

2016

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Fair Work (Registered Organisations) Amendment Bill 2014

No. , 2014

(Employment)

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

Contents

1	Short title	1
2	Commencement	1
3	Schedule(s)	2
Schedule 1—The Registered Organisations Commissioner		3
Part 1—Amendments		3
<i>Fair Work Act 2009</i>		3
<i>Fair Work (Registered Organisations) Act 2009</i>		3
Part 2—Transitional provisions		26
Schedule 2—Increased disclosure requirements, investigation powers and penalties		29
Part 1—Amendments		29
<i>Fair Work (Registered Organisations) Act 2009</i>		29
Part 2—Transitional provisions		89

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

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

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

13

Schedule 1—The Registered Organisations Commissioner

Part 1—Amendments

Fair Work Act 2009

1 Subsection 576(2) (note)

Omit “additional functions”, substitute “an additional function”.

2 Paragraph 604(1)(b)

Repeal the paragraph, substitute:

(b) made under the Registered Organisations Act by:

(i) the General Manager (including a delegate of the General Manager); or

(ii) the Registered Organisations Commissioner (including a delegate of the Commissioner);

3 Subsection 607(1)

Omit “or the General Manager”, substitute “, the General Manager or the Registered Organisations Commissioner”.

4 Subparagraph 613(2)(a)(ii)

Omit “and”, substitute “or”.

5 At the end of paragraph 613(2)(a)

Add:

(iii) a decision of the Registered Organisations Commissioner (including a delegate of the Commissioner) under the Registered Organisations Act; and

Fair Work (Registered Organisations) Act 2009

6 Section 6

Insert:

1 **Commission** means the Registered Organisations Commission
2 established by section 329DA.

3 **Commissioner** means the Registered Organisations Commissioner
4 holding office under Part 3A of Chapter 11.

5 **7 Section 6**

6 Insert:

7 **directions contravention** means a contravention of one of the
8 following:

- 9 (a) subsection 297(2) or (3);
10 (b) subsection 298(2) or (3);
11 (c) subsection 299(2) or (3);
12 (d) subsection 300(2) or (3);
13 (e) subsection 301(2) or (3);
14 (f) subsection 302(2) or (3);
15 (g) subsection 303(2).

16 **8 Section 6 (definition of FWA Member)**

17 Repeal the definition.

18 **9 Section 13 (heading)**

19 Repeal the heading, substitute:

20 **13 Additional function of the FWC**

21 **10 Subsection 13(1)**

22 Omit all the words after “FWC”, substitute “include keeping a register
23 of organisations”.

24 **11 Subsection 26(1)**

25 Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

26 **12 Subsection 28(1A)**

27 Omit “General Manager”, substitute “Commissioner”.

28 **13 Subsection 28(1A) (note)**

29 Omit “General Manager”, substitute “Commissioner”.

14 Section 31

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

15 Subsection 38(4)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

16 Paragraph 73(3)(a)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

17 Subsection 77(2)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

18 Subsection 95(3A)

After “request the General Manager”, insert “or the Commissioner”.

19 Paragraph 95(3A)(a)

After “General Manager”, insert “or the Commissioner, as the case requires,”.

20 Subsections 95(3B) and (3C)

After “General Manager”, insert “or the Commissioner”.

21 Paragraph 110(a)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

22 Subsection 114(2)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

23 Subsection 151(3)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

24 Paragraph 151(10)(b)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

25 Subsections 152(4) and 154(4)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

26 Paragraph 160(a)

Omit “paragraph 13(1)(a)”, substitute “subsection 13(1)”.

27 Subsection 183(1)

Omit “FWC”, substitute “Commissioner”.

28 Subsection 183(4)

Omit “General Manager”, substitute “Commissioner”.

29 Subsection 184(2)

Omit “General Manager”, substitute “Commissioner”.

30 Section 186 (heading)

Repeal the heading, substitute:

186 Commissioner may permit organisation or branch to conduct its elections for office

31 Section 186

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

32 Subsection 187(3)

Omit “FWC”, substitute “Commissioner”.

33 Section 189 (heading)

Repeal the heading, substitute:

189 Commissioner to arrange for conduct of elections

34 Subsection 189(1)

Omit “FWC”, substitute “Commissioner”.

35 Subsection 189(2)

Omit “General Manager”, substitute “Commissioner”.

36 Paragraph 189(3)(a)

Omit “FWC”, substitute “Commissioner”.

1 **37 Paragraphs 189(3)(a) and (b)**

2 Omit “General Manager”, substitute “Commissioner”.

3 **38 Subsection 189(3)**

4 Omit “General Manager must”, substitute “Commissioner must”.

5 **39 Paragraph 192(2)(b)**

6 Omit “FWC”, substitute “Commissioner”.

7 **40 Paragraph 197(1)(a)**

8 Omit “General Manager”, substitute “Commissioner”.

9 **41 Subparagraph 198(6)(b)(i)**

10 Omit “FWC”, substitute “Commissioner”.

11 **42 Section 202 (heading)**

12 Repeal the heading, substitute:

13 **202 Federal Court may authorise Commissioner to take certain**
14 **action**

15 **43 Subsections 202(1) and (2)**

16 Omit “General Manager”, substitute “Commissioner”.

17 **44 Paragraph 202(5)(b)**

18 Omit “General Manager”, substitute “Commissioner”.

19 **45 Subsection 203(1)**

20 Omit “General Manager” (wherever occurring), substitute
21 “Commissioner”.

22 **46 Subsection 203(1)**

23 Omit “of the FWC”, substitute “assisting the Commissioner”.

24 **47 Subsection 203(1)**

25 Omit “343A”, substitute “343B”.

48 Paragraph 203(6)(b)

Omit “of the FWC”, substitute “assisting the Commissioner”.

49 Paragraph 203(6)(b)

Omit “General Manager”, substitute “Commissioner”.

50 Paragraph 203(6)(b)

Omit “343A”, substitute “343B”.

51 Paragraph 203(6)(c)

Omit “General Manager”, substitute “Commissioner”.

52 Paragraph 206(4)(c)

Omit “General Manager”, substitute “Commissioner”.

53 Section 207 (heading)

Repeal the heading, substitute:

**207 Commissioner to make arrangements for conduct of elections
etc.**

54 Section 207

Omit “General Manager”, substitute “Commissioner”.

55 Subsection 215(5)

Omit “General Manager”, substitute “Commissioner”.

56 Section 229

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

57 Section 233 (heading)

Repeal the heading, substitute:

233 Obligation to lodge information with the Commissioner

58 Subsections 233(1) and (2)

Omit “FWC”, substitute “Commissioner”.

59 Subsections 234(3) and (4)

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

60 Section 235 (heading)

Repeal the heading, substitute:

235 Commissioner may authorise access to certain records

61 Subsection 235(1)

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

62 Section 236 (heading)

Repeal the heading, substitute:

**236 Commissioner may direct organisation to deliver copy of
records**

63 Section 236

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

64 Subsection 237(1)

Omit “General Manager”, substitute “Commissioner”.

65 Subsections 237(1), (2) and (4)

Omit “FWC”, substitute “Commissioner”.

66 Subsections 241(1) and (2)

Omit “General Manager”, substitute “Commissioner”.

67 At the end of section 246

Add:

- (3) In satisfying himself or herself as mentioned in paragraph (2)(a),
the General Manager must consult with the Commissioner.

68 After subsection 247(1)

Insert:

(1A) In satisfying himself or herself as mentioned in paragraphs (1)(a) and (b), the General Manager must consult with the Commissioner.

69 After subsection 249(5)

Insert:

(5A) In satisfying himself or herself as mentioned in paragraph (5)(a), the General Manager must consult with the Commissioner.

70 After subsection 249(6)

Insert:

(6A) In satisfying himself or herself as mentioned in paragraph (6)(a), the General Manager must consult with the Commissioner.

71 Subsections 255(1) and (4) and 257(11)

Omit “General Manager”, substitute “Commissioner”.

72 Subsection 261(2)

Omit “FWC”, substitute “Commissioner”.

73 Subsections 265(5) and 266(1)

Omit “General Manager”, substitute “Commissioner”.

74 Section 268 (heading)

Repeal the heading, substitute:

268 Reports etc. to be lodged with the Commissioner

75 Section 268

Omit “General Manager”, substitute “Commissioner”.

76 Section 268

Omit “FWC”, substitute “Commissioner”.

77 Paragraph 269(2)(a)

Omit “General Manager”, substitute “Commissioner”.

78 Paragraph 269(2)(c)

Omit “FWC”, substitute “Commissioner”.

79 Subsection 270(1)

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

80 Paragraph 270(3)(c)

Omit “FWC” (wherever occurring), substitute “Commissioner”.

81 Subsection 270(7)

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

82 Section 271

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

83 Section 272 (heading)

Repeal the heading, substitute:

272 Information to be provided to members or Commissioner

84 Subsections 272(1) and (4) and 278(2)

Omit “General Manager”, substitute “Commissioner”.

85 Subsections 310(1) and (2)

Repeal the subsections, substitute:

*Application other than for order relating to directions
contravention*

(1) The following may apply for an order under this Part, other than an
order relating to a directions contravention:

(a) the Commissioner, or a person authorised in writing by the
Commissioner to make the application;

- 1 (b) the General Manager, or a person authorised in writing by the
2 General Manager to make the application.

3 Note: For the meaning of *directions contravention*, see section 6.

4 *Application for order relating to directions contravention*

- 5 (2) The Minister, or a person authorised in writing by the Minister to
6 make the application, may apply for an order under this Part
7 relating to a directions contravention.

8 **86 Section 317**

9 After:

10 Part 3 provides that if a person is a party to certain kinds of
11 proceedings under this Act, the Commonwealth may, in some
12 circumstances, give the person financial assistance. Division 2 of
13 Part 3 contains a rule about the ordering of costs by a court.

14 insert:

15 Part 3A establishes the Registered Organisations Commission and
16 Registered Organisations Commissioner, provides for the terms
17 and conditions of appointment of the Commissioner and makes
18 provision for staff to assist the Commissioner. The Registered
19 Organisations Commission Special Account is also established by
20 the Part.

21 **87 Section 317**

22 Omit “General Manager” (wherever occurring), substitute
23 “Commissioner”.

24 **88 After Part 3 of Chapter 11**

25 Insert:

**Part 3A—Registered Organisations Commissioner
and Registered Organisations Commission**

**Division 1—Establishment, functions and powers of
Commissioner**

329AA Establishment

There is to be a Registered Organisations Commissioner.

329AB Functions of the Commissioner

The Commissioner has the following functions:

- (a) to promote:
 - (i) efficient management of organisations and high standards of accountability of organisations and their office holders to their members; and
 - (ii) compliance with financial reporting and accountability requirements of this Act;
including by providing education, assistance and advice to organisations and their members;
- (b) to monitor acts and practices to ensure they comply with the provisions of this Act providing for the democratic functioning and control of organisations;
- (c) such other functions as are conferred on the Commissioner by this Act or by another Act;
- (d) to do anything incidental to or conducive to the performance of any of the above functions.

329AC Powers of Commissioner

The Commissioner has the power to do all things necessary or convenient to be done for the purposes of performing his or her functions.

Note: The expenditure of public money must comply with the requirements in the *Financial Management and Accountability Act 1997*.

Division 2—Terms and conditions of appointment of Commissioner

329BA Appointment

- (1) The Commissioner is to be appointed by the Minister by written instrument.
- (2) Before the Minister appoints a person as the Commissioner, the Minister must be satisfied that the person:
 - (a) has suitable qualifications or experience; and
 - (b) is of good character.
- (3) The Commissioner is to be appointed on a full-time basis.

