



Queensland

Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Bill 2012



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2012

A Bill

for

**An Act to amend the *Industrial Relations Act 1999*, the
Industrial Relations Regulation 2011 and the *Public Service Act
2008* for particular purposes**

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3
This Act may be cited as the *Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012*. 4
5
6

Clause 2 Commencement 7
Parts 4 and 5 and the schedule commence on 1 July 2012. 8

Part 2 Amendment of Industrial Relations Act 1999 9
10

Clause 3 Act amended 11
This part amends the *Industrial Relations Act 1999*. 12

Clause 4 Amendment of s 3 (Principal object of this Act) 13
Section 3— 14
insert— 15
'(p) ensuring that, when wages and employment conditions 16
are determined by arbitration, the following are taken 17
into account— 18
(i) for a matter involving the public sector—the 19
financial position of the State and the relevant 20
public sector entity, and the State's fiscal strategy; 21

	(ii) for another matter—the employer’s financial position.’.	1 2
Clause 5	Amendment of s 104 (Meaning of <i>engaging in</i> conduct for a <i>prohibited reason</i> for ch 4)	3 4
	Section 104(1)(g), from ‘in, a’—	5
	<i>omit, insert—</i>	6
	‘in—	7
	(i) a protected action ballot; or	8
	(ii) a secret ballot ordered by an industrial body under an industrial law; or’.	9 10
Clause 6	Amendment of s 144 (What is to be done when an agreement is proposed)	11 12
	Section 144—	13
	<i>insert—</i>	14
	‘(4A) Subsections (2)(c) and (3) do not apply to an agreement proposed to be made with employees under section 147A.’.	15 16
Clause 7	Insertion of new s 147A	17
	After section 147—	18
	<i>insert—</i>	19
	‘147A Employer may ask employees to approve proposed agreement being negotiated with employee organisation	20 21
	‘(1) This section applies if—	22
	(a) the parties to a proposed agreement are an employer and 1 or more employee organisations; and	23 24
	(b) the agreement is not a project agreement.	25
	‘(2) The employer may request the employees who will be bound by the proposed agreement to approve it.	26 27

- ‘(3) The request must not be made until after the peace obligation
period has ended. 1 2
- ‘(4) In making the request, the employer must comply with section
144(2)(a) and (b). 3 4
- ‘(5) If a valid majority of the employees approve the proposed
agreement— 5 6
- (a) the employer may apply to the commission for
certification of the agreement under division 2; and 7 8
- (b) the agreement is taken to be made by— 9
- (i) the employer; and 10
- (ii) the employees at the time the agreement is made. 11
- Note—* 12
- See section 142(b)(ii). 13
- ‘(6) For section 156, if— 14
- (a) a step was taken by the employer, in negotiating the
proposed agreement with a relevant employee 15
organisation, to comply with a requirement under this 16
Act; and 17 18
- (b) the employer complied with the requirement as it 19
applied to that proposed agreement; 20
- the employer is taken to have complied with the requirement 21
as it applies to the agreement made by the employer with the 22
employees. 23
- Example—* 24
- For paragraph (a), the step taken was that the employer advised a 25
relevant employee organisation, under section 143(2), of the employer’s 26
intention to begin negotiations for the proposed agreement. 27
- For section 156, the employer is taken to have given the notice under 28
section 143(2) to the employees. 29
- ‘(7) Subsection (5) does not prevent a relevant employee 30
organisation being bound by the agreement under section 31
166(2). 32

- ‘(8) If the commission has jurisdiction to arbitrate the matter under section 149, this section stops applying and anything being done under this section ends. 1
2
3
- ‘(9) Making a request under subsection (2) does not, of itself, constitute a failure to negotiate in good faith as required under section 146. 4
5
6
- ‘(10) In this section— 7
 - peace obligation period* see section 147. 8
 - relevant employee organisation* means an employee organisation mentioned in subsection (1).’ 9
10

- Clause 8 Amendment of s 149 (Arbitration if conciliation unsuccessful)** 11
12
- (1) Section 149(5)(c)(ii)— 13
 - omit, insert—* 14
 - ‘(ii) either— 15
 - (A) for a matter involving a public sector entity—the State’s financial position and fiscal strategy, and the financial position of the public sector entity; or 16
17
18
19
 - (B) for any other matter—the employer’s financial position; 20
21
and the likely effects of the commission’s determination on those things; and 22
23
 - (iii) the likely effects of the commission’s determination on the economy and the community;’. 24
25
26
 - (2) Section 149(7), ‘(5).’— 27
 - omit, insert—* 28
 - ‘(5) and, for each thing, must— 29
 - (a) set out the commission’s findings on material questions of fact; and 30
31

- (b) refer to the evidence or other material on which those findings were based. 1
2
- Note—* 3
- See also the *Acts Interpretation Act 1954*, section 27B.’. 4
- (3) Section 149— 5
- insert—* 6
- ‘(11) In this section— 7
- public sector entity—*** 8
- (a) includes an entity that is— 9
- (i) a department; or 10
- (ii) a public service office; or 11
- (iii) an agency, authority, commission, corporation, instrumentality, office, or other entity, established under an Act or under State authorisation for a public or State purpose; or 12
13
14
15
- (iv) a part of an entity mentioned in subparagraph (i), (ii) or (iii); but 16
17
- (b) does not include— 18
- (i) a local government; or 19
- (ii) a local government owned corporation, or a subsidiary of a local government owned corporation, under the *Local Government Act 2009*; or 20
21
22
23
- (iii) a parents and citizens association formed under the *Education (General Provisions) Act 2006*.’. 24
25

- Clause 9 Amendment of s 156 (Certifying an agreement)** 26
- Section 156(1)(a), after the examples— 27
- insert—* 28

	<i>Note—</i>	1
	For an agreement made with employees under section 147A—see also section 147A(6).’	2 3
Clause 10	Amendment of s 174 (Protected industrial action)	4
	Section 174—	5
	<i>insert—</i>	6
	‘(3A) Also, subsection (2) applies to industrial action only if the requirements stated in the following provision are complied with—	7 8 9
	(a) if the action is in response to, and is taken after the start of, industrial action by another negotiating party in relation to a proposed agreement—section 175;	10 11 12
	(b) if the action is organised, or engaged in, by an employee organisation or employees and paragraph (a) does not apply—section 176;	13 14 15
	(c) if the action is organised, or engaged in, by an employer and paragraph (a) does not apply—section 177.’	16 17
Clause 11	Replacement of ss 175–177	18
	Sections 175 to 177—	19
	<i>omit, insert—</i>	20
‘175	Requirements for industrial action in response to industrial action by another party	21 22
	‘(1) This section applies to industrial action in response to, and taken after the start of, industrial action by another negotiating party in relation to a proposed agreement.	23 24 25
	‘(2) The person intending to take the action must give all of the negotiating parties written notice of the intended action.	26 27
	<i>Note—</i>	28
	See also section 177A in relation to the notice required to be given under this subsection.	29 30

‘(3)	However, if the person is an employer who is negotiating an agreement with employees, the employer may take other reasonable steps to notify the employees of the intended action instead of giving a written notice.	1 2 3 4
‘176	Requirements for other industrial action by an employee organisation or employees	5 6
‘(1)	This section applies to industrial action that is organised, or engaged in, by an employee organisation or by employees, other than industrial action to which section 175 applies.	7 8 9
‘(2)	The industrial action must be authorised by a ballot conducted under schedule 4 (a <i>protected action ballot</i>).	10 11
‘(3)	Industrial action is authorised by a protected action ballot if—	12
(a)	a protected action ballot order has been made by the commission in relation to the proposed action; and	13 14
(b)	the action was the subject of the protected action ballot; and	15 16
(c)	at least 50% of the employees on the roll of voters for the ballot voted; and	17 18
(d)	more than 50% of the valid votes cast approved the industrial action; and	19 20
(e)	the industrial action starts—	21
(i)	during the 30-day period starting on the day the results of the ballot are declared; or	22 23
(ii)	if the commission has extended the period under subsection (7)—during the extended period.	24 25
Note—		26
	See also sections 186 and 187 in relation to the authorisation of industrial action by a protected action ballot if—	27 28
•	the action is later found not to have been authorised by the ballot; or	29
•	there is a technical breach relating to the protected action ballot order.	30 31

