

FIRST PRINT

**INDUSTRIAL ARBITRATION (UNIONS) AMENDMENT
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are to amend the Industrial Arbitration Act 1940 (the 1940 Act) and to repeal the Trade Union Act 1881 (the 1881 Act) so as:

- (a) to provide for the incorporation of industrial unions of employers and employees and trade unions on their registration under the 1940 Act; and
- (b) to reform the law concerning industrial relations by requiring the governing bodies of industrial unions of employers and employees and trade unions registered under the 1940 Act to be more accountable for their actions (by requiring members of those bodies to comply with similar standards of behaviour as are demanded of company directors under the Corporations Law); and
- (c) to provide that the election of union officers is compulsory; and
- (d) to restate with modifications certain provisions of the 1940 Act and the 1881 Act relating to unions; and
- (e) to make other provisions of a consequential, savings and transitional nature.

A consequential amendment is also proposed to the Stamp Duties Act 1920 to delete a reference to the 1881 Act.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 provides for the repeal of the Trade Union Act 1881.

Clause 5 provides for the amendment of the Stamp Duties Act 1920.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS

Schedule 1 inserts proposed Part 11 (consisting of proposed sections 107–117FA) relating to unions into the 1940 Act.

Part 11 deals with the legal status of employer and employee associations and other combinations in the nature of trade unions. The proposed Part makes provision for the registration and incorporation of associations as industrial unions of employers or employees or as trade unions. An association may not be registered as both an industrial union and a trade union. The basic distinction between the status of an industrial union and a trade union is that an industrial union may represent its members in proceedings under the 1940 Act, but a trade union cannot.

Provisions of the proposed Part applying to industrial unions of employers and employees and their officers will also apply to trade unions registered as such under the proposed Part and their officers, except where excluded or modified by regulations.

Under the present law, only a trade union which is registered under the 1881 Act can be registered as an industrial union of employees under the 1940 Act. The proposed amendments to the 1940 Act will enable associations of employees which are not trade unions to apply for registration as industrial unions of employees. With the repeal of the 1881 Act and the enactment of the proposed amendments to the 1940 Act, it is also proposed that trade unions may apply for registration as trade unions under the 1940 Act if there is no industrial union of employees to which their members might conveniently belong.

The following is an explanation of the provisions of Part 11.

PART 11—UNIONS

Division 1—Preliminary

Division 1 (proposed sections 107–108) provides definitions for the purposes of the Part and refers to the manner of its operation.

Division 2—Legality of unions

Division 2 (proposed sections 109–113) provides that the purposes of unions (being industrial unions or trade unions, whether or not the trade unions are registered under the 1940 Act) are not unlawful as being in restraint of trade. The Division also covers the enforceability or otherwise of the constitution or rules of registered unions and certain types of agreements.

Division 3—Industrial unions

Division 3 (proposed sections 114–117EN) deals with the establishment and management of industrial unions and the conduct of their officials. The Division consists of 14 Subdivisions.

Subdivision 1—Registration

Subdivision 1 (proposed sections 114–117I) sets out the bases on which industrial unions of employers and employees may be registered. On registration, such a union is

Industrial Arbitration (Unions) Amendment 1991

incorporated and becomes a separate legal entity. After the commencement of the proposed provisions, organisations which are incorporated under other legislation, such as the Corporations Law, cannot be registered under the 1940 Act.

Subdivision 2—Rules of industrial unions

Subdivision 2 (proposed sections 117J–117Q) and proposed Schedule 5 to the 1940 Act, deal with matters which must be covered by the rules of registered unions. These matters include procedural and administrative matters, elections for offices (which, with certain minor exceptions, must be held at least once every 4 years) and the making of loans, grants and donations, including donations for political objects.

Subdivision 3—Validity and performance of rules

Subdivision 3 (proposed sections 117R–117S) makes provision for members of unions to challenge in the Industrial Commission of New South Wales the validity of rules and the manner in which rules are implemented. The Commission may award damages to a member of a union who has suffered loss as the result of a breach of the rules.

Subdivision 4—Conduct of elections for office

Subdivision 4 (proposed sections 117T–117AE) provides that elections for office bearers are compulsory and are to be paid for by unions. Elections are to be conducted by the Electoral Commissioner or an independent returning officer approved by and named on a panel maintained by the industrial registrar unless the registrar grants an exemption.

Subdivision 5—Inquiries into elections

Subdivision 5 (proposed sections 117AF–117AQ) provides for inquiries concerning the conduct of elections and, in certain circumstances, for the grant of financial assistance by the State in relation to the cost of such inquiries.

Subdivision 6—Membership of industrial unions

Subdivision 6 (proposed sections 117AR–117BG) deals with matters relating to membership of industrial unions, including membership entitlements, ballots for the rationalisation of union coverage, resignations and the recovery of subscriptions.

Subdivision 7—Duties of officers

Subdivision 7 (proposed sections 117BH–117BO) provides that officers of unions are required to act honestly and with reasonable care and diligence in the performance of their functions. They must not use their positions for profit and are liable to compensate the union for any loss sustained as the result of a failure to comply with these requirements. Officers must also disclose any interest which they may have in any contract or proposed contract being made with the union. "Officer", for the purpose of these provisions, extends to persons who take a part in the management of the union even if they do not hold an office.

Industrial Arbitration (Unions) Amendment 1991

Subdivision 8—Disqualification from office

Subdivision 8 (proposed sections 117BP–117BU) contains provisions dealing with the disqualification of persons from holding office in registered unions on the basis of their conviction for certain specified offences unless they have obtained the leave of the commission or 5 years has elapsed since they were convicted or released from prison.

Subdivision 9—Oppression

Subdivision 9 (proposed sections 117BV–117BY) contains provisions which enable the registrar or a member of a union to approach the Commission if it appears that the affairs of the union are being conducted in an oppressive or unfairly prejudicial or unfairly discriminatory manner. In such circumstances, orders which the Commission may make include an order suspending or cancelling a union's registration under the Act, an order disqualifying a member of a union or an order altering the union's rules.

Subdivision 10—Records to be kept and lodged by industrial unions

Industrial unions are required, in accordance with Subdivision 10 (proposed sections 117BZ–117CE), to maintain specified records and to lodge specified information, including information concerning membership and the making of loans, grants and donations, with the registrar at regular, specified intervals.

Subdivision 11—Accounts and audit

Subdivision 11 (proposed sections 117CF–117CW) contains requirements concerning the accounts of industrial unions, audit of the accounts by a company auditor, presentation of financial statements at meetings of unions and lodgment of copies of those financial statements with the registrar.

Subdivision 12—Amalgamation of industrial unions

Subdivision 12 (proposed sections 117CX–117DO) contains provisions covering the amalgamation of industrial unions which must initially apply to the registrar for approval to submit amalgamation proposals to a ballot of members. An appeal against refusal of an application by the registrar lies to the Commission. If an amalgamation proposal is approved in accordance with the provisions and either no irregularities have occurred in the ballot or any investigation of any irregularities has been completed, the registrar must fix a date for the amalgamation to take effect. On that date, appropriate registration procedures are put into effect and applicable awards, orders and agreements are taken to apply to the amalgamated organisation. The expenses of an amalgamation ballot are to be paid by the industrial unions which apply for the amalgamation.

Subdivision 13—Validating provisions for industrial unions

Certain validating provisions are set out in Subdivision 13 (proposed sections 117DP–117DV). Acts done in good faith or more than 4 years previously by management bodies and officers or by persons purporting to act as management bodies or officers are, subject to specified exceptions, saved despite invalidities which might later be discovered concerning the election of the management bodies or officers or the making, alteration or rescission of rules. Powers are conferred on the Commission to make declarations concerning the operation of these provisions and the consequences of any invalidity which has occurred in the operation of a union. Provision is made for persons who have been treated as members of industrial unions to be admitted as

Industrial Arbitration (Unions) Amendment 1991

members. It is also provided that no proceedings may be taken to challenge the validity of an industrial union merely because members of the union are also members of an organisation registered under the Commonwealth Industrial Relations Act 1988.

Subdivision 14—Miscellaneous

Subdivision 14 (proposed sections 117DW–117EN) contains various miscellaneous provisions dealing with such matters as a prohibition on deduction of subscriptions from a member's salary or wages without consent, provision of copies of rules to members, certificates of membership, registered offices, mortality funds, injunctions to restrain contravention of the Part, proceedings for offences, recovery of compensation, damages or penalties and applications to the Commission to rectify anomalies.

Division 4—Suspension and cancellation of registration

Division 4 (proposed sections 117EO–117EV) makes provision for the suspension and cancellation of the registration of industrial unions by the Commission on the motion of an interested industrial union or person or the Minister or on the Commission's own motion. Grounds of suspension and cancellation include breach by an industrial union or a substantial number of its members of an order of the Commission, an award or agreement or where an industrial union or members have engaged or are engaged in industrial action adversely affecting or likely to adversely affect the safety, health or welfare of the community.

Suspension is to be for a prescribed period. Suspension may be lifted by the Commission. A suspended union is not entitled to represent its members.

The registration of an industrial union is not to be cancelled unless the union has the opportunity of being heard by the Commission. Instead of suspending or cancelling the registration of an industrial union, the Commission may, amongst other things, change the rules of an industrial union to suspend the entitlements of particular members of the union. On cancellation of the registration of an industrial union, it ceases to be incorporated and is wound up by a Commission-appointed liquidator.

The Division also makes provision for voluntary cancellation of registration and removal of defunct industrial unions. Officials of certain unions whose registration is cancelled are, in the absence of the Commission's leave, disqualified from forming or holding office in another industrial union for 5 years following the cancellation.

Division 5—State peak organisations

Division 5 (proposed sections 117EW–117EX) makes provision for the approval of State peak organisations of employers by the Commission. Provision is made for the Labor Council of New South Wales to be the State peak organisation for employees. The provisions of the Part (other than those relating to registration and incorporation) apply to these organisations. State peak organisations may intervene in certain proceedings and may sign industrial agreements under the Act on behalf of their members.

Division 6—Trade unions

Division 6 (proposed sections 117EY–117FA) provides that regulations may apply provisions of the proposed Part to trade unions registered as such under the 1940 Act in the same way as they apply to registered industrial unions. Provision is made for the

Industrial Arbitration (Unions) Amendment 1991

registration of associations as trade unions under the Part. Unregistered trade unions which have existed for more than 12 months before applying for registration must lodge certain financial statements with the registrar.

Schedule 1 also inserts proposed Schedule 5 (containing clauses 1–8) into the 1940 Act. This Schedule sets out the requirements for rules of industrial unions as referred to above in relation to proposed Part 11.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

Definition of “trade union”

Item (1) revises the definition of “trade union”.

Repeal of restated provisions

Items (2) and (13) repeal sections 6–8, 9, 10A and 107–117E (Parts 11 and 11A) of the 1940 Act. These provisions, with extensive modifications, are largely restated in proposed Part 11.

Functions of the Industrial Commission

Items (3), (4) and (5) (b) and (c) deal with varying the jurisdiction and powers of the Commission for the purposes of proposed Part 11. Item (3) amends section 14 (8A) (a) to preclude a non-judicial member of the Commission from exercising the powers and jurisdiction of the industrial registrar. Item (4) inserts section 30A (1A), which deals with the powers of the Commission under Part 11 in relation to trade unions, in substitution for section 112 which is to be repealed. Item (5) (b) and (c) amend section 30B to enable the Commission in court session to exercise jurisdiction as required by proposed Part 11.

Repeal of obsolete reference

Item (5) (a) removes an obsolete reference to the 1881 Act.

Special criminal jurisdiction of Commission

Item (6) proposes amendment of section 39 to enable the Commission to exercise its special criminal jurisdiction in relation to offences under Part 11.

Updating of references

Items (7)–(12) make consequential amendments to references to trade unions and industrial unions of employees.

Regulations

Item (14) provides for the making of regulations concerning the procedure to be followed on suspension or cancellation of the registration of unions.

Savings and transitional provisions

Item (15) enacts appropriate savings and transitional provisions.

FIRST PRINT

**INDUSTRIAL ARBITRATION (UNIONS) AMENDMENT
BILL 1991**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Industrial Arbitration Act 1940 No. 2
4. Repeal of Trade Union Act 1881, 45 Vic. No. 12
5. Consequential amendment of Stamp Duties Act 1920 No. 47

SCHEDULE 1—PRINCIPAL AMENDMENTS

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS



**INDUSTRIAL ARBITRATION (UNIONS) AMENDMENT
BILL 1991**

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Industrial Arbitration Act 1940 with respect to industrial unions, trade unions and other combinations; to repeal the Trade Union Act 1881 and to amend the Stamp Duties Act 1920 consequentially.

Industrial Arbitration (Unions) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Industrial Arbitration (Unions) Amendment Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Industrial Arbitration Act 1940 No. 2

3. The Industrial Arbitration Act 1940 is amended as set out in Schedules 1 and 2.

Repeal of Trade Union Act 1881, 45 Vic. No. 12

4. (1) The Trade Union Act 1881 is repealed.

(2) The regulations under that Act are also repealed.

Consequential amendment of Stamp Duties Act 1920 No. 47

5. The Stamp Duties Act 1920 is amended by omitting from clause (7) of the General Exemptions from Stamp Duty under Part 3 in the Second Schedule the matter "the Trade Union Act 1881, as amended, or".

SCHEDULE 1—PRINCIPAL AMENDMENTS

(Sec. 3)

(1) Part 11 (sections 107–117FA):

After Part 10A, insert:

PART 11—UNIONS

Division 1—Preliminary

Definitions

107. (1) In this Part:

“committee of management”, in relation to an association, industrial union or branch of an association or industrial union, means the group or body of persons (however described) that manages the affairs of the association, industrial union or branch;

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

“office”, in relation to an industrial union, means:

- (a) an office of president, vice-president, secretary or assistant secretary of the industrial union; or
- (b) the office of a voting member of a collective body of the industrial union, being a collective body that has power in relation to any of the following functions:
 - (i) the management of the financial or other affairs of the industrial union;
 - (ii) the determination of policy for the industrial union;
 - (iii) the making, alteration or rescission of rules of the industrial union;
 - (iv) the enforcement of rules of the industrial union, or the performance of functions in relation to the enforcement of such rules; or
- (c) an office the holder of which is, under the rules of the industrial union, entitled to participate directly in any of the functions referred to in paragraph (b) (i) or (iv), other than an office the holder of which participates only in accordance with directions given by a collective body or another person for the purpose of implementing:
 - (i) existing policy of the industrial union; or
 - (ii) decisions concerning the industrial union; or
- (d) an office the holder of which is, under the rules of the industrial union, entitled to participate directly in any of the functions referred to in paragraph (b) (ii) or (iii); or
- (e) the office of a person holding (whether as trustee or otherwise) property:
 - (i) of the industrial union; or
 - (ii) in which the industrial union has a beneficial interest;

“officer”, in relation to an industrial union, means a person who holds an office in the industrial union;

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

“State peak organisation” means an association approved for the time being by the commission as a peak organisation for employers or as the peak organisation for employees.

(2) A reference in this Part to **affairs of an industrial union**, unless the contrary intention appears, includes a reference to:

- (a) the formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with another person or other persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with another person or other persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with another person or other persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the industrial union; and
- (b) the internal management and proceedings of the industrial union; and
- (c) the power of persons to exercise, or to control the exercise of, the rights to vote attached to membership of the industrial union; and
- (d) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in any of the preceding paragraphs.

(3) A reference in this Part to **“the commission”**, unless the contrary intention appears, is a reference to the commission constituted by one judicial member.

Operation of Part: registration alternatives

108. (1) This Part provides for the registration of associations as industrial unions of employees or employers or as trade unions.

(2) An association may be registered under this Part as an industrial union or as a trade union, but not as both an industrial union and a trade union.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Division 2—Legality of unions

Definition

109. In this Division, “**union**” means an industrial union or a trade union, whether or not the trade union is registered as a trade union under this Act.

Purposes not to give rise to criminal proceedings

110. The purposes of a union are not, merely because they are in restraint of trade, taken to be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise.

Purposes not to give rise to civil disqualification

111. The purposes of a union are not, merely because they are in restraint of trade, unlawful so as to render void any agreement or trust.

Certain agreements not enforceable

112. (1) This Act does not authorise the taking of legal proceedings to enforce or recover damages for a breach of any agreement to pay the funds of a union to an employer or employee who is not a member of the union in consideration of the employer or employee acting in conformity with the rules or resolutions of the union.

(2) This section does not make unlawful any agreement referred to in subsection (1) and does not apply to any legal proceedings permitted by section 113.

Enforcement of certain agreements

113. (1) Legal proceedings may be taken in the commission to enforce or recover damages for a breach of any of the following:

- (a) the constitution or rules of an industrial union or a trade union registered as such under this Act;
- (b) an agreement between members of any such union concerning the conditions on which any members for the time being of the union will or will not sell their goods, transact business, employ or be employed;
- (c) an agreement for the regulation of any business or industry as between employers and employees made by any such union with an employer or employers;

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (d) an agreement made between one such union and another;
- (e) a bond to secure the performance of any of the agreements referred to in paragraphs (b)–(d).
- (2) This Division does not affect:
 - (a) any agreement between partners as to their own business; or
 - (b) any agreement between an employer and his or her employees as to such employment; or
 - (c) any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or business.

Division 3—Industrial unions

Subdivision 1—Registration

Associations capable of registration as industrial unions of employers

114. (1) An association of persons the members of which have, in the aggregate, throughout the 6 months before the application for its registration was lodged with the registrar, employed (on an average taken per month) not fewer than 50 employees, may be registered as an industrial union of employers.

(2) It does not matter if one or a number of the officers of the association is employed by the association, is not an employer and does not have industrial interests represented by the association.

Associations capable of registration as industrial unions of employees

115. (1) An association of employees that:
- (a) if registered as an industrial union, would be capable of representing those employees in connection with industrial matters; and
 - (b) has, in the aggregate, throughout the 6 months before the application for its registration was lodged with the registrar, (on an average taken per month) not fewer than 50 members who are employees;
 - (c) is not a registered trade union of employees,

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

may be registered as an industrial union of employees.

(2) It does not matter if one or a number of the officers of the association is employed by the association, is not otherwise an employee and does not have industrial interests represented by the association.

Criteria for registration

116. (1) The registrar may grant an application for registration made by an association that may be registered as an industrial union under this Subdivision or as a trade union under Division 6, as the case may be, if, and only if:

- (a) the association:
 - (i) is a genuine association of a kind referred to in this Part; and
 - (ii) is an association for furthering or protecting the interests of its members; and
 - (iii) is an association that is effectively representative of its members; and
 - (iv) is an association that carries on business only within New South Wales; and
- (b) the rules of the association make provision as required by this Act to be made by the rules of industrial unions; and
- (c) the association does not have the same name as that of an industrial union or a trade union registered as a trade union under Division 6 and does not have a name that is so similar to the name of an industrial union or a trade union registered as a trade union under Division 6 as to be likely to cause confusion; and
- (d) the name proposed by the association is not, in the opinion of the registrar, unsuitable to be the name of an industrial union; and
- (e) a majority of the members present at a general meeting of the association or an absolute majority of the committee of management of the association has passed, under the rules of the association, a resolution in favour of registration of the association as an industrial union or trade union; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (f) the registration of the association would further the execution of this Act; and
- (g) in the case of an application by an association to be registered as an industrial union, there is no other industrial union to which the members of the association might conveniently belong.

(2) The registrar must not register an association consisting of the members of a branch of an industrial union as an industrial union unless the registrar is satisfied that it is an association of sufficient importance to be registered separately.

Application for registration

117. An application to be registered as an industrial union is to be made in the prescribed manner.

Proof of authority for application

117A. The registrar may require such proof as the registrar considers necessary to establish the authority of the persons making an application for the registration of an industrial union to act on behalf of the association.

Registrar to deal with application

117B. (1) On receipt of an application by an association to be registered as an industrial union, the registrar must notify any industrial union which, in the opinion of the registrar, may be affected by the application.

(2) Any person may lodge with the registrar a notice of objection to that application in the prescribed manner and within the prescribed time.

(3) The objection must set out with reasonable particularity the ground or grounds of the objection and the facts and circumstances relied on as establishing those grounds, and must be verified by statutory declaration.

(4) A copy of the notice of objection must be served on the applicant for registration by the objector within the prescribed time.

(5) Within 7 days after service of the notice of objection, the applicant for registration may file a statutory declaration in answer to the notice of objection and must, within that period, serve a copy of that declaration on the objector.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(6) If no objections to the application are lodged within the prescribed period, the registrar must as soon as practicable after having examined the application and the rules of the association either register the association as an industrial union or refuse to register the association.

Determination of objections etc.

117C. (1) If an objection is, or objections are, lodged in relation to an application, the registrar is required to fix a day for considering the objection or objections and to give notice of the day so fixed to the applicant for registration and to the objector or objectors.

(2) On the day appointed for the consideration of the objection or objections by the registrar, the registrar is to proceed to hear and determine the application for registration and all objections to the application, without prejudice to the registrar's power to adjourn the proceedings from time to time.

(3) The procedure to be followed at the hearing is to be as directed by the registrar.

Appeal against decision of registrar on objections

117D. (1) An applicant to be registered as an industrial union whose application has been refused by the registrar or a party to a hearing before the registrar may appeal to the commission in court session against a decision of the registrar in relation to an application or an objection.

(2) On any such appeal, further evidence is admissible only on special grounds and only with special leave of the commission in court session.

(3) The commission in court session may affirm, vary or set aside the decision subject to the appeal as the commission in court session thinks fit.

