its membership dues by reference  
34 to rates of pay even where those rates are set by reference to a  
35 person's age.
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2 **Division 2—Rules relating to elections for office**

3 **143 Rules to provide for elections for offices**

4

(1) The rules of an organisation:

5

(a) must provide for the election of the holder of each office in the organisation by:

6

7

(i) a direct voting system; or

8

(ii) a collegiate electoral system that, in the case of a

9

full-time office, is a one-tier collegiate electoral system;

10

and

11

(b) must provide for the conduct of every such election

12

(including the acceptance or rejection of nominations) by a

13

returning officer who is not the holder of any office in, or an

14

employee of, the organisation or a branch, section or division

15

of the organisation; and

16

(c) must provide that, if the returning officer conducting an

17

election finds a nomination to be defective, the returning

18

officer must, before rejecting the nomination, notify the

19

person concerned of the defect and, where practicable, give

20

the person the opportunity of remedying the defect within

21

such period as is applicable under the rules, which must,

22

where practicable, be not less than 7 days after the person is

23

notified; and

24

(d) must make provision for:

25

(i) the manner in which persons may become candidates

26

for election; and

27

(ii) the duties of returning officers; and

28

(iii) the declaration of the result of an election; and

29

(e) must provide that, where a ballot is required, it must be a

30

secret ballot, and must make provision for:

31

(i) in relation to a direct voting system ballot (including a

32

direct voting system ballot that is a stage of an election

33

under a collegiate electoral system)—the day on which

34

the roll of voters for the ballot is to be closed; and

35

(ii) absent voting; and



- 1 (iii) the conduct of the ballot; and  
2 (iv) the appointment, conduct and duties of scrutineers to  
3 represent the candidates at the ballot; and  
4 (f) must be such as to ensure, as far as practicable, that no  
5 irregularities can occur in relation to an election.
- 6 (2) Without limiting section 142, the rules of an organisation relating  
7 to elections may provide for compulsory voting.
- 8 (3) The day provided for in the rules of an organisation as the day on  
9 which the roll of voters is to be closed (see paragraph (1)(e)) must  
10 be a day no earlier than 30 days, and no later than 7 days, before  
11 the day on which nominations for the election open.
- 12 (4) A reference in this section to the rules of an organisation includes a  
13 reference to the rules of a branch of the organisation.
- 14 (5) The reference in paragraph (1)(c) to a nomination being defective  
15 does not include a reference to a nomination of a person that is  
16 defective because the person is not qualified to hold the office to  
17 which the nomination relates.
- 18 (6) The rules providing for the day on which the roll of voters for a  
19 ballot is to be closed are not to be taken to prevent the correction of  
20 errors in the roll after that day.

21 **144 Rules to provide for elections for office by secret postal ballot**

- 22 (1) Where the rules of an organisation provide for election for an  
23 office to be by a direct voting system, the rules must also provide  
24 that, where a ballot is required for such an election, it must be a  
25 secret postal ballot.
- 26 (2) An organisation may lodge in the Industrial Registry an application  
27 for an exemption from subsection (1), accompanied by particulars  
28 of proposed alterations of the rules of the organisation, to provide  
29 for the conduct of elections of the kind referred to in subsection (1)  
30 by a secret ballot other than a postal ballot.
- 31 (3) If the Industrial Registrar is satisfied, on application by an  
32 organisation under subsection (2):
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- 1 (a) that the proposed alterations of the rules:  
2 (i) comply with and are not contrary to this Schedule (other  
3 than subsection (1)), the Workplace Relations Act,  
4 awards, certified agreements and old IR agreements;  
5 and  
6 (ii) are not otherwise contrary to law; and  
7 (iii) have been decided on under the rules of the  
8 organisation; and  
9 (b) that the conduct of a ballot under the rules of the organisation  
10 as proposed to be altered:  
11 (i) is likely to result in a fuller participation by members of  
12 the organisation in the ballot than would result from a  
13 postal ballot; and  
14 (ii) will afford to members entitled to vote an adequate  
15 opportunity of voting without intimidation;  
16 the Industrial Registrar may grant to the organisation an exemption  
17 from subsection (1).
- 18 (4) Proposed alterations of the rules of an organisation referred to in  
19 subsection (2) take effect if and when the Industrial Registrar  
20 grants to the organisation an exemption from subsection (1).
- 21 (5) An exemption under subsection (3) remains in force until revoked  
22 under subsection (6).
- 23 (6) The Industrial Registrar may revoke an exemption granted to an  
24 organisation under subsection (3):  
25 (a) on application by the organisation, if the Industrial Registrar  
26 is satisfied that the rules of the organisation comply with  
27 subsection (1); or  
28 (b) if the Industrial Registrar is no longer satisfied:  
29 (i) that the rules of the organisation provide for the conduct  
30 of elections of the kind referred to in subsection (1) by a  
31 secret ballot other than a postal ballot; or  
32 (ii) of a matter referred to in paragraph (3)(b);  
33 and the Industrial Registrar has given the organisation an  
34 opportunity, as prescribed, to show cause why the exemption  
35 should not be revoked.
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- 1 (7) Where the Industrial Registrar revokes an exemption granted to an  
2 organisation on the ground specified in paragraph (6)(b), the  
3 Industrial Registrar may, by instrument, after giving the  
4 organisation an opportunity, as prescribed, to be heard, determine  
5 such alterations (if any) of the rules of the organisation as are, in  
6 the Industrial Registrar's opinion, necessary to bring them into  
7 conformity with subsection (1).
- 8 (8) An alteration of the rules of an organisation determined under  
9 subsection (7) takes effect on the date of the instrument.
- 10 (9) Subsection 81(1) of the Workplace Relations Act does not apply in  
11 relation to a decision of the Industrial Registrar to grant an  
12 exemption under subsection (3).
- 13 Note: Subsection 81(1) of the Workplace Relations Act provides for appeals  
14 from certain decisions of the Industrial Registrar.
- 15 (10) This section applies in relation to elections for offices in branches  
16 of organisations as if references to an organisation were references  
17 to a branch of an organisation.

18 **145 Rules to provide for terms of office**

- 19 (1) The rules of an organisation must, subject to subsection (2),  
20 provide terms of office for officers in the organisation of no longer  
21 than 4 years without re-election.
- 22 (2) The rules of an organisation, or a branch of an organisation, may  
23 provide that a particular term of office is extended for a specified  
24 period, where the extension is for the purpose of synchronising  
25 elections for offices in the organisation or branch, as the case may  
26 be.
- 27 (3) The term of an office must not be extended under subsection (2) so  
28 that the term exceeds 5 years.
- 29 (4) A reference in this section (other than subsection (2)) to the *rules*  
30 *of an organisation* includes a reference to the rules of a branch of  
31 the organisation.

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1     **146 Rules may provide for filling of casual vacancies**

2             (1) The rules of an organisation may provide for the filling of a casual  
3                 vacancy in an office by an ordinary election or, subject to this  
4                 section, in any other manner provided in the rules.

5             (2) Rules made under subsection (1) must not permit a casual vacancy,  
6                 or a further casual vacancy, occurring within the term of an office  
7                 to be filled, otherwise than by an ordinary election, for so much of  
8                 the unexpired part of the term as exceeds:

9                 (a) 12 months; or

10                (b) three-quarters of the term of the office;

11                whichever is the greater.

12             (3) Where, under rules made under subsection (1), a vacancy in an  
13                 office in an organisation is filled otherwise than by an ordinary  
14                 election, the person filling the vacancy must be taken, for the  
15                 purposes of the relevant provisions, to have been elected to the  
16                 office under the relevant provisions.

17             (4) A reference in this section to the rules of an organisation includes a  
18                 reference to the rules of a branch of the organisation.

19             (5) In this section:

20                 **ordinary election** means an election held under rules that comply  
21                 with section 143.

22                 **relevant provisions**, in relation to an organisation, means:

23                 (a) the provisions of this Schedule (other than this section); and

24                 (b) the rules of the organisation (other than rules made under  
25                     subsection (1)) providing for the filling of a casual vacancy  
26                     in an office otherwise than by an ordinary election.

27                 **term**, in relation to an office, means the total period for which the  
28                 last person elected to the office by an ordinary election (other than  
29                 an ordinary election to fill a casual vacancy in the office) was  
30                 entitled by virtue of that election (having regard to any rule made  
31                 under subsection 145(2)) to hold the office without being  
32                 re-elected.

1 **147 Model rules for conduct of elections**

2 (1) The Minister may, by notice published in the *Gazette*, issue  
3 guidelines containing one or more sets of model rules for the  
4 conduct of elections for office. An organisation may adopt model  
5 rules in whole or in part, and with or without modification.

6 (2) The Minister may, by signed instrument, delegate the power under  
7 subsection (1) to the Electoral Commissioner.

8 Note: The Minister may also delegate this power under section 343.

**Chapter 5** Rules of organisations

**Part 2** Rules of organisations

**Division 3** Rules relating to conduct of officers and employees

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1

2 **Division 3—Rules relating to conduct of officers and**  
3 **employees**

4 **148 Model rules about conduct of officers and employees**

5 The Minister may, by notice published in the *Gazette*, issue  
6 guidelines containing one or more sets of model rules about the  
7 conduct of officers and employees. An organisation may adopt the  
8 model rules in whole or in part, and with or without modification.

9 Note: Part 4 of Chapter 8 deals with the conduct of officers and employees.

1

2 **Division 4—Other rules**

3 **Subdivision A—Loans, grants and donations**

4 **149 Rules to provide conditions for loans, grants and donations by**  
5 **organisations**

- 6 (1) The rules of an organisation must provide that a loan, grant or  
7 donation of an amount exceeding \$1,000 must not be made by the  
8 organisation unless the committee of management:  
9 (a) has satisfied itself:  
10 (i) that the making of the loan, grant or donation would be  
11 in accordance with the other rules of the organisation;  
12 and  
13 (ii) in the case of a loan—that, in the circumstances, the  
14 security proposed to be given for the repayment of the  
15 loan is adequate and the proposed arrangements for the  
16 repayment of the loan are satisfactory; and  
17 (b) has approved the making of the loan, grant or donation.
- 18 (2) In spite of subsection (1), the rules of an organisation may provide  
19 for a person authorised by the rules to make a loan, grant or  
20 donation of an amount not exceeding \$3,000 to a member of the  
21 organisation if the loan, grant or donation:  
22 (a) is for the purpose of relieving the member or any of the  
23 member's dependants from severe financial hardship; and  
24 (b) is subject to a condition to the effect that, if the committee of  
25 management, at the next meeting of the committee, does not  
26 approve the loan, grant or donation, it must be repaid as  
27 determined by the committee.
- 28 (3) In considering whether to approve a loan, grant or donation made  
29 under subsection (2), the committee of management must have  
30 regard to:  
31 (a) whether the loan, grant or donation was made under the rules  
32 of the organisation; and  
33 (b) in the case of a loan:
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- 1 (i) whether the security (if any) given for the repayment of  
2 the loan is adequate; and  
3 (ii) whether the arrangements for the repayment of the loan  
4 are satisfactory.
- 5 (4) Nothing in subsection (1) requires the rules of an organisation to  
6 make provision of the kind referred to in that subsection in relation  
7 to payments made by the organisation by way of provision for, or  
8 reimbursement of, out-of-pocket expenses incurred by persons for  
9 the benefit of the organisation.
- 10 (5) In this section, a reference to an *organisation* includes a reference  
11 to a branch of an organisation.
- 12 (6) For the purposes of the application of this Division to a branch of  
13 an organisation, the members of the organisation constituting the  
14 branch are taken to be members of the branch.

15 **Subdivision B—Agreements between organisations and State**  
16 **unions**

17 **150 Definitions**

18 In this Subdivision:

19 *ineligible State members*, in relation to an organisation, means the  
20 members of a State union who, under the eligibility rules of the  
21 organisation, are not eligible to be members of the organisation.

22 *State Act* means:

- 23 (a) the *Industrial Relations Act 1996* of New South Wales; or  
24 (b) the *Industrial Relations Act 1999* of Queensland; or  
25 (c) the *Industrial Relations Act 1979* of Western Australia; or  
26 (d) the *Industrial and Employee Relations Act 1994* of South  
27 Australia; or  
28 (e) an Act of a State that is prescribed for the purposes of this  
29 Subdivision.

30 *State union*, in relation to an organisation, means:



- 1 (a) an association of employees which is registered under a State  
2 Act; or  
3 (b) an association of employees in Tasmania which is neither  
4 registered under this Schedule nor part of an organisation  
5 registered under this Schedule;  
6 and which is composed substantially of persons who, under the  
7 eligibility rules of the organisation, are eligible to be members of  
8 the organisation.

9 **151 Membership agreements**

- 10 (1) The rules of an organisation of employees may authorise the  
11 organisation to enter into agreements in the prescribed form with  
12 State unions to the effect that members of the State union  
13 concerned who are ineligible State members are eligible to become  
14 members of the organisation under the agreement.
- 15 (2) If, under rules made under subsection (1), an organisation enters  
16 into an agreement with a State union, the organisation must lodge a  
17 copy of the agreement in the Industrial Registry.
- 18 Note: This subsection is a civil penalty provision (see section 305).
- 19 (3) The agreement does not come into force unless and until the  
20 Industrial Registrar enters particulars of the agreement in the  
21 register kept under paragraph 13(1)(a).
- 22 (4) The Industrial Registrar must not enter particulars of the agreement  
23 in that register unless he or she has been directed by the  
24 Commission to do so.
- 25 (5) The Commission must not give such a direction to the Industrial  
26 Registrar unless the Commission is satisfied that the agreement:  
27 (a) is not contrary to:  
28 (i) any object of this Schedule or the Workplace Relations  
29 Act; or  
30 (ii) any subsisting order made by the Commission relating  
31 to the organisation's eligibility rules; or  
32 (iii) any subsisting agreement or understanding of which the  
33 Commission is aware that deals with the organisation's

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- 1 entitlement to represent under this Schedule, or the  
2 Workplace Relations Act, the industrial interests of a  
3 particular class or group of employees; and  
4 (b) was entered into only for the purpose of:  
5 (i) overcoming any legal or practical difficulty that might  
6 arise in connection with the participation, or possible  
7 participation, of ineligible State members in the  
8 administration of the organisation or in the conduct of  
9 its affairs; or  
10 (ii) encouraging and facilitating an amalgamation between  
11 the organisation and another organisation of employees.
- 12 (6) An organisation is not entitled to represent under this Schedule, or  
13 the Workplace Relations Act, the industrial interests of persons  
14 who are eligible for membership of the organisation only under an  
15 agreement entered into under rules made under subsection (1).
- 16 (7) If a person who became a member of an organisation under an  
17 agreement entered into under rules made under subsection (1) later  
18 becomes eligible for membership of the organisation under its  
19 eligibility rules, the organisation is not entitled to represent the  
20 industrial interests of the person until a record of the person's  
21 eligibility is entered in the register kept under paragraph 230(1)(a).
- 22 (8) If it appears to the Commission:  
23 (a) of its own motion; or  
24 (b) on application by an interested person;  
25 that an agreement entered into under rules made under  
26 subsection (1) may no longer be operating for a purpose mentioned  
27 in subparagraph (5)(b)(i) or (ii), the Commission must give to the  
28 parties to the agreement an opportunity to make oral or written  
29 submissions as to whether the agreement is still operating for such  
30 a purpose.
- 31 (9) If, after considering any such submissions and, in the case of an  
32 application under paragraph (8)(b), the matters raised by the  
33 applicant, the Commission is satisfied that the agreement is no  
34 longer operating for such a purpose, the Commission may, by  
35 order, terminate the agreement.
-

- 1 (10) The Industrial Registrar must as soon as practicable:  
2 (a) give notice of the termination to each party to the agreement;  
3 and  
4 (b) enter particulars of the termination in the register kept under  
5 paragraph 13(1)(a).

- 6 (11) If an organisation and a State union agree, in writing, to terminate  
7 an agreement entered into under rules made under subsection (1):  
8 (a) the organisation must lodge in the Industrial Registry a copy  
9 of the agreement to terminate; and  
10 (b) the Industrial Registrar must as soon as practicable enter  
11 particulars of the termination in the register kept under  
12 paragraph 13(1)(a).

13 Note: Paragraph (a) is a civil penalty provision (see section 305).

- 14 (12) The termination of an agreement takes effect when particulars of  
15 the termination are entered in the register as mentioned in  
16 paragraph (10)(b) or (11)(b) and, when the termination takes effect,  
17 persons who became members of the organisation under the  
18 agreement (other than a person whose eligibility for membership of  
19 the organisation under its eligibility rules is recorded as mentioned  
20 in subsection (7)) cease to be members of the organisation.

## 21 **152 Assets and liabilities agreements**

- 22 (1) The rules of an organisation of employees may authorise the  
23 organisation to enter into agreements with State unions setting out  
24 arrangements for the management and control of the assets and  
25 liabilities of the organisation and the State union concerned.
- 26 (2) The agreements must be in the prescribed form.
- 27 (3) If, under rules made under subsection (1), an organisation enters  
28 into an agreement with a State union, the organisation must lodge a  
29 copy of the agreement in the Industrial Registry.

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

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- 1 (4) The agreement does not come into force unless and until the  
2 Industrial Registrar enters particulars of the agreement in the  
3 register kept under paragraph 13(1)(a).
- 4 (5) The Industrial Registrar must not enter particulars of the agreement  
5 in that register unless he or she has been directed by the  
6 Commission to do so.
- 7 (6) The Commission must not give such a direction to the Industrial  
8 Registrar unless the Commission is satisfied that the agreement:  
9 (a) is not contrary to any object of this Schedule or the  
10 Workplace Relations Act; and  
11 (b) does not adversely affect the interests of any lessor, lessee or  
12 creditor of the organisation or State union.

13 **153 Party to section 152 agreement may apply to Federal Court for**  
14 **orders**

- 15 (1) An organisation or a State union who is a party to an agreement  
16 made under section 152 (a *section 152 agreement*) may apply to  
17 the Federal Court for orders:  
18 (a) requiring the other party to comply with the agreement; or  
19 (b) resolving any difficulty in the operation or interpretation of  
20 the agreement;  
21 and the Court may make such orders as it thinks fit.
- 22 (2) In making an order under subsection (1), the Court must have  
23 regard to the interests of any lessor, lessee or creditor of the  
24 organisation or State union.
- 25 (3) An order made under subsection (1) has effect despite anything in  
26 the rules of the organisation or State union who are the parties to  
27 the agreement.

28 **154 Termination of section 152 agreement**

- 29 (1) If an organisation and a State union agree, in writing, to terminate  
30 an agreement made under section 152 (a *section 152 agreement*),  
31 the termination has no effect unless the parties apply to the Federal

- 1 Court for approval under this section and the Court gives its  
2 approval.
- 3 (2) The Court must not approve the termination unless:  
4 (a) the parties have made an agreement (a *termination*  
5 *agreement*) that makes appropriate provision for the  
6 management and control of the assets and liabilities of the  
7 organisation and State union after termination of the  
8 section 152 agreement; or  
9 (b) the Court makes orders that will, in the Court's opinion,  
10 make appropriate provision for the management and control  
11 of the assets and liabilities of the organisation and State  
12 union after termination of the section 152 agreement.
- 13 (3) In determining whether a termination agreement, or orders, make  
14 appropriate provision as required by subsection (2), the Court must  
15 have regard to the following factors:  
16 (a) the positions of the organisation and State union in relation to  
17 their respective assets and liabilities before the section 152  
18 agreement took effect;  
19 (b) the fairness, in all the circumstances, of the manner in which  
20 relevant assets and liabilities acquired after the section 152  
21 agreement took effect will be dealt with after termination of  
22 the agreement;  
23 (c) how the interests of lessors, lessees or creditors of the  
24 organisation and the State union will be affected by the  
25 termination and subsequent arrangements;  
26 (d) any other factor that the Court considers relevant.
- 27 (4) If the Court approves a termination agreement, the Court must  
28 direct the Industrial Registrar to enter particulars of the agreement  
29 in the register kept under paragraph 13(1)(a), and particulars of any  
30 orders made by the Court that relate to the agreement.
- 31 (5) A termination agreement takes effect on the day specified by the  
32 Court. The day specified by the Court must not be a day earlier  
33 than the day on which the Court approves the agreement.

**Chapter 5** Rules of organisations

**Part 2** Rules of organisations

**Division 4** Other rules

Section 155

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1 **Subdivision C—Miscellaneous**

2 **155 Exercise of Commission’s powers under this Division**

3                   The powers of the Commission under this Division are exercisable  
4                   only by a Presidential Member.

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2 **Division 5—Alteration of rules and evidence of rules**

3 **156 Industrial Registrar may determine alterations of rules**

4 (1) Where the rules of an organisation do not, in the Industrial  
5 Registrar's opinion, make provision required by this Schedule, the  
6 Industrial Registrar may, by instrument, after giving the  
7 organisation an opportunity, as prescribed, to be heard on the  
8 matter, determine such alterations of the rules as are, in the  
9 Industrial Registrar's opinion, necessary to bring them into  
10 conformity with this Schedule.

11 (2) Alterations determined under subsection (1) take effect on the date  
12 of the instrument.

13 **157 Commission may determine alteration of rules where there has**  
14 **been a breach of an undertaking**

15 (1) If:  
16 (a) in the course of an organisation being registered under  
17 section 19, an undertaking was given under subsection 19(2)  
18 to avoid demarcation disputes that might otherwise arise  
19 from an overlap between its eligibility rules and the  
20 eligibility rules of another organisation; and  
21 (b) the first-mentioned organisation has breached the  
22 undertaking;  
23 the Commission may, by instrument, determine such alterations of  
24 the rules of the organisation as are, in the Commission's opinion,  
25 necessary to remove the overlap.

26 (2) The Commission must give the organisation and the other  
27 organisation an opportunity, as prescribed, to be heard on the  
28 matter.

29 (3) Alterations determined under subsection (1) take effect on the date  
30 of the instrument.

Section 158

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1 **158 Change of name or alteration of eligibility rules of organisation**

- 2 (1) A change in the name of an organisation, or an alteration of the  
3 eligibility rules of an organisation, does not take effect unless the  
4 Commission consents to the change or alteration.
- 5 (2) The Commission may consent to a change or alteration in whole or  
6 part, but must not consent unless the Commission is satisfied that  
7 the change or alteration has been made under the rules of the  
8 organisation.
- 9 (3) The Commission must not consent to a change in the name of an  
10 organisation unless the Commission is satisfied that the proposed  
11 new name of the organisation:  
12 (a) is not the same as the name of another organisation; and  
13 (b) is not so similar to the name of another organisation as to be  
14 likely to cause confusion.
- 15 (4) The Commission must not consent to an alteration of the eligibility  
16 rules of an organisation if, in relation to persons who would be  
17 eligible for membership because of the alteration, there is, in the  
18 opinion of the Commission, another organisation:  
19 (a) to which those persons could more conveniently belong; and  
20 (b) that would more effectively represent those members.
- 21 (5) However, subsection (4) does not apply if the Commission accepts  
22 an undertaking from the organisation seeking the alteration that the  
23 Commission considers appropriate to avoid demarcation disputes  
24 that might otherwise arise from an overlap between the eligibility  
25 rules of that organisation and the eligibility rules of the other  
26 organisation.
- 27 (6) The Commission may refuse to consent to an alteration of the  
28 eligibility rules of an organisation if satisfied that the alteration  
29 would contravene an agreement or understanding to which the  
30 organisation is a party and that deals with the organisation's right  
31 to represent under this Schedule and the Workplace Relations Act  
32 the industrial interests of a particular class or group of persons.



- 1 (7) The Commission may also refuse to consent to an alteration of the  
2 eligibility rules of an organisation if it:
- 3 (a) is satisfied that the alteration would change the effect of any  
4 order made by the Commission under section 133 about the  
5 right of the organisation to represent under this Schedule and  
6 the Workplace Relations Act the industrial interests of a  
7 particular class or group of employees; and  
8 (b) considers that such a change would give rise to a serious risk  
9 of a demarcation dispute which would prevent, obstruct or  
10 restrict the performance of work in an industry, or harm the  
11 business of an employer.
- 12 (8) Subsections (6) and (7) do not limit the grounds on which the  
13 Commission may refuse to consent to an alteration of the eligibility  
14 rules of an organisation.
- 15 (9) Where the Commission consents, under subsection (1), to a change  
16 or alteration, the change or alteration takes effect on:  
17 (a) where a date is specified in the consent—that date; or  
18 (b) in any other case—the day of the consent.
- 19 (10) This section does not apply to a change in the name, or an  
20 alteration of the eligibility rules, of an organisation that is:  
21 (a) determined by the Commission under subsection 163(7); or  
22 (b) proposed to be made for the purposes of an amalgamation  
23 under Part 2 of Chapter 3 or Division 4 of Part 7 of  
24 Chapter 11; or  
25 (c) proposed to be made for the purposes of a withdrawal from  
26 amalgamation under Part 3 of Chapter 3.

27 **159 Alteration of other rules of organisation**

- 28 (1) An alteration of the rules (other than the eligibility rules) of an  
29 organisation does not take effect unless particulars of the alteration  
30 have been lodged in the Industrial Registry and a Registrar has  
31 certified that, in his or her opinion, the alteration:  
32 (a) complies with, and is not contrary to, this Schedule, the  
33 Workplace Relations Act, awards, certified agreements and  
34 old IR agreements; and
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- 1 (b) is not otherwise contrary to law; and  
2 (c) has been made under the rules of the organisation.
- 3 (2) Where particulars of an alteration of the rules (other than the  
4 eligibility rules) of an organisation have been lodged in the  
5 Industrial Registry, a Registrar may, with the consent of the  
6 organisation, amend the alteration for the purpose of correcting a  
7 typographical, clerical or formal error.
- 8 (3) An alteration of rules that has been certified under subsection (1)  
9 takes effect on the day of certification.
- 10 (4) This section does not apply in relation to an alteration of the rules  
11 of an organisation that is:
- 12 (a) proposed to be made in relation to an application for an  
13 exemption from subsection 144(1); or  
14 (b) determined or certified by the Industrial Registrar under  
15 subsection 144(7) or section 156, 163, 246, 247 or 249; or  
16 (c) proposed to be made for the purpose of an amalgamation  
17 under Part 2 of Chapter 3 or Division 4 of Part 7 of  
18 Chapter 11; or  
19 (d) proposed to be made for the purposes of a withdrawal from  
20 amalgamation under Part 3 of Chapter 3.

21 **160 Certain alterations of rules to be recorded**

- 22 Where there has been a change in the name of an organisation, or  
23 an alteration of the eligibility rules of an organisation, under this  
24 Schedule, the Industrial Registrar must:
- 25 (a) immediately enter, in the register kept under paragraph  
26 13(1)(a), particulars of the change or alteration, and the date  
27 of effect of the change or alteration; and  
28 (b) as soon as practicable after the organisation produces its  
29 certificate of registration to the Industrial Registrar, amend  
30 the certificate accordingly and return it to the organisation.

