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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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Building and Construction Industry Improvement Bill 2003

No. , 2003

(Employment and Workplace Relations)

**A Bill for an Act to improve workplace relations
practices in the building and construction industry,
and for related purposes**

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1 **A Bill for an Act to improve workplace relations**
2 **practices in the building and construction industry,**
3 **and for related purposes**

4 The Parliament of Australia enacts:

5 **Chapter 1—Preliminary**
6
7

8 **1 Short title**

9 This Act may be cited as the *Building and Construction Industry*
10 *Improvement Act 2003*.

Section 2

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	
2. Sections 3 to 255	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	

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 Main object of Act**

13 (1) The main object of this Act is to provide an improved workplace
14 relations framework for building work to ensure that building work
15 is carried out fairly, efficiently and productively for the benefit of

- 1 all building industry participants and for the benefit of the
2 Australian economy as a whole.
- 3 (2) This Act aims to achieve its main object by the following means:
- 4 (a) improving the bargaining framework so as to further
5 encourage genuine bargaining at the workplace level;
- 6 (b) promoting respect for the rule of law;
- 7 (c) ensuring respect for the rights of building industry
8 participants;
- 9 (d) ensuring that building industry participants are accountable
10 for their unlawful conduct;
- 11 (e) providing effective means for investigation and enforcement
12 of relevant laws;
- 13 (f) improving occupational health and safety in building work;
- 14 (g) encouraging the pursuit of high levels of employment in the
15 building industry;
- 16 (h) providing assistance and advice to building industry
17 participants in connection with their rights and obligations
18 under relevant industrial laws.

19 4 Definitions

20 In this Act, unless the contrary intention appears:

21 ***ABC Commissioner*** means the Australian Building and
22 Construction Commissioner referred to in section 11.

23 ***ABC Inspector*** means an Australian Building and Construction
24 Inspector referred to in section 235.

25 ***accreditation scheme*** means the accreditation scheme referred to
26 in section 50.

27 ***AIRC*** means the Australian Industrial Relations Commission
28 established by section 8 of the Workplace Relations Act.

29 ***allowable award matters*** means matters covered by subsection
30 51(2).

31 ***AWA*** has the meaning given by section 4 of the Workplace
32 Relations Act.

Section 4

1 Note: Part XV of the Workplace Relations Act extends the circumstances in
2 which AWAs can be made.

3 **award** has the meaning given by section 4 of the Workplace
4 Relations Act.

5 **bargaining services** (except in Chapter 7) means services provided
6 by (or on behalf of) a building association in relation to an
7 agreement, or a proposed agreement, under Part VIB of the
8 Workplace Relations Act (including the negotiation, making,
9 certification, operation, extension, variation or termination of the
10 agreement).

11 **bargaining services fee** (except in Chapter 7) means a fee
12 (however described) payable:

13 (a) to a building association; or

14 (b) to someone else in lieu of a building association;

15 wholly or partly for the provision, or purported provision, of
16 bargaining services, but does not include membership dues.

17 **building agreement** means an agreement that applies to building
18 work (whether or not it also applies to other work).

19 **building association** means an industrial association whose
20 eligibility rules allow membership by at least one of the following
21 groups:

22 (a) building employers;

23 (b) building employees;

24 (c) building contractors;

25 whether or not those rules also allow membership by other persons.

26 **building award** means an award that applies to building work
27 (whether or not it also applies to other work).

28 **building certified agreement** means a certified agreement that
29 applies to building work (whether or not it also applies to other
30 work).

31 **Building Code** means the code of practice referred to in section 26.

1 **building contractor** means a person who has entered into, or who
2 has offered to enter into, a contract for services under which the
3 person:

- 4 (a) carries out building work; or
5 (b) arranges for building work to be carried out.

6 **building employee** means:

- 7 (a) a person whose employment consists of, or includes, building
8 work; or
9 (b) a person who accepts an offer of engagement as an employee
10 for work that consists of, or includes, building work.

11 **building employer** means an employer who employs, or offers to
12 employ, building employees.

13 **building industrial dispute** means an industrial dispute that relates
14 to building employees, whether or not the dispute also relates to
15 other employees.

16 **building industry participant** means any of the following:

- 17 (a) a building employee;
18 (b) a building employer;
19 (c) a building contractor;
20 (d) a person who enters into a contract with a building contractor
21 under which the building contractor agrees to carry out
22 building work or to arrange for building work to be carried
23 out;
24 (e) a building association;
25 (f) an officer, delegate or other representative of a building
26 association;
27 (g) an employee of a building association.

28 **building work** has the meaning given by section 5.

29 **certified agreement** has the meaning given by section 4 of the
30 Workplace Relations Act.

31 Note: Part XV of the Workplace Relations Act extends the circumstances in
32 which agreements can be certified under Part VIB of that Act.

Section 4

1 **certify**, in relation to an agreement, means certify under Part VIB
2 of the Workplace Relations Act.

3 Note: Part XV of the Workplace Relations Act extends the circumstances in
4 which agreements can be certified under Part VIB of that Act.

5 **civil penalty provision** means:

- 6 (a) a Grade A civil penalty provision; or
7 (b) a Grade B civil penalty provision.

8 **Commissioner** means the ABC Commissioner or a Deputy ABC
9 Commissioner.

10 **Commonwealth authority** means:

- 11 (a) a body corporate established for a public purpose by or under
12 a law of the Commonwealth; or
13 (b) a body corporate:
14 (i) incorporated under a law of the Commonwealth or a
15 State or Territory; and
16 (ii) in which the Commonwealth has a controlling interest.

17 **Commonwealth building employee organisation** means an
18 organisation of employees (within the meaning of the Workplace
19 Relations Act) whose eligibility rules allow membership by
20 building employees (whether or not those rules also allow other
21 persons to be members).

22 **Commonwealth building employer organisation** means an
23 organisation of employers (within the meaning of the Workplace
24 Relations Act) whose eligibility rules allow membership by
25 building employers (whether or not those rules also allow other
26 persons to be members).

27 **Commonwealth building organisation** means:

- 28 (a) a Commonwealth building employee organisation; or
29 (b) a Commonwealth building employer organisation.

30 **Commonwealth industrial instrument** means:

- 31 (a) an award or certified agreement; or
32 (b) an order of the AIRC under this Act or the Workplace
33 Relations Act.

1 **Commonwealth place** means a place referred to in paragraph 52(i)
2 of the Constitution, other than the seat of government.

3 **conduct** includes an omission.

4 **constitutional corporation** means:

5 (a) a corporation to which paragraph 51(xx) of the Constitution
6 applies; or

7 (b) a body corporate that is incorporated in a Territory.

8 **demarcation dispute** has the meaning given by section 4 of the
9 Workplace Relations Act.

10 **Deputy ABC Commissioner** means a Deputy Australian Building
11 and Construction Commissioner referred to in section 11.

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

14 **designated building law** means:

15 (a) this Act or the Workplace Relations Act; or

16 (b) a Commonwealth industrial instrument.

17 **eligibility rules** means rules that relate to the conditions of
18 eligibility for membership.

19 **eligible condition** means a condition relating to:

20 (a) the times or days when work is to be performed; or

21 (b) inclement weather procedures; or

22 (c) any other matter prescribed by the regulations for the
23 purposes of this paragraph.

24 **employee** has the meaning given by section 4 of the Workplace
25 Relations Act.

26 **employee organisation** means an organisation of employees within
27 the meaning of the Workplace Relations Act.

28 **employer** has the meaning given by section 4 of the Workplace
29 Relations Act.

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

Section 4

1 **Federal Safety Commissioner** means the Federal Safety
2 Commissioner referred to in section 31.

3 **Federal Safety Officer** means a Federal Safety Officer referred to
4 in section 238.

5 **Full Bench** has the meaning given by section 4 of the Workplace
6 Relations Act.

7 **full-time Commissioner** means:

- 8 (a) the ABC Commissioner; or
9 (b) a Deputy ABC Commissioner appointed on a full-time basis.

10 **Grade A civil penalty provision** means:

- 11 (a) a section of this Act (other than a section that is divided into
12 subsections) that has a note at its foot stating “Grade A civil
13 penalty”; or
14 (b) a subsection of this Act that has a note at its foot stating
15 “Grade A civil penalty”.

16 **Grade B civil penalty provision** means:

- 17 (a) a section of this Act (other than a section that is divided into
18 subsections) that has a note at its foot stating “Grade B civil
19 penalty”; or
20 (b) a subsection of this Act that has a note at its foot stating
21 “Grade B civil penalty”.

22 **industrial association** has the same meaning as in Part XA of the
23 Workplace Relations Act.

24 **industrial body** means:

- 25 (a) the AIRC; or
26 (b) a court or commission, however designated, exercising under
27 an industrial law powers and functions corresponding to
28 those conferred on the AIRC by the Workplace Relations
29 Act.

30 **industrial dispute** (except in Chapter 7) has the meaning given by
31 section 4 of the Workplace Relations Act (as affected by Part XV
32 of that Act).

1 **industrial instrument** means an award or agreement, however
2 designated, that:

- 3 (a) is made under or recognised by an industrial law; and
4 (b) deals with the relationship between employers and
5 employees, concerns the relationship between an employer
6 and the employer's employees, or provides for the prevention
7 or settlement of a dispute between an employer and the
8 employer's employees.

9 **industrial law** means:

- 10 (a) this Act or the Workplace Relations Act; or
11 (b) a law, however designated, of the Commonwealth or of a
12 State or Territory that regulates the relationships between
13 employers and employees or provides for the prevention or
14 settlement of disputes between employers and employees.

15 **Industrial Registrar** means the Industrial Registrar appointed
16 under section 67 of the Workplace Relations Act.

17 Note: See also section 245, which allows delegation by the Industrial
18 Registrar.

19 **Industrial Registry** means the Australian Industrial Registry
20 established under section 62 of the Workplace Relations Act.

21 **negotiating party** has the same meaning as in Division 8 of
22 Part VIB of the Workplace Relations Act.

23 **objectionable provision** has the meaning given by section 7.

24 **occupier** has the meaning given by section 4 of the Workplace
25 Relations Act.

26 **office**, in relation to an organisation or industrial association or a
27 branch of an organisation or industrial association, has the meaning
28 given by section 6.

29 **officer**, in relation to an organisation or industrial association,
30 means a person who holds an office in the organisation or
31 association.

32 **OHS law** means a law of a State or Territory that is prescribed for
33 the purposes of this definition.

Section 4

1 **organisation** has the meaning given by section 4 of the Workplace
2 Relations Act.

3 **part-time Commissioner** means a Deputy ABC Commissioner
4 appointed on a part-time basis.

5 **pattern bargaining** has the meaning given by section 8.

6 **penalty unit** has the meaning given by section 4AA of the *Crimes*
7 *Act 1914*.

8 **premises** has the meaning given by section 4 of the Workplace
9 Relations Act.

10 **President** has the meaning given by section 4 of the Workplace
11 Relations Act.

12 **Presidential Member** has the meaning given by section 4 of the
13 Workplace Relations Act.

14 **Registrar** has the meaning given by section 4 of the Workplace
15 Relations Act.

16 **registry** means the Principal Registry, or another registry,
17 established under section 64 of the Workplace Relations Act.

18 **State award** has the meaning given by section 4 of the Workplace
19 Relations Act.

20 **State employment agreement** has the meaning given by section 4
21 of the Workplace Relations Act.

22 **State industrial authority** has the meaning given by section 4 of
23 the Workplace Relations Act.

24 **State industrial instrument** means an industrial instrument that is
25 made under or recognised by an industrial law of a State.

26 **State industrial law** means an industrial law of a State.

27 **statutory freedom of association statement** means the statement
28 set out in Schedule 1.

1 **unlawful action damages** means compensation ordered under
2 section 227 for a contravention of section 74.

3 **unlawful industrial action** has the meaning given by section 73.

4 **Workplace Relations Act** means the *Workplace Relations Act*
5 1996.

6 **5 Definition of building work**

7 (1) Subject to subsections (2), (3) and (4), **building work** means any of
8 the following activities:

- 9 (a) the construction, alteration, extension, restoration, repair,
10 demolition or dismantling of buildings, structures or works
11 that form, or are to form, part of land, whether or not the
12 buildings, structures or works are permanent;
- 13 (b) the construction, alteration, extension, restoration, repair,
14 demolition or dismantling of railways (not including rolling
15 stock) or docks;
- 16 (c) the installation in any building, structure or works of fittings
17 forming, or to form, part of land, including heating, lighting,
18 air-conditioning, ventilation, power supply, drainage,
19 sanitation, water supply, fire protection, security and
20 communications systems;
- 21 (d) any operation that is part of, or is preparatory to, or is for
22 rendering complete, work covered by paragraph (a), (b) or
23 (c), for example:
- 24 (i) site clearance, earth-moving, excavation, tunnelling and
25 boring;
- 26 (ii) the laying of foundations;
- 27 (iii) the erection, maintenance or dismantling of scaffolding;
- 28 (iv) the prefabrication of made-to-order components to form
29 part of any building, structure or works, whether carried
30 out on-site or off-site;
- 31 (v) site restoration, landscaping and the provision of
32 roadways and other access works;

33 but does not include any of the following:

- 34 (e) the drilling for, or extraction of, oil or natural gas;

Section 6

- 1 (f) the extraction (whether by underground or surface working)
2 of minerals, including tunnelling or boring, or constructing
3 underground works, for that purpose;
4 (g) any work that is part of a project for:
5 (i) the construction, repair or restoration of a
6 single-dwelling house; or
7 (ii) the construction, repair or restoration of any building,
8 structure or work associated with a single-dwelling
9 house; or
10 (iii) the alteration or extension of a single-dwelling house, if
11 it remains a single-dwelling house after the alteration or
12 extension.
- 13 (2) Paragraph (1)(g) does not apply if the project is part of a
14 multi-dwelling development that consists of, or includes, the
15 construction of at least 5 single-dwelling houses.
- 16 (3) Subject to subsection (4), **building work** includes any activity that
17 is prescribed by the regulations for the purposes of this subsection.
- 18 (4) **Building work** does not include any activity that is prescribed by
19 the regulations for the purposes of this subsection.
- 20 (5) In this section:
21 **land** includes land beneath water.

22 **6 Definition of office**

- 23 (1) In this Act, **office**, in relation to an association, means:
24 (a) an office of president, vice president, secretary or assistant
25 secretary of the association; or
26 (b) the office of a voting member of a collective body of the
27 association, being a collective body that has power in relation
28 to any of the following functions:
29 (i) the management of the affairs of the association;
30 (ii) the determination of policy for the association;
31 (iii) the making, alteration or rescission of rules of the
32 association;

- 1 (iv) the enforcement of rules of the association, or the
 2 performance of functions in relation to the enforcement
 3 of such rules; or
 4 (c) an office the holder of which is, under the rules of the
 5 association, entitled to participate directly in any of the
 6 functions referred to in subparagraphs (b)(i) and (iv), other
 7 than an office the holder of which participates only in
 8 accordance with directions given by a collective body or
 9 another person for the purpose of implementing:
 10 (i) existing policy of the association; or
 11 (ii) decisions concerning the association; or
 12 (d) an office the holder of which is, under the rules of the
 13 association, entitled to participate directly in any of the
 14 functions referred to in subparagraphs (b)(ii) and (iii); or
 15 (e) the office of a person holding (whether as trustee or
 16 otherwise) property:
 17 (i) of the association; or
 18 (ii) in which the association has a beneficial interest.

19 In this subsection, **association** means an organisation or branch of
 20 an organisation, or an industrial association or branch of an
 21 industrial association.

- 22 (2) In this Act, a reference to an **office** in an organisation or industrial
 23 association includes a reference to an office in a branch of the
 24 organisation or association.

25 **7 Definition of objectionable provision**

- 26 (1) Each of the following provisions (however it is described in the
 27 document concerned) is an **objectionable provision**:
 28 (a) a provision that requires or permits any conduct that would
 29 contravene Chapter 7 or that would (if Part 2 of that Chapter
 30 were disregarded) contravene that Chapter;
 31 (b) a provision that directly or indirectly requires a person:
 32 (i) to encourage another person to become, or remain, a
 33 member of a building association; or
 34 (ii) to discourage another person from becoming, or
 35 remaining, a member of a building association;

Section 8

- 1 (c) a provision that indicates support for persons being members
2 of a building association;
- 3 (d) a provision that indicates opposition to persons being
4 members of a building association;
- 5 (e) a provision that requires or permits payment of a bargaining
6 services fee to a building association;
- 7 (f) a provision that requires or permits an officer or employee of
8 a union (within the meaning of Chapter 9) to exercise rights
9 of a kind covered by that Chapter.
- 10 (2) For the purpose of determining whether a provision is an
11 objectionable provision, it does not matter whether that provision is
12 void because of section 69.
- 13 (3) In this section:
- 14 *permits* includes:
- 15 (a) purports to permit; and
16 (b) has the effect of permitting; and
17 (c) purports to have the effect of permitting.
- 18 *requires* includes:
- 19 (a) purports to require; and
20 (b) has the effect of requiring; and
21 (c) purports to have the effect of requiring.

22 **8 Definition of *pattern bargaining***

- 23 (1) Subject to this section, *pattern bargaining* means a course of
24 conduct or bargaining, or the making of claims, by a person that:
- 25 (a) involves seeking common wages or other common
26 conditions of employment (other than in an award or State
27 award); and
28 (b) extends beyond a single business.
- 29 (2) Conduct by a person is not pattern bargaining to the extent to
30 which the person is genuinely trying to reach agreement on the
31 matters that are the subject of the conduct.

- 1 (3) A party to a proposed agreement in relation to a single business, or
 2 part of a single business, does not engage in pattern bargaining
 3 merely because the party is seeking the inclusion in the proposed
 4 agreement of terms and conditions which give effect to a Full
 5 Bench decision establishing national standards.
- 6 (4) Conduct by a person (the *first person*) is not pattern bargaining if:
 7 (a) the conduct occurs in relation to a proposed agreement
 8 between the first person and a second person under which the
 9 second person would carry out building work or arrange for
 10 building work to be carried out; and
 11 (b) the conduct is engaged in solely for the purpose of
 12 encouraging the second person to have particular eligible
 13 conditions in an agreement that covers employees of the
 14 second person.
- 15 (5) In this section:
 16 *genuinely trying to reach agreement* has the same meaning as in
 17 section 170MW of the Workplace Relations Act, as affected by
 18 section 62 of this Act.
 19 *single business* has the same meaning as in Part VIB of the
 20 Workplace Relations Act.
- 21 (6) In applying section 62, for the purposes of this section, to a
 22 proposed agreement that is not under Part VIB of the Workplace
 23 Relations Act, references in section 62 to a negotiating party are to
 24 be read as references to a proposed party to the proposed
 25 agreement.

26 9 Extension to Christmas Island

- 27 (1) This Act extends to Christmas Island.
 28 (2) This Act applies in relation to Christmas Island with such
 29 modifications as are prescribed by the regulations.

30 10 Act to bind Crown

- 31 (1) This Act binds the Crown in each of its capacities.

Section 10

- 1 (2) Nothing in this Act renders the Commonwealth or a State or
2 Territory liable to be prosecuted for an offence.

1
2 **Chapter 2—Australian Building and**
3 **Construction Commissioner**

4 **Part 1—Australian Building and Construction**
5 **Commissioner**
6

7 **11 ABC Commissioner and Deputy ABC Commissioners**

- 8 (1) There is to be an Australian Building and Construction
9 Commissioner (the *ABC Commissioner*).
- 10 (2) The ABC Commissioner is to be assisted by such number of
11 Deputy Australian Building and Construction Commissioners
12 (*Deputy ABC Commissioners*) as are appointed from time to time.

13 **12 Functions of ABC Commissioner**

14 The ABC Commissioner has the following functions:

- 15 (a) monitoring and promoting appropriate standards of conduct
16 by building industry participants, including by:
17 (i) monitoring and promoting compliance with this Act and
18 the Workplace Relations Act; and
19 (ii) monitoring and promoting compliance with the Building
20 Code; and
21 (iii) referring matters to other relevant agencies and bodies;
- 22 (b) investigating suspected contraventions, by building industry
23 participants, of:
24 (i) this Act, the Workplace Relations Act or an award,
25 certified agreement, AWA or order of the AIRC; and
26 (ii) the Building Code;
- 27 (c) instituting, or intervening in, proceedings in accordance with
28 this Act;
- 29 (d) providing assistance and advice to building industry
30 participants regarding their rights and obligations under this
31 Act and the Workplace Relations Act;

Section 13

- 1 (e) providing representation to a building industry participant
2 who is, or might become, a party to a proceeding under this
3 Act or the Workplace Relations Act, if the ABC
4 Commissioner considers that providing the representation
5 would promote the enforcement of this Act or the Workplace
6 Relations Act;
- 7 (f) disseminating information about this Act, the Workplace
8 Relations Act and the Building Code, and about other matters
9 affecting building industry participants, including
10 disseminating information by facilitating ongoing discussions
11 with building industry participants;
- 12 (g) any other functions conferred on the ABC Commissioner by
13 this Act or by another Act;
- 14 (h) any other functions conferred on the ABC Commissioner by
15 the regulations.

16 **13 Minister's directions to ABC Commissioner**

- 17 (1) The Minister may, by notice published in the *Gazette*, give
18 directions specifying the manner in which the ABC Commissioner
19 must exercise or perform the powers or functions of the ABC
20 Commissioner under this Act.
- 21 (2) The Minister must not give a direction under subsection (1) about a
22 particular case.
- 23 (3) The ABC Commissioner must comply with the directions.
- 24 (4) A direction by the Minister is a disallowable instrument for the
25 purposes of section 46A of the *Acts Interpretation Act 1901*.

26 **14 Minister may require reports**

- 27 (1) The Minister may, in writing, direct the ABC Commissioner to
28 give the Minister specified reports relating to the ABC
29 Commissioner's functions.

30 Note: See also section 243, which restricts the disclosure of personal
31 information in a report.

- 32 (2) The ABC Commissioner must comply with the direction.

1 **15 Delegation by ABC Commissioner**

- 2 (1) The ABC Commissioner may, in writing, delegate all or any of his
3 or her powers and functions under this Act to:
4 (a) a Deputy ABC Commissioner; or
5 (b) an ABC Inspector; or
6 (c) an SES employee or acting SES employee; or
7 (d) a person prescribed by the regulations for the purposes of this
8 paragraph.
- 9 (2) Powers or functions under section 230 may only be delegated to a
10 Deputy ABC Commissioner.
- 11 (3) In exercising powers or functions under a delegation, the delegate
12 must comply with any directions of the ABC Commissioner.
- 13 (4) As soon as practicable after delegating any power or function
14 under this section, the ABC Commissioner must publish details of
15 the delegation.

16 **16 Annual report**

- 17 (1) As soon as practicable after the end of each financial year, the
18 ABC Commissioner must prepare and give to the Minister a report
19 on the operations of the ABC Commissioner during that year.
- 20 (2) The report must include:
21 (a) details of the number, and type, of matters that were
22 investigated by the ABC Commissioner during the financial
23 year; and
24 (b) details of assistance provided during the financial year to
25 building employees and building contractors in connection
26 with the recovery of unpaid entitlements; and
27 (c) details of assessments conducted under section 77 during the
28 financial year.
- 29 Note: See also section 243, which restricts the disclosure of personal
30 information in a report.
- 31 (3) The report must also include:

Section 16

- 1 (a) details of directions given by the Minister during the
2 financial year under section 13 or 14; and
3 (b) details of delegations by the ABC Commissioner under
4 section 15 during the financial year.
- 5 (4) The Minister must cause a copy of the report to be laid before each
6 House of the Parliament within 15 sitting days of that House after
7 its receipt by the Minister.
8

1
2 **Part 2—Administrative provisions**
3

4 **17 Appointment**

- 5 (1) A Commissioner is to be appointed by the Minister by written
6 instrument.
- 7 (2) The appointment:
8 (a) is to be on a full-time basis for the ABC Commissioner; and
9 (b) is to be on a full-time basis or part-time basis for a Deputy
10 ABC Commissioner.
- 11 (3) The Minister must not appoint a person as a Commissioner unless
12 the Minister is satisfied that the person:
13 (a) has suitable qualifications or experience; and
14 (b) is of good character.
- 15 (4) A Commissioner holds office for the period specified in the
16 instrument of appointment. The period must not exceed 5 years.
- 17 (5) A Commissioner holds office on the terms and conditions (if any)
18 in relation to matters not covered by this Act that are determined
19 by the Minister.

20 **18 Acting ABC Commissioner**

- 21 (1) The Minister may appoint a person to act as the ABC
22 Commissioner:
23 (a) during a vacancy in the office of ABC Commissioner
24 (whether or not an appointment has previously been made to
25 the office); or
26 (b) during any period, or during all periods, when the ABC
27 Commissioner is absent from duty or from Australia, or is,
28 for any reason, unable to perform the duties of the office.
- 29 (2) Anything done by or in relation to a person purporting to act under
30 an appointment is not invalid merely because:
31 (a) the occasion for the appointment had not arisen; or

Section 19

- 1 (b) there was a defect or irregularity in connection with the
2 appointment; or
3 (c) the appointment had ceased to have effect; or
4 (d) the occasion to act had not arisen or had ceased.

5 **19 Remuneration**

- 6 (1) A Commissioner is to be paid the remuneration that is determined
7 by the Remuneration Tribunal. If no determination of that
8 remuneration by the Tribunal is in operation, a Commissioner is to
9 be paid the remuneration that is prescribed.
- 10 (2) A Commissioner is to be paid the allowances that are prescribed.
- 11 (3) This section has effect subject to the *Remuneration Tribunal Act*
12 *1973*.

13 **20 Leave**

- 14 (1) A full-time Commissioner has the recreation leave entitlements
15 that are determined by the Remuneration Tribunal.
- 16 (2) The Minister may grant a full-time Commissioner leave of
17 absence, other than recreation leave, on the terms and conditions as
18 to remuneration or otherwise that the Minister determines.
- 19 (3) The Minister may grant a part-time Commissioner leave of absence
20 (including recreation leave) on the terms and conditions as to
21 remuneration or otherwise that the Minister determines.

22 **21 Engaging in other paid employment etc.**

- 23 (1) A full-time Commissioner must not engage in paid employment
24 outside the duties of his or her office without the Minister's
25 approval.
- 26 (2) A part-time Commissioner must not engage in any paid
27 employment that conflicts or may conflict with the proper
28 performance of the Commissioner's duties.

1 **22 Disclosure of interests**

2 A Commissioner must give written notice to the Minister of all
3 interests (financial or otherwise) that the Commissioner has or
4 acquires and that could conflict with the proper performance of the
5 Commissioner's functions.

6 **23 Resignation**

7 A Commissioner may resign his or her appointment by giving the
8 Minister a written resignation.

9 **24 Termination of appointment**

- 10 (1) The Minister may terminate the appointment of a Commissioner if:
11 (a) the Commissioner:
12 (i) becomes bankrupt; or
13 (ii) applies to take the benefit of any law for the relief of
14 bankrupt or insolvent debtors; or
15 (iii) compounds with his or her creditors; or
16 (iv) makes an assignment of his or her remuneration for the
17 benefit of his or her creditors; or
18 (b) the Commissioner fails, without reasonable excuse, to
19 comply with section 21 or 22; or
20 (c) the Commissioner is a full-time Commissioner and is absent
21 from duty, except on leave of absence, for 14 consecutive
22 days or for 28 days in any 12 months.
- 23 (2) Subject to subsections (3) and (4), the Minister may terminate the
24 appointment of a Commissioner on the ground of misbehaviour or
25 physical or mental incapacity.
- 26 (3) If a Commissioner:
27 (a) is an eligible employee for the purposes of the
28 *Superannuation Act 1976*; and
29 (b) has not reached his or her maximum retiring age within the
30 meaning of that Act;

Section 25

1 his or her appointment cannot be terminated on the ground of
2 physical or mental incapacity unless the CSS Board has given a
3 certificate under section 54C of that Act.

- 4 (4) If a Commissioner:
5 (a) is a member of the superannuation scheme established by
6 deed under the *Superannuation Act 1990*; and
7 (b) is under 60 years of age;

8 his or her appointment cannot be terminated on the ground of
9 physical or mental incapacity unless the PSS Board has given a
10 certificate under section 13 of that Act.

11 **25 Staff and consultants**

12 (1) The staff required to assist the ABC Commissioner in the
13 performance of the ABC Commissioner's functions are to be
14 persons engaged under the *Public Service Act 1999*.

15 (2) For the purposes of the *Public Service Act 1999*:

16 (a) the ABC Commissioner and the APS employees so assisting
17 the ABC Commissioner together constitute a Statutory
18 Agency; and

19 (b) the ABC Commissioner is the Head of that Statutory Agency.

20 (3) The ABC Commissioner may, on behalf of the Commonwealth,
21 engage persons having suitable qualifications and experience as
22 consultants to the ABC Commissioner. The terms and conditions
23 of the engagement of a person are such as are determined by the
24 ABC Commissioner in writing.

25 Note: See also section 71 of the *Public Service Act 1999*, which makes
26 provision for State employees to perform services in an Agency (as
27 defined in that Act).

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Chapter 3—The Building Code

5

26 Minister to issue Building Code

- 6 (1) The Minister may issue one or more documents that together
7 constitute a code of practice (the ***Building Code***) that is to be
8 complied with by persons in respect of building work.
- 9 (2) Without limiting subsection (1), the Minister may issue one or
10 more documents in relation to occupational health and safety
11 matters relating to building work.
- 12 (3) The Building Code cannot require a person to comply with the
13 Code in respect of particular building work (the ***current work***)
14 unless:
15 (a) the person is a building contractor that is a constitutional
16 corporation; or
17 (b) the person is a building industry participant and the current
18 work is to be carried out in a Territory or Commonwealth
19 place.
- 20 (4) Before exercising powers under this section, the Minister must take
21 into account any relevant recommendations of the Federal Safety
22 Commissioner in relation to occupational health and safety matters.
- 23 (5) The Minister must make the Building Code publicly available.

24

27 ABC Commissioner to report on compliance with Code

- 25 (1) The ABC Commissioner must give the Minister a written report, at
26 least annually, on the extent to which the Building Code is being
27 complied with.
- 28 (2) The Minister may notify the ABC Commissioner in writing of
29 particular occupational health and safety matters that need not be
30 covered in the report.

- 1 (3) The Minister must cause a copy of each report to be laid before
2 each House of the Parliament within 15 sitting days of that House
3 after its receipt by the Minister.

4 **28 ABC Commissioner to publicise non-compliance with Code**

- 5 If the ABC Commissioner considers that it is in the public interest
6 to do so, the ABC Commissioner may publish details of
7 non-compliance with the Building Code, including the names of
8 the persons who have failed to comply.

9 **29 Federal Safety Commissioner to report on compliance with Code**

- 10 (1) The Federal Safety Commissioner must give the Minister a written
11 report, at least annually, on the extent to which the Building Code
12 is being complied with in relation to occupational health and safety
13 matters.
- 14 (2) The Minister must cause a copy of each report to be laid before
15 each House of the Parliament within 15 sitting days of that House
16 after its receipt by the Minister.