329BB Term of appointment

The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Commissioner is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

329BC Acting Commissioner

The Minister may appoint an individual to act as the Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: Sections 33AB and 33A of the *Acts Interpretation Act 1901* have rules that apply to acting appointments.

329BD Remuneration

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed.

1 (2) The Commissioner is to be paid the allowances that are prescribed.

2 (3) This section has effect subject to the *Remuneration Tribunal Act*
3 *1973*.

4 **329BE Leave of absence**

5 (1) The Commissioner has the recreation leave entitlements that are
6 determined by the Remuneration Tribunal.

7 (2) The Minister may grant the Commissioner leave of absence, other
8 than recreation leave, on the terms and conditions as to
9 remuneration or otherwise that the Minister determines.

10 **329BF Outside employment**

11 The Commissioner must not engage in paid employment outside
12 the duties of his or her office without the Minister's approval.

13 **329BG Disclosure of interests to the Minister**

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

18 **329BH Other terms and conditions**

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

22 **329BI Resignation**

23 (1) The Commissioner may resign his or her appointment by giving
24 the Minister a signed notice of resignation.

25 (2) The resignation takes effect on the day it is received by the
26 Minister or, if a later day is specified in the resignation, on that
27 later day.

329BJ Termination of appointment

- (1) The Minister may terminate the appointment of the Commissioner:
- (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Minister must terminate the appointment of the Commissioner if:
- (a) the Commissioner:
 - (i) becomes bankrupt; or
 - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with one or more of his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
 - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Commissioner engages in paid employment contrary to section 329BF; or
 - (d) the Commissioner fails, without reasonable excuse, to comply with section 329BG.

Division 3—Staff and consultants

329CA Staff

- (1) The staff assisting the Commissioner are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Fair Work Ombudsman (within the meaning of the Fair Work Act).
- (2) When performing services for the Commissioner, the persons:
- (a) are subject to the directions of the Commissioner; and
 - (b) are not subject to the directions of the Fair Work Ombudsman (within the meaning of the Fair Work Act).

329CB Other persons assisting the Commissioner

The Commissioner may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory; whose services are made available to the Commissioner in connection with the performance of any of the Commissioner's functions.

329CC Consultants

- (1) The Commissioner may, on behalf of the Commonwealth, engage persons having suitable qualifications and experience as consultants to the Commissioner.
- (2) The consultants are to be engaged on terms and conditions that the Commissioner determines in writing.

Division 4—Establishment and function of the Registered Organisations Commission

329DA Establishment

The Registered Organisations Commission is established by this section.

Note: The Commission does not have a legal identity separate from the Commonwealth.

329DB Constitution of the Commission

The Commission consists of:

- (a) the Commissioner; and
- (b) any staff assisting the Commissioner as mentioned in subsection 329CA(1).

329DC Function of the Commission

The Commission's function is to assist the Commissioner in the performance of the Commissioner's functions.

1 **329DD Commission has privileges and immunities of the Crown**

2 The Commission has the privileges and immunities of the Crown.

3 **Division 5—Registered Organisations Commission Special**
4 **Account**

5 **329EA Registered Organisations Commission Special Account**

6 (1) The Registered Organisations Commission Special Account (the
7 **Account**) is established by this section.

8 (2) The Account is a Special Account for the purposes of the *Financial*
9 *Management and Accountability Act 1997*.

10 **329EB Credits to the Account**

11 There may be credited to the Account amounts equal to the
12 following:

- 13 (a) amounts received by the Commonwealth in connection with
14 the performance of the Commissioner's functions under this
15 Act;
16 (b) interest received by the Commonwealth from the investment
17 of amounts debited from the Account;
18 (c) amounts received by the Commonwealth in relation to
19 property paid for with amounts debited from the Account;
20 (d) amounts of any gifts given or bequests made for the purposes
21 of the Account.

22 Note: An Appropriation Act provides for amounts to be credited to a Special
23 Account if any of the purposes of the Account is a purpose that is
24 covered by an item in the Appropriation Act.

25 **329EC Purposes of the Account**

26 The purposes of the Account are as follows:

- 27 (a) paying or discharging the costs, expenses and other
28 obligations incurred by the Commonwealth in the
29 performance of the Commissioner's functions;
30 (b) paying any remuneration and allowances payable to any
31 person under this Act (including staff mentioned in
32 section 329CA);

(c) meeting the expenses of administering the Account.

Note: See section 21 of the *Financial Management and Accountability Act 1997* (debits from Special Accounts).

Division 6—Reporting requirements

329FA Directions from the Minister

- (1) The Minister may, by legislative instrument, give written directions to the Commissioner about the performance of the Commissioner's functions.

Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative Instruments Act 2003* do not apply to the direction (see sections 44 and 54 of that Act).

- (2) The direction must be of a general nature only.

- (3) The Commissioner must comply with the direction.

329FB Minister may require reports

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

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

- (3) The direction, or the report (if made in writing), is not a legislative instrument.

329FC Annual report

Annual report to be given to Minister

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

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

Contents of annual report

- (2) The Commissioner must include the following in the report in relation to that year:
- (a) details of the number and types of investigations conducted by the Commissioner under Part 4 of Chapter 11;
 - (b) details of:
 - (i) when each investigation was started; and
 - (ii) if the investigation has been completed—when it was completed; and
 - (iii) if the investigation has not been completed—when it is expected to be completed;
 - (c) details of any orders applied for under paragraph 310(1)(a);
 - (d) details of the types of education activities undertaken by the Commissioner and whether the education activities were provided to:
 - (i) registered employer organisations; or
 - (ii) registered employee organisations; or
 - (iii) members of registered employer organisations; or
 - (iv) members of registered employee organisations;
 - (e) any other matter prescribed by the regulations.

89 Section 330 (heading)

Repeal the heading, substitute:

330 Commissioner may make inquiries

90 Subsections 330(1) and (2)

Omit “General Manager”, substitute “Commissioner”.

91 Section 331 (heading)

Repeal the heading, substitute:

331 Commissioner may conduct investigations

92 Section 331

Omit “General Manager” (wherever occurring), substitute “Commissioner”.

1 **93 Subsection 332(1)**

2 Omit “General Manager must”, substitute “Commissioner must”.

3 **94 Paragraph 332(1)(a)**

4 Omit “FWC”, substitute “Commissioner”.

5 **95 Paragraph 332(1)(b)**

6 Omit “General Manager”, substitute “Commissioner”.

7 **96 Subsections 332(2) and (3)**

8 Omit “General Manager” (wherever occurring), substitute
9 “Commissioner”.

10 **97 Subsection 333(1)**

11 Omit “FWC”, substitute “Commissioner”.

12 **98 Subsection 333(1)**

13 Omit “General Manager”, substitute “Commissioner”.

14 **99 Subsections 333(2) and (3)**

15 Omit “General Manager” (wherever occurring), substitute
16 “Commissioner”.

17 **100 Sections 334 to 335A**

18 Omit “General Manager” (wherever occurring), substitute
19 “Commissioner”.

20 **101 Section 335B**

21 Omit “General Manager”, substitute “Commissioner”.

22 **102 Subsection 335C(1)**

23 Omit “General Manager”, substitute “Commissioner”.

24 **103 Subsection 335C(1)**

25 Omit “of the FWC”, substitute “assisting the Commissioner”.

104 Subsection 335C(2)

Omit “General Manager” (wherever occurring), substitute
“Commissioner”.

105 Subsection 336(1) (heading)

Repeal the heading, substitute:

Commissioner must notify reporting unit

106 Subsection 336(1)

Omit “General Manager is satisfied”, substitute “Commissioner is
satisfied”.

107 Subsection 336(1)

Omit “the reporting unit concerned”, substitute “a reporting unit”.

108 Subsection 336(1)

Omit “General Manager must”, substitute “Commissioner must”.

109 Subsection 336(1A) (heading)

Repeal the heading, substitute:

Commissioner must make inquiries

110 Subsection 336(1A)

Omit “General Manager”, substitute “Commissioner”.

111 Subsection 336(2) (heading)

Repeal the heading, substitute:

Commissioner may take other action

112 Subsection 336(2)

Omit “General Manager”, substitute “Commissioner”.

113 Subsections 336(3) and (5)

Omit “General Manager”, substitute “Commissioner”.

1 **114 Section 337 (heading)**

2 Repeal the heading, substitute:

3 **337 Offences in relation to investigation by Commissioner**

4 **115 Subsection 337(1)**

5 Omit “General Manager” (wherever occurring), substitute
6 “Commissioner”.

7 **116 Before subparagraph 337A(b)(i)**

8 Insert:

9 (ia) the Commissioner or a member of the staff assisting the
10 Commissioner;

11 **117 Paragraph 337K(3)(a)**

12 After “subparagraph (1)(b)(ii)”, insert “and to the Commissioner”.

13 **118 Paragraphs 337K(5)(a) and (b)**

14 Omit “FWA Member”, substitute “FWC Member”.

15 **119 Paragraphs 343A(2)(c) to (g)**

16 Repeal the paragraphs.

17 **120 Paragraphs 343A(2)(i) to (j)**

18 Repeal the paragraphs.

19 **121 Paragraphs 343A(3)(d) to (g)**

20 Repeal the paragraphs.

21 **122 Paragraph 343A(3)(h)**

22 Omit “a provision of Part 4 of that Chapter or”.

23 **123 Subsection 343A(3A)**

24 Repeal the subsection.

25 **124 After section 343A**

26 Insert:

343B Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate to a member of the staff assisting the Commissioner all or any of the Commissioner's functions or powers under this Act.
- (2) Despite subsection (1), the Commissioner's functions or powers under the following provisions cannot be delegated:
- (a) subsection 28(1A);
 - (b) subsection 95(3A), (3B) or (3C);
 - (c) subsection 183(4);
 - (d) section 197;
 - (e) any provision of Part 3 or 4 of Chapter 7 (other than section 202);
 - (f) any provision of Division 1, 2, 3 or 4 of Part 3 of Chapter 8;
 - (g) subsection 278(2);
 - (h) section 310;
 - (j) section 334;
 - (k) section 335 or 335A;
 - (ka) subsection 335C(2);
 - (m) subsection 336(1), (2), (3) or (5).
- (3) Despite subsection (1), the Commissioner's functions or powers under section 330, 331, 332 or 333 can only be delegated to:
- (a) a member of the staff assisting the Commissioner; or
 - (b) any other person or body the Commissioner is satisfied has substantial or significant experience or knowledge in at least one of the following fields:
 - (i) accounting;
 - (ii) auditing;
 - (iii) financial reporting;
 - (iv) conducting compliance audits or investigations;
 - (v) a field prescribed by the regulations for the purposes of this subparagraph.
- (5) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Commissioner.

1 **125 Paragraph 347(1)(c)**

2 Omit “FWC”, substitute “Commissioner”.

3 **126 Section 348**

4 After “General Manager”, insert “or the Commissioner”.

5 **127 Section 349**

6 Omit “FWC”, substitute “Commissioner”.

7 **128 Section 349**

8 Omit “General Manager”, substitute “Commissioner”.

Part 2—Transitional provisions

129 Definitions

In this Part:

commencement time means the time when this Schedule commences.

Commissioner has the same meaning as in the Act.

FWC has the same meaning as in the Act.

General Manager has the same meaning as in the Act.

the Act means the *Fair Work (Registered Organisations) Act 2009*.

130 Commissioner to complete certain processes

(1) This item applies if:

- (a) a process begun under the Act is incomplete at the commencement time; and
- (b) because of the amendments made by this Schedule, a function or power that the General Manager or the FWC was required, or able, to perform or exercise in relation to the process has become a function or power of the Commissioner.