1 **161 Evidence of rules**

2 In proceedings under this Schedule or the Workplace Relations  
3 Act, a copy of the rules of an organisation certified by a Registrar  
4 to be a true and correct copy is evidence of the rules of the  
5 organisation.

6 **162 Powers of Commission**

7 The powers of the Commission under this Division are exercisable  
8 only by a Presidential Member.

Section 163

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## Part 3—Validity and performance of rules etc

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### 163 Rules contravening section 142

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#### *Application for order declaring rules contravene section 142*

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(1) A member, or an applicant for membership, of an organisation may apply to the Federal Court for an order under this section in relation to the organisation.

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(2) If the application is made by a member, the order under this section may declare that the whole or a part of a rule of an organisation contravenes section 142 or that the rules of an organisation contravene section 142 in a particular respect.

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(3) If the application is made by an applicant for membership, the order under this section may declare that the whole or a part of a rule of an organisation contravenes paragraph 142(1)(c) or (d) or that the rules of an organisation contravene paragraph 142(1)(c) or (d) in a particular respect.

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(4) An organisation in relation to which an application is made under this section must be given an opportunity of being heard by the Court.

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(5) The Court may, without limiting any other power of the Court to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the organisation an opportunity to alter its rules.

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#### *Effect of order*

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(6) Where an order under this section declares that the whole or a part of a rule contravenes section 142, the rule or that part of the rule, as the case may be, is taken to be void from the date of the order.

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1 *Appropriate authority may alter organisation's rules*

2 (7) Where:

3 (a) the Court makes an order declaring as mentioned in  
4 subsection (2) or (3) in relation to the rules of an  
5 organisation; and

6 (b) at the end of 3 months from the making of the order, the rules  
7 of the organisation have not been altered in a manner that, in  
8 the opinion of the appropriate authority, brings them into  
9 conformity with section 142 in relation to the matters that  
10 gave rise to the order;

11 the appropriate authority must, after giving the organisation an  
12 opportunity, as prescribed, to be heard on the matter, determine, by  
13 instrument, such alterations of the rules as will, in the appropriate  
14 authority's opinion, bring the rules into conformity with that  
15 section in relation to those matters.

16 Note: For the meaning of *appropriate authority* see subsection (12).

17 (8) The appropriate authority may, on the application of the  
18 organisation made within the period of 3 months referred to in  
19 subsection (7) or within any extension of the period, extend, or  
20 further extend, the period.

21 (9) Alterations determined under subsection (7) take effect on the date  
22 of the instrument.

23 *Court may make interim orders*

24 (10) At any time after a proceeding under this section has been  
25 instituted, the Court may make any interim orders that it considers  
26 appropriate in relation to a matter relevant to the proceeding.

27 (11) An order under subsection (10) continues in force, unless  
28 expressed to operate for a shorter period or sooner discharged, until  
29 the completion of the proceeding concerned.

30 *Definitions*

31 (12) In this section:

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Section 164

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- 1                    ***appropriate authority*** means:
- 2                    (a) in relation to the eligibility rules of an organisation—a
- 3                    Presidential Member of the Commission; or
- 4                    (b) in relation to the other rules of an organisation—the
- 5                    Industrial Registrar.
- 6                    (13) In this section, a reference to ***a rule, or the rules, of an***
- 7                    ***organisation*** includes a reference to a rule, or the rules, of a branch
- 8                    of an organisation.

9                    **164 Directions for performance of rules**

10                    *Application for order directing performance of rules*

- 11                    (1) A member of an organisation may apply to the Federal Court for an
- 12                    order under this section in relation to the organisation.
- 13                    Note:        For the meaning of ***order under this section***, see subsection (9).
- 14                    (2) Before making an order under this section, the Court must give any
- 15                    person against whom the order is sought an opportunity of being
- 16                    heard.
- 17                    (3) The Court may refuse to deal with an application for an order
- 18                    under this section unless it is satisfied that the applicant has taken
- 19                    all reasonable steps to try to have the matter that is the subject of
- 20                    the application resolved within the organisation.

21                    *Court may make interim orders*

- 22                    (4) At any time after the making of an application for an order under
- 23                    this section, the Court may make any interim orders that it
- 24                    considers appropriate and, in particular, orders intended to further
- 25                    the resolution within the organisation concerned of the matter that
- 26                    is the subject of the application.
- 27                    (5) An order under subsection (4) continues in force, unless expressed
- 28                    to operate for a shorter period or sooner discharged, until the
- 29                    completion of the proceeding concerned.

Section 164A

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1                    *Definition*

2                    (9) In this section:

3                    ***order under this section*** means an order giving directions for the  
4                    performance or observance of any of the rules of an organisation  
5                    by any person who is under an obligation to perform or observe  
6                    those rules.

7                    **164A Directions to rectify breach of rule of organisation**

8                    *Application for order*

9                    (1) A member of an organisation may apply to the Federal Court for an  
10                    order under subsection 4 in relation to the organisation.

11                    (2) Before making the order, the Court must give any person against  
12                    whom the order is sought an opportunity of being heard.

13                    *Conditions for making order*

14                    (3) The Court may make an order under subsection (4) in relation to an  
15                    organisation if the Court is satisfied that:

- 16                    (a) a person was under an obligation to perform or observe  
17                    a rule or rules of the organisation; and  
18                    (b) the person breached the rule or rules; and  
19                    (c) the person acted unreasonably in so breaching the rule  
20                    or rules.

21                    *Nature of order*

22                    (4) Subject to section 164B, the Court may make an order directing  
23                    one or more persons (who may be, or include, the person who  
24                    breached the rule or rules) to do specified things that will, in the  
25                    opinion of the Court, as far as is reasonably practicable, place the  
26                    organisation in the position in which it would have been if the  
27                    breach of the rule or rules had not occurred.

28                    (5) The Court may make the order whether or not, at the time of  
29                    making the order, the person is a member or officer of the  
30                    organisation.

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Section 164B

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1 **164B Orders under sections 164 and 164A**

2 *Order must not invalidate election etc.*

- 3 (1) An order must not be made under section 164 or 164A that would  
4 have the effect of treating as invalid an election to an office in an  
5 organisation or a step in relation to such an election.

6 *Order must not require compensation*

- 7 (2) An order under section 164A does not include an order directing  
8 one or more persons to compensate an organisation for any loss or  
9 damage suffered by the organisation caused by the breach of the  
10 rule or rules.

11 Note: An application for a compensation order may be made under Part 2 of  
12 Chapter 10 of this Schedule.

13 *Court may declare that rules contravene section 142*

- 14 (3) Where the Court, in considering an application under section 164  
15 or 164A, finds that the whole or a part of a rule of the organisation  
16 concerned contravenes section 142 or that the rules of the  
17 organisation concerned contravene that section in a particular  
18 respect, the Court may, by order, make a declaration to that effect.

- 19 (4) Section 163 (other than subsections (1) to (5) (inclusive)) applies in  
20 relation to an order made under subsection (3) of this section as if  
21 the order had been made under section 163.

22 *Definition*

- 23 (5) In this section:

24 *election* includes a purported election that is a nullity.



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## **Chapter 6—Membership of organisations**

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### **Part 1—Simplified outline of Chapter**

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#### **165 Simplified outline**

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This Chapter sets out rules about membership of organisations. It covers entitlement to membership, circumstances in which a person may cease to be a member, recovery of money from members by organisations, and conscientious objection to membership.

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This Chapter also gives the Federal Court a role in deciding a person's membership status.

Section 166

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## Part 2—Entitlement to membership

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### 166 Entitlement to become and to remain a member

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#### *Employee organisations*

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- (1) Subject to any award or order of the Commission, a person who is eligible to become a member of an organisation of employees under the eligibility rules of the organisation that relate to the occupations in which, or the industry or enterprise in relation to which, members are to be employed is, unless of general bad character, entitled, subject to payment of any amount properly payable in relation to membership:

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(a) to be admitted as a member of the organisation; and

(b) to remain a member so long as the person complies with the rules of the organisation.

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Note 1: Rules of an organisation must provide for the circumstances in which a person ceases to be a member of an organisation (see subparagraph 141(1)(b)(vii)).

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Note 2: If a member fails to pay his or her membership dues for 24 months, this may result in the person ceasing to be a member, regardless of the rules of the organisation (see section 172).

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Note 3: See also section 168, which deals with a special case of entitlement to membership (person treated as having been a member).

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- (2) Subsection (1) does not entitle a person to remain a member of an organisation if the person ceases to be eligible to become a member and the rules of the organisation do not permit the person to remain a member.

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- (3) A person who is qualified to be employed in a particular occupation, and seeks to be employed in the occupation:

(a) is taken to be an employee for the purposes of this section; and

(b) in spite of anything in the rules of the organisation, is not to be treated as not being eligible for membership of an

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1 organisation merely because the person has never been  
2 employed in the occupation.

3 *Employer organisations*

4 (4) Subject to subsection (5) and to any award or order of the  
5 Commission, an employer who is eligible to become a member of  
6 an organisation of employers is entitled, subject to payment of any  
7 amount properly payable in relation to membership:

8 (a) to be admitted as a member of the organisation; and

9 (b) to remain a member so long as the employer complies with  
10 the rules of the organisation.

11 (5) Subsection (4) does not entitle an employer:

12 (a) to become a member of an organisation if the employer is:

13 (i) a natural person who is of general bad character; or

14 (ii) a body corporate whose constituent documents make  
15 provisions inconsistent with the purposes for which the  
16 organisation was formed; or

17 (b) to remain a member of an organisation if the employer ceases  
18 to be eligible to become a member and the rules of the  
19 organisation do not permit the employer to remain a member.

20 *This section overrides inconsistent rules*

21 (6) Subsections (1) and (4) have effect in spite of anything in the rules  
22 of the organisation concerned, except to the extent that they  
23 expressly require compliance with those rules.

24 **167 Federal Court may declare on person's entitlement to**  
25 **membership**

26 *Who may apply to Federal Court*

27 (1) Where a question arises as to the entitlement under section 166 of a  
28 person:

29 (a) to be admitted as a member of an organisation (whether for  
30 the first time or after having resigned, or been removed, as a  
31 member of the organisation); or

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- 1 (b) to remain a member of an organisation;  
2 application may be made to the Federal Court for a declaration as  
3 to the entitlement of the person under this section by either of the  
4 following:  
5 (c) the person;  
6 (d) the organisation concerned.

7 *Court may make orders relating to its declaration*

- 8 (2) On the hearing of an application under subsection (1), the Court  
9 may, in spite of anything in the rules of the organisation concerned,  
10 make such order to give effect to its declaration as it considers  
11 appropriate.
- 12 (3) The orders which the Court may make under subsection (2)  
13 include:  
14 (a) an order requiring the organisation concerned to treat a  
15 person to whom subsection 166(1) or (4) applies as being a  
16 member of the organisation; and  
17 (b) in the case of a question as to the entitlement under this  
18 section of a person to be admitted as a member of an  
19 organisation, where the person has previously been removed  
20 from membership of the organisation—an order that the  
21 person be taken to have been a member of the organisation in  
22 the period between the removal of the person from  
23 membership and the making of the order.

24 *Effect of orders*

- 25 (4) On the making of an order as mentioned in paragraph (3)(a), or as  
26 otherwise specified in the order, the person specified in the order  
27 becomes, by force of this section, a member of the organisation  
28 concerned.
- 29 (5) Where:  
30 (a) an order is made as mentioned in paragraph (3)(b); and  
31 (b) the person specified in the order pays to the organisation  
32 concerned any amount that the person would have been liable

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1                   to pay to the organisation if the person had been a member of  
2                   the organisation during the period specified in the order;  
3           the person is taken to have been a member of the organisation  
4           during the period specified in the order.

5                   *Court to give certain people opportunity to be heard*

- 6           (6) Where an application is made to the Court under this section:  
7               (a) if the application is made by an organisation—the person  
8               whose entitlement is in question must be given an  
9               opportunity of being heard by the Court; and  
10              (b) if the application is made by the person whose entitlement is  
11              in question—the organisation concerned must be given an  
12              opportunity of being heard by the Court.

13           **168 Application for membership of organisation by person treated**  
14           **as having been a member**

- 15           (1) Where:  
16               (a) a person who is eligible for membership of an organisation  
17               (other than a member of the organisation or a person who has  
18               been expelled from the organisation) applies to be admitted  
19               as a member of the organisation; and  
20               (b) the person has, up to a time within one month before the  
21               application, acted in good faith as, and been treated by the  
22               organisation as, a member;  
23           the person is entitled to be admitted to membership and treated by  
24           the organisation and its members as though the person had been a  
25           member during the whole of the time when the person acted as,  
26           and was treated by the organisation as, a member and during the  
27           whole of the time from the time of the person's application to the  
28           time of the person's admission.
- 29           (2) Where a question arises as to the entitlement under this section of a  
30           person to be admitted as a member and to be treated as though the  
31           person had been a member during the times referred to in  
32           subsection (1):  
33               (a) the person; or

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- 1 (b) the organisation;  
2 may apply to the Federal Court for a declaration as to the  
3 entitlement of the person under this section.
- 4 (3) Subject to subsection (5), the Court may, in spite of anything in the  
5 rules of the organisation concerned, make such orders (including  
6 mandatory injunctions) to give effect to its determination as it  
7 considers appropriate.
- 8 (4) The orders that the Court may make under subsection (3) include  
9 an order requiring the organisation concerned to treat a person to  
10 whom subsection (1) applies as being a member of the organisation  
11 and as having been a member during the times referred to in  
12 subsection (1).
- 13 (5) Where an application is made to the Court under this section:  
14 (a) if the application is made by an organisation—the person  
15 whose entitlement is in question must be given an  
16 opportunity to be heard by the Court; and  
17 (b) if the application is made by the person whose entitlement is  
18 in question—the organisation concerned must be given an  
19 opportunity to be heard by the Court.

20 **169 Request by member for statement of membership**

- 21 An organisation must, at the request of a person who is a member,  
22 give to the person, within 28 days after the request is made, a  
23 statement showing:  
24 (a) that the person is a member of the organisation; and  
25 (b) where there are categories of membership of the  
26 organisation—the category of the person's membership; and  
27 (c) if the person expressly requests—whether the person is a  
28 financial member of the organisation.

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

30 **170 Rectification of register of members**

- 31 The Federal Court may at any time, in a proceeding under this  
32 Schedule or the Workplace Relations Act, order such rectifications
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1 of the register of members of an organisation as it considers  
2 necessary.

Section 171

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## Part 3—Termination of membership

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### 171 Federal Court may order that persons cease to be members of organisations

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The Federal Court may, on the application of an organisation, order that a person's membership of that organisation or another organisation is to cease from a day, and for a period, specified in the order.

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### 172 Non-financial members to be removed from the register

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(1) If:

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- (a) the rules of an organisation require a member to pay dues in relation to the person's membership of the organisation; and
- (b) the member has not paid the amount; and
- (c) a continuous period of 24 months has elapsed since the amount became payable; and

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- (d) the member's name has not been removed from the register kept by the organisation under paragraph 230(1)(a);

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the organisation must remove the name and postal address of the member from the register within 12 months after the end of the 24 month period.

22

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

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(2) In calculating a period for the purposes of paragraph (1)(c), any period in relation to which the member was not required by the rules of the organisation to pay the dues is to be disregarded.

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(3) A person whose name is removed from the register under this section ceases to be a member of the organisation on the day his or her name is removed. This subsection has effect in spite of anything in the rules of the organisation.

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Note: A non-financial member's membership might cease and his or her name be removed from the register earlier than is provided for by this section if the organisation's own rules provide for this to happen.



1 **173 No entrance fee if person re-joins within 6 months**

2 (1) If:

3 (a) a person applies for membership of an organisation within 6  
4 months after the person's membership has ceased under  
5 section 172; and

6 (b) the application is accepted by the organisation;  
7 the organisation must not require the person to pay any fee  
8 associated with a new membership (other than membership dues)  
9 in relation to the membership for which the person has applied.

10 (2) This section is not to be taken to prevent an organisation requiring  
11 (whether by means of its rules or otherwise) payment of  
12 outstanding dues in order for a person to maintain continuity of  
13 financial membership.

14 **174 Resignation from membership**

15 (1) A member of an organisation may resign from membership by  
16 written notice addressed and delivered to a person designated for  
17 the purpose in the rules of the organisation or a branch of the  
18 organisation.

19 Note: The notice of resignation can be given electronically if the  
20 organisation's rules allow for this (see section 9 of the *Electronic*  
21 *Transactions Act 1999*).

22 (2) A notice of resignation from membership of an organisation takes  
23 effect:

24 (a) where the member ceases to be eligible to become a member  
25 of the organisation:

26 (i) on the day on which the notice is received by the  
27 organisation; or

28 (ii) on the day specified in the notice, which is a day not  
29 earlier than the day when the member ceases to be  
30 eligible to become a member;

31 whichever is later; or

32 (b) in any other case:

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- 1 (i) at the end of 2 weeks, or such shorter period as is  
2 specified in the rules of the organisation, after the notice  
3 is received by the organisation; or  
4 (ii) on the day specified in the notice;  
5 whichever is later.
- 6 (3) Any dues payable but not paid by a former member of an  
7 organisation, in relation to a period before the member's  
8 resignation from the organisation took effect, may be sued for and  
9 recovered in the name of the organisation, in a court of competent  
10 jurisdiction, as a debt due to the organisation.
- 11 (4) A notice delivered to the person mentioned in subsection (1) is  
12 taken to have been received by the organisation when it was  
13 delivered.
- 14 (5) A notice of resignation that has been received by the organisation  
15 is not invalid because it was not addressed and delivered in  
16 accordance with subsection (1).
- 17 (6) A resignation from membership of an organisation is valid even if  
18 it is not effected in accordance with this section if the member is  
19 informed in writing by or on behalf of the organisation that the  
20 resignation has been accepted.
- 21 Note: Regulations may require employers who offer payroll deduction  
22 facilities to inform employees that cessation of payroll deduction by  
23 an employee does not constitute resignation (see section 359).

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2 **Part 4—False information, disputes and arrears of**  
3 **dues**  
4

5 **175 False representation as to membership of organisation**

6 A person must not, in an application made under this Schedule or  
7 the Workplace Relations Act, make a statement about the person's  
8 membership of an organisation if the person knows, or is reckless  
9 as to whether, the statement is false or misleading.

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

11 **176 False representation about resignation from organisation**

12 A person (the *first person*) must not provide information about  
13 resignation from an organisation to a member, or a person eligible  
14 to become a member, of the organisation if the person knows, or is  
15 reckless as to whether, the information is false or misleading.

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

17 **177 Disputes between organisations and members**

- 18 (1) A dispute between an organisation and any of its members is to be  
19 decided under the rules of the organisation.
- 20 (2) Any fine, fee, levy or dues payable to an organisation by a member  
21 in relation to a period after the organisation was registered may be  
22 sued for and recovered, in the name of the organisation, as a debt  
23 due to the organisation, in a court of competent jurisdiction.
- 24 (3) A court of competent jurisdiction may, on application brought in  
25 the name of an organisation, order the payment by a member of  
26 any contribution (not exceeding \$20) to a penalty incurred or  
27 money payable by the organisation under an award, order, certified  
28 agreement or old IR agreement.

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1       **178 Recovery of arrears**

2               (1) In spite of subsection 177(2), legal proceedings for the recovery of  
3               an amount payable by a person in relation to the person's  
4               membership of an organisation must not be commenced after the  
5               end of the period of 12 months starting on the day on which the  
6               amount became payable.

7               (2) The amount ceases to be payable at the end of the period if legal  
8               proceedings to recover the amount have not been commenced by  
9               then.

10       **179 Liability for arrears**

11               (1) Where a person has ceased to be eligible to become a member of  
12               an organisation and that person has not actively participated in the  
13               affairs of the organisation since that time, those circumstances are  
14               a defence to an action by the organisation for arrears of dues  
15               payable from the time when the person ceased to be so eligible.

16               (2) Where such a defence is successful, that person is taken to have  
17               ceased to be a member from the time that the person ceased to be  
18               so eligible.

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2 **Part 5—Conscientious objection to membership**  
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4 **180 Conscientious objection to membership of organisations**

5 (1) Where a natural person:

6 (a) on application made to a Registrar, satisfies the Registrar:

7 (i) in the case of a person who is an employer or is  
8 otherwise eligible to join an organisation of  
9 employers—that the person’s conscientious beliefs do  
10 not allow the person to be a member of an association of  
11 the kind described in paragraph 18(1)(a); or

12 (ii) in the case of a person who is an employee or is  
13 otherwise eligible to join an organisation of  
14 employees—that the person’s conscientious beliefs do  
15 not allow the person to be a member of an association of  
16 the kind described in paragraph 18(1)(b) or 18(1)(c);  
17 and

18 (b) pays the prescribed fee to the Registrar;  
19 the Registrar must issue to the person a certificate to that effect in  
20 the prescribed form.

21 (2) An appeal does not lie to the Commission under section 81 of the  
22 Workplace Relations Act against a decision of a Registrar to issue  
23 a certificate under subsection (1).

24 (3) Subject to subsection (4), a certificate under subsection (1) remains  
25 in force for the period (not exceeding 12 months) specified in the  
26 certificate, but may, as prescribed, be renewed from time to time  
27 by a Registrar for such period (not exceeding 12 months) as the  
28 Registrar considers appropriate.

29 (4) Where:

30 (a) a Registrar becomes aware of a matter that was not known to  
31 the Registrar when a certificate was issued by the Registrar to  
32 a person under subsection (1); and

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- 1 (b) if the Registrar had been aware of the matter when the  
2 application for the certificate was being considered, the  
3 Registrar would not have issued the certificate;  
4 the Registrar may, after giving the person an opportunity, as  
5 prescribed, to show cause why the certificate should not be  
6 revoked, revoke the certificate.
- 7 (5) The holding by an employer of a certificate issued under  
8 subsection (1) does not prevent the employer being a party to an  
9 industrial dispute.
- 10 (6) In this section:
- 11 ***appropriate organisation***, in relation to a person who has made an  
12 application under subsection (1), means the organisation that, in  
13 the opinion of the Registrar dealing with the application, would,  
14 but for the person's conscientious beliefs, be the appropriate  
15 organisation for the person to join having regard to:
- 16 (a) in the case of a person who is an employer—the industry in  
17 relation to which the person is an employer; or  
18 (b) in the case of a person who is otherwise eligible to join an  
19 organisation of employers—the business carried on by the  
20 person; or  
21 (c) in the case of a person who is an employee—the past  
22 employment (if any), and the future prospects of  
23 employment, of the person; or  
24 (d) in the case of a person who is otherwise eligible to join an  
25 organisation of employees—the work done by the person or  
26 the enterprise in which the person works.
- 27 ***conscientious beliefs*** means any conscientious beliefs, whether the  
28 grounds for the beliefs are or are not of a religious character and  
29 whether the beliefs are or are not part of the doctrine of any  
30 religion.
- 31 ***prescribed fee***, in relation to a person who has made an application  
32 under subsection (1), means a fee equal to the annual subscription  
33 that would be payable by the person if the person were a member  
34 of the appropriate organisation.

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## **Chapter 7—Democratic control**

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### **Part 1—Simplified outline of Chapter**

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#### **181 Simplified outline**

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This Chapter deals with elections for positions in organisations. It does not deal with other kinds of ballots (for example, amalgamation and disamalgamation ballots, which are dealt with in Chapter 3).

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Part 2 sets out the rules for the conduct of elections. Elections for office must generally be conducted by the AEC. This Part also requires the AEC to conduct elections for some positions that are not offices, if the organisation concerned requests the AEC to do so.

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Part 3 provides for inquiries by the Federal Court into elections for office.

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Part 4 sets out the circumstances in which people are disqualified from holding, or being elected to hold, office in organisations.

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## **Part 2—Conduct of elections for office and other positions**

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### **182 Conduct by AEC**

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#### *Elections for office*

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- (1) Each election for an office in an organisation, or branch of an organisation, must be conducted by the AEC. The expenses of conducting such an election are to be borne by the Commonwealth.

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Note: For the meaning of *office*, see section 9.

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- (2) Subsection (1) does not apply in relation to an election for an office in an organisation or branch while an exemption granted to the organisation or branch, as the case may be, under section 186 is in force in relation to elections in the organisation or branch or an election for the particular office.

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#### *Elections for other positions*

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- (3) If an organisation or branch of an organisation has made a request under section 187 in relation to an election for a position other than an office, the AEC must conduct the election.

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### **183 Application for organisation or branch to conduct its elections for office**

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- (1) A committee of management of an organisation or branch of an organisation may lodge in the Industrial Registry an application for the organisation or branch, as the case may be, to be exempted from subsection 182(1) in relation to elections for offices, or an election for a particular office, in the organisation or branch.

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- (2) An application may not be made by a committee of management of an organisation or branch of an organisation unless the committee of management:
- (a) has resolved to make the application; and



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- 1 (b) has notified the members of the organisation or branch, as  
2 prescribed, of the making of the resolution.
- 3 (3) An application under subsection (1) must be accompanied by a  
4 declaration by a member of the committee of management  
5 concerned stating that subsection (2) has been complied with.
- 6 (4) Where an application has been made under subsection (1), the  
7 Industrial Registrar must cause a notice setting out details of the  
8 application to be published, as prescribed, for the purpose of  
9 bringing the notice to the attention of members of the organisation  
10 or branch concerned.
- 11 (5) Where the rules of an organisation require an office to be filled by  
12 an election by the members, or by some of the members, of a  
13 single branch of the organisation, an election to fill the office is  
14 taken to be an election for the branch.

15 **184 Objections to application to conduct elections for office**

- 16 (1) Objection may be made to an application under subsection 183(1)  
17 by a member of the organisation or branch of the organisation in  
18 relation to which the application was made.
- 19 (2) The Industrial Registrar or, if the Industrial Registrar directs,  
20 another Registrar must, as prescribed, hear the application and any  
21 objections duly made.

22 **185 Threats etc. in relation to section 184 objections**

- 23 (1) A person commits an offence if the person uses, causes or inflicts  
24 any violence, injury, punishment, damage, loss or disadvantage to  
25 another person because the other person has lodged an objection  
26 under subsection 184(1).

27 Maximum penalty: 30 penalty units.

- 28 (2) A person commits an offence if the person:  
29 (a) gives, or offers or promises to give, any property or benefit  
30 of any kind with the intention of influencing or affecting

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- 1 another person because the other person proposes to lodge, or  
2 has lodged, an objection under subsection 184(1); or  
3 (b) asks for or obtains, or offers or agrees to ask for or obtain,  
4 any property or benefit of any kind (whether for that person  
5 or another person), on the understanding that the lodging of  
6 an objection under subsection 184(1) will be influenced or  
7 affected in any way.

