(i) is for coping with emergencies and/or disasters; and

(ii) is prepared by the Commonwealth, a State or a Territory; or

(b) a fire-fighting, civil defence or rescue body, or part of such a body; or

(c) any other body, or part of a body, a substantial purpose of which involves:

(i) securing the safety of persons or animals in an emergency or natural disaster; or

(ii) protecting property in an emergency or natural disaster; or

(iii) otherwise responding to an emergency or natural disaster; or

(d) a body, or part of a body, prescribed by the regulations;

but does not include a body that was established, or is continued in existence, for the purpose, or for purposes that include the purpose, of entitling one or more employees to be absent from their employment under this Division.

Regulations may prescribe other activities

109(4) The regulations may prescribe an activity that is of a community service nature as an eligible community service activity.

SECTION 110 NOTICE AND EVIDENCE REQUIREMENTS

Notice

110(1) An employee who wants an absence from his or her employment to be covered by this Division must give his or her employer notice of the absence.

110(2) The notice:

(a) must be given to the employer as soon as practicable (which may be a time after the absence has started); and

(b) must advise the employer of the period, or expected period, of the absence.

Evidence

110(3) An employee who has given his or her employer notice of an absence under subsection (1) must, if required by the employer, give the employer evidence that would satisfy a reasonable person that the absence is because the employee has been or will be engaging in an eligible community service activity.

Compliance

110(4) An employee's absence from his or her employment is not covered by this Division unless the employee complies with this section.

Note: Personal information given to an employer under this section may be regulated under the *Privacy Act 1988*.

SECTION 111 PAYMENT TO EMPLOYEES (OTHER THAN CASUALS) ON JURY SERVICE

Application of this section

111(1) This section applies if:

(a) in accordance with this Division, an employee is absent from his or her employment for a period because of jury service; and

(b) the employee is not a casual employee.

Employee to be paid base rate of pay

111(2) Subject to subsections (3), (4) and (5), the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

Evidence

111(3) The employer may require the employee to give the employer evidence that would satisfy a reasonable person:

(a) that the employee has taken all necessary steps to obtain any amount of jury service pay to which the employee is entitled; and

(b) of the total amount (even if it is a nil amount) of jury service pay that has been paid, or is payable, to the employee for the period.

Note: Personal information given to an employer under this subsection may be regulated under the *Privacy Act 1988*.

111(4) If, in accordance with subsection (3), the employer requires the employee to give the employer the evidence referred to in that subsection:

(a) the employee is not entitled to payment under subsection (2) unless the employee provides the evidence; and

(b) if the employee provides the evidence — the amount payable to the employee under subsection (2) is reduced by the total amount of jury service pay that has been paid, or is payable, to the employee, as disclosed in the evidence.

Payment only required for first 10 days of absence

111(5) If an employee is absent because of jury service in relation to a particular jury service summons for a period, or a number of periods, of more than 10 days in total:

(a) the employer is only required to pay the employee for the first 10 days of absence; and

(b) the evidence provided in response to a requirement under subsection (3) need only relate to the first 10 days of absence; and

(c) the reference in subsection (4) to the total amount of jury service pay as disclosed in evidence is a reference to the total amount so disclosed for the first 10 days of absence.

*Meaning of **jury service pay***

111(6) ***Jury service pay*** means an amount paid in relation to jury service under a law of the Commonwealth, a State or a Territory, other than an amount that is, or that is in the nature of, an expense-related allowance.

*Meaning of **jury service summons***

111(7) ***Jury service summons*** means a summons or other instruction (however described) that requires a person to attend for, or perform, jury service.

SECTION 112 STATE AND TERRITORY LAWS THAT ARE NOT EXCLUDED

112(1) This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to engaging in eligible community service activities, to the extent that those entitlements are more beneficial to employees than the entitlements under this Division.

Note: For example, this Act would not apply to the exclusion of a State or Territory law providing for a casual employee to be paid jury service pay.

112(2) If the community service activity is an activity prescribed in regulations made for the purpose of subsection 109(4), subsection (1) of this section has effect subject to any provision to the contrary in the regulations.

Division 9 — Long service leave

SECTION 113 ENTITLEMENT TO LONG SERVICE LEAVE

Entitlement in accordance with applicable award-derived long service leave terms

113(1) If there are applicable award-derived long service leave terms (see subsection (3)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

Note: This Act does not exclude State and Territory laws that deal with long service leave, except in relation to employees who are entitled to long service leave under this Division (see paragraph 27(2)(g)), and except as provided in subsection 113A(3).

113(2) However, subsection (1) does not apply if:

(a) a workplace agreement, or an AWA, that came into operation before the commencement of this Part applies to the employee; or

(b) one of the following kinds of instrument that came into operation before the commencement of this Part applies to the employee and expressly deals with long service leave:

(i) an enterprise agreement;

(ii) a preserved State agreement;

(iii) a workplace determination;

(iv) a pre-reform certified agreement;

(v) a pre-reform AWA;

(vi) a section 170MX award;

(vii) an old IR agreement.

Note: If there ceases to be any agreement or instrument of a kind referred to in paragraph (a) or (b) that applies to the employee, the employee will, at that time, become entitled under subsection (1) to long service leave in accordance with applicable award-derived long service leave terms.

113(3) ***Applicable award-derived long service leave terms***, in relation to an employee, are:

(a) terms of an award, or a State reference transitional award, that (disregarding the effect of any instrument of a kind referred to in subsection (2)):

(i) would have applied to the employee at the test time (see subsection (3A)) if the employee had, at that time, been in his or her current circumstances of employment; and

(ii) would have entitled the employee to long service leave; and

(b) any terms of the award, or the State reference transitional award, that are ancillary or incidental to the terms referred to in paragraph (a).

History

S 113(3) amended by No 124 of 2009, Sch 2 items 125–127, commenced 1 January 2010.

113(3A) For the purpose of subparagraph (3)(a)(i), the test time is:

(a) immediately before the commencement of this Part; or

(b) if the employee is a Division 2B State reference employee (as defined in Schedule 2 to the Transitional Act) — immediately before the Division 2B referral commencement (as defined in that Schedule).

History

S 113(3A) inserted by No 124 of 2009, Sch 2 item 128, commenced 1 January 2010; amended by No 175 of 2012, Sch 1 item 48, commenced 5 December 2012.

Entitlement in accordance with applicable agreement-derived long service leave terms

113(4) If there are applicable agreement-derived long service leave terms (see subsection (5)) in relation to an employee, the employee is entitled to long service leave in accordance with those terms.

113(5) There are ***applicable agreement-derived long service leave terms***, in relation to an employee if:

(a) an order under subsection (6) is in operation in relation to terms of an instrument; and

(b) those terms of the instrument would have applied to the employee immediately before the commencement of this Part if the employee had, at that time, been in his or her current circumstances of employment; and

(c) there are no applicable award-derived long service leave terms in relation to the employee.

113(6) If the FWC is satisfied that:

(a) any of the following instruments that was in operation immediately before the commencement of this Part contained terms entitling employees to long service leave:

(i) an enterprise agreement;

(ii) a collective agreement;

(iii) a pre-reform certified agreement;

(iv) an old IR agreement; and

(b) those terms constituted a long service leave scheme that was applying in more than one State or Territory; and

(c) the scheme, considered on an overall basis, is no less beneficial to the employees than the long service leave entitlements that would otherwise apply in relation to the employees under State and Territory laws;

the FWC may, on application by, or on behalf of, a person to whom the instrument applies, make an order that those terms of the instrument (and any terms that are ancillary or incidental to those terms) are applicable agreement-derived long service leave terms.

History

S 113(6) amended by No 174 of 2012, Sch 9 item 38, commenced 1 January 2013.

References to instruments

113(7) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the Transitional Act.

History

S 113(7) amended by No 175 of 2012, Sch 1 item 49, commenced 5 December 2012.

SECTION 113A ENTERPRISE AGREEMENTS MAY CONTAIN TERMS DISCOUNTING SERVICE UNDER PRIOR AGREEMENTS ETC. IN CERTAIN CIRCUMSTANCES

113A(1) This section applies if:

(a) an instrument (the ***first instrument***) of one of the following kinds that came into operation before the commencement of this Part applies to an employee on or after the commencement of this Part:

(i) an enterprise agreement;

(ii) a workplace agreement;

(iii) a workplace determination;

(iv) a preserved State agreement;

(v) an AWA;

(vi) a pre-reform certified agreement;

(vii) a pre-reform AWA;

(viii) an old IR agreement;

(ix) a section 170MX award; and

(b) the instrument states that the employee is not entitled to long service leave; and

(c) the instrument ceases, for whatever reason, to apply to the employee; and

(d) immediately after the first instrument ceases to apply, an enterprise agreement (the ***replacement agreement***) starts to apply to the employee.

113A(2) The replacement agreement may include terms to the effect that an employee's service with the employer during a specified period (the ***excluded period***) (being some or all of the period when the first instrument applied to the employee) does not count as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory.

113A(3) If the replacement agreement includes terms as permitted by subsection (2), the excluded period does not count, and never again counts, as service for the purpose of determining whether the employee is qualified for long service leave, or the amount of long service leave to which the employee is entitled, under this Division or under a law of a State or Territory, unless a later agreement provides otherwise. This subsection has effect despite sections 27 and 29.

113A(4) References in this section to a kind of instrument (other than an enterprise agreement) are references to a transitional instrument of that kind, as continued in existence by Schedule 3 to the Transitional Act.

History

S 113A(4) amended by No 175 of 2012, Sch 1 item 50, commenced 5 December 2012.

