

1993

THE PARLIAMENT OF THE COMMONWEALTH OF
AUSTRALIA

HOUSE OF REPRESENTATIVES

(Presented and read a first time)

(*Mr Charles*)

A BILL

FOR

An Act to ensure that individuals shall have, as well as the right to belong to industrial associations, the right not to belong to those associations, and for purposes connected therewith

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Industrial Relations (Membership of Associations) Act 1993*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears: 5

“award” means an award or order that has been reduced to writing under subsection 143(1) of the Industrial Relations Act and includes an agreement that has been certified under section 115 of that Act;

“Commission” means the Australian Industrial Relations Commission established by section 8 of the Industrial Relations Act; 10

“committee of management”, in relation to an organisation, association or branch of an organisation or association, means the group or body of persons (however described) that manages the affairs of the organisation, association or branch; 15

“Court” means the Federal Court of Australia;

“employee” includes any person whose usual occupation is that of employee;

“employer” includes: 20

- (a) a person who is usually an employer; and
- (b) a person who is a potential employer; and
- (c) an unincorporated club;

“industrial action” has the same meaning as in the Industrial Relations Act; 25

“Industrial Relations Act” means the *Industrial Relations Act 1988*¹;

“officer”, in relation to an organisation or branch of an organisation, means a person who holds an office, within the meaning of the Industrial Relations Act, in the organisation or branch; 30

“organisation” means an organisation registered under the Industrial Relations Act, and includes a branch of an organisation;

“trade union” means: 35

- (a) an organisation of employees; or
- (b) an association of employees that is registered or recognised as a trade union (however described) under

- the law of a State or Territory; or
- (c) an association of employees a principal purpose of which is the protection and promotion of the employees' interests in matters concerning their employment.

Objects

4. The objects of this Act are:

- (a) to ensure that employers are free to belong to, or not to belong to, representative bodies of employers; and
- (b) to ensure that employees are free to belong to, or not to belong to, representative bodies of employees; and
- (c) to ensure that independent contractors are free to belong to, or not to belong to, representative bodies of employers, or representative bodies of employees; and
- (d) to make provision incidental to the operation of the Industrial Relations Act.

PART 2 - OFFENCES RELATED TO MEMBERSHIP OF ORGANISATIONS

Membership or non-membership of organisation not to affect employment

5. (1) An employer shall not dismiss an employee, injure an employee in his or her employment, alter the position of an employee to the employee's prejudice or refuse to promote an employee because the employee:

- (a) is or has been, or proposes, or has at any time proposed, to become an officer, delegate or member of:

- (i) an organisation; or
- (ii) an association that has applied, under the Industrial Relations Act, to be registered as an organisation; or

- (b) has refused or failed to join in industrial action; or

- (c) is a person:

- (i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under

- section 127A of the Industrial Relations Act;
or
- (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or 5
- (iii) in relation to whom an order has been made under that section; or
- (d) has made or proposes, or has at any time proposed, to make application to the Commission for an order under section 136 of the Industrial Relations Act for the holding of a secret ballot; or 10
- (e) has participated in or proposes, or has at any time proposed, to participate in a secret ballot ordered by the Commission under section 135 or 136 of the Industrial Relations Act; or 15
- (f) is entitled to the benefit of an award or order of the Commission; or
- (g) has appeared, or proposes to appear, as a witness, or has given, or proposes to give, evidence, in a proceeding under the Industrial Relations Act; or 20
- (h) being a member of an organisation that is seeking better industrial conditions, is dissatisfied with his or her conditions; or
- (j) has absented himself or herself from work without leave if: 25
 - (i) the absence was for the purpose of carrying out duties or exercising rights as an officer or delegate of an organisation; and
 - (ii) the employee applied for leave before absenting himself or herself and leave was unreasonably refused or withheld; or 30
- (k) being an officer, delegate or member of an organisation, has done, or proposes to do, an act or thing for the purpose of furthering or protecting the industrial interests of the organisation where the act or thing is: 35
 - (i) lawful; and
 - (ii) within the limits of the authority expressly conferred on the employee by the

