

2019

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Fair Work (Registered Organisations)  
Amendment (Ensuring Integrity) Bill  
2019**

**No.     , 2019**

*(Industrial Relations)*

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

*B19RC108.V24.V01.docx 26/06/2019 03:32 PM*



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## Contents

1	Short title .....	1
2	Commencement .....	1
3	Schedules .....	2
<b>Schedule 1—Disqualification from office</b>		3
	<i>Fair Work (Registered Organisations) Act 2009</i>	3
<b>Schedule 2—Cancellation of registration and alternative orders</b>		14
	<i>Fair Work (Registered Organisations) Act 2009</i>	14
<b>Schedule 3—Administration of dysfunctional organisations etc.</b>		26
	<i>Fair Work (Registered Organisations) Act 2009</i>	26
<b>Schedule 4—Public interest test for amalgamations</b>		34
	<i>Fair Work (Registered Organisations) Act 2009</i>	34
<b>Schedule 5—Minor and technical amendments</b>		41
	<i>Fair Work (Registered Organisations) Act 2009</i>	41



# Sensitive: Legal

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OPC drafter to complete	
1. Does this Bill need a message? (See H of R Practice, sixth ed, pp. 423-427, and OGC advice.) If yes: <ul style="list-style-type: none"><li>• List relevant clauses/items—</li><li>• Prepare message advice (see Drafting Direction 4.9)</li><li>• Give a copy of the message advice to the Legislation area.</li></ul>	No
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.) If no list relevant clauses/items—	Yes
3. Is there any constitutional reason why this Bill should not be introduced in the Senate? (See Constitution sections 53 and 55 and Drafting Direction 3.2.)	No

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

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The Parliament of Australia enacts:

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### **1 Short title**

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This Act is the *Fair Work (Registered Organisations) Amendment (Ensuring Integrity) Act 2019*.

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### **2 Commencement**

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

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

**3 Schedules**

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

## Schedule 1—Disqualification from office

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

#### 1 Section 6

Insert:

*designated finding* has the meaning given by section 9C.

*designated law* has the meaning given by section 9C.

*disqualified from holding office in an organisation* has the meaning given by section 225.

~~*wider criminal finding* has the meaning given by section 9C.~~

#### 2 After section 9B

Insert:

#### 9C Designated findings, and designated laws ~~and wider criminal findings~~

*Designated findings*

(1) A *designated finding* is a finding:

- (a) in any criminal proceedings against a person—that the person has committed an offence against a designated law; or
- (b) in any civil proceedings against a person—that the person has contravened, or been involved in a contravention of:
  - (i) a civil penalty provision of this Act; or
  - (ii) a civil remedy provision of the Fair Work Act; or
  - (iii) a civil remedy provision of the *Building and Construction Industry (Improving Productivity) Act 2016*; or
  - (iv) a ~~civil penalty provision of the Fair Work (Building Industry) Act 2012 as in force at any time before its repeal; or~~

- 1 ~~(v) a provision of Part IV of the *Competition and Consumer*~~  
2 ~~*Act 2010*, or a provision of the *Competition Code of a*~~  
3 ~~*State or Territory*, other than an offence; or~~  
4 ~~(vi) a WHS civil penalty provision of the *Work Health and*~~  
5 ~~*Safety Act 2011*; or~~  
6 ~~(vii) a provision of a State or Territory OHS law (within the~~  
7 ~~meaning of the *Fair Work Act*), other than an offence.~~

### Designated ~~law~~laws

#### (2) The following are **designated laws**:

- 9 (a) this Act;  
10 (b) the *Fair Work Act*;  
11 (c) the *Building and Construction Industry (Improving*  
12 *Productivity) Act 2016*;  
13 (d) the ~~*Fair Work (Building Industry) Act 2012* as in force at any~~  
14 ~~time before its repeal;~~  
15 ~~(e) Part IV of the *Competition and Consumer Act 2010* (and any~~  
16 ~~other provision of the Act so far as it applies in relation to~~  
17 ~~Part IV) and the *Competition Code of each State and*~~  
18 ~~*Territory*;~~  
19 ~~(f) the *Work Health and Safety Act 2011*;~~  
20 ~~(g) each State or Territory OHS law (within the meaning of the~~  
21 ~~*Fair Work Act*);~~  
22 ~~(h) Part 7.8 of the *Criminal Code* (causing harm to, and~~  
23 ~~impersonation and obstruction of, Commonwealth public~~  
24 ~~officials) and any other provision of the Code so far as it~~  
25 ~~applies in relation to that Part.~~

### ~~Wider criminal findings~~

- 26 ~~(3) A **wider criminal finding** is a finding (other than a designated~~  
27 ~~finding) in any criminal proceedings against a person that the~~  
28 ~~person has committed an offence against any law of the~~  
29 ~~Commonwealth or a State or Territory.~~



## 9D Findings against part of an organisation

A finding made against a part of an organisation is taken for the purposes of this Act to have been made against the organisation.

### **33 Section 181**

After “Chapter 3).”, insert “This Chapter also deals with orders disqualifying a person from holding office in organisations.”.

### **4 Section 181**

Omit:

Part 4 sets out the circumstances in which people are disqualified from holding, or being elected to hold, office in organisations.

substitute:

Part 4 sets out circumstances in which a person becomes ineligible to be elected to, or to hold, office in an organisation. It also provides for applications to be made to the Federal Court for orders disqualifying a person from holding office in an organisation. It is an offence for a person to be a candidate for election to, or hold or act as if they hold, office in an organisation in these circumstances.

### **5 Division 1 of Part 4 of Chapter 7 (heading)**

Repeal the heading, substitute:

## **Division 1—Preliminary**

### **46 At the end of section 210**

Add:

This Part also allows applications to be made ~~by the Commissioner, the Minister and certain other persons~~ for a Federal Court order disqualifying a person from holding office in an organisation (see Division 3).

~~A-It is an offence for a person who is disqualified may commit an offence if the person is from holding office in an organisation to be a candidate for, or holds~~hold ~~or acts~~act ~~as if the person holds~~they hold, office in an organisation (see Division 4).

### **57 At the end of Division 1 of Part 4 of Chapter 7**

Add:

#### **210A Application of this Part to branches**

(1) In this Part:

- (a) a reference to an office in, or holding an office in, an organisation includes an office in, or holding an office in, a branch of an organisation; and
- (b) a reference to an officer of an organisation includes an officer of a branch of an organisation.

(2) This section does not limit subsection 9(2).

### **68 After paragraph 212(a)**

Insert:

- (aa) an offence under a law of the Commonwealth ~~or~~ a State or Territory, or another country, punishable on conviction by imprisonment for life or a period of 5 years or more; or

### **79 Subsection 215(1)**

Omit “an election, or to be elected or appointed, to an office”, substitute “election to, or to hold, an office”.

### **810 At the end of subsection 215(1)**

Add:

Note: The person is also not eligible to be a candidate for election to, or to hold, an office in a branch of an organisation (see subsection 9(2) and section 210A).