17 **30 Building industry participants to report on compliance with Code**

- 18 (1) This section applies to a person who is required to comply with the
19 Building Code in respect of particular building work.
- 20 (2) The ABC Commissioner may, by notice in writing, direct the
21 person to give a written report to the ABC Commissioner, within
22 the period specified in the direction, containing specified
23 information about the extent to which the person complied with the
24 Building Code in respect of that building work. The specified
25 period must be at least 14 days.
- 26 (3) The person must comply with the requirement.
- 27 Note: Grade B civil penalty.
- 28 (4) The ABC Commissioner must give a copy of the report to the
29 Federal Safety Commissioner.

1
2 **Chapter 4—Occupational health and safety**

3 **Part 1—Federal Safety Commissioner**

4 **Division 1—Functions etc. of Federal Safety Commissioner**

5 **31 Federal Safety Commissioner**

6 There is to be a Federal Safety Commissioner.

7 **32 Functions of Federal Safety Commissioner**

8 The Federal Safety Commissioner has the following functions:

- 9 (a) promoting occupational health and safety in relation to
10 building work;
- 11 (b) monitoring and promoting compliance with the Building
12 Code, so far as the Code deals with occupational health and
13 safety;
- 14 (c) disseminating information about the Building Code, so far as
15 the Code deals with occupational health and safety;
- 16 (d) performing functions as the accreditation authority for the
17 purposes of the accreditation scheme;
- 18 (e) promoting the benefits of the accreditation scheme and
19 disseminating information about the accreditation scheme;
- 20 (f) referring matters to other relevant agencies and bodies;
- 21 (g) any other functions conferred on the Federal Safety
22 Commissioner by this Act or by another Act;
- 23 (h) any other functions conferred on the Federal Safety
24 Commissioner by the regulations.

25 **33 Minister's directions to Federal Safety Commissioner**

- 26 (1) The Minister may, by notice published in the *Gazette*, give
27 directions specifying the manner in which the Federal Safety
28 Commissioner must exercise or perform the powers or functions of
29 the Federal Safety Commissioner under this Act.

Section 34

- 1 (2) The Minister must not give a direction under subsection (1) about a
2 particular case.
- 3 (3) The Federal Safety Commissioner must comply with the
4 directions.
- 5 (4) A direction by the Minister is a disallowable instrument for the
6 purposes of section 46A of the *Acts Interpretation Act 1901*.

7 **34 Minister may require reports**

- 8 (1) The Minister may, in writing, direct the Federal Safety
9 Commissioner to give the Minister specified reports relating to the
10 Federal Safety Commissioner's functions.

11 Note: See also section 243, which restricts the disclosure of personal
12 information in a report.

- 13 (2) The Federal Safety Commissioner must comply with the direction.

14 **35 Delegation by Federal Safety Commissioner**

- 15 (1) The Federal Safety Commissioner may, in writing, delegate all or
16 any of his or her powers and functions under this Act to:
- 17 (a) a Federal Safety Officer; or
18 (b) an SES employee or acting SES employee; or
19 (c) a person prescribed by the regulations for the purposes of this
20 paragraph.
- 21 (2) In exercising powers or functions under a delegation, the delegate
22 must comply with any directions of the Federal Safety
23 Commissioner.
- 24 (3) As soon as practicable after delegating any power or function
25 under this section, the Federal Safety Commissioner must publish
26 details of the delegation.

27 **36 Annual report**

- 28 (1) As soon as practicable after the end of each financial year, the
29 Federal Safety Commissioner must prepare and give to the

- 1 Minister a report on the operations of the Federal Safety
2 Commissioner during that year.
- 3 (2) The report must include details of the number, and type, of matters
4 that were investigated by the Federal Safety Commissioner during
5 the financial year.
- 6 Note: See also section 243, which restricts the disclosure of personal
7 information in a report.
- 8 (3) The report must also include:
9 (a) details of directions given by the Minister during the
10 financial year under section 33 or 34; and
11 (b) details of delegations by the Federal Safety Commissioner
12 under section 35 during the financial year.
- 13 (4) The Minister must cause a copy of the report to be laid before each
14 House of the Parliament within 15 sitting days of that House after
15 its receipt by the Minister.

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**Division 2—Administrative provisions relating to
appointment etc. of Federal Safety Commissioner**

3

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37 Appointment

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(1) The Federal Safety Commissioner is to be appointed by the Minister by written instrument. The appointment is to be on a full-time basis.

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(2) The Minister must not appoint a person as the Federal Safety Commissioner unless the Minister is satisfied that the person:

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(a) has suitable qualifications or experience; and

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(b) is of good character.

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(3) The Federal Safety Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

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

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38 Acting Federal Safety Commissioner

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(1) The Minister may appoint a person to act as the Federal Safety Commissioner:

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(a) during a vacancy in the office of Federal Safety Commissioner (whether or not an appointment has previously been made to the office); or

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(b) during any period, or during all periods, when the Federal Safety Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

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(2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:

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(a) the occasion for the appointment had not arisen; or

- 1 (b) there was a defect or irregularity in connection with the
2 appointment; or
3 (c) the appointment had ceased to have effect; or
4 (d) the occasion to act had not arisen or had ceased.

5 **39 Remuneration**

- 6 (1) The Federal Safety Commissioner is to be paid the remuneration
7 that is determined by the Remuneration Tribunal. If no
8 determination of that remuneration by the Tribunal is in operation,
9 the Federal Safety Commissioner is to be paid the remuneration
10 that is prescribed.
- 11 (2) The Federal Safety Commissioner is to be paid the allowances that
12 are prescribed.
- 13 (3) This section has effect subject to the *Remuneration Tribunal Act*
14 *1973*.

15 **40 Leave**

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

21 **41 Engaging in other paid employment**

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

25 **42 Disclosure of interests**

26 The Federal Safety Commissioner must give written notice to the
27 Minister of all interests (financial or otherwise) that the Federal
28 Safety Commissioner has or acquires and that could conflict with
29 the proper performance of the Federal Safety Commissioner's
30 functions.

Section 43

1 **43 Resignation**

2 The Federal Safety Commissioner may resign his or her
3 appointment by giving the Minister a written resignation.

4 **44 Termination of appointment**

5 (1) The Minister may terminate the appointment of the Federal Safety
6 Commissioner if:

7 (a) the Federal Safety Commissioner:

8 (i) becomes bankrupt; or

9 (ii) applies to take the benefit of any law for the relief of
10 bankrupt or insolvent debtors; or

11 (iii) compounds with his or her creditors; or

12 (iv) makes an assignment of his or her remuneration for the
13 benefit of his or her creditors; or

14 (b) the Federal Safety Commissioner fails, without reasonable
15 excuse, to comply with section 41 or 42; or

16 (c) the Federal Safety Commissioner is absent from duty, except
17 on leave of absence, for 14 consecutive days or for 28 days in
18 any 12 months.

19 (2) Subject to subsections (3) and (4), the Minister may terminate the
20 appointment of a Federal Safety Commissioner on the ground of
21 misbehaviour or physical or mental incapacity.

22 (3) If the Federal Safety Commissioner:

23 (a) is an eligible employee for the purposes of the
24 *Superannuation Act 1976*; and

25 (b) has not reached his or her maximum retiring age within the
26 meaning of that Act;

27 his or her appointment cannot be terminated on the ground of
28 physical or mental incapacity unless the CSS Board has given a
29 certificate under section 54C of that Act.

30 (4) If the Federal Safety Commissioner:

31 (a) is a member of the superannuation scheme established by
32 deed under the *Superannuation Act 1990*; and

33 (b) is under 60 years of age;

1 his or her appointment cannot be terminated on the ground of
2 physical or mental incapacity unless the PSS Board has given a
3 certificate under section 13 of that Act.

4 **45 Staff and consultants**

5 (1) The staff necessary to assist the Federal Safety Commissioner are
6 to be persons engaged under the *Public Service Act 1999* and made
7 available by the Secretary of the Department.

8 (2) The Federal Safety Commissioner may, on behalf of the
9 Commonwealth, engage persons having suitable qualifications and
10 experience as consultants to the Federal Safety Commissioner. The
11 terms and conditions of the engagement of a person are such as are
12 determined by the Federal Safety Commissioner in writing.
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Part 2—OHS action

4

46 Definition of *building OHS action*

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In this Part, *building OHS action* means:

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(a) a failure or refusal by an employee to attend for building work; or

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(b) a failure or refusal to perform any work at all by an employee who attends for building work;

9

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where:

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(c) the failure or refusal is based on a reasonable concern by the employee about an imminent risk to his or her health or safety arising from conditions at the workplace; and

12

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14

(d) at least one of the following applies:

15

(i) the employer is a constitutional corporation;

16

(ii) the employer is the Commonwealth;

17

(iii) the refusal or failure occurs in a Territory or Commonwealth place.

18

19

47 Entitlement to be paid for periods of building OHS action

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(1) This section applies to an employee who engages in building OHS action.

21

22

Non-entitlement period before referral

23

(2) A period is a *pre-referral non-entitlement period* for the employee to the extent that all the following conditions are satisfied in respect of the period:

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(a) during the period, the employee engaged in building OHS action;

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28

(b) during the period, the employee failed to comply with a relevant dispute resolution procedure that applied to the situation giving rise to the building OHS action;

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31

(c) the period did not occur after the situation was referred to a relevant authority under an OHS law.

32

1 Note: The relevant law could be a law of the Commonwealth or of a State or
2 Territory.

3 (3) The employer must not make a payment to the employee in
4 relation to a pre-referral non-entitlement period.

5 Note: Grade A civil penalty.

6 (4) The employee must not accept a payment from the employer if the
7 employer would contravene subsection (3) in making the payment.

8 Note: Grade A civil penalty.

9 *Non-entitlement period after referral*

10 (5) If the employee engages in building OHS action after the situation
11 giving rise to the action is referred to a relevant authority under an
12 OHS law, then the employer must not make a payment to the
13 employee in relation to a period that:

14 (a) is after the referral; and

15 (b) during which the employee engages in building OHS action;

16 unless:

17 (c) before the payment is made, a prohibition notice has been
18 issued in respect of the situation and the employee complied
19 with the relevant dispute resolution procedure at all times
20 after the referral and before the issue of the prohibition
21 notice; or

22 (d) both of the following conditions are satisfied:

23 (i) the building OHS action ceased before the payment is
24 made and before the relevant authority began an
25 inspection, at the workplace, of the situation;

26 (ii) the employee complied with the relevant dispute
27 resolution procedure at all times after the referral and
28 before the building OHS action ceased.

29 Note: Grade A civil penalty.

30 (6) The employee must not accept a payment from the employer if the
31 employer would contravene subsection (5) in making the payment.

32 Note: Grade A civil penalty.

Section 48

1 *Compliance with dispute resolution procedure*

2 (7) For the purposes of this section, the employee's non-compliance
3 with a relevant dispute resolution procedure is to be disregarded to
4 the extent that the non-compliance was due to circumstances
5 outside the employee's control.

6 *Definition*

7 (8) In this section:

8 *prohibition notice* means a prohibition notice issued under an OHS
9 law.

10 **48 Requirement to notify building OHS action**

11 If an employee engages, or threatens to engage, in building OHS
12 action, then the employer must notify the ABC Commissioner in
13 writing of the action or threat within 72 hours after the employer
14 becomes aware of the action or threat.

15 Note: Grade B civil penalty.

16 **49 Requirement to notify payments for period of building OHS**
17 **action**

18 If an employer makes a payment to an employee in respect of a
19 period during which the employee engaged in building OHS
20 action, then the employer must, within 72 hours, notify the ABC
21 Commissioner in writing that the payment was made.

22 Note: Grade B civil penalty.

1
2 **Part 3—Accreditation scheme for Commonwealth**
3 **building contracts**
4

5 **50 Accreditation scheme**

6 *Accreditation scheme*

- 7 (1) The regulations may prescribe an accreditation scheme for persons
8 who wish to enter into Commonwealth building contracts with the
9 Commonwealth or Commonwealth authorities.
- 10 (2) The regulations must provide for the Federal Safety Commissioner
11 to be the accrediting authority under the scheme.
- 12 (3) The regulations may prescribe fees for applications made under the
13 regulations.

14 *Commonwealth building contracts not to be entered into with*
15 *persons who are not accredited*

- 16 (4) The Commonwealth or a Commonwealth authority must not enter
17 into a Commonwealth building contract with a person or persons
18 unless the person, or each of the persons, is an accredited person at
19 the time the contract is entered into. This subsection does not apply
20 to contracts prescribed by the regulations.
- 21 (5) Subsection (4) overrides:
- 22 (a) any Commonwealth provision enacted before the
23 commencement of this section; and
- 24 (b) any Commonwealth provision enacted after the
25 commencement of this section, unless the provision expressly
26 refers to this section.
- 27 (6) A contravention of subsection (4) in respect of a contract does not
28 affect the validity of the contract.
- 29 (7) In this section:

Section 50

1 **accredited person** means a person who is accredited under the
2 accreditation scheme.

3 **Commonwealth authority** means a Commonwealth authority
4 within the meaning of the *Commonwealth Authorities and*
5 *Companies Act 1997*.

6 **Commonwealth building contract** means a contract under which a
7 person agrees with the Commonwealth or a Commonwealth
8 authority to carry out building work or arrange for building work to
9 be carried out.

10 **Commonwealth provision** means a provision of a law of the
11 Commonwealth.

1
2 **Chapter 5—Awards, certified agreements and**
3 **other provisions about employment**
4 **conditions**

5 **Part 1—Awards**
6

7 **51 Scope of industrial disputes**

8 *Building industrial dispute normally limited to allowable award*
9 *matters*

- 10 (1) For the following purposes of the Workplace Relations Act, an
11 industrial dispute that is a building industrial dispute is taken to
12 include only matters covered by subsections (2) and (3):
13 (a) dealing with an industrial dispute by arbitration;
14 (b) preventing or settling an industrial dispute by making an
15 award or order;
16 (c) maintaining the settlement of an industrial dispute by varying
17 an award or order.

18 *Allowable award matters*

- 19 (2) For the purposes of subsection (1), the matters are as follows:
20 (a) classifications of employees;
21 (b) ordinary time hours of work, rest breaks, notice periods and
22 variations to working hours;
23 (c) rates of pay generally (such as hourly rates and annual
24 salaries), rates of pay for juniors, trainees or apprentices, and
25 rates of pay for employees under the supported wage system;
26 (d) incentive-based payments and piece rates;
27 (e) annual leave and leave loadings;
28 (f) personal/carer's leave, including sick leave, family leave,
29 bereavement leave and compassionate leave;

Section 51

- 1 (g) ceremonial leave for Aboriginal and Torres Strait Islander
2 people, and other like forms of leave, to meet cultural
3 obligations;
- 4 (h) parental leave, including maternity and adoption leave;
- 5 (i) observance of days declared by the Government of a State or
6 Territory to be observed generally within that State or
7 Territory, or a region of that State or Territory, as public
8 holidays by employees who work in that State, Territory or
9 region, and entitlements of employees to payment in respect
10 of those days;
- 11 (j) monetary allowances for:
- 12 (i) expenses incurred in the course of employment; or
- 13 (ii) responsibilities or skills that are not taken into account
14 in rates of pay for employees; or
- 15 (iii) disabilities associated with the performance of particular
16 tasks or work in particular conditions or locations;
- 17 (k) the maximum number of hours per week that an employee
18 can be required to work overtime;
- 19 (l) loadings for working overtime or for casual or shift work;
- 20 (m) penalty rates;
- 21 (n) payments in relation to a termination that is:
- 22 (i) on the initiative of the employer; and
- 23 (ii) on the grounds of operational requirements;
- 24 (o) stand-down provisions;
- 25 (p) dispute settling procedures;
- 26 (q) type of employment, such as full-time employment, casual
27 employment, regular part-time employment and shift work;
- 28 (r) superannuation;
- 29 (s) bonuses for outworkers;
- 30 (t) pay (other than bonuses) and conditions for outworkers, but
31 only to the extent necessary to ensure that their overall pay
32 (other than bonuses) and conditions of employment are fair
33 and reasonable in comparison with the pay and conditions of
34 employment specified in a relevant award or awards for
35 employees who perform the same kind of work at an
36 employer's business or commercial premises.

Section 51

- 1 (3) The AIRC's power to make an award dealing with matters covered
2 by subsection (2) is limited to making a minimum rates award that
3 provides for basic minimum entitlements.

4 *Matters that are not allowable award matters*

- 5 (4) Matters that are not covered by subsection (2) include, but are not
6 limited to, the following:
7 (a) transfers between locations;
8 (b) training or education (except in relation to leave and
9 allowances for trainees or apprentices);
10 (c) recording of the hours employees work, or the times of their
11 arrival or departure from work;
12 (d) the times or days when work counts as ordinary time or
13 overtime, or when rostered days off (RDOs) may be taken;
14 (e) payments of accident make up pay by employers;
15 (f) rights of an organisation to participate in, or represent, the
16 employer or employee in the whole or part of a dispute
17 settling procedure, unless the organisation is the
18 representative of the employer's or employee's choice;
19 (g) transfers from one type of employment to another type of
20 employment;
21 (h) the number or proportion of employees that an employer may
22 employ in a particular type of employment or in a particular
23 classification;
24 (i) prohibitions (directly or indirectly) on an employer
25 employing employees in a particular type of employment or
26 in a particular classification;
27 (j) the maximum or minimum hours of work for regular
28 part-time employees.
- 29 (5) The AIRC's power to make an award dealing with matters covered
30 by paragraph (2)(r) does not include the power to specify a
31 particular superannuation fund or scheme.

32 *Other provisions that AIRC may include in an award*

- 33 (6) Paragraph (4)(j) does not prevent the AIRC from including in an
34 award:

Section 51

- 1 (a) provisions setting a minimum number of consecutive hours
2 that an employer may require a regular part-time employee to
3 work; or
4 (b) provisions facilitating a regular pattern in the hours worked
5 by regular part-time employees.

6 (7) The AIRC may include in an award provisions that are incidental
7 to an allowable award matter provided for in the award and are
8 essential for the purpose of making a particular provision operate
9 in a practical way.

10 (8) The AIRC may include machinery provisions in awards, such as
11 definitions, titles and commencement provisions.

12 *Exceptional matters*

13 (9) Subsection (1) does not exclude a matter (the *exceptional matter*)
14 from an industrial dispute if the AIRC is satisfied of all the
15 following:

- 16 (a) a party to the dispute has made a genuine attempt to reach
17 agreement on the exceptional matter;
18 (b) there is no reasonable prospect of agreement being reached
19 on the exceptional matter by conciliation, or further
20 conciliation, by the AIRC;
21 (c) it is appropriate to settle the exceptional matter by
22 arbitration;
23 (d) the issues involved in the exceptional matter are exceptional
24 issues;
25 (e) a harsh or unjust outcome would apply if the industrial
26 dispute were not to include the exceptional matter.

27 (10) For the purpose of applying the Workplace Relations Act in
28 relation to a building industrial dispute, the definition of
29 *exceptional matters order* in section 4 of that Act has effect as if it
30 referred to subsection (9) of this section (instead of subsection
31 89A(7) of that Act).

32 (11) An order under section 120A of the Workplace Relations Act in
33 relation to a building industrial dispute may only be made by a Full
34 Bench.

1 *Anti-discrimination clause*

2 (12) Nothing in this section prevents the AIRC from including a model
3 anti-discrimination clause in an award.

4 Note: A model anti-discrimination clause was established by the AIRC in
5 the Full Bench decision dated 9 October 1995 (print M5600).

6 *Provisions permitted by section 113A and subsection 143(1C) of*
7 *the Workplace Relations Act*

8 (13) Nothing in this section prevents the AIRC from including in an
9 award provisions that are permitted by section 113A, and
10 subsection 143(1C), of the Workplace Relations Act.

11 *Statutory freedom of association statement*

12 (14) Nothing in this section prevents the AIRC from including the
13 statutory freedom of association statement in a document given to a
14 Registrar under paragraph 143(1)(b) of the Workplace Relations
15 Act. The statement does not form part of an award.

16 *Interpretation*

17 (15) In this section:

18 *outworker* means an employee who, for the purposes of the
19 business of the employer, performs work at private residential
20 premises or at other premises that are not business or commercial
21 premises of the employer.

22 **52 Minimising number of allowances**

23 In applying section 88B of the Workplace Relations Act in relation
24 to a building industrial dispute, the AIRC must also have regard to
25 the desirability of minimising the number, and complexity, of
26 allowances.

1

2 **Part 2—Certified agreements**

3 **Division 1—Certification**

4 **53 Hearing required before certification**

- 5 (1) Before certifying a building agreement, the AIRC must hold a
6 hearing in relation to the certification.
- 7 (2) At least 7 days before the hearing, the Industrial Registrar must
8 give the ABC Commissioner a copy of each document that is
9 lodged with the AIRC in relation to the certification.

10 **54 Extraneous matters**

- 11 (1) The AIRC must not certify a building agreement that includes any
12 matter that does not pertain to the employment relationship
13 between the employer and employees who will be subject to the
14 agreement.
- 15 (2) Subsection (1) does not apply if the matter:
16 (a) is incidental to a matter that pertains to that employment
17 relationship; and
18 (b) is essential for the purpose of making a particular provision
19 of the agreement operate in a practical way.
- 20 (3) This section has effect subject to section 58.

21 **55 Non-standard period or retrospective payments**

22 *Period other than 3 years*

- 23 (1) The AIRC must not certify a building agreement if the nominal
24 expiry date specified in the agreement is a date other than the third
25 anniversary of the starting date of the agreement.
- 26 (2) Subsection (1) does not apply if:
27 (a) the specified date is earlier than that third anniversary; and

1 (b) the AIRC is satisfied that the earlier date is justified by
2 special circumstances.

3 *Retrospective payments*

4 (3) The AIRC must not certify a building agreement if the agreement
5 imposes obligations on the employer to make payments in respect
6 of any period before the starting date of the agreement.

7 (4) Subsection (3) does not apply if the AIRC is satisfied that the
8 employer unreasonably delayed the making of the agreement.

9 *Definition*

10 (5) In this section:

11 *starting date* means:

12 (a) for an agreement under section 170LK or 170LL of the
13 Workplace Relations Act—the date on which the agreement
14 is made; or

15 (b) for an agreement under section 170LJ of the Workplace
16 Relations Act—the date of approval under subsection
17 170LJ(2) of that Act; or

18 (c) for an agreement under Division 3 of Part VIB of the
19 Workplace Relations Act—the date of approval under
20 subsection 170LR(1) of that Act.

21 **56 Pattern bargaining**

22 The AIRC must not certify a building agreement unless it is
23 satisfied that the agreement did not result from pattern bargaining.

24 **57 Objectionable provisions**

25 The AIRC must not certify a building agreement if the AIRC is
26 satisfied that the agreement contains objectionable provisions.

27 **58 Freedom of association statement**

28 The AIRC must not certify a building agreement unless the
29 agreement contains the statutory freedom of association statement.

1 **59 Initiation of bargaining period**

2 The AIRC must not certify a building agreement unless a notice
3 has been given in respect of the agreement under section 170MI of
4 the Workplace Relations Act.

5 Note: See also section 64.

6 **60 Agreements that incorporate other documents**

7 Before certifying a building agreement that makes provision for a
8 matter by applying, adopting or incorporating the provisions of
9 another document, the AIRC must consider the terms of those
10 provisions in the other document for the purpose of assessing
11 whether the agreement, as a whole, meets the requirements for
12 certification.

13 **61 Appeal against certification**

14 Paragraph 45(1)(eaa) of the Workplace Relations Act has effect in
15 relation to building agreements as if that paragraph also referred to
16 the ground that, under this Act, the AIRC should have refused to
17 certify the agreement.

1

2 **Division 2—Miscellaneous**

3 **62 Indicators of genuinely trying to reach agreement**

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In the application of section 170MW of the Workplace Relations Act in relation to a proposed building agreement, the following conduct of a negotiating party (the *first party*) is to be regarded as indicating that the party is genuinely trying to reach an agreement:

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- (a) agreeing to meet face to face at reasonable times proposed by another negotiating party;
- (b) attending meetings that the first party has agreed to attend;
- (c) complying with negotiating procedures agreed to by the first party;
- (d) disclosing relevant information, as appropriate, taking into account the employer's need to protect the employer's commercial interests;
- (e) disclosing in writing any direct or indirect financial benefit that has been, or is to be, provided, in relation to the proposed agreement, to the first party by a third party, for example any commission or other income that may be derived by the first party arising from a term proposed for the agreement;
- (f) stating a position on matters at issue, and explaining that position;
- (g) considering and responding to proposals made by another negotiating party;
- (h) adhering to commitments given to another negotiating party or parties in respect of:
 - (i) meetings; and
 - (ii) responses to matters raised during bargaining;
- (i) dedicating sufficient resources and personnel to the bargaining process;
- (j) not capriciously adding or withdrawing items for bargaining;
- (k) not refusing or failing to meet with one or more of the other negotiating parties;

Section 63

- 1 (l) in or in connection with the bargaining process, not refusing
2 or failing to meet with a person who is entitled to represent
3 an employee or with a person who is a representative chosen
4 by a negotiating party to represent it in the bargaining
5 process.

6 **63 Employee representations**

- 7 (1) Before an employer makes a building agreement under
8 section 170LJ, or Division 3 of Part VIB, of the Workplace
9 Relations Act, the employer must take reasonable steps to ensure
10 that all affected employees of the employer have an opportunity to
11 make representations to the employer about the proposed
12 agreement.

13 Note: Section 170LJ, and Division 3 of Part VIB, of the Workplace
14 Relations Act deal with agreements between an employer and an
15 employee organisation.

- 16 (2) In this section:

17 *affected employee* means an employee whose employment will be
18 covered by the agreement.

19 **64 Representation ballot for initiation of bargaining period**

- 20 (1) A union-related initiation notice under section 170MI of the
21 Workplace Relations Act has no effect unless:
22 (a) in the period of 21 days before the notice date, all the
23 affected employees were given an opportunity to vote on a
24 proposal that the notice be given and a majority of those who
25 cast a valid vote voted in favour of the proposal; and
26 (b) the notice includes details of that vote.
- 27 (2) Voting must comply with the following requirements in order to be
28 taken into account for the purposes of subsection (1):
29 (a) if there are at least 10 affected employees who, at the
30 commencement of voting, are entitled to vote—the voting
31 must be by secret ballot;
32 (b) the voting process must be fair;

- 1 (c) at least 24 hours before the start of voting, all the affected
2 employees must be notified of the subject matter of the
3 voting, the proposed timing and the proposed voting method;
4 (d) if the regulations prescribe additional requirements that are to
5 be complied with in respect of the voting—those
6 requirements must be complied with.

7 (3) In this section:

8 ***affected employee*** means a person who is an employee of the
9 employer concerned and whose employment will be covered by the
10 agreement.

11 ***notice date*** means:

- 12 (a) the day on which the notice is given; or
13 (b) if the notice is given to different persons on different days—
14 the later or latest of those days.

15 ***union-related initiation notice*** means:

- 16 (a) a notice by an employee organisation in relation to a
17 proposed building agreement; or
18 (b) a notice by an employer who intends to make a building
19 agreement under section 170LJ, or Division 3 of Part VIB, of
20 the Workplace Relations Act.

21 **65 Initiating party who is employee may appoint agent**

- 22 (1) A person referred to in paragraph 170MI(1)(c) of the Workplace
23 Relations Act who wishes to:
24 (a) initiate a bargaining period under section 170MI of that Act
25 for a proposed building agreement; or
26 (b) give notice to an employer under section 170MO of that Act
27 of an intention to take building industrial action;
28 without disclosing the person's identity to the person's employer,
29 may appoint an agent to initiate the bargaining period, or give the
30 notice, on the person's behalf.
- 31 (2) If a person has appointed an agent under subsection (1), the
32 person's notice to the AIRC under subsection 170MI(2) of the

Section 66

1 Workplace Relations Act must be accompanied by a document
2 containing the person's name.

3 (3) The regulations may make provision in relation to the
4 qualifications and appointment of agents appointed under this
5 section.

6 (4) In this section:

7 *building industrial action* has the same meaning as in Chapter 6.

8 **66 Identity of person who has appointed agent not to be disclosed**

9 *Disclosure by AIRC prohibited*

10 (1) The AIRC must not disclose information that the AIRC knows, or
11 has reasonable grounds to believe, will identify a person who has
12 appointed an agent under section 65 as:

13 (a) a person who has initiated a bargaining period under
14 section 170MI of the Workplace Relations Act; or

15 (b) a person who has given notice to an employer under
16 section 170MO of the Workplace Relations Act.

17 (2) Each of the following is an exception to the prohibition in
18 subsection (1):

19 (a) the disclosure is required or permitted by this Act or by
20 another Act, or by regulations made under this Act or under
21 another Act;

22 (b) the person whose identity is disclosed has, in writing,
23 authorised the disclosure.

24 *Disclosure by individual prohibited*

25 (3) A person must not disclose protected information that the person
26 knows, or has reasonable grounds to believe, will identify another
27 person as a person referred to in paragraph (1)(a) or (b).

28 Penalty: Imprisonment for 12 months.

29 (4) Each of the following is an exception to the prohibition in
30 subsection (3):

- 1 (a) the disclosure is made by a person in the course of
2 performing functions or duties:
3 (i) as a Registry official; or
4 (ii) of, or on behalf of, an authorised ballot agent;
5 (b) the disclosure is required or permitted by this Act or by
6 another Act, or by regulations made under an Act;
7 (c) the person whose identity is disclosed has, in writing,
8 authorised the disclosure.

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

11 (5) In this section:

12 ***authorised ballot agent*** has the same meaning as in Division 2 of
13 Part 3 of Chapter 6.

14 ***protected information***, in relation to a person, means information
15 that the person acquired:

- 16 (a) in the course of performing functions or duties as a Registry
17 official; or
18 (b) in the course of performing functions or duties as, or on
19 behalf of, an authorised ballot agent; or
20 (c) from a person referred to in paragraph (a) or (b) who
21 acquired the information as mentioned in paragraph (a) or
22 (b).

23 ***Registry official*** means:

- 24 (a) the Industrial Registrar; or
25 (b) a member of the staff of the Industrial Registry (including a
26 Deputy Industrial Registrar).

Section 67

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Part 3—Other provisions about employment conditions

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67 Injunction against pattern bargaining

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(1) If, on application by the ABC Commissioner or any other person, the Federal Court is satisfied that a person or industrial association (the *defendant*) is engaging, has engaged or is proposing to engage in pattern bargaining in respect of building employees, then the Court may grant an injunction in such terms as the Court considers appropriate.

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(2) If, in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

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(3) The Court cannot grant an injunction, or interim injunction, unless:

- (a) the defendant is an organisation or a constitutional corporation; or
- (b) the conduct concerned is, was or would be:
 - (i) conduct that adversely affects a constitutional corporation in its capacity as a building industry participant; or
 - (ii) conduct carried out with intent to adversely affect a constitutional corporation in its capacity as a building industry participant; or
 - (iii) conduct occurring in connection with the negotiation of an agreement under Division 2 of Part VIB of the Workplace Relations Act; or
 - (iv) conduct occurring in relation to an industrial dispute that the parties are seeking to resolve by an agreement under Division 3 of Part VIB of the Workplace Relations Act; or
 - (v) conduct occurring in a Territory or Commonwealth place; or

- 1 (c) some or all of the employees referred to in subsection (1) are
2 employees, or prospective employees, of a constitutional
3 corporation.
- 4 (4) The power of the Court to grant an injunction restraining the
5 defendant from engaging in conduct may be exercised:
- 6 (a) whether or not it appears to the Court that the defendant
7 intends to engage again, or to continue to engage, in conduct
8 of that kind;
- 9 (b) whether or not the defendant has previously engaged in
10 conduct of that kind; and
- 11 (c) whether or not there is an imminent danger of substantial
12 damage to any person if the defendant engages in conduct of
13 that kind.
- 14 (5) This section has effect despite anything in section 170MT of the
15 Workplace Relations Act.