- organisation under its rules; or
- 5 (m) is not, has not been, or proposes, or has at any time proposed, not to become an officer, delegate or member of:
- (i) an organisation; or
- (ii) an association that has applied to be registered under the Industrial Relations Act as an organisation; or
- 10 (n) refuses, has refused, fails or has failed to pay, or proposes, or has at any time proposed, not to pay:
- (i) a subscription or fee payable in respect of membership of; or
- (ii) any other fee, levy, subscription or payment to, an organisation or an association that has applied under the Industrial Relations Act to be registered as our organisation, whether the subscription, fee, levy or payment is lawfully due or not.
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- (2) An employer shall not:
- 20 (a) employ, offer to employ, promote or offer to promote a person who is an officer, delegate or member of:
- (i) an organisation; or
- (ii) an association that has applied under the Industrial Relations Act to be registered as an organisation, on condition that the person ceases to be an officer, delegate or member of that organisation or association; or
- 25
- (b) employ, offer to employ, promote or offer to promote a person who is not an officer, delegate or member of:
- 30 (i) an organisation; or
- (ii) any association that has applied under the Industrial Relations Act to be registered as an organisation, on condition that the person becomes or agrees to become an officer, delegate or member of that organisation or association; or
- 35
- (c) alter the conditions of employment of a person to his or her benefit on condition that the person:
- (i) ceases to be; or

- (ii) becomes or agrees to become, an officer, delegate or member of;
- (iii) an organisation; or
- (iv) an association that has applied under the Industrial Relations Act to be registered as an organisation. 5

Penalty:

- (a) in the case of a natural person - 10 penalty units; and
- (b) in the case of a body corporate - 50 penalty units.

Employers not to refuse to employ or discriminate against certain persons 10

6. An employer shall not refuse to employ a person, or discriminate against a person in the terms or conditions on which the employer offers to employ the person, because the person:

- (a) is or has been, or proposes, or has at any time proposed, to become an officer, delegate or member of: 15
 - (i) an organisation; or
 - (ii) an association that has applied, under the Industrial Relations Act, to be registered as an organisation; or 20
- (b) has refused or failed to join an industrial union; or
- (c) is a person:
 - (i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under section 127A of the Industrial Relations Act; or 25
 - (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or 30
 - (iii) in relation to whom an order has been made under that section; or
- (d) has made, or proposes, or has at any time proposed, to make application to the Commission for an order under section 136 of the Industrial Relations Act for the holding of a secret ballot; or 35
- (e) has participated in, or proposes, or has at any time

proposed, to participate in a secret ballot ordered by the Commission under section 135 or 136 of the Industrial Relations Act; or

(f) is entitled to the benefit of an award or order of the Commission;

(g) has appeared, or proposed to appear as a witness, or has given, or proposes to give, evidence, in a proceeding under the Industrial Relations Act; or

(h) being an officer, delegate or member of an organisation, has done, or proposed to do, an act or thing for the purpose of furthering or protecting the industrial interests of the organisation where the act or thing is:

(i) lawful; and

(ii) within the limits of the authority expressly conferred on the employee by the organisation under its rules.

Penalty:

(a) in the case of a natural person - 10 penalty units; and

(b) in the case of a body corporate - 50 penalty units.

Threats to dismiss, or alter position of, employee

7. An employer shall not threaten to dismiss an employee, threaten to injure an employee in his or her employment or threaten to alter the position of an employee to his or her prejudice:

(a) because the employee is, or proposes to become, an officer, delegate or member of an organisation, or an association that has applied, under the Industrial Relations Act, to be registered as an organisation, or with intent to dissuade or prevent the employee from becoming such an officer, delegate or member; or

(b) with intent to coerce the employee to join, or resign from, an industrial union; or

(c) because the employee is a person:

(i) who has made, or proposes, or has at any time proposed, to make, application to the Commission to review a contract under section 127A of the Industrial Relations Act;

