

# INDUSTRIAL RELATIONS BILL 2016

## Explanatory Notes

### Short title

The short title of the Bill is the *Industrial Relations Bill 2016*.

### Policy objectives and the reasons for them

The policy object of the *Industrial Relations Bill 2016* (the Bill) is to provide for a framework for the conduct of industrial relations within the State's industrial relations jurisdiction that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.

Following the Commonwealth's expansion of its industrial relations jurisdiction in 2005 to cover all trading corporations in the private sector through the use of its constitutional powers, and the subsequent referral by the State of the non-incorporated private sector to the Commonwealth in 2010, the State's industrial relations jurisdiction covers the Queensland and local government sectors. In some matters, for example long service leave and jury service leave, the State has a shared jurisdiction.

During 2015, the Palaszczuk Government approved an independent review of the State's industrial relations laws and tribunals to provide recommendations for industrial relations reform. An election priority for the Government, this was the first major review of the state's industrial relations laws since 1998.

The review group, chaired by Mr Jim McGowan AM, was comprised of representatives of Queensland's industrial relations' key stakeholders including representatives of unions and employer organisations, Queensland's Bar Association and Law Society, government agencies and the Local Government Association of Queensland (LGAQ).

Following public consultation and consideration of submissions, the Review group provided its Report entitled 'A Review of the Industrial Relations Framework in Queensland: A Report of the Industrial Relations Legislative Reform Reference Group' (the Report) to the Government. The report was published in March 2016.

The Report recommends that new industrial relations legislation be drafted due to the significant changes in the jurisdiction covered by the provisions of the current *Industrial Relations Act 1999* (IR Act) and also recommends retention of the local government sector in Queensland's industrial relations jurisdiction. The Report's recommendations promote genuine consultation and cooperative industrial relations underpinned by collective bargaining for setting wages and conditions, the independence of the industrial tribunals; strong, effective and transparent governance and accountability obligations for state-registered industrial organisations, and the Queensland Government as a model employer. The report also recommends the adoption of protections aligned with those afforded to private

sector employees and employers under the *Fair Work Act 2009* (FW Act) including introducing a general protections and an anti-bullying jurisdiction in Queensland. The report also recommends that the Queensland Industrial Relations Commission (the commission) have an exclusive jurisdiction for work place/employment related anti-discrimination matters.

The Government has accepted the report's recommendations.

Additionally the Bill includes amendments to the *Holidays Act 1983* to make Easter Sunday a public holiday from 2017. Easter Sunday is being declared as a public holiday because of its significance as a religious and cultural day. It is considered that work on Easter Sunday should be treated and remunerated in the same way as the Good Friday, Easter Saturday and Easter Monday public holidays that surround it; and as a result of having four public holidays in a row, where awards and agreements may place the decision to work on one or more of those days with the worker, a worker has a greater chance of benefiting from a four day break.

Declaration of Easter Sunday as a public holiday will make Queensland consistent with public holiday arrangements in New South Wales, Victoria and the Australian Capital Territory where Easter Sunday is already a public holiday.

Consistent treatment of Easter Sunday as a public holiday is a commitment in the Queensland Labor State Policy Platform.

## **Achievement of policy objectives**

The Bill repeals the IR Act and provides for an industrial relations system based upon the recommendations of the Report and policy issues determined by Government.

The Bill will achieve its purpose by:

Setting the key elements for the State's industrial relations system i.e.

- a set of minimum standards;
- collective bargaining as the cornerstone for setting wages and conditions;
- a set of individual rights to fair treatment;
- effective, transparent and accountable governance and reporting obligations for registered organisations; and
- an independent commission and court.

The Bill:

- reframes the objects of the legislation around a fair and balanced system, the primacy of collective bargaining and recognising obligations of mutual trust and confidence;
- strengthens enterprise bargaining arrangements with greater emphasis on responsible representation and good faith bargaining; and for the commission to assist the parties to reach agreement. Arbitration is triggered only as a last resort; and
- revises the regulation of registered industrial organisations and associated entities. The Bill provides that the financial reporting requirements for

industrial organisations and the training requirements for officers with financial management duties are similar with those of the *Fair Work (Registered Organisations) Act 2009* (FWRO Act). This will assist those organisations with counterpart federally registered bodies better manage their administrative arrangements while ensuring registered organisations in this State are accountable to their members. The Bill further provides the Industrial Registrar, as an independent statutory officer, with the authority to investigate suspected breaches of industrial organisation's obligations.

The Bill introduces new protections for workers to:

- fulfil the Government's commitment to provide paid leave for victims of domestic and family violence;
- establish a general protections jurisdiction to protect workers against adverse action during employment or dismissal from employment; and workplace bullying remedies for state and local government employees similar to those available to private sector workers under the FW Act; and
- further align Queensland's minimum employment standards with the national employment standards for parental, carers and compassionate leave, the requirement to give an information statement to an employee upon the commencement of employment; and
- introduces a right to request flexible work arrangements.

In regard to strengthening Queensland's industrial tribunals, the Bill:

- provides the commission with exclusive jurisdiction to deal with all workplace related anti-discrimination matters, including those taken under the *Anti-discrimination Act 1991*;
- amends legal representation arrangements to be the same as those in the Fair Work Commission which means representation by a lawyer or other paid agent in the commission is permitted based on how unfair it would be not to allow representation. Legal representation is not permitted in enterprise bargaining arbitration matters.

The Bill also amends:

- the *Public Service Act 2008* to ensure there is no overlap in the directive making powers of the Minister for Industrial Relations and the Public Service Commissioner;
- other State Government employing Acts to ensure these do not impede the rights of employees, other than those on Statutory appointment, judicial officers and their associates, and employees engaged for special and specific tasks (e.g. special investigators) to have access to enterprise bargaining for their terms of employment.

The Bill also enables the Industrial Registrar to partition the Local Government Industry Modern award into three awards based upon occupational divisions identified in the Award Modernisation Variation Notice issued by the Minister on 6 June 2016 pursuant to S140CA of the IR Act. This is an administrative function only and is done to assist employers and workers by making the document more user-friendly for each occupational division.

Additionally, the Bill amends the *Holidays Act 1983* to provide that, from 2017, Easter Sunday will be a public holiday.

## **Alternative ways of achieving policy objectives**

The Government considers that the Bill is the best and only method for implementing the Report's recommendations and achieve the Government's policy intent. The Report recommended replacement of the IR Act by new industrial relations legislation.

In relation to Easter Sunday, the declaration of the day as a public holiday can only be achieved by amendment of the *Holidays Act 1983*.

## **Estimated cost for government implementation**

The cost implications of implementing the Report's recommendations through this Bill are not anticipated to be significant to Government and will be accommodated within existing budget allocations.

In regard to making Easter Sunday a public holiday, the additional wages cost to the Queensland economy for that day is estimated to be up to \$80 million. The additional wages cost to the Queensland public sector is estimated at \$4.8 - \$13.3 million, with advice from those agencies most likely to be impacted by the change indicating that the costs will be at the lower end of that range.

## **Consistency with fundamental legislative principles**

The Office of Queensland Parliamentary Counsel (OQPC) has raised the following issues which may infringe fundamental legislative principles (FLPs).

*Representational rights* - The reversal of onus of proof in general protections matters (Chapter 8) and Courts and Tribunals (Chapter 11 Part 9 – Evidentiary matters). The FLP offends the Legislative Standards Act 1992 (LS Act) at s 4(3) (d).

This reversal of the onus of proof in Chapter 8 is justifiable as employees cannot be in a position to discover the intent of their employer or relevant decision-maker. The reason why the action was taken is within the knowledge of the person who took the action. Without this reversal, it could prove disproportionately difficult for an applicant to establish the reason why adverse action has been taken against them by the respondent. This is the same as the FW Act. In regard to Chapter 11 – Evidentiary matters, the reversal of the onus of proof is equivalent to that provided in the judicial notice provisions of the *Evidence Act 1977*.

*The delegation of legislative power* - Unfair dismissal setting the income threshold (S315). Leaving the threshold amount to be prescribed under the FWA offends LS Act at s4 (4) because it is a delegation of legislative power to the Commonwealth. This delegation of legislative power is appropriate to ensure aligned thresholds for employees in the state and federal systems.

*Sufficient regard to rights and liberties of individuals* - The transitional arrangement for modern awards and pre-modernisation awards: Modern awards in operation

under the IR Act will be taken to be modern awards under the new Act and pre-modernisation awards will be revoked. In some cases a pre-modernisation award may underpin a pre-modernisation certified agreement so should therefore apply to employees. This has been identified as a potential FLP issue offending LS Act at s4 (3). The Bill addresses the potential issue by providing that any certified agreement is taken to be varied to include provisions for the terms and conditions of employment from any pre-modern award from which an entitlement is derived.

The proposed early termination of certified agreements made under section 147A of the IR Act from the date of the introduction of the Bill is to give effect to the intention of the Government to not allow for a process where representational rights can be altogether side-stepped, which in turn could lead to employees' conditions and rights being inadequately provided for in an agreement. It is considered that this treatment highlights the Government's intention to ensure representational rights to be part of a collective bargaining model, and that this will result in fairer bargaining outcomes for workers. The transitional measure will deter parties from making certified agreements under the offending 147A provision, and is considered preferable than allowing potentially unfair agreements to be certified without employees being able to be represented by unions in negotiations if they so wish.

*Power to enter places* - A possible FLP offending LS Act at s4 (3)(e) is identified in Chapter 13 Enforcement relating to the power to enter places. A similar breach is ascribed to the powers of entry for authorised officers under Chapter 9. Of particular concern is the legislative provision may breach a FLP by conferring power to enter premises and to search for or seize documents or other property without a duly issued warrant. These provisions preserve the existing powers for inspectors and authorised officers of the IR Act without change to those powers.

*Whether the legislation is sufficiently clear:* A related FLP, possibly offending LS Act at s4 (3)(k) is whether the legislation is sufficiently clear in regard to offences by an authorised industrial officer (that they must not contravene a requirement of the section). This provision is preserved from the IR Act without change in the Bill.

*Whether subordinate legislation has sufficient regard to the institution of Parliament:* A transitional regulation making power is also proposed for the Bill to enable a regulation to be made to provide for matters necessary to achieve the transition from the repealed Act to the new Act (a Henry VIII provision). Such a provision potentially offends LS Act at s4 (5)(a). The provision is considered necessary to ensure the orderly transition between the legislative frameworks and contains safeguards such as sun-setting of 1 year.

## **Consultation**

To inform the review of Queensland's industrial relations legislation, the Review Group and its Chair undertook an extensive process of consultation with stakeholders that included the release of a series of Issues Papers and invitation to make submissions. Twenty-six formal submissions were made to the review. Consultations and submissions are listed in Appendix 4 and 5 of the Report. The Report references the submissions received and consultation conducted as they relate to its recommendations.

Confidential briefings on the IR Bill 2016 have been undertaken with key stakeholders. Briefings were held with the Queensland Council of Unions (QCU); Australian Workers Union (AWU); Local Government Association of Queensland (LGAQ); Chamber of Commerce and Industry Queensland (CCIQ); Australian Industry Group (AiG); Master Builders Association of Queensland (MBAQ); Queensland Law Society (QLS); and the Bar Association of Queensland (BAQ).

Consultation was also undertaken with Government agencies - Department of the Premier and Cabinet (DPC); Queensland Treasury (QT); Public Service Commission (PSC); Department of Justice and Attorney General (DJAG); Queensland Health (QH); the Office of the Queensland Ombudsman (Ombudsman); the Office of the Public Guardian; the Anti-Discrimination Council Queensland (ADCQ); Department of Transport and Main Roads (DTMR); and the Department of Infrastructure, Local Government and Planning (DILGP).

Consultation was also undertaken with the President and Deputy President (Court) of the Queensland Industrial Court and Commission.

## **Consistency with legislation of other jurisdictions**

The Bill is specific to the State of Queensland, and is not required to be uniform with or complementary to legislation of the Commonwealth or another state. However, in developing the provisions of the Bill consideration has been given to relevant provisions of the Commonwealth's FW Act and FWRO Act. Where appropriate the Bill's provisions have been drafted to reflect similar regulation. Examples of this approach can be found in those parts of the Bill that deal with minimum employment standards, general protections against adverse action, access to an anti-workplace bullying jurisdiction and in the financial reporting and training obligations of registered industrial organisations and officers.

In relation to Easter Sunday, the declaration of that day as a public holiday will ensure Queensland is consistent with New South Wales, Victoria and the Australian Capital Territory where Easter Sunday is already a public holiday.

# Notes on provisions

## Chapter 1 Preliminary

### Part 1 Introduction

*Clause 1* sets out the short title of the Bill.

*Clause 2* provides that the Bill commences on a day to be fixed by proclamation with the exception of chapter 19, part 8 (Amendment of *Public Service Act 2008*) which apart from certain excluded provisions, commences on assent. Particularly, clause 1125 commences on assent, replacing chapter 3, part 5 of the *Public Service Act 2008* (Qld) and prescribing that the senior IRC member (with the function of hearing and deciding public service appeals) is the President of the Queensland Industrial Court and commission.

*Clause 3* provides that the main purpose of this Act is to provide for a framework for co-operative industrial relations that is fair and balanced and supports the delivery of high-quality services, economic prosperity and social justice for Queenslanders.

*Clause 4* defines how the main purpose of the Bill is to be primarily achieved.

*Clause 5* states that the Bill binds all persons. The Bill also binds the State. However, none of the provisions of the Bill will make the State liable to be prosecuted for an offence.

### Part 2 Interpretation

*Clause 6* provides that the dictionary in schedule 5 defines particular words in the Bill.

*Clause 7* defines 'employer' for the purposes of the Bill. The clause also provides that an employer includes:

- for long service leave, emergency service leave and jury service leave provisions of the Bill, an employer can be a national system employer within the meaning of section 14 of the FW Act, including a national system employer mentioned in section 30N of the FW Act;
- a person for whose calling or business an outworker works;
- for a proceeding for an offence or for payment or recovery of amounts – a former employer';
- a person declared to be an employer under the Bill at clause 465.

*Clause 8* defines an 'employee' for the purposes of the Bill. The clause also provides that an employee includes:

- for long service leave, emergency service leave and jury service leave provisions of the Bill, a national system employee within the meaning of

section 13 of the FW Act, including a national system employer mentioned in section 30M of the FW Act;

- a person who is a member of a class of persons declared to be employees under the Bill at clause 465.
- for a proceedings for an offence or for payment or recovery of amounts – a former employee;
- an outworker, an apprentice, or a trainee.

*Clause 9* defines an ‘industrial matter’. It sets out all matters that are an ‘industrial matter’ for the purposes of this Bill. Without limiting the clause, a matter is also an ‘industrial matter’ if it relates to a matter mentioned in schedule 1.

### **Part 3 General overview of scope of Act**

*Clause 10* gives an overview of the scope of the Bill. Without limiting subsection 1 of this clause, it is declared that this part does not confer entitlements or impose liabilities.

*Clause 11* provides that for this part the ‘Queensland referral Act’ means the *Fair Work (Commonwealth Powers) and Other Provisions Act 2009* (Cth).

*Clause 12* at subclause (1) provides that generally this Bill applies to employers and employees in Queensland only to the extent that the FW Act does not apply to them.

Subclause (2) further provides that the State government, entities related to the State government and their employees, and local governments and entities established under local government legislation and their employees, are examples of entities whom this Bill generally applies.

Subclause (3) also provides that this Bill generally applies to other employers and their employees if the employers are declared by Queensland law not to be national system employers for the FW Act and the declaration is endorsed by the Minister under the FW Act.

*Clause 13* provides that particular provisions of the QES about long service leave, jury service leave and emergency service leave may apply to employers and employees who are generally covered by the FW Act.

## **Chapter 2 Modern employment conditions**

### **Part 1 Preliminary**

*Clause 14* provides definitions for the chapter including, for applicable industrial instrument, ordinary hours of work, relevant industrial instrument and short term casual.



*Clause 15* preserves the arrangements section 71BB of the IR Act and provides a meaning for long term casual for this chapter.

## **Part 2 Interaction of elements of industrial relations system**

*Clause 16* sets out the purpose of this part, which is to explain how elements of the industrial relations system interact with each other; and how particular elements of the industrial relations system prevail over other elements.

*Clause 17* provides that the Queensland Employment Standards have effect despite an inconsistency with another law of the State, unless the other law provides an employee with a benefit that is at least as favourable for the employee as the Queensland Employment Standards.

*Clause 18* provides that an industrial instrument may not include a provision that displaces, or is otherwise inconsistent with the Queensland Employment Standards, unless the provision is at least as favourable for an employee as the Queensland Employment Standards. The Queensland Employment Standards have effect subject to provisions included in an industrial instrument mentioned in this clause.

*Clause 19* provides that a modern award and a certified agreement may apply to an employee in relation to particular employment at the same time. However, if there is an inconsistency between these instruments, the certified agreement prevails to the extent of any inconsistency. This clause also provides that while a project agreement operates, it operates to the exclusion of any certified agreement.

*Clause 20* provides that a modern award prevails over a relevant contract to the extent of any inconsistency. The clause provides a definition of “relevant contract” which means a contract of service that is in force when the modern award comes into operation or made while the modern award is in operation.

## **Part 3 Queensland Employment Standards**

### **Division 1 Preliminary**

*Clause 21*, Meaning of *Queensland Employment Standards*, specifies matters for which legislated minimum employment standards will apply. These matters are the Queensland Employment Standards

### **Division 2 Minimum wage**

*Clause 22* preserves an employee’s entitlement to a minimum wage contained in the IR Act.

*Clause 22* provides that an employee, unless excluded through a ruling made by the full bench of the QIRC, is entitled to a wage equal to or greater than the Queensland minimum wage.

### **Division 3 Maximum Weekly Hours**

*Clause 23* is modelled on the FW Act. It provides that an employer must not ask or require an employee engaged on a full-time basis to work more than 38 hours per week unless the additional hours are reasonable. Factors that should be taken into account when determining if a request is reasonable are listed at clause 26.

Clause 23 imposes a similar restriction upon requests to work hours in addition to ordinary weekly hours for employees engaged on less than full-time hours.

This clause also provides that an employee can refuse to work additional hours if the request is unreasonable. Factors that should be taken into account when determining if a request is unreasonable are listed at clause 26.

*Clause 24* permits averaging arrangements to be included in industrial instruments which may result in an employee working in excess of the maximum weekly hours provided for in clause 23, provided the arrangement is 'reasonable'. Factors set out at clause 26 that may be used to determine if the excess hours are reasonable are the same matters for consideration in determining reasonableness of averaging arrangements.

*Clause 25* permits an employer and employee who are not engaged under an industrial instrument to enter into an averaging arrangement. Any averaging arrangement must be made in writing. Hours may be averaged over a period of up to and including 26 weeks. An arrangement under this clause is also subject to the requirement that hours in excess of the maximum under clause 23 must be reasonable in accordance with clause 26.

*Clause 26* lists factors that should be taken into account when determining whether hours in excess of the maximum hours are reasonable or not reasonable.

### **Division 4 Requests for flexible working arrangements**

*Clause 27* has its basis in the FW Act, however clause 27 does not restrict this right to specific purposes or categories of employees. Any employee in the Queensland jurisdiction may request a flexible working arrangement.

Clause 27(1) provides a non-exhaustive list of ways in which an employee's working arrangement may be altered under a flexible working arrangement, such as a change to ordinary hours of work.

Clause 27(2) provides detail on the way in which the request must be made.

The right under this clause is a right to request and not an automatic right to the arrangement requested.

*Clause 28* provides detail on the way in which the employer must respond to the request, including that the employer has 21 days from receipt of the request to respond to the request and that the employer may grant the request in full, in part,

subject to certain conditions or refuse the request. Any refusal, partial refusal or imposition of conditions must be made on reasonable grounds.

Clause 28 provides the criteria the employer must address when responding to a request, including that the response must be in writing and provide reasons for the decision including identifying the grounds for refusal, partial refusal or imposition of conditions. The response must also state that QIRC has jurisdiction to hear and decide a dispute over the request. This clause also sets out the legislative provision under which the QIRC has jurisdiction to hear a dispute of this nature.

*Clause 29* provides that failure of the employer to respond to the request within the 21 day time frame is considered a refusal and as such the QIRC has jurisdiction to hear and decide a dispute over the request in the same manner as provided for under clause 28.

## **Division 5 Annual leave**

### **Subdivision 1 Entitlement to annual leave**

*Clause 30* retains the application clause for annual leave arrangements in the IR Act.

Clause 30 provides for the types of employment excluded from the annual leave provisions.

*Clause 31* retains the annual leave entitlement in the IR Act, with the exception that the former reference to a modern industrial instrument has been replaced with a reference an applicable industrial instrument. This reference to an applicable industrial instrument applies to clause 31(4) which provides that the annual leave entitlement may accumulate unless an applicable industrial instrument provides otherwise. Therefore, unless an industrial instrument places a restriction on the accumulation of annual leave, there is no limit to the accrual of annual leave.

Clause 31 establishes an entitlement to annual leave for employees, other than those excluded through the application clause. This entitlement applies to completed years of employment and distinguish between shift workers and non-shift workers. The minimum entitlement for each completed year is 4 weeks for non-shift workers and 5 weeks for shift workers. "Shift worker" is defined.

Annual leave is exclusive of public holidays, however where an employee is entitled annual leave in compensation for working on a public holiday, such annual leave is inclusive of public holidays.

*Clause 32* preserves the arrangements in the IR Act for working out a completed year of employment for the purpose of determining an entitlement to annual leave.

Clause 32 clarifies periods where an employee may be absent from work without pay that are not to be counted for the purpose of determining a completed year of employment.

Clause 32(2)(a) provides that periods of unpaid absence from work of more than three months are not taken into account for determining service. Clause 32(2)(b) provides that periods of absence from work less than three months without the employer's approval are also not taken into account, unless the absence is due to illness or injury and certified by a doctor.

Each period of absence stands alone. For example if an employee had an unpaid absence from work of two months, returned to work and then took a further two period of absence, both periods of absence would stand alone and be taken into account separately for the purposes of calculating the year of employment.

A month is not defined in the Bill. Schedule 1 of the *Acts Interpretation Act 1954* defines **month** as meaning a calendar month.

**calendar month** means a period starting at the beginning of any day of 1 of the 12 named months and ending—

(a) immediately before the beginning of the corresponding day of the next named month; or

(b) if there is no such corresponding day—at the end of the next named month.

## **Subdivision 2 Taking annual leave**

*Clause 33* provides detail on requirements for the taking of annual leave.

This clause provides that the employer and employee may agree when leave is to be taken and that the employer may not unreasonably refuse as to when the employee is to take his or her annual leave.

If the employer and employee cannot agree, the employer may decide when the leave is to be taken, provided the employee is given at least 8 weeks' written notice of the first date of the leave.

Clause 33 permits an employee, subject to the employer's agreement, to take annual leave before the employee becomes entitled to such leave, that is, before the employee has completed that year of service. However where an employee takes leave before he or she is entitled to the leave, the employee is only entitled to any balance of his or her full leave entitlement upon completion of the year of service.

*Clause 34* retains the annual leave entitlement in the IR Act, with the exception that the former reference to a modern industrial instrument has been replaced with a reference to an applicable industrial instrument. Clause 34 permits an industrial instrument to include additional information on requirements for the taking of leave, provided such requirements are reasonable.

### **Subdivision 3 Payment for annual leave**

*Clause 35* details requirements on the payment of annual leave, including that unless an employee and employer otherwise agree, the employer must pay the employee for annual leave in advance.

*Clause 35* clarifies that the rate of pay at which the leave is paid is the ordinary rate being paid to the employee immediately before the leave is taken.

However if immediately before an employee takes annual leave, the employee is being paid at a higher rate than the ordinary rate, an employee is entitled to be paid leave at the higher rate. The leave loading referred to in *clause 36* is paid at the ordinary rate even where the leave is paid at the higher rate.

This clause provides detail for calculation of an amount for payment of annual leave for employees paid on commission, including provision of a formula for determining a default average commission. Generally payment for leave will be in accordance with the default average commission. An exception to this is where an applicable industrial instrument or contract provides otherwise (it should be noted that an applicable industrial instrument may not contain an arrangement less favourable to the employee than the arrangement provided for in this clause).

The default average commission may also not be applied if an application is made to the QIRC to consider whether the default average commission represents a fair amount and the QIRC finds it does not, in such an instance the QIRC may determine a fair amount.

*Clause 36* preserves the arrangements in the IR Act and provides detail on an entitlement to, and calculation of, annual leave loading. In accordance with *clause 36(1)* annual leave loading is generally paid at least at 17.5% of the employees' ordinary rate of pay. The requirement that loading be paid at the ordinary rate applies even if the employee is being paid for the annual leave at a higher rate in accordance with *clause 35(2)(b)*.

*Clause 36(2)* provides that if an employee is being paid a "prescribed additional amount", this amount may be deducted from the employee's entitlement to loading. In such a case, if the prescribed additional amount is greater than the entitlement to loading, the employer is not required to pay the employee loading. If the prescribed additional amount is less than the amount of loading the employee would be entitled to, the employer is required to pay the employee the difference between these two amounts.

*Clause 36(3)* defines "prescribed additional amount". Examples of a prescribed additional amount include annual leave bonus and annual leave loading.

## **Subdivision 4 Cashing out annual leave**

*Clause 37* preserves the arrangements in the IR Act and details requirements for cashing out annual leave and the circumstances when cashing out of annual leave is permitted including that: the cashing out of leave is subject to agreement of the employer and employee (*clause 37(2)*); that the amount that may be cashed out cannot result in an employee's annual leave balance being less than a 4 week entitlement (*clause 37(3)*); and each arrangement to cash out leave must be in writing and a separate arrangement (*clause 37(4)*).

*Clause 37(5)* provides that the employer must pay the employee at least the full amount that would have been payable to the employee had the employee taken the annual leave that has been cashed out. The rate at which leave is paid is the applicable rate at *clause 35*. The rate also includes payment of loading at *clause 36*.

## **Subdivision 5 Payment on termination of employment**

*Clause 38* establishes arrangements for the payment on termination of employment of an unused annual leave entitlement. The clause also provides that an employee is entitled to payment of a pro rata amount of leave that the employee is not yet entitled to.

*Clause 38* applies whether an employee or an employer terminates an employee's employment.

*Clause 38(2)* provides that an untaken leave entitlement is presumed to be taken from the termination day. Therefore if an employee had a leave entitlement of two weeks this two weeks would be presumed to be taken from the employee's termination day.

As an untaken annual leave entitlement is paid as if it were taken, *clause 38(3)(a)* provides payment is extended to any public holiday that may occur during the period presumed to be taken. The effect of *clause 38(2)* and *38(3)(a)* is that if an employee ceased employment prior to a public holiday, and the employee had an unused annual leave entitlement, the presumed leave taken from the termination day would be exclusive of any public holiday that falls during the presumed leave period and the employee would also be paid for any such public holiday.

*Clause 38(3)(b)* clarifies that the payment attracts loading in accordance with *clause 36*.

The presumption that leave is taken only applies where an entitlement exists, this does not apply to a pro rata amount of leave. Any pro rata amount is considered a lump sum payment.

*Clause 38(4)* makes provision for payment for pro rata annual leave. This applies in respect of any period of employment less than 1 year, where the employment is terminated either by the employee or employer. This means where an employee has

not completed a full year of the employee's first year of employment or a full year or any subsequent year of employment, the employee is entitled to a pro rata payment. The payment of pro rata annual leave also attracts loading referred to in clause 36.

Therefore if, for instance, if a non-shift worker had worked continuously for four years and six months, and had taken all annual leave when they became entitled to leave, that is at the end of each year of completed service, the employee would be entitled to a pro rata payment of two weeks annual leave on termination of employment and loading for this period.

There is no qualifying period for a pro rata payment.

Clause 38(5) clarifies the minimum rate at which payment of an untaken annual leave entitlement and pro rata payment on termination, is to be made. Clause 38(5) applies unless an industrial instrument provides otherwise, however an applicable industrial instrument may not provide an arrangement that is less favourable to the employee.

## **Division 6 Personal leave**

### **Subdivision 1 Sick leave**

*Clause 39* preserves the arrangements in the IR Act. Clause 39 is an application clause and provides that the sick leave entitlement does not apply to casual employees, pieceworkers or school-based apprentices or trainees.

*Clause 40* provides that an employee is entitled to 10 days sick leave on full pay for each completed year of employment. "Full pay" is defined in the dictionary to mean payment in full for the time the employee is absent from work.

"Day" is defined at clause 40(5) to include a day as defined in an applicable industrial instrument to the extent it relates to sick leave; or one-fifth of the number of the employee's ordinary hours of work for a week, averaged over each completed 6 weeks of employment with the employer.

Clause 40(2)(a) provides that sick leave accumulates progressively throughout the year. The effect of this is that an employee does not need to complete each year of employment before gaining an entitlement. Clause 40(2)(b) provides that sick leave accumulates from year to year, this clause places no limit on the amount of sick leave an employee can accrue.

Clause 40(3) enables an employee to take a period of less than one day leave. This clause places no minimum or maximum on the amount of leave that may be taken.

*Clause 41* preserves the arrangements in the IR Act. Clause 41(1) provides that access to a sick leave entitlement is conditional upon the employee notifying the employer of the need to take leave in accordance with the requirements of clause 41(1)(a). Clause 41(1)(b) sets out the employee's obligations with respect to

providing evidence to support the application for leave. Leave is contingent upon the employee fulfilling the requirements of this clause.

Clause 41(2) permits an applicable industrial instrument, or an employee and employer to agree upon, another arrangement with respect to notice and evidence. An arrangement in an applicable industrial instrument may not be less favourable to an employee than the legislated provision.

## **Subdivision 2 Carer's leave**

*Clause 42* permits an employee, other than a casual employee, to access up to 10 days per year on full pay of the employee's sick leave entitlement referred to at clause 40 to care for or support a family or household member when that person is ill or because an emergency arises in relation to that person.

An employee may also access carer's leave to care for a person experiencing domestic violence. Carer's leave for this purpose is not restricted to caring for a person who is a household or family member.

The limit of 10 days leave per year for caring purposes applies regardless of the amount of sick leave an employee may have accrued.

Unpaid carer's leave is available if the employee has exhausted his or her paid entitlement.

Carer's leave may be taken for part of a day. The clause does not stipulate a minimum amount of carer's leave that must be taken.

*Clause 43* provides that a long term casual employee is entitled to 10 days leave each year and if necessary and subject to the employer's agreement further periods of leave for caring purposes as described in clause 42. As a casual employee does not have an entitlement to paid sick leave all carer's leave is unpaid.

An employer must not fail to reengage an employee because the employee has accessed carer's leave.

Carer's leave may be taken for part of a day. The clause does not stipulate a minimum amount of carer's leave that must be taken.

*Clause 44* provides that a short term casual employee may leave work or be unavailable to attend work for up to 2 days each time an employee needs to care for or support another person for the purposes as described in clause 42.

A short term casual employee may also access carer's leave to care for or support a member of the employees' immediate family or household for the birth of a child. Carer's leave for this purpose is only available to short term casual employees. The rationale for this is that a short term casual employee does not have access to parental leave, therefore if a short term casual employee's spouse gave birth the employee would not have an entitlement under the parental leave provisions to be



absent from work. It is noted that this is not entirely consistent with the parental leave entitlement as that entitlement restricts short leave to the employee's spouse and not to other members of the employee's immediate family or household, however this is considered an appropriate way of providing short term casuals with an entitlement to be absent for the birth of their child.

This clause also provides that, subject to the employer's agreement, an employee may access further periods of carer's leave.

As a casual employee does not have an entitlement to paid sick leave all carer's leave is unpaid.

An employer must not fail to reengage an employee because the employee has accessed carer's leave.

*Clause 45* provides detail on the type of information an employer may require an employee to provide to support a leave application and when supporting documentation is required. In accordance with this clause, different forms of supporting documentation may be submitted based on the purpose for which the leave is taken.

Clause 45 recognises the sensitive nature of information that may be disclosed in support of a leave application to care for a person who has experienced domestic violence. A heightened obligation exists with respect to evidence an employer receives in support of an application of this nature so that the employer must not disclose this information unless the employer has some further obligation to do so. While this clause provides that the employer must not disclose this information unless disclosure is required or permitted by another Act, this does not mean that an employer may disclose information without good cause simply because he or she was permitted to do under another piece of legislation.

### **Subdivision 3 Bereavement and compassionate leave**

*Clause 46* is an application clause and provides that this subdivision does not apply to pieceworkers.

*Clause 47* does not apply to casual employees. Clause 47 entitles employees to paid and unpaid bereavement leave and paid compassionate leave.

Clause 47(2)(a) describes the circumstances for which paid bereavement leave may be used. An employee has an entitlement to bereavement leave following the death of a member of the employee's immediate family or household, or where the employee, or the employee's spouse, is pregnant and the pregnancy does not result in the birth of a living child. There is no requirement that the employee, or the employee's spouse, must have reached a certain stage in the pregnancy when the pregnancy ends for the employee to be entitled to access bereavement leave.

The entitlement is to at least 2 days bereavement leave on full pay and is available each time a circumstance described above occurs. The 2 days need not be taken consecutively, and leave may be taken as a part of a day.

Clause 47(2)(b) provides a further entitlement to unpaid bereavement leave for an employee to travel to a funeral or other death ceremony of a member of the employee's immediate family or household. The clause does not specify how much leave may be taken, this is determined on a case by case basis depending on how much time would reasonably be required in each instance.

This entitlement to unpaid bereavement leave is available each time a circumstance described above arises.

Clause 47(3) entitles an employee to 2 days compassionate leave on full pay. This clause also describes circumstances for which compassionate leave may be used. Access to compassionate leave is available when a member of the employee's immediate family or household contracts an illness or sustains an injury that poses a serious threat to that person's life.

The entitlement to 2 days paid compassionate leave is available each time a circumstance described above arises. The 2 days need not be taken consecutively and leave may be taken as a part of a day.

The entitlement to compassionate leave applies per incident regardless of how long the incident continues, that is regardless of how long the injury or illness that the leave is taken for poses a serious threat to the person's life.

Compassionate and bereavement leave are two separate entitlements, therefore an employee could take compassionate leave when an illness or injury posed a serious threat to the life of a member of that person's family or household, if that person then died from that illness or injury, the employee would have a further entitlement to bereavement leave.

*Clause 48* makes provision for bereavement and compassionate leave entitlements for casual employees.

Purpose, access and time limits for bereavement and compassionate leave under this clause are the same as those that apply to employees who are not engaged on a casual basis, however all bereavement and compassionate leave for casual employees is unpaid.

Clause 48 clarifies that an employer must not fail to reengage a short or long term casual employee because the employee has accessed bereavement or compassionate leave. This provision does not prevent the employer from failing to reengage a casual employee for another reason.

Clause 48 distinguishes between long and short term casual employees. Both are entitled to the same leave for the same purposes however this clause clarifies the entitlement for short term casuals extends to the employee being unavailable to

attend work. This has relevance as it provides a protection for a short term employee to refuse an offer of work at a time when the person requires bereavement or compassionate leave.

*Clause 49* provides detail on evidence that must be provided to support an application for bereavement or compassionate leave. The clause does not specify what type of evidence the employee must provide to support an application for compassionate leave, instead the evidence required is that which would satisfy a reasonable person.

This clause applies to all employees who have access to an entitlement to bereavement or compassionate leave under clause 47 or 48.