Decision of commission in court session on appeal

117E. On the hearing of an appeal, the commission in court session may do any one or more of the following:

- (a) dismiss the appeal;
- (b) require the registrar to register an association as an industrial union;

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (c) require the registrar to refuse to register an association as an industrial union or require the registrar to refuse to register the association unless the association changes its name or alters its rules;
- (d) require the registrar to cancel the registration of an association as an industrial union with the effect that the association is taken never to have been registered under this Act;
- (e) make any other order that the commission in court session considers appropriate in the circumstances.

Applicant for registration may change its name or alter its rules

117F. (1) The registrar may, on the application of an association applying to be registered as an industrial union, grant leave to the association, on such terms and conditions as the registrar considers appropriate, to change its name or to alter its rules:

- (a) to enable it to comply with this Act; or
- (b) to remove a ground of objection to registration taken by an objector or by the registrar.

(2) An association granted leave under subsection (1) may change its name, or alter its rules, even though the application for registration is pending.

(3) Rules of an association as altered in accordance with leave granted under subsection (1) are binding on the members of the association:

- (a) despite anything in the other rules of the association; and
- (b) subject to any further alterations lawfully made.

Registration

117G. (1) When the registrar grants an application by an association to be registered as an industrial union, the registrar must immediately record, in the register kept for the purpose, the name of the industrial union and note that the rules of the association are registered and the date of the entry.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) An association is taken to be registered under this Act when the registrar records the name and notes that the rules of the association are registered.

(3) On registration, an association becomes an industrial union or a registered trade union, as specified in the certificate of registration.

(4) The registrar must issue to each association registered under this Act a certificate of registration in the prescribed form.

(5) A document purporting to be such a certificate is evidence of the registration of the association specified in the certificate in the absence of proof to the contrary.

(6) The registrar may, as prescribed, issue to an industrial union a copy of, or a certificate replacing, the certificate of registration issued under subsection (4) or that certificate as amended under Subdivision 12.

(7) The purported registration under this Act of an association otherwise than in accordance with the requirements made by or under this Act is void.

Incorporation

117H. (1) An association, when registered under this Act as an industrial union or a trade union:

- (a) is a body corporate; and
- (b) has perpetual succession; and
- (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with any real or personal property; and
- (d) is required to have a common seal; and
- (e) may sue or be sued in its registered name.

(2) The custody and manner of affixing of the common seal is to be as prescribed by the regulations.

(3) This section does not apply to an incorporated continued industrial union the registration of which under this Act is confirmed in accordance with clause 2 of the item relating to the Industrial Arbitration (Unions) Amendment Act 1991 in Schedule 6.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Certain legislation not to apply to industrial unions

117I. (1) The registrar must not register as an industrial union an association which is incorporated under the Co-operation Act 1923, Permanent Building Societies Act 1967, Credit Union Act 1969, Associations Incorporation Act 1984, Friendly Societies Act 1989 or Corporations Law.

(2) The incorporation after the commencement of this section, under any of the Acts referred to in subsection (1), of an association registered under this Act, is void.

(3) This section does not apply to an incorporated continued industrial union the registration of which under this Act is confirmed in accordance with clause 2 of the item relating to the Industrial Arbitration (Unions) Amendment Act 1991 in Schedule 6.

Subdivision 2—Rules of industrial unions

Industrial unions to have rules

117J. (1) An industrial union must have rules that make provision as required by this Act.

(2) An industrial union must not make any rule which is contrary to any term or provision of an award.

General requirements for rules

117K. (1) The rules of an industrial union:

- (a) must be certain; and
- (b) must not be contrary to, or fail to make provision as required by, this Act or an order of the commission or any court or other tribunal of competent jurisdiction; and
- (c) must not be contrary to law or against the public interest; and
- (d) must not be such as to prevent or hinder members of the industrial union from observing any law or the provisions of any award or agreement; and
- (e) must not deprive any member, or any section or class of membership, of a reasonable voice in the management of the industrial union; and
- (f) must not impose on members of the industrial union, or on applicants for membership of the industrial union,

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

any conditions, obligations or restrictions that, having regard to the execution of this Act and the purposes of the registration of industrial unions under this Act, are oppressive, unreasonable or unjust.

- (2) The rules must be:
- (a) contained in consecutively numbered paragraphs; and
 - (b) printed, typewritten or otherwise produced in legible form in a manner that is permanent, facilitates a reproduction by photographic means and is satisfactory to the registrar; and
 - (c) available in sufficient quantities to supply a copy to each member of the industrial union; and
 - (d) consolidated by the industrial union whenever the number or nature of the alterations to the rules renders it reasonable to do so or whenever the registrar so directs.

Rules of industrial unions

117L. (1) The rules of an industrial union must specify:

- (a) the name of the industrial union; and
- (b) the purposes for which the industrial union is formed; and
- (c) the conditions of eligibility for membership,

and may specify the industry in relation to which it is formed.

(2) The rules of an industrial union must also make provision for:

- (a) procedural and administrative matters; and
- (b) elections for offices; and
- (c) elections for offices by secret postal ballot; and
- (d) terms of office; and
- (e) filling of casual vacancies; and
- (f) conditions for loans, grants and donations; and
- (g) conditions for the imposing of levies and the making of donations or other payments for political objects,

as required by Schedule 5.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(3) The provisions of Schedule 5 relating to rules of industrial unions have effect.

Registrar may determine alterations of rules

117M. (1) Where the rules of an industrial union do not, in the registrar's opinion, make provision required by this Act, the registrar may, by instrument in writing, after giving the industrial union an opportunity, as prescribed, to be heard on the matter, determine such alterations of the rules as are, in the registrar's opinion, necessary to bring them into conformity with this Act.

(2) Alterations determined under subsection (1) take effect on the date of the instrument.

(3) An industrial union the rules of which have been or are to be altered under this section or a member of such an industrial union may appeal to the commission in court session against a decision of the registrar made under this section.

(4) The appeal to the commission in court session must be made in the prescribed manner and within the prescribed time.

Change of name of industrial union

117N. (1) A change in the name of an industrial union does not take effect unless the registrar consents to the change.

(2) The registrar must not consent to a change unless satisfied that the change has been made under the rules of the industrial union.

(3) The registrar must not consent to a change in the name of an industrial union unless satisfied that the proposed new name of the industrial union:

- (a) is not the same as the name of another industrial union; and
- (b) is not so similar to the name of another industrial union as to be likely to cause confusion; and
- (c) is not, in the opinion of the registrar, unsuitable to be the name of an industrial union.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(4) Where the registrar consents to a change under subsection (1), the change takes effect on registration of the change by the registrar.

(5) The recording of a change of name in the register does not affect any rights and liabilities of the industrial union existing immediately before the recording.

Alteration of rules of industrial union

117O. (1) An alteration of the rules of an industrial union does not take effect unless the registrar consents to the alteration.

(2) The registrar may consent to an alteration in whole or part, but must not consent to an alteration unless satisfied that the alteration:

- (a) complies with, and is not contrary to, this Act and relevant awards made under this Act; and
- (b) is not otherwise contrary to law; and
- (c) has been made under the rules of the industrial union.

(3) The registrar must not consent to an alteration of the rules of an industrial union, relating to eligibility for membership of the industrial union, if, in relation to persons who would be eligible for membership because of the alteration, there is, in the opinion of the registrar, another industrial union to which those persons might conveniently belong.

(4) Where particulars of an alteration of the rules of an industrial union have been lodged with or recorded by the registrar, the registrar may, with the consent of the industrial union, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

(5) Where the registrar consents under this section to an alteration, the alteration takes effect on registration of the change by the registrar.

(6) This section does not apply in relation to an alteration of the rules of an industrial union that is:

- (a) determined by the registrar under section 117M or 117R; or
- (b) proposed to be made for the purpose of an amalgamation under Subdivision 12.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Certain alterations of rules to be recorded

117P. Where there has been a change in the name of an industrial union, or an alteration of the rules of an industrial union, under this Act, the registrar must:

- (a) immediately enter, in the register kept for this purpose, particulars of the change or alteration, and the date of registration of the change or alteration; and
- (b) as soon as practicable after the industrial union produces its certificate of registration to the registrar, amend the certificate accordingly and return it to the industrial union.

Evidence of rules

117Q. (1) In proceedings under this Act, a copy of the rules of an industrial union certified by the registrar to be a true and correct copy is evidence of the rules of the industrial union.

(2) In this Subdivision, a reference to **the rules of an industrial union** includes a reference to the rules of a branch of the industrial union.

Subdivision 3—Validity and performance of rules

Rules contravening general requirements for rules etc.

117R. (1) A member of an industrial union may apply to the commission for an order under this section in relation to the industrial union.

(2) An order under this section may declare that the whole or a part of a rule of an industrial union contravenes section 117K or that the rules of an industrial union contravene that section in a particular respect.

(3) An industrial union in relation to which an application is made under this section must be given an opportunity to be heard by the commission.

(4) The commission may, without limiting any other power of the commission to adjourn proceedings, adjourn proceedings in relation to an application under this section for such period and on such terms and conditions as it considers appropriate for the purpose of giving the industrial union an opportunity to alter its rules.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(5) Where an order under this section declares that the whole or a part of a rule contravenes section 117K or that the rules contravene that section in a particular respect, the rule or that part of the rule or the rules in that particular respect, as the case may be, is or are taken to be void from the date of the order.

(6) Where:

(a) the commission makes an order declaring as mentioned in subsection (2) in relation to the rules of an industrial union; and

(b) at the expiration of 3 months from the making of the order, the rules of the industrial union have not been altered in a manner that, in the opinion of the registrar, brings them into conformity with section 117K in relation to the matters that gave rise to the order,

the registrar must, after giving the industrial union an opportunity, as prescribed, to be heard on the matter, determine, by instrument in writing, such alterations of the rules as will, in the registrar's opinion, bring them into conformity with that section in relation to those matters.

(7) The registrar may, on the application of the industrial union made within the period of 3 months referred to in subsection (6) or within any extension of the period, extend, or further extend, the period.

(8) Alterations determined under subsection (6) take effect on the date of the instrument.

(9) At any time after a proceeding under this section has been instituted, the commission may make such interim orders as it considers appropriate in relation to any matter raised in the proceedings.

(10) An order under subsection (9) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

(11) In this Subdivision, a reference to **a rule**, or **the rules**, of an industrial union includes a reference to a rule, or the rules, of a branch of an industrial union.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Directions for performance of rules

117S. (1) In this section:

“election” includes a purported election that is a nullity;

“order under this section” means an order:

- (a) giving directions for the performance or observance of any of the rules of an industrial union by any person who is under an obligation to perform or observe those rules; or
- (b) awarding damages against the industrial union to a member who has suffered loss as the result of a failure by the industrial union in relation to the performance or observance of any rules of the industrial union.

(2) A member of an industrial union may apply to the commission for an order under this section in relation to the industrial union.

(3) Before making an order under this section, the commission must give any person against whom the order is sought an opportunity to be heard.

(4) The commission may refuse to deal with an application for an order under this section unless it is satisfied that the applicant has taken all reasonable steps to try to have the matter the subject of the application resolved within the industrial union.

(5) At any time after the making of an application for an order under this section, the commission may make such interim orders as it considers appropriate and, in particular, orders intended to further the resolution within the industrial union concerned of the matter the subject of the application.

(6) An order under subsection (5) continues in force, unless expressed to operate for a shorter period or sooner discharged, until the completion of the proceeding concerned.

(7) An order must not be made under this section that would have the effect of treating as invalid an election to an office in an industrial union or a step in relation to such an election.

(8) If the commission, in considering an application under this section, finds that the whole or a part of a rule of the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

industrial union concerned contravenes section 117K or that the rules of the industrial union concerned contravene that section in a particular respect, the commission may, by order, make a declaration to that effect.

(9) Section 117R (5)–(11) applies in relation to an order made under subsection (8) of this section as if the order had been made under those provisions.

(10) If the commission, in considering an application under this section, finds that a member of the industrial union has suffered loss as the result of a contravention of the kind referred to in subsection (8), the commission may order the industrial union to pay damages, in the amount determined by the commission, to that member.

Subdivision 4—Conduct of elections for office**Elections for offices compulsory**

117T. Each office in an industrial union and each office in a branch of an industrial union must be filled by election.

Cost of elections

117U. The expenses of an election conducted under this Subdivision must be borne by the industrial union or the branch of the industrial union concerned, including:

- (a) the salary or other remuneration of any officer or employee of the State performing any duty in relation to the election, including any person appointed solely for the purposes of the election; and
- (b) the cost of travel of such an officer or employee, including any travelling or similar allowance, incurred in connection with the performance of any such duty; and
- (c) expenses in connection with the provision or use of premises provided by the State for the purposes of the election, including premises obtained solely for such purposes.

Conduct of elections by registrar

117V. (1) When an election is required to be held, an industrial union or a branch of an industrial union must apply in writing to the registrar requesting that the registrar arrange for the conduct of an election for an office in the industrial

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

union or branch, as the case may be, in accordance with the rules of the industrial union or branch.

(2) For the purposes of subsection (1), an application by an industrial union or a branch may be made:

- (a) by or on behalf of the committee of management of the industrial union or of the branch, as the case may be, or otherwise as may be provided by the rules of the industrial union or branch; or
- (b) by a number of the members of the industrial union or of the branch, as the case may be, being not less than 1,000 or 10%, whichever is the lesser, of the members of the industrial union or branch making the request.

(3) Where an application is made, or purports to be made, under this section, the registrar must, after making such inquiries (if any) and such examination of the rules of the industrial union or of the branch as the registrar considers necessary, decide whether or not to authorise the holding of the election.

(4) Where the registrar decides that the application has been duly made, the registrar must inform the industrial union or branch of that fact and state whether the election is to be conducted by:

- (a) the Electoral Commissioner; or
- (b) an independent returning officer approved by the registrar and named in a panel maintained by the registrar in accordance with the regulations.

(5) A person conducting an election under this section for an office in an industrial union or a branch of an industrial union may, despite anything contained in the rules of the industrial union or of the branch, take such action and give such directions as the person considers necessary in relation to the conduct of the election or in order to ensure that no irregularities occur in relation to the election or to remedy any procedural defects in the rules of the industrial union or of the branch which may appear to the person to exist.

(6) An election conducted under this section is not to be invalidated by reason only of:

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(a) a breach of the rules of the industrial union or of the branch involved in:

(i) an act done under this section; or

(ii) an act done in compliance with a direction given under this section; or

(b) an irregularity in the request in pursuance of which the election is conducted.

(7) A person must not:

(a) fail to comply with a direction given under subsection (5); or

(b) obstruct or hinder the person conducting an election under this section or carrying out a direction given under subsection (5).

Maximum penalty: 50 penalty units.

(8) If a person conducting an election under this section:

(a) dies or becomes unable to complete the conduct of the election; or

(b) ceases to be a person qualified to conduct the election, the registrar must make arrangements or give directions for the completion of the conduct of the election by another person who is so qualified.

Failure to hold elections every 4 years

117W. (1) The registrar must inform the commission if an industrial union or a branch of an industrial union fails to comply with the rules concerning elections and terms of office.

(2) The commission may suspend the registration of an industrial union if the industrial union or any branch of it fails to comply with the requirements of this Act in relation to the holding of elections at least once every 4 years after the industrial union is registered under this Act.

Registrar may issue exemptions concerning returning officer

117X. (1) An industrial union or a branch of an industrial union may apply to the registrar for approval to engage a person or body to conduct an election for an office in the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

industrial union or branch, as the case may be, other than the persons referred to in section 117V (4).

(2) On being satisfied by the industrial union or branch that it is appropriate that a person or body other than a person referred to in section 117V (4) be appointed to conduct the election for the industrial union or branch, the registrar may issue to the industrial union or branch a certificate to that effect and naming the person or body who or which is to conduct the election to which the application applies.

(3) The registrar may have regard, in making a decision under this section, to the size, structure and resources of the industrial union or branch and to such other matters as the registrar considers relevant.

Procedure for conduct of elections

117Y. (1) The procedure for the conduct of elections is to be as prescribed by the regulations.

(2) The voting system for an election is to be in accordance with the rules of the industrial union concerned unless the rules of the industrial union provide that officers elected to a State branch of a Federal organisation are taken to be validly elected to the corresponding offices in the industrial union.

Ballot-papers etc. to be preserved

117Z. Despite anything in the rules of an industrial union or a branch of an industrial union, the industrial union or branch, and every officer and employee of the industrial union or branch who is able to do so, and the person or body conducting an election for an office in the industrial union or branch under this Subdivision, must take such steps as are reasonably necessary to ensure that all ballot-papers, envelopes, lists and other documents relevant to the election are preserved and kept by the Electoral Commissioner or other returning officer, as the case may be, for one year after the completion of the election.

Offence in relation to preservation of ballot-papers etc.

117AA. A person must not contravene section 117Z.

Maximum penalty: 50 penalty units.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Offences in relation to elections

117AB. (1) Where a person conducting an election requires an officer or employee of an industrial union or branch of an industrial union to provide or make available, for the purposes of the election, a register or list of:

(a) in the case of an officer or employee of the industrial union—the members of:

(i) the industrial union or a branch of the industrial union; or

(ii) a section or class of the members of the industrial union or a branch of the industrial union; and

(b) in the case of an officer or employee of a branch of the industrial union—the members of:

(i) the branch; or

(ii) a section or class of the members of the branch, the officer or employee must promptly comply with the requirement so far as he or she is capable.

(2) A person must not, without lawful authority or excuse, in relation to an election for an office:

(a) impersonate another person to secure a ballot-paper to which the impersonator is not entitled, or impersonate another person for the purpose of voting; or

(b) destroy, deface, alter, take or otherwise interfere with a nomination paper, ballot-paper or envelope; or

(c) put or deliver a ballot-paper or other paper:

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

(ii) into the post; or

(d) deliver a ballot-paper to a person receiving ballot-papers for the purposes of the election; or

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

(f) record more than one vote; or

(g) forge or utter, knowing the same to be forged, a nomination paper, ballot-paper or envelope; or

(h) supply a ballot-paper; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (i) obtain, or have in the person's possession, a ballot-paper; or
 - (j) destroy, take, open or otherwise interfere with a ballot-box.
- (3) A person must not, without lawful authority or excuse, in relation to an election for an office:
- (a) threaten, offer or suggest any violence, injury, punishment, damage, loss or disadvantage for or on account of, or to induce:
 - (i) any candidature or withdrawal of candidature; or
 - (ii) any vote or omission to vote; or
 - (iii) any support or opposition to any candidate; or
 - (iv) any promise of any vote, omission, support or opposition; or
 - (b) use, cause, inflict or procure any violence, injury, punishment, damage, loss or disadvantage for or on account of any such candidature, withdrawal, vote, omission, support, opposition or promise.
- (4) A person must not, without lawful authority or excuse, in relation to an election for an office:
- (a) hinder or obstruct the taking of the votes; or
 - (b) use any form of intimidation to prevent from voting, or to influence the vote of, a person entitled to vote at the election; or
 - (c) threaten, offer or suggest, or use, cause, inflict or procure, any violence, injury, punishment, damage, loss or disadvantage because of, or to induce:
 - (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) counsel or advise a person entitled to vote to refrain from voting.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(5) A person (in this subsection called the “**relevant person**”) must not, without lawful authority or excuse, in relation to an election for an office:

- (a) request, require or induce another person to show a ballot-paper to the relevant person, or 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) if the relevant person is a person performing duties for the purposes of the ballot, show to another person, or permit another person to have access to, a ballot-paper used in the ballot, otherwise than in the performance of those duties.

Maximum penalty: 100 penalty units.

Proof of election to office etc.

117AC. (1) A certificate issued by the registrar stating that a specified person is, or was at any specified time, elected to or the holder of a specified office in an industrial union is prima facie evidence of such facts without proof of the registrar’s signature.

(2) A certificate may be issued by the registrar under subsection (1) on proof to the registrar’s satisfaction that the person has been elected to the specified office in the specified industrial union and that the requirements of the rules of the specified industrial union relating to such election have been duly complied with.

(3) The person to whom any certificate has been issued under this section stating that the person has been elected to or is the holder of a specified office in an industrial union must, within 14 days:

- (a) of ceasing to hold the specified office; or
- (b) of being requested to do so by the registrar,

return the certificate to the registrar for cancellation.

Maximum penalty: 20 penalty units.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Right to participate in certain ballots**

117AD. Subject to reasonable provisions in the rules of an industrial union in relation to enrolment, every financial member of an industrial union has a right to vote at any ballot taken for the purpose of submitting a matter to a vote of the members of the industrial union, or of a branch, section or other division of the industrial union in which the member is included.

Requests by members for information concerning elections and certain ballots

117AE. A financial member of an industrial union may request the returning officer:

- (a) in relation to an election for an office in the industrial union or a branch of the industrial union; or
- (b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an industrial union or a branch of the industrial union,

to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot. The returning officer must comply with the request.

Subdivision 5—Inquiries into elections**Application for inquiry**

117AF. (1) A person who is, or within the preceding period of 12 months has been, a member of an industrial union and who claims that there has been an irregularity in relation to an election for an office in the industrial union or a branch of the industrial union, may make an application for an inquiry by the commission into the matter.

- (2) An application under this section must:
 - (a) be in writing in a form approved by the registrar; and
 - (b) be lodged with the registrar before the completion of the election or within such time after the completion of the election as may be prescribed; and
 - (c) specify the election in respect of which the application is made and the irregularity which is claimed to have

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

occurred, and state the facts relied on in support of the application; and

- (d) be accompanied by a statutory declaration by the applicant declaring that the facts stated in the application are, to the best of the applicant's knowledge and belief, true.

Action by registrar

117AG. (1) On lodgment of an application for an inquiry under this Subdivision, the registrar must:

- (a) if the registrar is satisfied:

- (i) that there are reasonable grounds for an inquiry into the question of whether there has been an irregularity in relation to the election, which may have affected or may affect the result of the election; and
- (ii) that the circumstances of the matter justify an inquiry by the commission,

grant the application and refer the matter to the commission; or

- (b) if the registrar is not so satisfied, refuse the application and inform the applicant accordingly.