(2) For the purposes of completing the process:

- (a) the Commissioner must or may, as the case requires, perform the function or exercise the power; and
- (b) things done by or in relation to the General Manager or the FWC before the commencement time have effect as if they were done by or in relation to the Commissioner.

131 Permission to keep records at premises

A permission given by the General Manager under section 234 (storage of records) of the Act that is in force immediately before the commencement time has effect, after that time, as if it had been given by the Commissioner under that section.

132 Certain references to include documents dealt with before the commencement time

After the commencement time:

- 1 (a) the reference in subsection 236(5) of the Act to a copy of a
2 document received by the Commissioner includes a reference
3 to a copy of a document received by the General Manager
4 under section 236 of the Act before the commencement time;
5 and
6 (b) the reference in subsection 237(4) of the Act to a statement
7 lodged with the Commissioner under subsection (1) includes
8 a reference to a statement lodged with the FWC under
9 subsection 237(1) of the Act before the commencement time;
10 and
11 (c) the reference in paragraph 347(1)(c) of the Act to a copy of a
12 list lodged with the Commissioner under subsection 233(1)
13 includes a reference to a copy of a list lodged with the FWC
14 under that subsection before the commencement time; and
15 (d) the reference in section 348 of the Act to a certificate of the
16 Commissioner includes a reference to a certificate of the
17 General Manager covered by that section before the
18 commencement time; and
19 (e) the reference in section 349 of the Act to a list of the officers
20 of an organisation or a branch of an organisation lodged with
21 the Commissioner on behalf of the organisation or a copy of
22 any such list certified by the Commissioner includes a
23 reference to such a list lodged with the FWC on behalf of the
24 organisation or a copy of such a list certified by the General
25 Manager before the commencement time.

26 **133 Proceedings in relation to civil penalty provisions**

- 27 (1) This item applies if an application made by the General Manager under
28 Part 2 of Chapter 10 of the Act has not been finally determined before
29 the commencement time.
- 30 (2) If the General Manager and the Commissioner agree, by signed writing,
31 that the Commissioner is substituted for the General Manager as a party
32 to any proceeding arising from the application:
33 (a) the agreement has effect accordingly; and
34 (b) the rights and obligations of the General Manager in relation
35 to such a proceeding become rights and obligations of the
36 Commissioner.

134 Other proceedings

- (1) This item applies if:
- (a) an application made by the General Manager under the Act, other than an application under Part 2 of Chapter 10 of the Act, has not been finally determined before the commencement time; and
 - (b) because of the amendments made by this Schedule, the power to make applications of that kind has become a power of the Commissioner.
- (2) The Commissioner is substituted for the General Manager as a party to any proceeding arising from the application, and the rights and obligations of the General Manager in relation to such a proceeding become rights and obligations of the Commissioner.

135 Information sharing

The Commissioner may, for the purposes of performing or exercising his or her functions or powers under the Act, require the General Manager to disclose to the Commissioner information acquired by the General Manager or a member of the staff of the FWC in the performance or exercise of functions or powers under the Act before the commencement time.

136 Commissioner's first annual report

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

137 Minister may make rules about transitional matters

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by Part 1 of this Schedule.

1 **Schedule 2—Increased disclosure**
2 **requirements, investigation powers**
3 **and penalties**

4 **Part 1—Amendments**

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

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

7 Repeal the definition.

8 **2 Section 6**

9 Insert:

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

12 **3 Section 6**

13 Insert:

14 *proceeding* means:

15 (a) a proceeding in a court; or

16 (b) a proceeding or hearing before, or an examination by or
17 before, a tribunal;

18 whether the proceeding, hearing or examination is of a civil,
19 administrative, criminal, disciplinary or other nature.

20 **4 Section 6**

21 Insert:

22 *serious contravention*, in relation to a contravention of a civil
23 penalty provision by an organisation, a branch of an organisation
24 or a person who is, or was, an officer or employee of an
25 organisation or a branch of an organisation, means a contravention
26 that:

27 (a) materially prejudices the interests of the organisation or
28 branch, or the members of the organisation or branch; or

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

4 **5 Section 16**

5 Repeal the section.

6 **6 Subsection 51(2) (penalty)**

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

8 **7 Subsection 52(1) (note)**

9 Repeal the note.

10 **8 At the end of subsection 52(1)**

11 Add:

12 Civil penalty: 100 penalty units.

13 **9 Subsection 52(3) (note)**

14 Repeal the note.

15 **10 At the end of subsection 52(3)**

16 Add:

17 Civil penalty: 100 penalty units.

18 **11 Subsections 72(1) to (3) (penalty)**

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

20 **12 At the end of subsection 95(3C)**

21 Add:

22 Civil penalty: 100 penalty units.

23 **13 Subsection 103(4) (penalty)**

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

25 **14 Subsection 104(1) (note)**

26 Repeal the note.

15 At the end of subsection 104(1)

Add:

Civil penalty: 100 penalty units.

16 Subsection 104(3) (note)

Repeal the note.

17 At the end of subsection 104(3)

Add:

Civil penalty: 100 penalty units.

18 Subsections 105(1) to (3) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

19 After subparagraph 141(1)(b)(ii)

Insert:

(ia) the keeping of minute books in which are recorded
proceedings and resolutions of meetings of committees
of management of the organisation and its branches; and

20 Division 3A of Part 2 of Chapter 5

Repeal the Division.

21 Subsection 151(2) (note)

Repeal the note.

22 At the end of subsection 151(2)

Add:

Civil penalty: 60 penalty units.

23 Subsection 151(11)

Repeal the subsection, substitute:

(11) If an organisation and a State union agree, in writing, to terminate
an agreement entered into under rules made under subsection (1),
the organisation must lodge with the FWC a copy of the agreement
to terminate.

1 Civil penalty: 60 penalty units.

2 (11A) If an organisation and a State union agree, in writing, to terminate
3 an agreement entered into under rules made under subsection (1),
4 the General Manager must as soon as practicable enter particulars
5 of the termination in the register kept under subsection 13(1).

6 **24 Subsection 152(3) (note)**

7 Repeal the note.

8 **25 At the end of subsection 152(3)**

9 Add:

10 Civil penalty: 60 penalty units.

11 **26 Sections 154C and 154D**

12 Repeal the sections.

13 **27 Paragraph 159(4)(a)**

14 Omit “or section 148D”.

15 **28 Section 169 (note)**

16 Repeal the note.

17 **29 At the end of section 169**

18 Add:

19 Civil penalty: 100 penalty units.

20 **30 Subsection 172(1) (note)**

21 Repeal the note.

22 **31 At the end of subsection 172(1)**

23 Add:

24 Civil penalty: 60 penalty units.

25 **32 Section 175 (note)**

26 Repeal the note.

33 At the end of section 175

Add:

Civil penalty: 100 penalty units.

34 Section 176 (note)

Repeal the note.

35 At the end of section 176

Add:

Civil penalty: 100 penalty units.

36 Subsections 185(1) and (2) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

37 Subsection 189(2) (note)

Repeal the note.

38 At the end of subsection 189(2)

Add:

Civil penalty: 60 penalty units.

39 Section 190 (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

40 Subsection 191(2) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

41 Subsection 192(1) (note)

Repeal the note.

42 At the end of subsection 192(1)

Add:

Civil penalty: 100 penalty units.

43 Subsection 192(3) (note)

Repeal the note.

44 At the end of subsection 192(3)

Add:

Civil penalty: 100 penalty units.

45 Subsection 193(2) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

46 Section 194 (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

47 Subsections 195(2) to (6) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

48 Subsection 198(1) (note)

Repeal the note.

49 At the end of subsection 198(1)

Add:

Civil penalty: 100 penalty units.

50 Subsection 198(4) (note)

Repeal the note.

51 At the end of subsection 198(4)

Add:

Civil penalty: 100 penalty units.

52 Subsection 198(5) (note)

Repeal the note.

53 At the end of subsection 198(5)

Add:

Civil penalty: 100 penalty units.

54 Subsection 198(8) (note)

Repeal the note.

55 At the end of subsection 198(8)

Add:

Civil penalty: 100 penalty units.

56 Subsections 199(3) and (5) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

57 Subsection 202(5) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

58 Subsection 203(6) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

59 Paragraph 212(b)

Omit “or subsection 202(5)”, substitute “, subsection 202(5) or section 290A”.

60 Subsection 230(1) (note)

Repeal the note.

61 At the end of subsection 230(1)

Add:

Civil penalty: 60 penalty units.

62 Subsection 230(2) (note 1)

Repeal the note.

63 Subsection 230(2) (note 2)

Omit “Note 2”, substitute “Note”.

64 At the end of subsection 230(2) (after note 2)

Add:

Civil penalty: 60 penalty units.

65 At the end of subsection 231(1)

Add:

1 Civil penalty: 60 penalty units.

2 **66 Subsection 231(2) (note)**

3 Repeal the note.

4 **67 At the end of subsection 231(2)**

5 Add:

6 Civil penalty: 60 penalty units.

7 **68 Subsection 232(1) (penalty)**

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

9 **69 At the end of subsection 233(1)**

10 Add:

11 Civil penalty: 60 penalty units.

12 **70 At the end of subsection 233(2)**

13 Add:

14 Civil penalty: 60 penalty units.

15 **71 Subsection 233(3) (note)**

16 Repeal the note.

17 **72 At the end of subsection 233(3)**

18 Add:

19 Civil penalty: 100 penalty units.

20 **73 Subsection 235(2) (note)**

21 Repeal the note.

22 **74 At the end of subsection 235(2)**

23 Add:

24 Civil penalty: 60 penalty units.

1 **75 Subsection 236(1) (note)**

2 Repeal the note.

3 **76 At the end of subsection 236(1)**

4 Add:

5 Civil penalty: 60 penalty units.

6 **77 Subsection 236(2) (note)**

7 Repeal the note.

8 **78 At the end of subsection 236(2)**

9 Add:

10 Civil penalty: 60 penalty units.

11 **79 Subsection 237(1) (note)**

12 Repeal the note.

13 **80 At the end of subsection 237(1)**

14 Add:

15 Civil penalty: 100 penalty units.

16 **81 Subsection 237(3) (note)**

17 Repeal the note.

18 **82 At the end of subsection 237(3)**

19 Add:

20 Civil penalty: 100 penalty units.

21 **83 Subsection 253(3) (note 1)**

22 Repeal the note.

23 **84 Subsection 253(3) (note 2)**

24 Renumber as Note 1.

25 **85 Subsection 253(3) (note 3)**

26 Renumber as Note 2.

86 At the end of section 253 (after note 3)

Add:

(4) A reporting unit must not contravene this section.

Civil penalty: 100 penalty units.

87 Subsection 254(3) (note)

Repeal the note.

88 At the end of section 254

Add:

(4) A reporting unit must not contravene this section.

Civil penalty: 100 penalty units.

89 After subsection 255(2)

Insert:

(2A) The reporting guidelines for the purposes of section 253 and 270 must require a report that shows the total expenditure incurred by reporting units during the financial year in relation to each of the following:

- (a) remuneration, and other employment-related costs and expenses, in respect of employees;
- (b) advertising;
- (c) operating costs;
- (d) donations to political parties;
- (e) legal costs.

Note: The total expenditure may be shown in diagrammatic form, such as a pie chart.

90 Subsection 256(1) (note)

Repeal the note.

91 At the end of subsection 256(1)

Add:

Civil penalty: 100 penalty units.

