



# Fair Work Act 2009

No. 28, 2009

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This compilation is in 3 volumes

Volume 1: sections 1–257

Volume 2: sections 258–678

**Volume 3: sections 679–800**

Schedules

Endnotes

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Fair Work Act 2009* that shows the text of the law as amended and in force on 30 December 2023 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **Chapter 5—Administration**

### **Part 5-2—Office of the Fair Work Ombudsman**

#### **Division 1—Introduction**

##### **679 Guide to this Part**

This Part is about the Office of the Fair Work Ombudsman.

Division 2 is about the Fair Work Ombudsman. The Fair Work Ombudsman's functions include promoting and monitoring compliance with this Act, and providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations.

Division 3 is about the Office of the Fair Work Ombudsman. The Office of the Fair Work Ombudsman consists of the Fair Work Ombudsman, Fair Work Inspectors and staff.

The inspectors exercise compliance powers for purposes including determining whether this Act is being complied with. The compliance powers include the power to enter certain premises, and to inspect and make copies of documents on the premises.

##### **680 Meanings of *employee* and *employer***

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

## **Division 2—Fair Work Ombudsman**

### **Subdivision A—Establishment and functions and powers of the Fair Work Ombudsman**

#### **681 Establishment**

There is to be a Fair Work Ombudsman.

#### **682 Functions of the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman has the following functions:
  - (a) to promote:
    - (i) harmonious, productive and cooperative workplace relations; and
    - (ii) compliance with this Act and fair work instruments; including by providing education, assistance and advice to employees, employers, outworkers, outworker entities and organisations and producing best practice guides to workplace relations or workplace practices;
  - (b) to monitor compliance with this Act and fair work instruments;
  - (c) to inquire into, and investigate, any act or practice that may be contrary to this Act, a fair work instrument or a safety net contractual entitlement;
  - (d) to commence proceedings in a court, or to make applications to the FWC, to enforce this Act, fair work instruments and safety net contractual entitlements;
  - (e) to refer matters to relevant authorities;
  - (f) to represent employees or outworkers who are, or may become, a party to proceedings in a court, or a party to a matter before the FWC, under this Act or a fair work instrument, if the Fair Work Ombudsman considers that representing the employees or outworkers will promote compliance with this Act or the fair work instrument;

(g) any other functions conferred on the Fair Work Ombudsman by any Act.

Note 1: The Fair Work Ombudsman also has the functions of an inspector (see section 701).

Note 2: In performing functions under paragraph (a), the Fair Work Ombudsman might, for example, produce a best practice guide to achieving productivity through bargaining.

- (1A) In performing functions under paragraph (1)(a), the Fair Work Ombudsman must have regard to:
- (a) the need for guidelines and other materials to be available in multiple languages; and
  - (b) the need for community outreach in multiple languages.
- (2) The Fair Work Ombudsman must consult with the FWC in producing guidance material that relates to the functions of the FWC.

### **683 Delegation by the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman may, in writing, delegate to a member of the staff of the Office of the Fair Work Ombudsman or to an inspector all or any of the Fair Work Ombudsman's functions or powers under any Act (subject to subsections (1A) and (1B)).
- (1A) The Fair Work Ombudsman must not delegate his or her functions or powers as an inspector.
- (1B) The Fair Work Ombudsman may delegate to a member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee:
- (a) the power under subsection 712AA(1) to apply for the issue of an FWO notice; and
  - (b) the power under subsection 712AD(1) to give an FWO notice; and
  - (c) the power under subsections 712AD(3) and (4) to give notice of a later time.

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Note: *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Fair Work Ombudsman.

### **684 Directions from the Minister**

- (1) The Minister may, by legislative instrument, give written directions to the Fair Work Ombudsman about the performance of his or her functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the direction (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

- (2) The direction must be of a general nature only.
- (3) The Fair Work Ombudsman must comply with the direction.
- (4) The Fair Work Ombudsman is not required to comply with the direction to the extent that it relates to the Fair Work Ombudsman's performance of functions, or exercise of powers, under the *Public Service Act 1999* in relation to the Office of the Fair Work Ombudsman.

### **685 Minister may require reports**

- (1) The Minister may, in writing, direct the Fair Work Ombudsman to give the Minister specified reports relating to the Fair Work Ombudsman's functions.

Note: A report must not include information relating to an individual's affairs (see section 714A).

- (2) The Fair Work Ombudsman must comply with the direction.
- (3) The direction, or the report (if made in writing), is not a legislative instrument.

## **686 Annual report**

To avoid doubt, the requirement on the Fair Work Ombudsman to give an annual report to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* does not require or authorise the disclosure of information for the purposes of the *Privacy Act 1988*.

Note: An annual report must not include information relating to an individual's affairs (see section 714A).

## **Subdivision B—Appointment and terms and conditions of the Fair Work Ombudsman**

### **687 Appointment of the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman is to be appointed by the Governor-General by written instrument.
- (2) Before the Governor-General appoints a person as the Fair Work Ombudsman, the Minister must be satisfied that the person:
  - (a) has suitable qualifications or experience; and
  - (b) is of good character.
- (3) The Fair Work Ombudsman holds office on a full-time basis.
- (4) The Fair Work Ombudsman holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: The Fair Work Ombudsman is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

### **688 Remuneration of the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Fair Work Ombudsman is to be paid the remuneration that is prescribed by the regulations.

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- (2) The Fair Work Ombudsman is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**689 Leave of absence of the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Fair Work Ombudsman leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

**690 Outside work of the Fair Work Ombudsman**

The Fair Work Ombudsman must not engage in paid work outside the duties of his or her office without the Minister's approval.

**692 Resignation of the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

**693 Termination of appointment of the Fair Work Ombudsman**

- (1) The Governor-General may terminate the appointment of the Fair Work Ombudsman:
  - (a) for misbehaviour; or
  - (b) if the Fair Work Ombudsman is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General must terminate the appointment of the Fair Work Ombudsman if:



- (a) the Fair Work Ombudsman becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Fair Work Ombudsman is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Fair Work Ombudsman engages, except with the Minister's approval, in paid work outside the duties of his or her office (see section 690); or
- (d) the Fair Work Ombudsman fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

#### **694 Other terms and conditions of the Fair Work Ombudsman**

The Fair Work Ombudsman holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

#### **695 Appointment of acting Fair Work Ombudsman**

- (1) The Minister may, by written instrument, appoint a person who is qualified for appointment as the Fair Work Ombudsman to act as the Fair Work Ombudsman:
  - (a) during a vacancy in the office of Fair Work Ombudsman (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Fair Work Ombudsman is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

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- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

## **Division 3—Office of the Fair Work Ombudsman**

### **Subdivision A—Establishment of the Office of the Fair Work Ombudsman**

#### **696 Establishment of the Office of the Fair Work Ombudsman**

- (1) The Office of the Fair Work Ombudsman is established by this section.
- (2) The Office of the Fair Work Ombudsman consists of:
  - (a) the Fair Work Ombudsman; and
  - (b) the staff of the Office of the Fair Work Ombudsman; and
  - (c) the inspectors appointed under section 700.
- (3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
  - (a) the Office of the Fair Work Ombudsman is a listed entity; and
  - (b) the Fair Work Ombudsman is the accountable authority of the Office of the Fair Work Ombudsman; and
  - (c) the following persons are officials of the Office of the Fair Work Ombudsman:
    - (i) the Fair Work Ombudsman;
    - (ii) the staff of the Office of the Fair Work Ombudsman;
    - (iii) the inspectors appointed under section 700;
    - (iv) persons whose services are made available to the Fair Work Ombudsman under section 698;
    - (v) consultants engaged under section 699; and
  - (d) the purposes of the Office of the Fair Work Ombudsman include:
    - (i) the functions of the Fair Work Ombudsman referred to in section 682; and
    - (ii) the functions of inspectors under Subdivision D.

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**Subdivision B—Staff and consultants etc.**

**697 Staff**

- (1) The staff of the Office of the Fair Work Ombudsman must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Fair Work Ombudsman and the staff of the Office of the Fair Work Ombudsman together constitute a Statutory Agency; and
  - (b) the Fair Work Ombudsman is the Head of that Statutory Agency.

**698 Persons assisting the Fair Work Ombudsman**

The Fair Work Ombudsman may also be assisted:

- (a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of a State or Territory; or
- (c) by officers and employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the Fair Work Ombudsman in connection with the performance of any of his or her functions.

Note: For example, State or Territory employees could be made available to assist the Fair Work Ombudsman in providing education in a particular region.

**699 Consultants**

The Fair Work Ombudsman may engage persons having suitable qualifications and experience as consultants to the Office of the Fair Work Ombudsman.

## **Subdivision C—Appointment of Fair Work Inspectors**

### **700 Appointment of Fair Work Inspectors**

- (1) The Fair Work Ombudsman may, in writing, appoint as a Fair Work Inspector:
  - (a) a person who has been appointed, or who is employed, by the Commonwealth; or
  - (b) a person who is employed by a State or Territory.
- (2) The Fair Work Ombudsman may appoint a person as a Fair Work Inspector only if the Fair Work Ombudsman is satisfied that the person is of good character.
- (3) A Fair Work Inspector is appointed for the period specified in the instrument of appointment. The period must not exceed 4 years.

Note: A Fair Work Inspector is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

### **701 Fair Work Ombudsman is a Fair Work Inspector**

The Fair Work Ombudsman is a Fair Work Inspector by force of this section.

### **702 Identity cards**

- (1) The Fair Work Ombudsman must issue an identity card to an inspector appointed under section 700.
- (2) The Minister must issue an identity card to the Fair Work Ombudsman.

#### *Form of identity card*

- (3) The identity card must:
  - (a) be in the form approved by the Fair Work Ombudsman; and
  - (b) contain a recent photograph of the inspector.

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*Inspector must carry card*

- (4) An inspector must carry the identity card at all times when performing functions or exercising powers as an inspector.

*Offence*

- (5) A person commits an offence if:
- (a) the person ceases to be an inspector; and
  - (b) the person does not, within 14 days of so ceasing, return the person's identity card to the Fair Work Ombudsman or the Minister (as the case may be).

Penalty: 1 penalty unit.

- (6) Subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

*Defence—card lost or destroyed*

- (7) Subsection (5) does not apply if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

**Subdivision D—Functions and powers of Fair Work  
Inspectors—general**

**703 Conditions and restrictions on functions and powers**

- (1) The functions, and powers (*compliance powers*), conferred on an inspector are subject to such conditions and restrictions as are specified in his or her instrument of appointment.
- (2) To avoid doubt, the power to apply for the issue of an FWO notice under section 712AA and the power to give an FWO notice under section 712AD are not compliance powers.

#### **704 General directions by the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman may, by legislative instrument, give a written direction to inspectors relating to the performance of their functions or the exercise of their powers as inspectors.
- (2) The direction must be of a general nature only, and cannot relate to a particular case.
- (3) An inspector must comply with the direction.

#### **705 Particular directions by the Fair Work Ombudsman**

- (1) The Fair Work Ombudsman may give a direction to an inspector relating to the performance of the inspector's functions or the exercise of the inspector's powers as an inspector.
- (2) The inspector must comply with the direction.
- (3) If a direction is in writing, the direction is not a legislative instrument.

#### **706 Purpose for which powers of inspectors may be exercised**

- (1) An inspector may exercise compliance powers (other than a power under section 715 or 716) for one or more of the following purposes (*compliance purposes*):
  - (a) determining whether this Act or a fair work instrument is being, or has been, complied with;
  - (b) subject to subsection (2), determining whether a safety net contractual entitlement is being, or has been, contravened by a person;
  - (c) the purposes of a provision of the regulations that confers functions or powers on inspectors;
  - (d) the purposes of a provision of another Act that confers functions or powers on inspectors.

Note: The powers in sections 715 (which deals with enforceable undertakings) and 716 (which deals with compliance notices) may be

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exercised for the purpose of remedying the effects of certain contraventions.

- (2) An inspector may exercise compliance powers for the purpose referred to in paragraph (1)(b) only if the inspector reasonably believes that the person has contravened one or more of the following:
- (a) a provision of the National Employment Standards;
  - (b) a term of a modern award;
  - (c) a term of an enterprise agreement;
  - (d) a term of a workplace determination;
  - (e) a term of a national minimum wage order;
  - (f) a term of an equal remuneration order.

### **707 When powers of inspectors may be exercised**

An inspector may exercise compliance powers:

- (a) at any time during working hours; or
- (b) at any other time, if the inspector reasonably believes that it is necessary to do so for compliance purposes.

### **707A Hindering or obstructing the Fair Work Ombudsman and inspectors etc.**

- (1) A person must not intentionally hinder or obstruct:
- (a) the Fair Work Ombudsman or an inspector in the performance of his or her functions or the exercise of his or her powers as the Fair Work Ombudsman or an inspector; or
  - (b) an assistant referred to in section 710 assisting an inspector on premises; or
  - (c) a member of the staff of the Office of the Fair Work Ombudsman in the performance of his or her functions or the exercise of his or her powers in relation to an FWO notice.

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

- (2) Subsection (1) does not apply if:
- (a) the person has a reasonable excuse; or



- (b) if the Fair Work Ombudsman or inspector referred to in paragraph (1)(a) or (b) (as the case requires) was required to show his or her identity card to the person under subsection 708(3) or paragraph 711(3)(b)—the Fair Work Ombudsman or inspector:
  - (i) failed to do so; or
  - (ii) failed to tell the person of the effect of this section.
- (3) A reference in subsection (1) to the Fair Work Ombudsman includes a reference to a delegate of the Fair Work Ombudsman.

### **Subdivision DA—Power to enter premises**

#### **708 Power of inspectors to enter premises**

- (1) An inspector may, without force:
  - (a) enter premises, if the inspector reasonably believes that this Act or a fair work instrument applies to work that is being, or applied to work that has been, performed on the premises; or
  - (b) enter business premises, if the inspector reasonably believes that there are records or documents relevant to compliance purposes on the premises, or accessible from a computer on the premises.
- (2) Despite paragraph (1)(a), an inspector must not enter a part of premises that is used for residential purposes unless the inspector reasonably believes that the work referred to in that paragraph is being performed on that part of the premises.
- (3) The inspector must, either before or as soon as practicable after entering premises, show his or her identity card to the occupier, or another person who apparently represents the occupier, if the occupier or other person is present at the premises.

#### **709 Powers of inspectors while on premises**

The inspector may exercise one or more of the following powers while on the premises:

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- (a) inspect any work, process or object;
- (b) interview any person;
- (c) require a person to tell the inspector who has custody of, or access to, a record or document;
- (d) require a person who has the custody of, or access to, a record or document to produce the record or document to the inspector either while the inspector is on the premises, or within a specified period;
- (e) inspect, and make copies of, any record or document that:
  - (i) is kept on the premises; or
  - (ii) is accessible from a computer that is kept on the premises;
- (f) take samples of any goods or substances in accordance with any procedures prescribed by the regulations.

Note: See also sections 713, 713A and 714 (which deal with self-incrimination and produced documents etc.).

### **710 Persons assisting inspectors**

- (1) A person (the *assistant*) may accompany the inspector onto the premises to assist the inspector if the Fair Work Ombudsman is satisfied that:
  - (a) the assistance is necessary and reasonable; and
  - (b) the assistant has suitable qualifications and experience to properly assist the inspector.
- (2) The assistant:
  - (a) may do such things on the premises as the inspector requires to assist the inspector to exercise compliance powers; but
  - (b) must not do anything that the inspector does not have power to do.
- (3) Anything done by the assistant is taken for all purposes to have been done by the inspector.

## **Subdivision DB—Powers to ask questions and require records and documents**

### **711 Power to ask for person’s name and address**

- (1) An inspector may require a person to tell the inspector the person’s name and address if the inspector reasonably believes that the person has contravened a civil remedy provision.
  - (2) If the inspector reasonably believes that the name or address is false, the inspector may require the person to give evidence of its correctness.
  - (3) A person must comply with a requirement under subsection (1) or (2) if:
    - (a) the inspector advises the person that he or she may contravene a civil remedy provision if he or she fails to comply with the requirement; and
    - (b) the inspector shows his or her identity card to the person.
- Note: This subsection is a civil remedy provision (see Part 4-1).
- (4) Subsection (3) does not apply if the person has a reasonable excuse.

### **712 Power to require persons to produce records or documents**

- (1) An inspector may require a person, by notice, to produce a record or document to the inspector.
- (2) The notice must:
  - (a) be in writing; and
  - (b) be served on the person; and
  - (c) require the person to produce the record or document at a specified place within a specified period of at least 14 days.The notice may be served by sending the notice to the person’s fax number.

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- (3) A person who is served with a notice to produce must not fail to comply with the notice.

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

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

**712A Minister may nominate AAT presidential members to issue FWO notices**

- (1) The Minister may, by writing, nominate an AAT presidential member to issue written notices (*FWO notices*) under section 712AB.
- (2) The Minister may nominate an AAT presidential member who is a Judge to issue FWO notices under section 712AB only if the Judge has consented, by writing, to the nomination.
- (3) A nomination ceases to have effect if:
- (a) the nominated AAT presidential member ceases to be an AAT presidential member; or
  - (b) the Minister, by writing, withdraws the nomination.
- (4) A nominated AAT presidential member has, in performing a function of or connected with issuing an FWO notice under this Subdivision, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

**712AA Fair Work Ombudsman may apply to nominated AAT presidential member for FWO notice**

*General requirements*

- (1) The Fair Work Ombudsman may apply, in writing, to a nominated AAT presidential member for the issue of an FWO notice referred to in subsection (2) if the Fair Work Ombudsman believes on reasonable grounds that a person:

- (a) has information or documents relevant to an investigation by an inspector into a suspected contravention of a provision of this Act, a fair work instrument or a safety net contractual entitlement that relates, directly or indirectly, to:
    - (i) the underpayment of wages, or other monetary entitlements, of employees; or
    - (ii) the unreasonable deduction of amounts from amounts owed to employees; or
    - (iii) the placing of unreasonable requirements on employees to spend or pay amounts paid, or payable, to employees; or
    - (iv) the unfair dismissal of an employee; or
    - (v) the bullying of a worker at work; or
    - (va) the sexual harassment of a person who is a worker in a business or undertaking, seeking to become a worker in a particular business or undertaking, or conducting a business or undertaking; or
    - (vi) the unlawful discrimination of a person in relation to employment; or
    - (vii) a contravention of a provision of the National Employment Standards; or
    - (viii) the coercion of an employee by an employer; and
  - (b) is capable of giving evidence that is relevant to such an investigation.
- (2) The FWO notice may require the person:
- (a) to give information to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman; or
  - (b) to produce documents to the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman; or
  - (c) to attend before the Fair Work Ombudsman, or a specified member of the staff of the Office of the Fair Work Ombudsman who is an SES employee or an acting SES employee, and answer questions relevant to the investigation.

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*Form and content of application*

- (3) An application for an FWO notice must:
  - (a) if a form is prescribed by the regulations—be in that form; and
  - (b) include any information prescribed by the regulations.
- (4) An application for an FWO notice must not relate to more than one person, but may relate to more than one investigation.

*Application must be accompanied by affidavit*

- (5) An application for an FWO notice must be accompanied by an affidavit by the Fair Work Ombudsman including the following:
  - (a) the name of the person to whom the application relates;
  - (b) details of the investigation (or investigations) to which the application relates;
  - (c) the grounds on which the Fair Work Ombudsman believes the person has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations) referred to in paragraph (b);
  - (d) details of other methods used to attempt to obtain the information, documents or evidence;
  - (e) the number (if any) of previous applications for an FWO notice that the Fair Work Ombudsman has made in relation to the person in respect of the investigation (or investigations) referred to in paragraph (b);
  - (f) information about whether the Fair Work Ombudsman has made, or expects to make, any other applications for an FWO notice in relation to the investigation (or investigations) referred to in paragraph (b) and, if so, the persons to whom those applications relate.

*Further information*

- (6) A nominated AAT presidential member to whom an application for an FWO notice is made may request the Fair Work Ombudsman to

give the presidential member further information in relation to the application.

- (7) If a request for further information is made under subsection (6), the Fair Work Ombudsman must give the further information in writing as soon as practicable after receiving the request.