16 **68 Project agreements not enforceable**

- 17 (1) If:
- 18 (a) an agreement is entered into with the intention of securing
19 standard employment conditions for building employees in
20 respect of building work that they carry out at a particular
21 building site or sites; and
- 22 (b) not all the employees are employed by the same employer;
23 and
- 24 (c) either:
- 25 (i) a party to the agreement is an organisation and at least
26 some of the employees are members of that
27 organisation; or
- 28 (ii) a party to the agreement is a constitutional corporation
29 and at least some of the employees are employees of
30 that corporation; and
- 31 (d) the agreement is not certified;
- 32 then the agreement is unenforceable to the extent to which it relates
33 to building employees.

Section 69

- 1 (2) In determining for the purposes of this section whether employees
2 are employed by the same employer, section 170LB of the
3 Workplace Relations Act is to be disregarded.

4 Note: See also sections 56 and 67, which deal with pattern bargaining.

5 **69 Objectionable provisions etc. in industrial instruments etc.**

- 6 (1) A provision of a building certified agreement or building award is
7 void to the extent that it is an objectionable provision.

- 8 (2) A provision of an industrial instrument, or an agreement or
9 arrangement (whether written or unwritten), is void to the extent
10 that it requires or permits, or has the effect of requiring or
11 permitting, any conduct that would contravene Chapter 7.

12 **70 Removal of objectionable provisions from awards and certified**
13 **agreements**

- 14 (1) Where, on application by a person mentioned in subsection (2), the
15 AIRC is satisfied that a building award contains objectionable
16 provisions, the AIRC must vary the award so as to remove the
17 objectionable provisions.

- 18 (2) The application may be made by:
19 (a) an organisation or party bound by the award; or
20 (b) an employee whose employment is subject to the award; or
21 (c) the ABC Commissioner.

- 22 (3) Where, on application by a person mentioned in subsection (4), the
23 AIRC is satisfied that a building certified agreement contains
24 objectionable provisions, the AIRC must vary the agreement so as
25 to remove the objectionable provisions.

- 26 (4) The application may be made by:
27 (a) a person bound by the certified agreement; or
28 (b) an employee whose employment is subject to the certified
29 agreement; or
30 (c) the ABC Commissioner.

1 **71 Enforcement of building awards, agreements and orders**

2 (1) Part VIII of the Workplace Relations Act applies in relation to a
3 building award, building certified agreement or building order as
4 if:

- 5 (a) references in that Part to a magistrates court included
6 references to the Federal Magistrates Court; and
7 (b) references in subsections 178(4) and (4A) of that Act to
8 \$1,000 were references to 100 penalty units; and
9 (c) references in subsection 178(4) of that Act to \$2,000 were
10 references to 200 penalty units; and
11 (d) references in subsections 178(4) and (4A) of that Act to
12 \$5,000 were references to 500 penalty units; and
13 (e) references in subsection 178(4) of that Act to \$10,000 were
14 references to 1,000 penalty units; and
15 (f) the reference in paragraph 179D(2)(a) of that Act to \$5,000
16 were a reference to \$25,000.

17 (2) In this section:

18 ***building order*** means:

- 19 (a) an order of the AIRC under this Act; or
20 (b) an order of the AIRC under the Workplace Relations Act,
21 being an order that is binding on a building employer or
22 building employee (whether or not it is also binding on other
23 persons).

1
2 **Chapter 6—Industrial action etc.**

3 **Part 1—Preliminary**
4

5 **72 Definitions**

6 (1) In this Chapter, unless the contrary intention appears:

7 *building industrial action* means:

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

13 (i) the terms and conditions of the work are prescribed,
14 wholly or partly, by an industrial instrument or an order
15 of an industrial body; or

16 (ii) the work is performed, or the practice is adopted, in
17 connection with an industrial dispute (within the
18 meaning of Chapter 7); or

19 (b) a ban, limitation or restriction on the performance of building
20 work, or on acceptance of or offering for building work, in
21 accordance with the terms and conditions prescribed by an
22 industrial instrument or by an order of an industrial body; or

23 (c) a ban, limitation or restriction on the performance of building
24 work, or on acceptance of or offering for building work, that
25 is adopted in connection with an industrial dispute (within
26 the meaning of Chapter 7); or

27 (d) a failure or refusal by persons to attend for building work or a
28 failure or refusal to perform any work at all by persons who
29 attend for building work;

30 but does not include:

31 (e) action by employees that is authorised or agreed to, in
32 advance and in writing, by the employer of the employees; or

33 (f) action by an employer that is authorised or agreed to, in
34 advance and in writing, by or on behalf of employees of the
35 employer; or

- 1 (g) action by an employee if:
2 (i) the action was based on a reasonable concern by the
3 employee about an imminent risk to his or her health or
4 safety; and
5 (ii) the employee did not unreasonably fail to comply with a
6 direction of his or her employer to perform other
7 available work, whether at the same or another
8 workplace, that was safe for the employee to perform.

9 Note: See also subsection (2), which deals with the burden of proof of the
10 exception in paragraph (g) of this definition.

11 ***constitutionally-connected action*** means building industrial action
12 that satisfies at least one of the following conditions:

- 13 (a) the action is taken by an organisation;
14 (b) the action is taken by a constitutional corporation, or
15 adversely affects a constitutional corporation in its capacity
16 as a building industry participant;
17 (c) the action is taken in connection with an industrial dispute;
18 (d) the action relates to work that is regulated by an award or
19 certified agreement;
20 (e) the action relates to the negotiation or proposed negotiation
21 of an agreement under Division 2 of Part VIB of the
22 Workplace Relations Act;
23 (f) the action occurs in a Territory or Commonwealth place.

24 ***excluded action*** means:

- 25 (a) building industrial action that is protected action for the
26 purposes of the Workplace Relations Act (as affected by
27 Division 1 of Part 3 of this Chapter); or
28 (b) building industrial action that is AWA industrial action for
29 the purposes of Division 8 of Part VID of the Workplace
30 Relations Act.

31 ***industrially-motivated*** means motivated by one or more of the
32 following purposes, or by purposes that include one or more of the
33 following purposes:

- 34 (a) supporting or advancing claims against an employer in
35 respect of the employment of employees of that employer;

Section 72

- 1 (b) supporting or advancing claims by an employer in respect of
2 the employment of employees of that employer;
3 (c) advancing industrial objectives of an industrial association;
4 (d) disrupting the performance of work.
5 The employer referred to in paragraphs (a) and (b) need not be the
6 employer whose employees do the work to which the action
7 relates.
- 8 (2) Whenever a person seeks to rely on paragraph (g) of the definition
9 of ***building industrial action*** in subsection (1), that person has the
10 burden of proving that paragraph (g) applies.
- 11 (3) For the purposes of this Chapter:
12 (a) conduct is capable of constituting building industrial action
13 even if the conduct relates to part only of the duties that
14 persons are required to perform in the course of their
15 employment; and
16 (b) a reference to building industrial action includes a reference
17 to a course of conduct consisting of a series of building
18 industrial actions.

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Part 2—Unlawful industrial action

4

73 Definition of *unlawful industrial action*

5

Building industrial action is *unlawful industrial action* if:

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(a) the action is industrially-motivated; and

7

(b) the action is constitutionally-connected action; and

8

(c) the action is not excluded action.

9

74 Unlawful industrial action prohibited

10

A person must not engage in unlawful industrial action.

11

Note: Grade A civil penalty.

12

75 Injunction against threatened etc. unlawful industrial action

13

(1) If, on application by the ABC Commissioner or any other person, an appropriate court is satisfied that unlawful industrial action is threatened, impending or probable, then the court may grant an injunction in such terms as the court considers appropriate.

14

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(2) If, in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

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(3) The power of the court to grant an injunction restraining a person (the *defendant*) from engaging in conduct may be exercised:

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(a) whether or not it appears to the court that the defendant intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the defendant has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the defendant engages in conduct of that kind.

30

(4) In this section:

Section 76

1 *appropriate court* means the Federal Court, the Federal
2 Magistrates Court, a Supreme Court of a State or Territory or a
3 District Court, or County Court, of a State.

4 **76 Obligation to notify cessation of unlawful industrial action**

5 (1) Within 14 days after an employer becomes aware that unlawful
6 industrial action by employees of the employer has come to an end,
7 the employer must give written notice to the ABC Commissioner.

8 Note: Grade B civil penalty.

9 (2) The notice must be in the form prescribed by the regulations and
10 must contain the particulars required by the form.

11 (3) The ABC Commissioner may, by written notice, require an
12 employer who has given a notice under this section to provide
13 additional information to the ABC Commissioner regarding the
14 damage (if any) that the employer suffered as a result of the
15 unlawful industrial action.

16 (4) The employer must provide the information within the time
17 required by the notice.

18 Note: Grade B civil penalty.

19 **77 Assessment of damage resulting from unlawful industrial action**

20 (1) The ABC Commissioner may, in writing, nominate an ABC
21 Inspector to assess the maximum amount that could be ordered to
22 be paid to a person under paragraph 227(1)(b) in respect of an
23 alleged contravention of section 74 that is specified in the
24 nomination.

25 (2) After assessing the amount, the ABC Inspector may issue a
26 certificate that specifies:

- 27 (a) the amount assessed; and
28 (b) the person who suffered the damage; and
29 (c) the alleged contravention.

30 (3) If, in proceedings under section 227, the alleged contravention
31 specified in the certificate is found to have occurred, then the

Section 77

- 1 certificate is prima facie evidence that the amount specified in the
2 certificate is the amount of damage suffered, as a result of the
3 contravention, by the person specified in the certificate.
- 4 (4) A document that purports to be a certificate issued under this
5 section is to be taken to be such a certificate, unless the contrary is
6 proved.

1

2

Part 3—Protected action

3

Division 1—Exceptions to protected action

4

78 Action in support of extraneous claims

5

(1) Building industrial action is not protected action for the purposes of the Workplace Relations Act if:

6

7

(a) the action is engaged in for the purposes of supporting or advancing claims made in respect of a proposed building agreement; and

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10

(b) any of those claims relates to a matter that does not pertain to the employment relationship between the employer and employees who will be subject to the agreement.

11

12

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(2) Subsection (1) does not apply if the matter referred to in paragraph (1)(b):

14

15

(a) is incidental to a matter that pertains to that employment relationship; and

16

17

(b) is essential for the purpose of making a particular provision of the agreement operate in a practical way.

18

19

79 Action involving extraneous participants

20

(1) Building industrial action in relation to a proposed building agreement is not protected action for the purposes of the Workplace Relations Act if:

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(a) the action is engaged in in concert with one or more persons who are not protected persons for the action; or

24

25

(b) the organisers include one or more persons who are not protected persons for the action.

26

27

(2) In this section:

28

protected person means:

29

(a) an employee organisation that is a negotiating party to the proposed agreement; or

30

- 1 (b) a member of such an organisation who is employed by the
2 employer and whose employment will be subject to the
3 proposed agreement; or
4 (c) an officer or employee of such an organisation acting in that
5 capacity; or
6 (d) an employee who is a negotiating party to the proposed
7 agreement.

8 **80 Action before nominal expiry date**

9 Building industrial action is not protected action for the purposes
10 of the Workplace Relations Act if:

- 11 (a) the action is engaged in for the purpose of supporting or
12 advancing claims:
13 (i) against an employer; or
14 (ii) by an employer;
15 in respect of employees whose employment is, in any
16 respect, subject to a building certified agreement; and
17 (b) the action is taken before the nominal expiry date of that
18 agreement.

19 **81 Action during “cooling off” period**

20 *Exception to protected action*

- 21 (1) Building industrial action in relation to a proposed building
22 agreement is not protected action for the purposes of the
23 Workplace Relations Act to the extent that the action continues
24 beyond the 14th day after the day (the *notified day*) notified by a
25 person (the *notifying person*) in relation to the proposed agreement
26 under subsection 170MO(5) of the Workplace Relations Act.
- 27 (2) Subsection (1) does not apply to building industrial action that:
28 (a) occurs after the 35th day after the notified day; and
29 (b) is covered by a certificate issued by the AIRC under
30 subsection (3).

31 Note: The mere fact that industrial action is covered by a certificate does not
32 mean that it will be protected action. For example, it might be
33 disqualified by another provision of this Part.

Section 81

- 1 (3) The AIRC, on application by the notifying person, may issue a
2 certificate to the effect that specified building industrial action
3 during a specified period is building industrial action to which this
4 subsection applies. In deciding whether to issue a certificate, the
5 AIRC must have regard to the following matters:
6 (a) the matters that are at issue between the negotiating parties;
7 (b) the merits of the negotiating parties' cases;
8 (c) the interests of the negotiating parties and the public interest;
9 (d) the anticipated effect of any building industrial action on
10 third parties;
11 (e) whether any negotiating party has failed to genuinely try to
12 reach agreement;
13 (f) the extent to which the conduct of the negotiating parties
14 during the bargaining period has been reasonable;
15 (g) any principles formulated by a Full Bench for the purposes of
16 this subsection.
- 17 (4) The period specified in a certificate cannot be longer than 14 days.
18 However, the AIRC (on application by the notifying person) may
19 issue a further certificate or certificates under subsection (3) in
20 respect of building industrial action in relation to the same
21 proposed agreement.
- 22 (5) An application for a certificate under subsection (3) cannot be
23 made:
24 (a) earlier than the 35th day after the notified day; or
25 (b) earlier than the 21st day after the last day of a period
26 specified in a previous certificate under that subsection in
27 respect of building industrial action in relation to the same
28 proposed agreement; or
29 (c) at a time when a suspension of the relevant bargaining period
30 is in effect under section 170MW of the Workplace Relations
31 Act.
- 32 (6) Section 170MO of the Workplace Relations Act does not apply to
33 action that is covered by a certificate under subsection (3) of this
34 section.

1 **82 Action not authorised by secret ballot**

2 Building industrial action in relation to a proposed building
3 agreement is not protected action under subsection 170ML(2) of
4 the Workplace Relations Act unless:

- 5 (a) the action was authorised under Division 2 of this Part; or
6 (b) the action is covered by paragraph 170ML(2)(f) of the
7 Workplace Relations Act.

8 Note: Section 114 sets out the requirements for authorisation under
9 Division 2 of this Part.

10 **83 Negotiations must precede building industrial action**

11 (1) In this section, *negotiations* has the same meaning as in Division 8
12 of Part VIB of the Workplace Relations Act.

13 (2) If the AIRC has:

- 14 (a) made an order in relation to negotiations; or
15 (b) given a direction in relation to negotiations or to a matter that
16 arose during negotiations;

17 engaging in building industrial action by a person who is a member of
18 a Commonwealth building employee organisation that is a
19 negotiating party is not protected action unless, before the person
20 begins to engage in the action, the organisation has complied with
21 the order or direction so far as it applies to the organisation.

22 (3) If the AIRC has:

- 23 (a) made an order in relation to negotiations; or
24 (b) given a direction in relation to negotiations or to a matter that
25 arose during negotiations;

26 engaging in building industrial action by a building employee who
27 is a negotiating party is not protected action unless, before the
28 employee begins to engage in the action, the employee has
29 complied with the order or direction in so far as it applies to him or
30 her.

31 (4) Subsections 170MP(1) and (2) of the Workplace Relations Act do
32 not apply in relation to building industrial action.

Chapter 6 Industrial action etc.

Part 3 Protected action

Division 1 Exceptions to protected action

Section 84

1 **84 Organising industrial action**

2 Organising building industrial action is not protected action for the
3 purposes of the Workplace Relations Act if the building industrial
4 action (if engaged in) would be excluded from protected action by
5 this Division.

1

2 **Division 2—Requirements for secret ballots**

3 **Subdivision A—General**

4 **85 Object of Division and overview of Division**

5 *Object*

- 6 (1) The object of this Division is to establish a transparent process
7 which allows employees directly concerned to choose, by means of
8 a fair and democratic secret ballot, whether to authorise building
9 industrial action supporting or advancing claims by
10 Commonwealth building employee organisations, or by employees.

11 *Overview of Division*

- 12 (2) Under section 82, building industrial action in relation to a
13 proposed building agreement is not protected action under
14 subsection 170ML(2) of the Workplace Relations Act unless it has
15 been authorised in advance by a secret ballot held under this
16 Division (a *protected action ballot*). This Division establishes the
17 steps that Commonwealth building employee organisations, or
18 employees, who wish to organise or engage in protected action
19 must take in order to:
- 20 (a) obtain an order from the AIRC that will authorise a protected
21 action ballot to be held; and
 - 22 (b) hold a protected action ballot that may authorise the building
23 industrial action.

24 Note: Building industrial action does not have to have been authorised by a
25 protected action ballot if the action is in response to a building
26 employer lockout (see paragraph 82(b)).

27 **86 Definitions**

28 In this Division:

29 *AEC* means the Australian Electoral Commission.

30 *applicant* means an applicant for a ballot order.

Section 86

1 **applicant's agent** means an agent appointed by an employee, or by
2 a group of employees, under subsection 87(6).

3 **authorised ballot agent**, in relation to a protected action ballot,
4 means the person authorised by the AIRC in the ballot order to
5 conduct the ballot.

6 **authorised independent adviser**, in relation to a protected action
7 ballot, means the person authorised by the AIRC in the ballot order
8 to be the independent adviser for the ballot.

9 **ballot order** means an order made under section 98 requiring a
10 protected action ballot to be held.

11 **bargaining period** has the meaning given by subsection 170MI(1)
12 of the Workplace Relations Act.

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

16 **declaration voting** has the meaning given by subsection 99(3).

17 **joint applicant** means a person who is participating, or has
18 participated, in making a joint application under section 91.

19 **old IR agreement** has the meaning given by section 4 of the
20 Workplace Relations Act.

21 **party**, in relation to an application for a ballot order, means either
22 of the following:

- 23 (a) the applicant;
24 (b) the building employer of the relevant employees.

25 **prescribed number**, in relation to relevant employees, means:

- 26 (a) if there are less than 80 relevant employees—2; or
27 (b) if there are not less than 80, but not more than 5,000, relevant
28 employees—5% of the number of such employees; or
29 (c) if there are more than 5,000 relevant employees—250.

1 **proposed agreement**, in respect of a bargaining period, means the
2 proposed building agreement in respect of whose negotiation the
3 bargaining period has been initiated.

4 **protected action ballot** means a ballot under this Division.

5 **relevant employee**, in relation to proposed building industrial
6 action against a building employer in respect of a proposed
7 agreement, means:

- 8 (a) if a Commonwealth building employee organisation is a
9 negotiating party to the agreement—any member of the
10 organisation who is employed by the building employer and
11 whose employment will be subject to the agreement; and
12 (b) if an employee is a negotiating party to the agreement—any
13 employee who is a negotiating party to the agreement;

14 but does not include an employee who is a party to an AWA whose
15 nominal expiry date has not passed.

16 **roll of voters** means a list compiled:

- 17 (a) by the AIRC under section 102; or
18 (b) by an authorised ballot agent in compliance with an order of
19 the AIRC under section 102.

20 **Subdivision B—Application for order for protected action** 21 **ballot to be held**

22 **87 Who may apply for a ballot order etc.**

23 *When application can be made*

- 24 (1) A person referred to in subsection (4) may, during a bargaining
25 period for the negotiation of a proposed agreement under
26 Division 2 or 3 of Part VIB of the Workplace Relations Act, apply
27 to the AIRC for an order for a ballot to be held to determine
28 whether proposed building industrial action has the support of
29 relevant employees.

30 Note: For the duration of a bargaining period, see sections 170MK of the
31 Workplace Relations Act (when it begins) and 170MV of that Act
32 (when it ends).

Section 87

- 1 (2) However, if there are one or more existing agreements, the
2 application must be made not more than 30 days before:
3 (a) if there is only one existing agreement—the nominal expiry
4 date of the existing agreement; or
5 (b) if there are 2 or more existing agreements—whichever is the
6 last occurring of the nominal expiry dates of those existing
7 agreements.
- 8 (3) For the purposes of subsection (2), an *existing agreement* is:
9 (a) a certified agreement applying to relevant employees; or
10 (b) an old IR agreement applying to relevant employees.

11 *Who can apply*

- 12 (4) The following people may apply:
13 (a) if the bargaining period was initiated by a Commonwealth
14 building employee organisation—that organisation;
15 (b) if the bargaining period was initiated by an employee or
16 employees—any employee who is a negotiating party to the
17 proposed agreement, or a group of such employees acting
18 jointly.

19 Note: For joint applications, see section 91.

20 *Employee applications need support of prescribed number of*
21 *employees*

- 22 (5) An employee, or a group of employees acting jointly, cannot make
23 an application unless the application has the support of at least the
24 prescribed number of relevant employees.

25 Note: *Prescribed number* is defined in section 86.

26 *Employee applicants can appoint agent*

- 27 (6) A person or persons referred to in paragraph (4)(b) who wish to
28 make an application under this section without disclosing their
29 identities to their building employer may appoint an agent to
30 represent them for all purposes connected with the application.

1 **88 Contents of application**

- 2 (1) The application must include the following:
- 3 (a) the question or questions to be put to the relevant employees
4 in the ballot, including the nature of the proposed building
5 industrial action;
- 6 (b) details of the types of employees who are to be balloted;
- 7 (c) any details prescribed by the regulations for the purposes of
8 this paragraph.
- 9 (2) The application may include the name of a person nominated by
10 the applicant to conduct the ballot.

11 Note: The question of who conducts the ballot is ultimately decided by the
12 AIRC—see paragraph 99(1)(e) and section 116.

13 **89 Material to accompany application**

- 14 (1) The application must be accompanied by:
- 15 (a) a copy of the notice given under subsection 170MI(2) of the
16 Workplace Relations Act to initiate the relevant bargaining
17 period; and
- 18 (b) a copy of the particulars that accompanied that notice as
19 required by section 170MJ of that Act; and
- 20 (c) a declaration by the applicant under subsection (4) of this
21 section.
- 22 (2) If the applicant is a Commonwealth building employee
23 organisation, the application must be accompanied by a written
24 notice showing that the application has been duly authorised by a
25 committee of management of the organisation or by someone
26 authorised by such a committee to authorise the application.
- 27 (3) If the applicant is an employee, or a group of employees,
28 represented by an applicant's agent, the application must be
29 accompanied by a document containing the name of the employee,
30 or each of those employees.
- 31 (4) The applicant's declaration must state that the building industrial
32 action to which the application relates is not for the purpose of

Section 90

1 supporting or advancing claims to include an objectionable
2 provision in the proposed agreement.

3 (5) The declaration must be in the form prescribed by the regulations.

4 **90 Notice of application**

5 The applicant must give a copy of the application (but not the
6 material referred to in section 89) to:

7 (a) the other party; and

8 (b) any person nominated in the application to conduct the
9 ballot;

10 within 24 hours after lodging the application with the AIRC.

11 **91 Joint applications**

12 (1) If the bargaining period for the proposed agreement was initiated
13 by an employee, 2 or more employees who are negotiating parties
14 may make a joint application for a ballot order.

15 (2) An employee who has participated in making a joint application
16 may withdraw his or her name from the application before the
17 application is determined but cannot do so after the application is
18 determined by the AIRC.

19 (3) If employees have made a joint application, the name of another
20 employee who is a negotiating party may, before the application is
21 determined, be joined to the application if the other applicants
22 consent.

23 (4) The regulations may:

24 (a) in the case of a provision of this Act permitting an applicant
25 for a ballot order to do any thing—specify how the provision
26 is to apply to joint applicants; and

27 (b) in the case of a provision of this Act requiring an applicant
28 for a ballot order to be given notice, or otherwise informed,
29 of any thing—specify how the requirement is to be fulfilled
30 in relation to joint applicants.

1 **Subdivision C—Determination of application and order for**
2 **ballot to be held**

3 **92 AIRC may notify parties etc. of procedure**

4 If:

- 5 (a) an application for a ballot order is lodged with the AIRC; and
6 (b) the AIRC considers that notifying the parties, or a person
7 who may become the authorised ballot agent, of the
8 procedure to be followed by the AIRC in dealing with that
9 application will not delay, and may expedite, the
10 determination of the application;

11 the AIRC may notify the parties or person concerned accordingly.

12 **93 AIRC to act quickly in relation to application etc.**

13 (1) In exercising its powers under this Division, the AIRC:

- 14 (a) must act as quickly as is practicable; and
15 (b) must, as far as is reasonably possible, determine all
16 applications made under this Division within 2 working days
17 of the AIRC after the application is made.

18 Note: In exercising its powers, the AIRC is also required to act according to
19 equity, good conscience and the substantial merits of the case, without
20 regard to technicalities and legal forms (see paragraph 110(2)(c) of the
21 Workplace Relations Act). It is not bound by the rules of evidence,
22 and may inform itself in any manner it considers just (see paragraph
23 110(2)(b) of that Act).

24 (2) However, the AIRC must not determine an application for a ballot
25 order until it is satisfied that:

- 26 (a) the applicant has complied with section 90; and
27 (b) the persons referred to in subsections 94(1) and (2) have had
28 a reasonable opportunity to make submissions in relation to
29 the application.

30 (3) Paragraph 111(1)(g) of the Workplace Relations Act does not
31 apply to a proceeding under this Division.

32 Note: Paragraph 111(1)(g) of the Workplace Relations Act allows the AIRC
33 to dismiss, refrain from further hearing etc. matters or parts of matters.

1 **94 Parties and relevant employees may make submissions and apply**
2 **for directions**

- 3 (1) A party or a relevant employee may make submissions, and may
4 apply for directions, relating to:
5 (a) an application for a ballot order; or
6 (b) any aspect of the conduct of a protected action ballot.

7 Note: See also paragraph 111(1)(s), and subsection 111(2), of the Workplace
8 Relations Act (which give the AIRC the power to summon before it
9 anyone it considers would help in the hearing or determination of a
10 proceeding).

- 11 (2) A person nominated in an application to conduct a ballot may
12 make submissions, and apply for directions, relating to the
13 application.

- 14 (3) An authorised ballot agent may make submissions, and apply for
15 directions, relating to any aspect of a protected action ballot.

- 16 (4) In spite of subsection 93(3), the AIRC may decline to consider a
17 person's submission if the AIRC is satisfied that the submission is
18 vexatious, frivolous, misconceived or lacking in substance.

19 **95 AIRC may give directions**

- 20 (1) The AIRC may give directions, by order, in connection with:
21 (a) an application for a ballot order; or
22 (b) any aspect of the conduct of a protected action ballot.

- 23 (2) Without limiting subsection (1), the AIRC may give directions
24 aimed at ensuring that a protected action ballot is conducted
25 expeditiously.

- 26 (3) In deciding whether to give directions under this section, and the
27 content of any such directions, the AIRC must have regard to the
28 desirability of the ballot results being available to the parties within
29 10 days after the ballot order is made.

30 **96 AIRC procedure regarding multiple applications**

- 31 (1) If:

- 1 (a) more than one application for a ballot order is before the
2 AIRC for determination; and
3 (b) the applications relate to building industrial action by
4 employees of the same building employer or by employees at
5 the same place of work; and
6 (c) the AIRC considers that determining the applications at the
7 same time will not unreasonably delay the determination of
8 any of the applications;
9 the AIRC may determine the applications at the same time.

10 (2) If:

- 11 (a) the AIRC has made an order requiring a ballot to be held in
12 relation to building industrial action by employees of a
13 building employer, or by employees at a place of work; and
14 (b) the AIRC proposes to make another order requiring a ballot
15 to be held in relation to building industrial action against that
16 building employer, or at the same place of work; and
17 (c) the AIRC considers that the level of disruption of the
18 building employer's business, or at the place of work (as the
19 case requires), could be reduced if the ballots were held at the
20 same time; and
21 (d) the AIRC considers that requiring the ballots to be held at the
22 same time will not unreasonably delay the conduct of either
23 ballot;
24 the AIRC may make, or vary, the relevant orders so as to require
25 the ballots to be held at the same time.

26 **97 Application not to be granted unless certain conditions are met**

27 *AIRC must be satisfied of various matters*

- 28 (1) The AIRC must grant an application for a ballot order if, and must
29 not grant the application unless, it is satisfied that:
30 (a) during the bargaining period, the applicant genuinely tried to
31 reach agreement with the building employer of relevant
32 employees; and
33 (b) the applicant is genuinely trying to reach agreement with the
34 building employer.

Chapter 6 Industrial action etc.
Part 3 Protected action
Division 2 Requirements for secret ballots

Section 98

1 Note 1: An application for a ballot order must comply with the requirements
2 set out in Subdivision B.

3 Note 2: To work out when a bargaining period began, see section 170MK of
4 the Workplace Relations Act.

5 *When AIRC has discretion to refuse application*

6 (2) Despite subsection (1), the AIRC may refuse the application if it is
7 satisfied:

8 (a) that granting the application would be inconsistent with the
9 object of this Division (see section 85); or

10 (b) that the applicant, or a relevant employee, has at any time
11 contravened a provision of this Division or an order made, or
12 direction given, under this Division.

13 Note: Orders that can be made under this Division are orders under
14 sections 98 and 101 and paragraph 102(1)(b).

15 **98 Grant of application—order for ballot to be held**

16 If the AIRC grants the application, the AIRC must order the
17 applicant to hold a protected action ballot.

18 **99 Matters to be included in order**

19 (1) An order for a protected action ballot to be held must specify the
20 following:

21 (a) the name of:

22 (i) if the applicant is a Commonwealth building employee
23 organisation—the organisation; or

24 (ii) if the applicant is an employee, or a group of
25 employees, represented by an applicant's agent—the
26 applicant's agent; or

27 (iii) if the applicant is an employee, or a group of
28 employees, not represented by an applicant's agent—the
29 employee or employees;

30 (b) the types of employees who are to be balloted;

31 (c) the voting method;

32 (d) the timetable for the ballot;

- 1 (e) the name of the person authorised by the AIRC to conduct
2 the ballot;
- 3 (f) the name of the person (if any) authorised by the AIRC to be
4 the independent adviser for the ballot;
- 5 (g) the question or questions to be put to the relevant employees
6 in the ballot, including the nature of the proposed building
7 industrial action.

8 Note 1: Section 116 specifies who may be authorised by the AIRC to conduct
9 protected action ballots.

10 Note 2: Section 117 specifies who may be authorised by the AIRC to be the
11 independent adviser for a protected action ballot.

- 12 (2) The order must specify a postal ballot as the voting method unless:
13 (a) the order specifies another voting method; and
14 (b) the AIRC is satisfied that the other voting method is more
15 efficient and expeditious than a postal ballot.

- 16 (3) If the order specifies a postal ballot as the voting method, it must
17 specify that the voting must take place by way of declaration
18 voting. A person votes by way of **declaration voting** if the person:
19 (a) marks his or her vote on a ballot paper; and
20 (b) places the ballot paper in a declaration envelope; and
21 (c) seals that envelope and signs his or her name in the space
22 provided on the back flap of that envelope; and
23 (d) places that envelope in an outer envelope that is addressed to
24 the authorised ballot agent; and
25 (e) posts the outer envelope so that it reaches the authorised
26 ballot agent before voting in the ballot ends.