1 **92 Subsection 256(3) (note)**

2 Repeal the note.

3 **93 At the end of subsection 256(3)**

4 Add:

5 Civil penalty: 60 penalty units.

6 **94 Subsection 256(4) (note)**

7 Repeal the note.

8 **95 At the end of subsection 256(4)**

9 Add:

10 Civil penalty: 60 penalty units.

11 **96 Subsection 256(5) (note)**

12 Repeal the note.

13 **97 At the end of subsection 256(5)**

14 Add:

15 Civil penalty: 60 penalty units.

16 **98 Subsection 256(6) (note)**

17 Repeal the note.

18 **99 At the end of subsection 256(6)**

19 Add:

20 Civil penalty: 60 penalty units.

21 **100 Subsection 257(10) (note)**

22 Repeal the note.

23 **101 At the end of subsection 257(10)**

24 Add:

25 Civil penalty: 100 penalty units.

102 Subsection 257(11) (note)

Repeal the note.

103 At the end of subsection 257(11)

Add:

Civil penalty: 100 penalty units.

104 Subsection 258(1) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

105 Section 259 (note)

Repeal the note.

106 At the end of section 259

Add:

Civil penalty: 100 penalty units.

107 Subsections 260(3) and (4) (penalty)

Omit “Maximum penalty”, substitute “Penalty”.

108 Subsection 263(2) (note)

Repeal the note.

109 At the end of subsection 263(2)

Add:

Civil penalty: 60 penalty units.

110 Subsection 263(3) (note)

Repeal the note.

111 At the end of subsection 263(3)

Add:

Civil penalty: 60 penalty units.

112 Subsection 263(5) (note)

Repeal the note.

1 **113 At the end of subsection 263(5)**

2 Add:

3 Civil penalty: 60 penalty units.

4 **114 Subsection 264(3) (note)**

5 Repeal the note.

6 **115 At the end of subsection 264(3)**

7 Add:

8 Civil penalty: 60 penalty units.

9 **116 Subsection 265(1) (note)**

10 Repeal the note.

11 **117 At the end of subsection 265(1)**

12 Add:

13 Civil penalty: 100 penalty units.

14 **118 Subsection 265(4) (note)**

15 Repeal the note.

16 **119 At the end of subsection 265(4)**

17 Add:

18 Civil penalty: 100 penalty units.

19 **120 Subsection 265(5) (note)**

20 Repeal the note.

21 **121 At the end of subsection 265(5)**

22 Add:

23 Civil penalty: 100 penalty units.

24 **122 Subsection 266(1) (note)**

25 Repeal the note.

1 **123 At the end of subsection 266(1)**

2 Add:

3 Civil penalty: 60 penalty units.

4 **124 Section 267 (note)**

5 Repeal the note.

6 **125 At the end of section 267**

7 Add:

8 Civil penalty: 100 penalty units.

9 **126 Section 268**

10 After “general meeting”, insert “, or meeting of the committee of
11 management,”.

12 **127 Paragraph 268(c)**

13 Omit “a meeting”, insert “a general meeting, or presented to a meeting
14 of the committee of management, as the case requires,”.

15 **128 Section 268 (note)**

16 Repeal the note.

17 **129 At the end of section 268**

18 Add:

19 Civil penalty: 100 penalty units.

20 **130 Subsection 270(4) (note)**

21 Repeal the note.

22 **131 At the end of subsection 270(4)**

23 Add:

24 Civil penalty: 100 penalty units.

25 **132 Subsection 270(5) (note)**

26 Repeal the note.

1 **133 At the end of subsection 270(5)**

2 Add:

3 Civil penalty: 100 penalty units.

4 **134 Subsection 270(6) (note)**

5 Repeal the note.

6 **135 At the end of subsection 270(6)**

7 Add:

8 Civil penalty: 100 penalty units.

9 **136 Subsection 270(7) (note)**

10 Repeal the note.

11 **137 At the end of subsection 270(7)**

12 Add:

13 Civil penalty: 100 penalty units.

14 **138 Subsection 272(3) (note)**

15 Repeal the note.

16 **139 At the end of subsection 272(3)**

17 Add:

18 Civil penalty: 60 penalty units.

19 **140 Subsection 272(5) (note)**

20 Repeal the note.

21 **141 At the end of subsection 272(5)**

22 Add:

23 Civil penalty: 60 penalty units.

24 **142 Subsection 274(1) (note)**

25 Repeal the note.

143 At the end of subsection 274(1)

Add:

Civil penalty: 60 penalty units.

144 At the end of subsection 276(1)

Add:

Civil penalty: 60 penalty units.

145 Subsection 276(2) (note)

Repeal the note.

146 At the end of subsection 276(2)

Add:

Civil penalty: 60 penalty units.

147 Section 281

After:

Part 2 sets out the general duties of officers and employees in relation to the financial management of an organisation or a branch of an organisation.

insert:

Part 2A sets out disclosure obligations about remuneration paid to officers and material personal interests of officers.

Part 2A also restricts officers from taking part in making decisions in relation to matters in which they have a material personal interest, requires the preparation of officer and related party disclosure statements and requires officers to undertake approved training in relation to their financial duties.

148 Subsection 285(1) (note)

Repeal the note.

149 At the end of subsection 285(1)

Add:

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

150 Subsection 286(1) (note)

Repeal the note.

151 At the end of subsection 286(1)

Add:

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

152 Subsection 286(2) (note)

Repeal the note.

153 At the end of subsection 286(2)

Add:

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

154 Subsection 287(1) (note)

Repeal the note.

155 At the end of subsection 287(1)

Add:

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

156 Subsection 287(2) (note)

Repeal the note.

157 At the end of subsection 287(2)

Add:

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

3 **158 Subsection 288(1) (note 1)**

4 Omit “1”.

5 **159 Subsection 288(1) (note 2)**

6 Repeal the note.

7 **160 At the end of subsection 288(1) (after note 2)**

8 Add:

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

11 **161 Subsection 288(2) (note)**

12 Repeal the note.

13 **162 At the end of subsection 288(2)**

14 Add:

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

17 **163 After section 290**

18 Insert:

19 **290A Good faith, use of position and use of information—criminal**
20 **offences**

21 *Good faith—officers of organisations and branches*

22 (1) An officer of an organisation or a branch commits an offence if he
23 or she:

24 (a) is reckless; or

25 (b) is intentionally dishonest;

26 and fails to exercise his or her powers or discharge his or her
27 duties:

28 (c) in good faith in the best interests of the organisation; or

29 (d) for a proper purpose.

1 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

2 *Use of position—officers and employees of organisations and*
3 *branches*

- 4 (2) An officer or employee of an organisation or a branch commits an
5 offence if the officer or employee uses his or her position
6 dishonestly:

7 (a) with the intention of directly or indirectly gaining an
8 advantage for himself or herself, or someone else, or causing
9 detriment to the organisation; or

10 (b) reckless as to whether the use may result in himself or herself
11 or someone else directly or indirectly gaining an advantage,
12 or causing detriment to the organisation.

13 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

14 *Use of information—officers and employees of organisations and*
15 *branches*

- 16 (3) A person who obtains information because he or she is, or has
17 been, an officer or employee of an organisation or a branch
18 commits an offence if he or she uses the information dishonestly:

19 (a) with the intention of directly or indirectly gaining an
20 advantage for himself or herself, or someone else, or causing
21 detriment to the organisation; or

22 (b) reckless as to whether the use may result in himself or herself
23 or someone else directly or indirectly gaining an advantage,
24 or causing detriment to the organisation.

25 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

26 **164 Section 291 (heading)**

27 Repeal the heading, substitute:

28 **291 Interaction of sections 285 to 289 and 290A with other laws etc.**

29 **165 Section 291**

30 After “289”, insert “and 290A”.

1 **166 After Part 2 of Chapter 9**

2 Insert:

3 **Part 2A—Disclosure obligations**

4 **Division 1—Preliminary**

5 **293A Simplified outline**

6 This Part sets out disclosure obligations about remuneration paid to
7 officers and material personal interests of disclosing officers (see
8 subsection 293C(1)).

9 It also restricts disclosing officers from taking part in making
10 decisions in relation to matters in which they have a material
11 personal interest, requires the preparation of officer and related
12 party disclosure statements and requires officers to undertake
13 approved training in relation to their financial duties.

14 **Division 2—Disclosure obligations and restrictions on**
15 **taking part in making decisions**

16 **293B Disclosure of remuneration paid to officers**

17 *Disclosure by officers*

- 18 (1) Each officer of an organisation must, in accordance with
19 section 293BA or 293BB, disclose to the organisation details of
20 any remuneration paid to the officer:
- 21 (a) because the officer is a member of a Board, if:
- 22 (i) the officer is a member of the Board only because the
23 officer is an officer of the organisation; or
- 24 (ii) the officer was nominated for the position of member of
25 the Board by the organisation, a branch of the
26 organisation or a peak council; or
- 27 (b) by a related party of the organisation, in connection with the
28 performance of the officer's duties as an officer.

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

- (2) Each officer of a branch of an organisation must, in accordance section 293BA or 293BB, disclose to the branch details of any remuneration paid to the officer:
- (a) because the officer is a member of a Board, if:
 - (i) the officer is a member of the Board only because the officer is an officer of the branch; or
 - (ii) the officer was nominated for the position of member of the Board by the organisation, a branch of the organisation or a peak council; or
 - (b) by a related party of the branch, in connection with the performance of the officer's duties as an officer.

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

293BA Immediate disclosure

The disclosure is in accordance with this section if it is made in writing to the committee of management of the organisation or branch, as the case may be, as soon as practicable after the remuneration is paid to the officer.

293BB Standing disclosure of remuneration

- (1) The disclosure is in accordance with this section if:
- (a) remuneration is to be paid to the officer, under a contract or other arrangement, on a regular basis during the financial year; and
 - (b) the officer gives to the members of the committee of management of the organisation or branch, as the case may be, standing notice of the amounts of remuneration that the officer expects to be paid during the financial year; and
 - (c) the requirements set out in subsections (2) to (5) are met.
- (2) The standing notice must be given at any time before, or as soon as practicable after, the first payment is made to the officer.
- (3) If, during the financial year, an amount of remuneration paid to the officer under the contract or arrangement exceeds the amount

- 1 notified in the standing notice, the officer must, as soon as
2 practicable, notify the committee of management of the
3 organisation or branch, as the case may be, of the excess.
- 4 (4) If, at the end of the financial year, the total amount (the *final total*)
5 of remuneration paid to the officer under the contract or
6 arrangement is more, or less, than the total amount notified under
7 paragraph (2)(b), the officer must, as soon as practicable after the
8 end of the financial year, notify the committee of management of
9 the organisation or branch, as the case may be, of the final total.
- 10 (5) Notice under this section must be given in writing.

11 **293BC Disclosure of certain remuneration and benefits by**
12 **organisations and branches**

- 13 (1) An organisation must, for a financial year, disclose to the members
14 of the organisation and its branches details of the following in
15 accordance with subsection (3):
- 16 (a) the identity of each officer of the organisation who, when all
17 officers of the organisation are ranked by relevant
18 remuneration for the financial year (from highest to lowest),
19 is ranked no lower than fifth;
- 20 (b) for each of those officers:
- 21 (i) the actual amount of the officer's relevant remuneration
22 for the financial year; and
- 23 (ii) the value and form of the officer's relevant non-cash
24 benefits for the financial year.
- 25 (2) A branch of an organisation must, for a financial year, disclose to
26 the members of the branch, details of the following in accordance
27 with subsection (3):
- 28 (a) the identity of each officer of the branch who, when all
29 officers of the branch are ranked by relevant remuneration for
30 the financial year (from highest to lowest), is ranked no lower
31 than fifth;
- 32 (b) for each of those officers:
- 33 (i) the actual amount of the officer's relevant remuneration
34 for the financial year; and
- 35 (ii) the value and form of the officer's relevant non-cash
36 benefits for the financial year.

Manner of disclosure

- (3) A disclosure under subsection (1) or (2) must be made as part of the officer and related party disclosure statement required under Division 3.