### **712AB Issue of FWO notice**

- (1) A nominated AAT presidential member to whom an application for an FWO notice has been made must issue the FWO notice if the presidential member is satisfied of the following:
- (a) that an inspector has commenced the investigation (or investigations) to which the application relates;
  - (b) that there are reasonable grounds to believe that the person to whom the application relates has information or documents, or is capable of giving evidence, relevant to the investigation (or investigations);
  - (c) that any other method of obtaining the information, documents or evidence:
    - (i) has been attempted and has been unsuccessful; or
    - (ii) is not appropriate;
  - (d) that the information, documents or evidence would be likely to be of assistance in the investigation (or investigations);
  - (e) that, having regard to all the circumstances, it would be appropriate to issue the FWO notice;
  - (f) any other matter prescribed by the regulations.
- (2) A nominated AAT presidential member must not issue an FWO notice except in the circumstances referred to in subsection (1).
- (3) An FWO notice must not be issued in relation to more than one person, but may be issued in relation to more than one investigation.
- (4) If:
- (a) an application for an FWO notice is made in relation to more than one investigation; and

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(b) the nominated AAT presidential member to whom the application is made is not satisfied of the matters referred to in subsection (1) in relation to each of those investigations; the nominated AAT presidential member must issue the FWO notice in relation to the investigation (or investigations) in relation to which the nominated AAT presidential member is satisfied of the matters referred to in subsection (1).

**712AC Form and content of FWO notice**

An FWO notice must:

- (a) if a form is prescribed by the regulations—be in that form; and
- (b) if the notice requires a person to give information under paragraph 712AA(2)(a)—specify the time by which, and the manner and form in which, the information is to be given; and
- (c) if the notice requires a person to produce documents under paragraph 712AA(2)(b)—specify the time by which, and the manner in which, the documents are to be produced; and
- (d) if the notice requires a person to attend to answer questions relevant to an investigation—specify the time and place for the attendance; and
- (e) be signed by the nominated AAT presidential member who issued it; and
- (f) include any other information prescribed by the regulations.

**712AD Fair Work Ombudsman may give FWO notice to person in relation to whom it is issued and vary time for compliance**

*Fair Work Ombudsman may give FWO notice to person in relation to whom it is issued*

- (1) If a nominated AAT presidential member issues an FWO notice, the Fair Work Ombudsman may give the notice to the person in relation to whom it is issued.



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- (2) If an FWO notice is not given to the person in relation to whom it is issued within 3 months after the day on which it was issued, the notice ceases to have effect at the end of that period.

*Variation of time for compliance with FWO notice*

- (3) If:
- (a) the Fair Work Ombudsman gives an FWO notice to a person under subsection (1); and
  - (b) the time specified in the notice under paragraph 712AC(b), (c) or (d) is not at least 14 days after the notice is given to the person;
- the Fair Work Ombudsman must, at the same time as the FWO notice is given to the person, also give notice to the person of a time later than the time specified in the notice.
- (4) The Fair Work Ombudsman may, at any time after giving an FWO notice to the person in relation to whom it is issued, give notice to the person of a time later than the time:
- (a) specified in the notice under paragraph 712AC(b), (c) or (d);  
or
  - (b) notified under subsection (3).
- (5) A later time notified under subsection (3) or (4) must be at least 14 days after the FWO notice is given to the person.
- (6) If the person is notified of a later time under subsection (3) or (4), the FWO notice has effect as if the later time (or the latest of those times) were the time specified in the FWO notice.

**712AE Conduct of examination**

*Legal representation*

- (1) A person attending before the Fair Work Ombudsman, or a member of the staff mentioned in paragraph 712AA(2)(c), may be represented by a lawyer if the person chooses.

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*Oath or affirmation*

- (2) The Fair Work Ombudsman, or a member of the staff mentioned in paragraph 712AA(2)(c), may require the information or answers to be verified by, or given on, oath or affirmation, and either orally or in writing. For that purpose, the Fair Work Ombudsman, or any member of the staff of the Office of the Fair Work Ombudsman, may administer the oath or affirmation.
- (3) The oath or affirmation is an oath or affirmation that the information or answers are or will be true.

**712B Requirement to comply with FWO notice**

- (1) A person who has been given an FWO notice must do the following (as applicable):
  - (a) give information or produce a document in accordance with the notice;
  - (b) attend to answer questions in accordance with the notice;
  - (c) take an oath or make an affirmation when required to do so under subsection 712AE(2);
  - (d) answer questions relevant to the investigation while attending as required by the FWO notice.

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

- (2) Subsection (1) does not apply to the extent that the person is not capable of complying with the requirement.

**712C Payment for expenses incurred in attending as required by an FWO notice**

- (1) A person who attends as required by an FWO notice is (subject to subsection (2)) entitled to be paid fees and allowances, fixed by or calculated in accordance with the regulations, for reasonable expenses (including legal expenses) incurred by the person in so attending.

- (2) The person is not entitled to be paid for expenses under this section unless the person:
  - (a) applies, in writing, to the Fair Work Ombudsman for payment of the expenses within 3 months after the attendance; and
  - (b) provides to the Fair Work Ombudsman sufficient evidence to establish that the person incurred the expenses.
- (3) An application under paragraph (2)(a) must:
  - (a) if a form is prescribed by the regulations—be in that form; and
  - (b) include any information prescribed by the regulations.

### **712D Protection from liability relating to FWO notices**

A person who, in good faith, gives information, produces a record or document, or answers a question, when required to do so under an FWO notice is not liable to:

- (a) any proceedings for contravening any other law because of that conduct; or
- (b) civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

### **712E Fair Work Ombudsman must notify Commonwealth Ombudsman of issue of FWO notice**

- (1) As soon as practicable after an FWO notice has been issued, the Fair Work Ombudsman must:
  - (a) notify the Commonwealth Ombudsman that the FWO notice has been issued; and
  - (b) give the Commonwealth Ombudsman a copy of:
    - (i) the FWO notice; and
    - (ii) the affidavit that accompanied the application for the FWO notice; and
    - (iii) any other information in relation to the FWO notice that was given to the nominated AAT presidential member who issued the notice.

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- (2) If notice under subsection 712AD(3) or (4) is given to a person, the Fair Work Ombudsman must notify the Commonwealth Ombudsman as soon as practicable after giving notice.

**712F Review and report by Commonwealth Ombudsman**

*Fair Work Ombudsman to give report etc. to Commonwealth Ombudsman*

- (1) As soon as practicable after an examination of a person under paragraph 712AA(2)(c) is completed, the Fair Work Ombudsman must give the Commonwealth Ombudsman:
- (a) a report about the examination; and
  - (b) a video recording of the examination; and
  - (c) a transcript of the examination.
- (2) The report under paragraph (1)(a) must include:
- (a) a copy of the FWO notice under which the examination was conducted; and
  - (b) the following information:
    - (i) the time and place at which the examination was conducted;
    - (ii) the name of each person who was present at the examination;
    - (iii) any other information prescribed by the rules.

*Review of exercise of powers under this Subdivision*

- (3) The Commonwealth Ombudsman:
- (a) must review the exercise of powers under this Subdivision by the Fair Work Ombudsman and any member of the staff of the Office of the Fair Work Ombudsman; and
  - (b) may do anything incidental or conducive to the performance of that function.
- (4) The Commonwealth Ombudsman's powers under the *Ombudsman Act 1976* extend to a review by the Ombudsman under this section

as if the review were an investigation by the Ombudsman under that Act.

- (5) The exercise of those powers in relation to a review by the Ombudsman under this section is taken, for all purposes, to be an exercise of powers under the *Ombudsman Act 1976*.

*Commonwealth Ombudsman to report to Parliament*

- (6) As soon as practicable after the end of each quarter of each financial year, the Commonwealth Ombudsman must prepare and present to the Parliament a report about examinations conducted during that quarter. The report must include the results of reviews conducted under this section during that quarter.
- (7) The Commonwealth Ombudsman may prepare and present to the Parliament any other reports about the results of reviews conducted under this section the Commonwealth Ombudsman considers appropriate.

**Subdivision DC—Other rules relating to answers, records and documents**

**713 Self-incrimination etc.**

*Excuses that are not available*

- (1) A person is not excused from giving information, producing a record or document, or answering a question, under paragraph 709(d) or subsection 712(1), or under an FWO notice, on the ground that to do so might tend to incriminate the person or otherwise expose the person to a penalty or other liability.

*Use/derivative use indemnity in relation to requirement under paragraph 709(d) or subsection 712(1)*

- (2) In the case of an individual who produces a record or document, under paragraph 709(d) or subsection 712(1), none of the following:

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- (a) the record or document produced;
- (b) producing the record or document;
- (c) any information, document or thing obtained as a direct or indirect consequence of producing the record or document; is admissible in evidence against the individual in criminal proceedings, other than:
  - (d) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); and
  - (e) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

*Use indemnity in relation to FWO notices*

- (3) In the case of an individual who gives information, produces a record or document, or answers a question, under an FWO notice, any information or answer given, or record or document produced, is not admissible in evidence against the individual in proceedings, other than:
  - (a) proceedings for a contravention of section 712B or 718A (requirement to comply with FWO notice and false or misleading information or documents); and
  - (b) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act (false or misleading information or documents); and
  - (c) proceedings for an offence against section 149.1 of the *Criminal Code* that relates to this Act (obstruction of Commonwealth officials).

**713A Certain records and documents are inadmissible**

The following are not admissible in evidence in criminal proceedings against an individual:

- (a) any record or document inspected or copied under paragraph 709(e) of which the individual had custody, or to

which the individual had access, when it was inspected or copied;

- (b) any information, document or thing obtained as a direct or indirect consequence of inspecting or copying a record or document of which the individual had custody, or to which the individual had access, when it was inspected or copied under paragraph 709(e).

### **713AA Legal professional privilege**

Nothing in this Part requires a person to produce a document that would disclose information that is the subject of legal professional privilege.

### **714 Power to keep records or documents**

- (1) If a record or document is produced to the Fair Work Ombudsman, an inspector or any other person in accordance with this Subdivision, he or she may:
  - (a) inspect, and make copies of, the record or document; and
  - (b) keep the record or document for such period as is necessary.
- (2) While the Fair Work Ombudsman, an inspector or any other person keeps a record or document, he or she must allow the following persons to inspect, or make copies of, the record or document at all reasonable times:
  - (a) the person who produced the record or document;
  - (b) any person otherwise entitled to possession of the record or document;
  - (c) a person authorised by the person referred to in paragraph (b).

### **714A Reports not to include information relating to an individual's affairs**

- (1) Information relating to the affairs of an individual must not be included in a report under section 685 (which allows the Minister

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to require reports) or in a report referred to in section 686 (which deals with annual reports) if:

- (a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or
  - (b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual's affairs) would be able to work out the identity of the individual to whom the information relates.
- (2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual's affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

**Subdivision DD—Enforceable undertakings and compliance notices**

**715 Enforceable undertakings relating to contraventions of civil remedy provisions**

*Application of this section*

- (1) This section applies if the Fair Work Ombudsman reasonably believes that a person has contravened a civil remedy provision.

*Accepting an undertaking*

- (2) The Fair Work Ombudsman may accept a written undertaking given by the person in relation to the contravention, except as provided by subsection (5).

*Withdrawing or varying an undertaking*

- (3) The person may withdraw or vary the undertaking at any time, but only with the Fair Work Ombudsman's consent.



*Relationship with orders in relation to contraventions of civil remedy provisions*

- (4) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if an undertaking given by the person under this section in relation to the contravention has not been withdrawn.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

*Relationship with compliance notices*

- (5) The Fair Work Ombudsman must not accept an undertaking in relation to a contravention if the person has been given a notice in relation to the contravention under section 716.

*Enforcement of undertakings*

- (6) If the Fair Work Ombudsman considers that the person who gave the undertaking has contravened any of its terms, the Fair Work Ombudsman may apply to the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) or an eligible State or Territory Court for an order under subsection (7).
- (7) If the court is satisfied that the person has contravened a term of the undertaking, the court may make one or more of the following orders:
- (a) an order directing the person to comply with the term of the undertaking;
  - (b) an order awarding compensation for loss that a person has suffered because of the contravention;
  - (c) any other order that the court considers appropriate.

## **716 Compliance notices**

*Application of this section*

- (1) This section applies if an inspector reasonably believes that a person has contravened one or more of the following:
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- (a) a provision of the National Employment Standards;
- (b) a term of a modern award;
- (c) a term of an enterprise agreement;
- (d) a term of a workplace determination;
- (e) a term of a national minimum wage order;
- (f) a term of an equal remuneration order;
- (fa) subsection 536AA(1) or (2) (which deal with employer obligations in relation to advertising rates of pay);
- (g) a provision of Part 6-4C (which deals with the Coronavirus economic response);
- (h) a jobkeeper enabling direction (within the meaning of Part 6-4C);
- (i) a provision of an agreement authorised by Part 6-4C.

*Giving a notice*

- (2) The inspector may, except as provided by subsection (4), give the person a notice requiring the person to do either or both of the following within such reasonable time as is specified in the notice:
  - (a) take specified action to remedy the direct effects of the contravention referred to in subsection (1);
  - (b) produce reasonable evidence of the person's compliance with the notice.
- (3) The notice must also:
  - (a) set out the name of the person to whom the notice is given; and
  - (b) set out the name of the inspector who gave the notice; and
  - (c) set out brief details of the contravention; and
  - (d) explain that a failure to comply with the notice may contravene a civil remedy provision; and
  - (e) explain that the person may apply to the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:

- (i) the person has not committed a contravention set out in the notice;
- (ii) the notice does not comply with subsection (2) or this subsection; and
- (f) set out any other matters prescribed by the regulations.

*Relationship with enforceable undertakings*

- (4) An inspector must not give a person a notice in relation to a contravention if:
  - (a) the person has given an undertaking under section 715 in relation to the contravention; and
  - (b) the undertaking has not been withdrawn.

*Relationship with civil remedy provisions*

- (4A) An inspector must not apply for an order under Division 2 of Part 4-1 in relation to a contravention of a civil remedy provision by a person if:
  - (a) the inspector has given the person a notice in relation to the contravention; and
  - (b) either of the following subparagraphs applies:
    - (i) the notice has not been withdrawn, and the person has complied with the notice;
    - (ii) the person has made an application under section 717 in relation to the notice that has not been completely dealt with.

Note: A person other than an inspector who is otherwise entitled to apply for an order in relation to the contravention may do so.

- (4B) A person who complies with a notice in relation to a contravention of a civil remedy provision is not taken:
  - (a) to have admitted to contravening the provision; or
  - (b) to have been found to have contravened the provision.

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*Person must not fail to comply with notice*

- (5) A person must not fail to comply with a notice given under this section.

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

- (6) Subsection (5) does not apply if the person has a reasonable excuse.

### **717 Review of compliance notices**

- (1) A person who has been given a notice under section 716 may apply to the Federal Court, the Federal Circuit and Family Court of Australia (Division 2) or an eligible State or Territory Court for a review of the notice on either or both of the following grounds:
- (a) the person has not committed a contravention set out in the notice;
  - (b) the notice does not comply with subsection 716(2) or (3).
- (2) At any time after the application has been made, the court may stay the operation of the notice on the terms and conditions that the court considers appropriate.
- (3) The court may confirm, cancel or vary the notice after reviewing it.

### **Subdivision E—Disclosure of information by the Office of the Fair Work Ombudsman**

#### **718 Disclosure of information by the Office of the Fair Work Ombudsman**

*Information to which this section applies*

- (1) This section applies to the following information:
- (a) information acquired by the Fair Work Ombudsman in the course of performing functions, or exercising powers, as the Fair Work Ombudsman;

- (b) information acquired by an inspector in the course of performing functions, or exercising powers, as an inspector;
- (c) information acquired by a member of the staff of the Office of the Fair Work Ombudsman in the course of performing functions, or exercising powers, as a member of that staff;
- (d) information acquired by a person in the course of assisting the Fair Work Ombudsman under section 698, or in the course of performing functions, or exercising powers, as a consultant under section 699;
- (e) information acquired by a person in the course of assisting an inspector under section 710.

*Disclosure that is necessary or appropriate, or likely to assist administration or enforcement*

- (2) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information if the Fair Work Ombudsman reasonably believes:
  - (a) that it is necessary or appropriate to do so in the course of performing functions, or exercising powers, under this Act; or
  - (b) that the disclosure is likely to assist in the administration or enforcement of a law of the Commonwealth, a State or a Territory.

*Disclosure to the Minister*

- (3) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to the Minister if the Fair Work Ombudsman reasonably believes that the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

*Disclosure to the Department*

- (4) The Fair Work Ombudsman may disclose, or authorise the disclosure of, the information to:
  - (a) the Secretary of the Department; or

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(b) an SES employee, or an APS employee, in the Department; for the purpose of briefing, or considering briefing, the Minister if the Fair Work Ombudsman reasonably believes the disclosure is likely to assist the Minister to consider a complaint or issue in relation to a matter arising under this Act.

**Subdivision F—False or misleading information or documents**

**718A False or misleading information or documents**

- (1) A person must not give information or produce a document to the Fair Work Ombudsman, an inspector, or a person referred to in subsection 712AA(2), (the *official*) exercising powers or performing functions under, or in connection with, a law of the Commonwealth if the person knows, or is reckless as to whether, the information or the document:
- (a) is false or misleading; or
  - (b) for information—omits any matter or thing without which the information is misleading.

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

Note 2: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) Subsection (1) does not apply as a result of paragraph (1)(a) if the information or the document is not false or misleading in a material particular.
- (3) Subsection (1) does not apply as a result of paragraph (1)(b) if the information did not omit any matter or thing without which the information is misleading in a material particular.
- (4) Subsection (1) does not apply to a person who produces a document if the document is accompanied by a written statement signed by the person or, in the case of a body corporate, by a competent officer of the body corporate:
- (a) stating that the document is, to the knowledge of the person, false or misleading in a material particular; and

- (b) setting out, or referring to, the material particular in which the document is, to the knowledge of the person, false or misleading.
- (5) Subsection (1) does not apply if, before the information was given or the document was produced by a person to the official, the official did not take reasonable steps to inform the person that the person may be liable to a civil remedy for contravening subsection (1).
- (6) For the purposes of subsection (5), it is sufficient if the following form of words is used:
- “You may be liable to a civil remedy for giving false or misleading information or producing false or misleading documents”.

## Chapter 6—Miscellaneous

### Part 6-1—Multiple actions

#### Division 1—Introduction

##### 719 Guide to this Part

This Part provides rules relating to applications for remedies under this Act.

Division 2 prevents certain applications where other remedies are available.

Division 3 prevents multiple applications or complaints in relation to the same conduct.

##### 720 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).



## **Division 2—Certain actions not permitted if alternative action can be taken**

### **721 Equal remuneration applications**

- (1) The FWC must not deal with an application for an equal remuneration order if the FWC is satisfied that there is available to the employees to whom the order will apply, an adequate alternative remedy that:
  - (a) exists under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory; and
  - (b) will ensure equal remuneration for work of equal or comparable value for those employees.
- (2) A remedy that:
  - (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
  - (b) consists solely of compensation for past actions;is not an adequate alternative remedy for the purposes of this section.

### **722 Notification and consultation requirements applications**

The FWC must not make an order under subsection 532(1) or 787(1) if the FWC is satisfied that there is available to the applicant, or to the employees represented by the applicant, an alternative remedy that:

- (a) exists under a law of the Commonwealth (other than Division 2 of Part 3-6 or Division 3 of Part 6-4) or a law of a State or Territory; and
- (b) will give effect, in relation to the employees and registered employee associations concerned, to the requirements of Article 13 of the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4).

**Chapter 6** Miscellaneous

**Part 6-1** Multiple actions

**Division 2** Certain actions not permitted if alternative action can be taken

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Note: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

**723 Unlawful termination applications**

A person must not make an unlawful termination application in relation to conduct if the person is entitled to make a general protections court application in relation to the conduct.

## **Division 3—Preventing multiple actions**

### **Subdivision A—Equal remuneration applications**

#### **724 Equal remuneration applications**

- (1) The FWC must not deal with an application for an equal remuneration order in relation to an employee if proceedings for an alternative remedy:
  - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
  - (b) against unequal remuneration for work of equal or comparable value for the employee;have commenced under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory.
- (2) Subsection (1) does not prevent the FWC from dealing with the application if the proceedings for the alternative remedy:
  - (a) have been discontinued by the party who commenced the proceedings; or
  - (b) have failed for want of jurisdiction.
- (3) If an application has been made to the FWC for an equal remuneration order in relation to an employee, a person is not entitled to commence proceedings for an alternative remedy under a law of the Commonwealth (other than Part 2-7) or a law of a State or Territory:
  - (a) to ensure equal remuneration for work of equal or comparable value for the employee; or
  - (b) against unequal remuneration for work of equal or comparable value for the employee.
- (4) Subsection (3) does not prevent a person from commencing proceedings for an alternative remedy if:
  - (a) the applicant has discontinued the application for the equal remuneration order; or

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- (b) the application has failed for want of jurisdiction.
- (5) A remedy that:
  - (a) exists under a law of the Commonwealth, a State or a Territory relating to discrimination in relation to employment; and
  - (b) consists solely of compensation for past actions; is not an alternative remedy for the purposes of this section.

