

Fair Work (Commonwealth Powers) and Other Provisions Bill 2009

Explanatory Notes

Short Title

The short title of the Bill is the *Fair Work (Commonwealth Powers) and Other Provisions Bill 2009*.

Policy Objectives

The policy objectives of the Bill are:

- to enable Queensland to participate in a single, national industrial relations system for private sector employers and employees;
- to ensure the national system is underpinned by strong principles of fairness and balance; and
- to enable particular employers and employees to transfer to the State industrial relations system, including the Brisbane City Council.

Unrelated to the above objectives, the Bill makes amendments to the *Trustee Companies Act 1968* to facilitate changes being made at the national level in relation to the Commonwealth regulation of trustee companies.

Unrelated to the above, the Bill also amends the *Adoption Act 2009* by making transitional arrangements for interim adoption orders made under the *Adoption of Children Act 1964* to be treated as interim orders under the *Adoption Act 2009*.

The Bill also makes amendments to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*.

The *Trans-Tasman Mutual Recognition Act 1992* (Cwlth) (Commonwealth Trans-Tasman Mutual Recognition Act) and the *Mutual Recognition Act 1992* (Cwlth) (Commonwealth Mutual Recognition Act) have provisions allowing the schedules to the Acts to be amended by regulations made by

the Governor-General. In most circumstances, in order for the regulations made by the Governor-General to be valid, all the participating jurisdictions must endorse the regulations.

The purpose of the proposed legislation is to authorise the Governor in Council to publish a notice in the Queensland Government Gazette under section 7 of the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* (Queensland Trans-Tasman Mutual Recognition Act). This notice, as required by 43(1) of the Commonwealth Trans-Tasman Mutual Recognition Act, will set out and endorse the proposed regulation to amend the schedules of the Commonwealth Trans-Tasman Mutual Recognition Act to include section 9B of the South Australian *Summary Offences Act 1953* (SA) (South Australian Summary Offences Act).

The proposed legislation will also make the amendments necessary to the *Queensland Mutual Recognition (Queensland) Act 1992* (Queensland Mutual Recognition Act) to adopt amendments made to the schedules of the Mutual Recognition Act 1992 (Cwlth). The objective of this amendment is to allow the Governor to publish a notice in the Queensland Government Gazette, as required by section 47(2) of the Commonwealth Mutual Recognition Act, requesting the Governor-General to make the proposed regulation to amend the Schedules of the Commonwealth Mutual Recognition Act to include section 9B of the South Australian Summary Offences Act.

Reasons for the Bill

Referral of matters to the Commonwealth Parliament

Since March 2006, when the main provisions of the Commonwealth *Workplace Relations Amendment (Work Choices) Act 2005* (“Work Choices Act”) commenced, the Commonwealth has regulated the employment relationships of employers that are trading or financial corporations (“constitutional corporations”) and their employees. For many corporations, the test of whether they fall within the legal definition of a constitutional corporation is complex. This has created significant confusion for those employers and their employees about whether they are covered by the State or Commonwealth industrial relations system.

The new *Fair Work Act 2009* (Cwth) similarly regulates the employment relationships of constitutional corporations and their employees.

This Bill will enable Queensland to participate in a national system of industrial relations for the private sector from 1 January 2010 by referring

power to the Commonwealth to make laws with respect to all private sector employers and their employees, regardless of their corporate status.

This will remove the confusion for employers and employees about whether or not they are covered by the State or federal workplace relations system. It will also result in greater efficiencies for employers by removing duplication from the Australian industrial relations system.

Amendments to the *Trustee Companies Act 1968*

In March 2008, the Council of Australian Governments agreed to the Commonwealth Government assuming responsibility for the regulation of trustee companies. Schedule 2 of the *Corporations Legislation Amendment (Financial Services Modernisation) Bill 2009* (Cwlth), currently before the Commonwealth Parliament, provides for the Commonwealth regulation of trustee companies.

Amendments to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*

Under section 7(2) of the Queensland Trans-Tasman Mutual Recognition Act, in order for Queensland to endorse regulations made under the Commonwealth Trans-Tasman Mutual Recognition Act, an Act of Queensland Parliament must authorise the Governor to make a gazette notice endorsing the regulations for the purposes of section 43(1) of the Commonwealth Trans-Tasman Mutual Recognition Act.

Once this Act of Parliament is passed, Queensland then can endorse a regulation by means of the Governor making a gazette notice that includes an endorsement of the proposed regulation.

Section 5(1)(b) of the Queensland Mutual Recognition Act provides that the Queensland Parliament has only referred legislative power to the Commonwealth to enact the Commonwealth Mutual Recognition Act and amendments to the Commonwealth Mutual Recognition Act that do not relate to the schedules to the Commonwealth Mutual Recognition Act.

Therefore, the Commonwealth has no power to amend the operation of the schedules to the Commonwealth Mutual Recognition Act as far as that Act operates in Queensland.

In order for Queensland to endorse a regulation made by the Governor-General to amend a schedule to the Commonwealth Mutual Recognition Act, section 5(1)(b) of the Queensland Mutual Recognition Act must be amended to extend the referral of power to the Commonwealth

to include amendments made to the schedules of the Commonwealth Mutual Recognition Act.

This will allow the Governor to approve the terms of amendments for the Commonwealth Mutual Recognition Act by proclamation, as required under section 47(2) of the Commonwealth Mutual Recognition Act.

Achievement of the Objectives

Referral of matters to the Commonwealth Parliament

The Bill refers certain matters relating to industrial relations and employment to the Parliament of the Commonwealth to enable the Commonwealth to make laws about these matters for employees and employers in Queensland's private sector, who would otherwise be outside the reach of the Commonwealth's legislative power.

The referral of matters is based on section 51(xxxvii) of the *Commonwealth Constitution*, which provides that the Commonwealth Parliament has the power to make laws with respect to '*matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law*'.

The Bill refers three matters to the Commonwealth Parliament.

First, the Bill refers the text of Schedule 2 of the Bill to the Commonwealth Parliament (initial reference). This will enable the Commonwealth to include that text in the *Fair Work Act 2009* (Cwth) and, by so doing, extend the application of that Act to all private sector employers and their employees in Queensland.

Second, in relation to Queensland employers that are not constitutional corporations, the Bill refers to the Commonwealth Parliament the power to amend the Commonwealth *Fair Work Act 2009* (Cwth) with respect to particular subject matters (amendment reference). These subject matters are set out in the definition of "referred subject matters" in the Bill but do not include those matters which are set out in the definition of "excluded subject matter".

The Bill provides that the Commonwealth Parliament may only rely on the amendment reference to make direct amendments of the text of the *Fair Work Act 2009* (Cwth). The amendment reference does not allow the Commonwealth Parliament to enact a provision that would have

substantive effect otherwise than as a part of the text of the *Fair Work Act 2009* (Cwth).

Third, the Bill refers power to the Commonwealth Parliament to make transitional arrangements for employers and employees moving from the Queensland system to the Commonwealth system (transition reference). The Commonwealth will provide for these arrangements by amending the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

An Inter-Governmental Agreement, which will be signed by each referring State, the Territories and the Commonwealth (the Agreement), underpins the Bill. The Agreement includes the fundamental workplace relations principles which provide the basis for the national system. These principles are also enshrined in the Bill. The Agreement provides that, if a Commonwealth proposal or amendment to the *Fair Work Act 2009* (Cwth) is considered by one or more of the referring States or the Territories to undermine the fundamental workplace relations principles, that proposal or amendment will not proceed unless it is endorsed by a two-thirds majority of referring States, the Territories and the Commonwealth.