### **911 At the end of Part 4 of Chapter 7**

Add:

## Division 3—Disqualification orders

### 221 Simplified outline of this Division

The Commissioner, the Minister or another person with a sufficient interest may apply to the Federal Court for an order disqualifying a person from holding office in an organisation, on the grounds set out in this Division.

### 222 Disqualification orders

- (1) Any of the following may apply for an order under this section, if the applicant considers that any one or more of the grounds for disqualification set out in section 223 apply in relation to a person:

- (a) the Commissioner;
- (b) the Minister;
- (c) a person with a sufficient interest.

- (2) The Federal Court may make an order disqualifying the person from holding office in an organisation, for the period the Court considers appropriate, if the Court:

- (a) is satisfied that a ground for disqualification set out in the application applies in relation to the person; and
- (b) does not consider that it would be unjust to disqualify the person, having regard to:
  - (i) the nature of the matters constituting the ground; and
  - (ii) the circumstances and the nature of the person's involvement in the matters constituting the ground; and
  - (iii) any other matters the Court considers relevant.

- (3) If the Court makes an order under subsection (2), the person is also disqualified from holding office in a branch of an organisation for the period.

- (4) The Court must give the Commissioner a copy of the order.

### 223 Grounds for disqualification

#### *Designated finding or contempt in relation to designated law*

- (1) A ground for disqualification applies in relation to a person if:
- (a) a designated finding is made against the person; or
  - (b) the person is found to be in contempt of court in relation to an order or injunction made under a designated law.

#### *~~Wider criminal finding or contempt~~*

#### *Contempt in relation to law other than designated law*

- (2) A ground for disqualification applies in relation to a person if:
- (a) ~~either:~~
    - ~~(i) a wider criminal finding is made against the person; or~~
    - ~~(ii) the person is found to be in contempt of court in relation to an order or injunction made under any law of the Commonwealth or a State or Territory (other than a designated law); and~~
  - (b) the person engaged in the conduct to which the finding relates in the course of (or purportedly in the course of) performing functions in relation to any organisation.

#### *Multiple failures to prevent contraventions etc. by organisation*

- (3) A ground for disqualification applies in relation to a person if:
- (a) ~~2 of any more than one~~ of the following findings ~~are~~ made against any organisation in relation to conduct engaged in while the person is an officer of the organisation:
    - (i) a designated finding;
    - ~~(ii) a wider criminal finding;~~
    - ~~(iii) a finding that the organisation is in contempt of court in relation to an order or injunction made under any law of the Commonwealth or a State or Territory~~ a designated law; and
  - (b) the person failed to take reasonable steps to prevent the conduct.

---

*Corporate impropriety*

- (4) A ground for disqualification applies in relation to a person if:
- (a) the person is found, in any criminal or civil proceedings against the person, to have committed an offence against, or contravened, a provision of Division 1 of Part 2D.1 of the *Corporations Act 2001* (general duties of officers of corporations); or
  - (b) the person becomes disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2001*.

*Not fit and proper*

- (5) A ground for disqualification applies in relation to a person if, having regard to any events mentioned in subsection (6), the person is not a fit and proper person to hold office in an organisation.
- (6) For the purposes of subsection (5), the events are the following:
- (a) the person is refused an entry permit, or an entry permit held by the person is revoked or suspended, under Part 3-4 of the Fair Work Act;
  - (b) the person is refused a WHS entry permit, or a WHS entry permit held by the person is revoked or suspended, under Part 7 of the *Work Health and Safety Act 2011*;
  - (c) the person is refused an entry permit (however described), or any such permit held by the person is revoked or suspended, under a State or Territory OHS law (within the meaning of the Fair Work Act);
  - (d) in any criminal or civil proceedings against the person, or in any action against the person by an agency of the Commonwealth or a State or Territory, the person is found to have engaged in conduct involving fraud, dishonesty, misrepresentation, concealment of material facts or a breach of duty;
  - (e) in any criminal proceedings against the person, the person is found to have-  
(i) engaged in conduct involving the intentional use of violence towards another person, the intentional causing

of death or injury to another person or the intentional  
damaging or destruction of property; or

~~(f) any other event the Court considers relevant.~~

(ii) committed an offence against a law of the

Commonwealth or a State or Territory that is punishable  
by imprisonment for 2 years or more.

### Division 4—Offences in relation to standing for or holding office etc. while disqualified

#### 224 Simplified outline of this Division

A person who is disqualified from holding office in an organisation  
may commit an offence if the person is a candidate for, or holds or  
acts as if the person holds, office in an organisation.

#### 225 Definition of *disqualified from holding office in an organisation*

A person is *disqualified from holding office in an organisation* if  
the person is:

- (a) not eligible to be a candidate for election to, or to hold, an  
office in an organisation under subsection 215(1); or
- (b) disqualified from holding office in an organisation under an  
order made under section ~~28N~~28M or 222.

Note: The person is also disqualified from holding office in a branch of an  
organisation (see subsections 9(2), ~~28N~~28M(2) and 222(3)).

#### 226 Offences

(1) A person commits an offence if:

- (a) the person is a candidate for election to an office in an  
organisation; and
- (b) the person is disqualified from holding office in an  
organisation.

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

(2) A person commits an offence if:

- (a) the person is an officer of an organisation; and
- (b) the person is disqualified from holding office in an organisation; and
- (c) if the person is disqualified from holding office in an organisation under subsection 215(1) and was holding an office in the organisation at the time of the conviction referred to in that subsection—the person has ceased to hold that office under subsection 215(2) or (3), 216(3) or 217(3).

Note: Paragraph (2)(c) has the effect that a person who is holding office at the time the person is convicted of a prescribed offence does not commit an offence during the period the person is allowed to continue holding the office in accordance with sections 215, 216 and 217.

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

(3) A person commits an offence if:

- (a) the person is disqualified from holding office in an organisation; and
- (b) the person:
  - (i) exercises the capacity to significantly affect the financial standing or other affairs of an organisation or a part of an organisation; or
  - (ii) gives directions (not including advice given by the person in the proper performance of functions that relate to the person's professional capacity) to the committee of management of an organisation or a part of an organisation; and
- (c) if subparagraph (b)(ii) applies—the person:
  - (i) knows that the committee of management of the organisation or part is accustomed to act in accordance with the person's directions; or
  - (ii) intends that the committee of management will do so.

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

(4) Strict liability applies to the physical element of the offences against subsections (1), (2) and (3), that a person is disqualified from holding office in an organisation, if the person is disqualified under an order made under section ~~28N~~28M or 222.

- 1 (5) Nothing in this section affects the powers of the Federal Court in  
2 relation to punishment of contempt of the Court.

### 4012 Subsection 255E(2)

4 Repeal the subsection, substitute:

- 5 (2) The Commissioner must refuse to grant the application if the  
6 person is disqualified from holding office in an organisation.