### **Subdivision B—Applications and complaints relating to dismissal**

#### **725 General rule**

A person who has been dismissed must not make an application or complaint of a kind referred to in any one of sections 726 to 732 in relation to the dismissal if any other of those sections applies.

#### **726 Dismissal remedy bargaining order applications**

- (1) This section applies if:
  - (a) a dismissal remedy bargaining order application has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction.
- (2) A *dismissal remedy bargaining order application* is an application for a bargaining order made on the ground that the person was dismissed in contravention of the good faith bargaining requirement in paragraph 228(1)(e).

#### **727 General protections FWC applications**

- (1) This section applies if:
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- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction; or
    - (iii) resulted in the issue of a certificate under paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful).
- (1A) This section also applies if:
- (a) a general protections FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction; and
  - (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 368(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
  - (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 369(1)(b) and (c).
- (2) A **general protections FWC application** is an application under section 365 for the FWC to deal with a dispute that relates to dismissal.

## 728 General protections court applications

This section applies if:

- (a) a general protections court application has been made by, or on behalf of, the person in relation to the dismissal; and
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- (b) the application has not:
  - (i) been withdrawn by the person who made the application; or
  - (ii) failed for want of jurisdiction.

**729 Unfair dismissal applications**

- (1) This section applies if:
  - (a) an unfair dismissal application has been made by the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction; or
    - (iii) failed because the FWC was satisfied that the dismissal was a case of genuine redundancy.
- (2) An *unfair dismissal application* is an application under subsection 394(1) for a remedy for unfair dismissal.

**730 Unlawful termination FWC applications**

- (1) This section applies if:
  - (a) an unlawful termination FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction; or
    - (iii) resulted in the issue of a certificate under paragraph 776(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful).
- (1A) This section also applies if:

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- (a) an unlawful termination FWC application has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction; and
  - (c) a certificate in relation to the dispute has been issued by the FWC under paragraph 776(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
  - (d) a notification of the parties' agreement to the FWC arbitrating the dispute has been made as referred to in paragraphs 777(1)(b) and (c).
- (2) An **unlawful termination FWC application** is an application under section 773 for the FWC to deal with a dispute that relates to dismissal.

**731 Unlawful termination court applications**

This section applies if:

- (a) an unlawful termination court application has been made by, or on behalf of, the person in relation to the dismissal; and
- (b) the application has not:
  - (i) been withdrawn by the person who made the application; or
  - (ii) failed for want of jurisdiction.

**732 Applications and complaints under other laws**

- (1) This section applies if:
- (a) an application or complaint under another law has been made by, or on behalf of, the person in relation to the dismissal; and
  - (b) the application or complaint has not:

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- (i) been withdrawn by the person who made the application; or
  - (ii) failed for want of jurisdiction.
- (2) An **application or complaint under another law** is an application or complaint made under:
- (a) a law of the Commonwealth (other than this Act); or
  - (b) a law of a State or Territory.
- (3) For the purposes of this Subdivision, if a complaint under the *Australian Human Rights Commission Act 1986* relates to a dismissal only as a result of an amendment of the complaint, the complaint is taken to be made when the complaint is amended.

**733 Dismissal does not include failure to provide benefits**

For the purposes of this Subdivision, a reference to an application or complaint made in relation to a dismissal does not include a reference to an application or complaint made only in relation to failure by the employer concerned to provide a benefit to which the dismissed person is entitled as a result of the dismissal.

**Subdivision C—General protections applications that do not relate to dismissal**

**734 General rule**

- (1) A person must not make a general protections court application in relation to conduct that does not involve the dismissal of the person if:
- (a) an application or complaint under an anti-discrimination law or the *Australian Human Rights Commission Act 1986* has been made by, or on behalf of, the person in relation to the conduct; and
  - (b) the application or complaint has not:
    - (i) been withdrawn by the person who made the application; or



- (ii) failed for want of jurisdiction.
- (2) A person must not make an application or complaint under an anti-discrimination law or the *Australian Human Rights Commission Act 1986* in relation to conduct that does not involve the dismissal of the person if:
  - (a) a general protections court application has been made by, or on behalf of, the person in relation to the conduct; and
  - (b) the application has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction.

### **Subdivision D—Sexual harassment applications**

#### **734A Sexual harassment court applications—interaction with sexual harassment FWC applications**

- (1) A person (the *first person*) who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A by another person (the *second person*) must not (subject to subsection (2)) make a sexual harassment court application in relation to particular conduct if:
  - (a) a sexual harassment FWC application has been made by, or on behalf of, the first person in relation to the conduct; and
  - (b) a certificate in relation to the dispute has been issued by the FWC under paragraph 527R(3)(a) (which provides for the FWC to issue a certificate if the FWC is satisfied that all reasonable attempts to resolve a dispute (other than by arbitration) have been, or are likely to be, unsuccessful); and
  - (c) 2 or more of the parties (the *notifying parties*) have jointly notified the FWC as mentioned in paragraph 527S(1)(b) that they agree to the FWC arbitrating the dispute; and
  - (d) paragraphs 527S(1)(c), (d) and (e) apply in relation to the notification; and
  - (e) the notifying parties include both the first person and the second person.

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- (2) Subsection (1) does not apply in relation to a sexual harassment court application that includes an application for an interim injunction.
- (3) A *sexual harassment FWC application* is an application under section 527F for the FWC to deal with a dispute that relates to a contravention of Division 2 of Part 3-5A.

**734B Sexual harassment FWC applications and sexual harassment court applications—interaction with anti-discrimination laws**

- (1) A person who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A must not make either of the following applications:
  - (a) a sexual harassment FWC application (other than an application that consists solely of an application for a stop sexual harassment order);
  - (b) a sexual harassment court application;in relation to particular conduct if:
  - (c) an application or complaint under an anti-discrimination law or the *Australian Human Rights Commission Act 1986* has been made by, or on behalf of, the person in relation to the conduct; and
  - (d) the application or complaint has not:
    - (i) been withdrawn by the person who made the application; or
    - (ii) failed for want of jurisdiction.
- (2) A person who alleges they have been sexually harassed in contravention of Division 2 of Part 3-5A must not make an application or complaint under an anti-discrimination law or the *Australian Human Rights Commission Act 1986* in relation to particular conduct if:
  - (a) either of the following applications has been made by, or on behalf of, the person in relation to the conduct:

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- (i) a sexual harassment FWC application (other than an application that consists solely of an application for a stop sexual harassment order);
- (ii) a sexual harassment court application; and
- (b) the application referred to in paragraph (a) has not:
  - (i) been withdrawn by the person who made the application; or
  - (ii) failed for want of jurisdiction.

## Part 6-2—Dealing with disputes

### Division 1—Introduction

#### 735 Guide to this Part

This Part is about dealing with disputes between national system employees and their employers.

Division 2 deals with the powers of the FWC and other persons to deal with a dispute if a modern award, enterprise agreement or contract of employment includes a term that provides for the FWC or the person to deal with the dispute.

#### 736 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

## **Division 2—Dealing with disputes**

### **Subdivision A—Model term about dealing with disputes**

#### **737 Model term about dealing with disputes**

The regulations must prescribe a model term for dealing with disputes for enterprise agreements.

### **Subdivision B—Dealing with disputes**

#### **738 Application of this Division**

This Division applies if:

- (a) a modern award includes a term that provides a procedure for dealing with disputes, including a term in accordance with section 146; or
- (b) an enterprise agreement includes a term that provides a procedure for dealing with disputes, including a term referred to in subsection 186(6); or
- (c) a contract of employment or other written agreement includes a term that provides a procedure for dealing with disputes between the employer and the employee, to the extent that the dispute is about any matters in relation to the National Employment Standards or a safety net contractual entitlement; or
- (d) a determination under the *Public Service Act 1999* includes a term that provides a procedure for dealing with disputes arising under the determination or in relation to the National Employment Standards.

#### **739 Disputes dealt with by the FWC**

- (1) This section applies if a term referred to in section 738 requires or allows the FWC to deal with a dispute.

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- (3) In dealing with a dispute, the FWC must not exercise any powers limited by the term.
- (4) If, in accordance with the term, the parties have agreed that the FWC may arbitrate (however described) the dispute, the FWC may do so.

Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

- (5) Despite subsection (4), the FWC must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.
- (6) The FWC may deal with a dispute only on application by a party to the dispute.

**740 Dispute dealt with by persons other than the FWC**

- (1) This section applies if a term referred to in section 738 requires or allows a person other than the FWC to deal with a dispute.
- (3) If, in accordance with the term, the parties have agreed that the person may arbitrate (however described) the dispute, the person may do so.
- (4) Despite subsection (3), the person must not make a decision that is inconsistent with this Act, or a fair work instrument that applies to the parties.

## **Part 6-3—Extension of National Employment Standards entitlements**

### **Division 1—Introduction**

#### **741 Guide to this Part**

This Part contains Divisions that extend some National Employment Standards entitlements to non-national system employees.

Division 2 extends the entitlements to unpaid parental leave, and related entitlements.

Division 3 extends the entitlements to notice of termination or payment in lieu of notice.

#### **742 Meanings of *employee* and *employer***

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

## **Division 2—Extension of entitlement to unpaid parental leave and related entitlements**

### **Subdivision A—Main provisions**

#### **743 Object of this Division**

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); and
- (b) the Workers with Family Responsibilities Recommendation, 1981 (Recommendation No. R165) which the General Conference of the ILO adopted on 23 June 1981;

by providing for a system of unpaid parental leave and related entitlements, that will help men and women workers who have responsibilities in relation to their dependent children:

- (c) to prepare for, enter, participate in or advance in economic activity; and
- (d) to reconcile their employment and family responsibilities.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).

#### **744 Extending the entitlement to unpaid parental leave and related entitlements**

*Extension of Division 5 of Part 2-2 and related provisions*

- (1) The provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2), apply in relation to a non-national system employee as if:



- (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and
- (b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

Note 1: Division 5 of Part 2-2 provides for unpaid parental leave and related entitlements.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are to national system employees and national system employers because of section 60 or another similar section.

- (2) The related provisions are the following, so far as they apply in relation to Division 5 of Part 2-2 as it applies because of subsection (1):
  - (a) the provisions of Divisions 2 and 13 of Part 2-2;
  - (b) any other provisions of this Act prescribed by the regulations;
  - (c) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Division 5 of Part 2-2, or in provisions referred to in paragraph (a) or (b) of this subsection.

*Modifications are set out in Subdivision B*

- (3) The extended parental leave provisions have effect subject to the modifications provided for in Subdivision B. The ***extended parental leave provisions*** are the provisions of Division 5 of Part 2-2, and the related provisions identified in subsection (2) of this section, as they apply because of this section.

*Regulations made for the purpose of provisions*

- (4) Subsection (1) also applies to any regulations made for the purpose of a provision to which that subsection applies, other than a provision that is modified by Subdivision B.

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**745 Contravening the extended parental leave provisions**

A non-national system employer must not contravene the extended parental leave provisions.

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

**746 References to the National Employment Standards include extended parental leave provisions**

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended parental leave provisions.

**747 State and Territory laws that are not excluded**

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements in relation to the birth or adoption of children, to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended parental leave provisions.

**Subdivision B—Modifications of the extended parental leave provisions**

**748 Non-national system employees are not award/agreement free employees**

A non-national system employee is not an award/agreement free employee for the purpose of the extended parental leave provisions.

**749 Modification of meaning of *base rate of pay* for pieceworkers**

Section 16 has effect as if the following paragraph were added at the end of subsection 16(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's base rate of pay for the purposes of the extended parental leave provisions.

**750 Modification of meaning of *full rate of pay* for pieceworkers**

Section 18 has effect as if the following paragraph were added at the end of subsection 18(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the extended parental leave provisions.

**751 Modification of meaning of *ordinary hours of work*—if determined by State industrial instrument**

Section 20 has effect as if the following subsection were inserted before subsection 20(1):

- (1A) If a State industrial instrument applies to a non-national system employee and specifies, or provides for the determination of, the employee's ordinary hours of work, the employee's ***ordinary hours of work*** are as specified in, or determined in accordance with, that instrument.

**752 Modification of meaning of *ordinary hours of work*—if not determined by State industrial instrument**

Section 20 has effect as if references in subsections 20(1), (2) and (3) to an award/agreement free employee also included references to a non-national system employee to whom either of the following paragraphs applies:

- (a) a State industrial instrument applies to the employee, but it does not specify, or provide for the determination of, the employee's ordinary hours of work;
- (b) no State industrial instrument applies to the employee.

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**753 Modification of meaning of *ordinary hours of work*—regulations may prescribe usual weekly hours**

Section 20 has effect as if the following subsection were added at the end:

- (5) For a non-national system employee:
  - (a) who is not a full-time employee; and
  - (b) who does not have usual weekly hours of work; and
  - (c) to whom either of the following subparagraphs applies:
    - (i) a State industrial instrument applies to the employee, but it does not specify, or provide for the determination of, the employee's ordinary hours of work;
    - (ii) no State industrial instrument applies to the employee; the regulations may prescribe, or provide for the determination of, hours that are taken to be the employee's usual weekly hours of work for the purposes of the extended parental leave provisions.

**754 Modification of meaning of *pieceworker***

Section 21 has effect as if the following paragraph were added at the end of subsection 21(1):

- (d) a non-national system employee who is in a class of employees prescribed by the regulations as pieceworkers for the purpose of the extended parental leave provisions.

**755 Modification of provision about interaction with paid leave**

Section 79 applies as if subsections 79(2) and (3) were omitted.

**756 Modification of provision about relationship between National Employment Standards and agreements**

Section 128 has effect as if references to an award/agreement free employee also included references to a non-national system employee.

### **757 Modification of power to make regulations**

Section 129 has effect as if the following subsection were added at the end:

- (2) The regulations may:
  - (a) permit non-national system employers and non-national system employees to agree on matters that would or might otherwise be contrary to an extended parental leave provision; and
  - (b) prohibit such employers and employees from agreeing on matters, or prohibit such employers from making requirements of such employees, that would or might otherwise be permitted by an extended parental leave provision.

## **Division 3—Extension of entitlement to notice of termination or payment in lieu of notice**

### **Subdivision A—Main provisions**

#### **758 Object of this Division**

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).

#### **759 Extending entitlement to notice of termination or payment in lieu of notice**

*Extension of Subdivision A of Division 11 of Part 2-2 and related provisions*

- (1) The provisions of Subdivision A of Division 11 of Part 2-2, and the related provisions identified in subsection (2), apply in relation to a non-national system employee as if:
  - (a) any reference in the provisions to a national system employee also included a reference to a non-national system employee; and
  - (b) any reference in the provisions to a national system employer also included a reference to a non-national system employer.

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Note 1: Subdivision A of Division 11 of Part 2-2 provides for notice of termination or payment in lieu of notice.

Note 2: This subsection applies to express references to national system employees and national system employers, and to references that are to national system employees and national system employers because of section 60 or another similar section.

- (2) The related provisions are the following, so far as they apply in relation to Subdivision A of Division 11 of Part 2-2 as it applies because of subsection (1):
- (a) the provisions of Division 2, Subdivision C of Division 11, and Division 13, of Part 2-2;
  - (b) any other provisions of this Act prescribed by the regulations;
  - (c) any provisions of this Act that define expressions that are used (directly or indirectly) in provisions of Subdivision A of Division 11 of Part 2-2, or in provisions referred to in paragraph (a) or (b) of this subsection.

*Modifications are set out in Subdivision B*

- (3) The extended notice of termination provisions have effect subject to the modifications provided for in Subdivision B. The ***extended notice of termination provisions*** are the provisions of Subdivision A of Division 11 of Part 2-2, and the related provisions identified in subsection (2) of this section, as they apply because of this section.

*Regulations made for the purpose of provisions*

- (4) Subsection (1) also applies to any regulations made for the purpose of a provision to which that subsection applies, other than a provision that is modified by Subdivision B.

## **760 Contravening the extended notice of termination provisions**

A non-national system employer must not contravene the extended notice of termination provisions.

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

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**761 References to the National Employment Standards include extended notice of termination provisions**

A reference in this Act, or another law of the Commonwealth, to the National Employment Standards includes a reference to the extended notice of termination provisions.

**762 State and Territory laws that are not excluded**

This Act is not intended to apply to the exclusion of laws of a State or Territory that provide employee entitlements relating to notice of termination of employment (or payment in lieu of notice), to the extent that those laws:

- (a) apply to non-national system employees; and
- (b) provide entitlements for those employees that are more beneficial than the entitlements under the extended notice of termination provisions.

**Subdivision B—Modifications of the extended notice of termination provisions**

**763 Non-national system employees are not award/agreement free employees**

A non-national system employee is not an award/agreement free employee for the purpose of the extended notice of termination provisions.

**764 Modification of meaning of *full rate of pay* for pieceworkers**

Section 18 has effect as if the following paragraph were added at the end of subsection 18(2):

- (d) the employee is a non-national system employee, and the regulations prescribe, or provide for the determination of, the employee's full rate of pay for the purposes of the extended notice of termination provisions.



**765 Modification of meaning of *piecemaker***

Section 21 has effect as if the following paragraph were added at the end of subsection 21(1):

- (d) a non-national system employee who is in a class of employees prescribed by the regulations as piecemarkers for the purpose of the extended notice of termination provisions.

**766 Modification of provision about notice of termination by employee**

Section 118 has effect as if the following subsection were added at the end:

- (2) A State industrial instrument may include terms specifying the period of notice a non-national system employee must give in order to terminate his or her employment.

**767 Modification of provision about relationship between National Employment Standards and agreements**

Section 128 has effect as if references to an award/agreement free employee also included references to a non-national system employee.

**768 Modification of power to make regulations**

Section 129 has effect as if the following subsection were added at the end:

- (2) The regulations may:
  - (a) permit non-national system employers and non-national system employees to agree on matters that would or might otherwise be contrary to an extended notice of termination provision; and
  - (b) prohibit such employers and employees from agreeing on matters, or prohibit such employers from making requirements of such employees, that would or might

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otherwise be permitted by an extended notice of termination provision.

## **Part 6-3A—Transfer of business from a State public sector employer**

### **Division 1—Introduction**

#### **768AA Guide to this Part**

This Part provides for the transfer of certain terms and conditions of employment when there is a transfer of business from a non-national system employer that is a State public sector employer (called “the old State employer”) to a national system employer (called “the new employer”).

A transfer of business involves the transfer of employment of one or more employees of the old State employer to the new employer. Each of those employees is a “transferring employee”.

If there is a transfer of business, then this Part provides for certain terms and conditions of employment with the old State employer to be transferred to the employment of the transferring employee with the new employer.

This Part achieves the transfer of those terms and conditions by creating a new instrument—a “copied State instrument”—for each transferring employee. The new instrument is a federal instrument and is enforceable under this Act.

#### **768AB Meanings of *employee* and *employer***

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

## Division 2—Copying terms of State instruments when there is a transfer of business

### 768AC What this Division is about

This Division sets out when there is a transfer of business from the old State employer to the new employer.

### 768AD When does a transfer of business occur?

*When there is a transfer of business*

- (1) There is a **transfer of business** from a non-national system employer that is a State public sector employer of a State (the **old State employer**) to a national system employer (the **new employer**) if the following requirements are satisfied:
  - (a) the employment of a person who is a State public sector employee of the old State employer has terminated;
  - (b) within 3 months after the termination, the person becomes employed by the new employer;
  - (c) the work (the **transferring work**) the person performs for the new employer is the same, or substantially the same, as the work the person performed for the old State employer;
  - (d) there is a connection between the old State employer and the new employer as described in subsection (2), (3) or (4).

*Transfer of assets from old State employer to new employer*

- (2) There is a connection between the old State employer and the new employer if, in accordance with an arrangement between:
  - (a) the old State employer or an associated entity of the old State employer; and
  - (b) the new employer or an associated entity of the new employer;

the new employer, or the associated entity of the new employer, owns or has the beneficial use of some or all of the assets (whether tangible or intangible):

- (c) that the old State employer, or the associated entity of the old State employer, owned or had the beneficial use of; and
- (d) that relate to, or are used in connection with, the transferring work.

*Old State employer outsources work to new employer*

- (3) There is a connection between the old State employer and the new employer if the transferring work is performed by one or more transferring employees, as employees of the new employer, because the old State employer, or an associated entity of the old State employer, has outsourced the transferring work to the new employer or an associated entity of the new employer.

*New employer is an associated entity of old employer*

- (4) There is a connection between the old State employer and the new employer if the new employer is an associated entity of the old State employer when the transferring employee becomes employed by the new employer.