*Clause 50* provides that an employee who has access to an entitlement to bereavement or compassionate leave under clause 47 or 48, may, subject to the employer's agreement, take additional unpaid bereavement or compassionate leave.

#### **Subdivision 4 Cultural leave**

*Clause 51* provides that an employee who is required by Aboriginal tradition or Island custom to attend an Aboriginal or Torres Strait Islander ceremony may take up to 5 days unpaid cultural leave in each year. This leave does not accumulate from year to year.

The entitlement for each year means the 12 month period taken from the employee's commencement date up to and including the day immediately before the first anniversary of commencement. Subsequent years are determined in this manner.

This leave applies to all employees. A proportionate entitlement is not applied to employees engaged in a less than full-time permanent capacity.

While access to cultural leave is subject to employer agreement, the employer must not unreasonably refuse the leave.

*Clause 51(4)* describes matters the employer must take into account when considering an employee's application for cultural leave. The matters listed at this clause are not exhaustive.

*Clauses 51(5) and (6)* sets out notice requirements and obligations.

*Clause 51(7)* declares cultural leave is a welfare measure for the purposes of section 104 of the *Anti-Discrimination Act 1991*. Section 104 provides that certain acts not inconsistent with that Act where they are designed to benefit members of particular groups of people.

#### **Division 7 Domestic and family violence leave**

*Clause 52* applies when an employee has experienced domestic violence and as a result requires leave.

This clause entitles an employee, other than a casual employee, to a maximum of 10 days domestic and family violence leave per year on full pay per year. For this purpose, payment for a day on full pay means payment for all ordinary hours that the employee would be paid if the employee had worked on that day. An employee, who is not a casual employee and who works on a less than full time basis, is entitled to payment for domestic and family violence leave on a proportionate basis.

This clause entitles a long term casual employee to a maximum of 10 days unpaid domestic and family violence leave per year. A short term casual employee is entitled to a maximum of 2 days unpaid domestic and family violence leave per year.

If required, an employee eligible for leave under this clause may access additional unpaid domestic and family violence leave, subject to his or her employer's agreement.

This clause identifies the reasons the leave may be taken. The matters identified are not exhaustive.

Domestic and family violence leave does not accumulate from year to year. The leave may be used at any time throughout the year including as consecutive days, separate days, parts of days or a combination of these. There is no minimum amount of leave that must be taken. There is no qualifying period of employment that must be worked before an employee is eligible for this leave.

An employer must not fail to reengage a short or long term casual employee because the employee has accessed domestic and family violence leave.

*Clause 53* provides that an employee's entitlement to take domestic and family violence leave is conditional upon the employee notifying the employer the leave is required. If possible, notice should be given before leave is taken, however this clause recognises there are situations where this may not be possible, in such cases prompt notification is sought.

*Clause 54* provides the employer with discretion to require the employee to provide evidence in support of an application for leave. If the employer requires evidence the employee must provide it. The clause provides a non-exhaustive list of evidence an employee could provide to comply with this request.

*Clause 54* recognises information disclosed in support of a domestic and family violence leave application may be of a sensitive nature. This clause requires an employer to exercise caution with respect to treatment of such evidence by imposing an obligation upon the employer not to disclose information unless required or permitted to do so by some other legislation. While this clause permits further disclosure, an employer should not disclose information without good cause, simply because it is permitted under another piece of legislation.

## **Division 8 Parental leave**

### **Subdivision 1 Preliminary**

*Clause 55* is an application clause and establishes parental leave does not apply to short term casual employees, seasonal employees, or pieceworkers.

*Clause 56* explains the different types of parental leave available including birth related leave which applies to an employee who is pregnant (this is also referred to as maternity leave), or an employee whose spouse gives birth; adoption leave; and surrogacy leave.

*Clause 57* provides a list of definitions relevant to this Division.

### **Subdivision 2 Parental leave entitlement**

*Clause 58* establishes categories of employees to whom parental leave applies as employees other than casual employees who have had “continuous service”, as defined, with an employed for 12 months or a long term casual employee. This clause has the effect of establishing a 12 month qualifying period for an entitlement to parental leave.

*Clause 59* provides an employee with an entitlement to birth related parental leave. The clause provides a maximum 52 week maternity leave entitlement for an employee who gives birth. Maternity leave must be unbroken. An employee who gives birth cannot access short parental leave.

An employee whose spouse gives birth may take up to 8 weeks short birth related leave and a period of long birth related leave of up to 52 weeks. Long birth related leave may not be broken.

Short birth related leave may be taken as one continuous period of up to 8 weeks leave or for broken periods of up to 8 weeks provided the minimum period of leave taken is 2 weeks. The exception to this is short birth related leave taken when the child is born, no minimum period of leave applies in this instance.

An employee may take short birth related leave at the same time as the employee’s spouse is on long birth related leave.

*Clause 60* provides an employee who adopts a child with an entitlement to take up to 8 weeks short adoption leave and up to 52 weeks long adoption leave. Long adoption leave may not be broken.

Short adoption leave may be taken as one continuous period of up to 8 weeks leave or for broken periods of up to 8 weeks provided the minimum period of leave taken is 2 weeks. The exception to this is short adoption leave taken when the child is placed with the employee, no minimum period of leave applies in this instance.

An employee may take short adoption leave at the same time as the employee's spouse is on long adoption leave.

*Clause 61* provides an employee who becomes a parent as a result of a surrogacy arrangement may take up to 8 weeks short surrogacy leave and up to 52 weeks long surrogacy leave. Long surrogacy leave may not be broken.

Short surrogacy leave may be taken as one continuous period of up to 8 weeks leave or for broken periods of up to 8 weeks provided the minimum period of leave taken is 2 weeks. The exception to this is short surrogacy leave taken when the child commences residing with the employee, no minimum period of leave applies in this instance.

An employee may take short surrogacy leave at the same time as the employee's spouse is on long surrogacy leave.

*Clause 62* provides parental leave must not extend beyond 52 weeks after the child for whom the leave is taken was born, adopted, or started residing with the person taking parental leave. This limit applies unless an extension is granted and provided the extension does not extend the parental leave to beyond 104 weeks after the child for whom the leave is taken was born, adopted, or started residing with the person taking parental leave.

*Clause 62(2)* provides that an employee's entitlement to long parental leave is reduced by any short parental leave taken concurrently by the spouse.

### **Subdivision 3 Notices and Information**

*Clause 63* establishes the notice requirements that apply to a pregnant employee who wishes to take maternity leave.

*Clause 64* establishes the notice requirements that an employee who wishes to take birth-related leave, other than maternity leave.

*Clause 65* establishes the notice requirements that apply to an employee who wishes to take adoption leave.

*Clause 66* establishes the notice requirements that apply to an employee who wishes to take surrogacy leave.

*Clause 67* provides that the employee does not fail to comply with the notice requirements in clauses 63 to 66 if the failure was caused by an exception provided for in this clause. However this clause provides that the employee must give the employer 2 weeks' notice after this child is born, or placed with, or starts residing with the employee.

This clause also provides that where the leave applies in the case of the birth of a living child, the employee must provide a doctors certificate as evidence of the child's birth.

*Clause 68* provides that if the employees fails to comply with clauses 63 to 66, the employer is not required to provide parental leave until the employee provides the required notice and supporting documentation.

*Clause 69* provides that an employee must notify his or her employer of any change in the information provided in clauses 63 to 66 within 2 weeks after the change.

*Clause 70* provides that if while on parental leave there is any change to the employee's address or contact details, the employee must notify his or her employer of this change.

The employee must also take reasonable steps to notify the employer of any change leave arrangements, such as a change in the length of leave, the date the employee plans to return to work, or a decision to return to work on a part-time basis.

*Clause 71* provides that on becoming aware that an employee is pregnant or is otherwise becoming a parent, the employer must provide the employee with advice on the employee's parental leave entitlements and notice obligations. An employer cannot refuse to grant leave on the basis that the employee did not provide required notice or documentation if the employer failed to provide this advice.

*Clause 72* provides that if while an employee is on parental leave, an employer decides to make significant workplace change, the employer must take measures to inform the employee of the change and its effect on the employee before such change occurs. The employer must also give the employee a reasonable opportunity to discuss changes that impact upon the employee's position.

#### **Subdivision 4 Application to extend parental leave or return part-time**

*Clause 73* provides an employee is entitled to apply to extend long parental leave up to 104 weeks, which is reduced by the amount of short parental leave taken. An application of this nature may only be made once in a 12 month period unless the employer agrees otherwise.

*Clause 74* provides that an employee may apply to return to work on a part-time basis. An application of this nature may only be made once in a 12 month period unless the employer agrees otherwise.

*Clause 75* provides the conditions under which an employee may make an application to extend parental leave or return to work on a part-time basis.

*Clause 76* provides detail on the requirements pertaining to the employer's response to an application to extend parental leave or return to work on a part-time basis, including factors that the employer must consider, the way in which response must be made and established timeframes for the response.

This clause also imposes a requirement on the employer not to unreasonably refuse an application made under clauses 74 or 75. If an employer does refuse a request the employer must provide the employee with written reasons for this decision.

## **Subdivision 5 Other provisions affecting duration of parental leave**

*Clause 77* provides that an employee cannot take long parental leave at the same time as his or her spouse is taking long parental leave.

Where an employee contravenes this clause, then the period of leave the employee is entitled to is reduced by the period of leave the employee's spouse has taken.

*Clause 78* provides the conditions under which parental leave applied for but not started is automatically cancelled.

This clause also provides detail on conditions that cancel parental leave once the leave has commenced and requirements with regard to return to work where an employee is no longer entitled to parental leave.

This clause does not affect an employee's entitlement to special maternity leave or sick leave under clause 85.

*Clause 79* provides that employees may take annual or long service leave together with or instead of parental leave, provided that the total amount of leave taken does not exceed the employee's entitlement.

An employee is not entitled to take paid sick leave or other paid leave while on unpaid parental leave unless the employer agrees. The clause defines "other paid leave" for this part.

*Clause 80* provides that an employee on parental leave may return to work for a 'keeping in touch day' without breaking continuity of service or extending parental leave. The clause describes the purpose of a keeping in touch day and requirements around when such work may be performed. The clause also provides that work on such a day is paid work.

*Clause 81* provides that an employer and employee may agree to break a period of parental leave, by the employee returning to work whether on a full time, part-time or casual basis.

*Clause 82* entitles an employee to extend his or her period of parental leave by notice. Under this provision an employee may only extend parental leave once, it must be by written notice and it may not be extended beyond 52 weeks after the birth of the child, or when the child was adopted or started residing with the employee.

*Clause 83* provides the conditions under which the employee may shorten parental leave, including that the application must be by written notice given to the employer at least 14 days before the employee wants to return to work. Return to work under this clause is subject to the employer's agreement.

*Clause 84* details requirements with respect to return to work where an employee, who is on parental leave, ceases to be responsible for the care of the child and under the circumstances, it is reasonable to expect the employee will not again be responsible for the care of the child within a reasonable period.



## **Subdivision 6 Other entitlements**

*Clause 85* provides an employee with an entitlement to special maternity leave if an employee's pregnancy terminates before the expected date of birth other than by the birth of a living child, or in the case of an employee whose maternity leave has not commenced if the employee suffers pregnancy related illness.

This leave may be unpaid special maternity leave, and/ or an employee may access paid sick leave for the purpose of special maternity leave. Leave is available for as long as a doctor certifies is it necessary.

*Clause 86* entitles an employee seeking to adopt a child to take up to 2 days unpaid leave, to attend compulsory interviews or examinations connected with the adoption process.

*Clause 87* entitles an employee who is an intended parent under a surrogacy arrangement to take up to 2 days unpaid leave to attend compulsory interviews or court hearing connected with the surrogacy process.

*Clause 88* establishes how an employee is entitled to return to work at the completion of a period of parental leave. The clause also establishes conditions in relation to a female employee returning to work after a period of special maternity leave or sick leave under clause 85.

An employer must make a position to which an employee is entitled available to the employee. If a long-term casual employee's hours were reduced because of the pregnancy before the employee commenced maternity leave, the employer must restore the employee's hours to hours equivalent to those worked immediately before the hours were reduced.

*Clause 89* establishes employer obligations with respect to workplace adjustments, where the work of a female employee is, because of her pregnancy or breastfeeding, a risk to the health or safety of the employee or her unborn or newborn child.

*Clause 90* clarifies that parental leave does not break an employee's continuity of service. It also clarifies when parental period of leave is not to be taken into account for the purpose of determining an employees' period of service.

*Clause 91* provides protection against an employer dismissing an employee because of pregnancy or parental leave. The clause does not affect the employer's right to dismiss an employee for other reasons nor does it affect the rights of a dismissed employee.

*Clause 92* requires an employer to give certain information to a "replacement employee". The clause provides a definition of "replacement employee".

## **Division 9 Long service leave**

A note references section 13 of Bill as it applies to Division 9. Section 13 provides that the provisions of the Queensland Employment Standards about long service leave, jury service leave and emergency service leave may apply to employers and

employees who are generally covered by the Commonwealth Fair Work Act. Section 112 of the Commonwealth Fair Work Act permits a state law in relation to community service leave, which includes emergency service leave, to apply to those in the federal jurisdiction, to the extent the state law is more beneficial to an employee.

### **Subdivision 1 Preliminary**

*Clause 93* defines terms used in this Division.

### **Subdivision 2 Relationship of this division with continuity of service provisions**

*Clause 94* clarifies that the provisions of part 4 of chapter 2, dealing with continuity of service and employment, are to be applied when working out an employee's long service leave rights and entitlements.

### **Subdivision 3 Entitlement**

*Clause 95* applies to employees, other than seasonal employees, and provides the period of long service leave to which an employee is entitled for his or her period of service.

The long service leave entitlement provided for under this clause, is to be paid on full pay and is calculated at a rate of 8.6667 weeks on completion of 10 continuous years of services. This clause also establishes that an employee is entitled to proportionate payment for long service leave if certain prescribed conditions are met. The clause defines the term "proportionate payment".

This clause also clarifies long service leave is exclusive of a public holiday that falls during the period of the leave and that an employee who has entitlements to long service leave, other than from this Bill, is entitled to leave that is at least as favourable as leave under this Bill.

*Clause 96* applies to employees who had service before 23 June 1990 and were not casual employees.

Specific sections of the repealed *Industrial Conciliation and Arbitration Act 1961* apply to these employees to determine their continuous service and calculate their long service leave entitlements in relation to service before 23 June 1990.

### **Subdivision 4 Taking long service leave**

*Clause 97* provides that the QIRC may insert provisions in an applicable industrial instrument concerning the taking of long service leave.

An employer and employee may agree when long service leave is to be taken. If the employer and employee cannot agree, the employer may decide when long service leave is to be taken, subject to certain conditions.

## **Subdivision 5 Payment for long service leave etc. for employees generally**

*Clause 98* provides detail on the way in which payment for long service leave should be made, including that it be paid at the ordinary rate the employee was being paid immediately before taking long service leave, unless the employee was being paid at a higher rate and if so payment should be at that higher rate. The clause defines "usual rate" for this part.

This clause also provides protection against an employer reducing an employee's rate of pay before leave commences to avoid paying that leave at a higher rate.

This clause further provides that where an employee's ordinary rate is increased or decreased while the employee is on leave, payment of the leave should be at the altered rate for the time that the employee is on leave when that amended rate applies.

*Clause 99* provides detail on the way in which payment for long service leave should be made when an employee is paid on a commission. The clause provides a formula for working out a default average commission. Generally leave will be paid in accordance with this formula. Exceptions to this include where an industrial instrument or contract provides otherwise (it should be noted that an industrial instrument may not provide for a rate less favourable to an employee than the arrangement provided for under this clause); or if on application, the QIRC finds the default average commission does not represent a fair amount. In such cases, the QIRC may determine a fair amount for payment of long service leave.

*Clause 100* preserves the arrangements in the IR Act which provide that where a dispute arises over payment of long service leave for an employee on piecework rates, the QIRC may decide the rate payable.

*Clause 101* preserves other arrangements in the IR Act relating to payment for long service leave, including that an employer and employee may agree when and the way in which an employee will be paid for long service leave. If the employer and employee cannot agree on matters relating to payment of the leave, this may be decided by the QIRC.

## **Subdivision 6 Casual or regular part-time employees**

*Clause 102* defines "casual employee" for the purpose of the long service leave division.

*Clause 103* preserves arrangements in the IR Act which provide how continuity of service for casual employees is to be calculated.

The clause does not limit any other entitlement to long service leave that an employee may have. For example, if a casual employee gained an entitlement to long service leave under the *Industrial Conciliation and Arbitration Act 1961*, this entitlement would be retained under this Act.

*Clause 104* provides that an employer and casual employee may agree to the taking of long service leave in the form of its full-time equivalent, subject to any provision contained in an industrial instrument. This clause provides an example to demonstrate application of the clause.

*Clause 105* provides the manner and the method of calculation of payment of long service leave for casual employees. A formula and example to demonstrate application are provided. The clause also includes a definition of "actual service" and "hourly rate".

### **Subdivision 7 Seasonal employees in the sugar industry and meat works.**

*Clause 106* is an application clause and provides that the subdivision applies to seasonal workers in the sugar industry and meat works.

*Clause 107* provides the method of, including a formula for, calculating the long service leave entitlement of seasonal employees to whom this subdivision applies.

The clause excludes service before 23 June 1990 for the purpose of calculating the length of the employee's continuous service.

The clause refers to the entitlement that applies under clause 95 but provides that the rate paid is based on actual service. The clause defines "actual service".

*Clause 108* provides that a seasonal employee in the sugar or meat industry may take long service leave between seasons and that if so, leave is taken to have commenced when the employee last ceased work with that employer.

### **Subdivision 8 Other seasonal employees**

*Clause 109* provides that the QIRC may decide long service leave conditions for seasonal employees, other than those provided for under subdivision 7 (employees in the sugar industry or meat works).

### **Subdivision 9 Miscellaneous**

*Clause 110* provides arrangements when payment of an entitlement to long service leave is permitted instead of taking leave.

The clause provides that part or all of the leave entitlement may be paid in lieu of taking the leave however this may only occur where an industrial instrument provides for this, or where the QIRC orders the payment. The clause includes conditions that must be met for payment to be made, including that the QIRC may only order payment on compassionate grounds or on financial hardship grounds.

The QIRC cannot make a general ruling that allows employees to be paid for an entitlement instead of taking the leave.

The provision does not stipulate a minimum or maximum amount of the entitlement that may be paid out, payment may be made for all or part of the entitlement.

Clause 111 provides for payment of an entitlement to long service leave when an employee dies.

Clause 112 provides that service in the reserve forces does not break continuous service with an employer. "Reserve forces" is defined for this clause.

Clause 113 provides that this part does not apply to an employer if any exemptions from long service leave awarded by the QIRC under the *Industrial Conciliation and Arbitration Act 1961* are still in force.

The QIRC may, on application, revoke such an exemption.

Clause 114 provides that a person who is an employee is entitled to long service leave notwithstanding that the person may satisfy the definition of "employer" under this Bill.

## **Division 10 Public holidays**

Clause 115 provides definitions of "ordinary working day" and "show holiday" for the purpose of the public holidays' clauses.

Clause 116 entitles an employee to be absent from work on a public holiday, if that employee would have worked on that day, or for part of that day, had the day not been a public holiday.

An employer may request an employee work on a public holiday provided the request is reasonable. The employee must not refuse a reasonable request but may deny one that is unreasonable. The clause provides guidance on matters to be taken into account when determining if such a request is reasonable.

Clause 117 provides that an employee must be paid for a public holiday if the employee would ordinarily have worked on that day, whether or not the employee actually works on that day.

If the employee is absent from work on a public holiday, and the employee would ordinarily have worked on that day, the employee is entitled to be paid at the employee's base rate of pay for a day, or part of that day. "Base rate of pay" is defined.

If the employee does work on the public holiday, the employee is entitled to be paid the rate of pay that the employee would have been paid for work performed on that day, had the day not been a public holiday; or the rate of pay provided for in an applicable industrial instrument, provided the applicable industrial instrument rate is not less favourable to the employee than otherwise provided for in this clause.

Clause 117 clarifies that an employer is not obliged to pay an employee for more than one show holiday in any one year.

Therefore if an employee worked in one district when a show holiday occurred and had not worked on that day but been paid for that day as a public holiday, the employee would have no entitlement to payment from the same employer for another show holiday in that year. This situation could occur if an employee

transferred from one district to another and the show holiday occurred in each district while the employee was working in that district.

While an employee who takes leave and is paid for a show holiday in one district, is not entitled to take leave and receive payment for a later show holiday in another district, if the employee is ready, willing and able to work on the day of the show holiday in the second district, and the employer does not require the employee to work on that day, the employer cannot deduct payment of the second show holiday from the employee's wage.

## **Division 11 Emergency Service Leave**

A note references section 13 of Bill as it applies to Division 11. Section 13 provides that the provisions of the Queensland Employment Standards about long service leave, jury service leave and emergency service leave may apply to employers and employees who are generally covered by the Commonwealth Fair Work Act. Section 112 of the Commonwealth Fair Work Act permits a state law in relation to community service leave, which includes emergency service leave, to apply to those in the federal jurisdiction, to the extent the state law is more beneficial to an employee.

*Clause 118* entitles an employee to take leave for the purpose of engaging in certain voluntary emergency management activities. Leave taken under this clause is unpaid.

Clause 118 describes conditions that must be met to access leave. The clause also provides detail on what the leave may be used for, including travelling to and from the activity; engaging in the activity; and for rest after the activity. It also details notification requirements that apply when accessing this leave.

The clause defines "recognised emergency management entity".

## **Division 12 Jury Service**

A note references section 13 of Bill as it applies to Division 12. Section 13 provides that the provisions of the Queensland Employment Standards about long service leave, jury service leave and emergency service leave may apply to employers and employees who are generally covered by the Commonwealth Fair Work Act. Section 112 of the Commonwealth Fair Work Act permits a state law in relation to community service leave, which includes jury service leave, to apply to those in the federal jurisdiction, to the extent the state law is more beneficial to an employee.

*Clause 119* provides that if an employee is required to attend jury service, the employee is entitled to jury service leave. In accordance with this clause an employer must pay an employee who attends jury service the difference between the amount the employee is entitled to receive as remuneration and allowances, excluding meal allowances, as provided for in the "attendance document" and the ordinary rate the employee would have been paid if the employee had not taken jury service leave.

Clause 119(5) and 119(6) are read together and provide that if an employee is not required to serve on a jury after attending for jury service and the employee would ordinarily be working on that day then the employee must present for work at the earliest reasonable opportunity, if practicable.

The clause provides relevant definitions including for the “attendance document”.

## **Division 13 Notice of termination and redundancy**

### **Subdivision 1 Notice of termination**

*Clause 120* is an application clause and specifies those employees who are exempt from this subdivision. Exempt employees include casual employees; employees engaged by hour or day; employees engaged for a specific period or task; employees during the first 3 months of employment; employees serving a period of probation; employees to whom an applicable industrial instrument does not apply and who is not a public service officer employed under the *Public Service Act 2008* and whose annual wages immediately before the dismissal are equal to or more than the amount of the high income threshold under the FW Work section 333.

*Clause 121* preserves section 71KA of the IR Act and provides conditions that must be met for an employer to dismiss an employee, including that the employer must either give the employee the required notice, or pay the employee the required compensation. An exception to this is where an employee has engaged in misconduct described by this clause.

This clause provides an explanation of when an employer may dismiss an employee because the employee has engaged in misconduct and exclusions to this. Actions considered to be misconduct are identified.

*Clause 122* preserves the arrangements in section 71KB of the IR Act which provides that where an employer fails to give an employee the required notice or compensation, the QIRC or a magistrate may order the employer to pay the required compensation.

A regulation may exclude from the operation of this clause dismissals happening in specified circumstances that relate to the transfer of the employer's business.

*Clause 123* preserves the arrangements in section 71KC of the IR Act and establishes the minimum period of notice to be given to an employee. This clause also provides that a regulation may prescribe matters that must be disregarded when working out continuous service.

*Clause 124* provides the method of calculating the minimum amount of compensation to be paid to an employee.

In accordance with this clause, a regulation may prescribe the amount that is taken to be payable, or how to work out the amount, under an employment contract mentioned in this clause, to an employee whose wages before dismissal were determined wholly or partly on the basis of commission or piece rates.

## **Subdivision 2 Redundancy pay**

*Clause 125* preserves the arrangements in section 71KE of the IR Act with the exception that the reference to a “modern industrial instrument” has been replaced with a reference to an “applicable industrial instrument”. This is an application clause, it establishes when an employee has an entitlement to redundancy pay and specifies employees who are exempt from this subdivision.

This clause specifically excludes from this subdivision employees who are terminated because of the ordinary and customary turnover of labour.

*Clause 126* stipulates the minimum amount of redundancy pay an eligible employee is entitled to. An employee’s entitlement is paid as weeks of pay, based on the number of years of continuous service with the employer. A weeks’ pay is based on the employee’s ordinary hours of work. Exceptions to this clause are provided for at clause 127.

*Clause 127* preserves the arrangements in section 71KG of the IR Act. This clause provides circumstances where the amount of redundancy pay, otherwise payable, may be reduced.

In accordance with this clause, an employer may apply to the QIRC to reduce the amount of redundancy pay to an amount, which may include to no payment at all, that the QIRC considers appropriate.

## **Division 14 Information statements**

*Clause 128* provides that the chief executive must prepare an information statement that provides details on specified industrial and employment matters which must be published on the Department’s website.

The reference to “the chief executive” and “the department” for the purpose of this provision are in accordance with the meanings given in section 33 *References to Ministers, departments and chief of the Acts Interpretation Act 1954*.

*Clause 129* requires the employer to give an employer the information statement referred to in clause 128 and if an industrial instrument applies to that employee documentation specifying the name of the applicable industrial instrument.

## **Part 4 Continuity of service and employment**

*Clause 130* preserves the arrangements in section 71Q of the IR Act and provides definitions for the term “service” and “transferred employee” as used in this part.

*Clause 131* prescribes when an employee’s continuity of service is not broken for the purposes of working out an employee’s rights and entitlements under chapter 2, the Queensland Employment Standards, of the Bill, or under an applicable industrial instrument.

This clause provides that an employee may not claim the benefit of a right or entitlement twice for the same period of employment.



The clause also provides that the minimum period of notice required from an employer when dismissing a transferred employee is for the total period of service. Notice given previously in relation to the transfer of calling need not be considered.

*Clause 132* provides arrangements with respect to continuity of service for a transferred employee. A transferred employee is an employee who becomes an employee of a new employer because of the transfer of a calling to that employer from a former employer.

This clause provides the transfer of a business does not break continuity of service for a transferred employee's and that the service of an employee with the former employer is taken to be service with the new employer.

The clause clarifies situations where an employee's service is not broken when an employee is dismissed by a former employer and re-engaged by a new employer. Under this clause "dismissed" includes stood down.

*Clause 133* preserves the arrangements in section 71QC of the IR Act and provides that the period of service of an employee as an apprentice or trainee does not break the employee's continuity of service with the employer at the completion of the apprenticeship or traineeship, or re-employment of the employee within 3 months of the completion.

The period of service of an employee with an employer before the commencement of an apprenticeship or traineeship does not break the employee's continuity of service.

*Clause 134* establishes the circumstances where an employee's continuity of service is considered not to have been broken. The clause defines "subsidiary" and "terminate" for this clause.

## **Part 5 Wages and employment conditions for apprentices and trainees**

*Clause 135* preserves the arrangements in section 136 of the IR Act and provides that an apprentice or trainee is entitled to the same conditions of employment as those fixed by the industrial instrument applicable to other employees in the same workplace. The clause provides a definition of "workplace".

This clause provides that an apprentice or trainee is entitled to wages at either the rate stated in the instrument or a rate fixed by the QIRC. It further provides that an apprentice is entitled to receive any allowances provided for a tradesperson and prescribes how this is to be calculated.

*Clause 136* preserves the arrangements in section 137 of the IR Act and provides that the QIRC may make orders fixing minimum wages and employment conditions for apprentices and trainees, regardless of whether they are employed under an industrial instrument or not. Where there is inconsistency between an order and an industrial instrument, the order will prevail. It further provides who may commence an application for such an order.

*Clause 137* preserves the arrangements in section 138 of the IR Act and provides that the QIRC may make an order for the provision of tools, or a tool allowance, for apprentices. An employer must not contravene such an order, the maximum penalty for a breach is 40 penalty units. The clause establishes remedies that a magistrate may apply to the employer contravening an order. The magistrate may express the order in the alternative so that the employer may decide how to comply with it. The court must pay an amount paid under this clause to the apprentice.

*Clause 138* preserves the arrangements in section 138B of the IR Act and provides that an apprentice or trainee who continues in employment after the end of the probationary period and is subsequently dismissed or the employer fails to sign the training contract, is entitled to be paid as if they were an apprentice or trainee or the wages payable under the industrial instrument relevant to the work performed by the employee, whichever is more favourable to the employee, unless the training contract has been sent to the chief executive for registration.

*Clause 139* preserves the arrangements in section 139A of the IR Act and provides that a person who had been employed by the employer prior to commencing an apprenticeship or traineeship is entitled to be reinstated to his or her former position if the apprenticeship or traineeship does not continue for defined reasons.

## **Part 6 Labour market programs**

*Clause 140* preserves the arrangements in section 140 of the IR Act and provides that the QIRC may make an order setting wages and conditions for employees who participate in labour market programs. In making an order the QIRC may consider any matter it considers relevant, together with those matters provided for in the clause. As an example, the clause provides that the QIRC may determine remuneration to be a combination of a wage paid by the employer and benefits that the participants receive from the State or Commonwealth.

## **Chapter 3 Modern awards**

### **Part 1 Preliminary**

*Clause 141* is based on section 140D(1) and (2) of the IR Act and provides for what the commission must have regard to, in relation to a modern award, when exercising its powers, including: relative living standards and the needs of low-paid employees; the need to provide penalty rates for employees who work overtime, or unsocial hours, perform shift work or work on weekends or public holidays; and the need to ensure equal remuneration. In exercising its powers, the commission must ensure a modern award provides for fair and just wages and employment conditions that are more favourable than the Queensland Employment Standards, and generally reflects the prevailing employment conditions of employees covered, or to be covered, by the award.

*Clause 142* is based on section 140D(3) of the IR Act and provides for what the commission must have regard to when setting, varying or revoking minimum wages

in a modern award, including: prevailing employment conditions; certain matters from clause 141(2), and providing fair minimum wages to young employees; employees engaged as apprentices and trainees; and employees with a disability.

## **Part 2 Content of modern awards**

*Clause 143* sets out content that the commission is to ensure is either included or excluded in a modern award. For example, an award: does not include a provision that discriminates against an employee; does not include a provision that displaces, or is otherwise inconsistent with the Queensland Employment Standards (apart from in certain specified circumstances); includes a provision requiring an employer to consult employees before making a decision likely to be of particular significance to employees; is to be in plain English with easy to understand structure and content; and does not include provisions that are obsolete or need updating.

A definition of 'facilitative provisions' and 'relevant employee organisation' is provided for this clause.

*Clause 144* requires that the commission must ensure that a dispute resolution procedure is contained in each modern award, whether through agreement by the parties or by direction of the commission. This clause also prescribes what a dispute resolution procedure must include, however, this does not limit what the parties or the commission may include in a dispute resolution procedure.

*Clause 145* is based on the historical provision at section 129 of the IR Act (pre-2012) and provides that in certain circumstances, the commission may include in a modern award provisions that are based on a certified agreement. This clause also provides for when the commission must, upon application and agreement of the parties to a certified agreement, vary a modern award to include provisions based on a certified agreement.

*Clause 146* requires the commission, where the parties agree and the provisions of the directive apply or previously applied to the parties to the award, to include provisions based on a directive in modern awards.

## **Part 3 Making, varying and revoking modern awards**

*Clause 147* is based on section 140G of the IR Act and provides that the commission may make or vary a modern award on its own initiative or by application by certain parties to provide for fair and just employment conditions.

*Clause 148* is based on section 140HA and 140HB of the IR Act and provides requirements for when a variation to a modern award comes into operation, including provision for retrospective operation of a variation only in exceptional circumstances.

*Clause 149* is a new provision to provide that the registrar may, on an application or on the registrar's own initiative vary a modern award to correct a minor or technical error or reflect a change to the name of a party or update an outdated reference. A variation under this provision is to take effect when it is approved by the commissioner nominated by the president to approve such variations.

*Clause 150* is based on section 140H of the IR Act and provides the commission may, to provide fair and just employment conditions, revoke a modern award, on its own initiative or by application by certain parties or on review of the modern award, if satisfied that no employees will adversely affected by the revocation of the award.

#### **Part 4 Coverage and operation of modern awards**

*Clause 151* provides a civil penalty provision for a person that contravenes a provision of a modern award that applies to them.

*Clause 152* which is based on s140EA of the IR Act and provides that a modern award does not impose obligations or confer entitlements on a person unless the award applies to that person. The clause also stipulates that an award must apply to a person for them to contravene it.

*Clause 153* which is based on s140E of the IR Act sets out when a modern award applies or does not apply to an employee, employer and organisation.

*Clause 154* provides that when an award applies only to a stated employer it also applies to the employer and any successor of the employer. However, the clause also limits the application of the modern award if it has only applied to a particular stated establishment or operation of a stated employer.

*Clause 155* is based on s140EB of the IR Act and provides that a modern award starts operating on the day stated in the award as the day on which it comes into operation, which must not be earlier than the day it is made. A modern award continues in effect until it is revoked.

#### **Part 5 Review of modern awards**

*Clause 156* provides that the commission may review a modern award on its own initiative or by application.

*Clause 157* is based on s140GD of the IR Act and provides that the Anti-Discrimination Commission may apply to the commission for a review of a modern award on the grounds that it is discriminatory. The clause also provides that the commission must review the award and when the commission must vary the award.

#### **Part 6 Technical matters**

*Clause 158* provides definitions for this part of the Chapter.

*Clause 159* which is based on s140IA of the IR Act sets out formal requirements for a relevant instrument; for example, it must have a unique title, be in writing and state the day on which it is signed.

*Clause 160* provides publication requirements for after the commission makes a relevant instrument, including: that, as soon as practicable after making a relevant instrument, the commission must give the registrar a copy of the instrument, and the registrar must notify the parties to whom the modern award applies or applied or will

apply, and publish the relevant instrument on the QIRC website. This clause is based on s140IB of the IR Act.

*Clause 161* which is based on s140IC of the IR Act provides the registrar must, as soon as practicable after the commission varies a relevant instrument or makes a general ruling under clause 458, publish the relevant instrument as varied on the commission website.

*Clause 162* provides for the interpretation of terms in a relevant instrument, based on s140ID of the IR Act.

## **Chapter 4 Collective bargaining**

### **Part 1 Preliminary**

#### **Division 1 Purpose and application**

*Clause 163* provides that collective bargaining, in good faith and with a view to reaching agreement is the primary basis for deciding wages and employment conditions. Further, it provides where agreement cannot be reached, that the commission can help the parties reach agreement or if not, reduce the matters in dispute, and arbitrate the matter if conciliation is not successful. This clause provides that the negotiating parties may make an agreement and apply to the commission for it to be certified, or, in certain circumstances, apply for the making of a bargaining award and the revocation of the modern award that covers the negotiation parties.

It also provides that taking protected industrial action is a right of negotiating parties, subject to requirements, as part of the collective bargaining process.