- or
- (ii) on whose behalf an organisation has made, or proposes, or has at any time proposed, to make such an application; or
- (iii) in relation to whom an order has been made under that section; or 5
- (d) because the employee has made, or proposes, or has at any time proposed, to make application to the Commission for an order under section 136 of the Industrial Relations Act for the holding of a secret ballot; or 10
- (e) because the employee has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 135 or 136 of the Industrial Relations Act; or 15
- (f) because the employee has appeared, or proposes to appear, as a witness, or has given, or proposes to give, evidence, in a proceeding under the Industrial Relations Act, or with the intent to dissuade or prevent the employee from so appearing or giving evidence; or 20
- (g) with the intent to dissuade or prevent the employee, being an officer, delegate or member of an organisation, from doing an act or thing for the purpose of furthering or protecting the industrial interests of the organisation where the act or thing is: 25
 - (i) lawful; and
 - (ii) within the limits of the authority expressly conferred on the employee by the organisation under its rules; or
- (h) because the employee is not, has not been, or proposes, or has at any time proposed, not to become an officer, delegate or member of: 30
 - (i) an organisation; or
 - (ii) an association that has applied under the Industrial Relations Act to be registered as an organisation; or 35
- (j) because the employee refuses, has refused, fails or has failed to pay, or proposes, or has at any time proposed, not to pay:

- (i) a subscription or fee payable in respect of membership of; or
- (ii) any other fee, levy, subscription or payment to, an organisation or an association that has applied under the Industrial Relations Act to be registered as an organisation, whether the subscription, fee, levy or payment is lawfully due or not.

Penalty:

- (a) in the case of a natural person - 10 penalty units; and
- (b) in the case of a body corporate - 50 penalty units.

Employees not to cease work in certain circumstances

8. An employee shall not cease work in the service of his or her employer because the employer:

- (a) is, or is not, an officer, delegate or member of:
 - (i) an organisation; or
 - (ii) an association that has applied under the Industrial Relations Act to be registered as an organisation; or
- (b) is entitled to the benefit of an award or an order of the Commission; or
- (c) has appeared, or proposes to appear, as a witness, or has given, or proposes to give, evidence, in a proceeding under the Industrial Relations Act.

Penalty: 10 penalty units.

Organisations not to take certain industrial action

9. (1) An organisation shall not take, or threaten to take, industrial action against an employer because the employer is, or is not, an officer, delegate or member of:

- (a) an organisation; or
- (b) an association that has applied, under the Industrial Relations Act to be registered as an organisation.

Penalty: 50 penalty units.

(2) An organisation shall not:

- (a) advise, encourage or incite an employer to take action in relation to a person that would, if taken, contravene paragraph 5(1)(b), (d), (e), (g), (m) or (n), 5(2)(a),

- 6(b), (d) or (e) or 7(b), (d), (e), (f), (h) or (j); or
- (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take action in relation to a person that would, if taken, contravene paragraph 5(1)(b), (d), (e), (g), (m), or (n), 5(2)(a), 6(b), (d) or (e), or 7(b), (d), (e), (f), (h) or (j); or 5
- (c) because a member of the organisation has refused or failed to comply with a direction given by the organisation, take, or threaten to take, industrial action against an employer with intent to coerce the employer to prejudice the member in the member's employment or possible employment; or 10
- (d) because a member of the organisation has refused or failed to comply with a direction given by the organisation, advise, encourage or incite an employer to prejudice the member in the member's employment or possible employment; or 15
- (e) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment with intent to coerce the person to join in industrial action; or 20
- (f) impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the organisation with intent to coerce the member to join in industrial action; or 25
- (g) impose, or threaten to impose, a penalty, forfeiture or disability of any kind on a member of the organisation because the member has refused or failed to join in industrial action; or 30
- (h) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person in the person's employment or possible employment with the intent to deter or prevent the person from making application to the Commission for an order under section 136 of the Industrial Relations Act; or 35
- (j) impose or threaten to impose, a penalty, forfeiture or disability of any kind upon a member of the

organisation because the member:

- (i) has made, or proposes, or at any time proposed to make, application to the Commission for an order made under section 136 of the Industrial Relations Act for the holding of a secret ballot; or
- (ii) has participated in, or proposes, or has at any time proposed, to participate in, a secret ballot ordered by the Commission under section 135 or 136 of the Industrial Relations Act.

(3) A contravention of subsection (2) is an offence punishable, on conviction, by a penalty not exceeding a fine of 50 penalty units for the first day on which the action constituting the offence takes place plus 10 penalty units for each subsequent day on which the action continues.