(2) The registrar may exercise his or her powers under subsection (1) on the basis of the matters stated in the application but he or she may also take into account any relevant information coming to his or her knowledge.

(3) Any act or decision of the registrar under this section is not subject to appeal to the commission.

Hindering or obstruction of registrar

117AH. A person must not hinder or obstruct the registrar, or a person acting on the registrar's behalf, in the exercise of the registrar's functions under section 117AG.

Maximum penalty: 50 penalty units.

Inquiry by commission

117AI. On receipt of a reference from the registrar under this Subdivision, the commission must as soon as practicable proceed to inquire into the alleged irregularity.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Interim orders

117AJ. (1) At any time after an inquiry in relation to an election has been instituted, the commission may make one or more of the following orders:

- (a) an order that no further steps are to be taken in the conduct of the election or in carrying into effect the result of the election;
- (b) an order that a person who has assumed an office, has continued to act in an office, or claims to occupy an office, to which the inquiry relates, must not act in that office;
- (c) an order that a person who holds, or last held before the election, an office to which the inquiry relates may act or continue to act in that office;
- (d) where the commission considers that an order under paragraph (c) would not be practicable, would be prejudicial to the efficient conduct of the affairs of the industrial union or a branch of the industrial union or would be inappropriate having regard to the nature of the inquiry, an order that a member of the industrial union or branch or another person specified in the order may act in an office to which the inquiry relates;
- (e) an order for the recounting of votes;
- (f) an order incidental or supplementary to an order under this subsection;
- (g) an order varying or discharging an order under this subsection.

(2) If the commission orders that a person may act, or continue to act, in an office, the person must, while the order remains in force, and despite anything contained in the rules of the industrial union or of a branch of the industrial union, be taken, for all purposes, to hold the office.

(3) An order under this section is to continue in force, unless expressed to operate for a shorter period or unless sooner discharged, until the completion of proceedings before the commission in relation to the election and of all matters ordered (otherwise than under this section) by the commission in those proceedings.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Procedure at hearing**

117AK. (1) The commission is to allow to appear or be represented at an inquiry all persons who apply to the commission for leave to appear or be represented, being persons who appear to the commission to be justly entitled to be heard, and the commission may order any other person so to appear or be represented.

(2) The persons appearing or represented, or ordered to appear or be represented, at an inquiry are taken to be parties to the proceedings.

(3) For the purposes of this Subdivision:

- (a) the procedure of the commission is, subject to this Act and rules of the commission, within the discretion of the commission; and
- (b) the commission is not bound to act in a formal manner and is not bound by any rules of evidence, but may inform itself on any matter in such manner as it considers just.

Functions and powers of commission

117AL. (1) At an inquiry, the commission is to inquire into and determine the question of whether an irregularity has occurred in relation to the election, and such further questions concerning the conduct and results of the election as the commission thinks necessary.

(2) In the course of conducting an inquiry, the commission may make such orders (including an order for the recounting of votes) as the commission considers necessary.

(3) If the commission finds that an irregularity has occurred, the commission may make one or more of the following orders:

- (a) an order declaring the election, or any step taken in relation to the election, to be void;
- (b) an order declaring a person purporting to have been elected not to have been elected, and declaring another person to have been elected;
- (c) an order directing the registrar to make arrangements:
 - (i) in the case of an uncompleted election—for a step in relation to the election (including the

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

calling for nominations) to be taken again and for the uncompleted steps in the election to be taken; or

(ii) in the case of a completed election—for a step in relation to the election (including the calling for nominations) to be taken again or a new election to be held;

(d) an order directing, despite anything contained in the rules of the industrial union or branch of the industrial union, the taking of such safeguards as the commission considers necessary against irregularities in relation to:

(i) any such new election; or

(ii) any such step so ordered to be taken again; or

(iii) any uncompleted steps in the election,

and, for the purposes of any such order, an order appointing and authorising a person to act as a returning officer either alone or in conjunction with the returning officer acting under the rules of the industrial union or branch in relation to the election, and to exercise such powers as the commission directs;

(e) an order (including an order modifying the operation of the rules of the industrial union or branch to the extent necessary to enable a new election to be held, a step in relation to an election to be taken again or an uncompleted step in an election to be taken) incidental or supplementary to, or consequential on, any other order under this section.

(4) The commission is not to declare an election, or any step taken in relation to an election, to be void, or declare that a person was not elected, unless the commission is of the opinion that, having regard to the irregularity found, and any circumstances giving rise to a likelihood that similar irregularities may have occurred or may occur, the result of the election may have been affected, or may be affected, by irregularities.

Discontinuance of inquiries

117AM. Without limiting the power of the commission to terminate a proceeding before it, the commission may, at any

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

time after it begins an inquiry into an election, terminate the inquiry absolutely or to the extent that it relates to specified matters.

Validity of certain acts etc. where election declared void

117AN. (1) If the commission declares void the election of a person who has, since the election, purported to act in the office to which the person purports to have been elected, or declares such a person not to have been elected:

- (a) subject to a declaration under paragraph (b), all acts done by or in relation to the person that could validly have been done by or in relation to the person if the person had been duly elected are valid; and
- (b) the commission may declare an act referred to in paragraph (a) to have been void, and, if the commission does so, the act is taken not to have been valid.

(2) If an election is held, or a step in relation to an election is taken, under an order of the commission, the election or step is not invalid merely because of a departure from the rules of the industrial union or branch concerned that was required by the order of the commission.

Costs

117AO. (1) The commission may make such order as to the costs (including expenses of witnesses) of proceedings before the commission in relation to an inquiry under this Subdivision as the commission considers just, and the commission may assess the amount of such costs.

(2) If, on any such inquiry, the commission finds that an irregularity has occurred, the Minister may, if the Minister considers the circumstances justify so doing, authorise the grant by the State to the person who applied for the inquiry of financial assistance in relation to the whole or a part of the costs (including expenses of witnesses) that the applicant has paid, has become liable to pay or may become liable to pay in relation to the inquiry.

(3) If, on any such inquiry, the commission does not find that any irregularity has occurred, but certifies that the person who applied for the inquiry acted reasonably in so applying, the Minister may authorise the grant by the State to that

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

person of financial assistance in relation to the whole or a part of the costs of the applicant as specified in subsection (2).

(4) If the Minister is satisfied that, having regard to the findings of the commission on any such inquiry, it is not just that a person (not being the person who applied for the inquiry) should be required to bear, or to bear in full, any costs that the person has paid, has become liable to pay or may become liable to pay in relation to the inquiry (including expenses of witnesses), the Minister may authorise the grant by the State to that person of financial assistance in relation to the whole or a part of those costs.

(5) Where the commission orders:

- (a) a new election to be held; or
- (b) any step in relation to an election to be taken again; or
- (c) any other step (including modification of the rules of the industrial union or branch) incidental or supplementary to, or consequential on, any other order made under section 117AL,

the Minister may, if the Minister is satisfied that the nature of the irregularity found by the commission to have occurred is such that it would be unreasonable for the industrial union to be required to bear, or to bear in full, the expenses involved in compliance with the order of the commission, authorise payment by the State of the whole or a part of those expenses.

Irregularity

117AP. In this Subdivision:

“**irregularity**”, in relation to an election for an office, includes a breach of the rules of an industrial union or of a branch of an industrial union and any act, omission or other thing which prevents or hinders or attempts to prevent or hinder:

- (a) the full and free recording of votes by all persons entitled to record votes and by no other persons; or
- (b) a correct ascertainment or declaration of the results of the voting,

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

or otherwise adversely and unfairly affects the result of the election.

Savings as to commission's powers

117AQ. Nothing in this Subdivision limits or in any way affects the functions conferred or imposed on the commission by any other provision of this Act.

Subdivision 6—Membership of industrial unions

Entitlement to membership of industrial unions

117AR. (1) Subject to any award or order made under this Act, an employee who is eligible to become a member of an industrial union under the rules of the industrial union that relate to the occupations in which, or the industry in relation to which, members are to be employed is, unless of generally bad character, entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the industrial union; and
- (b) to remain a member so long as the employee complies with the rules of the industrial union.

(2) Subsection (1) does not entitle an employee to remain a member of an industrial union if the employee ceases to be eligible to become a member and the rules of the industrial union do not permit the employee to remain a member.

(3) Subject to subsection (4) and to any award or order made under this Act, an employer who is eligible to become a member of an industrial union is entitled, subject to payment of any amount properly payable in relation to membership:

- (a) to be admitted as a member of the industrial union; and
- (b) to remain a member so long as the employer complies with the rules of the industrial union.

(4) Subsection (3) does not entitle an employer:

- (a) to become a member of an industrial union if the employer is:
 - (i) a natural person who is of generally bad character; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (ii) a body corporate whose constituent documents make provisions inconsistent with the purposes for which the industrial union was formed; or
- (b) to remain a member of an industrial union if the employer ceases to be eligible to become a member and the rules of the industrial union do not permit the employer to remain a member.
- (5) Subsections (1) and (3) have effect despite anything in the rules of the industrial union concerned, except to the extent that those subsections expressly require compliance with those rules.
- (6) A person who is qualified to be employed in a particular occupation and seeks to be employed in that occupation:
 - (a) must for the purposes of this section be taken to be an employee; and
 - (b) despite anything in the rules of the industrial union, is not to be treated as not being eligible for membership of an industrial union merely because the person has never been employed in the occupation.
- (7) If a question arises as to:
 - (a) the entitlement under this section of a person:
 - (i) to be admitted as a member of an industrial union (whether for the first time or after having resigned, or been removed, as a member of the industrial union); or
 - (ii) to remain a member of an industrial union; or
 - (b) the reasonableness of any admission fee, subscription, fine or levy or other requirements of the rules of an industrial union to be imposed on a person under this section,

the person or, where the person is an employee, a person who is or wants to become the employer of the person, or the industrial union concerned, may apply to the commission for a declaration as to the entitlement of the person under this section.
- (8) On the hearing of an application under subsection (7), the commission may, despite anything in the rules of the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

industrial union concerned, make such orders to give effect to its declaration as it considers appropriate.

(9) The orders which the commission may make under subsection (8) include:

- (a) an order requiring the industrial union concerned to treat a person to whom subsection (1) or (3) applies as being a member of the industrial union; and
- (b) in the case of a question as to the entitlement under this section of a person to be admitted as a member of an industrial union, where the person has previously been removed (whether before or after the commencement of this section) from membership of the industrial union—an order that the person be taken to have been a member of the industrial union in the period between the removal of the person from membership and the making of the order; and
- (c) an order directing the alteration or annulment of the rules of an industrial union in such a manner as will bring them into conformity with what the commission declares to be reasonable in the circumstances.

(10) On the making of an order as mentioned in subsection (9) (a), or as otherwise specified in the order, the person specified in the order becomes, by force of this section, a member of the industrial union concerned.

(11) If:

- (a) an order is made as mentioned in subsection (9) (b); and
- (b) the person specified in the order pays to the industrial union concerned any amount that the person would have been liable to pay to the industrial union if the person had been a member of the industrial union during the period specified in the order,

the person is taken to have been a member of the industrial union during the period specified in the order.

(12) On the making of an order mentioned in subsection (9) (c), the rules affected are taken to have been altered or annulled in accordance with the order.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(13) Where an application is made to the commission under this section:

- (a) if the application is made otherwise than by the person whose entitlement is in question—the person must be given an opportunity to be heard by the commission; and
- (b) if the application is made otherwise than by the industrial union concerned—the industrial union must be given an opportunity to be heard by the commission.

Rationalising union coverage: voting for change

117AS. (1) In this Part, “enterprise” has the meaning that it has in Part 1C.

(2) An application may be made to the commission:

- (a) by one or more industrial unions representing persons employed in an enterprise; or
- (b) by at least the prescribed number of persons employed in the enterprise,

for permission to hold a secret ballot to determine whether all employees in the enterprise should be represented by one industrial union.

(3) The commission is not to determine any such application unless satisfied that adequate notice of the application has been given to:

- (a) each industrial union representing persons employed in the enterprise; and
- (b) the persons employed in the enterprise whether members of an industrial union of employees or not; and
- (c) the enterprise employer.

(4) In determining whether to grant such permission, the commission may take submissions from any person given a notice under subsection (3).

(5) If the commission considers that the holding of the ballot is in the best interests of the enterprise and its employees, the commission must grant permission for the holding of the ballot.

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(6) If permission for the holding of a ballot is granted by the commission, either:

- (a) one or more industrial unions representing the persons employed in the enterprise; or
- (b) at least the prescribed number of persons employed in the enterprise,

may arrange for the holding of a secret ballot to decide whether the union coverage for the enterprise should be rationalised by having all of those persons whose conditions of employment are of a kind capable of being fixed by State awards represented by one industrial union.

(7) Any such ballot is to be conducted by a person who:

- (a) is independent of the persons employed in the enterprise; and
- (b) meets any requirement that may be imposed for the purposes of this section by the regulations.

(8) Despite subsection (7), such a ballot may be conducted by any person on behalf of the employees who are entitled to vote in the ballot.

(9) Only persons employed in the enterprise whose conditions of employment are of a kind capable of being fixed by State awards are eligible to vote in such a ballot.

(10) In this section, “**prescribed number**” means:

- (a) if there are fewer than 80 persons employed in the enterprise—4; or
- (b) if there are not fewer than 80, but not more than 5,000, persons so employed—5% of the number of persons employed in the enterprise; or
- (c) if there are more than 5,000 persons so employed—250.

Rationalising union coverage: effect of vote in favour

117AT. (1) If at least 65% of the persons employed in the enterprise vote in favour of being represented by a single industrial union, that union is required:

- (a) to notify the registrar and the other industrial union or unions concerned in writing of the result of the ballot; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) to supply the registrar with such information concerning the ballot and related matters as the registrar may request.

(2) The registrar must register particulars of any such vote in favour of being represented by a single industrial union notified to the registrar, unless the registrar is satisfied that there was an irregularity concerning the ballot.

(3) Such particulars are not to be registered earlier than 14 days after the registrar is notified of the result of the ballot.

(4) When the registrar, under this section, registers particulars of a vote, then, unless satisfied that no alteration of the rules of any industrial union concerned is necessary, the registrar is required, after giving each such industrial union an opportunity to be heard, to specify such alterations (if any) of the rules of any such industrial union as are, in the registrar's opinion, necessary to give effect to the vote.

(5) An alteration of the rules of an industrial union specified under this section takes effect on the day on which the registrar registers particulars of the vote or at a later time specified by the registrar.

(6) The registrar may do such other things as are necessary to give effect to the vote, including the alteration of the copy of any industrial union's rules held by the registrar.

(7) The copy of an industrial union's rules altered under this section by the registrar is, to the extent of the alteration, taken to be the copy of the official rules of the union.

Complaints about irregularities before ballot

117AU. At any time before particulars of a vote taken at the ballot are registered under section 117AT by the registrar, an industrial union whose membership may be affected by a ballot proposed to be or that has been conducted under section 117AS may lodge a written complaint with the registrar, particularising alleged irregularities in the procedure followed before the ballot is proposed to be or was conducted.

Complaints about irregularities during ballot

117AV. (1) If, at any time before particulars of a vote taken at a ballot are registered under section 117AT, the registrar

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

receives a written complaint from at least 20% of the employees eligible to vote in the ballot particularising alleged irregularities in the conduct of the ballot and requesting that a further secret ballot be conducted by an independent person, the registrar (if of the opinion that such action is justified) is to refrain from registering the particulars and may arrange with the employees concerned:

- (a) for the conduct of a further secret ballot, as requested in the complaint; and
- (b) for evidence of the result of the further ballot to be supplied to the registrar.

(2) The result of any such further ballot is to be disregarded if the registrar is not satisfied that it has been conducted in accordance with the registrar's directions.

Registrar may require further information

117AW. For the purpose of:

- (a) investigating a written complaint authorised by this Subdivision; or
- (b) ensuring the proper conduct of a secret ballot arranged by the registrar under this Subdivision,

the registrar may require any person concerned to produce records relating to membership of a relevant industrial union or to supply other relevant information to the registrar.

Disregarding result of ballot

117AX. If the registrar is satisfied the complaint has been made out or that the secret ballot will not be or has not been properly conducted, the registrar may give notice to the parties concerned that the ballot must be postponed or abandoned or that the results of the ballot will be disregarded.

Frequency of ballots

117AY. (1) The registrar is required to disregard the results of a ballot conducted under a provision of this Subdivision at any time with respect to employees of an enterprise if there has been another ballot conducted under the same provision with respect to employees of the enterprise during the period of 2 years immediately before that time.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) In this section, “**ballot**” does not include a ballot arranged by the registrar.

Failure to amend rules or admit members

117AZ. An industrial union that:

- (a) fails to amend its rules in accordance with an order made by the commission; or
- (b) fails to admit to membership a person whom the commission declares is entitled to such admission,

is guilty of an offence.

Maximum penalty: 50 penalty units.

Request by member for statement of membership

117BA. An industrial union must, at the request of a person who is a member, give to the person, within 28 days after the request is made, a statement showing:

- (a) that the person is a member of the industrial union; and
- (b) if there are categories of membership of the industrial union—the category of the person’s membership; and
- (c) if the person expressly requests—whether the person is a financial member of the industrial union.

Penalty for failure to comply with request

117BB. An industrial union that fails to comply with a request under section 117AB is guilty of an offence.

Maximum penalty: 20 penalty units.

Resignation from membership

117BC. (1) A member of an industrial union may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the industrial union or a branch of the industrial union.

(2) A notice of resignation from membership of an industrial union takes effect:

- (a) if the member ceases to be eligible to become a member of the industrial union:
 - (i) on the day on which the notice is received by the industrial union; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member,
whichever is later; or
- (b) in any other case:
 - (i) at the end of 6 months, or such shorter period as is specified in the rules of the industrial union, after the notice is received by the industrial union; or
 - (ii) on the day specified in the notice,
whichever is later.
- (3) Any subscriptions or other sums in the nature of fines, levies, penalties or calls payable but not paid by a former member of an industrial union, in relation to a period, not exceeding 6 months, before the member's resignation from the industrial union took effect, may be sued for and recovered in the name of the industrial union, in a court of competent jurisdiction, as a debt due to the industrial union.
- (4) A notice delivered to the designated person mentioned in subsection (1) is taken to have been received by the industrial union when it was delivered.
- (5) A notice of resignation that has been received by the industrial union is not invalid because it was not addressed and delivered in accordance with subsection (1).
- (6) A resignation from membership of an industrial union is valid even if it is not effected in accordance with this section if the member is informed in writing by or on behalf of the industrial union that the resignation has been accepted.

Liability of ineligible person for arrears

117BD. (1) If a person has ceased to be eligible to become a member of an industrial union and the person has not actively participated in the affairs of the industrial union since that time, those circumstances are to be a defence to an action by the industrial union for arrears of subscriptions or other sums in the nature of fines, levies, penalties or calls payable from the time when the person ceased to be so eligible.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) If such a defence is successful, that person is taken to have ceased to be a member from the time when the person ceased to be so eligible.

(3) In any event, the person is not to be liable for arrears in relation to so much of a period as exceeds 6 months.

Liability of member for arrears

117BE. (1) An industrial union is not entitled to sue for and recover arrears of subscriptions or other sums in the nature of fines, levies, penalties or calls that are due and payable by a member in respect of so much of a period as exceeds 6 months prior to the date of the commencement of the proceedings to recover the arrears.

(2) Proceedings to recover arrears must be commenced within 6 months of the arrears becoming due.

Membership of minors

117BF. (1) A person under the age of 18 years but above the age of 16 years may be a member of an industrial union unless the rules of the industrial union prohibit such membership.

(2) A minor admitted to membership of an industrial union in accordance with subsection (1) may, subject to the rules of the industrial union, enjoy all rights of membership and execute all documents and give all releases that are required to be executed or given under the rules of the industrial union.

(3) A person admitted to membership of an industrial union in accordance with subsection (1):

(a) is not to hold office in the industrial union; and

(b) is not to vote at any meeting of the industrial union, until the person is 18 years of age.

Rectification of register of members

117BG. Any member of the commission may at any time, in a proceeding under this Act, order such rectifications of the register of members of an industrial union as the member considers necessary.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Subdivision 7—Duties of officers

Duty to act honestly

117BH. (1) An officer of an industrial union must at all times act honestly in the exercise of the powers and the discharge of the duties of his or her office.

Maximum penalty: 50 penalty units.

(2) An officer of an industrial union must not, with intent to deceive or defraud an industrial union or the members of the industrial union or for any other fraudulent purpose, act dishonestly in the exercise of any of the powers or the discharge of any of the duties of his or her office.

Maximum penalty: 200 penalty units.

Duty to act with reasonable care and diligence

117BI. An officer of an industrial union must at all times exercise a reasonable degree of care and diligence in the exercise of the powers and the discharge of the duties of his or her office.

Maximum penalty: 50 penalty units.

Improper use of information

117BJ. An officer or former officer of an industrial union must not make improper use of information acquired by virtue of the officer's position as such an officer to gain, directly or indirectly, an advantage for the officer or for any other person or to cause detriment, loss or damage to the industrial union.

Maximum penalty: 200 penalty units.

Use of position for profit

117BK. An officer of an industrial union must not make improper use of the officer's position as such an officer to gain, directly or indirectly, an advantage for the officer or for any other person or to cause detriment, loss or damage to the industrial union.

Maximum penalty: 200 penalty units.