#### **768AE Meaning of *transferring employee*, *termination time* and *re-employment time***

- (1) The person referred to in paragraph 768AD(1)(a) is a ***transferring employee*** in relation to the transfer of business.
- (2) The ***termination time*** of a transferring employee is the start of the day the employment of the employee is terminated by the old State employer.
- (3) The ***re-employment time*** of a transferring employee is the start of the day the employee becomes employed by the new employer.

## **Division 3—Copied State instruments**

### **Subdivision A—Guide to this Division**

#### **768AF What this Division is about**

If there is a transfer of business, then this Division provides for certain terms and conditions of a transferring employee's employment with the old State employer to be transferred to the employment with the new employer.

The transfer of those terms and conditions is achieved by creating a new instrument—called a “copied State instrument”—for the transferring employee. The new instrument is a federal instrument that is enforceable under this Act.

There are 2 types of copied State instruments—a copied State award and a copied State employment agreement.

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

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

### **Subdivision B—Copied State instruments**

#### **768AG Contravening a copied State instrument**

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

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

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

### **768AH What is a copied State instrument?**

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

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

### **768AI What is a copied State award?**

- (1) If, immediately before the termination time of a transferring employee:
- (a) a State award (the *original State award*) was in operation under the State industrial law of the State; and
  - (b) the original State award covered (however described in the original State award or a relevant law of the State) the old State employer and the transferring employee (whether or not the original State award also covered other persons);
- then a *copied State award* for the transferring employee is taken to come into operation immediately after the termination time.

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

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

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

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

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

**768AJ What is a State award?**

- (1) A *State award* is an instrument in relation to which the following conditions are satisfied:
- (a) the instrument regulates terms and conditions of employment;
  - (b) the instrument was made under a State industrial law by a State industrial body;
  - (c) the instrument is referred to in that law as an award.
- (2) However, the regulations may provide that an instrument of a specified kind:
- (a) is a *State award*; or
  - (b) is not a *State award*.

**768AK What is a copied State employment agreement?**

- (1) If, immediately before the termination time of a transferring employee:
- (a) a State employment agreement (the *original State agreement*) was in operation under a State industrial law of the State; and
  - (b) the original State agreement covered (however described in the original State agreement or a relevant law of the State)



the old State employer and the transferring employee  
(whether or not the original State agreement also covered  
other persons);

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

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

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

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

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

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

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

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

**768AL What is a State employment agreement?**

- (1) A ***State employment agreement*** is:
- (a) an agreement in relation to which the following conditions are satisfied:
    - (i) the agreement is between a non-national system employer and one or more of the employees of the employer, or between a non-national system employer and an association of employees registered under a State industrial law;
    - (ii) the agreement determines terms and conditions of employment of one or more employees of the employer;
    - (iii) the agreement was made under a State industrial law; or
  - (b) a determination in relation to which the following conditions are satisfied:
    - (i) the determination determines terms and conditions of employment;
    - (ii) the determination was made under a State industrial law by a State industrial body;
    - (iii) the determination was made in a situation in which parties who were negotiating for the making of an agreement of a kind described in paragraph (a) had not been able to reach an agreement;
    - (iv) the purpose of the determination was to resolve the matters that were at issue in those negotiations.
- (2) However, the regulations may provide that an instrument of a specified kind:
- (a) is a ***State employment agreement***; or
  - (b) is not a ***State employment agreement***.
- (3) A State employment agreement is a ***State collective employment agreement*** unless:
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- (a) it is an agreement of a kind that, under the relevant State industrial law, could only be entered into by a single employee and a single employer; or
  - (b) the agreement is of a kind prescribed by the regulations.
- (4) A State employment agreement referred to in paragraph (3)(a) or (b) is a ***State individual employment agreement***.

### **768AM When does a copied State instrument apply to a person?**

#### *Transferring employee and organisations*

- (1) A copied State instrument for a transferring employee ***applies*** to the transferring employee or an organisation if:
- (a) the instrument covers the employee or organisation; and
  - (b) the instrument is in operation; and
  - (c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employee or organisation; and
  - (d) immediately before the employee's termination time, the employee or organisation would have been:
    - (i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or
    - (ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

#### *New employer and other employers*

- (2) A copied State instrument for a transferring employee ***applies*** to an employer (whether the new employer or another employer) if:
- (a) the instrument covers the employer; and
  - (b) the instrument is in operation; and
  - (c) no other provision of this Act provides, or has the effect, that the instrument does not apply to the employer; and

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- (d) immediately before the employee's termination time, the old State employer would have been:
  - (i) required by the law of the State to comply with terms of the original State award or original State agreement for the instrument; or
  - (ii) entitled under the law of the State to enforce terms of the original State award or original State agreement for the instrument.

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

*Other circumstances when instrument applies*

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

*Instrument only applies in relation to transferring work*

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

**768AN When does a copied State instrument cover a person?**

*Transferring employee and new employer*

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

*Employee organisation*

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

- (a) the instrument covers the employee because of subsection (1); and
- (b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the employee.

*Employer organisation*

- (3) A copied State instrument for a transferring employee **covers** an employer organisation in relation to the new employer if:
  - (a) the instrument covers the new employer because of subsection (1); and
  - (b) immediately before the employee's termination time, the original State award or original State agreement for the instrument covered (however described in the original State award or original State agreement or in a relevant law of the State) the organisation in relation to the old State employer.

*Other circumstances when a person is covered*

- (4) A copied State instrument for a transferring employee also **covers** a person if any of the following provides, or has the effect, that the instrument covers the person:
  - (a) a provision of this Act or of the Registered Organisations Act;
  - (b) an FWC order made under a provision of this Act;
  - (c) an order of a court.

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

*Circumstances when a person is not covered*

- (5) Despite subsections (1), (2), (3) and (4), a copied State instrument for a transferring employee does not **cover** a person if any of the

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following provides, or has the effect, that the instrument does not cover the person:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

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

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

*Covered only in relation to transferring work*

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

**768AO When is a copied State instrument in operation?**

*When instrument comes into operation*

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

*When copied State award ceases to operate*

- (2) A copied State award for a transferring employee ceases to operate at the following time:
  - (a) unless paragraph (b) applies—the end of the period (the **default period**) that is 5 years or such longer period as is prescribed by the regulations, starting on the day the employee's termination time occurred;
  - (b) if the regulations allow the FWC to make an order to extend the period of operation of a copied State award for a transferring employee and, in accordance with those

regulations, the FWC makes an order that the award operates for a period that is longer than the default period—the end of that period.

- (3) The regulations may:
- (a) prescribe circumstances in which the FWC may make an order for the purposes of paragraph (2)(b); and
  - (b) prescribe a maximum period that the order may specify; and
  - (c) otherwise make provision in relation to the making of the order.

*When copied State agreement ceases to operate*

- (4) A copied State employment agreement for a transferring employee ceases to operate when it is terminated, which may happen before or after the nominal expiry date of the agreement.

Note 1: See section 768AY for how the copied State employment agreement can be terminated.

Note 2: If, after the transferring employee's re-employment time with the new employer, an enterprise agreement is made that covers the employee and the new employer, then the copied State employment agreement will cease to cover the employee and the new employer and will never cover them again, see section 768AU.

- (5) The ***nominal expiry date*** of a copied State employment agreement for a transferring employee is:
- (a) the day the original State agreement would nominally have expired under the State industrial law of the State; or
  - (b) if that day falls after the end of 4 years beginning on the day the employee's termination time occurs—the last day of that 4-year period.

*Once instrument ceases operation, can never operate again*

- (6) A copied State instrument for a transferring employee that has ceased to operate can never operate again.

## **Division 4—Interaction between copied State instruments and the NES, modern awards and enterprise agreements**

### **Subdivision A—Guide to this Division**

#### **768AP What this Division is about**

This Division provides for how copied State instruments interact with the National Employment Standards, modern awards and enterprise agreements.

### **Subdivision B—Interaction with the NES**

#### **768AQ Interaction between the NES and a copied State instrument**

To the extent that a term of a copied State instrument for a transferring employee is detrimental to the employee, in any respect, when compared to an entitlement of the employee under the National Employment Standards, the term of the instrument is of no effect.

#### **768AR Provisions of the NES that allow instruments to contain particular kinds of terms**

*Application of particular provisions of the NES*

- (1) The following provisions have effect, on and after the re-employment time of a transferring employee, as if a reference to a modern award or an enterprise agreement included a reference to a copied State instrument for the transferring employee:
  - (a) section 63 (which allows terms dealing with averaging of hours of work);
  - (b) section 93 (which allows terms dealing with cashing out and taking paid annual leave);



- (c) section 101 (which allows terms dealing with cashing out paid personal/carer's leave);
- (d) subsection 107(5) (which allows terms dealing with evidence requirements for paid personal/carer's leave etc.);
- (e) subsection 115(3) (which allows terms dealing with substitution of public holidays);
- (f) section 118 (which allows terms dealing with an employee giving notice to terminate his or her employment);
- (g) subsections 121(2) and (3) (which allow terms specifying situations in which the redundancy pay entitlement under section 119 does not apply);
- (h) section 126 (which allows terms providing for school-based apprentices and trainees to be paid loadings in lieu).

*Terms about paid annual leave and personal/carer's leave*

- (2) If a copied State instrument for a transferring employee:
  - (a) includes terms referred to in subsection 93(1) but the terms do not include the requirements referred to in subsection 93(2); or
  - (b) includes terms referred to in subsection 101(1) but the terms do not include the requirements referred to in subsection 101(2);

then the instrument is taken to include terms that include the requirements.

*Shiftworker annual leave entitlement*

- (3) If a copied State instrument for a transferring employee applies to the employee, then subsections 87(3) to (5) have effect, on and after the employee's re-employment time, in the same way as they apply to an award/agreement free employee.

Note: If the transferring employee qualifies for the shiftworker annual leave entitlement under those subsections, the employee will be entitled to 5 (rather than 4) weeks of paid annual leave.

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**Subdivision C—Interaction with modern awards**

**768AS Modern awards and copied State awards**

- (1) While a copied State award for a transferring employee:
- (a) covers the employee, or an employer (whether the new employer or another national system employer) or other person in relation to the employee; and
  - (b) is in operation;

a modern award does not cover the employee, or the employer or other person in relation to the employee.

Note 1: When the copied State award for a transferring employee ceases to cover the employee, a modern award will start to cover the employee, or an employer or other person in relation to the employee.

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

- (2) Subsection (1) does not apply for the purposes of section 193 (which is about the better off overall test for enterprise agreements).

Note: For the purposes of determining whether an enterprise agreement that covers a transferring employee passes the better off overall test, subsection (2) allows the enterprise agreement to be compared against a modern award that covers the employee.

- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

**768AT Modern awards and copied State employment agreements**

*Copied State collective employment agreements*

- (1) If a copied State collective employment agreement for a transferring employee and a modern award both apply:
- (a) to the employee; or

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(b) to an employer (whether the new employer or another national system employer) or another person in relation to the employee;

then the copied State collective employment agreement for the employee prevails over the modern award, to the extent of any inconsistency.

Note 1: This subsection has effect subject to item 17 of Schedule 9 to the Transitional Act as that item applies in a modified way because of section 768BY. That item, as modified, requires that the base rate of pay under the copied State employment agreement must not be less than the modern award rate.

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

*Copied State individual employment agreements*

(2) While a copied State individual employment agreement for a transferring employee applies:

(a) to the employee; or

(b) to an employer (whether the new employer or another national system employer) or another person in relation to the employee;

a modern award does not apply to the employee, or to the employer or other person in relation to the employee.

Note 1: However, a modern award can cover the transferring employee while the copied State individual employment agreement applies.

Note 2: This subsection has effect subject to item 17 of Schedule 9 to the Transitional Act as that item applies in a modified way because of section 768BY. That item, as modified, requires that the base rate of pay under the copied State employment agreement must not be less than the modern award rate.

Note 3: This subsection may operate in relation to an employer that is not the new employer in the situation where there has been a later transfer of business by the new employer (see Part 2-8).

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*FWC coverage orders*

- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

**Subdivision D—Interaction with enterprise agreements**

**768AU Enterprise agreements and copied State instruments**

- (1) While a copied State instrument for a transferring employee covers the employee and the new employer in relation to the transferring work, an enterprise agreement that covers the new employer at the employee's re-employment time does not cover the employee in relation to that work.

Note 1: The fact that a copied State collective employment agreement for a transferring employee covers the employee does not prevent the employee and the new employer from replacing that agreement at any time with an enterprise agreement, regardless of whether the employee's copied State collective employment agreement has passed its nominal expiry date.

Note 2: Industrial action must not be taken before the nominal expiry date of a copied State collective employment agreement for a transferring employee (see item 4 of Schedule 13 to the Transitional Act as that item applies in a modified way because of section 768BY).

- (2) However, if after the re-employment time, another enterprise agreement starts to cover the employee and the new employer in relation to the transferring work, then the copied State instrument for the employee ceases to cover the employee and the new employer and can never cover them again.
- (3) This section has effect subject to any FWC order about coverage under subsection 768BA(1).

## **Division 5—Variation and termination of copied State instruments**

### **Subdivision A—Guide to this Division**

#### **768AV What this Division is about**

This Division sets out when a copied State instrument may be varied or terminated.

### **Subdivision B—Variation of copied State instruments**

#### **768AW Variation in limited circumstances**

A copied State instrument for a transferring employee cannot be varied except under:

- (a) section 768AX; or
- (b) item 20 of Schedule 3A to the Transitional Act (which deals with variation of discriminatory instruments) as that item has effect because of section 768BY; or
- (c) item 20 of Schedule 9 to the Transitional Act (which deals with variation of instruments in annual wage reviews) as that item has effect because of section 768BY; or
- (d) Division 4 of Part 3 of Schedule 11 to the Transitional Act (which deals with transfer of business) as that Division has effect because of section 768BY.

#### **768AX Variation of copied State instruments**

##### *Application of this section*

- (1A) This section applies if there is, or is likely to be, a transfer of business.

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*Variations that may be made*

- (1) The FWC may vary a copied State instrument for a transferring employee:
- (a) to remove terms that the FWC is satisfied are not, or will not be, capable of meaningful operation or to vary those terms so that they are capable of meaningful operation; or
  - (b) to remove an ambiguity or uncertainty in the instrument; or
  - (c) to enable the instrument to operate in a way that is better aligned to the working arrangements of the new employer's enterprise; or
  - (d) to resolve an uncertainty or difficulty relating to the interaction between the instrument and the National Employment Standards, or to make the instrument operate effectively with the National Employment Standards; or
  - (e) if the instrument is a copied State employment agreement—to resolve an uncertainty or difficulty relating to the interaction between the instrument and a modern award; or
  - (f) to remove terms that are inconsistent with Part 3-1 (which deals with general protections), or to vary terms to make them consistent with that Part.

Note: Paragraph (d) does not affect a term of the copied State instrument that is permitted by a provision of the National Employment Standards as the provision has effect under section 768AR.

*Who may apply for a variation*

- (2) The FWC may make a variation under subsection (1):
- (a) on its own initiative; or
  - (b) on application by a person who is, or is likely to be, covered by the copied State instrument; or
  - (c) on application by an employee organisation that is entitled to represent the industrial interests of an employee who is, or is likely to be, covered by the copied State instrument.

Note: The copied State instrument for the transferring employee may also cover another transferring employee or a non-transferring employee if a consolidation order is made.

*Matters that the FWC must take into account*

- (3) In deciding whether to make a variation under subsection (1), the FWC must take into account the following:
- (a) the views of:
    - (i) the employees who would be affected by the copied State instrument as varied; and
    - (ii) the new employer or a person who is likely to be the new employer;
  - (b) whether any employees would be disadvantaged by the copied State instrument as varied in relation to their terms and conditions of employment;
  - (c) if the copied State instrument is a copied State employment agreement—the nominal expiry date of the agreement;
  - (d) whether the copied State instrument, without the variation, would have a negative impact on the productivity of the new employer’s workplace;
  - (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument, without the variation;
  - (f) the degree of business synergy between the copied State instrument, without the variation, and any workplace instrument that already covers the new employer;
  - (g) the public interest.

*Variation relating to the NES*

- (4) If there is a dispute about the making of a variation for the purposes of paragraph (1)(d), the FWC may compare the entitlements that are in dispute:
- (a) on a “line-by-line” basis, comparing individual terms; or
  - (b) on a “like-by-like” basis, comparing entitlements according to particular subject areas; or
  - (c) using any combination of the above approaches the FWC sees fit.

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- (5) The regulations may make provisions that apply to determining, for the purposes of paragraph (1)(d), whether terms of a copied State instrument for a transferring employee are, or are not, detrimental in any respect when compared to entitlements under the National Employment Standards.

*When variation may be made*

- (6) A variation may be made under subsection (1) in relation to a copied State instrument of a transferring employee:
- (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
  - (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

*Restriction on when variation may come into operation*

- (7) A variation under subsection (1) operates from the day specified in the variation, which may be a day before the variation is made.

**Subdivision C—Termination of copied State instruments**

**768AY Termination in limited circumstances**

- (1) A copied State instrument for a transferring employee cannot be terminated except under items 22, 23, 24, 25 and 26 of Schedule 3A to the Transitional Act (which deal with termination of State employment agreements) as those items have effect because of section 768BY.
- (2) A copied State instrument for a transferring employee that has been terminated ceases to operate and can never operate again.

Note: A copied State instrument that does not operate cannot cover a person (see subsection 768AN(6)).



## **Division 6—FWC orders about coverage of copied State instruments and other instruments**

### **Subdivision A—Guide to this Division**

#### **768AZ What this Division is about**

This Division allows the FWC to make an order that a copied State instrument for a transferring employee does not, or will not, cover the employee and that an enterprise agreement or named employer award that covers the new employer covers, or will cover, the employee instead.

It also allows the FWC to make an order that a copied State instrument for a transferring employee does not, or will not, cover an employee organisation but instead covers, or will cover, another employee organisation.

#### **768AZA Orders in relation to a transfer of business**

- (1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.
- (2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
  - (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
  - (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

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**Subdivision B—Coverage orders**

**768BA FWC orders about coverage for transferring employees**

*Orders that the FWC may make*

- (1) The FWC may make the following orders:
  - (a) an order that a copied State instrument for a transferring employee that would, or would be likely to, cover the transferring employee and the new employer because of subsection 768AN(1) does not, or will not, cover the transferring employee and the new employer;
  - (b) an order that an enterprise agreement or named employer award that covers the new employer at the transferring employee's re-employment time covers, or will cover, the transferring employee.

*Who may apply for an order*

- (2) The FWC may make an order under subsection (1):
  - (a) on its own initiative; or
  - (b) on application by any of the following:
    - (i) a transferring employee or an employee who is likely to be a transferring employee;
    - (ii) the new employer or a person who is likely to be the new employer;
    - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);
    - (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

*Matters that the FWC must take into account*

- (3) In deciding whether to make an order under subsection (1), the FWC must take into account the following:
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- (a) the views of:
  - (i) the employees who would be affected by the order; and
  - (ii) the new employer or a person who is likely to be the new employer;
- (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
- (c) if the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;
- (d) whether the copied State instrument would have a negative impact on the productivity of the new employer’s workplace;
- (e) whether the new employer would incur significant economic disadvantage as a result of the copied State instrument covering the new employer;
- (f) the degree of business synergy between the copied State instrument and any workplace instrument that already covers the new employer;
- (g) the public interest.

*Restriction on when order may come into operation*

- (4) An order under subsection (1) must not come into operation in relation to a particular transferring employee before the later of the following:
  - (a) the transferring employee’s re-employment time;
  - (b) the day on which the order is made.

**768BB FWC orders about coverage for employee organisations**

- (1) The FWC may make an order that:
  - (a) a copied State instrument for a transferring employee that would, or would be likely to, cover an employee organisation (the ***first employee organisation***) in relation to the transferring employee because of subsection 768AN(2) does not, or will not, cover the organisation; and

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- (b) another employee organisation (the ***second employee organisation***) is, or will be, covered by the copied State instrument in relation to the employee.
- (2) When making an order under subsection (1), the FWC must consider whether the second employee organisation is a federal counterpart (within the meaning of section 9A of the Registered Organisations Act) of the first employee organisation.
- (3) The regulations may:
  - (a) prescribe circumstances in which the FWC may make an order for the purposes of subsection (1); and
  - (b) otherwise make provision in relation to the making of the order.
- (4) An order under subsection (1) must be made in accordance with any regulations that are made for the purposes of subsection (3).