8 Maximum penalty: 30 penalty units.

9 **186 Registrar may permit organisation or branch to conduct its**  
10 **elections for office**

11 (1) Where an application in relation to an organisation or branch has  
12 been lodged under subsection 183(1) and, after any objections duly  
13 made have been heard, a Registrar is satisfied:

- 14 (a) that the rules of the organisation or branch comply with the  
15 requirements of this Schedule relating to the conduct of  
16 elections for office; and  
17 (b) that, if the organisation or branch is exempted from  
18 subsection 182(1), the elections for the organisation or  
19 branch, or the election for the particular office, as the case  
20 may be, will be conducted:  
21 (i) under the rules of the organisation or branch, as the case  
22 may be, and this Schedule; and  
23 (ii) in a manner that will afford members entitled to vote at  
24 such elections or election an adequate opportunity of  
25 voting without intimidation;

26 the Registrar may exempt the organisation or branch from  
27 subsection 182(1) in relation to elections for the organisation or  
28 branch, or the election for the particular office, as the case may be.

29 (2) A Registrar may revoke an exemption granted to an organisation or  
30 branch under subsection (1):

- 31 (a) on application by the committee of management of the  
32 organisation or branch; or  
33 (b) if the Registrar:

- 1 (i) is no longer satisfied as mentioned in subsection (1);  
2 and  
3 (ii) has given the committee of management of the  
4 organisation or branch an opportunity, as prescribed, to  
5 show cause why the exemption should not be revoked.

6 **187 Organisation may ask AEC to conduct elections for positions**  
7 **other than offices**

- 8 (1) If the rules of an organisation or branch of an organisation require  
9 an election to be held for a position other than an office in the  
10 organisation or branch, the organisation or branch, as the case may  
11 be, may request the AEC to conduct the election.

12 Note: For the meaning of *office*, see section 9.

- 13 (2) The request must be:  
14 (a) in writing; and  
15 (b) signed by an officer of the organisation or branch who is  
16 authorised to do so by the committee of management of the  
17 organisation or branch; and  
18 (c) given to the AEC.
- 19 (3) A copy of the request must also be lodged in the Industrial Registry  
20 at the same time as the prescribed information in relation to the  
21 election is lodged (see section 189).

22 **188 Declaration envelopes etc. to be used for postal ballots**

23 If the rules of an organisation provide for elections for office by  
24 postal ballot, a vote in the election cannot be counted unless the  
25 ballot paper on which it is recorded is returned as follows:

- 26 (a) the ballot paper must be in the declaration envelope provided  
27 to the voter with the ballot paper;  
28 (b) the declaration envelope must be in another envelope that is  
29 in the form prescribed by the regulations.

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1 **189 Registrar to arrange for conduct of elections**

2 (1) An organisation or branch of an organisation must lodge in the  
3 Industrial Registry the prescribed information in relation to an  
4 election that is to be conducted by the AEC.

5 (2) The prescribed information must be lodged before the prescribed  
6 day or such later day as a Registrar allows.

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

8 (3) If:

9 (a) the prescribed information is lodged in the Industrial Registry  
10 by the organisation or branch (whether or not before the  
11 prescribed day or the later day allowed by a Registrar); and

12 (b) a Registrar is satisfied that an election is required to be held  
13 under the rules of the organisation or branch; and

14 (c) if the election is not an election for an office—the  
15 organisation or branch has made a request under section 187;

16 a Registrar must arrange for the conduct of the election by the  
17 AEC.

18 **190 Organisation or branch must not assist one candidate over**  
19 **another**

20 An organisation or branch commits an offence if it uses, or allows  
21 to be used, its property or resources to help a candidate against  
22 another candidate in an election under this Part for an office or  
23 other position.

24 Maximum penalty: 100 penalty units.

25 **191 Organisation to provide returning officer with copy of register**

26 (1) A person (the *returning officer*) conducting an election under this  
27 Part for an office or other position in an organisation, or branch of  
28 an organisation, may give a written request to an officer or  
29 employee of the organisation or branch to make available the  
30 register of members, or part of the register, kept by the

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- 1 organisation under section 230, to the returning officer for the  
2 purposes of the ballot.
- 3 (2) An officer or employee of the organisation or branch commits an  
4 offence if he or she fails to comply with a request under  
5 subsection (1).
- 6 Maximum penalty: 30 penalty units.
- 7 (3) Subsection (2) does not apply if the officer or employee complied  
8 with the request as promptly as he or she was capable.
- 9 Note: A defendant bears an evidential burden in relation to the matter  
10 mentioned in subsection (3).
- 11 (4) An offence against subsection (2) is an offence of strict liability.  
12 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 13 (5) If the register, or the relevant part of the register, is kept in  
14 electronic form, the returning officer may require the register to be  
15 made available in that form.
- 16 (6) A request under subsection (1) must specify the period within  
17 which the register must be made available. The period must not be  
18 less than 7 days after the request is given.

19 **192 Declaration by secretary etc. of organisation**

- 20 (1) If:  
21 (a) a returning officer makes a request under section 191 in  
22 relation to the organisation's register; and  
23 (b) the returning officer gives written notice of the request to the  
24 secretary or other prescribed officer of the organisation or  
25 branch concerned;  
26 the secretary or other prescribed officer of the organisation must  
27 make a declaration, in accordance with subsection (2), that the  
28 register has been maintained as required by subsection 230(2).  
29 Note: This subsection is a civil penalty provision (see section 305).
- 30 (2) The declaration must be:  
31 (a) signed by the person making it; and
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1 (b) given to the returning officer, and lodged in the Industrial  
2 Registry, as soon as practicable but no later than the day  
3 before the first day of voting in the relevant election.

4 (3) A person must not, in a declaration for the purposes of  
5 subsection (1), make a statement if the person knows, or is reckless  
6 as to whether, the statement is false or misleading.

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

8 **193 Provisions applicable to elections conducted by AEC**

9 (1) If an electoral official is conducting an election, or taking a step in  
10 relation to an election, for an office or other position in an  
11 organisation, or branch of an organisation, the electoral official:

12 (a) subject to paragraph (b), must comply with the rules of the  
13 organisation or branch; and

14 (b) may, in spite of anything in the rules of the organisation or  
15 branch, take such action, and give such directions, as the  
16 electoral official considers necessary:

17 (i) to ensure that no irregularities occur in or in relation to  
18 the election; or

19 (ii) to remedy any procedural defects that appear to the  
20 electoral official to exist in the rules; or

21 (iii) to ensure the security of ballot papers and envelopes  
22 that are for use, or used, in the election.

23 (2) A person commits an offence if the person does not comply with a  
24 direction under subsection (1).

25 Maximum penalty: 30 penalty units.

26 (3) Subsection (2) does not apply so far as the person is not capable of  
27 complying.

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

30 (4) Subsection (2) does not apply if the person has a reasonable  
31 excuse.

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

4 (5) An offence against subsection (2) is an offence of strict liability.

5 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

6 (6) An election for an office or other position conducted by an  
7 electoral official, or step taken in relation to such an election, is not  
8 invalid merely because of a breach of the rules of the organisation  
9 or branch because of:

10 (a) action taken under subsection (1); or

11 (b) an act done in compliance with a direction under  
12 subsection (1).

13 (7) If an electoral official conducting, or taking a step in connection  
14 with, an election for an office or other position:

15 (a) dies or becomes unable to complete the conduct of the  
16 election or the taking of the step; or

17 (b) ceases to be qualified to conduct the election or to take the  
18 step;

19 the Electoral Commissioner must arrange for the completion of the  
20 conduct of the election, or the taking of the step, by another  
21 electoral official.

22 **194 Hindering or obstructing electoral official or other person**

23 A person commits an offence if the person hinders or obstructs:

24 (a) an electoral official in the performance of functions in  
25 relation to an election for an office or other position in an  
26 organisation or branch of an organisation; or

27 (b) any other person in complying with a direction under  
28 subsection 193(1).

29 Maximum penalty: 30 penalty units.

30 **195 Improper interference with election process**

31 (1) This section applies in relation to an election for an office or other  
32 position in an organisation or branch of an organisation.

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*Interference with ballot papers*

- (2) A person commits an offence if the person:
- (a) impersonates another person with the intention of:
    - (i) securing a ballot paper to which the impersonator is not entitled; or
    - (ii) casting a vote; or
  - (b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or
  - (c) fraudulently puts a ballot paper or other paper:
    - (i) into a ballot box or other ballot receptacle; or
    - (ii) into the post; or
  - (d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or
  - (e) records a vote that the person is not entitled to record; or
  - (f) records more than one vote; or
  - (g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or
  - (h) provides a ballot paper without authority; or
  - (i) obtains a ballot paper which the person is not entitled to obtain; or
  - (j) has possession of a ballot paper which the person is not entitled to possess; or
  - (k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

*Threats in relation to votes, candidature etc.*

- (3) A person commits an offence if the person threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:



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- 1 (a) any candidature or withdrawal of candidature; or  
2 (b) any vote or omission to vote; or  
3 (c) any support or opposition to any candidate; or  
4 (d) any promise of any vote, omission, support or opposition.

5 Maximum penalty: 30 penalty units.

6 *Offers of bribes*

- 7 (4) A person commits an offence if the person gives, or promises or  
8 offers to give, any property or benefit of any kind to a person with  
9 the intention of influencing or affecting any of the following:  
10 (a) any candidature or withdrawal of candidature;  
11 (b) any vote or omission to vote;  
12 (c) any support or opposition to any candidate;  
13 (d) any promise of any vote, omission, support or opposition.

14 Maximum penalty: 30 penalty units.

15 *Acceptance of bribes*

- 16 (5) A person commits an offence if the person asks for or obtains, or  
17 offers or agrees to ask for or obtain, any property or benefit of any  
18 kind (whether for that person or another person), on the  
19 understanding that any of the following will be influenced or  
20 affected in any way:  
21 (a) any candidature or withdrawal of candidature;  
22 (b) any vote or omission to vote;  
23 (c) any support or opposition to any candidate;  
24 (d) any promise of any vote, omission, support or opposition.

25 Maximum penalty: 30 penalty units.

26 *Secrecy of vote*

- 27 (6) A person (the **relevant person**) commits an offence:  
28 (a) if the relevant person requests, requires or induces another  
29 person to show a ballot paper to the relevant person, or  
30 permits the relevant person to see a ballot paper, in such a

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- 1 manner that the relevant person can see the vote, while the  
2 ballot paper is being marked or after it has been marked; or  
3 (b) if the relevant person is a person performing duties for the  
4 purposes of the election—if the relevant person shows to  
5 another person, or permits another person to have access to, a  
6 ballot paper used in the election, otherwise than in the  
7 performance of the duties.

8 Maximum penalty: 30 penalty units.

9 **196 Death of candidate**

- 10 In spite of anything in the rules of an organisation or branch of an  
11 organisation, where:  
12 (a) 2 or more candidates are nominated for an election in relation  
13 to an office in the organisation or branch; and  
14 (b) one of those candidates dies before the close of the ballot;  
15 the election must be discontinued and a new election held.

16 **197 Post-election report by AEC**

17 *Requirement for AEC to make report*

- 18 (1) After the completion of an election conducted under this Part by  
19 the AEC, the AEC must give a written report on the conduct of the  
20 election to:  
21 (a) the Industrial Registrar; and  
22 (b) the organisation or branch for whom the election was  
23 conducted.

24 Note: The AEC may be able, in the same report, to report on more than one  
25 election it has conducted for an organisation. However, regulations  
26 made under paragraph 359(2)(c) may impose requirements about the  
27 manner and timing of reports.

- 28 (2) The report must include details of the prescribed matters.

1 *Contents of report—register of members*

- 2 (3) If the AEC is of the opinion that the register of members, or the  
3 part of the register, made available to the AEC for the purposes of  
4 the election contained, at the time of the election:

- 5 (a) an unusually large proportion of members' addresses that  
6 were not current; or  
7 (b) in the case of a register kept by an organisation of  
8 employees—an unusually large proportion of members'  
9 addresses that were workplace addresses;

10 this fact must be included in the report, together with a reference to  
11 any relevant model rules which, in the opinion of the AEC, could  
12 assist the organisation or branch to address this matter.

13 Note: Model rules are relevant only to the conduct of elections for office,  
14 not for elections for other positions (see section 147).

15 *Contents of report—difficult rules*

- 16 (4) If the report identifies a rule of the organisation or branch that, in  
17 the AEC's opinion, was difficult to interpret or apply in relation to  
18 the conduct of the election, the report must also refer to any  
19 relevant model rules, which in the opinion of the AEC, could assist  
20 the organisation or branch to address this matter.

21 Note: For model rules, see section 147.

22 *Subsection (3) relevant only for postal ballots*

- 23 (5) Subsection (3) applies only in relation to elections conducted by  
24 postal ballot.

25 Note: An organisation can obtain an exemption from the requirement to hold  
26 elections for office by postal ballot (see section 144).

27 **198 Organisation to respond to adverse report on rules**

28 *Organisation must respond to "difficult rules" report*

- 29 (1) If an organisation or branch is given a post-election report under  
30 section 197 that identifies a rule that was difficult to interpret or

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1 apply, the organisation or branch must, within 30 days, give a  
2 written response to the AEC on that aspect of the report.

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

4 (2) The response must specify whether the organisation or branch  
5 intends to take any action in relation to the rule, and if so, what  
6 action it intends to take.

7 *Organisation must make its response available to members*

8 (3) The organisation or branch must also make available to its  
9 members the part of the report dealing with the difficult rule or  
10 rules (the *relevant extract*) and the organisation's or branch's  
11 response to it.

12 (4) The relevant extract must be made available to members no later  
13 than the day on which the response is to be made available by the  
14 organisation or branch to members.

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

16 (5) The response must be made available to members:

17 (a) if the response is not to be published in the next edition of the  
18 organisation or branch journal—within 30 days after it is  
19 given to the AEC; and

20 (b) if the response is to be so published—in the next edition.

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

22 (6) Without limiting the ways in which an organisation or branch may  
23 comply with subsection (3), it complies if it does all of the  
24 following:

25 (a) publishes, in the next edition of the organisation or branch  
26 journal, a copy of the relevant extract of the report and the  
27 organisation's response;

28 (b) within 30 days after the day on which it gives its response to  
29 the AEC:

30 (i) lodges in the Industrial Registry a copy of the relevant  
31 extract of the report and a copy of the response given to  
32 the AEC under subsection (1), together with a  
33 declaration that the organisation or branch will provide

- 1 a copy of the extract and the organisation's response to  
2 any member who so requests; and  
3 (ii) gives notice in the next edition of the organisation or  
4 branch journal, or in an appropriate newspaper, that a  
5 copy of the relevant extract of the report and the  
6 organisation's response is available, upon request, from  
7 the organisation or branch to each member free of  
8 charge;  
9 (c) meets the requirements of any regulations made for the  
10 purposes of this subsection.

11 *Declaration that report and response will be available*

- 12 (7) A declaration under paragraph (6)(b) must be signed by the  
13 secretary or other prescribed officer of the organisation or branch  
14 (as the case requires).  
15 (8) A person must not, in a declaration for the purposes of  
16 paragraph (6)(b), make a statement if the person knows, or is  
17 reckless as to whether, the statement is false or misleading.

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

19 *Definitions*

- 20 (9) In this section:

21 *appropriate newspaper*, in relation to an organisation or branch,  
22 means a newspaper, or newspapers, whose circulation covers the  
23 main geographical areas where members of the organisation or  
24 branch reside.

25 *next edition*, in relation to publishing a relevant extract of a  
26 post-election report or response in a journal, means the first edition  
27 of the journal in which it is reasonably practicable for the report or  
28 the response (as the case may be) to be published.

29 **199 Ballot papers etc. to be preserved**

- 30 (1) In spite of anything in the rules of an organisation or a branch of an  
31 organisation, where an election for an office in the organisation or
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1 branch is conducted by the AEC, the organisation or branch, and  
2 every officer and employee of the organisation or branch who is  
3 able to do so, and the AEC, must take such steps as are necessary  
4 to ensure that all ballot papers, envelopes, lists and other  
5 documents relevant to the election are preserved and kept by the  
6 AEC for one year after the completion of the election.

7 (2) In spite of anything in the rules of an organisation or a branch of an  
8 organisation, where an election for an office in the organisation or  
9 branch is conducted by the organisation or branch, the organisation  
10 or branch, and every officer and employee of the organisation or  
11 branch who is able to do so, must take such steps as are necessary  
12 to ensure that all ballot papers, envelopes, lists and other  
13 documents relevant to the election are preserved and kept at the  
14 office of the organisation or branch, as the case may be, for one  
15 year after the completion of the election.

16 (3) An organisation or branch of an organisation commits an offence if  
17 the organisation or branch contravenes subsection (1) or (2).

18 Maximum penalty: 100 penalty units.

19 (4) Subsection (3) does not apply if the organisation has a reasonable  
20 excuse.

21 Note: A defendant bears an evidential burden in relation to the matter  
22 mentioned in subsection (4), see subsection 13.3(3) of the *Criminal*  
23 *Code*.

24 (5) An officer or employee of an organisation or branch commits an  
25 offence if the officer or employee contravenes subsection (1) or  
26 (2).

27 Maximum penalty: 20 penalty units.

28 (6) Subsection (5) does not apply if the officer or employee has a  
29 reasonable excuse.

30 Note: A defendant bears an evidential burden in relation to the matter  
31 mentioned in subsection (6), see subsection 13.3(3) of the *Criminal*  
32 *Code*.

33 (7) Offences against subsections (3) and (5) are offences of strict  
34 liability.

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Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Section 200

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## Part 3—Inquiries into elections for office

4

### 200 Application for inquiry

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*When member of organisation may apply for inquiry*

6

- (1) If a person who is, or within the preceding period of 12 months has been, a member of an organisation claims that there has been an irregularity in relation to an election for an office in the organisation or a branch of the organisation, the person may make an application for an inquiry by the Federal Court into the matter.

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

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*When Electoral Commissioner must apply for an inquiry*

13

- (2) If the Electoral Commissioner believes that the result of an election for an office has been affected by an irregularity in relation to the election, the Electoral Commissioner must make an application for an inquiry by the Federal Court into the matter.

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*When Electoral Commissioner may apply for an inquiry*

18

- (3) If the Electoral Commissioner believes that there has been an irregularity in relation to an election for an office, the Electoral Commissioner may make an application for an inquiry by the Federal Court into the matter.

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Note: This section relates only to elections for office. It does not apply to elections for positions other than offices (which can also be conducted under Part 2).

23

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### 201 Instituting of inquiry

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Where:

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- (a) an application for an inquiry has been lodged with the Federal Court under section 200; and

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29

- (b) the Court is satisfied that there are reasonable grounds for the application;

30



1                   the Court must fix a time and place for conducting the inquiry, and  
2                   may give such directions as it considers necessary to ensure that all  
3                   persons who are or may be justly entitled to appear at the inquiry  
4                   are notified of the time and place fixed and, where the Court fixes a  
5                   time and place, the inquiry is taken to have been instituted.

6                   **202 Federal Court may authorise Industrial Registrar to take**  
7                   **certain action**

- 8                   (1) Where an application for an inquiry has been lodged with the  
9                   Federal Court under section 200, the Court may authorise the  
10                  Industrial Registrar to arrange, for the purposes of the inquiry, for a  
11                  designated Registry official to take any action referred to in  
12                  subsection (2).
- 13                  (2) If a Registry official is designated by the Industrial Registrar for  
14                  the purposes of subsection (1), the actions that the official may take  
15                  are as follows:
- 16                   (a) inspecting election documents;
  - 17                   (b) for the purposes of any such inspection, entering, with such  
18                   assistance as he or she considers necessary, any premises  
19                   used or occupied by the organisation, or a branch of the  
20                   organisation, concerned in which he or she believes election  
21                   documents to be;
  - 22                   (c) giving a written notice to a person requiring the person to  
23                   deliver to him or her, within the period and in the manner  
24                   specified in the notice, any election documents in the  
25                   possession or under the control of the person;
  - 26                   (d) taking possession of any election documents;
  - 27                   (e) retaining any election documents delivered to him or her, or  
28                   of which he or she has taken possession, for such period as is  
29                   necessary for the purposes of the application and, if  
30                   proceedings under this Part arise out of the application, until  
31                   the completion of the proceedings or such earlier time as the  
32                   Court orders.
- 33                  (3) Before authorising any action under subsection (1), the Court must,  
34                  if it considers that, having regard to all the circumstances, a person

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1                   should be given an opportunity of objecting to the proposed action,  
2                   give such an opportunity to the person.

3                   (4) The period specified in a notice given under paragraph (2)(c) must  
4                   specify a period of at least 14 days after the notice is given.

5                   (5) A person commits an offence if the person:

6                   (a) contravenes a requirement made under paragraph (2)(c); or

7                   (b) hinders or obstructs the Industrial Registrar, or a person  
8                   acting on his or her behalf, in the exercise of powers under  
9                   subsection (2).

10                  Maximum penalty: 30 penalty units.

11                  (6) Strict liability applies to paragraph (5)(a).

12                  Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

13                  (7) Paragraph (5)(a) does not apply if the person has a reasonable  
14                  excuse.

15                  Note: A defendant bears an evidential burden in relation to the matter  
16                  mentioned in subsection (7), see subsection 13.3(3) of the *Criminal*  
17                  *Code*.

18                  (8) A person is not excused from producing an election document  
19                  under this section on the ground that the production of the  
20                  document might tend to incriminate the person or expose the  
21                  person to a penalty.

22                  (9) However:

23                   (a) producing the document; or

24                   (b) any information, document or thing obtained as a direct or  
25                   indirect consequence of producing the document;

26                  is not admissible in evidence against the person in criminal  
27                  proceedings or proceedings that may expose the person to a  
28                  penalty.

29                  (10) In this section:

30                   *election documents*, in relation to an election, means ballot papers,  
31                   envelopes, lists or other documents that have been used in, or are  
32                   relevant to, the election.

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1     **203 Designated Registry officials must have identity cards**

2                     *Issue of identity card*

- 3             (1) The Industrial Registrar must issue an identity card to each  
4                 designated Registry official.
- 5             (2) The identity card must:
- 6                 (a) be in the prescribed form; and
- 7                 (b) include a recent photograph of the official.

8                     *Use of identity card*

- 9             (3) A designated Registry official must carry the identity card at all  
10                 times when taking action under section 202.
- 11             (4) Before the official takes action under paragraph 202(2)(b) (entering  
12                 premises), the official must:
- 13                 (a) inform the occupier of the premises that the official is  
14                     authorised to enter the premises; and
- 15                 (b) show the identity card to the occupier.
- 16             (5) The official is not entitled to enter premises under paragraph  
17                 202(2)(b) if he or she has not complied with subsection (4).

18                     *Offence: failing to return identity card*

- 19             (6) A person commits an offence if:
- 20                 (a) the person holds or held an identity card; and
- 21                 (b) the person ceases to be a Registry official; and
- 22                 (c) the person does not, as soon as is practicable after so ceasing,  
23                     return the identity card to the Industrial Registrar.

24                     Maximum penalty: 1 penalty unit.

- 25             (7) An offence against subsection (6) is an offence of strict liability.

26                 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- 27             (8) Subsection (6) does not apply if the identity card was lost or  
28                 destroyed.



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- 1 (3) An order under this section continues in force, unless expressed to  
2 operate for a shorter period or sooner discharged, until the  
3 completion of:  
4 (a) the proceeding concerned in the Court in relation to the  
5 election; and  
6 (b) all matters ordered by the Court (otherwise than under this  
7 section) in the proceeding.

8 **205 Procedure at hearing**

- 9 (1) The Federal Court must allow to appear at an inquiry all persons  
10 who apply to the Court for leave to appear and who appear to the  
11 Court to have an interest in the inquiry, and the Court may order  
12 any other person to appear.  
13 (2) The persons appearing, or ordered under subsection (1) to appear,  
14 at an inquiry are taken to be parties to the proceeding.  
15 (3) For the purposes of this Part:  
16 (a) the procedure of the Court is, subject to this Schedule and the  
17 Rules of Court, within the discretion of the Court; and  
18 (b) the Court is not bound to act in a formal manner and is not  
19 bound by any rules of evidence, but may inform itself on any  
20 matter in such manner as it considers just.

21 **206 Action by Federal Court**

- 22 (1) At an inquiry, the Federal Court must inquire into and determine  
23 the question whether an irregularity has happened in relation to the  
24 election, and such further questions concerning the conduct and  
25 results of the election as the Court considers necessary.  
26 (2) For the purposes of subsection (1), the Court must determine  
27 whether an irregularity has happened on the balance of  
28 probabilities.  
29 (3) In the course of conducting an inquiry, the Court may make such  
30 orders (including an order for the recounting of votes) as the Court  
31 considers necessary.

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- 1 (4) If the Court finds that an irregularity has happened, the Court may,  
2 subject to subsection (5), make one or more of the following  
3 orders:
- 4 (a) an order declaring the election, or any step in relation to the  
5 election, to be void;
- 6 (b) an order declaring a person purporting to have been elected  
7 not to have been elected, and declaring another person to  
8 have been elected;
- 9 (c) an order directing the Industrial Registrar to make  
10 arrangements:
- 11 (i) in the case of an uncompleted election—for a step in  
12 relation to the election (including the calling for  
13 nominations) to be taken again and for the uncompleted  
14 steps in the election to be taken; or
- 15 (ii) in the case of a completed election—for a step in  
16 relation to the election (including the calling for  
17 nominations) to be taken again or a new election to be  
18 held;
- 19 (d) an order (including an order modifying the operation of the  
20 rules of the organisation to the extent necessary to enable a  
21 new election to be held, a step in relation to an election to be  
22 taken again or an uncompleted step in an election to be  
23 taken) incidental or supplementary to, or consequential on,  
24 any other order under this section.
- 25 (5) The Court must not declare an election, or any step taken in  
26 relation to an election, to be void, or declare that a person was not  
27 elected, unless the Court is of the opinion that, having regard to the  
28 irregularity found, and any circumstances giving rise to a  
29 likelihood that similar irregularities may have happened or may  
30 happen, the result of the election may have been affected, or may  
31 be affected, by irregularities.
- 32 (6) Without limiting the power of the Court to terminate a proceeding  
33 before it, the Court may, at any time after it begins an inquiry into  
34 an election, terminate the inquiry or the inquiry to the extent that it  
35 relates to specified matters.

1 **207 Industrial Registrar to make arrangements for conduct of**  
2 **elections etc.**

3 Where the Federal Court makes an order under paragraph  
4 206(4)(c) in relation to an election, the Industrial Registrar must  
5 arrange for the taking of the necessary steps in relation to the  
6 election, or for the conduct of the new election, as the case  
7 requires, by the AEC.

8 **208 Enforcement of orders**

9 The Federal Court may grant such injunctions (including  
10 mandatory injunctions) as it considers necessary for the effective  
11 performance of its functions and the enforcement of its orders  
12 under this Part.