Division 10 — Public holidays

SECTION 114 ENTITLEMENT TO BE ABSENT FROM EMPLOYMENT ON PUBLIC HOLIDAY

Employee entitled to be absent on public holiday

114(1) An employee is entitled to be absent from his or her employment on a day or part-day that is a public holiday in the place where the employee is based for work purposes.

Reasonable requests to work on public holidays

114(2) However, an employer may request an employee to work on a public holiday if the request is reasonable.

114(3) If an employer requests an employee to work on a public holiday, the employee may refuse the request if:

(a) the request is not reasonable; or

(b) the refusal is reasonable.

114(4) In determining whether a request, or a refusal of a request, to work on a public holiday is reasonable, the following must be taken into account:

(a) the nature of the employer's workplace or enterprise (including its operational requirements), and the nature of the work performed by the employee;

(b) the employee's personal circumstances, including family responsibilities;

(c) whether the employee could reasonably expect that the employer might request work on the public holiday;

(d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration that reflects an expectation of, work on the public holiday;

(e) the type of employment of the employee (for example, whether full-time, part-time, casual or shiftwork);

(f) the amount of notice in advance of the public holiday given by the employer when making the request;

(g) in relation to the refusal of a request — the amount of notice in advance of the public holiday given by the employee when refusing the request;

(h) any other relevant matter.

SECTION 115 MEANING OF *PUBLIC HOLIDAY*

The public holidays

115(1) The following are ***public holidays***:

(a) each of these days:

(i) 1 January (New Year's Day);

(ii) 26 January (Australia Day);

(iii) Good Friday;

(iv) Easter Monday;

(v) 25 April (Anzac Day);

(vi) the Queen's birthday holiday (on the day on which it is celebrated in a State or Territory or a region of a State or Territory);

(vii) 25 December (Christmas Day);

A copied State award copies the terms of a State award that covered the transferring employee and the old State employer immediately before the termination of the employee's employment with the old State employer.

A copied State employment agreement copies the terms of a State employment agreement that covered the transferring employee and the old State employer immediately before the termination of the employee's employment with the old State employer.

History

S 768AF inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

Subdivision B — Copied State instruments

History

Subdiv B, comprising s 768AG–768AO, inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AG CONTRAVENING A COPIED STATE INSTRUMENT

768AG A person must not contravene a term of a copied State instrument for a transferring employee that applies to the person.

Note 1: This section is a civil remedy provision (see Part 4-1).

Note 2: For when a copied State instrument for a transferring employee applies to a person, see section 768AM.

History

S 768AG inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AH WHAT IS A COPIED STATE INSTRUMENT?

768AH A ***copied State instrument*** for a transferring employee is the following:

(a) a copied State award for the employee;

(b) a copied State employment agreement for the employee.

History

S 768AH inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AI WHAT IS A COPIED STATE AWARD?

768AI(1) If, immediately before the termination time of a transferring employee:

(a) a State award (the ***original State award***) was in operation under the State industrial law of the State; and

(b) the original State award covered (however described in the original State award or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State award also covered other persons);

then a ***copied State award*** for the transferring employee is taken to come into operation immediately after the termination time.

Note 1: Even though a copied State award comes into operation in relation to the transferring employee, it will not be enforceable by the employee or another person (for example, the new employer) unless and until it applies to the employee or other person. In particular, it will not apply to the employee or new employer before the employee becomes employed by the new employer. For when the copied State award applies to a person, see section 768AM.

Note 2: A copied State employment agreement for the transferring employee may also come into operation immediately after the termination time, see subsection 768AK(1); if it does, then the State's interaction rules that were in force immediately before the termination time apply for the purposes of working out the interaction between the copied State award and the copied State employment agreement (see item 11 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

768AI(2) The copied State award is taken to include the same terms as were in the original State award immediately before the termination time.

Note: The State's instrument content rules that were in force immediately before the termination time apply to the copied State award (see item 10 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

768AI(3) If the terms of the original State award were affected by an order, a decision or a determination of a State industrial body or a court of the State that was in operation immediately before the termination time, the terms of the copied State award are taken to be similarly affected by the terms of that order, decision or determination.

History

S 768AI inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AJ WHAT IS A STATE AWARD?

768AJ(1) A ***State award*** is an instrument in relation to which the following conditions are satisfied:

(a) the instrument regulates terms and conditions of employment;

(b) the instrument was made under a State industrial law by a State industrial body;

(c) the instrument is referred to in that law as an award.

768AJ(2) However, the regulations may provide that an instrument of a specified kind:

(a) is a ***State award***; or

(b) is not a ***State award***.

History

S 768AJ inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AK WHAT IS A COPIED STATE EMPLOYMENT AGREEMENT?

768AK(1) If, immediately before the termination time of a transferring employee:

(a) a State employment agreement (the ***original State agreement***) was in operation under a State industrial law of the State; and

(b) the original State agreement covered (however described in the original State agreement or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State agreement also covered other persons);

then a ***copied State employment agreement*** for the transferring employee is taken to come into operation immediately after the termination time.

Note 1: Even though a copied State employment agreement comes into operation for the transferring employee, it will not be enforceable by the employee or another person (for example, the new employer) unless and until it applies to the employee or other person. In particular, it will not apply to the employee or new employer before the employee becomes employed by the new employer. For when the copied State employment agreement applies to a person, see section 768AM.

Note 2: A copied State award for the transferring employee may also come into [illegible] immediately after the termination time, see subsection 768AI(1). If it does, [illegible] State's interaction rules that were in force immediately before the termination [illegible] apply for the purposes of working out the interaction between the copied [illegible] employment agreement and the copied State award (see item 11 of Schedule 3A [illegible] Transitional Act as that item applies in a modified way because of section 768BY).

768AK(2) The copied State employment agreement is taken to include the same terms as were in the original State agreement immediately before the termination time.

Note: The State's instrument content rules that were in force immediately before the termination time apply to the copied State employment agreement (see item 11 of Schedule 3A to the Transitional Act as that item applies in a modified way because of section 768BY).

768AK(3) If the terms of the original State employment agreement were affected by an order, a decision or a determination of a State industrial body or a court of the State that was in operation immediately before the termination time, the terms of the copied State employment agreement are taken to be similarly affected by the terms of the order, decision or determination.

768AK(4) If the original State agreement is a collective State employment agreement, the copied State employment agreement is a ***copied State collective employment agreement***.

768AK(5) If the original State agreement is an individual State employment agreement, the copied State employment agreement is a ***copied State individual employment agreement***.

History

S 768AK inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AL WHAT IS A STATE EMPLOYMENT AGREEMENT?

768AL(1) A ***State employment agreement*** is:

(a) an agreement in relation to which the following conditions are satisfied:

(i) the agreement is between a non-national system employer and one or more of the employees of the employer, or between a non-national system employer and an association of employees registered under a State industrial law;

(ii) the agreement determines terms and conditions of employment of one or more employees of the employer;

(iii) the agreement was made under a State industrial law; or

(b) a determination in relation to which the following conditions are satisfied:

(i) the determination determines terms and conditions of employment;

(ii) the determination was made under a State industrial law by a State industrial body;

(iii) the determination was made in a situation in which parties who were negotiating for the making of an agreement of a kind described in paragraph (a) had not been able to reach an agreement;

(iv) the purpose of the determination was to resolve the matters that were at issue in those negotiations.

768AL(2) However, the regulations may provide that an instrument of a specified kind:

(a) is a ***State employment agreement***; or

(b) is not a ***State employment agreement***.

768AL(3) A State employment agreement is a ***State collective employment agreement*** unless:

(a) it is an agreement of a kind that, under the relevant State industrial law, could only be entered into by a single employee and a single employer; or

(b) the agreement is of a kind prescribed by the regulations.

768AL(4) A State employment agreement referred to in paragraph (3)(a) or (b) is a ***State individual employment agreement***.

History

S 768AL inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AM WHEN DOES A COPIED STATE INSTRUMENT APPLY TO A PERSON?

Transferring employee and organisations

768AM(1) A copied State instrument for a transferring employee ***applies*** to the transferring employee or an organisation if:

(a) the instrument covers the employee or organisation; and

(b) the instrument is in operation; and

(c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employee or organisation; and

(d) immediately before the employee's termination time, the employee or organisation would have been:

(i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or

(ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

New employer and other employers

768AM(2) A copied State instrument for a transferring employee ***applies*** to an employer (whether the new employer or another employer) if:

(a) the instrument covers the employer; and

(b) the instrument is in operation; and

(c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employer; and

(d) immediately before the employee's termination time, the old State employer would have been:

(i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or

(ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

Note: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).

Other circumstances when instrument applies

768AM(3) A copied State instrument for a transferring employee also *applies* to a person if an FWC order made under a provision of this Act provides, or has the effect, that the instrument applies to the person.

History

S 768AM(3) amended by No 174 of 2012, Sch 9 item 1339, commenced 1 January 2013.

Instrument only applies in relation to transferring work

768AM(4) A reference in this Act to a copied State instrument for a transferring employee applying to the employee is a reference to the instrument applying to the employee in relation to the transferring work of the employee.

History

S 768AM inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AN WHEN DOES A COPIED STATE INSTRUMENT COVER A PERSON?

Transferring employee and new employer

768AN(1) A copied State instrument for a transferring employee *covers* the employee and the new employer in relation to the transferring work from the employee's re-employment time.

Employee organisation

768AN(2) A copied State instrument for a transferring employee *covers* an employee organisation in relation to the employee if:

(a) the instrument covers the employee because of subsection (1); and

(b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the employee.