Note: Failure to prepare an officer and related party disclosure statement is a contravention of a civil penalty provision (see section 293J).

Relevant remuneration

- (4) For the purposes of this section, the **relevant remuneration** of an officer of an organisation or a branch of an organisation for a financial year is the sum of the following:
- (a) any remuneration disclosed to the organisation or the branch by the officer under subsection 293B(1) or (2), during the financial year;
 - (b) any remuneration paid, during the financial year, to the officer by the organisation or the branch.

Relevant non-cash benefits

- (5) For the purposes of this section, the **relevant non-cash benefits** of an officer of an organisation or a branch of an organisation for a financial year are the non-cash benefits provided to the officer, at any time during the financial year, in connection with the performance of the officer's duties as an officer, by the organisation or the branch or by a related party of the organisation or the branch.

293C Disclosure of material personal interests of officers

Disclosure by officers

- (1) This section applies to each officer (a **disclosing officer**) of an organisation or a branch of an organisation whose duties include duties that relate to the financial management of the organisation or branch.
- (2) A disclosing officer of an organisation must, in accordance with subsection (5), disclose to the committee of management of the organisation details of any material personal interest that the

- 1 officer has or acquires in a matter that relates to the affairs of the
2 organisation.
- 3 Civil penalty: 100 penalty units, or 1,200 penalty units for a
4 serious contravention.
- 5 (3) A disclosing officer of a branch must, in accordance with
6 subsection (5), disclose to the committee of management of the
7 branch details of any material personal interest that the officer has
8 or acquires in a matter that relates to the affairs of the branch.
- 9 Civil penalty: 100 penalty units, or 1,200 penalty units for a
10 serious contravention.
- 11 (4) A disclosing officer does not need to disclose an interest under
12 subsection (2) or (3) if:
13 (a) the interest:
14 (i) arises because the disclosing officer is a member, or a
15 representative of a member, of an organisation or a
16 branch and the interest is held in common with the other
17 members of the organisation or branch; or
18 (ii) arises in relation to the officer's remuneration as an
19 officer of the organisation or branch; or
20 (iii) relates to a contract the organisation or branch is
21 proposing to enter into that is subject to approval by the
22 members of the organisation or branch and will not
23 impose any obligation on the organisation or branch if it
24 is not approved by the members; or
25 (iv) is in a contract, or proposed contract, with, or for the
26 benefit of, or on behalf of, a related party of the
27 organisation or branch that is a body corporate and
28 arises merely because the officer is on the Board of the
29 related party; or
30 (b) the officer has given a standing notice of the nature and
31 extent of the interest under section 293D and the notice is
32 still effective in relation to the interest.
- 33 (5) A disclosure made under subsection (2) or (3) must:
34 (a) be made as soon as practicable after the interest is acquired;
35 and
36 (b) provide details of:
37 (i) the nature and extent of the interest; and
-

(ii) the relation of the interest to the affairs of the organisation or branch; and

(c) be made:

(i) at a meeting of the committee of management (either orally or in writing); or

(ii) to the members of the committee of management individually in writing.

The disclosure is made under subparagraph (c)(ii) when it has been given to every member of the committee of management.

Committee of management must record details of disclosure in minutes of meeting

(6) An organisation or a branch contravenes this subsection if a committee of management of the organisation or branch (as the case may be) fails to record details of a disclosure made under subsection (2) or (3):

(a) if the disclosure is made at a meeting of the committee of management of the organisation or branch—in the minutes of the meeting of the committee of management at which the disclosure is made; or

(b) in any other case—in the minutes of the first meeting of the committee of management after the disclosure is made.

Civil penalty: 100 penalty units.

(7) An organisation or a branch contravenes this subsection if a committee of management of the organisation or branch (as the case may be) fails, within 28 days of being requested in writing to do so by a member of the organisation or branch, to provide to the member details of disclosures made to the committee of management under subsection (2) or (3).

Civil penalty: 100 penalty units.

**293D Officer may give members of committee of management
standing notice about an interest**

Power to give notice

- (1) An officer of an organisation who has an interest in a matter may give to the members of the committee of management of the organisation standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the organisation at the time the notice is given.

Note: The standing notice may be given to the members of the committee of management before the interest becomes a material personal interest.

- (2) The standing notice must:

(a) give details of the nature and extent of the interest; and

(b) be given:

(i) at a meeting of the committee of management (either orally or in writing); or

(ii) to the members of the committee of management individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every member of the committee of management.

Standing notice must be tabled at meeting if given to members of the committee of management individually

- (3) If the standing notice is given to the members of the committee of management individually in writing, it must be tabled at the next meeting of the committee of management after it is given.

Nature and extent of interest must be recorded in minutes

- (4) The committee of management must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting of the committee of management at which the standing notice is given or tabled.

Dates of effect and expiry of standing notice

- (5) The standing notice:

(a) takes effect as soon as it is given; and

- 1 (b) ceases to have effect if a person who was not a member of
2 the committee of management at the time when the notice
3 was given is appointed as a member of the committee of
4 management.

5 A standing notice that ceases to have effect under paragraph (b)
6 commences to have effect again if it is given to the person referred
7 to in that paragraph.

8 *Effect of material increase in nature or extent of interest*

- 9 (6) The standing notice ceases to have effect in relation to a particular
10 interest if the nature or extent of the interest materially increases
11 above that disclosed in the notice.

12 *Effect of contravention by officer*

- 13 (7) A contravention of this section by an officer does not affect the
14 validity of any act, transaction, agreement, instrument, resolution
15 or other thing.

- 16 (8) This section applies in relation to a branch of an organisation as if
17 references to an organisation were references to a branch of an
18 organisation.

19 **293E Interaction of section 293C and 293D with other laws**

20 Sections 293C and 293D have effect in addition to, and not in
21 derogation of:

- 22 (a) any general law rule about conflicts of interest; and
23 (b) any provision in an organisation's or branch's rules that
24 restricts an officer or employee from having a material
25 personal interest in a matter involving duties or interests that
26 conflict with their duties or interests as an officer of the
27 organisation or branch.

28 **293F Restrictions on taking part in making decisions**

- 29 (1) An officer of an organisation who has a material personal interest
30 in a matter that relates to the affairs of the organisation:
31 (a) must not be present during any deliberation by the
32 organisation on the matter; and

1 (b) must not take part in any decision of the organisation with
2 respect to the matter.

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

5 (2) An officer of a branch of an organisation who has a material
6 personal interest in a matter that relates to the affairs of the branch:

7 (a) must not be present during any deliberation by the branch on
8 the matter; and

9 (b) must not take part in any decision of the branch with respect
10 to the matter.

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

13 (3) Subsections (1) and (2) do not apply if:

14 (a) subsection (4) allows the officer to be present and take part in
15 a discussion with respect to the matter; or

16 (b) the interest does not need to be disclosed under section 293C.

17 (4) The officer may be present and take part in a decision with respect
18 to the matter if members of the committee of management of the
19 organisation or branch (as the case may be) who do not have a
20 material personal interest in the matter have passed a resolution
21 that:

22 (a) identifies the officer, the nature and extent of the officer's
23 interest in the matter and its relation to the affairs of the
24 organisation or branch; and

25 (b) states that those members are satisfied that the interest should
26 not disqualify the officer from being present and taking part
27 in a decision with respect to the matter.

28 *Effect of contravention by officer*

29 (5) A contravention by an officer of this section does not affect the
30 validity of any act, transaction, agreement, instrument, resolution
31 or other thing.

293G Disclosure of payments made by an organisation or a branch

(1) An organisation must, for a financial year and in accordance with subsection (3), disclose to the members of the organisation and its branches, details of each payment made by the organisation during the financial year:

- (a) to a related party of the organisation or of a branch of the organisation; or
- (b) to a declared person or body of the organisation.

(2) A branch of an organisation must, for a financial year and in accordance with subsection (3), disclose to the members of the branch each payment made by the branch, during the financial year:

- (a) to a related party of the branch; or
- (b) to a declared person or body of the branch.

(3) A disclosure under subsection (1) or (2) must be made as part of the officer and related party disclosure statement required under Division 3.

Note: Failure to prepare an officer and related party disclosure statement is a contravention of a civil penalty provision (see section 293J).

(4) Subsections (1) and (2) do not apply to a payment made to a related party if:

- (a) the related party is an officer of the organisation or the branch; and
- (b) the payment:
 - (i) consists of remuneration paid to the officer by the organisation or the branch; or
 - (ii) is reimbursement for expenses reasonably incurred by the officer in performing the officer's duties as an officer.

Note: Section 293B requires certain disclosures in relation to remuneration.

(5) Subsections (1) and (2) do not apply to a payment made to a related party if the payment consists of amounts deducted by the organisation or the branch from remuneration payable to one or more officers or employees of the organisation or the branch (as the case may be).

Arm's length terms

- (5A) Subsections (1) and (2) do not apply to a payment made to a related party if the payment is made on terms that:
- (a) would be reasonable in the circumstances if the organisation, or the branch, and the related party were dealing at arm's length; or
 - (b) are less favourable to the related party than the terms referred to in paragraph (a).

Small amounts given to related party

- (5B) Subsections (1) and (2) do not apply to a payment made to a related party if the total of the following amounts is less than or equal to the amount prescribed by the regulations for the purposes of this subsection:
- (a) the amount of the payment;
 - (b) the total of all other payments given to the related party, in the financial year, in relation to which subsections (1) and (2) do not apply to the payment because of this subsection.
- (5C) In working out the total of the payments referred to in paragraphs (5B)(a) and (b) disregard:
- (a) amounts that have been repaid; and
 - (b) amounts that fall under any other exception in this section.

Payments to members that do not discriminate unfairly

- (5D) Subsections (1) and (2) do not apply to a payment made to a related party if:
- (a) the payment is given to the related party in their capacity as a member of the organisation or the branch; and
 - (b) making the payment does not discriminate unfairly against the other members of the organisation or the branch.
- (6) For the purposes of this section, a person or body is a ***declared person or body*** of an organisation or a branch of an organisation if:
- (a) an officer of the organisation or the branch has disclosed a material personal interest under subsection 293C(2) or (3) or 293D(1); and
 - (b) the interest relates to, or is in, the person or body; and

- 1 (c) the officer has not notified the organisation or the branch that
2 the officer no longer has the interest.

3 **293H Section 293G—order for alternative disclosure arrangement**

- 4 (1) If an organisation considers that it is too onerous for the
5 organisation to comply with section 293G because special
6 circumstances exist in relation to the organisation, the organisation
7 may lodge with the Commissioner an application for an order
8 under this section.
- 9 (2) The application must be accompanied by:
- 10 (a) a statement of the special circumstances that exist in relation
11 to the organisation; and
- 12 (b) particulars of a proposed alternative arrangement (the
13 ***alternative disclosure arrangement***) to provide for
14 disclosures, in relation to payments made by the organisation,
15 that are appropriate for the organisation's special
16 circumstances and provide appropriate transparency; and
- 17 (c) evidence of the organisation's past and current high standards
18 of financial accountability and control that are appropriate for
19 the organisation's special circumstances and provide
20 appropriate transparency.
- 21 (3) If the Commissioner is satisfied, on application by an organisation
22 under subsection (1):
- 23 (a) that special circumstances exist in relation to the
24 organisation; and
- 25 (b) that, taking into account the evidence provided in accordance
26 with paragraph (2)(c), the proposed alternative disclosure
27 arrangement provides for disclosures, in relation to payments
28 made by the organisation, that are appropriate for the
29 organisation's special circumstances and provide appropriate
30 transparency; and
- 31 (c) that the proposed alternative disclosure arrangement:
- 32 (i) complies with and is not contrary to this Act (other than
33 section 293G); and
- 34 (ii) is not otherwise contrary to law;
- 35 the Commissioner may, in writing, make an order under this
36 subsection.