## **Division 7—FWC orders about consolidating copied State instruments etc.**

### **Subdivision A—Guide to this Division**

#### **768BC What this Division is about**

This Division allows the FWC to consolidate the various workplace instruments that may apply in the new employer's workplace. It achieves this by allowing the FWC to make an order that a copied State instrument for a particular transferring employee is also a copied State instrument for one or more other transferring employees or non-transferring employees.

Subdivision B deals with consolidating copied State instruments for transferring employees. Under that Subdivision, the FWC may make an order that the copied State instrument for a transferring employee ("employee A") is also the copied State instrument for one or more other transferring employees. If the FWC makes a consolidation order for those other transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those other transferring employees (see section 768BF).

Subdivision C deals with non-transferring employees. Under that Subdivision, the FWC may make an order that the copied State instrument for employee A (who is a transferring employee) is also the copied State instrument for one or more non-transferring employees. If the FWC makes a consolidation order for those non-transferring employees, then this Act is modified so that the copied State instrument for employee A is also the copied State instrument for those non-transferring employees (see section 768BI).

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**768BCA Orders in relation to a transfer of business**

- (1) This Division provides for orders to be made if there is, or is likely to be, a transfer of business.
- (2) An order may be made under this Division in relation to a copied State instrument of a transferring employee:
  - (a) before the copied State instrument comes into operation, if it is likely that the instrument will come into operation; and
  - (b) before the employee is a transferring employee, if it is likely that the employee will become a transferring employee.

**Subdivision B—Consolidation orders in relation to transferring employees**

**768BD Consolidation orders in relation to transferring employees**

*Consolidation order*

- (1) The FWC may make an order (a *consolidation order*) that a copied State instrument for a transferring employee (*employee A*) is also a copied State instrument for one or more other transferring employees.

*Who may apply for order*

- (2) The FWC may make a consolidation order under subsection (1):
  - (a) on its own initiative; or
  - (b) on application by any of the following:
    - (i) a transferring employee, or an employee who is likely to be a transferring employee;
    - (ii) the new employer or a person who is likely to be the new employer;
    - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i).

*Matters that the FWC must take into account*

- (3) In deciding whether to make a consolidation order under subsection (1), the FWC must take into account the following:
- (a) the views of:
    - (i) the employees who would be affected by the order; and
    - (ii) the new employer or a person who is likely to be the new employer;
  - (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
  - (c) if the order relates to a copied State employment agreement—the nominal expiry date of the agreement;
  - (d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer’s workplace;
  - (e) whether the new employer would incur significant economic disadvantage if the order were not made;
  - (f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
  - (g) the public interest.

*Restriction on when order may come into operation*

- (4) A consolidation order under subsection (1) must not come into operation in relation to a particular transferring employee (other than employee A) before the later of the following:
- (a) the transferring employee’s re-employment time;
  - (b) the day on which the order is made.

**768BE Consolidation order to deal with application and coverage**

- (1) A consolidation order under subsection 768BD(1) must specify when the copied State instrument for employee A applies to, and covers:
- (a) another transferring employee; and

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- (b) the new employer in relation to the other transferring employee; and
  - (c) an employee organisation in relation to the other transferring employee;
- which must not be before the other transferring employee's re-employment time.
- (2) Once the consolidation order comes into operation in relation to the other transferring employee, the copied State instrument for the other transferring employee ceases to operate.

**768BF Effect of this Act after a consolidation order is made**

If the FWC makes a consolidation order under subsection 768BD(1), then this Act has effect in relation to a particular transferring employee (other than employee A), from the time the order comes into operation in relation to that employee, as if a reference in relation to that employee to the copied State instrument for that employee were a reference to the copied State instrument for employee A.

**Subdivision C—Consolidation orders in relation to non-transferring employees**

**768BG Consolidation orders in relation to non-transferring employees**

*Consolidation order*

- (1) The FWC may make an order (a **consolidation order**) that a copied State instrument for a transferring employee (**employee A**) also is, or will be, a copied State instrument for one or more non-transferring employees who perform, or are likely to perform, the transferring work.



*Non-transferring employees*

- (2) A **non-transferring employee** of a new employer is a national system employee of the new employer who is not a transferring employee.

*Who may apply for order*

- (3) The FWC may make a consolidation order under subsection (1):
- (a) on its own initiative; or
  - (b) on application by any of the following:
    - (i) a non-transferring employee who performs, or is likely to perform, the transferring work;
    - (ii) the new employer or a person who is likely to be the new employer;
    - (iii) an employee organisation that is entitled to represent the industrial interests of an employee referred to in subparagraph (i);
    - (iv) if the application relates to an enterprise agreement—an employee organisation that is, or is likely to be, covered by the agreement.

*Matters that the FWC must take into account*

- (4) In deciding whether to make a consolidation order under subsection (1), the FWC must take into account the following:
- (a) the views of:
    - (i) the employees who would be affected by the order; and
    - (ii) the new employer or a person who is likely to be the new employer;
  - (b) whether any employees would be disadvantaged by the order in relation to their terms and conditions of employment;
  - (c) if the order relates to a copied State employment agreement or an enterprise agreement—the nominal expiry date of the agreement;

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- (d) whether the copied State instrument for employee A would have a negative impact on the productivity of the new employer's workplace;
- (e) whether the new employer would incur significant economic disadvantage if the order were not made;
- (f) the degree of business synergy between the copied State instrument for employee A and any workplace instrument that already covers the new employer;
- (g) the public interest.

*Restriction on when order may come into operation*

- (5) A consolidation order under subsection (1) must not come into operation in relation to a particular non-transferring employee before the later of the following:
  - (a) the time when the non-transferring employee starts to perform the transferring work for the new employer;
  - (b) the day on which the order is made.

**768BH Consolidation order to deal with application and coverage**

- (1) A consolidation order under subsection 768BG(1) must specify when the copied State instrument for employee A applies to, and covers:
  - (a) a non-transferring employee; and
  - (b) the new employer in relation to the non-transferring employee; and
  - (c) an employee organisation in relation to the non-transferring employee;in relation to the transferring work.
- (2) If an enterprise agreement covers the non-transferring employee and the new employer, the order must also specify that the agreement does not cover:
  - (a) the non-transferring employee; or
  - (b) the new employer in relation to the non-transferring employee; or

- (c) an employee organisation in relation to the non-transferring employee;  
in relation to that work.

**768BI Effect of this Act after a consolidation order is made**

If the FWC makes a consolidation order under subsection 768BG(1), then this Act has effect in relation to a particular non-transferring employee, from the time the order comes into operation in relation to that employee, as if:

- (a) the copied State instrument for employee A were also the copied State instrument for that employee; and  
(b) that employee were a transferring employee in relation to that copied State instrument.

## **Division 8—Special rules for copied State instruments**

### **Subdivision A—Guide to this Division**

#### **768BJ What this Division is about**

This Division has a collection of special rules for copied State instruments for transferring employees.

Subdivision B deals with the case where a copied State instrument for a transferring employee does not have a term about settling disputes about matters arising under the instrument. In that case, the model term prescribed by the regulations is taken to be a term of the instrument.

Subdivision C is about working out service and entitlements of a transferring employee. This is particularly relevant for working out the employee's entitlements under the National Employment Standards and the copied State instrument for the employee.

Subdivision D deals with the case where a copied State award for a transferring employee ceases to operate and the employee suffers a reduction in take home pay. That Subdivision allows the FWC to make a take-home pay order to compensate the employee.

Subdivision E modifies particular provisions of this Act in relation to copied State instruments.

Subdivision F modifies particular provisions of the Transitional Act in relation to copied State instruments.

Subdivision G modifies particular provisions of the Registered Organisations Act in relation to copied State instruments.

## **Subdivision B—Terms about disputes**

### **768BK Where no term dealing with disputes**

- (1) If a copied State instrument for a transferring employee does not include a term that provides a procedure for settling disputes about matters arising under the instrument, then the instrument is taken to include the model term that is prescribed by the regulations for settling disputes about matters arising under a copied State instrument for a transferring employee.

Note: This section deals with the situation where the original State award or original State agreement for the copied State instrument did not include a term about settling disputes about matters arising under the award or agreement.

- (2) For the purposes of subsection (1), the model term prescribed for a copied State award for a transferring employee may be the same or different from the model term prescribed for a copied State employment agreement for a transferring employee.

## **Subdivision C—Service and entitlements of a transferring employee**

### **768BL Service for the purposes of this Act**

#### *General rule*

- (1) Service of a transferring employee with the old State employer that occurred before the employee's termination time also counts as service of the employee with the new employer for the purposes of this Act (including for the purposes of determining the employee's entitlements under the National Employment Standards) after the employee's re-employment time.

#### *Gap between termination time and re-employment time*

- (2) If there is a period of time between the employee's termination time with the old State employer and the employee's re-employment time with the new employer, then that period:

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- (a) does not break the employee's continuous service with the new employer (taking account of the effect of subsection (1)); but
- (b) does not count towards the length of the employee's continuous service with the new employer.

**768BM NES—working out non-accruing entitlements**

*Application of this section*

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the National Employment Standards, other than entitlements to:
  - (a) paid annual leave; or
  - (b) paid personal/carer's leave.

Note: For entitlements to paid annual leave and paid personal/carer's leave under the National Employment Standards, see section 768BN.

*No double entitlement*

- (2) If, before or after the employee's termination time, the employee has the benefit of an entitlement, the amount of which is calculated by reference to a period of service, then subsection 768BL(1) does not result in that period of service with the old State employer being counted again when calculating the employee's entitlements of that kind under the National Employment Standards.
- (3) To avoid doubt, subsection (2) does not require the employee to serve any initial qualifying period of service for long service leave again.

*Limitation on application of general rule to redundancy pay*

- (4) If the terms and conditions of employment that applied to the employee's employment by the old State employer immediately before the employee's termination time did not provide for an entitlement to redundancy pay, then subsection 768BL(1) does not apply in relation to the employee and the new employer for the

purposes of Subdivision B of Division 11 of Part 2-2 (which deals with redundancy pay).

- (5) If a State industrial body could have made an order giving the employee an entitlement to redundancy pay (however described), had the employee's employment been terminated for redundancy (however described) before the employee's termination time, then:
- (a) the terms and conditions of the employee's employment referred to in subsection (4) are taken to have provided for an entitlement to redundancy pay; and
  - (b) paragraph 121(1)(b) does not apply in relation to the employee during the 12 months starting at the employee's re-employment time.

Note: Because of paragraph (b), the employee may therefore be entitled to redundancy pay under section 119 if the employee's employment is terminated by the new employer during the 12-month period starting at the employee's termination time, even if the new employer is a small business employer.

### **768BN NES—working out accruing entitlements**

#### *Application of this section*

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the National Employment Standards to:
- (a) paid annual leave; or
  - (b) paid personal/carer's leave;
- if the employee had, immediately before the employee's termination time, an accrued entitlement to an amount of:
- (c) paid annual leave (however described); or
  - (d) paid personal or carer's leave (however described).

Note: For other entitlements under the National Employment Standards, see section 768BM.

#### *Leave accrued for purposes of the NES*

- (2) The provisions of the National Employment Standards relating to:
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(a) taking that kind of leave (including rates of pay while taking leave); or

(b) cashing-out that kind of leave;

apply as a minimum standard to the accrued leave, after the employee's re-employment time, as if it had accrued under the National Employment Standards.

*No double entitlement*

- (3) However, if before or after the employee's termination time, the old State employer paid the employee an amount in relation to some or all of the accrued leave, then for the purposes of subsection (2), the amount of accrued leave is reduced accordingly.

*Working out whether leave accrued*

- (4) For the purposes of subsection (1), it does not matter whether the entitlement to leave accrued under:
- (a) the original State award or original State agreement for the copied State instrument for the employee; or
  - (b) a State industrial law of the State.

**768BO Copied State instrument—service**

*General rule*

- (1) Service of a transferring employee with the old State employer that:
- (a) occurred before the employee's termination time; and
  - (b) counted for the purposes of the application to the employee of the original State award or original State agreement for the copied State instrument for the employee;
- also counts as service of the employee with the new employer for the purposes of the application to the employee of the copied State instrument after the employee's re-employment time.



*Gap between termination time and re-employment time*

- (2) If there is a period of time between the employee's termination time with the old State employer and the employee's re-employment time with the new employer, then that period:
- (a) does not break the employee's continuous service with the new employer (taking account of the effect of subsection (1)); but
  - (b) does not count towards the length of the employee's continuous service with the new employer.

*Effect of consolidation order*

- (3) If the FWC makes a consolidation order under subsection 768BD(1), then, despite section 768BF, the original State award or original State agreement referred to in paragraph (1)(b) of this section is the original State award or original State agreement for the copied State instrument for the employee before the consolidation order was made.

**768BP Copied State instrument—working out non-accruing entitlements**

*Application of this section*

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under a copied State instrument for the employee, other than entitlements to:
- (a) annual leave (however described); or
  - (b) personal leave or carer's leave (however described).

Note: For entitlements to annual leave or personal leave or carer's leave under the copied State instrument, see section 768BQ.

*No double entitlement*

- (2) If, before or after the employee's termination time, the employee has the benefit of an entitlement, the amount of which is calculated by reference to a period of service, then subsection 768BO(1) does

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not result in that period of service with the old State employer being counted again when calculating the employee's entitlements of that kind under the copied State instrument for the employee.

- (3) To avoid doubt, subsection (2) does not require the employee to serve any initial qualifying period of service for long service leave again.

**768BQ Copied State instrument—working out accruing entitlements**

*Application of this section*

- (1) This section applies for the purposes of determining the entitlements of a transferring employee under the copied State instrument for the employee to:
- (a) annual leave (however described); or
  - (b) personal leave or carer's leave (however described).

Note: For other entitlements under the copied State instrument, see section 768BP.

*Leave accrued for purposes of the instrument*

- (2) If the employee had, immediately before the employee's termination time, an accrued entitlement to an amount of:
- (a) annual leave (however described); or
  - (b) personal leave or carer's leave (however described);
- then the accrued leave is taken to have accrued under the copied State instrument for the employee.

*No double entitlement*

- (3) However, if before or after the employee's termination time, the old State employer paid the employee an amount in relation to some or all of the accrued leave, then for the purposes of subsection (2), the amount of accrued leave is reduced accordingly.

*Working out whether leave accrued*

- (4) For the purposes of subsection (2), it does not matter whether the leave accrued under:
- (a) the original State award or original State agreement for the copied State instrument; or
  - (b) a State industrial law of the State.

**Subdivision D—Cessation of copied State awards: avoiding reductions in take-home pay**

**768BR Cessation not intended to result in reduction in take-home pay**

- (1) If a copied State award for a transferring employee ceases to operate because of subsection 768AO(2), the cessation is not intended to result in a reduction in the take-home pay of the employee.
- (2) A transferring employee's *take-home pay* is the pay the employee actually receives:
- (a) including wages and incentive-based payments, and additional amounts such as allowances and overtime; but
  - (b) disregarding the effect of any deductions that are made as permitted by section 324.

Note: Deductions permitted by section 324 may (for example) include deductions under salary sacrificing arrangements.

- (3) A transferring employee suffers a *reduction in take-home pay* if, and only if:
- (a) when the copied State award for the employee ceases to operate because of subsection 768AO(2), the employee becomes a person to whom a modern award applies; and
  - (b) the employee is employed in the same position as (or a position that is comparable to) the position he or she was employed in immediately before the cessation of the copied State award; and

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- (c) the amount of the employee's take-home pay for working particular hours or for a particular quantity of work after the cessation of the copied State award is less than what would have been the employee's take-home pay for those hours or that quantity of work immediately before the cessation; and
- (d) that reduction in the employee's take-home pay is attributable to the cessation of the copied State award.

**768BS Orders remedying reductions in take-home pay**

- (1) If the FWC is satisfied that a transferring employee to whom a modern award applies has suffered a reduction in take-home pay, the FWC may make any order (a *take-home pay order*) requiring, or relating to, the payment of an amount or amounts to the employee that the FWC considers appropriate to remedy the situation.
- (2) The FWC may make a take-home pay order:
  - (a) on its own initiative; or
  - (b) on application by either of the following:
    - (i) a transferring employee who has suffered a reduction in take-home pay;
    - (ii) an organisation that is entitled to represent the industrial interests of the employee.
- (3) The FWC must not make a take-home pay order if:
  - (a) the FWC considers that the reduction in take-home pay is minor or insignificant; or
  - (b) the FWC is satisfied that the employee has been adequately compensated in other ways for the reduction.
- (4) The FWC must ensure that a take-home pay order is expressed so that:
  - (a) it does not apply to a transferring employee unless the employee has actually suffered a reduction in take-home pay; and
  - (b) if the take-home pay payable to the employee under the modern award increases after the order is made, there is a

corresponding reduction in any amount payable to the employee under the order.

- (5) If the FWC is satisfied that an application for a take-home pay order has already been made in relation to a transferring employee, the FWC may dismiss any later application that is made under these provisions in relation to the same employee.

### **768BT Contravening a take-home pay order**

A person must not contravene a term of a take-home pay order that applies to the person.

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

### **768BU How long a take-home pay order continues to apply**

A take-home pay order made in relation to a transferring employee to whom a particular modern award applies continues to apply in relation to the employee (subject to the terms of the order) for so long as the modern award continues to cover the employee.

Note: It does not matter if the modern award stops applying to the employee because an enterprise agreement starts to apply.

### **768BV Interaction of take-home pay orders with modern awards and enterprise agreements**

A term of a modern award or an enterprise agreement has no effect in relation to a transferring employee to the extent that it is less beneficial to the employee than a term of a take-home pay order that applies to the employee.

### **768BW Application of this Act to take-home pay orders**

This Act applies as if the following provisions included a reference to a take-home pay order:

- (a) subsection 675(2) (which is about FWC orders);
- (b) subsection 706(2) (which is about powers of inspectors).

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**Subdivision E—Modification of this Act**

**768BX Modification of this Act for copied State instruments**

This Act has effect in relation to a transferring employee on and after the employee's re-employment time as if a reference in a provision referred to in column 1 to a term referred to in column 2 included a reference to the term referred to in column 3.

<b>Modification of this Act for copied State instruments</b>			
<b>Item</b>	<b>Column 1 Provision of this Act</b>	<b>Column 2 Current term</b>	<b>Column 3 New term</b>
1	Division 2 of Part 2-9 (payment of wages)	modern award	copied State award for the transferring employee
2	Division 2 of Part 2-9 (payment of wages)	enterprise agreement	copied State employment agreement for the transferring employee
3	Division 3 of Part 2-9 (guarantee of annual earnings)	modern award	copied State award for the transferring employee
4	Division 3 of Part 2-9 (guarantee of annual earnings)	enterprise agreement	copied State employment agreement for the transferring employee
5	Part 3-2 (unfair dismissal)	modern award	copied State award for the transferring employee
6	Part 3-2 (unfair dismissal)	enterprise agreement	copied State employment agreement for the transferring employee
7	Division 9 of Part 3-3 (payments relating to periods of industrial action)	modern award	copied State award for the transferring employee
8	Division 9 of Part 3-3 (payments relating to periods of industrial action)	enterprise agreement	copied State employment agreement for the transferring employee

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**Modification of this Act for copied State instruments**

Item	Column 1 Provision of this Act	Column 2 Current term	Column 3 New term
9	subsection 481(1) (right of entry)	fair work instrument	copied State instrument for the transferring employee
10	subsection 524(2) (stand down)	enterprise agreement	copied State instrument for the transferring employee
11	Part 4-1 (compliance)	fair work instrument	copied State instrument for the transferring employee
12	section 657 (General Manager)	fair work instrument	copied State instrument for the transferring employee
13	Part 5-2 (Fair Work Ombudsman)	fair work instrument	copied State instrument for the transferring employee
14	Part 5-2 (Fair Work Ombudsman)	modern award	copied State award for the transferring employee
15	Part 5-2 (Fair Work Ombudsman)	enterprise agreement	copied State employment agreement for the transferring employee
16	Part 6-2 (dealing with disputes)	modern award	copied State award for the transferring employee
17	Part 6-2 (dealing with disputes)	enterprise agreement	copied State employment agreement for the transferring employee
18	Part 6-2 (dealing with disputes)	fair work instrument	copied State instrument for the transferring employee

**Subdivision F—Modification of the Transitional Act**

**768BY Modification of the Transitional Act for copied State instruments**

- (1) Each relevant transitional provision (see subsection (2)) has effect in relation to a transferring employee as if a reference to a term referred to in column 1 were a reference to the term referred to in

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column 2. The provision has effect from the time specified in column 3 of the table in subsection (2).