Employer organisation

768AN(3) A copied State instrument for a transferring employee *covers* an employer organisation in relation to the new employer if:

(a) the instrument covers the new employer because of subsection (1); and

(b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the old State employer.

Other circumstances when a person is covered

768AN(4) A copied State instrument for a transferring employee also *covers* a person if any of the following provides, or has the effect, that the instrument covers the person:

(a) a provision of this Act or of the Registered Organisations Act;

(b) an FWC order made under a provision of this Act;

(c) an order of a court.

Example:

The FWC may make a consolidation order specifying that the instrument covers a person specified in the order (see subsections 768BE(1) and 768BH(1)).

History

S 768AN(4) amended by No 174 of 2012, Sch 9 items 1340 and 1341, commenced 1 January 2013.

Circumstances when a person is not covered

768AN(5) Despite subsections (1), (2), (3) and (4), a copied State instrument for a transferring employee does not *cover* a person if any of the following provides, or has the effect, that the instrument does not cover the person:

(a) a provision of this Act;

(b) an FWC order made under a provision of this Act;

(c) an order of a court.

Example:

If, after the transferring employee's re-employment time, an enterprise agreement starts to cover the employee, subsection 768AU(2) provides that a copied State instrument for the employee ceases to cover the employee.

History

S 768AN(5) amended by No 174 of 2012, Sch 9 item 1342, commenced 1 January 2013.

768AN(6) Despite subsections (1), (2), (3) and (4), a copied State instrument for a transferring employee that has ceased to operate does not *cover* a person.

Applies only in relation to transferring work

768AN(7) A reference to a copied State instrument for a transferring employee covering the employee is a reference to the instrument covering the employee in relation to the transferring work of the employee.

History

S 768AN inserted by No 175 of 2012, Sch 1 item 1, commenced 5 December 2012.

SECTION 768AO WHEN IS A COPIED STATE INSTRUMENT IN OPERATION?

When instrument comes into operation

768AO(1) A copied State instrument for a transferring employee comes into operation immediately after the employee's termination time.

When copied State award ceases to operate

768AO(2) A copied State award for a transferring employee ceases to operate at the following time:

(a) unless paragraph (b) applies — the end of the period (the ***default period***) that is 5 years or such longer period as is prescribed by the regulations, starting on the day the employee's termination time occurred;

(b) if the regulations allow the FWC to make an order to extend the period of operation of a copied State award for a transferring employee and, in accordance with those regulations, the FWC makes an order that the award operates for a period that is longer than the default period — the end of that period.

History

S 768AO(2) amended by No 174 of 2012, Sch 9 item 1343, commenced 1 January 2013.

768AO(3) The regulations may:

10 Notification of transfer of preserved redundancy provisions

10(1) This item applies if one or more redundancy provisions apply to the new employer and a transferring employee under item 9 of this Schedule.

10(2) Within 28 days after the time the transferring employee becomes employed by the new employer, the new employer must take reasonable steps to give the transferring employee a written notice that complies with subitem (3).

Note: This is a civil remedy provision: see subitem 11(3) of Schedule 16.

10(3) The notice must:

(a) identify the redundancy provision or the redundancy provisions; and

(b) state that the provision or provisions apply to the new employer and the transferring employee; and

(c) specify the date on which the period of 24 months, being the period that applies in relation to the provision or provisions under paragraph 9(6)(a) of this Schedule, ends; and

(d) state that the provision or provisions will continue to apply to the new employer and the transferring employee until that date, or an earlier date in accordance with subitem (4) of this Schedule.

10(4) Subitem (2) does not apply if an enterprise agreement, workplace determination or ITEA starts to apply to the transferring employee within 14 days after the time the transferring employee becomes employed by the new employer.

11 Lodging copy of notice about preserved redundancy provisions with FWA

11(1) If the new employer gives a notice under subitem 10(2) of this Schedule to a transferring employee, the new employer must lodge a copy of the notice with FWA within the period specified in subitem (2). The copy must be lodged in accordance with subitem (3).

Note: This is a civil remedy provision: see subitem 11(4) of Schedule 16.

11(2) The notice must be lodged within 14 days after the day specified in paragraph (a) or (b) (as the case requires):

(a) if the new employer gives a notice to a transferring employee in respect of a redundancy provision that was included in an ITEA, a pre-reform AWA or a preserved individual State agreement — the day on which that notice is given; or

(b) if the new employer gives one or more notices to one or more transferring employees in respect of a redundancy provision that was included in a collective agreement, a pre-reform certified agreement or a preserved collective State agreement — the earliest day on which a notice was given.

11(3) A notice is lodged with FWA in accordance with this item only if it is actually received by FWA.

Note: This means that section 29 of the *Acts Interpretation Act 1901* (to the extent that it deals with the time of service of documents) does not apply to lodgment of a notice.

12 FWA must issue receipt for lodgment

12(1) If a notice is lodged under item 11 of this Schedule, FWA must issue a receipt for the lodgment.

12(2) The receipt must state that the notice was lodged under item 11 of this Schedule on a particular day.

12(3) FWA must give a copy of the receipt to the person who lodged the notice under item 11 of this Schedule.

Division 3 — Transfer of entitlements under the AFPCS during bridging period

13 Transfer of entitlements under the AFPCS

13(1) This item applies if:

(a) there is a transfer of business from an employer (the ***old employer***) to another employer (the ***new employer***) as described in subsection 311(1) of the FW Act; and

(b) the connection between the old employer and the new employer referred to in paragraph 311(1)(d) of the FW Act occurs during the bridging period.

13(2) This item applies regardless of whether:

(a) the termination of a transferring employee's employment with the old employer occurs before, on or after the WR Act repeal day; or

(b) the employment of a transferring employee by the new employer occurs before, on or after the WR Act repeal day.

13(3) Despite the repeal of Division 7 of Part 11 of the WR Act (which deals with an employee's entitlements under the Australian Fair Pay and Conditions Standard), that Division applies in relation to the transfer of business as if:

(a) a reference in the following provisions to at the time of transmission were a reference to at the time the transferring employee becomes employed by the new employer:

(i) subsection 599(1);

(ii) subsection 600(2);

(iii) subsection 601(2); and

(b) a reference in the following provisions to before the time of transmission were a reference to before the termination of the transferring employee's employment with the old employer:

(i) subparagraph 599(1)(a)(ii);

(ii) paragraphs 599(3)(a) and (b) and (4)(b);

(iii) subparagraphs 600(2)(a)(i) and (iii);

(iv) subparagraphs 601(2)(a)(i) and (iii); and

(c) a reference in subparagraph 599(4)(a)(ii) to at the time of transmission were a reference to at the time of termination of the transferring employee's employment with the old employer; and

(d) a reference in subsection 599(4) to after the time of transmission were a reference to after the time of termination of the transferring employee's employment with the old employer; and

(e) a reference in subsections 600(1) and 601(1) to before the time of transmission were a reference to before the time the transferring employee becomes employed by the new employer; and

(f) the reference to section 605 in the note to subsection 599(4) were a reference to subitem 11(5) of Schedule 16 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.

Division 4 — Transfers of business: Division 2B State instruments

History

Div 4 inserted by No 124 of 2009, Sch 2 item 74, commenced 1 January 2010.

14 Application of this Division

14 This Division applies in relation to a transfer of business and transferable instruments that are Division 2B State instruments.

Note: Transfers of business affecting transitional instruments are dealt with in Division 1 of this Part.

History

Item 14 inserted by No 124 of 2009, Sch 2 item 74, commenced 1 January 2010.

15 Application of FW Act in relation to transferring employees covered by Division 2B State instrument

15(1) This item applies if:

(a) there is a transfer of business from an employer (the ***old employer***) to another employer (the ***new employer***), as described in subsection 311(1) of the FW Act; and

(b) the connection between the old employer and the new employer referred to in paragraph 311(1)(d) of the FW Act occurs on or after the Division 2B referral commencement.

15(2) Part 2-8 of the FW Act (as modified by item 16 of this Schedule) applies in relation to the transfer of business.

History

Item 15 inserted by No 124 of 2009, Sch 2 item 74, commenced 1 January 2010.

16 Modification — application of FW Act in relation to Division 2B State instruments

16(1) Subsection 312(1) of the FW Act applies in relation to the transfer of business as if the following paragraph were added at the end:

; (d) a Division 2B State instrument.

16(2) Except as provided in subitems (3) to (5), Part 2-8 of the FW Act applies in relation to the transfer of business as if:

(a) a reference to an enterprise agreement included a reference to a Division 2B State employment agreement; and

(b) a reference to a modern award included a reference to a Division 2B State award.

16(3) Paragraph (2)(a) does not apply in relation to the reference to an enterprise agreement in paragraph 312(1)(a) or 319(1)(c) of the FW Act.

16(4) Paragraph (2)(b) does not apply in relation to the reference to a modern award in subsection 312(2) or paragraph 319(1)(c) of the FW Act.

16(5) The following provisions of Part 2-8 of the FW Act apply in relation to the transfer of business as if a reference to an enterprise agreement included a reference to a collective Division 2B State employment agreement:

(a) subsection 315(3);

(b) paragraphs 318(1)(b) and (2)(c);

(c) paragraph 319(2)(c).

16(6) Paragraph 319(1)(b) of the FW Act applies in relation to the transfer of business as if the words ''(other than an individual Division 2B State employment agreement)'' were inserted after the words ''a transferable instrument''.

16(7) If a transferable instrument that is a Division 2B State award starts to cover the new employer in relation to the transfer of business as mentioned in paragraph 313(1)(a) of the FW Act, the FWC cannot make an order under paragraph 319(1)(c) of the FW Act.