Similarly, the Bill provides that if, in the opinion of the Governor, the *Fair Work Act 2009* (Cwth) is proposed to be, or has been, amended in a manner that is inconsistent with one or more of the fundamental workplace relations principles, the Governor may terminate the amendment reference on three months' notice. The Commonwealth *Fair Work Act 2009* (Cwth) will provide that a State will remain a referring State if it terminates its amendment reference in those circumstances.

Amendments to the *Trustee Companies Act 1968*

The Bill amends the *Trustee Companies Act 1968* consequential on proposed Commonwealth legislation assuming responsibility for trustee company regulation. The amendments:

- remove the State approval mechanism for trustee companies and recognise licensed trustee companies within the meaning of section 601RAA of the *Corporations Act 2001* (Cwlth);
- omit sections that will be unnecessary or inconsistent when Commonwealth regulations takes effect;
- facilitate the transfer of a trustee company's business to another licensed trustee company when its licence is cancelled; and

provide for the making of regulation of a transitional nature to facilitate the transition to national regulation. •

The Bill also provides for consequential amendments to a number of other State Acts.

Amendments to the Trans-Tasman Mutual Recognition (Queensland) Act 2003

The Bill will authorise the Governor to gazette a notice to endorse a regulation made by the Governor-General under the Commonwealth Trans-Tasman Mutual Recognition Act and will allow the Governor to approve the terms of amendments for the Commonwealth Mutual Recognition Act by proclamation.

Alternative ways of Achieving Policy Objectives

Referral of matters to the Commonwealth Parliament

In addition to the method adopted by the Bill, the following means of enabling Queensland's participation in a national industrial relations system were considered:

- (1) enacting industrial relations legislation in the same terms as the *Fair Work Act 2009* (Cwth) (subject to certain exemptions), but extending its scope to apply to all private sector employers and employees; and
- (2) adopting the Commonwealth law so it applied in Queensland, following another State's referral.

A text-based initial referral law with the exclusion of certain matters (such as the public sector and local government) was the preferred option as it minimises the scope for the Commonwealth to legislate beyond what is referred and creates certainty over the coverage of the *Fair Work Act 2009* (Cwth). A referral ensures continuing uniformity of the law between jurisdictions and avoids the necessity of establishing complex, inter-jurisdictional arrangements. A referral also avoids the risk of constitutional challenges relating to the conferral of functions and powers on Commonwealth regulatory bodies such as Fair Work Australia.

The inclusion of an amendment reference based on particular subject matters was considered desirable because it gives the Commonwealth Parliament the ability to make amendments to the *Fair Work Act 2009* (Cwth) without the need for amendments to be made to each State's referral legislation.

Amendments to the *Trustee Companies Act 1968*

There is no alternative way to achieve the policy objective of facilitating changes being made at the national level in relation to the Commonwealth regulation of trustee companies.

Estimated Cost for Government Implementation

The Bill will not involve any financial consequences for the Government.

Consistency with Fundamental Legislative Principles

Referral of matters to the Commonwealth Parliament

The Bill is generally consistent with fundamental legislative principles, for the reasons outlined below.

Section 4(1) of the *Legislative Standards Act 1992* requires legislation to accord with the principles relating to legislation that underlie a parliamentary democracy based on the rule of law. The Scrutiny of Legislation Committee (the Committee) stated (in report no 26, *Scrutiny of Bills for Constitutional Validity*), that in the Committee's view, it would breach the fundamental legislative principles for Parliament to enact laws which are clearly constitutionally invalid. However, the Committee has also stated that where there is an element of doubt about the constitutional validity of a bill, the fundamental legislative principles will not be breached.

The legislative power of the State Parliament to enact the Bill is conferred not by s 51(xxxvii) of the *Commonwealth Constitution*, but by the general legislative power of the State to make laws for the peace, welfare and good government of the State.

The Committee has previously raised concerns about the ability of the State to terminate a reference in accordance with provisions such as those in clause 7 of the Bill. For instance, in relation to the *Water (Commonwealth Powers) Act 2008*, the Committee questioned whether a state can revoke its referral of power at any time, by enactment, irrespective of the period of the referral, and the effect of that revocation on the Commonwealth enactment made pursuant to the referral.

In relation to the *Water (Commonwealth Powers) Act 2008*, the Committee noted that it is arguable that the States can revoke a referral, given their incapacity to abdicate legislative power. The Committee further noted that

it is also arguable that the effect of a revocation is that it not only terminates the referral of power to the Commonwealth, but that it also terminates the operation of any Commonwealth law enacted in reliance on that referral. It is acknowledged that an alternative argument is that State legislation revoking the reference would be rendered ineffective by section 109 of the *Commonwealth Constitution* as inconsistent with the Commonwealth legislation enacted pursuant to the original reference.

In response to these concerns, it is noted that the use of revocation provisions is common in State reference legislation. The approach taken in the Bill, enabling the Governor to fix a day, by proclamation, to terminate all of the references, or only the amendment or transition references, accords with the vast majority of State reference legislation enacted since 1952. For example, this approach was used in the *Water (Commonwealth Powers) Act 2008* and the *Personal Properties Securities (Commonwealth Powers) Act 2009*.

The Bill makes provision for Queensland to terminate all of references, or just the amendment reference, or just the transition reference, at any time. The *Fair Work Amendment (State Referrals and Other Measures) Bill 2009* (Cwlth) is the Commonwealth Bill which will give effect to Queensland's referral of matters. Item 31 of Schedule 1 of that Bill will insert into the *Fair Work Act 2009* (Cwlth) a new section 30L. The new section 30L will adequately protect the State's interests in the event that Queensland no longer wishes the Commonwealth to have the power to legislate with respect to the referred matters. Section 30L(6) makes it clear that the termination of the initial reference, the amendment reference, or the transition reference, would result in Queensland ceasing to be a referring State (except in specified circumstances explained below). This would bring to an end the Commonwealth's power to legislate for Queensland in relation to any of the referred matters. In other words, the new section 30L of the *Fair Work Act 2009* (Cwlth) has been drafted in such a way that it will overcome any argument, based on s 109 of the Constitution, that Queensland could not terminate its referral.

Section 4(2)(b) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the institution of Parliament. It is arguable that the Bill infringes this fundamental legislative principle because:

- (1) the Bill, in practical terms, reduces the power of the Parliament of Queensland by referring power to the Parliament of the Commonwealth; and

- (2) the Bill allows the Governor to terminate one or more of the references; and
- (3) the Bill enables a declaration to be made by regulation that a particular employer is not a national system employer. Once endorsed by the Commonwealth Minister, such a declaration has the effect of moving the declared employer and its employees back into the State industrial relations system, and takes effect irrespective of the corporate status of the employer.

The provisions of the Bill are considered to be justified for the reasons outlined below.

It is acknowledged that, in practical terms, the effect of the Bill will be that the power to legislate with respect to private sector employers and their employees will be referred to the Commonwealth Parliament. Technically, the Queensland Parliament will retain a concurrent power to legislate with respect to the referred matters. However, any Queensland law relating to industrial relations is likely to be rendered ineffective in so far as it applies to the referred private sector, because it is likely to be inconsistent with the *Fair Work Act 2009* (Cwth).