Compensation to industrial union

117BL. (1) If the commission convicts a person of an offence under this Subdivision, the commission may, if satisfied that an industrial union has suffered loss or damage

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

as a result of the act or omission that constituted the offence, in addition to imposing a penalty, order the convicted person to pay compensation to the industrial union in the amount that the commission specifies.

(2) In determining the amount of compensation to award under this Subdivision, the commission must have regard to any amount which has been paid to the industrial union or which the industrial union is entitled to be paid by way of damages awarded in civil proceedings.

Recovery of compensation

117BM. Where an officer of an industrial union contravenes a provision of this Subdivision in relation to an industrial union, the industrial union and, whether or not the industrial union has instituted proceedings, any member of the industrial union may, whether or not the person has been convicted of an offence under this Subdivision in relation to that contravention, recover from the officer as a debt due to the industrial union by action in the commission:

- (a) if that officer, or any other person made a profit as a result of the contravention or failure—an amount equal to that profit; and
- (b) if the industrial union has suffered loss or damage as a result of the contravention or failure—an amount equal to that loss or damage.

Officer to disclose interest

117BN. (1) An officer of an industrial union who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the industrial union must, subject to this section and as soon as practicable after the relevant facts have come to his or her knowledge, declare the nature of his or her interest at a meeting of the governing body of the industrial union.

Maximum penalty: 50 penalty units.

(2) The requirements of subsection (1) do not apply in any case where the interest of an officer of an industrial union consists only of being a member or creditor of a corporation that is interested in a contract or proposed contract with the industrial union if the interest of the officer may properly be regarded as not being a material interest.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(3) An officer of an industrial union is taken not to be interested or to have been at any time interested in any contract or proposed contract only because the contract or proposed contract relates to a loan to the industrial union, if he or she has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan. This subsection has effect not only for the purposes of this Act but also for the purposes of any rule of law, but does not affect the operation of any provision in the rules of the industrial union.

(4) For the purposes of subsection (1), a general notice given to the members of the governing body of an industrial union by an officer of that industrial union, to the effect that he or she is an officer or member of a specified corporation or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that corporation or firm, is taken to be a sufficient declaration of interest in relation to any contract made or proposed to be made if:

- (a) the notice states the nature and extent of the interest of the officer in the corporation or firm; and
- (b) when the question of confirming or entering into the contract is first taken into consideration, the extent of his or her interest in the corporation or firm is not greater than is stated in the notice; and
- (c) the notice is given at a meeting of the governing body or the officer takes reasonable steps to ensure that it is read at the next meeting of the governing body after it is given.

(5) An officer of an industrial union who holds an office or possesses any property as a consequence of which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as an officer of the industrial union must declare in accordance with subsection (7) the fact and the nature, character and extent of the conflict.

Maximum penalty: 50 penalty units.

(6) An officer of an industrial union who holds an office or possesses any property as a consequence of which, whether directly or indirectly, duties or interests might be created in

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

conflict with his or her duties or interests as an officer of the industrial union must not, with intent to deceive or defraud the industrial union or the members of the industrial union or for any other fraudulent purpose, fail to declare in accordance with subsection (7) the fact and the nature, character and extent of the conflict.

Maximum penalty: 200 penalty units.

(7) A declaration required by subsection (5) or (6) in relation to the holding of an office or the possession of any property must be made by a person:

- (a) if the person holds the office or possesses the property as mentioned in subsection (5) or (6) when he or she becomes an officer of the industrial union—at the first meeting of the governing body held after:
 - (i) he or she becomes an officer of the industrial union; or
 - (ii) the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge,

whichever is later; or

- (b) if the person commences to hold the office or comes into possession of the property as mentioned in subsection (5) or (6) after he or she becomes an officer of the industrial union—at the first meeting of the governing body held after the relevant facts as to the holding of the office or the possession of the property come to his or her knowledge.

(8) The secretary of an industrial union must record every declaration under this section in the minutes of the meeting at which it was made.

(9) Except as provided by subsection (3), this section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the rules of the industrial union restricting an officer of the industrial union from having any interest in contracts with the industrial union or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as an officer of the industrial union.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Operation of Subdivision**

117BO. (1) This Subdivision has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of an officer of an industrial union and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

(2) In this Subdivision, a reference to an industrial union includes a reference to a branch of an industrial union.

(3) In this Subdivision, “**officer**”, in relation to an industrial union, means:

- (a) any person who holds an office; and
- (b) any person, by whatever name called and whether or not he or she holds an office in the industrial union, who is concerned, or takes part, in the management of the industrial union.

Subdivision 8—Disqualification from office**Interpretation**

117BP. (1) In this Subdivision, “**prescribed offence**” means:

- (a) an offence under a law of the Commonwealth, a State or Territory, or of another country, involving fraud or dishonesty and punishable on conviction by imprisonment for a period of 3 months or more; or
- (b) an offence against section 117V, 117AA, 117AB, 117AH, 117DG or 117EN; or
- (c) any other offence in relation to the formation, registration or management of an association or an industrial union; or
- (d) any other offence under a law of the Commonwealth, a State or Territory, or of another country, involving the intentional use of violence towards another person, the intentional causing of death or injury to another person or the intentional damaging or destruction of property.

(2) A reference in this Subdivision to a person having been convicted of a prescribed offence includes a reference to a person having been so convicted before the commencement of this section.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(3) A reference in this Subdivision to a person being convicted of a prescribed offence does not include a reference to a person being convicted, otherwise than on indictment, of an offence referred to in subsection (1) (c).

(4) A reference in this Subdivision to a person being convicted of a prescribed offence does not include a reference to a person being convicted of an offence referred to in subsection (1) (d) unless the person has served, or is serving, a term of imprisonment in relation to the offence.

(5) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was convicted by the court of a specified offence on a specified day is, for the purpose of an application made under this Subdivision, evidence that the person was convicted of the offence on that day.

(6) A certificate purporting to be signed by the registrar or other proper officer of a federal court, a court of a State or Territory, or a court of another country, stating that a person was acquitted by the court of a specified offence, or that a specified charge against the person was dismissed by the court, is, for the purpose of an application made under this Subdivision, evidence of the facts stated in the certificate.

(7) A certificate purporting to be signed by the officer in charge of a prison stating that a person was released from the prison on a specified day is, for the purpose of an application made under this Subdivision, evidence that the person was released from the prison on that day.

Certain persons disqualified from holding office in industrial unions

117BQ. (1) A person who has been convicted of a prescribed offence is not eligible to be a candidate for an election, or to be elected or appointed, to an office in an industrial union unless:

- (a) on an application made under section 117BR or 117BS in relation to the conviction of the person for the prescribed offence:
 - (i) the person was granted leave to hold office in industrial unions; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (ii) the person was refused leave to hold office in industrial unions but, under section 117BR (2) (b) or 117BS (2) (b), the commission specified a period for the purposes of this subsection, and the period has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison; or
 - (b) in any other case—a period of 5 years has elapsed since the person was convicted of the prescribed offence or, if the person served a term of imprisonment in relation to the prescribed offence, since the person was released from prison.
- (2) If a person who holds an office in an industrial union is convicted of a prescribed offence, the person ceases to hold the office at the end of the period of 28 days after the conviction unless, within the period, the person makes an application to the commission under section 117BR or 117BS.
- (3) Where a person who holds an office in an industrial union makes an application to the commission under section 117BR or 117BS and the application is not determined:
- (a) except in a case to which paragraph (b) applies—within the period of 3 months after the date of the application; or
 - (b) if the commission, on application by the person, has extended that period—within that period as extended, the person ceases to hold the office at the end of the period of 3 months or the period as extended, as the case may be.
- (4) The commission must not, under subsection (3) (b), extend a period for the purposes of subsection (3) unless:
- (a) the application for the extension is made before the end of the period of 3 months referred to in subsection (3) (a); or
 - (b) if the commission has previously extended the period under subsection (3) (b)—the application for the further extension is made before the end of that period as extended.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(5) An industrial union, a member of an industrial union or the registrar may apply to the commission for a declaration that, because of the operation of this section or section 117BR or 117BS:

- (a) a person is not, or was not, eligible to be a candidate for election, or to be elected or appointed, to an office in the industrial union; or
- (b) a person has ceased to hold an office in the industrial union.

(6) The granting to a person, on an application made under section 117BR or 117BS in relation to a conviction of the person for a prescribed offence, of leave to hold offices in industrial unions does not affect the operation of this section or section 117BR or 117BS in relation to another conviction of the person for a prescribed offence.

Application for leave to hold office in industrial unions by prospective candidate for office

117BR. (1) A person who:

- (a) wants to be a candidate for election to an office in an industrial union; and
- (b) has been, within the immediately preceding period of 5 years, convicted of a prescribed offence or released from prison after serving a term of imprisonment in relation to a conviction for a prescribed offence,

may, subject to subsection (4), apply to the commission for leave to hold office in industrial unions.

(2) If a person makes an application under subsection (1), the commission may:

- (a) grant the person leave to hold office in industrial unions; or
- (b) refuse the person leave to hold office in industrial unions and specify, for the purposes of section 117BQ (1), a period of less than 5 years; or
- (c) refuse a person leave to hold office in industrial unions.

(3) A person who:

- (a) holds an office in an industrial union; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) is convicted of a prescribed offence; and
- (c) on an application made under subsection (1) in relation to the conviction for the prescribed offence, is, under subsection (2) (b) or (c), refused leave to hold office in industrial unions,

ceases to hold the office in the industrial union.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or under section 117BS in relation to the conviction.

Application for leave to hold office in industrial unions by office holder

117BS. (1) If a person who holds an office in an industrial union is convicted of a prescribed offence, the person may, within 28 days after the conviction, apply to the commission for leave to hold office in industrial unions.

(2) If a person makes an application under subsection (1) for leave to hold office in industrial unions, the commission may:

- (a) grant the person leave to hold office in industrial unions; or
- (b) refuse the person leave to hold office in industrial unions and specify, for the purposes of section 117BQ (1), a period of less than 5 years; or
- (c) refuse the person leave to hold office in industrial unions.

(3) A person who, on an application made under subsection (1), is, under subsection (2), refused leave to hold office in industrial unions ceases to hold the office concerned.

(4) A person is not entitled to make an application under this section in relation to the person's conviction for a prescribed offence if the person has previously made an application under this section or section 117BR in relation to the conviction.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Commission to have regard to certain matters**

117BT. For the purposes of exercising the power under section 117BR or 117BS to grant or refuse leave to a person who has been convicted of a prescribed offence to hold office in industrial unions, the commission must have regard to:

- (a) the nature of the prescribed offence; and
- (b) the circumstances of, and the nature of the person's involvement in, the commission of the prescribed offence; and
- (c) the general character of the person; and
- (d) the fitness of the person to be involved in the management of industrial unions, having regard to the conviction for the prescribed offence; and
- (e) any other matter that, in the commission's opinion, is relevant.

Action by commission

117BU. (1) The commission may, despite anything in the rules of any industrial union concerned, make such order to give effect to a declaration referred to in section 117BQ (5) as it considers appropriate.

(2) If an application is made to the commission under section 117BQ (5):

- (a) the person whose eligibility, or whose holding of office, is in question must be given an opportunity to be heard by the commission; and
- (b) if the application is made otherwise than by the industrial union concerned—the industrial union must be given an opportunity to be heard by the commission.

(3) If an application is made to the commission under section 117BR or 117BS, the industrial union concerned must be given an opportunity to be heard by the commission.

Subdivision 9—Oppression**Application to commission**

117BV. An application to the commission for an order under this Subdivision in relation to an industrial union may be made by the registrar or by a member of the industrial

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

union who believes that:

- (a) the affairs of the industrial union are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the industrial union or in a manner that is contrary to the interests of the industrial union as a whole; or
- (b) an act or omission, or a proposed act or omission, by or on behalf of the industrial union, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the industrial union or was or would be contrary to the interests of the members of the industrial union as a whole; or
- (c) a rule of the industrial union has been breached.

Action by commission

117BW. (1) If the commission is of the opinion that:

- (a) the affairs of an industrial union are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the industrial union, or in a manner that is contrary to the interests of the members of the industrial union as a whole; or
- (b) an act or omission, or a proposed act or omission, by or on behalf of the industrial union, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members of the industrial union or was or would be contrary to the interests of the members of the industrial union as a whole; or
- (c) a rule of the industrial union has been breached,

the commission may make such orders as the commission considers appropriate.

(2) The orders that the commission may make under subsection (1) include, without limiting the generality of the foregoing, one or more of the following orders:

- (a) an order that the registration of the industrial union be suspended or cancelled under Division 4;

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) an order regulating the conduct of the affairs of the industrial union in the future;
- (c) an order disqualifying any member or members from membership of the industrial union;
- (d) an order dismissing any officer of the industrial union;
- (e) an order directing the industrial union to institute, prosecute, defend or discontinue specified proceedings, or authorising a member or members of the industrial union to institute, prosecute, defend or discontinue specified proceedings;
- (f) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;
- (g) an order requiring a person to do a specified act or thing;
- (h) an order cancelling, amending or adding to the rules of the industrial union;
- (i) an order directing any person who is under an obligation to observe a rule of the industrial union to observe the rule.

Failure to comply with commission order

117BX. An industrial union or other person who contravenes an order of the commission under this Subdivision is guilty of an offence.

Maximum penalty: 200 penalty units.

Alterations of rules to be recorded

117BY. Any alteration of the rules of an industrial union that results from an order of the commission under this Subdivision must be recorded by the registrar in accordance with Subdivision 2.

Subdivision 10—Records to be kept and lodged by industrial unions

Records to be kept and lodged by industrial unions

117BZ. (1) An industrial union must keep, under this section, the following records:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) a register of its members, showing the name, residential address and financial status of each member and such other particulars as may be prescribed by the regulations;
 - (b) a list of the offices in the industrial union and each branch of the industrial union;
 - (c) a list of the names, residential addresses and occupations of the persons holding the offices;
 - (d) such other records as are prescribed by the regulations.
- (2) An industrial union must:
- (a) enter in the register the name and residential or postal address of each person who becomes a member, within 28 days after the person becomes a member; and
 - (b) remove from the register the name and residential or postal address of each person who ceases to be a member, within 28 days after the person ceases to be a member; and
 - (c) enter in the register any change in the particulars shown on the register, within 28 days after the matters necessitating the change become known to the industrial union.
- (3) An industrial union must lodge with the registrar once in each year, at such time as is prescribed by the regulations:
- (a) a statutory declaration by the secretary or other prescribed officer of the industrial union certifying that the register of members has, during the immediately preceding calendar year, been kept and maintained as required by subsections (1) and (2); and
 - (b) a copy of the records required to be kept under subsection (1) (b), (c) and (d), certified by statutory declaration by the secretary or other prescribed officer of the industrial union to be a correct statement of the information contained in those records.
- (4) An industrial union must, within the prescribed period, lodge with the registrar notification of any change made to the records required to be kept under subsection (1) (b), (c) and (d), certified by statutory declaration by the secretary or

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

other prescribed officer of the industrial union to be a correct statement of the changes made.

(5) The records kept by an industrial union under subsection (1) must be kept at the registered office of the industrial union.

(6) A member of an industrial union may inspect and make copies of, or take extracts from, the register of members of an industrial union, or a part of the register but only after the member produces a certificate issued by the registrar that the member has satisfied the registrar that he or she is a candidate for election to an office in the industrial union and is seeking information for that purpose.

(7) An industrial union must cause its register of members, or each part of the register, to be available, during office hours, for the purposes of subsection (6), at the registered office of the industrial union, to a member of the industrial union who produces a certificate issued by the registrar under that subsection.

(8) If:

(a) a member of an industrial union to whom a certificate has been issued by the registrar under subsection (6) requests the registrar to give a direction under this subsection; and

(b) the registrar is satisfied:

(i) that the member has been refused access to the register of members, or a part of the register of members, of the industrial union at the registered office of the industrial union; or

(ii) that there are other grounds for giving a direction under this subsection,

the registrar may direct the industrial union to deliver to the registrar, before a specified day, a copy of the register certified by statutory declaration by the secretary or other prescribed officer of the industrial union to be, as at a day specified in the certificate that is not more than 28 days before the first-mentioned day, a correct statement of the information contained in the register, for the member to inspect at the office of the registrar.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(9) If default is made in complying with a provision of this section, the industrial union and any officer of the industrial union who failed to take all reasonable steps to secure compliance by the industrial union with the provision are each guilty of an offence.

Maximum penalty (subsection (9)): 50 penalty units.

Concealment, falsification etc. of books

117CA. (1) An officer, former officer, member or former member of an industrial union who conceals, destroys, mutilates or falsifies any securities of or belonging to the industrial union or any books affecting or relating to the affairs of the industrial union is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) It is a defence to a charge arising under subsection (1) if the defendant proves that he or she acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Misuse of mechanical, electronic or other devices

117CB. If matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of an industrial union is recorded or stored by means of a mechanical device, an electronic device or any other device, a person who:

- (a) records or stores by means of that device matter that he or she knows to be false or misleading in a material particular; or
- (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored, by means of that device; or
- (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
 - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular, other matter so recorded or stored,

is guilty of an offence.

Maximum penalty: 100 penalty units.

Directions by registrar concerning maintenance of register of members

117CC. (1) The registrar may give directions to an industrial union in relation to the maintenance of the register of its members if the registrar is not satisfied that the industrial union is maintaining the register in accordance with this Subdivision.

(2) Without affecting the generality of subsection (1), the registrar may direct an industrial union to make:

- (a) such rectifications of the register; or
 (b) such changes in the form of or manner in which the register is being maintained,

as the registrar considers necessary to ensure that the register provides, for the purpose of the conduct of a ballot or election under this Act, in a convenient form, accurate and current particulars of the membership of the industrial union.

(3) An industrial union that fails to comply with a direction given by the registrar under this section is guilty of an offence.

Maximum penalty (subsection (3)): 50 penalty units.

Industrial unions to notify particulars of loans, grants and donations

117CD. (1) An industrial union must, as soon as practicable after the end of each financial year, lodge with the registrar a statement showing the relevant particulars in relation to each loan, grant or donation (other than a donation or other payment for political objects) of a relevant amount, and of all donations or other payments for political objects made by the industrial union during the financial year.

(2) A statement lodged with the registrar under subsection (1) must be signed by an officer of the industrial union.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(3) A statement lodged with the registrar under subsection (1) may be inspected at the registry, during office hours, by a member of the industrial union concerned.

(4) The relevant particulars, in relation to a loan made by an industrial union, are:

- (a) the amount of the loan; and
- (b) the purpose for which the loan was required; and
- (c) the security given in relation to the loan; and
- (d) the name and address of the person to whom the loan was made and the arrangements made for the repayment of the loan.

(5) The relevant particulars, in relation to a grant or donation made by an industrial union, are:

- (a) the amount of the grant or donation; and
- (b) the purpose for which the grant or donation was made; and
- (c) the name and address of the person to whom the grant or donation was made.

(6) The relevant amount, in relation to a loan, grant or donation, other than a donation or other payment for political objects, is an amount exceeding \$2,500.

(7) If default is made in complying with a provision of this section, the industrial union and any officer of the industrial union who failed to take all reasonable steps to ensure the compliance by the industrial union with the provision are each guilty of an offence.

Maximum penalty (subsection (7)): 50 penalty units.

Industrial union to keep register of loans, grants and donations

117CE. (1) An industrial union must, in accordance with this Subdivision:

- (a) keep and maintain at its registered office:
 - (i) a register of loans, grants and donations; and
 - (ii) a register of donations and other payments made for political objects, made by the industrial union; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) ensure that contributions by members to the fund maintained for the purpose of making donations or other payments for political objects are voluntary; and
- (c) ensure:
 - (i) that the making of each donation or other payment for political objects is in accordance with the rules of the industrial union; and
 - (ii) that the committee of management of the industrial union or branch of the industrial union has approved the making of the donation or other payment for political objects.

Maximum penalty: 50 penalty units.

(2) The relevant particulars in relation to each loan, grant or donation must be entered in the register within 14 days of the making of the loan, grant or donation.

(3) The register maintained by an industrial union under this section may be inspected at the registered office of the industrial union, during office hours, by a member of the industrial union concerned.

(4) The provisions of section 117CD (4) and (5) apply to this section.

Subdivision 11—Accounts and audit

Interpretation

117CF. (1) Where the rules of an industrial union change the period constituting the financial year of the industrial union, the period between the commencement of the first financial year after the change and the end of the preceding financial year is, for the purposes of this Subdivision, taken to be a financial year.

(2) This Subdivision does not apply, in relation to an association that becomes registered as an industrial union under this Act, with respect to any financial year before the first financial year of the industrial union that begins after the date of registration.

Industrial union to keep proper accounting records

117CG. (1) An industrial union must keep:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) accounting records which correctly record and explain the transactions and financial position of the industrial union, including such records as are required by the regulations; and
 - (b) its accounting records in a manner which will enable accounts and statements to be prepared from them under section 117CI; and
 - (c) its accounting records in a manner which will enable the accounts of the industrial union to be conveniently and properly audited under this Subdivision.
- (2) Accounting records of an industrial union, so far as they relate to the income and expenditure of the industrial union, must be kept on an accrual basis or a cash basis or partly on an accrual basis and partly on a cash basis.
- (3) An industrial union must retain the accounting records kept under subsection (1) for at least 7 years after the completion of the transactions to which they relate.
- (4) An industrial union must not fail to comply with this section.

Maximum penalty (subsection (4)): 100 penalty units.

Financial year

117CH. The financial year of an industrial union is:

- (a) except as provided by paragraph (b), the period of 12 months specified in the rules of the industrial union as its financial year or, if no period is so specified, the period of 12 months commencing on 1 July in any year and ending on 30 June in the following year; or
- (b) any other period the registrar may direct in respect of the industrial union.

Industrial union to prepare accounts etc.