History

Item 16(7) amended by No 174 of 2012, Sch 9 item 1233, commenced 1 January 2013.

Item 16 inserted by No 124 of 2009, Sch 2 item 74, commenced 1 January 2010.

SCHEDULE 12 — GENERAL PROTECTIONS

1 Meanings of *employee* and *employer*

1 In this Schedule, ***employee*** and ***employer*** have their ordinary meanings.

2 Application in relation to Australian Fair Pay and Conditions Standard

2 For the purposes of the operation of Part 3-1 of the FW Act in relation to the bridging period, a reference in that Part to the National Employment Standards is taken to include a reference to the Australian Fair Pay and Conditions Standard.

Note: References in Part 3-1 of the FW Act to the National Employment Standards are found in paragraph 344(a) and subparagraph 354(1)(a)(i) of that Act.

3 Application in relation to award-based transitional instruments and agreement-based transitional instrument

3(1) Part 3-1 of the FW Act has effect as if:

(a) a reference in that Part to an enterprise agreement included a reference to an agreement-based transitional instrument; and

(b) a reference in that Part to a modern award included a reference to an award-based transitional instrument.

Note: References in Part 3-1 of the FW Act:

(a) to an enterprise agreement are found in paragraphs 341(2)(e) and (g), paragraph 344(b), subsection 353(3) and subparagraphs 354(1)(a)(iii) and (b)(ii) of that Act; and

(b) to a modern award are found in paragraphs 341(2)(g) and 344(b) of Part 3-1 of that Act.

3(2) Without limiting subitem (1), paragraph 344(b) of the FW Act has effect in relation to the bridging period as if a term referred to in that paragraph were a term of an agreement-based transitional instrument or an award-based transitional instrument that dealt with:

(a) averaging of hours of work; or

(b) cashing out paid annual leave; or

(c) taking paid annual leave; or

(d) cashing out paid personal/carer's leave; or

(e) the kind of evidence that an employee must provide in order to be entitled to paid personal/carer's leave, unpaid carer's leave or compassionate leave; or

(f) the substitution of a day or part-day for a day or part-day that would otherwise be a public holiday; or

(g) the period of notice an employee must give in order to terminate his or her employment; or

(h) paid loadings for school-based apprentices and trainees in lieu of paid annual leave, paid annual leave or paid absence on public holidays.

Note: This means, for example, that an employer is prohibited from exerting undue influence or undue pressure on an employee to have the employee agree to a cashing out of annual leave arrangement under a term of a pre-reform certified agreement.

4 Application in relation to Division 2B State instruments

4 Part 3-1 of the FW Act has effect as if:

(a) a reference in that Part to an enterprise agreement included a reference to a Division 2B State employment agreement; and

(b) a reference in that Part to a modern award included a reference to a Division 2B State award.

Note: References in Part 3-1 of the FW Act:

(a) to an enterprise agreement are found in paragraphs 341(2)(e) and (g), paragraph 344(a), subsection 353(3) and subparagraphs 354(1)(a)(iii) and (b)(ii) of that Act; and

(b) to a modern award are found in paragraphs 341(2)(g) and 344(b) of that Act.

History

Item 4 inserted by No 124 of 2009, Sch 2 item 75, commenced 1 January 2010.

SCHEDULE 12A — UNFAIR DISMISSAL

1 Meanings of *employee* and *employer*

1 In this Schedule, ***employee*** and ***employer*** have their ordinary meanings.

2 Meaning of *small business employer*, for unfair dismissal purposes, prior to 1 January 2011

2(1) For the purposes of the application of Part 3-2 of the FW Act in relation to the dismissal of a person before 1 January 2011, a national system employer is a ***small business employer*** if, and only if, the employer's number of full-time equivalent employees, worked out under this item, is less than 15 at the earlier of the following times (the ***notice or dismissal time***):

(a) the time when the person is given notice of the dismissal;

(b) immediately before the dismissal.

2(2) The employer's ***number of full-time equivalent employees*** at the notice or dismissal time is worked out as follows:

Method statement

Step 1. For each person who was an employee of the employer at any time during the period of 4 weeks immediately preceding the day on which the notice or dismissal time occurs, work out the number of ordinary hours (including parts of hours) for the person as the employer's employee during the period.

Note: Subitem (3) sets out what are a person's ordinary hours.

Step 2. If, during the period, the person took leave to which subitem (4) applies, work out the number of hours of leave to which that subitem applies that the person took during the period.

Step 3. Add together all of the numbers of ordinary hours worked out under step 1, and subtract all of the number of hours of leave worked out under step 2.

Step 4. Divide by 152 the number worked out under step 3. The result is the employer's ***number of full-time equivalent employees*** at the notice or dismissal time.

Note: The number 152 is based on the maximum number of hours that a full-time employee would work in 4 weeks (being 38 hours per week) excluding reasonable additional hours.

2(3) For the purposes of step 1 of the method statement in subitem (2), the ordinary hours of work of a person as the employer's employee are:

(a) to the extent that a modern award, enterprise agreement or workplace determination applied to the person, and the person was not a casual employee — the ordinary hours of work specified or provided for in that award, agreement or determination; or

(b) to the extent that a transitional instrument applied to the person, and the person was not a casual employee — the person's ordinary hours of work under item 33 of Schedule 3; or

(ba) to the extent that a Division 2B State instrument applied to the person, and the person was not a casual employee — the person's ordinary hours of work under item 45 of Schedule 3A; or

(c) to the extent that:

(i) a State industrial instrument applied to the person as a non-national system employee; and

(ii) the instrument specified, or provided for the determination of, the person's ordinary hours of work; and

(iii) the person was not a casual employee;

the ordinary hours of work as specified in, or determined in accordance with, that instrument; or

(d) to the extent that no such award, agreement, determination or instrument applied to the person, and the person was not a casual employee:

(i) if the person was a national system employee — the person's ordinary hours of work under section 20 of the FW Act; or

(ii) if the person was a non-national system employee — what would have been the person's ordinary hours of work under that section if the person had been a national system employee; or

(e) to the extent that the person was a casual employee — the lesser of:

(i) 152 hours; and

(ii) the number of hours actually worked by the person.

History

Item 2(3) amended by No 124 of 2009, Sch 2 item 76, commenced 1 January 2010.

2(4) This subitem applies to leave, whether paid or unpaid, that the person took if:

(a) the person was entitled to the leave in connection with:

(i) the birth of a child of the person or the person's spouse or de facto partner; or

(ii) the placement of a child with the person for adoption; and

(b) the duration of the period of leave has been at least 4 weeks;

whether or not the person took any other kind of paid leave while taking that leave.

2(5) For the purposes of this item, a national system employer and the employer's associated entities are taken to be one entity.

2(6) This item has effect despite section 23 of the FW Act.

SCHEDULE 13 — BARGAINING AND INDUSTRIAL ACTION

PART 1 — PRELIMINARY

1 Meanings of *employee* and *employer*

1 In this Schedule, ***employee*** means a national system employee and ***employer*** means a national system employer.

PART 2 — BARGAINING

2 Employee covered by individual agreement-based transitional instrument or individual Division 2B State employment agreement is taken not to be an employee who will be, or who is, covered by enterprise agreement in certain circumstances

History

Part 2 heading amended by No 124 of 2009, Sch 2 item 77, commenced 1 January 2010.

2(1) This item applies to an employee at a particular time if, at that time, an individual agreement-based transitional instrument or an individual Division 2B State employment agreement covers the employee.

History

Item 2(1) amended by No 124 of 2009, Sch 2 item 78, commenced 1 January 2010.

2(2) The employee is only taken, for the purposes of the FW Act, to be at that time an employee who is or will be covered by an enterprise agreement or a proposed enterprise agreement, if one of the following applies:

(a) the nominal expiry date of the individual agreement-based transitional instrument or the individual Division 2B State employment agreement has passed;

(b) a conditional termination of the individual agreement-based transitional instrument or the individual Division 2B State employment agreement has been made under subitem 18(2) of Schedule 3 or subitem 25(2) of Schedule 3A.

Note: The main effect of this subitem is that an employee who is covered by an individual agreement-based transitional instrument or an individual Division 2B State employment agreement will not be able to do any of the following until the nominal expiry date of the instrument passes or a conditional termination of the instrument is made under subitem 18(2) of Schedule 3 or subitem 25(2) of Schedule 3A:

(a) be represented in bargaining for an enterprise agreement;

(b) vote on the agreement;

(c) be in a group of employees covered by a protected action ballot order in relation to the agreement;

(d) have the agreement apply to the employee.

History

Item 2(2) amended by No 124 of 2009, Sch 2 items 79–82, commenced 1 January 2010.

2(3) Despite subitem (2), an employer must give a notice of employee representational rights to an employee under section 173 of the FW Act, if the employer would have been required to give such a notice but for subitem (2). However, the notice must explain that a person can only become the employee's bargaining representative for the agreement when one of the following occurs:

(a) the nominal expiry date of the individual agreement-based transitional instrument or the individual Division 2B State employment agreement passes;

(b) a conditional termination of the individual agreement-based transitional instrument or the individual Division 2B State employment agreement is made under subitem 18(2) of Schedule 3 or subitem 25(2) of Schedule 3A.

History

Item 2(3) amended by No 124 of 2009, Sch 2 items 83 and 84, commenced 1 January 2010.

3 Application for bargaining order where certain collective agreement-based transitional instruments or collective Division 2B State employment agreements have not passed nominal expiry date

History

Item 3 heading amended by No 124 of 2009, Sch 2 item 85, commenced 1 January 2010.