### 4113 Section 307A

8 Repeal the section.

### 4214 At the end of subsection 308(1)

10 Add:

11 Note: Section 222 also allows the Commissioner, Minister, or a person with  
12 a sufficient interest to apply for a disqualification order in relation to a  
13 person's contravention of a civil penalty provision of this Act, among  
14 other matters.

### 4315 Paragraph 324(2)(g)

16 Omit "or to be elected or appointed", substitute "to, or to hold, an office  
17 in an organisation".

### 4416 Subsection 325(2)

19 Omit "or to be elected or appointed", substitute "for election to, or to  
20 hold, an office in an organisation,".

### 4517 Application of amendments

22 *Definition of prescribed offence*

23 (1) Despite paragraph 213(a) of the *Fair Work (Registered Organisations)*  
24 *Act 2009* (the *Act*), Part 4 of Chapter 7 of the Act does not apply in  
25 relation to a conviction for a prescribed offence within the meaning of  
26 paragraph 212(aa) of the Act if:

- 27 (a) the offence is not a prescribed offence within the meaning of  
28 another paragraph of section 212 of the Act; and  
29 (b) the conviction ~~occurred~~ is in relation to conduct engaged in  
30 before commencement.



## *Section 222 disqualification*

- (2) In satisfying itself as to whether a ground for disqualification set out in section 223 of the Act as amended by this Schedule applies in relation to a person, the Federal Court may only have regard to the following:
- (a) for the ground mentioned in subsection 223(1) or (2)—a finding made in relation to conduct engaged in:
    - (i) after commencement; and
    - (ii) for paragraph 223(1)(b) or ~~subparagraph 223(2)(a)(ii)~~—in relation to an order or injunction made after commencement;and the matters mentioned in paragraph 223(2)(b);
  - (b) for the ground mentioned in subsection 223(3)—a finding made in relation to conduct engaged in:
    - (i) after commencement; and
    - (ii) for subparagraph 223(3)(a)(~~iii~~)—in relation to an order or injunction made after commencement;and a failure, after commencement, to take steps as mentioned in the subsection;
  - (c) for the ground mentioned in subsection 223(4)—a finding made in relation to conduct engaged in, or a disqualification in relation to conduct engaged in or an event occurring, after commencement;
  - (d) for the ground mentioned in subsection 223(5):
    - (i) an event occurring after commencement; and
    - (ii) for an event mentioned in paragraph 223(6)(d) or (e)—a finding made in relation to conduct engaged in after commencement.
- (3) However, the Court may have regard to matters occurring before or after commencement for the purposes of paragraph 222(2)(b) of the Act as amended by this Schedule.

## *Section 307A disqualification*

- (4) Section 307A of the Act, as in force immediately before its repeal by this Schedule, continues in effect, after commencement and despite that repeal, in relation to conduct engaged in before commencement.

- 1 (5) A reference in section 225 of the Act as amended by this Schedule to an  
2 order made under section 222 includes a reference to an order made  
3 under section 307A of the Act, including that section as continued in  
4 effect by subitem (4).

5 *Commencement*

- 6 (6) In this item:  
7 *commencement* means the start of the day this item commences.

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## **Schedule 2—Cancellation of registration and alternative orders**

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

#### **1 At the end of section 17**

Add:

It is also possible for the Federal Court to make orders instead of cancellation of registration, on application under Division 2 of Part 3. These orders might include disqualification of certain officers, alteration of eligibility rules to exclude certain members and suspension of rights and privileges of the organisation and members.

#### **2 Subsections 19(4) and 20(2)**

After “or its members”, insert “or officers”.

#### **3 Part 3 of Chapter 2 (heading)**

Repeal the heading, substitute:

## **Part 3—Cancellation of registration and alternative orders**

#### **4 Sections 28 and 29**

Repeal the sections, substitute:

### **Division 1—Simplified outline of this Part**

#### **27A Simplified outline of this Part**

The Federal Court or the FWC may cancel the registration of an organisation.

1 The grounds for an application to the Federal Court are set out in  
2 Division 3. ~~Broadly, the grounds relate to corrupt or unlawful~~  
3 ~~conduct.~~

4 The same grounds may also be the basis for an application to the  
5 Federal Court for alternative orders. The alternative orders might  
6 be made in situations involving actions of particular officers or  
7 members, or where the Court otherwise considers it appropriate.

8 An applicant can apply to the Court for cancellation or for  
9 alternative orders (or both). If an applicant applies for cancellation  
10 (or for both cancellation and alternative orders) and the Court finds  
11 that the ground for the application is established, the Court may  
12 consider making alternative orders instead of cancellation only if  
13 the organisation satisfies the Court that cancellation would be  
14 unjust.

15 The alternative orders include disqualification of officers,  
16 alteration of eligibility rules to exclude certain members and  
17 suspension of rights and privileges of the organisation and  
18 members.

19 The FWC also has the power to cancel the registration of an  
20 organisation on certain, mainly technical, grounds, either on  
21 application or on its own motion.

## 22 Division 2—Applications to the Federal Court for orders 23 under this Part

### 24 28 Application for cancellation of registration

25 Any of the following persons may apply to the Federal Court for an  
26 order cancelling the registration of an organisation, if the person  
27 considers that any one or more of the grounds in Division 3 exists  
28 in relation to the organisation:

- 29 (a) the Commissioner;  
30 (b) the Minister;  
31 (c) a person with a sufficient interest.

## 28A Application for alternative orders

Any of the following persons may apply to the Federal Court for any one or more of the orders under Division 5 in relation to an organisation, if the person considers that any one or more of the grounds in Division 3 exists in relation to the organisation:

- (a) the Commissioner;
- (b) the Minister;
- (c) a person with a sufficient interest.

## 28B Multiple applications

- (1) Nothing in this Part prevents a person applying under section 28 for cancellation of registration and under section 28A for alternative orders in relation to the same organisation.
- (2) If a person does so, the Court must deal with the applications together.

## Division 3—Grounds for Federal Court orders

### 28C Ground—~~corrupt conduct of officers~~ affairs of organisation or part of organisation

- (1) For the purposes of an application under section 28 or 28A, a ground exists in relation to an organisation if ~~a substantial number of the officers of the organisation or a part of the organisation, or 2 or more senior officers of the organisation or a part of the organisation, have:~~
  - ~~(a) engaged in conduct that involved, or was engaged in for the purposes of, abusing their position as officers; or~~
  - ~~(b) engaged in conduct that perverted, or was engaged in for the purposes of perverting, the course of justice; or~~
  - ~~(c) engaged in conduct that, having regard to their duties and powers as officers, involved, or was engaged in for the purposes of, corruption of any other kind; or~~
  - ~~(d) of the organisation or a part of the organisation have acted in affairs of the organisation or a part of the organisation in their~~