- 1 (4) If the Commissioner makes the order under subsection (3):
2 (a) the order must set out the alternative disclosure arrangement;
3 and
4 (b) the alternative disclosure arrangement takes effect when the
5 Commissioner makes the order; and
6 (c) compliance with the alternative disclosure arrangement set
7 out in the order is, for the purposes of this Act, taken to be
8 compliance with section 293G.
- 9 (5) The order remains in force until the earlier of:
10 (a) the day the order is revoked under subsection (6); and
11 (b) the day 5 years after the day the order was made.
- 12 (6) The Commissioner may revoke the order if the Commissioner:
13 (a) either:
14 (i) is no longer satisfied of a matter referred to in
15 paragraph (3)(a), (b) or (c); or
16 (ii) is satisfied that the organisation has contravened the
17 alternative disclosure arrangement set out in the order;
18 and
19 (b) has given the organisation an opportunity, as prescribed, to
20 show cause why the order should not be revoked.
- 21 (7) Subsection 604(1) of the Fair Work Act does not apply in relation
22 to a decision of the Commissioner under subsection (3).
- 23 Note: Subsection 604(1) of the Fair Work Act provides for appeals from
24 certain decisions of the Commissioner.
- 25 (8) This section applies in relation to a branch of an organisation as if
26 references to an organisation were references to a branch of an
27 organisation.
- 28 (9) An order under subsection (3) is not a legislative instrument.

Division 3—Officer and related party disclosure statements

293J Officer and related party disclosure statements

- 31 (1) An organisation must:
32 (a) as soon as practicable after the end of each financial year,
33 cause an officer and related party disclosure statement to be
-

1 prepared for the organisation in relation to the financial year
2 in accordance with this section; and

3 (b) within the period of 6 months starting at the end of the
4 financial year:

5 (i) cause the officer and related party disclosure statement
6 to be provided to the members of the organisation and
7 its branches; and

8 (ii) lodge with the Commissioner a copy of the officer and
9 related party disclosure statement provided to the
10 members.

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

13 (2) A branch of an organisation must:

14 (a) as soon as practicable after the end of each financial year,
15 cause an officer and related party disclosure statement to be
16 prepared for the branch in relation to the financial year in
17 accordance with this section; and

18 (b) within the period of 6 months starting at the end of the
19 financial year:

20 (i) cause the officer and related party disclosure statement
21 to be provided to the members of the branch; and

22 (ii) lodge with the Commissioner a copy of the officer and
23 related party disclosure statement provided to the
24 members.

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

27 (3) The *officer and related party disclosure statement* for an
28 organisation or a branch of an organisation must include details of
29 the disclosures provided by the organisation or the branch under
30 sections 293BC, 293G and 293H for the financial year.

31 **Division 4—Training in relation to financial duties**

32 **293K Officers to undertake approved training**

33 (1) Unless exempted under section 293M, each officer of an
34 organisation or a branch of an organisation whose duties include

1 duties (*financial duties*) that relate to the financial management of
2 the organisation or the branch must undertake training:

- 3 (a) approved by the Commissioner under section 293L; and
4 (b) that covers each of the officer's financial duties.

- 5 (2) The organisation or branch must ensure that the officer completes
6 the training within 6 months after the person begins to hold the
7 office.

8 Civil penalty: 100 penalty units.

9 **293L Approved training**

- 10 (1) The Commissioner may, for the purposes of section 293K, approve
11 training provided by:

- 12 (a) an organisation; or
13 (b) a peak council; or
14 (c) a body or person the Commissioner is satisfied has
15 appropriate skills and expertise to provide the training;

16 if the Commissioner is satisfied that the training covers one or
17 more of the duties of officers of organisations and branches of
18 organisations that relate to the financial management of
19 organisations and branches of organisations.

- 20 (2) If the approval is made in writing, the approval is not a legislative
21 instrument.

22 **293M Commissioner may grant exemption from financial training**

- 23 (1) An organisation or branch of an organisation may, in writing, apply
24 to the Commissioner for an officer of the organisation or the
25 branch to be exempted from the requirement to undertake training
26 under section 293K.

- 27 (2) The Commissioner may grant the exemption if the Commissioner
28 is satisfied that the officer has a proper understanding of the
29 officer's financial duties within the organisation or the branch
30 because of the officer's:

- 31 (a) experience as a company director; or
32 (b) experience as an officer of a registered organisation; or
33 (c) other professional qualifications and experience.

1 (3) The Commissioner may grant the exemption subject to any
2 conditions that the Commissioner considers appropriate in the
3 circumstances.

4 **167 Paragraph 297(1)(a)**

5 Omit “or the Fair Work Act”.

6 **168 Subsection 297(2) (note)**

7 Repeal the note.

8 **169 At the end of subsection 297(2)**

9 Add:

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

12 **170 Subsection 297(3) (note)**

13 Repeal the note.

14 **171 At the end of subsection 297(3)**

15 Add:

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

18 **172 Paragraph 298(1)(a)**

19 Omit “or the Fair Work Act”.

20 **173 Subsection 298(2) (note)**

21 Repeal the note.

22 **174 At the end of subsection 298(2)**

23 Add:

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

26 **175 Subsection 298(3) (note)**

27 Repeal the note.

1 **176 At the end of subsection 298(3)**

2 Add:

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

5 **177 Paragraph 299(1)(a)**

6 Omit “or the Fair Work Act”.

7 **178 Subsection 299(2) (note)**

8 Repeal the note.

9 **179 At the end of subsection 299(2)**

10 Add:

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

13 **180 Subsection 299(3) (note)**

14 Repeal the note.

15 **181 At the end of subsection 299(3)**

16 Add:

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

19 **182 Paragraph 300(1)(a)**

20 Omit “or the Fair Work Act”.

21 **183 Subsection 300(2) (note)**

22 Repeal the note.

23 **184 At the end of subsection 300(2)**

24 Add:

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

1 **185 Subsection 300(3) (note)**

2 Repeal the note.

3 **186 At the end of subsection 300(3)**

4 Add:

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

7 **187 Paragraph 301(1)(a)**

8 Omit “or the Fair Work Act”.

9 **188 Subsection 301(2) (note)**

10 Repeal the note.

11 **189 At the end of subsection 301(2)**

12 Add:

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

15 **190 Subsection 301(3) (note)**

16 Repeal the note.

17 **191 At the end of subsection 301(3)**

18 Add:

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

21 **192 Paragraph 302(1)(a)**

22 Omit “or the Fair Work Act”.

23 **193 Subsection 302(2) (note)**

24 Repeal the note.

25 **194 At the end of subsection 302(2)**

26 Add:

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

3 **195 Subsection 302(3) (note)**

4 Repeal the note.

5 **196 At the end of subsection 302(3)**

6 Add:

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

9 **197 Paragraph 303(1)(a)**

10 Omit “or the Fair Work Act”.

11 **198 Subsection 303(2) (note)**

12 Repeal the note.

13 **199 At the end of subsection 303(2)**

14 Add:

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

17 **200 Subsection 305(2)**

18 Repeal the subsection, substitute:

19 (2) A *civil penalty provision* is a subsection, or a section that is not
20 divided into subsections, that has set out at its foot a pecuniary
21 penalty, or penalties, indicated by the words “Civil penalty”.

22 **201 At the end of section 305**

23 Add:

24 (4) The Federal Court must apply the rules of evidence and procedure
25 for civil matters when hearing and determining an application for
26 an order under this Part.

27 **202 Subsection 306(1)**

28 Omit “Subject to subsection (1A), in”, substitute “In”.

203 Paragraph 306(1)(a)

Omit “300 penalty units”, substitute “5 times the pecuniary penalty specified for the civil penalty provision”.

204 Paragraph 306(1)(b)

Omit “60 penalty units”, substitute “the pecuniary penalty specified for the civil penalty provision”.

205 Subsection 306(1A)

Repeal the subsection.

206 Subsection 306(2)

Omit “, reporting unit”.

207 Subsection 306(2)

Omit “by the person”, substitute “by the person or organisation”.

208 At the end of section 306

Add:

- (3) A person is not liable to more than one pecuniary penalty under this Part in relation to the same conduct.

209 After section 307

Insert:

307A Disqualification orders

- (1) The Federal Court may make an order disqualifying a person from holding office in an organisation for a period that the Court considers appropriate if:
- (a) the person has contravened a civil penalty provision; and
 - (b) the Court is satisfied that the disqualification is justified.
- (2) In determining whether the disqualification is justified, the Court may have regard to:
- (a) the person’s conduct in relation to the management, business and property of any organisation; and
 - (b) any other matter that the Court considers appropriate.

210 Section 311

After “the person”, insert “or organisation”.

211 Section 317

After:

Part 3A establishes the Registered Organisations Commission and Registered Organisations Commissioner, provides for the terms and conditions of appointment of the Commissioner and makes provision for staff to assist the Commissioner. The Registered Organisations Commission Special Account is also established by the Part.

insert:

Part 3B sets out the circumstances in which the Commissioner or the General Manager may disclose information obtained in the performance of functions or exercise of powers under this Act.

212 After Part 3A of Chapter 11

Insert:

Part 3B—Information sharing

329G When information may be disclosed

Information to which this section applies

- (1) This section applies to information acquired by the following in the performance of functions or exercise of powers under this Act:
- (a) the Commissioner or a member of the staff assisting the Commissioner;
 - (b) the General Manager or a member of the staff of the FWC.

Disclosure that is necessary or appropriate, or likely to assist administration or enforcement

- (2) The Commissioner or General Manager may disclose, or authorise the disclosure of, the information if he or she reasonably believes:

- 1 (a) that it is necessary or appropriate to do so in the course of
2 performing or exercising his or her functions or powers
3 (including under the Fair Work Act); or
4 (b) that the disclosure is likely to assist in the administration or
5 enforcement of a law of the Commonwealth, a State or a
6 Territory.

7 **213 Before section 330**

8 Insert:

9 **Division 1—Inquiries**

10 **214 Before section 331**

11 Insert:

12 **Division 2—Investigations**

13 **215 Section 335 (heading)**

14 Repeal the heading, substitute:

15 **335 Conduct of investigations**

16 **216 Subsection 335(1)**

17 Repeal the subsection, substitute:

- 18 (1) This section applies if the Commissioner believes on reasonable
19 grounds that a person:
20 (a) has information or a document that is relevant to an
21 investigation; or
22 (b) is capable of giving evidence which the Commissioner has
23 reason to believe is relevant to an investigation.

24 **217 Subsection 335(2)**

25 Omit “making an investigation, the Commissioner may, by written
26 notice, require the person”, substitute “the investigation, the
27 Commissioner may, by written notice, require the person to do one or
28 more of the following”.

218 Paragraph 335(2)(a)

Omit “person; and”, substitute “person;”.

219 Paragraph 335(2)(b)

Omit “access; and”, substitute “access;”.

220 At the end of subsection 335(2)

Add:

; (d) to give to the Commissioner such other reasonable assistance in connection with the investigation as is specified in the notice.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337).

221 Subsection 335(3)

Omit all the words after “attend”, substitute:

must:

- (a) state the general nature of the matters to which the investigation relates; and
- (b) state that the person may be accompanied by another person who may, but does not have to, be a lawyer; and
- (c) set out the effect of section 337AD (self-incrimination); and
- (d) state whether or not the person will be required to answer questions on oath or affirmation; and
- (e) if the person will be required to answer questions on oath or affirmation—set out the effect of section 335F (attendee’s lawyer).

Note: For questioning on oath or affirmation, see Division 3.

222 Section 335A

Repeal the section.