#### **Division 2 Some basic concepts about collective bargaining**

*Clause 164* establishes that a certified agreement is a written agreement about industrial matters that relate to an employer, employees of the employer, and employee organisations covered by the agreement. The certified agreement covers all employees in the group, whether they were employed before or after the commencement of the agreement.

*Clause 165* provides that a certified agreement may be made between an employer and one or more employee organisations who are entitled to represent any employees of the employer, or if not between an employer and employee organisation/s, then between the employer and the employees of the employer.

*Clause 166* provides for a new industrial instrument - a bargaining award - which is an award that covers an employer, employees of the employer, and an employee organisation that represents or is entitled to represent employees who are covered by the bargaining award.

*Clause 167* provides that a bargaining award may only be made if all parties who will be covered by it consent to its making, and that immediately before the bargaining award is made a modern award or bargaining award is in effect under which the only employers and employees covered are the employers and employees who will be covered by the bargaining award.

### **Division 3 Other definitions**

*Clause 168* provides definitions for terms used in this chapter including: bargaining instrument as a new term to refer to both certified agreements and bargaining awards, and defining that a negotiating party means a person who is negotiating under this chapter or a person who has received a notice of intention and refuses to negotiate, other than a person in relation to whom clause 8 of this Bill applies too.

### **Part 2 Collective bargaining process**

*Clause 169* sets out what must be done when a person (the proposer) proposes to make a bargaining instrument. The clause provides that the proposer must give notice to certain persons, and also provides the time periods within which the notice must be given, including that the proposer must not give the notice of intention more than six months before the nominal expiry date of any existing bargaining instrument or arbitration determination that applies to the parties.

*Clause 170* applies to negotiations that relate to a project or multi-employer agreement and provides that proposed parties to a bargaining instrument must notify the proposer and the commission of their intention of being a party within 21 days of receiving advice of the notice of intention. An agreement or application for the making of a bargaining award may only be made within the 21-day period if all proposed parties to the negotiation have given a written notice of intention.

*Clause 171* sets out what must happen if during negotiation parties propose to make a certified agreement (other than an excluded instrument) or a bargaining award, including providing a copy or access to a copy of the proposed bargaining instrument to employees. The clause also provides that if an employee asks an employee organisation to represent him or her, the employer must give the organisation reasonable opportunity to represent the employee in negotiating with the employer.

*Clause 172* preserves section 145 of the IR Act relating to project agreements, and requires an employer to negotiate with the single bargaining unit, if more than one employee organisation has given notice under clause 8 (2) that they want to be part of a project agreement. A definition of the term 'single bargaining unit' is provided.

*Clause 173* sets out that parties must negotiate in good faith and what each party must do to negotiate in good faith, including attending and participating in bargaining meetings; disclosing relevant information other than confidential or commercially sensitive information in a timely way; genuinely considering proposals made by other parties; and not engaging in capricious or unfair conduct that undermines freedom of association or the collective bargaining process. Subject to this clause, parties may also make an agreement about procedures or principles for the conduct of the bargaining process.

*Clause 174* provides that, to enable negotiating parties to reach agreement, during the peace obligation period parties cannot take industrial action or ask the commission to help reach agreement under part 3 (conciliation and arbitration) of this chapter. A definition for the term peace obligation period is also provided.

## **Part 3 Conciliation and arbitration by commission**

### **Division 1 Conciliation**

*Clause 175* provides that this division applies if the peace obligation period has ended and a negotiating party asks the commission to help the parties reach agreement. This clause also provides that, if the negotiating parties notify the commission that they intend to resume negotiating without the commission's help, this conciliation division stops applying.

*Clause 176* sets out the commission's role in conciliation, which is to help negotiating parties: reach agreement on as many matters as possible, and comply with their obligations to negotiate in good faith. To achieve this objective the commission may give advice, directions, or hold a conference. A civil penalty provision applies if the commission requires a person to attend a conference.

*Clause 177* provides that a conciliating member may refer a matter to arbitration if it consider that parties have tried to reduce the scope of the matters at issue or a negotiating party has tried to negotiate with the other parties; and, the parties have negotiated for the prescribed minimum period of time or the conciliating member does not consider that there is a reasonable likelihood of further conciliation or negotiation resulting in agreement. The minimum period of time means six months from the nominal expiry date of a bargaining instrument that applies to the parties, or three months from the day conciliation of the matter started, whichever is later.

*Clause 178* provides that negotiating parties may make a consent application to the commission for arbitration of a matter and also prescribes what the application must state. The commission may grant the application and make interlocutory orders or other orders if it considers it appropriate. The clause also provides examples of the reasons the commission might make an order, for example: requesting the negotiating parties reduce the scope of the matters at issue; or in relation to a failure to bargain in good faith.

### **Division 2 Arbitration**

*Clause 179* provides that this division applies if matters are referred to arbitration by the conciliating member, or an application for arbitration of the matters made by negotiating parties is granted by the commission.

*Clause 180* provides that the full bench must determine the matters in dispute by arbitration. The full bench may give directions or make orders of an interlocutory nature when determining disputed matters by arbitration. The full bench may also make any other order or exercise any other power it deems appropriate to determine the disputed matters.

The clause also provides that in determining matters the full bench must at least consider the merits of the case; and the likely effect of the proposed arbitration determination, and the likely effect of any matters agreed between the negotiating parties before or during the arbitration, on employees and employers to whom the proposed arbitration determination will apply. It is not intended under this subsection that the commission can deal with any matters which have been agreed between the negotiating parties, other than to consider what has been agreed when determining the disputed matters.

*Clause 181* sets out that an arbitration determination made by the full bench may include a provision for a matter agreed between the negotiating parties before or during arbitration, but that the commission may not exercise any powers in relation to any agreed matter. This is a new provision to clarify that the agreed matters may be included in the arbitration determination.

*Clause 182* preserves historical meaning and provides that the full bench must publish its reasons when determining disputed matters.

*Clause 183* prescribes that an arbitration determination must state a nominal expiry date that is agreed to by the negotiating parties, or if not, as ordered by the full bench, but no later than four years after the date the arbitration determination is made. The clause also prescribes that the arbitration determination operates until it is terminated or it is replaced by a bargaining instrument, and provides that while the arbitration determination operates, it prevails to the extent of any inconsistency over an award or an order made under clause 136. An arbitration determination cannot be amended.

## **Part 4 Scope orders**

*Clause 184* provides for when a negotiating party may apply to the commission for a scope order. The application may be made any time after the notice of intention for negotiations has been given but not after part 3 division 2 of this chapter (arbitration) starts applying.

*Clause 185* sets out the circumstances in which the commission may make a scope order in relation to a proposed bargaining instrument. A scope order may relate to more than 1 proposed bargaining instrument.

*Clause 186* provides that a scope order must state the employer/s and employees to be covered by the instrument and the employee organisations to be parties to the instrument.

*Clause 187* provides that the commission may take action it considers appropriate to give effect to a scope order in relation to a proposed bargaining instrument, including making or varying other orders or instruments.

*Clause 188* 'duration of scope order' sets out when and how a scope order takes effect and continues in force.



## **Part 5 Certifying agreements and making bargaining awards**

### **Division 1 Making and hearing applications**

*Clause 189* provides that an application for the commission to certify an agreement may be made by a party to the agreement. It also prescribes what must be provided in an application if an agreement is made between a single employer and 1 or more employee organisations but has not been signed by all of the parties.

*Clause 190* sets out when a party may apply to the commission for the making of a bargaining award or the termination of a relevant modern award. The application may be made by a party to the proposed bargaining award only if all the parties have agreed on the terms of the agreement and the agreement has been approved by a valid majority of the relevant employees in a properly conducted ballot.

*Clause 191* provides that before an application for certification of an agreement or making of a bargaining award is heard, the registrar must place a notice of hearing in the registry stating the names of the parties to the proposed bargaining instrument, the relevant award or designated award, and the hearing date.

*Clause 192* prescribes which entities may be heard on application for a bargaining instrument. An employee organisation is entitled to be heard if it is a party to the proposed bargaining instrument. If the employee organisation is not a party, they may be heard on the application only by leave of the commission. This clause does not affect another right of an employee organisation or person to be heard or to intervene in an application.

### **Division 2 Deciding applications**

#### **Subdivision 1 Commission's decision on applications**

*Clause 193* sets out requirements for the commission's decision: that the commission must grant a part 5 application to certify an agreement or make a bargaining award if each requirement under subdivision 2 (requirements for granting applications) is satisfied and the commission is not required under subdivision 3 (refusal to grant applications) to refuse to grant the application.

*Clause 194* provides that before the commission refuses to grant an application it must give the persons who will be covered by the proposed bargaining instrument an opportunity to take action that may be necessary to enable the commission to grant the application. The commission may also conciliate the industrial matter concerned with a view to helping the persons concerned to take the action necessary to enable the commission to grant the application.

#### **Subdivision 2 Requirements for granting applications**

*Clause 195* prescribes specific requirements relating to the bargaining process about which the commission must be satisfied when granting an application, including giving required notice, explaining the proposed bargaining instrument to employees in a way that was appropriate, and that there was no coercion or attempted coercion

by the employer in relation to an employee requesting an employee organisation represent them in the negotiations.

*Clause 196* provides that the proposed bargaining instrument must be in writing and signed by or for all the parties. In some cases the instrument will not have to be signed by all parties if the commission is satisfied that all parties have agreed on the terms of the instrument and that the application was made within a reasonable time after it was approved by a valid majority of relevant employees. The clause also provides that in deciding whether all parties have agreed on the terms of the proposed bargaining instrument the commission may consider whether the parties negotiated in faith and any other evidence supporting or not supporting the alleged agreement.

*Clause 197* provides that the commission must be satisfied that a valid majority of the relevant employees employed approved the proposed bargaining instrument.

*Clause 198* provides that the commission must be satisfied that the proposed bargaining instrument includes a provision requiring an employer to consult with employees before making a decision likely to be of significance to the employees, an outline of the proposed consultation process, and a nominal expiry date that is the day the project ends or up to a maximum of four years after the day the instrument comes into operation. This clause also requires that the application includes or is accompanied by the equal remuneration information required under clause 250, and any other information prescribed by regulation.

*Clause 199* provides that the commission must be satisfied that the proposed bargaining instrument passes the no-disadvantage test under division 3 of this chapter.

*Clause 200* lists what the commission must be satisfied of for the parties to the agreements for project agreements, for agreements to be made with an employee organisation, and for an agreement for a new business. This clause requires that the commission consider whether a party has been given proper notice and whether or not it has withdrawn from the agreement or does not want to be a party.

*Clause 201* provides that the commission must be satisfied that a multi-employer agreement or project agreement provides for equal remuneration for work of equal or comparable value in relation to the employees to be covered by the agreement.

For any other proposed bargaining instrument, clause 201 requires that the commission must be satisfied the employer has, for all employees of the employer, implemented equal remuneration; or will, if the instrument is certified or made, implement equal remuneration; or is implementing equal remuneration for work of equal or comparable value.

*Clause 202* requires that for bargaining awards the commission must be satisfied that the employees and employers covered by an existing modern award or bargaining award will only be those who are covered by the proposed bargaining award.

*Clause 203* provides that if a scope order is in effect in relation to a proposed bargaining instrument, the commission must be satisfied that the instrument is not inconsistent with the order.

### **Subdivision 3 Refusal to grant applications**

*Clause 204* provides that the commission will refuse to grant a part 5 application if it considers that the proposed bargaining instrument is inconsistent with, or seeks to prohibit an equal remuneration order.

*Clause 205* provides that the commission will refuse to grant a part 5 application if the proposed bargaining instrument has an objectionable term within the meaning of clause 301 of this Bill.

*Clause 206* sets out that the commission must refuse to grant a part 5 application if the employer has, or has caused an entity to, contravene a provision of chapter 8, part 1, division 4 of this Bill, which sets out certain industrial activities provisions. This is based on similar provisions under the IR Act under which the commission was required to refuse to certify an agreement if the employer had caused an entity to engage in conduct, which, if the employer had engaged in that conduct, would have contravened the freedom of association provisions under chapter 4 of the repealed Act. However, this clause does not apply if the commission is satisfied that the contravention, or conduct and its effects, has been fully remedied. The meaning of an industrial activities provision is also provided for use in this clause.

*Clause 207* provides that the commission will refuse to grant a part 5 application if the proposed bargaining instrument has a discriminatory provision, unless the provision provides for minimum wages of young employees, employees with a disability, and all employees engaged as apprentices or trainees.

*Clause 208* provides that the commission will refuse to grant a part 5 application if the proposed bargaining instrument displaces or is inconsistent with the Queensland Employment Standards. This does not apply to a provision that is at least as favourable for an employee as the Queensland Employment Standards.

*Clause 209* provides that the commission must refuse to grant a part 5 application if the proposed bargaining instrument only applies to a group or category of employees and it is unfair that the instrument does not employ to other employees if it would be reasonable for the other employees to be covered by the instrument.

### **Division 3 No-disadvantage test**

*Clause 210* sets out that a proposed bargaining instrument passes the no disadvantage test if the instrument does not disadvantage employees in relation to their employment conditions. This clause is based on section 160 of the IR Act.

Subsection (2) of this clause provides that a proposed bargaining instrument disadvantages employees if the commission considers that the instrument would result in a reduction in the employees' entitlements or protections. However, subsection (2) of this clause does not apply if the commission considers that in the context of the employment conditions considered as a whole, the reduction is not against the public interest.

For the purposes of the no disadvantage test, the president may, in exceptional circumstances, require the registrar prepare a report comparing the instrument with the employees' entitlements or protections.

A definition of entitlements or protections is provided for use in this clause.

*Clause 211* preserves section 161 of the IR Act and provides that if a bargaining instrument sets the wages of an employee eligible for the supported wages system at a rate not less than the rate set in accordance with that system, then the making of the bargaining instrument is not to be taken to result in a reduction of the employee's wages.

*Clause 212* provides that, if wages payable under a bargaining instrument to an employee undertaking an approved apprenticeship or traineeship, are no less than wages calculated in accordance with this clause, those wages will not be taken to reduce the employee's wages for the purpose of the no-disadvantage test.

The clause excludes a traineeship where the trainees is covered by the Training Wage Award State – 2012 or the National Training Wage Schedule of a modern award under the Commonwealth Fair Work Act. Definitions of approved training and benchmark training are also provided for use in this clause.

*Clause 213* preserves section 163 of the IR Act which requires the commission, on application, to designate an appropriate 'designed award' to use as the comparison for the no-disadvantage test where it is proposed to make an agreement and there is no relevant award applicable to some or all of the persons to be covered by the proposed agreement.

## **Division 4 Other provisions**

*Clause 214* preserves section 159 of the IR Act and provides that the procedures for preventing and settling disputes contained in a bargaining instrument may, with the commission's consent, allow the commission to settle a dispute.

*Clause 215* provides that if a part 5 application is granted, the commission must give the registrar a copy of, and written reasons for making or certifying the bargaining instrument. The registrar must then give the parties to whom the instrument applies notice of the making of the instrument, and if it is a bargaining award, notice of revocation of the relevant modern award. The registrar must also ensure a copy of the instrument is published to the QIRC website.

## **Part 6 Effect of bargaining instruments**

*Clause 216* establishes the time period in which a certified agreement operates, and provides that a certified agreement operates until it is terminated under section 227 or 228.

*Clause 217* establishes the time period in which a bargaining award operates.

*Clause 218* provides that a person must not contravene a bargaining instrument. This clause is a civil penalty provision.

*Clause 219* prescribes that a bargaining instrument does not impose obligations or confer entitlements on a person unless the instrument applies to them.

*Clause 220* prescribes that an employee, employer or organisation is covered by a bargaining instrument when it is in operation and covers them.

*Clause 221* specifies who is covered by a bargaining instrument. These include:

- An employee or employer stated in the instrument;
- An employee organisation if they are a party to the instrument being made. The clause also prescribes when an organisation can be covered by an instrument if the instrument is made between the employees and the employer.

However, an employee, employer or organisation will not be covered by a bargaining instrument if another provision of this Act, an order made by the commission under another provision of this Act, or an order of a court has effect or provides that they are not covered.

*Clause 222* provides that a successor to the whole or part of a business becomes a party to a bargaining instrument operating in that business or part of a business. The previous employer stops being bound.

## **Part 7 Extending, amending and terminating bargaining instruments etc.**

### **Division 1 Extension of bargaining instruments**

*Clause 223* provides means for the nominal expiry date of a bargaining instrument to be extended. The clause does not apply to an agreement made with an employee organisation for a business that an employer proposes to commence, or to an agreement that did not pass the no-disadvantage test, but was approved as not being against the public interest.

### **Division 2 Amendment of bargaining instruments**

*Clause 224* prescribes that a bargaining instrument may only be amended under this division or clause 223.

*Clause 225* establishes the method for amending a bargaining instrument. This clause does not apply to an amendment to add or omit a party to a bargaining instrument, other than an amendment mentioned in subsection (1)(b). A definition for approving parties under the clause is also provided.

*Clause 226* is a new provision that provides that the commission may approve an amendment of a bargaining award so that it applies to a proposed new party if it is satisfied that the bargaining award should apply to the new party as they are an employer or an employee organisation who is entitled to represent the industrial interests of the employees covered.

### **Division 3 Termination of certified agreements**

*Clause 227* reflects section 172 of the IR Act and allows the employer and one or more of the organisations bound by the agreement to terminate it by notice on or before its nominal expiry date. Before the commission terminates the agreement a valid majority of employees must approve of its termination.

*Clause 228* reflects section 173 of the IR Act and provides the means by which an agreement may be terminated after its nominated expiry date.

### **Division 4 Termination of bargaining awards**

*Clause 229* provides that a bargaining award may be terminated after its nominal expiry date if the commission certifies an agreement or makes an arbitration determination that applies to any parties of the bargaining award. The bargaining award is then taken to operate as a modern award and the modern award applies to the employees, employers and organisation to whom the bargaining award applied immediately before the conversion happened. The general requirements and content section of the modern awards chapter do not apply to modern awards that take effect under this clause.

*Clause 230* applies if a modern award takes effect under clause 229 of this Bill, when a bargaining award conversion event occurs. The registrar must as soon as practicable after the modern award takes effect give notice to the parties of the revocation of the bargaining award the effect of the modern award. A copy of the modern award must also be published on the QIRC website.

## **Part 8 Protected industrial action**

### **Division 1 Preliminary**

*Clause 231* provides a definition for protected industrial action for this part.

*Clause 232* sets out that a negotiating party for a proposed bargaining instrument has a right to take protected industrial action for the proposed instrument, subject to this part.

### **Division 2 Process for taking protected industrial action**

*Clause 233* defines what protected industrial action is and the circumstances in which it may be taken. The clause also provides that prior to industrial action being taken, the negotiating party (the employee organisation or employer) who intends to take the action must not have contravened the requirement under this Act for parties to negotiate the terms of the proposed instrument in good faith.

If industrial action is engaged in by employees, the industrial action must be approved by the registrar under section 235 before the industrial action is engaged in.

A notice under section 236 must be given before industrial action is engaged in. The clause also provides that industrial action may be engaged in during conciliation for

the proposed instrument but a notice of the action must first have been given. A definition of who is a protected person for a proposed bargaining instrument is also provided for this clause.

*Clause 234* provides when industrial action is not protected industrial action, including on or before the nominal expiry date of any existing bargaining instrument that will be replaced by the proposed instrument, during a peace obligation period, or during arbitration for the proposed instrument. This clause is a civil penalty provision.

*Clause 235* provides that the registrar must, on application by an employee organisation, and if satisfied the requirements have been met, approve the employees likely to be engaging in the proposed industrial action. For this clause, the registrar must be satisfied of requirements including that:

- before making the application, the employee organisation followed a process for members likely to be engaging in the proposed action to express their democratic views about the proposed action, and the result being that a majority of the employees who participated in the process expressed support for the proposed action; and
- the employees likely to be engaging in the proposed action are members or, eligible members, of the employee organisation; and
- will be covered by the proposed bargaining agreement subject of the industrial action; and
- the employees do not propose to engage in the industrial action before the end of the nominal expiry date of the bargaining instrument or arbitration determination that is being replaced by the proposed instrument, or during any peace obligation period.

An approval under this clause remains in force for a period specified by the registrar.

*Clause 236* provides when a person intending to take industrial action must provide a written notice to all negotiating parties, which is generally at least 3 working days before the day the intended action is to start, but with specified exceptions. The clause also prescribes what the notice must include. This clause also provides that an employer may, instead of giving a written notice, take any other reasonable steps to notify employees of the intended action.

A notice may be given before the end of any peace obligation period as long as the intended action does not start during that period.

These provisions reflect section 175 of the IR Act.

### **Division 3 Consequences of protected industrial action**

*Clause 237* provides that no legal proceedings lie under any law for action taken for protected industrial action, except if the action results in:

- personal injury; or

- wilful or reckless destruction of, or damage to property; or
- the unlawful taking, keeping or use of property.

*Clause 238* provides that an employer must not prejudice employees for engaging in protected industrial action. It also lists prohibited actions that an employer must not do, wholly or partly, because an employee is proposing to, or has engaged in protected industrial action. This clause is a civil penalty provision, and preserves section 179 of the IR Act.

*Clause 239* sets out orders that the commission may make if an employer contravenes clause 238(1) of this Bill and prejudices an employee for engaging in protected industrial action.

#### **Division 4 Suspension or termination by commission of protected industrial action**

*Clause 240* generally reflects provisions at section 423 of the FW Act and provides that: a negotiating party for the proposed bargaining instrument; the Minister; or a person prescribed by regulation, may apply for the commission to make an order suspend or terminate protected industrial action. To grant the application the commission must be satisfied that:

- if section 233(2)(a) applies - the industrial action is causing significant economic harm to an employer or an employee who will be covered by the proposed bargaining instrument; or
- if section 233(1)(b) applies - the industrial action is causing, or threatening to cause, significant economic harm to an employee who is proposed to be covered by the instrument; or
- if the industrial action is causing significant economic harm – the harm is imminent; or
- the industrial action has been protracted; or
- the dispute about the terms of the proposed instrument will not be resolved reasonably in the reasonably foreseeable future.

The clause also provides a list of factors relevant to deciding whether protected industrial action is causing, or threatening to cause, significant economic harm to an employer or employee.

*Clause 241* reflects section 424 of the FW Act and provides that: a negotiating party for the proposed bargaining instrument; the Minister; or a person prescribed by regulation, may apply for the commission to make an order suspend or terminate protected industrial action in exceptional circumstances where life, property, health or welfare is endangered. To grant the application the commission must be satisfied that the industrial action has threatened, is threatening, or would threaten:



- to endanger the life, personal safety or health, or welfare of the State's population or part of it or; or
- to cause significant damage to the State's economy or an important part of it.

The clause also prescribes that the commission must decide an application under this clause within 5 days, and if after this time it is unable to make a decision, make an interim order to suspend the protected industrial action.

## **Part 9 General**

*Clause 242* provides that an employee organisation may apply to the registrar for a certificate stating that a relevant employee has requested the organisation represent the employee in negotiations. The employer may apply to the registrar for a certificate stating that the employer need not negotiate with the organisation because the employee has withdrawn the request for the organisation to represent them, or the employee has ceased to be a relevant employee. This provision preserves section 152 of the IR Act.

*Clause 243* provides, that if the commission is not satisfied that a valid majority of employees covered or to be covered by a bargaining instrument have genuinely made or terminated the instrument or given it approval, it may order a secret ballot. A majority vote will satisfy the commission of the requirement. However, if before a vote is taken, the commission becomes satisfied, it may revoke the order. A definition of bargaining instruments for this clause is also provided. This provision reflects section 184 of the IR Act.

*Clause 244* prohibits coercion in relation to making, amending terminating or extending the nominal expiry date of an instrument, but does not prohibit industrial action that is protected action. This is a civil penalty provision.

The clause also prohibits an employer from coercing or attempting to coerce an employee from making (or withdrawing) a request that he or she be represented by an industrial organisation of which they are a member in relation to an instrument the employer proposes to make.

The same clause also includes a new provision prohibiting coercion of, or attempts to coerce, an employee not to express their views or to express views that are different from the employee's views, in relation to proposed industrial action.

A definition of take or refrain from taking is provided for this clause.

## **Chapter 5 Equal remuneration**

### **Part 1 Preliminary**

*Clause 245* provides the purpose of this chapter which is to set out what is required of the commission in respect of ensuring equal remuneration for men and women workers for work of equal or comparable value.

*Clause 246* defines particular terms used in this part.

## **Part 2 Instruments affecting wages**

### **Division 1 Making of modern awards**

*Clause 247* provides that this division applies to the making of a modern award under chapter 3.

*Clause 248* provides the requirements for the commission to ensure that modern awards provide for equal remuneration for work of equal or comparable value. These requirements reflect the main elements of the *Equal Remuneration Principle – a Statement of Policy* issued by the commission. The clause also allows that the commission may have regard to any other matter the commission considers relevant. The clause makes clear that the assessment of the current value of the work must be free of assumptions based on gender, that comparisons within and between occupations and industries may be used but are not required and that discrimination on the basis of gender is not necessary to establish that the work has been undervalued.

*Clause 249* requires that the commission must make an order under part 3 if it is not satisfied that the modern award provides for equal remuneration to ensure the modern award provides for equal remuneration for work of equal or comparable value.

### **Division 2 Bargaining instruments and other instruments**

*Clause 250* provides that an application for the certification of an agreement or the making of a bargaining award must be accompanied by an affidavit that informs the commission about the steps taken by the parties to provide for equal remuneration for work of equal or comparable value, including the wage-related information for the employees who are or will be covered by the proposed bargaining instrument. Where a provision of an agreement or bargaining award provides for the differential treatment of wages for different groups of employees, the affidavit also needs to provide the justification for including the provision in the instrument.

*Clause 251* provides that the commission may, when undertaking certain specified functions, direct any of the relevant parties to obtain and give the commission wage-related information for a stated group or groups of employees who are or will be covered by the proposed instrument.

## **Part 3 Equal Remuneration Orders**

*Clause 252* provides that the commission may make any order it considers appropriate to ensure employees covered by the order receive equal remuneration for work of equal or comparable value.

*Clause 253* sets out that the commission may make an order under this part on application by certain specified parties.

*Clause 254* requires that the commission must and may only make an order when it is satisfied that the employees to be covered by the order do not receive equal remuneration for work of equal or comparable value.

*Clause 255* provides that the order may introduce equal remuneration immediately or progressively.

*Clause 256* provides that an employer is not to reduce the remuneration of an employee because an application or order has been made under this part. If an employer purports to do so, the reduction is of no effect.

*Clause 257* provides that this part does not limit (subject to section 258) any other right that a person or organisation has to secure equal remuneration for work of equal or comparable value.

*Clause 258* provides that an application may not be made under this part where alternative action has begun under another provision of this Bill or under another Act, unless that action has been discontinued or has failed for want of jurisdiction.

An application cannot be made under another provision of this Bill or of another Act for an order for equal remuneration where action has begun under this part, unless that action has been discontinued or has failed for want of jurisdiction.

## **Part 4 Miscellaneous**

*Clause 259* provides that the commission may make a statement of policy about the operation of this chapter.

## **Chapter 6 Industrial disputes**

### **Part 1 Preliminary**

*Clause 260* defines the terms used in chapter 6.

### **Part 2 Notice of industrial dispute**

*Clause 261* preserves section 229 of the IR Act and provides how notice may be given and what must be included in the notice of dispute to the registrar.

### **Part 3 Action for preventing or settling industrial disputes**

*Clause 262* reflects section 230 of the IR Act and provides that the commission may take appropriate action for the prevention and prompt settlement of the dispute if a notice has been issued under clause 261, or if the commission considers it is in the public interest to take action under this section, whether or not a notice of dispute has been given.

While not restricting the commission's powers, the clause specifies how the commission may take steps appropriate for the prevention or prompt settlement of

the dispute. The commission may do one or any number of the things provided in clause 262(4).

Where a dispute exists, the commission may nominate one of the parties to the dispute as having the carriage of proceedings in the matter and, where this is determined, the named party has the carriage of proceedings accordingly.

The clause does not affect the operation of an industrial instrument where the instrument imposes a duty on a party in relation to industrial disputes.

*Clause 263* preserves section 231 of the IR Act and provides that the commission may act as a mediator in an industrial cause, either at the request of the parties directly involved in the cause or if it appears that mediation is desirable in the public interest.

*Clause 264* preserves section 232 of the IR Act and applies to action taken by the commission under clause 262. This clause sets out that the commission, if it considers that it is desirable for the prevention or prompt settlement of a dispute, may require a person to attend a conference at a stated time and place. A person required to attend must attend at the stated time and place and continue to attend as directed by the commission. This section is a civil penalties provision.

*Clause 265* preserves section 233 of the IR Act and provides that the commission may direct an order about an industrial dispute to certain parties, and sets out what must be contained in the order.

The clause provides information that must be included in an affidavit, if the commission has ordered that an affidavit be filed, and action that the registrar must take at the completion of the time required for affidavits to be filed.

This clause also provides a definition of 'full bench' for this part.

*Clause 266* preserves section 234 of the IR Act and provides remedies available to the full bench when an organisation or person who has been issued with a show cause notice by the registrar under clause 266(7) does not show cause at the stated time. A definition of "stated time" and "organisation" is provided for this clause. The full bench may do one or any number of the things provided in this clause including imposing a penalty, and making orders it considers appropriate.

## **Part 4 Industrial action**

*Clause 267* reflects the provisions of section 237 of the IR Act and provides for the indemnification, on certain grounds, of an organisation or association of persons against the unauthorised actions of an agent during or in connection with industrial action.

*Clause 268* preserves section 238 of the IR Act 'payments for strikes not compellable' and provides that an employer may pay, or refuse to pay, an employee for a period when the employee engages in a strike.

An employee, employee organisation or officer, member or employee of the organisation must not threaten to organise or engage in a strike, with the intention of coercing the employer to make payment.

The meaning of strike for this clause does not include the failure to perform work in excess of work required under a bargaining instrument.

*Clause 269* preserves section 239 of the IR Act and provides that specified persons may make an application to the commission for orders under this clause for a contravention of clause 268.

*Clause 270* preserves section 240 of the IR Act and provides that the commission cannot deal with an application for payment under clause 268 to an employee for a period when the employee engaged in a strike. This clause applies to a strike period before or after making of the claim or the commencement.

*Clause 271* preserves section 241 of the IR Act and provides that an employee can refuse to perform work if a reasonable concern exists about an imminent risk to the employee's health or safety, and if the employee did not unreasonably contravene a direction of the employer to perform other available work that was safe and appropriate to perform.

## **Chapter 7 Employees bullied in the workplace**

*Clause 272* provides that an employee is bullied in the workplace if while at work an individual or group of individuals repeatedly behave unreasonably towards the employee, or a group of employees which the employee is a member of, and that behaviour creates a risk to the employees' health and safety. This does not apply to reasonable management action carried out in a reasonable manner.

*Clause 273* provides that an employee can apply to the commission for a stop bullying order under clause 275 if they believe they have been bullied in the workplace.

*Clause 274* provides that the commission must start to deal with an application under clause 273 within 14 days of the application being made.

*Clause 275* provides that if the commission is satisfied that an employee has been bullied in the workplace and there is a risk that the employee will continue to be bullied in the workplace, it may make any order it considers appropriate to prevent the employee from being bullied. The clause also provides what the commission must take into account in considering the terms of the order.

*Clause 276* provides that a person must not contravene an order to stop bullying under clause 275. This is a civil penalty provision

*Clause 277* provides that section 115 of the *Work Health and Safety Act 2011* and a provision of a corresponding WHS law do not apply in relation to an application under clause 273.

## **Chapter 8 Rights and responsibilities of employees, employers, organisations etc.**

### **Part 1 General protections**

#### **Division 1 Introduction**

*Clause 278* sets out that the purpose of this part is to protect workplace rights, protect freedom of association, provide protection from workplace discrimination and provide relief for persons who have been discriminated against, victimised or otherwise adversely affected as a result of contraventions of the general protections.

Subclause (2) provides that these protections are provided to persons, whether an employee, an employer or otherwise. Chapter 1, Part 2 of the Bill sets out that for the purposes of the Bill, an employer is a person who is not a national system employer within the meaning of the FW Act and who employs or usually employs 1 or more individuals. It also provides that an employee is an individual who is employed, or usually employed, by an employer.

*Clause 279* defines particular terms used in this part. Of note, the definition of 'industrial association' is based on the definition in section 102 of the IR Act which defines 'industrial association' for the purposes of chapter 4 (freedom of association) of the IR Act. This includes an industrial organisation registered under the Bill. References to independent contractors have not been adopted for this definition, as it is not intended that this general protections part will extend to private sector independent contractors who currently have access to general protections under the FW Act. The focus for the general protections part under this Bill is to provide rights and obligations for public sector and local government sector employees and employers.

#### **Division 2 Application of this part**

*Clause 280* provides that, subject to clause 281, this part applies to action taken by an employer; or action that affects, is capable of affecting or is taken with intent to affect the activities, relationships or business of an employer.

This clause also provides that this part applies to action that consists of advising, encouraging or inciting action taken with intent to coerce an employer to take or not take, or threaten to take or not take, particular action in relation to another person.

This clause has been adapted from section 338 of the FW Act, to ensure relevance for the state jurisdiction. Although not expressly stated to apply to action taken in Queensland, this provision operates to the full extent of Parliament's legislative power, and therefore should apply to the extent that action is taken in Queensland.

*Clause 281* makes clear that this part does not apply to action mentioned in clause 280 if the FW Act, chapter 3, part 3-1 applies to the action.

Given parties will likely be concerned with any potential interaction with the FW Act provisions, this clause has been included to make clear that the general protections

provided under the Bill will not provide an additional avenue where an avenue is available under the FW Act. For example, an independent contractor who is able to commence a general protections application under part 3-1 FW Act against a state or local government entity.

However, the sham arrangements at division 6 recognise that sham contracting occurs where an employer attempts to disguise an employment relationship as an independent contracting arrangement. Therefore, the general protections under this part will provide an ability for an individual engaged as an independent contractor (but who is actually an employee of a state or local government entity) to bring an action against the state or local government entity employer.

The clause also provides that the general protections part does not apply to an action for unfair dismissal. Unfair dismissal is dealt with in chapter 8, part 2 and an application for reinstatement may be made where an eligible person dismissed and the dismissal was harsh, unjust and unreasonable.

### **Division 3 Workplace rights**

*Clause 282* sets out the circumstances in which a person takes adverse action against another person for the purposes of the general protections part. Adverse action can be taken by an employer against an employee; a prospective employer against a prospective employee; an employee against an employer; and an industrial association against a person.

Subclause (1) provides that adverse action is taken by an employer against an employee for a range of reasons (i.e. dismissal, injuring the employee in his or her employment, altering the employee's position to their prejudice, and discriminating between the employee and other employees).

This clause generally reflects section 342 of the FW Act which sets out the meaning of adverse action, however provisions similar to items 3, 4 and 6 in section 342 have not been adopted in any form as they relate to relationships between principals and independent contractors.

*Clause 283* defines what is a 'process or proceedings under an industrial law or industrial instrument'. It provides that a process or proceeding under an industrial law or instrument includes: any conference conducted, or hearing held, by the court or commission; court proceedings under an industrial law or instrument; protected industrial action; a process under the Bill for employees to express their democratic views about proposed industrial action before it is engaged in; certifying, making amending or terminating a bargaining instrument; agreeing to cash out paid annual leave; making a request under the QES for a flexible working arrangement; dispute settlement for which provision is made by, or under, an industrial law or instrument; and any other process or proceedings under an industrial law or instrument.