13 **209 Validity of certain acts etc. where election declared void**

- 14 (1) Where the Federal Court declares void the election of a person who  
15 has, since the election, purported to act in the office to which the  
16 person purported to have been elected, or declares such a person  
17 not to have been elected:
- 18 (a) subject to a declaration under paragraph (b), all acts done by  
19 or in relation to the person that could validly have been done  
20 by or in relation to the person if the person had been duly  
21 elected are valid; and
  - 22 (b) the Court may declare an act referred to in paragraph (a) to  
23 have been void, and, if the Court does so, the act is taken not  
24 to have been validly done.
- 25 (2) Where an election is held, or a step in relation to an election is  
26 taken, under an order of the Court, the election or step is not  
27 invalid merely because of a departure from the rules of the  
28 organisation or branch concerned that was required by the order of  
29 the Court.

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2 **Part 4—Disqualification from office**

3 **Division 1—Simplified outline of Part**

4 **210 Simplified outline**

5

6

7

This Part imposes certain limitations and requirements on people who hold, or wish to hold, office in an organisation and who have been convicted of a prescribed offence (see Division 2).



1  
2 **Division 2—Persons who have been convicted of a**  
3 **prescribed offence**

4 **211 Simplified outline of Division**

5 This Division imposes certain limitations and requirements on  
6 people who hold, or wish to hold, office in an organisation and  
7 who have been convicted of a prescribed offence.

8 Section 215 sets out the basic limitation for people convicted of a  
9 prescribed offence. The remaining sections in this Division deal  
10 with the ways the rule in section 215 operates and may be  
11 modified.

12 **212 Meaning of *prescribed offence***

13 In this Division, a *prescribed offence* is:

- 14 (a) an offence under a law of the Commonwealth, a State or  
15 Territory, or another country, involving fraud or dishonesty  
16 and punishable on conviction by imprisonment for a period  
17 of 3 months or more; or  
18 (b) an offence against section 51, 72, 105, 185, 191, subsection  
19 193(2), section 194, 195, 199 or subsection 202(5); or  
20 (c) any other offence in relation to the formation, registration or  
21 management of an association or organisation; or  
22 (d) any other offence under a law of the Commonwealth, a State  
23 or Territory, or another country, involving the intentional use  
24 of violence towards another person, the intentional causing of  
25 death or injury to another person or the intentional damaging  
26 or destruction of property.

27 **213 Meaning of *convicted of a prescribed offence***

28 For the purposes of this Division, a person:

- 29 (a) is convicted of a prescribed offence whether the person is  
30 convicted before or after the commencement of this Part; and
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- 1 (b) is not convicted of a prescribed offence merely because the  
2 person is convicted, otherwise than on indictment, of an  
3 offence referred to in paragraph 212(c); and  
4 (c) is not convicted of a prescribed offence referred to in  
5 paragraph 212(d) unless the person has served, or is serving,  
6 a term of imprisonment in relation to the offence.  
7 Note: Other terms used in this Part may be defined in section 6.

8 **214 Certificate of registrar etc. is evidence of facts**

- 9 (1) A certificate purporting to be signed by the registrar or other  
10 proper officer of a federal court, a court of a State or Territory, or a  
11 court of another country, stating that a person was convicted by the  
12 court of a specified offence on a specified day is, for the purpose of  
13 an application made under section 215, 216 or 217, evidence that  
14 the person was convicted of the offence on that day.  
15 (2) A certificate purporting to be signed by the registrar or other  
16 proper officer of a federal court, a court of a State or Territory, or a  
17 court of another country, stating that a person was acquitted by the  
18 court of a specified offence, or that a specified charge against the  
19 person was dismissed by the court, is, for the purpose of an  
20 application made under section 215, 216 or 217, evidence of the  
21 facts stated in the certificate.  
22 (3) A certificate purporting to be signed by the officer in charge of a  
23 prison stating that a person was released from the prison on a  
24 specified day is, for the purpose of an application made under  
25 section 215, 216 or 217, evidence that the person was released  
26 from the prison on that day.

27 **215 Certain persons disqualified from holding office in**  
28 **organisations**

- 29 (1) A person who has been convicted of a prescribed offence is not  
30 eligible to be a candidate for an election, or to be elected or  
31 appointed, to an office in an organisation unless:  
32 (a) on an application made under section 216 or 217 in relation  
33 to the conviction of the person for the prescribed offence:
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- 1 (i) the person was granted leave to hold office in  
2 organisations; or  
3 (ii) the person was refused leave to hold office in  
4 organisations but, under paragraph 216(2)(b) or  
5 217(2)(b), the Federal Court specified a period for the  
6 purposes of this subsection, and the period has elapsed  
7 since the person was convicted of the prescribed offence  
8 or, if the person served a term of imprisonment in  
9 relation to the prescribed offence, since the person was  
10 released from prison; or  
11 (b) in any other case—a period of 5 years has elapsed since the  
12 person was convicted of the prescribed offence or, if the  
13 person served a term of imprisonment in relation to the  
14 prescribed offence, since the person was released from  
15 prison.
- 16 (2) Where a person who holds an office in an organisation is convicted  
17 of a prescribed offence, the person ceases to hold the office at the  
18 end of the period of 28 days after the conviction unless, within the  
19 period, the person makes an application to the Federal Court under  
20 section 216 or 217.
- 21 (3) If a person who holds an office in an organisation makes an  
22 application to the Federal Court under section 216 or 217 and the  
23 application is not determined:  
24 (a) except in a case to which paragraph (b) applies—within the  
25 period of 3 months after the date of the application; or  
26 (b) if the Court, on application by the person, has extended the  
27 period—within that period as extended;  
28 the person ceases to hold the office at the end of the period of 3  
29 months or the period as extended, as the case may be.
- 30 (4) The Court must not, under paragraph (3)(b), extend a period for the  
31 purposes of subsection (3) unless:  
32 (a) the application for the extension is made before the end of  
33 the period of 3 months referred to in paragraph (3)(a); or  
34 (b) if the Court has previously extended the period under  
35 paragraph (3)(b)—the application for the further extension is  
36 made before the end of the period as extended.
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- 1 (5) An organisation, a member of an organisation or the Industrial  
2 Registrar may apply to the Federal Court for a declaration whether,  
3 because of the operation of this section or section 216 or 217:  
4 (a) a person is not, or was not, eligible to be a candidate for  
5 election, or to be elected or appointed, to an office in the  
6 organisation; or  
7 (b) a person has ceased to hold an office in the organisation.
- 8 (6) The granting to a person, on an application made under section 216  
9 or 217 in relation to a conviction of the person for a prescribed  
10 offence, of leave to hold offices in organisations does not affect the  
11 operation of this section or section 216 or 217 in relation to another  
12 conviction of the person for a prescribed offence.

13 **216 Application for leave to hold office in organisations by**  
14 **prospective candidate for office**

- 15 (1) A person who:  
16 (a) wants to be a candidate for election, or to be appointed, to an  
17 office in an organisation; and  
18 (b) has been, within the immediately preceding period of 5 years,  
19 convicted of a prescribed offence or released from prison  
20 after serving a term of imprisonment in relation to a  
21 conviction for a prescribed offence;  
22 may, subject to subsection (4), apply to the Federal Court for leave  
23 to hold office in organisations.
- 24 (2) Where a person makes an application under subsection (1), the  
25 Court may:  
26 (a) grant the person leave to hold office in organisations; or  
27 (b) refuse the person leave to hold office in organisations and  
28 specify, for the purposes of subsection 215(1), a period of  
29 less than 5 years; or  
30 (c) refuse a person leave to hold office in organisations.
- 31 (3) A person who:  
32 (a) holds an office in an organisation; and  
33 (b) is convicted of a prescribed offence; and
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- 1 (c) on an application made under subsection (1) in relation to the  
2 conviction for the prescribed offence, is, under  
3 paragraph (2)(b) or (c), refused leave to hold office in  
4 organisations;  
5 ceases to hold the office in the organisation.
- 6 (4) A person is not entitled to make an application under this section in  
7 relation to the person's conviction for a prescribed offence if the  
8 person has previously made an application under this section or  
9 under section 217 in relation to the conviction.

10 **217 Application for leave to hold office in organisations by office**  
11 **holder**

- 12 (1) Where a person who holds an office in an organisation is convicted  
13 of a prescribed offence, the person may, subject to subsection (4),  
14 within 28 days after the conviction, apply to the Federal Court for  
15 leave to hold office in organisations.
- 16 (2) Where a person makes an application under subsection (1) for  
17 leave to hold office in organisations, the Court may:  
18 (a) grant the person leave to hold office in organisations; or  
19 (b) refuse the person leave to hold office in organisations and  
20 specify, for the purposes of subsection 215(1), a period of  
21 less than 5 years; or  
22 (c) refuse the person leave to hold office in organisations.
- 23 (3) A person who, on an application made under subsection (1), is,  
24 under paragraph (2)(b) or (c), refused leave to hold office in  
25 organisations ceases to hold the office concerned.
- 26 (4) A person is not entitled to make an application under this section in  
27 relation to the person's conviction for a prescribed offence if the  
28 person has previously made an application under this section or  
29 section 216 in relation to the conviction.

30 **218 Federal Court to have regard to certain matters**

- 31 For the purposes of exercising the power under section 216 or 217  
32 to grant or refuse leave, to a person who has been convicted of a
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**Chapter 7** Democratic control

**Part 4** Disqualification from office

**Division 2** Persons who have been convicted of a prescribed offence

**Section 219**

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- 1 prescribed offence, to hold office in organisations, the Federal  
2 Court must have regard to:
- 3 (a) the nature of the prescribed offence; and
  - 4 (b) the circumstances of, and the nature of the person's  
5 involvement in, the commission of the prescribed offence;  
6 and
  - 7 (c) the general character of the person; and
  - 8 (d) the fitness of the person to be involved in the management of  
9 organisations, having regard to the conviction for the  
10 prescribed offence; and
  - 11 (e) any other matter that, in the Court's opinion, is relevant.

12 **219 Action by Federal Court**

- 13 (1) The Federal Court may, in spite of anything in the rules of any  
14 organisation concerned, make such order to give effect to a  
15 declaration made under subsection 215(5) as it considers  
16 appropriate.
- 17 (2) Where an application is made to the Court under subsection  
18 215(5):
- 19 (a) the person whose eligibility, or whose holding of office, is in  
20 question must be given an opportunity of being heard by the  
21 Court; and
  - 22 (b) if the application is made otherwise than by the organisation  
23 concerned—the organisation must be given an opportunity of  
24 being heard by the Court.
- 25 (3) Where an application is made to the Court under section 216 or  
26 217, the organisation concerned must be given an opportunity of  
27 being heard by the Court.

28 **220 Part not to affect spent convictions scheme**

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

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## **Chapter 8—Records and accounts**

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### **Part 1—Simplified outline of Chapter**

5

#### **229 Simplified outline**

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This Chapter deals with records that must be kept by organisations, and imposes obligations in relation to organisations' financial affairs.

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Part 2 requires an organisation to keep membership records and lists of office-holders. Copies of these must be lodged with the Industrial Registrar. Details of some types of loans, grants and donations made by the organisation must also be lodged with the Industrial Registrar.

14

15

Part 3 sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

16

Part 4 deals with access to organisations' books.

Section 230

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**Part 2—Records to be kept and lodged by organisations**

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**230 Records to be kept and lodged by organisations**

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(1) An organisation must keep the following records:

7

(a) a register of its members, showing the name and postal address of each member and showing whether the member became a member under an agreement entered into under rules made under subsection 151(1);

8

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(b) a list of the offices in the organisation and each branch of the organisation;

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13

(c) a list of the names, postal addresses and occupations of the persons holding the offices;

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(d) such other records as are prescribed.

16

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

17

(2) An organisation must:

18

(a) enter in the register of its members the name and postal address of each person who becomes a member, within 28 days after the person becomes a member;

19

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(b) remove from that register the name and postal address of each person who ceases to be a member under the rules of the organisation, within 28 days after the person ceases to be a member; and

22

23

24

(c) enter in that register any change in the particulars shown on the register, within 28 days after the matters necessitating the change become known to the organisation.

25

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28

Note 1: This subsection is a civil penalty provision (see section 305).

29

Note 2: An organisation may also be required to make alterations to the register of its members under other provisions of the Schedule (see, for example, sections 170 and 172).

30

31



1     **231 Certain records to be held for 7 years**

- 2             (1) An organisation must keep a copy of its register of members as it  
3               stood on 31 December in each year. The organisation must keep  
4               the copy for the period of 7 years after the 31 December  
5               concerned.
- 6             (2) The regulations may provide that an organisation must also keep a  
7               copy of the register, or a part of the register, as it stood on a  
8               prescribed day. The organisation must keep the copy for the period  
9               of 7 years after the prescribed day.

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

11     **232 Offence to interfere with register or copy**

- 12            (1) A person commits an offence if:  
13               (a) the person does an act; and  
14               (b) the act results in the destruction or defacement of, or other  
15               interference with, a register of members or a copy of such a  
16               register; and  
17               (c) either:  
18                   (i) the register of members is required to be kept by an  
19                   organisation under paragraph 230(1)(a); or  
20                   (ii) the copy is required to be kept by an organisation under  
21                   section 231.

22            Maximum penalty: 20 penalty units.

- 23            (2) Strict liability applies to paragraph (1)(c).

24            Note:       For *strict liability*, see section 6.1 of the *Criminal Code*.

25     **233 Obligation to lodge information in Industrial Registry**

- 26            (1) An organisation must lodge in the Industrial Registry once in each  
27               year, at such time as is prescribed:  
28               (a) a declaration signed by the secretary or other prescribed  
29               officer of the organisation certifying that the register of its  
30               members has, during the immediately preceding calendar



1 (b) will, in the case of a register of members, be available for  
2 inspection in accordance with section 235.

3 (5) While a permission under subsection (4) is in force, a record  
4 referred to in the permission may, to the extent specified in the  
5 permission, be kept at the premises specified in the permission.

### 6 **235 Registrar may authorise access to certain records**

7 (1) A person (the *authorised person*) authorised by a Registrar may  
8 inspect, and make copies of, or take extracts from, the records kept  
9 by an organisation under sections 230 and 231 (the *records*) at  
10 such times as the Registrar specifies.

11 (2) An organisation must cause its records to be available, at all  
12 relevant times, for the purposes of subsection (1) to the authorised  
13 person.

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

15 (3) Without limiting the ways in which an organisation can comply  
16 with subsection (2), it complies if it makes the records available to  
17 the authorised person in a form agreed to by the authorised person.

18 Note: For example, the authorised person could agree to the organisation  
19 providing him or her with a hard copy or with a floppy disk, or to  
20 transmitting a copy of the register (or the relevant part) to a specified  
21 e-mail address.

### 22 **236 Registrar may direct organisation to deliver copy of records**

23 *Register kept under section 230*

24 (1) Where:

25 (a) a member of an organisation requests a Registrar to give a  
26 direction under this subsection; and

27 (b) the Registrar is satisfied:

28 (i) that the member has been refused access to the register  
29 required to be kept under section 230, or part of it, at the  
30 office or premises where the register or part is kept; or

31 (ii) that there are other grounds for giving a direction under  
32 this subsection;

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**Section 236**

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1 the Registrar may direct the organisation to deliver to the Registrar  
2 a copy of the relevant records certified by declaration by the  
3 secretary or other prescribed officer of the organisation to be, as at  
4 a day specified in the certificate that is not more than 28 days  
5 before the first-mentioned day, a correct statement of the  
6 information contained in the register, for the member to inspect at a  
7 specified registry, and the organisation must comply with the  
8 direction.

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

10 *Copy kept under section 231*

11 (2) Where:

- 12 (a) a member of an organisation requests a Registrar to give a  
13 direction under this subsection; and  
14 (b) the Registrar is satisfied that:  
15 (i) the member has been refused access to the copy of the  
16 register required to be kept under section 231; and  
17 (ii) the member has reasonable grounds for seeking access  
18 to the copy;

19 the Registrar may direct the organisation to deliver to the Registrar  
20 a copy of the copy, and the organisation must comply with the  
21 direction.

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

23 (3) A direction of the Registrar given under this section must be in  
24 writing and must specify the period within which the relevant copy  
25 must be delivered to the Registrar. The period must not be less than  
26 14 days after the direction is given.

27 (4) A copy of a record delivered under subsection (1) or (2) may be in  
28 the form of a hard copy or, if the Registrar agrees, in electronic  
29 form.

30 (5) Where a Registrar receives a copy of a document from an  
31 organisation under this section, the Registrar may, if the Registrar  
32 considers it appropriate in the circumstances, provide a copy of  
33 that document to a member of the organisation.

1     **237 Organisations to notify particulars of loans, grants and**  
2     **donations**

- 3             (1) An organisation must, within 90 days after the end of each  
4                 financial year (or such longer period as the Registrar allows), lodge  
5                 in the Industrial Registry a statement showing the relevant  
6                 particulars in relation to each loan, grant or donation of an amount  
7                 exceeding \$1,000 made by the organisation during the financial  
8                 year.

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

- 10            (2) A statement lodged in the Industrial Registry under subsection (1)  
11                 must be signed by an officer of the organisation.

- 12            (3) An organisation must not, in a statement under subsection (1),  
13                 make a statement if the person knows, or is reckless as to whether,  
14                 the statement is false or misleading.

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

- 16            (4) A statement lodged in the Industrial Registry under subsection (1)  
17                 may be inspected at any registry, during office hours, by a member  
18                 of the organisation concerned.

- 19            (5) The relevant particulars, in relation to a loan made by an  
20                 organisation, are:

- 21                 (a) the amount of the loan; and  
22                 (b) the purpose for which the loan was required; and  
23                 (c) the security given in relation to the loan; and  
24                 (d) except where the loan was made to relieve a member of the  
25                     organisation, or a dependant of a member of the organisation,  
26                     from severe financial hardship—the name and address of the  
27                     person to whom the loan was made and the arrangements  
28                     made for the repayment of the loan.

- 29            (6) The relevant particulars, in relation to a grant or donation made by  
30                 an organisation, are:

- 31                 (a) the amount of the grant or donation; and  
32                 (b) the purpose for which the grant or donation was made; and

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- 1 (c) except where the grant or donation was made to relieve a  
2 member of the organisation, or a dependant of a member of  
3 the organisation, from severe financial hardship—the name  
4 and address of the person to whom the grant or donation was  
5 made.
- 6 (7) Where an organisation is divided into branches:
- 7 (a) this section applies in relation to the organisation as if loans,  
8 grants or donations made by a branch of the organisation  
9 were not made by the organisation; and
- 10 (b) this section applies in relation to each of the branches as if  
11 the branch were itself an organisation.
- 12 (8) For the purposes of the application of this section in accordance  
13 with subsection (7) in relation to a branch of an organisation, the  
14 members of the organisation constituting the branch are taken to be  
15 members of the branch.

1

2 **Part 3—Accounts and audit**

3 **Division 1—Preliminary**

4 **238 Simplified outline**

5

This Part sets out the requirements that are placed on organisations in relation to financial records, accounting and auditing.

6

7

It provides for reports to be provided on the basis of reporting units. A reporting unit may be the whole of an organisation or one or more branches of an organisation.

8

9

10

Division 2 provides for the reporting units.

11

Division 3 sets out the accounting obligations for reporting units.

12

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Division 4 provides for auditors to be appointed and sets out the powers and duties of the auditors and the duties that others have in relation to auditors.

15

16

Division 5 sets out the reporting requirements that reporting units must comply with.

17

18

Division 6 provides for reduced reporting requirements to apply in particular cases.

19

20

Division 7 provides for members' access to the financial records of reporting units.

21

**239 Part only applies to financial years starting after registration**

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This Part does not apply, in relation to an association that becomes registered as an organisation under this Schedule, in relation to any financial year before the first financial year of the organisation that begins after the date of registration.

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1       **240 Financial years—change in financial year**

2                       Where the rules of an organisation change the period constituting  
3                       the financial year of the organisation, the period between:

4                       (a) the commencement of the first financial year after the  
5                       change; and

6                       (b) the end of the preceding financial year;

7                       is to be taken, for the purposes of this Part, to be a financial year.

8       **241 Exemptions from certain Australian Accounting Standards**

9                       (1) The Industrial Registrar may, by written notice, determine that  
10                      particular Australian Accounting Standards do not apply in relation  
11                      to an organisation or to a class of organisations.

12                      (2) In deciding whether to determine that a particular Australian  
13                      Accounting Standard does not apply in relation to an organisation  
14                      or organisations, the Registrar is to have regard to the cost to the  
15                      organisation or organisations of complying with the standard and  
16                      the information needs of the members of the organisation or  
17                      organisations.



1

2 **Division 2—Reporting units**

3 **242 What is a reporting unit?**

4 (1) The requirements of this Part apply in relation to reporting units. A  
5 reporting unit may be the whole of an organisation or a part of an  
6 organisation.

7 *Organisations not divided into branches*

8 (2) Where an organisation is not divided into branches, the **reporting**  
9 **unit** is the whole of the organisation.

10 *Organisations divided into branches*

11 (3) Where an organisation is divided into branches, each branch will  
12 be a **reporting unit** unless a certificate issued by the Industrial  
13 Registrar stating that the organisation is, for the purpose of  
14 compliance with this Part, divided into reporting units on an  
15 alternative basis (see section 245) is in force.

16 (4) The alternative reporting units are:

- 17 (a) the whole of the organisation; or  
18 (b) a combination of 2 or more branches of the organisation.

19 Each branch of an organisation must be in one, and only one,  
20 reporting unit.

21 (5) For the purposes of this Part, so much of an organisation that is  
22 divided into branches as would not, apart from this subsection, be  
23 included in any branch, is taken to be a branch of the organisation.

24 **243 Designated officers**

25 A **designated officer** is an officer of:

- 26 (a) in the case of a reporting unit that is the whole of an  
27 organisation—the organisation; or  
28 (b) in any other case—a branch, or one of the branches, that  
29 constitutes the reporting unit;

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1                   who, under the rules of the reporting unit, is responsible (whether  
2                   alone or with others) for undertaking the functions necessary to  
3                   enable the reporting unit to comply with this Part.

4                   **244 Members, staff and journals etc. of reporting units**

- 5                   (1) For the purposes of the application of this Part in relation to a  
6                   reporting unit that is the whole of an organisation:
- 7                   (a) the members of the organisation are taken to be members of  
8                   the reporting unit; and
  - 9                   (b) employees of the organisation are taken to be employees of  
10                  the reporting unit; and
  - 11                  (c) the rules of the organisation are taken to be the rules of the  
12                  reporting unit; and
  - 13                  (d) the financial affairs and records of the organisation are taken  
14                  to be the financial affairs and records of the reporting unit;  
15                  and
  - 16                  (e) conduct and activities of the organisation are taken to be  
17                  conduct and activities of the reporting unit; and
  - 18                  (f) a journal published by the organisation is taken to be a  
19                  journal published by the reporting unit.

- 20                  (2) For the purposes of the application of this Part in relation to a  
21                  reporting unit that is not the whole of an organisation:
- 22                  (a) the members of the organisation constituting the branch or  
23                  branches that make up the reporting unit are taken to be  
24                  members of the reporting unit; and
  - 25                  (b) employees of the organisation employed in relation to the  
26                  branch or branches that make up the reporting unit (whether  
27                  or not they are also employed in relation to any other branch)  
28                  are taken to be employees of the reporting unit; and
  - 29                  (c) if the reporting unit consists of one branch—the rules of the  
30                  branch are taken to be the rules of the reporting unit; and
  - 31                  (d) if the reporting unit consists of more than one branch—the  
32                  rules of the branches (including any rules certified under  
33                  section 246, or determined under section 247, for the purpose  
34                  of giving effect to the establishment of the reporting unit) are  
35                  taken to be the rules of the reporting unit; and

- 1 (e) the financial affairs and records of the branch or branches  
2 that make up the reporting unit are taken to be the financial  
3 affairs and records of the reporting unit; and  
4 (f) conduct and activities of the branch or branches that make up  
5 the reporting unit are taken to be conduct and activities of the  
6 reporting unit; and  
7 (g) if the reporting unit consists of one branch—a journal  
8 published by the branch is taken to be a journal published by  
9 the reporting unit; and  
10 (h) a journal published by the organisation is taken to be a  
11 journal published by the reporting unit.

12 **245 Determination of reporting units**

- 13 (1) The Industrial Registrar may issue to an organisation that is  
14 divided into branches a certificate stating that the organisation is,  
15 for the purpose of compliance with this Part, to be divided into  
16 reporting units on an alternative basis (as mentioned in subsection  
17 242(3)).  
18 (2) A certificate may be issued on application by an organisation or at  
19 the initiative of the Registrar.

20 **246 Determination of reporting units—application by organisation**

- 21 (1) An application by an organisation for a certificate under  
22 section 245 must:  
23 (a) be in accordance with the regulations; and  
24 (b) include an application for the Industrial Registrar to certify  
25 such alterations to the rules of the organisation as are  
26 required to give effect to the establishment of the proposed  
27 reporting units.

28 Note: Examples of the alterations that may be required are:

- 29 (a) alterations to designate officers from the branches to be the  
30 committee of management for the reporting unit for the purpose  
31 of complying with this Part; and  
32 (b) alterations to designate officers from the branches to undertake  
33 such duties as are necessary for the purpose of enabling the  
34 reporting unit to comply with this Part.

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- 1 (2) Where an organisation applies for a certificate, the Industrial  
2 Registrar must issue the certificate and certify the rule alterations if  
3 the Registrar is satisfied that:
- 4 (a) the level of financial information that would be available to  
5 members under the proposed division into reporting units  
6 would be adequate and would be relevant to them; and  
7 (b) the alterations to the rules:
- 8 (i) comply with, and are not contrary to, this Schedule, the  
9 Workplace Relations Act, awards, certified agreements  
10 or old IR agreements; and  
11 (ii) are not otherwise contrary to law; and  
12 (iii) have been made under the rules of the organisation.

13 **247 Determination of reporting units—Industrial Registrar**  
14 **initiative**

- 15 (1) The Industrial Registrar may only issue a certificate under  
16 section 245 on his or her initiative if the Registrar:
- 17 (a) is satisfied that, to improve compliance with the accounting,  
18 auditing and reporting requirements of this Part, it is most  
19 appropriate for the organisation to be divided into reporting  
20 units on the basis set out in the certificate; and  
21 (b) is satisfied that the level of financial information that would  
22 be available to members under the proposed division into  
23 reporting units would be adequate and would be relevant to  
24 them; and  
25 (c) has complied with the prescribed procedure.
- 26 (2) Where, in the Industrial Registrar's opinion, the rules of an  
27 organisation need to be altered to give effect to the establishment  
28 of the proposed reporting units under subsection (1), the Industrial  
29 Registrar may, by instrument, after giving the organisation an  
30 opportunity, as prescribed, to be heard on the matter, determine  
31 such alterations of the rules as are, in the Industrial Registrar's  
32 opinion, necessary to give effect to the establishment of the  
33 proposed reporting units.