117CI. (1) As soon as practicable after the end of each financial year, an industrial union:

- (a) must cause to be prepared, from the accounting records kept by the industrial union under section 117CG (1) in relation to the financial year, those accounts and other statements, in relation to the financial year, which are prescribed; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) must include in the accounts (other than accounts prepared in relation to the first financial year of the industrial union to which this Subdivision applies) the relevant figures from the accounts prepared by the industrial union, under this subsection, in relation to the preceding financial year.

(2) The regulations may provide for the giving of certificates in, or in relation to, accounts and other statements prepared under this section.

False entries etc. in accounts etc.

117CJ. A person who wilfully makes or causes to be made any false entry in or any omission from accounting records kept under section 117CG or accounts and other statements prepared under section 117CI is guilty of an offence.

Maximum penalty: 100 penalty units.

Information to be provided to members or registrar

117CK. (1) A member of an industrial union, or the registrar, may apply to the industrial union for specified prescribed information in relation to the industrial union.

(2) An industrial union must, on application being made under subsection (1) by a member of the industrial union or the registrar, make the specified information available to the member or the registrar in the manner, and within the time, prescribed.

(3) Accounts prepared under section 117CI must include a notice which refers to subsections (1) and (2) and which sets out the terms of those subsections.

(4) An industrial union must not fail to comply with this section.

Maximum penalty (subsection (4)): 50 penalty units.

Auditors of industrial unions

117CL. (1) An industrial union must ensure that there is an auditor of the industrial union at any time when an auditor is required for the purposes of the operation of this Subdivision in relation to the industrial union.

(2) The position of auditor of an industrial union must be held by:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) a person who is a registered company auditor; or
 - (b) a firm at least one of whose members is a registered company auditor.
- (3) A person must not accept appointment as auditor of an industrial union unless the person is a registered company auditor.
- (4) A member of a firm must not accept appointment of the firm as auditor of an industrial union unless at least one member of the firm is a registered company auditor.
- (5) A person who holds the position of auditor of an industrial union must resign the appointment if the person ceases to be a registered company auditor.
- (6) A member of a firm that holds the position of auditor of an industrial union must take whatever steps are open to the member to ensure that the firm resigns the appointment if the member ceases to be a registered company auditor and is or becomes aware that no other member of the firm is a registered company auditor.
- (7) The auditor of an industrial union must use his or her best endeavours to comply with each requirement of this Act that is applicable to the auditor in that capacity.
- (8) An industrial union must comply with this section.
- Maximum penalty (subsection (8)): 100 penalty units.

Powers and duties of auditors

117CM. (1) An auditor of an industrial union must inspect and audit the accounting records kept by the industrial union in relation to each financial year and must, within the prescribed period after the end of the year, make a report in relation to that year to the industrial union.

(2) An auditor, or a person authorised by an auditor for the purposes of this subsection, is:

- (a) entitled at all reasonable times to full and free access to all records and other documents of the industrial union relating directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the industrial union; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) entitled to seek from any officer or employee of the industrial union the information and explanations that the auditor or authorised person reasonably wants for the purposes of the audit.

(3) The auditor of an industrial union must serve on the industrial union a notification that sets out the name and address of a person authorised by the auditor for the purposes of subsection (2).

(4) An auditor must, in a report under this section in relation to a financial year, state:

(a) whether in the auditor's opinion:

(i) there were kept by the industrial union in relation to the year satisfactory accounting records, including:

(A) records of the sources and nature of the income of the industrial union (including income from members); and

(B) records of the nature and purposes of the expenditure of the industrial union; and

(ii) the accounts and other statements prepared under section 117CI in relation to the year were properly drawn up so as to give a true and fair view of:

(A) the financial affairs of the industrial union as at the end of the year; and

(B) the income and expenditure, and any surplus or deficit, of the industrial union for the year; and

(b) whether all the information and explanations that, under subsection (2), officers or employees of the industrial union were required to provide were provided,

and, in addition, the auditor must state in the report particulars of any deficiency, failure or shortcoming in relation to a matter referred to in paragraph (a) or (b).

(5) If:

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(a) an auditor, in the course of performing duties as auditor of an industrial union, becomes aware that there has been a breach of this Act; and

(b) the auditor is of the opinion that the matter cannot be adequately dealt with by comment in a report,

the auditor must immediately report the matter, in writing, to the registrar.

(6) An officer, employee or member of an industrial union must not:

(a) hinder or obstruct the auditor of the industrial union when taking action under subsection (2) (a); or

(b) refuse or fail, without reasonable excuse, to produce to the auditor of the industrial union a record or other document in the custody or under the control of the officer, employee or member that is sought from the officer, employee or member by the auditor under subsection (2) (a).

Maximum penalty: 100 penalty units.

(7) It is a defence to a prosecution for an offence against subsection (6) if the defendant proves that he or she did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

(8) In subsection (6), “**auditor**” includes a person authorised by the auditor for the purposes of subsection (2).

(9) An auditor must not fail to comply with subsection (5).

Maximum penalty (subsection (9)): 50 penalty units.

Fees and expenses of auditors

117CN. An industrial union must pay the reasonable fees and expenses of an auditor of the industrial union.

Removal of auditor from office

117CO. An auditor of an industrial union may be removed during the term of appointment of the auditor:

(a) if the auditor was appointed by the committee of management of the industrial union—only by

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

resolution passed at a meeting of the committee by an absolute majority of the members of the committee; or

- (b) if the auditor was appointed by a general meeting of the members of the industrial union—only by resolution passed at a general meeting by a majority of the members of the industrial union voting at the meeting.

Copies of report and audited accounts to be provided to members and presented to meetings

117CP. (1) An industrial union must provide free of charge to its members:

- (a) a copy of the report of the auditor in relation to the inspection and audit of the accounting records kept by the industrial union in relation to a financial year; and
- (b) a copy of the accounts and other statements prepared under section 117CI to which the report relates.

(2) If, under the rules of the industrial union, the committee of management of the industrial union resolves to provide to the members of the industrial union a summary of the report, accounts and statements, the industrial union may comply with subsection (1) by providing free of charge to its members a copy of the summary if:

- (a) the industrial union lodges a copy of the summary with the registrar; and
- (b) the auditor certifies that the summary is, in the auditor's opinion, a fair and accurate summary of the report, accounts and statements; and
- (c) the summary contains a statement to the effect that the industrial union will provide a copy of the report, accounts and statements free of charge to any member who requests it; and
- (d) where particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 117CM (4) are set out in the report—the summary contains the particulars.

(3) The copies referred to in subsection (1), or the summary referred to in subsection (2), must be provided

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

within the prescribed period after the making by the industrial union of the report concerned.

(4) An industrial union that publishes a journal of the industrial union that is available to the members of the industrial union free of charge, may comply with subsection (1):

- (a) by publishing in the journal the report, accounts and other statements referred to in that subsection; or
- (b) by preparing a summary as described in subsection (2), complying with the requirements of that subsection in relation to the summary and publishing the summary in the journal,

and by posting a copy of the journal to each member of the industrial union.

(5) Subject to subsection (6), an industrial union must cause the report, accounts and other statements referred to in subsection (1) to be presented:

- (a) within the prescribed period—to a general meeting of the members of the industrial union or a meeting of the committee of management of the industrial union; or
- (b) if such a meeting is not due to be held within the prescribed period—to the first meeting of the committee of management held after the prescribed period.

(6) If:

- (a) the report sets out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 117CM (4); and
- (b) neither a general meeting of the members of the industrial union nor a meeting of the committee of management of the industrial union is due to be held within the prescribed period,

the industrial union must, within the prescribed period, cause the report, accounts and other statements referred to in subsection (1) to be presented to a meeting of the committee of management convened for the purpose.

(7) In addition to other rights conferred on a member of an industrial union by this Subdivision, a member is entitled to

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

inspect the accounting records of the industrial union at its registered office during business hours.

(8) An industrial union must not fail to comply with this section.

Maximum penalty: 50 penalty units.

(9) A member of the committee of management of an industrial union who:

- (a) provides to members of the industrial union; or
- (b) publishes in a journal of the industrial union; or
- (c) presents to a general meeting of the members of the industrial union or a meeting of the committee of management of the industrial union,

comments on a matter dealt with in a report, accounts or other statements of the kind referred to in subsection (1), or in a summary of the kind referred to in subsection (2), must not, in the comments, make a statement that is to the member's knowledge false or misleading in a material particular.

Maximum penalty (subsection (9)): 50 penalty units.

Reports etc. to be lodged with registrar

117CQ. (1) An industrial union must, within the prescribed period after the meeting referred to in section 117CP (5) or (6) (whichever is applicable) lodge with the registrar:

- (a) copies of the report, accounts and other statements presented to the meeting; and
- (b) a certificate by the secretary, or other prescribed officer, of the industrial union that the documents lodged are copies of the documents presented to the meeting.

(2) Subject to subsection (9), the registrar must:

- (a) if the documents lodged with the registrar under subsection (1) include a report of an auditor setting out particulars of a deficiency, failure or shortcoming in relation to a matter referred to in section 117CM (4)—investigate the deficiency, failure or shortcoming; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) if, for any other reason, the registrar considers that a matter revealed in the documents should be investigated—investigate the matter.

(3) If, having regard to matters that have been brought to notice in the course of, or because of, an investigation under subsection (2), the registrar forms the opinion that there are grounds for investigating the finances or the financial administration of the industrial union concerned, the registrar may make the further investigation.

(4) At least the relevant number of members of the industrial union concerned may request the registrar to investigate the finances and the financial administration of the industrial union where documents have been lodged with the registrar under subsection (1).

(5) On receipt of a request under subsection (4), the registrar must investigate the finances and the financial administration of the industrial union concerned.

(6) For the purpose of making an investigation under subsection (2), (3) or (5), the registrar may, by written notice, require an officer or employee of the industrial union concerned:

- (a) to provide the registrar with specified information relevant to the investigation; or
- (b) to attend before the registrar, so that the registrar may put to the officer or employee questions relating to matters relevant to the investigation and to produce to the registrar all records and other documents in the custody, or under the control, of the officer or employee relating to the matters.

(7) If, at the conclusion of an investigation under subsection (2), (3) or (5), the registrar is satisfied that the industrial union concerned has contravened:

- (a) subsection (1) or any other provision of this Act or a provision of the regulations; or
- (b) a rule of the industrial union relating to the finances or financial administration of the industrial union,

the registrar must notify the industrial union accordingly, and must include in the notification a request that the industrial

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

union take specified action, within a specified period, to rectify the matter.

(8) If the contravention by the industrial union is incapable of rectification or if the industrial union refuses or fails to comply with the request made in the notification by the registrar, the registrar must refer the matter to the commission which may suspend and, if appropriate, subsequently cancel or, if appropriate, may cancel the registration of the industrial union under Division 4.

(9) The registrar is not required by this section to investigate any deficiency, failure or shortcoming if, after consultation with the industrial union concerned and the auditor, the registrar is satisfied that the deficiency, failure or shortcoming is trivial or will be remedied in the following financial year.

(10) In this section:

“**relevant number**”, in relation to an industrial union, means:

- (a) if the industrial union has more than 5,000 members—250; or
- (b) in any other case—5% of the number of members of the industrial union.

(11) An industrial union must not fail to comply with this section.

Maximum penalty: 100 penalty units.

(12) A person must not:

- (a) refuse or fail, without reasonable excuse:
 - (i) to attend before the registrar in accordance with a requirement under subsection (7); or
 - (ii) to provide information, or produce a document, that the person is required to provide or produce under subsection (7); or
- (b) in purported compliance with a requirement under subsection (7), provide information, or produce a document, that is to the person's knowledge false or misleading in a material particular; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(c) when attending before the registrar in accordance with a requirement under subsection (7), make a statement, whether orally or in writing, that is to the person's knowledge false or misleading in a material particular, but a person is not guilty of an offence against this subsection merely because of refusing or failing to answer a question.

Maximum penalty (subsection (12)): 100 penalty units.

Waiver of requirement to lodge reports etc.

117CR. (1) An industrial union may apply to the registrar for exemption from the requirement under section 117CQ that the industrial union must lodge specific documents with the registrar where the industrial union has lodged documents which comply with the requirements of section 280 of the Industrial Relations Act 1988 of the Commonwealth and which are also substantially in accordance with the requirements of this Act.

(2) On being satisfied by the industrial union that it is not appropriate that the industrial union should be required to lodge specific documents with the registrar under section 117CQ, the registrar may issue to the industrial union a certificate to that effect specifying the document or documents that need or need not be lodged by the industrial union with the registrar for the financial year specified in the certificate and, on issue of the certificate, section 117CQ applies to the industrial union as modified by the certificate.

Failure to lodge reports etc. with registrar

117CS. (1) The registrar must inform the commission if an industrial union fails to comply with section 117CP or 117CQ.

(2) The commission may suspend the registration of an industrial union that fails to comply with this Subdivision.

Industrial unions to lodge accounts etc. of all branches

117CT. (1) An industrial union that is divided into branches must consolidate the report, accounts and other statements prepared by each of its branches into the one set of financial statements for the purpose of compliance with section 117CQ.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) An industrial union may apply to the registrar for exemption from compliance with subsection (1).

(3) On being satisfied by the industrial union that it is not appropriate that the industrial union should be required to lodge consolidated financial statements, the registrar may issue to the industrial union a certificate to that effect and, until the certificate is revoked, subsection (1) does not apply to the industrial union and each branch of the industrial union is required to comply with this Subdivision as if it were a separate industrial union.

(4) The registrar may at any time, by written notice, revoke a certificate issued to an industrial union under subsection (3) if the registrar is no longer satisfied that the industrial union should be exempt from compliance with subsection (1).

Industrial union to forward notices etc. to auditor

117CU. An industrial union must forward to the auditor of the industrial union any notice of, and any other communication relating to, a meeting of the industrial union, or the committee of management of the industrial union, at which the report of the auditor, or any accounts or statements to which the report relates, are to be presented, being a notice or other communication that a member of the industrial union, or the committee of management of the industrial union, as the case may be, would be entitled to receive.

Maximum penalty: 50 penalty units.

Auditor entitled to attend meetings at which report presented

117CV. (1) An auditor, or a person authorised by an auditor for the purposes of this section, is entitled to attend, and be heard at, any part of a meeting of an industrial union, or the committee of management of the industrial union, at which:

- (a) the report of the auditor, or any accounts or other statements to which the report relates, are to be presented or considered; or
- (b) there is to be conducted any business of the meeting that relates to:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (i) the auditor in that capacity; or
- (ii) a person authorised by the auditor, in the capacity of a person so authorised,

as the case may be.

(2) The auditor must serve on the industrial union a notification that sets out the name and address of a person authorised by the auditor for the purposes of this section.

(3) An officer, employee or member of an industrial union must not hinder or obstruct the auditor of the industrial union from attending a part of the meeting that the auditor is, under this section, entitled to attend.

Maximum penalty: 50 penalty units.

(4) If an auditor of an industrial union:

- (a) attends a part of a meeting that the auditor is, under this section, entitled to attend; and
- (b) in the course of the part of the meeting, indicates to the chairperson of the meeting that the auditor wishes to be heard under the right conferred by this section,

the chairperson must, as soon as practicable after having received the indication, afford to the auditor an opportunity to be heard.

Maximum penalty: 50 penalty units.

(5) It is a defence to a prosecution for an offence against a subsection of this section if the defendant proves that he or she did not know, and could not reasonably have known, that the auditor, or the person authorised by the auditor, to whom the charge relates was a person in relation to whom the subsection applied.

(6) In subsections (3) and (4), “**auditor**” includes a person authorised by the auditor for the purposes of this section.

Liability of auditors and other persons in certain circumstances

117CW. (1) An auditor of an industrial union is not, in the absence of malice, liable to an action for defamation in respect of a statement that the auditor makes in the course of duties as auditor, whether the statement is made orally or in writing.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) A person is not, in the absence of malice, liable to an action for defamation in respect of the publishing of a document prepared by an auditor of an industrial union in the course of duties as auditor and required by or under this Act to be lodged with the registrar.

(3) This section does not limit or affect any right, privilege or immunity that a defendant has in an action for defamation.

Subdivision 12—Amalgamation of industrial unions
Amalgamation

117CX. Any 2 or more industrial unions may amalgamate together in accordance with the procedure set out in this Subdivision.

Resolution approving amalgamation

117CY. Each of the industrial unions concerned in the proposed amalgamation must pass a resolution approving the amalgamation in accordance with its rules.

Application for approval to be lodged

117CZ. (1) The industrial unions concerned in a proposed amalgamation, and any association proposed to be registered as an industrial union under the amalgamation, must lodge with the registrar an application for the approval of the registrar for the submission of the amalgamation proposal to a ballot.

(2) The application must include a scheme for the amalgamation, setting out the prescribed particulars of the amalgamation.

(3) A copy of:

- (a) the rules of any association proposed to be registered as an industrial union; and
- (b) any proposed alterations of the rules of the existing industrial unions,

must be lodged with the application.

(4) If 3 or more industrial unions are concerned in the proposed amalgamation, the scheme for the amalgamation may contain a provision to the effect that, if:

- (a) the members of one or more of the industrial unions do not approve the amalgamation; and

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) the members of 2 or more of the industrial unions (including, where one of the industrial unions is a party to the amalgamation otherwise than as a de-registering industrial union, that industrial union) approve both the amalgamation so far as it involves all the industrial unions concerned and, in the alternative, the amalgamation so far as it involves the other industrial union or 2 or more of the other industrial unions, there may be an amalgamation involving the industrial unions the members of which give their approval.

(5) If the scheme for the proposed amalgamation contains an alternative provision, the scheme must also set out particulars of the differences between the proposed principal amalgamation and each proposed alternative amalgamation and the differences between any rules referred to in subsection (3) (a) and any proposed alterations referred to in subsection (3) (b).

(6) The application must demonstrate:

- (a) that the proposed amalgamation would promote industrial harmony; and
- (b) that there is a community of interest between the industrial unions concerned in the proposed amalgamation in relation to their industrial interests.

Consideration of application

117DA. On lodgment of an application, the registrar may either:

- (a) proceed to consideration of the application; or
- (b) direct that such consideration take place at an open hearing.

Consideration of application by registrar

117DB. (1) If the registrar decides that an open hearing in relation to the proposed amalgamation is unnecessary, the registrar must proceed with a consideration of the application.

(2) If the registrar is satisfied:

- (a) that the form of the application lodged in relation to the proposed amalgamation complies with this Act; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) that the documents that are required to be lodged with the application have been lodged, and comply with this Act; and
- (c) that the committee of management of each of the industrial unions concerned in the proposed amalgamation has passed a resolution approving the proposed amalgamation; and
- (d) that any proposed alterations of the rules of an industrial union concerned in the proposed amalgamation have been made under the rules of the industrial union; and
- (e) that the proposed amalgamation would promote industrial harmony; and
- (f) that there is a community of interest between the industrial unions concerned in the proposed amalgamation in relation to their industrial interests; and
- (g) that a person who is not eligible for membership of an industrial union concerned in the proposed amalgamation would not be eligible for membership of the proposed amalgamated industrial union immediately after the proposed amalgamation takes effect; and
- (h) that any proposed alteration of the name of an industrial union concerned in the proposed amalgamation will not result in the industrial union having a name that is, in the opinion of the registrar, unsuitable, is the same as the name of another industrial union or is so similar to the name of another industrial union as to be likely to cause confusion; and
- (i) that any proposed alteration of the rules of an industrial union concerned in the proposed amalgamation comply with, and are not contrary to, this Act and awards and are not otherwise contrary to law; and
- (j) that any proposed de-registration of an industrial union complies with this Act and is not otherwise contrary to law,

the registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(3) For the purposes of subsection (2) (f), there is a community of interest between industrial unions of employees in relation to their industrial interests if, and only if, the registrar is satisfied that a substantial number of members of each of the industrial unions are:

- (a) eligible to become members of the other industrial union or each of the other industrial unions; or
- (b) engaged in the same work, in aspects of the same work or in similar work; or
- (c) bound by the same awards; or
- (d) employed in the same or similar work by employers engaged in the same industry; or
- (e) engaged in work, or in industries, in relation to which there is a community of interest.

(4) For the purposes of subsection (2) (f), there is a community of interest between industrial unions of employers in relation to their industrial interests if, and only if, the registrar is satisfied that a substantial number of members of each of the industrial unions are:

- (a) eligible to become members of the other industrial union or each of the other industrial unions; or
- (b) engaged in the same industry, in aspects of the same industry or in similar industries; or
- (c) bound by the same awards; or
- (d) engaged in industries in relation to which there is a community of interest.

(5) If the registrar is not satisfied as to any of the matters referred to in subsection (2), (3) or (4), the registrar must, subject to subsection (6), dismiss the application.

(6) If, apart from this subsection, the registrar would be required to dismiss the application, the registrar may defer consideration of the application:

- (a) to permit the applicants to amend the application and any documents lodged with the application; or
- (b) to permit the applicants to lodge documents in relation to the application; or

*Industrial Arbitration (Unions) Amendment 1991***SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***

- (c) to permit the applicants to amend any proposed alterations of the rules of the industrial unions concerned in the proposed amalgamation,

and, if the registrar is then satisfied as to the matters referred to in subsection (2), the registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

Notification of hearing in relation to proposed amalgamation

117DC. (1) If the registrar decides that an open hearing in relation to the proposed amalgamation is necessary, the registrar:

- (a) must immediately fix a time and place for the hearing of submissions in relation to:
- (i) the making of a declaration as to whether or not a community of interest exists; and
 - (ii) the accepting of the application and the granting of approval to submit the amalgamation proposal to a ballot; and
- (b) must ensure that all affected industrial unions are promptly notified of the time and place of the hearing; and
- (c) may inform any other person who is likely to be interested of the time and place of the hearing.