Nonetheless, it is considered that the Bill is justified. As explained above, the Commonwealth's use of the "corporations power" to regulate employment relationships has created significant confusion about which employers and employees are subject to the Commonwealth laws. The Bill's referral of powers will remove that confusion and provide certainty to employers and employees in Queensland about which industrial relations system regulates their relationships. Further, as has again been explained above, it will remain open to Queensland to terminate the referral of powers at any time.

In relation to point (2), clause 7 of the Bill enables the termination of all of the references, or only the amendment or the transition references, by the publication of a proclamation made by the Governor. Clause 9 provides that the date fixed for the termination of the references must usually be 6 months from the day of the proclamation. As explained above, the effect of terminating all, or any, of the references, will usually be that Queensland ceases to be a referring State.

However, new section 30L of the *Fair Work Act 2009* (Cwlth) will provide that if the Governor terminates the amendment reference on six months' notice, and the amendment reference of every other referring State

terminates on the same day, Queensland and all other referring States will remain referring States.

Additionally, clause 9(2) of the Bill makes it clear that the Governor may terminate the amendment reference on 3 months' notice if the Governor declares that, in his or her opinion, the *Fair Work Act 2009* (Cwth) has been amended, or is proposed to be amended, in a way that breaches one or more of the fundamental workplace relations principles. If the Governor terminates the amendment reference in these circumstances, Queensland will remain a referring State.

If the amendment reference terminates in either of the two situations explained above, then the *Fair Work Act 2009* (Cwth), as in force at the time of the termination, will continue to apply in Queensland because Queensland will remain a referring State. However, until the Queensland Parliament re-enacts the amendment reference, any subsequent amendments the Commonwealth Parliament makes to the *Fair Work Act 2009* (Cwth) will not take effect in Queensland's referred jurisdiction.

Clause 7 may be considered to be a "Henry VIII clause" because the effect of the Bill once enacted will be able to be brought to an end by an Executive act. It must be noted, however, that clause 10 of the Bill provides that a proclamation made by the Governor in accordance with clause 7 is subordinate legislation. This means that the proclamation must be tabled in the Legislative Assembly and may be disallowed by the Assembly (see sections 49 and 50 of the *Statutory Instruments Act 1992*). The clause therefore is considered to have sufficient regard to the institution of Parliament, because Parliament has the opportunity to disallow the Governor's proclamation. Further, the power of the Governor to terminate a reference does not affect the power of the Parliament, by legislation, to repeal the referral law and thereby terminate the references.

In relation to point (3), it is arguable that the regulation-making power is a "Henry VIII clause" because the effect of the Act can be added to by regulation. It is therefore necessary to note that there are considerable restrictions governing the exercise of the power to declare employers not to be national system employers. Such a declaration can only be made in respect of an employer which is:

- a body corporate established for a public purpose by or under a law of Queensland, by the Governor, or by a Minister; or
- a body established for a local government purpose by or under a law of Queensland; or

a wholly-owned subsidiary (within the meaning of the *Corporations Act 2001*) of, or a body which is wholly controlled by, a body mentioned above.

A declaration cannot be made in respect of a university. Further, unless the employer is a body established for a local government purpose, or is owned or controlled by such a body, a declaration cannot be made in respect of an employer that:

- generates, supplies, or distributes electricity; or
- supplies or distributes gas; or
- provides services for the supply, distribution or release of water;
or

operates a rail service or a port.

To take effect, the declaration must name the particular employer (that is, a class or kind of employer cannot be declared), and be endorsed in writing by the Commonwealth Minister.

The regulation-making power to declare a particular employer not to be a national system employer is therefore limited to a small category of employers and must be exercised in an open and transparent manner. Further, that the declaration may be made by regulation is not considered objectionable because the regulation must be tabled in the Legislative Assembly, and may be disallowed.

Amendments to the *Trustee Companies Act 1968*

New section 81 of the *Trustee Companies Act 1968*, as inserted by the Bill, provides for the making of regulations of a saving or transitional nature for the purposes of—

- (a) the enactment of part 4 of the Bill; or
- (b) the transition from the regulation of trustee companies under this Act to the regulation of trustee companies under the *Corporations Act*; or
- (c) applying, complementing or otherwise giving effect to the provisions of the *Corporations Act* regulating trustee companies.

This may breach the fundamental legislative principle of having sufficient regard to the institution of Parliament. However, this regulation-making power is necessary where the Commonwealth is able to modify the operation of its legislation in this area by regulation. Those regulations may necessitate modifying the operation of provisions of the *Trustee Companies*

Act 1968; to avoid an inconsistency with the Commonwealth legislation; to ensure there is not a regulatory gap in the transitional arrangements between the Commonwealth and the State; or to complement Commonwealth regulatory measures. Similar provisions have been used in Queensland legislation when regulatory regimes are being substantially changed. The section and regulations made under it will expire two years after the commencement of the section.

Amendments to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*

The amendment of the Queensland Mutual Recognition Act in this Bill expands the amendments of the Commonwealth Mutual Recognition Act that can be endorsed by the executive rather than with Parliamentary approval.

The intention of the Mutual Recognition legislation was to create legislative schemes allowing the sale of goods and carrying on of certain occupations across participating jurisdictions.

These Acts allow certain laws and certain goods to be excluded on a temporary or permanent basis from the operation of the mutual recognition schemes. The Commonwealth Mutual Recognition Act was fixed some time ago and there has arisen the need to amend the Commonwealth Mutual Recognition Act schedules to provide exemptions for other laws or categories of goods or occupations from the operation of the schemes.

Consultation

Referral of matters to the Commonwealth Parliament

There has been extensive consultation with unions and employers, at both the State and federal levels, during the development of the Bill. Government stakeholders have not opposed the general course of action to refer the remaining private sector employers and employees to the federal industrial relations system, provided that employees do not lose any entitlements derived under State law. Employers generally support a single industrial relations system.

The Department of Premier and Cabinet, the Office of the Queensland Parliamentary Counsel, Queensland Treasury, the Departments of Education and Training and Employment, Economic Development and Innovation have been consulted. There is support of the Bill from the consulted agencies.

Amendments to the *Trustee Companies Act 1968*

The Department of the Premier and Cabinet, Queensland Treasury and the Department of Environment and Resource Management were consulted on the *Trustee Company Act 1968* amendments in the Bill. The President of the Guardianship and Administration Tribunal, Public Trustee and Public Advocate were consulted in relation to the consequential amendment for section 48 of the *Guardianship and Administration Act 2000*.

Uniformity with legislation of the Commonwealth and other States

Referral of matters to the Commonwealth Parliament

The Bill is consistent with the other Australian states that have referred, or intend to refer, their private sector industrial relations powers to the Commonwealth.

Amendments to the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*

This Bill is substantially uniform national legislation. The mutual recognition legislation adopts the Commonwealth mutual recognition legislation under section 51(xxxvii) of the Commonwealth of Australia Constitution Act.

The Commonwealth mutual recognition legislation creates legislative schemes allowing the sale of goods and carrying on of certain occupations across the participating jurisdictions.

Notes on Provisions

Part 1 Preliminary

1 Short Title

Clause 1 sets out the short title of the Act.

2 Commencement

Clause 2(1) provides that the Act commences on a day to be fixed by proclamation.