- 1 own interests rather than in the interests of the members of  
2 the organisation or part as a whole; or  
3 ~~(e) conducted b)~~ affairs of the organisation or a part of the  
4 organisation have been or are being conducted in a manner  
5 that is:  
6 (i) oppressive or unfairly prejudicial to, or unfairly  
7 discriminatory against, a member or a class of members;  
8 or  
9 (ii) contrary to the interests of the members of the  
10 organisation or part as a whole; or  
11 ~~(2) (c)~~ affairs of the organisation or a part of the organisation  
12 have been or are being conducted in a manner resulting in the  
13 organisation or part, or officers or members of the  
14 organisation or part, having a record of not complying with  
15 designated laws.  
16 (2) In working out whether there is a record for the purposes of  
17 paragraph (1)(c), the Court must have regard to the incidence and  
18 age of occurrences of non-compliance with designated laws by the  
19 organisation or part or officers or members of the organisation or  
20 part.  
21 (3) For the purposes of this section (and without altering meaning  
22 elsewhere in this Act), the *affairs* of an organisation or a part of an  
23 organisation include:  
24 (a) the internal management, governance and proceedings of the  
25 organisation or part; and  
26 (b) its business model, including the way it is structured and how  
27 it operates to achieve its aims; and  
28 (c) its transactions and dealings with other persons.  
29 (4) In considering how affairs of the organisation or a part of the  
30 organisation have been or are being conducted, the Court may have  
31 regard to both acts and omissions.  
32 (5) A finding of fact in proceedings in any court is admissible as prima  
33 facie evidence of the fact for the purposes of an application made  
34 on the ground set out in this section.

## **28D—Ground—multiple findings against organisation**

~~For the purposes of an application under section 28 or 28A, a ground exists in relation to an organisation if 2 of any of the following findings have been made against the organisation:~~

- ~~(a) a designated finding;~~
- ~~(b) a wider criminal finding.~~

## **28E28D Ground—serious offence committed by organisation**

For the purposes of an application under section 28 or 28A, a ground exists in relation to an organisation if:

- (a) the organisation is found, in criminal proceedings against the organisation, to have committed an offence against a law of the Commonwealth or a State or Territory; and
- (b) the offence is punishable on conviction by a penalty for a body corporate of (or equivalent to) at least 1,500 penalty units.

## **28F28E Ground—multiple findings against members**

For the purposes of an application under section 28 or 28A, a ground exists in relation to an organisation if designated findings have been made against a substantial number of the members of:

- (a) the organisation; or
- (b) a part of the organisation; or
- (c) a class of members of the organisation.

## **28G28F Ground—non-compliance with orders or injunctions**

(1) For the purposes of an application under section 28 or 28A, a ground exists in relation to an organisation if:

- (a) the organisation has failed to comply with an order or injunction made under ~~any law of the Commonwealth or a State or Territory~~ designated law; or
- (b) a substantial number of the members of:
  - (i) the organisation; or
  - (ii) a part of the organisation; or

- 1 (iii) a class of members of the organisation;  
2 have failed to comply with an order or injunction made under  
3 a designated law.

- 4 (2) A finding of fact in proceedings in any court is admissible as prima  
5 facie evidence of the fact for the purposes of an application made  
6 on the ground set out in this section.

7 **28H28G Ground—obstructive industrial action**

- 8 (1) For the purposes of an application under section 28 or 28A, a  
9 ground exists in relation to an organisation if:  
10 (a) the organisation; or  
11 (b) a substantial number of the members of:  
12 (i) the organisation; or  
13 (ii) a part of the organisation; or  
14 (iii) a class of members of the organisation;  
15 have organised or engaged in industrial action covered by  
16 subsection (2).
- 17 (2) This subsection covers industrial action (other than protected  
18 industrial action):  
19 (a) that prevented, hindered or interfered with:  
20 (i) the activities of a federal system employer; or  
21 (ii) the provision of any public service by the  
22 Commonwealth or a State or Territory or an authority of  
23 the Commonwealth or a State or Territory; or  
24 (b) that had, or is having or is likely to have, a substantial  
25 adverse effect on the safety, health or welfare of the  
26 community or a part of the community.
- 27 (3) A finding of fact in proceedings in any court is admissible as prima  
28 facie evidence of the fact for the purposes of an application made  
29 on the ground set out in this section.



**28J28H Application of grounds in relation to amalgamated organisations**

- (1) For the purposes of considering whether a ground set out in this Division exists in relation to an organisation that is an amalgamated organisation:
- (a) a reference to the organisation includes any de-registered organisation in relation to the amalgamation; and
  - (b) a reference to an officer of the organisation includes a person who was an officer of ~~a~~any such de-registered organisation; and
  - (c) a reference to conduct of an officer in relation to the organisation includes conduct of the officer as an officer in relation to ~~a~~any such de-registered organisation.
- (2) An expression defined for the purposes of Part 2 of Chapter 3 has the same meaning in this section as it has in that Part.

**Division 4—Cancellation of registration of an organisation by the Federal Court**

**28K28J Order cancelling registration of an organisation**

- (1) If an application is made under section 28 for cancellation of the registration of an organisation, the Federal Court must cancel the registration if:
- (a) the Court finds that a ground set out in the application is established; and
  - (b) the organisation does not satisfy the Court that it would be unjust to cancel its registration, having regard to:
    - (i) the nature of the matters constituting the ground; and
    - (ii) the action (if any) that has been taken by or against the organisation or its members or officers in relation to those matters; and
    - (iii) the best interests of the members of the organisation as a whole; and
    - (iv) any other matters the Court considers relevant.

Note 1: If the organisation satisfies the Court that it would be unjust to cancel its registration, the Court may decide instead to make any of the orders under Division 5. The Court may do this whether or not an application for any of those orders has been made under section 28A.

Note 2: See Division 7 for the effect of cancellation.

- (2) The organisation must be given an opportunity of being heard by the Court.

### **28L28K Orders additional to cancelling registration under section 28K28J**

If the Federal Court cancels the registration of an organisation under section 28K28J, the Court may, by order, do either or both of the following:

- (a) direct that an application by the former organisation for registration as an organisation is not to be dealt with under this Act before the end of a specified period;
- (b) direct that an application for the registration of an organisation whose officers are the same, or substantially the same, as the officers of the former organisation is not to be dealt with under this Act before the end of a specified period.

## **Division 5—Alternative Federal Court orders**

### **28M28L When the Federal Court may make alternative orders**

- (1) The Federal Court may make orders under this Division if:
- (a) the Court finds that a ground set out in an application under section 28 or 28A in relation to an organisation is established; and
  - (b) if the Court is considering an application under section 28, or an application under section 28A together with an application under section 28—the organisation satisfies the Court that it would be unjust to cancel the registration of the organisation.
- (2) Before making an order under section 28N28M or 28P28N, or exercising the power mentioned in paragraph 28Q28P(1)(a) in relation to only part of an organisation or only some of its members, the Court must be satisfied that:

- 1 (a) the ground set out in the application is established wholly or  
2 mainly because of the conduct of:  
3 (i) officers of a particular part of the organisation; or  
4 (ii) members of a particular part of the organisation or a  
5 particular class of members of the organisation; and  
6 (b) it would not be unjust to make the order, or exercise the  
7 power in that way, having regard to:  
8 (i) the circumstances and nature of the officers' or  
9 members' involvement in the matters constituting the  
10 ground; and  
11 (ii) any other matters the Court considers relevant.
- 12 (3) Before exercising the power mentioned in paragraph ~~28Q~~~~28P~~(1)(a)  
13 in relation to the whole of an organisation or all of its members, the  
14 Court must be satisfied that it would not be unjust to exercise the  
15 power in that way, having regard to:  
16 (a) the nature of the matters constituting the ground; and  
17 (b) any other matters the Court considers relevant.
- 18 (4) The organisation must be given an opportunity of being heard by  
19 the Court.