- 27 (4) If the order specifies an attendance ballot as the voting method, it
28 must specify that the voting must take place during the voters'
29 meal-time or other breaks, or outside their hours of employment.

- 30 (5) If the AIRC is satisfied that there are exceptional circumstances
31 justifying the percentage referred to in paragraph 114(5)(a) being
32 lower than 40%, the order may specify a lower percentage.

33 Note: Subsection 114(1) requires a certain percentage of people on the roll
34 to have voted in the ballot in order for the ballot to operate as an
35 authorisation of building industrial action.

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- 1 (6) If the AIRC is satisfied, in relation to the proposed building
2 industrial action that is the subject of the order, that there are
3 exceptional circumstances justifying the period of written notice
4 referred to in paragraph 170MO(2)(b) of the Workplace Relations
5 Act being longer than 3 days, the order may specify a longer
6 period, of up to 7 days.

7 **100 Guidelines for ballot timetables**

8 The President may develop guidelines in relation to appropriate
9 timetables for the conduct of protected action ballots. The
10 President may consult the AEC, and any other person, in
11 developing guidelines.

12 **101 Power of AIRC to require information relevant to roll of voters**

- 13 (1) The AIRC may order the building employer of the relevant
14 employees, or the applicant, or both, to provide:
15 (a) a list of employees of the type described in the application;
16 and
17 (b) any other information that it is reasonable for the AIRC to
18 require in order to assist in the compilation of a roll of voters
19 for the proposed ballot.
- 20 (2) The order may require the list, or other information, to be provided
21 to the AIRC or to the authorised ballot agent.
- 22 (3) The order may require the list, or other information, to be provided
23 in whatever form the AIRC considers appropriate.

24 **102 Roll to be compiled by AIRC or ballot agent**

25 If the AIRC makes a ballot order, it must:

- 26 (a) compile a list of the names of the persons who are eligible to
27 be included on the roll of voters for the ballot and provide
28 that list, as the roll of voters, to the authorised ballot agent; or
29 (b) order, by separate order, the authorised ballot agent to
30 compile the roll of voters for the ballot.

1 **103 Eligibility to be included on the roll**

2 (1) A person is eligible to be included on the roll of voters for the
3 ballot if, and only if:

4 (a) if the applicant is a Commonwealth building employee
5 organisation—the person:

6 (i) was a member of the organisation on the day the ballot
7 order was made; and

8 (ii) was employed by the building employer on the day the
9 ballot order was made; and

10 (iii) will be subject to the agreement in respect of whose
11 negotiation the bargaining period was initiated; or

12 (b) if the applicant is an employee, or a group of employees—the
13 person:

14 (i) was employed by the building employer on the day the
15 ballot order was made; and

16 (ii) will be subject to the agreement in respect of whose
17 negotiation the bargaining period was initiated.

18 (2) A person is not eligible to be included on the roll of voters for the
19 ballot if, on the day the ballot order was made, the person was a
20 party to an AWA whose nominal expiry date had not passed.

21 **104 Adding or removing names from the roll**

22 (1) If:

23 (a) a person requests the authorised ballot agent to include the
24 person's name on the roll of voters for a protected action
25 ballot; and

26 (b) the ballot agent is satisfied that the person is eligible to be
27 included on the roll; and

28 (c) the voting in the ballot has not yet ended;

29 the ballot agent must add the person's name to the roll.

30 (2) If:

31 (a) a person applies to the AIRC for a declaration that the person
32 is eligible to be included on the roll of voters for the ballot;
33 and

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- 1 (b) the AIRC is satisfied that the person is eligible to be included
2 on the roll; and
3 (c) the voting in the ballot has not yet ended;
4 the AIRC must make the declaration and direct the authorised
5 ballot agent to include the person's name on the roll.
- 6 (3) If:
7 (a) a party, the authorised ballot agent, or a person whose name
8 is on the roll of voters for a protected action ballot, applies to
9 the AIRC for a declaration that a person whose name has
10 been included on the roll of voters for the ballot is not
11 eligible to be so included; and
12 (b) the voting in the ballot:
13 (i) in the case of a postal ballot—has not yet finished; and
14 (ii) in any other case—has not yet started; and
15 (c) the AIRC is satisfied that the person is not eligible to be so
16 included;
17 the AIRC must make the declaration and direct the authorised
18 ballot agent to remove the person's name from the roll.
- 19 (4) If a person's name is removed from the roll of voters for a postal
20 ballot after the person has cast a vote, the authorised ballot agent
21 must take reasonable steps to ensure that the person's ballot paper
22 is not included in the count of the votes.

23 **105 Variation of order**

24 *Variation sought by applicant*

- 25 (1) An applicant for a ballot order may apply to the AIRC, at any time
26 before the order expires, to vary the ballot order.

27 *Variation sought by ballot agent*

- 28 (2) The authorised ballot agent for a particular ballot may apply to the
29 AIRC, at any time before voting has ended, to vary:
30 (a) the voting method specified in the ballot order; or
31 (b) the timetable for the ballot specified in the ballot order.

1 Note: See also sections 94 and 95 (parties etc. may make submissions and
2 AIRC may give directions).

3 **106 Expiry and revocation of order**

- 4 (1) If a ballot has not been held within the period specified in the
5 ballot order, the order expires at the end of that period.
- 6 (2) An applicant for a ballot order may apply to the AIRC, at any time
7 before the order expires, to revoke the ballot order.
- 8 (3) If the applicant makes an application under subsection (2), the
9 AIRC must revoke the order.

10 **107 Compliance with orders and directions**

11 A Commonwealth building employee organisation or a person to
12 whom an order or a direction under this Division is expressed to
13 apply must comply with the order or direction.

14 Note: Grade A civil penalty.

15 **108 AIRC to notify parties and authorised ballot agent**

16 As soon as practicable after making a ballot order, the AIRC must
17 ensure that a copy of the order is given to each party and to the
18 authorised ballot agent.

19 **Subdivision D—Conduct and results of protected action ballot**

20 **109 Conduct of ballot**

21 A ballot is not a protected action ballot unless it is conducted by
22 the authorised ballot agent for the ballot.

23 **110 Form of ballot paper**

24 The ballot paper must be in the prescribed form and must include
25 the following:

- 26 (a) the name of the applicant or the applicant's agent (as the case
27 requires);
- 28 (b) the types of employees who are to be balloted;

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- 1 (c) the name of the ballot agent authorised to conduct the ballot;
2 (d) the question or questions to be put to the relevant employees
3 in the ballot, including the nature of the proposed building
4 industrial action;
5 (e) a statement that the voter's vote is secret and that the voter is
6 free to choose whether or not to support the proposed
7 building industrial action;
8 (f) instructions to the voter on how to complete the ballot paper.

9 **111 Who can vote**

10 A person cannot vote in a protected action ballot unless the
11 person's name is on the roll of voters for the ballot.

12 **112 Declaration of ballot results**

13 As soon as practicable after the end of the voting, the authorised
14 ballot agent must, in writing:

- 15 (a) make a declaration of the results of the ballot; and
16 (b) inform the parties and the Industrial Registrar of the result.

17 **113 Ballot reports**

18 *Report by authorised ballot agent*

19 (1) As soon as practicable after the end of the voting, the authorised
20 ballot agent must give the Industrial Registrar a written report
21 about the conduct of the ballot.

22 Note: Grade B civil penalty.

- 23 (2) A report under subsection (1) must set out details of:
24 (a) any complaints made to the authorised ballot agent about the
25 conduct of the ballot; and
26 (b) any irregularities in relation to the conduct of the ballot that
27 have come to the attention of the authorised ballot agent.

28 (3) Subsection (2) does not limit subsection (1).

1 *Report by authorised independent adviser*

- 2 (4) As soon as practicable after the end of the voting, the authorised
3 independent adviser (if any) must give the Industrial Registrar a
4 written report about the conduct of the ballot.

5 Note: Grade B civil penalty.

- 6 (5) A report under subsection (4) must set out details of:
7 (a) any complaints made to the authorised independent adviser
8 about the conduct of the ballot; and
9 (b) any irregularities in relation to the conduct of the ballot that
10 have come to the attention of the authorised independent
11 adviser.
- 12 (6) Subsection (5) does not limit subsection (4).

13 *Definitions*

- 14 (7) In this section:

15 **conduct**, in relation to a protected action ballot, includes, but is not
16 limited to, the compilation of the roll of voters for the ballot.

17 **irregularity**, in relation to the conduct of a protected action ballot,
18 includes an act or omission by means of which the full and free
19 recording of votes by all persons entitled to record votes and by no
20 other persons is, or is attempted to be, prevented or hindered.

21 **114 Effect of ballot**

- 22 (1) Building industrial action is authorised under this Division if:
23 (a) the action was the subject of a protected action ballot; and
24 (b) at least the prescribed percentage of persons on the roll of
25 voters for the ballot voted in the ballot; and
26 (c) more than 50% of the votes validly cast were votes approving
27 the action; and
28 (d) if there is only one existing agreement—the action
29 commences during the 30-day period beginning on
30 whichever is the later of the following:
31 (i) the date of the declaration of the results of the ballot;

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- 1 (ii) the nominal expiry date of the existing agreement; and
2 (e) if there are 2 or more existing agreements—the action
3 commences during the 30-day period beginning on
4 whichever is the later of the following:
5 (i) the date of the declaration of the results of the ballot;
6 (ii) whichever is the last occurring of the nominal expiry
7 dates of those existing agreements; and
8 (f) if there is no existing agreement—the action commences
9 during the 30-day period beginning on the date of the
10 declaration of the results of the ballot.

11 Note: Building industrial action must be authorised under this Division if it
12 is to be protected action for the purposes of the Workplace Relations
13 Act—see section 82 of this Act.

- 14 (2) However, the action is not authorised to the extent that it occurs
15 after the end of the bargaining period referred to in section 87.
- 16 (3) The AIRC may, by order, extend the 30-day period mentioned in
17 paragraph (1)(d), (e) or (f) by up to 30 days if the building
18 employer and the applicant for the ballot order jointly apply to the
19 AIRC for the period to be extended.
- 20 (4) The AIRC must not make an order under subsection (3) extending
21 the 30-day period if that period has previously been extended.
- 22 (5) For the purposes of subsection (1), the *prescribed percentage* is:
23 (a) 40%; or
24 (b) if the ballot order specifies a lower percentage—that
25 percentage.
- 26 (6) For the purposes of subsection (1), an *existing agreement* is:
27 (a) a certified agreement applying to relevant employees; or
28 (b) an old IR agreement applying to relevant employees.

29 **115 Registrar to record questions put in ballot, and to publish**
30 **results of ballot**

- 31 (1) The Industrial Registrar must, in relation to each protected action
32 ballot that has been held, keep a record of:
33 (a) the questions put to voters in the ballot; and

1 (b) the results of the ballot declared by the authorised ballot
2 agent under section 112.

3 (2) The Industrial Registrar must, as soon as practicable after being
4 notified of the results of a ballot by the authorised ballot agent
5 under section 112, publish the results.

6 **Subdivision E—Authorised ballot agents and authorised**
7 **independent advisers**

8 **116 Who may be an authorised ballot agent?**

9 (1) In a ballot order, the AIRC may name as the authorised ballot
10 agent:

- 11 (a) the AEC; or
12 (b) another person.

13 (2) The AIRC must not name a person other than the AEC as the
14 authorised ballot agent for the ballot unless the AIRC is satisfied
15 that the person:

- 16 (a) is capable of ensuring the secrecy and security of votes cast
17 in the ballot; and
18 (b) is capable of ensuring that the ballot will be fair and
19 democratic; and
20 (c) will conduct the ballot expeditiously; and
21 (d) is otherwise a fit and proper person to conduct the ballot.

22 (3) The AIRC must not name the applicant as the authorised ballot
23 agent for the ballot unless:

- 24 (a) the applicant nominates another person to be the authorised
25 independent adviser for the ballot; and
26 (b) the AIRC names the other person as the authorised
27 independent adviser for the ballot.

28 Note: Section 117 specifies who may be authorised by the AIRC to be the
29 independent adviser for a protected action ballot.

30 (4) If the AIRC is satisfied that a person is not sufficiently independent
31 of the applicant, the AIRC must not name the person as the
32 authorised ballot agent for the ballot unless:

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- 1 (a) the applicant nominates a third person as the authorised
2 independent adviser for the ballot; and
3 (b) the AIRC names the third person as the authorised
4 independent adviser for the ballot.
- 5 Note: Section 117 specifies who may be authorised by the AIRC to be the
6 independent adviser for a protected action ballot.
- 7 (5) The regulations may prescribe:
8 (a) conditions that a person must meet in order to satisfy the
9 AIRC that the person is a fit and proper person to conduct a
10 ballot; and
11 (b) factors to be taken into account by the AIRC in determining
12 whether a person is a fit and proper person to conduct a
13 ballot.

14 **117 Who may be an authorised independent adviser?**

- 15 (1) In a ballot order, the AIRC may name a person nominated by the
16 applicant as the authorised independent adviser.
- 17 (2) The AIRC must not name a person as the authorised independent
18 adviser for the ballot unless the AIRC is satisfied that the person:
19 (a) is sufficiently independent of the applicant; and
20 (b) is capable of giving the authorised ballot agent:
21 (i) advice that is; and
22 (ii) recommendations that are;
23 directed towards ensuring that the ballot will be fair and
24 democratic.
- 25 (3) The regulations may prescribe factors to be taken into account by
26 the AIRC in determining whether a person is capable of giving an
27 authorised ballot agent:
28 (a) advice that is; and
29 (b) recommendations that are;
30 directed towards ensuring that a protected action ballot will be fair
31 and democratic.

1 **Subdivision F—Funding of ballots**

2 **118 Liability for cost of ballot**

- 3 (1) The applicant for a ballot order is liable for the cost of holding the
4 ballot.
- 5 (2) If the application for the ballot order was made by joint applicants,
6 each applicant is jointly and severally liable for the cost of holding
7 the ballot.
- 8 (3) Subsections (1) and (2) have effect subject to subsections 119(3)
9 and (6).

10 **119 Commonwealth has partial liability for cost of ballot**

11 *Authorised ballot agent someone other than the AEC*

- 12 (1) If:
13 (a) the authorised ballot agent for the ballot is not the AEC; and
14 (b) the applicant notifies the Industrial Registrar of the cost
15 incurred by the applicant in relation to the holding of the
16 ballot; and
17 (c) does so within a reasonable time after the completion of the
18 ballot;
19 the Industrial Registrar must determine how much (if any) of that
20 cost was reasonably and genuinely incurred by the applicant in
21 holding the ballot.
- 22 (2) If subsection (1) applies, the Commonwealth is liable to pay to the
23 authorised ballot agent 80% of the amount determined under that
24 subsection.
- 25 (3) The applicant is, to the extent of the Commonwealth's liability
26 under subsection (2), discharged from liability under section 118
27 for the cost of holding the ballot.
- 28 (4) The regulations may prescribe matters to be taken into account by
29 the Industrial Registrar in determining whether costs are
30 reasonably and genuinely incurred by the applicant in holding the
31 ballot.

Section 120

1

Authorised ballot agent the AEC

2

(5) If the authorised ballot agent for the ballot is the AEC, the AEC must certify, within a reasonable time after the completion of the ballot, the amount of the reasonable costs charged by the AEC to the applicant in relation to holding the ballot.

3

4

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6

(6) The applicant is, to the extent of 80% of the amount certified under subsection (5), discharged from liability under section 118 for the cost of holding the ballot.

7

8

9

Subdivision G—Miscellaneous

10

120 Identity of certain persons not to be disclosed by AIRC

11

(1) The AIRC must not disclose information that the AIRC knows, or has reasonable grounds to believe, will identify a person as:

12

13

(a) an applicant who is represented by an applicant's agent; or

14

(b) a relevant employee who was one of the prescribed number of employees supporting an application for a ballot order (as required by subsection 87(5)); or

15

16

(c) a person whose name appears on the roll of voters for a protected action ballot; or

17

18

(d) a person who is a party to an AWA.

19

20

(2) Each of the following is an exception to the prohibition in subsection (1):

21

22

(a) the disclosure is required or permitted by this Act or by another Act, or by regulations made under this Act or under another Act;

23

24

(b) the person whose identity is disclosed has, in writing, authorised the disclosure.

25

26

27

121 Identity of certain persons not to be disclosed by individuals

28

(1) A person must not disclose protected information that the person knows, or has reasonable grounds to believe, will identify another person as a person referred to in paragraph 120(1)(a), (b), (c) or (d).

29

30

31

1 Penalty: Imprisonment for 12 months.

2 (2) Each of the following is an exception to the prohibition in
3 subsection (1):

4 (a) the disclosure is made by a person in the course of
5 performing functions or duties:

6 (i) as a Registry official; or

7 (ii) of, or on behalf of, an authorised ballot agent; or

8 (iii) as an authorised independent adviser;

9 (b) the disclosure is required or permitted by this Act or by
10 another Act, or by regulations made under this Act or under
11 another Act;

12 (c) the person whose identity is disclosed has, in writing,
13 authorised the disclosure.

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

16 (3) In this section:

17 ***protected information***, in relation to a person, means information
18 that the person acquired:

19 (a) in the course of performing functions or duties as a Registry
20 official; or

21 (b) in the course of performing functions or duties as, or on
22 behalf of, an authorised ballot agent; or

23 (c) from a person referred to in paragraph (a) or (b) who
24 acquired the information as mentioned in paragraph (a) or
25 (b).

26 ***Registry official*** means:

27 (a) the Industrial Registrar; or

28 (b) a member of the staff of the Industrial Registry (including a
29 Deputy Industrial Registrar).

30 **122 Immunity if person acted in good faith on ballot results**

31 (1) If:

Section 123

- 1 (a) the results of a protected action ballot as declared by the
2 authorised ballot agent purported to authorise particular
3 building industrial action; and
4 (b) an organisation or person, acting in good faith on the
5 declared ballot results, organised or engaged in that building
6 industrial action; and
7 (c) it is subsequently determined that the action was not
8 authorised by the ballot; and
9 (d) the action would have been protected action if it had been
10 authorised by the ballot;
11 no action lies against the organisation or person under any law
12 (whether written or unwritten) in force in a State or Territory in
13 respect of the action unless the action involved:
14 (e) personal injury; or
15 (f) wilful or reckless destruction of, or damage to, property; or
16 (g) the unlawful taking, keeping or use of property.
17 (2) Subsection (1) does not prevent an action for defamation being
18 brought in respect of anything that occurred in the course of
19 building industrial action.

20 **123 Limits on challenges etc. to ballot orders**

- 21 (1) An order of the AIRC that a person hold a protected action ballot,
22 and any order or decision of the AIRC in connection with the
23 order:
24 (a) is final and conclusive; and
25 (b) must not be challenged, appealed against, reviewed, quashed,
26 set aside or called in question in any court on any ground;
27 and
28 (c) is not subject to mandamus, prohibition, certiorari or
29 injunction, or the making of a declaratory or other order, in
30 any court on any ground;
31 unless subsection (2) applies to the order or decision.
32 (2) This subsection applies to an order for a protected action ballot, or
33 to an order or decision of the AIRC in connection with the order,
34 if:

- 1 (a) in proceedings relating to the order or decision, as the case
2 requires, a person claims that another person or persons:
3 (i) contravened this Division, or an order of the AIRC
4 under this Division, if the contravention is not merely a
5 technical breach; or
6 (ii) misled the AIRC (whether by a false statement or by an
7 omission) in such a way as to affect the order or
8 decision; and
9 (b) the court is satisfied that there are reasonable grounds for the
10 claim.

11 **124 Limits on challenges etc. to ballots**

- 12 (1) If a protected action ballot has been conducted, or has purportedly
13 been conducted:
14 (a) the declaration of the results of the ballot is final and
15 conclusive; and
16 (b) the declaration of the results of the ballot must not be
17 quashed or set aside by any court on any ground; and
18 (c) the conduct of the ballot, and the declaration of the results of
19 the ballot, must not be challenged, appealed against,
20 reviewed or called in question, as applicable, in any court on
21 any ground; and
22 (d) the conduct of the ballot, and the declaration of the results of
23 the ballot, are not subject to mandamus, prohibition,
24 certiorari or injunction, or the making of a declaratory or
25 other order, as applicable, in any court on any ground;
26 unless subsection (2) applies to the conduct or declaration.
- 27 (2) This subsection applies to the conduct of a protected action ballot,
28 and to the declaration of the results of a ballot, if:
29 (a) in proceedings relating to the conduct or declaration, as the
30 case requires, a person claims that another person or persons:
31 (i) contravened this Division, or an order of the AIRC
32 under this Division, if the contravention is not merely a
33 technical breach; or
34 (ii) acted fraudulently in relation to the conduct or
35 declaration; or

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- 1 (iii) acted in such a way as to cause an irregularity in
2 relation to the conduct or declaration, being an
3 irregularity that affected the outcome of the ballot; and
4 (b) the court is satisfied that there are reasonable grounds for the
5 claim.

6 (3) In this section:

7 **conduct**, in relation to a protected action ballot, includes, but is not
8 limited to, the compilation of the roll of voters for the ballot.

9 **irregularity**, in relation to the conduct or declaration of a protected
10 action ballot, includes an act or omission by means of which:

- 11 (a) the full and free recording of votes by all persons entitled to
12 record votes and by no other persons; or
13 (b) a correct ascertainment or declaration of the results of the
14 voting;

15 is, or is attempted to be, prevented or hindered.

16 **125 Preservation of ballot papers**

- 17 (1) An authorised ballot agent commits an offence if:
18 (a) the ballot agent conducts a protected action ballot; and
19 (b) the ballot agent does not ensure that the following are kept
20 for one year after the completion of the ballot:
21 (i) the roll of voters;
22 (ii) all ballot papers, envelopes and other documents and
23 records relevant to the ballot.

24 Penalty: 60 penalty units.

25 (2) An offence against subsection (1) is an offence of strict liability.

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

27 (3) Subsection (1) does not apply if the authorised ballot agent has a
28 reasonable excuse.

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

1 **126 Conferral of function on AEC**

- 2 (1) If the AEC is the authorised ballot agent for a protected action
3 ballot, it is a function of the AEC to conduct the ballot.
- 4 (2) If the AEC is:
5 (a) the ballot agent nominated in an application for a ballot
6 order; or
7 (b) the authorised ballot agent for such a ballot;
8 the AEC cannot make a submission or an application to the AIRC
9 seeking to cease having that status in relation to the ballot.

10 **127 Inspection powers of AIRC etc.**

11 Paragraphs (d) and (e) of the definition of *prescribed premises* in
12 subsection 134(5) of the Workplace Relations Act have effect in
13 relation to a building industrial dispute as if those paragraphs
14 referred to this Division in the same way as they refer to
15 sections 135 and 136 of that Act.

16 **128 AIRC's power to order secret ballots under the Workplace**
17 **Relations Act**

- 18 (1) The AIRC must not order a vote of members of a Commonwealth
19 building employee organisation under subsection 135(1) of the
20 Workplace Relations Act if:
21 (a) the organisation has initiated a bargaining period (within the
22 meaning of section 170MI of that Act) for a building certified
23 agreement with a particular building employer; and
24 (b) the members are employees of the building employer whose
25 employment will be subject to the agreement.
- 26 (2) Subsection 135(2) of the Workplace Relations Act does not apply
27 in relation to the members of a Commonwealth building employee
28 organisation.
- 29 (3) Subsections 135(2B) and 136(1), (2), (3), (4), (5), (6) and (7) of the
30 Workplace Relations Act do not apply in relation to building
31 industrial action.

Section 129

- 1 (4) Section 170MQ of the Workplace Relations Act does not apply in
2 relation to building industrial action.

3 **129 Notice of intention to take building industrial action**

- 4 (1) Paragraph 170MO(2)(b) of the Workplace Relations Act applies in
5 relation to an intention to take building industrial action as if the
6 period of written notice required by that paragraph were:
7 (a) 3 working days' written notice; or
8 (b) if a ballot order made under section 98 of this Act in respect
9 of the action specifies a higher number of days—that number
10 of days' written notice.

11 Note: For the maximum number of days the ballot order can specify, see
12 subsection 99(6) of this Act.

- 13 (2) A written notice or other notification under section 170MO of the
14 Workplace Relations Act, in respect of an intention to take
15 building industrial action, cannot be given:
16 (a) if the notification relates to action that must, in order to be
17 protected action, be authorised by a protected action ballot—
18 before the declaration of the results of the ballot (see
19 section 112 of this Act); or
20 (b) if the notification relates to a lockout by a building employer
21 (whether the notification is to be given by the building
22 employer, a Commonwealth building employee organisation
23 or an employee)—before the start of the bargaining period.
- 24 (3) Subsection 170MO(6) of the Workplace Relations Act does not
25 apply in relation to notice or notification of an intention to take
26 building industrial action.

27 **130 Breaching AIRC orders under Division 2 of Part 3**

28 Subsection 178(1) of the Workplace Relations Act does not apply
29 to an order of the AIRC made under this Division.

30 Note: Breaches of orders made under this Division are dealt with by civil
31 penalties imposed under this Act.

1 **131 Certain rights in relation to protected action ballots**

2 Sections 345 and 346 of Schedule 1B to the Workplace Relations
3 Act do not apply to protected action ballots.

4 Note: The right to vote in protected action ballots is provided for in this
5 Division.

6 **132 Certain offences relating to protected action ballots**

7 Subsections 317(2), (3) and (4) of the Workplace Relations Act
8 apply in relation to protected action ballots.

9 **133 Regulations**

10 The regulations may make provision in relation to the following
11 matters:

- 12 (a) the qualifications and appointment of applicants' agents;
13 (b) procedures to be followed in relation to the conduct of a
14 ballot, or class of ballot, under this Division;
15 (c) the qualifications, appointment, powers and duties of
16 scrutineers;
17 (d) the powers and duties of authorised independent advisers;
18 (e) the manner in which ballot results are to be published under
19 section 115.

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Part 4—Miscellaneous

3

4

134 AIRC orders to stop or prevent building industrial action

5

(1) If it appears to the AIRC that building industrial action is happening, or is threatened, impending or probable, in relation to:

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(a) an industrial dispute; or

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(b) the negotiation or proposed negotiation of an agreement under Division 2 of Part VIB of the Workplace Relations Act; or

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(c) work that is regulated by an award or a certified agreement;

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the AIRC may, by order, give directions that the building industrial action stop or not occur.

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(2) The AIRC may make such an order of its own motion, or on the application of:

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(a) the ABC Commissioner; or

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(b) a party to the industrial dispute (if any); or

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(c) a person who is directly affected, or who is likely to be directly affected, by the building industrial action; or

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(d) an organisation of which a person referred to in paragraph (c) is a member.

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(3) The AIRC must, as far as practicable, hear and determine an application for an order under subsection (1) within 48 hours.

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(4) The AIRC may make an interim order directing that building industrial action stop or not occur if:

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(a) an application has been made for an order under

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subsection (1) in respect of the building industrial action; and

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(b) the AIRC:

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(i) is satisfied that the building industrial action is not, or would not be, protected action; or

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(ii) has not formed a view in that regard; and

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(c) the AIRC is satisfied:

- 1 (i) that it will be unable to determine the application within
2 48 hours of the making of the application; or
3 (ii) that the building industrial action has not commenced,
4 but is likely to commence not later than 48 hours after
5 the making of the application, and that it will be unable
6 to determine the application before the building
7 industrial action commences.
- 8 (5) An interim order ceases to have effect if the application is
9 determined.
- 10 (6) In considering whether or not to make an interim order under
11 subsection (4), the AIRC must have regard to, but is not limited by,
12 the following:
13 (a) the damage to industry that will be caused by the building
14 industrial action;
15 (b) the time that will be needed to determine the application;
16 (c) whether the building industrial action has escalated since the
17 application was made;
18 (d) whether the building industrial action forms part of a
19 sequence of related building industrial action that the AIRC
20 is satisfied is not, or may not be, protected action;
21 (e) if the building industrial action has not commenced—the
22 time when it is likely to commence;
23 (f) whether notice of the building industrial action required to be
24 given by or under the Workplace Relations Act has been
25 given.
- 26 (7) In considering whether to make an order under subsection (1) or an
27 interim order under subsection (4), the AIRC must have regard to:
28 (a) whether a person or organisation engaging in the building
29 industrial action is a person whose employment is subject to,
30 or is an organisation that is bound by, a certified agreement
31 that has not yet reached its nominal expiry date; and
32 (b) the undesirability of the occurrence of building industrial
33 action that is not protected action.
- 34 (8) If an order can be made by the AIRC under this section in relation
35 to building industrial action, then an order cannot be made by the

Section 134

- 1 AIRC in relation to that building industrial action under
2 section 127 of the Workplace Relations Act
- 3 (9) Subject to subsection (8), the powers conferred on the AIRC by
4 subsections (1) and (4) are in addition to, and not in derogation of,
5 the powers conferred on the AIRC by the rest of this Act or by the
6 Workplace Relations Act.
- 7 (10) A person or organisation to whom an order under subsection (1) or
8 (4) is expressed to apply must comply with the order.
- 9 (11) An order under subsection (1) or (4) does not apply to action that is
10 protected action for the purposes of the Workplace Relations Act
11 (as affected by Part 3 of this Chapter).
- 12 (12) The Federal Court may, on the application of:
13 (a) the ABC Commissioner; or
14 (b) a person or organisation affected by an order under
15 subsection (1) or (4);
16 grant an injunction on such terms as the Court considers
17 appropriate if it is satisfied that another person or organisation:
18 (c) has engaged in conduct that constitutes a contravention of
19 subsection (10); or
20 (d) is proposing to engage in conduct that would constitute such
21 a contravention.
- 22 (13) If, in the opinion of the Federal Court it is desirable to do so, the
23 Court may grant an interim injunction pending determination of an
24 application under subsection (12).
- 25 (14) If the ABC Commissioner is not a party to proceedings (the
26 **original proceedings**) in which an injunction is granted under
27 subsection (12) or (13), the ABC Commissioner may nevertheless:
28 (a) apply for a variation of the injunction; or
29 (b) apply for action to be taken in respect of a breach of the
30 injunction.
31 Before applying, the ABC Commissioner must give notice to the
32 parties to the original proceedings. This subsection does not, by
33 implication, affect the rights of parties to the original proceedings.

1 **135 Obligation to notify commencement etc. of building industrial**
2 **action**

- 3 (1) If an employee engages, or threatens to engage, in notifiable
4 industrial action, then the employer must notify the ABC
5 Commissioner in writing of the action or threat within 72 hours
6 after the employer becomes aware of the action or threat.

7 Note: Grade B civil penalty.

- 8 (2) In this section:

9 ***notifiable industrial action*** means building industrial action that:

- 10 (a) is industrially-motivated; and
11 (b) constitutionally-connected.

12 **136 Payments in relation to periods of building industrial action**

- 13 (1) Part VIIIA of the Workplace Relations Act applies in relation to
14 building work with the following modifications:

15 (a) references in that Part to industrial action are to be read as
16 references to building industrial action that is
17 industrially-motivated and constitutionally-connected;

18 (b) the reference in paragraph 187AD(1)(a) of the Workplace
19 Relations Act to \$10,000 is to be read as a reference to:

- 20 (i) 1,000 penalty units if the person is a body corporate;
21 and
22 (ii) 200 penalty units in other cases.