Independent contractors

10. (1) In this section:

“discriminatory action”, in relation to an eligible person, means:

- (a) a refusal to make use of, or to agree to make use of, services offered by the eligible person; or
- (b) a refusal to supply, or to agree to supply, goods or services to the eligible person;

“eligible person” means a person who is not an employee, but who is, or, if the person were an employee, would be, eligible to join an organisation.

(2) Sections 5, 6, 7 and 8 and subsection 9(1) extend to independent contractors and, for those purposes:

“dismiss” includes terminate a contract for services;

“employ” includes engage an independent contractors;

“employee” includes an independent contractor;

“employer” includes a person engaging an independent contractor;

“employment” includes the terms and conditions of a contract for services.

(3) An organisation shall not:

- (a) advise, encourage or incite a person (whether an

employee or not) to take discriminatory action against an eligible person because the eligible person is, or is not, a member of an organisation; or

- (b) take, or threaten to take, industrial action against an employer with the intent to coerce the employer to take discriminatory action against an eligible person because the eligible person is, or is not, a member of an organisation; or 5
- (c) take, or threaten to take, industrial action against an eligible person with intent to coerce the person to join, or to resign from, an organisation. 10

(4) If a person who engaged an independent contractor is convicted of an offence against section 5, 6 or 7 constituted by terminating the contract for services, the Court may make such orders as the Court thinks fit to compensate the independent contractor. 15

(5) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.

(6) A contravention of subsection (3) is an offence punishable, on conviction, by a penalty not exceeding a fine of 50 penalty units for the first day on which the action constituting the offence takes place plus 10 penalty units for each subsequent day on which the action continues. 20

Employees not to be dismissed etc for engaging in industrial action 25

11. (1) The object of this section is to give effect, in certain respects, to Australia's international obligation to provide for a right to strike. This obligation arises as mentioned in section 170PA of the Industrial Relations Act.

(2) An employer must not dismiss an employee, injure an employee in his or her employment, or alter the position of an employee to the employee's prejudice, merely because the employee has engaged, or is proposing to engage, in industrial action in relation to an industrial dispute that has been notified to the Commission or that the Commission has found to exist. 30 35

Penalty:

- (a) in the case of an individual – 10 penalty units; or
- (b) in the case of a body corporate – 50 penalty units.

(3) Subsection (2) does not apply if the industrial action has involved or is likely to involve:

- (a) personal injury; or
- (b) wilful or reckless destruction of, or damage to, property; or
- (c) the unlawful taking, keeping or use of property.

(4) Subsection (2) does not apply in relation to an employee included in a class of employees prescribed by the regulations.

(5) Regulations may not prescribe a class of employees for the purposes of subsection (4) unless the exclusion of employees in that class from the operation of subsection (2) is consistent with Australia's international obligation referred to in subsection (1).

(6) In a prosecution for an offence against subsection (2), it is not necessary for the prosecutor to prove the defendant's reason for the action charged or the intent with which the defendant took the action charged, but it is a defence to the prosecution if the defendant proves that the action was not motivated solely by the reason, or taken with the sole intent, stated in the charge.

(7) If an employer is convicted of an offence against subsection (2), the Court may order the employer:

- (a) if the offence was constituted by dismissing an employee – to reinstate the person dismissed to the position that the person occupied immediately before the dismissal or to a position no less favourable than that position; and
- (b) in any case – to pay, to the person dismissed, injured or prejudiced, compensation for loss suffered as a result of the dismissal, injury or prejudice.

(8) The rights of and relating to reinstatement that are conferred on a person by this section do not limit any other rights of the person.

Proof of reason for action

12. (1) In a prosecution for an offence against subsection 5(1), section 6, 7 or 8, subsection 9(1) or (2) or subsection 10(3), it is not necessary for the prosecutor to prove the defendant's reason for the action charged nor the purpose for which, or the intent with which, the defendant took the action charged.