## ~~28N~~~~28M~~ **Order—disqualification of certain officers**

- 20  
21 (1) The Federal Court may make an order disqualifying the officers  
22 mentioned in subparagraph ~~28M~~~~28L~~(2)(a)(i) from holding office in  
23 an organisation, for the period the Court considers appropriate.
- 24 (2) If the Court does so, the officers are also disqualified from holding  
25 office in a branch of an organisation for the period.
- 26 (3) The Court must give the Commissioner a copy of the order.

## ~~28P~~~~28N~~ **Order—exclusion of certain members**

- 27  
28 (1) The Federal Court may make an order:  
29 (a) determining alterations of the eligibility rules of the  
30 organisation so as to exclude from eligibility for membership  
31 of the organisation persons belonging to the part of the

organisation, or the class of members, mentioned in  
subparagraph ~~28M28L~~(2)(a)(ii); or

(b) if persons belonging to such a part or class are eligible for  
membership under an agreement of the kind referred to in  
section 151—declaring that the persons are excluded from  
eligibility for membership despite anything in the agreement.

(2) An alteration of rules made under this section takes effect on the  
date of the order or on such other day as is specified in the order.

(3) If the Court makes an order under this section, the Court may also,  
by order, prohibit the organisation, for a specified period, from  
seeking consent under section 158 to an alteration of the  
organisation's eligibility rules that would have the effect of  
restoring eligibility to any persons or class of persons excluded by  
the order under this section.

**~~28Q28P~~ Order—suspension of rights and privileges etc. and later  
reconsideration of question of cancellation or alternative  
orders**

*Powers to suspend rights, privileges etc.*

(1) The Federal Court may, by order, exercise any of the following  
powers:

(a) the power to suspend, to the extent specified in the order, any  
of the rights, privileges or capacities of the organisation or a  
part of the organisation, or of all or any of its members, as  
such members, under this Act, the Fair Work Act or any  
other Act, under modern awards or orders made under this  
Act, the Fair Work Act or any other Act or under enterprise  
agreements;

(b) the power to give directions as to the exercise of any rights,  
privileges or capacities that have been suspended;

(c) the power to make provision restricting the use of the funds  
or property of the organisation or a part of the organisation,  
and for the control of the funds or property for the purpose of  
ensuring observance of the restrictions.

- 1 (2) An order made in the exercise of a power under this section has  
2 effect despite anything in the rules of the organisation or a part of  
3 the organisation.
- 4 (3) An order made in the exercise of a power under this section:  
5 (a) may be revoked by the Court, by order, on application by a  
6 party to the proceedings; and  
7 (b) unless sooner revoked, ceases to be in force on the day  
8 specified in the order.

9 *Reconsideration of application*

- 10 (4) If the Court exercises a power under this section in relation to an  
11 application under section 28 or 28A (or both), the Court must  
12 reconsider the application:  
13 (a) by the time the orders made under this section cease to be in  
14 force; or  
15 (b) on application by a party to the proceeding before that time,  
16 if the Court considers that it is just to reconsider the  
17 application under section 28 or 28A before that time having  
18 regard to any evidence given in relation to observance or  
19 non-observance of any order and any other relevant  
20 circumstances.

21 **Division 6—Cancellation of registration of an organisation**  
22 **by the FWC**

23 **5 At the end of section 30**

24 Add:

25 Note: See Division 7 for the effect of cancellation.

26 **6 Before section 31**

27 Insert:

28 **Division 7—Effect of cancellation of registration**

29 **7 ~~Paragraph~~Before paragraph 158(10)(a)**

30 ~~After “Insert:~~

1 (aa) determined by the Federal Court under<sup>22</sup>, insert “section  
2 28P28N; or<sup>22</sup>.”

### 8 Section 343

4 Before “The”, insert “(1)”.

### 9 At the end of section 343

6 Add:

7 (2) Despite subsection (1), the Minister’s functions or powers under  
8 the following provisions cannot be delegated:

- 9 (a) section 28;  
10 (b) section 28A;  
11 (c) section 222;  
12 (d) subsection 323(1).

### 10 Paragraph 343B(2)(a)

14 Repeal the paragraph, substitute:

- 15 (a) section 28 or 28A;

### 11 Application of amendments

17 (1) In finding whether a ground set out in an application made under  
18 section 28 or 28A of the *Fair Work (Registered Organisations) Act*  
19 *2009* (the *Act*) as amended by this Schedule is established, the Federal  
20 Court may only have regard to the following:

- 21 (a) for the ground set out in section 28C of the Act—conduct  
22 engaged in after commencement;  
23 (b) for the ground set out in section 28D or 28E of the Act—a  
24 finding made in relation to conduct engaged in after  
25 commencement;  
26 (c) for the ground set out in section 28F28E of the Act—findings  
27 made in relation to conduct engaged in after commencement;  
28 (d) for the ground set out in section 28G28F of the Act—failures  
29 to comply with orders or injunctions made after  
30 commencement;

- 1 (e) for the ground set out in section ~~28H~~28G of the Act—  
2 industrial action organised or engaged in after  
3 commencement.
- 4 (2) However, the Court may have regard to matters occurring before or  
5 after commencement for the purposes of subparagraphs  
6 ~~28K~~28J(1)(b)(iv) and ~~28M~~28L(2)(b)(ii), and paragraph ~~28M~~28L(3)(b),  
7 of the Act ~~as amended by this Schedule~~.
- 8 (3) Sections 28 and 29 of the Act, as in force immediately before  
9 commencement, continue in effect, after commencement and despite the  
10 amendments made by this Schedule, in relation to:  
11 (a) conduct engaged in before commencement; and  
12 (b) conduct engaged in before or after commencement in relation  
13 to an order or injunction made before commencement.
- 14 (4) For the purposes of the operation of sections 28 and 29 of the Act as  
15 continued in effect by subitem (3), the amendments made by this  
16 Schedule are taken not to have been made.
- 17 (5) In this item:  
18 **commencement** means the start of the day this item commences.

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**Schedule 3—Administration of dysfunctional organisations etc.**

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

**1 Section 6**

Insert:

***administrator*** for an organisation or a part of an organisation:

- (a) means a person appointed as administrator for the organisation or part in accordance with a scheme approved under subsection 323A(1); and
- (b) includes any interim administrator appointed for the time being by the Federal Court.