3 Despite subsection 229(3) of the FW Act, if one or more of the following instruments apply to an employee, or employees, who will be covered by a proposed enterprise agreement:

(a) any of the following transitional instruments:

(i) a collective agreement;

(ii) a workplace determination;

(iii) a preserved collective State agreement;

(iv) a pre-reform certified agreement;

(v) a section 170MX award;

(b) a collective Division 2B State employment agreement;

an application for a bargaining order may only be made under subsection 229(1) of that Act:

(f) not more than 90 days before the nominal expiry date of the instrument, or the latest nominal expiry date of those instruments (as the case may be); or

(g) after an employer that will be covered by the proposed enterprise agreement has requested under subsection 181(1) of that Act that employees approve the agreement, but before the agreement is so approved.

History

Item 3 amended by No 124 of 2009, Sch 2 items 86–88, commenced 1 January 2010.

PART 3 — INDUSTRIAL ACTION

4 Industrial action must not be taken before the nominal expiry date of agreement-based transitional instrument or Division 2B State employment agreement

History

Item 4 heading amended by No 124 of 2009, Sch 2 item 89, commenced 1 January 2010.

4(1) The following provisions of the FW Act:

(a) section 417 (which prohibits industrial action before the nominal expiry date of enterprise agreements etc.);

(b) item 14 of the table in subsection 539(2) of the FW Act (which deals with civil remedies);

apply, on and after the WR Act repeal day, in relation to an agreement-based transitional instrument or a Division 2B State employment agreement, in a corresponding way to the way that those provisions apply in relation to an enterprise agreement.

History

Item 4(1) amended by No 124 of 2009, Sch 2 item 90, commenced 1 January 2010.

4(2) Subitem (1) does not apply to an individual agreement-based transitional instrument or an individual Division 2B State employment agreement if the employee and employer covered by the instrument or agreement have made a conditional termination in relation to the instrument or agreement under subitem 18(2) of Schedule 3 or subitem 25(2) of Schedule 3A.

Note: The effect of this provision is that an employee who is covered by an agreement-based transitional instrument or a Division 2B State employment agreement may not organise or engage in industrial action until after the nominal expiry date of the instrument or agreement has passed. However, this does not apply to an individual agreement-based transitional instrument, or an individual Division 2B State employment agreement, in relation to which a conditional termination has been made.

History

Item 4(2) amended by No 124 of 2009, Sch 2 items 91–94, commenced 1 January 2010.

4(3) For the purposes of subitem (1), the reference in subsection 417(1) of the FW Act to the day on which an enterprise agreement was approved by the FWC is taken to be a reference to

SECTION 59 ROLL OF VOTERS FOR BALLOT

59 The roll of voters for a ballot for a proposed amalgamation is the roll of persons who, on the day on which the FWC fixes the commencing day and closing day of the ballot or 28 days before the commencing day of the ballot (whichever is the later):

(a) have the right under the rules of the existing organisation concerned to vote at such a ballot; or

(b) if the rules of the existing organisation concerned do not then provide for the right to vote at such a ballot — have the right under the rules of the organisation to vote at a ballot for an election for an office in the organisation that is conducted by a direct voting system.

History

S 59 amended by No 174 of 2012, Sch 9 item 961, commenced 1 January 2013.

SECTION 60 "YES" CASE AND "NO" CASE FOR AMALGAMATION

"Yes" statement may be altered

60(1) If an existing organisation concerned in a proposed amalgamation lodges a statement under section 48 in relation to the amalgamation, the FWC may permit the organisation to alter the statement.

History

S 60(1) amended by No 174 of 2012, Sch 9 item 962, commenced 1 January 2013.

Members of organisation may lodge "no" statement

60(2) Not later than 7 days before the day fixed under section 53 for receiving submissions in relation to the amalgamation, members of the organisation (being members whose number is at least the required minimum number) may lodge with the FWC a written statement of not more than 2,000 words in opposition to the proposed principal amalgamation and any proposed alternative amalgamation.

History

S 60(2) amended by No 174 of 2012, Sch 9 item 962, commenced 1 January 2013.

"No" statement may be altered

60(3) The FWC may permit a statement lodged under subsection (2) to be altered.

History

S 60(3) amended by No 174 of 2012, Sch 9 item 963, commenced 1 January 2013.

"Yes" and "no" statements to be sent to voters

60(4) Subject to subsections (5), (6) and (7), a copy of the statements mentioned in subsections (1) and (2), or, if those statements have been altered or amended, those statements as altered or amended, must accompany the ballot paper sent to the persons entitled to vote at a ballot for the amalgamation.

2 or more "no" statements must be combined

60(5) If 2 or more statements in opposition to the amalgamation are duly lodged with the FWC under subsection (2):

(a) the FWC must prepare, or cause to be prepared, in consultation, if practicable, with representatives of the persons who lodged each of the statements, a written statement of not more than 2,000 words in opposition to the amalgamation based on both or all the statements and, as far as practicable, presenting fairly the substance of the arguments against the amalgamation contained in both or all the statements; and

(b) the statement prepared by the FWC must accompany the ballot paper for the amalgamation as if it had been the sole statement lodged under subsection (2).

History

S 60(5) amended by No 174 of 2012, Sch 9 item 964, commenced 1 January 2013.

FWC may correct factual errors in statements

60(6) The FWC may amend a statement mentioned in subsection (1) or (2) to correct factual errors or to ensure that the statement complies with this Act.

History

S 60(6) amended by No 174 of 2012, Sch 9 items 965 and 966, commenced 1 January 2013.

Statements may include photos etc. if the FWC approves

60(7) A statement mentioned in subsection (1) or (2) may, if the FWC approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

History

S 60(7) amended by No 174 of 2012, Sch 9 items 967 and 968, commenced 1 January 2013.

60(8) A statement prepared under subsection (5) may include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

Certain statements not required to be sent to voters

60(9) Subsection (4) and paragraph (5)(b) do not apply to a ballot that is not conducted under section 65.

Note: Ballots conducted under section 65 are secret postal ballots.

Definition

60(10) In this section:

required minimum number, in relation to an organisation, means:

(a) 5% of the total number of members of the organisation on the day on which the application was lodged under section 44 in relation to the proposed amalgamation concerned; or

(b) 1,000;

whichever is the lesser.

SECTION 61 ALTERATION AND AMENDMENT OF SCHEME

Permission to alter amalgamation scheme

61(1) The FWC may, at any time before the commencing day of the ballot for a proposed amalgamation, permit the existing organisations concerned in the amalgamation to alter the scheme for the amalgamation, including:

(a) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

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the rules of any association proposed to be registered lation to the proposed amalgamation, authorise the existing organisations concerned in the amalgamation to alter the scheme so far as it affects that association (including any of its rules) by resolution of their committees of management; and

(b) may make provision in relation to the procedure that, despite anything in the rules of the existing organisations or the rules of the association, may be followed, or is to be followed, by the committees of management in that regard; and

(c) may be given subject to conditions.

Permission relating to rules of existing organisations

61(3) A permission under paragraph (1)(b):

(a) may, despite anything in the rules of an existing organisation concerned proposed amalgamation, authorise the organisation to amend the (including any proposed alterations of the rules of the organisation including the scheme so far as it affects any association proposed to be registered as an organisation in relation to the proposed amalgamation) by resolution of its committee of management; and

(b) may make provision in relation to the procedure that, despite anything in these rules, may be followed, or is to be followed, by the committee of management in that regard; and

(c) may be given subject to conditions.

Powers of the FWC if conditions breached

61(4) If:

(a) the FWC gives a permission under subsection (1) subject to conditions; and

(b) the conditions are breached;

the FWC may:

(c) amend the scheme for the amalgamation, including:

(i) the rules of any association proposed to be registered as an organisation in relation to the amalgamation; or

(ii) any proposed alterations of the rules of the existing organisations concerned in the amalgamation; or

(d) give directions and orders:

(i) in relation to the conduct of the ballot for the amalgamation; or

(ii) otherwise in relation to the procedure to be followed in relation to the amalgamation.

ded by No 174 of 2012, Sch 9 items 970 and
ced 1 January 2013.

(3) Subsection (4) does not limit by implication the powers that the FWC has apart from that subsection.

ded by No 174 of 2012, Sch 9 item 971,
ced 1 January 2013.

Outline of scheme must change if scheme changes

(6) If the scheme for the amalgamation is altered or amended (whether under this section or otherwise), the outline of the scheme must be altered or amended to the extent necessary to reflect the alterations or amendments.

SECTION 62 OUTLINE OF SCHEME FOR AMALGAMATION

(1) The outline of the scheme for a proposed amalgamation may, if the FWC approves, consist of more than 3,000 words.

ded by No 174 of 2012, Sch 9 item 972,
January 2013

(2) The outline may, if the FWC approves, include matter that is not in the form of words, including, for example, diagrams, drawings, illustrations, photographs and symbols.

(2) amended by No 174 of 2012, Sch 9 item 972,
ced 1 January 2013.

(3) The FWC:

(a) may, at any time before the commencing day of the ballot for the amalgamation, permit the existing organisations concerned in the amalgamation to alter the outline; and

(b) may amend the outline to correct factual errors or otherwise to ensure that it complies with this Act.

(3) amended by No 174 of 2012, Sch 9 item 973,
ced 1 January 2013.