- 23 (2) Part VIIIA of the Workplace Relations Act does not apply to
24 building work except as provided by this section.

25 **137 Obligation to notify claims for strike pay**

26 If:

27 (a) a claim is made to an employer for the employer to make a
28 payment; and

29 (b) the making of the payment would contravene section 187AA
30 of the Workplace Relations Act (as applied by section 136 of
31 this Act);

Section 138

1 then the employer must notify the ABC Commissioner in writing
2 of the claim within 72 hours after the claim is made.

3 Note: Grade A civil penalty.

4 **138 Notices under section 170MO of the Workplace Relations Act**

5 (1) If an employee party gives a notice under section 170MO of the
6 Workplace Relations Act in relation to a proposed building
7 agreement, then no further notice can be given by any employee
8 party under that section in relation to that proposed agreement. For
9 this purpose, *employee party* means an employee or an employee
10 organisation.

11 (2) If an employer gives a notice under section 170MO of the
12 Workplace Relations Act in relation to a proposed building
13 agreement, then no further notice can be given by the employer
14 under that section in relation to that proposed agreement.

15 **139 No restriction on certain actions in tort**

16 Section 166A of the Workplace Relations Act does not apply in
17 relation to a building industrial dispute if the organisation referred
18 to in that section is a Commonwealth building employee
19 organisation.

20 Note: Section 166A of the Workplace Relations Act restricts the taking of
21 action in tort in relation to certain conduct relating to an industrial
22 dispute.

23 **140 Federal Court not to restrain certain legal proceedings**

24 The Federal Court, in exercising powers under any law of the
25 Commonwealth, must not grant an interlocutory injunction to
26 prevent a person from instituting or pursuing an action, in relation
27 to building industrial action, under any law in force in a State or
28 Territory.

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2 **Chapter 7—Freedom of association**

3 **Part 1—Preliminary**
4

5 **141 Objects of Chapter**

6 In addition to the objects set out in section 3, this Chapter has the
7 following objects:

- 8 (a) to ensure that building industry participants are free to
9 become, or not become, members of building associations;
10 (b) to ensure that building industry participants are not
11 discriminated against or victimised because they are, or are
12 not, members or officers of building associations;
13 (c) to provide effective relief to building industry participants
14 who are prevented or inhibited from exercising their rights to
15 freedom of association;
16 (d) to provide effective remedies to penalise and deter persons
17 who engage in conduct which prevents or inhibits building
18 industry participants from exercising their rights to freedom
19 of association.

20 **142 Definitions**

- 21 (1) In this Chapter, unless the contrary intention appears:

22 ***bargaining services*** means:

- 23 (a) services provided by (or on behalf of) a building association
24 in relation to an agreement, or a proposed agreement, under
25 Part VIB of the Workplace Relations Act (including the
26 negotiation, making, certification, operation, extension,
27 variation or termination of the agreement); or
28 (b) services provided by (or on behalf of) a building association
29 in relation to a State employment agreement or proposed
30 State employment agreement (including the negotiation,
31 making, certification, operation, extension, variation or
32 termination of the agreement).

Section 142

1 ***bargaining services fee*** means a fee (however described) payable:

- 2 (a) to a building association; or
3 (b) to someone else in lieu of a building association;
4 wholly or partly for the provision, or purported provision, of
5 bargaining services, but does not include membership dues.

6 ***building employment*** means employment as a building employee.

7 ***industrial action*** means:

- 8 (a) the performance of work in a manner different from that in
9 which it is customarily performed, or the adoption of a
10 practice in relation to work, the result of which is a restriction
11 or limitation on, or a delay in, the performance of the work,
12 where:
13 (i) the terms and conditions of the work are prescribed,
14 wholly or partly, by an industrial instrument or an order
15 of an industrial body; or
16 (ii) the work is performed, or the practice is adopted, in
17 connection with an industrial dispute; or
18 (b) a ban, limitation or restriction on the performance of work, or
19 on acceptance of or offering for work, in accordance with the
20 terms and conditions prescribed by an industrial instrument
21 or by an order of an industrial body; or
22 (c) a ban, limitation or restriction on the performance of work, or
23 on acceptance of or offering for work, that is adopted in
24 connection with an industrial dispute; or
25 (d) a failure or refusal by persons to attend for work or a failure
26 or refusal to perform any work at all by persons who attend
27 for work;

28 but does not include:

- 29 (e) action by employees that is authorised or agreed to, in
30 advance and in writing, by the employer of the employees; or
31 (f) action by an employer that is authorised or agreed to, in
32 advance and in writing, by or on behalf of employees of the
33 employer; or
34 (g) action by an employee if:

- 1 (i) the action was based on a reasonable concern by the
2 employee about an imminent risk to his or her health or
3 safety; and
4 (ii) the employee did not unreasonably fail to comply with a
5 direction of his or her employer to perform other
6 available work, whether at the same or another
7 workplace, that was safe for the employee to perform.

8 Note: See also subsection (2), which deals with the burden of proof of the
9 exception in paragraph (g) of this definition.

10 ***industrial dispute*** means:

- 11 (a) an industrial dispute (including a threatened, impending or
12 probable industrial dispute) that is about matters pertaining to
13 the relationship between employers and employees; or
14 (b) a situation that is likely to give rise to an industrial dispute of
15 the kind referred to in paragraph (a); or
16 (c) a dispute arising between 2 or more industrial associations, or
17 within an industrial association, as to the rights, status or
18 functions of members of the associations or association in
19 relation to the employment of those members; or
20 (d) a dispute arising between employers and employees, or
21 between members of different industrial associations, as to
22 the demarcation of functions of employees or classes of
23 employees; or
24 (e) a dispute about the representation under an industrial law of
25 the industrial interests of employees by an industrial
26 association of employees.

27 ***officer***, in relation to a building association, includes:

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

30 ***threat*** means a threat of any kind, whether direct or indirect and
31 whether express or implied.

- 32 (2) In any proceedings under section 227 in respect of a contravention
33 of this Chapter, the burden of proving the exception in
34 paragraph (g) of the definition of ***industrial action*** in
35 subsection (1) lies on the person who is seeking to rely on the
36 exception.

Section 142

- 1 (3) For the purposes of this Chapter:
2 (a) conduct is capable of constituting industrial action even if the
3 conduct relates to part only of the duties that persons are
4 required to perform in the course of their employment; and
5 (b) a reference to industrial action includes a reference to a
6 course of conduct consisting of a series of industrial actions.

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2 **Part 2—Conduct to which this Chapter applies**
3

4 **143 Application**

5 Parts 3 to 7 of this Chapter apply only to the extent provided in this
6 Part.

7 **144 Organisations**

8 This Chapter applies to:

- 9 (a) conduct by an organisation; and
10 (b) conduct by an officer of an organisation acting in that
11 capacity; and
12 (c) conduct carried out with a purpose or intent relating to a
13 person’s membership or non-membership of an organisation.

14 **145 Industrial action**

15 (1) This Chapter applies to conduct carried out with a purpose or intent
16 relating to a person’s participation, or non-participation, in action
17 that would be covered by the definition of *industrial action* in
18 subsection 4(1) of the Workplace Relations Act if, in that
19 definition:

- 20 (a) paragraphs (e) and (f) required an authorisation or agreement
21 to be in advance and in writing; and
22 (b) the words “and appropriate” were omitted from
23 subparagraph (g)(ii).

24 (2) For the purposes of this Chapter, a person who seeks to rely on
25 paragraph (g) of the definition (as modified by subsection (1)) has
26 the burden of proving that paragraph (g) applies.

27 **146 Matters arising under this Act or the Workplace Relations Act**

28 (1) This Chapter applies to conduct carried out with a purpose or intent
29 relating to a person’s participation or non-participation (in any
30 capacity) in:

Section 147

- 1 (a) any proceedings under this Act or the Workplace Relations
2 Act; or
3 (b) any other activity provided for by this Act or the Workplace
4 Relations Act.
- 5 (2) This Chapter applies to conduct carried out with a purpose or intent
6 relating to:
7 (a) the fact that an award, a certified agreement or an AWA
8 applies to a person's employment; or
9 (b) the fact that a person is bound by an award, a certified
10 agreement or an AWA.

11 **147 Constitutional corporations**

- 12 This Chapter applies to the following conduct:
13 (a) conduct by a constitutional corporation;
14 (b) conduct against a constitutional corporation;
15 (c) conduct that adversely affects a constitutional corporation in
16 its capacity as a building industry participant;
17 (d) conduct carried out with intent to adversely affect a
18 constitutional corporation in its capacity as a building
19 industry participant;
20 (e) conduct that directly affects a person in the capacity of:
21 (i) an employee, or prospective employee, of a
22 constitutional corporation; or
23 (ii) a contractor, or prospective contractor, of a
24 constitutional corporation;
25 (f) conduct carried out with intent to directly affect a person in
26 the capacity of:
27 (i) an employee, or prospective employee, of a
28 constitutional corporation; or
29 (ii) a contractor, or prospective contractor, of a
30 constitutional corporation;
31 (g) conduct that consists of advising, encouraging or inciting a
32 constitutional corporation:
33 (i) to take, or not to take, particular action in relation to
34 another person; or

- 1 (ii) to threaten to take, or not to take, particular action in
2 relation to another person.

3 **148 Commonwealth and Commonwealth authorities**

4 This Chapter applies to the following conduct:

- 5 (a) conduct by the Commonwealth or a Commonwealth
6 authority;
- 7 (b) conduct that affects, or is carried out with intent to affect, the
8 Commonwealth, or a Commonwealth authority, in its
9 relationships with its employees or contractors;
- 10 (c) conduct that affects, or is carried out with intent to affect, a
11 person in the capacity of an employee or contractor of the
12 Commonwealth or of a Commonwealth authority.

13 **149 Territories and Commonwealth places**

14 This Chapter applies to conduct in a Territory or Commonwealth
15 place.

16 **150 Victoria**

- 17 (1) This Chapter applies to conduct in Victoria.
- 18 (2) This section has effect only for so long, and in so far, as the
19 **Commonwealth Powers (Industrial Relations) Act 1996** of
20 Victoria refers to the Parliament of the Commonwealth a matter or
21 matters that result in the Parliament of the Commonwealth having
22 sufficient legislative power for this section so to have effect.

Section 151

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Part 3—General prohibitions relating to freedom of association

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151 Coercion

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A building industry participant must not organise or take, or threaten to organise or take, any action against another building industry participant with intent to coerce the other building industry participant or a third building industry participant:

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- (a) to become, or not become, an officer or member of a building association; or
- (b) to remain, or cease to be, an officer or member of a building association.

Note: Grade A civil penalty.

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152 False or misleading statements about membership

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A building industry participant must not make a false or misleading representation about:

- (a) another building participant's obligation:
 - (i) to be, or become, an officer or member of a building association; or
 - (ii) not to be, not to become or to cease to be, an officer or member of a building association; or
- (b) another building participant's obligation to disclose whether the other building industry participant, or a third building industry participant, is, or has been, an officer or member of a building association or of a particular building association; or
- (c) the need for another building participant to be, or not to be, an officer or member of a building association, or of a particular building association, in order for the other participant to obtain the benefit of an industrial instrument.

Note 1: Grade A civil penalty.

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Part 4—Conduct by building employers etc.

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154 Dismissal etc. of members of building associations etc.

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

- (a) dismiss a building employee;
- (b) injure a building employee in his or her employment;
- (c) alter the position of a building employee to the employee's prejudice;
- (d) refuse to employ another person as a building employee;
- (e) discriminate against another person in the terms or conditions on which the employer offers to employ the other person as a building employee.

Note: Grade A civil penalty.

(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:

- (a) terminate a contract for services that he or she has entered into with a building contractor;
- (b) injure the building contractor in relation to the terms and conditions of the contract for services;
- (c) alter the position of the building contractor to the building contractor's prejudice;
- (d) refuse to engage another person as a building contractor;
- (e) discriminate against another person in the terms or conditions on which the person offers to engage the other person as a building contractor.

Note: Grade A civil penalty.

1 **155 Prohibited reasons**

- 2 (1) Conduct referred to in subsection 154(1) or (2) is for a *prohibited*
3 *reason* if it is carried out because the building employee, building
4 contractor or other person concerned:
- 5 (a) is, has been, proposes to become or has at any time proposed
6 to become an officer, delegate or member of a building
7 association; or
 - 8 (b) is not, or does not propose to become, a member of a
9 building association; or
 - 10 (c) in the case of a refusal to engage another person as a building
11 contractor—has one or more employees who are not, or do
12 not propose to become, members of a building association; or
 - 13 (d) has not paid, or does not propose to pay, a fee (however
14 described) to a building association; or
 - 15 (e) has refused or failed to join in industrial action; or
 - 16 (f) in the case of a building employee—has refused or failed to
17 agree or consent to, or vote in favour of, the making of an
18 agreement to which a building association of which the
19 employee is a member would be a party; or
 - 20 (g) has made, proposes to make or has at any time proposed to
21 make an application to an industrial body for an order under
22 an industrial law for the holding of a secret ballot; or
 - 23 (h) has participated in, proposes to participate in or has at any
24 time proposed to participate in a secret ballot ordered by an
25 industrial body under an industrial law; or
 - 26 (i) is entitled to the benefit of an industrial instrument or an
27 order of an industrial body; or
 - 28 (j) has made or proposes to make any inquiry or complaint to a
29 person or body having the capacity under an industrial law to
30 seek:
 - 31 (i) compliance with that law; or
 - 32 (ii) the observance of a person's rights under an industrial
33 instrument; or
 - 34 (k) has participated in, proposes to participate in or has at any
35 time proposed to participate in a proceeding under an
36 industrial law; or

Section 155

- 1 (l) has given or proposes to give evidence in a proceeding under
2 an industrial law; or
3 (m) in the case of a building employee, or a building contractor,
4 who is a member of a building association that is seeking
5 better industrial conditions—is dissatisfied with his or her
6 conditions; or
7 (n) in the case of a building employee or a building contractor—
8 has absented himself or herself from work without leave if:
9 (i) the absence was for the purpose of carrying out duties or
10 exercising rights as an officer of a building association;
11 and
12 (ii) the building employee or building contractor applied for
13 leave before absenting himself or herself and leave was
14 unreasonably refused or withheld; or
15 (o) as an officer or member of a building association, has done,
16 or proposes to do, an act or thing for the purpose of
17 furthering or protecting the industrial interests of the building
18 association, being an act or thing that is:
19 (i) lawful; and
20 (ii) within the limits of an authority expressly conferred on
21 the building employee, building contractor or other
22 person by the building association under its rules; or
23 (p) in the case of a building employee or building contractor—
24 has not paid, has not agreed to pay, or does not propose to
25 pay, a bargaining services fee.
- 26 (2) If:
27 (a) a threat is made to engage in conduct referred to in
28 subsection 154(1) or (2); and
29 (b) one of the prohibited reasons in subsection (1) of this section
30 refers to a person doing or proposing to do a particular act, or
31 not doing or proposing not to do a particular act; and
32 (c) the threat is made with the intent of dissuading or preventing
33 the person from doing the act, or coercing the person to do
34 the act, as the case requires;
35 the threat is taken to have been made for that prohibited reason.

1 **156 Inducements to cease membership etc. of building associations**
2 **etc.**

3 A building employer, or a person who has engaged a building
4 contractor, must not (whether by threats or promises or otherwise)
5 induce a building employee, or the building contractor, (as the case
6 requires):

- 7 (a) to become an officer or member of a building association; or
8 (b) to remain an officer or member of a building association; or
9 (c) not to become an officer or member of a building association;
10 or
11 (d) to cease to be an officer or member of a building association.

12 Note: Grade A civil penalty.

Section 157

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Part 5—Conduct by building employees etc.

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157 Cessation of work

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A building employee or building contractor must not cease work in the service of his or her employer, or of the person who engaged the building contractor, (as the case requires) because the employer or person:

- (a) is an officer or member of a building association; or
- (b) is entitled to the benefit of an industrial instrument or an order of an industrial body; or
- (c) has made or proposes to make any inquiry or complaint to a person or body having the capacity under an industrial law to seek:
 - (i) compliance with that law; or
 - (ii) the observance of a person's rights under an industrial instrument; or
- (d) has participated in, proposes to participate in or has at any time proposed to participate in any proceedings under an industrial law; or
- (e) has given evidence in a proceeding under an industrial law.

Note: Grade A civil penalty.

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Part 6—Conduct by building associations etc.

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158 Building associations acting against building employers

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- (1) A building association, or an officer or member of a building association, must not organise or take, or threaten to organise or take, industrial action against a building employer because the employer is an officer or member of a building association.

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Note: Grade A civil penalty.

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- (2) A building association, or an officer or member of a building association, must not organise or take, or threaten to organise or take, industrial action against a building employer with intent to coerce the employer:

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- (a) to become an officer or member of a building association; or
(b) to remain an officer or member of a building association; or
(c) not to become an officer or member of a building association;
or
(d) to cease to be an officer or member of a building association;
or
(e) to pay a fee (however described) to a building association.

Note: Grade A civil penalty.

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- (3) A building association, or an officer or member of a building association, must not:
- (a) advise, encourage or incite a building employer; or
(b) organise or take, or threaten to organise or take, industrial action against a building employer with intent to coerce the employer;
- to take action in relation to a person that would, if taken, contravene subsection 154(1).

Note: Grade A civil penalty.

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- (4) A building association, or an officer or member of a building association, must not, because a member of the association has

Section 159

- 1 refused or failed to comply with a direction given by the
2 association:
- 3 (a) advise, encourage or incite a building employer; or
4 (b) organise or take, or threaten to organise or take, industrial
5 action against a building employer with intent to coerce the
6 employer;
7 to prejudice the member in the member's employment or possible
8 employment.
- 9 Note: Grade A civil penalty.

10 **159 Building associations acting against building employees etc.**

- 11 (1) A building association, or an officer or member of a building
12 association, must not take, or threaten to take, action having the
13 effect, directly or indirectly, of prejudicing a person in the person's
14 building employment, or prospective building employment, with
15 intent:
- 16 (a) to coerce the person to join in industrial action; or
17 (b) to dissuade or prevent the person from making an application
18 to an industrial body for an order under an industrial law for
19 the holding of a secret ballot.
- 20 Note: Grade A civil penalty.
- 21 (2) A building association, or an officer or member of a building
22 association, must not:
- 23 (a) take, or threaten to take, action having the effect, directly or
24 indirectly, of prejudicing a person in the person's building
25 employment or prospective building employment; or
26 (b) advise, encourage or incite a person to take action having the
27 effect, directly or indirectly, of prejudicing another person in
28 the other person's building employment or prospective
29 building employment;
- 30 for any of the following reasons, or for reasons that include any of
31 the following reasons:
- 32 (c) the person has not paid, has not agreed to pay, or does not
33 propose to pay, a bargaining services fee;

- 1 (d) the person is, has been, proposes to become or has at any
2 time proposed to become an officer or member of a building
3 association;
- 4 (e) the person is not, or does not propose to become, a member
5 of a building association;
- 6 (f) the person has not paid, has not agreed to pay, or does not
7 propose to pay, a fee (however described) to a building
8 association;
- 9 (g) the person has refused or failed to join in industrial action;
- 10 (h) the person has made or proposes to make any inquiry or
11 complaint to a person or body having the capacity under an
12 industrial law to seek:
- 13 (i) compliance with that law; or
14 (ii) the observance of a person's rights under an industrial
15 instrument.

16 Note: Grade A civil penalty.

17 **160 Building associations acting against members**

18 A building association, or an officer or member of a building
19 association, must not impose, or threaten to impose, a penalty,
20 forfeiture or disability of any kind on a member of the association:

- 21 (a) with intent to coerce the member to join in industrial action;
22 or
- 23 (b) because the member has refused or failed to join in industrial
24 action; or
- 25 (c) because the member has made, proposes to make or has at
26 any time proposed to make an application to an industrial
27 body for an order under an industrial law for the holding of a
28 secret ballot; or
- 29 (d) because the member has participated in, proposes to
30 participate in or has at any time proposed to participate in a
31 secret ballot ordered by an industrial body under an industrial
32 law; or
- 33 (e) because the member has made or proposes to make any
34 inquiry or complaint to a person or body having the capacity
35 under an industrial law to seek:
- 36 (i) compliance with that law; or

Section 161

- 1 (ii) the observance of a person's rights under an industrial
2 instrument; or
3 (f) because the member has refused or failed to agree or consent
4 to, or vote in favour of, the making of an agreement to which
5 the building association would be a party; or
6 (g) because the member has participated in, proposes to
7 participate in or has at any time proposed to participate in a
8 proceeding under an industrial law; or
9 (h) because the member has given or proposes to give evidence
10 in a proceeding under an industrial law.
11 Note: Grade A civil penalty.

12 **161 Building associations acting against building contractors etc.**

13 (1) In this section:

14 ***discriminatory action***, in relation to an eligible person, means:

- 15 (a) a refusal to make use of, or to agree to make use of, services
16 offered by the eligible person; or
17 (b) a refusal to supply, or to agree to supply, goods or services to
18 the eligible person; or
19 (c) threatening to refuse as mentioned in paragraph (a) or (b).

20 ***eligible person*** means a person who is not a building employee, but
21 who:

- 22 (a) is eligible to become a member of a building association; or
23 (b) would be eligible to become a member of a building
24 association if he or she were a building employee.

25 (2) A building association, or an officer or member of a building
26 association, must not:

- 27 (a) advise, encourage or incite a person (whether an employer or
28 not) to take discriminatory action against an eligible person
29 because the eligible person, or any person employed or
30 engaged by the eligible person:
31 (i) is, has been, proposes to become or has at any time
32 proposed to become, a member of a building
33 association; or

- 1 (ii) is not, or proposes not to become, a member of a
2 building association; or
3 (iii) is a member of a building association who has refused
4 or failed to comply with a direction given by the
5 association; or
6 (iv) has not paid, or does not propose to pay, a fee (however
7 described) to a building association; or
8 (v) has made or proposes to make any inquiry or complaint
9 to a person or body having the capacity under an
10 industrial law to seek:
11 (A) compliance with that law; or
12 (B) the observance of a person's rights under an
13 industrial instrument; or
14 (b) take, or threaten to take, industrial action against a person
15 (whether an employer or not) with intent to coerce the person
16 to take discriminatory action against an eligible person
17 because the eligible person, or any person employed or
18 engaged by the eligible person:
19 (i) is, has been, proposes to become or has at any time
20 proposed to become, a member of a building
21 association; or
22 (ii) is not, or proposes not to become, a member of a
23 building association; or
24 (iii) is a member of a building association who has refused
25 or failed to comply with a direction given by the
26 association; or
27 (iv) has not paid, or does not propose to pay, a fee (however
28 described) to a building association; or
29 (v) has made or proposes to make any inquiry or complaint
30 to a person or body having the capacity under an
31 industrial law to seek:
32 (A) compliance with that law; or
33 (B) the observance of a person's rights under an
34 industrial instrument; or
35 (c) take, or threaten to take, industrial action against an eligible
36 person with intent to coerce the eligible person, or any person
37 employed or engaged by the eligible person:

Section 162

- 1 (i) to become, or to remain, a member of a building
2 association; or
3 (ii) not to become, or not to remain, a member of a building
4 association; or
5 (iii) to comply with a direction given by the association.

6 Note: Grade A civil penalty.

7 (3) For the avoidance of doubt, nothing in subsection (2) prevents a
8 building association from entering into an agreement or
9 arrangement with another person for the supply of goods or
10 services to members of the building association (including the
11 supply on particular terms or conditions).

12 (4) A building association, or an officer or member of a building
13 association, must not:

14 (a) advise, encourage or incite a person (whether an employer or
15 not) to take discriminatory action against an eligible person
16 for a prohibited reason; or

17 (b) take, or threaten to take, industrial action against a person
18 (whether an employer or not) with intent to coerce the person
19 to take discriminatory action against an eligible person for a
20 prohibited reason; or

21 (c) take, or threaten to take, industrial action against an eligible
22 person for a prohibited reason.

23 Note: Grade A civil penalty.

24 (5) Conduct mentioned in subsection (4) is carried out for a *prohibited*
25 *reason* if it is carried out because the eligible person concerned has
26 not paid, has not agreed to pay, or does not propose to pay, a
27 bargaining services fee.

28 **162 Building associations acting against building contractors etc. to**
29 **encourage contraventions**

30 A building association, or an officer or member of a building
31 association, must not:

32 (a) advise, encourage or incite a person; or

33 (b) organise or take, or threaten to organise or take, industrial
34 action against a person with intent to coerce the person;

1 to take action in relation to another person that would, if taken,
2 contravene subsection 154(2).

3 Note: Grade A civil penalty.

4 **163 Building associations not to demand bargaining services fee**

5 (1) A building association, or an officer or member of a building
6 association, must not demand (whether orally or in writing)
7 payment of a bargaining services fee from a building industry
8 participant.

9 Note: Grade A civil penalty.

10 (2) Nothing in this section prevents a building association from
11 demanding payment of a bargaining services fee that is payable to
12 the association under a contract for the provision of bargaining
13 services.

14 (3) In this section:

15 *demand* includes:

- 16 (a) purport to demand; and
17 (b) have the effect of demanding; and
18 (c) purport to have the effect of demanding.

19 **164 Action to coerce person to pay bargaining services fee**

20 A building association, or an officer or member of a building
21 association, must not take, or threaten to take, action against a
22 building industry participant with intent to coerce the participant,
23 or another building industry participant, to pay a bargaining
24 services fee.

25 Note: Grade A civil penalty.

26 **165 Building associations not prevented from entering contracts**

27 To avoid doubt, nothing in this Part prevents a building association
28 from entering into a contract for the provision of bargaining
29 services with a person who is not a member of the association.

Section 166

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Part 7—False or misleading representations about bargaining services fees etc.

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166 False or misleading representations about bargaining services fees etc.

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A building industry participant must not make a false or misleading representation about:

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(a) another building industry participant's liability to pay a bargaining services fee; or

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(b) another building industry participant's obligation to enter into an agreement to pay a bargaining services fee; or

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(c) another building industry participant's obligation to become a member of a building association.

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Note: Grade A civil penalty.

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Part 8—Relationship between this Chapter and other laws

167 Operation of State and Territory laws

- (1) To the extent that this Chapter relies on section 147, 149 or 150 for its application, it is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) This section has effect subject to section 168.

168 Remedies under this Act and State or Territory law

- (1) This section applies to conduct of a person or building association if:
 - (a) the conduct contravenes a provision of this Chapter; and
 - (b) the conduct also contravenes a provision of an industrial law of a State or Territory, being a provision that deals with discrimination, or preference, in employment; and
 - (c) this Chapter would not apply to the conduct if sections 147, 149 and 150 were omitted.
- (2) If an application is made under section 227 in respect of the conduct, an application cannot be made, under the industrial law of the State or Territory, in respect of that conduct.
- (3) Subsection (2) does not preclude a person or building association being prosecuted for an offence, or any applications being made in connection with such a prosecution.
- (4) If an application is made under the industrial law of the State or Territory in respect of the conduct, an application cannot be made under section 227 in respect of that conduct.
- (5) Subsection (4) does not preclude an application being made under section 227 if the application under the industrial law of the State or Territory was made in connection with the prosecution of the person or building association for an offence.

Section 169

1 **169 Relationship between this Chapter and Workplace Relations**
2 **Act**

3 If any person is entitled to make an application under section 227
4 in respect of conduct that constitutes a contravention of this
5 Chapter, then no person is entitled to make an application under
6 Part XA of the Workplace Relations Act in respect of that conduct.

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Part 9—Miscellaneous

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170 Proof not required of the reason for, or the intention of, conduct

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(1) If:

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(a) in an application under section 227 relating to a person's or a building association's conduct, it is alleged that the conduct was, or is being, carried out for a particular reason or with a particular intent; and

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(b) for the person or building association to carry out the conduct for that reason or with that intent would constitute a contravention of this Chapter;

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it is presumed, in proceedings under section 227 arising from the application, that the conduct was, or is being, carried out for that reason or with that intent, unless the person or building association proves otherwise.

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(2) This section does not apply in relation to the granting of an interim injunction under section 227.

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171 Freedom of association not dependent on certificate

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(1) A person's rights under this Chapter do not depend on whether the person is the holder of a conscientious objection certificate in force under section 180 of Schedule 1B to the Workplace Relations Act.

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(2) This section is enacted for the avoidance of doubt.

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Chapter 8—Discrimination, coercion and unfair contracts

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172 Coercion in relation to engagement etc. of building employees and building contractors

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(1) A person (the *first person*) must not organise or take action, or threaten to organise or take action, with intent to coerce another person (the *second person*):

(a) to employ, or not employ, a person as a building employee; or

or

(b) to engage, or not engage, a person as a building contractor; or

(c) to allocate, or not allocate, particular responsibilities to a building employee or building contractor; or

(d) to designate a building employee or building contractor as having, or not having, particular duties or responsibilities.

Note: Grade A civil penalty.

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(2) Subsection (1) does not apply unless:

(a) the first person is an organisation or a constitutional corporation; or

(b) the second person is a constitutional corporation; or

(c) the conduct occurs in a Territory or Commonwealth place.

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173 Coercion of persons to make, vary, terminate etc. certified agreements etc.

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(1) A person must not:

(a) take or threaten to take any action; or

(b) refrain or threaten to refrain from taking any action;

with intent to coerce another person, or to apply undue pressure to another person, to agree, or not to agree:

(c) to make, vary or terminate, or extend the nominal expiry date of, a building agreement under Division 2 or 3 of Part VIB of the Workplace Relations Act; or

1 (d) to approve any of the things mentioned in paragraph (c).

2 Note: Grade A civil penalty.

3 (2) Subsection (1) does not apply to action that is protected action for
4 the purposes of the Workplace Relations Act (as affected by
5 Division 1 of Part 3 of Chapter 6 of this Act).

6 (3) An employer must not coerce, or attempt to coerce, an employee of
7 the employer:

8 (a) not to make a request as mentioned in subsection 170LK(4)
9 of the Workplace Relations Act in relation to a building
10 agreement that the employer proposes to make; or

11 (b) to withdraw such a request.

12 Note: Grade A civil penalty.

13 (4) An employer must not apply, or attempt to apply, undue pressure
14 to an employee of the employer:

15 (a) not to make a request as mentioned in subsection 170LK(4)
16 of the Workplace Relations Act in relation to a building
17 agreement that the employer proposes to make; or

18 (b) to withdraw such a request.

19 Note: Grade A civil penalty.

20 (5) Section 170NC of the Workplace Relations Act does not apply if
21 the agreement referred to in that section is a building agreement.

22 **174 Discrimination against employer in relation to industrial** 23 **instruments**

24 (1) A person (the *first person*) must not discriminate against another
25 person (the *second person*) on the ground that:

26 (a) the employment of the second person's building employees is
27 covered, or is not covered, by:

28 (i) a particular kind of industrial instrument; or

29 (ii) an industrial instrument made with a particular person;
30 or

31 (b) it is proposed that the employment of the second person's
32 building employees be covered, or not be covered, by:

33 (i) a particular kind of industrial instrument; or

Section 175

1 (ii) an industrial instrument made with a particular person.

2 Note: Grade A civil penalty.

3 (2) Subsection (1) does not apply to conduct that is protected action
4 for the purposes of the Workplace Relations Act (as affected by
5 Division 1 of Part 3 of Chapter 6 of this Act).