- ‘(4) However, the industrial action must not start before the peace obligation period, within the meaning of section 147, has ended. 1
2
3
- ‘(5) The person intending to take the industrial action must give written notice of the intended action to all of the negotiating parties. 4
5
6
- Note—* 7
- See also section 177A in relation to the notice required to be given under this subsection. 8
9
- ‘(6) For subsection (5)— 10
- (a) the written notice must not be given until the results of the protected action ballot have been declared; and 11
12
- (b) the period of the notice given must be at least— 13
- (i) 3 working days; or 14
- (ii) if the protected action ballot order states a longer period of notice for the purpose of this subsection—the stated period. 15
16
17
- Note—* 18
- Under schedule 4, section 8(5) the stated period must not be more than 7 working days. 19
20
- ‘(7) The commission may extend the 30-day period mentioned in subsection (3)(e)(i) by not more than 30 days if— 21
22
- (a) an applicant for the protected action ballot order applies to the commission for the period to be extended; and 23
24
- (b) the period has not previously been extended. 25
- ‘(8) Subsection (9) applies if— 26
- (a) the nature of the proposed industrial action stated in the question put to the employees in the protected action ballot included periods of industrial action of a stated duration; and 27
28
29
30
- (b) the question did not state that consecutive periods of the industrial action may be organised or engaged in. 31
32

- ‘(9) For subsection (3)(b), only the first period in a series of
consecutive periods of the industrial action is taken to be the
subject of the protected action ballot.

‘177 Requirements for other industrial action by an employer

- ‘(1) This section applies to industrial action that is organised, or
engaged in, by an employer, other than industrial action to
which section 175 applies.
- ‘(2) The employer must give all of the negotiating parties at least 3
working days written notice of the intended action.
- Note—*
- See also section 177A in relation to the notice required to be given
under this subsection.
- ‘(3) However, if the employer is negotiating an agreement with
employees, the employer may take other reasonable steps to
notify the employees of the intended action instead of giving a
written notice.

‘177A Provision about notice of industrial action

- ‘(1) This section applies to a notice required to be given under
section 175(2), 176(5) or 177(2).
- ‘(2) The notice must state the nature of the intended action and the
day it will start.
- ‘(3) The notice may be given before the end of the peace
obligation period if the intended action does not start before
the end of that period.
- ‘(4) In this section—
peace obligation period see section 147(2).’.

Clause 12 Insertion of new ch 6, div 6A

Chapter 6—
insert—

‘Division 6A	Termination of protected industrial action by Minister	1 2
‘181A Definitions for div 6A		3
‘(1) In this division—		4
<i>Minister</i> means the Attorney-General.		5
<i>post-industrial action negotiation period</i> see section 181E(4).		6 7
<i>termination declaration</i> see section 181B(1).		8
‘(2) To remove any doubt, it is declared that the definition of <i>Minister</i> for this division does not limit the meaning of that term where it is used elsewhere in this Act, except in section 183(6A)(a).		9 10 11 12
‘181B Termination of industrial action by Ministerial declaration		13
‘(1) The Minister may, by a written declaration (a <i>termination declaration</i>), terminate protected industrial action in relation to a proposed agreement if the Minister is satisfied that—		14 15 16
(a) the action is being engaged in, or is threatened, impending or probable; and		17 18
(b) the action—		19
(i) is threatening or would threaten to cause, or has caused, significant damage to the economy, community or local community, or part of the economy; or		20 21 22 23
(ii) is threatening or would threaten to endanger, or has endangered, the personal health, safety or welfare of the community or part of it.		24 25 26
‘(2) The termination declaration—		27
(a) must be published in the gazette; and		28
(b) takes effect on the day it is made.		29

‘181C Informing commission and parties of termination declaration	1 2
‘(1) This section applies if a termination declaration is made.	3
‘(2) The Minister must inform the commission of the making of the termination declaration.	4 5
‘(3) The Minister must take all reasonable steps to ensure the parties to the proposed agreement are made aware of—	6 7
(a) the making of the termination declaration; and	8
(b) the effect of section 181F(2).	9
 ‘181D Minister may give directions to reduce or remove threat, damage or danger	 10 11
‘(1) If a termination declaration has taken effect in relation to a proposed agreement, the Minister may give written directions requiring any of the following persons to take, or not take, stated action—	12 13 14 15
(a) a stated employee who will be covered by the agreement;	16 17
(b) an employee organisation that is a party to the proposed agreement;	18 19
(c) the employer who is a party to the proposed agreement.	20
‘(2) However, the Minister may only give a direction under subsection (1) if the Minister is satisfied the direction is reasonably directed to removing or reducing the threat, damage or danger mentioned in section 181B(1)(b).	21 22 23 24
‘(3) A person to whom a direction under subsection (1) applies must comply with it.	25 26
<i>Note—</i>	27
See division 7 for penalty provisions applicable to contraventions of this subsection.	28 29
‘(4) The Minister must inform the commission of the making of a direction under subsection (1).	30 31

‘181E Conciliation of matter during post-industrial action negotiation period	1 2
‘(1) This section applies if a termination declaration has taken effect in relation to a proposed agreement.	3 4
‘(2) During the post-industrial action negotiation period, to help the parties reach agreement the commission has the power to conciliate the matter as if section 148 applied.	5 6 7
‘(3) However, during the post-industrial action negotiation period—	8 9
(a) the commission must not make any order that is inconsistent with the termination declaration or a direction given by the Minister under section 181D; and	10 11 12
(b) any industrial action organised, or engaged in, is not protected industrial action for section 174.	13 14
‘(4) The <i>post-industrial action negotiation period</i> is the period—	15
(a) starting on the day the termination declaration is made; and	16 17
(b) ending—	18
(i) 21 days after the day the termination declaration is made; or	19 20
(ii) if the commission extends the post-industrial action negotiation period under subsection (5)—42 days after the day the termination declaration is made.	21 22 23 24
‘(5) The commission must extend the post-industrial action negotiation period if—	25 26
(a) all of the parties to the proposed agreement jointly apply to the commission for the extension within 21 days after the day the termination declaration is made; and	27 28 29
(b) the parties have not settled all of the matters that were at issue during negotiations for the proposed agreement.	30 31

‘181F Determination of matter by commission after post-industrial action negotiation period	1
	2
‘(1) This section applies if—	3
(a) the post-industrial action negotiation period has ended;	4
and	5
(b) the matters that were at issue during negotiations for the proposed agreement have not been settled.	6
	7
‘(2) The commission must determine the matter by arbitration as quickly as possible.	8
	9
‘(3) For subsection (2), section 149(2) to (11) is taken to apply.	10
‘(4) For sections 150, 181, 341, 342 and 719, a determination under this section is taken to be a determination under section 149.’.	11
	12
	13

Clause 13 Amendment of s 182 (Penalty provisions)	14
(1) Section 182—	15
<i>insert—</i>	16
‘(ca) section 181D(3);	17
(e) schedule 4, section 9(4).’.	18
(2) Section 182(ca) to (e)—	19
<i>renumber</i> as section 182(d) to (f).	20

Clause 14 Amendment of s 183 (Penalties for contravening penalty provisions)	21
	22
Section 183—	23
<i>insert—</i>	24
‘(6A) An application for an order for a contravention of section 181D(3) may be made by—	25
	26
(a) the Minister within the meaning of section 181A(1); or	27
(b) a party to the proposed agreement to which the termination declaration relates; or	28
	29

- (c) another person prescribed under a regulation. 1
- ‘(7A) An application for an order for a contravention of schedule 4, 2
section 9(4) may be made by— 3
- (a) an employee who will be covered by the proposed 4
agreement concerned; or 5
- (b) if an employee organisation was an applicant for the 6
protected action ballot order concerned—the employee 7
organisation; or 8
- (c) another person prescribed under a regulation.’. 9