**Modification of the Transitional Act and regulations for copied State instruments**

<b>Item</b>	<b>Column 1 Current term</b>	<b>Column 2 New term</b>
1	Division 2B State instrument	copied State instrument for the transferring employee
2	Division 2B State award	copied State award for the transferring employee
3	Division 2B State award applying (within the meaning of the Transitional Act) to a person	copied State award for the transferring employee applying (within the meaning of this Act) to a person
4	Division 2B State award covering (within the meaning of the Transitional Act) a person	copied State award for the transferring employee covering (within the meaning of this Act) a person
5	Division 2B State employment agreement	copied State employment agreement for the transferring employee
6	collective Division 2B State employment agreement	copied State collective employment agreement for the transferring employee
7	individual Division 2B State employment agreement	copied State individual employment agreement for the transferring employee
8	Division 2B State employment agreement applying (within the meaning of the Transitional Act) to a person	copied State employment agreement for the transferring employee applying (within the meaning of this Act) to a person
9	Division 2B State employment agreement covering (within the meaning of the Transitional Act) a person	copied State employment agreement for the transferring employee covering (within the meaning of this Act) a person
10	nominal expiry date of a Division 2B State employment agreement	nominal expiry date of a copied State employment agreement for the transferring employee



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**Modification of the Transitional Act and regulations for copied State instruments**

Item	Column 1 Current term	Column 2 New term
11	Division 2B referral commencement	transferring employee's termination time
12	Division 2B State reference employee	transferring employee
13	Division 2B referring State	the State of the old State employer
14	source State	the State of the old State employer

(2) For the purposes of subsection (1), the *relevant transitional provisions* are:

- (a) the provisions of the Transitional Act that are listed in column 1; and
- (b) the regulations made for the purposes of those provisions.

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**Modification of the Transitional Act and regulations for copied State instruments**

Item	Column 1 Relevant transitional provision	Column 2 Which is about	Column 3 Relevant time
1	item 10 of Schedule 3A	instrument content rules	the transferring employee's termination time
2	item 11 of Schedule 3A	instrument interaction rules	the transferring employee's termination time
3	item 13 (other than note 1 and note 2) of Schedule 3A	references to State industrial bodies	the transferring employee's termination time
4	item 17 of Schedule 3A	no loss of accrued rights etc. when instrument terminates	the transferring employee's re-employment time

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<b>Item</b>	<b>Column 1 Relevant transitional provision</b>	<b>Column 2 Which is about</b>	<b>Column 3 Relevant time</b>
5	item 20 of Schedule 3A	variation of discriminatory instruments	the transferring employee's termination time
6	item 22 of Schedule 3A	collective agreements—termination by agreement	the transferring employee's re-employment time
7	item 23 of Schedule 3A	collective agreements—termination by the FWC	the transferring employee's re-employment time
8	item 24 of Schedule 3A	individual agreements—termination by agreement	the transferring employee's re-employment time
9	item 25 of Schedule 3A	individual agreements—termination conditional on enterprise agreement	the transferring employee's re-employment time
10	item 26 of Schedule 3A	individual agreements—unilateral termination by the FWC	the transferring employee's re-employment time
11	item 47 of Schedule 3A	employee not award/agreement free	the transferring employee's re-employment time
12	item 48 of Schedule 3A	calculating an employee's ordinary hours of work	the transferring employee's re-employment time
13	items 19, 20 and 21 of Schedule 4	interaction with the NES	the transferring employee's re-employment time
14	Part 5 of Schedule 9	base rates of pay	the transferring employee's re-employment time

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**Modification of the Transitional Act and regulations for copied State instruments**

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<b>Item</b>	<b>Column 1 Relevant transitional provision</b>	<b>Column 2 Which is about</b>	<b>Column 3 Relevant time</b>
15	Division 4 of Part 3 of Schedule 11	transfer of business	the transferring employee's re-employment time
16	item 4 of Schedule 12	general protections	the transferring employee's termination time
17	items 2, 3, 4 and 17 of Schedule 13	industrial action	the transferring employee's re-employment time
18	item 4B of Schedule 16 (as that item relates to subitems 25(6) and (7) of Schedule 3A) and item 16 of Schedule 16 (as that item relates to item 4B of Schedule 16)	compliance relating to conditional terminations of individual employment agreements	the transferring employee's re-employment time
19	items 12 and 13 of Schedule 16 and item 16 of Schedule 16 (as that item relates to those items)	compliance relating to non-disclosure obligations	the transferring employee's re-employment time

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**Subdivision G—Modification of the Registered Organisations Act**

**768BZ Modification of the Registered Organisations Act for copied State instruments**

- (1) The Registered Organisations Act has effect in relation to a transferring employee on and after the employee's termination time as if:

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- (a) a reference in that Act to a modern award included a reference to a copied State award for the employee; and
  - (b) a reference in that Act to an enterprise agreement included a reference to a copied State employment agreement for the employee.
- (2) The regulations may deal with other matters relating to how the Registered Organisations Act applies in relation to a transferring employee.

## **Division 9—Regulations**

### **768CA Regulations**

- (1) The regulations may:
  - (a) make provision in relation to the transition from State awards and State employment agreements to copied State instruments; and
  - (b) make provision in relation to the transition from copied State instruments to modern awards and enterprise agreements; and
  - (c) deal with how this Act applies in relation to copied State instruments for transferring employees; and
  - (d) provide that provisions of this Act or the Transitional Act apply in relation to transferring employees or new employers with specified modifications; and
  - (e) otherwise make provision relating to how provisions of this Act or the Transitional Act apply in relation to transferring employees or new employers; and
  - (f) make provision in relation to non-transferring employees of the new employer; and
  - (g) provide that provisions of this Act or the Transitional Act apply in relation to the non-transferring employees with specified modifications; and
  - (h) make other provision in relation to the matters dealt with in this Part.
- (2) Without limiting subsection (1), the regulations may:
  - (a) modify provisions of this Act or the Transitional Act, or provide for the application (with or without modifications) of provisions of this Act or the Transitional Act to matters to which they would otherwise not apply; and
  - (b) provide differently for the purposes of different provisions, or in relation to different situations.
- (3) However, this section does not allow regulations to:

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- (a) modify a provision so as to impose an obligation which, if contravened, constitutes an offence; or
  - (b) include new provisions that create offences.
- (4) The provisions of this Part (including this section) that provide for regulations to deal with matters do not limit each other.

## **Part 6-4—Additional provisions relating to termination of employment**

### **Division 1—Introduction**

#### **769 Guide to this Part**

This Part contains provisions to give effect, or further effect, to certain international agreements relating to discrimination and termination of employment.

Division 2 makes it unlawful for an employer to terminate an employee's employment for certain reasons. Division 2 also deals with compliance. In most cases, a dispute that involves the termination of an employee's employment will be dealt with by a court only if the dispute has not been resolved by the FWC.

Division 3 sets out notification and consultation requirements in relation to certain terminations of employment.

#### **770 Meanings of *employee* and *employer***

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

## Division 2—Termination of employment

### 771 Object of this Division

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation, done at Geneva on 25 June 1958 ([1974] ATS 12); and
- (b) the ILO Convention (No. 156) concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, done at Geneva on 23 June 1981 ([1991] ATS 7); and
- (c) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (d) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982; and
- (e) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and
- (f) article 26 of the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
- (g) paragraph 2 of article 2, and articles 6 and 7, of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5).

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).



### **772 Employment not to be terminated on certain grounds**

- (1) An employer must not terminate an employee's employment for one or more of the following reasons, or for reasons including one or more of the following reasons:
- (a) temporary absence from work because of illness or injury of a kind prescribed by the regulations;
  - (b) trade union membership or participation in trade union activities outside working hours or, with the employer's consent, during working hours;
  - (c) non-membership of a trade union;
  - (d) seeking office as, or acting or having acted in the capacity of, a representative of employees;
  - (e) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;
  - (f) race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, subsection to family and domestic violence, pregnancy, religion, political opinion, national extraction or social origin;
  - (g) absence from work during parental leave;
  - (h) temporary absence from work for the purpose of engaging in a voluntary emergency management activity, where the absence is reasonable having regard to all the circumstances.

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

- (2) However, subsection (1) does not prevent a matter referred to in paragraph (1)(f) from being a reason for terminating a person's employment if:
- (a) the reason is based on the inherent requirements of the particular position concerned; or
  - (b) if the person is a member of the staff of an institution that is conducted in accordance with the doctrines, tenets, beliefs or teachings of a particular religion or creed—the employment is terminated:

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- (i) in good faith; and
  - (ii) to avoid injury to the religious susceptibilities of adherents of that religion or creed.
- (3) To avoid doubt, if:
- (a) an employer terminates an employee's employment; and
  - (b) the reason, or a reason, for the termination is that the position held by the employee no longer exists, or will no longer exist; and
  - (c) the reason, or a reason, that the position held by the employee no longer exists, or will no longer exist, is the employee's absence, or proposed or probable absence, during parental leave;
- the employee's employment is taken, for the purposes of paragraph (1)(g), to have been terminated for the reason, or for reasons including the reason, of absence from work during parental leave.
- (4) For the purposes of subsection (1), subsection 109(2) (which deals with the meaning of *voluntary emergency management activity*) has effect as if the word employee had its ordinary meaning.

**773 Application for the FWC to deal with a dispute**

If:

- (a) an employer has terminated an employee's employment; and
- (b) the employee, or an industrial association that is entitled to represent the industrial interests of the employee, alleges that the employee's employment was terminated in contravention of subsection 772(1);

the employee, or the industrial association, may apply to the FWC for the FWC to deal with the dispute.

**774 Time for application**

- (1) An application under section 773 must be made:
  - (a) within 21 days after the employment was terminated; or

- (b) within such further period as the FWC allows under subsection (2).
- (2) The FWC may allow a further period if the FWC is satisfied that there are exceptional circumstances, taking into account:
  - (a) the reason for the delay; and
  - (b) any action taken by the employee to dispute the termination; and
  - (c) prejudice to the employer (including prejudice caused by the delay); and
  - (d) the merits of the application; and
  - (e) fairness as between the person and other persons in a like position.

### **775 Application fees**

- (1) The application must be accompanied by any fee prescribed by the regulations.
- (2) The regulations may prescribe:
  - (a) a fee for making an application to the FWC under section 773; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.

### **776 Dealing with a dispute (other than by arbitration)**

- (1) If an application is made under section 773, the FWC must deal with the dispute (other than by arbitration).

Note: The FWC may deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

- (2) Any conference conducted for the purposes of dealing with the dispute (other than by arbitration) must be conducted in private, despite subsection 592(3).

Note: For conferences, see section 592.

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- (3) If the FWC is satisfied that all reasonable attempts to resolve the dispute (other than by arbitration) have been, or are likely to be, unsuccessful, then:
- (a) the FWC must issue a certificate to that effect; and
  - (b) if the FWC considers, taking into account all the materials before it, that arbitration under section 777, or an unlawful termination court application, in relation to the dispute would not have a reasonable prospect of success, the FWC must advise the parties accordingly.
- (4) An **unlawful termination court application** is an application to a court under Division 2 of Part 4-1 for orders in relation to a contravention of subsection 772(1).

**777 Dealing with a dispute by arbitration**

- (1) This section applies if:
- (a) the FWC issues a certificate under paragraph 776(3)(a) in relation to the dispute; and
  - (b) the parties notify the FWC that they agree to the FWC arbitrating the dispute; and
  - (c) the notification:
    - (i) is given to the FWC within 14 days after the day the certificate is issued, or within such period as the FWC allows on an application made during or after those 14 days; and
    - (ii) complies with any requirements prescribed by the procedural rules; and
  - (d) sections 726, 727, 728, 729, 731 and 732 do not apply.

Note: Sections 726, 727, 728, 729, 731 and 732 prevent multiple applications or complaints of a kind referred to in those sections from being made in relation to the same dispute. A notification can only be made under this section where there is no such other application or complaint in relation to the dispute at the time the notification is made. Generally, once a notification is made no such application or complaint can be made in relation to the dispute (see section 730).

- (2) The FWC may deal with the dispute by arbitration, including by making one or more of the following orders:
- (a) an order for reinstatement of the employee;
  - (b) an order for the payment of compensation to the employee;
  - (c) an order for payment of an amount to the employee for remuneration lost;
  - (d) an order to maintain the continuity of the employee's employment;
  - (e) an order to maintain the period of the employee's continuous service with the employer.
- (3) A person to whom an order under subsection (2) applies must not contravene a term of the order.

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

### **778 Taking a dispute to court**

A person who is entitled to apply under section 773 for the FWC to deal with a dispute must not make an unlawful termination court application in relation to the dispute unless:

- (a) both of the following apply:
  - (i) the FWC has issued a certificate under paragraph 776(3)(a) in relation to the dispute;
  - (ii) the unlawful termination court application is made within 14 days after the day the certificate is issued, or within such period as the court allows on an application made during or after those 14 days; or
- (b) the unlawful termination court application includes an application for an interim injunction.

Note 1: Generally, if the parties notify the FWC that they agree to the FWC arbitrating the dispute (see subsection 777(1)), an unlawful termination court application cannot be made in relation to the dispute (see sections 730 and 731).

Note 2: For the purposes of subparagraph (a)(ii), in *Brodie-Hanns v MTV Publishing Ltd* (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion

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under a similarly worded provision of the *Industrial Relations Act 1988*.

**779 Appeal rights**

- (1) Despite subsection 604(2), the FWC must not grant permission to appeal from a decision made by the FWC under subsection 777(2) (which is about arbitration of a dispute) unless the FWC considers that it is in the public interest to do so.
- (2) Despite subsection 604(1), an appeal from a decision made by the FWC in relation to a matter arising under subsection 777(2) can only, to the extent that it is an appeal on a question of fact, be made on the ground that the decision involved a significant error of fact.

**779A Costs orders against parties**

- (1) The FWC may make an order for costs against a party (the *first party*) to a dispute for costs incurred by the other party to the dispute if:
  - (a) an application for the FWC to deal with the dispute has been made under section 773; and
  - (b) the FWC is satisfied that the first party caused those costs to be incurred because of an unreasonable act or omission of the first party in connection with the conduct or continuation of the dispute.
- (2) The FWC may make an order under subsection (1) only if the other party to the dispute has applied for it in accordance with section 781.
- (3) This section does not limit the FWC's power to order costs under section 611.

**780 Costs orders against lawyers and paid agents**

- (1) This section applies if:
  - (a) an application for the FWC to deal with a dispute has been made under section 773; and

- (b) a person who is a party to the dispute has engaged a lawyer or paid agent (the *representative*) to represent the person in the dispute; and
  - (c) under section 596, the person is required to seek the FWC's permission to be represented by the representative.
- (2) The FWC may make an order for costs against the representative for costs incurred by the other party to the dispute if the FWC is satisfied that the representative caused those costs to be incurred because:
- (a) the representative encouraged the person to start, continue or respond to the dispute and it should have been reasonably apparent that the person had no reasonable prospect of success in the dispute; or
  - (b) of an unreasonable act or omission of the representative in connection with the conduct or continuation of the dispute.
- (3) The FWC may make an order under this section only if the other party to the dispute has applied for it in accordance with section 781.
- (4) This section does not limit the FWC's power to order costs under section 611.

## **781 Applications for costs orders**

An application for an order for costs in relation to an application under section 773 must be made within 14 days after the FWC finishes dealing with the dispute.

### **781A Schedule of costs**

- (1) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in relation to matters that can be covered by an order under section 611, 779A or 780 in relation to an application under section 773, including expenses arising from the representation of a party by a person or organisation other than on a legal professional basis.

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- (2) If a schedule of costs is prescribed for the purposes of subsection (1), then, in awarding costs under section 611, 779A or 780 in relation to an application under section 773, the FWC:
- (a) is not limited to the items of expenditure appearing in the schedule; but
  - (b) if an item does appear in the schedule—must not award costs in relation to that item at a rate or of an amount that exceeds the rate or amount appearing in the schedule.

**782 Contravening costs orders**

A person to whom an order for costs made under section 779A or 780 applies must not contravene a term of the order.

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

**783 Reason for action to be presumed unless proved otherwise**

- (1) If:
- (a) in an application in relation to a contravention of subsection 772(1), it is alleged that a person took, or is taking, action for a particular reason; and
  - (b) taking that action for that reason would constitute a contravention of subsection 772(1);
- it is presumed that the action was, or is being, taken for that reason, unless the person proves otherwise.
- (2) Subsection (1) does not apply in relation to orders for an interim injunction.



## **Division 3—Notification and consultation requirements relating to certain terminations of employment**

### **Subdivision A—Object of this Division**

#### **784 Object of this Division**

The object of this Division is to give effect, or further effect, to:

- (a) the ILO Convention (No. 158) concerning Termination of Employment at the Initiative of the Employer, done at Geneva on 22 June 1982 ([1994] ATS 4); and
- (b) the Termination of Employment Recommendation, 1982 (Recommendation No. R166) which the General Conference of the ILO adopted on 22 June 1982.

Note 1: In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: In 2009, the text of a Recommendation adopted by the General Conference of the ILO was accessible through the ILO website ([www.ilo.org](http://www.ilo.org)).

### **Subdivision B—Requirement to notify Centrelink**

#### **785 Employer to notify Centrelink of certain proposed terminations**

- (1) If an employer decides to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons, the employer must give a written notice about the proposed terminations to the Chief Executive Officer of the Commonwealth Services Delivery Agency (Centrelink).
- (2) The notice must be in the form (if any) prescribed by the regulations and set out:
  - (a) the reasons for the terminations; and

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- (b) the number and categories of employees likely to be affected; and
  - (c) the time when, or the period over which, the employer intends to carry out the terminations.
- (3) The notice must be given:
- (a) as soon as practicable after making the decision; and
  - (b) before terminating an employee's employment in accordance with the decision.
- (4) The employer must not terminate an employee's employment in accordance with the decision unless the employer has complied with this section.
- Note: This subsection is a civil remedy provision (see Part 4-1).
- (5) The orders that may be made under subsection 545(1) in relation to a contravention of subsection (4) of this section:
- (a) include an order requiring the employer not to terminate the employment of employees in accordance with the decision, except as permitted by the order; but
  - (b) do not include an order granting an injunction.

**Subdivision C—Failure to notify or consult registered employee associations**

**786 FWC may make orders where failure to notify or consult registered employee associations about terminations**

- (1) The FWC may make an order under subsection 787(1) if it is satisfied that:
- (a) an employer has decided to terminate the employment of 15 or more employees for reasons of an economic, technological, structural or similar nature, or for reasons including such reasons; and
  - (b) the employer has not complied with subsection (2) (which deals with notifying relevant registered employee

- associations) or subsection (3) (which deals with consulting relevant registered employee associations); and
- (c) the employer could reasonably be expected to have known, when he or she made the decision, that one or more of the employees were members of a registered employee association.

*Notifying relevant registered employee associations*

- (2) An employer complies with this subsection if:
- (a) the employer notifies each registered employee association of which any of the employees was a member, and that was entitled to represent the industrial interests of that member, of the following:
- (i) the proposed terminations and the reasons for them;
  - (ii) the number and categories of employees likely to be affected;
  - (iii) the time when, or the period over which, the employer intends to carry out the terminations; and
- (b) the notice is given:
- (i) as soon as practicable after making the decision; and
  - (ii) before terminating an employee's employment in accordance with the decision.

*Consulting relevant registered employee associations*

- (3) An employer complies with this subsection if:
- (a) the employer gives each registered employee association of which any of the employees was a member, and that was entitled to represent the industrial interests of that member, an opportunity to consult the employer on:
- (i) measures to avert or minimise the proposed terminations; and
  - (ii) measures (such as finding alternative employment) to mitigate the adverse effects of the proposed terminations; and

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- (b) the opportunity is given:
  - (i) as soon as practicable after making the decision; and
  - (ii) before terminating an employee's employment in accordance with the decision.

**787 Orders that the FWC may make**

- (1) The FWC may make whatever orders it considers appropriate, in the public interest, to put:
  - (a) the employees; and
  - (b) each registered employee association referred to in paragraph 786(2)(a) or (3)(a);in the same position (as nearly as can be done) as if the employer had complied with subsections 786(2) and (3).
- (2) The FWC must not, under subsection (1), make orders for any of the following:
  - (a) reinstatement of an employee;
  - (b) withdrawal of a notice of termination if the notice period has not expired;
  - (c) payment of an amount in lieu of reinstatement;
  - (d) payment of severance pay;
  - (e) disclosure of confidential information or commercially sensitive information relating to the employer, unless the recipient of such information gives an enforceable undertaking not to disclose the information to any other person;
  - (f) disclosure of personal information relating to a particular employee, unless the employee has given written consent to the disclosure of the information and the disclosure is in accordance with that consent.

**788 Application to the FWC for order**

The FWC may make the order only on application by:

- (a) one of the employees; or

- (b) a registered employee association referred to in paragraph 786(2)(a) or (3)(a); or
- (c) any other registered employee association that is entitled to represent the industrial interests of one of the employees.