223 Section 335C

Repeal the section, substitute:

Division 3—Questioning on oath or affirmation

335C When this Division applies

This Division applies if a person (the *attendee*) is required, for the purposes of an investigation, to attend before another person (the *investigator*) to answer questions on oath or affirmation.

335D Requirements made of attendee

- (1) The investigator may question the attendee on oath or affirmation and may, for that purpose:

- (a) require the attendee to either take an oath or make an affirmation; and
(b) administer an oath or affirmation to the attendee.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337AA).

- (2) The oath or affirmation to be taken or made by the attendee for the purposes of the investigation is an oath or affirmation that the statements that the attendee will make will be true.

- (3) The investigator may require the attendee to answer a question that is put to the attendee at the investigation.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 337).

335E Questioning to take place in private

- (1) The questioning must take place in private and the investigator may give directions about who may be present during the questioning, or during a part of it.

- (2) A person must not be present during the questioning unless he or she is:

- (a) the investigator or the attendee; or
(b) the Commissioner or a member of the staff assisting the Commissioner authorised by the Commissioner to be present; or
(c) is entitled to be present:
(i) because of a direction under subsection (1); or

- 1 (ii) because the person is the attendee's lawyer, or another
2 person accompanying the attendee as mentioned in
3 paragraph 335(3)(a).

4 Note: Failure to comply with this subsection is an offence (see
5 section 337AA).

6 **335F Attendee's lawyer**

- 7 (1) The attendee's lawyer may, at such times during the questioning as
8 the investigator determines:
9 (a) address the investigator; and
10 (b) question the attendee;
11 about matters about which the investigator has questioned the
12 attendee.

- 13 (2) If, in the investigator's opinion, a person is trying to obstruct the
14 questioning by exercising rights under subsection (1), the
15 investigator may require the person to stop addressing the
16 investigator, or questioning the attendee, as the case requires.

17 Note: Failure to comply with a requirement made under this subsection is an
18 offence (see section 337AA).

19 **335G Record of statements**

- 20 (1) The investigator may, and must if the attendee so requests, cause a
21 record to be made of statements made during the questioning.

- 22 (2) If a record made under subsection (1) is in writing or is reduced to
23 writing:

24 (a) the investigator may require the attendee to read it, or to have
25 it read to him or her, and may require him or her to sign it;
26 and

27 (b) the investigator must, if requested in writing by the attendee
28 to give to the attendee a copy of the written record, comply
29 with the request without charge but subject to such conditions
30 (if any) as the investigator imposes.

31 Note: Failure to comply with a requirement made under paragraph (2)(a) is
32 an offence (see section 337AA).

335H Copies given subject to conditions

If a copy is given to a person under subsection 335G(2) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Note: Failure to comply with this section is an offence (see section 337AA).

Division 4—Powers in relation to documents

335K Application for warrant to seize documents

- (1) If the Commissioner has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, documents whose production could be required under section 335, he or she may:
 - (a) lay before a magistrate an information on oath or affirmation setting out those grounds; and
 - (b) apply for the issue of a warrant to search the premises for those documents.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

335L Grant of warrant

- (1) This section applies if, on an application under section 335K, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular documents whose production could be required under section 335.
- (2) The magistrate may issue a warrant authorising a member of the Australian Federal Police, whether or not named in the warrant, together with any person so named, with such assistance, and by such force, as is necessary and reasonable:
 - (a) to enter on or into the premises; and
 - (b) to search the premises; and
 - (c) to break open and search anything, whether a fixture or not, in or on the premises; and

- 1 (d) to take possession of, or secure against interference,
2 documents that appear to be any or all of those documents.
- 3 (3) If the magistrate issues such a warrant, he or she must set out on
4 the information laid before him or her under section 335K for the
5 purposes of the application:
6 (a) which of the grounds set out in the information; and
7 (b) particulars of any other grounds;
8 he or she has relied on to justify the issue of the warrant.
- 9 (4) A warrant under this section must:
10 (a) specify the premises and documents referred to in
11 subsection (1); and
12 (b) state whether entry is authorised to be made at any time of
13 the day or night or only during specified hours; and
14 (c) state that the warrant ceases to have effect on a specified day
15 that is not more than 7 days after the day of issue of the
16 warrant.

17 **335M Execution of warrant**

- 18 (1) Before any person enters premises under a search warrant issued
19 under section 335L, a member of the Australian Federal Police
20 must:
21 (a) announce that the member is authorised to enter the premises;
22 and
23 (b) give any person at the premises an opportunity to allow entry
24 to the premises.
- 25 (2) However, the member of the Australian Federal Police is not
26 required to comply with subsection (1) if he or she believes on
27 reasonable grounds that immediate entry to the premises is
28 required to ensure that the effective execution of the warrant is not
29 frustrated.
- 30 (3) If the occupier of the premises is present at the premises:
31 (a) the member of the Australian Federal Police must make
32 available to the occupier a copy of the warrant; and
33 (b) the occupier is entitled to observe the search being
34 conducted.

- 1 (4) The occupier's right to observe the search being conducted ends if
2 the occupier impedes the search.
- 3 (5) This section does not prevent 2 or more areas of the premises being
4 searched at the same time.
- 5 (6) If documents are seized under the warrant, the member of the
6 Australian Federal Police or a person assisting the member must
7 provide a receipt for the documents.
- 8 (7) If 2 or more documents are seized, they may be covered in the one
9 receipt.

10 **335N Powers in relation to documents produced or seized**

- 11 (1) This section applies if:
12 (a) documents are produced to a person under a requirement
13 made under section 335; or
14 (b) under a warrant issued under section 335L, a person:
15 (i) takes possession of documents; or
16 (ii) secures documents against interference; or
17 (c) by virtue of a previous application of subsection (8) of this
18 section, documents are delivered into a person's possession.
- 19 (2) If paragraph (1)(a) applies, the person may take possession of any
20 of the documents.
- 21 (3) The person may inspect, and may make copies of, or take extracts
22 from, any of the documents.
- 23 (4) The person may use, or permit the use of, any of the documents for
24 the purposes of a proceeding.
- 25 (5) The person may retain possession of any of the documents for so
26 long as is necessary:
27 (a) for the purposes of exercising a power conferred by this
28 section (other than this subsection and subsection (7)); or
29 (b) for the purposes of conducting the investigation concerned;
30 or
31 (c) for a decision to be made about whether or not a proceeding
32 to which the documents would be relevant should be begun;
33 or

- 1 (d) for such a proceeding to be begun and carried on.
- 2 (6) No-one is entitled, as against the person, to claim a lien on any of
3 the documents, but such a lien is not otherwise prejudiced.
- 4 (7) While the documents are in the person's possession, the person:
5 (a) must permit another person to inspect at all reasonable times
6 such (if any) of the documents as the other person would be
7 entitled to inspect if they were not in the first-mentioned
8 person's possession; and
9 (b) may permit another person to inspect any of the documents.
- 10 (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any
11 of the documents into the possession of the Commissioner or of a
12 person authorised by the Commissioner to receive them.
- 13 (9) If paragraph (1)(a) or (b) applies, the person, or a person into
14 whose possession the person delivers any of the documents under
15 subsection (8), may require:
16 (a) if paragraph (1)(a) applies—a person who so produced any of
17 the documents; or
18 (b) in any case—a person who was a party to the compilation of
19 any of the documents;
20 to explain any matter about the content of any of the documents or
21 to which any of the documents relate.
- 22 Note: Failure to comply with a requirement made under this subsection is an
23 offence (see section 337).

24 **335P Powers if documents not produced**

- 25 If a person fails to produce particular documents in compliance
26 with a requirement made by another person under section 335, the
27 other person may require the first-mentioned person to explain:
28 (a) where the documents may be found; and
29 (b) who last had possession, custody or control of the documents
30 and where that person may be found.
- 31 Note: Failure to comply with a requirement made under this section is an
32 offence (see section 337).

1 **335Q Power to require person to identify property of an**
2 **organisation**

3 If a person has power under section 335 to require another person
4 to produce documents relating to the affairs of an organisation,
5 whether or not that power is exercised, the first-mentioned person
6 may require the other person:

- 7 (a) to identify property of the organisation; and
8 (b) to explain how the organisation has kept account of that
9 property.

10 Note: Failure to comply with a requirement made under this section is an
11 offence (see section 337).

12 **224 Section 336 (heading)**

13 Repeal the heading, substitute:

14 **Division 5—Action following investigations**

15 **336 Action in relation to reporting units**

16 **225 Before section 337**

17 Insert:

18 **Division 6—Offences**

19 **226 Paragraph 337(1)(a)**

20 Repeal the paragraph, substitute:

- 21 (a) the person fails, intentionally or recklessly, to comply with a
22 requirement under subsection 335(2):
23 (i) to give information or produce a document; or
24 (ii) to attend before the Commissioner or delegate; or
25 (iii) to give to the Commissioner such other reasonable
26 assistance as is specified in a notice under that
27 subsection; or

28 **227 At the end of subsection 337(1) (before the penalty)**

29 Add:

30 ; or (d) the person fails, intentionally or recklessly, to comply with:

- 1 (i) a requirement under subsection 335D(3) to answer a
2 question; or
3 (ii) a requirement under subsection 335N(9) to explain a
4 matter about the content of a document or to which a
5 document relates; or
6 (iii) a requirement under section 335P to explain where
7 documents may be found, and who last had possession,
8 custody or control of the documents and where that
9 person may be found; or
10 (iv) a requirement under section 335Q to identify property
11 of an organisation and explain how the organisation has
12 kept account of that property.

13 **228 Subsection 337(1) (penalty)**

14 Repeal the penalty, substitute:

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

16 **229 Subsections 337(2) to (5)**

17 Repeal the subsections, substitute:

18 (2) Paragraphs (1)(a) and (d) do not apply to the extent that the person
19 has a reasonable excuse.

20 (3) Subparagraphs (1)(d)(ii) and (iii) do not apply to the extent that the
21 person has explained the matter to the best of his or her knowledge
22 or belief.

23 (4) Subparagraph (1)(d)(iv) does not apply to the extent that the person
24 has, to the extent that the person is capable of doing so, performed
25 the acts referred to in paragraphs 335Q(a) and (b).

26 Note: A defendant bears an evidential burden in relation to the matters in
27 subsections (2) to (4) (see subsection 13.3(3) of the *Criminal Code*).

28 **230 Section 337AA**

29 Repeal the section, substitute:

30 **337AA Strict liability offences**

31 (1) A person commits an offence of strict liability if the person:

- 1 (a) fails to comply with a requirement under subsection 335D(1)
2 to take an oath or make an affirmation; or
3 (b) contravenes subsection 335E(2) (questioning to take place in
4 private); or
5 (c) fails to comply with a requirement under
6 paragraph 335G(2)(a) in relation to a record of statements
7 made during questioning; or
8 (d) contravenes section 335H (conditions on use of copies of
9 records of statements made during questioning).

10 Penalty: 60 penalty units.

- 11 (2) A person commits an offence of strict liability if the person fails to
12 comply with a requirement under subsection 335F(2) to stop
13 addressing an investigator, or questioning an attendee.

14 Penalty: 60 penalty units.

- 15 (3) Subsections (1) and (2) do not apply to the extent that the person
16 has a reasonable excuse.

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

19 **337AB Obstructing person acting under this Part**

- 20 (1) A person must not:
21 (a) engage in conduct that results in the obstruction or hindering
22 of a person in the exercise of a power under this Part; or
23 (b) engage in conduct that results in the obstruction or hindering
24 of a person who is executing a warrant issued under
25 section 335L.

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

- 27 (2) Subsection (1) does not apply to the extent that the person has a
28 reasonable excuse.