Clause 15 Insertion of new ss 186 and 187 10

Chapter 6, division 8— 11

insert— 12

**‘186 Industrial action organised, or engaged in, in good faith 13
on basis of protected action ballot 14**

- ‘(1) This section applies if— 15
- (a) the results of a protected action ballot declared by the 16
ECQ under schedule 4 purportedly authorise particular 17
industrial action; and 18
- (b) a protected person, within the meaning of section 174, 19
organises, or engages in, the industrial action acting in 20
good faith on the basis of the declared results; and 21
- (c) either— 22
- (i) it later becomes clear the industrial action was not 23
authorised by the ballot; or 24
- (ii) the decision to make the protected action ballot 25
order is set aside on appeal after the industrial 26
action is organised or engaged in. 27
- ‘(2) For section 176(2), the industrial action is taken to be 28
authorised by the protected action ballot. 29

‘187	Validity of protected action ballot etc. not affected by technical breach	1 2
	‘A technical breach of a provision in schedule 4 does not affect the validity of any of the following—	3 4
	(a) a protected action ballot order;	5
	(b) an order, direction or decision of the commission in relation to a protected action ballot order or a protected action ballot;	6 7 8
	(c) a direction or decision of the ECQ in relation to a protected action ballot order or a protected action ballot;	9 10
	(d) a protected action ballot, including, for example, the conduct of the ballot and the declaration of the results of the ballot.’.	11 12 13
 Clause 16	 Amendment of s 285 (Conducting a secret ballot)	 14
	(1) Section 285(1)—	15
	<i>insert—</i>	16
	‘ <i>Note—</i>	17
	See also section 664A in relation to interference with a secret ballot conducted under this section.’.	18 19
	(2) Section 285(5) and (8)—	20
	<i>omit.</i>	21
 Clause 17	 Amendment of s 320 (Basis of decisions of the commission and magistrates)	 22 23
	(1) Section 320(5), after ‘making a decision,’—	24
	<i>insert—</i>	25
	‘other than a decision made under section 149,’.	26
	(2) Section 320(5)—	27
	<i>insert—</i>	28

Note—

For a decision made under section 149, section 149(5)(c) provides for the matters the commission must consider in relation to the public interest.’.

Clause 18 Insertion of new ch 8, pt 7

Chapter 8—

insert—

‘Part 7 Other matters

‘339AA Government briefing about State’s financial position etc.

‘(1) The treasury chief executive may, at any time, give the members of the commission a briefing about the State’s financial position and fiscal strategy, and related matters.

Note—

The briefing is for information purposes only.

‘(2) The briefing must be given in an open hearing or otherwise made available to the public.

‘(3) In this section—

treasury chief executive means the chief executive of the department in which the *Duties Act 2001* is administered.’.

Clause 19 Insertion of new s 664A

After section 664—

insert—

‘664A Interference with protected action ballot or secret ballot conducted by commission etc.

‘(1) A person must not—

(a) resist or obstruct a following person performing a duty imposed, or an action directed or authorised to be done, for an employee ballot—

- | | | |
|------|---|----------------------|
| (i) | a person acting under the direction or authority of the balloting agent for the ballot; | 1
2 |
| (ii) | for a secret ballot conducted under section 285—the registrar or a public service officer; or | 3
4 |
| (b) | threaten or intimidate an employee entitled to vote in a protected action ballot so that the employee would not vote or would vote in a particular way; or | 5
6
7 |
| (c) | at or near the place where a ballot is being conducted under section 285— | 8
9 |
| (i) | threaten or intimidate, or obstruct the free passage of, an employee going to or attending at the place to vote at the ballot; or | 10
11
12 |
| (ii) | threaten or intimidate an employee so that the employee would not vote or would vote in a particular way; or | 13
14
15 |
| (d) | obstruct an employee or another person in the performance of an action directed or authorised to be done for an employee ballot; or | 16
17
18 |
| (e) | by a threat or intimidation, prevent an employee or another person from performing an action directed or authorised to be done for an employee ballot; or | 19
20
21 |
| (f) | vote in an employee ballot unless the person— | 22 |
| (i) | is entitled to vote; and | 23 |
| (ii) | has received a ballot paper from the balloting agent for the ballot; or | 24
25 |
| (g) | vote in an employee ballot in someone else’s name; or | 26 |
| (h) | if the person is entitled to vote in an employee ballot—mark a ballot paper relating to the ballot, other than a ballot paper received by the person from the balloting agent for the ballot. | 27
28
29
30 |
| | Maximum penalty—40 penalty units. | 31 |
| ‘(2) | A person who is performing functions or exercising powers under this Act for a protected action ballot must not show | 32
33 |

another person, or allow another person to have access to, a
ballot paper used in the ballot, except in the course of
performing those functions or exercising those powers.

Maximum penalty—40 penalty units.

‘(3) A person must not contravene any of the following—

(a) a protected action ballot order;

(b) an order made by the commission in relation to a
protected action ballot order or a protected action ballot;

(c) a direction given by the commission, or the ECQ, in
relation to a protected action ballot order or a protected
action ballot.

Maximum penalty—40 penalty units.

‘(4) Subsection (3) does not apply to the ECQ.

‘(5) In this section—

balloting agent, for an employee ballot, means—

(a) for a protected action ballot—the ECQ; or

(b) for a secret ballot conducted under section 285—the
registrar.

employee ballot means—

(a) a protected action ballot; or

(b) a secret ballot conducted under section 285.

prevent includes attempt to prevent.

resist or obstruct includes attempt to resist or obstruct.

threaten or intimidate includes attempt to threaten or
intimidate.

vote includes attempt to vote.’.

Clause 20 Insertion of new ch 20, pt 13

Chapter 20—

insert—

‘Part 13	Transitional provisions for	1
	Industrial Relations (Fair Work	2
	Act Harmonisation) and Other	3
	Legislation Amendment Act	4
	2012	5
‘780	Definitions for pt 13	6
	‘In this part—	7
	<i>amending Act</i> means the <i>Industrial Relations (Fair Work Act</i>	8
	<i>Harmonisation) and Other Legislation Amendment Act 2012</i> .	9
	<i>commencement</i> means the commencement of this part.	10
	<i>previous section 175</i> means section 175 as it was in force	11
	immediately before the commencement.	12
‘781	Application of amended s 149(5)	13
	‘(1) Section 149(5), as amended by the amending Act, section 8,	14
	applies to the arbitration of a matter only if the arbitration	15
	starts on or after the commencement.	16
	‘(2) For subsection (1), an arbitration <i>starts</i> when the requirements	17
	under section 149(1)(a), (b) or (c) are first satisfied.	18
‘782	Application of provisions about protected action ballots	19
	‘(1) This section applies to protected industrial action started	20
	before, on or after the commencement, if notice of the	21
	intended action was given before the commencement under	22
	previous section 175.	23
	‘(2) Chapter 6, division 6 (Industrial action) as it was in force	24
	before the commencement continues to apply to the protected	25
	industrial action.	26

‘783	Application of new ch 6, div 6A (Termination of protected industrial action by Minister)	1 2
‘(1)	This section applies to protected industrial action started before, on or after the commencement, if notice of the intended action was given before the commencement under previous section 175.	3 4 5 6
‘(2)	Chapter 6, division 6A does not apply to the protected industrial action.	7 8
‘784	Transitional regulation-making power	9
‘(1)	A regulation (a <i>transitional regulation</i>) may make provision of a saving or transitional nature for which—	10 11
(a)	it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of the pre-amended Act to the operation of the amended Act in relation to a prescribed matter; and	12 13 14 15
(b)	this Act does not make provision or sufficient provision.	16
‘(2)	Without limiting subsection (1), a transitional regulation may continue the operation of a repealed provision.	17 18
‘(3)	A transitional regulation may have retrospective operation to a day that is not earlier than the day of the commencement.	19 20
‘(4)	A transitional regulation must declare it is a transitional regulation.	21 22
‘(5)	This section and any transitional regulation expire 2 years after the day of commencement.	23 24
‘(6)	In this section—	25
	<i>amended Act</i> means this Act as amended by the amending Act.	26 27
	<i>pre-amended Act</i> means this Act as in force before the commencement of the amending Act.	28 29
	<i>prescribed matter</i> means—	30
(a)	the making of agreements, and the certification of agreements made, under section 147A; or	31 32