1     **248 Determination of reporting units—years certificate applies to**

2             A certificate issued under section 245 is in force, and has effect  
3             according to its terms, in relation to:

- 4             (a) the first financial year starting after the certificate is issued;  
5             and  
6             (b) each subsequent financial year unless, before the start of the  
7             financial year, the certificate is revoked under section 249.

8     **249 Determination of reporting units—revocation of certificates**

9             (1) The Industrial Registrar may at any time, by written notice, revoke  
10            a certificate issued to an organisation under section 245.

11            (2) If a certificate is revoked, each branch will be a reporting unit.

12            (3) A certificate may be revoked on application by an organisation or  
13            at the initiative of the Registrar.

14            (4) An application by an organisation for the revocation of a certificate  
15            must:

- 16            (a) be in accordance with the regulations; and  
17            (b) include an application for the Industrial Registrar to certify  
18            such alterations to the rules of the organisation as are  
19            required to give effect to each branch being a reporting unit.

20            (5) Where an organisation applies for a revocation, the Industrial  
21            Registrar must revoke the certificate and certify the rule alterations  
22            if the Registrar is satisfied that:

- 23            (a) the level of financial information that would be available to  
24            members with each branch being a reporting unit would be  
25            adequate and would be relevant to them; and  
26            (b) the alterations to the rules:  
27            (i) comply with, and are not contrary to, this Schedule, the  
28            Workplace Relations Act, awards, certified agreements  
29            or old IR agreements; and  
30            (ii) are not otherwise contrary to law; and  
31            (iii) have been made under the rules of the organisation.

**Section 250**

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- 1                   (6) The Industrial Registrar may only revoke a certificate on his or her  
2                   initiative if the Registrar:  
3                   (a) is satisfied that, to improve compliance with the accounting,  
4                   auditing and reporting requirements of this Part, it is most  
5                   appropriate for each branch to be a reporting unit; and  
6                   (b) has complied with the prescribed procedure.
- 7                   (7) Where:  
8                   (a) the Industrial Registrar intends to revoke a certificate on his  
9                   or her own initiative; and  
10                  (b) in the Registrar’s opinion, the rules of an organisation need  
11                  to be altered to give effect to each branch being a reporting  
12                  unit;  
13                  the Registrar may, by instrument, after giving the organisation an  
14                  opportunity, as prescribed, to be heard on the matter, determine  
15                  such alterations of the rules as are, in the Registrar’s opinion,  
16                  necessary to give effect to each branch being a reporting unit.

17                  **250 Determination of reporting units—rule alterations**

- 18                   (1) An alteration to rules under section 246, 247 or 249 takes effect on  
19                   the day that it is certified or determined.
- 20                   (2) To avoid doubt, changes in rules under those sections may include  
21                   changes to the duties of an office (even if during a particular term  
22                   of office).

23                  **251 Determination of reporting units—later certificate revokes  
24                  earlier certificate**

25                   A certificate issued to an organisation under section 245 is taken to  
26                   be revoked if a later certificate is issued to the organisation under  
27                   section 245.

1

2 **Division 3—Accounting obligations**

3 **Subdivision A—General obligations**

4 **252 Reporting unit to keep proper financial records**

5 (1) A reporting unit must:

6 (a) keep such financial records as correctly record and explain  
7 the transactions and financial position of the reporting unit,  
8 including such records as are prescribed; and

9 (b) keep its financial records in such a manner as will enable a  
10 general purpose financial report to be prepared from them  
11 under section 253; and

12 (c) keep its financial records in such a manner as will enable the  
13 accounts of the reporting unit to be conveniently and  
14 properly audited under this Part.

15 (2) Where an organisation consists of 2 or more reporting units, the  
16 financial records for each of the reporting units must, as far as  
17 practicable, be kept in a consistent manner.

18 Note 1: This would involve, for example, the adoption of consistent  
19 accounting policies and a common chart of accounts for all reporting  
20 units in the organisation.

21 Note 2: This requirement is subject to subsection (4) which allows reporting  
22 units to keep some records on a cash basis.

23 (3) Financial records of an organisation may, so far as they relate to  
24 the income and expenditure of the organisation, be kept on a cash  
25 basis or accrual basis, at the option of the organisation.

26 (4) If an organisation keeps the financial records referred to in  
27 subsection (1) on an accrual basis, it may keep the financial records  
28 for its membership subscriptions separately on a cash basis.

29 (5) An organisation must retain the financial records kept under  
30 subsection (1) for a period of 7 years after the completion of the  
31 transactions to which they relate.

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1       **253 Reporting unit to prepare general purpose financial report**

2               (1) As soon as practicable after the end of each financial year, a  
3               reporting unit must cause a general purpose financial report to be  
4               prepared, in accordance with the Australian Accounting Standards,  
5               from the financial records kept under subsection 252(1) in relation  
6               to the financial year.

7               (2) The general purpose financial report must consist of:

8                     (a) financial statements containing:

9                             (i) a profit and loss statement, or other operating statement;  
10                            and

11                           (ii) a balance sheet; and

12                           (iii) a statement of cash flows; and

13                           (iv) any other statements required by the Australian  
14                           Accounting Standards; and

15                     (b) notes to the financial statements containing:

16                             (i) notes required by the Australian Accounting Standards;  
17                            and

18                           (ii) information required by the reporting guidelines (see  
19                           section 255); and

20                     (c) any other reports or statements required by the reporting  
21                     guidelines (see section 255).

22               (3) The financial statements and notes for a financial year must give a  
23               true and fair view of the financial position and performance of the  
24               reporting unit. This subsection does not affect the obligation for a  
25               financial report to comply with the Australian Accounting  
26               Standards.

27               Note 1:    This section is a civil penalty provision (see section 305).

28               Note 2:    The Australian Accounting Standards may be modified for the  
29               purposes of this Schedule by the regulations.

30               Note 3:    If the financial statements and notes prepared in compliance with the  
31               Australian Accounting Standards would not give a true and fair view,  
32               additional information must be included in the notes to the financial  
33               statements under paragraph (2)(b).



1 **254 Reporting unit to prepare operating report**

- 2 (1) As soon as practicable after the end of each financial year, the  
3 committee of management of a reporting unit must cause an  
4 operating report to be prepared in relation to the financial year.
- 5 (2) The operating report must:
- 6 (a) contain a review of the reporting unit's principal activities  
7 during the year, the results of those activities and any  
8 significant changes in the nature of those activities during the  
9 year; and
- 10 (b) give details of any significant changes in the reporting unit's  
11 financial affairs during the year; and
- 12 (c) give details of the right of members to resign from the  
13 reporting unit under section 174; and
- 14 (d) give details (including details of the position held) of any  
15 officer or member of the reporting unit who is:
- 16 (i) a trustee of a superannuation entity or an exempt public  
17 sector superannuation scheme; or
- 18 (ii) a director of a company that is a trustee of a  
19 superannuation entity or an exempt public sector  
20 superannuation scheme; and
- 21 where a criterion for the officer or member being the trustee  
22 or director is that the officer or member is an officer or  
23 member of a registered organisation; and
- 24 (e) contain any other information that the reporting unit  
25 considers is relevant; and
- 26 (f) contain any prescribed information.
- 27 (3) To avoid doubt, the operating report may be prepared by the  
28 committee of management or a designated officer.

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

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1 **Subdivision B—Reporting guidelines**

2 **255 Reporting guidelines**

- 3 (1) The Industrial Registrar must, by written determination published  
4 in the *Gazette*, issue reporting guidelines for the purposes of  
5 sections 253 and 270.
- 6 (2) The reporting guidelines for the purposes of section 253 must  
7 provide:
- 8 (a) the manner in which reporting units must disclose the total  
9 amount paid by the reporting unit during a financial year to  
10 employers as consideration for the employers making payroll  
11 deductions of membership subscriptions; and
- 12 (b) the manner in which reporting units must disclose the total  
13 amount of legal costs and other expenses related to litigation  
14 or other legal matters paid by the reporting unit during a  
15 financial year; and
- 16 (c) details of any information required for the purposes of  
17 subparagraph 253(2)(b)(ii) (information in notes to general  
18 purpose financial reports); and
- 19 (d) the form and content of any reports or statements that are  
20 required for the purposes of paragraph 253(2)(c) (other  
21 reports or statements forming part of the general purpose  
22 financial reports).
- 23 (3) The reporting guidelines for the purposes of section 270 must  
24 provide:
- 25 (a) the manner in which reporting units must disclose the total  
26 amount paid by the reporting unit during a financial year to  
27 employers as consideration for the employers making payroll  
28 deductions of membership subscriptions; and
- 29 (b) details of the form and content of the general purpose  
30 financial report to be prepared under subsection 270(4).
- 31 (4) Reporting guidelines may also contain such other requirements in  
32 relation to the disclosure of information by reporting units as the  
33 Industrial Registrar considers appropriate.

- 1 (5) Section 81 of the Workplace Relations Act does not apply in  
2 relation to reporting guidelines or the issuing of reporting  
3 guidelines.

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1

2 **Division 4—Auditors**

3 **256 Auditors of reporting units**

4 (1) A reporting unit must ensure that there is an auditor of the  
5 reporting unit at any time when an auditor is required for the  
6 purposes of the operation of this Part in relation to the reporting  
7 unit.

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

9 (2) The position of auditor of a reporting unit is to be held by:  
10 (a) a person who is an approved auditor; or  
11 (b) a firm, at least one of whose members is an approved auditor.

12 (3) A person must not accept appointment as auditor of a reporting  
13 unit unless:  
14 (a) the person is an approved auditor; and  
15 (b) the person is not an excluded auditor in relation to the  
16 reporting unit.

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

18 (4) A member of a firm must not accept appointment of the firm as  
19 auditor of a reporting unit unless:  
20 (a) at least one member of the firm is an approved auditor; and  
21 (b) no member of the firm is an excluded auditor in relation to  
22 the reporting unit.

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

24 (5) A person who holds the position of auditor of a reporting unit must  
25 resign the appointment if the person:  
26 (a) ceases to be an approved auditor; or  
27 (b) becomes an excluded auditor in relation to the reporting unit.

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

29 (6) A member of a firm that holds the position of auditor of a reporting  
30 unit must take whatever steps are open to the member to ensure  
31 that the firm resigns the appointment if the member:

- 1 (a) ceases to be an approved auditor and is or becomes aware  
2 that no other member of the firm is an approved auditor; or  
3 (b) becomes an excluded auditor in relation to the reporting unit;  
4 or  
5 (c) becomes aware that another member of the firm is an  
6 excluded auditor in relation to the reporting unit.

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

- 8 (7) The auditor of a reporting unit must use his or her best endeavours  
9 to comply with each requirement of this Schedule that is applicable  
10 to the auditor in that capacity.

### 11 **257 Powers and duties of auditors**

- 12 (1) An auditor of a reporting unit must audit the financial report of the  
13 reporting unit for each financial year and must make a report in  
14 relation to the year to the reporting unit.
- 15 (2) An auditor, or a person authorised by an auditor for the purposes of  
16 this subsection, is:
- 17 (a) entitled at all reasonable times to full and free access to all  
18 records and other documents of the reporting unit relating  
19 directly or indirectly to the receipt or payment of money, or  
20 to the acquisition, receipt, custody or disposal of assets, by  
21 the reporting unit; and
- 22 (b) entitled to seek from any designated officer, or employee of  
23 the reporting unit, such information and explanations as the  
24 auditor or authorised person wants for the purposes of the  
25 audit.
- 26 (3) If an auditor requests an officer, employee or member of an  
27 organisation to produce records or other documents under  
28 paragraph (2)(a), the request must:
- 29 (a) be in writing; and  
30 (b) specify the nature of the records or other documents to be  
31 produced; and  
32 (c) specify how and where the records or other documents are to  
33 be produced; and

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- 1 (d) specify a period (of not less than 14 days after the notice is  
2 given) within which the records or other documents are to be  
3 produced.
- 4 (4) If an auditor authorises a person for the purposes of subsection (2),  
5 the auditor must serve on the reporting unit a notification that sets  
6 out the name and address of the person.
- 7 (5) An auditor must, in his or her report, state whether in the auditor's  
8 opinion the general purpose financial report is presented fairly in  
9 accordance with any of the following that apply in relation to the  
10 reporting unit:  
11 (a) the Australian Accounting Standards;  
12 (b) any other requirements imposed by this Part.  
13 If not of that opinion, the auditor's report must say why.
- 14 (6) If the auditor is of the opinion that the general purpose financial  
15 report does not so comply, the auditor's report must, to the extent it  
16 is practicable to do so, quantify the effect that non-compliance has  
17 on the general purpose financial report. If it is not practicable to  
18 quantify the effect fully, the report must say why.
- 19 (7) The auditor's report must describe:  
20 (a) any defect or irregularity in the general purpose financial  
21 report; and  
22 (b) any deficiency, failure or shortcoming in respect of the  
23 matters referred to in subsection (2) or section 252.
- 24 (8) The form and content of the auditor's report must be in accordance  
25 with the Australian Auditing Standards.
- 26 (9) The auditor's report must be dated as at the date that the auditor  
27 signs the report and must be given to the reporting unit within a  
28 reasonable time of the auditor having received the general purpose  
29 financial report.
- 30 (10) An auditor must not, in a report under this section, make a  
31 statement if the auditor knows, or is reckless as to whether, the  
32 statement is false or misleading.
- 33 Note: This subsection is a civil penalty provision (see section 305).
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- 1 (11) If:  
2 (a) the auditor suspects on reasonable grounds that there has  
3 been a breach of this Schedule or reporting guidelines; and  
4 (b) the auditor is of the opinion that the matter cannot be  
5 adequately dealt with by comment in a report or by reporting  
6 the matter to the committee of management of the reporting  
7 unit;  
8 the auditor must immediately report the matter, in writing, to the  
9 Industrial Registrar.

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

## 11 **258 Obstruction etc. of auditors**

- 12 (1) An officer, employee or member of an organisation or branch  
13 commits an offence if he or she:  
14 (a) hinders or obstructs the auditor of a reporting unit from  
15 taking action under paragraph 257(2)(a); or  
16 (b) does not comply with a request under paragraph 257(2)(a) by  
17 an auditor of a reporting unit to produce a record or other  
18 document in the custody or under the control of the officer,  
19 employee or member.

20 Maximum penalty: 30 penalty units.

- 21 (2) Strict liability applies to paragraph (1)(b).

22 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- 23 (3) It is a defence to an offence against paragraph (1)(b) if the officer,  
24 employee or member had a reasonable excuse for not complying.

25 Note: A defendant bears an evidential burden in relation to the matters  
26 mentioned in subsection (3).

- 27 (4) However, a person is not excused from producing a record or other  
28 document under this section on the ground that the production  
29 might tend to incriminate the person or expose the person to a  
30 penalty.

- 31 (5) However:

32 (a) producing the record or other document; or

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1 (b) any information, document or thing obtained as a direct or  
2 indirect consequence of giving the information or producing  
3 the record or other document;  
4 is not admissible in evidence against the person in criminal  
5 proceedings or proceedings that may expose the person to a  
6 penalty.

7 (6) It is a defence to an offence against subsection (1) if the officer,  
8 employee or member did not know, and could not reasonably have  
9 known, that the auditor, or the person authorised by the auditor, to  
10 whom the charge relates was a person in relation to whom that  
11 subsection applied.

12 Note: A defendant bears an evidential burden in relation to the matters  
13 mentioned in subsection (6).

14 (7) In a prosecution for an offence against subsection (1), it is not  
15 necessary to prove that the defendant knew that the auditor was an  
16 auditor.

17 (8) In this section:

18 *auditor* includes a person authorised by the auditor for the  
19 purposes of subsection 257(2).

20 **259 Reporting unit to forward notices etc. to auditor**

21 A reporting unit must forward to the auditor of the reporting unit  
22 any notice of, and any other communication relating to, a meeting  
23 of the reporting unit, or the committee of management of the  
24 reporting unit, at which the report of the auditor, or any general  
25 purpose financial report to which the report relates, are to be  
26 presented, being a notice or other communication that a member of  
27 the reporting unit, or the committee of management of the  
28 reporting unit, as the case may be, would be entitled to receive.

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

30 **260 Auditor entitled to attend meetings at which report presented**

31 (1) An auditor, or a person authorised by an auditor for the purposes of  
32 this section, is entitled to attend, and be heard at, any part of a

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- 1 meeting of a reporting unit, or the committee of management of a  
2 reporting unit, at which:
- 3 (a) the report of the auditor, or any general purpose financial  
4 report to which the report relates, is to be presented or  
5 considered; or
- 6 (b) there is to be conducted any business of the meeting that  
7 relates to:
- 8 (i) the auditor in that capacity; or  
9 (ii) a person authorised by the auditor, in the capacity of a  
10 person so authorised.
- 11 (2) Where an auditor authorises a person for the purposes of this  
12 section, the auditor must serve on the reporting unit a notification,  
13 which sets out the name and address of the person.
- 14 (3) An officer, employee or member of an organisation or branch  
15 commits an offence if he or she hinders or obstructs the auditor of  
16 a reporting unit from attending a part of the meeting that the  
17 auditor is entitled to attend.
- 18 Maximum penalty: 30 penalty units.
- 19 (4) A person commits an offence if:
- 20 (a) an auditor of a reporting unit attends a part of a meeting that  
21 the auditor is entitled to attend; and
- 22 (b) the person chairs the meeting; and
- 23 (c) in the course of the part of the meeting, the auditor indicates  
24 to the person chairing the meeting that the auditor wishes to  
25 be heard; and
- 26 (d) the person fails, as soon as practicable after having received  
27 the indication, to afford to the auditor an opportunity to be  
28 heard.
- 29 Maximum penalty: 20 penalty units.
- 30 (5) It is a defence to an offence against a subsection of this section if  
31 the person did not know, and could not reasonably have known,  
32 that the auditor, or the person authorised by the auditor, to whom

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1 the charge relates was a person in relation to whom the subsection  
2 applied.

3 Note: A defendant bears an evidential burden in relation to the matters  
4 mentioned in subsection (5).

5 (6) In a prosecution for an offence against this section, it is not  
6 necessary to prove that the defendant knew that the auditor was an  
7 auditor.

8 (7) In subsections (3) and (4):

9 *auditor* includes a person authorised by the auditor for the  
10 purposes of this section.

11 **261 Auditors and other persons to enjoy qualified privilege in**  
12 **certain circumstances**

13 (1) An auditor of a reporting unit is not, in the absence of malice,  
14 liable to an action for defamation at the suit of a person in relation  
15 to a statement that the auditor makes in the course of duties as  
16 auditor, whether the statement is made orally or in writing.

17 (2) A person is not, in the absence of malice, liable to an action for  
18 defamation at the suit of a person in relation to the publishing of a  
19 document prepared by an auditor of a reporting unit in the course  
20 of duties as auditor and required by or under this Schedule to be  
21 lodged with the Industrial Registry.

22 (3) This section does not limit or affect any right, privilege or  
23 immunity that a defendant has in an action for defamation.

24 **262 Fees and expenses of auditors**

25 A reporting unit must pay the reasonable fees and expenses of an  
26 auditor of the reporting unit.

27 **263 Removal of auditor**

28 (1) An auditor of a reporting unit may only be removed during the  
29 term of appointment of the auditor:

- 1 (a) where the auditor was appointed by the committee of  
2 management of the reporting unit—by resolution passed at a  
3 meeting of the committee by an absolute majority of the  
4 members of the committee; or  
5 (b) where the auditor was appointed by a general meeting of the  
6 members of the reporting unit—by resolution passed at a  
7 general meeting by a majority of the members of the  
8 reporting unit voting at the meeting.
- 9 (2) Written notice of the intention to remove the auditor must be given  
10 to each member of the reporting unit. The notice must be provided  
11 in accordance with any time limits provided by the rules of the  
12 reporting unit, or within a reasonable time before the resolution is  
13 moved if no such time limits are provided.
- 14 Note: This subsection is a civil penalty provision (see section 305).
- 15 (3) The auditor must be given reasonable notice of the resolution to  
16 remove the auditor and must be given the opportunity to:  
17 (a) in the case of removal under paragraph (1)(a)—make oral  
18 representations to the committee of management; and  
19 (b) in any case—make written representations.
- 20 Note: This subsection is a civil penalty provision (see section 305).
- 21 (4) If it is proposed to remove the auditor under paragraph (1)(b) and  
22 the auditor makes written representations, the auditor may require  
23 the reporting unit to provide a copy of the written representations  
24 to each member of the reporting unit.
- 25 (5) The reporting unit must comply with a requirement under  
26 subsection (4) unless the written representations exceed any limits  
27 as to length that are prescribed.
- 28 Note: This subsection is a civil penalty provision (see section 305).

## 264 Resignation of auditor

- 29  
30 (1) An auditor of a reporting unit may resign by giving written notice  
31 to the reporting unit.

**Chapter 8** Records and accounts

**Part 3** Accounts and audit

**Division 4** Auditors

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1                   (2) The resignation takes effect on the day specified in the notice or, if  
2                   no day is specified, the day that the notice is given to the reporting  
3                   unit.

4                   (3) If the auditor requests the reporting unit to allow the auditor to  
5                   explain his or her reasons for resigning, the reporting unit must  
6                   either:

7                   (a) distribute to the members of the reporting unit written  
8                   reasons for resignation prepared by the auditor; or

9                   (b) give the auditor the opportunity to explain his or her reasons  
10                  to a general meeting of the reporting unit.

11                  The committee of management of the reporting unit may choose  
12                  which method is used.

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

1

2 **Division 5—Reporting requirements**

3 **265 Copies of full report or concise report to be provided to**  
4 **members**

5 (1) A reporting unit must provide free of charge to its members either:

6 (a) a full report consisting of:

7 (i) a copy of the report of the auditor in relation to the  
8 inspection and audit of the financial records of the  
9 reporting unit in relation to a financial year; and

10 (ii) a copy of the general purpose financial report to which  
11 the report relates; and

12 (iii) a copy of the operating report to which the report  
13 relates; or

14 (b) a concise report for the financial year that complies with  
15 subsection (3).

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

17 (2) A concise report may only be provided if, under the rules of the  
18 reporting unit, the committee of management of the reporting unit  
19 resolves that a concise report is to be provided.

20 (3) A concise report for a financial year consists of:

21 (a) a concise financial report for the year drawn up in accordance  
22 with the regulations; and

23 (b) the operating report for the year; and

24 (c) a statement by the auditor:

25 (i) that the concise financial report has been audited; and

26 (ii) whether, in the auditor's opinion, the concise financial  
27 report complies with the relevant Australian Accounting  
28 Standards; and

29 (d) a copy of anything included under subsection 257(5), (6) or  
30 (7) in the auditor's report on the full report; and

31 (e) a statement that the report is a concise report and that a copy  
32 of the full report and auditor's report will be sent to the  
33 member free of charge if the member asks for them.

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- 1 (4) If a member requests a copy of the full report and auditor's report,  
2 as mentioned in paragraph (3)(e), the reporting unit must send  
3 those reports to the person within 28 days of the request being  
4 made.

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

- 6 (5) The copies referred to in subsection (1) must be provided within:  
7 (a) if a general meeting of members of the reporting unit to  
8 consider the reports is held within 6 months after the end of  
9 the financial year—the period starting at the end of the  
10 financial year and ending 21 days before that meeting; or  
11 (b) in any other case—the period of 5 months starting at the end  
12 of the financial year.

13 A Registrar may, upon application by the reporting unit, extend the  
14 period during which the meeting referred to in paragraph (a) may  
15 be held, or the period set out in paragraph (b), by no more than one  
16 month.

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

- 18 (6) Where a reporting unit publishes a journal of the reporting unit that  
19 is available to the members of the reporting unit free of charge, the  
20 reporting unit may comply with subsection (1):  
21 (a) by publishing in the journal the full report; or  
22 (b) by preparing a concise report as described in subsection (3)  
23 and publishing the concise report in the journal.

- 24 (7) Where a reporting unit consists of 2 or more branches of an  
25 organisation and one of those branches publishes a journal of the  
26 branch that is available to the members of the branch free of  
27 charge, the reporting unit may comply with subsection (1) in  
28 relation to those members:  
29 (a) by publishing in the journal the full report; or  
30 (b) by preparing a concise report as described in subsection (3)  
31 and publishing the concise report in the journal.

1 **266 Full report to be presented to meetings**

- 2 (1) Subject to subsection (2), the reporting unit must cause the full  
3 report to be presented to a general meeting of the members of the  
4 reporting unit within the period of 6 months starting at the end of  
5 the financial year (or such longer period as is allowed by a  
6 Registrar under subsection 265(5)).

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

- 8 (2) If the rules of the reporting unit permit a general meeting to be a  
9 series of meetings at different locations, the presenting of the full  
10 report to such a series of meetings is taken to be the presenting of  
11 the report to a general meeting. The general meeting is taken to  
12 have occurred at the time of the last of the meetings in the series.
- 13 (3) If the rules of the reporting unit provide for a specified percentage  
14 (not exceeding 5%) of members to be able to call a general meeting  
15 of the reporting unit for the purpose of considering the auditor's  
16 report, the general purpose financial report and the operating  
17 report, the full report may instead be presented to a meeting of the  
18 committee of management of the reporting unit that is held within  
19 the period mentioned in subsection (1).

20 **267 Comments by committee members not to be false or misleading**

21 Where a member of the committee of management of a reporting  
22 unit:

- 23 (a) provides to members of the reporting unit; or  
24 (b) publishes in a journal; or  
25 (c) presents to a general meeting of the members of the reporting  
26 unit or a meeting of the committee of management of the  
27 reporting unit;

28 comments on a matter dealt with in a report, accounts or statements  
29 of the kind referred to in subsection 265(1), or in a concise report  
30 as described in subsection 265(3), the member must not, in the  
31 comments, make a statement if the person knows, or is reckless as  
32 to whether, the statement is false or misleading.

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

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1       **268 Reports etc. to be lodged in Industrial Registry**

2                   A reporting unit must, within 14 days (or such longer period as a  
3                   Registrar allows) after the general meeting referred to in  
4                   section 266, lodge in the Industrial Registry:

- 5                   (a) a copy of the full report; and  
6                   (b) if a concise report was provided to members—a copy of the  
7                   concise report; and  
8                   (c) a certificate by a prescribed designated officer that the  
9                   documents lodged are copies of the documents provided to  
10                  members and presented to a meeting in accordance with  
11                  section 266.