This clause generally reflects provisions about the meaning of process or proceedings under an industrial law or industrial instrument that exists under section 341(2) of the FW Act, with variations to ensure relevance for Queensland's industrial relations system.

Clause 284 defines workplace right and this definition has three elements:

- clause 284(a) relates to entitlements, roles and responsibilities;
- clause 284(b) relates to processes and proceedings under industrial laws or instruments; and
- clause 284(c) relates to complaints or inquiries.

This clause generally reflects section 341(1) of the FW Act which provides a meaning of workplace right. It is possible that a workplace right may fall under more than one element and could be characterised as, for example, both a right to the benefit of an industrial law and also being able to participate in a process under an industrial law.

Clause 284(a) provides that a person has a workplace right if the person has a right to the benefit of, or has a role or responsibility under, an industrial law, industrial instrument or order made by an industrial body. This is intended to cover a broad range of entitlements, roles and responsibilities under industrial laws or instruments. For example, the right of an employee to be absent from work during parental leave.

Clause 284(b) provides that a person has a workplace right if the person is able to start or participate in a process or proceedings under an industrial law or instrument. Clause 283 provides a meaning of 'process or proceedings under an industrial law or industrial instrument' to assist users and clause 283(i) makes clear that these examples are non-exhaustive and do not limit the meaning of a process or proceedings.

Clause 284(c) provides that a person has a workplace right if the person is able to make a complaint or inquiry to an entity having the capacity under an industrial law to seek compliance with that law or an industrial instrument; or if the person is an employee, in relation to their employment. This would include where an employee makes a complaint to his or her employer.

Clause 285 prohibits a person taking adverse action against another person in relation to that person's workplace rights. This clause generally reflects section 340 (protection) of the FW Act.

Clause 285(1)(a) provides protection from adverse action because a person has a workplace right; and protection from adverse action because a person does (or does not) exercise a workplace right.

Clause 285(1)(b) also prohibits a person from taking adverse action against another person to prevent that person from exercising a workplace right. Clause 285(1) is a civil penalty provision.

Subclause (2) prohibits a person from taking adverse action against a second person because a third person exercise a workplace right for the second person's benefit, or for the benefit of a class of persons to which the second person belongs. This subclause is a civil penalty provision.



*Clause 286* at subclause (1) provides that a prospective employee is taken to have the workplace rights he or she would have if they were employed in the prospective employment by the prospective employer. This clause generally reflects section 341(3) of the FW Act.

Subclause (2) provides an exception so that a prospective employer does not contravene the workplace right protection if the prospective employer refuses to employ a prospective employee because the prospective employee would be entitled to a benefit from a bargaining instrument that the prospective employer is bound by because of the transfer of the whole or part of a business to the prospective employer from another employer.

This is intended to provide that, in a transfer of business situation, a prospective employer does not contravene the workplace right protection if they do not employ a prospective employee (an employee of the old employer) for a reason that includes the prospective employee's entitlement to a benefit from the bargaining instrument that would transfer with the prospective employee if he or she was to become an employee.

*Clause 287* prohibits any action (not limited to adverse action) taken with intent to coerce another person, or a third person, in relation to the exercise (or not) of their workplace rights. The prohibition applies irrespective of whether the action taken to coerce the other person is effective or not.

This subclause is a civil penalty provision. This clause generally reflects the coercion provision under section 343 of the FW Act.

*Clause 288* prohibits the exertion of undue influence or undue pressure on an employee who is deciding whether to modify or alter their conditions in certain circumstances. For example, where an employee is deciding (as an individual) whether or not to make an agreement with their employer under the QES to cash out an amount of annual leave.

This clause is a civil penalty provision. This clause generally reflects section 344 (undue influence or pressure) that exists under the FW Act.

*Clause 289* at subclause (1) prohibits a person from knowingly or recklessly making a false or misleading representation to another person about the workplace right, or the exercise or the effect of the exercise of a workplace right, of the other person or a third person. This subclause is a civil penalty provision.

Subclause (2) provides that this does not apply if the person to whom the representation was made would not be expected to rely on it.

This clause generally reflects section 345 (misrepresentation) that exists under the FW Act, with clarification that a person (person A) could make a misrepresentation about the rights of the person the misrepresentation is made to (person B) or about another person's rights (person C).

## Division 4 Industrial activities

*Clause 290* describes situations in which a person engages in industrial activity.

This clause generally reflects section 347 of the FW Act which provides a meaning for 'engages in industrial activity'.

*Clause 290(b)(vii)* provides that a person engages in industrial activity if the person does (or does not) seek to be represented by an industrial association. A note has been added to make clear that representation of a person by an industrial association includes a member, delegate or officer of an organisation registered under the Act making representations or advocating on the person's behalf.

*Clause 291* prohibits a person taking adverse action against another person because the other person is or is not involved with an industrial association, or has or has not engaged in industrial activity. This clause is a civil penalty provision and generally reflects section 346 of the FW Act.

*Clause 292* prohibits a person from organising, taking, or threatening to organise or take, any action against another person with intent to coerce them into engaging in industrial activity. This clause is a civil penalty provision. This clause generally reflects section 348 of the FW Act which protects persons from being coerced into engaging in industrial activities.

*Clause 293* at subclause (1) prohibits a person from knowingly or recklessly (i.e. not caring whether it is true or false) making a false or misleading statement about another person's (or a third person's) obligation to:

- engage in industrial activity; or
- disclose whether a person is or is not, or was or was not, an officer or member of an industrial association; or
- disclose whether a person is or is not engaging, or has or has not engaged, in industrial activity.

This subclause is a civil penalty provision.

However, this subclause does not apply if the person to whom the representation is made would not be expected to rely on it. This clause generally reflects section 349 (misrepresentations) that exists under the FW Act.

*Clause 294* at subclause (1) prohibits an employer from inducing an employee to take (or propose to take) membership action. This subclause is a civil penalty provision.

Subclause (2) provides that a person is described to have taken 'membership action' if their status as an officer or member of an industrial association changes. This clause generally reflects section 350 (inducements – membership action) under the FW Act, however section 350(2) has not been adopted in any form as it relates to membership action taken by independent contractors.

## Division 5 Other protections

*Clause 295* protects an employee or prospective employee from workplace discrimination. This protection prohibits an employer taking adverse action against an employee or prospective employee because of the person's sex, relationship status, pregnancy, parental status, breastfeeding, age, race, impairment, religious belief or religious activity, political belief or activity, trade union activity, lawful sexual activity, gender identity, sexuality, family responsibilities or association with, or in relation to, a person identified on the basis of any of these attributes. This subclause is a civil penalty provision.

However, this clause does not apply to action that is not unlawful under an anti-discrimination law (mentioned in subclause 3); or is taken because of the inherent requirements of the particular position concerned; or if the action is taken against a staff member of an institution in accordance with the doctrines, beliefs or teachings of a particular religion or creed is taken in good faith and to avoid injury to the religious susceptibilities of adherents of that religion or creed.

This clause generally reflects the intent of section 351 (discrimination) of the FW Act, however the list of attributes have been adopted from section 7 of the *Anti-Discrimination Act 1991* (Qld).

*Clause 296* provides specific protections for employees (or prospective employees) of employers who are experiencing domestic and family violence. This is a new workplace protection for Queensland, with no equivalent FW Act protection.

Subclause (1) prohibits an employer from taking adverse action against an employee, or prospective employee, because someone has committed or is committing domestic violence against the person. This subclause is a civil penalty provision.

It is not necessary for the person to have the benefit of, or be named as the aggrieved under a domestic violence order, a police protection order, or an application for a domestic violence order.

The definitions used in this clause have the meaning given by *the Domestic and Family Violence Protection Act 2012* (Qld).

*Clause 297* at subclause (1) prohibits an employer from dismissing an employee because the employee is temporarily absent from work because of a prescribed illness or injury.

*Clause 297(1)(b)* also provides that an employer cannot dismiss an employee because the employee is temporarily absent from work for certain reasons if the period of absence is reasonable. These reasons are where an employee is an SES member, member of a rural fire brigade or is an honorary ambulance officer and the absence is for the purpose of performing their relevant functions in emergency situations. This is intended to cover section 73(2)(a) of the IR Act, which provides that temporary absences from work for these reasons were invalid reasons for dismissal.

This subclause is a civil penalty provision and generally reflects section 352 (temporary absence – illness or injury) of the FW Act.

*Clause 298* at subclause (1) prohibits an industrial association, or an officer or member of an industrial association, from demanding a bargaining services fee from any person. This subclause is a civil penalty provision.

However, this clause does not apply if the bargaining service fee is payable to the industrial association under a contract for the provision of bargaining services. This clause generally reflects the intent of section 353 (bargaining services fees) under the FW Act.

*Clause 299* at subclause (1) prohibits a person from discriminating against an employer on the basis that employees of the employer are or are not covered by provisions of the QES, a type or kind of industrial instrument, or a bargaining instrument that does or does not cover a particular employee organisation. This subclause is a civil penalty provision.

This does not apply to protected industrial action. This clause generally reflects section 354 (coverage by particular instruments) of the FW Act.

*Clause 300* prevents a person from being coerced to make certain employment or management related decisions. This clause is a civil penalty provision.

This clause generally reflects section 355 (coercion – allocation of duties etc. to a particular person) of the FW Act to the extent it relates to employees (as private sector independent contractors are not covered by the general protections under this Bill).

*Clause 301* provides that a term of an industrial instrument, or an agreement or arrangement (whether written or unwritten) has no effect to the extent that it is an objectionable term. An objectionable term means a term that permits (or has the effect of permitting) a contravention of the general protections part or the payment of a bargaining services fee.

Clause 143 (content of modern awards) provides that the commission must ensure a modern award does not include an objectionable term. Similarly, clause 205 (objectionable terms) provides that the commission must refuse to grant an application for the certifying an agreement or the making a bargaining award if the commission considers a provision of a proposed bargaining instrument includes an objectionable term.

This clause generally reflects the intent of section 356 (objectionable terms) of the FW Act.

## **Division 6 Sham arrangements**

This division seeks to recognise that sham contracting occurs where an employer attempts to disguise or misrepresent an employment relationship as an independent contracting arrangement. The inclusion of this division provides an ability for an individual engaged as an independent contractor (but who is actually an employee of

a state or local government entity) to bring an action against the relevant state or local government entity employer.

*Clause 302* at subclause (1) prohibits an employer (as defined in Chapter 1, Part 2 of the Bill) who employs or proposes to employ an individual, from representing the contract of employment as a contract of services under which the individual performs, or would perform, work as an independent contractor. This subclause is a civil penalty provision.

However, this clause does not apply if the employer proves that when the representation was made the employer did not know and was not reckless as to whether the contract was a contract of employment rather than a contract of services. This clause generally reflects section 357 of the FW Act.

*Clause 303* prohibits an employer from dismissing, or threatening to dismiss, an individual who is their employee or performs particular work for the employer, in order to engage the individual as an independent contractor to perform substantially the same work under a contract for services. This clause is a civil penalty provision and generally reflects section 358 of the FW Act.

*Clause 304* prohibits an employer from knowingly making a false statement with the intention of persuading or influencing an employee to become an independent contractor to do the same, or substantially the same, work for the employer. This clause generally reflects section 359 of the FW Act.

## **Division 7 Ancillary rules**

*Clause 305* provides that for this part, a person takes action for a particular reason if the reasons for the action include that reason.

This clause generally reflects section 360 (multiple reasons for action) of the FW Act.

*Clause 306* provides if an application alleges that a person took (or is taking) action for a particular reason or intent that would contravene a general protections provision, then it is presumed that the action was (or is being) taken for that reason or with that intent, unless the person who an application for a contravention is made against proves otherwise. However, this clause does not apply in relation to orders for an interim injunction.

This clause reverses the onus of proof that civil matters usually require, so the respondent to an action under this part is required to establish (on the balance of probabilities) that the action was carried out for a reason or intent that did not contravene the relevant provisions of this part.

This reversal of the onus of proof exists because an employee cannot be in a position to discover the intent of their employer or relevant decision-maker. The reason why the action was taken is within the knowledge of the person who took the action. Without this reversal, it could prove disproportionately difficult for an applicant to establish the reason why adverse action has been taken against them by the respondent.

This type of presumption clause has historically existed in freedom of association protections. It generally reflects section 361 (reason for action to be presumed unless proved otherwise) of the FW Act. It also broadly covers the intent of section 122A (proof of the reason for, or the intention of, conduct not required) of the IR Act.

*Clause 307* provides a person cannot avoid being subject to the prohibitions in this part by getting another person to carry out the prohibited conduct. This clause generally reflects section 362 of the FW Act.

*Clause 308* provides what is taken to be action of an industrial association for this part. The clause also provides that if, for this part, it is necessary to establish the state of mind of an industrial association in relation to a particular action, it is enough to show that the action was taken by a person or a group mentioned in the clause, and that the person, or a person in the group, had that state of mind. This clause generally reflects section 363 of the FW Act.

## **Division 8 Compliance**

*Clause 309* provides that a person who alleges they have been dismissed or alleges a contravention of the general protections, may apply to the commission for the commission to deal with the dispute. An industrial organisation entitled to represent the industrial interests of the person may also make an application to the commission under this clause.

*Clause 310* at subclause (1) provides that for dismissal applications, an application for the commission to deal with a dispute must be made within 21 days of the dismissal taking effect. However, the commission has discretion to extend the timeframe for making an application if it is satisfied that there are exceptional circumstances. The clause also provides a list of the factors the commission is to take into account when determining if there are exceptional circumstances. This generally reflects section 366 of the FW Act.

Subclause (3) provides that for contraventions of this part other than dismissal (i.e. non-dismissal disputes), applications must be made within 6 years after the contravention occurred. This generally reflects section 544 (time limit on applications) of the FW Act which provides that for a contravention of a civil remedy provision, an application for orders can be made up to 6 years from the day the alleged contravention occurred. This includes non-dismissal general protections breaches.

*Clause 311* requires an application be accompanied by the fee prescribed by regulation.

*Clause 312* provides that the commission must hold a conference to attempt to settle an application before it arbitrates the application. The commission may by written notice require the parties to attend a conference at a specific time and place. The clause also requires the commission to issue a written certificate if it is satisfied that all reasonable attempts to settle a matter by conciliation have been, or are likely to be, unsuccessful. The clause further provides that the commission must advise

parties accordingly if it considers that the arbitration of the dispute would not have a reasonable prospect of success.

*Clause 313* provides that the commission may arbitrate (hear and decide) the application by making orders or dismissing the application (if the commission is satisfied all reasonable attempts to settle the matter by conciliation have been made, but have been unsuccessful).

Clauses 312 and 313 provide a similar model for the general protections application process to the process for unfair dismissal matters which are conciliated and arbitrated within the commission under chapter 8, part 2 of the Bill (which intend to cover chapter 3, part 2 unfair dismissals of the IR Act).

*Clause 314* provides the commission may make 1 or more of the orders outlined in subclause (1) on deciding an application. A person to whom an order applies must not contravene a term of the order. A contravention of a term of the order can give rise to a civil penalty.

This clause generally reflects provisions about orders on deciding application that already exist under the FW Act.

## **Part 2 Dismissals**

### **Division 1 Exclusions**

*Clause 315* at subclause (1) specifies those employees who are excluded from the application of clause 316 (when is a dismissal unfair). This includes a short term casual employee and the clause defines a 'short term casual employee' for this part.

Subclause (1)(e)(iii) also provides that clause 316 (when is a dismissal unfair) does not apply to an employee whose annual wages immediately before the dismissal are equal to or more than the amount of the high income threshold under the FW Act, section 333. This provision intends to ensure that the high income threshold for the Bill aligns, and maintains consistency with, the FW Act threshold, without requiring any other adjustment mechanism.

Subclause (4)(f)(iii) also aligns the high income threshold with the FW Act, as it provides that the division 3 requirements for dismissal do not apply to an employee whose annual wages immediately before the dismissal are equal to or more than the amount of the high income threshold under the FW Act, section 333.

This clause generally reflects the intent of section 72 of the IR Act.

### **Division 2 Unfair dismissals**

*Clause 316* provides that a dismissal is unfair if it is harsh, unjust or unreasonable.

This clause is different to section 73 of the IR Act, in that section 73 also provides a remedy for unfair dismissal where a dismissal is for an 'invalid reason'. Invalid

reasons include temporary absence due to illness or injury, certain freedom of association provisions, filing a complaint to a competent administrative authority, pregnancy-related reasons, discrimination and certain other grounds. As the general protections provisions (in relation to dismissal and non-dismissal) have been included at part 1 of this chapter, the invalid reason component is no longer necessary for unfair dismissals.

*Clause 317* provides the time limits within which an application for reinstatement may be lodged, and who may make the application. Reinstatement applications must be made within 21 days after the dismissal or a further period the commission allows.

The registrar may reject an application if the registrar considers that the dismissed employee is a person to whom clause 316 does not apply. When rejecting an application, the registrar must give written reasons for the rejection. Within 21 days of the registrar's notice, the applicant may inform the registrar in writing that they wish the application to proceed.

This generally reflects section 74 of the IR Act.

*Clause 318* provides that the commission must hold a conference to attempt to settle an application before it hears the application. The commission is required to issue a written certificate if it is satisfied that all reasonable steps to settle the matter by conciliation are, or are likely to be, unsuccessful. An application lapses if the applicant has not, within 6 months after receiving such a written certificate, taken any action in relation to the application or discontinued the application.

The parties may seek further conciliation, or settle the matter, at any time before an order is made by the commission for reinstatement, reemployment or compensation.

The president may delegate the functions of the commission under this clause to the registrar or a deputy registrar.

This clause generally reflects section 75 of the IR Act.

*Clause 319* provides that the commission may hear and decide the application once it considers that all reasonable steps have been taken, but have been unsuccessful, to settle an application by conciliation. The commission can hear and decide the application by can make an order (for reinstatement, reemployment or compensation) or dismiss the application.

This clause generally reflects section 76 of the IR Act.

*Clause 320* establishes the matters that the commission must consider when deciding whether a dismissal was harsh, unjust or unreasonable.

This clause generally reflects section 77 of the IR Act.

*Clause 321* provides that the commission may order a remedy of reinstatement or reemployment if it is satisfied that an employee was unfairly dismissed. This clause



also allows the commission to make other relevant orders and does not limit the commission's power to make interim or interlocutory orders.

This clause generally reflects sections 78 of the IR Act.

*Clause 322* provides that the commission may order that the employer pay the employee compensation, only where the commission considers that reinstatement or re-employment would be impracticable. The clause requires the commission to consider certain matters in determining the amount of compensation to be paid.

This clause generally reflects section 79 of the IR Act.

*Clause 323* provides further orders that the commission may make if the employer wilfully contravenes an order to reinstate or re-employ the employee.

The commission may make a further order for the employer to pay the employee an amount of not more than the monetary value of 50 penalty units and an amount for lost wages. The commission may also make further orders until the employer complies with an order made for reinstatement or reemployment or a further order made under this clause. Subclause (1)(a)(i) has not been included in the civil penalty part and associated schedule on the basis that it would not be effective to separate this specific provision for the payment of a penalty from the rest of this clause (which also allows other orders be made).

This clause generally reflects section 81 of the IR Act.

*Clause 324* provides that, if the commission orders the reinstatement or re-employment of an employee, the interruption to the employee's continuity of employment or service caused by the dismissal must not be counted when calculating the employee's entitlement to annual, sick, family or long service leave.

This clause generally reflects section 82 of the IR Act.

### **Division 3 Requirements for dismissal**

#### **Subdivision 1 Orders giving effect to article 12 of Termination of Employment Convention**

*Clause 325* provides that this subdivision applies to an application about severance allowance or other separation benefits. This clause generally reflects section 86 of the IR Act.

*Clause 326* provides that the commission may make an order about severance allowance or other separation benefits upon application. The clause specifies who may make an application, and that an employer must not contravene the commission's order. The clause provides remedies for the commission to apply should an employer contravene the commission's order. A definition of 'severance

allowance or other separation benefits' is provided. This clause generally reflects section 87 of the IR Act.

*Clause 327* provides that an application for an order must be made before or within 21 days after the dismissal or within a further period the commission allows. This clause generally reflects section 88 of the IR Act.

## **Subdivision 2 Order giving effect to article 13 of Termination of Employment Convention**

*Clause 328* provides that this subdivision applies if an employer decides to dismiss 15 or more employees for an economic, technological or structural reason. This clause generally reflects section 89 of the IR Act.

*Clause 329* requires the employer who wishes to dismiss 15 or more employees to provide notification to the Commonwealth department or agency whose primary responsibility is helping unemployed people find work and each employee organisation of which any of the employees is a member.

The clause specifies the details required to be included in the notice. A failure to give notice is not an offence. The commission is able to make certain orders and provide remedies where the employer fails to provide the required notice. This clause generally reflects section 90 of the IR Act.

*Clause 330* provides that the employer must give each employee organisation of which any of the employees is a member an opportunity to consult about the dismissals. Where the employer fails to consult as required, the commission may make orders it considers appropriate to put employees, and their organisations, in the same position as if the employer had consulted.

The clause does not apply if the employer could not reasonably be expected to have known (at the time of the decision) that the organisation's rules entitled it to represent the industrial interests of the dismissed employees. This clause generally reflects section 90A of the IR Act.

*Clause 331* provides a time limit within which an application under this subdivision must be made. This generally reflects section 90B of the IR Act.

## **Division 4 Stand-down of employees**

*Clause 332* provides for payment of certain public holidays for employees (other than casual employees) who are stood down in December and re-employed in January, and who have been employed for a continuous period of at least 2 weeks immediately before being stood down. A definition of "stand-down" is provided for this clause. This clause generally reflects section 97 of the IR Act.

*Clause 333* seeks to preserve section 98 of the IR Act and establishes the circumstances under which an employer may stand down an employee without pay

on a day, or for part of a day, when the employee cannot be usefully employed because a matter specified in the clause has happened (i.e. where something happened for which the employer is not responsible or has no control).

## **Division 5 General**

*Clause 334* seeks to preserve section 99 of the IR Act by providing that this part does not limit a right a person or organisation has to appeal against a dismissal or have an industrial instrument or order about a dismissal made.

*Clause 335* seeks to preserve section 100 of the IR Act by providing that an industrial instrument or order that is inconsistent with an order under this part does not apply to the extent that the inconsistency detrimentally affects the rights of the employees.

## **Chapter 9 Records and wages**

### **Part 1 Employers records**

#### **Division 1 Definitions**

*Clause 336* preserves section 363 of the IR Act and provides definitions of who the subdivision applies to. It does expand slightly to incorporate the definition of industrial instrument and non-industrial instrument employee previously located elsewhere within the section.

#### **Division 2 Authorised industrial officers**

*Clause 337* preserves section 364 of the IR Act and provides the conditions under which an authorised industrial officer may be appointed for the purposes of this Chapter.

*Clause 338* preserves section 365 of the IR Act and provides for actions that may be taken if the authorised industrial officer does not comply with the terms of the appointment.

#### **Division 3 Employers to keep certain records**

*Clause 339* preserves section 366 of the IR Act and provides the particulars that must be kept by an employer in relation to an industrial instrument employee, and provides for the duration and location that such record must be kept. It further allows for an employee to obtain a certificate with details of hours for long service leave purposes. The definition contained in the IR Act has been moved to the definitions clause in Division 1 of this part.

*Clause 340* preserves section 367 of the IR Act and provides the particulars that must be kept by an employer in relation to non- industrial instrument employees, and provides for the duration and location that such record must be kept. It further allows

for an employee to obtain a certificate with details of hours for long service leave purpose. The definition contained in the IR Act has been moved to the definitions clause in Division 1 of this part.

*Clause 341* preserves section 368 of the IR Act and provides that an employer must keep a register of employees with certain prescribed particulars and in a certain format. A provision relating to the form that the register must take has been omitted.

*Clause 342* preserves section 369 of the IR Act and provides that the required records must be kept in English.

*Clause 343* preserves section 370 of the IR Act and provides that an employer must provide an employee with a statement providing certain prescribed particulars for each payment made.

#### **Division 4 Power to inspect certain records**

*Clause 344* preserves section 371 of the IR Act and provides that an inspector may inspect a time and wages record and provides the parameters of such access and the consequences of failure to comply. The provision has been modified slightly to incorporate access to electronic records.

*Clause 345* preserves section 373A of the IR Act and provides that an authorised industrial officer may access records kept in relation to clothing outworkers in accordance with a later provision of the Act. A new provision which specifies that failure to comply with a notice given under the section is an offence with a penalty.

*Clause 346* preserves section 374 of the IR Act and provides that the registrar may inspect an employee register and index. This has been modified to include access to electronic copies.

*Clause 347* preserves section 375 of the IR Act and provides that an employee may inspect their own particulars in the time and wages records of the employer once per 12 months, unless otherwise consented to by the employer.

#### **Division 5 Entry and inspection of applicable documents – authorised officers**

##### **Subdivision 1 Right of entry**

*Clause 348* preserves section 372 of the IR Act and provides that an authorised industrial officer may access time and wages records for inspection subject to certain prescribed conditions. The provision also provides penalties and consequences for failure to comply with the requirements of the provision.

##### **Subdivision 2 Powers after entry**

*Clause 349* provides definitions for member employee and inspection of time and wages record in this part of the Bill.

*Clause 350* preserves section 373 of the IR Act and provides further conditions and particulars relating to an authorised industrial officer's access to a workplace for the purpose of inspecting records and interviewing persons in relation to the records or other matters.

*Clause 351* provides for written direction to an employer that time and wages record for an employee may not be available for inspection by an authorised officer. A person cannot be threatened or intimidated into making or not making a written direction.

*Clause 352* provides that an authorised officer may discuss matter with an employer or member employee or person eligible to become a member employee during working or non-working time.

*Clause 353* provides that an authorised officer must not obstruct an employer or an employee during working time.

*Clause 354* provides that a person must not act as an authorised officer unless the person holds a current authorisation.

## **Part 2 Wages and occupational superannuation**

### **Division 1 Interpretation**

*Clause 355* preserves section 376 of the IR Act and provides definitions used within the Division. The definition of "assignment" has been omitted and a new definition for "attachment notice" has been added.

*Clause 356* preserves section 377 of the IR Act and provides that service on a person also refers to service on a person's agent.

### **Division 2 Protection for wages**

*Clause 357* preserves section 378 of the IR Act and provides that subject to specific rights prescribed, the prime contractor must pay wages to employees on contracted work if a notice of attachment is served.

*Clause 358* preserves section 379 of the IR Act and provides that an assignment by an employer has no effect against wages payable to employees, however, will have effect if the assignment is to the employees for payment of wages. The definition of "assignment" has been added to this clause for clarity.

*Clause 359* preserves section 380 of the IR Act and provides certain conditions and requirements on an employer in relation to payment to employees of amounts paid or payable to them from a prime contractor.

*Clause 360* preserves section 381 of the IR Act and provides that an employee may serve a prime contractor with an attachment notice for wages subject to certain prescribed conditions.

*Clause 361* preserves section 382 of the IR Act and provides the requirements of a prime contractor who is served with an attachment notice, and the consequences of failure to comply. It also provides the mechanism by which an employee may withdraw an attachment notice.

*Clause 362* preserves section 383 of the IR Act and provides conditions for a prime contractor or clerk of the court in relation to wages for an employee who has an attachment notice and who obtains a judgement from a magistrate against an employer.

*Clause 363* preserves section 384 of the IR Act and provides conditions for the payment of wages held by a prime contractor or clerk of the court in accordance with attachment notices.

*Clause 364* preserves section 385 of the IR Act and provides the conditions under which an employee may sue the prime contractor, and also sets out the rights of offset held by the prime contractor.

*Clause 365* preserves section 386 of the IR Act and provides that no prejudice is to be suffered by the prime contractor if they had paid monies in accordance with an order before receiving notice of satisfaction of the order or cessation of the order.

*Clause 366* preserves section 387 of the IR Act and provides that an employee must sign a discharge for the amount paid in accordance with the order if requested by the person making the payment.

*Clause 367* preserves section 388 of the IR Act and provides an extension of the rights and entitlements of this part to employees of subcontractors if the employer has let the work to a subcontractor.

*Clause 368* preserves section 389 of the IR Act and provides the conditions and rights of a prime contractor if they have paid money to an employee under an attachment notice or order and the employer becomes bankrupt (individual) or winding up proceedings are commenced (corporation).

*Clause 369* preserves section 390 of the IR Act and provides that a magistrate may hear and determine a matter under this part in the absence of the person served, subject to conditions of service being met.

### **Division 3 Paying and recovering wages**

*Clause 370* preserves section 390A of the IR Act and provides definitions of fixed rate for the division.

*Clause 371* preserves section 391 of the IR Act and provides conditions about the payment of wages or other remuneration to an employee and regarding deductions from such wages.

*Clause 372* preserves section 392 of the IR Act and provides that an apprentice or trainee must be paid for supervised training time and the conditions and exclusions from such payment.

*Clause 373* preserves section 393 of the IR Act and provides the conditions for the payment of an employee's wages.

*Clause 374* preserves section 394 of the IR Act and provides that an employer may not dictate how an employee spends their wages nor take reprisal action in relation to how an employee spends their wages.

*Clause 375* preserves section 395 of the IR Act and provides the obligations and requirements for the payment of wages where the employer is unable to make payment to the employee and the employee's whereabouts are unknown.

*Clause 376* preserves section 396 of the IR Act and provides the conditions under which the employer may recover monies overpaid to an employee.

*Clause 377* preserves section 397 of the IR Act and provides the conditions under which an employer can make a deduction from an employee's wages when they cease to be employed.

*Clause 378* preserves section 398 of the IR Act and provides that a person under 18 may bring proceedings under the Act as if they were 18.

*Clause 379* preserves section 399 of the IR Act and provides that certain unpaid monies, as defined, may be recovered on application for an order for payment to a magistrate, subject to certain defined conditions. It also provides for the outcomes that a magistrate must or may make in relation to the application.

*Clause 380* preserves section 400 of the IR Act and provides a mechanism for the enforcement of orders made by a magistrate under the above section.

#### **Division 4 Recovery of wages for clothing outworkers**

*Clause 381* preserves section 400A of the IR Act and provides definitions for terms used in this division.

*Clause 382* preserves section 400B of the IR Act and provides conditions relating to when and how a clothing outworker may make a claim for unpaid wages and/or superannuation against a person they believe to be their apparent employer.

*Clause 383* preserves section 400C of the IR Act and provides that an apparent employer served with an unpaid wages claim is liable unless certain prescribed circumstances are met, and provides for the referral of the claim to another person in certain circumstances.

*Clause 384* preserves section 400D of the IR Act and provides that a referred employer is liable for payment of the unpaid wages and further provides conditions for payment of all or part of the claim

*Clause 385* preserves section 400E of the IR Act and provides that an application may be made by the apparent or referred employer to a magistrate or to the commission for an order for the employer of the outworker for reimbursement.

*Clause 386* preserves section 400F of the IR Act and provides that a claim can be made before the commission (if less than a monetary limit as prescribed) or otherwise to a magistrate for the recovery of unpaid wages and/or superannuation. It states who may make such application, and provides conditions or parameters in relation to the claim and the order.

*Clause 387* preserves section 400G of the IR Act and provides that certain actions or behaviours are offences in relation to this division.

*Clause 388* preserves section 400H of the IR Act and provides that actions taken under the provisions of this division do not preclude an aggrieved party from taking action under this Act; another Act or an industrial instrument.

*Clause 389* preserves section 400I of the IR Act and provides that the Governor in Council may make a code of practice in relation to clothing industry outworkers with a view to providing protection to these workers. It further provides for penalties for non-compliance with such a code and who may make a determination in relation to an alleged contravention.

## **Division 5 Wages in rural and mining industries**

*Clause 390* preserves section 401 of the IR Act and provides that wages are recoverable in the rural industry for work performed against a mortgagee in certain defined circumstances.

*Clause 391* preserves section 402 of the IR Act and provides conditions in relation to the enforcement of a warrant of distress issued to enforce an order for payment of an employee's wage.

*Clause 392* preserves section 403 of the IR Act and provides that the rights provided in the preceding clauses dealing with recovery of wages in the rural sector will also apply to the mining sector, with appropriate necessary changes.

*Clause 393* preserves section 404 of the IR Act and provides conditions in which wages are the first charge against property and in the winding-up of a company involved in mining.

## **Division 6 Occupational superannuation**

*Clause 394* preserves section 406 of the IR Act and provides conditions and obligations in relation to the payment of occupational superannuation contributions under a relevant industrial instrument. It also provides conditions for enforcement.

*Clause 395* preserves section 407 of the IR Act and provides the remedy that the commission may order if an employer has paid appropriate amounts in relation to occupational superannuation, but failed to pay these to an approved fund.

*Clause 396* preserves section 408 of the IR Act and provides who, and the conditions under which, recovery of unpaid contributions may be made by application to the magistrate for an order.



## **Chapter 10 Fees charged by private employment agents**

### **Part 1 Preliminary**

*Clause 397* defines various terms used in Chapter 10.

*Clause 398* defines when a person is a private employment agent in terms of the services provided by them. This includes offering to find work for a model or performer or providing other stipulated services for a model or performer.

Nominated activities are excluded for purposes of the meaning of private employment agent.

*Clause 399* provides the circumstances under which a private employment agent may also be a manager of a model or performer. To be a manager, the agent must provide at least four defined management services for the model or performer under a written agreement. An agent may be a manager whether or not any agreement between the agent and the model or performer states that the agent is the sole provider of management services.

### **Part 2 Requirements about payment of fees to private employment agents**

*Clause 400* prescribes that a private employment agent must not, in any way, demand or receive from a person seeking work, a fee for finding, or attempting to find, the person work (a finder's fee). Exceptions are provided for an agent who finds work for a model or performer and for an agent who is a manager of a model or performer.

A private employment agent may demand or receive a finder's fee from a model or performer only where the agent provides particulars prescribed by regulation in writing, the fee is not more than that prescribed by regulation and the amount payable to the model or performer, after payment of any fee, is at least the amount payable under an applicable industrial instrument.

A private employment agent who is also a manager of a model or performer may demand or receive a fee only in accordance with a written agreement with the model or performer. Any fee so received is in lieu of the prescribed fee that may be charged as an agent.

### **Part 3 Recovery of fees**

#### **Division 1 Orders for repayment by magistrates**

*Clause 401* provides that a magistrate who hears and decides a complaint for an offence regarding fees must order a defendant found guilty to repay to the work seeker any fee found, on the balance of probabilities, to have been received in contravention of the legislation. The magistrate may also, if the defendant is found not guilty, order the defendant to repay to the work seeker any fee found, on the balance of probabilities, to have been received from a person seeking work.

*Clause 402* provides for an application to be made to a magistrate for an order for the repayment of a fee received by a private employment agent in contravention of the fee charging restrictions.

An application may be made by the claimant, an employee organisation on behalf of a member who is a claimant, another person authorised to act for the claimant or an inspector.

The application must be made within 6 years after the claimant gave the agent the fee.

## **Division 2 Orders for repayment on application to commission**

*Clause 403* provides for an application to be made to the commission for an order for the repayment of a fee received by a private employment agent in contravention of the fee charging restrictions. However, the commission may only deal with the matter if the total fee claimed is \$20000 or less.

Provisions relating to who may make an application and the time period in which an application must be made are the same as for an application to a magistrate.