(b) protected action ballot orders or protected action ballots. 1

‘785 Amendment of regulation 2

‘The amendment of the *Industrial Relations Regulation 2011*
by the amending Act does not affect the power of the
Governor in Council to further amend the regulation or to
repeal it.’. 3
4
5
6

Clause 21 Insertion of new sch 4 7

After schedule 3— 8

insert— 9

**‘Schedule 4 Provisions for protected action 10
ballots 11**

section 176 12

‘Part 1 Preliminary 13

‘1 Purpose of sch 4 14

‘The purpose of this schedule is to establish a process
enabling employees to choose, by a fair and democratic secret
ballot, whether they wish to engage in particular industrial
action in relation to a proposed agreement if negotiations for
the agreement have begun. 15
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Note— 20

Under section 176 of this Act, industrial action by employees in relation
to a proposed agreement is not protected industrial action unless the
action has been authorised in advance by a protected action ballot. 21
22
23

‘2 Definition for sch 4 24

‘In this schedule— 25

protected action ballot order means an order of the commission requiring a protected action ballot to be conducted to determine whether employees wish to engage in particular industrial action in relation to a proposed agreement.

‘Part 2 Protected action ballot orders

‘3 Application for protected action ballot order

- ‘(1) An application for a protected action ballot order may be made to the commission by—

- (a) if the proposed agreement is an agreement with 1 or more employee organisations—an employee organisation that is a negotiating party; or

- (b) if the proposed agreement is an agreement with employees—an employee who the commission is satisfied is a negotiating party.

- ‘(2) Subsection (1) does not apply if the proposed agreement is a project agreement.

- ‘(3) The application must state—

- (a) the group of employees who are to be balloted; and

- (b) the question to be put to the employees who are to be balloted, including the nature of the proposed industrial action.

- ‘(4) For subsection (3)(a), a group of employees stated in the application is taken to include only employees who—

- (a) will be bound by the proposed agreement; and

- (b) if the proposed agreement is an agreement with 1 or more employee organisations—are members of an employee organisation that is an applicant.

- ‘(5) To remove any doubt, it is declared that applying for a protected action ballot order does not constitute organising industrial action.

‘4	When application may be made	1
‘(1)	This section applies if 1 or more existing certified agreements bind the employees who will be bound by the proposed agreement.	2 3 4
‘(2)	An application for a protected action ballot order must not be made earlier than 30 days before the nominal expiry date of the existing certified agreement, or the latest nominal expiry date of those existing certified agreements, as the case may be.	5 6 7 8 9
‘5	Notice of application	10
	‘Within 24 hours after making an application for a protected action ballot order, each applicant must give a copy of the application to—	11 12 13
	(a) the employer of the employees who are to be balloted; and	14 15
	(b) the ECQ.	16
‘6	When application must be decided	17
‘(1)	This section applies if an application for a protected action ballot order is made and the commission is satisfied section 5 has been complied with.	18 19 20
‘(2)	The commission must, as far as practicable, decide the application within 2 working days after the application is made.	21 22 23
‘7	Dealing with multiple applications together	24
	‘The commission may deal with 2 or more applications for a protected action ballot order at the same time if—	25 26
	(a) the applications relate to industrial action by—	27
	(i) employees of the same employer; or	28
	(ii) employees at the same workplace; and	29

- (b) the commission is satisfied that dealing with the applications at the same time will not unreasonably delay the deciding of any of the applications.

‘8 Making of protected action ballot order by commission

- ‘(1) The commission must make a protected action ballot order in relation to a proposed agreement if—
 - (a) an application for the order has been made under section 3; and
 - (b) the commission is satisfied each applicant has been, and is, genuinely trying to reach agreement with the employer of the employees who are to be balloted; and
 - (c) negotiations for the agreement have begun.
- ‘(2) The commission must not make a protected action ballot order if the requirements under subsection (1) are not satisfied.
- ‘(3) A protected action ballot order must state the following—
 - (a) the name of each applicant for the order;
 - (b) the group of employees who are to be balloted;
 - (c) the date by which voting in the ballot closes;
 - (d) the question to be put to the employees who are to be balloted, including the nature of the proposed industrial action.
- ‘(4) Subsection (5) applies if the commission is satisfied that exceptional circumstances relating to the proposed industrial action justify the period of notice mentioned in section 176(6)(b) of this Act being longer than 3 working days.
- ‘(5) The protected action ballot order may state a longer period of not more than 7 working days.

- ‘9 Notice of protected action ballot order** 1
- ‘(1) As soon as practicable after making a protected action ballot 2
order, the commission must give the following persons a copy 3
of the order— 4
- (a) each applicant for the order; 5
- (b) the employer of the employees who are to be balloted; 6
- (c) the ECQ. 7
- ‘(2) The ECQ must, as soon as practicable after the protected 8
action ballot order is made, take all reasonable steps to notify 9
each employee who is eligible to be included on the roll of 10
voters for the protected action ballot. 11
- ‘(3) A notice for subsection (2) must— 12
- (a) state the matters prescribed under a regulation; and 13
- (b) be given to the employee in the way prescribed under a 14
regulation. 15
- ‘(4) An employer must allow the ECQ access to the workplace 16
to— 17
- (a) give notice under subsection (2) to employees; or 18
- (b) prepare for the protected action ballot. 19
- Note—* 20
- See chapter 6, division 7 for penalty provisions applicable to 21
contraventions of this subsection. 22
- ‘10 Protected action ballot order may require 2 or more 23
ballots to be held together 24**
- ‘(1) This section applies if— 25
- (a) the commission has made a protected action ballot 26
order; and 27
- (b) the commission proposes to make 1 or more other 28
protected action ballot orders; and 29

(c)	the orders would require a protected action ballot to be held in relation to industrial action by employees of the same employer or employees at the same workplace.	1 2 3
‘(2)	The commission may make, or vary, the protected action ballot orders to require the protected action ballots to be held at the same time if the commission is satisfied—	4 5 6
(a)	the level of disruption of the employer’s enterprise, or at the workplace, could be reduced if the ballots were held at the same time; and	7 8 9
(b)	requiring the ballots to be held at the same time will not unreasonably delay any of the ballots.	10 11
‘11	Variation of protected action ballot order	12
‘(1)	An applicant for a protected action ballot order may apply to the commission to vary the order.	13 14
‘(2)	The ECQ may apply to the commission to vary the order to change the date by which voting in the ballot closes.	15 16
‘(3)	An application may be made under subsection (1) or (2)—	17
(a)	at any time before the date by which voting in the protected action ballot closes; or	18 19
(b)	if the ballot has not been held before that date and the commission consents—after that date.	20 21
‘(4)	If an application is made under subsection (1) or (2), the commission may vary the protected action ballot order.	22 23
‘12	Revocation of protected action ballot order	24
‘(1)	An applicant for a protected action ballot order may apply to the commission to revoke the order.	25 26
‘(2)	An application may be made under subsection (1) at any time before voting in the protected action ballot closes.	27 28
‘(3)	If an application is made under subsection (1), the commission must revoke the protected action ballot order.	29 30

‘Part 3	Conduct of protected action ballot	1 2
‘13	Requirements for conduct of protected action ballot	3
‘(1)	A protected action ballot must be conducted by the ECQ.	4
‘(2)	Subject to this part, the ECQ must conduct the protected action ballot in accordance with each of the following—	5 6
(a)	the protected action ballot order;	7
(b)	the timetable for the ballot developed under section 15;	8
(c)	any procedures prescribed under a regulation.	9
‘14	Voting must be by post	10
	‘Voting for a protected action ballot must be by post.	11
‘15	Timetable for protected action ballot	12
‘(1)	As soon as practicable after receiving a copy of the protected action ballot order, the ECQ must develop a timetable for the protected action ballot.	13 14 15
‘(2)	In developing the timetable, the ECQ must consult with—	16
(a)	each applicant for the protected action ballot order; and	17
(b)	the employer of the employees who are to be balloted.	18
‘16	Compiling roll of voters	19
‘(1)	As soon as practicable after receiving a copy of the protected action ballot order, the ECQ must compile the roll of voters for the protected action ballot.	20 21 22
‘(2)	For compiling the roll of voters, the ECQ may give either or both of the following persons a voting information direction—	23 24
(a)	the employer of the employees who are to be balloted;	25
(b)	an applicant for the protected action ballot order.	26

- ‘(3) For subsection (2), a *voting information direction* is a written direction requiring the person to whom it is given to give the ECQ—
- (a) the names of the employees included in the group of employees stated in the protected action ballot order; and
 - (b) any other information the ECQ reasonably requires to compile the roll of voters.