SECTION 63 EXEMPTION FROM BALLOT

(1) If:

(a) an application was lodged under section 46 for exemption from the requirement that a ballot be held in relation to a proposed amalgamation; and

(b) the total number of members that could be admitted to membership of the proposed amalgamated organisation on, and because of, the amalgamation does not exceed 25% of the number of members of the applicant organisation on the day on which the application was lodged;

the FWC must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, grant the exemption unless the FWC considers that, in the special circumstances of the case, the exemption should be refused.

History

S 63(1) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

63(2) If the exemption is granted, the members of the applicant organisation are taken to have approved the proposed principal amalgamation and each proposed alternative amalgamation (if any).

SECTION 64 APPROVAL FOR BALLOT NOT CONDUCTED UNDER SECTION 65

64 If:

(a) an application was lodged under section 47 for approval of a proposal for submission of a proposed amalgamation to ballot that is not conducted under section 65; and

(b) the proposal provides for:

(i) the ballot to be by secret ballot of the members of the organisation; and

(ii) the ballot to be held at duly constituted meetings of the members; and

(iii) the ballot to be conducted by the AEC; and

(iv) the members to be given at least 21 days' notice of the meetings, the matters to be considered at the meetings and their entitlement to an absent vote; and

(v) the distribution or publication of:

(A) the outline of the scheme for the amalgamation; and

(B) the statements mentioned in subsections 60(1) and (2); and

(vi) absent voting; and

(vii) the ballot to be otherwise conducted in accordance with the regulations; and

(c) the FWC is satisfied, after consulting with the Electoral Commissioner:

(i) that the proposal is practicable; and

(ii) that approval of the proposal is likely:

(A) to result in participation by members of the organisation that is fuller than the participation that would have been likely to have resulted if the ballot were conducted under section 65; and

(B) to give the members of the organisation an adequate opportunity to vote on the amalgamation without intimidation;

the FWC must, at the conclusion of the hearing arranged under section 53 in relation to the amalgamation, approve the proposal.

History

S 64 amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 65 SECRET POSTAL BALLOT OF MEMBERS

Ballot on proposed principal amalgamation

65(1) If the FWC approves, under section 55 or 57, the submission of a proposed amalgamation to ballot, the AEC must, in relation to each of the existing organisations concerned in the amalgamation, conduct a secret postal ballot of the members of the organisation on the question whether they approve the proposed principal amalgamation.

History

S 65(1) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

Ballot at same time on proposed alternative amalgamation

65(2) If the scheme for the amalgamation contains a proposed alternative provision, the AEC must also conduct, at the same time and in the same way as the ballot under subsection (1), a ballot of the members of each of the existing organisations on the question or questions whether, if the proposed principal amalgamation does not take effect, they approve the proposed alternative amalgamation or each proposed alternative amalgamation.

Same ballot paper to be used for both ballots

65(3) If, under subsection (2), the AEC is required to conduct 2 or more ballots of the members of an organisation at the same time, the same ballot paper is to be used for both or all the ballots.

Counting of votes in alternative amalgamation ballot

65(4) A person conducting a ballot under subsection (2) need not count the votes in the ballot if the person is satisfied that the result of the ballot will not be required to be known for the purposes of this Act.

Copy of outline to be sent to voters

65(5) A copy of the outline of the scheme for the amalgamation as lodged under this Part, or, if the scheme has been altered or amended, a copy of the outline of the scheme as altered or amended, is to accompany the ballot paper sent to a person entitled to vote at the ballot.

Conduct of ballot

65(6) In a ballot conducted under this section, each completed ballot paper must be returned to the AEC as follows:

(a) the ballot paper must be in the declaration envelope provided to the voter with the ballot paper;

(b) the declaration envelope must be in another envelope that is in the form prescribed by the regulations.

65(8) Subject to this section, a ballot conducted under this section is to be conducted as prescribed.

Organisation may be exempt from requirements of this section

65(9) This section does not apply to an existing organisation concerned in the amalgamation if:

(a) the FWC has granted the organisation an exemption under section 63 from the requirement that a ballot be held in relation to the proposed amalgamation; or

(b) the FWC has approved under section 64 a proposal by the organisation for the submission of the amalgamation to a ballot that is not conducted under this section.

History

S 65(9) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 66 DETERMINATION OF APPROVAL OF AMALGAMATION BY MEMBERS

66 Where the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation concerned in the amalgamation, the members of the organisation approve the amalgamation if, and only if:

(a) where a declaration under section 43 is in force in relation to the proposed amalgamation — more than 50% of the formal votes cast in the ballot are in favour of the amalgamation; or

(b) in any other case:

(i) at least 25% of the members on the roll of voters cast a vote in the ballot; and

(ii) more than 50% of the formal votes cast are in favour of the amalgamation.

SECTION 67 FURTHER BALLOT IF AMALGAMATION NOT APPROVED

67(1) If:

(a) the question of a proposed amalgamation is submitted to a ballot of the members of an existing organisation; and

(b) the members of the organisation do not approve the amalgamation;

the existing organisations concerned in the amalgamation may jointly lodge with the FWC a further application under section 44 for approval for the submission of the amalgamation to ballot.

History

S 67(1) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

67(2) If the application is lodged within 12 months after the result of the ballot is declared, the FWC may order:

(a) that any step in the procedure provided by this Part be dispensed with in relation to the proposed amalgamation; or

(b) that a fresh ballot be conducted in place of an earlier ballot in the amalgamation;

and the FWC may give such directions and make such further orders as the FWC considers necessary or desirable.

History

S 67(2) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

67(3) Subsection (2) does not by implication require a further application under section 44 to be lodged within the 12 month period mentioned in that subsection.

SECTION 68 POST-BALLOT REPORT BY AEC

68(1) After the completion of a ballot under this Part, the AEC must give a report on the conduct of the ballot to:

(a) the Federal Court; and

(b) the General Manager; and

(c) each applicant under section 44.

68(2) The report must include details of the prescribed matters.

68(3) If the AEC is of the opinion that the register of members, or the part of the register, made available to the AEC for the purposes of the ballot contained, at the time of the ballot:

(a) an unduly large proportion of members' addresses that were not current; or

(b) an unduly large proportion of members' addresses that were workplace addresses;

the fact must be included in the report.

68(4) Subsection (3) applies only in relation to postal ballots.

SECTION 69 INQUIRIES INTO IRREGULARITIES

69(1) Not later than 30 days after the result of a ballot under this Part is declared, application may be made to the Federal Court, as prescribed, for an inquiry by the Court into alleged irregularities in relation to the ballot.

69(2) If the Court finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the Court may:

(a) if the ballot has not been completed — order that a step in relation to the ballot be taken again; or

(b) in any other case — order that a fresh ballot be conducted in place of the ballot in which the irregularity happened;

and may make such further orders as it considers necessary or desirable.

69(3) The regulations may make provision with respect to the procedure for inquiries by the Court into alleged irregularities in relation to ballots under this Part, and for matters relating to, or arising out of, inquiries.

SECTION 70 APPROVAL OF AMALGAMATION

70(1) If the members of each of the existing organisations concerned in a proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is approved for the purposes of this Part.

70(2) If:

(a) the scheme for a proposed amalgamation contains an alternative provision; and

(b) the members of one or more of the existing organisations concerned in the amalgamation do not approve the proposed principal amalgamation; and

(c) the members of 2 or more of the organisations (in paragraph (d) called the ***approving organisations***) approve a proposed alternative amalgamation; and

(d) where one of the existing organisations is the proposed amalgamated organisation — that organisation is one of the approving organisations;

the proposed alternative amalgamation is approved for the purposes of this Part.

SECTION 71 EXPENSES OF BALLOT

71 The expenses of a ballot under this Part are to be borne by the Commonwealth.

SECTION 72 OFFENCES IN RELATION TO BALLOT

Interference with ballot papers

72(1) A person commits an offence in relation to a ballot if the person:

(a) impersonates another person with the intention of:

(i) securing a ballot paper to which the impersonator is not entitled; or

(ii) casting a vote; or

(b) does an act that results in a ballot paper or envelope being destroyed, defaced, altered, taken or otherwise interfered with; or

(c) fraudulently puts a ballot paper or other paper:

(i) into a ballot box or other ballot receptacle; or

(ii) into the post; or

(d) delivers a ballot paper or other paper to a person other than a person receiving ballot papers for the purposes of the ballot; or

(e) records a vote that the person is not entitled to record; or

(f) records more than one vote; or

(g) forges a ballot paper or envelope, or utters a ballot paper or envelope that the person knows to be forged; or

(h) provides a ballot paper without authority; or

(i) obtains a ballot paper which the person is not entitled to obtain; or

(j) has possession of a ballot paper which the person is not entitled to possess; or

(k) does an act that results in a ballot box or other ballot receptacle being destroyed, taken, opened or otherwise interfered with.

Maximum penalty: 30 penalty units.

Hindering the ballot, threats and bribes etc.

72(2) A person commits an offence in relation to a ballot if the person:

(a) hinders or obstructs the taking of the ballot; or

(b) uses any form of intimidation or inducement to prevent from voting, or to influence the vote of, a person entitled to vote at the ballot; or

(c) threatens, offers or suggests, or uses, causes or inflicts, any violence, injury, punishment, damage, loss or disadvantage with the intention of influencing or affecting:

(i) any vote or omission to vote; or

(ii) any support of, or opposition to, voting in a particular manner; or

(iii) any promise of any vote, omission, support or opposition; or

(d) gives, or promises or offers to give, any property or benefit of any kind with the intention of influencing or affecting anything referred to in subparagraph (c)(i), (ii) or (iii); or

(e) asks for or obtains, or offers or agrees to ask for or obtain, any property or benefit of any kind (whether for that person or another person), on the understanding that anything referred to in subparagraph (c)(i), (ii) or (iii) will be influenced or affected in any way; or

(f) counsels or advises a person entitled to vote to refrain from voting.