***books*** includes:

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

***financial misconduct*** includes the following:

- (a) a contravention of a provision of Division 2 of Part 2 of Chapter 9 (general duties in relation to the financial management of organisations);
- (b) misuse of funds;
- (c) false accounting;
- (d) failure to fulfil duties in relation to financial reporting.

***part*** of an organisation includes:

- (a) a branch or part of a branch of the organisation; and
- (b) a collective body of the organisation or a branch of the organisation.



## **2 Subsection 280(6)**

Repeal the subsection.

## **3 Section 317**

After:

Part 2 contains provisions validating certain invalidities in relation to registered organisations.

insert:

Part 2A provides for applications to be made to the Federal Court for a declaration in relation to an organisation or any part of it that is not functioning effectively. If a declaration is made, the Federal Court may approve a scheme to resolve the matters to which declaration relates, including a scheme for the administration of the organisation or a part of it.

## **4 Section 323**

Repeal the section, substitute:

## **Part 2A—Dysfunctional organisations etc.**

### **323 Declaration of dysfunction, misconduct etc. or vacancy in offices**

(1) Any of the following may apply to the Federal Court for any one or more of the declarations set out in subsection (3), if the applicant considers that circumstances mentioned in a paragraph of that subsection exist in relation to an organisation:

- (a) the Commissioner;
- (b) the Minister;
- (c) the organisation;
- (d) a member of the organisation;
- (e) any other person having a sufficient interest in the organisation.

- 1 (2) The Federal Court may make the declaration if the Court is  
2 satisfied that the circumstances exist in relation to the organisation.
- 3 (3) The declarations are the following:
- 4 (a) that an organisation or a part of an organisation has ceased to  
5 exist or function effectively and there are no effective means  
6 under the rules of the organisation or a part of the  
7 organisation by which the organisation or part can be  
8 reconstituted or enabled to function effectively;
- 9 (b) that one or more officers of an organisation or a part of an  
10 organisation have engaged in financial misconduct in relation  
11 to carrying out their functions or in relation to the  
12 organisation or a part of the organisation;
- 13 (c) that a substantial number of the officers of an organisation or  
14 a part of an organisation have, in affairs of the organisation  
15 or part, acted in their own interests rather than in the interests  
16 of the members of the organisation or part as a whole;
- 17 (d) that affairs of an organisation or a part of an organisation are  
18 being conducted in a manner that is:
- 19 (i) oppressive or unfairly prejudicial to, or unfairly  
20 discriminatory against, a member or a class of members;  
21 or
- 22 (ii) contrary to the interests of the members of the  
23 organisation or part as a whole;
- 24 (e) that an office or position in an organisation or a part of an  
25 organisation is vacant and there is no effective means under  
26 the rules of the organisation or part to fill the office or  
27 position.
- 28 (4) For the purposes of this section and without limiting the  
29 circumstances in which an organisation or a part of an organisation  
30 ceases to function effectively, an organisation or a part of an  
31 organisation is taken to have ceased to function effectively if the  
32 Court is satisfied that officers of the organisation or part have:
- 33 (a) on multiple occasions, contravened designated laws; or  
34 (b) misappropriated funds of the organisation or part; or  
35 (c) otherwise repeatedly failed to fulfil their duties as officers of  
36 the organisation or part of the organisation.
-

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**323A Federal Court may make certain orders if declaration made under section 323**

- (1) If the Federal Court makes a declaration under section 323 in relation to an organisation or a part of an organisation, the Court may, by order, approve a scheme for the taking of action by the organisation or a part of the organisation, or by an officer or officers of the organisation or a part of the organisation, to resolve the circumstances set out in the declaration.
- (2) Without limiting subsection (1), a scheme may provide for any of the following:
- (a) the appointment of an administrator for the organisation or part;
  - (b) reports to be given to the Court under the scheme;
  - (c) when the scheme begins and ends;
  - (d) when elections (if any) are to be held under the scheme.
- (3) The Court must not make an order under this section unless it is satisfied that the order would not do substantial injustice to the organisation or any member of the organisation.
- (4) If a scheme provides for its own end, the Court may only approve the scheme if the scheme provides that it does not end unless the Court is satisfied that circumstances set out in the declaration have been resolved or no longer exist.
- (5) If a scheme provides for an election for an office, the Court may only approve the scheme if the scheme provides for the election to be conducted by the AEC and in accordance with Chapter 7.
- (6) If the Court approves a scheme under subsection (1), the Court may give any ancillary or consequential directions it considers appropriate, including but not limited to directions about the matters mentioned in subsection (2).

**323B Federal Court order has effect despite other provisions**

An order or direction of the Federal Court under section 323A, and any action taken by an administrator or other person in accordance

1 with the order or direction, has effect despite anything in this Act,  
2 the rules of the organisation or the part of the organisation to which  
3 the order or direction relates and any previous order, direction or  
4 exemption made under this Act.

5 **323C Elections while under administration**

6 Despite anything in the rules of an organisation or a part of an  
7 organisation, or in any previous order, direction or exemption  
8 made under this Act, any election for an office held while the  
9 organisation or any part of it is under administration must be  
10 conducted by the AEC.

11 **323D Administrators—conflict of interest**

12 Within 21 days after an administrator:  
13 (a) acquires any interest, pecuniary or otherwise, that could  
14 conflict with the proper performance of the administrator's  
15 duties; or  
16 (b) becomes aware that any interest, pecuniary or otherwise, that  
17 the administrator has, or is likely to acquire, could conflict  
18 with the proper performance of his or her duties;  
19 the administrator must notify the Federal Court, in writing, of that  
20 interest.

21 **323E Administrators—termination of appointment**

22 The Federal Court may terminate the appointment of an  
23 administrator at any time, including (but not limited to) if the  
24 administrator has notified the Court of an interest under section  
25 323D.

26 **323F Functions of administrator**

27 (1) While an organisation or a part of an organisation is under  
28 administration, the administrator:  
29 (a) has control of the property and affairs of the organisation or  
30 part; and  
31 (b) may manage that property and those affairs; and

- 1 (c) may dispose of any of that property; and  
2 (d) may perform any function, and exercise any power, that the  
3 organisation or part, or any officers, could perform or  
4 exercise if it were not under administration.

- 5 (2) Nothing in subsection (1) limits the generality of anything else in  
6 it.