- ‘17 Who is eligible to be included on the roll of voters**
- ‘An employee is eligible to be included on the roll of voters for the protected action ballot only if—
- (a) the employee will be bound by the proposed agreement to which the ballot relates; and
 - (b) on the day the protected action ballot order was made, the employee was—
 - (i) included in the group of employees stated in the order; and
 - (ii) if the proposed agreement is an agreement with 1 or more employee organisations—a member of an employee organisation that is an applicant for the order.

- ‘18 Variation of roll of voters**
- ‘(1) The ECQ must include an employee’s name on the roll of voters for the protected action ballot if—
- (a) the ECQ is asked to do so by any of the following—
 - (i) an applicant for the protected action ballot order;
 - (ii) the employee;
 - (iii) the employee’s employer; and
 - (b) the ECQ is satisfied the employee is eligible to be included on the roll of voters; and

- (c) the request is made before the end of the working day before the day on which voting in the ballot starts. 1 2
- ‘(2) The ECQ must remove an employee’s name from the roll of voters for the protected action ballot if— 3 4
 - (a) the ECQ is asked to do so by any of the following— 5
 - (i) an applicant for the protected action ballot order; 6
 - (ii) the employee; 7
 - (iii) the employee’s employer; and 8
 - (b) the ECQ is satisfied the employee is not eligible to be included on the roll of voters; and 9 10
 - (c) the request is made before the end of the working day before the day on which voting in the ballot starts. 11 12
- ‘(3) The ECQ must remove a person’s name from the roll of voters for the protected action ballot if— 13 14
 - (a) the person (the *former employee*) is no longer employed by the employer (the *former employer*) of the employees who are to be balloted; and 15 16 17
 - (b) the ECQ is requested to do so by any of the following— 18
 - (i) an applicant for the protected action ballot order; 19
 - (ii) the former employee; 20
 - (iii) the former employer; and 21
 - (c) the request is made before the end of the working day before the day on which voting in the ballot starts. 22 23
- ‘(4) The ECQ may, on its own initiative and before the end of the working day before the day on which voting in the protected action ballot starts, do any of the following— 24 25 26
 - (a) include an employee’s name on the roll of voters for the ballot if the ECQ is satisfied the employee is eligible to be included on the roll of voters; 27 28 29
 - (b) remove an employee’s name from the roll of voters for the ballot if the ECQ is satisfied the employee is not eligible to be included on the roll of voters; 30 31 32

(c)	remove a person's name from the roll of voters for the ballot if the person is no longer employed by the employer of the employees who are to be balloted.	1 2 3
'19	Protected action ballot papers	4
	'The ballot paper for the protected action ballot must, if there is an approved form for the ballot paper, be in the approved form.	5 6 7
'20	Who may vote in a protected action ballot	8
	'An employee may vote in the protected action ballot only if the employee's name is on the roll of voters for the ballot.	9 10
'21	Scrutineers	11
	'A regulation may provide for the qualifications, appointment, powers and duties of scrutineers for the protected action ballot.	12 13 14
'22	Results of protected action ballot	15
	'(1) As soon as practicable after voting in the protected action ballot closes, the ECQ must, in writing—	16 17
	(a) make a declaration of the results of the ballot; and	18
	(b) inform the following persons of the results—	19
	(i) each applicant for the protected action ballot order;	20
	(ii) the employer of the employees who were balloted;	21
	(iii) the commission.	22
	'(2) As soon as practicable after the commission becomes aware of the results of the protected action ballot, the commission must publish the results—	23 24 25
	(a) on its website; or	26

(b) by any other means the commission considers appropriate. 1
2

Note— 3

The commission mentioned in subsections (1)(b)(iii) and (2) is the 4
Queensland Industrial Relations Commission. 5

‘23 Report about conduct of protected action ballot 6

‘(1) Subsection (2) applies if the ECQ— 7

(a) receives any complaints about the conduct of the 8
protected action ballot; or 9

(b) becomes aware of any irregularities in relation to the 10
conduct of the ballot. 11

‘(2) The ECQ must prepare a written report about the conduct of 12
the protected action ballot and give it to the commission. 13

‘(3) In this section— 14

conduct, in relation a protected action ballot, includes 15
compiling the roll of voters for the ballot. 16

irregularity, in relation to the conduct of a protected action 17
ballot, includes an act or omission that prevents or hinders the 18
full and free recording of votes by all employees entitled to 19
the vote in the ballot and not by any other person. 20

‘Part 4 Other provisions 21

‘24 Costs of protected action ballot 22

‘(1) The costs of a protected action ballot are payable by the State. 23

‘(2) Subsection (1) applies whether or not the ballot is completed. 24

‘25 Records 25

‘(1) The ECQ must keep the following documents or records for a 26
protected action ballot— 27

-
- (a) the roll of voters; 1
- (b) ballot papers, envelopes and other documents and 2
records for the ballot; 3
- (c) any other documents prescribed under a regulation. 4
- ‘(2) The ECQ must keep the documents or records— 5
- (a) for 1 year after the day on which voting for the protected 6
action ballot closed; and 7
- (b) in compliance with any requirements prescribed under a 8
regulation about how the documents or records must be 9
kept.’. 10

Clause 22	Amendment of sch 5 (Dictionary)	11
	Schedule 5—	12
	<i>insert—</i>	13
	‘ <i>ECQ</i> means the Electoral Commission of Queensland 14 established under the <i>Electoral Act 1992</i> . 15	
	<i>Minister</i> , for chapter 6, division 6A, see section 181A. 16	
	<i>post-industrial action negotiation period</i> , for chapter 6, 17 division 6A, see section 181A. 18	
	<i>protected action ballot</i> see section 176(2). 19	
	<i>protected action ballot order</i> see schedule 4, section 2. 20	
	<i>termination declaration</i> see section 181A.’. 21	

Part 3	Amendment of Industrial	22
	Relations Regulation 2011	23

Clause 23	Regulation amended	24
	This part amends the <i>Industrial Relations Regulation 2011</i> . 25	

Clause 24	Insertion of new ss 10A–10H	1
	Part 4—	2
	<i>insert—</i>	3
‘10A	Notice of protected action ballot order	4
‘(1)	For the Act, schedule 4, section 9(3)(a), the following matters are prescribed—	5 6
(a)	any matter stated in the protected action ballot order;	7
(b)	that the ballot will be by post;	8
(c)	the period during which the ballot will be conducted;	9
(d)	contact details for the ECQ;	10
(e)	that the employee may contact the ECQ to find out whether the employee is on the roll of voters;	11 12
(f)	that the employee may ask the ECQ to add or remove the employee’s name from the roll of voters;	13 14
(g)	that the employee may raise concerns or complaints about the conduct of the ballot, including any alleged irregularity, with the ECQ.	15 16 17
‘(2)	For the Act, schedule 4, section 9(3)(b), the following ways are prescribed—	18 19
(a)	giving the notice to the employee personally;	20
(b)	sending the notice by pre-paid post to—	21
(i)	the employee’s residential address; or	22
(ii)	another postal address nominated by the employee;	23
(c)	sending the notice to—	24
(i)	the employee’s email address at work; or	25
(ii)	another email address nominated by the employee;	26
(d)	sending, to an email address mentioned in paragraph (c), an electronic link that takes the employee directly to a copy of the notice on the employer’s intranet;	27 28 29
(e)	faxing the notice to—	30