(2) Where, in a prosecution for an offence to which

subsection (1) applies, there is specified in the charge a reason, purpose or intent for or with which the action charged was alleged to have been taken, it is a defence to the prosecution if the defendant proves that the action charged was not motivated (whether in whole or part) for the reason, nor taken for the purpose, or with the intent (whether alone or with some other purpose or intent), specified in the charge. 5

Action done on behalf of organisation

13. (1) For the purposes of sections 5, 6, 7, 8, 9 and 10, action done by: 10
- (a) the committee of management of an organisation or branch of an organisation; or
 - (b) an officer, employee or agent of an organisation or branch of an organisation acting in that capacity; or
 - (c) a member or group of members, of an organisation or branch of an organisation acting under the rules of the organisation or branch; or 15
 - (d) a member of an organisation or branch of an organisation who performs the function of dealing with an employer on behalf of the member and other members of the organisation or branch and is acting in that capacity, shall be taken to have been done by the organisation. 20
- (2) For the purposes of subsection 9(2), a direction given by:
- (a) the committee of management of an organisation or branch of an organisation; or 25
 - (b) an officer, employee or agent of an organisation or branch of an organisation acting in that capacity; or
 - (c) a member, or group of members, of an organisation or branch of an organisation authorised to give the direction by: 30
 - (i) the rules of the organisation; or
 - (ii) the committee of management of the organisation or branch; or
 - (iii) an officer, employee or agent of the organisation or branch acting in that capacity; or 35
 - (d) a member of an organisation or branch of an

organisation who performs the function of dealing with an employer on behalf of the member and other members of the organisation or branch and is acting in that capacity;

5 shall be taken to have been given by the organisation.

Court may order reinstatement

14. Where an employer is convicted of an offence against subsection 5(1) or section 6 or 7 constituted by dismissing an employee, the Court may order the employer:

- 10 (a) to reinstate the person in the position occupied by the person immediately before the dismissal or a position no less favourable than the position previously occupied; and
- 15 (b) to pay to the person the whole or part of the wages lost by the person because of the dismissal; and
- (c) to pay compensation to the person for any loss resulting from the commission of an offence.

Organisation liable to reimburse employer

15. Where:

- 20 (a) an employer is convicted of an offence against section 5, 6 or 7 by reason of action taken by the employer against or in respect of a particular person; and
- (b) an organisation is convicted of an offence against section 9 or 10 by reason of action taken by it in respect of the same person, the employer is, subject to subsection (2), entitled to recover, in a court of competent jurisdiction, an amount equal to the sum of:
- 25 (i) the whole, or such part, of the costs incurred by the employer in connection with the prosecution for the offence referred to in paragraph (a) as the court deems reasonable; and
- 30 (ii) the amount (if any) of the wages that the employer has been ordered to pay to the person under section 14;
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as a debt due by the organisation to the employer.

(2) A court shall not make an order under subsection (1) for

the payment of a sum to an employer by an organisation unless the court is satisfied:

- (a) that the action taken by the employer in contravention of section 5, 6 or 7 was taken solely because of the action taken by the organisation in contravention of section 9 or 10; or 5
- (b) that:
 - (i) the action so taken by the employer was taken, among other reasons, because of the action so taken by the organisation; and 10
 - (ii) the action so taken by the organisation constituted a substantial reason for the action taken by the employer.

Certain proceedings may be heard together

16. Where:

- (a) a prosecution is pending before a court for an offence against section 5, 6 or 7 in respect of a particular person; and 15
- (b) a prosecution is also pending before the same court for an offence against section 9 or 10 by an organisation in respect of the same person; 20

the court may, upon application made by the employer, order that the prosecutions be heard concurrently.

Certain provisions of awards void

17. (1) Where an award, whether made before or after the commencement of this Act, or a certified agreement, whether certified before or after the commencement of this Act, purports to authorise or require an employer to take any action that, if taken, would constitute a contravention of section 5, 6 or 7, the award or agreement is, to the extent that it purports to authorise or require the taking of that action, void. 25 30

(2) Subsection (1) shall not be taken to prevent the Commission from making an award or order, or certifying an agreement, directing or authorising the giving of preference, in relation to such matters, in such manner and subject to such conditions as are specified in the award, order or agreement, to the members of a particular organisation over members of another 35

5 organisation or all other organisations if, but only if, the award,
order or agreement does not purport to direct or authorise the
giving of preference, either directly or indirectly, to persons who are
members of an organisation over persons who are not members of
that organisation or any other organisation or to persons who are
not members of any organisation over persons who are members of
an organisation.