Clause 2(2) provides that section 15DA of the *Acts Interpretation Act 1954* (which provides for the automatic commencement of certain Acts one year after they are assented to) does not apply to this Act, other than parts 4 -7.

Commencement dates for the various amendments to the *Trustee Companies Act 1968* and other consequential amendments will depend on the commencement date of the corresponding Commonwealth legislative provisions and transitional arrangements.

3 Definitions

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Reference of matters

4 Fundamental workplace relations principles

Clause 4 sets out the fundamental workplace relations principles. These principles underpin the circumstances in which the State refers matters to the Commonwealth Parliament under this Act.

5 Reference of matters

Clause 5 provides for the reference of matters to the Commonwealth and outlines the three references, namely the initial reference, amendment reference and transitional reference described under the heading 'Achievement of the Objectives', above. Subsections (1)(a), (1)(b) and (1)(c) make each of the three references, respectively.

Clause 5(1)(a) provides for the referral of matters to which the initial referred provisions relate and allows the Commonwealth to make laws with respect to those matters by the inclusion of the initial referred provisions in the Commonwealth Act, in the terms, or substantially in the terms, of the scheduled text.

Clause 5(1)(b) provides for the reference of particular matters in Clause 3, and allows the Commonwealth to make laws with respect to these matters by making express amendments to the Commonwealth Act.

Clause 5(1)(c) provides for the reference of particular matters, defined as the 'referred transition matters' and allows the Commonwealth to make laws relating to any necessary transitional matters associated with the transition from the Queensland industrial relations regime to the regime provided by the Commonwealth Fair Work Act.

Clause 5(2) clarifies that the reference of a matter has effect only to the extent that the matter is not otherwise within the legislative power of the Commonwealth Parliament and to the extent that the matter is within the legislative power of the Queensland Parliament.

Clause 5(3) clarifies that none of the references is limited by any other of the references.

Clause 5(4) clarifies the intention of the Queensland Parliament that the Commonwealth Fair Work Act can be amended or have its operation affected by Commonwealth legislation enacted in reliance on other Commonwealth heads of power.

Clause 5(5) specifies that a reference has effect until terminated under section 7.

6 Matters excluded from the reference

Clause 6 sets out the matters that are excluded from the references under section 5, being matters relating to:

- (a) Ministers or Members of Parliament;

- (b) the Governor, the Office of the Governor, the Government House and its associated administrative unit;
- (c) judicial officers or members of State tribunals, or their associates;
- (d) public sector employees and employers;
- (e) persons appointed or engaged by the Governor, Governor in Council, or a Minister under any Act, law or authority;
- (f) officers or employees of the parliamentary service;
- (g) law enforcement officers; or
- (h) local government sector employees and employers.(h)

As the Commonwealth Parliament has power to make laws with respect to constitutional corporations, entities that are constitutional corporations cannot be excluded from the references. However, some constitutional corporations are declared by Queensland legislation not to be “national system employees”, in accordance with section 14 of the Commonwealth Fair Work Act.

For the sake of clarity, the definition of “public sector employer” provides that the term does not include the entities set out in Schedule 1. Although the entities set out in Schedule 1 may be constitutional corporations (and therefore could not be excluded from the reference), they are specified as not being “public sector employers” for the avoidance of doubt and for the assistance of persons reading the legislation.

7 Termination of references

Clause 7 provides for the manner in which a reference may be terminated.

Clause 7(1) enables the period of all of the references, or of the amendment reference or of the transitional reference, to be terminated on a day fixed by the Governor by proclamation.

Clause 7(2) provides that the Governor may publish a proclamation revoking a termination proclamation made under clause 7(1). Where this is done, the revoked proclamation is taken to not have been published for the purposes of clause 5.

Clause 7(3) provides that it is only possible to effect a revocation if notification of the revocation has been published before the day that was fixed under 7(1) for the termination.

Clause 7(4) provides that the making of a revocation of a proclamation published under 7(1) does not prevent the publication of a further proclamation under clause 7(1).

Clause 7(5) provides that if the amendment reference and the transitional reference have been terminated, the expression “the references” in clause 7(1) refers only to the initial reference.

8 Effect of termination of amendment reference or transition reference before initial reference

Clause 8 provides that if the amendment reference or the transition reference terminates before the initial reference:

- laws already made (whether or not in force) under those references are not affected by the termination; and
- The Commonwealth Fair Work Act, as in force immediate before the termination, continues to apply in the State.

This means that the amendment reference or the transition reference will continue to have effect to support those laws unless the initial reference is terminated.

9 Period for termination of references

Clause 9 (1) provides that a day fixed for the termination of a reference must be at least 6 months after the day on which the relevant proclamation is published.

However, clause 9(2) provides that if:

- the termination relates only to the amendment reference; and
- the Governor is of the opinion that the Commonwealth Fair Work Act is proposed to be amended, or has been amended, in a manner that is inconsistent with one or more of the fundamental workplace relations principles,

the period between the day on which the proclamation is published and the day fixed for the termination of the amendment reference may be reduced to three months.

Clause 9(3) provides that in the circumstances outlined in clause (2) the Minister must report the matter to Parliament.

10 Proclamations

Clause 10 provides that a proclamation made under this Act is subordinate legislation.

11 Amendment of titles

Clause 11 amends the long title and provides for the repeal of the section after its commencement.

12 Transitional provision

Clause 12 provides that a reference in any Act or instrument to an industrial instrument (defined under the *Industrial Relations Act 1999*) includes if the context permits and necessary to do so to take account of the reference of matters under this Act, a reference to a federal industrial instrument.

Part 3 Amendments of other legislation relating to the reference of matters

Division 1 Amendment of Acts Interpretation Act 1954

13 Act amended

Clause 13 provides that this division amends the *Acts Interpretation Act 1954*.

14 Amendment of s 36 (Meaning of commonly used terms and expressions)

Clause 14 inserts a reference of the *federal industrial instrument* into section 36 of the *Acts Interpretation Act 1954*.

Division 2 Amendment of Building and Construction Industry (Portable Long Service Leave) Act 1991

15 Act amended

Clause 15 provides that this division amends the *Building and Construction Industry (Portable Long Service Industry Leave) Act 1991*.

16 Amendment of s 59 (Amount of long service leave payment)

Clause 16 provides for the amendment of section 59(8), (10) and (11) to include a reference to ‘a relevant award or agreement’.

17 Amendment of schedule (Dictionary)

Clause 17 provides for the definition of *award, building and construction industry award or agreement and industrial agreement* in the Schedule of the Act to provide a definition of *building and construction industry award or agreement*.

Division 3 Amendment of Contract Cleaning Industry (Portable Long Service Leave) Act 2005

18 Act amended

Clause 18 provides that this division amends the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005*.

19 Amendment of s 71 (Application for long service leave entitlement)

Clause 19 amends section 71(2)(a) of the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* by replacing the reference to ‘award or relevant industrial agreement’ with a reference to ‘industrial instrument’.

20 Amendment of s 73 (Amount of long service leave payment)

Clause 20 amends section 73(4) of the Act by replacing the reference to ‘award or relevant industrial agreement’ with a reference to an ‘industrial instrument’.

21 Amendment of s 75 (Payments to employers)

Clause 21 amends section 75(8) of the Act by replacing the reference to ‘award or relevant industrial agreement’ with a reference to an ‘industrial instrument’.