(i)	the employee's fax number at work; or	1
(ii)	the employee's fax number at home; or	2
(iii)	another fax number nominated by the employee;	3
(f)	displaying the notice in a conspicuous place at the workplace that is known by and readily accessible to the employee;	4 5 6
(g)	any other way the ECQ considers appropriate.	7
'10B	Conduct of protected action ballot—information that may accompany ballot paper	8 9
'(1)	This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to information the ECQ may provide to an employee with the ballot paper for the protected action ballot.	10 11 12 13
'(2)	Any of the following may be provided—	14
(a)	directions about what an employee who is entitled to vote in the ballot must do to cast a valid vote;	15 16
(b)	other directions the ECQ reasonably believes may help to ensure there is no irregularity in the conduct of the ballot;	17 18 19
(c)	notes to assist an employee who is entitled to vote in the ballot by informing the employee of matters relating to the conduct of the ballot.	20 21 22
'10C	Conduct of protected action ballot—compilation of roll of voters	23 24
'(1)	This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to information provided, as required under a direction given under the Act, schedule 4, section 16, by—	25 26 27 28
(a)	an applicant for the protected action ballot order; or	29
(b)	the employer of an employee who is to be balloted.	30

- ‘(2) The information must be accompanied by a written
declaration by the applicant or employer that he or she
reasonably believes the information is complete, up to date
and accurate.

**‘10D Conduct of protected action ballot—issue of ballot
papers**

- ‘(1) This section prescribes, for the Act, schedule 4, section
13(2)(c), procedures for the conduct of a protected action
ballot relating to the issue of ballot papers.
- ‘(2) The ECQ must issue, to each employee who is to be balloted,
a ballot paper that bears the relevant ECQ officer’s initials or a
facsimile of the officer’s initials.
- ‘(3) The ECQ must post to each employee who is to be balloted a
sealed envelope that contains each of the following—
- (a) the ballot paper;
 - (b) information about—
 - (i) the closing date for the ballot; and
 - (ii) the time on the closing date by which the ECQ
must receive the employee’s vote;
 - (c) an envelope in which the employee must place his or her
ballot paper;
 - (d) a pre-paid envelope addressed to the ECQ;
 - (e) any other material the ECQ considers relevant to the
ballot.
- ‘(4) The envelope mentioned in subsection (3)(c) must—
- (a) set out a form of declaration that the employee has not
previously voted in the ballot; and
 - (b) have a place where the employee can sign the envelope;
and
 - (c) be able to fit in the pre-paid envelope mentioned in
subsection (3)(d).

‘10E	Conduct of protected action ballot—issue of replacement ballot papers	1 2
‘(1)	This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the issue of replacement ballot papers.	3 4 5
‘(2)	An employee who is to be balloted may ask the ECQ for a replacement ballot paper if—	6 7
(a)	the employee did not receive all of the documents mentioned in section 10D(3); or	8 9
(b)	the ballot paper received by the employee has been lost, destroyed or spoilt.	10 11
‘(3)	The request must—	12
(a)	be received by the ECQ on or before the closing day of the ballot; and	13 14
(b)	state the reason for the request; and	15
(c)	if practicable, be accompanied by evidence relating to the reason; and	16 17
(d)	include a declaration by the employee that the employee has not voted in the ballot.	18 19
‘(4)	The ECQ must give the employee a replacement ballot paper if satisfied—	20 21
(a)	the reason for the request is a reason mentioned in subsection (2); and	22 23
(b)	the request for the replacement ballot paper complies with subsection (3); and	24 25
(c)	the employee has not voted in the ballot.	26
‘10F	Conduct of protected action ballot—counting of votes by ECQ	27 28
‘(1)	This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the counting of votes.	29 30 31

- ‘(2) The ECQ must decide the result of the protected action ballot, as soon as practicable after the close of the ballot, by conducting a scrutiny of the ballot papers under this section. 1
2
3
- ‘(3) The ECQ must— 4
- (a) admit the valid ballot papers and reject the informal ballot papers; and 5
6
- (b) count the valid ballot papers; and 7
- (c) record the number of votes— 8
- (i) in favour of the question; and 9
- (ii) against the question; and 10
- (d) count the informal ballot papers. 11
- ‘(4) A ballot paper is *informal* only if— 12
- (a) the initials, or a facsimile of the initials, of the relevant ECQ officer are missing; or 13
14
- (b) the ballot paper is marked in a way that allows the employee to be identified; or 15
16
- (c) the ballot paper is not marked in a way that makes it clear how the employee intended to vote; or 17
18
- (d) the employee has not complied with a direction given to the employee under section 10B. 19
20
- ‘(5) However, a ballot paper is not *informal* under subsection (4)(a) if the ECQ is otherwise satisfied the ballot paper is authentic. 21
22
23
- ‘10G Conduct of protected action ballot—scrutiny of ballot papers by scrutineers 24
25**
- ‘(1) This section prescribes, for the Act, schedule 4, section 13(2)(c), procedures for the conduct of a protected action ballot relating to the scrutiny of ballot papers by scrutineers. 26
27
28
- ‘(2) If the ECQ is informed by a scrutineer that the scrutineer objects to a ballot paper being admitted as valid, or rejected as informal, the ECQ must— 29
30
31

(a)	decide whether the ballot paper is to be admitted as valid or rejected as informal; and	1 2
(b)	endorse its decision on the ballot paper and initial the endorsement.	3 4
‘(3)	If the ECQ is informed by a scrutineer that, in the scrutineer’s opinion, an error has been made in the scrutiny of the ballot papers, the ECQ must—	5 6 7
(a)	decide whether an error has been made; and	8
(b)	if appropriate, take action to correct the error.	9
‘(4)	To preserve the secrecy of the voting, the ECQ must ensure that a scrutineer does not have access to any information that may allow the scrutineer to identify which employee has completed a particular ballot paper.	10 11 12 13
‘(5)	Subsection (6) applies if a person—	14
(a)	is not entitled to be present or to remain present at the scrutiny of the protected action ballot; or	15 16
(b)	interrupts the scrutiny of the protected action ballot, other than to perform a function mentioned in section 10F(3).	17 18 19
‘(6)	The ECQ may direct the person to leave the place where the protected action ballot is being scrutinised.	20 21
‘(7)	In this section— <i>scrutineer</i> see section 10H(2).	22 23
‘10H	Scrutineers for protected action ballot	24
‘(1)	This section prescribes, for the Act, schedule 4, section 21, matters relating to the qualifications, appointment, functions and powers of scrutineers for a protected action ballot.	25 26 27
‘(2)	A <i>scrutineer</i> for the protected action ballot is a person appointed under subsection (3) or (4).	28 29
‘(3)	The employer may appoint 1 or more scrutineers for the protected action ballot.	30 31

- ‘(4) Also, an applicant for the protected action ballot order may appoint 1 or more scrutineers for the protected action ballot. 1
2
- ‘(5) An appointment under subsection (3) or (4) must be by a written notice signed by or for the employer or applicant. 3
4
- ‘(6) A scrutineer may be present at the scrutiny of the ballot papers for the protected action ballot after the ECQ has removed evidence of employees’ identities from the ballot papers as required under section 10G(4). 5
6
7
8
- ‘(7) However— 9
- (a) the total number of scrutineers present at the scrutiny of the ballot papers at a particular time must not be more than the total number of people engaged in the scrutiny of the ballot papers for the ECQ; and 10
11
12
13
- (b) the ECQ may refuse to allow a scrutineer to be present at the scrutiny of the ballot papers if the scrutineer fails to produce his or her notice of appointment on request by the ECQ. 14
15
16
17
- ‘(8) At the scrutiny of the ballot papers for the protected action ballot, the scrutineer may advise the ECQ if the scrutineer— 18
19
- (a) objects to a ballot paper being admitted as a valid ballot paper or rejected as an informal ballot paper; or 20
21
- (b) considers an error has been made in the conduct of the scrutiny of the ballot papers.’. 22
23