## 7 **323G Officers etc. to help administrator**

- 8 (1) This section applies in relation to the following persons:  
9 (a) an officer or employee of an organisation under  
10 administration;  
11 (b) if a part of an organisation is under administration:  
12 (i) an officer or employee of the organisation; and  
13 (ii) an officer or employee of the part of the organisation;  
14 (c) a person who, because of or following the appointment of an  
15 administrator for an organisation or part of an organisation,  
16 ceased to be an officer of the organisation or part.
- 17 (2) The person must:  
18 (a) attend on the administrator at such times; and  
19 (b) give the administrator such information about the  
20 organisation's or the part of the organisation's business,  
21 property, affairs and financial circumstances;  
22 as the administrator reasonably requires.
- 23 (3) A person commits an offence of strict liability if the person does  
24 not comply with subsection (2).
- 25 Penalty: ~~50~~120 penalty units ~~or imprisonment for 12 months, or~~  
26 ~~both.~~
- 27 (4) Subsection (3) does not apply if the person has a reasonable  
28 excuse.
- 29 (5) It is a reasonable excuse for a person to refuse or fail to give  
30 information on the ground that to do so might tend to incriminate  
31 the person or expose the person to a penalty.

- 1 (6) This section does not affect the law relating to legal professional  
2 privilege.

## 3 323H Rights to organisation's books

- 4 (1) A person is not entitled, as against the administrator for an  
5 organisation or a part of an organisation:  
6 (a) to retain possession of books of the organisation or the part;  
7 or  
8 (b) to claim or enforce a lien on such books;  
9 but such a lien is not otherwise prejudiced.
- 10 (2) Paragraph (1)(a) does not apply in relation to books of which a  
11 secured creditor is entitled to possession otherwise than because of  
12 a lien, but the administrator is entitled to inspect, and make copies  
13 of, such books at any reasonable time.
- 14 (3) The administrator may give a person a written notice requiring the  
15 person to deliver to the administrator, as specified in the notice,  
16 specified books that are in the person's possession.
- 17 (4) A notice under subsection (3) must specify a period of at least 3  
18 business days as the period within which the notice must be  
19 complied with.
- 20 (5) A person commits an offence of strict liability if the person does  
21 not comply with a notice under subsection (3).
- 22 Penalty: ~~50~~120 penalty units ~~or imprisonment for 12 months, or~~  
23 ~~both.~~
- 24 (6) Subsection (5) does not apply to the extent that the person is  
25 entitled, as against the organisation or part and the administrator, to  
26 retain possession of the books.
- 27 Note: A defendant bears an evidential burden in relation to the matter in  
28 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

## 29 323J Remuneration determinations

- 30 (1) The Federal Court may make any orders it considers appropriate to  
31 provide for and in relation to remuneration which the administrator

for an organisation or a part of an organisation is entitled to receive for necessary work properly performed by the administrator in relation to the administration.

- (2) If the order has the effect that the administrator is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the order must include a cap on the amount of remuneration worked out on a time-cost basis that the administrator is entitled to receive.
- (3) In making an order under this section, the Court must have regard to whether the remuneration is reasonable, taking into account:
- (a) the period during which the work is likely to be performed by the administrator; and
  - (b) the complexity (or otherwise) of the work likely to be performed by the administrator; and
  - (c) if the remuneration is worked out wholly or partly on a time-cost basis—the time likely to be properly taken by the administrator in performing the work; and
  - (d) any other matters the Court considers relevant.

## **323K Administrator not to be sued**

An administrator, or a person acting under the direction of an administrator, is not liable to an action or other proceeding for or in relation to an act done, or omitted to be done, in good faith in the performance or exercise, or the purported performance or exercise, of any function or power of the administrator as an administrator under this Part.

## **5 Paragraph 324(2)(p)**

Omit “of Chapter 11”, substitute “or 2A of this Chapter”.

## **6 After paragraph 343B(2)(h)**

Insert:

(ha) subsection 323(1);

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## Schedule 4—Public interest test for amalgamations

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

#### 1 Section 6

Insert:

*compliance record event* has the meaning given by section 72E.

#### 2 Section 34

Omit:

The 2 main elements of the amalgamation procedure are an application to the FWC 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.

substitute:

An amalgamation involves an application to the FWC 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.

Before an amalgamation can take effect, the FWC must decide whether the amalgamation is in the public interest. The amalgamation does not take effect if the FWC decides that it is not in the public interest.

#### 3 Section 34

After “amalgamated organisation)”, insert “, if the amalgamation takes effect”.

#### 4 Section 37

Repeal the section, substitute:

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## **37 Exercise of the FWC's powers under this Part**

(1) The powers of the FWC under this Part, other than under Subdivision A of Division 6 (public interest test for amalgamations), are exercisable only by the President, a Vice President or a Deputy President.

(2) The powers of the FWC under Subdivision A of Division 6 are exercisable only by a Full Bench.

## **5 Subsection 56(1)**

Omit "Objection", substitute "Except as provided by Subdivision A of Division 6, objection".

## **6 At the end of section 67**

Add:

(4) Subsection (2) does not authorise the FWC to dispense with deciding under section 72A whether the amalgamation is in the public interest.

## **7 Before section 73**

Insert:

## **Subdivision A—Public interest test for amalgamations**

### **72A Decision whether amalgamation is in public interest**

(1) Before fixing an amalgamation day under section 73 for a proposed amalgamation, the FWC must decide whether the amalgamation is in the public interest.

Note: An amalgamation does not take effect if the FWC decides it is not in the public interest (see section 72F).

(2) The FWC may make the decision at any time after an application under section 43 or 44 is lodged with the FWC in relation to the amalgamation.

**72B Hearings about public interest**

- (1) The FWC must:
- (a) fix a time and place for hearing submissions in relation to the matters mentioned in subsection 72D(1) (record of compliance with the law); and
  - (b) promptly notify the existing organisations concerned in the amalgamation of the time and place of the hearing; and
  - (c) promptly publish notice of the time and place of the hearing on its website and in any other way the FWC considers appropriate.
- (2) If the matter is not concluded under subsection 72D(2), the FWC must:
- (a) fix a time and place for hearing submissions in relation to whether the amalgamation is otherwise in the public interest; and
  - (b) promptly notify the existing organisations of the time and place of the hearing; and
  - (c) promptly publish notice of the time and place of the hearing on its website and in any other way the FWC considers appropriate.

**72C Persons who may make submissions about public interest**

- (1) Submissions in relation to the matters mentioned in subsection 72D(1) (record of compliance with the law), and whether the amalgamation is otherwise in the public interest, may be made by any of the following persons:
- (a) the existing organisations;
  - (b) any other organisation that represents the industrial interests of employers or employees in the industry or industries concerned or that may otherwise be affected by the amalgamation;
  - (c) a body other than an organisation that represents the interests of employers or employees in the industry or industries concerned;
  - (d) the Commissioner;

- (e) the Minister;
  - (f) a Minister of a referring State (within the meaning of the Fair Work Act), or of a Territory, who has responsibility for workplace relations matters in the State or Territory;
  - (g) any other person with a sufficient interest in the amalgamation.
- (2) The FWC must:
- (a) in considering the matters mentioned in subsection 72D(1)—have regard to any submissions made by persons mentioned in subsection (1) of this section in relation to those matters; and
  - (b) if the matter is not concluded under subsection 72D(2)—have regard to any other submissions made by persons mentioned in subsection (1) of this section.