(2) Submissions may be made only with the leave of the registrar and in relation to a prescribed matter.

Hearing before registrar

117DD. (1) If, at the hearing before the registrar, the registrar is satisfied as to the matters referred to in section 117DB (2) and (3) or (2) and (4), the registrar must accept the application and approve of the submission of the amalgamation proposal to a ballot.

(2) If the registrar is not so satisfied, the registrar must dismiss the application.

Appeal to commission in court session

117DE. (1) The applicants under section 117CZ may appeal to the commission in court session against a dismissal

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

of their application by the registrar under section 117DB or 117DD.

(2) On any such appeal, further evidence shall be admitted on special grounds only and not without special leave of the commission in court session.

(3) The commission in court session may affirm, vary or set aside the decision subject to the appeal as the commission in court session thinks fit.

(4) If, at the conclusion of the hearing, the commission in court session is satisfied as to the matters referred to in section 117DB (2) and (3) or (2) and (4), the commission in court session must accept the application and approve of the submission of the amalgamation proposal to a ballot.

(5) If the commission in court session is not so satisfied, the commission in court session must, subject to subsection (6), dismiss the application.

(6) If, apart from this subsection, the commission in court session would be required to dismiss the application, the commission in court session may defer consideration of the application:

- (a) to permit the applicants to amend the application and any documents lodged with the application; or
- (b) to permit the applicants to lodge documents in relation to the application; or
- (c) to permit the applicants to amend any proposed alterations of the rules of the industrial unions concerned in the proposed amalgamation,

and, if the commission in court session is then satisfied as to the matters referred to in section 117DB (2) and (3) or (2) and (4), the commission in court session must accept the application and approve of the submission of the amalgamation proposal to a ballot.

Ballot of members

117DF. (1) If approval has been given for the submission of the amalgamation to a ballot, the registrar must arrange for the conduct by the Electoral Commissioner, in relation to each of the industrial unions concerned in the amalgamation, of a secret ballot of the members of the industrial union on

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

the question of whether they approve the proposed principal amalgamation.

(2) If the scheme for the amalgamation contains a proposed alternative provision, the registrar must also arrange for the conduct, at the same time and in the same manner as the ballot under subsection (1), of a ballot of the members of each of the industrial unions on the question or questions of whether, if the proposed principal amalgamation does not take place, they approve the proposed alternative amalgamation or each of the proposed alternative amalgamations, as the case requires.

(3) If, under subsection (2), the registrar is required to arrange for the conduct of 2 or more ballots of the members of an industrial union at the same time, the ballot-papers for both or all ballots must be on the same piece of paper.

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

(5) A copy of the scheme for the proposed amalgamation as lodged under this Subdivision or, if the scheme has been amended under this Subdivision, of the scheme as amended, must accompany the ballot-paper or ballot-papers sent to the persons entitled to vote at the ballot or ballots.

(6) The roll of voters for a ballot must be a roll of the persons who, one month before the day prescribed as the commencing day of the ballot:

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

(7) Subject to this section, a ballot conducted under this section must be conducted as prescribed.

(8) If the total number of members that could be admitted to membership of the proposed amalgamated industrial union on, and because of, the amalgamation does not exceed 5% of

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

the number of members of the industrial union on the day on which the application was lodged under section 117CZ in relation to the amalgamation, the industrial union may apply to the registrar for exemption from the requirement that a ballot of its members be held in relation to the amalgamation.

(9) The registrar must grant the exemption unless the registrar considers that, in the special circumstances of the case, the exemption should be refused.

(10) If the exemption is granted, the members of the industrial union must be taken to have approved the proposed principal amalgamation and, if the scheme for the amalgamation contains an alternative provision, to have approved each proposed alternative amalgamation.

Officer of industrial union to provide information for ballot etc.

117DG. (1) A person conducting a ballot under section 117DF in relation to the proposed amalgamation may, for the purposes of the ballot, require an officer or employee of an industrial union concerned or of a branch of such an industrial union:

- (a) to provide to the person information within the knowledge or in the possession of the officer or employee; or
- (b) to make available to the person a document in the possession of the officer or employee or to which the officer or employee has access.

(2) An officer or employee of an industrial union or a branch of an industrial union must comply with a requirement made under this section.

Maximum penalty: 20 penalty units.

Determination of approval of amalgamation by members of industrial unions

117DH. (1) Where, under section 117DF (1) or (2), the question of an amalgamation is submitted to a ballot of the members of an industrial union concerned in the proposed amalgamation, the members of the industrial union are to be taken to have approved the amalgamation if, and only if:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) when the commission in court session is satisfied in accordance with section 117DE (4) that a community of interest exists under section 117DB (2) and (3) or (2) and (4) in relation to the proposed amalgamation—more than one half of the formal votes cast in the ballot are in favour of the relevant amalgamation; or
- (b) in any other case:
 - (i) at least one quarter of the members on the roll of voters cast a vote in the ballot; and
 - (ii) more than one half of the formal votes cast are in favour of the relevant amalgamation.

(2) If the scheme for the proposed amalgamation contains an alternative provision, a member is not to be taken to record a formal vote in a ballot on the question of a proposed alternative amalgamation if the member does not record a formal vote in favour of the proposed principal amalgamation.

Inquiries into irregularities

117DI. (1) Not later than 30 days after the declaration of the result of a ballot under section 117DF, application may be made to the commission in court session for an inquiry by the commission in court session into alleged irregularities in relation to the ballot.

(2) If the commission in court session finds that there has been an irregularity that may affect, or may have affected, the result of the ballot, the commission in court session may:

- (a) if the ballot is uncompleted—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 by the Electoral Commissioner in place of the ballot in which the irregularity happened,

and may make such further orders as it considers necessary.

(3) The regulations may make provision with respect to the procedure for inquiries by the commission in court session into alleged irregularities in relation to ballots under section 117DF, and for matters relating to, or arising out of, inquiries.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Approval of amalgamation

117DJ. (1) If the members of each of the industrial unions concerned in the proposed amalgamation approve the proposed principal amalgamation, the proposed principal amalgamation is to be taken to be approved for the purposes of this Subdivision.

(2) If:

- (a) the scheme for the proposed amalgamation contains an alternative provision; and
- (b) the members of one or more of the industrial unions concerned in the proposed amalgamation do not approve the proposed principal amalgamation; and
- (c) the members of 2 or more of the industrial unions (including, where one of the industrial unions is a party to the amalgamation otherwise than as a de-registering industrial union, that industrial union) approve both the proposed principal amalgamation and a proposed alternative amalgamation,

the proposed alternative amalgamation is to be taken to be approved for the purposes of this Subdivision.

Action to be taken after ballot

117DK. (1) A proposed amalgamation that is taken to be approved for the purposes of this Subdivision takes effect in accordance with this section.

(2) If the registrar is satisfied:

- (a) that any period allowed for applications to the commission in court session in respect of the proposed amalgamation has expired; and
- (b) that any application to the commission in court session has been disposed of, and the result of any fresh ballot ordered by the commission in court session has been declared; and
- (c) that there are no proceedings pending against any of the industrial unions concerned in the proposed amalgamation in relation to:
 - (i) contraventions of this Act or other laws of the State; or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (ii) breaches of awards, orders or agreements made under this Act or other laws of the State; and
- (d) that all penalties imposed on any of the industrial unions under this Act, or in relation to any such breaches, have been paid; and
- (e) that proper arrangements have been made for property of the de-registering industrial union or industrial unions to become the property of, and for liabilities of the de-registering industrial union or industrial unions to be satisfied by, the proposed amalgamated industrial union,

the registrar must, after consultation with the industrial unions, by notice published in the Industrial Gazette fix a day as the day on which the amalgamation is to take effect.

(3) On the day fixed:

- (a) if the proposed amalgamated industrial union is not already registered—the registrar must immediately record, in the register kept for the purpose, the name of the amalgamated industrial union and note that the rules of the industrial union are registered and the date of the entry; and
- (b) any proposed alteration of the rules of an industrial union concerned in the amalgamation takes effect; and
- (c) the registrar must de-register the proposed de-registering industrial union or industrial unions; and
- (d) the persons who, immediately before that day, were members of a proposed de-registering industrial union become, by force of this section and without payment of entrance fee, members of the proposed amalgamated industrial union.

Resignation from membership

117DL. Where the day on which the proposed amalgamation is to take effect is fixed, section 117BC has effect in relation to resignation from membership of a proposed de-registering industrial union as if the reference in subsection (2) of that section to 6 months were a reference to one month.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Effect of amalgamation on awards, orders and agreements

117DM. On and from the day on which the proposed amalgamation takes effect:

- (a) an award or order of the industrial commission or an agreement that was, immediately before that day, binding on a proposed de-registering industrial union and its members becomes, by force of this section, binding on the amalgamated industrial union and its members; and
- (b) the award, order or agreement has effect for all purposes (including the obligations of employers and industrial unions of employers) as if references in the award, order or agreement to the de-registering industrial union included references to the amalgamated industrial union.

Holding of offices after amalgamation

117DN. (1) The rules of:

- (a) an association proposed to be registered as an industrial union under a proposed amalgamation; and
- (b) an industrial union that is a proposed amalgamated industrial union in relation to proposed amalgamation,

may, despite clause 2 of Schedule 5, make provision in relation to the holding of offices in an industrial union by persons holding offices in any of the industrial unions concerned in the amalgamation immediately before the amalgamation takes effect.

(2) Such rules must not permit an office in the industrial union to be so held for more than 4 years after the amalgamation takes effect without an election being held in relation to the office.

Expenses of ballot

117DO. The expenses of a ballot under section 117DF are to be borne by the industrial unions which apply for approval for submission of the amalgamation proposal to a ballot.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

Subdivision 13—Validating provisions for industrial unions

Definitions

117DP. In this Subdivision, unless the contrary intention appears:

“**collective body**” means:

- (a) in relation to an industrial union—the committee of management or a conference, council, committee, panel or other body of or within the industrial union; and
- (b) in relation to a branch of such an industrial union—the committee of management or a conference, council, committee, panel or other body of or within the branch;

“**invalidity**” means nullity and includes any invalidity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that:

- (a) a member, or each of 2 or more of the members, of a collective body or branch of an industrial union, or one of the persons, or each of 2 or more of the persons, purporting to act as the members of such a collective body, or a person, or each of 2 or more persons, holding or purporting to hold an office or position in an industrial union or branch:
 - (i) has not been elected or appointed or duly elected or appointed; or
 - (ii) has purported to be elected or appointed by an election or appointment that was a nullity; or
 - (iii) was not entitled to be elected or appointed or to hold office; or
 - (iv) was not a member of the industrial union; or
 - (v) was elected or appointed or purported to be elected or appointed, in a case where one or more of the persons who took part in the election or appointment or the purported election or appointment was or were not

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

entitled to do so or was or were not members of the industrial union; or

- (b) persons who were not entitled to do so, or were not members of the industrial union, took part in the making or purported making or the alteration or purported alteration of the rules of an industrial union or branch, as officers or voters or otherwise.

Validation of certain acts done in good faith

117DQ. (1) Subject to this section and section 117DS, all acts done in good faith by a collective body of an industrial union or branch of an industrial union, or by persons purporting to act as such a collective body, are valid despite any invalidity that may later be discovered in:

- (a) the election or appointment of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or
- (b) the making, alteration or rescission of a rule of the industrial union or branch.

(2) Subject to this section and section 117DS, all acts done in good faith by a person holding or purporting to hold an office or position in an industrial union or branch are valid despite any invalidity that may later be discovered in:

- (a) the election or appointment of the person; or
- (b) the making, alteration or rescission of a rule of the industrial union or branch.

(3) For the purposes of this section:

- (a) a person is not to be treated as purporting to act as a member of a collective body of an industrial union or as the holder of an office or position in an industrial union unless the person has, in good faith, purported to be, and has been treated by officers or members of the industrial union as being, such a member or the holder of the office or position; and
- (b) a person is not to be treated as purporting to act as a member of a collective body of a branch of an industrial union or as the holder of an office or position in the branch unless the person has, in good faith, purported to be, and has been treated by officers or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

members of the branch as being, such a member or the holder of the office or position.

- (4) For the purposes of this section:
- (a) an act is to be treated as done in good faith until the contrary is proved; and
 - (b) a person who has purported to be a member of a collective body of an industrial union or branch is to be treated as having done so in good faith until the contrary is proved; and
 - (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
 - (d) an invalidity in:
 - (i) the election or appointment of a collective body of a branch of an industrial union or any member of such a collective body; or
 - (ii) the election or appointment of the persons or any of the persons purporting to act as a collective body of a branch; or
 - (iii) the election or appointment of a person holding or purporting to hold an office or position in a branch; or
 - (iv) the making, alteration or rescission of a rule of a branch,is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the branch or to a majority of the persons purporting to act as the committee of management; and
 - (e) an invalidity in any other election or appointment or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the industrial union or to a majority of the persons purporting to act as that committee of management.

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(5) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done in relation to an association before it became an industrial union.

(6) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty on, a member of an industrial union that would not have been valid if this section had not been enacted.

(7) Nothing in this section affects the operation of Subdivision 5.

Validation of certain acts after 4 years

117DR. (1) Subject to this section and section 117DS, after the end of 4 years from:

- (a) the doing of an act:
 - (i) by, or by persons purporting to act as, a collective body of an industrial union or branch of an industrial union and purporting to exercise power conferred by or under the rules of the industrial union or branch; or
 - (ii) by a person holding or purporting to hold an office or position in an industrial union or branch and purporting to exercise power conferred by or under the rules of the industrial union or branch; or
- (b) the election or purported election, or the appointment or purported appointment, of a person, to an office or position in an industrial union or branch; or
- (c) the making or purported making, or the alteration or purported alteration, of a rule of an industrial union or branch,

the act, election, purported election, appointment or purported appointment, or the making or purported making or alteration or purported alteration of the rule, is to be taken to have been done in compliance with the rules of the industrial union or branch.

(2) The operation of this section does not affect:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) any proceedings pending under this Act; or
- (b) the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the commission or any court, made before the end of the 4 years referred to in subsection (1).

(3) This section extends to an act, election, purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule:

- (a) done or occurring before the commencement of this section; or
- (b) done or occurring in relation to an association before it became an industrial union.

Order affecting application of section 117DQ or 117DR

117DS. (1) Where, on an application for an order under this section, the commission is satisfied that the application of section 117DQ or 117DR in relation to an act would do substantial injustice, having regard to the interests of:

- (a) the industrial union; or
- (b) members or creditors of the industrial union; or
- (c) persons having dealings with the industrial union,

the commission must, by order, declare accordingly.

(2) Where a declaration is made under subsection (1), section 117DQ or 117DR, as the case requires, does not apply, and is to be taken never to have applied, in relation to the act specified in the declaration.

(3) The commission may make an order under subsection (1) on the application of the industrial union, a member of the industrial union or any other person having a sufficient interest in relation to the industrial union.

(4) The commission may determine:

- (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
- (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

in any newspaper.

(5) A reference in this section to an act includes a reference to an election, purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule.

Commission may make orders in relation to consequences of invalidity

117DT. (1) An industrial union, a member of an industrial union or any other person having a sufficient interest in relation to an industrial union may apply to the commission for the determination of the question whether an invalidity has occurred in:

- (a) the management or administration of the industrial union or a branch of the industrial union; or
- (b) an election or appointment in the industrial union or a branch of the industrial union; or
- (c) the making or alteration of the rules of the industrial union or a branch of the industrial union.

(2) On an application under subsection (1), the commission may make such determination as it considers appropriate.

(3) If, in a proceeding under subsection (1), the commission determines that an invalidity of a kind referred to in that subsection has occurred, the commission may make such order as it considers appropriate:

- (a) to rectify the invalidity or cause it to be rectified; or
- (b) to negative, modify or cause to be modified the consequences in law of the invalidity; or
- (c) to validate any act, matter or thing rendered invalid by or because of the invalidity.

(4) Where an order is made under subsection (3), the commission may give such ancillary or consequential directions as it considers appropriate.

(5) The commission must not make an order under subsection (3) without satisfying itself that such an order would not do substantial injustice to:

- (a) the industrial union; or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) any member or creditor of the industrial union; or
- (c) any person having dealings with the industrial union.
- (6) The commission may determine:
 - (a) what notice, summons or rule to show cause is to be given to other persons of the intention to make an application or an order under this section; and
 - (b) whether and how the notice, summons or rule should be given or served and whether it should be advertised in any newspaper.
- (7) This section applies:
 - (a) to an invalidity whenever occurring (including an invalidity occurring before the commencement of this section); and
 - (b) to an invalidity occurring in relation to an association before it became an industrial union.

Application for membership of industrial union by person treated as having been a member

117DU. (1) If:

- (a) a person who is eligible for membership of an industrial union (other than a member of the industrial union or a person who has been expelled from the industrial union) applies to be admitted as a member of the industrial union; and
- (b) the person has, up to a time within one month before the application, acted in good faith as, and been treated by the industrial union as, a member,

the person is entitled to be admitted to membership and treated by the industrial union and its members as though the person had been a member during the whole of the time when the person acted as, and was treated by the industrial union as, a member and during the whole of the time from the time of the person's application to the time of the person's admission.

- (2) If a question arises as to the entitlement under this section of a person to be admitted as a member and to be treated as though the person had been a member during the times referred to in subsection (1):

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) the person; or
- (b) a person who is or desires to become the employer of the person; or
- (c) the industrial union,

may apply to the commission to determine the entitlement of the person under this section.

(3) Subject to subsection (5), the commission may, despite anything in the rules of the industrial union concerned, make such orders (including mandatory injunctions) to give effect to its determination as it considers appropriate.

(4) The orders that the commission may make under subsection (3) include an order requiring the industrial union concerned to treat a person to whom subsection (1) applies as being a member of the industrial union and as having been a member during the times referred to in subsection (1).

(5) Where an application is made to the commission under this section:

- (a) if the application is made otherwise than by the person whose entitlement is in question—the person must be given an opportunity to be heard by the commission; and
- (b) if the application is made otherwise than by the industrial union concerned—the industrial union must be given an opportunity to be heard by the commission.

(6) A reference in this section to a person having acted as, or been treated by the industrial union as, a member of an industrial union includes a reference to a person having so acted or been so treated during a period before the commencement of this section.

No challenge to dual membership with Federal organisation

117DV. No proceedings may be taken to challenge:

- (a) the existence of an industrial union; or
- (b) the registration of an industrial union; or
- (c) the election of officers of an industrial union; or
- (d) any decision made by an industrial union,

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

only because members of the industrial union are also members of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

Subdivision 14—Miscellaneous**Deduction of subscription etc.**

117DW. (1) A fine, levy, penalty, call or subscription that is due and payable by a member to an industrial union must not be deducted from a member's salary or wages without the member's prior written authorisation.

(2) A person who contravenes subsection (1) is guilty of an offence.

Maximum penalty: 20 penalty units.

Providing copy of rules on request by member

117DX. (1) If a member of an industrial union:

- (a) requests the secretary, or a person performing (in whole or part) the duties of secretary, of the industrial union or a branch of the industrial union, to provide to the member a copy of the rules of the industrial union or branch; and
- (b) pays or tenders to the secretary or other person such amount (not exceeding the prescribed amount) as the secretary or other person requires,

the secretary or other person must, within 14 days after the payment or tender of the amount, provide to the member a copy of the rules of the industrial union or branch as in force at the time of the request or a copy of those rules as in force at an earlier time, together with a copy of each amendment of the rules made since that time and before the time of the request.

(2) The secretary, or a person performing (in whole or part) the duties of secretary, of an industrial union or branch of an industrial union who contravenes this section is guilty of an offence.

Maximum penalty: 50 penalty units.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Certificate as to membership of industrial union**

117DY. A certificate issued by the registrar stating that a specified person was or was not at a specified time or during a specified period a member or officer of a specified industrial union or a specified branch of a specified industrial union is, in all courts and proceedings, evidence that the facts are as stated.

False representation as to membership of industrial union

117DZ. A person must not knowingly make, in an application made under this Act, a false representation that he or she is a member of an industrial union.

Maximum penalty: 50 penalty units.

List of officers to be evidence

117EA. A list of the officers of an industrial union or a branch of an industrial union lodged with the registrar on behalf of the industrial union, or a copy of any such list certified by the registrar, is evidence that the persons named in the list were, on the day when the list was lodged, officers of the industrial union or branch.

Registered office of industrial union

117EB. (1) An industrial union must have an office in New South Wales for the time being registered with the registrar to which all communications and notices may be addressed.

(2) An industrial union and each of the officers of such industrial union is guilty of an offence if the industrial union does not have a registered office for more than 7 days.

(3) An industrial union must give notice of the address of its registered office and of any change in that address to the registrar.

(4) Until an industrial union has given that notice, it is to be taken not to have a registered office.

Maximum penalty: 20 penalty units.

Mortality fund

117EC. (1) A member of an industrial union who is aged above 16 years may, by written notice, delivered at or sent to the registered office of the industrial union, nominate any

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

person to whom money due to the member by the industrial union is to be paid at the member's death.

(2) A notice under subsection (1) must not nominate an officer or employee of the industrial union unless the officer or employee is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator.

(3) A member of an industrial union may from time to time revoke or vary a nomination under subsection (1) by written notice delivered at or sent to the industrial union in accordance with subsection (1).

(4) The industrial union, on receiving satisfactory proof of the death of the nominator, must pay to the nominee the amount due to the deceased member.

Failure to give notice or send document

117ED. An industrial union, an officer of an industrial union or a member of a committee of management of an industrial union that or who is bound by the rules of the industrial union to give any notice or to send any document that is required to be given or sent under this Act must not wilfully fail to give that notice or send that document in accordance with the rules.