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



1  
2 **Division 6—Reduced reporting requirements for particular**  
3 **reporting units**

4 **269 Reporting units with substantial common membership with**  
5 **State registered bodies**

- 6 (1) This section applies to a reporting unit if there is an industrial  
7 association (the *associated State body*) that:  
8 (a) is registered or recognised as such an association (however  
9 described) under a prescribed State Act; and  
10 (b) is, or purports to be, composed of substantially the same  
11 members as the reporting unit; and  
12 (c) has, or purports to have, officers who are substantially the  
13 same as designated officers in relation to the reporting unit.
- 14 (2) A reporting unit is taken to have satisfied this Part if this section  
15 applies to the reporting unit and:  
16 (a) a Registrar, on the application of the reporting unit, issues a  
17 certificate stating that the financial affairs of the reporting  
18 unit are encompassed by the financial affairs of the  
19 associated State body; and  
20 (b) the associated State body has, in accordance with prescribed  
21 State legislation, prepared accounts, had those accounts  
22 audited, provided a copy of the audited accounts to its  
23 members and lodged the audited accounts with the relevant  
24 State authority; and  
25 (c) the reporting unit has lodged a copy of the audited accounts  
26 with the Industrial Registry; and  
27 (d) any members of the reporting unit who are not also members  
28 of the associated State body have been provided with copies  
29 of the accounts at substantially the same time as the members  
30 of the reporting unit who are members of the associated State  
31 body; and  
32 (e) a report under section 254 has been prepared in respect of the  
33 activities of the reporting unit and has been provided to

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1 members of the reporting unit with the copies of the  
2 accounts.

3 **270 Organisations with income of less than certain amount**

4 (1) If, on the application of a reporting unit that is the whole of an  
5 organisation made after the end of a financial year, a Registrar is  
6 satisfied that the reporting unit's income for the year did not  
7 exceed:

8 (a) in the case of a financial year that, because of section 240, is  
9 a period other than 12 months—such amount as the Registrar  
10 considers appropriate in the circumstances; or

11 (b) in any other case—\$100,000 or such higher amount as is  
12 prescribed;

13 the Registrar must issue to the reporting unit a certificate to that  
14 effect.

15 (2) Where a certificate is issued under subsection (1) in relation to a  
16 reporting unit in relation to a financial year:

17 (a) the following provisions of this section apply in relation to  
18 the reporting unit in relation to the year; and

19 (b) except as provided in paragraph (c), this Part continues to  
20 apply in relation to the reporting unit in relation to the year;  
21 and

22 (c) sections 253, 265, 266 and 268 do not apply in relation to the  
23 reporting unit in relation to the year.

24 (3) This Part (other than this section) applies to the reporting unit in  
25 relation to the year as if:

26 (a) a reference to a general purpose financial report prepared or  
27 to be prepared under section 253 were a reference to a  
28 general purpose financial report prepared under  
29 subsection (4) of this section; and

30 (b) the reference in subsection 272(5) to a general purpose  
31 financial report prepared under section 253 were a reference  
32 to a general purpose financial report prepared under  
33 subsection (4) of this section; and

1 (c) the reference in sections 332 and 333 to documents lodged in  
2 the Industrial Registry under section 268 were a reference to  
3 documents lodged with the Industrial Registry in accordance  
4 with subsection (7) of this section.

5 (4) Within the prescribed period after the end of the financial year, the  
6 reporting unit must cause to be prepared, in accordance with the  
7 reporting guidelines, from the financial records kept under  
8 subsection 252(1) in relation to the year, the general purpose  
9 financial report required by those reporting guidelines.

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

11 (5) After the making to the reporting unit of the report of the auditor  
12 under section 257 in relation to the auditor's inspection and audit  
13 of the financial records kept by the reporting unit in relation to the  
14 year, and before the end of the financial year immediately  
15 following the year, the reporting unit must cause a copy of the  
16 report, together with copies of the general purpose financial report  
17 to which the auditor's report relates, to be presented to a meeting  
18 of the members of the reporting unit.

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

20 (6) Where a member of a reporting unit requests the reporting unit to  
21 provide to the member a copy of the auditor's report and the  
22 general purpose financial report, the reporting unit must provide a  
23 copy of each of the documents to the member, free of charge,  
24 within 14 days after receiving the request.

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

26 (7) The reporting unit must, within 90 days (or such longer period as a  
27 Registrar allows) after the making to the reporting unit of the  
28 report under section 257, lodge with the Registrar copies of the  
29 auditor's report and the general purpose financial report together  
30 with a certificate by a prescribed designated officer that the  
31 information contained in the general purpose financial report is  
32 correct.

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

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1       **271 Exemption from this Part of certain reporting units**

2               (1) If, on the application of a reporting unit, a Registrar is satisfied,  
3               after considering such circumstances (if any) as are prescribed, that  
4               the reporting unit did not have any financial affairs in a financial  
5               year, the Registrar may issue to the reporting unit a certificate to  
6               that effect in respect of the financial year.

7               (2) The certificate exempts the reporting unit from the requirements of  
8               this Part in respect of the financial year.

9               (3) The application must be made to a Registrar within 90 days, or  
10              such longer period as the Registrar allows, after the end of the  
11              financial year.

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2 **Division 7—Members' access to financial records**

3 **272 Information to be provided to members or Registrar**

4 (1) A member of a reporting unit, or a Registrar, may apply to the  
5 reporting unit for specified prescribed information in relation to the  
6 reporting unit to be made available to the person making the  
7 application.

8 (2) The application must be in writing and must specify the period  
9 within which, and the manner in which, the information is to be  
10 made available. The period must not be less than 14 days after the  
11 application is given to the reporting unit.

12 (3) A reporting unit must comply with an application made under  
13 subsection (1).

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

15 (4) A Registrar may only make an application under subsection (1) at  
16 the request of a member of the reporting unit concerned, and the  
17 Registrar must provide to a member information received because  
18 of an application made at the request of the member.

19 (5) A general purpose financial report prepared under section 253, a  
20 concise report prepared under section 265 and a report prepared  
21 under subsection 270(4) must include a notice drawing attention to  
22 subsections (1), (2) and (3) of this section and setting out those  
23 subsections.

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

25 (6) Without limiting the information that may be prescribed under  
26 subsection (1), the information prescribed must include details  
27 (including the amount) of any fees paid by the reporting unit for  
28 payroll deduction services provided by a person who is an  
29 employer of:

- 30 (a) the member making the application for information; or  
31 (b) the member at whose request the application was made.

Section 273

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1       **273 Order for inspection of financial records**

- 2               (1) On application by a member of a reporting unit, the Commission  
3               may make an order:  
4               (a) authorising the applicant to inspect the financial records of  
5               the reporting unit specified in the order; or  
6               (b) authorising another person (whether a member or not) to  
7               inspect the financial records of the reporting unit specified in  
8               the order on the applicant's behalf.

9               This subsection is subject to subsections (2) and (3).

- 10              (2) The Commission may only make the order if it is satisfied:  
11              (a) that the applicant is acting in good faith; and  
12              (b) there are reasonable grounds for suspecting a breach of:  
13              (i) a provision of this Part; or  
14              (ii) the reporting guidelines; or  
15              (iii) a regulation made for the purposes of this Part; or  
16              (iv) a rule of a reporting unit relating to its finances or  
17              financial administration; and  
18              (c) it is reasonable to expect that an examination of the financial  
19              records will assist in determining if there is such a breach.
- 20              (3) The Commission may only make an order authorising the  
21              inspection of financial records that relate to the suspected breach  
22              mentioned in paragraph (2)(b).
- 23              (4) A person authorised to inspect the financial records may make  
24              copies of the financial records unless the Commission orders  
25              otherwise.

26       **274 Frivolous or vexatious applications**

- 27              (1) A person must not make an application under section 273 that is  
28              vexatious or without reasonable cause.

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

- 30              (2) If the Commission considers an application under section 273 to be  
31              vexatious or without reasonable cause, the Commission must  
32              dismiss the application as soon as possible.
-

1 **275 Ancillary orders**

2 If the Commission makes an order under section 273, the  
3 Commission may make any other orders it considers appropriate,  
4 including any or all of the following:

- 5 (a) an order limiting the use that a person who inspects the  
6 financial records may make of information obtained during  
7 the inspection;
- 8 (b) an order limiting the right of a person who inspects the  
9 financial records to make copies in accordance with  
10 subsection 273(4);
- 11 (c) an order that the reporting unit is not required to provide the  
12 names and addresses of its members.

13 **276 Disclosure of information acquired in inspection**

14 (1) An applicant who inspects the financial records under section 273,  
15 or a person who inspects the financial records on behalf of an  
16 applicant, must not disclose information obtained during the  
17 inspection unless the disclosure is to:

- 18 (a) a Registry official; or  
19 (b) the applicant.

20 (2) A person who receives information under paragraph (1)(a) or (b)  
21 must not disclose the information other than to another person  
22 covered by one of those paragraphs.

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

24 **277 Reporting unit or committee of management may allow member**  
25 **to inspect books**

26 The committee of management of a reporting unit, or the reporting  
27 unit by a resolution passed at a general meeting, may authorise a  
28 member to inspect financial records of the reporting unit.

Section 278

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1       **278 Commission to be advised of breaches of Part or rules etc. found**  
2                   **during inspection**

3               (1) If, as a result of inspecting the financial records of a reporting unit,  
4               a person reasonably believes that a breach of:

- 5                   (a) a provision of this Part; or  
6                   (b) the reporting guidelines; or  
7                   (c) a regulation made for the purposes of this Part; or  
8                   (d) a rule of a reporting unit relating to its finances or financial  
9                   administration;

10              may have occurred, the person must give the Industrial Registry  
11              written notice to that effect and give to the Industrial Registry any  
12              relevant information obtained during the inspection.

13              (2) If the Industrial Registry receives notice under subsection (1) and  
14              the Commission is satisfied that there are reasonable grounds for  
15              believing that there has been a breach of:

- 16                   (a) a provision of this Part; or  
17                   (b) the reporting guidelines; or  
18                   (c) a regulation made for the purposes of this Part; or  
19                   (d) a rule of a reporting unit relating to its finances or financial  
20                   administration;

21              the Commission must refer the matter to the Industrial Registrar.

22              Note:       Where a matter is referred, it will be investigated under section 334.

23       **279 Constitution of Commission**

24                   For the purposes of this Division, the Commission must be  
25                   constituted by a Presidential Member.



1  
2 **Part 4—Access to organisations' books**  
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4 **280 Right of access to organisation's books**

5 *Right while officer*

6 (1) An officer of an organisation or a branch may inspect the books of  
7 the organisation at all reasonable times for the purposes of a legal  
8 proceeding:

9 (a) to which the officer is a party; or

10 (b) that the officer proposes in good faith to bring; or

11 (c) that the officer has reason to believe will be brought against  
12 him or her;

13 where the officer reasonably believes that the books contain  
14 information that is relevant to the proceedings.

15 *Right during 7 years after ceasing to be officer*

16 (2) A person who has ceased to be an officer of an organisation or a  
17 branch may inspect the books of the organisation at all reasonable  
18 times for the purposes of a legal proceeding:

19 (a) to which the person is a party; or

20 (b) that the person proposes in good faith to bring; or

21 (c) that the person has reason to believe will be brought against  
22 him or her;

23 where the person reasonably believes that the books contain  
24 information that is relevant to the proceedings. This right continues  
25 for 7 years after the person ceased to be an officer of the  
26 organisation or the branch.

27 *Right to take copies*

28 (3) A person authorised to inspect books under this section for the  
29 purposes of a legal proceeding may make copies of the books for  
30 the purposes of those proceedings.

Section 280

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1 (4) Where a person obtains copies under subsection (3), the  
2 organisation is entitled to recover from the person any costs  
3 incurred by the organisation in providing the copies.

4 *Organisation or branch not to refuse access*

5 (5) An organisation or branch must allow a person to exercise his or  
6 her rights to inspect or take copies of the books under this section.

7 *Meaning of books*

8 (6) In this section:

9 **books** includes:

- 10 (a) a register; and  
11 (b) any other record of information; and  
12 (c) financial reports or financial records, however compiled,  
13 recorded or stored; and  
14 (d) a document.

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## **Chapter 9—Conduct of officers and employees**

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### **Part 1—Simplified outline of Chapter**

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#### **281 Simplified outline**

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This Chapter sets out some of the most significant duties of officers and employees of organisations and branches of organisations. Other duties are imposed by other provisions of this Schedule and other laws (including the general law).

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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.

Section 282

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2 **Part 2—General duties in relation to the financial**  
3 **management of organisations**

4 **Division 1—Preliminary**

5 **282 Simplified outline**

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This Part sets out some of the most significant duties of officers and employees of organisations and branches of organisations in relation to the financial management of an organisation or a branch of an organisation.

10 **283 Part only applies in relation to financial management**

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This Part only applies in relation to officers and employees of an organisation or a branch of an organisation to the extent that it relates to the exercise of powers or duties of those officers and employees related to the financial management of the organisation or branch.

16 **284 Meaning of *involved***

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For the purposes of this Part, a person is *involved* in a contravention if, and only if, the person has:

- (a) aided, abetted, counselled or procured the contravention; or
- (b) induced, whether by threats or promises or otherwise, the contravention; or
- (c) been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
- (d) conspired with others to effect the contravention.

1  
2 **Division 2—General duties in relation to the financial**  
3 **management of organisations**

4 **285 Care and diligence—civil obligation only**

- 5 (1) An officer of an organisation or a branch must exercise his or her  
6 powers and discharge his or her duties with the degree of care and  
7 diligence that a reasonable person would exercise if he or she:  
8 (a) were an officer of an organisation or a branch in the  
9 organisation's circumstances; and  
10 (b) occupied the office held by, and had the same responsibilities  
11 within the organisation or a branch as, the officer.

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

- 13 (2) An officer of an organisation or a branch who makes a judgment to  
14 take or not take action in respect of a matter relevant to the  
15 operations of the organisation or branch is taken to meet the  
16 requirements of subsection (1), and their equivalent duties at  
17 common law and in equity, in respect of the judgment if he or she:  
18 (a) makes the judgment in good faith for a proper purpose; and  
19 (b) does not have a material personal interest in the subject  
20 matter of the judgment; and  
21 (c) informs himself or herself about the subject matter of the  
22 judgment to the extent he or she reasonably believes to be  
23 appropriate; and  
24 (d) rationally believes that the judgment is in the best interests of  
25 the organisation.

26 The officer's belief that the judgment is in the best interests of the  
27 organisation is a rational one unless the belief is one that no  
28 reasonable person in his or her position would hold.

29 Note: This subsection only operates in relation to duties under this section  
30 and their equivalents at common law or in equity (including the duty  
31 of care that arises under the common law principles governing liability  
32 for negligence)—it does not operate in relation to duties under any  
33 other provision of this Schedule or under any other laws.

Section 286

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1       **286 Good faith—civil obligations**

2               (1) An officer of an organisation or a branch must exercise his or her  
3               powers and discharge his or her duties:

4                     (a) in good faith in what he or she believes to be the best  
5                     interests of the organisation; and

6                     (b) for a proper purpose.

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

8               (2) A person who is involved in a contravention of subsection (1)  
9               contravenes this subsection.

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

11       **287 Use of position—civil obligations**

12              (1) An officer or employee of an organisation or a branch must not  
13              improperly use his or her position to:

14                     (a) gain an advantage for himself or herself or someone else; or

15                     (b) cause detriment to the organisation or to another person.

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

17              (2) A person who is involved in a contravention of subsection (1)  
18              contravenes this subsection.

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

20       **288 Use of information—civil obligations**

21              (1) A person who obtains information because he or she is, or has  
22              been, an officer or employee of an organisation or a branch must  
23              not improperly use the information to:

24                     (a) gain an advantage for himself or herself or someone else; or

25                     (b) cause detriment to the organisation or to another person.

26              Note 1:     This duty continues after the person stops being an officer or  
27              employee of the organisation or branch.

28              Note 2:     This subsection is a civil penalty provision (see section 305).

29              (2) A person who is involved in a contravention of subsection (1)  
30              contravenes this subsection.

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

2        **289 Effect of ratification by members**

3                                      (1) If the members of an organisation ratify or approve a contravention  
4                                      of section 285, 286, 287 or 288, the ratification or approval:

5    (a) does not prevent the commencement of proceedings for a  
6    contravention of the section; and

7    (b) does not have the effect that proceedings brought for a  
8    contravention of the section must be determined in favour of  
9    the defendant.

10                                      (2) If members of an organisation ratify or approve a contravention of  
11                                      section 285, 286, 287 or 288, the Federal Court may take the  
12                                      ratification or approval into account in deciding what order or  
13                                      orders to make under section 306, 307 or 308 in proceedings  
14                                      brought for a contravention of the section. In doing this, it must  
15                                      have regard to:

16    (a) how well-informed about the conduct the members were  
17    when deciding whether to ratify or approve the  
18    contravention; and

19    (b) whether the members who ratified or approved the  
20    contravention were acting for proper purposes.

21        **290 Compliance with statutory duties**

22                                      An officer or employee does not contravene section 286, 287 or  
23                                      288 by doing an act that another provision of this Schedule or the  
24                                      Workplace Relations Act requires the officer or employee to do.

25        **291 Interaction of sections 285 to 289 with other laws etc.**

26                                      Sections 285 to 289:

27    (a) have effect in addition to, and not in derogation of, any rule  
28    of law relating to the duty or liability of a person because of  
29    his or her office or employment in relation to an organisation  
30    or a branch; and

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- 1 (b) do not prevent the commencement of proceedings for a  
2 breach of duty or in respect of a liability referred to in  
3 paragraph (a).

4 This section does not apply to subsection 285(2) to the extent to  
5 which it operates on the duties at common law and in equity that  
6 are equivalent to the requirements of subsection 285(1).

7 **292 Reliance on information or advice provided by others**

8 If:

- 9 (a) an officer relies on information, or professional or expert  
10 advice, given or prepared by:
- 11 (i) an employee of the organisation or the branch whom the  
12 officer believes on reasonable grounds to be reliable and  
13 competent in relation to the matters concerned; or
  - 14 (ii) a professional adviser or expert in relation to matters  
15 that the officer believes on reasonable grounds to be  
16 within the person's professional or expert competence;  
17 or
  - 18 (iii) another officer in relation to matters within the officer's  
19 authority; or
  - 20 (iv) a collective body on which the officer did not serve in  
21 relation to matters within the collective body's  
22 authority; and
- 23 (b) the reliance was made:
- 24 (i) in good faith; and
  - 25 (ii) after making proper inquiry if the circumstances  
26 indicated the need for inquiry; and
- 27 (c) the reasonableness of the officer's reliance on the  
28 information or advice arises in proceedings brought to  
29 determine whether an officer has performed a duty under this  
30 Part or an equivalent duty at common law or in equity;  
31 the officer's reliance on the information or advice is taken to be  
32 reasonable unless the contrary is proved.



1 **293 Responsibility for actions of other person**

2 (1) If the officers of an organisation or a branch delegate a power  
3 under its rules, each of those officers is responsible for the exercise  
4 of the power by the person to whom the power was delegated as if  
5 the power had been exercised by the officer.

6 (2) An officer is not responsible under subsection (1) if:

7 (a) the officer believed on reasonable grounds at all times that  
8 the person to whom the power was delegated would exercise  
9 the power in conformity with the duties imposed on officers  
10 of the organisation or the branch by this Schedule or the  
11 Workplace Relations Act; and

12 (b) the officer believed:

13 (i) on reasonable grounds; and

14 (ii) in good faith; and

15 (iii) after making proper inquiry if the circumstances  
16 indicated the need for inquiry;

17 that the person to whom the power was delegated was  
18 reliable and competent in relation to the power delegated.

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## **Chapter 10—Civil penalties**

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### **Part 1—Simplified outline of Chapter**

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#### **304 Simplified outline**

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This Chapter provides for civil penalties where specified provisions are contravened.

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It sets out the orders that may be made where a contravention has occurred.

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It also sets out the relationship with criminal proceedings arising out of the same conduct.

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## **Part 2—Civil consequences of contravening civil penalty provisions**

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### **305 Civil penalty provisions**

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(1) Subject to this Part, an application may be made to the Federal Court for orders under sections 306, 307 and 308 in respect of conduct in contravention of a civil penalty provision.

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(2) These provisions are the *civil penalty provisions*:

10

(a) subsection 52(1) (declaration about register);

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(b) subsection 52(3) (false statement);

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(c) subsection 104(1) (declaration about register);

13

(d) subsection 104(3) (false statement);

14

(e) subsection 151(2) and paragraph 151(11)(a) (lodging membership agreements);

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(f) subsection 152(3) (lodging assets and liabilities agreements);

17

(g) section 169 (request for statement of membership);

18

(h) subsection 172(1) (removal of non-financial members from register);

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(i) section 175 (false representation as to membership);

21

(j) section 176 (false representation about resignation);

22

(k) subsection 189(2) (lodging election information);

23

(l) subsection 192(1) (declaration about register);

24

(m) subsection 192(3) (false statement in declaration);

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(n) subsections 198(1), (4), (5) and (8) (response to post-election report);

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(o) subsections 230(1) and (2) (records to be kept and lodged by organisations);

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(p) subsections 231(1) and (2) (records to be held for 7 years);

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(q) subsections 233(1) and (2) (lodging of information in Registry);

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(r) subsection 233(3) (false statement about records);

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(s) subsection 235(2) (access to records);

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- 1 (t) subsections 236(1) and (2) (delivery of records);  
2 (u) subsection 237(1) (particulars of loans, grants and  
3 donations);  
4 (v) subsection 237(3) (false statement about loans, grants and  
5 donations);  
6 (w) sections 253 and 254 (keeping and preparation of accounts);  
7 (x) subsection 256(1) (appointment of auditors);  
8 (y) subsections 256(3), (4), (5) and (6) (persons not to be  
9 auditors);  
10 (z) subsections 257(10) and (11) (auditor's report);  
11 (za) section 259 (forwarding notices to auditors);  
12 (zb) subsections 263(2), (3) and (5) (removal of auditor);  
13 (zc) subsection 264(3) (distribution of auditor's reasons for  
14 resignation);  
15 (zd) subsections 265(1), (4) and (5) and 266(1) and section 267  
16 (accounts, reports etc.);  
17 (ze) section 268 (failure to lodge accounts etc.);  
18 (zf) subsections 270(4), (5), (6) and (7) (accounts of low income  
19 organisations);  
20 (zg) subsections 272(3) and (5) (providing information to  
21 members);  
22 (zh) subsection 274(1) (frivolous or vexatious applications);  
23 (zi) section 276 (disclosure of information);  
24 (zj) subsections 285(1), 286(1) and (2), 287(1) and (2), and  
25 288(1) and (2) (officers' duties);  
26 (zl) subsection 347(1) (provision of rules to members).
- 27 (3) For the purposes of this Part, any contravention of a civil penalty  
28 provision by a branch or reporting unit is taken to be a  
29 contravention by the organisation of which the branch or reporting  
30 unit is part.

31 **306 Pecuniary penalty orders that the Federal Court may make**

- 32 (1) In respect of conduct in contravention of a civil penalty provision,  
33 the Federal Court may make an order imposing on the person or

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- 1 organisation whose conduct contravened the civil penalty provision  
2 a pecuniary penalty of not more than:  
3 (a) in the case of a body corporate—100 penalty units; or  
4 (b) in any other case—20 penalty units.
- 5 (2) A penalty payable under this section is a civil debt payable to the  
6 Commonwealth. The Commonwealth may enforce the order as if it  
7 were an order made in civil proceedings against the person,  
8 reporting unit or organisation to recover a debt due by the person.  
9 The debt arising from the order is taken to be a judgment debt.

10 **307 Compensation orders**

11 *Compensation for damage suffered*

- 12 (1) The Federal Court may order a person to compensate an  
13 organisation for damage suffered by the organisation if:  
14 (a) the person has contravened a civil penalty provision in Part 2  
15 of Chapter 9 in relation to the organisation; and  
16 (b) the damage resulted from the contravention.  
17 The order must specify the amount of the compensation.

18 *Damage includes profits*

- 19 (2) In determining the damage suffered by the organisation for the  
20 purposes of making a compensation order, the Court is to have  
21 regard to any profits made by any person resulting from the  
22 contravention.

23 *Recovery of damage*

- 24 (3) A compensation order may be enforced as if it were a judgment of  
25 the Court.

26 **308 Other orders**

- 27 (1) The Federal Court may make such other orders as the Court  
28 considers appropriate in all the circumstances of the case.

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- 1                   (2) Without limiting subsection (1), the orders may include injunctions  
2                   (including interim injunctions), and any other orders, that the Court  
3                   thinks necessary to stop the conduct or remedy its effects.
- 4                   (3) Orders may be made under this section whether or not orders are  
5                   also made under section 306 or 307.

6                   **309 Effect of section 307**

- 7                   Section 307:
- 8                   (a) has effect in addition to, and not in derogation of, any rule of  
9                   law about the duty or liability of a person because of the  
10                  person's office or employment in relation to an organisation;  
11                  and
- 12                  (b) does not prevent proceedings from being instituted in respect  
13                  of such a duty or in respect of such a liability.

14                  **310 Who may apply for an order**

15                                 *Application by Industrial Registrar*

- 16                  (1) The Industrial Registrar, or some other person authorised in writing  
17                  by the Industrial Registrar under this subsection to make the  
18                  application, may apply for an order under this Part.

19                                 *Application by organisation*

- 20                  (3) An organisation may apply for a compensation order.
- 21                  (4) An organisation may intervene in an application for a pecuniary  
22                  penalty order or an order under section 308 in relation to the  
23                  organisation. The organisation is entitled to be heard on all matters  
24                  other than whether the order should be made.

25                  **311 Civil proceedings after criminal proceedings**

26                                 The Federal Court must not make a pecuniary penalty order against  
27                                 a person or organisation for a contravention if the person has been  
28                                 convicted of an offence constituted by conduct that is substantially  
29                                 the same as the conduct constituting the contravention.

1     **312 Criminal proceedings during civil proceedings**

- 2             (1) Proceedings for a pecuniary penalty order against a person or  
3             organisation are stayed if:  
4                 (a) criminal proceedings are started or have already been started  
5                 against the person or organisation for an offence; and  
6                 (b) the offence is constituted by conduct that is substantially the  
7                 same as the conduct alleged to constitute the contravention.
- 8             (2) The proceedings for the order may be resumed if the person or  
9             organisation is not convicted of the offence. Otherwise, the  
10            proceedings for the order are dismissed.

11     **313 Criminal proceedings after civil proceedings**

12             Criminal proceedings may be started against a person or  
13             organisation for conduct that is substantially the same as conduct  
14             constituting a contravention of a civil penalty provision regardless  
15             of whether an order under this Part has been made against the  
16             person or organisation.

17     **314 Evidence given in proceedings for penalty not admissible in  
18             criminal proceedings**

19             Evidence of information given or evidence of production of  
20             documents by an individual is not admissible in criminal  
21             proceedings against the individual if:

- 22                 (a) the individual previously gave the evidence or produced the  
23                 documents in proceedings for a pecuniary penalty order  
24                 against the individual for a contravention of a civil penalty  
25                 provision (whether or not the order was made); and  
26                 (b) the conduct alleged to constitute the offence is substantially  
27                 the same as the conduct that was claimed to constitute the  
28                 contravention.

29             However, this does not apply to a criminal proceeding in respect of  
30             the falsity of the evidence given by the individual in the  
31             proceedings for the pecuniary penalty order.