22 Amendment of s 151 (Relationship with other Acts, awards etc)

Clause 22 amends section 151 of the Act by replacing the reference to ‘award or relevant industrial agreement’ with a reference to an ‘industrial instrument’.

23 Amendment of sch 2 (Dictionary)

Clause 23 removes the definition of *award* and *relevant industrial agreement* in Schedule 2 of the Act and inserts a new definition of industrial instrument to reference a federal industrial instrument.

Division 4 Amendment of Electoral Act 1992

24 Act amended

Clause 24 provides that this division amends the *Electoral Act 1992*.

25 Amendment of schedule (Election Funding and financial disclosure based on part XX of the Commonwealth Electoral Act)

Clause 25 inserts a new definition of ‘registered industrial organisation’ to reflect an organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cwlth) of the law of another State or territory about the registration of industrial organisations or unions.

Division 5 Amendment of Electricity Act 1994

26 Act amended

Clause 26 provides that this division amends the *Electricity Act 1994*.

27 Amendment of s 131 (Effect of regulator taking over operation of relevant operations)

Clause 27 amends section 131(7) to include a reference to the *Fair Work Act 2009* (Cwlth).

Division 6 Amendment of Health Services Act 1991

28 Act amended

Clause 28 provides that this division amends the *Health Services Act 1991*.

29 Amendment of s 2 (Definitions)

Clause 29 amends the definition of *award* in section 2 of the Act to provide that an ‘award’ means an award under the *Industrial Relations Act 1999*, or the *Workplace Relations Act 1996* (Cwlth), or a modern award under the *Fair Work Act 2009* (Cwlth).

Division 7 Amendment of Industrial Relations Act 1999

30 Act amended

Clause 30 provides that this division amends the *Industrial Relations Act 1999*.

31 Amendment of s 5 (Who is an employee)

Clause 31 amends section 5(1) to insert a note at the end of the section to provide that the Commonwealth Act applies, generally speaking, to private sector employers and their employees.

32 Amendment of s 6 (Who is an employer)

Clause 32 amends section 6(1) to insert a note at the end of the section to provide that the Commonwealth Act applies, generally speaking, to private sector employers and their employees.

33 Amendment of s 9 (Working time for an employee under an industrial instrument made on or before 1 September 2005 etc.)

Clause 33 renumbers section 9(8) as section 9(9). The clause also inserts a new section 9(8) to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

34 Amendment of s 9A (Working time for an employee under an industrial instrument made after 1 September 2005 etc.)

Clause 34 renumbers section 9A(12) as section 9A(13). The clause also inserts a new section 9A(12) to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

35 Amendment of s 10 (Entitlement)

Clause 35 renumbers section 10(8) as section 10(9). The clause also inserts a new section 10(8) to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

36 Amendment of s 11 (Entitlement)

Clause 36 renumbers section 11(8) as section 11(9). The clause also inserts a new section 11(8) to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

37 Amendment of s 13 (Payment of annual leave)

Clause 37 renumbers section 13(5) as section 13(6). The clause also inserts a new section 13(5) to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

38 Amendment of s 13A (Annual leave loading)

Clause 38 inserts a new section 13A to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

39 Amendment of s 14 (Payment for annual leave on termination of employment)

Clause 39 inserts a new section 14(6) into the *Industrial Relations Act 1999* to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

40 Amendment of s 14A (Jury service leave)

Clause 40 renumbers section 14A(7) as section 14A(8). The clause also inserts a new section 14A(7) into the *Industrial Relations Act 1999* to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

41 Amendment of s 15 (Public holidays)

Clause 41 renumbers section 15(10) as section 15(11). The clause also inserts a new section 15(10) into the *Industrial Relations Act 1999* to provide that if this section applies to an employee, without limiting the section, its provisions are taken to be terms of an industrial instrument applicable to the employee.

42 Amendment of ch 2, pt 2, div 5 hdg (Past overrides less favourable conditions)

Clause 42 inserts a new heading, 'General', into chapter 2, part 2, division 5, of the *Industrial Relations Act 1999*.

43 Amendment of s 41 (This part overrides less favourable conditions)

Clause 43 inserts a new heading, ‘Relationship to other rights and industrial instruments’, into section 41 of the Act. The clause also inserts a new section 41(2) to provide that to the extent a provision of this part, other than section 38C, applies to an employee, without limiting the provision, the provision is taken to be a term of an industrial instrument applicable to the employee.

44 Insertion of new section 57A

Clause 44 inserts a new section 57A to provide that a provision of part 3 that applies to an employee is taken to be a term of an industrial instrument applicable to the employee.

45 Amendment of s 136 (Apprentices’ and trainees’ employment conditions)

Clause 45 inserts a new definition of *industrial instrument* to include a federal industrial instrument.

46 Amendment of s 275 (Power to declare persons to be employees or employers)

Clause 46 inserts a new definition of *industrial instrument* to include a federal industrial instrument.

47 Amendment of s 276 (Power to amend or void contracts)

Clause 47 is a technical amendment to correct the heading of section 276 to include the word ‘declare’ before the word ‘void’. The clause also inserts a new definition of *industrial instrument* to include a federal industrial instrument.

48 Amendment of s 314 (Functions and powers vested in commission by other jurisdictions)

Clause 48 replaces a reference to the *Workplace Relations Act 1996* (Cwlth) with a reference to the Commonwealth Act.

49 Amendment of s 315 (Arrangements with Commonwealth public service)

Clause 49 amends the definition of *Commonwealth public servant* in section 315(3), to delete the reference to an industrial registrar.

50 Amendment of s 408D (When fees are or are not payable to private employment agent)

Clause 50 amends the definition of an *industrial instrument* in section 408D(4) to provide that an industrial instrument includes a federal industrial instrument.

51 Amendment of s 411 (Meaning of *counterpart federal body* for ch 12)

Clause 51 updates a reference to Commonwealth legislation, so that the reference is to the Commonwealth (Registered Organisations) Act.

52 Amendment of s 580 (Exemption if federal election is held)

Clause 52 amends section 580 to insert a reference to the Commonwealth (Registered Organisations) Act.

53 Amendment of s 581 (Obligation to notify change in federal election result)

Clause 53 amends section 581(1)(b) to provide a reference to the Commonwealth (Registered Organisations) Act.

54 Amendment of s 582 (Exemption)

Clause 54 amends section 582(2) to provide a reference to the Commonwealth (Registered Organisations) Act rather than the 'Commonwealth Act'.

55 Amendment of s 584 (Obligation to file copy of federal officers register)

Clause 55 amends sections 584(2) and 584(3) to provide a reference to the Commonwealth (Registered Organisations) Act rather than the 'Commonwealth Act'.

56 Amendment of s 585 (Obligation to give notice of change or contravention)

Clause 56 amends section 585(1) to provide a reference to the Commonwealth (Registered Organisations) Act rather than the 'Commonwealth Act'.

57 Amendment of s 586 (Who may apply)

Clause 57 amends sections 586(b) and 586(c) to amend the reference of 'Commonwealth Act' to Commonwealth (Registered Organisations) Act.

58 Amendment of s 587 (Grant of exemption)

Clause 58 amends the definition of *relevant Commonwealth provision* in section 587(4) to update it so that the reference is to the relevant part of the Commonwealth (Registered Organisations) Act.

59 Amendment of s 588 (Obligation to file copies of federal audit documents)

Clause 59 amends section 588(2) to insert a reference to the Commonwealth (Registered Organisations) Act rather than the 'Commonwealth Act'.