Maximum penalty: 50 penalty units.

Circulating false copies of rules etc.

117EE. A person must not, with intent to mislead or defraud, give to any member of an industrial union, or any person intending to apply or applying to become a member of such industrial union, a copy of any rules or of any alterations or amendments of rules other than the rules of the industrial union as they exist for the time being, pretending that:

- (a) the rules are the existing rules of the industrial union; or
- (b) there are no other rules of the industrial union; or
- (c) the rules are the rules of an industrial union registered under this Act when the industrial union is not so registered.

Maximum penalty: 100 penalty units.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Annual reports etc. by registrar**

117EF. As soon as possible after 30 June each year, the registrar must prepare for tabling in Parliament by 31 October each year an annual report in respect of anything done by the registrar under this Part.

Injunctions

117EG. (1) If a person has engaged or is engaging in any conduct that constituted or constitutes a contravention of this Part, the commission may, on the application of:

- (a) the registrar; or
- (b) any person whose interests have been or are affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the commission it is desirable to do so, require that person to do any act or thing.

(2) If a person has refused or failed or is refusing or failing to do an act or thing that he or she is required by this Part to do, the commission may, on the application of:

- (a) the registrar; or
- (b) any person whose interests have been or are affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) If an application is made to the commission for an injunction under subsection (1), the commission may, if in the opinion of the commission it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The commission may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) If an application is made to the commission for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the commission to grant the injunction may be exercised:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) if the commission is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the commission that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the commission that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage or injury to any person if the first-mentioned person engages in conduct of that kind.
- (6) If an application is made to the commission for the grant of an injunction requiring a person to do a particular act or thing, the power of the commission to grant the injunction may be exercised:
- (a) if the commission is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the commission that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the commission that, in the event that an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage or injury to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) If the registrar makes an application to the commission for the grant of an injunction under this section, the commission must not require the registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.
- (8) If the commission has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the commission may, either in addition to or in substitution for the grant of the injunction, order the person to pay

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

damages to any other person.

(9) In any proceeding relating to an injunction under this Part or an application for such an injunction, the commission may make such order for costs (including expenses of witnesses) as may be thought just and may assess the amount of such costs.

Breach of injunction

117EH. (1) If the person who obtained an injunction (whether or not an interim injunction) under section 117EG (in this section and section 117EI called “**the aggrieved party**”) lodges with the registrar an application that:

- (a) is to the effect of the form, and includes the information, required by the regulations; and
- (b) alleges a breach of the injunction,

the registrar is to issue a summons requiring the person alleged to be in breach of the injunction (in this section called “**the defendant**”) to show cause why the commission should not take action under subsection (3).

(2) The commission is to hear the evidence of the aggrieved party and of any person appearing in answer to the summons and either:

- (a) if the defendant is found not to be in breach of the injunction—to dismiss the summons; or
- (b) to take action under subsection (3).

(3) Unless the summons is dismissed under subsection (2), the commission may, after considering the history of the matter and the conduct that led to the injunction and after considering the record of the parties, by its order do any one or more of the following:

- (a) dismiss the summons after finding that, although the defendant was in breach of the injunction, the circumstances were such that the commission should take no action on the breach;
- (b) require the defendant to enter into a recognizance with or without securities;
- (c) impose a penalty for a breach of the injunction;
- (d) alter the coverage of an industrial union to exclude

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

certain persons from membership;

- (e) suspend for a specified time, or suspend and later cancel, the registration of an industrial union.

(4) The maximum penalty that may be imposed under subsection (3) (c) for a breach of an injunction is:

- (a) in the case of an industrial union or any other corporation—100 penalty units and an additional penalty of 10 penalty units for each succeeding day during which the breach continues; or
- (b) in any other case—10 penalty units and an additional penalty of 1 penalty unit for each succeeding day during which the breach continues.

Consequential amendment of rules

117EI. (1) If, under section 117EH, the commission:

- (a) alters the coverage of an industrial union to exclude certain persons from membership; or
- (b) suspends or cancels the registration of such an industrial union,

the commission may, on the application of the registrar, the aggrieved party or on its own initiative, order that the rules of the industrial union be amended suitably or cancelled and may make such other orders as are necessary to give effect to, or in consequence of, the order made under section 117EH, including an order altering the rules of any other industrial union in such a way as to make eligible for membership of that other industrial union persons who were members of the industrial union of which the coverage was altered or the registration suspended or cancelled.

(2) The rules of the industrial union are to be taken to have been amended:

- (a) on the date of the order or, if a later date is specified in the order for the purpose, on the later date; and
- (b) in the manner specified in the order.

(3) This section does not prevent a further amendment, or the cancellation, of a rule of an industrial union amended under this section.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued***Application to commission in relation to rectification of anomalies**

117EJ. (1) An industrial union, a member of an industrial union or a person who appears to the commission to have a sufficient interest may apply to the commission for a declaration as to whether the industrial union is complying with the requirements of the Act in relation to its rules, officials, ownership and vesting of assets or in any other respects.

(2) The commission may hear and determine such an application and may make such declaration and such orders, if any, directed at rectification of anomalies as it considers appropriate.

(3) If appropriate, the commission, when considering an application under subsection (1), may have regard to any rules, other than those of the industrial union, which are of relevance to the industrial union such as the rules of a State branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

Proceedings for offences

117EK. (1) Proceedings for an offence against this Part may be taken:

- (a) before the commission in its criminal jurisdiction; or
- (b) before an industrial magistrate or a Local Court constituted by a Magistrate sitting alone.

(2) The maximum penalty that an industrial magistrate or a Local Court may impose in respect of an offence under this Part is 100 penalty units or the maximum penalty provided by this Part, whichever is the lesser.

(3) The maximum penalty that the commission may impose in respect of an offence under this Part is the maximum penalty provided by this Part.

Recovery of compensation or damages

117EL. (1) Any compensation, damages or debt required to be paid by an order of the commission made under this Part may be recovered in any court of competent jurisdiction as a debt due to the person to whom it is required to be paid.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(2) For the purposes of this section, the order of the commission imposing the penalty is taken to be a judgment of the court in which proceedings for recovery are taken.

Offences in connection with ballots

117EM. A person must not:

- (a) obstruct the taking of a ballot conducted under this Part; or
- (b) counsel persons who are entitled to vote at any such ballot to refrain from so voting; or
- (c) use any form of intimidation to prevent a person entitled to vote at any such ballot from voting; or
- (d) fail to carry out any orders or directions of the commission or registrar made or given in relation to a ballot under this Part.

Penalty for ballot offences

117EN. A person who contravenes section 117EM is guilty of an offence.

Maximum penalty: 100 penalty units.

Division 4—Suspension and cancellation of registration

Application of Division

117EO. This Division does not apply to an industrial union that is de-registered as the result of an amalgamation of industrial unions under Subdivision 12 of Division 3.

Suspension and cancellation of registration of industrial unions

117EP. (1) An interested industrial union, an interested person or the Minister may apply to the commission for suspension and cancellation, or cancellation, of the registration of another industrial union on any one or more of the following grounds:

- (a) that, because of its continued breach of an order of the commission (including an order for payment of compensation, damages, debt or a penalty), an award or an agreement made under this Act, or its continued failure to ensure that its members comply with and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

observe any such order, award or agreement, or in any other respect, the conduct of the industrial union has prevented or hindered the execution of this Act;

- (b) that, because of their continued breach of any such order, award or agreement, the conduct of a substantial number of the members of the industrial union has prevented or hindered the execution of this Act;
- (c) that the industrial union, or a substantial number of the members of the industrial union or of a section or class of members of the industrial union, has engaged in any lock-out, illegal strike or other industrial action that has prevented, hindered or interfered with the provision of any public service by the State or an authority of the State;
- (d) that the industrial union, or a substantial number of the members of the industrial union or of a section or class of members of the industrial union, has or have been, or is or are, engaged in any lock-out, illegal strike or other industrial action that has had, is having or is likely to have, a substantial adverse effect on the safety, health or welfare of the community or a part of the community.

(2) An industrial union in relation to which an application is made under subsection (1) must be given an opportunity to be heard by the commission.

(3) If the commission:

- (a) finds that a ground of the application has been established; and
- (b) does not consider that it would be unjust to do so having regard to the degree of gravity of the matters constituting the ground and the action (if any) that has been taken by or against the industrial union in relation to the matters,

the commission may, at its discretion, suspend the registration of the industrial union for the prescribed period.

(4) The commission may suspend on its own initiative the registration of an industrial union if the commission is satisfied as to the matters referred to in subsections (1) and (3), but only if the industrial union has been given an

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

opportunity to be heard by the commission.

(5) The commission may lift the suspension of the registration of an industrial union under this section at any time on grounds that appear to the commission to be appropriate, with or without the imposition of conditions on the industrial union.

(6) While the registration of an industrial union is suspended under this or any other Act, the industrial union is not entitled to represent its members or to appear on their behalf before the industrial commission, a conciliation committee or a tribunal under this Act.

(7) On the expiry of the prescribed period of suspension, the commission may, at its discretion, cancel the registration of the industrial union under this Act, but may not do so if:

- (a) the commission has already lifted the suspension under subsection (5); or
- (b) the industrial union has satisfied the commission that its registration should not be cancelled and that the suspension of its registration should be lifted, with or without the imposition of conditions on the industrial union; or
- (c) the commission has decided that it is appropriate to proceed under subsection (10) or section 117EQ.

(8) If the commission considers it appropriate in the particular circumstances because of the gravity of the case, the commission may, instead of suspending the registration of the industrial union, cancel such registration.

(9) Except where the cancellation of the registration of an industrial union under this Act is effected under the Essential Services Act 1988, the registration of an industrial union is not to be cancelled unless the industrial union has the opportunity to show cause to the commission, within the prescribed period, why its registration as an industrial union under this Act should not be cancelled.

(10) If:

- (a) the commission finds that a ground of the application under subsection (1) has been established; and
- (b) that finding is made, wholly or mainly, because of the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

conduct of a particular section or class of members of the industrial union,

the commission may, if it considers it just to do so, instead of suspending or cancelling the registration of the industrial union under this section, by its order, alter the rules of the industrial union so as to exclude from eligibility for membership of the industrial union persons belonging to the section or class.

(11) The commission may make such other orders as are necessary to give effect to, or in consequence of, an order made under this section, including an order altering the rules of any industrial union.

(12) An alteration of rules by an order made under subsection (10) or (11) takes effect on the date of the order or on such other day as is specified in the order.

Orders where cancellation of registration deferred

117EQ. (1) The commission may, instead of making an order under section 117EP suspending or cancelling registration, or altering rules, of an industrial union, make one or more of the following orders:

- (a) an order suspending, to the extent specified in the order, any of the rights, privileges or capacities of the industrial union, or of all or any of its members as such, under this or any other Act or under awards or orders made under this or any other Act;
- (b) an order giving directions as to the exercise of any rights, privileges or capacities that have been suspended;
- (c) an order restricting the use of the funds or property of the industrial union or a branch of the industrial union, and for the control of the funds or property for the purpose of ensuring observance of the restrictions.

(2) If the commission makes an order under subsection (1), it must defer the determination of the question whether to suspend or cancel the registration of the industrial union concerned until:

- (a) any order made under subsection (1) ceases to be in force; or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) on application by a party to the proceeding, the commission considers that it is just to determine the question, having regard to any evidence given relating to the observance or non-observance of any order and to any other relevant circumstance,

whichever happens first.

(3) An order made under subsection (1) has effect despite anything in the rules of the industrial union concerned or a branch of the industrial union.

(4) An order made under subsection (1):

- (a) may be revoked by the commission, by order, on application by a party to the proceeding concerned; and
 (b) unless sooner revoked, ceases to be in force:
 (i) 6 months after it came into force; or
 (ii) at the expiration of such longer period after it came into force as is ordered by the commission on application by a party to the proceeding made while the order remains in force.

(5) A person who contravenes an order made under subsection (1) (c) is guilty of an offence.

Maximum penalty: 50 penalty units.

Appeal against cancellation of registration by commission

117ER. (1) An industrial union may appeal to the commission in court session against an order of the commission cancelling the registration of the industrial union.

(2) On any such appeal, further evidence shall be admitted on special grounds only and not without special leave of the commission in court session.

(3) The commission in court session may affirm, vary or set aside the decision subject to the appeal as the commission in court session thinks fit.

Voluntary etc. cancellation of registration

117ES. (1) The commission may cancel the registration of an industrial union:

- (a) on application by the industrial union; or
 (b) on application by another interested industrial union or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

an interested person, or by the Minister, if the commission is satisfied that any ground referred to in subsection (2) has been made out; or

(c) on its own initiative if the commission is satisfied that the industrial union is defunct.

(2) The grounds on which registration may be cancelled under subsection (1) (b) are:

(a) that the industrial union was registered by mistake; or

(b) that the industrial union is an industrial union of employers that is no longer representative of its members; or

(c) that the industrial union is an industrial union of employees that is no longer representative of its members.

(3) The registrar may also on his or her own initiative cancel the registration of an industrial union if the registrar is satisfied that the industrial union is defunct.

(4) An industrial union may appeal to the commission in court session against the cancellation of its registration under this section.

Cancellation to be recorded

117ET. Where the registration of an industrial union under this Act is cancelled, the registrar must enter the cancellation, and the date of cancellation, in the register kept for the purpose.

Consequences of cancellation of registration

117EU. (1) The cancellation of the registration of an industrial union under this Act has the following consequences:

(a) the industrial union ceases to be an industrial union for the purposes of this Act (this section excepted); and

(b) the cancellation does not relieve the industrial union or any of its members from any penalty or liability incurred by the industrial union or its members before the cancellation; and

(c) the industrial union will be wound up by a liquidator appointed by the commission and, on completion of the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

winding up, will cease to be a body corporate under this Act; and

- (d) subject to subsection (3), the assets of the industrial union will be distributed to its members after payment of all debts of the industrial union including any penalty or liability referred to in paragraph (b) in accordance with the order of priorities set out in section 556 of the Corporations Law.

(2) The commission may, on application by an industrial union or person interested, make such order as the commission considers appropriate in relation to the winding up of the affairs of the industrial union.

(3) For the purposes of a winding up under subsection (1) (c), the provisions of Part 5.7 of the Corporations Law relating to involuntary winding up of a body other than a company or of Part 5.5 of the Corporations Law relating to voluntary winding up of a body as if it were a company, as the case requires, apply as modified by the regulations.

(4) For the purposes of a distribution under subsection (1) (d), the commission may determine that the members of the industrial union are those persons who were members:

- (a) at the time of suspension of the industrial union under this Part; or
- (b) at such other time nominated by the commission, as appears to the commission to be just and equitable.

(5) If, in the opinion of the commission, an industrial union has insufficient assets to justify its winding up, the commission may dispense with the requirement that the industrial union be wound up and may cause notice to be given of this decision in the manner prescribed.

Disqualification of certain officials

117EV. (1) A person who is an official of an industrial union whose registration has been cancelled under section 117EP must not, without the leave of the commission:

- (a) be involved in the formation of another industrial union; or
- (b) hold office in another industrial union,
for a period of 5 years after the cancellation of the

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

registration of the industrial union in which the person is an official.

(2) The commission may grant leave under subsection (1) on the application of the person or on its own initiative where the commission is of the opinion that the person did not participate, directly or indirectly, in the acts or omissions which resulted in cancellation of the registration of the industrial union.

(3) A person who is refused leave under subsection (1) may appeal against that decision to the commission in court session.

(4) On any such appeal, further evidence shall be admitted on special grounds only and not without special leave of the commission in court session.

(5) The commission in court session may affirm, vary or set aside the decision subject to the appeal as the commission in court session thinks fit.

Division 5—State peak organisations**Approval of State peak organisations**

117EW. (1) An association for employers that:

- (a) operates primarily throughout New South Wales; and
- (b) is representative of a significant number of member associations for employers,

may be approved by the commission as a State peak organisation for employers.

(2) The Labor Council of New South Wales is taken to be the State peak organisation for employees.

(3) The commission may from time to time review approvals in force under this section and may revoke an approval for such reason as appears sufficient to the commission.

(4) An application for the purposes of this section may be required by the regulations to be made in the prescribed manner.

(5) The provisions (other than provisions relating to registration or incorporation) of this Part, and of statutory instruments made under this Act, that apply to industrial

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

unions, and to their officers, apply to State peak organisations, and to their officers, except to the extent:

- (a) that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or
- (b) that the application of any of those provisions is modified or excluded by the regulations; or
- (c) that the regulations provide that instead of the provisions of this Part specified or described in the regulations applying, other provisions prescribed by the regulations apply.

Functions of State peak organisations

117EX. A State peak organisation may:

- (a) subject to establishing a sufficient interest in the proceedings, intervene in proceedings before the industrial commission, a conciliation committee or a tribunal and make such representations as it considers necessary to safeguard the interests of any one or more of its members; and
- (b) sign industrial agreements under this Act on behalf of its members.

Division 6—Trade unions**Application of Part to trade unions**

117EY. The provisions of this Part, and of the regulations, that apply to industrial unions, and to their officers and members, apply to trade unions that are registered as such under this Division, and to their officers and members, except to the extent:

- (a) that express provision is made by or under this or any other Act modifying or excluding the application of those provisions; or
- (b) that the application of any of those provisions is modified or excluded by the regulations; or
- (c) that the regulations provide that, instead of provisions of this Part specified or described in the regulations applying, other provisions prescribed by the regulations apply.

*Industrial Arbitration (Unions) Amendment 1991***SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*****Associations capable of registration as trade unions**

117EZ. An association may be registered as a trade union if:

- (a) it is an association of 7 or more members; and
- (b) it is a genuine trade union; and
- (c) there is no industrial union to which the members could conveniently belong; and
- (d) it is not an industrial union.

Application for registration by trade union established over 12 months

117FA. A trade union applying for registration that has been in existence for more than 12 months prior to the date of lodgment of the application for registration is not to be registered until it has lodged with the registrar such financial statements as are prescribed.

(2) Schedule 5:

After Schedule 4, insert:

**SCHEDULE 5—PROVISIONS RELATING TO
RULES OF INDUSTRIAL UNIONS**

(Sec. 117L)

Rules to provide for procedural and administrative matters

1. (1) The rules of an industrial union and a branch of an industrial union must provide for:

- (a) the entrance fees, subscription, affiliation and other amounts (if any) to be paid by members of the industrial union; and
- (b) the procedure (if any) for the disciplining of members and the mechanism (if any) for appeals by members in respect of disciplinary action taken against them; and
- (c) the name, constitution, membership, powers and duties of the committees of, and holders of offices in, the industrial union and its branches and, in particular:
 - (i) the election or appointment of members of the committees; and
 - (ii) the terms of office of members of the

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- committees; and
- (iii) the grounds on which, or the reasons for which, the office of a member of a committee becomes vacant; and
- (iv) the filling of casual vacancies occurring on the committees; and
- (v) the quorum and procedure at meetings of the committees; and
- (d) the manner of summoning meetings of members of the industrial union and its branches and meetings of the committees of the industrial union and its branches; and
- (e) the quorum and procedure at general meetings of members of the industrial union and whether members are entitled to vote by proxy at general meetings; and
- (f) the intervals between general meetings of members of the industrial union and the manner of calling general meetings; and
- (g) the time within which, and the manner in which, notices of general meetings and notices of motion are to be given, published or circulated; and
- (h) the removal of holders of offices in the industrial union and its branches; and
- (i) the control of committees of the industrial union and its branches respectively by the members of the industrial union and branches; and
- (j) the sources from which the funds of the industrial union are to be, or may be, derived; and
- (k) the manner in which the funds of the industrial union are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the industrial union; and
- (l) the manner in which documents may be executed by or on behalf of the industrial union; and
- (m) the manner in which the property of the industrial union is to be controlled and its funds invested; and
- (n) the conditions under which funds may be spent; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (o) the custody of books, documents and securities of the industrial union; and
 - (p) the inspection by members of the industrial union of books and documents of the industrial union; and
 - (q) the manner of dissolving or winding up the industrial union, and the liability (if any) of members of the industrial union to contribute to the payment of the debts and liabilities of the industrial union or the costs, charges and expenses of the dissolution or winding up of the industrial union; and
 - (r) the registered office of the industrial union (which must be within New South Wales); and
 - (s) the annual or periodic auditing of the accounts of the industrial union, including the appointment of an auditor and the grounds on which, or the reasons for which, the position of auditor becomes vacant; and
 - (t) the keeping of accounting records by the industrial union; and
 - (u) the manner of notifying a question, dispute or difficulty relating to an industrial matter; and
 - (v) the times when, and the terms on which, persons become or cease (otherwise than by resignation) to be members; and
 - (w) the resignation of members; and
 - (x) the keeping of a register of the members, arranged, where there are branches of the industrial union, according to branches; and
 - (y) the manner in which the rules may be altered or rescinded; and
 - (z) any other matters which may be prescribed.
- (2) The rules of an industrial union and a branch of an industrial union may provide for the removal from office of a person elected to an office in the industrial union only where the person has been found guilty, under the rules of the industrial union, of:
- (a) misappropriation of the funds of the industrial union; or

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (b) a substantial breach of the rules of the industrial union;
or
 - (c) gross misbehaviour or gross neglect of duty, or has ceased, under the rules of the industrial union, to be eligible to hold office.
- (3) The rules of an industrial union and a branch of an industrial union must require the industrial union to inform applicants for membership, in writing of:
- (a) the financial obligations arising from membership; and
 - (b) the circumstances, and the manner, in which a member may resign from the industrial union.
- (4) The rules of an industrial union must also provide that, within 14 days after:
- (a) the business, or part of the business, of a member of the industrial union is assigned or transferred to a person who is not a member of the industrial union; or
 - (b) such a person succeeds to the business, or part of the business, of a member of the industrial union,
- the member is required to notify the industrial union of the assignment, transfer or succession.
- (5) The rules of an industrial union may also provide for any other matter.
- (6) In this clause:

“**committee**”, in relation to an industrial union or branch of an industrial union, means a collective body of the industrial union or branch that has powers of the kind mentioned in the definition of “office” in section 107.