Section 315

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1       **315 Relief from liability for contravention of civil penalty provision**

2           (1) In this section:

3               *eligible proceedings:*

4               (a) means proceedings for a contravention of a civil penalty  
5               provision; and

6               (b) does not include proceedings for an offence.

7           (2) If:

8               (a) eligible proceedings are brought against a person or  
9               organisation; and

10              (b) in the proceedings it appears to the Federal Court that the  
11              person or organisation has, or may have, contravened a civil  
12              penalty provision but that:

13                      (i) the person or organisation has acted honestly; and

14                      (ii) having regard to all the circumstances of the case, the  
15                      person or organisation ought fairly to be excused for the  
16                      contravention;

17              the Court may relieve the person or organisation either wholly or  
18              partly from a liability to which the person or organisation would  
19              otherwise be subject, or that might otherwise be imposed on the  
20              person or organisation, because of the contravention.

21           (3) If a person or organisation thinks that eligible proceedings will or  
22           may be begun against them, they may apply to the Federal Court  
23           for relief.

24           (4) On an application under subsection (3), the Court may grant relief  
25           under subsection (2) as if the eligible proceedings had been begun  
26           in the Court.

27       **316 Power to grant relief**

28           (1) If:

29               (a) civil proceedings are brought against an officer of an  
30               organisation for negligence, default, breach of trust or breach  
31               of duty in a capacity as such an officer; and



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- 1 (b) in the proceedings it appears to the court before which the  
2 proceedings are taken that:
- 3 (i) the officer is or may be liable in respect of the  
4 negligence, default or breach; and
- 5 (ii) the officer has acted honestly; and
- 6 (iii) having regard to all the circumstances of the case  
7 (including those connected with the officer's  
8 appointment), the officer ought fairly to be excused for  
9 the negligence, default or breach;
- 10 the court may relieve the officer either wholly or partly from  
11 liability on the terms that the court thinks appropriate.
- 12 (2) An officer of an organisation who has reason to apprehend that a  
13 claim will or might be made against him or her for negligence,  
14 default, breach of trust or breach of duty in a capacity as such an  
15 officer may apply to the Federal Court for relief. On the  
16 application, the Court has the same power to relieve the officer as  
17 it would have had under subsection (1) if it had been a court before  
18 which proceedings against the officer for negligence, default,  
19 breach of trust or breach of duty had been brought.

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## **Chapter 11—Miscellaneous**

### **Part 1—Simplified outline of Chapter**

#### **317 Simplified outline**

This Chapter deals with a variety of topics.

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

Part 3 provides that if a person is a party to certain kinds of proceedings under the Schedule, 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.

Part 4 provides for a Registrar to make inquiries as to compliance with financial accountability requirements and civil penalty provisions. The Registrar may also conduct investigations.

Part 5 confers jurisdiction on the Federal Court in relation to matters arising under this Schedule.

Part 6 deals with various procedural and administrative matters. It also contains some offence provisions and provisions dealing with certain rights of members of organisations (sections 345, 346 and 347).

Part 7 deals with complementary registration systems.

1  
2 **Part 2—Validating provisions for organisations**  
3

4 **318 Definition**

5 In this Part:

6 *invalidity* includes nullity and also includes but is not limited to  
7 any invalidity or nullity resulting from an omission, defect, error,  
8 irregularity or absence of a quorum or caused by the fact that:

- 9 (a) a member, or each of 2 or more of the members, of a  
10 collective body of an organisation or branch of an  
11 organisation, or one of the persons, or each of 2 or more of  
12 the persons, purporting to act as the members of such a  
13 collective body, or a person, or each of 2 or more persons,  
14 holding or purporting to hold an office or position in an  
15 organisation or branch:  
16 (i) has not been elected or appointed or duly elected or  
17 appointed; or  
18 (ii) has purported to be elected or appointed by an election  
19 or appointment that was a nullity; or  
20 (iii) was not entitled to be elected or appointed or to hold  
21 office; or  
22 (iv) was not a member of the organisation; or  
23 (v) was elected or appointed or purported to be elected or  
24 appointed, in a case where one or more of the persons  
25 who took part in the election or appointment or the  
26 purported election or appointment was or were not  
27 entitled to do so or was or were not members of the  
28 organisation; or  
29 (b) persons who were not entitled to do so, or were not members  
30 of the organisation, took part in the making or purported  
31 making or the alteration or purported alteration of the rules of  
32 an organisation or branch, as officers or voters or otherwise.

Section 319

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1       **319 Validation of certain acts done in good faith**

2                       *Acts relating to elections, appointments, organisation's rules*

3               (1) Subject to this section and section 321, all acts done in good faith  
4               by a collective body of an organisation or branch of an  
5               organisation, or by persons purporting to act as such a collective  
6               body, are valid in spite of any invalidity that may later be  
7               discovered in:

- 8                       (a) the election or appointment of the collective body, any  
9                       member of the collective body or the persons or any of the  
10                      persons purporting to act as the collective body; or  
11                      (b) the making or alteration of a rule of the organisation or  
12                      branch.

13                      *Acts done by person holding or purporting to hold office*

14               (2) Subject to this section and section 321, all acts done in good faith  
15               by a person holding or purporting to hold an office or position in  
16               an organisation or branch are valid in spite of any invalidity that  
17               may later be discovered in:

- 18                      (a) the election or appointment of the person; or  
19                      (b) the making or alteration of a rule of the organisation or  
20                      branch.

21                      *Meaning of purporting to be member or office holder*

22               (3) For the purposes of this section:

- 23                      (a) a person is not to be treated as purporting to act as a member  
24                      of a collective body of an organisation or as the holder of an  
25                      office or position in an organisation unless the person has, in  
26                      good faith, purported to be, and has been treated by officers  
27                      or members of the organisation as being, such a member or  
28                      the holder of the office or position; and  
29                      (b) a person is not to be treated as purporting to act as a member  
30                      of a collective body of a branch of an organisation or as the  
31                      holder of an office or position in the branch unless the person  
32                      has, in good faith, purported to be, and has been treated by

1 officers or members of the branch as being, such a member  
2 or the holder of the office or position.

3 *Meaning of good faith*

4 (4) For the purposes of this section:

- 5 (a) an act is to be treated as done in good faith until the contrary  
6 is proved; and
- 7 (b) a person who has purported to be a member of a collective  
8 body of an organisation or branch is to be treated as having  
9 done so in good faith until the contrary is proved; and
- 10 (c) knowledge of facts from which an invalidity arises is not of  
11 itself to be treated as knowledge that the invalidity exists; and
- 12 (d) an invalidity in:
- 13 (i) the election or appointment of a collective body of a  
14 branch of an organisation or any member of such a  
15 collective body; or
- 16 (ii) the election or appointment of the persons or any of the  
17 persons purporting to act as a collective body of a  
18 branch; or
- 19 (iii) the election or appointment of a person holding or  
20 purporting to hold an office or position in a branch; or
- 21 (iv) the making or alteration of a rule of a branch;
- 22 is not to be treated as discovered before the earliest time  
23 proved to be a time when the existence of the invalidity was  
24 known to a majority of the members of the committee of  
25 management of the branch or to a majority of the persons  
26 purporting to act as the committee of management; and
- 27 (e) an invalidity in any other election or appointment or in the  
28 making or alteration of a rule to which this section applies is  
29 not to be treated as discovered before the earliest time proved  
30 to be a time when the existence of the invalidity was known  
31 to a majority of the members of the committee of  
32 management of the organisation or to a majority of the  
33 persons purporting to act as that committee of management.



Section 321

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- 1 the act, election or purported election, appointment or purported  
2 appointment, or the making or purported making or alteration or  
3 purported alteration of the rule, is taken to have been done in  
4 compliance with the rules of the organisation or branch.
- 5 (2) The operation of this section does not affect the validity or  
6 operation of an order, judgment, decree, declaration, direction,  
7 verdict, sentence, decision or similar judicial act of the Federal  
8 Court or any other court made before the end of the 4 years  
9 referred to in subsection (1).
- 10 (3) This section extends to an act, election or purported election,  
11 appointment or purported appointment, and to the making or  
12 purported making or alteration or purported alteration of a rule:  
13 (a) done or occurring before the commencement of this section;  
14 or  
15 (b) done or occurring in relation to an association before it  
16 became an organisation.

17 **321 Order affecting application of section 319 or 320**

- 18 (1) Where, on an application for an order under this section, the  
19 Federal Court is satisfied that the application of section 319 or 320  
20 in relation to an act would do substantial injustice, having regard to  
21 the interests of:  
22 (a) the organisation; or  
23 (b) members or creditors of the organisation; or  
24 (c) persons having dealings with the organisation;  
25 the Court must, by order, declare accordingly.
- 26 (2) Where a declaration is made under subsection (1), section 319 or  
27 320, as the case requires, does not apply, and is taken never to have  
28 applied, in relation to the act specified in the declaration.
- 29 (3) The Court may make an order under subsection (1) on the  
30 application of the organisation, a member of the organisation or  
31 any other person having a sufficient interest in relation to the  
32 organisation.
- 33 (4) The Court may determine:
-

Section 322

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- 1 (a) what notice, summons or rule to show cause is to be given to  
2 other persons of the intention to make an application or an  
3 order under this section; and  
4 (b) whether and how the notice, summons or rule should be  
5 given or served and whether it should be advertised in any  
6 newspaper.
- 7 (5) In this section:
- 8 *act* includes an election or purported election, appointment or  
9 purported appointment, and the making or purported making or  
10 alteration or purported alteration of a rule.

11 **322 Federal Court may make orders in relation to consequences of**  
12 **invalidity**

- 13 (1) An organisation, a member of an organisation or any other person  
14 having a sufficient interest in relation to an organisation may apply  
15 to the Federal Court for a determination of the question whether an  
16 invalidity has occurred in:
- 17 (a) the management or administration of the organisation or a  
18 branch of the organisation; or  
19 (b) an election or appointment in the organisation or a branch of  
20 the organisation; or  
21 (c) the making or alteration of the rules of the organisation or a  
22 branch of the organisation.
- 23 (2) On an application under subsection (1), the Court may make any  
24 declaration it considers proper.
- 25 (3) Where, in a proceeding under subsection (1), the Court finds that  
26 an invalidity of the kind referred to in that subsection has occurred,  
27 the Court may make any order it considers appropriate:
- 28 (a) to rectify the invalidity or cause it to be rectified; or  
29 (b) to negative, modify or cause to be modified the consequences  
30 in law of the invalidity; or  
31 (c) to validate any act, matter or thing rendered invalid by or  
32 because of the invalidity.



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- 1 (4) Where an order is made under subsection (3), the Court may give  
2 such ancillary or consequential directions as it considers  
3 appropriate.
- 4 (5) The Court must not make an order under subsection (3) unless it is  
5 satisfied that the order would not do substantial injustice to:  
6 (a) the organisation; or  
7 (b) any member or creditor of the organisation; or  
8 (c) any person having dealings with the organisation.
- 9 (6) The Court may determine:  
10 (a) what notice, summons or rule to show cause is to be given to  
11 other persons of the intention to make an application or an  
12 order under this section; and  
13 (b) whether and how the notice, summons or rule should be  
14 given or served and whether it should be advertised in any  
15 newspaper.
- 16 (7) This section applies:  
17 (a) to an invalidity whenever occurring (including an invalidity  
18 occurring before the commencement of this section); and  
19 (b) to an invalidity occurring in relation to an association before  
20 it became an organisation.

21 **323 Federal Court may order reconstitution of branch etc.**

- 22 (1) An organisation, a member of an organisation or any other person  
23 having a sufficient interest in relation to an organisation may apply  
24 to the Federal Court for a declaration that:  
25 (a) a part of the organisation, including:  
26 (i) a branch or part of a branch of the organisation; or  
27 (ii) a collective body of the organisation or a branch of the  
28 organisation;  
29 has ceased to exist or function effectively and there are no  
30 effective means under the rules of the organisation or branch  
31 by which it can be reconstituted or enabled to function  
32 effectively; or

Section 323

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- 1 (b) an office or position in the organisation or a branch of the  
2 organisation is vacant and there are no effective means under  
3 the rules of the organisation or branch to fill the office or  
4 position;  
5 and the Court may make a declaration accordingly.
- 6 (2) Where the Court makes a declaration under subsection (1), the  
7 Court may, by order, approve a scheme for the taking of action by  
8 a collective body of the organisation or a branch of the  
9 organisation, or by an officer or officers of the organisation or a  
10 branch of the organisation:
- 11 (a) for the reconstitution of the branch, the part of the branch or  
12 the collective body; or  
13 (b) to enable the branch, the part of the branch or the collective  
14 body to function effectively; or  
15 (c) for the filling of the office or position.
- 16 (3) Where an order is made under this section, the Court may give any  
17 ancillary or consequential directions it considers appropriate.
- 18 (4) The Court must not make an order under this section unless it is  
19 satisfied that the order would not do substantial injustice to the  
20 organisation or any member of the organisation.
- 21 (5) The Court may determine:
- 22 (a) what notice, summons or rule to show cause is to be given to  
23 other persons of the intention to make an application or an  
24 order under this section; and  
25 (b) whether and how the notice, summons or rule should be  
26 given or served and whether it should be advertised in any  
27 newspaper.
- 28 (6) An order or direction of the Court under this section, and any  
29 action taken in accordance with the order or direction, has effect in  
30 spite of anything in the rules of the organisation or a branch of the  
31 organisation.
- 32 (7) The Court must not under this section approve a scheme involving  
33 provision for an election for an office unless the scheme provides

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1 for the election to be held by a direct voting system or a collegiate  
2 electoral system.

1

2 **Part 3—Financial assistance and costs**

3 **Division 1—Financial assistance**

4 **324 Authorisation of financial assistance**

5 (1) Subject to this Division, the Minister may, on application made by  
6 a person under subsection (2), authorise payment by the  
7 Commonwealth to the person of financial assistance in relation to  
8 the whole or part of the person's relevant costs, if the Minister is  
9 satisfied:

10 (a) that hardship is likely to be caused to the person if the  
11 application is refused; and

12 (b) that in all the circumstances it is reasonable that the  
13 application should be granted.

14 (2) An application may be made to the Minister for financial assistance  
15 under this Division by the following persons (other than  
16 organisations) in the following circumstances:

17 (a) a person who made an application under section 163, 164 or  
18 164A, where the Federal Court granted a rule calling on  
19 another person, or an organisation, to show cause why an  
20 order should not be made under section 163, 164 or 164A in  
21 relation to the other person or organisation;

22 (b) a person who was a party, otherwise than as an applicant, to a  
23 proceeding under section 163, 164 or 164A;

24 (c) a person who made an application under section 164, where  
25 the Federal Court made an interim order under subsection  
26 164(4);

27 (d) a person who applied for an inquiry into an election, where  
28 the Federal Court found that an irregularity happened;

29 (e) a person who applied for an inquiry into an election, where  
30 the Federal Court certified under subsection 325(1) that the  
31 person acted reasonably in applying;

32 (f) a person who incurred costs in relation to an inquiry into an  
33 election, other than a person who applied for the inquiry;

- 1 (g) a member of an organisation who made an application under  
2 subsection 215(5), where the Federal Court declared that the  
3 person the subject of the application was not eligible to be a  
4 candidate for election or to be elected or appointed or had  
5 ceased to hold office;
- 6 (h) a member of an organisation who made an application under  
7 subsection 215(5), where the Federal Court certified under  
8 subsection 325(2) that the member acted reasonably in  
9 making the application;
- 10 (j) a person who incurred costs in relation to an application  
11 made under subsection 215(5), other than the person who  
12 made the application;
- 13 (k) a person who made an application to the Federal Court under  
14 section 216 or 217, where, on the application, the Federal  
15 Court granted the person leave under paragraph 216(2)(a) or  
16 217(2)(a) or refused the person leave under paragraph  
17 216(2)(b) or 217(2)(b);
- 18 (m) a person who applied for an inquiry into a ballot under Part 2  
19 of Chapter 3, where the Federal Court found that an  
20 irregularity happened;
- 21 (n) a person who applied for an inquiry into a ballot under Part 2  
22 of Chapter 3, where the Federal Court certified under  
23 subsection 325(3) that the person acted reasonably in  
24 applying;
- 25 (o) a person who incurred costs in relation to an inquiry into a  
26 ballot under Part 2 of Chapter 3, other than the person who  
27 applied for the inquiry;
- 28 (p) a person who was a party to a proceeding under Part 2 of  
29 Chapter 11;
- 30 (q) a person who made an application under section 167, where  
31 the Federal Court granted a rule calling on another person, or  
32 an organisation, to show cause why an order should not be  
33 made under subsection 167(2) in relation to the other person  
34 or organisation.

35 (3) In subsection (1), *relevant costs* means:

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- 1 (a) in the case of a person referred to in paragraph (2)(a), (c), (k)  
2 or (q)—the costs incurred by the person in relation to the  
3 application concerned; or  
4 (b) in the case of a person referred to in paragraph (2)(b) or (p)—  
5 the costs incurred by the person in relation to the proceeding  
6 concerned; or  
7 (c) in the case of a person referred to in paragraph (2)(d), (e),  
8 (m) or (n)—the costs incurred by the person in relation to the  
9 inquiry concerned; or  
10 (d) in the case of a person referred to in paragraph (2)(f), (j) or  
11 (o)—the costs referred to in that paragraph; or  
12 (e) in the case of a member of an organisation referred to in  
13 paragraph (2)(g) or (h)—the costs incurred by the member in  
14 relation to the application concerned.

15 **325 Federal Court may certify that application was reasonable**

- 16 (1) Where a person has applied for an inquiry into an election but the  
17 Federal Court does not find that an irregularity happened, the Court  
18 may certify for the purposes of this Division that the person acted  
19 reasonably in applying.  
20 (2) Where a member of an organisation has made an application under  
21 subsection 215(5) but the Federal Court does not declare that the  
22 person who is the subject of the application was not eligible to be a  
23 candidate or to be elected or appointed or had ceased to hold  
24 office, the Court may certify for the purposes of this Division that  
25 the member acted reasonably in making the application.  
26 (3) Where a person has applied for an inquiry into a ballot under Part 2  
27 (amalgamation) or Part 3 (withdrawal from amalgamation) of  
28 Chapter 3 but the Federal Court does not find that an irregularity  
29 happened, the Court may certify that the person acted reasonably in  
30 applying.

31 **326 Applications under sections 163, 164, 164A and 167**

- 32 (1) The Minister may refuse an application made by a person referred  
33 to in paragraph 324(2)(a), (b), (c) or (q) if satisfied that:
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- 1 (a) the order sought in the proceeding concerned is the same or  
2 substantially the same as an order obtained or sought in  
3 another relevant proceeding and the proceeding involves the  
4 determination of the same or substantially the same questions  
5 of fact or law or mixed fact and law as were or are involved  
6 in the determination of the other relevant proceeding; or  
7 (b) it would be contrary to the interests of justice to grant  
8 financial assistance to the applicant in relation to the  
9 proceeding concerned.

10 (2) In subsection (1):

11 *other relevant proceeding* means a proceeding that:

- 12 (a) was instituted, whether before or after the commencement of  
13 this section, before the institution of the proceeding in  
14 relation to which the application referred to in that subsection  
15 was made; and  
16 (b) has been heard and determined by, or is pending before, the  
17 Federal Court.

18 (3) Where the Minister authorises the payment of financial assistance  
19 on application made by a person referred to in paragraph 324(2)(a),  
20 (b), (c), or (q), subsections (4) and (5) of this section apply.

21 (4) The Minister may:

- 22 (a) specify the amount, or determine from time to time the  
23 amounts, to be paid; or  
24 (b) authorise the payment of such amount as is determined, or  
25 such amounts as are determined from time to time, under  
26 directions of the Minister.

27 (5) The Minister may authorise payment to be made by the  
28 Commonwealth before or after the hearing or determination by the  
29 Federal Court of the proceeding concerned.

30 **327 Fees for 2 counsel not normally to be paid**

31 Nothing in this Division authorises a payment in relation to fees of  
32 more than one counsel appearing for the person applying for

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**Part 3** Financial assistance and costs  
**Division 1** Financial assistance

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1 financial assistance unless 2 or more counsel appeared, or are to  
2 appear, for any other person at the hearing concerned.

3 **328 Powers of Federal Court not affected**

4 Nothing in this Division limits the power of the Federal Court to  
5 make an order as to the costs of proceedings before the Court.



1

2 **Division 2—Costs**

3 **329 Costs only where proceeding instituted vexatiously etc.**

4 (1) A person who is a party to a proceeding (including an appeal) in a  
5 matter arising under this Schedule must not be ordered to pay costs  
6 incurred by any other party to the proceeding unless the person  
7 instituted the proceeding vexatiously or without reasonable cause.

8 (2) In subsection (1):

9 *costs* includes all legal and professional costs and disbursements  
10 and expenses of witnesses.

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## Part 4—Inquiries and investigations

4

### 330 Registrar or staff may make inquiries

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(1) A Registrar, or another Registry official on behalf of a Registrar,  
may make inquiries as to whether the following are being complied  
with:

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(a) Part 3 of Chapter 8;

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(b) the reporting guidelines made under that Part;

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(c) regulations made for the purposes of that Part;

11

(d) rules of a reporting unit relating to its finances or financial  
administration.

12

13

(2) A Registrar, or another Registry official on behalf of a Registrar,  
may make inquiries as to whether a civil penalty provision (see  
section 305) has been contravened.

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(3) The person making the inquiries may take such action as he or she  
considers necessary for the purposes of making the inquiries.

17

18

However, he or she cannot compel a person to assist with the  
inquiries under this section.

19

20

### 331 Registrar may conduct investigations

21

(1) If a Registrar is satisfied that there are reasonable grounds for  
doing so, the Registrar may conduct an investigation as to whether:

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(a) a provision of Part 3 of Chapter 8 has been contravened; or

24

(b) the reporting guidelines made under that Part have been  
contravened; or

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(c) a regulation made for the purposes of that Part has been  
contravened; or

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(d) a rule of a reporting unit relating to its finances or financial  
administration has been contravened.

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(2) If a Registrar is satisfied that there are reasonable grounds for  
doing so, the Registrar may conduct an investigation as to whether  
a civil penalty provision (see section 305) has been contravened.

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- 1 (3) A Registrar may also conduct an investigation in the circumstances  
2 set out in the regulations.
- 3 (4) Where, having regard to matters that have been brought to notice in  
4 the course of, or because of, an investigation under subsection (1)  
5 or (2), a Registrar forms the opinion that there are grounds for  
6 investigating the finances or financial administration of the  
7 reporting unit, the Registrar may make the further investigation.
- 8 (5) An investigation may, but does not have to, follow inquiries under  
9 section 330.

10 **332 Investigations arising from auditor's report**

- 11 (1) Subject to subsection (2), a Registrar must:  
12 (a) where the documents lodged in the Industrial Registry under  
13 section 268 include a report of an auditor setting out any:  
14 (i) defect or irregularity; or  
15 (ii) deficiency, failure or shortcoming; and  
16 (b) where for any other reason the Registrar considers that a  
17 matter revealed in the documents should be investigated—  
18 investigate the matter.
- 19 (2) The Registrar is not required to investigate the matters raised in the  
20 report of the auditor if:  
21 (a) the defect, irregularity, deficiency, failure or shortcoming  
22 consists solely of the fact that the organisation concerned has  
23 kept financial records for its membership subscriptions  
24 separately on a cash basis as provided in subsection 252(4);  
25 or  
26 (b) after consultation with the reporting unit and the auditor, the  
27 Registrar is satisfied that the matters are trivial or will be  
28 remedied in the following financial year.
- 29 (3) Where, having regard to matters that have been brought to notice in  
30 the course of, or because of, an investigation under subsection (1),  
31 a Registrar forms the opinion that there are grounds for  
32 investigating the finances or the financial administration of the  
33 reporting unit, the Registrar may make the further investigation.

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1       **333 Investigations arising from request from members**

- 2               (1) Where documents have been lodged in the Industrial Registry  
3               under section 268, at least:  
4               (a) if the reporting unit has more than 5,000 members—250  
5               members; or  
6               (b) in any other case—5% of the members of the reporting unit;  
7               may request a Registrar to investigate the finances and the financial  
8               administration of the reporting unit.
- 9               (2) On receipt of a request under subsection (1), a Registrar must  
10              investigate the finances and the financial administration of the  
11              reporting unit concerned. The Registrar, in conducting the  
12              investigation, is not limited to the most recent financial year for  
13              which documents have been lodged and may investigate years for  
14              which documents are yet to be lodged.
- 15              (3) Where the Registrar receives more than one request in relation to a  
16              reporting unit during a financial year, the Registrar is only required  
17              to conduct one investigation but may conduct more than one  
18              investigation.

19       **334 Investigations arising from referral under section 278**

20                       If a matter is referred to the Industrial Registrar under section 278,  
21                       the Industrial Registrar must ensure that a Registrar conducts an  
22                       investigation.

23       **335 Conduct of investigations**

- 24              (1) This section applies to:  
25              (a) a designated officer or employee of the reporting unit  
26              concerned; and  
27              (b) a former designated officer or employee of the reporting unit;  
28              and  
29              (c) a person who held the position of auditor of the reporting unit  
30              during the period that is the subject of the investigation;  
31              if a Registrar has reason to believe that the person:

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- 1 (d) has information or a document that is relevant to the  
2 investigation; or  
3 (e) is capable of giving evidence which the Registrar has reason  
4 to believe is relevant to the investigation.
- 5 (2) For the purpose of making an investigation, the Registrar may, by  
6 written notice, require the person:
- 7 (a) to give to the Registrar, within the period (being a period of  
8 not less than 14 days after the notice is given) and in the  
9 manner specified in the notice, any information within the  
10 knowledge or in the possession of the person; and  
11 (b) to produce or make available to the Registrar, at a reasonable  
12 time (being a time not less than 14 days after the notice is  
13 given) and place specified in the notice, any documents in the  
14 custody or under the control of the person, or to which he or  
15 she has access; and  
16 (c) to attend before the Registrar, at a reasonable time (being a  
17 time not less than 14 days after the notice is given) and place  
18 specified in the notice, to answer questions relating to matters  
19 relevant to the investigation, and to produce to the Registrar  
20 all records and other documents in the custody or under the  
21 control of the person relating to those matters.
- 22 (3) A notice requiring a person to attend must state that the person may  
23 be accompanied by another person. The other person may be, but  
24 does not have to be, a lawyer.

25 **336 Action following an investigation**

- 26 (1) If, at the conclusion of an investigation, the Registrar who  
27 conducted the investigation is satisfied that the reporting unit  
28 concerned has contravened:
- 29 (a) a provision of Part 3 of Chapter 8; or  
30 (b) the reporting guidelines; or  
31 (c) a provision of the regulations; or  
32 (d) a rule of the reporting unit relating to the finances or  
33 financial administration of the reporting unit;  
34 the Registrar must notify the reporting unit accordingly.