60 Amendment of s 589 (Obligation to give notice of change or contravention)

Clause 60 amends section 589 in the *Industrial Relations Act 1999* to provide references to the Commonwealth (Registered Organisations) Act rather than the 'Commonwealth Act'.

61 Insertion of new chapter 16

Clause 61 inserts a new chapter 16 'Employers declared not to be national system employers' into the *Industrial Relations Act 1999*.

The purpose of this chapter is to provide for declarations to be made that particular employers are not 'national system employers' for the purposes of the 'Commonwealth Act'. By section 14(2) of the Commonwealth Act, the effect of such a declaration is that the declared employer will not be included in the federal industrial relations regime.

The new chapter also facilitates the transition of federal industrial instruments to the State scheme for declared employers and their employees.

692 Declaration that particular employers are not to be national system employers

Clause 692(1) provides that this section applies for the purposes of the Commonwealth Act, section 14(2).

Clause 692(2) declares that the Brisbane City Council is not a national system employer.

Clause 692(3) provides that a regulation may be made declaring an employer not to be a national system employer.

Clause 692(4) allows a declaration to be revoked by regulation.

Clause 692(5) provides that the Minister by gazette notice may fix a relevant day for a declaration made by subsection (2) or a declaration made by a regulation mentioned in subsection (3). Under section 14(2) of the Commonwealth Act, a Commonwealth Ministerial endorsement is required before a particular employer is declared to be not a national system employer. The prescription of a relevant day allows the timing of this endorsement to be taken into account for the purposes of applying the provisions of part 2.

Clause 695(6) provides a definition of a FWA section 14(2) employer, being an employer about whom a declaration may be made under section 14(2) of the 'Commonwealth Act'.

Part 2 Change from federal to State system

692A Definitions for this part

Clause 692A provides definitions that apply in the new Chapter 16, Part 2.

692B Brisbane City Council

Clause 692B provides that, on the relevant day (defined in section 692A), the *Brisbane City Council Transitional Enterprise Bargaining Certified*

Agreement 2009 is taken to bind Brisbane City Council, its employees and any employer organisations who, immediately before the relevant day, were covered by the Brisbane City Council Transitional Enterprise Bargaining Agreement 6 Extension 11.

692C Operation of existing industrial instrument in relation to declared employers

Clause 692C(1) applies if a regulation has been made providing that the employees of a particular declared employer are bound by an industrial instrument.

Clause 692C(2) provides that, from the relevant day (defined in section 692A), the industrial instrument binds the declared employer, the declared employees and any organisation party to the agreement.

Clause 692C(3) provides that, for the purposes of this section, a regulation may declare valid an existing industrial instrument referred to in subsection (1) or any matter relating to the industrial instrument.

692D New State instruments taken to exist for declared employers in other circumstances

This section applies to the extent sections 692B (application to Brisbane City Council) and 692C (operation of existing industrial instrument in relation to declared employers) do not provide for declared employees.

Clause 692D(2) provides for the ‘conversion’ of federal industrial instruments to State instruments. The section provides that if a federal instrument applies or purports to apply to the declared employees of a particular declared employer, on the relevant day an industrial instrument that binds the declared employees and declared employer is taken to exist under this Act.

Clause 692D(3) provides that if a new State instrument is taken to exist because of subsection (2) then:

- (a) the instrument is taken to be a Queensland Workplace Agreement (if the old federal agreement is an individual statutory agreement); otherwise a certified agreement and;
- (b) the instrument will be taken to be approved in the case of a Queensland Workplace Agreement or certified in the case of a certified agreement, under this Act on the relevant day; and

- (c) the instrument is taken to have the same terms as the old federal instrument including those terms as added to or modified by:
 - i. terms of a federal award incorporated into the old federal instrument; or
 - ii. orders of the Australian Industrial Relations Commission or Fair Work Australia; or
 - iii. another instrument under the national fair work legislation or the *Workplace Relations Act 1996* (Cwlth); and
- (d) the *Industrial Relations Act 1999* will apply in relation to instrument subject to modifications or exclusions that may be prescribed under a regulation made for this subsection; and
- (e) the commission may (on application by the Minister or by a declared employer, a declared employee or organisation) amend or revoke any term of the instrument and the commission may do so, if satisfied that it is fair and reasonable to do so in the circumstances.

Clause 692D(4) provides that the commission may in amending a new State instrument under subsection (3)(e): provide for it to take effect

- (a) immediately; or
- (b) progressively, in specified stages (to achieve the final effect of an amendment).

Clause 692D(5) confirms that a new State instrument applies subject to chapter 2.

Clause 692D(6) provides that a new State instrument is taken to have a specified nominal expiry date that is the earlier of either:

- (a) a day that is 2 years from the relevant day;
- (d) the day that, immediately before the relevant day, was the expiry date of the old federal industrial instrument.(b)

Clause 692D(7) provides the definition of *individual statutory agreement* for the purposes of the section.

692E Ability to carry over matters

Clause 692E provides that the Commission may (in connection with the operation of this part, or matter arising directly or indirectly, out of the operation of this part):

- (a) accept, recognise, adopt or rely on any step taken under, or for the purposes of, the national fair work legislation; and
- (b) accept or rely on any matter or thing that has been presented, filed or provided under, or for the purposes of, the national fair work legislation, and
- (c) give effect to any thing done under, or for the purposes of, the national fair work legislation.

692F Reference in a new State instrument to a federal industrial authority or authority manager

Clause 692F(1) provides that if a term of a new State instrument is expressed to confer a power or function on a federal industrial authority that term is taken to have conferred the power or function on the commission instead.

Similarly, a power or function given to a federal industrial authority manager by a term of a new State instrument, that term has effect from the relevant day as if the term referred instead to the registrar (subsection (2)).

Clause 692F (3) provides that this section has effect subject to a contrary intention in the *Industrial Relations Act 1999* or a regulation.

692G Reference in a new State instrument to a provision of Commonwealth law

Clause 692G(1) provides that if a term of a new State instrument is expressed to refer to a provision of the Commonwealth Act or the *Workplace Relations Act 1996* (Cwlth) (from the relevant day) it is taken to refer instead to the corresponding provision of this Act.

Clause 692G(2) provides that the section has effect subject to a contrary intention in this Act and a regulation.

Clause 692G(3) outlines the meaning of *corresponding provision of this Act*.

692H Reference in a new State instrument to a federal organisation

Clause 692H (1) provides that if a term of a new State instrument is expressed to refer to a federal organisation it is taken to refer instead to an

organisation (under this Act) of which the federal organisation is a counterpart federal body as defined in section 411.

Clause 692H(2) provides that a federal organisation which is not a counterpart federal body of an organisation under this Act is taken to be an organisation under the Act, but only for the purposes of representing, in the State system, the employees of the relevant declared employer and only until such time as a new certified agreement or award is made to cover the employees.

Clause 692H(3) provides that the representation under (2) ceases when the new State instrument stops binding the relevant declared employer.

Clause 692H(4) provides that the section has effect subject to a contrary intention in the *Industrial Relations Act 1999* and a regulation.

692I Counting service under the old federal instrument

The purpose of section 692I is to recognise service of an employee under an old federal instrument and to decide the entitlements of a declared employee under a new State instrument.

Clause 692I(2) provides that service under the old federal instrument also counts as service under the new State instrument.