## **Subdivision D—Limits on scope of this Division**

### **789 Limits on scope of this Division**

- (1) This Division does not apply in relation to any of the following employees:
  - (a) an employee employed for a specified period of time, for a specified task, or for the duration of a specified season;
  - (b) an employee whose employment is terminated because of serious misconduct;
  - (c) a casual employee;
  - (d) an employee (other than an apprentice) to whom a training arrangement applies and whose employment is for a specified period of time or is, for any reason, limited to the duration of the training arrangement;
  - (e) a daily hire employee working in the building and construction industry (including working in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures);
  - (f) a daily hire employee working in the meat industry in connection with the slaughter of livestock;
  - (g) a weekly hire employee working in connection with the meat industry and whose termination of employment is determined solely by seasonal factors;
  - (h) an employee prescribed by the regulations as an employee in relation to whom this Division does not apply.
- (2) Paragraph (1)(a) does not prevent this Division from applying in relation to an employee if a substantial reason for employing the employee as described in that paragraph was to avoid the application of this Division.

## Part 6-4A—Special provisions about TCF outworkers

### Division 1—Introduction

#### 789AA Guide to this Part

This Part contains special provisions about TCF outworkers.

Division 2 provides for TCF contract outworkers to be taken to be employees in certain circumstances for the purposes of most of the provisions of this Act.

Division 3 provides for TCF outworkers (whether employees or contractors) to recover unpaid remuneration from entities that are indirectly responsible for work done by the outworkers.

Division 4 allows the regulations to prescribe a code dealing with standards of conduct and practice relating to TCF outwork.

Division 5 contains miscellaneous provisions.

#### 789AB Meanings of *employee* and *employer*

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

#### 789AC Objects of this Part

The objects of this Part are to eliminate exploitation of outworkers in the textile, clothing and footwear industry, and to ensure that those outworkers are employed or engaged under secure, safe and fair systems of work, by:

- (a) providing nationally consistent rights and protections for those outworkers, regardless of whether they are employees or contractors; and

- (b) establishing an effective mechanism by which those outworkers can recover amounts owing to them in relation to their work from other parties in a supply chain; and
- (c) providing for a code dealing with standards of conduct and practice to be complied with by parties in a supply chain.

## **Division 2—TCF contract outworkers taken to be employees in certain circumstances**

### **789BA Provisions covered by this Division**

- (1) This Division covers the provisions of this Act, other than the following provisions (and other than regulations made for the purposes of the following provisions):
  - (a) Division 1, and this Division, of this Part;
  - (b) Divisions 2A and 2B of Part 1-3 (application of this Act in referring States);
  - (c) Part 3-4 (right of entry);
  - (d) Part 3-5 (stand down);
  - (e) Part 6-3 (extension of National Employment Standards entitlements);
  - (ea) Part 6-3A (transfer of business from a State public sector employer);
  - (f) Part 6-4 (additional provisions relating to termination of employment);
  - (g) Part 1 of Schedule 1.
- (2) Provisions of this Act that are not covered by this Division are to be interpreted disregarding the effect of this Division in relation to other provisions of this Act.

Note: For example, references to national system employees and national system employers, in provisions of this Act that are not covered by this Division, are to be interpreted disregarding the effect of this Division in relation to the definitions of those expressions in sections 13 and 14.
- (3) References in provisions that are covered by this Division to matters dealt with in, or occurring under, provisions of this Act that are not covered by this Division (the *excluded provisions*) are to be interpreted having regard to the fact that this Division does not apply for the purposes of the excluded provisions.



**789BB TCF contract outworkers taken to be employees in certain circumstances**

- (1) For the purposes of the provisions covered by this Division:
- (a) a TCF contract outworker is taken to be an employee (within the ordinary meaning of that expression), and to be a national system employee, in relation to particular TCF work performed by the outworker, if:
    - (i) the work is performed directly or indirectly for a Commonwealth outworker entity; and
    - (ii) if the entity is a constitutional corporation—the work is performed for the purposes of a business undertaking of the corporation; and
  - (b) the person (whether a Commonwealth outworker entity referred to in subparagraph (a)(i) or another person) that engages the outworker is taken to be the employer (within the ordinary meaning of that expression), and to be a national system employer, of the outworker in relation to the TCF work.

Note 1: See section 17A for when TCF work is performed *directly* or *indirectly* for a person.

Note 2: See also section 789BC, which allows regulations to deal with matters relating to TCF contract outworkers who are taken by this section to be employees.

- (2) A **TCF contract outworker** is a TCF outworker who performs work other than as an employee.
- (3) In interpreting any of the following for the purposes of the provisions covered by this Division:
- (a) provisions of this Act;
  - (b) any instrument that is relevant to the relationship between the TCF contract outworker and the person referred to in paragraph (1)(b);
- an interpretation that is consistent with the objective stated in subsection (4) is to be preferred to an interpretation that is not consistent with that objective.

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- (4) The objective is that a TCF contract outworker who is taken to be an employee in relation to TCF work should have the same rights and obligations in relation to the work as an employee would have if he or she were employed by the person referred to in paragraph (1)(b) to do the work.
- (5) This section has effect subject to regulations made for the purposes of section 789BC.

**789BC Regulations relating to TCF outworkers who are taken to be employees**

- (1) For the purpose of furthering the objective stated in subsection 789BB(4), the regulations may do either or both of the following in relation to TCF outworkers (*deemed employees*) who are taken by section 789BB to be employees of other persons (*deemed employers*) in relation to TCF work:
  - (a) provide that provisions covered by this Division apply in relation to deemed employees and deemed employers with specified modifications;
  - (b) otherwise make provision relating to how provisions covered by this Division apply in relation to deemed employees and deemed employers.
- (2) Regulations made for the purposes of subsection (1) may provide differently:
  - (a) for the purposes of different provisions; or
  - (b) in relation to different situations.
- (3) This section does not allow regulations to:
  - (a) modify a provision that creates an offence, or that imposes an obligation which, if contravened, constitutes an offence; or
  - (b) include new provisions that create offences.

## **Division 3—Recovery of unpaid amounts**

### **789CA When this Division applies**

*Outworker not paid for TCF work in certain circumstances*

- (1) This Division applies if:
- (a) a TCF outworker performs TCF work for a person (the **responsible person**):
    - (i) as an employee of the responsible person; or
    - (ii) under a contract for the provision of services to the responsible person; and
  - (b) the responsible person does not pay an amount (the **unpaid amount**) that is payable, in relation to the TCF work, by the responsible person:
    - (i) to the outworker; or
    - (ii) to another person, for the benefit of the outworker; on or before the day when the amount is due for payment; and
  - (c) the unpaid amount is payable under:
    - (i) a contract; or
    - (ii) this Act, or an instrument made under or in accordance with this Act; or
    - (iii) another law of the Commonwealth; or
    - (iv) a transitional instrument as continued in existence by Schedule 3 to the Transitional Act; or
    - (v) a State or Territory industrial law, or a State industrial instrument.

Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a TCF outworker performs work as a national system employee of a national system employer.

- (2) Without limiting paragraph (1)(b), the unpaid amount may (subject to paragraph (1)(c)) be an amount of any of the following kinds that relates to (or is attributable to) the TCF work:

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- (a) an amount payable by way of remuneration or commission;
- (b) an amount payable in respect of leave;
- (c) an amount payable by way of contributions to a superannuation fund;
- (d) an amount payable by way of reimbursement for expenses incurred.

*Meaning of indirectly responsible entity*

- (3) Subject to subsections (4) and (5), a person is an **indirectly responsible entity** in relation to the TCF work if:
  - (a) the person is a Commonwealth outworker entity; and
  - (b) the TCF work was performed indirectly:
    - (i) for the entity; and
    - (ii) if the entity is a constitutional corporation—for the purposes of a business undertaking of the corporation.

Note: See section 17A for when TCF work is performed **indirectly** for a person.

*Extent of liability of indirectly responsible entity*

- (4) If subsection (3) is satisfied in relation to a Commonwealth outworker entity and part only of the TCF work:
  - (a) the entity is an **indirectly responsible entity** in relation to that part of the TCF work; and
  - (b) for the purposes of applying this Division in relation to the entity and that part of the TCF work, the **unpaid amount** is so much only of the amount referred to in paragraph (1)(b) as is attributable to that part of the TCF work.

*Retailer of goods not an indirectly responsible entity in certain circumstances*

- (5) If:
  - (a) a Commonwealth outworker entity, as a retailer, sells goods produced by the TCF work; and

- (b) the entity does not have any right to supervise or otherwise control the performance of the work before the goods are delivered to the entity;
- the entity is not an *indirectly responsible entity* in relation to the TCF work.

### **789CB Liability of indirectly responsible entity for unpaid amount**

- (1) Each indirectly responsible entity (or the indirectly responsible entity, if there is only one) is liable to pay the unpaid amount.
- (3) If there are 2 or more indirectly responsible entities, those entities are jointly and severally liable for the payment of the unpaid amount.
- (4) Subject to subsection 789CE(1A), this section does not affect the liability of the responsible person to pay the unpaid amount.

### **789CC Demand for payment from an apparent indirectly responsible entity**

- (1) The TCF outworker, or a person acting on behalf of the outworker, may give an apparent indirectly responsible entity a written demand for payment of the amount that the outworker reasonably believes the entity is liable for under section 789CB.
- (2) An entity is an *apparent indirectly responsible entity* in relation to the TCF work if the TCF outworker reasonably believes that the entity is an indirectly responsible entity in relation to the TCF work.
- (3) The demand must:
  - (a) specify the amount, and identify the responsible person; and
  - (b) include particulars of the TCF work to which the amount relates, and why the amount is payable by the entity to which the demand is given; and
  - (c) state that if the specified amount is not paid by a specified time, proceedings may be commenced against the entity under section 789CD.

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- (4) The time specified for the purpose of paragraph (3)(c) must not be less than 14 days after the demand is given to the entity.

**789CD Court order for entity to pay amount demanded**

- (1) If:
- (a) in accordance with section 789CC, an apparent indirectly responsible entity has been given a demand for payment of a specified amount; and
  - (b) the amount has not been paid in full by the time specified in the demand;
- a person or organisation specified in subsection (2) (the *applicant*) may commence proceedings for an order requiring the entity to pay the specified amount.
- (2) The proceedings may be commenced:
- (a) by the TCF outworker; or
  - (b) on the TCF outworker's behalf, by:
    - (i) an organisation that is entitled to represent the industrial interests of the outworker; or
    - (ii) an inspector.
- (3) The proceedings may be commenced in:
- (a) the Federal Court; or
  - (b) the Federal Circuit and Family Court of Australia (Division 2); or
  - (c) an eligible State or Territory court.
- (4) Subject only to subsections (5) and (6), the court may make an order requiring the entity to pay, to the outworker or to another person on the outworker's behalf, the specified amount (or so much of that amount as the applicant alleges is still owing).
- (5) The court must not make an order under subsection (4) if the entity satisfies the court that the entity is not liable under section 789CB to pay any of the specified amount.

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- (6) If the entity satisfies the court that the amount of the entity's liability under section 789CB is less than the specified amount (or is less than so much of that amount as the applicant alleges is still owing), the court must not make an order under subsection (4) requiring the entity to pay more than that lesser amount.
- (7) In making the order, the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (8) Without limiting subsection (7), in determining the amount of interest, the court must take into account the period between the day when the unpaid amount was due for payment by the responsible person and the day when the order is made.
- (9) Proceedings cannot be commenced under this section more than 6 years after the time when the unpaid amount became due for payment by the responsible person.

**789CE Effect of payment by entity (including entity's right to recover from responsible person)**

- (1) This section applies if an entity pays an amount in discharge of a liability of the entity under section 789CB, or pursuant to an order under section 789CD.
- (1A) The payment discharges the liability of the responsible person for the unpaid amount, to the extent of the payment. This does not affect any right that the entity has to recover an equivalent amount from the responsible person (under this section or otherwise) or from another person, or to be otherwise indemnified in relation to the making of the payment.
- (2) The entity may, in accordance with this section, recover from the responsible person an amount (the *recoverable amount*) equal to the sum of:
  - (a) the amount paid by the entity as mentioned in subsection (1);
  - and

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- (b) any interest paid by the entity in relation to that amount pursuant to an order under section 789CD.
- (3) The entity may recover the recoverable amount:
  - (a) by offsetting it against any amount that the entity owes to the responsible person; or
  - (b) by action against the responsible person under subsection (4).
- (4) The entity may commence proceedings against the responsible person for payment to the entity of the recoverable amount. The proceedings may be commenced in:
  - (a) the Federal Court; or
  - (b) the Federal Circuit and Family Court of Australia (Division 2); or
  - (c) an eligible State or Territory court.
- (5) The court may make an order requiring the responsible person to pay the entity the recoverable amount (or so much of it as is still owing) if the court is satisfied that:
  - (a) this section applies as mentioned in subsection (1); and
  - (b) the entity has not otherwise recovered the recoverable amount in full from the responsible person.
- (6) In making the order the court must, on application, include an amount of interest in the sum ordered, unless good cause is shown to the contrary.
- (7) Without limiting subsection (6), in determining the amount of interest, the court must take into account the period between the day when the recoverable amount was paid by the entity and the day when the order is made.
- (8) Proceedings cannot be commenced under this section more than 6 years after the time when the entity paid the recoverable amount.

**789CF Division does not limit other liabilities or rights**

Nothing in this Division limits any other liability or right in respect of the entitlement of the TCF outworker to the unpaid amount (or

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to have the unpaid amount paid to another person for the  
outworker's benefit).

## Division 4—Code of practice relating to TCF outwork

### 789DA Regulations may provide for a code

For the purpose of furthering the objects of this Part, the regulations may prescribe a code (the *TCF outwork code*) dealing with standards of conduct and practice to be complied with in relation to any of the following:

- (a) the employment or engagement of TCF outworkers;
- (b) arranging for TCF work to be performed, if the work:
  - (i) is to be performed by TCF outworkers; or
  - (ii) is of a kind that is often performed by TCF outworkers;
- (c) the sale of goods produced by TCF work.

Note 1: In situations where there is a chain or series of arrangements for the supply or production of goods, the TCF outwork code may (subject to section 789DC) impose obligations on any persons that are parties to arrangements in that chain or series.

Note 2: References in other provisions to “this Act” include the code, because the code is in the regulations and is therefore within the definition of *this Act* in section 12.

### 789DB Matters that may be dealt with in TCF outwork code

- (1) The matters that may be dealt with in the TCF outwork code include (but are not limited to) the following:
  - (a) record keeping requirements;
  - (b) reporting on compliance with record keeping requirements, or with other requirements of the code;
  - (c) general matters relating to the operation and administration of the code.
- (2) The TCF outwork code must not specify wages or other entitlements for TCF outworkers.

**789DC Persons on whom obligations may be imposed by TCF outwork code**

- (1) The TCF outwork code may only impose obligations on a person if one or more of subsections (2) to (5) applies to the person.

Note: See also subsection (6), which limits the matters in relation to which obligations may be imposed.

- (2) This subsection applies to a person if the person is a national system employer that employs TCF outworkers.

Note: For the purpose of this Division, the effect of Division 2 must be taken into account in determining whether a person is a national system employer that employs TCF outworkers.

- (3) This subsection applies to a person if:

- (a) the person is a Commonwealth outworker entity; and
- (b) the person arranges for TCF work to be performed (directly or indirectly):
  - (i) for the person; and
  - (ii) if the person is a constitutional corporation—for the purposes of a business undertaking of the corporation; and
- (c) the work:
  - (i) is to be performed by TCF outworkers; or
  - (ii) is of a kind often performed by TCF outworkers.

Note: See section 17A for when a person arranges for TCF work to be performed *directly* or *indirectly* for the person.

- (4) This subsection applies to a person if:

- (a) the person arranges for TCF work to be performed; and
- (b) the work:
  - (i) is to be performed by TCF outworkers; or
  - (ii) is of a kind often performed by TCF outworkers; and
- (c) the work is to be performed indirectly:
  - (i) for another person, being a Commonwealth outworker entity; and

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- (ii) if that Commonwealth outworker entity is a constitutional corporation—for the purposes of a business undertaking of that corporation.
- (5) This subsection applies to a person if the person is a constitutional corporation that sells goods produced by TCF work.
- (6) The capacity for the TCF outwork code to impose obligations on a person is subject to the following limitations:
  - (a) the obligations that may be imposed on a person because subsection (2) applies to the person are limited to obligations relating to the person's employment of TCF outworkers;
  - (b) the obligations that may be imposed on a person because subsection (3) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
  - (c) the obligations that may be imposed on a person because subsection (4) applies to the person are limited to obligations relating to TCF work (or an arrangement for TCF work) because of which that subsection applies to the person;
  - (d) the obligations that may be imposed on a person because subsection (5) applies to the person are limited to obligations relating to the person being a seller of goods as referred to in that subsection.

**789DD Other general matters relating to content of TCF outwork code**

- (1) The TCF outwork code may be expressed to apply in relation to:
  - (a) all persons covered by section 789DC, or specified classes of those persons; and
  - (b) all TCF work, or specified classes of TCF work.

Note: A class of person or TCF work may (for example) be identified by reference to a particular sector of the textile, clothing or footwear industry.

- (2) The TCF outwork code may provide differently for:
  - (a) different classes of persons covered by section 789DC; or

- (b) different classes of TCF work; or
- (c) different situations.

**789DE Relationship between the TCF outwork code and other instruments**

- (1) A TCF award prevails over the TCF outwork code, to the extent of any inconsistency.
- (2) The TCF outwork code prevails over any of the following, to the extent of any inconsistency:
  - (a) an enterprise agreement;
  - (b) a workplace determination;
  - (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the Transitional Act.
- (3) Subject to subsection (5), the TCF outwork code may:
  - (a) make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time; or
  - (b) make provision to the effect that compliance with a specified term of an instrument or other writing as in force or existing from time to time is taken to satisfy a particular requirement of the code.
- (4) The kinds of instrument or other writing by reference to which the TCF outwork code may make provision as mentioned in subsection (3) include (but are not limited to) the following:
  - (a) a TCF award;
  - (b) a code (however described), dealing with matters relating to outworkers, that is made under a law of a State or Territory.
- (5) The TCF outwork code cannot make provision as mentioned in subsection (3) by reference to any of the following:
  - (a) an enterprise agreement;
  - (b) a workplace determination;

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- (c) an agreement-based transitional instrument, as continued in existence by Schedule 3 to the Transitional Act.
- (6) Subsections (3) and (4) have effect despite subsection 14(2) of the *Legislation Act 2003*.

## **Division 5—Miscellaneous**

### **789EA Part not intended to exclude or limit State or Territory laws relating to outworkers**

- (1) This Part is not intended to exclude or limit the operation of a law of a State or Territory (or an instrument made under a law of a State or Territory), to the extent that the law (or instrument) relates to outworkers and is capable of operating concurrently with this Part.
- (2) A reference in subsection (1) to this Part includes a reference to any regulations made for the purposes of this Part.

## **Part 6-4B—Workers bullied at work**

### **Division 1—Introduction**

#### **789FA Guide to this Part**

This Part allows a worker who has been bullied at work to apply to the FWC for an order to stop the bullying.

#### **789FB Meanings of *employee* and *employer***

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



## **Division 2—Stopping workers being bullied at work**

### **789FC Application for an FWC order to stop bullying**

- (1) A worker who reasonably believes that he or she has been bullied at work may apply to the FWC for an order under section 789FF.
- (2) For the purposes of this Part, **worker** has the same meaning as in the *Work Health and Safety Act 2011*, but does not include a member of the Defence Force.

Note: Broadly, for the purposes of the *Work Health and Safety Act 2011*, a worker is an individual who performs work in any capacity, including as an employee, a contractor, a subcontractor, an outworker, an apprentice, a trainee, a student gaining work experience or a volunteer.

- (3) The application must be accompanied by any fee prescribed by the regulations.
- (4) The regulations may prescribe:
  - (a) a fee for making an application to the FWC under this section; and
  - (b) a method for indexing the fee; and
  - (c) the circumstances in which all or part of the fee may be waived or refunded.

### **789FD When is a worker *bullied at work*?**

- (1) A worker is ***bullied at work*** if:
  - (a) while the worker is at work in a constitutionally-covered business:
    - (i) an individual; or
    - (ii) a group of individuals;repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
  - (b) that behaviour creates a risk to health and safety.