*Clause 404* provides that a presidential member of the commission may transfer an application to the commission to a magistrate for hearing under certain circumstances.

*Clause 405* provides that the commission or magistrate who hears an application made to the commission, must order the agent to repay to the claimant the amount the commission or magistrate finds to be the fee the agent has received from the claimant in contravention of the fee charging restrictions.

## **Part 4 Enforcement**

*Clause 406* provides avenues for the enforcement of an order made by a magistrate on a private employment agent for the repayment of fees received in contravention of the fee charging restrictions or for certain costs.

## **Chapter 11 Industrial tribunals and registry**

### **Part 1 Industrial court of Queensland**

#### **Division 1 Preliminary**

*Clause 407* preserves section 242 of the IR Act to provide for the continued existence of the Industrial Court of Queensland (the Court) as a superior court of record.

*Clause 408* preserves section 242A of the IR Act that provides that the Court has a seal which attracts judicial notice.

*Clause 409* preserves section 242C of the IR Act and sets out the membership of the Court.

*Clause 410* preserves section 247 of the IR Act and provides that the court can be constituted by the president, vice-president or a deputy president sitting alone.

*Clause 411* preserves section 242B of the IR Act and provides that the court is a part of the department for financial purposes.

## **Division 2 Members**

### **Subdivision 1 President**

*Clause 412* sets out the functions of the president of the court.

*Clause 413* preserves section 243 of the IR Act and sets out how the president of the court is appointed.

*Clause 414* preserves section 244 of the IR Act and sets out the effect of the appointment of the president on their tenure as a Supreme Court judge and the interaction between the appointment and tenure.

*Clause 415* preserves section 245 of the IR Act that establishes the tenure of the president and provides a mechanism for matters being heard at the expiry of tenure.

*Clause 416* preserves section 246 that allows the Governor in Council to appoint an acting president where the President can temporarily not perform the functions of office.

### **Subdivision 2 Vice-president**

*Clause 417* preserves section 242F of the IR Act and provides the functions of the vice-president.

*Clause 418* preserves section 246A of the IR Act and sets out the criteria and process for appointment as vice-president.

*Clause 419* preserves section 246B of the IR Act and establishes the tenure of the vice president and provides a mechanism for matters being heard at the expiry of tenure.

*Clause 420* preserves section 246BA of the IR Act that allows the Governor in Council to appoint an acting vice president where the vice president can temporarily not perform the functions of office.

### **Subdivision 3 Deputy presidents**

*Clause 421* preserves section 246C of the IR Act and sets out criteria and process for appointment as deputy president.

*Clause 422* preserves section 246D of the IR Act and allows the Governor in Council to appoint an acting deputy president where the deputy president can temporarily not perform the functions of office

### **Subdivision 4 Miscellaneous**

*Clause 423* preserves section 246E of the IR Act and provides that Vice-President or a Deputy President may be removed from office for mental or physical incapacity or misbehaviour.

### **Division 3 Jurisdiction and powers of court**

*Clause 424* preserves section 248 of the IR Act and sets out the court's jurisdiction.

*Clause 425* sets out limits on the jurisdiction of the court, including where a matter has been, or is being, appealed under the *Public Service Act 2008*. That is, where an appeal under the *Public Service Act 2008* is before, or has been before, the commission it is not a decision appealable under this Bill.

*Clause 426* preserves section 249 of the IR Act and provides that an interpretation by the court of this Act, an industrial instrument or permit binds the commission, a magistrate and organisations and persons subject to this Bill or bound by the instrument or permit.

*Clause 427* preserves section 250 of the IR Act that allows the court to refuse to proceed in certain circumstances.

*Clause 428* preserves section 251 of the IR Act and provides jurisdiction for the court for contempt of court, and provides how such matters are to proceed.

## **Part 2 Industrial relations commission**

### **Division 1 Preliminary**

*Clause 429* preserves section 255 of the IR Act that establishes the continuation of the Queensland Industrial Relations Commission (the commission) as a court of record.

*Clause 430* preserves section 255 of the IR Act that provides that the commission has a seal which attracts judicial notice.

*Clause 431* preserves section 255B of the IR Act and provides that the court is a part of the department for funding purposes.

*Clause 432* preserves section 256 of the IR Act that sets out the composition of the commission and the full bench of the commission, including that the composition of the full bench must include a presidential member when hearing an appeal, or an application for deregistration of a registered organisation.

*Clause 433* preserves section 272 of the IR Act and provides that a decision of the full bench is made by a majority of its members.

## **Division 2 Members**

### **Subdivision 1 President**

*Clause 434* preserves section 257 of the IR Act and establishes the president of the court as president of the commission without further salary or allowance.

*Clause 435* preserves section 264 of the IR Act that sets out powers of the president regarding responsibility for the administrative functions for the commission.

*Clause 436* provides power for the president to develop performance measures and a code of conduct to apply to members of the commission and the deputy and vice presidents.

*Clause 437* preserves section 269 of the IR Act that allows the president to give functions to a deputy commissioner after considering certain matters.

*Clause 438* preserves sections 270 and 271 of the IR Act that provide for the president to transfer a matter to the same or different member or members.

### **Subdivision 2 Vice-president**

*Clause 439* preserves section 258 of the IR Act and provides that the vice-president of the court is also the vice-president of the commission without additional salary or allowances.

### **Sub-division 3 Deputy presidents and commissioners**

*Clause 440* preserves section 258AA of the IR Act and provides that the deputy president of the court is also the deputy president of the commission without additional salary or allowances.

*Clause 441* preserves section 258A and provides for appointment as a deputy president of the commission by the Governor in Council and the qualifications necessary for, and conditions of appointment.

*Clause 442* preserves section 259 of the IR Act that provides for appointment as a commissioner by the Governor in Council and the qualifications necessary for, and conditions of appointment. This clause provides a definition of relevant entity for this clause.

*Clause 443* preserves section 260 of the IR Act that establishes the tenure of the vice president and provides a mechanism for matters being heard at the expiry of the tenure.

*Clause 444* preserves section 261 of the IR Act that provides that if deputy president or commissioner can not perform the functions of office temporarily, the Governor in Council may appoint a person to act as deputy president or commissioner.

*Clause 445* preserves section 262 of the IR Act that sets out restrictions on persons who may be appointed deputy president. The restrictions operate to preserve the independence of the office of deputy president and commissioner.

*Clause 446* preserves section 263 of the IR Act that allows the Governor to remove a deputy president or commissioner from office on an address of the Legislative Assembly for mental or physical incapacity or misbehaviour.

## **Division 3 The commission**

### **Subdivision 1 Functions**

*Clause 447* preserves section 273 of the IR Act that sets out the functions of the commission and includes taking measures to prevent disputes.

### **Subdivision 2 Jurisdiction**

*Clause 448* preserves section 265 of the IR Act and sets out the jurisdiction of the commission.

*Clause 449* sets out limits on the jurisdiction of the commission, including where a matter has been, or is being, appealed under the *Public Service Act 2008*.

*Clause 450* preserves section 267 of the IR Act and provides exclusive jurisdiction to the commission.

### **Subdivision 3 Powers**

*Clause 451* preserves section 274 of the IR Act and sets out the general powers of the commission.

*Clause 452* preserves section 325 of the IR Act and provides when the commission may exercise its powers.

*Clause 453* preserves section 286 of the IR Act and provides that this chapter of the bill does not limit the powers of the commission under this or another Act.

*Clause 454* preserves section 266 of the IR Act and prevents the commission from allowing discrimination in employment in exercising its powers.

*Clause 455* preserves section 268 of the IR Act and provides that the commission may refuse to hear and decide a matter in certain circumstances.

*Clause 456* provides a discretionary power to the commission such that the commission may stay or dismiss an application or complaint where the acts or

omissions subject of the application or complaint have been considered or are being considered by the commission in another proceeding. This clause is of similar effect to section 140 of *Anti-discrimination Act 1991* (Qld).

## **Subdivision 4 Miscellaneous**

*Clause 457* provides for the appointment of associates under this Bill and not under the *Public Service Act 2008*.

## **Division 4 Particular powers of the commission**

### **Subdivision 1 General rulings**

*Clause 458* preserves section 287 of the IR Act and provides powers for the full bench of the commission to make general rulings.

*Clause 459* sets out the requirements for general rulings including application, publication and term.

*Clause 460* sets out relationship between industrial instruments and a general ruling and empowers the registrar to amend an industrial instrument subject to a general ruling.

### **Subdivision 2 Statements of policy**

*Clause 461* preserves section 288 of the IR Act and provides that the full bench may make a statement of policy.

*Clause 462* sets out the effects of a statement of policy by the commission, including that a statement of policy may be inserted in an award.

### **Subdivision 3 Declarations about industrial matters**

*Clause 463* preserves section 274A of the IR Act that provides power to the commission to make a declaration on application.

*Clause 464* preserves section 274A that sets out who can apply to the commission for a declaration.

### **Subdivision 4 Declaring persons to be employees or employers**

*Clause 465* preserves section 275 of the IR Act that provides that the full bench can, on application, make declarations that a class of persons are employees, and that a person is an employer. This clause sets out the considerations the full bench make take, and provides a definition for this clause of Contract and industrial instrument.

*Clause 466* preserves section 275 of the IR Act that sets out who can make application for a declaration.

## **Subdivision 5 Interpretation of industrial instruments**

*Clause 467* preserves section 284 of the IR Act and gives power to the commission to give an interpretation of an industrial instrument (other than a certified agreement or bargaining award), and who may apply for an interpretation.

*Clause 468* sets out who may apply for a determination.

## **Subdivision 6 Assistance by commission**

*Clause 469* provides that the commission may provide assistance to parties who have requested in writing for assistance in negotiating or resolving a matter relevant to the industrial cause (a facilitation request) whether or not the matter is within the jurisdiction of the commission.

*Clause 470* preserves section 273A of the IR Act and allows the commission to exercise dispute resolution functions where parties to a dispute agree. The clause sets out the powers to be exercised by the commission in dispute resolution. A referral agreement can include an industrial instrument.

## **Subdivision 7 Amending or voiding contracts**

*Clause 471* preserves section 276 of the IR Act and provides power to the commission in certain circumstances to amend or declare void certain contracts where the contract is unfair. The clause provides a definition of accident pay provision, contract, injury, unfair contract and worker for use in this section.

*Clause 472* preserves section 276 of the IR Act and provides who may make an application. The high income threshold in the *Fair Work Act 2009* (Cth) applies. This amount is called up as it is applied federally, and is well known, as a cut off to access the Fair Work Commission on certain matters.

## **Subdivision 8 Injunctions**

*Clause 473* preserves section 277 of the IR Act and provides that the commission may issue an injunction, who may apply, who can be bound and that a person must comply with an injunction of the commission where they have received notice of it. The onus of proof for the defence to an allegation of contravention of an injunction by a registered organisation is reversed. The matters to be proved by the organisation would all be within the knowledge of the organisation. The clause provides a definition of organisation for use in this section that includes a branch of the organisation.

*Clause 474* provides for who may apply for an injunction.



## **Subdivision 9 Recovery of unpaid wages**

*Clause 475* preserves section 278 of the IR Act and gives power to the commission to order payment of wages, superannuation contributions and other matters on application. The clause gives power to a presidential member to remit the matter to a magistrate if satisfied of certain matters.

*Clause 476* preserves section 278 of the IR Act that limits applications to amounts under \$50,000.

*Clause 477* provides for the orders that must, and may, be made on application.

## **Subdivision 10 Orders about the right to represent a group of employees**

*Clause 478* provides definition of association and right to represent for use in this subdivision.

*Clause 479* preserves section 279 (1) of the IR Act and gives power to the full bench to make orders regarding a demarcation dispute.

*Clause 480* sets out who may make application for orders about representation.

*Clause 481* provides that the full bench may only make orders if certain circumstances exist.

*Clause 482* outlines matters which must be considered by the full bench in making an order.

*Clause 483* provides that the full bench may, when making an order, make an ancillary order and place conditions on any order made and other procedural matters.

## **Subdivision 11 Reopening proceedings**

*Clause 484* preserves section 280 of the IR Act and provides power to the full bench and the commission to reopen proceedings on application and sets out what the full bench or commission may do upon reopening proceedings.

*Clause 485* sets out who may apply to reopen proceedings.

## **Subdivision 12 Referring matters to full bench or court**

*Clause 486* preserves section 281 of the IR Act and allows the commission, with the approval of the President, to refer a matter to the full bench if the matter is of substantial industrial significance.

*Clause 487* allows the commission to refer a question of law to the court for the court's opinion. This clause is similar in effect to section 282 of the IR Act.

### **Subdivision 13 Entry and inspection**

*Clause 488* preserves section 283 of the IR Act and allows a member of the commission, an officer of the commission or another person with written authority of a member of the commission to enter a workplace in certain circumstances and exercise certain powers. The right to enter is necessary to allow the commission to investigate matters whether before it or not, and may only be exercised during working hours. The clause makes it an offence for a person to do certain things if the power in this clause is being exercised and provides a definition of workplace for this clause.

### **Subdivision 14 Secret ballots**

*Clause 489* preserves section 285 of the IR Act that allows the commission to direct that a secret ballot be conducted.

*Clause 490* reinstates section 664A from the IR Act prior to passage of *Industrial Relations (Fair Work Harmonisation) and Other Legislation Amendment Act 2012* and provides definitions for prevent, resist or obstruct, threaten or intimidate and vote for this clause.

## **Division 5 Arrangements with other authorities**

### **Subdivision 1 Member may also be a member of Australian commission**

*Clause 491* preserves section 305 of the IR Act and provides that a member of the commission may also hold appointment to the Australian (Fair Work) Commission.

### **Subdivision 2 Dual commissioners**

*Clause 492* preserves section 306 of the IR Act and provides that the Governor in Council may appoint a member of the Australian commission to be a commissioner or Deputy President (a dual commissioner).

*Clause 493* preserves section 307 of the IR Act and provides the powers of a dual commissioner.

### **Subdivision 3 References to Commonwealth official**

*Clause 494* preserves section 308 of the IR Act and allows the President to request a the president of the Commonwealth (currently the Fair Work Commission) commission to nominate a member of the Commonwealth (currently the Fair Work Commission) commission to deal with an industrial matter under this Bill.

## **Subdivision 4 Conferences and joint sessions with industrial authorities**

*Clause 495* preserves section 309 of the IR Act and allows the President to direct that a joint conference be held with an industrial authority in certain circumstances.

*Clause 496* preserves section 310 of the IR Act and sets out when the President may convene a joint session with an industrial authority and sets out what the President may do in a joint session.

*Clause 497* preserves section 311 of the IR Act and provides for similar matters before the full bench.

*Clause 498* preserves section 311A of the IR Act and allows the full bench to adopt the ruling of any joint session, or issue a general ruling.

*Clause 499* preserves section 312 of the IR Act and provides that a member participating in a joint session has the powers of the commission and must perform the functions of the commission.

*Clause 500* preserves section 313 of the IR Act and allows the President to decide to not deal with an industrial matter by joint sitting, either before or during the joint sitting.

## **Subdivision 5 Other functions etc. and arrangements**

*Clause 501* preserves section 314 of the IR Act and vests power in the commission bestowed by another jurisdiction.

*Clause 502* preserves section 315 of the IR Act and allows a Queensland, or Commonwealth, public servant to perform functions under this Bill.

## **Part 3 Industrial Magistrates Court**

### **Division 1 Preliminary**

*Clause 503* preserves section 289 of the IR Act and continues the Industrial Magistrates Court as a court of record.

*Clause 504* preserves section 291 of the IR Act and provides that the Industrial Magistrates Court is constituted by a magistrate sitting alone.

### **Division 2 Industrial magistrates**

*Clause 505* preserves section 290 of the IR Act and provides that a magistrate and an acting magistrate is an industrial magistrate.

## **Division 3 Jurisdiction**

*Clause 506* preserves section 292 of the IR Act and sets out the jurisdiction of a magistrate and provides a definition of fee for this clause.

*Clause 507* preserves section 293 of the IR Act and confers exclusive jurisdiction on a magistrate, and also provides exceptions to the exclusive jurisdiction and provides a definition of fee for this clause.

## **Part 4 Industrial Registry**

### **Division 1 Preliminary**

*Clause 508* preserves section 294 of the IR Act and establishes the industrial registry.

*Clause 509* preserves section 296 of the IR Act and provides that the registry has an official seal, of which judicial notice must be taken.

*Clause 510* provides that the registrar must manage and administer the registry.

### **Division 2 Functions**

*Clause 511* preserves section 295 of the IR Act and sets out the functions of the registry.

*Clause 512* preserves section 304 of the IR Act and provides that the registrar, deputy registrar and other staff of the registry are officers of the court and commission.

### **Division 3 Industrial registrar and staff**

#### **Subdivision 1 Registrar**

*Clause 513* preserves section 299 of the IR Act and sets out the functions and powers of the registrar.

*Clause 514* sets out the appointment process, and terms and conditions, for the position of registrar. This clause is of similar effect to section 297 of the IR Act.

*Clause 515* preserves the registrar's position and some entitlements in the public service if a public servant at the time of appointment.

*Clause 516* allows the Minister to grant a leave of absence to the registrar.

*Clause 517* allows the registrar to resign by written notice to the Minister.

*Clause 518* preserves section 298 of the IR Act and sets out when the Governor in Council must, and also may, end the registrar's appointment.

*Clause 519* preserves section 302 of the IR Act and allows the Governor in Council to appoint an acting registrar.

*Clause 520* preserves section 301 of the IR Act and allows the registrar to delegate powers to certain persons.

## **Subdivision 2 Deputy registrar and staff of registry**

*Clause 521* preserves section 300 of the IR Act and provides that the deputy registrar helps the registrar in performing their functions.

*Clause 522* preserves section 303 of the IR Act and provides that staff of the registry including the deputy registrar are appointed under the *Public Service Act 2008*.

## **Division 4 QIRC website**

*Clause 523* preserves section 304A of the IR Act and provides that the QIRC website is to be used by the registrar for certain functions.

*Clause 524* preserves section 304B of the IR Act and provides for when a matter is published in the QIRC website, and how a matter can be published if the website is unavailable.

## **Part 5 Proceedings**

### **Division 1 Definitions**

*Clause 525* preserves section 316 of the IR Act and provides definitions of administer, exercising and take a statutory declaration for this part of the Bill.

### **Division 2 Starting proceedings and service of process**

*Clause 526* preserves section 684 of the IR Act and sets out when a registered organisation may start proceedings in its registered name.

*Clause 527* sets out who may start proceedings, including the commission on its own initiative. This clause is of similar effect to section 317 of the IR Act.

*Clause 528* preserves section 318 of the IR Act and sets out how service of proceedings may be effected.

### **Division 3 Conduct of proceedings**

*Clause 529* preserves section 319 of the IR Act to reflect that a party to proceedings may be represented by an agent appointed in writing, or an officer of an organisation if the person is a member of the organisation.

*Clause 530* provides that a party may only be legally represented in certain circumstances including for prosecution of an offence under this Bill. It further

provides that a party cannot be legally represented in certain circumstances including an arbitration hearing for a certified agreement. It further provides that leave of the industrial tribunal is required in other circumstances and when such leave should be given.

*Clause 531* preserves section 320 of the IR Act and provides guidance of how decisions are to be made in the commission and Industrial Magistrates Court including that the rules of evidence do not apply and that the decision is to be guided by good conscience.

*Clause 532* preserves section 321 of the IR Act and provides that witnesses are competent and can be compelled to give evidence in proceedings.

*Clause 533* preserves section 322 of the IR Act and provides that the Minister or State Peak Council may intervene in proceedings.

*Clause 534* preserves section 323 of the IR Act and provides that the registrar may adjourn proceedings when a member of the commission cannot attend at the appointed time.

*Clause 535* preserves section 324 of the IR Act and provides that an employee of the State must provide information to a court or commission.

## **Division 4 Powers**

*Clause 536* preserves section 326 of the IR Act and provides for court, commission or registrar to, in interlocutory proceedings, make orders or give directions in relation to the proceedings.

*Clause 537* preserves section 327 of the IR Act and provides the commission, by order, to direct the registrar or appropriately qualified person to conduct an inquiry.

*Clause 538* preserves section 328 of the IR Act and provides the court, commission, registrar or persons directed by the commission to take evidence on oath or statutory declaration.

*Clause 539* preserves section 329 of the IR Act and lists powers the court, commission or registrar may exercise in relation to jurisdiction.

*Clause 540* preserves section 330 of the IR Act and provides the ability for the commission to obtain extra information and protect confidentiality.

## **Division 5 Decisions and enforcement**

*Clause 541* preserves section 331 of the IR Act and provides the court and commission with to make a decision, dismiss a matter and make an order for payment.

*Clause 542* preserves section 332 of the IR Act and provides the court or commission with the ability to reserve its decision.

*Clause 543* preserves section 333 of the IR Act and provides that the commission must issue its written decision in plain English and structured in a way for easy understanding. This is in keeping with the layperson status of the commission.

*Clause 544* reflects section 334 of the IR Act and provides that the court or commission makes decisions that are enforced and penalties are imposed in the same way a Supreme Court judgement is enforced. The clause is updated to include 'court officers' in the officers of the court and commission in the enforcement of a decision or imposing functions or conferring powers.

*Clause 545* preserves section 535 of the IR Act and provides that a person must bear their own costs in relation to a proceeding unless the court or commission has ordered costs to another party.

*Clause 546* preserves section 336 of the IR Act and provides that the registrar may issue a certificate under the seal of the court or commission for the amount to be paid.

*Clause 547* moves section 685 of the IR Act into this division and specifies that the recovery of a penalty imposed on or an amount ordered to be paid by an organisation can be issued or executed against the organisations' property.

## **Division 6 Proceedings under the Anti-discrimination Act 1991**

*Clause 548* provides for costs provisions.

## **Division 7 Protections and immunities**

*Clause 549* preserves section 337 of the IR Act and provides that a member of the court, commission or a magistrate has protection and immunities of a Supreme Court judge. Also includes the registrar in proceedings for defamation, a defence of absolute privilege for publication made in good faith.

## **Division 8 Rules and practice**

*Clause 550* preserves section 337A of the IR Act and provides for the establishment and lists the functions of a rules committee.

*Clause 551* preserves section 338 of the IR Act and provides that the Governor in Council may make rules with the consent of the rules committee. The section also lists the matters permitted in the Rules.

*Clause 552* preserves section 339 of the IR Act and provides that subject to Act and rules the practice and procedure of the court, commission and Industrial Magistrates Court or registrar is their responsibility.

## **Division 9 Exercise of powers and application of procedures**

*Clause 553* moves section 677 of the IR Act into this division and provides that the powers and procedures of the court, commission or Industrial Magistrates Court apply unless a contrary intention exists.

## **Part 6 Appeals**

### **Division 1 Appeals to Court of Appeal**

*Clause 554* provides that person dissatisfied with a decision of the court may appeal to the Court of Appeal. Where the appeal is from a decision of the court, the grounds of appeal are limited to error of law, or excess or want of jurisdiction. Further a person aggrieved by a decision of the full bench of which the president was a member may appeal to the Court of Appeal. Where the appeal is from a decision of a full bench, the grounds of appeal may be any ground including mistake of fact with leave of the Court of Appeal.

*Clause 555* provides what the Court of Appeal may do on an appeal.

### **Division 2 Appeals to court**

*Clause 556* provides that a person aggrieved by a decision of an Industrial Magistrate may appeal to the court.

*Clause 557* provides that a person aggrieved by a decision of the commission may appeal the decision to the court. The grounds of appeal may be error of law or excess or want of jurisdiction without leave, or any other ground including mistake of fact with leave. A decision of the full bench may not be appealed where it is an arbitration of a certified agreement.

*Clause 558* sets out what the court may do on an appeal.

*Clause 559* provides that the court must be constituted by the President when hearing an appeal, and that the vice president and deputy president may hear and decide interlocutory proceedings.

### **Division 3 Appeals to full bench**

*Clause 560* provides that a person aggrieved by a decision of the registrar may appeal to the full bench on the grounds of appeal may be error of law or excess or want of jurisdiction without leave, or any other ground including mistake of fact with leave.

*Clause 561* sets out what the full bench may do on an appeal.



## **Division 4 Appeals to commission**

*Clause 562* provides that an employee stood down by their employer may appeal the stand down to the commission and sets out what the commission may do on an appeal.

## **Division 5 General**

*Clause 563* preserves section 345 of the IR Act and provides a definition of industrial tribunal for this division.

*Clause 564* preserves section 346 of the IR Act and provides that an appeal against a decision must be made within 21 days.

*Clause 565* provides that leave to appeal must be given if it is in the public interest to do so.

*Clause 566* preserves section 347 of the IR Act and provides that a decision being appealed can be wholly or partly stayed.

*Clause 567* preserves section 348 of the IR Act and sets out the nature of appeal.

## **Part 7 Offence proceedings**

*Clause 568* preserves section 683 (6) & (7) of the IR Act and provides that proceedings must commence within a specific time frame after the offence was committed or comes to the complainant's knowledge.

*Clause 569* preserves section 683 of the IR Act and provides that a court or magistrate can hear and decide proceedings for an offence, and when and where the proceedings may be held.

## **Part 8 Civil penalties**

### **Division 1 Preliminary**

*Clause 570* sets out the definitions for this part.

*Clause 571* at subclause (1) makes clear that the contravention of a civil penalty provision under this Bill is not an offence.

Subclause (2) provides that a person involved in the contravention of a civil penalty provision is taken to have contravened the provision.

Subclause (3) sets out an exhaustive list of when a person is 'involved in' a contravention of a civil penalty provision.

## **Division 2 Applications for civil penalty orders**

*Clause 572* provides that for each civil penalty provision (refer to schedule 3 Civil penalties) the applicants referred to in column 2 of the schedule may apply to the relevant industrial tribunal (in the column 3) for orders in relation to a contravention or alleged contravention of the provision. The maximum penalty amount that can be imposed on an individual in relation to an order is provided in column 4.

*Clause 573* provides that an application must be made within 6 years after the day on which the contravention of the civil penalty provision occurred or is alleged to have occurred.

## **Division 3 Making and effect of civil penalty orders**

*Clause 574* at subclause (1) provides that the relevant industrial tribunal for a civil penalty provision may, on application, order a person to pay a civil penalty in relation to the contravention of the civil penalty provision (if satisfied the person has contravened the provision).

Subclause (2) specifies that an order made under subclause (1) is a 'civil penalty order'.

Subclause (3) makes clear that the relevant industrial tribunal may make a civil penalty order in addition to one or more orders that the relevant industrial tribunal may make under another provision of the Bill, unless otherwise provided. The intent is that a relevant tribunal is not restricted to the making of only one order in respect of a contravention of a civil penalty provision and other orders and remedies can be provided (where the relevant tribunal has the power and considers it appropriate to do so).

*Clause 575* provides how the amount of a civil penalty is to be determined and specifies the maximum penalty amount that may be imposed on an individual or a body corporate. The maximum penalty that can be imposed on a body corporate is five times the maximum amount of penalty units that can be imposed on an individual.

*Clause 576* provides who a penalty can be paid to. The relevant industrial tribunal may order that a civil penalty (or part of a civil penalty) can be paid to the State, a particular organisation or a particular person.

*Clause 577* provides that a penalty payable under a civil penalty order may be recovered as a debt due to the person to whom that penalty is payable.

*Clause 578* seeks to provide that where a civil penalty order is made against a person (ordering the person to pay a penalty) in relation to certain conduct, the person will not be liable to pay a civil penalty under another statute which relates to the same conduct that constituted the contravention of the civil remedy provision under this Bill.

## **Part 9 Evidentiary Matters**

*Clause 579* preserves section 678 of the IR Act and specifies that inspector authority and relevant documents, organisation rules and officers register, limits of district or part of the State or road, and judicial notice of the existence of industrial action are accepted as evidence. This clause is similar in effect to judicial notice provisions in the *Evidence Act 1977*.

*Clause 580* preserves section 679 of the IR Act and provides that records that related to person's trade secrets or financial position cannot be inspected by anyone other than a member of the court or commission or an expert witness.

*Clause 581* preserves section 680 of the IR Act and lists the types of records from a court or commission that are admissible in proceedings as evidence.

*Clause 582* preserves section 681 of the IR Act and provides for proof of certain facts by statement.

*Clause 583* preserves section 682 of the IR Act and provides for evidentiary value of certificate of trustee of superannuation funds.

## **Part 10 Miscellaneous**

### **Division 1 General appointment provisions for members of court and commission**

*Clause 584* provides for definition for a relevant member of the court or commission other than the president.

*Clause 585* preserves section 242D of the IR Act and provides for the appointment of members on a full-time or part-time basis.

*Clause 586* provides for the remuneration of members for functions performed on a part-time basis as well as when a person is acting.

*Clause 587* provides for benefits under the Pensions Act for a relevant member.

*Clause 588* provides for part time members benefits under the Pensions Act and formulas for calculating benefits.

*Clause 589* provides for superannuation for member who was first appointed under the IR Act and provides a definition for scheme under the *Superannuation (State Public Sector) Act 1990*.

*Clause 590* provides for leave under the Pensions Act for a relevant member.

*Clause 591* provides for other leave granted to the president by the Chief Justice other than leave mentioned in the Pensions Act. It also provides that the president may grant leave to any other member.

*Clause 592* provides leave for part-time members.

*Clause 593* provides for other terms and conditions as decided by the Governor in Council for a member of the court or commission.

## **Division 2 President's annual report**

*Clause 594* preserves section 252 of the IR Act and provides for a president's annual report as soon as practicable after the end of each financial year.

# **Chapter 12 Industrial organisations and associated entities**

## **Part 1 Preliminary**

*Clause 595* preserves section 409 of the IR Act and defines the terms used in this chapter.

*Clause 596* defines the term "corporation" for its use in this chapter. It includes bodies incorporated under other prescribed legislation but does not include a body incorporated under this Bill, a federal organisation or a body incorporated by its registration as an industrial organisation in another State.

*Clause 597* defines the term "counterpart federal body" for its use in this chapter.

*Clause 598* defines the term "financial year" for its use in this chapter.

*Clause 599* defines the term "office" for its use in this chapter.

*Clause 600* provides a mechanism for exemption from the requirements of this chapter to a branch of an organisation or an officer if the registrar is satisfied that the branch or officer does not have a role in financial or management activities.

## **Part 2 Registration**

### **Division 1 Registration application**

*Clause 601* preserves section 413 of the IR Act and provides that applications for registration of organisations are to be made to the commission.

*Clause 602* preserves section 414 of the IR Act and provides that an association may apply for registration as either an employee or employer organisation and that a corporation may apply for registration as an employer organisation only.

*Clause 603* preserves section 415 of the IR Act and stipulates what must accompany an application for registration.

*Clause 604* specifies the additional documents that are required to accompany an application for registration as an employee organisation.

*Clause 605* specifies the additional documents that are required to accompany an application for registration as an employer organisation. Definitions for the terms “member” and “rules” are provided for use in this part.

## **Division 2 Hearing of registration applications**

*Clause 606* preserves section 418 of the IR Act and provides that a person with sufficient interest may object to the commission about the registration of an organisation. The commission must hear the objection in the way prescribed by regulation.

*Clause 607* preserves section 419 of the IR Act and provides the criteria on which the commission must be satisfied before it can grant an application for registration.

*Clause 608* preserves section 420 of the IR Act and provides for additional criteria on which the commission must be satisfied before it can register an employee organisation.

*Clause 609* preserves section 421 of the IR Act and provides for further criteria on which the commission must be satisfied before it can register an employer organisation.

## **Division 3 Grant of application**

*Clause 610* preserves section 422 of the IR Act and provides that if the commission grants the registration application, the applicant immediately becomes an organisation and the rules for which the application was granted take effect as the rules of the organisation.

*Clause 611* preserves section 423 of the IR Act and incorporates an association upon its registration.

## **Division 4 Registered name and office**

*Clause 612* preserves section 424 of the IR Act and provides that the name of an organisation that is not a corporation must include the words industrial organisation or union of employees or employers, as the case may be, and include a reference to the locality in which most of the members live or carry on business.

*Clause 613* preserves section 425 of the IR Act and provides that an organisation must have a registered office and must notify the registrar of any change of the registered office. A maximum penalty of 100 penalty units is provided if the organisation fails to comply with the clause.

## **Division 5 Miscellaneous**

*Clause 614* preserves section 426 of the IR Act and provides that the registrar must keep a register of organisations and a copy of the rules of each organisation. A person is entitled to inspect the rules held by the registrar, on payment of the fee prescribed in the rules of court.

*Clause 615* preserves section 427 of the IR Act provides that an organisation may apply to the commission to amend its list of callings. A definition of the term “list of callings” is provided for use in this clause.

### **Part 3 General contents of rules**

#### **Division 1 Requirement to have rules**

*Clause 616* preserves section 428 of the IR Act and provides that an organisation must have rules to certain cover matters. The organisation must give a copy of its rules to any person who asks for it, and who pays the fee prescribed by a regulation.

#### **Division 2 General requirements for contents**

*Clause 617* preserves section 429 of the IR Act and provides compulsory requirements for the rules of all organisations. A definition of the term “committee” is provided for use in the clause.

*Clause 618* preserves section 430 of the IR Act and provides additional compulsory requirements for rules of organisations that are not corporations but for the operation of clause 18. They do not apply to organisations that are corporations, as the legislation under which they are incorporated deals with these issues.

*Clause 619* preserves section 431 of the IR Act and requires that the rules of an organisation must include specified conditions regarding making of a loan, grant or donation of more than \$1000. It limits the maximum payment to a member to relieve severe financial hardship to \$3000

#### **Division 3 Permitted contents**

*Clause 620* preserves section 432 of the IR Act and allows organisations to have additional rules that make other provisions that do not contravene this Bill.

*Clause 621* preserves section 433 of the IR Act and permits the rules of an organisation to provide for the filling of casual vacancies under the specified circumstances. A definition of the term “term” is provided for use in this clause.

*Clause 622* preserves section 434 of the IR Act and permits an organisation’s rules to provide for a mortality benefit. Members can nominate a person to whom the amount is payable on their death. A definition of the term “eligible nominee” is provided for use in this clause

#### **Division 4 Restrictions on contents**

*Clause 623* preserves section 435 of the IR Act and provides for general restrictions in relation to an organisation’s rules.

*Clause 624* preserves section 436 of the IR Act and provides that the rules of an organisation (which is not a corporation) may provide for a maximum term of office of 4 years. This period can be extended by up to 1 year for the purpose of synchronising elections.

## **Part 4 Election rules**

### **Division 1 Preliminary**

*Clause 625* preserves section 437 of the IR Act and provides that this division does not apply to organisations that are corporations, as the legislation under which they are incorporated deals with these issues.

*Clause 626* preserves section 439 of the IR Act and provides a definition of the term “collegiate electoral system” for this part.

*Clause 627* preserves section 438 of the IR Act and provides a definition of the term “direct voting system” in this part. A definition is provided for the term “eligible member” for use in this clause.

### **Division 2 General requirements**

*Clause 628* preserves section 440 of the IR Act that requires an organisation’s rules about elections to ensure that the processes for election are transparent and that no irregularities can occur.

*Clause 629* preserves section 441 of the IR Act and requires an organisation’s rules to provide for the filling of elected offices by way of an election.

*Clause 630* preserves section 442 of the IR Act and requires that an organisation’s rules must provide for its officers to be elected under a direct voting system or a collegiate electoral system.