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

- 31 (3) The occupier, or person in charge, of premises that a person enters
32 under a warrant issued under section 335L must not intentionally
33 or recklessly fail to provide to that person all reasonable facilities

and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

337AC Concealing documents relevant to investigation

(1) If the Commissioner, or a person or body to whom the Commissioner has delegated the conduct of an investigation, is investigating, or is about to investigate, a matter, a person must not:

- (a) in any case—engage in conduct that results in the concealment, destruction, mutilation or alteration of a document relating to that matter; or
- (b) if a document relating to that matter is in a particular State or Territory—engage in conduct that results in the taking or sending of the document out of that State or Territory or out of Australia.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

(2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant intended neither to defeat the purposes of the investigation, nor to delay or obstruct the investigation, or any proposed investigation under this Part.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (2) (see section 13.4 of the *Criminal Code*).

337AD Self-incrimination

(1) For the purposes of this Part, it is not a reasonable excuse for a person to refuse or fail:

- (a) to give information; or
- (b) to produce a document; or
- (c) to sign a record;

in accordance with a requirement made of the person, that the information, producing the document or signing the record might tend to incriminate the person or make the person liable to a penalty.

(2) Subsection (3) applies if:

- (a) before:

- 1 (i) giving information; or
2 (ii) producing a document; or
3 (iii) signing a record;
4 pursuant to a requirement made under this Part, a person
5 (other than a body corporate) claims that the information,
6 producing the document or signing the record might tend to
7 incriminate the person or make the person liable to a penalty;
8 and
9 (b) the information, producing the document or signing the
10 record might in fact tend to incriminate the person or make
11 the person so liable.
- 12 (3) The information, or the fact that the person has produced the
13 document or signed the record, is not admissible in evidence
14 against the person in:
15 (a) a criminal proceeding; or
16 (b) a proceeding for the imposition of a penalty;
17 other than a proceeding in respect of:
18 (c) in the case of giving information or producing a document—
19 whether the information or document is false or misleading;
20 or
21 (d) in the case of signing a record—whether any statement
22 contained in the record is false or misleading.

23 **337AE Legal professional privilege**

- 24 (1) This section applies if:
25 (a) under this Part, a person requires a lawyer:
26 (i) to give information; or
27 (ii) to produce a document; and
28 (b) giving the information would involve disclosing, or the
29 document contains, a privileged communication made by, on
30 behalf of or to the lawyer in his or her capacity as a lawyer.

- 1 (2) The lawyer is entitled to refuse to comply with the requirement
2 unless the person to whom, or by or on behalf of whom, the
3 communication was made, consents to the lawyer complying with
4 the requirement.
- 5 (3) If the lawyer so refuses, he or she must, as soon as practicable, give
6 to the person who made the requirement a written notice setting
7 out:
- 8 (a) if the lawyer knows the name and address of the person to
9 whom, or by or on behalf of whom, the communication was
10 made—that name and address; and
- 11 (b) if subparagraph (1)(a)(i) applies and the communication was
12 made in writing—sufficient particulars to identify the
13 document containing the communication; and
- 14 (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to
15 identify the document, or the part of the document,
16 containing the communication.
- 17 Penalty: 10 penalty units or imprisonment for 3 months, or both.

Division 7—Evidentiary use of certain material

337AF Statements made on oath or affirmation during an investigation—proceedings against attendee

- 21 (1) A statement that a person makes on oath or affirmation during an
22 investigation is admissible in evidence against the person in a
23 proceeding unless:
- 24 (a) because of subsection 337AD(3), the statement is not
25 admissible in evidence against the person in the proceeding;
26 or
- 27 (b) the statement is not relevant to the proceeding and the person
28 objects to the admission of evidence of the statement; or
- 29 (c) the statement is qualified or explained by some other
30 statement made by the person on oath or affirmation during
31 the investigation, evidence of the other statement is not
32 tendered in the proceeding and the person objects to the
33 admission of evidence of the first-mentioned statement; or
- 34 (d) the statement discloses matter in respect of which the person
35 could claim legal professional privilege in the proceeding if
36 this subsection did not apply in relation to the statement, and

1 the person objects to the admission of evidence of the
2 statement.

3 (2) Subsection (1) applies in relation to a proceeding against a person
4 even if it is heard together with a proceeding against another
5 person.

6 (3) If a written record of statements made by a person during
7 questioning is signed by the person under subsection 335G(2) or
8 authenticated in any other prescribed manner, the record is, in a
9 proceeding, prima facie evidence of the statements it records, but
10 nothing in this Part limits or affects the admissibility in the
11 proceeding of other evidence of statements made during the
12 questioning.

13 **337AG Statements made on oath or affirmation during an**
14 **investigation—other proceedings**

15 If direct evidence by a person (the *absent witness*) of a matter
16 would be admissible in a proceeding, a statement that the absent
17 witness made on oath or affirmation during an investigation and
18 that tends to establish that matter is admissible in the proceeding as
19 evidence of that matter:

20 (a) if it appears to the court or tribunal that:

- 21 (i) the absent witness is dead or is unfit, because of
22 physical or mental incapacity, to attend as a witness; or
23 (ii) the absent witness is outside the State or Territory in
24 which the proceeding is being heard and it is not
25 reasonably practicable to secure his or her attendance;
26 or

27 (iii) all reasonable steps have been taken to find the absent
28 witness but he or she cannot be found; or

29 (b) if it does not so appear to the court or tribunal—unless
30 another party to the proceeding requires the party tendering
31 evidence of the statement to call the absent witness as a
32 witness in the proceeding and the tendering party does not so
33 call the absent witness.

337AH Weight of evidence admitted under section 337AG

- (1) This section applies if evidence of a statement made by a person made on oath or affirmation during an investigation is admitted under section 337AG in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
 - (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
 - (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
 - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.
- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

337AJ Objection to admission of statements made on oath or affirmation during an investigation

- (1) A party (the *adducing party*) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
 - (a) will apply to have admitted in evidence in the proceeding specified statements made on oath or affirmation during an investigation; and

- 1 (b) for that purpose, will apply to have evidence of those
2 statements admitted in the proceeding.
- 3 (2) A notice under subsection (1) must set out, or be accompanied by
4 writing that sets out, the specified statements.
- 5 (3) Within 14 days after a notice is given under subsection (1), the
6 other party may give to the adducing party a written notice:
7 (a) stating that the other party objects to specified statements
8 being admitted in evidence in the proceeding; and
9 (b) specifying, in relation to each of those statements, the
10 grounds of objection.
- 11 (4) The period prescribed by subsection (3) may be extended by the
12 court or tribunal or by agreement between the parties concerned.
- 13 (5) On receiving a notice given under subsection (3), the adducing
14 party must give to the court or tribunal a copy of:
15 (a) the notice under subsection (1) and any writing that
16 subsection (2) required to accompany that notice; and
17 (b) the notice under subsection (3).
- 18 (6) If subsection (5) is complied with, the court or tribunal may either:
19 (a) determine the objections as a preliminary point before the
20 hearing of the proceeding begins; or
21 (b) defer determination of the objections until the hearing.
- 22 (7) If a notice has been given in accordance with subsections (1) and
23 (2), the other party is not entitled to object at the hearing of the
24 proceeding to a statement specified in the notice being admitted in
25 evidence in the proceeding, unless:
26 (a) the other party has, in accordance with subsection (3),
27 objected to the statement being so admitted; or
28 (b) the court or tribunal gives the other party leave to object to
29 the statement being so admitted.

30 **337AK Copies of, or extracts from, certain documents**

- 31 (1) A copy of, or an extract from, a document relating to the affairs of
32 an organisation is admissible in evidence in a proceeding as if the
33 copy were the original document, or the extract were the relevant

1 part of the original document, whether or not the copy or extract
2 was made under section 335N.

3 (2) A copy of, or an extract from, a document is not admissible in
4 evidence under subsection (1) unless it is proved that the copy or
5 extract is a true copy of the document, or of the relevant part of the
6 document.

7 (3) For the purposes of subsection (2), a person who has compared:
8 (a) a copy of a document with the document; or
9 (b) an extract from a document with the relevant part of the
10 document;
11 may give evidence, either orally or by an affidavit or statutory
12 declaration, that the copy or extract is a true copy of the document
13 or relevant part, as the case may be.

14 **337AL Material otherwise admissible**

15 Nothing in this Division renders evidence inadmissible in a
16 proceeding in circumstances where it would have been admissible
17 in that proceeding if this Division had not been enacted.

18 **Division 8—Miscellaneous**

19 **337AM Evidence of authority**

20 A person (the *investigator*) who is about to make, or has made, a
21 requirement of another person under this Part must, if the other
22 person requests evidence of the investigator's authority to make the
23 requirement, produce to the other person:

- 24 (a) a written authorisation issued to the investigator by the
25 Commissioner; and
26 (b) such other evidence (if any) of the investigator's authority to
27 make the requirement as the Commissioner determines.

28 **337AN Application of Evidence Act**

29 Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of
30 the *Evidence Act 1995* apply to questioning on oath or affirmation
31 for the purposes of an investigation in the same way that they apply

1 to a proceeding to which that Act applies under section 4 of that
2 Act.

3 **337AP Allowances and expenses**

4 (1) A person who, pursuant to a requirement made under section 335,
5 attends before the Commissioner or a person or body to whom the
6 Commissioner has delegated the conduct of an investigation, is
7 entitled to the prescribed allowances and expenses (if any).

8 (2) The Commissioner may pay such amount as he or she thinks
9 reasonable on account of the costs and expenses (if any) that a
10 person incurs in complying with a requirement made under this
11 Part.

12 **337AQ Compliance with Part**

13 A person is neither liable to a proceeding, nor subject to a liability,
14 merely because the person has complied, or proposes to comply,
15 with a requirement made, or purporting to have been made, under
16 this Part.

17 **231 Subsection 337C(6) (penalty)**

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

19 **232 Section 337G**

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

21 **233 After paragraph 343B(2)(h)**

22 Insert:

23 (i) subsection 329G(2);

24 **234 Paragraph 343B(2)(k)**

25 Omit “or 335A”.

26 **235 Paragraph 343B(2)(ka)**

27 Repeal the paragraph.

28 **236 Before paragraph 343B(2)(m)**

29 Insert:

1 (l) section 335K;

2 **237 After subsection 343B(3)**

3 Insert:

4 (4) Despite subsection (1), functions and powers under Division 3
5 (questioning on oath or affirmation) can only be delegated to a
6 member of the staff assisting the Commissioner.

7 **238 Subsection 347(1) (note)**

8 Repeal the note.

9 **239 At the end of subsection 347(1)**

10 Add:

11 Civil penalty: 60 penalty units.

12 **240 Subsections 350(1) and (2) (penalty)**

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

14 **241 Subsection 356(6) (penalty)**

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

Part 2—Transitional provisions

242 Definitions

In this Part:

commencement time means the time when this Schedule commences.

Commissioner has the same meaning as in the Act.

General Manager has the same meaning as in the Act.

the Act means the *Fair Work (Registered Organisations) Act 2009*.

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

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

244 Approved training

A person who has undertaken training approved by the General Manager under section 154C of the Act, as in force immediately before the commencement time, is taken, for the purposes of section 293L of that Act as in force after the commencement time, to have undertaken that training as approved by the Commissioner.

245 Alternative disclosure arrangements

In satisfying himself or herself as mentioned in subsection 293H(3) of the Act during the period of 12 months immediately after the commencement time, the Commissioner must take into account:

- (a) any exemption granted to the organisation concerned under section 148D of the Act, as in force before the commencement time; and
- (b) the statement, particulars and evidence provided in relation to any such exemption as required by subsection 148D(2) of the Act, as in force before the commencement time.

246 Minister may make rules about transitional matters

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by Part 1 of this Schedule.