Part 4 **Amendment of Public Service Act 2008** 24 25

Clause	25	Act amended	26
		This part amends the <i>Public Service Act 2008</i> .	27
		<i>Note—</i>	28
		See also the amendments in the schedule.	29

Clause 26	Amendment of s 9 (Public service employees)	1
	Section 9(3), note 1, ‘to the appeals officer’—	2
	<i>omit, insert—</i>	3
	‘under chapter 7, part 1’.	4
Clause 27	Amendment of s 77 (Staff members of the commission)	5
	Section 77(2), ‘The appeals officer and persons’—	6
	<i>omit, insert—</i>	7
	‘Persons’.	8
Clause 28	Amendment of s 78 (Staff generally subject to direction by commission chief executive)	9
	Section 78(2) and (3)—	10
	<i>omit, insert—</i>	11
	‘(2) Subsection (1) does not apply to a staff member of the commission performing functions under section 88E to help appeals officers perform their function under this Act.’.	12
		13
		14
		15
Clause 29	Amendment of ch 3, pt 5, hdg (Appeals officer)	16
	Chapter 3, part 5, heading, ‘officer’—	17
	<i>omit, insert—</i>	18
	‘officers’.	19
Clause 30	Insertion of new s 88AA	20
	Chapter 3, part 5, before section 88A—	21
	<i>insert—</i>	22
	‘88AA Definition for pt 5	23
	‘In this part—	24
	<i>member</i> , of the IRC, see the <i>Industrial Relations Act 1999</i> , schedule 5.’.	25
		26

Clause 31	Replacement of s 88A (Appeals officer)	1
	Section 88A—	2
	<i>omit, insert—</i>	3
‘88A	Appeals officers	4
	‘(1) The commission chief executive must appoint 1 or more persons to be appeals officers (each an <i>appeals officer</i>).’	5 6
	‘(2) To be appointed as an appeals officer, a person must be a member of the IRC.’	7 8
	‘(3) If the person stops holding office as a member of the IRC, the person’s appointment as an appeals officer ends.’	9 10
	‘(4) An appeals officer may perform the functions of office of both appeals officer and member of the IRC.’	11 12
	‘(5) A member of the IRC’s service as an appeals officer is taken to be service as a member for all purposes.’	13 14
	‘(6) Without limiting subsection (5), a member of the IRC’s service as an appeals officer is taken to be—	15 16
	(a) if, because of an appointment or agreement under the <i>Industrial Relations Act 1999</i> , section 258, 258A or 259, the member is performing the functions of the office of a member on a part-time basis—part of the percentage of the full-time basis the member is to perform; and	17 18 19 20 21
	(b) for the <i>Industrial Relations Act 1999</i> , section 337, in the exercise of jurisdiction as a member of the IRC under an Act.’.	22 23 24
Clause 32	Omission of s 88B (Acting as appeals officer)	25
	Section 88B—	26
	<i>omit.</i>	27
Clause 33	Replacement of s 88C (Appeals officer’s functions)	28
	Section 88C—	29
	<i>omit, insert—</i>	30

‘88C	Appeals officer’s function	1
‘(1)	An appeals officer’s function is to hear and decide appeals under chapter 7, part 1.	2 3
‘(2)	Despite section 88A(2) and (5), an appeals officer performs the officer’s function mentioned in subsection (1), and exercises the officer’s powers, under this Act and not under the <i>Industrial Relations Act 1999</i> .’.	4 5 6 7
Clause 34	Amendment, relocation and renumbering of s 88D (Report on performance of functions)	8 9
(1)	Section 88D, heading, ‘performance of functions’— <i>omit, insert—</i> ‘appeals’.	10 11 12
(2)	Section 88D(1), from ‘appeals officer’— <i>omit, insert—</i> ‘commission chief executive must give the Minister a written report about appeals started, decided or withdrawn under part 1 during the financial year.’.	13 14 15 16 17
(3)	Section 88D(2), ‘appeals officer’— <i>omit, insert—</i> ‘commission chief executive’.	18 19 20
(4)	Section 88D— <i>relocate and renumber</i> , in chapter 7, part 4, as section 218C.	21 22
Clause 35	Insertion of new s 88D	23
	After section 88C— <i>insert—</i>	24 25
‘88D	Dealing with matters as appeals officer and member of the IRC	26 27
‘(1)	This section applies if—	28

[s 36]

- | | | |
|------|--|-------------|
| (a) | an appeals officer has dealt with a matter while performing the functions of the office of member of the IRC; and | 1
2
3 |
| (b) | the matter is or has become the subject of an appeal under chapter 7, part 1. | 4
5 |
| ‘(2) | The appeals officer must not deal with the appeal. | 6 |
| ‘(3) | The appeals officer must inform the commission chief executive why the appeals officer is not dealing with the appeal.’. | 7
8
9 |

Clause 36	Amendment of s 88E (Staff members to help appeals officer)	10 11
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|-----|--|----------------------|
| (1) | Section 88E, heading, ‘officer’—
<i>omit, insert—</i>
‘ officers ’. | 12
13
14 |
| (2) | Section 88E, ‘the appeals officer perform his or her functions’—
<i>omit, insert—</i>
‘appeals officers perform their function’. | 15
16
17
18 |

Clause 37	Omission of s 88F (Delegation)	19
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Section 88F— <i>omit.</i>	20 21
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Clause 38	Replacement of s 88G (Duty of persons performing appeal functions)	22 23
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Section 88G— <i>omit, insert—</i>	24 25
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‘88G	Duty of persons performing appeal function	1
	‘An appeals officer hearing and deciding an appeal and any staff member performing functions to help the appeals officer to hear and decide an appeal—	2
		3
		4
	(a) must perform the functions independently, impartially, fairly, and in the public interest; and	5
		6
	(b) in performing the functions, are not subject to direction by the commission, the commission chief executive or any Minister.’.	7
		8
		9
Clause 39	Amendment of s 112 (Acting senior executives)	10
	Section 112(3) and note—	11
	<i>omit.</i>	12
Clause 40	Amendment of s 193, hdg (Appeals to appeals officer)	13
	Section 193, heading, ‘to appeals officer’—	14
	<i>omit.</i>	15
Clause 41	Insertion of new ch 7, pt 1, div 1A	16
	Chapter 7, part 1, after section 196—	17
	<i>insert—</i>	18
‘Division 1A	Appeals heard and decided by appeals officers	19
		20
‘196A	Appeal heard and decided by appeals officer	21
	‘An appeal under this part is heard and decided by an appeals officer.’.	22
		23
Clause 42	Amendment of s 197 (Starting an appeal)	24
	(1) Section 197(1), ‘to the appeals officer’—	25

<i>omit.</i>	1
(2) Section 197(1), ‘appeals officer’, second mention—	2
<i>omit, insert—</i>	3
‘commission chief executive’.	4
(3) Section 197(2) and (3), ‘appeals officer’—	5
<i>omit, insert—</i>	6
‘commission chief executive’.	7

Clause 43	Amendment of s 198 (Notice by appeals officer of appeal)	8
(1)	Section 198, heading, ‘appeals officer’—	9
	<i>omit, insert—</i>	10
	‘commission chief executive’.	11
(2)	Section 198(1), from ‘appeals officer’—	12
	<i>omit, insert—</i>	13
	‘commission chief executive must—	14
(a)	give notice of receipt of the appeal notice to the appellant; and	15 16
(b)	give the appeal notice to an appeals officer to hear and decide the appeal.’.	17 18
(3)	Section 198(2), ‘appeals officer’—	19
	<i>omit, insert—</i>	20
	‘commission chief executive’.	21

Clause 44	Amendment of s 201 (Appeal is by way of review)	22
	Section 201(4), ‘(2)’—	23
	<i>omit, insert—</i>	24
	‘(3)’.	25