### **Division 3 Direct voting systems**

#### **Subdivision 1 Preliminary**

*Clause 631* preserves section 443 of the IR Act and provides that this subdivision applies if an organisation’s rules provide for the election of its elected officers by a direct voting system.

#### **Subdivision 2 Requirements for direct voting systems**

*Clause 632* preserves section 444 of the IR Act and requires that an organisation’s rules state the matters prescribed in this clause.

*Clause 633* preserves section 445 of the IR Act and requires that an organisation’s rules must state the matters prescribed in relation to ballots. For example, the rules are required to permit candidates access to the voters roll and to stipulate the method of voting to decide the result of the ballot, which is either first-past-the-post or a preferential system.

*Clause 634* preserves section 446 of the IR Act and allows an organisation’s rules to provide for compulsory voting in an election.

### **Subdivision 3 Alternative types of secret ballot**

*Clause 635* preserves section 447 of the IR Act and provides for an organisation to apply to the registrar to conduct its election other than by post. The proposed amendments to the organisation's rules to permit this must be included with the application.

*Clause 636* stipulates the conditions of which the registrar must be satisfied before the application may be granted, including that the ballot is likely to have a higher participation rate than a postal vote and that voters will not be subject to intimidation.

*Clause 637* provides when the proposed amendments take effect if the registrar grants the application.

*Clause 638* sets out the conditions under which the registrar may cancel the approval.

### **Division 4 Collegiate electoral systems**

#### **Subdivision 1 Preliminary**

*Clause 639* preserves section 451 of the IR Act and provides that this division applies if an organisation's rules provide for the election of its elected officers by a collegiate electoral system.

#### **Subdivision 2 Requirements for collegiate electoral systems**

*Clause 640* requires that of the people elected by an electoral college, at least 80% of them must have been elected in the collegiate electoral system at the stage immediately before the stage for which the electoral college was formed.

*Clause 641* requires that the organisation's rules must state specified matters for an election at the second or subsequent stage of a collegiate electoral system.

### **Division 5 Model election rules**

*Clause 642* preserves section 454 of the IR Act and provides that model election rules may be made by regulation.

*Clause 643* permits an organisation to adopt all or part of the election rules by resolution.

*Clause 644* permits an organisation's secretary to notify the registrar that the organisation had resolved to adopted all of the model rules without change.

The registrar must amend the organisation's rules accordingly.

*Clause 645* provides that if an organisation adopts the model rules without change its election rules are deemed to comply with the Act.



## **Part 5 Validity and compliance with rules**

*Clause 646* empowers the commission to decide whether an organisation's rules comply or to direct a person obliged to perform or observe an organisation's rules to perform or observe the rules.

*Clause 647* provides that only a member of the organisation or a person permitted by regulation may make application.

*Clause 648* provides the Minister a discretion to award financial assistance to a member of the organisation making application under this part.

The Minister may direct the State to give financial help if satisfied of the specified matters.

*Clause 649* empowers the commission to adjourn an application, to give the organisation the opportunity to take all reasonable steps to resolve the matter

*Clause 650* empowers the commission to make interim orders.

*Clause 651* empowers the commission to adjourn an application, to give the organisation the opportunity to amend its rules

*Clause 652* provides that if the commission declares that a rule contravenes, then the part of the rule in contravention is taken to be void.

*Clause 653* provides that a person who fails to comply with a direction of the commission to comply with a rule of an organisation is guilty of an offence. A maximum penalty of 100 penalty units is provided.

## **Part 6 Amendment of rules**

### **Division 1 Amendments by commission or registrar**

*Clause 654* provides that the commission may amend an organisation's eligibility rules to remove an overlap with another organisation's eligibility rules where the organisation has breached a demarcation dispute undertaking that it has given.

*Clause 655* provides that the registrar may amend an organisation's rules where it is considered in specified circumstances.

*Clause 656* preserves section 468 of the IR Act and provides amendments of a rule declared void to cure noncompliance.

*Clause 657* provides that an amendment made under this division may only be made by an order, direction or written decision. The registrar is required to give the organisation a copy of the instrument as soon as possible after it is made.

## **Division 2 Amendments by organisation**

### **Subdivision 1 Name or eligibility rule amendments**

*Clause 658* provides those changes to the name or eligibility rules that are not covered by this subdivision. A definition of the term “amend” is provided for use in this clause.

*Clause 659* provides the conditions under which a proposed amendment may be made.

*Clause 660* provides allows the registrar to approve a change in an organisation’s name from the term “union” to “organisation” or “industrial organisation”.

*Clause 661* provides the conditions under which the commission may approve the change of name of an organisation, other than replacing the word “union” with “organisation”.

*Clause 662* preserves section 474 of the IR Act and provides the conditions under which the commission may approve a change to an organisation’s eligibility rules.

*Clause 663* provides that the amendment takes effect on the day the approval is given or the date stated in the approval.

*Clause 664* provides the action the registrar must take on approval of amendment to the organisation’s name or eligibility rules.

### **Subdivision 2 Other rule amendments**

*Clause 665* clarifies that this subdivision does not apply to changes to an organisation’s name or eligibility rules, or if it adopts in full the model election rules without change.

*Clause 666* provides that an amendment can be made to the organisation’s rules only if it has been approved by the registrar. The matters that the registrar must be satisfied of are prescribed.

*Clause 667* provides that the registrar must register an amendment as soon as practicable after it has been approved. The amendment takes effect from the date it is registered.

## **Part 7 Conduct of elections**

### **Division 1 Preliminary**

*Clause 668* provides that this part does not apply to corporations to reflect clause 480 of the IR Act.

## **Division 2 Preparatory steps**

*Clause 669* requires an organisation or branch wishing to conduct an election to file the information prescribed by regulation within the registry.

*Clause 670* requires that if the prescribed information is filed with the registrar, and an election is required under the rules of the organisation or branch, the registrar must arrange for the electoral commission to conduct the election.

## **Division 3 Conduct of elections**

*Clause 671* preserves section 483 of the IR Act and provides that elections must only be conducted by the electoral commission.

*Clause 672* requires an election or any step involved in the election to be conducted in accordance with the rules of the organisation.

*Clause 673* preserves section 485 of the IR Act and provides that the electoral officer may take action or give directions.

*Clause 674* requires the electoral commissioner to appoint a substitute electoral officer if the electoral officer conducting an election dies, cannot complete the election or ceases to be qualified to conduct the election.

*Clause 675* requires that, despite anything in an organisation's rules, an election must be discontinued if one of the candidates dies and there were two or more candidates.

*Clause 676* preserves section 488 of the IR Act and provides that the electoral commission must provide the registrar of the result of the election.

*Clause 677* provides that the State is responsible for the costs of an election.

*Clause 678* requires the electoral commission to ensure all ballot records are kept for 1 year after an election.

## **Division 4 Offences about conduct of elections**

*Clause 679* requires that an organisation's resources are not used to help one candidate against another. A maximum penalty of 80 penalty units is provided.

*Clause 680* establishes that it is an offence for a person to obstruct another person conducting an election. A maximum penalty of 80 penalty units is provided.

*Clause 681* provides that it is an offence for a person, without a reasonable excuse, not to comply with a direction given by the electoral officer conducting an election.

A maximum penalty of 80 penalty units is provided.

*Clause 682* provides that it is an offence for a person to obstruct another person from complying with an electoral officer's direction. A maximum penalty of 80 penalty units is provided.

*Clause 683* requires that a person must not take any of the prescribed actions, without a lawful authority or excuse. A maximum penalty of 80 penalty units is provided.

*Clause 684* preserves section 496 of the IR Act and provides it is an offence to disadvantage candidates.

*Clause 685* makes it an offence for a person to gain access to another person's ballot paper to see how the person voted. It is also an offence for a person performing duties for an election to permit access to a ballot paper to anyone else, other than for a function involved in the election. A maximum penalty of 80 penalty units is provided.

## **Part 8 Election inquiries**

### **Division 1 Preliminary**

*Clause 686* provides that this part does not apply to organisations that are corporations.

### **Division 2 Applications and referrals to commission**

*Clause 687* provides that the commission may, on application referred to it by the registrar, conduct an inquiry into a claimed irregularity in an election.

*Clause 688* provides that only a financial member or a person who was a financial member, within one year before the application is made, of the organisation that conducted the election may apply for an election inquiry.

*Clause 689* provides that the application must identify the election in which an irregularity is claimed, and provide details of the irregularity and an affidavit of the facts that support the application. The application is to be lodged within 6 months of the election, or a longer period allowed by the registrar.

*Clause 690* provides that where the registrar is satisfied that reasonable grounds exist to justify an inquiry, the registrar may refer the application to the commission.

The registrar can take into account any appropriate information that is known by the registrar.

### **Division 3 Investigations and interim orders**

*Clause 691* provides that the commission may authorise the registrar to inspect and take possession of ballot records, enter premises where the records are kept and require a person in possession of the ballot record to give them to the registrar.

It is an offence under this section for a person who has the ballot records to not give them to the registrar when required or to obstruct the registrar in exercising a power under this section. A maximum penalty of 80 penalty units is provided.

*Clause 692* provides that the commission may make specified interim orders in respect of the election inquiry.

*Clause 693* provides that, while an interim order is in effect, the person holding office as a result of the order is taken to hold the office despite the rules of the organisation.

*Clause 694* provides when an interim order ends.

## **Division 4 Conduct of election inquiries**

*Clause 695* reflects section 507 of the IR Act that provides for the matters the commission must inquire into and decide at an election inquiry.

*Clause 696* provides the types of orders the commission may make if it finds an irregularity has happened or is likely to happen in an election.

*Clause 697* provides that the commission may make an order as an injunction to enforce an order, or perform its functions or exercise its powers under this part.

## **Division 5 Offences about election inquiries**

*Clause 698* provides for a maximum penalty of 80 penalty units against those who cause, inflict or procure a disadvantage to another person because the other person has applied for an election inquiry. A definition for the term “disadvantage” is provided for the purposes of this clause.

*Clause 699* requires that a person must not obstruct the carrying out of a commission order under this part. A maximum penalty of 80 penalty units is provided.

## **Division 6 Miscellaneous**

*Clause 700* provides for an applicant for an election inquiry to seek financial help from the Minister. The clause describes those circumstances under which the Minister may direct the State to provide financial help. The minister is to decide the amount of the financial help.

*Clause 701* provides that the State must pay the costs of a fresh election where the commission so orders a fresh election under this part. A definition of the term “fresh election” is provided for use in this clause.

## **Part 9 Officers**

### **Division 1 Preliminary**

*Clause 702* reflects section 514 of the IR Act that provides for the definitions to be applied to certain words and phrases that apply under this part.

## **Division 2 Disqualifications from candidature or holding office**

### **Subdivision 1 Disqualifications**

*Clause 703* provides those positions within an organisation for which a person under the age of 18 years is ineligible to be a candidate or to be elected.

*Clause 704* establishes the circumstances under which a person convicted of a prescribed offence may be a candidate or be elected to an office in an organisation.

*Clause 705* applies to a person who holds an office in an organisation and is convicted of a disqualifying offence. This clause describes how such a person ceases to hold an office and the circumstances under which the court may extend the time for making such a leave application.

### **Subdivision 2 Applications for leave to hold office**

*Clause 706* preserves section 519 of the IR Act and provides that a person who meets the criteria prescribed by the clause may apply to the court for leave to hold office.

*Clause 707* provides that a person convicted of a disqualifying offence may apply to the court for leave to hold the office or another stated office. The court may only grant such leave if the application is made within 28 days after the conviction and the person has not already made a leave application for the conviction.

*Clause 708* provides what the court must consider in deciding a leave application.

*Clause 709* provides a power for the court to state a disqualification period for the applicant to hold office in any organisation, if it decides to refuse a leave application. The factors determining the maximum length of the disqualification period are specified

*Clause 710* provides that the granting of a leave application for a conviction or the fixing of a disqualification period does not affect the operation of this division for another conviction.

### **Subdivision 3 Miscellaneous**

*Clause 711* provides for applications from a member of the organisation, or from the registrar, for a declaration that because of this division a person is not or was not eligible to be a candidate or to be elected to office in the organisation, or the person has ceased to hold an office in the organisation.

The court may make orders it considers appropriate, despite anything in the rules of the organisation, to give effect to the declaration.

*Clause 712* establishes what shall, under this division, be taken as evidence of a person's conviction, acquittal, release from prison, or dismissal of charges against a person. A definition is provided for the term "appropriate officer" for use in this clause.

## **Division 3 Officers' duties**

*Clause 713* provides that this division applies if an officer of an organisation performs functions or exercises powers.

*Clause 714* provides that an officer must act honestly and in good faith in the best interests of the organisation for a proper purpose. A maximum penalty of 3091 penalty units or 5 years imprisonment is provided.

*Clause 715* establishes the degree of care and diligence expected of an officer.

A maximum penalty of 3091 penalty units or 5 years imprisonment is provided.

*Clause 716* requires that an officer with a material personal interest must disclose such, and requires the officer not to be present or vote at any annual general or management committee meeting at which the matter is considered. A maximum penalty of 3091 penalty units or 5 years imprisonment is provided for each offence in this clause.

*Clause 717* provides that this division does not limit certain specified matters.

## **Part 10 Membership**

### **Division 1 Eligibility and admission to membership**

*Clause 718* preserves section 531 of the IR Act and establishes the eligibility of a person to become a member of an organisation.

*Clause 719* requires that an organisation must admit an eligible person to membership and provides time limits in which the person must be admitted. A maximum penalty of 100 penalty units is provided

A definition of the term "admit to membership" is provided for this clause.

*Clause 720* provides when an organisation must give a person a union card. A maximum penalty of 100 penalty units is provided for contravention of this clause.

The term "union card" is defined for the purposes of this clause.

*Clause 721* provides that a person under 18 may become a member of an organisation, unless the rules provide otherwise. The rights that accrue to persons under 18 who are members are prescribed

### **Division 2 Membership disputes**

*Clause 722* provides that the commission can decide a question or dispute, on application of a person or an organisation, in relation to specified matters.

*Clause 723* provides the discretionary powers available to the commission after having heard the application.

### **Division 3 Membership subscriptions**

*Clause 724* provides that a person must be given a written receipt within one month of their payment to an organisation of a membership subscription or membership renewal. A maximum penalty of 100 penalty units is provided.

### **Division 4 Resignation**

*Clause 725* preserves section 538 of the IR Act and provides that this division applies despite the rules of an organisation.

*Clause 726* provides the conditions and manner in which a member may resign from an organisation.

*Clause 727* provides that a person's membership of an organisation automatically ends if the person owes a membership subscription and has owed this subscription for 2 years.

### **Division 5 Liabilities of member to organisation**

*Clause 728* provides a definition for the term "member's liability" used in this division.

*Clause 729* provides for the recovery of a member's liability to an organisation.

*Clause 730* limits the liability of a member whose membership of an organisation has ended.

## **Part 11 Records and accounts**

### **Division 1 Preliminary**

*Clause 731* provides for the definitions for this part.

### **Division 2 Registers of member and officers**

*Clause 732* prescribes that an organisation must keep for each year a written register stating each person who is or was a member or an officer of the organisation.

A maximum penalty of 40 penalty units is provided for each of the offences prescribed under this clause.

*Clause 733* prescribes the type of information that must be kept in the members register. A maximum penalty of 40 penalty units is provided for failure to do so.

*Clause 734* prescribes the type of information that must be kept in the officers register. A maximum penalty of 40 penalty units is provided for failure to do so.

*Clause 735* provides that the organisation must file, annually, a copy of its officers register. A maximum penalty of 40 penalty units is provided for failure to do so.



*Clause 736* provides that an organisation must file a copy of its officers register each time a person becomes or ceases to be an officer of the organisation within 30 days after the person becomes or ceases to be an officer of the organisation. A maximum penalty of 40 penalty units is provided for failure to do so.

*Clause 737* provides for the inspection of the registers of an organisation by the registrar, a member or a person with the written authority of the registrar or a member or a person with the written authority of a member. A copy of the register held by the registrar may be inspected by any person upon payment of the fee prescribed by the rules of court.

*Clause 738* provides that the registrar may give certain written directions to an organisation. A maximum penalty of 40 penalty units is provided if the organisation fails to comply with the direction, unless the organisation has a reasonable excuse.

*Clause 739* provides that members and officers registers are to be kept for at least 7 years. A maximum penalty of 40 penalty units is provided for failure to do so.

### **Division 3 Financial policies, training and registers**

*Clause 740* provides that an industrial organisation must have policies about a number of specified matters related to the financial management of industrial organisations. The policies are to comply with the requirements prescribed under a regulation for a policy about the matter.

This section also provides examples of what constitutes entertainment and hospitality and provides clarification of what constitutes contracting activities for the purposes of this section. A maximum penalty of 85 penalty units is provided for failure to comply with this direction.

*Clause 741* provides that an industrial organisation must ensure that an officer who holds a financial management position completes approved financial management training within six months of assuming the role. This section also provides that the Registrar is to publish information about approved financial management training on the Queensland Industrial Relations Commission website.

*Clause 742* provides that an industrial organisation must keep a register of gifts, hospitality and other benefits, given and received for each financial year and set out the particulars of the register where the value of an individual occurrence is greater than an amount prescribed by regulation. This results in an organisation no longer having to keep a record of each occurrence to ascertain if the total is above a prescribed amount.

*Clause 743* provides that an organisation must keep a register of any material personal interest disclosures. The register must be kept for at least 7 years. A maximum penalty of 40 penalty units is provided for failure to comply.

*Clause 744* provides that a policy kept or a register kept may be inspected by the registrar, a member of the organisations management committee or a member of the organisation, and how the inspection can be arranged. A maximum penalty of 40 penalty units is provided for failure to comply.

## **Division 4 Remuneration register**

*Clause 745* provides a definition of “remuneration register” for this division.

*Clause 746* provides that an organisation must prepare a remuneration register.

A maximum penalty of 20 penalty units is provided for failure to comply.

*Clause 747* provides that an organisation must keep a remuneration register for at least 7 years. A maximum penalty of 40 penalty units is provided for failure to comply.

## **Division 5 Loans grants and donations**

*Clause 748* provides that an organisation must keep a loans grants and donations register for this division.

*Clause 749* provides that each loans gifts and donations register must be kept for at least 7 years. A maximum penalty of 40 penalty units is provided for failure to comply.

## **Division 6 Accounts and audits**

### **Subdivision 1 Preliminary**

*Clause 750* allows the registrar to grant exemptions from the general requirement that Australian Accounting Standards apply to organisations. Subclause 1 provides that the registrar may determine that an Australian Accounting Standard does not apply in relation to an organisation or to a class of organisations. Subclause 2 requires the registrar to have regard to the cost of compliance with the Standard and the information needs of members in making a determination about the application of an Australian Accounting Standard.

### **Subdivision 2 Reporting units**

*Clause 751* provides how this sub division applies in relation to reporting units.

*Clause 752* provides what is a reporting unit for the purpose of this legislation. Subclause 2 provides that an organisation not divided into branches constitutes a single reporting unit. Subclause 3 provides that where an organisation is divided into branches, each branch is a reporting unit unless the Registrar issues a certificate determining the organisation to be divided into reporting units on an alternative basis. Subclause 4 provides that the alternative bases for division into reporting units of an organisation that has a branch structure are: the organisation as a whole, or a combination of two or more branches.

*Clause 753* establishes who is a designated officer for the purpose of this legislation and provides that the designated officer must be identified and that if no officer is designated the function is seen to be undertaken by the secretary.

*Clause 754* provides for members, staff and journals for reporting units that is all of an organisations for application of this division to reporting units that are not all of an organisation.

*Clause 755* enables the registrar to issue certificates stating that an organisation divided into branches is divided into reporting units on an alternative basis. The registrar can issue a certificate on application by an organisation, or at the registrar's own initiative.

*Clause 756* outlines the requirements an organisation needs to adhere to in making an application for a certificate, including the requirement to include an application to amend any rules of the organisation as may be required to give effect to the establishment of reporting units on the alternative basis sought.

Subclause 2 sets out matters of which the registrar must be satisfied before issuing a certificate and certifying any rules changes.

*Clause 757* provides that a certificate issued can only be issued on the registrar's own initiative where the registrar is satisfied that:

- in order to improve compliance with the accounting, auditing and reporting requirements of the subdivision, it is most appropriate for the organisation to be divided into reporting units as proposed; and
- members of the organisation would have available to them an adequate level of relevant financial information.

*Clause 758* provides that a certificate issued operates in relation to each financial year after it is issued unless revoked before the start of a financial year.

*Clause 759* provides for the revocation of certificates issued. If a certificate is revoked the reporting structure of the organisation reverts to each branch being a reporting unit. A certificate may be revoked by the registrar on application, or at the registrar's initiative. Provision is made for necessary rule changes to give effect to the new reporting structure that will result from the certificate being revoked.

*Clause 760* clarifies when rule changes in relation to the issuing or revocation of a certificate take effect, and that such rule changes can vary the duties associated with an office in an organisation.

*Clause 761* provides that a reporting unit certificate is revoked upon the issuing of a subsequent certificate.

### **Subdivision 3 Accounting obligations**

*Clause 762* requires each reporting unit to keep proper financial records with respect to its transactions and financial position so as to enable compliance with its accounting obligations and to ensure convenient auditing.

The clause also requires:

- Where an organisation consists of more than one reporting unit, records of the units must be kept in a consistent manner to the extent that this is practicable.
- Records may be retained on a cash or accrual basis.
- Membership records may be kept on a cash basis, even if other records are retained on an accrual basis
- Records must be retained for 7 years from the date of the transaction to which they relate.

*Clause 763* requires a reporting unit to prepare a financial report at the end of each financial year in accordance with the Australian Accounting Standards for the financial year. This clause sets out what the financial report must consist of.

*Clause 764* requires the committee of a reporting unit to have an operating report prepared as soon as practicable after the end of each financial year.

The clause also lists the matters that must be reported including that it: review of the reporting unit's principle activities during the year; provide details of members' right to resign from the reporting unit; and provide details of involvement, in certain circumstances, of unit officers or members in trusteeships or trustee company directorships relating to certain superannuation funds.

*Clause 765* requires the Registrar to produce and publish in the Gazette reporting guidelines which relates to organisation's reporting requirements.

## **Subdivision 4 Auditors**

*Clause 766* provides that each organisation must have a qualified auditor. The clause sets out the necessary requirements.

*Clause 767* sets out the powers and responsibilities of auditors and the powers exercisable by them in meeting those responsibilities.

*Clause 768* provides what the auditor must state in his or her auditors report as well as requirements for the report.

*Clause 769* provides that an auditor report must not be knowingly false or misleading.

*Clause 770* provides that an auditor must immediately notify the registrar if the auditor becomes aware of a contravention that cannot be adequately dealt with in the audit report. A maximum penalty of 100 penalty units is provided for failure to comply.

*Clause 771* provides that an officer, employee or member of an industrial organisation must not hinder or obstruct an auditor or fail to comply with a request from an auditor. A maximum penalty of 30 penalty units is provided for failure to comply with this provision.

*Clause 772* requires a reporting unit to forward to an auditor notices and other communications relating to a meeting at which the auditor's report, or accounts to

which the report relates, are to be considered. A definition of financial reporting meeting is provided in this section.

*Clause 773* provides that an auditor, or a person authorised by the auditor, is entitled to attend any meeting at which the auditor's report, or accounts to which the report relates, are to be considered, or at which there will be business concerning the auditor or a person authorised by the auditor.

*Clause 774* provides that auditors and certain other persons enjoy qualified privilege in relation to defamation in certain circumstances

*Clause 775* provides that a reporting unit must pay the reasonable fees and expenses of an auditor.

*Clause 776* provides that an auditor is not to be removed from office, except by resolution passed at a meeting of the body of the reporting unit that appointed the auditor. The auditor is accorded certain procedural rights in relation to any such meeting.

*Clause 777* provides for the manner in which an auditor is able to resign his or her appointment. The clause also requires a reporting unit to notify its members of the reasons for the auditor's resignation if the auditor so requests.

## **Subdivision 5 Reporting requirements**

*Clause 778* provides that a reporting unit is required to provide to its members either a full report, consisting of copies of the auditor's report, the general purpose financial report and the operating report, or a concise report. The clause also specifies a reporting unit can only provide members with a concise report if, in accordance with its rules, the committee of management resolves to do so.

*Clause 779* provides that where requested by a member, a reporting unit that has provided members with a concise report must provide to the member, within 28 days, a copy of the full report.

*Clause 780* provides that the report must be provided to members within a specified period after the end of the financial year to which it relates

*Clause 781* states that the requirement to provide a report may be satisfied in certain circumstances by publication of the report in the reporting unit's journal. The clause also provides that where a reporting unit consists of 2 or more branches of an organisation and one of those branches publishes a journal of the branch that is available to the members of the branch free of charge, the reporting unit may comply in relation to those members: by publishing in the journal the full report; or by preparing a concise report and publishing the concise report in the journal.

*Clause 782* provides for the presentation of the full report to a general or management committee meeting within 5 months after the end of the financial year or if the registrar has extended the time.

*Clause 783* prohibits misleading, false or reckless statements on the part of a reporting unit's committee of management where, in relation to the provision or presentation of a report, the committee comments on matters dealt with in a full or concise report.

*Clause 784* requires a reporting unit to lodge reports with the registrar within 14 days of their being presented to the general meeting.

### **Subdivision 6 Reduced reporting requirements for particular units**

*Clause 785* enables the Registrar to issue a certificate permitting a reporting unit that is the whole of an organisation with receipts less than a particular amount. This clause provides definitions for this section for organisation reporting unit and prescribed income threshold.

*Clause 786* allows a registrar to provide a reporting unit with a general exemption from the requirement of the Part where the unit had no financial affairs in a financial year. The application to the registrar must be made within 90 days of the end of the financial year.

### **Subdivision 7 Members' access to financial records**

*Clause 787* provides that a reporting unit, on application by a member or a registrar, must make available certain prescribed information concerning its financial affairs. A registrar may only apply for the information at the request of a member and the registrar is to furnish that member with the information received. This clause specifies that the prescribed information must include details regarding fees paid by the reporting unit to an employer in return for payroll deduction of membership dues.

*Clause 788* enables a member of a reporting unit to apply for an order allowing inspection of financial records and sets out the matters of which the commission must be satisfied before granting an order, including that: the application is made in good faith and that there are reasonable grounds for suspecting a breach of the financial accounting, auditing and reporting provisions or regulations relating to those provisions, the reporting guidelines, or a relevant rule of the reporting unit. The commission's power to order access to the financial records of a reporting unit is confined to those records that relate to the suspected breach.

*Clause 789* provides that a person must not make frivolous or vexatious application. This clause allows the commission to dismiss applications it considers vexatious.

*Clause 790* provides that if the commission may make any other order it considers appropriate in relation to the information acquired in inspection.

*Clause 791* provides that a person who inspects the financial records or someone who inspects for an applicant, must not disclose information obtained during the inspection unless the disclosure is to a member of the staff of the commission or applicant.

*Clause 792* provides that the committee of management of a reporting unit, or the reporting unit by a resolution passed at a general meeting, may authorise a member to inspect financial records of the reporting unit

*Clause 793* provides that if as a result of inspecting financial records a contravention is found, the commission must be advised of contraventions of a relevant rule under this part. If the commission determines that there are reasonable grounds for believing that there has been a contravention the commission must refer the matter to the registrar. A definition of the term relevant contravention is provided for the use of this clause.

*Clause 794* provides that for the purpose of this subdivision the commission must be constituted by the president, vice-president or a deputy president

## **Subdivision 8 Registrar's investigations and audits**

*Clause 795* provides that the registrar must investigate an organisations finances or financial administration in certain circumstances.

*Clause 796* empowers the registrar to direct an auditor, employee or officer of a former auditor, employee or officer of the organisation to provide certain information or documents to the registrar.

*Clause 797* provides that the registrar to, after investigating, issue a notice to an organisation advising of the contravention and requiring remedial action.

*Clause 798* provides that the registrar may apply to the court for an order to remedy a contravention where the organisation does not take action pursuant to a notice issued by the registrar.

*Clause 799* provides that the registrar may engage an auditor in certain circumstances.

*Clause 800* gives the functions and powers of the registrar to an auditor engaged by the registrar.

*Clause 801* provides that the costs of engaging the auditor must be borne by the organisation. The registrar may recover these costs as a debt.

## **Part 12 Exemptions**

### **Division 1 Exemptions for organisations with counterpart federal bodies**

#### **Subdivision 1 Exemption from holding election**

*Clause 802* provides how this section shall be applied, how an organisation may apply to the registrar for an exemption from holding an election, the matters the registrar must be satisfied of to grant an exemption and the effect of an exemption being granted. A definition of "corresponding office" is provided for use in this clause

*Clause 803* provides what is to happen if an organisation is given an exemption and an order under the Commonwealth FW RO Act has changed the result of the federal ballot.

A maximum penalty of 100 penalty units is provided for failure to comply with this clause.

### **Subdivision 2 Exemption from keeping members or officers register**

*Clause 804* provides that an organisation may apply to the registrar for an exemption from keeping a members or officers register. The registrar may grant an exemption only if satisfied of the specified matters.

*Clause 805* provides that, while an exemption is in force, the counterpart federal body's register of members or officers can be taken as the register required under this bill.

*Clause 806* provides that an organisation with an exemption from keeping a separate members register must file a copy of an officers register filed under the Commonwealth Act with the registrar. Failure to do so is an offence with a maximum penalty of 100 penalty units.

*Clause 807* establishes that if any of the specified events happen or contravention, the organisation must immediately give notice of the happening to the registrar. Failure to notify the registrar is an offence with a maximum penalty of 100 penalty units.

### **Subdivision 3 Exemption from accounting or audit obligations**

*Clause 808* provides that an organisation with a counterpart federal body may apply to the registrar for an exemption from the whole or part of the accounting or audit requirements. This clause provides the criteria on which the registrar must be satisfied before granting an exemption. The clause also prescribes the effect of the exemption.

*Clause 809* provides the effects of an exemption granted.

*Clause 810* provides that if the registrar has issued an exemption certificate a reference in this division is a reference to an organisations audit report is a reference to the audit report prepared for the organisations federal counterpart.

*Clause 811* provides that an organisation that has been granted an exemption must notify the registrar of any contravention of another Act for which the exemption has been granted. A failure to do so is an offence, with a maximum penalty of 100 penalty points.

## **Division 2 Exemptions from requirement that electoral commission conduct election**



## **Subdivision 1 Grant of exemption**

*Clause 812* provides that an organisation or branch may apply to the registrar for an exemption from the requirement that the electoral commission conduct elections.

*Clause 813* provides conditions that must be met before an exemption can be granted.

*Clause 814* provides that the registrar must publish a notice stating details of the application. The notice must be published in a way prescribed in a regulation.

*Clause 815* establishes that the registrar may grant an exemption only if satisfied that each of the specified criteria has been met.

## **Subdivision 2 Obligations if exemption granted**

*Clause 816* provides that this subdivision applies to an organisation or branch for each election to which an exemption under subdivision 1 is granted.

*Clause 817* stipulates what an organisation or branch must do before calling for nominations for an election, including obtaining the registrar's written approval of the returning officer's appointment. Failure to so comply is an offence under this bill, with a maximum penalty of 100 penalty units. An employee, member or officer of the organisation or branch must not be appointed as the returning officer.

*Clause 818* requires that the returning officer for the election must give the registrar, within 14 days of the declaration of the result of the election, a result report for the election stating the particulars required under a regulation. Failure to do so is an offence under this bill. The maximum penalty is 100 penalty units.

*Clause 819* requires that specified persons must take reasonable steps to ensure that all ballot records given to them for the election are kept for 1 year after the declaration of the election result. Failure to do so is an offence with a maximum penalty of 100 penalty units.

## **Division 3 Exemption from accounting or audit obligations for employer organisation that is a corporation**

*Clause 820* provides who may apply for exemption.

*Clause 821* sets out matters about which the registrar must be satisfied before granting an exemption.

*Clause 822* provides that if the registrar has issued an exemption certificate a reference in this division is a reference to an employer organisations audit report is a reference to the audit report prepared for the employer organisations federal counterpart.

*Clause 823* provides that an employer organisation that has been granted an exemption must notify the registrar of any contravention of another Act for which the

exemption has been granted. A failure to do so is an offence, with a maximum penalty of 100 penalty points.

## **Division 4 Cancellation of exemptions**

*Clause 824* provides that an exemption may only be cancelled by the registrar.

*Clause 825* applies if the registrar is considering cancelling an exemption for an organisation from holding an election, on the grounds of an election in the counterpart federal body, because an order under the Commonwealth Act has changed the federal election result.

## **Part 13 Validations**

### **Division 1 Preliminary**

*Clause 826* defines terms that apply to this part.

### **Division 2 Validations**

*Clause 827* preserves section 605 of the IR Act that provides for where invalidities are automatically validated by the operation of this part, that validation will be limited to the extent that it does not cause substantial injustice to stated persons.

*Clause 828* preserves section 606 of the IR Act that operates automatically to validate specified acts of an organisation, a collective body of an organisation or an officer of an organisation where those acts would otherwise be invalid.

*Clause 829* preserves section 607 of the IR Act that provides, if the election of a person to an office is declared void by the commission, then any acts done by the person, while purporting to act in the office for a period between the declaration of the election and the declaration of the commission, are valid.

*Clause 830* preserves section 608 of the IR Act that provides for election not invalid because of compliance with an order of the commission.

*Clause 831* preserves section 609 of the IR Act that provides for election not invalid because of contravention.

*Clause 832* preserves section 610 of the IR Act that provides for validation of certain events after 4 years.

*Clause 833* preserves section 611 of the IR Act that provides for a counterpart federal body not a ground for a challenge about an organisation's validity.

*Clause 834* preserves section 612 of the IR Act that provides for validation of amalgamations and withdrawals. Definitions are provided in this section.

## **Division 3 Orders about invalidity or its effects**

*Clause 835* preserves section 613 of the IR Act and provides that the commission may decide whether an invalidity has occurred in relation to an organisation and may make a declaration as to whether or not such an invalidity has occurred.

*Clause 836* preserves section 614 of the IR Act and provides who may apply to the commission under this part for a decision or declaration as to whether invalidity has occurred in relation to an organisation.

*Clause 837* preserves section 615 of the IR Act and provides that the commission may make various orders about an invalidity where it finds, on hearing the application that an invalidity has occurred.

## **Part 14 Amalgamations and withdrawals**

### **Division 1 Preliminary**

*Clause 838* preserves section 616 of the IR Act and provides definitions for certain words and phrases to be applied under this part.

### **Division 2 Amalgamations**

*Clause 839* preserves section 617 of the IR Act and establishes that an amalgamation may be carried out only under this division.

*Clause 840* preserves section 618 of the IR Act and provides the conditions under which the commission may approve an amalgamation.

*Clause 841* preserves section 619 of the IR Act and lists what a regulation may provide for.

*Clause 842* preserves section 620 of the IR Act and describes the effect of amalgamation.

*Clause 843* preserves section 621 of the IR Act and provides for an organisation's rules to allow an officer to be an officer of the proposed amalgamated organisation.

### **Division 3 Withdrawing from amalgamation**

*Clause 844* preserves section 622 of the IR Act and provides that a constituent part may withdraw from an amalgamated organisation subject to the specified conditions.

*Clause 845* preserves section 623 of the IR Act and provides the commission with the power to approve a withdrawal.

*Clause 846* preserves section 624 of the IR Act and describes the matters that may be dealt with by the regulation.