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- 1 (2) In addition to taking action under subsection (1), the Industrial  
2 Registrar may do all or any of the following:
- 3 (a) issue a notice to the reporting unit requesting that the  
4 reporting unit take specified action, within a specified period,  
5 to rectify the matter;
- 6 (b) apply to the Federal Court for an order under Part 2 of  
7 Chapter 10 (civil penalty provisions);
- 8 (c) refer the matter to the Director of Public Prosecutions for  
9 action in relation to possible criminal offences.
- 10 Note: In appropriate circumstances, the Registrar may also make a  
11 determination in accordance with section 247 (determination of  
12 reporting units).
- 13 (3) The Registrar may, on application by the reporting unit, extend any  
14 periods specified in the notice issued under subsection (2).
- 15 (4) The reporting unit must comply with the request made in the notice  
16 issued under subsection (2).
- 17 (5) The Federal Court may, on application by the Registrar, make such  
18 orders as the Court thinks fit to ensure that the reporting unit  
19 complies with subsection (4).

20 **337 Offences in relation to investigation by Registrar**

- 21 (1) A person commits an offence if:
- 22 (a) the person does not comply with:
- 23 (i) a requirement under subsection 335(2) to attend before a  
24 Registrar; or
- 25 (ii) a requirement under subsection 335(2) to give  
26 information or produce a document; or
- 27 (b) the person gives information, or produces a document, in  
28 purported compliance with a requirement under subsection  
29 335(2), and the person knows, or is reckless as to whether,  
30 the information or document is false or misleading; or
- 31 (c) when attending before a Registrar in accordance with a  
32 requirement under subsection 335(2), the person makes a  
33 statement, whether orally or in writing, and the person

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1 knows, or is reckless as to whether, the statement is false or  
2 misleading.

3 Maximum penalty: 30 penalty units.

4 (2) Strict liability applies to paragraph (1)(a).

5 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

6 (3) Paragraph (1)(a) does not apply if the person has a reasonable  
7 excuse.

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

10 (4) A person is not excused from giving information, or producing a  
11 document, that the person is required to give or produce under  
12 subsection 335(2) on the ground that the information, or the  
13 production of the document, might tend to incriminate the person  
14 or expose the person to a penalty.

15 (5) However:

16 (a) giving the information or producing the document; or

17 (b) any information, document or thing obtained as a direct or  
18 indirect consequence of giving the information or producing  
19 the document;

20 is not admissible in evidence against the person in criminal  
21 proceedings or proceedings that may expose the person to a  
22 penalty, other than proceedings under, or arising out of,  
23 paragraph (1)(b) or (c).

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## Part 5—Jurisdiction of the Federal Court of Australia

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### 338 Jurisdiction of Federal Court

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(1) The Federal Court has jurisdiction with respect to matters arising under this Schedule in relation to which:

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(a) applications may be made to it under this Schedule; or

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(b) actions may be brought in it under this Schedule; or

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(c) questions may be referred to it under this Schedule or the Workplace Relations Act; or

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12

(d) penalties may be sued for and recovered under this Schedule; or

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14

(e) prosecutions may be instituted for offences against this Schedule.

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(2) For the purposes of section 44 of the *Judiciary Act 1903*, the Federal Court is taken to have jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth holding office under the Workplace Relations Act and exercising powers or functions in relation to matters arising under this Schedule.

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Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia power to remit a matter to a federal court that has jurisdiction with respect to that matter.

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(3) The Federal Court has jurisdiction with respect to matters remitted to it under section 44 of the *Judiciary Act 1903*.

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### 339 Exclusive jurisdiction

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(1) Subject to this Schedule, the jurisdiction of the Federal Court in relation to an act or omission for which an organisation or member of an organisation is liable to be sued, or to be proceeded against for a pecuniary penalty, is exclusive of the jurisdiction of any other court created by the Parliament or any court of a State or Territory.

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- 1 (2) The jurisdiction of the Federal Court in relation to matters arising  
2 under section 163, 164, 164A, 164B or 167 or Part 3 of Chapter 7  
3 is exclusive of the jurisdiction, or any similar jurisdiction, of a  
4 State industrial authority.

5 **340 Exercise of Court's original jurisdiction**

- 6 (1) The jurisdiction of the Federal Court under this Schedule is to be  
7 exercised by a Full Court in relation to:  
8 (a) matters in relation to which applications are made to the  
9 Court under section 28 (cancellation of registration); and  
10 (b) matters in which a writ of mandamus or prohibition or an  
11 injunction is sought against:  
12 (i) a Presidential member; or  
13 (ii) officers of the Commonwealth at least one of whom is a  
14 Presidential member.
- 15 (2) Subsection (1) does not require the jurisdiction of the Court to be  
16 exercised by a Full Court in relation to a prosecution for an offence  
17 merely because the offence relates to a matter to which that  
18 subsection applies.
- 19 (3) Subsection (1) does not, in relation to the matters referred to in that  
20 subsection, require the jurisdiction of the Court to be exercised by  
21 a Full Court to:  
22 (a) join or remove a party; or  
23 (b) make an order by consent disposing of an application  
24 (including an order for costs); or  
25 (c) give directions about the conduct of a proceeding, including  
26 directions about:  
27 (i) the use of written submissions; and  
28 (ii) limiting the time for oral argument.

29 **341 Reference of proceedings to Full Court**

- 30 (1) At any stage of a proceeding in a matter arising under this  
31 Schedule, a single Judge exercising the jurisdiction of the Federal  
32 Court:

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- 1 (a) may refer a question of law for the opinion of a Full Court;  
2 and  
3 (b) may, of the Judge's own motion or on the application of a  
4 party, refer the matter to a Full Court to be heard and  
5 determined.
- 6 (2) If a Judge refers a matter to a Full Court under subsection (1), the  
7 Full Court may have regard to any evidence given, or arguments  
8 adduced, in the proceeding before the Judge.

9 **342 Appeal to the Court from certain judgments**

10 In spite of section 24 of the *Federal Court Act 1976*, an appeal  
11 does not lie to a Full Court from a judgment by a single Judge in an  
12 inquiry referred to in section 69, 108 or 201 except in accordance  
13 with leave given by the Court.

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## **Part 6—Other**

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### **343 Delegation by Minister**

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The Minister may, in writing, delegate to:

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(a) the Secretary of the Department; or

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(b) an SES employee or acting SES employee;

8

all or any of the Minister's powers under this Schedule.

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### **344 Conduct by officers, directors, employees or agents**

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(1) Where it is necessary to establish, for the purposes of this Schedule, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

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(a) that the conduct was engaged in by an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

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16

(b) that the officer, director, employee or agent had the state of mind.

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(2) Any conduct engaged in on behalf of a body corporate by:

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(a) an officer, director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; or

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21

(b) any other person at the direction or with the consent or agreement (whether express or implied) of an officer, director, employee or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, director, employee or agent;

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is taken, for the purposes of this Schedule, to have been engaged in also by the body corporate.

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(3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intent, opinion, belief or purpose of the person and the person's reasons for the intent, opinion, belief or purpose.

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1 Note: Section 6 of this Schedule defines *this Schedule* to include the  
2 regulations.

3 **345 Right to participate in ballots**

4 Subject to reasonable provisions in the rules of an organisation in  
5 relation to enrolment, every financial member of the organisation  
6 has a right to vote at any ballot taken for the purpose of submitting  
7 a matter to a vote of the members of the organisation, or of a  
8 branch, section or other division of the organisation in which the  
9 member is included.

10 **346 Requests by members for information concerning elections and**  
11 **certain ballots**

12 A financial member of an organisation may, by notice in writing,  
13 request the returning officer:

- 14 (a) in relation to an election for an office or other position in the  
15 organisation or a branch of the organisation; or  
16 (b) in relation to a ballot taken for the purpose of submitting a  
17 matter to a vote of the members of an organisation or a  
18 branch of the organisation;

19 to provide to the member specified information for the purpose of  
20 determining whether there has been an irregularity in relation to the  
21 election or ballot, and the returning officer must not unreasonably  
22 withhold the information.

23 **347 Providing copy of rules or list of offices etc. on request by**  
24 **member**

- 25 (1) If a member of an organisation requests the organisation, or a  
26 branch of the organisation, to provide to the member:  
27 (a) a copy of the rules of the organisation or branch; or  
28 (b) a copy of any amendments of the rules made since a  
29 specified time; or  
30 (c) a copy of the list of the offices, or of the persons holding the  
31 offices, of an organisation or branch lodged in the Industrial  
32 Registry on behalf of the organisation under subsection  
33 233(1);
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1 the organisation or branch (as the case requires) must provide a  
2 copy to the member and, subject to the regulations, must provide  
3 the copy free of charge.

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

5 (2) A request under this section:

6 (a) must be made to the secretary, or a person performing (in  
7 whole or part) the duties of secretary, of the organisation or  
8 branch concerned; and

9 (b) must be in writing; and

10 (c) must specify the period (of not less than 14 days) within  
11 which the relevant copy must be provided.

12 (3) An organisation or branch whose rules or list of offices, or of the  
13 persons holding the offices, are available on the Internet must  
14 inform a member seeking a copy of that fact. However, informing  
15 the member of that fact does not affect the organisation's or  
16 branch's other obligations under this section and the regulations.

17 (4) The regulations may:

18 (a) prescribe the manner in which a request under this section  
19 must be made; and

20 (b) prescribe the time within which the organisation or branch  
21 must respond to the request; and

22 (c) prescribe the form or forms in which a copy of the rules,  
23 amendments or list of offices, or of the persons holding the  
24 offices, may be provided; and

25 (d) prescribe fees that may be charged by an organisation or  
26 branch for providing a copy of the rules or amendments to a  
27 member if that member has been provided with a copy of the  
28 same rules or amendments free of charge within the past 3  
29 years; and

30 (e) prescribe fees that may be charged by an organisation or  
31 branch for providing a copy of a list of offices to a member if  
32 that member has already been provided with a copy of the  
33 same list free of charge.

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1       **348 Certificate as to membership of organisation**

2                     A certificate of a Registrar stating that a specified person was at a  
3                     specified time a member or officer of a specified organisation or a  
4                     specified branch of a specified organisation is, in all courts and  
5                     proceedings, evidence that the facts are as stated.

6       **349 List of officers to be evidence**

7                     A list of the officers of an organisation or a branch of an  
8                     organisation lodged in the Industrial Registry on behalf of the  
9                     organisation, or a copy of any such list certified by a Registrar, is  
10                    evidence that the persons named in the list were, on the day when  
11                    the list was lodged, officers of the organisation or branch.

12       **350 Unauthorised collection of money**

- 13                    (1) A person commits an offence if:  
14                       (a) the person makes a representation that the person is  
15                       authorised to collect money on behalf of an organisation; and  
16                       (b) the person knows the representation is false.

17                    Maximum penalty: 20 penalty units.

- 18                    (2) A person commits an offence if:  
19                       (a) the person collects money on behalf of an organisation; and  
20                       (b) the person knows that he or she does not have authority to do  
21                       so.

22                    Maximum penalty: 20 penalty units.

23       **351 No imprisonment in default**

24                    In spite of the provisions of any other law, a court may not direct  
25                    that a person is to serve a sentence of imprisonment in default of  
26                    the payment of a fine or other pecuniary penalty imposed under  
27                    this Schedule.

1     **352 Jurisdiction of courts limited as to area**

- 2             (1) For the purposes of this Schedule, a court of a State or Territory  
3                 whose jurisdiction is limited, as to subject matter or parties, to any  
4                 part of a State or Territory is taken to have jurisdiction throughout  
5                 the State or Territory.
- 6             (2) On the hearing of a proceeding in a court for the recovery of a  
7                 penalty, fine, fee, levy or due, the court may, if in the interests of  
8                 justice it considers appropriate, adjourn the hearing to a court of  
9                 competent jurisdiction to be held at some other place in the same  
10                State or Territory.

11     **353 Public sector employer to act through employing authority**

12             In spite of anything to the contrary in this Schedule, the Workplace  
13             Relations Act or any other law, the employer of an employee  
14             engaged in public sector employment must, for the purposes of this  
15             Schedule and the Rules of the Commission, act only by an  
16             employing authority of the employee acting on behalf of the  
17             employer and, in particular:

- 18               (a) anything done by an employing authority of an employee has  
19                 effect, for those purposes, as if it had been done by the  
20                 employer of the employee; and
- 21               (b) anything served on, or otherwise given or notified to, an  
22                 employing authority of an employee has effect, for those  
23                 purposes, as if it had been served on, or given or notified to,  
24                 the employer of the employee.

25     **354 Proceedings by and against unincorporated clubs**

- 26             (1) For the purposes of this Schedule, the treasurer of a club is taken to  
27                 be the employer of a person employed for the purposes or on  
28                 behalf of the club, and any proceeding that may be taken under this  
29                 Schedule by or against the club may be taken by or against the  
30                 treasurer on behalf of the club.
- 31             (2) The treasurer is authorised to retain out of the funds of the club  
32                 sufficient money to meet payments made by the treasurer on behalf  
33                 of the club under this section.
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1 (3) In this section:

2 *club* means an unincorporated club.

3 *treasurer* includes a person having possession or control of any  
4 funds of a club.

5 **355 Inspection of documents etc.**

6 All documents and other things produced in evidence before the  
7 Commission may be inspected by the Commission or by such other  
8 parties as the Commission allows.

9 **356 Trade secrets etc. tendered as evidence**

10 (1) In a proceeding before the Federal Court or the Commission:

11 (a) the person entitled to a trade secret may object that  
12 information tendered as evidence relates to the trade secret;  
13 or

14 (b) a witness or party may object that information tendered as  
15 evidence relates to the profits or financial position of the  
16 witness or party.

17 (2) Where an objection is made under subsection (1) to information  
18 tendered as evidence, the information may only be given as  
19 evidence under a direction of the Federal Court or Commission.

20 (3) If information is given as evidence under subsection (2), it must  
21 not be published in any newspaper, or otherwise, unless the Federal  
22 Court or Commission, by order, permits the publication.

23 (4) Where the Federal Court or Commission directs that information  
24 relating to a trade secret or to the profits or financial position of a  
25 witness or party is to be given in evidence, the evidence must be  
26 taken in private if the person entitled to the trade secret, or the  
27 witness or party, requests.

28 (5) The Federal Court or Commission may direct that evidence given  
29 in a proceeding before it, or the contents of a document produced  
30 for inspection, must not be published.



- 1 (6) A person commits an offence if the person gives as evidence, or  
2 publishes, any information in contravention of this section or a  
3 direction given under this section.

4 Maximum penalty: 20 penalty units.

### 5 **357 Application of penalty**

6 A court that imposes a monetary penalty under this Schedule (other  
7 than a penalty for an offence) may order that the penalty, or a part  
8 of the penalty, be paid to:

- 9 (a) the Commonwealth; or  
10 (b) an organisation; or  
11 (c) another person.

### 12 **358 Enforcement of penalties etc.**

13 (1) Where a court has:

- 14 (a) imposed a monetary penalty under this Schedule (other than  
15 a penalty for an offence); or  
16 (b) ordered the payment of costs or expenses;

17 a certificate signed by a Registrar, specifying the amount payable  
18 and by whom and to whom respectively it is payable, may be filed  
19 in the Federal Court or in any other court of competent jurisdiction.

20 (2) A certificate filed in a court under subsection (1) is enforceable in  
21 all respects as a final judgment of the court in which it is filed.

22 (3) Where there are 2 or more creditors under a certificate, process  
23 may be issued separately by each creditor for the enforcement of  
24 the certificate as if there were separate judgments.

### 25 **359 Regulations**

26 *General power*

27 (1) The Governor-General may make regulations prescribing all  
28 matters:

- 29 (a) required or permitted by this Schedule to be prescribed; or
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- 1 (b) necessary or convenient to be prescribed for carrying out or  
2 giving effect to this Schedule.

3 *Specific matters on which regulations may be made*

- 4 (2) The matters in relation to which the Governor-General may make  
5 regulations include, but are not limited to:  
6 (a) the manner in which, and the time within which, applications,  
7 submissions and objections under this Schedule may be made  
8 and dealt with; and  
9 (b) the fees to be charged in relation to proceedings under this  
10 Schedule; and  
11 (c) the manner in which, and the time within which, the AEC  
12 must give post-election and post-ballot reports; and  
13 (d) requiring, or authorising a particular person to require, the  
14 providing by all or any organisations of information relating  
15 to matters relevant to the conduct of elections for offices in  
16 organisations and branches of organisations; and  
17 (e) requiring the exhibiting, on the premises of an employer  
18 bound by an order of the Commission under this Schedule, of  
19 any of the terms of the order; and  
20 (f) penalties not exceeding a fine of 10 penalty units for offences  
21 against the regulations; and  
22 (g) pecuniary penalties not exceeding:  
23 (i) in the case of a body corporate—25 penalty units; or  
24 (ii) in any other case—5 penalty units;  
25 for contravening civil penalty provisions in the regulations.

26 Note: Regulations made under the Workplace Relations Act may also be  
27 relevant to the operation of this Schedule. For example, regulations  
28 about the Commission's practice and procedure may be made under  
29 section 359 of the Workplace Relations Act.

30 *Regulations relating to payroll deduction facilities*

- 31 (3) The Governor-General may also make regulations imposing  
32 requirements relating to payroll deduction facilities on:  
33 (a) the Commonwealth in its capacity as an employer; and  
34 (b) employers who are constitutional corporations.
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- 1                    Note:        For the meaning of *constitutional corporation*, see section 6.
- 2                    (4) Regulations referred to in subsection (3) may include, but are not  
3                    limited to:
- 4                    (a) requirements that employers give employees information  
5                    about money received by the employer in relation to the  
6                    provision by the employer of payroll deduction facilities for  
7                    an organisation; and
- 8                    (b) requirements that employers who provide payroll deduction  
9                    facilities inform employees who use or have used the  
10                    facilities in relation to their membership of an organisation  
11                    that ceasing to use the facilities does not constitute  
12                    resignation from the organisation.

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2 **Part 7—Complementary registration systems**

3 **Division 1—Application of this Part**

4 **360 Complementary registration systems**

5

If:

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(a) an organisation is divided into branches; and

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(b) the operations of one of the branches is confined to a prescribed State or the operations of 2 or more of the branches are each confined to a prescribed State; and

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(c) the organisation proposes in accordance with this Part to amalgamate with an associated body as defined by this Part for the purpose of seeking the non-corporate registration of the branch, or of any of the branches, referred to in paragraph (b) under an Act of the State concerned that is, or under Acts of the States concerned each of which is, a prescribed State Act for the purposes of this Part;

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then, in addition to the other provisions of this Schedule, this Part applies to the organisation but so applies only in relation to the branch or branches referred to in paragraph (c).

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2 **Division 2—Preliminary**

3 **361 Definitions**

4 (1) In this Part, unless the contrary intention appears:

5 ***amalgamation*** means the carrying out of arrangements in relation  
6 to an organisation and an associated body under which it is  
7 intended that:

- 8 (a) a branch of the organisation is to obtain non-corporate  
9 registration under a prescribed State Act; and  
10 (b) the associated body is to be de-registered under a prescribed  
11 State Act; and  
12 (c) members of the associated body who are not already  
13 members of the organisation are to become members of the  
14 organisation; and  
15 (d) the property of the associated body is to become the property  
16 of the organisation forming part of the branch fund of the  
17 branch; and  
18 (e) the liabilities of the associated body are to be satisfied from  
19 the branch fund of the branch.

20 ***associated body***, in relation to an organisation, means an  
21 association registered under a prescribed State Act that is or  
22 purports to be composed of substantially the same members, and  
23 has or purports to have substantially the same officers, as a branch  
24 of the organisation in the same State, including such an association  
25 that has purported to function as a branch of the organisation.

26 ***State*** means a prescribed State.

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2 **Division 3—Branch rules**

3 **362 Branch funds**

4 (1) The rules of a branch of an organisation must provide for a fund of  
5 the branch that is to be managed and controlled under rules of the  
6 branch, and must make provision in relation to the fund in  
7 accordance with subsection (2).

8 (2) The branch fund is to consist of:

- 9 (a) real or personal property of which the branch of the  
10 organisation, by the rules or by any established practice not  
11 inconsistent with the rules, has, or in the absence of a limited  
12 term lease, bailment or arrangement, would have, the right of  
13 custody, control or management; and  
14 (b) the amounts of entrance fees, subscriptions, fines, fees or  
15 levies received by a branch, less so much of the amounts as is  
16 payable by the branch to the organisation; and  
17 (c) interest, rents, dividends or other income derived from the  
18 investment or use of the fund; and  
19 (d) a superannuation or long service leave or other fund operated  
20 or controlled by the branch for the benefit of its officers or  
21 employees; and  
22 (e) a sick pay fund, accident pay fund, funeral fund, tool benefit  
23 fund or similar fund operated or controlled by the branch for  
24 the benefit of its members; and  
25 (f) property acquired wholly or mainly by expenditure of the  
26 money of the fund or derived from other assets of the fund;  
27 and  
28 (g) the proceeds of a disposal of parts of the fund.

29 (3) The Commission may grant to a branch of an organisation  
30 exemption from this section or any provision of this section on the  
31 ground that the branch's rules make adequate and reasonable  
32 provision for its funds, having regard to the organisation's  
33 functioning under this Schedule and the Workplace Relations Act  
34 and its participation in any State workplace relations system.

1     **363 Obligations of Commission in relation to application under**  
2             **section 158**

- 3             (1) Subsections (2) and (3) apply in relation to the consideration by the  
4             Commission of an application under section 158 for consent to a  
5             change in the name, or an alteration of the eligibility rules, of an  
6             organisation.
- 7             (2) The Commission must, in addition to any other relevant matters,  
8             have regard to:
- 9                 (a) whether there is, in relation to the organisation, an associated  
10                 body registered under a prescribed State Act; and
- 11                 (b) whether the reason the change is sought is to enable the  
12                 organisation, in addition to representing members or staff  
13                 members under this Schedule or the Workplace Relations  
14                 Act, to represent under the State Act a class of persons who  
15                 would, if the change were consented to, become eligible for  
16                 membership.
- 17             (3) In the case of an alteration to a rule that may effect a change in the  
18             class of persons eligible for membership of a branch of the  
19             organisation that is registered under the law of a State, the  
20             Commission must, before consenting, give notice of the proposed  
21             change to the industrial registrar or similar officer appointed under  
22             the law of the State in which the branch operates and, if so  
23             requested, consult with the industrial registrar or officer.

24     **364 Branch autonomy**

25             The rules of an organisation must provide for the autonomy of a  
26             branch in matters affecting members of the branch only and  
27             matters concerning the participation of the branch in a State  
28             workplace relations system.

29     **365 Organisation may participate in State systems**

- 30             (1) Where it is not contrary to the rules of an organisation to do so, the  
31             organisation may participate in workplace relations systems.

**Chapter 11** Miscellaneous

**Part 7** Complementary registration systems

**Division 3** Branch rules

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- 1                   (2) For the purpose of participating, a branch of an organisation may  
2                   become registered under a law of a State so long as that registration  
3                   does not involve the branch in becoming incorporated, or otherwise  
4                   becoming a legal entity, under the law of the State.
- 5                   (3) Where an organisation participates, its rules may provide that the  
6                   secretary of the branch of the organisation in the State is the person  
7                   to sue or to be sued under the law of the State in relation to any  
8                   acts or omissions arising from its participation.



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2 **Division 4—Amalgamation of organisation and associated**  
3 **body**

4 **366 Organisation and associated body may amalgamate**

5 An organisation and an associated body may amalgamate in the  
6 manner set out in this Division.

7 **367 Procedure for amalgamation**

- 8 (1) The committee of management of an organisation and the  
9 committee of management of the associated body must each pass a  
10 resolution proposing amalgamation and specifying particulars of  
11 the proposed amalgamation.
- 12 (2) Application must be made to the Commission by the organisation  
13 for approval of the amalgamation.
- 14 (3) The application must be accompanied by a copy of any proposed  
15 alterations of the rules of the organisation.
- 16 (4) If the rules of the organisation do not comply, subject to subsection  
17 362(3), with Division 3 in respect of each branch for which the  
18 organisation proposes to seek non-corporate registration under a  
19 prescribed State Act, the proposed alterations must include  
20 alterations necessary for the rules so to comply.
- 21 (5) The Commission must:
- 22 (a) determine what notice is to be given to other persons of the  
23 application; and
- 24 (b) determine whether, on whom and how notice should be  
25 served and whether it should be advertised in any newspaper;  
26 and
- 27 (c) fix a period during which objections may be lodged.
- 28 (6) Objection may be made to the amalgamation, so far as it involves  
29 an alteration of the eligibility rules of the organisation, by:
- 30 (a) another organisation; or

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- 1 (b) a member of the associated body; or  
2 (c) a registered association in the State in which the associated  
3 body functions;  
4 because there is another organisation to which the members of the  
5 associated body, whose eligibility for membership would depend  
6 on the alteration, could more conveniently belong.
- 7 (7) Objection may be made to the amalgamation by a member of the  
8 organisation or of the associated body on the ground that:  
9 (a) the provisions of this section have not been complied with; or  
10 (b) the amalgamation would do substantial injustice to the  
11 members of the organisation or associated body.
- 12 (8) If any objections are duly lodged or if the Commission otherwise  
13 deems it advisable to do so, the Commission must:  
14 (a) fix a day and place of hearing; and  
15 (b) determine to whom and in what manner notice of the day and  
16 place of the hearing shall be given.
- 17 (9) If the Commission:  
18 (a) finds that no duly made objection is justified; and  
19 (b) is satisfied that the provisions of this section have been  
20 complied with; and  
21 (c) is satisfied that the amalgamation would not do substantial  
22 injustice to the members of the organisation or of the  
23 associated body; and  
24 (d) is satisfied that any proposed alterations of the rules of the  
25 organisation:  
26 (i) comply with and are not contrary to this Schedule and  
27 applicable awards; and  
28 (ii) are not otherwise contrary to law; and  
29 (iii) have been decided on under the rules of the  
30 organisation;
- 31 the Commission must, subject to subsection (10), approve the  
32 amalgamation and fix the day on which the amalgamation is to  
33 take effect, but otherwise the Commission must refuse to approve  
34 the amalgamation.

- 1           (10) The Commission must not approve an amalgamation unless the  
2           Commission is satisfied as to arrangements made relating to  
3           property and liabilities of the associated body.
- 4           (11) On the day on which the amalgamation takes effect, any alteration  
5           of the rules of the organisation takes effect.
- 6           (12) On the day on which the amalgamation takes effect, all members of  
7           the associated body who are not already members of the  
8           organisation but are or become, on that day, eligible for  
9           membership of the organisation:
- 10           (a) become members of the organisation; and  
11           (b) are to be taken to have been members for the period ending  
12           on that day during which they were members of the  
13           associated body.

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2 **Division 5—Exercise of Commission's powers**

3 **368 Exercise of Commission's powers under this Part**

4                   The powers of the Commission under this Part are exercisable only  
5                   by a Presidential Member.

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(98/02)