Clause 45	Amendment of s 204 (Representation of parties)	1
	Section 204(3), ‘the appeals officer’s leave’—	2
	<i>omit, insert—</i>	3
	‘the leave of the appeals officer who is hearing the appeal’.	4
Clause 46	Amendment of s 206 (Withdrawing an appeal)	5
	(1) Section 206, ‘appeals officer’—	6
	<i>omit, insert—</i>	7
	‘commission chief executive’.	8
	(2) Section 206(3), after ‘the withdrawal to’—	9
	<i>insert—</i>	10
	‘the appeals officer who is hearing the appeal,’.	11
Clause 47	Amendment of s 208 (Decision on appeal)	12
	Section 208(4)—	13
	<i>omit, insert—</i>	14
	‘(4) As soon as possible after a decision on an appeal is available—	15
		16
	(a) the appeals officer who made the decision must give a copy of the decision to the commission chief executive; and	17
		18
		19
	(b) the commission chief executive must give a copy of the decision to the parties to the appeal.’.	20
		21
Clause 48	Amendment of s 210 (Decision on appeal is binding on parties)	22
		23
	Section 210(1), ‘The appeals officer’s’—	24
	<i>omit, insert—</i>	25
	‘An appeals officer’s’.	26

Clause 49	Amendment of s 212 (Public service employee's entitlements for attending appeal as part of duties)	1 2
	Section 212(2), 'appeals officer'—	3
	<i>omit, insert</i> —	4
	'commission chief executive'.	5
Clause 50	Amendment of s 213 (Entitlement of non-public service employees)	6 7
	Section 213(3), 'appeals officer'—	8
	<i>omit, insert</i> —	9
	'commission chief executive'.	10
Clause 51	Amendment of s 214 (Relevant department's or public service office's financial obligation for appeal)	11 12
	Section 214(2), 'appeals officer'—	13
	<i>omit, insert</i> —	14
	'commission chief executive'.	15
Clause 52	Amendment of s 215 (Jurisdiction of IRC for industrial matters)	16 17
	Section 215(3), 'to the appeals officer'—	18
	<i>omit, insert</i> —	19
	'under part 1'.	20
Clause 53	Insertion of new s 218B	21
	Chapter 7, part 4—	22
	<i>insert</i> —	23
	'218B Commission chief executive's functions—appeals	24
	'The commission chief executive may communicate, in the way the officer considers appropriate, matters arising out of	25 26

an appeal under part 1 that may affect decision-making for particular decisions in the public service, or in a particular government entity, to—

- (a) persons who are likely to make decisions of that kind; or
- (b) persons who are likely to be affected by decisions of that kind; or
- (c) any other person if the officer considers the matters may be relevant to the person's functions under an Act or other law.'.

Clause 54	Renumbering of ch 9, pt 6, hdg (Transitional provision for Public Interest Disclosure Act 2010)	10
	Chapter 9, part 6, second occurring—	11
	<i>renumber</i> as chapter 9, part 8.	12
Clause 55	Renumbering of s 264 (Amendment of regulation by Public Interest Disclosure Act 2010 does not affect powers of Governor in Council)	13
	Section 264, second occurring—	14
	<i>renumber</i> as section 280.	15
Clause 56	Insertion of new ch 9, pt 9	16
	After section 280—	17
	<i>insert</i> —	18

‘Part 9	Transitional provisions for Industrial Relations (Fair Work Act Harmonisation) and Other Legislation Amendment Act 2012	1 2 3 4 5
‘281	Definitions for pt 9	6
	‘In this part—	7
	<i>commencement</i> means the commencement of this part.	8
	<i>former appeals officer</i> means the person who, immediately before the commencement, held appointment under old section 88A as the appeals officer.	9 10 11
	<i>former delegate</i> means a person who, immediately before the commencement, was delegated under old section 88F to hear and decide appeals under the old appeals provisions.	12 13 14
	<i>new appeals officer</i> means a person appointed to be an appeals officer under new section 88A.	15 16
	<i>new section 88A</i> means section 88A as in force from the commencement.	17 18
	<i>old appeals provisions</i> means chapter 7, part 1 as in force immediately before the commencement.	19 20
	<i>old section 88A</i> means section 88A as in force immediately before the commencement.	21 22
	<i>old section 88F</i> means section 88F as in force immediately before the commencement.	23 24
‘282	Appointment of former appeals officer and former delegate ends at commencement	25 26
	‘Subject to section 284(3), the following end at the commencement—	27 28
	(a) the former appeals officer’s appointment;	29

(b) a former delegate's delegation.' 1

'283 Appeals started after commencement' 2

- '(1) This section applies if a person after the commencement starts
an appeal under chapter 7, part 1 against a decision made
before the commencement. 3
4
5
- '(2) The appeal must be heard and decided by a new appeals
officer under this Act as in force from the commencement. 6
7
- '(3) This Act as in force from the commencement applies in
relation to starting the appeal and the appeal. 8
9

'284 Appeals started before commencement' 10

- '(1) This section applies if a person before the commencement
starts an appeal under chapter 7, part 1 and the appeal has not
been decided or withdrawn at the commencement (a
transitional appeal). 11
12
13
14
- '(2) A transitional appeals officer or transitional delegate must
hear and decide, or continue to hear and decide, a transitional
appeal under the old appeals provisions. 15
16
17
- '(3) For the purposes of subsection (2)— 18
- (a) this Act as in force before the commencement continues
to apply; and 19
20
- (b) the former appeals officer and a former delegate are
taken to hold the appointment and delegation ended
under section 282; and 21
22
23
- (c) if there is a vacancy in the office of the former appeals
officer, the commission chief executive may appoint a
person under old section 88A to be a transitional appeals
officer; and 24
25
26
27
- (d) a transitional appeals officer may delegate his or her
functions in relation to the appeal to an appropriately
qualified person. 28
29
30

	‘(4) Each appointment and delegation mentioned in subsection (3)(b), (c) and (d) in effect when the last transitional appeal is decided or withdrawn ends when the decision is made or the withdrawal happens.	1 2 3 4
	‘(5) In this section— <i>transitional appeals officer</i> means—	5 6
	(a) the former appeals officer; or	7
	(b) a person appointed under subsection (3) to be the transitional appeals officer.	8 9
	<i>transitional delegate</i> mans—	10
	(a) a former delegate; or	11
	(b) a person who is delegated under subsection (3) to hear and decide an appeal.’.	12 13
Clause 57	Amendment of sch 4 (Dictionary)	14
	Schedule 4—	15
	<i>insert—</i>	16
	‘ <i>member</i> , of the IRC, for chapter 3, part 5, see section 88AA.’.	17
Part 5	Minor and consequential amendments	18 19
Clause 58	Act amended	20
	The schedule amends the Act it mentions.	21

Schedule	Minor and consequential amendments	1 2
	section 58	3
Public Service Act 2008		4
1	Amendment of particular provisions to omit ‘to the appeals officer’	5 6
	The following provisions are amended by omitting ‘to the appeals officer’—	7 8
	• chapter 7, part 1, heading	9
	• section 193	10
	• section 194(1)	11
	• section 195(1)	12
	• section 196	13
	• section 214B(2)(a)(i).	14
2	Amendment of particular provisions to replace ‘The appeals officer’ with ‘An appeals officer’	15 16
	The following provisions are amended by omitting ‘The appeals officer’ and replacing that term with ‘An appeals officer’—	17 18 19
	• section 199(1)	20
	• section 200	21
	• section 201(1)	22
	• section 203(1).	23

3	Amendment of particular provisions to replace ‘the appeals officer’ with ‘an appeals officer’	1 2
	The following provisions are amended by omitting ‘the appeals officer’ and replacing that term with ‘an appeals officer’—	3 4 5
	• section 201(3)	6
	• section 201(4)	7
	• section 202	8
	• section 203(2)	9
	• section 205(1)	10
	• section 208(1)	11
	• section 208(2)	12
	• section 211(b)	13
	• section 213(1)	14
	• section 214B.	15