Rules to provide for elections for offices

2. (1) The rules of an industrial union must provide for the election of the holder of each office in the industrial union by:
- (a) a particular direct voting system; or
 - (b) a particular collegiate electoral system that, in the case of a full-time office, is a one-tier collegiate electoral system.
- (2) When the rules of the industrial union are lodged with the registrar for recording, the registrar, having regard to such

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

factors as the size, structure and resources of the industrial union concerned, to any representations made to the registrar by the industrial union and to such other matters as the registrar considers to be relevant, must specify the particular system of voting to be employed by the industrial union.

(3) A reference in this clause to the rules of an industrial union includes a reference to the rules of a branch of the industrial union.

Rules may provide for elections for offices in State branch of Federal organisation

3. (1) The rules of an industrial union may provide that officers elected to a State branch of a Federal organisation are taken to be validly elected to the corresponding offices in the industrial union if the registrar is satisfied that:

- (a) the membership of the State branch of the Federal organisation and the industrial union is identical; and
- (b) the rules of the State branch of the Federal organisation relating to the election of officers comply substantially with the requirements relating to election of officers under this Act.

(2) In this clause, “**State branch of a Federal organisation**” means a State branch of an organisation registered under the Industrial Relations Act 1988 of the Commonwealth and “**State branch of the Federal organisation**” has an equivalent meaning.

Rules to provide for elections by secret postal ballot

4. (1) The rules of an industrial union must provide that, if a ballot is required for an election, it must be a secret postal ballot.

(2) An industrial union may lodge with the registrar an application for an exemption from subclause (1), accompanied by particulars of proposed alterations of the rules of the industrial union, to provide for the conduct of elections of the kind referred to in subclause (1) by a secret ballot other than a postal ballot.

(3) If the registrar is satisfied, on application, that:

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) the proposed alterations of the rules:
 - (i) comply with and are not contrary to this Act (other than subclause (1)) and awards or orders made under this Act; and
 - (ii) are not otherwise contrary to law; and
 - (iii) have been decided in accordance with the rules of the industrial union; and
- (b) the conduct of a ballot under the rules of the industrial union as proposed to be altered:
 - (i) is likely to result in a fuller participation by members of the industrial union in the ballot than would result from a postal ballot; and
 - (ii) will afford to members entitled to vote an adequate opportunity of voting without intimidation,

the registrar may grant to the industrial union an exemption from subclause (1).

(4) Proposed alterations of the rules of an industrial union referred to in subclause (2) take effect if and when the registrar grants to the industrial union an exemption from subclause (1).

(5) An exemption under subclause (3) remains in force until revoked under subclause (6).

(6) The registrar may revoke an exemption granted to an industrial union under subclause (3):

- (a) on application by the industrial union, if the registrar is satisfied that the rules of the industrial union comply with subclause (1); or
- (b) if the registrar is no longer satisfied:
 - (i) that the rules of the industrial union provide for the conduct of elections of the kind referred to in subclause (1) by a secret ballot other than a postal ballot; or
 - (ii) of a matter referred to in subclause (3) (b), and the registrar has given the industrial union an opportunity, as prescribed, to show cause why the exemption should not be revoked.

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(7) If the registrar revokes an exemption granted to an industrial union on a ground specified in subclause (6) (b), the registrar may, by instrument, after giving the industrial union an opportunity, as prescribed, to be heard, determine such alterations (if any) of the rules of the industrial union as are, in the registrar's opinion, necessary to bring them into conformity with subclause (1).

(8) An alteration of the rules of an industrial union determined under subclause (7) takes effect on the date of the instrument.

(9) This clause applies in relation to elections for offices in branches of industrial unions as if references to an industrial union were references to a branch of an industrial union.

Rules to provide for terms of office

5. (1) The rules of an industrial union:

(a) must, subject to paragraph (b) and subclause (3), provide terms of office for officers in the industrial union of no longer than 4 years without re-election; and

(b) may provide that, where a person elected to a full-time office will attain retirement age within 12 months after the end of the term for which the person is elected, the person may hold the office, without being re-elected, until attaining retirement age.

(2) If the rules of an industrial union provide as mentioned in subclause (1) (b), the rules must provide that where a candidate duly nominated for election to a full-time office is a person who, if elected, will hold that office in the circumstances mentioned in that paragraph, the ballot-papers for the election must indicate the maximum term for which, if elected, the person may hold office.

(3) The rules of an industrial union, or a branch of an industrial union, may provide that a particular term of office is extended for a specified period, where the extension is for the purpose of synchronising elections for offices in the industrial union or branch.

(4) Rules made under subclause (3) may apply in relation to a term of office that started before the commencement of this clause.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(5) The term of an office must not be extended under subclause (3) so that the term exceeds 4 years.

(6) A reference in this clause (other than subclause (3)) to the rules of an industrial union includes a reference to the rules of a branch of the industrial union.

(7) In this clause:

“**retirement age**”, in relation to an office, means the retirement age applicable to the office under the rules of the industrial union concerned or, where the rules provide for a minimum retirement age and a maximum retirement age in relation to the office, the maximum retirement age.

Rules may provide for filling of casual vacancies

6. (1) The rules of an industrial union may provide for the filling of a casual vacancy in an office by an ordinary election or, subject to this clause, in any other manner provided in the rules.

(2) Rules made under subclause (1) must not permit a casual vacancy, or a further casual vacancy, occurring within the term of an office to be filled, otherwise than by an ordinary election, for so much of the unexpired part of the term as exceeds:

(a) 12 months; or

(b) three-quarters of the term of the office,

whichever is the greater.

(3) If, under rules made under subclause (1), a vacancy in an office in an industrial union is filled otherwise than by an ordinary election, the person filling the vacancy must be taken, for the purposes of the relevant provisions, to have been elected to the office under the relevant provisions.

(4) A reference in this clause to the rules of an industrial union includes a reference to the rules of a branch of the industrial union.

(5) In this clause:

“**ordinary election**” means an election held under rules that comply with clause 2;

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

“relevant provisions”, in relation to an industrial union, means:

- (a) the provisions of this Act (other than this clause); and
- (b) the rules of the industrial union (other than rules made under subclause (1)) providing for the filling of a casual vacancy in an office otherwise than by an ordinary election;

“term”, in relation to an office, means the total period for which the last person elected to the office by an ordinary election (other than an ordinary election to fill a casual vacancy in the office) was entitled by virtue of that election (disregarding any rule made under clause 5 (1) (b) but having regard to any rule made under clause 5 (3)) to hold the office without being re-elected.

Rules to provide conditions for loans, grants and donations by industrial unions

7. (1) The rules of an industrial union, and the rules of a branch of an industrial union, must provide that a loan, grant or donation must not be made by the industrial union or the branch, unless the relevant committee of management:

- (a) has satisfied itself:
 - (i) that the making of the loan, grant or donation would be in accordance with the other rules of the industrial union or branch; and
 - (ii) in the case of a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and

(b) has approved the making of the loan, grant or donation.

(2) Despite subclause (1), the rules of an industrial union or branch may provide for a person authorised by the rules to make a loan, grant or donation to a member of the industrial union or branch, if the loan, grant or donation:

- (a) is for the purpose of relieving the member or any of the member’s dependants from severe financial hardship; and

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

(b) is subject to a condition to the effect that, if the relevant committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it must be repaid as determined by the committee.

(3) In considering whether to approve a loan, grant or donation made under subclause (2), the relevant committee of management must have regard to:

(a) whether the loan, grant or donation was made under the rules of the industrial union or branch; and

(b) in the case of a loan:

(i) whether the security (if any) given for the repayment of the loan is adequate; and

(ii) whether the arrangements for the repayment of the loan are satisfactory.

(4) Nothing in subclause (1) requires the rules of an industrial union, or a branch of an industrial union, to make provision of the kind referred to in that subclause in relation to payments made by the industrial union or branch by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the industrial union or branch.

(5) In this clause:

“**relevant committee of management**”, in relation to an industrial union or branch of an industrial union, means the committee of management of the industrial union or branch, as the case may be.

Rules to provide conditions for imposing of levies and making of donations or other payments for political objects by industrial unions

8. (1) The rules of an industrial union, and the rules of a branch of an industrial union, must provide that no levy is to be imposed for political objects and no donation or other payment for political objects is to be made out of amounts so levied by the industrial union or the branch, as the case may be, unless the rules require:

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

- (a) that a separate fund must be established for the purpose of the imposing of such levies and the making of such donations or other payments; and
- (b) that contributions raised from members of the industrial union by any such levy must be voluntary and must be applied only to the purpose for which they were raised, unless the members making the contributions agree to some other application; and
- (c) that the relevant committee of management must approve the imposing of each such levy and the making of each such donation or payment and must satisfy itself that the imposing of each such levy and the making of each such donation or other payment out of the amounts levied would be in accordance with the other rules of the industrial union or branch.

(2) Any separate fund established for the purposes of this clause and any property in which that fund may be invested is not to be liable to attachment in the enforcement of any order for payment of any penalty made against the industrial union or branch.

(3) The requirements of this clause do not apply to donations or other payments made to a charity registered, capable of being registered or exempted from registration under the Charitable Collections Act 1934.

(4) In this clause:

“candidate” means a person nominated as a candidate for election to Parliament or to any public office;

“donation or other payment for political objects” includes a payment to a candidate, group or party and a payment towards or the payment of any expenses incurred, either directly or indirectly, by a candidate, group or party, in relation to the election of candidates to Parliament or to some other public office;

“group” means a group of candidates, or part of a group of candidates, for election to Parliament or to any public office;

“party” means a body or industrial union, incorporated or unincorporated, having as one of its objects or activities the promotion of the election to Parliament or to any

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 1—PRINCIPAL AMENDMENTS—*continued*

public office of a candidate or candidates endorsed by it or by a body or industrial union of which it forms a part;

“**Parliament**” includes the Parliament of any other State and of a Territory and of the Commonwealth;

“**public office**” means the office of a member of any shire, municipal or city council, or of any public body that has power to raise money, either directly or indirectly, by means of a rate;

“**relevant committee of management**” has the meaning set out in clause 7.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS

(Sec. 3)

(1) Section 5 (**Definitions**):

From section 5 (1), omit the definition of “Trade union”, insert instead:

“**Trade union**” means any temporary or permanent combination:

- (a) for regulating the relations between:
 - (i) employees and employers; or
 - (ii) employees and employees; or
 - (iii) employers and employers; or
- (b) for imposing restrictive conditions on the conduct of any trade or business whether or not such a combination would, except for this Act, be an unlawful combination because one or more of its purposes is in restraint of trade.

(2) Sections 6–8, 9 and 10A:

Omit the sections.

(3) Section 14 (**Industrial commission**):

In section 14 (8A) (a), after “magistrate”, insert “or the registrar”.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(4) Section 30A (**General powers and functions of the commission**):

After section 30A (1), insert:

(1A) For the purpose of exercising the jurisdiction and powers conferred on the commission in relation to unregistered and registered trade unions by Part 11, the commission has all the powers of the Supreme Court and must hear and determine according to equity and good conscience all questions arising for determination under that Part.

(5) Section 30B (**Jurisdiction of the commission**):

(a) From section 30B (1) (c), omit “section 15A (1) of the Trade Union Act 1881,”.

(b) After section 30B (1) (e), insert:

(e1) to hear and determine any proceedings which are commenced before, and any appeal which is made to, the commission in court session in accordance with Part 11;

(c) From section 30B (1) (f), omit “industrial union of employees or”.

(6) Section 39 (**Definitions**):

After “offences:”, insert:

“An offence against Part 11 of this Act.”

(7) Section 99 (**Illegal strikes**):

(a) In section 99 (b), omit “any union”, insert instead “any industrial union”.

(b) In section 99 (b), after “such”, insert “industrial”.

(8) Section 100 (**Penalty for illegal strike**):

From section 100 (1), omit “trade union registered as an”.

(9) Section 101A (**Defence to proceedings under sec. 100**):

In section 101A, before “union”, wherever occurring, insert “industrial”.

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

- (10) Section 106A (**Secret ballots on order of commission or conciliation commissioner**):
Omit “trade union”, wherever occurring, insert instead “industrial union of employees”.
- (11) Section 106B (**Request by industrial union of employees for secret ballots on strikes**):
- (a) From section 106B (1), omit “a trade union”, wherever occurring, insert instead “an industrial union of employees”;
 - (b) Omit “the trade union”, wherever occurring, insert instead “the industrial union of employees”.
- (12) Section 106C (**Registrar’s powers on request for secret ballot**):
Omit “trade union”, wherever occurring, insert instead “industrial union of employees”.
- (13) Parts 11 and 11A [sections 107–117E]:
Omit the Parts.
- (14) Section 130 (**Regulations made by the Governor**):
After section 130 (1) (j), insert:
- (j1) regulating the procedure to be followed by the commission or the registrar in relation to the suspension or cancellation of industrial unions or trade unions;
- (15) Schedule 6 (**Savings and transitional provisions**):
- (a) Before the matter relating to the Industrial Arbitration (Amendment) Act 1988, insert:

PART 1—GENERAL**Regulations**

(1) The Governor may make regulations containing provisions of a saving or transitional nature consequent on the enactment of the following Acts:

Industrial Arbitration (Unions) Amendment Act 1991

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

*Industrial Arbitration (Unions) Amendment 1991*SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(3) To the extent to which a provision referred to in subclause (1) takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

PART 2—SPECIAL PROVISIONS

- (b) Omit the numbers to all clauses and re-number former clauses 2–4 as clauses 1–3.
- (c) At the end of the Schedule, insert:

*Industrial Arbitration (Unions) Amendment Act 1991***Definition**

1. In this item:

“**continued industrial union**” means an incorporated or unincorporated body taken to be registered by the operation of clause 2;

“**1991 Act**” means the Industrial Arbitration (Unions) Amendment Act 1991.

Saving of industrial unions of employers and employees

2. (1) An incorporated or unincorporated body that, immediately before the commencement of this clause, was registered under this Act as an industrial union of employers or an industrial union of employees is, on that commencement, taken to be registered under Part 11 as an industrial union of employers or an industrial union of employees, as the case may be.

(2) Within 18 months after the commencement of this clause, the registrar must carry out an examination of the rules of all continued industrial unions.

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(3) If, as a consequence of such an examination, the registrar becomes aware that an industrial union does not comply with one or more of the requirements of Part 11 applicable to the industrial union, the registrar must serve a notice on the industrial union.

(4) The notice must specify each of the applicable requirements with which the industrial union does not comply and require the industrial union to comply with each such requirement:

- (a) within 6 months after service of the notice; or
- (b) within such longer period as the registrar may consider reasonable in the circumstances.

(5) The registrar must cancel the registration of the industrial union if it does not comply with the notice.

(6) If the registrar is satisfied (as a consequence of such an examination or because of compliance with a notice served under this clause) that an industrial union does comply with the applicable requirements of Part 11, the registrar must confirm the registration of the industrial union under Part 11 in the manner prescribed.

(7) On the date of such confirmation, section 117H (Incorporation) applies to any continued industrial union that is not already an incorporated body under another Act in the same way as it applies to an association registered as an industrial union after the commencement of that section.

Saving of certain industrial unions of employees

3. It does not matter for the purposes of clause 2 if an industrial union of employees has fewer than 50 members who are employees.

Application of Part 11 to continued industrial union that is subject to the Corporations Law

4. (1) The provisions of the Corporations Law, to the exclusion of corresponding provisions of Part 11, apply to a continued industrial union that was, or is taken to have been, incorporated under the Corporations Law before the commencement of this clause.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(2) The regulations may declare which provisions of Part 11 do, or do not, correspond with provisions of the Corporations Law for the purposes of this clause.

(3) Such of the provisions of Part 11 as are prescribed by the regulations (subject to such modifications, if any, as are so prescribed), apply to such an industrial union, despite subclauses (1) and (2).

Application of Part 11 to other incorporated continued industrial unions

5. (1) Part 11 (section 117H excepted) applies to a continued industrial union that was incorporated under a law other than the Corporations Law before the commencement of this clause.

(2) The prescribed provisions of the Act under which such an industrial union was incorporated do not apply, or apply subject to the prescribed modifications, if any, to the industrial union.

Suspension of registration

6. (1) If the registration of a continued industrial union was suspended when clause 2 commenced, the industrial union is, for the purpose only of determining whether or not its registration should be cancelled under that clause, taken to be registered immediately before that commencement.

(2) The registrar must not confirm the registration of any such industrial union while its suspension continues.

(3) Nothing prevents the suspension, after the commencement of this clause, of the registration of a continued industrial union.

Cancellation of registration

7. Nothing prevents the cancellation, after the commencement of this clause, of the registration of a continued industrial union.

Application of winding up provisions of Corporations Law to continued industrial unions

8. (1) The provisions of the Corporations Law relating to the winding up of a company apply to a continued industrial union to which clause 4 applies.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(2) The provisions of Part 5.7 of the Corporations Law relating to the involuntary winding up of a body other than a company or of Part 5.5 of the Corporations Law relating to the voluntary winding up of a body as if it were a company, as the case requires, apply, as modified by the regulations, in relation to a continued industrial union that was incorporated under a law other than the Corporations Law.

Effect of cancellation of registration under Part 11 on continued industrial unions

9. (1) The cancellation, under Part 11, of the registration of a continued industrial union to which clause 4 applies does not affect the status of the body corporate concerned as a company under the Corporations Law.

(2) If the registration of any other incorporated continued industrial union is cancelled under Part 11, the industrial union ceases to be a body corporate on completion of its winding up under that Part.

Saving of trade unions registered under Trade Union Act

10. (1) A trade union that, immediately before the commencement of this clause, was registered under the Trade Union Act 1881 but was not registered under this Act is, on that commencement, taken to be registered under this Act as a trade union.

(2) Within 18 months after the commencement of this clause, the registrar must carry out an examination of the rules of all trade unions taken to be registered by the operation of this clause.

(3) If, as a consequence of such an examination, the registrar becomes aware that a trade union does not comply with one or more of the requirements of Part 11 applicable to the trade union, the registrar must serve a notice on the trade union.

(4) The notice must specify each of the applicable requirements with which the trade union does not comply and require the trade union to comply with each such requirement:

(a) within 6 months after service of the notice; or

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

- (b) within such longer period as the registrar may consider reasonable in the circumstances.
- (5) The registrar must cancel the registration of the trade union if it does not comply with the notice.
- (6) If the registrar is satisfied (as a consequence of such an examination or because of compliance with a notice served under this clause) that a trade union does comply with the applicable requirements of Part 11, the registrar must confirm the registration of the trade union under Part 11 in the manner prescribed.
- (7) On the date of such confirmation, section 117H (Incorporation) applies to any such trade union in the same way as it applies to an association registered as a trade union after the commencement of that section.
- (8) Nothing prevents the suspension or cancellation, after the commencement of this clause, of the registration of a trade union to which this clause applies.

Transitional registration

- 11. The regulations may make provision for or with respect to:
 - (a) examination of the rules of industrial unions of employers or industrial unions of employees and trade unions to which clauses 2 and 10 apply; and
 - (b) declaring the circumstances in which those industrial unions or trade unions are, or are not, taken to comply with specified requirements of Part 11; and
 - (c) the variation of the requirements of Part 11 so as to enable the confirmation of registration of those industrial unions or trade unions after the commencement of that Part; and
 - (d) the application of provisions of Part 11 to those industrial unions and trade unions until their registration under that Part has been confirmed.

Existing office holders

- 12. (1) A person who, immediately before the commencement of this clause, held an office in a body that, on that commencement, becomes an industrial union or a trade union registered under Part 11 is taken to have been

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

elected to that office for the remainder of the term for which he or she was appointed or elected, or for a period of 4 years, whichever is the lesser.

(2) Despite subclause (1), the regulations may provide for the extension of the term of office of a person for a longer period than that referred to in that subclause for the purpose of synchronising elections for offices in an industrial union and a State branch of a Federal organisation registered under the Industrial Relations Act 1988 of the Commonwealth.

Elections for offices

13. (1) An industrial union which has not held elections before the commencement of this clause must apply to the registrar under section 117V for the conduct by the registrar of an election within 18 months after that commencement.

(2) The registrar must serve on an industrial union that fails or refuses to comply with subclause (1) a notice requiring the industrial union to hold an election within 6 months after the date of the notice or such further period as the registrar considers reasonable in the circumstances and specifies in the notice.

(3) The registrar must cancel the registration of an industrial union which fails to comply with a notice served under subclause (2).

General saving

14. (1) If anything:

(a) that was done or commenced under a provision of this Act or the Trade Union Act 1881 before the commencement of an amendment to this Act made by the 1991 Act; and

(b) that still has an effect or has not been completed immediately before that commencement,

could have been done or commenced under a corresponding provision of this Act, as so amended, if the amendment had been in force when the thing was done or commenced, the thing done continues to have effect or the thing commenced may be completed, as if it had been done or commenced under the corresponding provision of this Act, as so amended.

Industrial Arbitration (Unions) Amendment 1991

SCHEDULE 2—CONSEQUENTIAL AMENDMENTS—*continued*

(2) Without affecting the generality of subclause (1), any order or award made under a provision of this Act by the commission, a conciliation commissioner or a conciliation committee is taken to have been made under any corresponding provision of this Act, as amended by the 1991 Act.

(3) Nothing in this clause affects any saving provided by the Interpretation Act 1987 or any of the specific provisions of this Schedule relating to the 1991 Act.