*Clause 847* preserves section 625 of the IR Act and provides the action that the registrar must take on the withdrawal day.

*Clause 848* preserves section 626 of the IR Act and provides that members of the constituent part may join the newly registered organisation.

#### **Division 4 Offences about amalgamation or withdrawal ballots**

*Clause 849* preserves section 627 of the IR Act and provides that it is an offence for a person to obstruct another person from conducting an amalgamation or withdrawal ballot. A maximum penalty of 100 penalty units is provided. The penalty has increased from 40 penalty units.

*Clause 850* preserves section 628 of the IR Act and provides that a person must not do specified things in relation to an amalgamation or withdrawal ballot, without lawful authority or excuse. A maximum penalty of 80 penalty units is provided.

*Clause 851* preserves section 629 of the IR Act and provides that a person must not cause, inflict or procure a disadvantage to anyone or anything because of or to induce certain matters. A maximum penalty of 80 penalty units is provided.

*Clause 852* preserves section 630 of the IR Act and provides that unauthorised access to a ballot paper must not occur. A maximum penalty of 80 penalty units is provided

#### **Division 5 Miscellaneous**

*Clause 853* preserves section 631 of the IR Act and provides that an organisation may use its resources to support the proposed amalgamation.

*Clause 854* preserves section 632 of the IR Act and provides that expenses in relation to a ballot for an amalgamation or withdrawal are to be paid for by the State.

*Clause 855* preserves section 633 of the IR Act and provides that defamation proceedings do not lie against specified persons for printing or publishing a document for an amalgamation or withdrawal ballot.

*Clause 856* preserves section 634 of the IR Act and provides that the commission may resolve difficulties.

*Clause 857* preserves section 635 of the IR Act and provides for the transfer and registration of property after an amalgamation or a withdrawal.

*Clause 858* preserves section 636 of the IR Act and provides that this part applies despite another Act or other instrument.

## **Part 15 Complaints, investigations and appointment of administrator**

### **Division 1 Complaints**

*Clause 859* preserves section 636A of the IR Act and provides that a person may make a complaint to the registrar about an organisation or officer.

*Clause 860* preserves section 636B of the IR Act and provides what a complaint must include.

*Clause 861* preserves section 636C of the IR Act and provides what actions the registrar must take when dealing with a complaint.

*Clause 862* preserves section 636D of the IR Act and provides that the organisation or officer must be advised of the complaint.

### **Division 2 Investigations**

*Clause 863* preserves section 636I of the IR Act and provides for definitions of certain words and phrases under this division.

*Clause 864* preserves section 636J of the IR Act and provides how this division applies if the registrar refers a complaint to an inspector for investigation.

*Clause 865* preserves section 636K of the IR Act and provides that the inspector must give the registrar a written report on the findings of the investigation

*Clause 866* preserves section 636L of the IR Act and provides for the examination of an organisation's accounting records.

*Clause 867* preserves section 636M of the IR Act and provides for cooperating with investigation or audit.

*Clause 868* preserves section 636CN of the IR Act and provides that the state pay the costs of an audit under this division.

### **Division 3 Appointment of administrator**

*Clause 869* provides for definitions of certain phrases under this division

*Clause 870* preserves section 636O of the IR Act and provides for the appointment of an administrator by the court.

*Clause 871* preserves section 636Q of the IR Act and provides for consideration of injustice to organisations and interests of members before appointing auditor.

*Clause 872* preserves section 636R of the IR Act and provides the primary function of an administrator during their term of office.

*Clause 873* preserves section 636S of the IR Act and provides that the administrator has an additional function of providing the minister with reports at specified times.

*Clause 874* preserves section 636CT of the IR Act and provides the powers of an administrator.

*Clause 875* preserves section 636U of the IR Act and provides that an administrator may require the person to undertake a specified task under this section. A penalty of 100 penalty units is provided for a failure to comply with this section.

*Clause 876* preserves section 636V of the IR Act and provides that an administrator is not liable for a non-negligent act done under this Act. Any civil liability prevented under this section will be attached to the State.

## **Part 16 Deregistration**

### **Division 1 Preliminary**

*Clause 877* preserves section 637 of the IR Act and provides for definitions of certain words and phrases to be applied under this part.

### **Division 2 General deregistration provisions**

#### **Subdivision 1 Bringing deregistration proceedings**

*Clause 878* preserves section 638 of the IR Act and provides the grounds on which deregistration of an organisation can be ordered by the full bench.

*Clause 879* preserves section 639 of the IR Act and provides who may apply to the full bench for a deregistration order.

#### **Subdivision 2 Deciding deregistration proceedings**

*Clause 880* preserves section 640 of the IR Act and provides that the full bench may make a deregistration order on a ground other than industrial conduct.

*Clause 881* preserves section 641 of the IR Act and provides what the full bench must do at a deregistration hearing if a ground on which the proceedings is based is an industrial conduct ground.

*Clause 882* preserves section 642 of the IR Act and provides that the full bench may defer making its decision regarding a deregistration order and make a deferral order instead.

*Clause 883* preserves section 643 of the IR Act and describes the circumstances under which a deferral order ceases to have any effect.

*Clause 884* preserves section 644 of the IR Act and provides that a full bench can make incidental orders or direction in relation to the deregistration order.

### **Division 3 Small organisations**

*Clause 885* preserves section 645 of the IR Act and provides that the commission may conduct a review of an organisation as to whether the organisation is or may be a small organisation.

*Clause 886* preserves section 646 of the IR Act and provides that the commission may bring a deregistration proceeding.

*Clause 887* preserves section 647 of the IR Act and provides that the commission can make a deregistration order if satisfied the organisation is a small organisation.

### **Division 4 Effects of deregistration**

*Clause 888* preserves section 648 of the IR Act and provides that this division provides the effects of a deregistration order.

*Clause 889* preserves section 649 of the IR Act and provides that the deregistered organisation ceases to be an organisation from the making of the deregistration order.

*Clause 890* preserves section 650 of the IR Act and provides the effect on corporate status of a deregistered organisation.

*Clause 891* preserves section 651 of the IR Act and provides that there is no release of liabilities for a deregistered organisation.

*Clause 892* preserves section 652 of the IR Act and provides what is to happen to the property of a deregistered organisation.

*Clause 893* preserves section 653 of the IR Act and provides the consequences of deregistration on certain instruments.

### **Part 17 Miscellaneous**

*Clause 894* preserves section 654 of the IR Act and provides who is entitled to be heard before any decision under this chapter is made by the court, commission or registrar.

*Clause 895* preserves section 655 of the IR Act and provides for a notice of the registrar's or Minister's decision.

*Clause 896* preserves section 656 of the IR Act and provides that a person must not obtain possession of an organisation's property by false representation or imposition. A maximum penalty of 100 penalty units is provided.

*Clause 897* preserves section 657 of the IR Act and provides what a person holding an organisation's property must not do with such property. A penalty of 100 penalty units is provided.

## **Chapter 13 Enforcement**

### **Part 1 Preliminary**

*Clause 898* sets out definitions of terms used within Chapter 13.

### **Part 2 Appointment**

*Clause 899* provides for the conditions under which inspectors may be appointed.

The Governor in Council may appoint a person as the chief inspector and the chief executive may appoint a person as an inspector.

The person must be a public service officer or employee, an inspector under the *Further Education and Training Act 2014*, a person with the qualifications prescribed under a regulation or a person who is appropriately qualified.

An inspector is employed under the *Public Service Act 2008* and is also an inspector for the *Child Employment Act 2006*, the *Pastoral Workers' Accommodation Act 1980*, the *Trading (Allowable Hours) Act 1990* and the *Workers' Accommodation Act 1952*.

*Clause 900* specifies an inspector's functions. These include ensuring compliance with industrial instruments, investigating alleged contraventions of the Act and informing employers and employees about their rights and obligations under the Act. The functions also include investigating complaints and monitoring compliance on specific matters relating to industrial organisations. In performing their functions, inspectors must have regard to people in disadvantaged bargaining positions and helping employees balance work and family responsibilities.

*Clause 901* provides that an inspector's powers may be limited by any conditions stated in an instrument of appointment, by a notice signed by the chief executive or Governor in Council or by a regulation.

*Clause 902* provides for specific circumstances under which an inspector's office ends including under a term or condition of office or on resignation.

*Clause 903* provides that an inspector may resign by signed notice given to the chief executive.

### **Part 3 Identity cards**

*Clause 904* provides that an inspector's identity card must be issued by the chief executive and must contain a recent photo of the inspector and a copy of the inspector's signature, identify the person as an inspector and state an expiry date for the card. A single card may be issued for the purposes of this Act and any other purpose (e.g. another Act).

*Clause 905* provides that before exercising a power, an inspector must produce their identity card for inspection by a person or display the card so it is clearly visible. If it



is not practicable to produce or display the card before exercising a power, the card must be produced for inspection at the first reasonable opportunity.

*Clause 906* provides that when the office of an inspector ends, the inspector's identity card must be returned to the chief executive within 21 days unless there is a reasonable excuse. A maximum penalty of 10 penalty units is prescribed for failing to comply with the requirement.

## **Part 4 General**

*Clause 907* provides that any non-specific reference to inspector's powers is a reference to all or any of an inspector's powers.

*Clause 908* provides that a reference to a document includes a reference to an image or writing from an electronic document or one that is reasonably capable of being produced from an electronic document.

*Clause 909* makes special provisions for exercising a power under this Bill as an inspector under the *Child Employment Act 2006* (CE Act). A reference in this Bill to an employee includes a child to whom the CE Act applies. A reference in this Bill to an employer includes a person who engages or arranges for a child to whom the CE Act applies, to work at their direction whether for gain or reward or on a voluntary basis.

## **Part 5 Powers**

*Clause 910* specifies when and where an inspector may enter a workplace, including those on or near residential premises, without the occupier's consent. This includes a public place or a workplace when it is open for carrying on business or otherwise open for entry.

The definition of a workplace in this clause makes it clear that the power to enter places includes a place of business used or occupied by an industrial organisation or a branch of an industrial organisation.

*Clause 911* provides for the specific powers of an inspector who enters a place under the provisions of this clause for the purposes of monitoring or enforcing compliance with this Bill. An inspector may require a person in a workplace to give them reasonable help to exercise a power but must warn the person it is an offence to fail to comply with the requirement unless the person has a reasonable excuse. There is a maximum of 40 penalty units for failing to comply with the requirement.

*Clause 912* gives an inspector the power to require a person to make available for inspection at a reasonable time and place nominated by the inspector, any documents issued to a person or required to be kept under this Bill, any documents relating to an employee including time and wages records or any documents related to industrial organisations. The inspector may require a person to certify a true copy of the document. The person must comply with these requirements unless they have

a reasonable excuse. There is a maximum of 40 penalty units for breach of these requirements.

*Clause 913* provides the matters about which an inspector is allowed to question specified persons. This clause also enables an inspector to question a person in private. The clause specifies that an inspector must warn the person that it is an offence to fail to answer such questions without a reasonable excuse (e.g. answering the questions might tend to incriminate the person). There is a maximum of 40 penalty points for failing to answer questions without a reasonable excuse.

*Clause 914* provides for the circumstances in which an inspector may require a person to state and give evidence of the correctness of the person's name and address. This includes person's found committing an offence or who are suspected of having just committed an offence.

The clause specifies that an inspector must warn the person that it is an offence to fail to answer such questions without a reasonable excuse. There is a maximum of 40 penalty points for failing to provide a name and address without a reasonable excuse. A person may not be convicted of an offence for failing to state their name and address unless they are found guilty of the offence in relation to which the requirement was made.

## **Part 6 Powers to claim and deal with unpaid amounts**

*Clause 915* specifies that, on an inspector's written demand, an employee's unpaid wages and tool allowance be paid to the inspector and that unpaid superannuation contributions plus interest be paid either to the inspector or to a complying superannuation fund.

A magistrate on deciding an offence against this clause may order the employer to pay to the employee, in addition to any penalties, the amount found payable to the employee. The penalty for breach of this provision is a maximum of 40 penalty units.

*Clause 916* provides an inspector obligations for amounts paid to them by an employer on demand. An employee's unpaid wages are to be paid to the employee and an employee's unpaid occupational superannuation contributions are to be paid to a superannuation fund as specified in this clause.

## **Part 7 Miscellaneous**

*Clause 917* prohibits a person from obstructing an inspector or a person helping an inspector in the exercise of a power. The clause specifies that an inspector must warn the person that their conduct is considered an obstruction and that it is an offence to cause an obstruction without a reasonable excuse. There is a maximum of 40 penalty points for causing an obstruction unless the person has a reasonable excuse.

*Clause 918* makes it an offence for a person to pretend to be an inspector, with a maximum penalty of 40 penalty units.

*Clause 919* provides that failure of an inspector to produce or display an identity card or comply with any limitations on the inspector's powers does not affect the lawfulness of action taken by the inspector but makes the inspector liable to disciplinary action.

## **Chapter 14 General offences**

*Clause 920* generally reflects section 659 of the IR Act and provides a person must obey an order of the court or commission that provides for payment of a penalty if the order is disobeyed.

*Clause 921* generally reflects section 660 of the IR Act and requires that a person must not engage in specified improper conduct and enables a person engaging in such conduct to be excluded from the hearing. A maximum penalty of 100 penalty units or one year's imprisonment for improper conduct is provided.

*Clause 922* generally reflects section 661 of the IR Act and makes it an offence for a person, when issued an attendance notice to appear before an industrial tribunal not to appear; or alternatively, when appearing, to refuse to be sworn or make an affirmation or answer questions or produce records as required.

*Clause 923* generally reflects section 662 of the IR Act and provides for a penalty if a person makes a false or misleading statement to an official for this Bill.

*Clause 924* generally reflects section 663 of the IR Act and provides penalties if a person provides, or makes entries in, false or misleading documents.

*Clause 925* generally reflects section 664 of the IR Act and provides for a penalty if a person obstructs an officer (as defined) who is performing a function or exercising a power under this Bill.

*Clause 926* generally reflects section 701 of the IR Act and provides that a person is prohibited from specified false pretences in relation to employment. A person's liability to be dealt with for an offence under this clause does not affect their liability under the criminal Code for forgery or false pretences. However, a person cannot be dealt with under both this Bill and the Criminal Code.

*Clause 927* generally reflects section 665 of the IR Act and provides for a penalty if an employer seeks to avoid an obligation of the Act in relation to paying an employee for public holidays or leave by dismissing the employee or interrupting the employee's continuity of service. It also provides for an Industrial Magistrate to order, in addition to any penalty, the payment of proportionate long service leave if satisfied that the employer acted to avoid their obligations.

*Clause 928* generally reflects section 666 of the IR Act and provides that an employer must pay an employee's wages to the employee or in accordance with an

employee's written direction. The clause also provides details of the offence of non-payment of wages and the penalties a magistrate may impose upon hearing a complaint regarding non-payment of wages.

*Clause 929* generally reflects section 667 of the IR Act and provides for a penalty to be imposed on an employee who knowingly agrees to accept reduced wages. The return from the employee to the employer of wages payable under an industrial instrument or permit is evidence that the employee has entered into an agreement to accept reduced wages.

*Clause 930* generally reflects section 668 of the IR Act and makes it an offence for a person to publish a statement that a person is ready and willing to employ a person on reduced wages or be employed on reduced wages. The clause further provides the circumstances under which proceedings for an offence under this section can be commenced and details the circumstances which must exist before proceedings can be commenced against a proprietor of a newspaper or advertising medium.

*Clause 931* generally reflects section 669 of the IR Act provides a penalty for offering, demanding, asking or accepting an employment premium. If the court finds that a defendant is guilty of accepting a premium it must, in addition to any penalty, order the defendant pay an amount equivalent to the premium to the person from whom the defendant accepted the premium.

*Clause 932* generally reflects section 670 of the IR Act and requires that a person must not contravene an industrial instrument. It also provides for the imposition of penalties for first and subsequent offences.

*Clause 933* generally reflects section 671 of the IR Act and provides that in the event that a person is found guilty of a contravention of an industrial instrument, permit, or this Bill, and the court is satisfied the contravention consisted of wilful action or default of the person, the court may grant specified injunctions. The person must obey the injunction and a maximum penalty of 200 penalty units is provided for failure to obey.

*Clause 934* generally reflects section 697 of the IR Act and provides that the employer must display a copy of an applicable industrial instrument in the workplace. A maximum penalty of 20 penalty units is provided.

*Clause 935* generally reflects section 700 of the IR Act and provides that on termination of employment (by the employer or the employee) and upon request from the former employee, the employer must give the former employee a signed certificate providing details required by a regulation. A maximum penalty of 20 penalty units is provided.

*Clause 936* generally reflects section 706 of the IR Act and prohibits a person from disclosing information acquired in the performance of functions or the exercise of powers under the Bill except in specified circumstances. A maximum penalty of 16 penalty units is provided.

*Clause 937* generally reflects section 672 of the IR Act and provides that, without limiting the Criminal Code, an organisation or person who takes part in, counsels,

encourages or is concerned in the commission of an offence under this Bill, is taken to have committed the offence and are liable to the appropriate penalty for the transgression.

*Clause 938* generally reflects section 674 of the IR Act and provides that a person's attempt to commit an offence is deemed to commit an offence and is liable to the same penalty as if the attempted offence had been committed.

*Clause 939* generally reflects section 675 of the IR Act and provides that a reference to a person knowingly making a false or misleading statement includes a reference to a person being reckless about whether it is a false or misleading statement.

*Clause 940* generally reflects section 676 of the IR Act and provides that a reference to a person engaging in conduct also includes a person being, directly or indirectly, a party to the conduct.

## **Chapter 15 Application to State and employees of the State**

### **Part 1 General Provisions**

*Clause 941* preserves section 686 of the IR Act and provides that this Bill binds the State, except in relation to certain specified matters.

*Clause 942* preserves section 688 of the IR Act and provides that execution or attachment cannot be issued against the property or revenues of the State or a department to enforce an industrial instrument or decisions of the court, commission or a magistrate. A person who is or is taken to be an employer of employees in a department is not personally liable under a relevant industrial instrument or for contravention of the instrument

A definition of the term "execution or attachment" and "state employer" is provided for use in this clause.

*Clause 943* preserves section 689 of the IR Act and provides that the Bill binds a related State entity as it binds an employer other than the State. The exclusions and protections given to the State in clause 1 and 2 of this chapter do not apply to a related state entity. A definition of the term 'department or part of a department' and 'related State entity' is given for use in this clause.

*Clause 944* preserves section 690 of the IR Act and provides who must represent a public sector unit in its role as an employer in an industrial cause in the court, commission or an Industrial Magistrate's Court. A definition of the term "industrial tribunal" is provided for use in this clause.

*Clause 945* preserves section 691 of the IR Act and provides that, if the Minister decides that an industrial cause affects, or is likely to affect, employees in more than one public sector unit, the departmental chief executive is taken to be the employer of all affected employees. Any agreement made by the departmental chief executive as employer or order made in a proceeding to which the departmental chief

executive is a party, binds all those to whom the agreement or order purports to apply.

## **Part 2 Prescribed Hospital and Health Services employees**

*Clause 946* preserves section 693 of the IR Act and provides that Schedule 4 states the way this Act is modified for prescribed services under the *Hospital and Health Boards Act 2011*.

## **Part 3 Other provisions for health employees**

*Clause 947* provides definitions for this part.

*Clause 948* allows for the recovery of overpayments made to health employees and provides how a health employer may recover an overpayment. This clause does not affect the operation section 396A of the repealed IR Act in relation to payments made to health employees before 14 August 2012.

*Clause 949* preserves section 396B of the IR Act and allows a health employer to make a transition loan to a health employee as the result of the employer altering its existing pay date arrangements. However, when the employee ceases employment, the employer may deduct the remaining amount of the transition loan owing from the employees final payment.

*Clause 950* preserves section 396C of the IR Act and enables the recovery of an overpayment that has not yet been repaid from a health employee's final payment upon that employee ceasing to be a health employee. A health employer may deduct from the employee's final payment an amount up to the amount of the outstanding overpayment as agreed by the health employer and employee.

*Clause 951* preserves section 396D of the IR Act and clarifies that a health employee ceases employment when the employee's contract of employment ends and they are paid an amount for accrued leave entitlements. It further clarifies that this can apply even if the health employee subsequently commences a new employment contract with a health employer.

*Clause 952* provides that the Minister must review the operation of this part and table a report in the Legislative Assembly within two years of the commencement of this part.

## **Chapter 16 Employers declared not to be national system employers**

### **Part 1 Declarations**

*Clause 953* provides that this clause applies for the purposes of the Commonwealth FW Act, section 14(2).

*Clause 954* declares that the Brisbane City Council is not a national system employer.

*Clause 955* provides that a regulation may be made declaring an employer not to be a national system employer. This clause also allows a declaration to be revoked by regulation.

*Clause 956* provides that the Minister by gazette notice may fix a relevant day for the declaration made by clause 954 or a declaration made by a regulation mentioned in clause 955. Under section 14(2) of the Commonwealth FW 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.

## **Part 2 Change from federal to State system**

*Clause 957* provides definitions that apply in this part.

*Clause 958* provides that, on the relevant day (defined in clauses 958 and 959), 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.

*Clause 959* applies if a regulation has been made providing that the employees of a particular declared employer are bound by an industrial instrument. From the relevant day, the industrial instrument applies to the declared employer, the declared employees and any organisation party to the instrument. This clause also provides that, for the purposes of this clause, a regulation may declare valid an existing industrial instrument, or any matter relating to the industrial instrument referred to in the clause.

*Clause 960* applies to the extent clauses 958 and 959 do not provide for declared employees. This clause provides for the 'conversion' of federal industrial instruments to State instruments. The clause 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 applies to the declared employees and declared employer is taken to exist under this Bill.

*Clause 961* 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): accept, recognise, adopt or rely on any step taken under, or for the purposes of, the national fair work legislation; 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 give effect to anything done under, or for the purposes of, the national fair work legislation.

*Clause 962* 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, if a power or

function is 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. This clause has effect subject a contrary intention in this Bill and a regulation.

*Clause 963* provides that if a term of a new State instrument is expressed to refer to a provision of the Commonwealth FW Act (from the relevant day) it is taken to refer instead to the corresponding provision of this Bill. This clause has effect subject to this Bill and a regulation. This clause has effect subject a contrary intention in this Bill and a regulation.

*Clause 964* 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 Bill) of which the federal organisation is a counterpart federal body.

This clause also provides that a federal organisation which is not a counterpart federal body of an organisation under this Bill is taken to be an organisation under the Bill, 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. Representation ceases when the new State instrument stops binding the relevant declared employer. This clause has effect subject a contrary intention in this Bill and a regulation.

*Clause 965* recognises service of an employee under an old federal instrument to decide the entitlements of a declared employee under a new State instrument. The clause provides that service under the old federal instrument also counts as service under the new State instrument, and if a declared employee has had the benefit of an entitlement then the period of service under the old federal instrument by which the entitlement was calculated is not to be counted again.

*Clause 966* recognises leave that had accrued before the relevant day. If a declared employee, to whom a new State instrument applies, had immediately before the relevant day, accrued entitlement to leave that leave will be carried over and recognised under the new State instrument. This clause applies to annual leave, sick leave, personal leave or carer's leave, and long service leave.

*Clause 967* 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 this Bill for the remainder of the period. This clause also provides that steps taken to take a period of leave under the old federal instrument is also recognised under the new State instrument or this Bill. A regulation may also 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 FW Act.



## **Chapter 17 General provisions**

### **Part 1 Queensland Industrial Relations Consultative Committee**

#### **Division 1 Establishment and purpose**

*Clause 968* provides for the establishment of the Queensland Industrial Relations Consultative Committee (the committee).

*Clause 969* provides that the purpose of the committee is to provide a forum for State, local government and employee representatives (and any invited representatives) to consult on achieving the main purpose of the Bill, including the legislation, policies, strategies and other instruments that relate to that main purpose.

Subclause (2) provides examples of actions the committee may take in order to achieve its purpose.

Subclause (3) further provides certain matters the committee must have regard to in achieving its purpose, including that the committee is not to interfere with judicial and commission functions.

#### **Division 2 Membership**

*Clause 970* at subclause (1) prescribes the membership composition of the committee, which includes State, local government and employee representatives. The Minister is also the chairperson of the committee.

Subclause (2)(a) and (b) provides that the Minister must appoint as members a person nominated by the LGAQ Ltd (if the LGAQ Ltd nominates a person instead of the chief executive officer (CEO) of the LGAQ Ltd as its member) and the persons nominated by the Queensland Council of Unions (QCU) and the Australian Workers Union of Employees, Queensland (AWU).

The other members (being the Minister, the commission chief executive (CCE) under the *Public Service Act 2008* (Qld), the CEO of the LGAQ Ltd if the CEO is the chosen member for the LGAQ Ltd, and 2 persons in senior departmental offices which have been nominated by the Minister) are automatically appointed as members by virtue of clause 970.

Subclause 2(c) further prescribes that the Minister must appoint an appointed member as the Deputy Chairperson. This position supports the administration of the Committee.

*Clause 971* prescribes the process for an individual appointed as a member of the committee representing the LGAQ Ltd (other than the CEO of the LGAQ Ltd), the QCU or the AWU to resign from the committee.

*Clause 972* provides that the appointment of an individual as a member for the LGAQ Ltd (other than the CEO of the LGAQ Ltd), the QCU or the AWU may be terminated by the Minister in certain circumstances, including at the request of the organisation that nominated the member.

*Clause 973* ensures that the continuity of representation at committee meetings is not dependent on one individual given that circumstances may affect an individual's ability to attend meetings at certain times, by providing for the appointment of substitute members.

Subclause (1) provides that certain members (the Minister, the CCE under the *Public Service Act 2008* (Qld), the CEO of the LGAQ Ltd, senior departmental office holders for the Queensland government) in their individual capacity may nominate substitute members.

Subclause (2) provides that for members who have been nominated by an organisation (a person nominated by the LGAQ Ltd, the QCU and the AWU), that the organisation may nominate substitute members.

Subclause (3) provides that substitute members are given the same rights as the member they are representing, thereby ensuring organisational representation at committee meetings is not unduly affected by the appointment of a substitute member.

*Clause 974* prescribes that, in certain circumstances, nominated representatives may be invited to participate in meetings of the committee or subcommittee. For example, depending on the circumstances the committee may deem it appropriate or advantageous to seek the assistance of technical experts or industry experts. This clause also expressly excludes a representative from becoming a member of the committee and provides a mechanism to end a representative's participation at committee meetings.

### **Division 3 Proceedings of consultative committee**

*Clause 975* provides for the timing and arrangements of committee meetings.

Subclause (1) provides that the Minister may convene a meeting of the committee at any time and place. However, subclause (2) provides that the Minister must convene a meeting of the committee at least twice each year.

*Clause 976* allows the committee to establish a subcommittee to consider and report to the committee.

### **Part 2 Other provisions**

*Clause 977* preserves section 694 of the IR Act and applies where an employer with a workplace in Queensland engages an employee in Queensland. Where the work of this employee is performed partly in Queensland and partly in some other State, the employment is bound by the relevant Queensland industrial instrument for the full period of the employment including that outside Queensland.

*Clause 978* preserves section 695 of the IR Act and provides that a student undertaking tertiary studies may apply to the registrar for a permit to work in a particular calling for a particular period. It must be demonstrated by the applicant that

the period of work is necessary to complete the course. The conditions of the permit operate to the exclusion of any provision contained in an industrial instrument.

*Clause 979* preserves section 696 of the IR Act and provides that an application may be made to the commission for a permit for an aged or infirm person to work in a calling for less than the wages prescribed by an industrial instrument.

The registrar must notify an employee organisation in the industrial calling the application relates to, and the commission must promptly hear any objection from the employee organisation's authorised representative to the issuing of a permit under this clause. If issued, a permit under this clause has effect despite an industrial instrument.

*Clause 980* preserves section 698 of the IR Act and provides that the registrar may, if an industrial instrument is varied, reprint the industrial instrument in corrected form.

*Clause 981* preserves section 699 of the IR Act and sets out a process by which the registrar may declare an industrial instrument obsolete. To do so, the registrar must, after making inquiry, publish a notice of an intention to declare a stated industrial instrument obsolete. If no objection is filed, the registrar may declare the instrument obsolete. The commission must hear and decide any objections received in response to notice of the registrar under this clause.

*Clause 982* preserves section 702 of the IR Act and provides that an official bears no civil liability in respect of acts done or omissions made honestly and without negligence, acting under this Bill or any of the Acts listed in clause 904(4). If this provision prevents civil liability from attaching to a person, it attaches instead to the State. However, this section does not apply if the official is a State employee within the meaning of the *Public Service Act 2008*, section 26B(4).

*Clause 983* generally reflects the provisions of section 703 of the IR Act and provides for payment from the consolidated fund to an employee suffering hardship due to an underpayment of wages which cannot be recovered from the employer. The Governor in Council may authorise such a payment. The employer is still liable to pay the unpaid wages even though payment has been made from the fund. If the employee subsequently receives remuneration, he or she is to make payment to the fund. Definition of the term 'remuneration' is provided for use in this clause.

*Clause 984* preserves section 704 of the IR Act and provides that any notices or applications that are required under this Bill must be in writing, unless otherwise provided.

*Clause 985* provides that the *Electronic Transaction (Queensland) Act 2001* does not apply to the giving of a document under this Bill.

*Clause 986* is a new provision which sets out that if a person is required under this Bill to give a document, including a written notice, to another person they may do so electronically in a way that the receiver is able to receive the document. This provision applies unless the contrary intention appears, to provide for the circumstance when a document might be required to be provided in a format other

than electronically. Exemptions to this clause are documents given, filed, received, issued or sent in a proceeding before the court, commission or industrial magistrate's court. The clause also provides for when a sender or receiver is taken to have sent or to have received a document electronically.

*Clause 987* preserves section 705 of the IR Act relating to inaccurate descriptions, and provides that the operation of this Bill is not prevented or abridged by misnomer, inaccurate description or omission in or from a document given under this Bill in relation to subject matter that is sufficiently clear to be understood.

*Clause 988* preserves section 707 of the IR Act and provides that, where a provision of this Bill does not apply to a person or class of person, a decision is inoperative to the extent that it purports to apply to the person or member of the class about the provision's subject matter.

This Bill does not create rights, privileges or benefits for a period of service as an employee if similar rights etc. were given or received by the person under the repealed Act.

*Clause 989* preserves section 708 of the IR Act and provides that forms may be used by or in the court, commission, Industrial Magistrates Court or registry when approved by the president. The chief executive may approve forms for use in other circumstances.

*Clause 990* preserves section 709 of the IR Act and provides that the Governor in Council may make regulations and specifies some of the matters on which regulations may be made.

## **Chapter 18 Repeal and transitional provisions**

### **Part 1 Repeal**

*Clause 991* provides that the IR Act is repealed.

### **Part 2 Transitional provisions for repeal of industrial Relations Act 1999**

#### **Division 1 Preliminary**

*Clause 992* defines terms used in this part of the Bill.

#### **Division 2 Existing industrial instruments**

##### **Subdivision 1 Awards**

*Clause 993* provides that a modern award in operation under the repealed IR Act is taken to be a modern award under the new Act. This clause also provides that until the modern award is varied under this Act for the first time, specified sections of the repealed act continue to apply while specific sections of this Act do not apply.

Clause 994 provides that any review and variation of a modern award still in progress under the specified provisions of the IR Act must continue and be completed under the provisions of that repealed Act.

*Clause 995* provides for the partitioning of the modern award for the Local Government industry (excluding the Brisbane City Council) into three awards by the Registrar.

Subclause (1) identifies the relevant award for the purposes of the partitioning as the Queensland Local Government Industry Award—State 2014 or any award made prior to the commencement of the Bill that replaces the Queensland Local Government Industry Award—State 2014.

Subclause (2) provides that the Registrar must terminate the relevant award and replace it with three awards. For the purposes of the section these awards are to be known as the ‘replacement awards’.

Subclause (3) sets out that the replacement awards must each cover a group of employees described in the variation notice issued by the Minister for Employment and Industrial Relations pursuant to S140CA of the IR Act on 6 June 2016 as Stream A: Administrative, Clerical, technical, professional, community service, supervisory and managerial employees; Stream B: Operational employees (excluding those identified under the classifications listed in occupational stream C); and Stream C: Building, engineering and related maintenance services; and Nursing stream. The variation notice identifies the occupations and groups within each of those streams.

Subclause (4) ensures that that the registrar, in partitioning the awards into three awards may make any necessary provision to ensure wages and employment conditions for employees are not affected i.e. neither reduced or improved, by the partitioning.

Subclause (5) provides that a party to the award cannot be heard in relation to the partitioning of the award. This makes clear the intent of the amendment is for an administrative separation of the relevant award into its replacement awards by the registrar.

Subclauses (6) to (8) provide further instruction for the registrar in dealing with the relevant award and the replacement awards, and that certain other provisions of the Bill do not apply. In particular, the provisions of chapter 3 for making and revoking a modern award and certain provisions of equal remuneration chapter 5 do not apply.

Subclause (9) makes clear that the partitioning shall not occur until the Queensland Local Government Industry Award—State 2014 has been reviewed and varied pursuant to chapter 20, division 2 of the IR Act.

*Clause 996* is a transitional provision which provides that an application to vary a modern award made, but not decided, under the repealed Act, must continue to be dealt with under the repealed Act.

*Clause 997* provides that pre-modern awards which were in operation immediately before commencement of this Act, and which applied to employees due to underpinning pre-modernisation certified agreements, are taken to be revoked.

This clause also provides, at subclause (4), that from commencement of this Act if, but for this section, the conditions an employee would be entitled to under the QES or a certified agreement are less favourable than wages or conditions the employee was entitled to immediately before commencement under a pre-modern award being revoked by this clause. In this case, the certified agreement that applies to the employee is taken to be varied to include provision for any wages or condition of employment from any revoked pre-modern award from which they derived an entitlement.

## **Subdivision 2 Existing certified agreements and determinations**

*Clause 998* provides that existing certified agreements and arbitration determinations continue in force under this Bill, however, they cannot be amended under clause 223 or chapter 4, part 7 division 2.

*Clause 999* provides that the commission must determine matter by arbitration under the repealed act if the requirement under section 149(4) of the repealed Act started to apply before commencement of this Bill, and a determination had not yet been made under section 150 of the old Act.

*Clause 1000* provides that existing applications for certification made before the commencement of this Bill under section 153 of the repealed Act should be decided under chapter 6 division 2 of the repealed Act. This clause does not apply for an application for an agreement made with employees under old section 147A if the application was made on or after the introduction day.

*Clause 1001* applies if an agreement was made with employees under section 147A of the repealed Act and an application was made to the commission under section 153 of the repealed Act to certify the agreement. If the application was not decided by the commission before the commencement, the application is taken to have been withdrawn on commencement.

This clause also provides that if the commission certified an agreement made under old section 147A between introduction and commencement, that any such agreement will be issued with an early nominal expiry date, 3 months from the commencement of this section. This nominal expiry date cannot be extended under chapter 4, part 7, division 1.

## **Subdivision 3 Other instruments and orders**

*Clause 1002* sets out transitional provisions for equal remuneration orders and applications made under the provisions of the IR Act. Subclause (1) provides for continued effect of equal remuneration orders that are in effect immediately before the commencement: orders made under old IR Act chapter 2, part 5 or old chapter 2A, part 4 and which were in effect, are taken to have been made under chapter 5, part 3 of this Bill. Subclause (2) provides that for an application for an order under the same parts of the repealed Act as for subclause (1), which was made but not yet

been decided before commencement, the application must continue to be decided under the old part. If such an application is granted, the order made is taken to have been made under chapter 5, part 3 of this Bill.