Maximum penalty: 30 penalty units.

Secrecy of vote

72(3) A person (the ***relevant person***) commits an offence in relation to a ballot if:

(a) the relevant person requests, requires or induces another person:

(i) to show a ballot paper to the relevant person; or

(ii) to permit the relevant person to see a ballot paper;

in such a manner that the relevant person can see the vote while the ballot paper is being marked or after it has been marked; or

(b) in the case where the relevant person is a person performing duties for the purposes of the ballot — the relevant person shows another person, or permits another person to have access to, a ballot paper used in the ballot, otherwise than in the performance of the duties.

Maximum penalty: 30 penalty units.

Division 6 — Amalgamation taking effect

SECTION 73 ACTION TO BE TAKEN AFTER BALLOT

73(1) The scheme of a proposed amalgamation that is approved for the purposes of this Part takes effect in accordance with this section.

73(2) If the FWC is satisfied that:

(a) the period, or the latest of the periods, within which application may be made to the Federal Court under section 69 in relation to the amalgamation has ended; and

(b) any application to the Federal Court under section 69 has been disposed of, and the result of any fresh ballot ordered by the Court has been declared; and

(c) there are no proceedings (other than civil proceedings) pending against any of the existing organisations concerned in the amalgamation in relation to:

(i) contraventions of this Act, the Fair Work Act or other Commonwealth laws; or

(ii) breaches of modern awards or enterprise agreements; or

(iii) breaches of orders made under this Act, the Fair Work Act or other Commonwealth laws; and

(d) any obligation that an existing organisation has under a law of the Commonwealth that is not fulfilled by the time the amalgamation takes effect will be regarded by the proposed amalgamated organisation as an obligation it is bound to fulfil under the law concerned;

the FWC must, after consultation with the existing organisations, by notice published as prescribed, fix a day (in this Division called the ***amalgamation day***) as the day on which the amalgamation is to take effect.

History

S 73(2) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

73(3) On the amalgamation day:

(a) if the proposed amalgamated organisation is not already registered — the General Manager must enter, in the register kept under paragraph 13(1)(a), such particulars in relation to the organisation as are prescribed, and the date of the entry; and

(b) any proposed alteration of the rules of an existing organisation concerned in the amalgamation takes effect; and

(c) the FWC must de-register the proposed de-registering organisations; and

(d) the persons who, immediately before that day, were members of a proposed de-registering organisation become, by force of this section and without payment of entrance fee, members of the proposed amalgamated organisation.

History

S 73(3) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

73(4) If:

(a) the FWC has been given an undertaking, for the purposes of paragraph (2)(d), that an amalgamated organisation will fulfil an obligation; and

(b) after giving the amalgamated organisation an opportunity to be heard, the FWC determines that the organisation has not complied with the undertaking;

the FWC may make any order it considers appropriate to require the organisation to comply with the undertaking.

History

S 73(4) amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 74 ASSETS AND LIABILITIES OF DE-REGISTERED ORGANISATION BECOME ASSETS AND LIABILITIES OF AMALGAMATED ORGANISATION

74(1) On the amalgamation day, all assets and liabilities of a de-registered organisation cease to be assets and liabilities of that organisation and become assets and liabilities of the amalgamated organisation.

74(2) For all purposes and in all proceedings, an asset or liability of a de-registered organisation existing immediately before the amalgamation day is taken to have become an asset or liability of the amalgamated organisation on that day.

SECTION 75 RESIGNATION FROM MEMBERSHIP

75 When the day on which the proposed amalgamation is to take effect is fixed, section 174 has effect in relation to resignation from membership of a proposed de-registering organisation as if the reference in subsection 174(2) to 2 weeks were a reference to one week or such lesser period as the FWC directs.

History

S 75 amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 76 EFFECT OF AMALGAMATION ON MODERN AWARDS, ORDERS AND ENTERPRISE AGREEMENTS

76 On and from the amalgamation day:

(a) a modern award or an enterprise agreement that, immediately before that day, covered a proposed de-registering organisation and its members covers, by force of this section, the proposed amalgamated organisation and its members; and

(aa) a modern award, an order of the FWC or an enterprise agreement that, immediately before that day, applied to a proposed de-registering organisation and its members applies to, by force of this section, the proposed amalgamated organisation and its members; and

(b) the award, order or agreement has effect for all purposes (including the obligations of employers and organisations of employers) as if references in the award, order or agreement to a de-registered organisation included references to the amalgamated organisation.

History

S 76 amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 77 EFFECT OF AMALGAMATION ON AGREEMENT UNDER SECTION 151

77(1) Unless the scheme of a proposed amalgamation otherwise provides, an agreement in force under section 151 to which a de-registered organisation was a party continues in force on and from the amalgamation day as if references in the agreement to the de-registered organisation were references to the amalgamated organisation.

77(2) The General Manager must enter in the register kept under paragraph 13(1)(a) particulars of the effect of the amalgamation on the agreement.

SECTION 78 INSTRUMENTS

78(1) On and after the amalgamation day, an instrument to which this Part applies continues, subject to subsection (2), in full force and effect.

78(2) The instrument has effect, in relation to acts, omissions, transactions and matters done, entered into or occurring on or after that day as if a reference in the instrument to a de-registered organisation were a reference to the amalgamated organisation.

SECTION 79 PENDING PROCEEDINGS

79 Where, immediately before the amalgamation day, a proceeding to which this Part applies was pending in a court or before the FWC:

(a) the amalgamated organisation is, on that day, substituted for each de-registered organisation as a party; and

(b) the proceeding is to continue as if the amalgamated organisation were, and had always been, the de-registered organisation.

History

S 79 amended by No 174 of 2012, Sch 9 item 974, commenced 1 January 2013.

SECTION 80 DIVISION APPLIES DESPITE LAWS AND AGREEMENTS PROHIBITING TRANSFER ETC.

80(1) This Division applies, and must be given effect to, despite anything in:

(a) the Fair Work Act or any other Commonwealth, State or Territory law; or

(b) any contract, deed, undertaking, agreement or other instrument.

80(2) Nothing done by this Division, and nothing done by a person because of, or for a purpose connected with or arising out of, this Division:

(a) is to be regarded as:

(i) placing an organisation or other person in breach of contract or confidence; or

(ii) otherwise making an organisation or other person guilty of a civil wrong; or

(b) is to be regarded as placing an organisation or other person in breach of:

(i) any Commonwealth, State or Territory law; or

(ii) a facsimile of those initials; or

(b) the ballot paper is marked in a way that permits the voter to be identified; or

(c) the ballot paper is not marked in a way that makes it clear how the voter meant to vote; or

(d) a person returning material mentioned in paragraph 63(c) with the ballot paper does not comply with a direction given under subregulation 60(7).

67(5) However, a vote is not informal because of paragraph (4)(a) if the electoral official is satisfied the ballot paper in question is authentic.

67(6) If the electoral official conducting the ballot is informed by a scrutineer that the scrutineer objects to a ballot paper being admitted as formal or rejected as informal, the official must:

(a) decide whether the ballot paper is to be admitted as formal or rejected as informal; and

(b) endorse that decision on the ballot paper and initial the endorsement.

67(7) If the electoral official conducting the ballot is informed by a scrutineer to the effect that, in the scrutineer's opinion, an error has been made in the conduct of the scrutiny, the electoral official must decide whether an error has been made and, if appropriate, direct what action is to be taken to correct or mitigate the error.

REGULATION 68 SCRUTINEERS (s 64 and 65(8))

68(1) In relation to a ballot of the members of an organisation on a proposed amalgamation, the committee of management of the organisation may appoint members as scrutineers to safeguard the interests of the members who approve of the amalgamation.

68(2) An appointment under subregulation (1) must be made by an instrument signed on behalf of the committee of management by an authorised officer of the organisation.

68(3) If members of an organisation (the ***opposing members***) have lodged, under subsection 60(2) of the Act, a written statement in opposition to the proposed amalgamation or any proposed alternative amalgamation, the electoral official conducting a ballot of the members of the organisation in relation to the amalgamation must allow members of the organisation who appear to the official to represent the opposing members to be scrutineers for the ballot to safeguard the interests of members who disapprove of the amalgamation.

68(4) Subject to subregulations (5), (6) and (7):

(a) a scrutineer may be present:

(i) at the issue of ballot papers under regulation 61; and

(ii) at the preparation and dispatch of ballot material under regulations 59 and 63; and

(iii) at the receipt and placement of ballot material in safe custody under regulation 66; and

(iv) at the scrutiny of ballot material under regulation 67; and

(b) at the scrutiny mentioned in subparagraph (a)(iv):

(i) if the scrutineer objects to a decision that a ballot paper is formal or informal; or

(ii) if the scrutineer considers that an error has been made in the conduct of the scrutiny;

the scrutineer may inform the electoral official conducting the ballot accordingly.

68(5) At any time during the period of scrutiny:

(a) the number of scrutineers appointed under subregulation (1) and in attendance at the scrutiny; and

(b) the number of scrutineers mentioned in subregulation (3) and in attendance at the scrutiny;

must not, in either case, exceed the number of electoral officials engaged on the scrutiny at that time.

68(6) If a member appointed under subregulation (1) fails to produce the member's instrument of appointment for inspection by the electoral official conducting the ballot when requested by the official to do so, the official may refuse to allow the member to attend or act as a scrutineer.