Clause 692I(3) provides that if a declared employee has had the benefit of an entitlement then (2) does not enable the period of service by which the entitlement was calculated to be counted again.

692J Accruing entitlements – leave accrued immediately before the relevant day

The purpose of section 692J is to recognise leave that had accrued before the relevant day. Under section 692J, if a declared employee, to whom a new State instrument applies, had immediately before the relevant day, accrued entitlement to leave (whether the leave is under national fair work legislation, the old federal instrument or the *Industrial Relations Act 1999*) that leave will be carried over and recognised under the new State instrument.

This section applies to annual leave, sick leave, personal leave or carer's leave, and long service leave.

692K Leave that is being, or is to be, taken under the old federal instrument

Clause 692K provides that if a declared employee was (immediately before the relevant day) taking a period of leave under the old federal instrument he/she is entitled to continue that leave under the new State instrument or the *Industrial Relations Act 1999* for the remainder of the period.

Clause 292K(2) provides that steps taken to take a period of leave under the old federal instrument is also recognised under the new State instrument or the *Industrial Relations Act 1999*.

Clause 292K(3) provides that a regulation may deal with other matters relating to how a new State instrument applies to leave that is taken by a declared employee under the old federal instrument or the Commonwealth Act.

62 Amendment of s 745 (Definitions for pt 7)

Clause 62 amends section 745 to amend the definition of *Commonwealth Act*, for Part 7, to mean the *Workplace Relations Act 1996* (Cwlth).

63 Insertion of new ch 20, pt 10

Clause 63 inserts a new Part 10 Transitional provisions for Fair Work (Commonwealth Powers) and Other Provisions Act 2009 into the Act.

760 Referral of matters to Commonwealth Parliament

Clause 760 provides that the *Industrial Relations Act 1999* will operate in relation to a matter arising under that Act before the commencement of the Commonwealth laws based on the State's initial reference of power, as well as a matter arising directly or indirectly out of such a matter, if the matter is not dealt with under the Commonwealth laws.

761 Declaration about BCC Certified Agreement

Clause 761 provides that the *Brisbane City Council Transitional Enterprise Bargaining Certified Agreement 2009* is validly made and certified for the purposes of the law of the State.

762 Amendment of regulation

Section 762 provides that the amendment of the *Industrial Relations Regulations 2000* by the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* does not affect the power of the Governor in Council to amend the regulation further or repeal it.

64 Amendment of sch 5 (Dictionary)

Clause 64 amends definitions in Schedule 5 of the Act and inserts further definitions.

Division 8 Amendment of Industrial Regulation 2000

65 Regulation amended

Clause 65 provides that this division amends the *Industrial Relations Regulation 2000*.

66 Renumbering of pt 14

Clause 66 renumbers part 14 as part 15, and sections 148 and 149 as sections 149 and 150.

67 Insert of new pt 14

Clause 67 inserts a new 'Part 14 Declarations for Commonwealth Act, s 14(2)' into the *Industrial Relations Act 1999*.

148 Declarations

Section 148 declares particular employers mentioned in schedule 7A not to be national system employers for the purposes of the Commonwealth Act, section 14(2). Section 14(2) of the Commonwealth Act allows particular employers to be excluded from the federal regime by declaration under a law of the State. The declared employers include a number of government corporations that are wholly owned subsidiaries of, or wholly controlled by, local governments.

68 Insertion of new sch 7A

Clause 68 inserts a new schedule 7A of employers declared not to be national system employers for the purposes of section 14(2) of the Commonwealth Act.

Division 9 Amendment of Magistrates Court Act 1921

69 Act amended

Clause 69 provides that this division amends the *Magistrates Court 1921*.

70 Amendment of s 42B (Application of pt 5A)

Clause 70 amends section 42B(3) and (4) to insert a reference to the *Fair Work Act 2009* (Cwlth).

Division 10 Amendment of Statutory Instruments Act 1992

71 Act amended

Clause 71 provides that this division amends the *Statutory Instruments Act 1992*.

72 Amendment of schedule 2A (Subordinate legislation to which part 7 does not apply)

Clause 72 amends Schedule 2A to provide that Part 7 of the *Statutory Instruments Act 1992* (Staged automatic expiry of subordinate legislation) does not apply to a proclamation under the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*.

Division 11 Amendment of Summary Offences Act 2005

73 Act amended

Clause 73 provides that this division amends the *Summary Offences Act 2005*.

74 Amendment of schedule (Dictionary)

Clause 74 amends the definition of *authorised industrial officer* to mean:

- (a) an authorised industrial officer appointed under the *Industrial Relations Act 1999*, section 364 (Authorising industrial officers); or
- (b) a permit holder under the *Fair Work Act 2009* (Cwlth).

Division 12 Amendment of Workers' Compensation and Rehabilitation Act 2003

75 Act amended

Clause 75 provides that this division amends the *Workers' Compensation and Rehabilitation Act 2003*.

76 Amendment of s 107A (Definitions for pt 1A)

Clause 76 amends the definition of *Industrial Act* in section 107A to insert a reference to the Commonwealth Act (which is the *Fair Work Act 2009* (Cwlth)).

77 Amendment of schedule 6 (Dictionary)

Clause 77 amends the definition of *industrial instrument* in Schedule 6 of the *Workers' Compensation and Rehabilitation Act 2003* to include a 'federal industrial instrument'.

Division 13 Amendment of Workplace Health and Safety Act 1995

78 Act amended

Clause 78 provides that this division amends the *Workplace Health and Safety Act 1995*.

79 Amendment of s 90B (Definitions for part)

Clause 79 amends the definition of *employee organisation* in section 90B to replace a reference to the *Workplace Relations Act 1996* (Cwlth) with a reference to the *Fair Work Act 2009* (Cwlth).

Part 4 Amendments relating to trustee companies

Division 1 Amendment of Trustee Companies Act 1968

80 Act amended

Clause 80 provides that the division amends the *Trustee Companies Act 1968*.

81 Amendment of s 4 (Definitions)

Clause 81(1) omits unnecessary definitions.

Clause 81(2) redefines trustee company as a licensed trustee company under the Corporations Act, section 601RAA.

82 Amendment of s 4AA (Powers conferred on trustee companies are additional powers)

Clause 82 is a technical amendment as a consequence of trustee companies being regulated under the Corporations Act.

83 Omission of s 4A (Subsidiaries, holding companies and related corporations)

Clause 83 omits a section that will be unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

84 Omission of ss 36 and 36A

Clause 84 omits sections 36 and 36A which provide for the regulation of common funds.

85 Relocation and renumbering of s 43 (When legatee to bear commission on legacy)

Clause 85 relocates and renumbers current section 43 as section 68A.

86 Omission of pt 4

Clause 86 omits part 4 of the *Trustee Companies Act 1968* as amended, which is unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

87 Omission of ss 50-53

Clause 87 omits sections 50-53 which are unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

88 Omission of pt 6

Clause 88 omits part 6 which is unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

89 Relocation and renumbering of s 62 (Appointment of attorney by trustee company)

Clause 89 relocates and renumbers section 62, as section 68B.

90 Omission of pt 7

Clause 90 omits part 7 which is unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

91 Replacement of pt 8, hdg (General)

Clause 91 changes the name of the part 8 heading.