*Clause 1003* provides that Chapter 5, Part 2, Division 2 does not apply to employees of a local government sector employer if the application for certification of the agreement is made before 1 January 2019. However, the commission decides on application by a party to the agreement, to apply section 251 to the agreement.

*Clause 1004* provides that any orders under old section 137, 138 and 140 of the repealed Act in effect immediately before the commencement relating to wages and conditions of apprentices and trainees, tool allowance, or labour market programs continue in effect as if made under chapter 2, part 5 or 6 of this Bill.

### **Division 3 Conditions of employment for continuing employees**

*Clause 1005* sets out when this transitional part applies to an employee, defined as a continuing employee for this Division: if, immediately before the commencement, a pre-modernisation industrial instrument applied to the employee in relation to particular employment, or old chapter 2A applied to the employee in relation to particular employment.

*Clause 1006* sets out that Queensland Employment Standards under this Bill start applying to continuing employees from commencement. This clause also sets out, that for continuing employees where a modern award had been made but which did not apply to the employee because of section 824 of the old Act, the modern award starts applying to the employee from commencement. The pre-modernisation certified agreement that applied to the employee before commencement continues in force. Any provision of an existing certified agreement that, while inconsistent with the Queensland Employment Standards is at least favourable, can continue to apply.

*Clause 1007* provides a transitional provision for sections 9 and 9A of the old Act where pre-modernisation certified agreements were taken to include the provisions of the old Act under those sections in relation to working time, overtime etc, so that these may continue to operate. This clause operates despite clause 1013 of this Bill.

*Clause 1008* is based on section 809 of the IR Act and provides for the leave entitlements of continuing employees accrued before the commencement under an industrial instrument or chapter 2 or 2 A of the repealed Act. The clause also provides that leave approved before commencement is taken to be approved for the purposes of the Queensland Employment Standards or an industrial instrument applicable to the employee.

*Clause 1009* is based on section 810 of the IR Act and provides details on what regard must be given to when calculating leave entitlements.

*Clause 1010* provides that giving a notice or documents in compliance with pre-commencement employment condition requirements may, if the context permits, satisfy requirements under this Act, or an industrial instrument under this Act regarding notices etc. This clause is based on section 811 of the IR Act.

*Clause 1011* which is based on section 812 of the IR Act provides that, if before the commencement of this Act the commission made an order in relation to the continuing employee on an application under section 13(4) or 71EF(4) of the repealed Act, the order continues to have effect, unless under an industrial instrument the employee is not entitled to receive an amount representing commission in an annual leave payment.

*Clause 1012* which is based on section 813 of the Industrial Relations Act 1999 provides a leave loading payment amount paid to an employee before commencement of this Act in addition to the employee's annual leave entitlement under chapter 2 or 2A of the repealed Act is taken to be an additional leave amount for clause 36(2).

*Clause 1013* provides that, if before the commencement of this Act the employee was on parental leave under pre-commencement conditions, the employee is taken to be under the appropriately defined parental leave under this Act, i.e. long birth-related leave; short birth-related leave. This clause is based on section 814 of the IR Act. Clause 1013 also sets out transitional provisions dealing with other actions which may have occurred under the old Act and which are to be taken to have been made under the new provisions. These include transfer to a safe job and extension of parental leave.

*Clause 1014* which is based on section 815 of the IR Act provides that Clause 72 of the QES applies to a decision made, but not implemented, before the commencement of this Act.

*Clause 1015* based on section 817 of the IR Act provides that if before the commencement the employer and employee made an agreement in regards to long service leave under sections 45(2) or 71HD(2) of the repealed Act, or the employer gave notice under section 45(3) or 71HD(3), the agreement or notice is taken to have been made under clause 97.

*Clause 1016* reflects section 818 of the IR Act and provides that if before commencement the commission made an order in relation to the payment of long service leave, the order continues to have effect under clause 99(3), unless an industrial instrument under this Act provides that the employee is not entitled to receive an amount representing commission in a long service leave payment.

*Clause 1017* which is based on section 819 of the Industrial Relations Act 1999 provides that if before commencement of this Act the commission decided under section 46(8) or 71HG of the repealed Act that an employee who was paid piece rates should be paid for long service leave on and from commencement, the decision continues to have effect as if it had been made under clause 100.

*Clause 1018* sets out transitional provisions for certain existing decisions, agreements or orders about long service leave made before the commencement of this Act, on and from commencement, the agreement, decision or order continues to have effect as if it had been made under the corresponding sections of Chapter 2. Subsection 2 of this clause applies subject to a provision in an industrial instrument about the payment for, or taking of the employee's long service leave.



## **Division 4 Dismissals**

*Clause 1019* provides that chapter 3, part 4, division 1AA of the IR Act. This division applies to prescribed employees under certain instruments and provides additional requirements for dismissal, including entitlement for employees to be paid a minimum redundancy payment and allowing employers to apply to the commission for relief from the obligation to make a redundancy payment. This division continues to apply to an employee to whom it applied immediately before the commencement of the new Act.

## **Division 5 Freedom of association**

*Clause 1020* provides that despite the repeal of the IR Act, the freedom of association provisions in old chapter 4 will continue to apply after the commencement of the new Act in relation to conduct to which it applies that was engaged in, or proposed to be engaged in before the commencement of the new Act. Chapter 8 general protections in the new Act will not apply to this conduct.

## **Division 6 Protected industrial action**

*Clause 1021* provides that industrial action organised or engaged in after the commencement of this Bill that would, apart from the repeal of the IR Act, be protected industrial action under that Act is taken to be protected industrial action under this Bill.

## **Division 7 Industrial tribunals and registry**

*Clause 1022* is a transitional provision preserving appointment of members of the court, commission and registry under the IR Act 1999.

*Clause 1023* is a transitional provision preserving a proceeding started under the IR Act but not determined.

*Clause 1024* is a transitional provision providing that a proceeding, including an appeal, related to a proceeding under the IR Act 1999 may be commenced under this bill.

*Clause 1025* is a transitional provision preserving the rules made under section 338 of the IR Act 1999.

## **Division 8 Enforcement**

*Clause 1026* provides that the appointments of inspectors under the IR Act are continued by this Bill.

## **Division 9 Records and wages**

*Clause 1027* is a transitional provision preserving the issuance or suspension of an authority under section 364 of the IR Act.

*Clause 1028* is a transitional provision preserving an application filed under section 365(1) of the IR Act but not determined.

*Clause 1029* is a transitional provision preserving a notice issued under sections 371, 373A and 374 of the IR Act.

*Clause 1030* is a transitional provision preserving a written objection made by a member of a registered organisation under section 373 of the IR Act.

*Clause 1031* is a transitional provision preserving an agreement to contribute to another superannuation fund made under section 405 of the IR Act as in force immediately before 1 April 2005

## **Division 10 Private employment agents' fees**

*Clause 1032* provides that fees received by private employment agents in contravention of the IR Act during its period of operation will be dealt with under the provisions of that Act. Similarly, applications and orders commenced or made under the IR Act will continue to be dealt with under the provisions of that Act.

## **Division 11 Industrial organisations and associated entities**

### **Subdivision 1 Provisions for old Act, ch12, pt 2**

*Clause 1033* is a transitional provision continuing the registration of an organisation.

### **Subdivision 2 Provisions for old ch12, pt 2**

*Clause 1034* is a transitional provision preserving an application filed for registration but not yet determined.

*Clause 1035* is a transitional provision continuing the register of organisations and rules of an organisation.

*Clause 1036* is a transitional provision continuing an application to change the callings in an organisations rules.

### **Subdivision 3 Provisions for old ch 12, pt 3**

*Clause 1037* is a transitional provision continuing an organisations rules.

### **Subdivision 4 Provisions for ch 12, pt 4**

*Clause 1038* is a transitional provision continuing an application to approve ballots.

### **Subdivision 5 Provisions for old ch 12, pt 5**

*Clause 1039* is a transitional provision preserving applications made under section 459 of the IR Act.

*Clause 1040* is a transitional provision preserving applications made under section 461 of the IR Act.

### **Subdivision 6 Provisions for old ch 12, pt 6**

*Clause 1041* is a transitional provision preserving demarcation dispute undertakings.

*Clause 1042* is a transitional provision preserving declarations made under section 468 (1) of the IR Act.

*Clause 1043* is a transitional provision preserving applications made under section 472 of the IR Act.

*Clause 1044* is a transitional provision preserving applications made under section 473 of the IR Act.

*Clause 1045* is a transitional provision preserving applications made under section 474 of the IR Act.

*Clause 1046* is a transitional provision preserving applications made under section 478 of the IR Act.

### **Subdivision 7 Provisions for old ch 12, pt 7**

*Clause 1047* is a transitional provision preserving election arrangements made under section 482 of the IR Act.

### **Subdivision 8 Provisions for old ch 12, pt 8**

*Clause 1048* is a transitional provision preserving election enquiries commenced under section 502 of the IR Act.

*Clause 1049* is a transitional provision preserving registrar actions under section 503 (1) of the IR Act.

*Clause 1050* is a transitional provision preserving applications made under section 512 of the IR Act.

### **Subdivision 9 Provisions for old ch 12, pt 9**

*Clause 1051* is a transitional provision preserving applications made under section 519 of the IR Act.

*Clause 1052* is a transitional provision preserving applications made under section 520 of the IR Act.

*Clause 1053* is a transitional provision preserving applications made under section 524 of the IR Act.

## **Subdivision 10 Provisions for old ch 12, pt 10**

*Clause 1054* is a transitional provision preserving applications made under section 535 of the IR Act.

## **Subdivision 11 Provisions for old ch 12, pt 12**

*Clause 1055* is a transitional provision preserving the obligations under section 554 of the IR Act until the expiry of those obligations.

*Clause 1056* is a transitional provision preserving the obligations under section 555 of the IR Act until the expiry of those obligations.

*Clause 1057* is a transitional provision preserving any register of gifts, hospitality and other benefits kept by an organisation under section 557A of the IR Act.

*Clause 1058* is a transitional provision preserving the obligations under section 557H of the IR Act until the expiry of those obligations.

*Clause 1059* is a transitional provision is a transitional provision preserving the obligations under section 557I of the IR Act until the expiry of those obligations.

*Clause 1060* is a transitional provision is a transitional provision preserving the obligations under section 557Y of the IR Act until the expiry of those obligations.

*Clause 1061* is a transitional provision is a transitional provision preserving the obligations under section 557Z of the IR Act until the expiry of those obligations.

*Clause 1062* is a transitional provision allowing prosecution, or preserving a prosecution brought, under section 566 of the IR Act.

*Clause 1063* is a transitional provision allowing prosecution, or preserving a prosecution brought, under section 569 of the IR Act.

*Clause 1064* is a transitional provision allowing prosecution, or preserving a prosecution brought, under section 570 of the IR Act.

*Clause 1065* is a transitional provision preserving any investigation commenced by the registrar under section 571 of the IR Act.

*Clause 1066* is a transitional provision preserving any audit initiated by the registrar under section 575 of the IR Act.

## **Subdivision 12 Provisions for old ch 12, pt 13**

*Clause 1067* is a transitional provision preserving an exemption granted under section 580 of the IR Act.

*Clause 1068* is a transitional provision preserving an exemption granted under section 582 of the IR Act.

*Clause 1069* is a transitional provision preserving an application filed but not decided under section 590.

*Clause 1070* is a transitional provision preserving an exemption granted under section 591 of the IR Act.

*Clause 1071* is a transitional provision preserving an application filed but not decided under section 594.

*Clause 1072* is a transitional provision preserving the publication of details pursuant to section 596 of the IR Act of an application made under section 594 of the IR Act.

*Clause 1073* is a transitional provision preserving steps taken under section 599 of the IR Act regarding an election.

### **Subdivision 13 Provisions for old ch 12, pt 14**

*Clause 1074* is a transitional provision preserving the time for challenging an amalgamation or withdrawal under, and the effect of, section 612 of the IR Act.

*Clause 1075* is a transitional provision preserving an application made but not decided under section 613 of the IR Act.

### **Subdivision 14 Provisions for old ch 12, pt 15**

*Clause 1076* is a transitional provision preserving action taken under section 617 in relation to an amalgamation.

*Clause 1077* is a transitional provision preserving action taken under section 622 in relation to a withdrawal.

### **Subdivision 15 Provisions for old ch 12, pt 15A**

*Clause 1078* is a transitional provision preserving complaints made under section 636A but not finalised.

### **Subdivision 16 Provisions for old ch 12, pt 16**

*Clause 1079* is a transitional provision preserving applications made under Chapter 12, part 16, division 2 of the IR Act.

*Clause 1080* is a transitional provision preserving proceedings commenced under Chapter 12, part 16, division 3 of the IR Act.

### **Division 12 Other provisions**

*Clause 1081* provides that repealed section 664A (which provides for the imposition of penalties for interference with a protected action ballot or a secret ballot conducted by the commission or in accordance with the old Act) continues to apply to an act or omission constituting an offence under that section that happened before the commencement of the new Act.

*Clause 1082* provides that existing declarations of employers not to be national system employers under the repealed IR Act is taken to have been made under this Bill.

*Clause 1083* provides that student's work permits and aged or infirm persons permits issued under the IR Act continue in effect under this Bill.

*Clause 1084* provides that references in an Act or document to the repealed IR Act are taken to be references to this Bill if the context permits.

*Clause 1085* provides for the making of transitional provisions in a transitional regulation. The clause and any transitional regulation made under it expire one year after this Bill commences.

## **Chapter 19 Amendment of Acts**

### **Part 1 Amendment of this Act**

*Clause 1086* provides that Part 1 amends this Bill.

*Clause 1087* amends the long title of this Bill.

### **Part 2 Amendment of the Anti-Discrimination Act 1991**

*Clause 1088* states that this part amends the *Anti-Discrimination Act 1991*.

The purpose of the amendments in this Part is provide for the commission to have exclusive jurisdiction for workplace/employment related anti-discrimination matters.

*Clause 1089* inserts a note into section 113 consequential to the insertion of new section 174C by clause 1099 of the Bill.

*Clause 1090* inserts new section 113AA (Transfer of application from industrial relations commission to QCAT) into the Act. This new section gives the commission power to transfer applications for an exemption made under section 113 to QCAT where the exemption sought relates to or includes a non-work-related matter. QCAT has an existing power to transfer matters under section 52 of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

*Clause 1091* amends section 113A (Appeal from tribunal decision) to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'. A definition for this term is inserted by clause 1106 into the schedule (Dictionary) to mean the IR Act in relation to work-related matters and the QCAT Act for other matters.

*Clause 1092* amends section 124 (Unnecessary information) to replace the reference to the 'tribunal' with a reference to 'QCAT or the industrial relations commission'.

*Clause 1093* amends section 125 (Act's freedom from associated highly objectionable conduct purpose and how it is to be achieved) to replace the reference to 'the QCAT

Act' with a reference to 'relevant tribunal Act'. A definition for this term is inserted by clause 1106.

*Clause 1094* amends section 144 (Applications for orders protecting complainant's interests (before reference to tribunal)) to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1095* amends section 155 (Requirement to initiate investigation) of the Act to replace the reference to the 'tribunal' with a reference to 'QCAT or the commission' and also replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1096* amends section 164A (Right of complainant to seek referral to tribunal after conciliation conference) to replace the reference in subsection (2) to the 'tribunal' to the 'commission' where the complaint is, or includes, a work-related matter. A note is also inserted to refer to the power of the commission under section 193A inserted by clause 1102.

This clause also amends section 164A(6) to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1097* amends section 166 (Complainant may obtain referral of unconciliated complaint) to enable complainants to require the Anti-Discrimination Commissioner to refer a complaint that is work-related or includes a work-related matter to the commission. A note is also inserted to refer to the power of the commission under new section 193A inserted by clause 1102.

Section 166(5) is also amended to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1098* amends section 167 (Complainant or respondent may seek referral after 6 months) to enable a referral to the commission if the complaint is work-related or includes a work-related matter. A note is also inserted to refer to the power of the commission under new section 193A inserted by clause 1102.

This clause also amends section 167(7) to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1099* amends Part 2 of Chapter 7 of the Act to replace Division 1A which sets out the powers and functions of the tribunal. New section 174A provides the functions of QCAT under the Act. New section 174B sets out the functions of the commission under the Act. New section 174C provides that QCAT and the commission may exercise powers conferred on those tribunals by the Act as well as powers conferred on those tribunals under the QCAT Act or IR Act, however the Act prevails to the extent of any inconsistency.

*Clause 1100* amends section 176 (Constitution of tribunal) to provide that hearings by QCAT in relation to a complaint under the Act must be constituted by a legally qualified member.

*Clause 1101* amends section 177 (Tribunal may join a person as a party) to remove an unnecessary reference to QCAT consequential to the amendments giving the

commission jurisdiction under the Act. A new subsection (2) is also inserted to clarify that section 177 does not limit the operation of provisions under the tribunal Acts about the joining of parties to a proceeding.

*Clause 1102* amends Chapter 7, division 1, subdivision 1 to insert section 193A. This new section provides the commission with power to transfer a complaint to QCAT where it relates to or includes a work related matter. QCAT has an existing power to transfer matters under section 52 of the QCAT Act.

*Clause 1103* amends section 228A (Constitution of tribunal for this chapter) to provide that for the purpose of providing an opinion under Chapter 8 of the Act, QCAT must be constituted by a judicial member and the commission must be constituted by a member of the Industrial Court.

*Clause 1104* amends section 233 (Appeal from opinion) to replace the reference to 'the QCAT Act' with a reference to 'relevant tribunal Act'.

*Clause 1105* amends chapter 11 (Transitional provisions) of the Act to insert a new transitional provision. This new section 276 sets out how the amendments in the Bill which give powers and functions to the commission will apply to proceedings after commencement.

*Clause 1106* amends the schedule (Dictionary) to omit the definition of 'tribunal' and replace it with a new definition. Definitions are also inserted for the terms 'IR Act', 'relevant tribunal Act' and 'work-related matter'.

A 'work-related matter' is defined to capture all matters involving work or in a work-related area. The definition is intended to cover discrimination complaints as well as other jurisdiction of the Anti-Discrimination Commission, including for example: sexual harassment (section 118); victimisation (section 129); vilification (section 124A) and complaints about a reprisal under section 44 of the *Public Interest Disclosure Act 2010*.

The term 'industrial relations commission' which is also used in the amendments to the Act is not defined given a definition is included in the *Acts Interpretation Act 1954*.

### **Part 3 Amendment of Holidays Act 1983**

*Clause 1107* provides that Part 3 amends the *Holidays Act 1983*.

*Clause 1108* provides for a new public holiday to be observed for Easter Sunday on the Sunday following Good Friday and added to the Schedule to the *Holidays Act 1983*.

The Bill also provides for Easter Sunday (the Sunday after Good Friday) to be included in the list of public holidays forming the definition of that term in Schedule 5 Dictionary.

### **Part 4 Amendment of Hospital and Health Boards Act 2011**

*Clause 1109* provides that Part 4 amends the *Hospital and Health Boards Act 2011*.



*Clause 1110* inserts a new clause setting out the requirement for the chief executive to consult with the Services or employee organisation about the issuing of the proposed employment directive or the proposed amendment or repeal of the directive. The chief executive may delegate this function to a health service executive or an appropriately qualified employee of the department.

## **Part 5 Amendment of Magistrates Courts Act 1921**

*Clause 1111* provides that this part amends the *Magistrates Court Act 1921* (Qld).

*Clause 1112* provides that section 42B of the *Magistrates Court Act 1921* (Qld) is to be amended, to insert a new provision at 42B(1)(a)(ii) to provide that a person may make an employment claim if the employee's annual wages at the time of the breach of the contract of employment are less than the amount of the high income threshold under the FW Act, section 333.

Similar to the unfair dismissal threshold for the Bill, this provision is intended to ensure that for employment claims under Part 5A (processes for employment claims) of the *Magistrates Court Act 1921* (Qld), the threshold aligns, and maintains consistency with, the FW Act threshold.

## **Part 6 Amendment of Ombudsman Act 2001**

*Clause 1113* confirms that this Part amends the *Ombudsman Act 2001* (OA 2001).

*Clause 1114* amends section 76(3) of the OA 2001 to clarify that staff employed under the OU 2001 can be covered by an industrial instrument made under this bill. This includes the provisions of this bill regarding negotiating and making a certified agreement.

## **Part 7 Amendment of Public Guardian Act 2014**

*Clause 1115* confirms that this Part amends the *Ombudsman Act 2014* (PGA 2014).

*Clause 1116* amends section 114 of the PGA 2014 to clarify that staff employed under the PGA 2014 can be covered by an industrial instrument made under this bill. This includes the provisions of this bill regarding negotiating and making a certified agreement.

## **Part 8 Amendment of Public Service Act 2008**

*Clause 1117* includes a new provision stating that this part amends the *Public Service Act 2008*.

*Clause 1118* makes a minor amendment to section 9 to provide that subsection (2) is subject to section 217, thereby removing an existing reference to section 215(3) in both the substance of the provision and the accompanying note.

*Clause 1119* amends the *Public Service Act 2008* to insert a new section as section 49A (Consultation on directives) to provide for consultation on directives.

New s49A has the effect of introducing a requirement to consult public service agencies and employee organisations where a proposed directive affects a public service agency or public service employees who are entitled to be represented by an employee organisation. Employee organisation has the same meaning as in the *Industrial Relations Act 2016*.

*Clause 1120* amends section 51 to insert a new subsection (2) specifying the relationship between a rulings made under the *Public Service Act 2008* and legislation. Subsection (2) provides that, for section 51(1), a ruling is not inconsistent with an Act or subordinate legislation to the extent that the ruling is “at least as favourable” as the Act or subordinate legislation.

*Clause 1121* omits and inserts a new section 52 (Relationship between directives and industrial instruments) to address the relationship between directives that deal with the same subject matter (in whole or in part) as an industrial instrument.

At subsection (2) it provides that if a directive is inconsistent with an industrial instrument, the industrial instrument prevails to the extent of the inconsistency between the directive and the industrial instrument. Inconsistency between directives and instruments was previously contemplated in the legislation, including at section 687(2) of the *Industrial Relations Act 1999* and is intended to have the same meaning in this provision, being substantive inconsistency for the cohort of employees contemplated by the directive or part thereof. Subsection (3) clarifies further the meaning of inconsistent, making it clear that where remuneration and conditions of employment are “at least as favourable” as the remuneration and conditions of employment provided in the industrial instrument, they will not be considered inconsistent. Conditions of employment is wider than remuneration and includes rates of pay, hours or work or leave or other similar employee entitlements. It is not anticipated that reasonable employer administrative measures or processes or matters of managerial prerogative contemplated in a directive from time to time would be inconsistent with an industrial instrument.

Finally, the definition of ‘directive’ is also extended for the purposes of this provision to include directives that are applied (i.e. through a process of adoption outside the coverage provision of the directive) to a public service office and its employees by way of a regulation made under section 23 of the *Public Service Act 2008*.

*Clause 1122* amends section 53 to omit section 53(baa). It also amends section 53(b) to provide that the commission chief executive may make a ruling about the overall employment conditions for persons employed as:

- i) Chief executives, senior executives or senior officers; or
- ii) Public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.

*Clause 1123* amends section 54(3) to provide that the definition of ‘non-executive employees’ means public service employees other than:

- a) Chief executives, senior executives or senior officers; or

- b) Public service officers on contract whose remuneration is equal to, or higher than, the remuneration payable to a senior officer.

*Clause 1124* inserts a new section 54A in light of the allocation of powers in section 53 and 54. It clarifies that nothing in the Act or the *Industrial Relations Act 2016* prevents the commission chief executive and the industrial relations Minister from making a joint ruling. A joint ruling may be desirable where the content of the directive applies to both executive and non-executive employees and would need to rely on the directive making power of both the commission chief executive and the Minister for Industrial Relations.

*Clause 1125* amends Chapter 3, Part 5 of the Act, in particular sections 88A, 88B and 88C. It also omits section 88D and 88E. These new sections formally recognise the transfer of the public service appeals functions to the Queensland Industrial Relations Commission and the role of IRC members (defined in schedule 4 of the Act) to hear and decide public service appeals.

*Clause 1126* inserts a new section 149A to require the commission chief executive to make a directive about reviewing the status of casual employees for the purpose of deciding whether or not to convert their employment to permanent employment. It also states that the chief executive of the department in which a casual employee the subject of the directive is employed must decide whether the person's employment in the department is to continue as a casual employee according to the terms of the existing employment or be as either a general employee on tenure or a public service officer. It also sets out a requirement for the chief executive to consider any criteria for the decision fixed under the directive by the commission chief executive.

*Clause 1127* amends section 193 to insert a note which states that the *Industrial Relations Act 2016* does not apply in relation to a matter that has been, or is, the subject of an appeal under this part except to the extent that the matter relates to bullying in the workplace.

*Clause 1128* amends section 195(4) to insert new subsection (c) which states that section 195(4)(b) does not apply to the extent that the matter relates to bullying in the workplace.

*Clause 1129* amends the heading of Chapter 7, part 1, division 1A.

*Clause 1130* amends section 196A to replace references to 'appeals officer' with 'IRC member' and to state that, to remove any doubt, it is declared that an IRC member's functions and powers for this Act are performed and exercised under the *Public Service Act 2008* and not the *Industrial Relations Act 2016*.

*Clause 1131* inserts a new section 196B to set out the duty of a staff member performing functions to help an IRC member to hear and decide and appeal, namely that the functions must be performed independently, impartially, fairly and in the public interest. It also states that in performing those functions the staff member is not subject to the direction of the commission, the commission chief executive or any Minister.

*Clauses 1132 to 1134* amends sections 197(3), 198(1)(b), 199(1), 199 (2)(b) and (c) and 199(3) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1135* amends section 200 to replace the heading 'Appeals officer' with 'IRC member' and section 200(1), (2), (3) and (4) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1136* amends section 201(1) to replace the words 'An appeals officer' with 'An IRC member' and section 201(3) and (4) to replace the words 'an appeals officer' with 'an IRC member'.

*Clause 1137* amends section 202(1) to replace the heading 'Appeals officer's' with 'IRC member's' and section 202(2) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1138* amends section 203(1) to replace the heading 'Appeals officer' with the words 'IRC member', section 203(1) to replace the words 'appeals officer' with 'IRC member', section 203(2) to replace the words 'appeals officer' with 'IRC member' and section 203(2)(c) to replace the words 'senior appeals officer' with 'senior IRC member'.

*Clause 1139* amends the section 203A heading to replace the words 'Senior appeals officer' with 'Senior IRC member' and section 203A(1), (2) and (3) to replace the words 'senior appeals officer' with 'senior IRC member'.

*Clause 1140* amends section 203B(1) to replace the words 'Senior appeals officer' with 'Senior IRC member'.

*Clause 1141* amends section 204(3) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1142* amends the section 205 heading to replace the words 'Appeals officer's' with 'IRC member's' and section 205(1) and (2) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1143* amends section 206(2) and (3) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1144* amends section 208(1), (2) and (4) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1145* amends section 209 to replace the words 'appeals officer' with 'IRC member'.

*Clause 1146* amends section 210(1) to replace the words 'appeals officer's' with 'IRC member's' and section 210(2) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1147* amends section 211(b) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1148* amends section 213(1) to replace the words 'appeals officer' with 'IRC member'.

*Clause 1149* amends section 214(1)(a) to replace the words 'appeals officer's' with 'IRC member's'.

*Clause 1150* amends section 214B(2)(a)(iii) and (3) to replace the words ‘appeals officer’ with ‘IRC member’.

*Clause 1151* amends section 215(2) to include ‘or a matter that has been heard by the IRC’ and omits section 215(3).

*Clause 1152* inserts new part 12 after chapter 9, part 11. This part inserts a new section 289 that confirms that any ruling made under section 53 or 54 in force at commencement will continue in force. To reflect that the Bill, through amendments to sections 53 and 54, changes the matters the commission chief executive and industrial relations Minister can issue directives on, the new section provides that the ruling is taken to have been made under whichever ever of sections 53 and 54 the ruling could have been made under if it were made on commencement.

The new section also excludes two rulings from the operation of amended section 52.

Directive 17/13 Pay Date for Employees of Queensland Health, including as applied by a regulation made for section 23, will continue to displace industrial instruments (where and if applicable) and will not be subject to section 52.

Directive 09/16 for field staff also be excluded from the operation of section 52, but only until 30 September 2017. After this date section 52 will apply to the directive. This will allow affected agencies sufficient time to consult on any required changes.

It also inserts new section 290, which provides transitional arrangements for appeals to ensure that a person with an appeal on foot at commencement does not have their appeal rights affected by the amendments to the sections dealing with public service appeals. It also saves procedures in force under section 203 immediately before commencement for an appeal and practice directions in force under section 203B immediately before commencement.

*Clause 1153* amends Schedule 4 (Dictionary) to omit the definitions of ‘member’ and ‘vice-president’ and insert definitions of IRC member and senior IRC member.

## **Part 9 Amendment of Workers Compensation and Rehabilitation Act 2003**

*Clause 1154* provides that this Part amends the *Workers’ Compensation and Rehabilitation Act 2003* (WCRA 2003).

*Clause 1155* amends section 552 of the WCRA 2003 to remove particular administrative functions required to be performed by the respondent and the registrar. Consultation with the President, Registry and the Regulator has determined that the requirements are no longer required.

*Clause 1156* amends section 559 to remove the requirement for the appeal body to read the appeal body’s decision in a hearing in open court. The appeal body remains obliged to provide a written copy of the decision to each party.

## **Part 10 Other amendments**

Clause 1157 provides for Schedule 6 to amend the other Acts mentioned in it.

### **Schedule 1 Industrial matters**

This schedule provides an explanation of what are considered to be industrial matters and generally reflects the schedule 1 of the IR Act. A further matter has been included at clause 30 to provide that matters relating to the relationship between employers and organisations is an industrial matter.

### **Schedule 2 Costs provisions for proceedings under Anti-Discrimination Act 1991**

Schedule 2 contains costs provisions for proceedings referred to the commission under the *Anti-Discrimination Act 1991*. These provisions are aligned with the cost provisions in the *Queensland Civil and Administrative Tribunal Act 2009* which apply to matters referred to the QCAT under the *Anti-Discrimination Act 1991*.

### **Schedule 3 Civil penalties**

This sets out civil penalty provisions for the Bill. This schedule is to be read with Chapter 11, Part 8 of the Bill which deals with the applications for orders and the making and effect orders in relation to contraventions of civil penalty provisions.

For each civil penalty provision in the Bill, this makes clear who has standing to apply for an order; the relevant industrial tribunal to which an application for an order can be made; and the maximum penalty that the relevant industrial tribunal may impose on an individual.

Column 1 'Civil remedy provision' lists the civil penalty provisions in the Bill.

Column 2 'Applicants' sets out who has standing to apply to a relevant tribunal for an order.

Column 3 'Industrial tribunal' sets out the relevant tribunals a person may make an application to.

Column 4 'Maximum penalty for an individual' sets out the maximum penalty that the relevant industrial tribunal may impose on an individual.

## **Schedule 4 Application of Act to prescribed Hospital and Health Services and their employees**

### **Part 1 Preliminary**

*Clause 1* provides definitions for this schedule.

*Clause 2* provides that for the purpose of Chapter 3 Modern Awards, Chapter 4 Collective Bargaining, Chapter 5 Equal Remuneration and Chapter 6 Industrial Disputes of this Bill, the departmental chief executive is taken to be the employer of a health service employee instead of the prescribed service. This ensures that the departmental chief executive will be a party to any industrial matter in the Department of Health and the Health and Hospital Services unless delegated by the departmental chief executive.

### **Part 2 Modification of Chapter 3 – Modern awards**

*Clause 3* provides that the departmental chief executive is to be a party to any modern award applying to health service employees instead of hospital and health services. This provision also states that these awards are binding on hospital and health services and their employees.

### **Part 3 Modification of Chapter 4 – Collective bargaining**

*Clause 4* places the same obligations on hospital and health services during a peace obligation period, notwithstanding that they are not parties to the negotiation.

*Clause 5* provides that for clause 13 of this Bill a hospital and health service is taken to be a negotiating party if authorised by the departmental chief executive.

*Clause 6* provides that a bargaining instrument between the departmental chief executive and the health service employees of the hospital and health services, or an employee organisation representing these employees, also covers the hospital and health services.

*Clause 7* clarifies that this section applies subject to the modifications contained in this Schedule, particularly in that bargaining instruments are binding on hospital and health services.

### **Part 4 Modification of Chapter 6 – Industrial Disputes**

*Clause 8* provides that the departmental chief executive is the default party for proceedings for industrial disputes involving a hospital and health service. Where a hospital and health service becomes aware of a dispute, the Service must give written notice of this dispute to the departmental chief executive at the same time as the registrar is first given notice of the dispute under clause 3 (10 of this Bill, or when the Service first becomes aware that the registrar has been given notice.

The departmental chief executive is taken to be the employer party to the dispute unless the departmental chief executive gives written notice to the hospital and health service that the Service is to be the party instead of the departmental chief

executive. If the Service is to be a party to the dispute, they must provide the commission with a copy of the written notice given by the departmental chief executive or authorised delegate.

In deciding whether to give a written notice, the departmental chief executive is to consider whether the dispute may affect the terms and conditions of employment of health service employees in more than one health system employer (i.e. hospital and health services or the department).

*Clause 9* provides that the departmental chief executive may intervene in proceedings in relation to health service employees in a hospital and health service. In these circumstances, the departmental chief executive becomes a party to the dispute in addition to the hospital and health service. This power may be used when the departmental chief executive becomes aware that a dispute may have State-wide implications.

## **Part 5 Modification of Chapter 8 – Rights and responsibilities of employees, employers, organisations etc.**

*Clause 10* enables the commission to consider an employee's conduct, capacity or performance at another health system employer (i.e. a hospital and health service or the department) when considering whether a dismissal by a health system employer was harsh, unjust or unreasonable. This situation may arise where a health service employee works in two hospital and health services and is dismissed by one of the services for serious misconduct. In these circumstances, the other hospital and health service may take this into account in deciding whether to also dismiss the employee.

## **Part 6 Modification of other provisions**

*Clause 11* applies to applications made under this Bill, other than applications made under Chapter 3 (Modern Awards), Chapter 4 (Collective Bargaining) or Chapter 6 (Industrial Disputes). For these applications, the departmental chief executive is taken to be the employer instead of a hospital and health service, unless the departmental chief executive gives written notice to the hospital and health service.

*Clause 12* applies to proceedings under this Bill, other than proceedings under Chapter 3 (Modern Awards), Chapter 4 (Collective Bargaining) or Chapter 6 (Industrial Disputes). For these proceedings, the departmental chief executive is taken to be the employer instead of a hospital and health service, unless the departmental chief executive gives written notice to the service.

*Clause 13* provides that the commission may make orders, give directions or do anything else it may do under this Bill in relation to a hospital and health service even though a service is not party to a proceeding before the commission.



## **Schedule 5 Dictionary**

The dictionary defines terms used throughout the Bill.

## **Schedule 6 Minor and consequential amendments**

Schedule 6 sets out amendments made to other Acts to amend references to the IR Act and its provisions and replace them with references to the Bill and the equivalent provisions.