6 (3) Subsection (1) does not apply to conduct by the first person if:

7 (a) the conduct occurs in relation to:

8 (i) a proposed agreement between the first person and the
9 second person under which the second person would
10 carry out building work or arrange for building work to
11 be carried out; or

12 (ii) a proposed variation of an agreement between the first
13 person and the second person under which the second
14 person carries out building work or arranges for
15 building work to be carried out; and

16 (b) the conduct is engaged in solely for the purpose of
17 encouraging the second person to have particular eligible
18 conditions in an industrial instrument that covers employees
19 of the second person.

20 (4) Subsection (1) does not apply unless:

21 (a) the industrial instrument referred to in that section is an
22 award, certified agreement or AWA; or

23 (b) the first person is an organisation or a constitutional
24 corporation; or

25 (c) the second person is a constitutional corporation; or

26 (d) the conduct occurs in a Territory or Commonwealth place.

27 **175 Coercion in relation to superannuation**

28 (1) A person (the *first person*) must not:

29 (a) take, or threaten to take, any action (the *relevant action*); or

30 (b) refrain, or threaten to refrain, from taking action (the *relevant*
31 *action*);

32 with intent:

- 1 (c) to coerce a building employee to nominate a particular
2 superannuation fund or scheme to receive the employee's
3 superannuation contributions; or
4 (d) to coerce a building employer to pay the employer's
5 superannuation contributions in respect of building
6 employees to a particular superannuation fund or scheme.

7 Note: Grade A civil penalty.

8 (2) Subsection (1) does not apply if the relevant action is, or would be,
9 protected action for the purposes of the Workplace Relations Act
10 (as affected by Division 1 of Part 3 of Chapter 6).

11 (3) Subsection (1) does not apply unless:

- 12 (a) the first person is an organisation or a constitutional
13 corporation; or
14 (b) paragraph (1)(d) applies and the building employer referred
15 to in that paragraph is a constitutional corporation; or
16 (c) paragraph (1)(d) applies and the building employer referred
17 to in that paragraph is the Commonwealth or a
18 Commonwealth authority; or
19 (d) the relevant action occurs, or would occur, in a Territory or
20 Commonwealth place.

21 **176 Unfair contracts with building contractors**

22 Sections 127A, 127B and 127C of the Workplace Relations Act
23 apply in relation to a contract for the performance of building work
24 as if references in sections 127A and 127B of that Act to the
25 Federal Court included references to the Federal Magistrates Court.

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2 **Chapter 9—Union right of entry**

3 **Part 1—Preliminary**
4

5 **177 Objects of this Chapter**

6 In addition to the objects set out in section 3, this Chapter has the
7 following objects:

- 8 (a) to establish a framework that balances:
9 (i) the right of unions to represent their members in the
10 workplace, hold discussions with potential members and
11 investigate suspected breaches of industrial laws and
12 industrial instruments; and
13 (ii) the right of occupiers of premises and employers to
14 conduct their businesses without undue interference or
15 harassment;
16 (b) to ensure that permits to enter premises and inspect records
17 are only held by persons who understand their rights and
18 obligations under this Chapter and who are fit and proper
19 persons to exercise those rights;
20 (c) to ensure that occupiers of premises and employers
21 understand their rights and obligations under this Chapter;
22 (d) to ensure that permits are suspended or revoked where rights
23 granted under this Chapter are misused.

24 **178 Definitions**

25 In this Chapter, unless the contrary intention appears:

26 ***affected employee*** means:

- 27 (a) in relation to the entry onto premises under section 188 to
28 investigate a suspected breach—an employee for whom all
29 the following are satisfied:
30 (i) the employee carries out building work on the premises;
31 (ii) the employee is a member of the permit holder's union;

- 1 (iii) the suspected breach relates to, or affects, the employee
2 or the building work; and
3 (b) in relation to the entry onto premises under section 197 to
4 hold discussions—an employee for whom all the following
5 are satisfied:
6 (i) the employee carries out building work on the premises;
7 (ii) the employee is a member of the permit holder's union
8 or is eligible to become a member of that union;
9 (iii) the employee is one of the employees with whom the
10 discussions are to be held.

11 ***affected employer*** means an employer of affected employees.

12 ***authority documents***, in relation to the entry onto premises by a
13 permit holder, means:

- 14 (a) if the permit holder entered the premises in reliance on an
15 entry notice:
16 (i) the permit holder's permit; and
17 (ii) the entry notice; or
18 (b) if the permit holder entered the premises in reliance on an
19 exemption certificate:
20 (i) the permit holder's permit; and
21 (ii) the exemption certificate; or
22 (c) if the permit holder entered the premises in reliance on an
23 order of the AIRC:
24 (i) the permit holder's permit; and
25 (ii) the order.

26 ***Commonwealth union*** means a Commonwealth building employee
27 organisation.

28 ***entry notice*** means an entry notice in the form approved under
29 section 179.

30 ***exemption certificate*** means an exemption certificate under
31 section 191.

32 ***official***, in relation to a union, means an officer or employee of the
33 union.

Section 179

- 1 *permit* means a permit under this Chapter.
- 2 *permit holder* means a person who holds a permit under this
3 Chapter.
- 4 *permit holder's union*, in relation to a permit, means the union for
5 which the permit was issued.
- 6 *State industrial instrument* means a State award or a State
7 employment agreement.
- 8 *State union* means an association of employees, or of employees
9 and independent contractors:
- 10 (a) that is registered or recognised as such under a State
11 industrial law; and
- 12 (b) whose eligibility rules allow building employees to be
13 members of the association (whether or not those rules also
14 allow other persons to be members).
- 15 *union* means a Commonwealth union or a State union.

16 **179 Form of entry notice**

- 17 (1) The Registrar must, in writing, approve a form of entry notice for
18 the purposes of this section.
- 19 (2) The form:
- 20 (a) must require the following matters to be specified by the
21 person using the form:
- 22 (i) the premises that are proposed to be entered;
- 23 (ii) the union in respect of which the relevant entry permit
24 was issued;
- 25 (iii) any other matters prescribed by the regulations; and
- 26 (b) must include any other information prescribed by the
27 regulations.
- 28 (3) Subsection (2) does not, by implication, limit the matters that may
29 be contained in, or required by, the form.

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Part 2—Issue of entry permits

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180 Issue of permit

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(1) A union may apply to the Industrial Registrar for the issue of a permit to an official of the union. The application must be in writing.

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(2) The Industrial Registrar may issue a permit to the official named in the application.

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(3) The permit:

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(a) must include any conditions that are imposed by the Industrial Registrar under section 181; and

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(b) must include any conditions that are applicable under section 185 at the time of issue.

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(4) The regulations may make provision in relation to the following matters:

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(a) the form of an application for a permit;

(b) the declarations and other documents that must accompany the application;

(c) verification, by statutory declaration, of those documents;

(d) the form of a permit.

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Note: Under the *Criminal Code* and the *Statutory Declarations Act 1959*, penalties apply to false statements etc.

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181 Imposition of permit conditions at time of issue

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(1) At the time of issuing a permit, the Industrial Registrar may impose conditions that limit the circumstances in which the permit has effect.

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Note: For example, the conditions could limit the premises to which the permit applies or the time of day when the permit operates.

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(2) In deciding whether to impose conditions, the Industrial Registrar must have regard to the matters specified in subsection 182(2).

1 **182 Permit not to be issued in certain cases**

2 *Official not a fit and proper person*

- 3 (1) The Industrial Registrar must not issue a permit to an official
4 unless the Industrial Registrar is satisfied that the official is a fit
5 and proper person to hold the permit.
- 6 (2) For the purposes of subsection (1), the Industrial Registrar must
7 have regard to the following matters:
- 8 (a) whether the official has received appropriate training about
9 the rights and responsibilities of a permit holder;
 - 10 (b) whether the official has ever been convicted of an offence
11 against an industrial law;
 - 12 (c) whether the official has ever been convicted of an offence
13 against a law of the Commonwealth, a State, a Territory or a
14 foreign country, involving:
 - 15 (i) entry onto premises; or
 - 16 (ii) fraud or dishonesty; or
 - 17 (iii) intentional use of violence against another person or
18 intentional damage or destruction of property;
 - 19 (d) whether the official, or any other person, has ever been
20 ordered to pay a penalty under this Act or any other industrial
21 law in respect of conduct of the official;
 - 22 (e) whether any permit issued to the official under this Chapter,
23 or under the Workplace Relations Act, has been revoked or
24 suspended or made subject to conditions;
 - 25 (f) whether a court, or other person or body, under a State
26 industrial law, has cancelled, suspended or imposed
27 conditions on a right of entry for industrial purposes that the
28 official had under that law;
 - 29 (g) whether a court, or other person or body, under a State
30 industrial law, has disqualified the official from exercising,
31 or applying for, a right of entry for industrial purposes under
32 that law;
 - 33 (h) any other matters that the Industrial Registrar considers
34 relevant.

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Banning order or disqualification applies under this Chapter

- (3) The Industrial Registrar must not issue a permit to an official:
- (a) during a disqualification period specified by the Industrial Registrar under section 184; or
 - (b) if the issue is prevented by an AIRC order under section 185 or 209.

Disqualification etc. applies under State industrial law

- (4) The Industrial Registrar must not issue a permit to an official at a time when:
- (a) a suspension, imposed by a court or other person or body, applies under a State industrial law to a right of entry for industrial purposes that the official has under that law; or
 - (b) a disqualification, imposed by a court or other person or body, prevents the official from exercising, or applying for, a right of entry for industrial purposes under a State industrial law.

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Part 3—Expiry, revocation, suspension etc. of entry permits

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183 Expiry of permit

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Unless earlier revoked, a permit expires at the earlier of the following times:

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(a) at the end of the third anniversary of the date of issue; or

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(b) when the permit holder ceases to be an official of the union that applied for the permit.

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184 Revocation, suspension etc. by Industrial Registrar

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(1) The ABC Commissioner, or a person prescribed by the regulations, may apply to the Industrial Registrar to take action under this section against a permit holder. The application must be made in accordance with the regulations.

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(2) On application made under subsection (1), the Industrial Registrar may do any of the following in relation to one or more permits held by the permit holder:

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(a) revoke the permit (whether or not the permit is already suspended);

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(b) suspend the permit for a specified period;

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(c) impose conditions on the permit (whether or not the permit is already suspended).

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(3) In exercising powers under subsection (2), the Industrial Registrar must have regard to the matters specified in subsection 182(2).

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Industrial Registrar must revoke or suspend in certain circumstances

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(4) If the Industrial Registrar is satisfied that any of the things mentioned in subsection (5) has happened since the first of the permits was issued, then the Industrial Registrar must take the

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1 following action in relation to each permit held by the permit
2 holder:

- 3 (a) if the permit expires before the end of the minimum
4 disqualification period—the Industrial Registrar must revoke
5 the permit;
6 (b) if the permit does not expire before the end of the minimum
7 disqualification period—the Industrial Registrar must either:
8 (i) revoke the permit; or
9 (ii) suspend the permit for a period that does not end earlier
10 than the end of the minimum disqualification period.

11 The Industrial Registrar must also specify a disqualification period
12 for the purposes of section 182. The disqualification period cannot
13 be shorter than the minimum disqualification period.

14 (5) The things are:

- 15 (a) the permit holder was found, in proceedings under this Act,
16 to have contravened section 207;
17 (b) the permit holder, or another person, was ordered to pay a
18 penalty under this Act in respect of a contravention of this
19 Chapter by the permit holder;
20 (c) the permit holder gave an entry notice for frivolous or
21 vexatious reasons, or in frivolous or vexatious circumstances;
22 (d) a court, or other person or body, under a State industrial law,
23 cancelled or suspended a right of entry for industrial
24 purposes that the permit holder had under that law;
25 (e) a court, or other person or body, under a State industrial law,
26 disqualified the permit holder from exercising, or applying
27 for, a right of entry for industrial purposes under that law;
28 (f) the permit holder otherwise acted improperly in relation to
29 the exercise of rights under this Chapter.

30 *Definitions*

31 (6) In this section:

32 ***acted improperly*** includes:

- 33 (a) exercising rights under this Chapter in a vexatious,
34 unreasonable or inappropriate manner; and

Section 185

- 1 (b) making unreasonable, vexatious or inappropriate use of
2 information obtained by the permit holder as a result of
3 exercising rights under this Chapter.

4 *minimum disqualification period*, in relation to action by the
5 Industrial Registrar under subsection (4) (the *current action*),
6 means:

- 7 (a) if the Industrial Registrar has never previously taken action
8 against the permit holder under that subsection—the period
9 of 3 months starting when the current action is taken; or
10 (b) if the Industrial Registrar has previously taken action against
11 the permit holder under that subsection on only one
12 occasion—the period of 12 months starting when the current
13 action is taken; or
14 (c) if the Industrial Registrar has previously taken action against
15 the permit holder under that subsection on at least 2
16 occasions—the period of 5 years starting when the current
17 action is taken.

18 **185 Orders by AIRC for abuse of system**

- 19 (1) If the AIRC is satisfied that a union, or any official of a union, has
20 abused the rights conferred by this Chapter, then the AIRC may
21 make whatever orders it considers appropriate to restrict the rights
22 of the union, or officials of the union, under this Chapter.
- 23 (2) The AIRC may make the orders:
24 (a) of its own motion; or
25 (b) on application by the ABC Commissioner.
- 26 (3) The orders may include:
27 (a) an order that revokes or suspends some or all of the permits
28 that have been issued in respect of the union; and
29 (b) an order that imposes limiting conditions on some or all of
30 the permits that have been issued in respect of the union or
31 that might in future be issued in respect of the union; and
32 (c) an order that bans, for a specified period, the issue of permits
33 in respect of the union, either generally or to specified
34 persons.

1 For the purposes of this subsection, *limiting condition* means a
2 condition that limits the circumstances in which a permit has
3 effect.

4 (4) A union, or an official of a union, who is subject to an order under
5 this section must comply with the order.

6 Note: Grade A civil penalty.

7 (5) The powers of the AIRC under this section are exercisable by:
8 (a) the President; or
9 (b) a Presidential Member assigned by the President for the
10 purposes of the matter concerned; or
11 (c) a Full Bench, if the President so directs.

12 **186 Revoked etc. permit must be returned to Industrial Registrar**

13 (1) If any of the following happens to a permit, then the permit holder
14 must within 7 days return the permit to the Industrial Registrar:

- 15 (a) the permit is revoked;
16 (b) the permit expires;
17 (c) the permit is suspended;
18 (d) conditions are imposed on the permit after it is issued.

19 Note: Grade B civil penalty.

20 (2) In the case of a suspended permit, the Industrial Registrar must, on
21 application by the permit holder or the permit holder's union,
22 return the permit to the permit holder after the end of the
23 suspension period if the Industrial Registrar is satisfied that the
24 permit is then still in force.

25 Note: In the meantime the permit might have been revoked or might have
26 expired.

27 **187 Extra conditions to be endorsed on permit**

28 If conditions are imposed on a permit by the Industrial Registrar
29 under section 184 or by the AIRC under section 185, then the
30 permit ceases to have effect until the Industrial Registrar endorses
31 those conditions on the permit.

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Part 4—Right of entry to investigate suspected breaches

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188 Right of entry to investigate breach

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Right of entry for breach of Commonwealth industrial law etc.

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- (1) If a permit holder for a Commonwealth union suspects, on reasonable grounds, that a breach has occurred, or is occurring, of:

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(a) this Act or the Workplace Relations Act; or

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(b) an award or a certified agreement or an order of the AIRC under this Act or the Workplace Relations Act, being an award, certified agreement or order that is binding on the permit holder's union;

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then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:

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(c) building work is being carried out on the premises by one or more employees who are members of the permit holder's union; and

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(d) the suspected breach relates to, or affects, that building work or any of those employees.

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Right of entry for breach of State industrial law etc.

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- (2) If a permit holder for a State union suspects, on reasonable grounds, that a breach has occurred, or is occurring, of:

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(a) a State industrial law; or

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(b) a State industrial instrument that is binding on the permit holder's union;

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then, for the purpose of investigating the suspected breach, the permit holder may, during working hours, enter premises if:

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(c) building work is being carried out on the premises by one or more employees who are members of the permit holder's union; and

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(d) the suspected breach relates to, or affects, that building work or any of those employees; and

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- 1 (e) at least one of the following applies:
2 (i) the employer of the employees is a constitutional
3 corporation;
4 (ii) the premises are in a Territory or Commonwealth place.

5 **189 Rights of permit holder after entering premises**

- 6 (1) This section applies if a permit holder has entered premises under
7 section 188 for the purpose of investigating a suspected breach.

8 *Inspection of work etc. and interviewing employees*

- 9 (2) While on the premises, the permit holder may, for the purpose of
10 investigating the suspected breach:
11 (a) during working hours, inspect or view any work, material,
12 machinery, or appliance, that is relevant to the suspected
13 breach; and
14 (b) during working hours, interview the following persons about
15 the suspected breach:
16 (i) employees who are members of the permit holder's
17 union; or
18 (ii) employees who are eligible to become members of the
19 permit holder's union.

- 20 (3) For the avoidance of doubt, a refusal or failure by a person to
21 participate in an interview under this section is not to be treated as
22 conduct covered by section 149.1 of the *Criminal Code*.

23 *Inspection of records while on the premises*

- 24 (4) While on the premises, the permit holder may, for the purpose of
25 investigating the suspected breach, require an affected employer to
26 allow the permit holder, during working hours, to inspect and make
27 copies of, any records relevant to the suspected breach (other than
28 non-member records) that:
29 (a) are kept on the premises by the employer; or
30 (b) are accessible from a computer that is kept on the premises
31 by the employer.

Section 189

- 1 *Inspection of records at later time*
- 2 (5) The permit holder may, for the purpose of investigating the
3 suspected breach, by notice in writing, require an affected
4 employer, on a later day or days specified in the notice:
- 5 (a) to produce, or allow access to, all records, or particular
6 records, relevant to the suspected breach (other than
7 non-member records), either at the premises or at another
8 place that is agreed between the permit holder and the
9 employer; and
- 10 (b) to allow the permit holder, during working hours, to inspect
11 and make copies of, any of those records.
- 12 The permit holder may give the notice while on the premises or
13 within 5 days after the day on which the permit holder entered the
14 premises.
- 15 (6) A day specified in a notice to an employer under subsection (5)
16 cannot be earlier than 14 days after the notice is given to the
17 employer.
- 18 (7) Before issuing a requirement to an affected employer under
19 subsection (4) or (5), the permit holder must produce the permit
20 holder's authority documents for inspection by the employer.
- 21 (8) If a permit holder:
- 22 (a) has given a notice to an employer under subsection (5)
23 requiring the employer to produce, or allow access to,
24 records at the premises; and
- 25 (b) has given a copy of the notice to the ABC Commissioner;
26 then the permit holder is entitled to enter the premises during
27 working hours for the purpose of inspecting and copying the
28 records in accordance with the notice.
- 29 *Application to AIRC for access to non-member records*
- 30 (9) The permit holder may, for the purposes of investigating the
31 suspected breach, apply to the AIRC for either or both of the
32 following orders:

- 1 (a) an order to allow the permit holder to enter the premises and
2 to inspect and make copies of non-member records that are
3 relevant to the suspected breach;
4 (b) an order to require an affected employer to produce, or allow
5 access to, such records for inspection and copying.
- 6 (10) The AIRC may make such an order if it is satisfied that the order is
7 necessary to investigate the suspected breach. Before doing so, the
8 AIRC must have regard to the conditions (if any) that apply to the
9 permit holder's permit.
- 10 (11) An application for an order under subsection (9):
11 (a) must be in accordance with the regulations; and
12 (b) must set out the grounds on which the application is made.

13 *Definitions*

- 14 (12) In this section:
- 15 ***non-member record*** means a record that:
16 (a) relates to the employment of a person who is not a member
17 of the permit holder's union; and
18 (b) does not also relate to the employment of a person who is a
19 member of the permit holder's union.
- 20 ***record relevant to the suspected breach*** means a record:
21 (a) that is relevant to the suspected breach; and
22 (b) that is of the following kind:
23 (i) a time sheet;
24 (ii) a pay sheet;
25 (iii) any other record or document, other than an AWA, an
26 ancillary document (within the meaning of Part VID of
27 the Workplace Relations Act) or a record or document
28 that shows some or all of the content of an AWA or of
29 an ancillary document.

30 **190 Limitation on rights—entry notice or exemption certificate**

- 31 (1) Section 188 does not authorise entry to premises unless:
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Section 191

- 1 (a) the conditions in subsection (2) of this section are satisfied;
2 or
3 (b) the conditions in subsection (3) of this section are satisfied.
- 4 (2) The conditions are that:
- 5 (a) the permit holder gave an entry notice to the occupier of the
6 premises at least 24 hours, but not more than 14 days, before
7 the entry; and
- 8 (b) the permit holder gave a copy of the entry notice to the ABC
9 Commissioner at least 24 hours, but not more than 14 days,
10 before the entry; and
- 11 (c) the entry notice specifies section 188 as the section that
12 authorises the entry; and
- 13 (d) the entry notice specifies particulars of the suspected breach
14 or breaches; and
- 15 (e) the entry is on a day specified in the entry notice.
- 16 (3) The conditions are:
- 17 (a) the entry is on a day specified in an exemption certificate
18 under section 191 and the premises are the premises specified
19 in the exemption certificate; and
- 20 (b) the permit holder gave a copy of the exemption certificate to
21 the occupier of the premises not more than 14 days before the
22 entry; and
- 23 (c) the permit holder gave a copy of the exemption certificate to
24 the ABC Commissioner not more than 14 days before the
25 entry.
- 26 (4) Conduct after entry is not authorised by section 189 unless the
27 conduct is for the purpose of investigating a suspected breach
28 identified in the permit holder's authority documents.

29 **191 Exemption from requirement to provide entry notice**

- 30 (1) A union may apply to the Industrial Registrar for an exemption
31 certificate in respect of the entry onto premises under section 188
32 to investigate a suspected breach.
- 33 (2) If the Industrial Registrar is satisfied that there are reasonable
34 grounds for believing that advance notice of entry onto the

1 premises under section 188 might result in the destruction,
2 concealment or alteration of relevant evidence, then the Industrial
3 Registrar must issue an exemption certificate in respect of entry
4 onto those premises.

- 5 (3) An exemption certificate must:
- 6 (a) specify the premises to which it applies; and
 - 7 (b) specify the union to which it relates; and
 - 8 (c) specify the day or days on which it operates; and
 - 9 (d) specify particulars of the suspected breach or breaches to
10 which it relates; and
 - 11 (e) specify section 188 as the section that authorises the entry.
- 12 (4) The regulations may make provision in relation to the following
13 matters:
- 14 (a) the form of an application for an exemption certificate;
 - 15 (b) the form of an exemption certificate.

16 **192 Limitation on rights—failure to comply with requests of**
17 **occupier or affected employer**

- 18 (1) This Part does not authorise a permit holder to enter, or remain on,
19 premises if the permit holder fails to produce the permit holder's
20 authority documents for inspection when requested to do so by an
21 affected employer or by the occupier of the premises.
- 22 (2) This Part does not authorise a permit holder to enter, or remain on,
23 premises if:
- 24 (a) an affected employer or the occupier of the premises requests
25 the permit holder to comply with an occupational health and
26 safety requirement that applies to the premises; and
 - 27 (b) the request is a reasonable request; and
 - 28 (c) the permit holder fails to comply with the request.
- 29 (3) This Part does not authorise a permit holder to enter, or remain on,
30 premises if:
- 31 (a) an affected employer or the occupier of the premises asks the
32 permit holder to do either or both of the following:

Section 193

- 1 (i) to conduct interviews in a particular room or area of the
2 premises;
3 (ii) to take a particular route to reach a particular room or
4 area of the premises; and
5 (b) the request is a reasonable request; and
6 (c) the permit holder fails to comply with the request.

7 Note: The AIRC may make an order under section 206 if the request is
8 unreasonable.

- 9 (4) For the purposes of subsection (3), if an affected employer or the
10 occupier requests the permit holder to hold discussions in a
11 particular room or area, or to take a particular route to reach a
12 particular room or area, the request is not unreasonable only
13 because it is not the room, area or route that the permit holder
14 would have chosen.

15 **193 Limitation on rights—residential premises**

16 This Part does not authorise a person to enter any part of premises
17 that is used for residential purposes.

18 **194 Limitation on rights—permit conditions**

- 19 (1) A permit holder's rights under this Part in respect of a permit are
20 subject to any conditions that apply to the permit.
21 (2) Subsection (1) does not apply to rights of a permit holder under an
22 order by the AIRC under section 189.

23 **195 Exclusion of rights of entry under other industrial laws or**
24 **instruments**

25 If a person:

- 26 (a) is authorised by section 188 to enter premises to investigate a
27 suspected breach and to do other things for the purpose of
28 investigating the suspected breach; or
29 (b) would be so authorised if:
30 (i) the person held a permit that is not subject to any
31 conditions; and

1 (ii) sections 190, 192 and 193 were omitted;
2 then the person has no right under any other industrial law (other
3 than an OHS law), or any State industrial instrument, to enter those
4 premises to investigate that suspected breach or to do those other
5 things for the purpose of investigating the suspected breach.

6 **196 Burden of proving reasonable grounds for suspecting breach**

7 Whenever it is relevant to determine whether a permit holder had
8 reasonable grounds for suspecting a breach, as mentioned in
9 section 188, the burden of proving the existence of reasonable
10 grounds lies on the person asserting the existence of those grounds.

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Part 5—Right of entry to talk to employees

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197 Right of entry to hold discussions with employees

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Employees covered by Commonwealth industrial instrument

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- (1) A permit holder for a Commonwealth union may enter premises for the purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, **eligible employee** means any employee who:

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- (a) on the premises, carries out building work that is covered by an award, or certified agreement, that is binding on the permit holder's union; and

- (b) is a member of the permit holder's union or is eligible to become a member of that union.

15

Employees covered by State industrial instrument

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- (2) A permit holder for a State union may enter premises for the purposes of holding discussions with any eligible employees who wish to participate in those discussions. For this purpose, **eligible employee** means any employee who:

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- (a) on the premises, carries out building work that is covered by a State industrial instrument that is binding on the permit holder's union; and

- (b) is a member of the permit holder's union or is eligible to become a member of that union.

25

- (3) Subsection (2) does not authorise the permit holder to enter premises unless at least one of the following paragraphs applies:

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- (a) the employer of the employees is a constitutional corporation and the proposed discussions relate to employment issues or industrial issues;

- (b) the premises are in a Territory or Commonwealth place.

1 **198 Limitation on rights—times of entry and discussions**

2 The permit holder may only enter the premises under section 197
3 during working hours and may only hold the discussions during the
4 employees' meal-time or other breaks.

5 **199 Limitation on rights—conscientious objection certificates**

6 This Part does not authorise entry to premises, or subsequent
7 conduct on the premises, if all of the following conditions are
8 satisfied:

- 9 (a) no more than 20 employees are employed to work at the
10 premises;
- 11 (b) all the employees at the premises are employed by an
12 employer who is the holder of a conscientious objection
13 certificate in force under section 180 of Schedule 1B to the
14 Workplace Relations Act, that has been endorsed by a
15 Registrar as provided in section 285C of the Workplace
16 Relations Act;
- 17 (c) none of the employees employed at the premises is a member
18 of a union.

19 **200 Limitation on rights—entry notice**

20 (1) This Part does not authorise entry to premises, or subsequent
21 conduct on the premises, unless all the following conditions are
22 satisfied:

- 23 (a) the permit holder gave an entry notice to the occupier of the
24 premises at least 24 hours, but not more than 14 days, before
25 the entry;
- 26 (b) the permit holder gave a copy of the entry notice to the ABC
27 Commissioner at least 24 hours, but not more than 14 days,
28 before the entry;
- 29 (c) the entry notice specifies section 197 as the section that
30 authorises the entry;
- 31 (d) the entry is on a day specified in the entry notice.

32 (2) This Part does not authorise entry to premises, or subsequent
33 conduct on the premises, if:

Section 201

- 1 (a) the conduct is for the purposes of recruitment, but the entry
2 notice does not specify recruitment as a purpose of entry; or
3 (b) the conduct is for the purposes of recruitment and a permit
4 holder for the union entered the premises in the preceding 6
5 months for that purpose.
- 6 (3) In this section:
- 7 *recruitment* means encouraging employees to become members of
8 the permit holder's union.

9 **201 Limitation on rights—residential premises**

10 This Part does not authorise a person to enter any part of premises
11 that is used for residential purposes.

12 **202 Limitation on rights—failure to comply with requests of
13 occupier or affected employer**

- 14 (1) This Part does not authorise a permit holder to enter, or remain on,
15 premises if the permit holder fails to produce the permit holder's
16 authority documents for inspection when requested to do so by an
17 affected employer or by the occupier of the premises.
- 18 (2) This Part does not authorise a permit holder to enter, or remain on,
19 premises if:
- 20 (a) an affected employer or the occupier of the premises requests
21 the permit holder to comply with an occupational health and
22 safety requirement that applies to the premises; and
23 (b) the request is a reasonable request; and
24 (c) the permit holder fails to comply with the request.
- 25 (3) This Part does not authorise a permit holder to enter, or remain on,
26 premises if:
- 27 (a) an affected employer or the occupier of the premises asks the
28 permit holder to do either or both of the following:
- 29 (i) to hold discussions in a particular room or area of the
30 premises;
- 31 (ii) to take a particular route to reach a particular room or
32 area of the premises; and

- 1 (b) the request is a reasonable request; and
2 (c) the permit holder fails to comply with the request.

3 Note: The AIRC may make an order under section 206 if the request is
4 unreasonable.

- 5 (4) For the purposes of subsection (3), if an affected employer or the
6 occupier requests the permit holder to hold discussions in a
7 particular room or area, or to take a particular route to reach a
8 particular room or area, the request is not unreasonable only
9 because it is not the room, area or route that the permit holder
10 would have chosen.

11 **203 Limitation on rights—permit conditions**

12 A permit holder's rights under this Part in respect of a permit are
13 subject to any conditions that apply to the permit.

14 **204 Exclusion of rights of entry under other industrial laws or** 15 **instruments**

16 If a person:

- 17 (a) is authorised by this Part to enter premises and hold
18 discussions with employees (either generally or in relation to
19 particular matters); or
20 (b) would be so authorised if:
21 (i) the person held a permit that is not subject to any
22 conditions; and
23 (ii) sections 198, 199, 200, 201 and 202 were omitted;

24 then the person has no right under any other industrial law (other
25 than an OHS law), or any State industrial instrument, to enter those
26 premises and hold those discussions with those employees.

Section 205

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Part 6—Miscellaneous

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205 Hindering, obstruction etc. in relation to this Chapter

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- (1) A permit holder exercising, or seeking to exercise, rights under section 188, 189 or 197 must not intentionally hinder or obstruct any person, or otherwise act in an improper manner.

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Note: Grade A civil penalty.

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- (2) A person must not refuse or unduly delay entry to premises by a permit holder who is entitled to enter the premises under section 188, subsection 189(8) or (9) or section 197.

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Note: Grade A civil penalty.

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- (3) An employer must not refuse or fail to comply with a requirement under subsection 189(4) or (5).

14

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Note: Grade A civil penalty.

16

- (4) A person must not otherwise intentionally hinder or obstruct a permit holder exercising rights under section 188, 189 or 197.

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Note: Grade A civil penalty.