## **72D Matters to which the FWC must have regard**

### *Record of compliance with the law*

- (1) In deciding whether the amalgamation is in the public interest, the FWC must have regard to any compliance record events that have occurred for each of the existing organisations.
- (2) If, having regard to the incidence and age of compliance record events for an existing organisation, the FWC considers that the organisation has a record of not complying with the law, the FWC must decide under section 72A that the amalgamation is not in the public interest.

### *Other matters of public interest*

- (3) If the matter is not concluded under subsection (2), the FWC must, in deciding whether the amalgamation is otherwise in the public interest, have regard to the impact the amalgamation is likely to have on:
  - (a) employees in the industry or industries concerned; and
  - (b) employers in the industry or industries concerned.

- (4) The FWC may have regard to any other matters it considers relevant.

### 72E Compliance record events

#### *Involving organisation or members*

- (1) A **compliance record event** occurs for an organisation if:
- (a) a designated finding ~~or a wider criminal finding~~ is made against the organisation; or
  - (b) the organisation is found to be in contempt of court in relation to an order or injunction made under ~~any law of the Commonwealth or a State or Territory~~ a designated law; or
  - (c) the organisation, or a substantial number of the members of:
    - (i) the organisation; or
    - (ii) a part of the organisation; or
    - (iii) a class of members of the organisation;organises or engages in industrial action covered by subsection ~~28H(2)~~ 28G(2).

#### *Involving officers*

- (2) A **compliance record event** also occurs for an organisation if:
- (a) a designated finding is made against a person, if the person was an officer of the organisation at the time of the conduct to which the finding relates; or
  - (b) ~~a wider criminal finding~~ a person is found to be in contempt of court in relation to an order or injunction made against under any law of the Commonwealth or a person State or Territory, if the person:
    - (i) was an officer of the organisation at the time of the conduct to which the finding relates; and
    - (ii) engaged in the conduct in the course of (or purportedly in the course of) performing functions in relation to the organisation; or
  - ~~(c) a person is found to be in contempt of court in relation to an order or injunction made under any law of the Commonwealth or a State or Territory, if the person:~~

- 1 ~~— (i) was an officer of the organisation at the time of the~~  
2 ~~conduct to which the finding relates; and~~  
3 ~~— (ii) engaged in the conduct in the course of (or purportedly~~  
4 ~~in the course of) performing functions in relation to the~~  
5 ~~organisation; or~~  
6 ~~— (d) (c) a person becomes disqualified from holding office in an~~  
7 ~~organisation while he or she is an officer in the organisation.~~

## 8 **72F Amalgamation not in public interest does not take effect**

- 9 (1) If the FWC decides under section 72A that the amalgamation is not  
10 in the public interest:  
11 (a) the FWC must not fix an amalgamation day for the  
12 amalgamation; and  
13 (b) the amalgamation does not take effect.  
14 (2) If the FWC decides under section 72A that the amalgamation is not  
15 in the public interest at any time before the FWC approves the  
16 submission of the amalgamation to ballot, then, despite any other  
17 provision of this Part, the FWC must refuse to approve the  
18 submission of the amalgamation to ballot.

## 19 **Subdivision B—Amalgamation taking effect**

### 20 **8 Subsection 73(1)**

21 After “takes effect”, insert “(if at all)”.

### 22 **9 Subsection 73(2)**

23 After “If”, insert “the FWC has decided under section 72A that the  
24 amalgamation is in the public interest and”.

### 25 **10 Paragraph 73(2)(c)**

26 Repeal the paragraph, substitute:

- 27 (c) there are no proceedings of the kind mentioned in subsection  
28 (2A) pending against any of the existing organisations  
29 concerned in the amalgamation; and

### 11 At the end of subsection 73(2)

Add:

Note: An amalgamation does not take effect if the FWC decides it is not in the public interest (see section 72F).

### 12 After subsection 73(2)

Insert:

(2A) For the purposes of paragraph (2)(c), the kind of proceedings are:

(a) criminal proceedings in relation to:

(i) a contravention of this Act, the Fair Work Act or any other law of the Commonwealth; or

(ii) a breach of an order made under this Act, the Fair Work Act or any other law of the Commonwealth; and

(b) civil proceedings for a contravention of a provision mentioned in a subparagraph of paragraph (b) of the definition of *designated finding* in subsection 9C(1).

### 13 Application of amendments

- (1) Without limiting the application of the amendments made by this Schedule, those amendments apply in relation to a proposed amalgamation if, on the day this item commences, an amalgamation day for the amalgamation has not been fixed under section 73 of the *Fair Work (Registered Organisations) Act 2009*.
- (2) To avoid doubt, subitem (1) applies regardless of whether an application was lodged under section 43 or 44 of that Act in relation to the amalgamation before this item commences.
- (3) A reference in the *Fair Work (Registered Organisations) Act 2009* to a compliance record event includes an event that occurred before this item commences.

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## **Schedule 5—Minor and technical amendments**

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

#### **1 Section 6 (definition of *Australian Accounting Standards*)**

Repeal the definition, substitute:

*Australian Accounting Standards* means the accounting standards issued by the Australian Accounting Standards Board, as in force, or applicable, from time to time, as modified by regulations made for the purpose of this definition.

#### **2 Section 6 (definition of *Australian Auditing Standards*)**

Repeal the definition, substitute:

*Australian Auditing Standards* means the auditing and assurance standards issued by the Australian Auditing and Assurance Standards Board as in force, or applicable, from time to time.

#### **3 Section 6 (paragraph (d) of the definition of *authorised official*)**

Repeal the paragraph, substitute:

(d) the Australian Building and Construction Commissioner;

#### **4 Subdivision BB of Division 4 of Part 2 of Chapter 5 (heading)**

Repeal the heading.

#### **5 Subsection 329FA(1) (note)**

Repeal the note, substitute:

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

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**6 Subparagraph 337A(1)(b)(iii)**

Omit “referred to in subsection 15(1) of the *Building and Construction Industry (Improving Productivity) Act 2016*”.

**7 Subparagraph 337A(1)(b)(iiia)**

Omit “referred to in subsection 15(2) of the *Building and Construction Industry (Improving Productivity) Act 2016*”.

**8 Paragraph 337BB(4)(d)**

Repeal the paragraph, substitute:

(d) the Australian Building and Construction Commissioner;

**9 Subsection 337C(1)**

Omit “337A(4)”, substitute “337A(3)”.

**10 Paragraph 343A(2)(b)**

Omit “154C(1),”.

**11 Paragraph 343A(3)(aa)**

Repeal the paragraph.

**12 Subsection 343B(2A)**

Repeal the subsection, substitute:

(2A) Despite subsection (1), the Commissioner’s functions or powers under the following provisions can only be delegated to a member of the staff assisting the Commissioner who is an SES employee or an acting SES employee:

(a) Subdivision A of Division 4 of Part 3 of Chapter 8 (registration of auditors);

(b) Division 4 of Part 2A of Chapter 9 (training in relation to financial duties).