PART 3 – EXTENDED OPERATION OF PART 2 TO CORPORATIONS

10 **Interpretation**

18. (1) In this part:

“corporation” means:

- 15 (a) a body corporate that is a foreign corporation within
the meaning of paragraph 51(xx) of the Constitution;
or
- (b) a body corporate that is a trading corporation or a
financial corporation, within the meaning of paragraph
51(xx) of the Constitution, being a body corporate
formed within the limits of the Commonwealth; or
- 20 (c) a body corporate, not being a body corporate of a kind
referred to in paragraph (b), that is incorporated in a
Territory; or
- (d) a body corporate that is a holding company of a body
corporate of a kind referred to in paragraph (a), (b) or
25 (c);

“corresponding law”, in relation to a State or Territory,
means a law, however designated, of the State or Territory
that regulates the relationships between employers and
employees or makes provision for the prevention or
30 settlement of disputes between employers and employees.

(2) For the purposes of this Part, the question whether a body
corporate is the holding company of another body corporate shall
be determined in the same manner as that question is required to
be determined by section 7 of the *Companies Act 1981*.

35 **Adaptation of Part 2**

19. (1) Without prejudice to its effect apart from this section,

Part 2 also has effect as provided by subsection (2) of this section.

(2) Part 2 has, by force of this subsection, the effect it would have if:

- (a) any references in that Part to an employer were, by express provision, confined to an employer who is a corporation; and 5
- (b) any references in that Part to an organisation extended, by express provision, to an organisation registered under a corresponding law; and
- (c) any references in that Part to the Industrial Relations Act included, by express provision, references to every corresponding law; and 10
- (d) any references in that Part to a section of the Industrial Relations Act included, by express provision, references to the section of each corresponding law that corresponds with that section; and 15
- (e) any references in that Part to the Commission included, by express provision, references to the Court or Commission (however designated) exercising under each corresponding law powers and functions corresponding with those conferred on the Commission by the Industrial Relations Act; and 20
- (f) any references in that Part to industrial action included, by express provision, references to action (however designated) that is, for the purposes of each corresponding law, action that corresponds with industrial action; and 25
- (g) the reference in paragraph 10(3)(a) to a person (first occurring) were, by express provision, read as a reference to a corporation; and 30
- (h) the reference in subsection 15(1) to a contravention of certain sections of this Act were, by express provision, read as a reference to a contravention of those sections as they have effect by virtue of this subsection; and
- (j) references in Part 2 to an agreement included, by express provision, references to an agreement to which a corresponding law relates that corresponds with an agreement that may be certified under section 115 of the Industrial Relations Act; and 35

- (k) references in section 15 to the certification of an agreement shall be read as if they included, by express provision, references to certification (however described) under a corresponding law.

5 **Certain provisions of agreements of no effect**

20. (1) In this section, a reference to a contract shall be read as including a reference to an agreement, arrangement or understanding, whether having, or intended to have, legal effect, or not.

10 (2) Subsection (3) relates to a contract entered into by a corporation after the commencement of this Act, being:

15 (a) a contract for the sale or purchase of real or personal property, or for the provision of goods or services, by, or under arrangements to be made by, the corporation; or

(b) that is expressed to, or is by necessary implication intended to be collateral to, or otherwise relate to or be associated with, a contract of a kind described in paragraph (a).

20 (3) A provision of a contract to which this subsection relates that, either directly or indirectly, purports to authorise or require the corporation:

25 (a) to take any action that, if taken, would constitute a contravention of section 5, 6 or 7 as it has effect by virtue of subsection 19(2); or

(b) to ensure that another person providing goods or services under arrangements made by the corporation takes any action that, if taken, would constitute such a contravention;

30 is, to the extent to which it purports so to authorise or require the corporation, void.

(4) This section extends to a contract entered into by a corporation with the Crown in right of the Commonwealth, a State or a Territory.

PART 4 – EXTENDED OPERATION OF PART 2 TO TRADE AND COMMERCE

Interpretation

21. In this Part, “inter-state or international trade and commerce” means:

trade and commerce:

- (a) between Australia and a place outside Australia; or
- (b) between the States; or
- (c) within a Territory, between a State and a Territory or between two Territories.

Adaptation of Part 2 to inter-state and international trade and commerce

22. (1) Without prejudice to its effect apart from this section, Part 2 has effect as provided by subsection (2).

(2) Part 2 has, by force of this subsection, the effect it would have if:

- (a) any references in that Part to an employer were, by express provision, confined to an employer who is engaged in inter-state or international trade and commerce, whether or not the employer is also engaged in other trade and commerce; and
- (b) any references in that Part to an employee were, by express provision, confined to an employee who is engaged, or engaged for a substantial part of his or her working time, in or in connection with the business of his or her employer that constitutes inter-state or international trade and commerce; and
- (c) any references in that Part to action taken by an employer in respect of a person, were, by express provision, confined to action taken in respect of a person who is, or would as a result of the taking of the action be, engaged, or engaged for a substantial part of his or her working time, in or in connection with the business of the employer that constitutes interstate or international trade and commerce; and
- (d) that Part were further modified as set out in paragraphs 19(2) (b) to (k) inclusive.

Certain provisions of agreements of no effect

23. (1) In this section, a reference to a contract shall be read as including a reference to an agreement, arrangement or understanding, whether having, or intended to have, legal effect, or not.

(2) Subsection (3) relates to a contract entered by a person after the commencement of this Act, being:

- (a) a contract that is for the sale or purchase of real or personal property, for use in, or for purposes, of interstate or international trade or commerce, by or under arrangements to be made by the person; or
- (b) a contract that is for the provision, in or for purposes of inter-state or international trade or commerce, of goods or services by, or under arrangements to be made by, the person; or
- (c) a contract that is expressed to, or is by necessary implication intended to be collateral to, or otherwise to relate to or be associated with, a contract of a kind described in paragraph (a) or (b).

(3) A provision of a contract to which this subsection relates that, either directly or indirectly, purports to authorise or require a party to the contract:

- (a) to take any action that, if taken, would constitute a contravention of section 5, 6 or 7 as it has effect by virtue of subsection 22(2); or
- (b) to ensure that another person providing goods or services under arrangements made by the person takes any action that, if taken, would constitute such a contravention;

is to the extent to which it purports so to authorise or require the person, void.

(4) This section extends to a contract to which subsection (3) relates entered into by a person with the Crown in right of the Commonwealth, a State or a Territory.

PART 5 - EXTENDED OPERATION OF PART 2 IN TERRITORIES

Adaptation of Part 2 to Territories

24. Without prejudice to its effect apart from this section, Part 2 has, by force of this section, the effect it would have if it were, by express provision, confined in its operation to engaging in conduct in a Territory.

Certain provisions of agreements of no effect

25. (1) In this section, a reference to a contract shall be read as including a reference to an agreement, arrangement or understanding, whether having, or intended to have, legal effect, or not.

(2) Subsection (3) applies to a contract entered into by a person in a Territory, or by a person whose principal place of business is in a Territory whether entered into within or outside that Territory, after the commencement of this Act, being:

- (a) a contract that is for the sale or purchase of real or personal property, or for the provision of goods or services, by or under arrangements to be made by, the person; or
- (b) a contract that is expressed to or is by necessary implication intended to, be collateral to, or otherwise to relate to, or be associated with, a contract of a kind described in paragraph (a).

(3) A provision of a contract to which this subsection relates that, either directly or indirectly, purports to authorise or require a party to the contract:

- (a) to take any action that, if taken, would constitute a contravention of section 5, 6 or 7 as it has effect by virtue of section 24; or
- (b) to ensure that another person takes any action that, if taken, would constitute such a contravention;

is, to the extent to which it purports so to authorise or require the person, void.

(4) This section extends to a contract to which subsection (3) relates entered into by a person with the Crown in right of the Commonwealth, a State or a Territory.

Extension of Part

26. This part extends to every Territory.

**PART 6 - CONSEQUENTIAL AMENDMENTS OF
INDUSTRIAL RELATIONS ACT**

5 Repeal of certain provisions

27. Sections 122, 267, 334, 334A, 335 and 336 of the Industrial Relations Act are repealed.

NOTE

1. No. 86, 1988, as amended. For previous amendments, see No. 109, 1988; No. 153, 1989 (as amended by No. 28, 1991); Nos. 37, 71 and 108, 1990; Nos. 19, 62 and 122, 1991; Nos. 52, 92, 94, 109, 132, 179, 196, 212 and 215, 1992; and No. 000, 1993.



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