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- (5) To avoid doubt, a failure to agree on a place as mentioned in paragraph 189(5)(a) does not constitute hindering or obstructing a permit holder exercising rights under section 189.

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- (6) Without limiting subsection (4), that subsection:

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- (a) extends to hindering or obstructing that occurs after the entry notice is given but before the permit holder enters the premises; and

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- (b) applies whether or not the person who is hindering or obstructing knows at the time which permit holder will be exercising the rights in respect of the entry notice.

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Note: For example, if an entry notice is given to the occupier and a person then destroys, conceals or manufactures evidence relating to the suspected breach, that conduct would amount to hindering or obstructing.

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1 **206 Unreasonable requests by occupier or affected employer**

- 2 (1) If the AIRC is satisfied that:
3 (a) an affected employer or the occupier of premises has made a
4 request to a permit holder as mentioned in section 192 or
5 202; and

6 (b) the request is not a reasonable request;
7 then the AIRC may make whatever orders it considers appropriate
8 in respect of the rights of the union, or officials of the union, to
9 investigate breaches as mentioned in section 188, or to hold
10 discussions with employees as mentioned in section 197, as the
11 case requires.

12 Note: Unreasonable requests might amount to a breach of subsection 205(4).

- 13 (2) Without limiting subsection (1), the AIRC may order that, for a
14 specified period, the permit holder who was exercising or seeking
15 to exercise rights under section 189 or 197 is entitled to enter
16 specified premises, or a specified part of specified premises, for a
17 specified period, and exercise those rights.

- 18 (3) The powers of the AIRC under this section are exercisable by:
19 (a) the President; or
20 (b) a Presidential Member assigned by the President for the
21 purposes of the matter concerned; or
22 (c) a Full Bench, if the President so directs.

- 23 (4) The AIRC may make an order under this section of its own motion
24 or on application in accordance with the regulations.

25 **207 Misrepresentations about right of entry**

- 26 (1) A person must not, in the circumstances mentioned in
27 subsection (2), engage in conduct:
28 (a) with the intention of giving a second person the impression;
29 or
30 (b) reckless as to whether a second person would get the
31 impression;
32 that the first person, or a third person, is authorised by this Chapter
33 to do a particular thing.

Section 208

1 Note: Grade A civil penalty.

2 (2) The circumstances are that:

3 (a) the first person or the third person (as the case requires) is not
4 authorised by this Chapter to do that thing; and

5 (b) the first person knows, or has reasonable grounds to believe,
6 that the first person or the third person (as the case requires)
7 is not authorised by this Chapter to do that thing.

8 **208 ABC Commissioner to be given opportunity to be heard**

9 Before the Industrial Registrar exercises any powers under this
10 Chapter on the application of someone other than the ABC
11 Commissioner, the Industrial Registrar must give the ABC
12 Commissioner an opportunity to be heard on the matter.

13 **209 Powers of AIRC to settle industrial disputes**

14 (1) In spite of section 51, the AIRC may exercise its powers under
15 Part VI of the Workplace Relations Act to prevent and settle
16 industrial disputes about the operation of this Chapter, but must not
17 make an order for that purpose conferring rights that are additional
18 to, or inconsistent with, rights exercisable under this Chapter.

19 (2) However, the AIRC does have power, for the purpose of
20 preventing or settling the industrial dispute, to:

21 (a) revoke or suspend a permit issued to a person under this
22 Chapter; or

23 (b) impose limiting conditions on a permit issued to a person
24 under this Chapter.

25 If the AIRC does so, it may make any order that it considers
26 appropriate, for the purpose of preventing or settling the industrial
27 dispute, about the issue of any further permit to the person, or of
28 any permit or further permit to any other person, under this
29 Chapter.

30 (3) In this section:

31 ***limiting condition*** means a condition that limits the circumstances
32 in which a permit has effect.

Chapter 10—Accountability of organisations

210 Deductions from money held on behalf of member

- (1) A Commonwealth building organisation must not make a membership deduction out of money it holds on behalf of a member unless:
- (a) the member has given a written consent to the organisation in the prescribed form and that consent covers the deduction concerned; and
 - (b) the consent was given not more than 12 months before the deduction is made; and
 - (c) the deduction, when added to other membership deductions previously made by the organisation in relation to the member during the consent period, would not be more than the annual rate of membership fees applicable to the member at the time the consent was given.

Note: Grade A civil penalty.

- (2) In this section:

consent period means the period of 12 months starting when the consent is given.

membership deduction means a deduction in respect of an amount that the member owes to the organisation in relation to the member's membership.

211 Annual statement of money held on behalf of members

- (1) If, at the end of a financial year, a Commonwealth building organisation holds any money on behalf of a member or members of the organisation, then the organisation must lodge a statement in the Industrial Registry and with the ABC Commissioner within 90 days after the end of the financial year. The statement must set out the total amount so held at the end of the financial year.

Note: Grade B civil penalty.

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1 (2) A statement lodged in the Industrial Registry may be inspected at
2 any registry, during office hours, by a member of the organisation.

3 (3) In this section:

4 *financial year*, in relation to an organisation, has the same meaning
5 as in Schedule 1B to the Workplace Relations Act.

6 **212 Annual statement of donations**

7 (1) If a Commonwealth building organisation receives any donation
8 greater than \$500 in a financial year, then the organisation must
9 lodge a statement in the Industrial Registry and with the ABC
10 Commissioner within 90 days after the end of the financial year.

11 Note: Grade B civil penalty.

12 (2) The statement must set out the following details for each donation
13 greater than \$500 that was received by the organisation during the
14 financial year:

- 15 (a) the amount of the donation;
16 (b) the date on which the donation was received;
17 (c) the name and address of the donor;
18 (d) the reason or reasons why the donor made the donation;
19 (e) if the donor indicated that the donation was made for the
20 benefit of a particular branch of the organisation—the name
21 of that branch.

22 (3) The organisation does not contravene subsection (1) by omitting
23 details required by paragraph (2)(c) or (d) if the organisation
24 proves that it could not find out the details, after having made
25 reasonable inquiries.

26 (4) A statement lodged in the Industrial Registry may be inspected at
27 any registry, during office hours, by a member of the organisation.

28 (5) Within 90 days after the end of each year ending on 30 June, the
29 Industrial Registrar must give the Minister and the ABC
30 Commissioner a report about the statements lodged in the
31 Industrial Registry under this section during that year. For each
32 such statement, the Industrial Registrar's report must detail the
33 extent to which the statement complies with this section.

1 (6) In this section:

2 *financial year*, in relation to an organisation, has the same meaning
3 as in Schedule 1B to the Workplace Relations Act.

4 **213 Donation requests to be reported**

5 (1) If:

6 (a) a person (the *requester*) requests another person (the *donor*)
7 to make a donation greater than \$500 to the requester or to
8 someone else; and

9 (b) the requester is acting on behalf of a Commonwealth
10 building organisation; and

11 (c) at the time of the request, the donor is involved in building
12 work as a building client, building employer or building
13 contractor (whether or not the work has actually begun); and

14 (d) if the organisation is a Commonwealth building employee
15 organisation—some or all of the building work is being done,
16 will be done, or could be done, by persons who are members
17 of the organisation or are eligible to be members of the
18 organisation; and

19 (e) if the organisation is a Commonwealth building employer
20 organisation—some or all of the building work is being done,
21 will be done, or could be done, by persons who are employed
22 or engaged by persons who are members of the organisation
23 or are eligible to be members of the organisation; and

24 (f) at the time of the request, the donor knows that the
25 circumstances in paragraphs (b) to (e) apply;

26 then the donor must give the ABC Commissioner written notice of
27 the request within 30 days after the request is made.

28 Note: Grade B civil penalty.

29 (2) The notice must specify the date of the request, the amount (or
30 minimum amount) requested and the name of the Commonwealth
31 building organisation.

32 (3) In this section:

33 *building client* means a person who enters into a contract with a
34 building contractor under which the building contractor agrees to

1 carry out building work or to arrange for building work to be
2 carried out.

3 **214 Financial reports under the Workplace Relations Act**

4 (1) For building reporting units, the Industrial Registrar must make
5 additional guidelines under section 255 of Schedule 1B to the
6 Workplace Relations Act.

7 (2) The additional guidelines must require the reporting unit to
8 disclose:

9 (a) commissions and other economic benefits received or
10 receivable by the reporting unit; and

11 (b) commissions and other economic benefits received or
12 receivable by an officer or employee of the reporting unit (in
13 that capacity); and

14 (c) commissions and other economic benefits received or
15 receivable by, or paid or payable by:

16 (i) an entity that is controlled by the reporting unit; or

17 (ii) an entity that is controlled by a person in the capacity of
18 an officer or employee of the reporting unit, where that
19 control is:

20 (A) for the benefit of the reporting unit or another
21 reporting unit of the organisation concerned; or

22 (B) to assist in the activities of the reporting unit or
23 another reporting unit of the organisation
24 concerned; or

25 (C) for the benefit of an officer, employee or
26 member of the reporting unit or an officer,
27 employee or member of another reporting unit
28 of the organisation concerned; or

29 (D) to assist in the activities of an officer, employee
30 or member of the reporting unit or an officer,
31 employee or member of another reporting unit
32 of the organisation concerned.

33 (3) The additional guidelines must also provide the manner in which
34 those commissions and other economic benefits must be disclosed.

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- 1 (4) The additional guidelines cannot require a reporting unit to
2 disclose information under paragraph (2)(c) if the disclosure of the
3 information to the reporting unit by the entity referred to in that
4 paragraph would contravene any law of the Commonwealth or of a
5 State or Territory.
- 6 (5) Section 254 of Schedule 1B to the Workplace Relations Act has
7 effect in relation to a building reporting unit as if that section also
8 required the reporting unit to give details of:
- 9 (a) each entity in which the reporting unit has a financial
10 interest; and
 - 11 (b) each entity in which an officer, employee or member of the
12 reporting unit holds a position as a trustee or director, where
13 one of the criteria for holding the position is that the person is
14 an officer, employee or member of an organisation; and
 - 15 (c) each entity that is controlled by the reporting unit; and
 - 16 (d) each entity that is controlled by a person acting in the
17 capacity of an officer or employee of the reporting unit.
- 18 (6) Within 90 days after the end of each year ending on 30 June, the
19 Industrial Registrar must give the Minister and the ABC
20 Commissioner a report about:
- 21 (a) reports lodged in that year by a building reporting unit under
22 section 268 of Schedule 1B to the Workplace Relations Act;
23 and
 - 24 (b) reports received in that year by the Industrial Registrar from
25 a building reporting unit under section 270 of Schedule 1B to
26 the Workplace Relations Act.
- 27 For each such report, the Industrial Registrar's report must detail
28 the extent to which the report complies with Schedule 1B to the
29 Workplace Relations Act (as modified by subsection (1) of this
30 section).
- 31 (7) In this section:
- 32 **building reporting unit** means a reporting unit within the meaning
33 of section 242 of Schedule 1B to the Workplace Relations Act,
34 where the organisation is a Commonwealth building organisation.

Section 215

- 1 (8) For the purposes of this section, a person or reporting unit *controls*
2 an entity if the person or reporting unit has the capacity to
3 dominate decision-making, directly or indirectly, in relation to the
4 financial and operating policies of the entity so as to enable the
5 entity to operate with the person or reporting unit in achieving the
6 objectives of the person or reporting unit.

7 **215 Deregistration for failing to satisfy judgment debt**

- 8 (1) This section applies if:
9 (a) a court has made an order (the *payment order*) under which a
10 Commonwealth building organisation has been ordered to
11 pay unlawful action damages to a person by a specified date;
12 and
13 (b) the damages are not paid in full by that date.
- 14 (2) The ABC Commissioner may apply to the Industrial Registrar for
15 the issue of a deregistration certificate. The application must be
16 accompanied by a copy of the payment order together with
17 evidence that paragraph (1)(b) applies.
- 18 (3) If the ABC Commissioner applies in accordance with
19 subsection (2), then the Industrial Registrar must immediately issue
20 a certificate (a *deregistration certificate*) in respect of the
21 organisation and cause the certificate to be served on the
22 organisation in accordance with the regulations.
- 23 (4) The Industrial Registrar cannot issue a deregistration certificate:
24 (a) at a time when an appeal is pending against the payment
25 order; or
26 (b) at a time when a person has a right to lodge such an appeal,
27 disregarding:
28 (i) a right that arose because the person was granted an
29 extension of time for lodging an appeal; and
30 (ii) a right that depends on the person being granted leave to
31 appeal or being granted an extension of time for lodging
32 an appeal.
- 33 (5) If an appeal against the payment order is lodged after the issue of
34 the deregistration certificate but before the registration is cancelled

- 1 under this section, then the deregistration certificate is treated as
2 never having been issued.
- 3 (6) Subject to subsections (7) and (8), the organisation's registration is
4 cancelled by force of this subsection at the end of the 14th day
5 after the day of service of the certificate, unless the unlawful action
6 damages have been paid in full before the end of that 14th day.
- 7 (7) The cancellation cannot take effect at the end of that 14th day if, at
8 the end of that 14th day, an appeal is pending in relation to the
9 issue of the certificate.
- 10 (8) If:
11 (a) subsection (7) prevented the cancellation taking effect at the
12 end of the 14th day; and
13 (b) at the end of a later day, there is no longer any appeal
14 pending in relation to the issue of the certificate; and
15 (c) the issue of the certificate has not been overturned on appeal;
16 then the cancellation takes effect at the end of that later day.
- 17 (9) In subsections (7) and (8), *appeal* includes:
18 (a) an appeal under section 81 of the Workplace Relations Act;
19 and
20 (b) an application to the High Court under paragraph 75(v) of the
21 Constitution; and
22 (c) an application to the Federal Court under section 39B of the
23 *Judiciary Act 1903*.
- 24 (10) Section 32 of Schedule 1B to the Workplace Relations Act applies
25 in relation to the deregistration in the same way as it applies to a
26 deregistration under that Schedule.
- 27 Note: That section deals with the consequences of deregistration.

28 **216 Additional ground for deregistration by Federal Court**

- 29 (1) Section 28 of Schedule 1B to the Workplace Relations Act applies
30 in relation to a Commonwealth building organisation as if
31 subsection 28(1) of that Schedule included the ground that:
32 (a) the organisation; or
33 (b) a substantial number of the members of the organisation; or
-

Section 217

- 1 (c) a section or class of members of the organisation;
2 has or have failed to comply with an injunction, or an interim
3 injunction, granted under this Act.
- 4 (2) A finding of fact by the Federal Court in proceedings under this
5 Act for an injunction, or an interim injunction, is admissible as
6 prima facie evidence of that fact in an application that is made
7 under section 28 of Schedule 1B to the Workplace Relations Act
8 on the ground mentioned in subsection (1) of this section.

9 **217 Disqualification of officials**

- 10 (1) On application by the ABC Commissioner, the Federal Court may
11 make an order mentioned in paragraph (2)(a), with or without an
12 order mentioned in paragraph (2)(b), in relation to a person who:
13 (a) has been found, in other proceedings, to have contravened:
14 (i) a civil penalty provision in this Act; or
15 (ii) a civil penalty provision in the Workplace Relations Act
16 (whether or not the contravention relates to building
17 work); or
18 (b) under a State industrial law, has at any time been disqualified
19 by a court or other body from holding office in an industrial
20 association.
- 21 (2) The orders are:
22 (a) an order that a specified disqualification period applies to the
23 person; and
24 (b) an order directing the person, during the disqualification
25 period, not to engage in specified conduct in relation to any
26 Commonwealth building organisation.
- 27 (3) In exercising its powers under this section, the Court must have
28 regard to the following matters:
29 (a) the nature of the contravention referred to in
30 paragraph (1)(a), or the reasons for the disqualification
31 referred to in paragraph (1)(b), as the case requires;
32 (b) the circumstances of, and the nature of the person's
33 involvement in, that contravention or disqualification;
34 (c) the general character of the person;

- 1 (d) the fitness of the person to be involved in the management of
2 Commonwealth building organisations, having regard to the
3 matter in paragraph (1)(a) or paragraph (1)(b), as the case
4 requires;
5 (e) any other matter that, in the Court's opinion, is relevant.
- 6 (4) If the Court orders a disqualification period, then:
7 (a) if the person holds any office in a Commonwealth building
8 organisation—the person ceases to hold that office at the start
9 of the disqualification period; and
10 (b) during the disqualification period, the person is not eligible to
11 be a candidate for election, or to be elected or appointed, to
12 an office in any Commonwealth building organisation.

13 218 Transactions to defeat creditors

- 14 (1) If:
15 (a) a court makes an order (the *original order*) under section 227
16 requiring a Commonwealth building organisation to pay
17 unlawful action damages (the *judgment debt*) to a person (the
18 *judgment creditor*) by a specified date; and
19 (b) the damages are not paid in full by the specified date; and
20 (c) either before or after the time of the original order, the
21 organisation entered into a transaction (the *designated*
22 *transaction*):
23 (i) with intent to defeat one or more creditors of the
24 organisation; or
25 (ii) with reckless disregard of the interests of one or more
26 creditors of the organisation;
27 then the Federal Court, on application by the judgment creditor,
28 may make an order directing a person (the *beneficiary*) to pay to
29 the judgment creditor, in satisfaction of the unsatisfied amount of
30 the judgment debt, an amount not exceeding an amount that, in the
31 Court's opinion, fairly represents some or all of the benefits that
32 the beneficiary has received because of the designated transaction.
- 33 (2) The Court cannot make an order under this section if it is satisfied
34 that the organisation itself is able to discharge the judgment debt.

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- 1 (3) The Court cannot make an order under this section materially
2 prejudicing a right or interest of a person who was not a party to
3 the designated transaction if it is proved that:
4 (a) the person received no benefit because of the transaction; or
5 (b) in relation to each benefit that the person received because of
6 the transaction:
7 (i) the person received the benefit in good faith; and
8 (ii) at the time of receiving the benefit, the person did not
9 suspect, and had no reasonable grounds for suspecting,
10 that the transaction was entered into by the organisation
11 in the manner mentioned in paragraph (1)(c).
- 12 (4) The Court cannot make an order under this section materially
13 prejudicing a right or interest of a party to the designated
14 transaction if it is proved that:
15 (a) the person became a party in good faith; and
16 (b) at the time of becoming a party, the person did not suspect,
17 and had no reasonable grounds for suspecting, that the
18 transaction was entered into by the organisation in the
19 manner mentioned in paragraph (1)(c); and
20 (c) the person provided valuable consideration under the
21 transaction or changed the person's position in reliance on
22 the transaction.
- 23 (5) If a person is required to pay an amount under this section, then the
24 person has the right (by force of this section) to recover that
25 amount as a debt from the organisation.
- 26 (6) In this section:
27 *creditor* includes a person who could reasonably have been
28 foreseen by the organisation as being reasonably likely to become a
29 creditor of the organisation.

Chapter 11—Demarcation orders

219 Orders about representation rights of Commonwealth employee organisations

(1) Subject to this Chapter and subsection 151(6) of Schedule 1B to the Workplace Relations Act, the AIRC may, on the application of an eligible person, make the following orders in relation to a demarcation dispute that relates to building employees (whether or not the dispute also relates to other employees):

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

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

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

(2) On application by an eligible person, the AIRC may set aside, revoke or vary an order made under subsection (1).

(3) In this section:

eligible person means any of the following:

(a) an organisation;

(b) an employer;

(c) the Minister;

(d) the ABC Commissioner;

Section 220

- 1 (e) any person who is, or is likely to be, adversely affected
2 (whether directly or indirectly) by the demarcation dispute.

3 **220 Preconditions for making order**

4 The AIRC must not make an order unless the AIRC is satisfied
5 that:

- 6 (a) the conduct, or threatened conduct, of an employee
7 organisation to which the order would relate, or of an officer,
8 member or employee of the organisation:
9 (i) is preventing, obstructing or restricting the performance
10 of work; or
11 (ii) is causing financial harm to any person, whether
12 directly or indirectly; 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 **221 Factors to be taken into account by AIRC**

18 In considering whether to make an order under section 219, the
19 AIRC must have regard to the wishes of the employees who are
20 affected by the dispute and, where the AIRC considers it
21 appropriate, must also 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 AIRC becomes
27 aware that deals with the right of an employee organisation to
28 represent under this Act or the Workplace Relations Act the
29 industrial interests of a particular class or group of
30 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 AIRC, in relation to another
34 demarcation dispute involving the employee organisation to

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

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

7 **222 Order may be subject to limits**

8 The order may be subject to conditions or limitations.

9 **223 Organisation must comply with order**

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

12 Note: Grade A civil penalty.

13 (2) The Federal Court may, on application by the Minister, the ABC
14 Commissioner or a person affected by an order made under
15 section 219, make such orders as it thinks fit to ensure compliance
16 with that order.

17 **224 Exercise of AIRC's powers under this Chapter**

18 The powers of the AIRC under this Chapter are exercisable only by
19 a Full Bench or Presidential Member.

20 **225 Exclusion of power to make order under Workplace Relations
21 Act**

22 If an order can be made under this Chapter in relation to a
23 demarcation dispute, then an order cannot be made in relation to
24 that dispute under Chapter 4 of Schedule 1B to the Workplace
25 Relations Act.

1
2 **Chapter 12—Enforcement**

3 **Part 1—Contravention of civil penalty provisions**
4

5 **226 Definitions**

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

7 *appropriate court* means:

- 8 (a) for a contravention of section 74—the Federal Court, the
9 Federal Magistrates Court, a Supreme Court of a State or
10 Territory or a District Court, or County Court, of a State; or
11 (b) for any other contravention—the Federal Court.

12 *pecuniary penalty order* means an order under paragraph
13 227(1)(a).

14 *person*, in relation to a contravention of a civil penalty provision,
15 includes an industrial association.

16 (2) For the purposes of this Part, a person who is involved in a
17 contravention of a civil penalty provision is treated as having
18 contravened that provision. For this purpose, a person is *involved*
19 *in* a contravention of a civil penalty provision if, and only if, the
20 person:

- 21 (a) has aided, abetted, counselled or procured the contravention;
22 or
23 (b) has induced the contravention, whether by threats or
24 promises or otherwise; or
25 (c) has been in any way, by act or omission, directly or
26 indirectly, knowingly concerned in or party to the
27 contravention; or
28 (d) has conspired with others to effect the contravention.

1 **227 Penalties etc. for contravention of civil penalty provision**

- 2 (1) An appropriate court, on application by an eligible person, may
3 make one or more of the following orders in relation to a person
4 (the *defendant*) who has contravened a civil penalty provision:
5 (a) an order imposing a pecuniary penalty on the defendant;
6 (b) an order requiring the defendant to pay a specified amount to
7 another person as compensation for damage suffered by the
8 other person as a result of the contravention;
9 (c) any other order that the court considers appropriate.
- 10 (2) The maximum pecuniary penalty is:
11 (a) for a Grade A civil penalty provision—1,000 penalty units if
12 the defendant is a body corporate and otherwise 200 penalty
13 units; and
14 (b) for a Grade B civil penalty provision—100 penalty units if
15 the defendant is a body corporate and otherwise 20 penalty
16 units.
- 17 (3) The orders that may be made under paragraph (1)(c) include:
18 (a) injunctions (including interim injunctions); and
19 (b) any other orders that the court considers necessary to stop the
20 conduct or remedy its effects, including orders for the
21 sequestration of assets.
- 22 (4) If the contravention is a contravention of section 74, then the
23 power of the court to grant an injunction restraining a person (the
24 *defendant*) from engaging in conduct may be exercised:
25 (a) whether or not it appears to the court that the defendant
26 intends to engage again, or to continue to engage, in conduct
27 of that kind; and
28 (b) whether or not the defendant has previously engaged in
29 conduct of that kind; and
30 (c) whether or not there is an imminent danger of substantial
31 damage to any person if the defendant engages in conduct of
32 that kind.
- 33 (5) A pecuniary penalty is payable to the Commonwealth, or to some
34 other person if the court so directs. It may be recovered as a debt.

Section 228

- 1 (6) Each of the following is an *eligible person* for the purposes of this
2 section:
3 (a) the ABC Commissioner;
4 (b) a person affected by the contravention;
5 (c) a person prescribed by the regulations for the purposes of this
6 paragraph.
- 7 (7) A regulation prescribing persons for the purposes of
8 paragraph (6)(c) may provide that a person is prescribed only in
9 relation to circumstances specified in the regulation.

10 **228 Multiple proceedings for same conduct**

- 11 (1) A court must not make a pecuniary penalty order against a person
12 for a contravention if the person has been convicted of an offence
13 constituted by conduct that is substantially the same as the conduct
14 constituting the contravention.
- 15 (2) Proceedings for a pecuniary penalty order against a person are
16 stayed if:
17 (a) criminal proceedings are started or have already been started
18 against the person for an offence; and
19 (b) the offence is constituted by conduct that is substantially the
20 same as the conduct alleged to constitute the contravention.
21 The proceedings for the order may be resumed if the person is not
22 convicted of the offence. Otherwise, the proceedings for the order
23 are dismissed.
- 24 (3) Criminal proceedings may be started against a person for conduct
25 that is substantially the same as conduct constituting a
26 contravention of a civil penalty provision regardless of whether an
27 order under this Part has been made against the person.

28 **229 Evidence given in proceedings for penalty not admissible in**
29 **criminal proceedings**

30 Evidence of information given by an individual, or evidence of
31 production of documents by an individual, is not admissible in
32 criminal proceedings against the individual if:

- 1 (a) the individual previously gave the evidence or produced the
2 documents in proceedings for a pecuniary penalty order
3 against the individual for a contravention of a civil penalty
4 provision (whether or not the order was made); and
5 (b) the conduct alleged to constitute the offence is substantially
6 the same as the conduct that was claimed to constitute the
7 contravention.

8 However, this does not apply to a criminal proceeding in respect of
9 the falsity of the evidence given by the individual in the
10 proceedings for the pecuniary penalty order.

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2 **Part 2—Compliance etc. powers**

3 **Division 1—ABC Commissioner's powers to obtain**
4 **information etc.**

5 **230 ABC Commissioner's powers to obtain information etc.**

6 *ABC Commissioner may require information, documents etc.*

- 7 (1) If the ABC Commissioner believes on reasonable grounds that a
8 person:
9 (a) has information or documents relevant to an investigation; or
10 (b) is capable of giving evidence that is relevant to an
11 investigation;
12 the ABC Commissioner may, by written notice given to the person,
13 require the person:
14 (c) to give the information to the ABC Commissioner, or to an
15 assistant, by the time, and in the manner and form, specified
16 in the notice; or
17 (d) to produce the documents to the ABC Commissioner, or to
18 an assistant, by the time, and in the manner, specified in the
19 notice; or
20 (e) to attend before the ABC Commissioner, or an assistant, at
21 the time and place specified in the notice, and answer
22 questions relevant to the investigation.
- 23 (2) The time specified under paragraph (1)(c), (d) or (e) must be at
24 least 14 days after the notice is given.

25 *Legal representation*

- 26 (3) A person attending before the ABC Commissioner, or before an
27 assistant, as mentioned in paragraph (1)(e) may, if the person so
28 chooses, be represented by a person who, under the *Judiciary Act*
29 *1903*, is entitled to practise as a barrister or solicitor, or both, in a
30 federal court.

1 *Oath or affirmation*

- 2 (4) The ABC Commissioner, or an assistant, may require the
3 information or answers to be verified by, or given on, oath or
4 affirmation, and either orally or in writing. For that purpose, the
5 ABC Commissioner, or an assistant, may administer the oath or
6 affirmation.
- 7 (5) The oath or affirmation is an oath or affirmation that the
8 information or answers are or will be true.

9 *Offence*

- 10 (6) A person commits an offence if:
11 (a) the person has been given a notice under subsection (1); and
12 (b) the person fails:
13 (i) to give the required information by the time, and in the
14 manner and form, specified in the notice; or
15 (ii) to produce the required documents by the time, and in
16 the manner, specified in the notice; or
17 (iii) to attend to answer questions at the time and place
18 specified in the notice; or
19 (iv) to take an oath or make an affirmation, when required to
20 do so under subsection (4); or
21 (v) to answer questions relevant to the investigation while
22 attending as required by the notice.

23 Penalty: Imprisonment for 6 months.

24 *Effect of other laws*

- 25 (7) The operation of this section is not limited by any secrecy
26 provision of any other law (whether enacted before or after the
27 commencement of this section), except to the extent that the
28 secrecy provision expressly excludes the operation of this section.
29 For this purpose, **secrecy provision** means a provision that
30 prohibits the communication or divulging of information.

31 *Definitions*

- 32 (8) In this section:
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Section 231

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assistant means:

- (a) a Deputy ABC Commissioner; or
- (b) an ABC inspector; or
- (c) a person referred to in subsection 25(1) or (3) who is assisting the ABC Commissioner.

investigation means an investigation by the ABC Commissioner into a contravention, by a building industry participant, of a designated building law.

231 Certain excuses not available in relation to section 230 requirements

Excuses that are not available

- (1) A person is not excused from giving information, producing a document, or answering a question, under section 230 on the ground that to do so:
 - (a) would contravene any other law; or
 - (b) might tend to incriminate the person or otherwise expose the person to a penalty or other liability; or
 - (c) would be otherwise contrary to the public interest.

Use/derivative use indemnity

- (2) However, neither:
 - (a) the information or answer given or the document produced; nor
 - (b) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer or producing the document;is admissible in evidence against the person in proceedings, other than:
 - (c) proceedings for an offence against subsection 230(6); or
 - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act; or
 - (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act.

1 **232 Protection from liability**

2 A person who, in good faith:

- 3 (a) gives information; or
4 (b) produces a document; or
5 (c) answers a question;

6 when requested or required to do so under section 230 is not liable
7 to:

- 8 (d) any proceedings for contravening any other law because of
9 that conduct; or
10 (e) civil proceedings for loss, damage or injury of any kind
11 suffered by another person because of that conduct.

12 **233 Retention and copying etc. of documents**

13 *ABC Commissioner may keep documents*

- 14 (1) The ABC Commissioner may take possession of a document
15 produced under section 230 and keep it for as long as is necessary
16 for the purposes of conducting the investigation to which the
17 document is relevant.

18 *Certified copy to be supplied to person entitled to document*

- 19 (2) The person otherwise entitled to possession of the document is
20 entitled to be supplied, as soon as practicable, with a copy that is
21 certified, by one of the following persons, to be a true copy:
22 (a) the ABC Commissioner;
23 (b) a Deputy ABC Commissioner;
24 (c) an ABC inspector;
25 (d) a person referred to in subsection 25(1) or (3) who is
26 assisting the ABC Commissioner.

27 *Certified copy to be treated as original*

- 28 (3) The certified copy must be received in all courts and tribunals as
29 evidence as if it were the original.

Chapter 12 Enforcement

Part 2 Compliance etc. powers

Division 1 ABC Commissioner's powers to obtain information etc.

Section 234

1

Right to inspect and copy the original

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- (4) Until a certified copy is supplied, the ABC Commissioner must, at such times and places as the ABC Commissioner considers appropriate, permit the person otherwise entitled to possession of the document (or a person authorised by that person) to inspect and make copies of all or part of the document.

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234 ABC Commissioner may make and keep copies of documents

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The ABC Commissioner may make and keep copies of all or part of any documents produced under section 230.