68(7) If a person:

(a) is not entitled to be present, or to remain present, at the scrutiny; or

(b) interrupts the scrutiny of a ballot, except to perform a function mentioned in paragraph (4)(b);

the electoral official conducting the ballot may direct the person to leave the place where the scrutiny is being conducted.

68(8) A person must comply with a direction given to him or her under subregulation (7).

Note This subregulation is a civil penalty provision (see regulation 168).

68(9) The AEC must advise the General Manager of a possible contravention of subregulation (8) not later than 21 days after the AEC has become aware of the possible contravention.

REGULATION 69 POST-BALLOT REPORT BY AEC (s 68(2))

69(1) For subsection 68(2) of the Act, the following matters are prescribed for inclusion in the report:

(a) the total number of persons on the roll of voters;

(b) the total number of ballot papers issued;

(c) the total number of envelopes posted in accordance with regulation 63 or for subparagraph 64(b)(vi) of [the Act] that were returned undelivered by the closing date of the ballot to the AEC (if applicable);

(d) the total number of ballot papers received by the electoral official by the closing day of the ballot;

(e) the total number of votes in favour of the question set out on the ballot paper;

(f) the total number of votes not in favour of the question set out on the ballot paper;

(g) the total number of informal ballot papers;

(h) any rules of the organisation or branch which because of ambiguity or other reason, were difficult to interpret or apply;

(i) any matters in relation to the roll of voters including those matters covered by subsection 68(3) of [the Act];

(j) the number of written allegations (if any) of irregularities made to the AEC during the ballot;

(k) action taken by the AEC in relation to those allegations;

(l) any other irregularities identified by the AEC and action taken by the AEC in relation to those other irregularities.

69(2) The AEC must:

(a) give the report under subsection 68(1) of the Act within 14 days after the closing day of the ballot fixed under subsection 58(1) of the Act; and

(b) publish the report on its web site as soon as practicable, but no later than 21 days after the closing day of the ballot.

69(3) An organisation that has a web site must, as soon as practicable after receiving a report mentioned in paragraph (2)(a), publish on its web site a notice of the availability of the report.

69(4) A notice published under subregulation (3) must remain on the web site until the end of the period in which an application may be made under section 69 of [the Act].

69(5) Subregulation (1) does not apply in relation to a ballot that was conducted under subsection 65(2) of the Act if, because of subsection 65(4) of the Act, the electoral official conducting the ballot did not count the votes in the ballot.

REGULATION 70 DECLARATION OF BALLOT (s 69)

70 The ballot is declared on the day the report mentioned in subsection 68(1) of the Act is given.

REGULATION 71 PRESERVATION OF BALLOT PAPERS

71 The AEC must keep all ballot papers and documents relating to a ballot:

(a) until the end of the period in which an application may be made under section 69 of the Act; or

(b) if an application of the kind referred to in paragraph (a) has been made — until the application is disposed of.

REGULATION 72 REQUEST BY MEMBER FOR INFORMATION ABOUT BALLOT

72(1) A person who is entitled to vote in a ballot may, for the purpose of determining whether there has been an irregularity in relation to the ballot, request the electoral official conducting the ballot to give the person specified information not available in the report given under subsection 68(1) of the Act.

72(2) The electoral official must comply with a request under subregulation (1) if the information requested is available to the electoral official.

REGULATION 73 APPLICATION FOR INQUIRY INTO BALLOT IRREGULARITY (s 69(1))

73(1) An application to the Federal Court under subsection 69(1) of the Act for an inquiry must be:

(a) in the form set out in the Federal Court Rules; and

(b) made by:

(i) a member of the organisation whose members were eligible to vote in the ballot; or

(ii) a person acting on behalf of a member mentioned in subparagraph (i); or

(iii) the Electoral Commissioner; and

(c) lodged in the Federal Court together with any document that the Federal Court Rules require to be lodged with the application.

73(2) For this Division, an inquiry is taken to have been instituted when an application mentioned in subregulation (1) is lodged.

REGULATION 74 HEARING OF INQUIRY INTO BALLOT IRREGULARITY (s 69(3))

74 If an inquiry is instituted, the Federal Court or a Judge may give any directions the Federal Court or Judge thinks necessary to ensure that all persons who are or may be entitled to appear or to be represented, at the inquiry are notified of the time and place fixed for the hearing of the inquiry.

REGULATION 75 INSPECTION OF DOCUMENTS FOR INQUIRY (s 69(3))

75(1) If an inquiry is instituted, the Federal Court or a Judge may authorise any person to inspect rolls of voters, ballot papers or other documents that have been used in connection with, or are relevant to, the ballot.

75(2) A person must not hinder or obstruct a person carrying out an inspection authorised under subregulation (1).

Penalty:

(a) for an individual — 5 penalty units; or

(b) for a body corporate — 10 penalty units.

REGULATION 76 INQUIRY INTO BALLOT IRREGULARITY — PROCEDURE AT HEARING (s 69(3))

76(1) The Federal Court may allow any person to appear or to be represented at an inquiry, and that person is taken to be a party to the proceedings.

76(2) The Federal Court may determine the procedure for the conduct of an inquiry.

76(3) The Federal Court is not bound, in conducting the inquiry, to act in a formal manner or to apply any rules of evidence, but may inform itself of any matter in any manner it thinks fit.

REGULATION 77 INQUIRY INTO BALLOT IRREGULARITY — ORDERS IF BALLOT NOT COMPLETED (s 69(3))

77(1) At any time after an inquiry is instituted and before the Federal Court finds whether there has been an irregularity that may affect, or may have affected, the result of an uncompleted ballot, the Federal Court, if it thinks fit, may:

(a) order that no further steps be taken in the conduct of the ballot; and

(b) make any order incidental or supplementary to an order under paragraph (a); and

(c) vary or discharge an order under paragraph (a) or (b).

77(2) An order under subregulation (1) continues in force until the conclusion of the inquiry, unless the order:

(a) is expressed to expire at some other time; or

(b) is discharged before the conclusion of the inquiry.

77(3) A person must comply with an order of the Federal Court under subregulation (1).

Penalty:

(a) for an individual — 5 penalty units; or

(b) for a body corporate — 10 penalty units.

REGULATION 78 PUBLIC NOTIFICATION OF AMALGAMATION DAY (s 73(2))

78(1) If the FWC has fixed a day under subsection 73(2) of the Act as the day on which an amalgamation is to take effect, the General Manager must publish a notice of the fixing of the day:

(a) in at least one newspaper; and

(b) no later than 14 days after the FWC has fixed a day.

History

Reg 78(1) amended by No 321 of 2012, Sch 2[8], commenced 1 January 2013.

78(2) The General Manager must be of the opinion that the notice is likely to come to the attention of interested persons including the members of the organisations, and any associations, to be amalgamated.

78(3) A notice published under paragraph (1)(a) is taken to be a notice published by the FWC for subsection 73(2) of the Act.

History

Reg 78(3) amended by No 321 of 2012, Sch 2[8], commenced 1 January 2013.

REGULATION 79 REGISTRATION OF AMALGAMATED ORGANISATIONS (s 73(3)(a))

79 For paragraph 73(3)(a) of the Act, the following particulars in relation to a proposed amalgamated organisation are prescribed:

(a) the name of the proposed organisation;

(b) the eligibility rules of the proposed organisation;

(c) if the proposed organisation is registered in relation to a particular industry — a description of the industry.

Division 2 — Withdrawal from amalgamations (Ch 3, Pt 3)

REGULATION 80 DEFINITIONS

80(1) In this Division:

amalgamation day has the same meaning as in Part 2 of Chapter 3 of the Act.

applicant, for a ballot, means a person who:

(a) is the constituent member, one of the constituent members, or a member of the committee of management; and

(b) applies for a ballot under section 94 of the Act.

closing day, for a ballot, means the day fixed as the closing day of the ballot under regulation 84.

commencing day, for a ballot, means the day fixed as the commencing day of the ballot under regulation 84.

inquiry means an enquiry [*sic*] under section 108 of the Act into alleged irregularities in relation to a ballot.

scrutineer means a person appointed as a scrutineer under regulation 96.

80(2) An expression used in this Division and in Part 3 of Chapter 3 of the Act has the same meaning in this Division as in that Part of that Chapter of the Act.

REGULATION 81 APPLICATION FOR BALLOT — NUMBER OF CONSTITUENT MEMBERS (s 94(3)(a))

81 For paragraph 94(3)(a) of the Act, the prescribed number of constituent members is the lesser of the following:

(a) the number equal to 5% of the constituent members on the day when the application is lodged;

(b) 2 000.

REGULATION 82 APPLICATION FOR BALLOT — PRESCRIBED FORM (s 94(4))

82 An application for a ballot under section 94 of the Act must:

(a) be in accordance with Form 2; and

(b) contain the information prescribed in that form; and

(c) nominate a person to be the representative constituent member for the ballot to receive documents on behalf of the applicant and for any other purpose specified in this Division.

REGULATION 83 OUTLINE OF PROPOSED WITHDRAWAL — MATTERS TO BE ADDRESSED (s 95(1)(b))

83 For paragraph 95(1)(b) of the Act, the written outline must address the following matters:

(a) the name of the amalgamated organisation appearing on the certificate of registration of the amalgamated organisation;

(b) if the constituent part of the amalgamated organisation is a part of the membership of the amalgamated organisation that would have been eligible for membership of an organisation that was formerly registered under the Fair Work Act — the name appearing on the certificate of registration for that organisation immediately before amalgamation day;

(c) if the constituent part of the amalgamated organisation is a part of the membership of the amalgamated organisation that would have been eligible for membership of a State or Territory branch of an organisation that was formerly registered under the Fair Work Act: