



Workplace Relations Amendment (Improved Protection for Victorian Workers) Act 2003

No. 137, 2003

**An Act to amend the *Workplace Relations Act 1996*,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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**An Act to amend the *Workplace Relations Act 1996*,
and for related purposes**

[Assented to 17 December 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Workplace Relations Amendment
(Improved Protection for Victorian Workers) Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	17 December 2003
2. Schedule 1	A day or days to be fixed by Proclamation, subject to subsection (3)	1 January 2004 (s 2(1); <i>Gazette</i> 2003, No. S502)
3. Schedule 2	A day or days to be fixed by Proclamation, subject to subsection (3)	1 January 2004 (s 2(1); <i>Gazette</i> 2003, No. S502)
4. Schedule 3	A single day to be fixed by Proclamation.	1 January 2004 (s 2(1); <i>Gazette</i> 2003, No. S502)
5. Schedule 4	The later of: (a) at the same time as the provisions covered by table item 4; and (b) immediately after the commencement of item 3 of Schedule 2 to this Act.	1 January 2004
Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.		

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

- (2A) A Proclamation under item 4 of the table must not specify a day that occurs before the day on which section 52 of the **Federal Awards (Uniform System) Act 2003** of Victoria commences.

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- (3) If a provision covered by item 2 or 3 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Matters concerning Victoria

Part 1—Amendment of the Workplace Relations Act 1996

1 After subsection 45(3)

Insert:

- (3A) The Full Bench must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in the following cases:
- (a) an appeal against a decision of a member of the Commission made under section 170MW in relation to a bargaining period for negotiating a proposed agreement if one or more of the employees to be covered by the proposed agreement is an employee in Victoria;
 - (b) an appeal against a decision of a member of the Commission made under section 501.

2 Subsection 86(1)

Repeal the subsection, substitute:

Purpose for which powers of inspectors can be exercised

- (1) The powers of an inspector under this section may be exercised for the purpose of ascertaining whether awards and certified agreements, and the requirements of this Act, are being, or have been, observed.

Powers of inspectors

- (1A) The powers of an inspector are:
- (a) to, without force, enter:
 - (i) premises on which the inspector has reasonable cause to believe that work to which an award or certified agreement applies is being or has been performed; or
 - (ii) a place of business in which the inspector has reasonable cause to believe that there are documents relevant to the purpose set out in subsection (1); and
 - (b) on premises or in a place referred to in paragraph (a):

- (i) to inspect any work, material, machinery, appliance, article or facility; and
 - (ii) as prescribed, to take samples of any goods or substances; and
 - (iii) to interview any employee; and
 - (iv) to require a person having the custody of, or access to, a document relevant to that purpose to produce the document to the inspector within a specified period; and
 - (v) to inspect, and make copies of or take extracts from, a document produced to him or her; and
- (c) to require a person, by notice, to produce to the inspector a document relevant to the purpose set out in subsection (1).

When may the powers be exercised?

- (1B) An inspector may exercise the powers in subsection (1A) at any time during ordinary working hours or at any other time at which it is necessary to do so for the purpose set out in subsection (1).

3 Subsection 86(2)

Omit “subparagraph (1)(b)(iv)”, substitute “subparagraph (1A)(b)(iv)”.

4 Subsection 86(3)

Omit “subsection (2)”, substitute “paragraph (1A)(c) or subsection (2)”.

5 After subsection 86(4)

Insert:

Notices under paragraph (1A)(c)

- (4A) The notice referred to in paragraph (1A)(c) must:

- (a) be in writing; and
- (b) be served on the person; and
- (c) require the person to produce the document at a specified place within a specified period of not less than 14 days.

Service may be effected by sending the notice to the person’s fax number.

Person must produce document even if it may incriminate them

- (4B) A person is not excused from producing a document under paragraph (1A)(c) on the ground that the production of the document may tend to incriminate the person.

Limited use immunity for documents produced

- (4C) If an individual produces a document under paragraph (1A)(c), the document produced and any information or thing (including any document) obtained as a direct or indirect consequence of the production of the document is not admissible in evidence against the individual in any criminal proceedings unless it is proceedings for an offence against section 305.

6 At the end of section 86

Add:

*Extended meaning of **award***

- (6) In this section, a reference to an **award** includes a reference to a contract of employment with an employee in Victoria (other than an employment agreement). The terms of the award, in this case, are taken to be the minimum terms and conditions of employees in Victoria applicable under subsection 500(1).

Definitions used in this section

- (7) In this section:

employee in Victoria has the same meaning as the term **employee** has in section 489.

employment agreement has the same meaning it has in section 489.

7 After subsection 170MW(1)

Insert:

- (1A) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under subsection (1) if one or more of the

employees to be covered by the proposed agreement is an employee in Victoria.

8 Section 305

Omit “86(1)(b)(iv)”, substitute “86(1A)(b)(iv), paragraph 86(1A)(c)”.

9 At the end of subsection 501(1)

Add:

Note: See also section 501A.

10 After subsection 501(2)

Insert:

- (2A) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under subsection (1).

11 After section 501

Insert:

501A Supported Wage System—minimum wage

- (1) For the purposes of Schedule 1A, the Commission may, by order, determine that the Supported Wage System applies to the employment of employees within a work classification.

Note: The Supported Wage System was endorsed by the Commission in the Full Bench decision dated 10 October 1994 (print L5723).

- (2) If the Commission makes an order under subsection (1), the minimum wage for the purposes of Schedule 1A for employees whose wages are set under the Supported Wage System is the supported wage rate worked out in accordance with the Supported Wage System and not the relevant minimum wage otherwise applicable to those employees under paragraph 1(1)(c) of that Schedule.
- (3) If the Supported Wage System requires a supported wage rate to be worked out by reference to another wage rate, then, for the purposes of subsection (2), the supported wage rate is to be worked out by reference to the minimum wage that would otherwise apply to those employees under paragraph 1(1)(c) of Schedule 1A.

- (4) The Commission may only make an order under subsection (1) on application by:
- (a) an employee, or group of employees, within the work classification; or
 - (b) an employer of such an employee or group of employees; or
 - (c) the Minister; or
 - (d) an organisation that is entitled to represent the industrial interests of one or more of the employees within the work classification; or
 - (e) an organisation of which an employer of employees within the work classification is a member.

12 Subsection 502(1)

After “subsection 501(2)”, insert “or 501A(2)”.

13 After subsection 502(5)

Insert:

- (5A) The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings under subsection (5).

14 Section 503

After “section 501”, insert “or 501A”.

15 Subsection 506(2)

Repeal the subsection, substitute:

- (2) Subject to sections 507 and 508, if a contract of employment, other than an employment agreement, with an employee in Victoria does not at any time comply with a minimum term or condition of employment applicable under subsection 500(1), sections 178 and 179 apply as if that minimum term or condition were a term of an award binding the parties to the contract.
- (3) Subsection (2) does not imply that an employee who is a party to an agreement referred to in that subsection may not take proceedings in an eligible court to recover money owed under the contract of employment as if the contract of employment did comply with that minimum term or condition of employment.

Note: The heading to section 506 is omitted and the following heading substituted “**Penalties and recovery of wages—application of sections 178 and 179 to Victorian employees**”.

16 At the end of Subdivision B of Division 3 of Part XV

Add:

509A Stand down provisions in a contract of employment (other than an employment agreement)

- (1) If a contract of employment with an employee in Victoria (other than an employment agreement) does not contain provision for the standing-down of employees who cannot be usefully employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible, the contract is taken to include the provision mentioned in subsection (2).
- (2) The provision is that:
 - (a) the employer may deduct payment for any part of a day during which an employee cannot usefully be employed because of any strike, breakdown of machinery or any stoppage of work for any cause for which the employer cannot reasonably be held responsible; and
 - (b) this does not break the continuity of employment of the employee for the purpose of any entitlements.

17 Heading to Subdivision D of Division 3 of Part XV

Repeal the heading, substitute:

Subdivision D—Records relating to certain employees

18 Section 514

Repeal the section, substitute:

514 Making and retaining employment records

- (1) This section applies to persons who are employees in Victoria and who are not employed under an award, a certified agreement or an AWA.
- (2) The regulations may make provision in relation to:

- (a) the making and retention by employers of records relating to the employment of persons who are employees to whom this section applies; and
 - (b) the inspection of such records.
- (3) The regulations may require employers of persons who are employees to whom this section applies to issue pay slips to those persons at such times, and containing such particulars, as are prescribed.

Note: The requirements concerning the making and keeping of records and the issuing of pay slips in relation to persons who are employees in Victoria but who are covered by awards, certified agreements or AWAs are to be found in section 353A.

19 Section 532

Repeal the section.

20 At the end of section 533

Add:

- (4) A person is not entitled to apply for an order under this section in respect of a breach of a minimum term or condition of employment applicable under subsection 500(1) if the person has already sought a penalty under section 178 (as that section applies under section 506) in respect of that breach.

21 Paragraphs 1(1)(a) and (b) of Schedule 1A

Repeal the paragraphs, substitute:

- (a) except in the case of an employee engaged in casual work—paid annual leave for each year worked (see clause 1A for the calculation of the number of hours of annual leave and further details about taking this leave);
- (b) except in the case of an employee engaged in casual work—paid personal leave (see clauses 1B to 1D for the calculation of personal leave and further details about taking this leave);
- (ba) except in the case of an employee engaged in casual work—paid bereavement leave (see clause 1E for the details about taking this leave);

22 Paragraph 1(1)(c) of Schedule 1A

Before “the greater of”, insert “unless paragraph (ca) applies—”.

23 After paragraph 1(1)(c) of Schedule 1A

Insert:

- (ca) if the employee's wages are set under the Supported Wage System—the supported wage rate for the employee worked out in accordance with the Supported Wage System;

24 At the end of subclause 1(1) of Schedule 1A

Add:

- ; (f) if an employee works in excess of 38 hours in a working week—to be paid for the excess hours at the hourly rate set out in subclause (3).

25 At the end of clause 1 of Schedule 1A

Add:

Rate of pay for hours in excess of 38

- (3) Unless an employee and employer agree to a higher hourly rate of pay, the rate of pay for hours that an employee works in excess of 38 hours in a working week is the hourly rate for the work classification of the employee applicable under section 501 or 501A.

26 At the end of Part 1 of Schedule 1A

Add:

1A Annual leave

Calculation of annual leave

- (1) An employee is entitled to annual leave, for each year worked, of the number of hours calculated by multiplying by 4 the usual number of ordinary hours worked by the employee per week during the year.
- (1A) However, if the variations from week to week in the number of ordinary hours worked by the employee during the year are such that there is no such usual number of hours, the employee is entitled to annual leave, for that year, of the number of hours calculated by:

- (a) working out the average number of ordinary hours per week the employee worked during the year; and
 - (b) multiplying that number of hours by 4.
- (1B) For the purposes of subclauses (1) and (1A):
- (a) hours when the employee is absent from work on paid leave, including (but not limited to) paid annual leave, paid personal leave or paid bereavement leave; and
 - (b) hours when the employee is absent from work because of a public holiday (being ordinary hours the employee would otherwise have been required to work on that day);
- are to be counted as if they were ordinary hours worked by the employee.

Rules about annual leave

- (2) Annual leave:
- (a) accrues on a pro-rata basis and is cumulative; and
 - (b) is credited on the anniversary of the employee's employment; and
 - (c) counts as service for all purposes; and
 - (d) is to be paid at the rate that, immediately before the leave is taken, is the employee's ordinary hourly rate of pay; and
 - (e) is to be paid when the employee takes annual leave or leaves his or her employment, as the case may be; and
 - (f) must be taken within 12 months after the end of the year in which it accrued unless the employee and the employer have agreed otherwise; and
 - (g) must be taken by an employee when directed to take it by the employer, if the employer directs the employee to do so because the employer shuts down his or her business for a period.

Note: One situation in which an employee's annual leave entitlement will be affected by pro-rating as mentioned in paragraph (a) is when the employee is employed for less than a full year.

1B Personal leave

When personal leave may be used

- (1) Subject to clauses 1C and 1D, an employee is entitled to paid personal leave when he or she is absent from work in the following circumstances:
 - (a) due to personal illness or injury (*sick leave*);
 - (b) for the purposes of caring for a member of the employee's immediate family or member of the employee's household who is sick and requires the employee's care and support (*carer's leave*).

Note: For *immediate family* see clause 1F.

When personal leave is to be paid

- (2) Personal leave is to be paid when an employee takes personal leave.

Accrual of personal leave credit

- (3) An employee accrues personal leave as follows:
 - (a) if the employee has worked for the employer for less than 12 months—one day for each completed 6 weeks;
 - (b) if the employee has worked for the employer for 12 months or more—8 days for each year.

Employees who work part-time accrue personal leave on a pro-rata basis.

Accumulation of personal leave

- (4) At the end of each year of employment, an employee's unused personal leave accrues by the lesser of:
 - (a) 8 days; or
 - (b) the balance of the employee's unused personal leave.

1C Sick leave

Employee's responsibilities

- (1) An employee's entitlement to sick leave is conditional on the employee promptly notifying the employer of:

- (a) any illness or injury that will cause him or her to be absent from work; and
- (b) the approximate period of that absence.

Employer may require medical certificate etc.

- (2) If required by the employer, an employee who takes sick leave must establish by producing a medical certificate or making a statutory declaration that he or she was unable to work because of injury or personal illness.

Post sick leave payment

- (3) After the first 5 months of service, an employee must be paid for any sick leave taken during that period to which he or she was not entitled, due to insufficient service, up to a maximum of 4 days.

Sick leave and workers' compensation

- (4) An employee is not entitled to take sick leave during any period for which he or she is receiving compensation payable under a law relating to workers' compensation.

1D Carer's leave

Up to 5 days' personal leave may be taken as carer's leave

- (1) An employee is entitled to use up to 5 days' personal leave each year to care for a member of his or her immediate family or a member of his or her household who is ill and requires the employee's care and support. However, an employee is not entitled to take carer's leave for a particular period if another person has taken leave to care for the person for the same period.

Employee's responsibility

- (2) An employee's entitlement to carer's leave is conditional on the employee promptly notifying the employer of his or her inability to attend for duty.

Employer may require medical certificate etc.

- (3) If required by the employer, an employee who takes carer's leave must establish by producing a medical certificate, or making a statutory declaration:
- (a) the nature of the illness of the person cared for; and
 - (b) the need of that person for care and support by another person.

1E Bereavement leave

- (1) An employee is entitled to take up to 2 days' paid bereavement leave on the death of a member of the employee's immediate family or household. The 2 days need not be consecutive.

Note: For *immediate family* see clause 1F.

- (2) The employee must give the employer such evidence of the death as the employer reasonably requires.

1F Definitions

In this Part:

de facto spouse, in relation to an employee, means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis.

immediate family, in relation to an employee, includes:

- (a) a spouse of the employee (including a former spouse, a de facto spouse and a former de facto spouse); and
- (b) a child (including an adopted child, a step-child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

Part 2—Application and saving provisions

27 Definition

In this Part:

Principal Act means the *Workplace Relations Act 1996*.

28 Application of item 1

The amendment of the Principal Act made by item 1 applies to:

- (a) appeals to the Full Bench instituted under section 45 of the Principal Act but not determined before the commencement of that item; and
- (b) appeals to the Full Bench under that section instituted on or after that commencement.

29 Application of item 7

The amendment of the Principal Act made by item 7 applies to:

- (a) applications made under section 170MW of the Principal Act but not determined as at the commencement of that item; and
- (b) applications made under that section on or after that commencement.

30 Application of item 10

The amendment of the Principal Act made by item 10 applies to:

- (a) applications made under section 501 of the Principal Act but not determined as at the commencement of that item; and
- (b) applications made under that section on or after that commencement.

31 Application of item 13

The amendment of the Principal Act made by item 13 applies to:

- (a) proceedings before the Full Bench under section 502 of the Principal Act but not determined as at the commencement of that item; and
- (b) proceedings referred to the Full Bench under that section on or after that commencement.

32 Application of item 15

The amendment of the Principal Act made by item 15 applies only in relation to a breach of a minimum term or condition of employment applicable to an employee under subsection 500(1) of that Act if that breach occurs on or after the commencement of that item.

33 Saving provision in relation to certain regulations made for the purposes of sections 353A and 514 of the Principal Act

- (1) Any regulations made for the purposes of section 353A of the Principal Act and dealing with record keeping in relation to employees covered by an employment agreement (within the meaning of Part XV) that are in force immediately before the commencement of items 17, 18 and 19 continue in force, on and after that day, as if they were regulations made to deal with that matter for the purposes of subsection 514(2) of that Act as amended by those items.
- (2) Any regulations made for the purposes of section 514 of the Principal Act that are in force immediately before the commencement of item 18 continue in force, on and after that day, as if they were regulations made for the purposes of subsection 514(3) of that Act as amended by that item.

34 Application of items 21 and 26—annual leave

- (1) The amendments of the Principal Act made by items 21 and 26 (except the insertion of clause 1E of Schedule 1A) apply to the calculation of an employee's annual leave in respect of:
 - (a) the first year of the employee's employment that commences on or after the commencing day; and
 - (b) each subsequent year of the employee's employment.
- (2) For the purpose of the application of subitem (1) to an employee engaged before the commencing day and continuing in that employment on that day, the reference in paragraph (1)(a) to the first year of the employee's employment that commences after the commencing day is a reference to the year commencing on the first anniversary of that engagement occurring on or after that day.
- (3) The rule in subitem (1) applies even if an employee only works part of a year.

- (4) To avoid doubt, the amendments made by items 21 and 26 do not affect any annual leave accumulated by an employee under Schedule 1A of the Principal Act before the commencing day.
- (5) In this item:
commencing day means the day that items 21 and 26 of this Schedule commence.

35 Application of items 21 and 26—personal leave

- (1) The amendments of the Principal Act made by items 21 and 26 (except the insertion of clause 1E of Schedule 1A) apply to:
 - (a) the calculation of an employee's personal leave in respect of:
 - (i) the first year of the employee's employment that commences on or after the commencing day; and
 - (ii) each subsequent year of the employee's employment; and
 - (b) personal leave taken on or after the commencing day.
- (2) For the purpose of the application of paragraph (1)(a) to an employee engaged before the commencing day and continuing in that employment on that day, the reference in subparagraph (1)(a)(i) to the first year of the employee's employment that commences after the commencing day is a reference to the year commencing on the first anniversary of that engagement occurring on or after that day.
- (3) The rule in paragraph (1)(a) applies even if an employee only works part of a year.
- (4) Any sick leave accumulated by an employee under paragraph 1(1)(b) of Schedule 1A as in force immediately before the commencing day is taken to be personal leave accumulated by the employee as at the commencing day.
- (5) In this item:
commencing day means the day that items 21 and 26 of this Schedule commence.

36 Bereavement leave

Clause 1E of Schedule 1A to the Principal Act applies in relation to deaths that occur on or after the commencement of item 26.

Schedule 2—Contract outworkers in Victoria in the textile, clothing and footwear industry

Part 1—Amendment of the Workplace Relations Act 1996

1 Subsection 86(1)

After “this Act”, insert “other than section 541”.

2 Section 305

After “subsection 86(2)”, insert “or subparagraph 542(2)(b)(iv), paragraph 542(2)(c) or subsection 542(4)”.

3 After Part XV

Insert:

Part XVI—Contract outworkers in Victoria in the textile, clothing and footwear industry

Division 1—Preliminary

537 Object of Part

The object of this Part is to ensure that an individual who is an outworker other than an employee performing work in Victoria in the textile, clothing or footwear industry is paid not less than the amount he or she would have been entitled to be paid for performing the same work as an employee.

538 Definitions

In this Part:

contract outworker means an individual who:

- (a) is a party to a contract for services; and

- (b) performs work under it for another party or parties to the contract.

court of competent jurisdiction means:

- (a) a District, County or Local Court; or
- (b) a magistrates court.

employee has the same meaning as in Part XV.

Division 2—New Commonwealth provisions

Subdivision A—General

539 Constitutional corporations

Without affecting its operation apart from this section, this Part applies where a person who is a party to a contract for services is a constitutional corporation.

540 Interstate trade or commerce etc.

Without affecting its operation apart from this section, this Part applies where work is contracted to be performed under a contract for services in the course of, or in relation to, trade or commerce:

- (a) between Australia and a place outside Australia; or
- (b) between the States; or
- (c) within a Territory; or
- (d) between a State and a Territory; or
- (e) between 2 Territories.

Subdivision B—Minimum rate of pay

541 Minimum rate of pay

- (1) To the extent that work performed under and in accordance with a contract for services to which a contract outworker is a party is work that:
 - (a) is performed by:
 - (i) the contract outworker; or
 - (ii) one or more other individuals who are not parties to the contract; and
-

- (b) satisfies the criteria in subsection (2);
a person who is obliged under the contract to pay for the work performed must pay the contract outworker and each other individual not less than the statutory amount calculated under subsection (3) for his or her work.
- (2) The criteria are:
- (a) the work is performed in Victoria; and
 - (b) the work comprises packing, processing or otherwise working on articles or materials for the textile, clothing or footwear industry; and
 - (c) the work is performed in or about:
 - (i) private residential premises; or
 - (ii) premises that are not business or commercial premises of anyone who is obliged under the contract to pay for the work performed.
- (3) The **statutory amount** owed to the contract outworker and each other individual is the amount that he or she would have been entitled to be paid because of clause 1 of Schedule 1A for the work mentioned in subsection (1) if he or she had performed the work as an employee in or about any premises in Victoria.
- (4) For the purposes of subsection (3), disregard provisions in clause 1 of Schedule 1A that deal with paid leave.
- (6) A person may discharge an obligation under subsection (1) to pay an amount to an individual other than a contract outworker by paying the amount to the contract outworker on behalf of the individual.
- (7) To avoid doubt, the obligation imposed by subsection (1) on a person to pay not less than the statutory amount for work performed under a contract for services does not apply to that person to the extent that the obligation relates to work performed under another contract for services.
- Example: A person (the **head contractor**) enters into a contract for services with a contract outworker under which the contract outworker is to make shirts. If the contract outworker subcontracts some of that work to other contract outworkers and agrees to pay them for that work, it is the subcontractor who is subject to the obligation in subsection (1) and not the head contractor.
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Subdivision C—Inspectors

542 Powers of inspectors

Purpose for which powers of inspectors can be exercised

- (1) The powers of an inspector under this section may be exercised for the purpose of ascertaining whether section 541 is being, or has been, observed.

Powers of inspectors

- (2) The powers of an inspector are:
- (a) to, without force, enter:
 - (i) premises on which the inspector has reasonable cause to believe that work to which section 541 applies is being or has been performed; or
 - (ii) a place of business in which the inspector has reasonable cause to believe that there are documents relevant to the purpose set out in subsection (1); and
 - (b) on premises or in a place referred to in paragraph (a):
 - (i) to inspect any work, material, machinery, appliance, article or facility; and
 - (ii) as prescribed, to take samples of any goods or substances; and
 - (iii) to interview any person; and
 - (iv) to require a person having the custody of, or access to, a document relevant to that purpose to produce the document to the inspector within a specified period; and
 - (v) to inspect, and make copies of or take extracts from, a document produced to him or her; and
 - (c) to require a person, by notice, to produce to the inspector a document relevant to the purpose set out in subsection (1).

When may the powers be exercised?

- (3) An inspector may exercise the powers in subsection (2) at any time during ordinary working hours or at any other time at which it is necessary to do so for the purpose set out in subsection (1).

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- (4) If a person who is required under subparagraph (2)(b)(iv) to produce a document contravenes the requirement, an inspector may, by written notice served on the person, require the person to produce the document at a specified place within a specified period (not being less than 14 days).
 - (5) Where a document is produced to an inspector under paragraph (2)(c) or subsection (4), the inspector may:
 - (a) inspect, and make copies of or take extracts from, the document; and
 - (b) retain the document for such period as is necessary for the purpose of exercising powers or performing functions as an inspector.
 - (6) During the period for which an inspector retains a document, the inspector must permit the person otherwise entitled to possession of the document, or a person authorised by the person, to inspect, and make copies of or take extracts from, the document at all reasonable times.

Notices under paragraph (2)(c)

- (7) The notice referred to in paragraph (2)(c) must:
 - (a) be in writing; and
 - (b) be served on the person; and
 - (c) require the person to produce the document at a specified place within a specified period of not less than 14 days.

Service may be effected by sending the notice to the person's fax number.

Person must produce document even if it may incriminate them

- (8) A person is not excused from producing a document under paragraph (2)(c) on the ground that the production of the document may tend to incriminate the person.

Limited use immunity for documents produced

- (9) If an individual produces a document under paragraph (2)(c), the document produced and any information or thing (including any document) obtained as a direct or indirect consequence of the production of the document is not admissible in evidence against
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the individual in any criminal proceedings unless it is proceedings for an offence against section 305.

- (10) If an inspector proposing to enter, or being on, premises is required by the occupier to produce evidence of authority, the inspector is not entitled to enter or remain on the premises without producing to the occupier the inspector's identity card.

Subdivision D—Enforcement of minimum rate of pay

543 Imposition and recovery of penalties

- (1) If a person breaches subsection 541(1), a penalty may be imposed by the Court or a court of competent jurisdiction.
- (2) Subject to subsection (3), if:
- (a) 2 or more breaches of subsection 541(1) are committed by the same person; and
 - (b) the breaches arose out of a course of conduct by the person; the breaches are taken for the purposes of this section to constitute a single breach of that subsection.
- (3) Subsection (2) does not apply in relation to a breach of subsection 541(1) that is committed by the person after a court has imposed a penalty on the person for an earlier breach of that subsection.
- (4) The maximum penalty that may be imposed under subsection (1) for a breach of subsection 541(1) is:
- (a) \$10,000 for a body corporate; or
 - (b) \$2,000 in other cases.
- (5) A penalty for a breach of subsection 541(1) may be sued for and recovered by:
- (a) an inspector; or
 - (b) an individual to whom the obligation concerned was owed.
- (6) If, in a proceeding against a person under this section, it appears to the court that an individual has not been paid an amount that the person was required to pay, the court may order the person to pay to the individual the amount of the underpayment.

- (7) An order must not be made under subsection (6) in relation to so much of an underpayment as relates to any period more than 6 years before the commencement of the proceeding.
- (8) A proceeding under this section in relation to a breach of subsection 541(1) must be commenced not later than 6 years after the commission of the breach.

544 Recovery of pay

If a person is required by subsection 541(1) to pay an amount to an individual, the individual may sue for the amount of the payment in the Court or in any court of competent jurisdiction not later than 6 years after the person was required to make the payment to him or her.

545 Interest up to judgment

- (1) In exercising its powers under section 543 or in a proceeding under section 544, the Court or a court of competent jurisdiction must, on application:
 - (a) order that there be included in the sum for which an order is made or judgment given, interest at such rate as the Court or court of competent jurisdiction (as the case requires) thinks fit on all or any part of the money for all or any part of the period between the date when the cause of action arose and the date on which the order is made or judgment entered; or
 - (b) without proceeding to calculate interest in accordance with paragraph (a), order that there be included in the sum for which an order is made or judgment given, a lump sum instead of any such interest.
- (2) Subsection (1) does not:
 - (a) authorise the giving of interest on interest or of a sum instead of such interest; or
 - (b) apply in relation to any debt on which interest is payable as of right whether by virtue of an agreement or otherwise; or
 - (c) authorise the giving of interest, or a sum instead of interest, except by consent, on any sum for which judgment is given by consent.

- (3) Subsection (1) does not apply if good cause is shown to the contrary.

546 Interest on judgment

A debt under a judgment or order of a court of competent jurisdiction made under section 543 or 544 carries interest from the date on which the judgment is entered or order made at such rate as would apply under section 52 of the *Federal Court of Australia Act 1976* if the debt were a judgment debt to which that section applies.

547 Plaintiffs may choose small claims procedure in magistrates courts

- (1) An action started by a person under section 544 in a magistrates court is to be dealt with in accordance with this section if the person indicates, in a manner prescribed by the regulations or by rules of court relating to that court, that he or she wants a small claims procedure to apply.
- (2) The procedure is governed by the following conditions:
- (a) the court may not award an amount exceeding \$5,000 or such higher amount as is prescribed;
 - (b) the court may act in an informal manner, is not bound by any rules of evidence, and may act without regard to legal forms and technicalities;
 - (c) at any stage of the action, the court may amend the papers initiating the action if sufficient notice is given to any party adversely affected by the amendment;
 - (d) a person is not entitled to be represented by counsel or solicitor unless the court permits;
 - (e) if the court permits a party to be represented by counsel or solicitor, the court may, if it thinks fit, do so subject to conditions designed to ensure that no other party is unfairly disadvantaged.
- (3) If the case is heard in a court of a Territory, the regulations may (despite paragraphs (2)(d) and (e)) prohibit or restrict legal representation of the parties.
- (4) Despite paragraphs (2)(d) and (e), if:
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- (a) the case is heard in a court of a State; and
 - (b) in a particular proceeding in that court (whatever the nature of the proceeding), the law of the State prohibits or restricts legal representation of the parties;
- regulations made under this Act may prohibit or restrict legal representation of the parties to the same extent as that law.

548 Enforcement of penalties etc.

- (1) If a court has:
 - (a) imposed a monetary penalty under this Part (other than a penalty for an offence); or
 - (b) under subsection 543(6), ordered the payment of an amount; or
 - (c) ordered the payment of costs or expenses;a certificate signed by a registrar, specifying the amount payable and by whom and to whom respectively it is payable, may be filed in the Court or in any other court of competent jurisdiction.
- (2) A certificate filed in a court under subsection (1) is enforceable in all respects as a final judgment of the court in which it is filed.
- (3) If there are 2 or more creditors under a certificate, process may be issued separately by each creditor for the enforcement of the certificate as if there were separate judgments.

549 Records relating to contracts for services with contract outworkers

- (1) The regulations may make provision in relation to:
 - (a) the making of outworker records by a person who is a party to a contract for services and who is subject to an obligation under subsection 541(1); and
 - (b) the making of outworker records by a contract outworker who is a party to a contract for services and to whom an obligation is owed under subsection 541(1) in relation to the contract; and
 - (c) the inspection of records mentioned in paragraphs (a) and (b); and

Schedule 2 Contract outworkers in Victoria in the textile, clothing and footwear industry

Part 1 Amendment of the Workplace Relations Act 1996

- (d) the giving of records mentioned in paragraphs (a) and (b) (or a copy of them) by a party to the contract concerned to one or more other parties to the contract; and
- (e) the retention of outworker records by parties to the contract concerned.

(2) In subsection (1):

outworker records, in relation to a contract for services, means records relating to the contract to the extent that work to be performed under the contract meets the criteria in subsection 541(2).

Part 2—Application

4 Application of amendments made by Part 1

The amendments made by Part 1 of this Schedule apply to work performed after the commencement of item 3 under a contract for services whether or not the contract was entered into before or after that commencement.

Schedule 3—Common rules

Part 1—Common rules generally

Workplace Relations Act 1996

1 After paragraph 45(1)(d)

Insert:

- (da) a declaration made by a member of the Commission under a provision of Division 5 of Part VI, or a decision by a member of the Commission not to make such a declaration; and

2 Before paragraph 45(3)(b)

Insert:

- (ad) in the case of an appeal under paragraph (1)(da) against a declaration under a provision of Division 5 of Part VI—by an organisation or person to whom the common rule applies; and

3 Before subsection 45(4)

Insert:

- (3B) The Full Bench must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in an appeal against a decision of a member of the Commission made under section 141 or subsection 142(5) (as that section or subsection has effect because of subsection 493A(2)).

4 At the end of subsection 141(1)

Add:

- Note: The Commission may also make common rule declarations for Victoria (see section 493A).

5 At the end of section 141

Add:

- (5) In deciding whether to declare a term of an award to be a common rule under subsection (1) or (2), the Commission must take into account the following:

- (a) the importance of avoiding overlap of awards and minimising the number of awards applying in relation to particular employers;
 - (b) for a declaration under subsection (1)—whether there are other awards applying to work performed in the industry in relation to which the industrial dispute arose, and if so, the extent to which the first-mentioned award is the most relevant and appropriate award for the work performed in that industry;
 - (c) for a declaration under subsection (2)—whether there are other awards applying to work performed in the public sector employment in relation to which the industrial dispute arose, and if so, the extent to which the first-mentioned award is the most relevant and appropriate award for the work performed in that public sector employment.
- (6) If:
- (a) an application is before the Commission, which if granted, would result in the Commission declaring a term of an award to be a common rule under subsection (1); and
 - (b) there is another award applying to work performed in the industry in relation to which the industrial dispute arose;
- the Commission may, on application or on its own initiative, declare a term of the other award to be a common rule under subsection (1). This subsection does not limit the Commission's powers under this section.
- (7) If:
- (a) an application is before the Commission, which if granted, would result in the Commission declaring a term of an award to be a common rule under subsection (2); and
 - (b) there is another award applying to work performed in the public sector employment in relation to which the industrial dispute arose;
- the Commission may, on application or on its own initiative, declare a term of the other award to be a common rule under subsection (2). This subsection does not limit the Commission's powers under this section.

- (8) In deciding whether to exercise the power conferred by subsection (6) or (7), the Commission must take into account the following:
 - (a) the matters mentioned in paragraph (5)(a);
 - (b) for an exercise of power under subsection (6)—the extent to which the other award mentioned in paragraph (6)(b) is the most relevant and appropriate award for the work performed in the industry concerned;
 - (c) for an exercise of power under subsection (7)—the extent to which the other award mentioned in paragraph (7)(b) is the most relevant and appropriate award for the work performed in the public sector employment concerned.
- (9) Without limiting the conditions, exceptions and limitations that can be specified in a declaration of a common rule under subsection (1) or (2), the Commission may specify a condition in such a declaration that the common rule is to come into force for a specified employer, or specified class of employers, on a specified day later than the day on which the declaration is made.
- (10) Unless the Commission is satisfied that there are exceptional circumstances, a declaration of a common rule under subsection (1) or (2) cannot come into force before the day on which the declaration is made.
- (11) For the purposes of this Act, an organisation is an organisation to which a common rule applies if the organisation is bound by the term of the award, or the variation, to which the relevant declaration relates.

6 After section 141

Insert:

141A Reference of application for declaration to Full Bench

- (1) This section applies to an application for a declaration under a provision of this Division.
 - (2) A reference in this section to a part of an application includes a reference to a question arising in relation to an application.
 - (3) If a proceeding in relation to an application is before a member of the Commission, any of the following:
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- (a) a party to the proceeding;
 - (b) the Minister;
 - (c) if a Minister of Victoria has intervened in the proceedings in accordance with section 141B—that Minister, on behalf of the Government of Victoria;
 - may apply to the member to have the application, or a part of the application, dealt with by a Full Bench because the application or the part of the application is of such importance that, in the public interest, it should be dealt with by a Full Bench.
 - (4) If an application is made under subsection (3) to a member of the Commission other than the President, the member must refer the application to the President to be dealt with.
 - (5) The President must confer with the member about whether the application under subsection (3) should be granted.
 - (6) The President must grant the application under subsection (3) if the President is of the opinion that the application or the part of the application is of such importance that, in the public interest, it should be dealt with by a Full Bench.
 - (7) If the President grants an application under subsection (3), the Full Bench must, subject to subsection (8), hear and determine the application or the part of the application and, in the hearing, may have regard to any evidence given, and any arguments adduced, in proceedings in relation to the application, or the part of the application, before the Full Bench commenced the hearing.
 - (8) If the President grants an application under subsection (3) in relation to an application:
 - (a) the Full Bench may refer a part of the application to a member of the Commission to hear and determine; and
 - (b) the Full Bench must hear and determine the rest of the application.
 - (9) The President or a Full Bench may, in relation to the exercise of powers under this section, direct a member of the Commission to provide a report in relation to a specified matter.
 - (10) The member must, after making such investigation (if any) as is necessary, provide a report to the President or Full Bench, as the case may be.
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- (11) The President may, before a Full Bench has been established for the purpose of hearing and determining, under this section, an application or part of an application, authorise a member of the Commission to take evidence for the purposes of the hearing, and:
- (a) the member has the powers of a person authorised to take evidence under subsection 111(3); and
 - (b) the Full Bench must have regard to the evidence.

141B Intervention by Minister of Victoria

The Commission must, on application, grant to a Minister of Victoria, on behalf of the Government of Victoria, leave to intervene in proceedings in which it is proposed to make a declaration of a common rule under section 141, or a declaration under subsection 142(5) (as that section or subsection has effect because of subsection 493A(2)).

7 At the end of Division 5 of Part VI

Add:

142A Applying single common rule to a business of employer

- (1) This section applies if:
- (a) a declaration (the *old declaration*) of a common rule is in force under subsection 141(1) or (2); and
 - (b) the common rule applies in relation to a business carried on by an employer; and
 - (c) the Commission has decided to make a declaration (the *new declaration*) under subsection 141(1) or (2) of another common rule (the *new common rule*) that could apply in relation to that business of the employer; and
 - (d) the new common rule is not a variation of a term of an award to which the first-mentioned common rule relates.
- (2) The Commission may specify in the new declaration that the new common rule does not apply in relation to that business of the employer.
- (3) In deciding whether to make that specification, the Commission must take into account the matters referred to in subsection 141(5).

- (4) This section does not limit the conditions, exceptions and limitations that can be specified in a declaration under subsection 141(1) or (2).

142B Application of section 109 to declarations under this Division

Section 109 applies to a declaration under this Division, or a decision not to make such a declaration, as if it were an order in relation to an industrial dispute.

142C Common rule taken to be award

To avoid doubt, a common rule declared under subsection 141(1) or (2) is taken to be an award of the Commission for the purposes of sections 152, 170LY and 170VQ.

Part 2—Common rules in relation to Victoria

Workplace Relations Act 1996

8 After section 493

Insert:

493A Additional effect of Act—common rules

- (1) The object of this section is to provide access for all employees in Victoria to the award safety net of fair and enforceable minimum wages and conditions of employment established and maintained by the Commission in accordance with Part VI.
- (2) Without affecting its operation apart from this section, this Act also has effect, subject to this section, as if a reference in section 141 or 142 to a Territory were a reference to Victoria.
- (3) To avoid doubt, regulations prescribing requirements for any of the following:
 - (a) publication of a notice in accordance with paragraph 141(4)(a);
 - (b) giving notice of a place and time in accordance with subsection 142(3);
 - (c) publication of a notice in accordance with subsection 142(4);may specify particular requirements for the publication, or the giving of notice, in accordance with paragraph 141(4)(a) or subsection 142(3) or (4) (as those provisions have effect because of subsection (2) of this section).
- (4) Despite subsection 152(1), this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this section. In particular, a common rule as it has effect because of this section is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with the common rule.

9 At the end of section 508

Add:

- (2) To avoid doubt, a common rule declared under subsection 141(1) (as it has effect because of subsection 493A(2)) is taken to be an award of the Commission for the purposes of subsection (1).

Part 3—Application and transitional provisions

10 Application of item 5

The amendment of the *Workplace Relations Act 1996* made by item 5 of this Schedule applies to applications for a declaration under a provision of Division 5 of Part VI of the *Workplace Relations Act 1996* made on or after the commencement of that item.

11 Application of item 7—section 142A

Section 142A of the *Workplace Relations Act 1996* (as inserted by item 7 of this Schedule) applies in relation to the making of a new declaration mentioned in paragraph 142A(1)(c), regardless of whether the old declaration mentioned in paragraph 142A(1)(a) was made before, on or after the commencement of that item.

12 Application of item 8

The amendment of the *Workplace Relations Act 1996* made by item 8 of this Schedule applies in relation to awards made before, on or after the commencement of that item.

13 Transitional—date when common rule comes into force

- (1) If the Commission makes a declaration of common rule under section 141 of the *Workplace Relations Act 1996* (as it has effect because of subsection 493A(2) of that Act) within the period of 12 months starting on the day on which this item commences, the declaration comes into force immediately after the end of that period.
- (2) Subitem (1) does not apply if the Commission specifies a condition in the declaration that the common rule is to come into force after the end of that period.

Schedule 4—Common rules and contract outworkers in Victoria in the textile, clothing and footwear industry

Workplace Relations Act 1996

1 At the end of Subdivision A of Division 2 of Part XVI

Add:

540A Concurrent operation of Victorian laws

This Part is not intended to exclude or limit the operation of a law of Victoria that is capable of operating concurrently with this Part.

2 Subsection 541(1)

After “subsection (3)”, insert “or (5) (as appropriate)”.

3 At the end of subsection 541(3)

Add “This subsection is subject to subsection (5).”.

4 After subsection 541(4)

Insert:

(5) If:

(a) both of these conditions are satisfied:

(i) the contract outworker or other individual is subject to one or more terms of an award that are common rules under Division 5 of Part VI;

(ii) that term or those terms provide for him or her to be entitled to be paid an amount for performing the work;
or

(b) in a case where paragraph (a) does not apply—both of the conditions mentioned in that paragraph would be satisfied, if he or she had performed the work as an employee in or about any premises in Victoria;

the *statutory amount* owed to him or her is the greater of the following amounts:

(c) the amount mentioned in subparagraph (a)(ii);

Schedule 4 Common rules and contract outworkers in Victoria in the textile, clothing and footwear industry

- (d) the amount that would have been worked out under subsection (3) in relation to his or her performance of the work, if this subsection did not operate.

Example: The term of an award that is a common rule under Division 5 of Part VI provides for a contract worker to be paid an amount for the work that is higher than the amount worked out in accordance with clause 1 of Schedule 1A. Therefore, the statutory amount owed to the worker is the amount provided for by the term of the award.

5 Application of items 2, 3 and 4

The amendments made by items 2, 3 and 4 of this Schedule apply to work performed after the commencement of this Schedule under a contract for services, whether or not the contract was entered into before or after that commencement.

*[Minister's second reading speech made in—
House of Representatives on 21 March 2002
Senate on 1 December 2003]*

(66/02)