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2 **Division 2—Powers of ABC Inspectors**
3

4 **235 Australian Building and Construction Inspectors**

- 5 (1) The ABC Commissioner may, by written instrument, appoint any
6 of the following persons as an Australian Building and
7 Construction Inspector (*ABC Inspector*):
8 (a) a person who is an employee of the Commonwealth or who
9 holds an office or appointment under a law of the
10 Commonwealth;
11 (b) a person who is an employee of a State or Territory or who
12 holds an office or appointment under a law of a State or
13 Territory;
14 (c) a consultant engaged by the ABC Commissioner under
15 section 25.
- 16 (2) The ABC Commissioner must not appoint a person referred to in
17 paragraph (1)(c) as an ABC Inspector unless the ABC
18 Commissioner is satisfied that the person is an appropriate person
19 to be appointed as an ABC Inspector.
- 20 (3) The ABC Commissioner is an ABC Inspector by force of this
21 subsection.
- 22 (4) In exercising powers or performing functions as an ABC Inspector,
23 an ABC Inspector appointed under subsection (1) must comply
24 with any directions of the ABC Commissioner.

25 **236 Identity cards for ABC Inspectors**

- 26 (1) The ABC Commissioner must issue to an ABC Inspector
27 appointed under subsection 235(1) an identity card in the form
28 prescribed by the regulations. The identity card must contain a
29 recent photograph of the ABC Inspector.
- 30 (2) The Minister must issue to the ABC Commissioner an identity card
31 in the form prescribed by the regulations. The identity card must
32 contain a recent photograph of the ABC Commissioner.

Section 237

- 1 (3) If a person to whom an identity card has been issued ceases to be
2 an ABC Inspector, the person must, within 14 days, return the
3 identity card to the ABC Commissioner, or the Minister, as the
4 case requires.
- 5 (4) A person must not contravene subsection (3).
6 Penalty: 1 penalty unit.
- 7 (5) An offence against subsection (4) is an offence of strict liability.
8 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 9 (6) Subsection (4) does not apply if the person has a reasonable
10 excuse.
11 Note: A defendant bears an evidential burden in relation to the matter in
12 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).
- 13 (7) An ABC Inspector must carry the identity card at all times when
14 exercising powers or performing functions as an ABC Inspector.

15 **237 Power to enter premises etc.**

- 16 (1) An ABC Inspector may exercise powers under this section for the
17 following purposes (*compliance purposes*):
18 (a) ascertaining whether a designated building law has been
19 complied with, or is being complied with, by a building
20 industry participant;
21 (b) ascertaining whether a court order relating to a designated
22 building law has been complied with, or is being complied
23 with, by a building industry participant;
24 (c) ascertaining whether the Building Code has been complied
25 with, or is being complied with, by a building industry
26 participant;
27 Note: Section 26 specifies the persons who can be required to comply
28 with the Building Code.
29 (d) making an assessment referred to in section 77.
- 30 (2) The powers may be exercised at any time during ordinary working
31 hours or at any other time at which it is necessary to do so for
32 compliance purposes.

- 1 (3) An ABC Inspector may, without force, enter:
2 (a) any premises on which the inspector has reasonable cause to
3 believe that building work is being carried out, or has been
4 carried out, being building work:
5 (i) to which a Commonwealth industrial instrument applies
6 or applied; or
7 (ii) to which the Building Code applies or applied; or
8 (b) any premises on which the inspector has reasonable cause to
9 believe that there are documents relevant to compliance
10 purposes; or
11 (c) any premises on which the inspector has reasonable cause to
12 believe that a breach by a building industry participant of a
13 designated building law or the Building Code, has occurred,
14 is occurring or is likely to occur.
- 15 (4) Subsection (3) does not authorise entry onto a part of premises if
16 that part is used for residential purposes.
- 17 (5) An ABC Inspector may do any of the following on premises
18 referred to in subsection (3):
19 (a) inspect any work, material, machinery, appliance, article or
20 facility;
21 (b) as prescribed by the regulations, take samples of any goods
22 or substances;
23 (c) interview any person;
24 (d) inspect, and make copies of, any document that is on the
25 premises, or is accessible from a computer that is kept on the
26 premises, being a document that the inspector believes, on
27 reasonable grounds, to be relevant to compliance purposes;
28 (e) require a person who has the custody of, or access to, a
29 document to produce the document to the inspector within a
30 specified period.
- 31 (6) If a person fails to comply with a requirement under subsection (5)
32 to produce a document, an ABC Inspector may, by written notice
33 served on the person, require the person to produce the document
34 at a specified place within a specified period (not being less than
35 14 days).

Section 237

- 1 (7) Where a document is produced to an ABC Inspector under
2 paragraph (5)(e) or subsection (6), the inspector may:
3 (a) inspect and copy the document; and
4 (b) if the inspector gives a receipt to the person who produced
5 the document—retain the document for as long as necessary
6 for the purpose of exercising powers or performing functions
7 as an ABC Inspector.
- 8 (8) While an ABC Inspector retains a document, the inspector must
9 permit the document to be inspected and copied, at any reasonable
10 time, by:
11 (a) the person otherwise entitled to possession of the document;
12 or
13 (b) a person authorised by the person otherwise entitled to
14 possession of the document.
- 15 (9) An ABC Inspector may, without force, enter business premises in
16 which a person ordinarily performs work or conducts business if
17 the inspector has reasonable cause to believe that the person has
18 information relevant to compliance purposes.
- 19 (10) An ABC Inspector must not enter business premises under
20 subsection (9) if the inspector has reasonable cause to believe that
21 the person concerned is not in that place.
- 22 (11) An ABC Inspector who enters premises under subsection (9) may
23 interview the person concerned in that place.
- 24 (12) For the avoidance of doubt, a refusal or failure by a person to
25 participate in an interview under this section is not to be treated as
26 conduct covered by section 149.1 of the *Criminal Code*.
- 27 (13) Before entering premises under this section, an ABC Inspector
28 must announce that the inspector is authorised to enter the place. If
29 the occupier or another person who apparently represents the
30 occupier is present, the inspector must produce the inspector's
31 identity card to that person for inspection.
- 32 (14) The occupier of premises must not refuse or unduly delay entry to
33 the premises by an ABC inspector exercising powers under this
34 section.

1 Note: Grade A civil penalty.

2 (15) In this section:

3 **copy**, in relation to a document, includes take extracts from the
4 document.

5 Note: The *Criminal Code* contains offences for obstructing or hindering
6 Commonwealth public officials.

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Division 3—Powers of Federal Safety Officers

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238 Federal Safety Officers

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- (1) The Federal Safety Commissioner may, by written instrument, appoint any of the following persons as a Federal Safety Officer:
 - (a) a person who is an employee of the Commonwealth or who holds an office or appointment under a law of the Commonwealth;
 - (b) a person who is an employee of a State or Territory or who holds an office or appointment under a law of a State or Territory;
 - (c) a consultant engaged by the Federal Safety Commissioner under section 45.
- (2) The Federal Safety Commissioner must not appoint a person referred to in paragraph (1)(c) as a Federal Safety Officer unless the Federal Safety Commissioner is satisfied that the person is an appropriate person to be appointed as a Federal Safety Officer.
- (3) The Federal Safety Commissioner is a Federal Safety Officer by force of this subsection.
- (4) In exercising powers or performing functions as a Federal Safety Officer, a Federal Safety Officer appointed under subsection (1) must comply with any directions of the Federal Safety Commissioner.

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239 Identity cards for Federal Safety Officers

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- (1) The Federal Safety Commissioner must issue to a Federal Safety Officer appointed under subsection 238(1) an identity card in the form prescribed by the regulations. The identity card must contain a recent photograph of the Federal Safety Officer.
- (2) The Minister must issue to the Federal Safety Commissioner an identity card in the form prescribed by the regulations. The identity

- 1 card must contain a recent photograph of the Federal Safety
2 Commissioner.
- 3 (3) If a person to whom an identity card has been issued ceases to be a
4 Federal Safety Officer, the person must, within 14 days, return the
5 identity card to the Federal Safety Commissioner, or the Minister,
6 as the case requires.
- 7 (4) A person must not contravene subsection (3).
- 8 Penalty: 1 penalty unit.
- 9 (5) An offence against subsection (4) is an offence of strict liability.
10 Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- 11 (6) Subsection (4) does not apply if the person has a reasonable
12 excuse.
13 Note: A defendant bears an evidential burden in relation to the matter in
14 subsection (6) (see subsection 13.3(3) of the *Criminal Code*).
- 15 (7) A Federal Safety Officer must carry the identity card at all times
16 when exercising powers or performing functions as a Federal
17 Safety Officer.

18 **240 Powers to enter premises etc. to ascertain compliance with**
19 **Building Code**

- 20 (1) A Federal Safety Officer may exercise powers under this section
21 for the purpose (a *compliance purpose*) of ascertaining whether the
22 Building Code has been complied with, or is being complied with,
23 by a building industry participant.
24 Note: Section 26 specifies the persons who can be required to comply with
25 the Building Code.
- 26 (2) The powers may be exercised at any time during ordinary working
27 hours or at any other time at which it is necessary to do so for a
28 compliance purpose.
- 29 (3) A Federal Safety Officer may, without force, enter:
30 (a) any premises on which the officer has reasonable cause to
31 believe that building work is being carried out, or has been

Section 240

- 1 carried out, being building work to which the Building Code
2 applies or applied; or
3 (b) any premises on which the officer has reasonable cause to
4 believe that a breach by a building industry participant of the
5 Building Code has occurred, is occurring or is likely to occur.
- 6 (4) Subsection (3) does not authorise entry onto a part of premises if
7 that part is used for residential purposes.
- 8 (5) A Federal Safety Officer may do any of the following on premises
9 referred to in subsection (3):
10 (a) inspect any work, material, machinery, appliance, article or
11 facility;
12 (b) as prescribed by the regulations, take samples of any goods
13 or substances;
14 (c) interview any person;
15 (d) inspect, and make copies of, any document that is on the
16 premises, or is accessible from a computer that is kept on the
17 premises, being a document that the officer believes, on
18 reasonable grounds, to be relevant to compliance purposes;
19 (e) require a person who has the custody of, or access to, a
20 document to produce the document to the officer within a
21 specified period.
- 22 (6) If a person fails to comply with a requirement under subsection (5)
23 to produce a document, a Federal Safety Officer may, by written
24 notice served on the person, require the person to produce the
25 document at a specified place within a specified period (not being
26 less than 14 days).
- 27 (7) Where a document is produced to a Federal Safety Officer under
28 paragraph (5)(e) or subsection (6), the officer may:
29 (a) inspect and copy the document; and
30 (b) if the Federal Safety Officer gives a receipt to the person who
31 produced the document—retain the document for as long as
32 necessary for the purpose of exercising powers or performing
33 functions as a Federal Safety Officer.

- 1 (8) While a Federal Safety Officer retains a document, the officer must
2 permit the document to be inspected and copied, at any reasonable
3 time, by:
- 4 (a) the person otherwise entitled to possession of the document;
5 or
6 (b) a person authorised by the person otherwise entitled to
7 possession of the document.
- 8 (9) A Federal Safety Officer may, without force, enter business
9 premises in which a person ordinarily performs work or conducts
10 business if the officer has reasonable cause to believe that the
11 person has information relevant to compliance purposes.
- 12 (10) A Federal Safety Officer must not enter business premises under
13 subsection (9) if the officer has reasonable cause to believe that the
14 person concerned is not in that place.
- 15 (11) A Federal Safety Officer who enters premises under subsection (9)
16 may interview the person concerned in that place.
- 17 (12) For the avoidance of doubt, a refusal or failure by a person to
18 participate in an interview under this section is not to be treated as
19 conduct covered by section 149.1 of the *Criminal Code*.
- 20 (13) Before entering premises under this section, a Federal Safety
21 Officer must announce that the officer is authorised to enter the
22 place. If the occupier or another person who apparently represents
23 the occupier is present, the officer must produce the officer's
24 identity card to that person for inspection.
- 25 (14) The occupier of premises must not refuse or unduly delay entry to
26 the premises by a Federal Safety Officer exercising powers under
27 this section.
- 28 Note: Grade A civil penalty.
- 29 (15) In this section:
- 30 **copy**, in relation to a document, includes take extracts from the
31 document.
- 32 Note: The *Criminal Code* contains offences for obstructing or hindering
33 Commonwealth public officials.

1 **241 Powers to enter premises etc. to ascertain compliance with**
2 **accreditation scheme**

- 3 (1) A Federal Safety Officer may exercise powers under this section
4 for the following purposes (*compliance purposes*):
- 5 (a) ascertaining whether a constitutional corporation that is an
6 applicant for accreditation meets the accreditation
7 requirements;
 - 8 (b) ascertaining whether a constitutional corporation that is an
9 accredited person has complied, or is complying, with
10 conditions of the accreditation;
 - 11 (c) ascertaining whether an accredited person has complied, or is
12 complying, with conditions of the accreditation in respect of
13 building work in a Territory or Commonwealth place.
- 14 (2) The powers may be exercised at any time during ordinary working
15 hours or at any other time at which it is necessary to do so for
16 compliance purposes.
- 17 (3) A Federal Safety Officer may, without force, enter:
- 18 (a) any premises on which the officer has reasonable cause to
19 believe that building work is being carried out, or has been
20 carried out, by the applicant or accredited person referred to
21 in subsection (1); or
 - 22 (b) any premises on which the officer has reasonable cause to
23 believe that there are documents relevant to compliance
24 purposes.
- 25 (4) Subsection (3) does not authorise entry onto a part of premises if
26 that part is used for residential purposes.
- 27 (5) A Federal Safety Officer may do any of the following on premises
28 referred to in subsection (3):
- 29 (a) inspect any work, material, machinery, appliance, article or
30 facility;
 - 31 (b) as prescribed by the regulations, take samples of any goods
32 or substances;
 - 33 (c) interview any person;
 - 34 (d) inspect, and make copies of, any document that is on the
35 premises, or is accessible from a computer that is kept on the

- 1 premises, being a document that the officer believes, on
2 reasonable grounds, to be relevant to compliance purposes;
- 3 (e) require a person who has the custody of, or access to, a
4 document to produce the document to the officer within a
5 specified period.
- 6 (6) If a person fails to comply with a requirement under subsection (5)
7 to produce a document, a Federal Safety Officer may, by written
8 notice served on the person, require the person to produce the
9 document at a specified place within a specified period (not being
10 less than 14 days).
- 11 (7) Where a document is produced to a Federal Safety Officer under
12 paragraph (5)(e) or subsection (6), the officer may:
- 13 (a) inspect and copy the document; and
14 (b) if the Federal Safety Officer gives a receipt to the person who
15 produced the document—retain the document for as long as
16 necessary for the purpose of exercising powers or performing
17 functions as a Federal Safety Officer.
- 18 (8) While a Federal Safety Officer retains a document, the officer must
19 permit the document to be inspected and copied, at any reasonable
20 time, by:
- 21 (a) the person otherwise entitled to possession of the document;
22 or
23 (b) a person authorised by the person otherwise entitled to
24 possession of the document.
- 25 (9) A Federal Safety Officer may, without force, enter business
26 premises in which a person ordinarily performs work or conducts
27 business if the officer has reasonable cause to believe that the
28 person has information relevant to compliance purposes.
- 29 (10) A Federal Safety Officer must not enter business premises under
30 subsection (9) if the officer has reasonable cause to believe that the
31 person concerned is not in that place.
- 32 (11) A Federal Safety Officer who enters premises under subsection (9)
33 may interview the person concerned in that place.

Chapter 12 Enforcement
Part 2 Compliance etc. powers
Division 3 Powers of Federal Safety Officers

Section 241

1 (12) For the avoidance of doubt, a refusal or failure by a person to
2 participate in an interview under this section is not to be treated as
3 conduct covered by section 149.1 of the *Criminal Code*.

4 (13) Before entering premises under this section, a Federal Safety
5 Officer must announce that the officer is authorised to enter the
6 place. If the occupier or another person who apparently represents
7 the occupier is present, the officer must produce the officer's
8 identity card to that person for inspection.

9 (14) The occupier of premises must not refuse or unduly delay entry to
10 the premises by a Federal Safety Officer exercising powers under
11 this section.

12 Note: Grade A civil penalty.

13 (15) In this section:

14 **accreditation** means accreditation under the accreditation scheme.

15 **accredited person** means a person who is accredited under the
16 accreditation scheme.

17 **copy**, in relation to a document, includes take extracts from the
18 document.

19 Note: The *Criminal Code* contains offences for obstructing or hindering
20 Commonwealth public officials.

Chapter 13—Miscellaneous

242 Protection of confidentiality of information

- (1) This section restricts what a person (the *entrusted person*) may do with protected information that the person has obtained in the course of official employment.

Note: Although this section applies only to information that a person obtained in the course of official employment, the obligations under this section continue to apply after the person ceases to be in official employment.

Recording or disclosing

- (2) The entrusted person must not:
- (a) make a record of protected information; or
 - (b) disclose protected information.

Penalty: Imprisonment for 12 months.

Permitted recording or disclosure by designated officials

- (3) If the entrusted person is a designated official at the time of the recording or disclosure, then each of the following is an exception to the offence in subsection (2):
- (a) the recording or disclosure is for the purposes of this Act;
 - (b) the recording or disclosure happens in the course of the performance of the duties of the entrusted person's official employment;
 - (c) in the case of a disclosure—the disclosure is to a person appointed or employed by:
 - (i) the Commonwealth, a State or Territory; or
 - (ii) an authority of the Commonwealth, a State or Territory; for the purpose of assisting in building industry law enforcement;
 - (d) the recording or disclosure is in accordance with regulations made for the purposes of this paragraph.

Section 242

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

3 *Permitted recording or disclosure by other persons*

4 (4) If the entrusted person is not a designated official at the time of the
5 recording or disclosure, then each of the following is an exception
6 to the offence in subsection (2):

7 (a) the recording or disclosure is for the purposes of this Act;

8 (b) the recording or disclosure happens in the course of the
9 performance of the duties of the entrusted person's official
10 employment, being duties relating to building industry law
11 enforcement;

12 (c) the recording or disclosure is in accordance with regulations
13 made for the purposes of this paragraph.

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

16 *Disclosure to a Minister*

17 (5) If:

18 (a) the entrusted person discloses protected information to any
19 Minister; and

20 (b) the disclosure is not required or authorised by section 14, 16,
21 34 or 36;

22 then the exceptions in subsections (3) and (4) of this section do not
23 apply to the disclosure.

24 *Disclosure in reports under this Act*

25 (6) If:

26 (a) the entrusted person discloses protected information in a
27 report under section 14, 16, 34 or 36; and

28 (b) section 243 is not complied with in respect of the disclosure
29 of the information in the report;

30 then the exceptions in subsections (3) and (4) of this section do not
31 apply to the disclosure.

Authorisation for purposes of Privacy Act

- 1
2 (7) A disclosure of personal information is taken to be authorised by
3 law for the purposes of paragraph (1)(d) of Information Privacy
4 Principle 11 in section 14 of the *Privacy Act 1988* if the
5 information is protected information and the disclosure is made in
6 accordance with subsection (3) or (4) of this section.

7 *Definitions*

- 8 (8) In this section:

9 ***building industry law enforcement*** means enforcement of a law of
10 the Commonwealth, or of a State or Territory, where the
11 enforcement is in respect of:

- 12 (a) conduct by, or in relation to, a building industry participant in
13 that capacity; or
14 (b) conduct that is, or relates to, building work.

15 ***designated official*** means any of the following:

- 16 (a) the ABC Commissioner;
17 (b) a Deputy ABC Commissioner;
18 (c) an ABC Inspector;
19 (d) a person assisting the ABC Commissioner as mentioned in
20 subsection 25(1);
21 (e) a person engaged as a consultant under subsection 25(3);
22 (f) the Federal Safety Commissioner;
23 (g) a Federal Safety Officer;
24 (h) a person assisting the Federal Safety Commissioner as
25 mentioned in subsection 45(1);
26 (i) a person engaged as a consultant under subsection 45(2);
27 (j) the Industrial Registrar;
28 (k) a person acting under a delegation under this Act from a
29 person covered by any of the above paragraphs.

30 ***disclose*** means divulge or communicate.

31 ***official employment*** means:

Section 243

- 1 (a) appointment or employment by, or the performance of
2 services for:
3 (i) the Commonwealth, a State or Territory; or
4 (ii) an authority of the Commonwealth, a State or Territory;
5 or
6 (b) appointment as an ABC inspector or Federal Safety Officer.

7 ***protected information*** means information that:

- 8 (a) was disclosed or obtained for the purposes of this Act; and
9 (b) was obtained by the entrusted person, or by any other person,
10 in the course of official employment; and
11 (c) relates to a person other than the entrusted person.

12 **243 Reports not to include information relating to an individual's**
13 **affairs**

- 14 (1) Information relating to the affairs of an individual must not be
15 included in a report under section 14, 16, 34 or 36 if:
16 (a) the individual is named, or otherwise specifically identified,
17 in the report as the individual to whom the information
18 relates; or
19 (b) it is reasonably likely that people generally (other than
20 people to whom the individual has disclosed information
21 relating to the individual's affairs) would be able to work out
22 the identity of the individual to whom the information relates.
- 23 (2) For the purposes of applying paragraph (1)(b) to information
24 relating to a particular individual's affairs, the context in which the
25 information appears, and information that is otherwise publicly
26 available, must be taken into account (as well as any other relevant
27 matter).

28 **244 Variation etc. of AIRC orders**

- 29 (1) On application by an eligible person, the AIRC may set aside,
30 revoke or vary any order that it has made under this Act.
- 31 (2) In this section:
32 ***eligible person*** means:

- 1 (a) the ABC Commissioner; or
 2 (b) a person affected by the order.

3 **245 Delegation by Industrial Registrar**

- 4 (1) The Industrial Registrar may, in writing, delegate all or any of his
 5 or her powers and functions under this Act to a Deputy Industrial
 6 Registrar other than powers or functions prescribed by the
 7 regulations for the purposes of this subsection.
- 8 (2) In exercising powers or functions under a delegation, the delegate
 9 must comply with any directions of the Industrial Registrar.

10 **246 Delegation by Minister**

- 11 (1) The Minister may, in writing, delegate all or any of the Minister's
 12 powers and functions under this Act to:
 13 (a) an SES employee or acting SES employee; or
 14 (b) a person prescribed by the regulations for the purposes of this
 15 paragraph;
 16 other than powers or functions under Chapter 2 or 4 or section 236
 17 or 239.
- 18 (2) The Minister may, in writing, delegate all or any of the Minister's
 19 powers and functions under Chapter 3 to:
 20 (a) the ABC Commissioner; or
 21 (b) a Deputy ABC Commissioner; or
 22 (c) the Federal Safety Commissioner.
- 23 (3) In exercising powers or functions under a delegation, the delegate
 24 must comply with any directions of the Minister.

25 **247 Building association responsible for conduct of members etc.**

- 26 (1) For the purposes of this Act, the following conduct in relation to a
 27 building association is taken to be conduct of the building
 28 association:
 29 (a) conduct of the committee of management of the association;
 30 (b) conduct of an officer or agent of the association acting in that
 31 capacity;

Section 248

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

20 **248 Capacity, state of mind etc. of person being coerced etc.**

- 21 In applying a provision of this Act that refers to:
22 (a) coercing a person to do a particular thing; or
23 (b) applying undue pressure to a person to do a particular thing;
24 or
25 (c) encouraging a person to do a particular thing; or
26 (d) advising a person to do a particular thing; or
27 (e) inciting a person to do a particular thing; or
28 (f) engaging in conduct with the intention of doing any of the
29 above;
30 it is not relevant whether or not that person is able, willing or
31 eligible to do that particular thing.

249 ABC Commissioner intervention in court proceedings

- 1
- 2 (1) The ABC Commissioner may intervene in the public interest in a
3 proceeding before a court in a matter that:
- 4 (a) arises under this Act; or
5 (b) arises under the Workplace Relations Act as affected by this
6 Act.
- 7 (2) If the ABC Commissioner intervenes in a proceeding under
8 subsection (1), the ABC Commissioner is taken to be a party to the
9 proceeding and has all the rights, duties and liabilities of such a
10 party.

250 ABC Commissioner intervention in AIRC proceedings

- 11
- 12 The ABC Commissioner may, by giving written notice to the
13 Industrial Registrar, intervene in a matter before the AIRC that:
- 14 (a) arises under this Act; or
15 (b) arises under the Workplace Relations Act as affected by this
16 Act.

251 Industrial Registrar must keep ABC Commissioner informed

- 17
- 18 The Industrial Registrar must, as soon as practicable, notify the
19 ABC Commissioner of:
- 20 (a) every application lodged with the AIRC, or the Industrial
21 Registrar, under:
- 22 (i) this Act; or
23 (ii) the Workplace Relations Act as affected by this Act;
24 and
25 (b) the outcome of each such application.

252 Jurisdiction of courts*Jurisdiction where Act allows proceedings to be instituted*

- 26
- 27
- 28 (1) If a provision of this Act, expressly or by implication, authorises a
29 proceeding to be instituted in a particular court in relation to a
30 matter:

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- 1 (a) that provision is taken to vest that court with jurisdiction in
2 that matter; and
3 (b) in the case of a court of a State—the jurisdiction so vested is
4 subject to any limits to which any other jurisdiction of the
5 court may be subject; and
6 (c) in the case of the Federal Court or the Federal Magistrates
7 Court—the jurisdiction so vested is not limited by any limits
8 to which the other jurisdiction of the court may be subject;
9 and
10 (d) in the case of a court of a Territory—the jurisdiction is vested
11 so far only as the Constitution permits.

12 *Additional jurisdiction of Federal Magistrates Court*

- 13 (2) The Federal Magistrates Court has jurisdiction in matters arising
14 under the Workplace Relations Act as affected by sections 71 and
15 176 of this Act.

16 *Jurisdiction in relation to modified provisions of Workplace
17 Relations Act*

- 18 (3) If:
19 (a) a court has jurisdiction in relation to a matter arising under a
20 provision of the Workplace Relations Act; and
21 (b) that provision is affected by this Act;
22 then that jurisdiction extends to a matter arising under that
23 provision as affected by this Act.

24 *Writ of mandamus etc. against officers of the Commonwealth*

- 25 (4) Subsections 412(2) and (3), and subsection 415(1), of the
26 Workplace Relations Act extend to matters in which a writ of
27 mandamus or prohibition, or an injunction, is sought against an
28 officer or officers of the Commonwealth holding office under that
29 Act, in relation to powers or functions under this Act. This
30 subsection is enacted for the avoidance of doubt.
31 (5) For the purposes of section 44 of the *Judiciary Act 1903*, the
32 Federal Court is taken to have jurisdiction with respect to any
33 matter in which a writ of mandamus or prohibition, or an

1 injunction, is sought against an officer or officers of the
2 Commonwealth holding office under this Act.

3 Note: Section 44 of the *Judiciary Act 1903* gives the High Court of Australia
4 power to remit a matter to a federal court that has jurisdiction with
5 respect to that matter.

- 6 (6) The Federal Court has jurisdiction with respect to matters remitted
7 to it under section 44 of the *Judiciary Act 1903*.

8 *Exclusive jurisdiction of Federal Court for certain matters*
9 *involving organisations etc.*

- 10 (7) Subject to this Act, the jurisdiction of the Federal Court in relation
11 to an act or omission for which an organisation, or member of an
12 organisation, is liable to be sued, or to be proceeded against for a
13 pecuniary penalty, is exclusive of the jurisdiction of any other
14 court created by the Parliament or any court of a State or Territory.

15 *Referral of matters to Full Court of Federal Court*

- 16 (8) At any stage of a proceeding in a matter in which the Federal Court
17 has jurisdiction under this Act, a single Judge exercising the
18 jurisdiction of the Federal Court:

19 (a) may refer a question of law for the opinion of a Full Court of
20 the Federal Court; and

21 (b) may, of the Judge's own motion or on the application of a
22 party, refer the matter to a Full Court of the Federal Court to
23 be heard and determined.

24 If a Judge so refers a matter, the Full Court of the Federal Court
25 may have regard to any evidence given, or arguments adduced, in
26 the proceeding before the Judge.

- 27 (9) The Federal Court has jurisdiction with respect to matters in
28 relation to which questions may be referred to it under
29 subsection (8).

30 **253 Court not to require undertaking as to damages**

31 If the ABC Commissioner is an applicant in proceedings under
32 section 67, 75, 134 or 227, then the court cannot require the ABC

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1 Commissioner, or any other person, as a condition of granting an
2 interim injunction, to give undertakings as to damages.

3 **254 ABC Commissioner etc. not liable for conduct in good faith**

4 (1) No one is liable to civil proceedings for loss, damage or injury of
5 any kind suffered by another person as a result of anything done, or
6 omitted to be done, in good faith and without negligence, by a
7 protected person in the exercise, or purported exercise, of
8 functions, powers or duties under, or in relation to, this Act.

9 (2) In this section:

10 *protected person* means any of the following:

- 11 (a) the ABC Commissioner;
12 (b) a Deputy ABC Commissioner;
13 (c) an ABC Inspector;
14 (d) a person assisting the ABC Commissioner as mentioned in
15 subsection 25(1);
16 (e) a person engaged as a consultant under subsection 25(3);
17 (f) the Federal Safety Commissioner;
18 (g) a Federal Safety Officer;
19 (h) a person assisting the Federal Safety Commissioner as
20 mentioned in subsection 45(1);
21 (i) a person engaged as a consultant under subsection 45(2);
22 (j) the Industrial Registrar;
23 (k) a person acting under a delegation under this Act from a
24 person covered by any of the above paragraphs.

25 **255 Regulations**

26 (1) The Governor-General may make regulations prescribing matters:
27 (a) required or permitted by this Act to be prescribed; or
28 (b) necessary or convenient to be prescribed for carrying out or
29 giving effect to this Act.

30 (2) Without limiting subsection (1), the regulations may make
31 provision for, and in relation to, the following:

- 1 (a) the signing or lodging of documents that are required or
2 permitted by this Act to be lodged with, or given to, the ABC
3 Commissioner, the Industrial Registrar, the Industrial
4 Registry or a court;
- 5 (b) the manner in which, and the time within which, applications
6 under this Act may be made and dealt with;
- 7 (c) the form of notices that are required or permitted to be given
8 under this Act;
- 9 (d) fees to be charged in relation to proceedings under this Act;
- 10 (e) penalties for offences against the regulations, not exceeding a
11 fine of 10 penalty units;
- 12 (f) civil penalties for contraventions of the regulations, not
13 exceeding:
- 14 (i) for a body corporate—25 penalty units; or
15 (ii) in any other case—5 penalty units.

1 **Schedule 1—Statement about freedom of**
2 **association**

3 Note: See definition of *statutory freedom of association statement* in section 4.
4
5

6 **1 Freedom of association**

- 7 (1) A person who is subject to the freedom of association provisions of
8 the *Building and Construction Industry Improvement Act 2003*:
9 (a) can freely choose, without interference, whether to be a
10 member, or not be a member, of an industrial association;
11 and
12 (b) should not be discriminated against, or victimised, on the
13 ground that the person is a member, or is not a member, of an
14 industrial association.

15 Note: The freedom of association provisions are contained in Chapter 7 of
16 the *Building and Construction Industry Improvement Act 2003*.

- 17 (2) If those rights are interfered with, the person may be able to seek a
18 remedy under that Act.

- 19 (3) A person who interferes with those rights may be subject to
20 penalties under that Act.

21 Note: The above statements are not enforceable provisions of an award or
22 certified agreement.