92 Insertion of new s 68C

Clause 92 inserts new section 68C. Proposed new section 601WBA of the Corporations Act under the *Corporations Legislation Amendment (Financial Services Modernisation Bill 2009 (Cwlth) Bill* provides that, if the Australian Securities and Investments Commission (ASIC) “cancels the licence of a trustee company (the transferring company), ASIC may, in writing, make a determination (a compulsory transfer determination) that there is to be a transfer of estate assets and liabilities from the transferring company to another licensed trustee company (the receiving company)”. To make this order ASIC must be satisfied, amongst other things, that legislation to facilitate the transfer that satisfies the requirements of section 601WBC has been enacted in the State or Territory in which the transferring company is registered and the State or Territory in which the receiving company is registered. Proposed new section 68C of the *Trustee Companies Act 1968* has been drafted to satisfy the requirements for State and Territory legislation in section 601WBC when an ASIC certificate of transfer comes into force.

93 Omission of s 69 (Other companies may apply for similar powers)

Clause 93 omits section 69 which is unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

94 Omission of s 73 (Provisions relating to ex trustee companies)

Clause 94 omits section 73 which is unnecessary as a consequence of trustee companies being regulated under the Corporations Act.

95 Renumbering of pts 1-8

Clause 95 renumbers parts 1-8 of the *Trustee Companies Act 1968* as parts 1 to 5.

96 Insertion of new pt 6

Clause 96 inserts new part 6 which provides for the following new sections:

- New section 74 includes the definitions for the part.
- New section 75 makes transitional provision for an application made before the commencement to the Court or a Judge to review the rate of commission, as mentioned in repealed section 41(4).
- New Section 76 makes transitional provision for an application made before the commencement to the Court or a Judge to review a fee, as mentioned in repealed section 45(1)
- New section 77 makes transitional provision for an account filed in the office of the registrar of the Supreme Court, as mentioned in repealed section 50(3) before the commencement.
- New section 78 makes transitional provision for an application before the commencement for an account under repealed section 51(1).
- New section 79 makes transitional provision in relation to paid up capital of a trustee company invested in the name of the Treasurer, as mentioned in repealed section 56 of the Act.
- New section 80 makes transitional provision in relation to proceedings for an offence alleged to have been committed before the commencement
- New section 81 provides for the making of regulations of a saving or transitional nature for the purposes of—
 - the enactment of the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009*, part 4; or
 - the transition from the regulation of trustee companies under this Act to the regulation of trustee companies under the Corporations Act; or
 - applying, complementing or otherwise giving effect to the provisions of the Corporations Act regulating trustee companies.—

97 Omission of sch 2

Clause 97 omits Schedule 2 to the Act.

Division 2 Repeal

98 Repeal of regulation

Clause 98 repeals the *Trustee Companies Regulation 1996*, SL No. 94.

Division 3 Amendments of Foreign Ownership of Land Register Act 1988

99 Act amended

Clause 99 provides that the division amends the *Foreign Ownership of Land Register Act 1988*.

100 Amendment of s 10 (Trustee company common funds)

Clause 100 provides for a minor consequential amendment to the *Foreign Ownership of Land Register Act 1988*.

Division 4 Amendments of Guardianship and Administration Act 2000

101 Act amended

Clause 101 provides that the division amends the *Guardianship and Administration Act 2000*.

102 Amendment of s 48 (Remuneration of professional administrators)

Clause 102 amends section 48(2) of the Act which applies a provision of the *Trustee Companies Act 1968* (which is to be repealed) to the remuneration of certain administrators. The remuneration will instead be not more than the Guardianship and Administration Tribunal considers fair and reasonable having regard to stated factors.

103 Insertion of new ch 12, pt 10

Clause 103 inserts a new part heading and a transitional provision. It preserves the operation of repealed section 48(2) of the *Guardianship and Administration Act 2000* for tribunal orders made before the commencement entitling an administrator to remuneration, until the tribunal makes a further order about the administrator's remuneration.

Division 5 Amendment of Trusts Act 1973

104 Act amended

Clause 104 provides that the division amends the *Trust Act 1973*.

105 Amendment of s 5 (Definitions)

Clause 105 provides for a minor consequential amendment to the *Trusts Act 1973*.

Part 5 Amendment of the Adoption Act 2009

106 Act amended

Clause 106 provides that this part amends the *Adoption Act 2009*

107 Insertion of new s331A

Clause 107 inserts a new transitional provision, section 331A, into the *Adoption Act 2009* to deal with interim orders made under the *Adoption of Children Act 1964*, which is to be repealed. The provision continues in effect, after the commencement day, an interim order that was in effect before the commencement day about a local adoption or an inter-country adoption.

Part 6 **Amendment of the Trans-Tasman Mutual Recognition (Queensland) Act 2003**

108 Act amended

Clause 108 provides that this part amends the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*

109 Insertion of new s 15 and schedule

Clause 109 inserts a new section 15 and schedule into the *Trans-Tasman Mutual Recognition (Queensland) Act 2003*. The new section provides that the Governor is authorised for section 7 of the *Trans-Tasman Mutual Recognition (Queensland) Act 2003* to make, for the purposes of the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth), a gazette notice in the form stated in the schedule.

Schedule **Authorised gazette notice**

Clause 1 provides that the notice may be cited as the *Trans-Tasman Mutual Recognition (Queensland) Authorisation Notice (No. 1) 2009*.

Clause 2 provides the endorsement of the proposed Commonwealth regulations amending the Commonwealth Act in relation to *Summary Offences Act 1953* (SA).

Schedule **Proposed Commonwealth regulation**

Clause 1 provides that the name of the Commonwealth Regulations is the *Trans-Tasman Mutual Recognition Act 1997 Amendment Regulations 2009* (No.).

Clause 2 provides that these Regulations commence on the day after they are registered.

Clause 3 provides that Schedule 1 amends the *Trans-Tasman Mutual Recognition Act 1997* (Cwlth).

Schedule 1 Amendment of Schedule 2 to the Trans-Tasman Mutual Recognition Act 1997

Clause 1 provides that Schedule 2, clause 8 after subheading “Other” substitutes *Environment Protection Act 1993*, Part 8, Division 2 (dealing with beverage containers) and *Summary Offences Act 1953*, Section 9B.

Part 7 Amendment of Mutual Recognition (Queensland) Act 1992

110 Act amended

Clause 110 provides that this Act amends the *Mutual Recognition (Queensland) Act 1992*.

111 Amendment of s 5 (Enactment of uniform mutual recognition legislation)

Clause 111 omits the words ‘(other than the Schedules)’ from section 5 of the *Mutual Recognition (Queensland) Act 1992* to allow the Governor to approve the terms of amendments to the *Mutual Recognition Act 1992* (Cwlth) by proclamation.

Schedule 1 Other entities that are not public sector employers

Commonwealth Parliament has power to make laws with respect to constitutional corporations and entities that are constitutional corporations are in the federal system.

Schedule 1 provides a list of entities created by statute which are considered to be constitutional corporations. It is intended that this list is to clarify that these entities are not public sector employers and therefore are not being excluded from the State’s referral of matters to the Commonwealth.

Schedule 2 Text to be included in the provisions of the Commonwealth Fair Work Act

Schedule 2 contains the proposed text of a new Division 2B of Part 1-3 of the Commonwealth *Fair Work Act 2009*. This text would be inserted into that Act by the proposed *Fair Work (State Referral and Consequential and Other Amendments) Bill 2009*, with the support of the initial reference under the Bill.

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