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- (2) To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a reasonable manner.
- (3) If a person conducts a business or undertaking (within the meaning of the *Work Health and Safety Act 2011*) and either:
  - (a) the person is:
    - (i) a constitutional corporation; or
    - (ii) the Commonwealth; or
    - (iii) a Commonwealth authority; or
    - (iv) a body corporate incorporated in a Territory; or
  - (b) the business or undertaking is conducted principally in a Territory or Commonwealth place;then the business or undertaking is a ***constitutionally-covered business***.

**789FE FWC to deal with applications promptly**

- (1) The FWC must start to deal with an application under section 789FC within 14 days after the application is made.
  - Note: For example, the FWC may start to inform itself of the matter under section 590, it may decide to conduct a conference under section 592, or it may decide to hold a hearing under section 593.
- (2) However, the FWC may dismiss an application under section 789FC if the FWC considers that the application might involve matters that relate to:
  - (a) Australia's defence; or
  - (b) Australia's national security; or
  - (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
  - (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.
  - Note: For another power of the FWC to dismiss applications under section 789FC, see section 587.

### **789FF FWC may make orders to stop bullying**

- (1) If:
- (a) a worker has made an application under section 789FC; and
  - (b) the FWC is satisfied that:
    - (i) the worker has been bullied at work by an individual or a group of individuals; and
    - (ii) there is a risk that the worker will continue to be bullied at work by the individual or group;
- then the FWC may make any order it considers appropriate (other than an order requiring payment of a pecuniary amount) to prevent the worker from being bullied at work by the individual or group.
- (2) In considering the terms of an order, the FWC must take into account:
- (a) if the FWC is aware of any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body—those outcomes; and
  - (b) if the FWC is aware of any procedure available to the worker to resolve grievances or disputes—that procedure; and
  - (c) if the FWC is aware of any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes—those outcomes; and
  - (d) any matters that the FWC considers relevant.

### **789FG Contravening an order to stop bullying**

A person to whom an order under section 789FF applies must not contravene a term of the order.

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

### **789FH Actions under work health and safety laws permitted**

Section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws (within the

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meaning of that Act) do not apply in relation to an application under section 789FC.

Note: Ordinarily, if a worker makes an application under section 789FC for an FWC order to stop the worker from being bullied at work, then section 115 of the *Work Health and Safety Act 2011* and corresponding provisions of corresponding WHS laws would prohibit a proceeding from being commenced, or an application from being made or continued, under those laws in relation to the bullying. This section removes that prohibition.

**789FI This Part is not to prejudice Australia's defence, national security etc.**

Nothing in this Part requires or permits a person to take, or to refrain from taking, any action if the taking of the action, or the refraining from taking the action, would be, or could reasonably be expected to be, prejudicial to:

- (a) Australia's defence; or
- (b) Australia's national security; or
- (c) an existing or future covert operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police; or
- (d) an existing or future international operation (within the meaning of section 12E of the *Work Health and Safety Act 2011*) of the Australian Federal Police.

**789FJ Declarations by the Chief of the Defence Force**

- (1) Without limiting section 789FI, the Chief of the Defence Force may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a specified activity.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

**789FK Declarations by the Director-General of Security**

- (1) Without limiting section 789FI, the Director-General of Security may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

**789FL Declarations by the Director-General of ASIS**

- (1) Without limiting section 789FI, the Director-General of the Australian Secret Intelligence Service may, by legislative instrument, declare that all or specified provisions of this Part do not apply in relation to a person carrying out work for the Director-General.
- (2) A declaration under subsection (1) may only be made with the approval of the Minister and, if made with that approval, has effect according to its terms.

## Part 6-4C—Coronavirus economic response

### Division 1—Introduction

#### 789GC Definitions

In this Part:

*10% decline in turnover certificate* has the meaning given by section 789GCD.

*10% decline in turnover test* means the test set out in section 789GCB.

*current GST turnover* has the same meaning as in the jobkeeper payment rules.

*decline in turnover test* has the same meaning as in the jobkeeper payment rules.

*designated employment provision* means:

- (a) a provision of this Act (other than a provision of this Part or a provision mentioned in section 789GZ); or
- (b) a provision of:
  - (i) a fair work instrument; or
  - (ii) a contract of employment; or
  - (iii) a transitional instrument (within the meaning of item 2 of Schedule 3 to the Transitional Act).

*designated quarter* applicable to a time has the meaning given by section 789GCC.

*eligible financial service provider* means:

- (b) a registered tax agent or BAS agent; or
- (c) a qualified accountant.

*employee* means a national system employee.

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Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

**employer** means a national system employer.

**fortnight** means a 14-day period beginning on a Monday.

**hourly rate of pay guarantee** has the meaning given by section 789GDB.

**jobkeeper enabling direction** means a direction authorised by repealed section 789GDC, 789GE, 789GF, 789GJA, 789GJB or 789GJC.

**jobkeeper payment** means a payment that:

- (a) is payable by the Commonwealth in accordance with the jobkeeper payment rules; and
- (b) is known as jobkeeper payment.

**jobkeeper payment rules** means rules made under the *Coronavirus Economic Response Package (Payments and Benefits) Act 2020*.

**licence** includes:

- (a) registration; and
- (b) permit.

**minimum payment guarantee** has the meaning given by section 789GDA.

**qualified accountant** has the same meaning as in the *Corporations Act 2001*.

**qualifies for the jobkeeper scheme** has the meaning given by section 789GCA.

**quarter** means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

**registered tax agent or BAS agent** has the same meaning as in the *Tax Agent Services Act 2009*.

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**wage condition** means the wage condition set out in the jobkeeper payment rules.

**789GCA When employer qualifies for the jobkeeper scheme**

For the purposes of this Part, an employer qualifies for the jobkeeper scheme at a time if, under the jobkeeper payment rules, the employer qualifies for the jobkeeper scheme for the fortnight in which the time occurs.

**789GCB 10% decline in turnover test**

- (1) For the purposes of this Part, an employer satisfies the **10% decline in turnover test** for a quarter if the employer would satisfy the decline in turnover test at a time in the quarter if:
  - (a) the turnover test period were the quarter, instead of the period determined under paragraph 8(7)(a) or (aa) of the jobkeeper payment rules; and
  - (b) instead of projected GST turnover, current GST turnover were used (including in subsection 8A(3) of the jobkeeper payment rules, and in applying an alternative decline in turnover test determined under subsection 8(6) of the jobkeeper payment rules); and
  - (c) the specified percentage for the employer was 10%, instead of the percentage worked out under subsection 8(2) of the jobkeeper payment rules; and
  - (d) the decline in turnover test was subject to such modifications (if any) as are prescribed by the regulations.
- (2) The regulations must not prescribe modifications for the purposes of paragraph (1)(d) unless:
  - (a) the jobkeeper payment rules are amended after the commencement of this section; and
  - (b) the modifications relate to those amendments.



### 789GCC Designated quarter

For the purposes of this Part, the *designated quarter* applicable to a time is set out in the table.

<b>Designated quarter applicable to a time</b>		
<b>Item</b>	<b>If the time occurs:</b>	<b>the designated quarter applicable to the time is the quarter ending on:</b>
1	before 28 October 2020	30 June 2020
2	during the period: (a) beginning at the start of 28 October 2020; and (b) ending at the end of 27 February 2021	30 September 2020
3	on or after 28 February 2021	31 December 2020

### 789GCD 10% decline in turnover certificate

- (1) An eligible financial service provider may issue a written certificate that:
  - (a) relates to a specified employer; and
  - (b) confirms that the employer satisfied the 10% decline in turnover test for the designated quarter applicable to a specified time.
- (2) However, an eligible financial service provider is not entitled to issue a certificate under subsection (1) in relation to an employer if the eligible financial service provider is:
  - (a) a director or employee of the employer; or
  - (b) an associated entity of the employer; or
  - (c) a director or employee of an associated entity of the employer.
- (3) A certificate under subsection (1) is to be known as a **10% decline in turnover certificate** that covers the employer specified in the

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certificate for the designated quarter applicable to the time specified in the certificate.

(4) If:

- (a) an employer is a small business employer; and
- (b) an individual who:
  - (i) is, or is authorised by, the employer; and
  - (ii) has knowledge of the financial affairs of the employer; makes a statutory declaration to the effect that the employer satisfied the 10% decline in turnover test for the designated quarter applicable to a specified time;

the statutory declaration is taken to be a **10% decline in turnover certificate** that covers the employer for the designated quarter applicable to the time specified in the statutory declaration.

Note: For *small business employer*, see section 23.

## **Division 7—Service**

### **789GR Service**

- (1) For the purposes of this Act, if an employee is subject to a jobkeeper enabling direction during a period, that period counts as service.
- (2) Subsection (1) has effect in addition to section 22.

## **Division 8—Accrual rules**

### **789GS Accrual rules**

- (1) If a jobkeeper enabling direction under repealed section 789GDC or 789GJA (jobkeeper enabling stand down) applies to an employee, the employee accrues leave entitlements as if the direction had not been given.
- (2) If a jobkeeper enabling direction under repealed section 789GDC or 789GJA (jobkeeper enabling stand down) applies to an employee, the following are to be calculated as if the direction had not been given:
  - (a) redundancy pay;
  - (b) payment in lieu of notice of termination.
- (3) If an employee takes paid annual leave in accordance with an agreement under repealed subsection 789GJ(2), the employee accrues leave entitlements as if the agreement had not been made.
- (4) If an employee takes paid annual leave in accordance with an agreement under repealed subsection 789GJ(2), the following are to be calculated as if the agreement had not been made:
  - (a) redundancy pay;
  - (b) payment in lieu of notice of termination.

## **Division 10—Dealing with disputes**

### **789GV FWC may deal with a dispute about the operation of this Part**

- (1) The FWC may deal with a dispute about the operation of this Part.
- (2) The FWC may deal with a dispute by arbitration.

Note: The FWC may also deal with a dispute by mediation or conciliation, or by making a recommendation or expressing an opinion (see subsection 595(2)).

- (3) The FWC may deal with a dispute only on application by any of the following:
  - (a) an employee;
  - (b) an employer;
  - (c) an employee organisation;
  - (d) an employer organisation.
- (4) The FWC may make any of the following orders:
  - (a) an order that the FWC considers desirable to give effect to a jobkeeper enabling direction;
  - (b) an order setting aside a jobkeeper enabling direction;
  - (c) an order:
    - (i) setting aside a jobkeeper enabling direction; and
    - (ii) substituting a different jobkeeper enabling direction;
  - (d) any other order that the FWC considers appropriate.
- (5) The FWC must not make an order under paragraph (4)(a) or (c) on or after 29 March 2021.
- (6) An order made by the FWC under paragraph (4)(a) ceases to have effect at the start of 29 March 2021.
- (7) In dealing with the dispute, the FWC must take into account fairness between the parties concerned.

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**789GW Contravening an FWC order dealing with a dispute about the operation of this Part**

A person must not contravene a term of an FWC order dealing with a dispute about the operation of this Part.

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

## **Division 12—Protections**

### **789GXA Misuse of jobkeeper enabling direction**

An employer must not purport to give a jobkeeper enabling direction if:

- (a) the direction is not authorised by this Part; and
- (b) the employer knows that the direction is not authorised by this Part.

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

### **789GXB 10% decline in turnover test—prohibited conduct**

- (1) An employer must not purport to give a jobkeeper enabling direction under section 789GJA, 789GJB or 789GJC if, at the time when the direction was given:
  - (a) the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time; and
  - (b) the employer knew that, or was reckless as to whether, the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time.

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

- (2) An employer must not purport to give a request under subsection 789GJD(1) if, at the time when the request was given:
  - (a) the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time; and
  - (b) the employer knew that, or was reckless as to whether, the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time.

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

- (3) An employer must not give information to an eligible financial service provider if:

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- (a) the information is given in connection with the issue of a 10% decline in turnover certificate that covers the employer for the designated quarter applicable to a particular time; and
- (b) the information:
  - (i) is false or misleading; or
  - (ii) omits any matter or thing without which the information is misleading; and
- (c) the employer knows that the information:
  - (i) is false or misleading; or
  - (ii) omits any matter or thing without which the information is misleading.

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

**789GXC False statutory declaration**

- (1) A person must not make a false statement in a statutory declaration covered by subsection 789GCD(3) if the person knows that the statement is false.

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

- (2) The following laws:
  - (a) a law of the Commonwealth, other than:
    - (i) subsection (1) of this section; or
    - (ii) the remaining provisions of this Act so far as they relate to subsection (1) of this section;
  - (b) a law of a State or Territory;do not apply to making a false statement in a statutory declaration covered by subsection 789GCD(3).

**789GXD Federal Court may terminate a jobkeeper enabling direction if employer does not satisfy the 10% decline in turnover test**

If:



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- (a) a jobkeeper enabling direction given by an employer to an employee of the employer under section 789GJA, 789GJB or 789GJC is in force at a particular time; and
  - (b) the Federal Court is satisfied that the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time;
- the Federal Court may, on application made by:
- (c) the employee; or
  - (d) an employee organisation; or
  - (e) an inspector;
- make either or both of the following orders:
- (f) an order terminating the direction;
  - (g) any other order that the court considers appropriate.

**789GXE Federal Court may terminate a subsection 789GJD(2) agreement if employer does not satisfy the 10% decline in turnover test**

- If:
- (a) an agreement made by an employer and an employee of the employer under subsection 789GJD(2) is in force at a particular time; and
  - (b) the Federal Court is satisfied that the employer did not satisfy the 10% decline in turnover test for the designated quarter applicable to that time;
- the Federal Court may, on application made by:
- (c) the employee; or
  - (d) an employee organisation; or
  - (e) an inspector;
- make either or both of the following orders:
- (f) an order terminating the agreement;
  - (g) any other order that the court considers appropriate.

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**789GY Protection of workplace rights**

For the avoidance of doubt, each of the following is a workplace right within the meaning of Part 3-1:

- (a) the benefit that an employee of an employer has or derives because of an obligation of the employer under repealed section 789GD to satisfy the wage condition;
- (b) agreeing, or not agreeing, to perform duties:
  - (i) on different days; or
  - (ii) at different times;in accordance with repealed subsection 789GG(2) or 789GJD(2);
- (c) agreeing, or not agreeing, to take paid annual leave in compliance with a request under repealed subsection 789GJ(1);
- (d) agreeing, or not agreeing, to take paid annual leave in accordance with repealed subsection 789GJ(2);
- (e) making a request under repealed section 789GU (secondary employment, training etc.).

**789GZ Relationship with other laws etc.**

- (1) This Part will at all times operate subject to the following:
  - (a) Division 2 of Part 2-9 (payment of wages etc.);
  - (b) Part 3-1 (general protections);
  - (c) Part 3-2 (unfair dismissal);
  - (d) section 772 (employment not to be terminated on certain grounds);
  - (e) an anti-discrimination law;
  - (f) a law of the Commonwealth, a State or a Territory, so far as the law deals with health and safety obligations of employers or employees;
  - (g) a law of the Commonwealth, a State or a Territory, so far as the law deals with workers' compensation.

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- (2) This Part has effect subject to a person's right to be represented, or collectively represented, by an employee organisation or employer organisation.

**789GZA Redundancy**

The giving of a jobkeeper enabling direction does not amount to a redundancy.

## **Division 13—Review of this Part**

### **789GZB Review of this Part**

- (1) The Minister must cause an independent review to be conducted of the operation of this Part.
- (2) The review must start on or before:
  - (a) 28 July 2020; or
  - (b) if a later day is specified in the regulations—that later day.
- (3) The persons who conduct the review must:
  - (a) complete the review; and
  - (b) give the Minister a written report of the review;on or before:
  - (c) 8 September 2020; or
  - (d) if a later day is specified in the regulations—that later day.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 5 sitting days of that House after the report is given to the Minister.

## **Part 6-4D—The National Construction Industry Forum**

### **789GZC Establishment**

The National Construction Industry Forum is established by this section.

### **789GZD Function of the Forum**

- (1) The function of the National Construction Industry Forum is to provide advice to the Government in relation to work in the building and construction industry.
- (2) The matters in relation to which the Forum may provide advice include, but are not limited to, the following:
  - (a) workplace relations;
  - (b) skills and training;
  - (c) safety;
  - (d) productivity;
  - (e) diversity and gender equity;
  - (f) industry culture.
- (3) Matters for advice may be:
  - (a) raised by the Government; or
  - (b) agreed between the members of the Forum.

### **789GZE Membership**

- (1) The members of the National Construction Industry Forum are:
  - (a) the Minister; and
  - (b) the Infrastructure Minister; and
  - (c) the Industry Minister; and
  - (d) the members appointed by the Minister.

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- (2) The Minister must appoint:
  - (a) one or more members who have experience representing employees in the building and construction industry; and
  - (b) an equal number of members who have experience representing employers in the building and construction industry, including at least one member who has experience representing contractors in the building and construction industry, and one member with experience in small to medium sized enterprises in the residential building sector.
- (3) The Minister may appoint any other person.

**789GZF Appointment by the Minister**

A member of the National Construction Industry Forum appointed by the Minister:

- (a) is to be appointed by written instrument; and
- (b) holds office:
  - (i) on a part-time basis; and
  - (ii) for the period specified in the instrument, which must not exceed 3 years.

Note: A member is eligible for reappointment (see section 33AA of the *Acts Interpretation Act 1901*).

**789GZG Chair of the Forum**

- (1) The Minister is the Chair of the National Construction Industry Forum.
- (2) If the Minister is unable to preside at a meeting, or considers it appropriate for any other reason, the Minister may nominate another Minister to preside at the meeting.

**789GZH Meetings**

- (1) The Chair of the National Construction Industry Forum must convene at least 2 meetings of the Forum in each calendar year.

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- (2) One meeting must be held in the first 6 months of the year and another must be held in the second 6 months of the year.
- (3) Otherwise, the timing of meetings is to be determined by the Chair in consultation with the members.
- (4) The procedure to be followed at a meeting is to be determined by the Chair in consultation with the members.

**789GZJ Confidentiality**

- (1) The views expressed at meetings of the National Construction Industry Forum are to be kept confidential.
- (2) However, this does not prevent members from:
  - (a) reporting to the persons, bodies or organisations they represent; or
  - (b) making announcements the members agree are in the public interest.
- (3) Within 14 working days of a meeting, the National Construction Industry Forum must publish on the Department's website a public communique.

**789GZK Substitute members**

- (1) If a member of the National Construction Industry Forum is unable to be present at a meeting, the member may nominate a person to attend the meeting in the member's place.
- (2) If the Chair agrees, the person may attend the meeting in the place of the member.
- (3) A person attending a meeting in the place of a member has all the rights and responsibilities of the member at, and in relation to, the meeting.

Note: For example, a substitute member must comply with the confidentiality requirement in section 789GZJ.

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**789GZL Invited participants**

- (1) The Chair may, after consulting the members of the National Construction Industry Forum, invite a person, body or organisation to participate in a meeting.
- (2) The Chair may terminate the invitation at any time, including during a meeting.
- (3) The participation of a person in a meeting does not make the person a member.
- (4) A person invited to participate in a meeting:
  - (a) is entitled to payment of travel allowance as if the person were a member; and
  - (b) must comply with subsection 789GZJ(1) (confidentiality).

**789GZM Remuneration**

- (1) A member of the National Construction Industry Forum is not entitled to be paid remuneration or allowances, other than travel allowance in accordance with subsection (2).
- (2) A member who is not a Minister or a member of the Parliament is entitled to be paid travel allowance at the rate prescribed by the regulations.
- (3) To avoid doubt, this section does not affect any entitlements of a Minister or a member of the Parliament under the *Parliamentary Business Resources Act 2017*.

**789GZN Resignation**

- (1) A member of the National Construction Industry Forum appointed by the Minister may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.



### **789GZP Disclosure of interests**

- (1) A member of the National Construction Industry Forum who has a material personal interest that relates to a matter being considered by the Forum must disclose the interest to the Chair.
- (2) The member must not participate in any part of a meeting during which the matter is dealt with.

### **789GZQ Termination of appointment**

The Minister may terminate the appointment of a member of the National Construction Industry Forum appointed by the Minister:

- (a) for misbehaviour; or
- (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity; or
- (c) if the member:
  - (i) becomes bankrupt; or
  - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with one or more of the member's creditors; or
  - (iv) makes an assignment of the member's remuneration for the benefit of one or more of the member's creditors; or
- (d) for a member appointed because the member held a particular position or qualification, or represented a particular group— if the member no longer holds the position or qualification, or represents that group; or
- (e) the member fails, without reasonable excuse, to comply with section 789GZJ (confidentiality) or section 789GZP (disclosure of interests); or
- (f) if the member is absent, except on leave of absence granted by the Minister, from 3 consecutive meetings of the Forum.

## Part 6-4E—Extension of anti-discrimination rules

### Division 1—Breastfeeding, gender identity and intersex status

#### 789HA Constitutional basis of this Division

This Division relies on the Commonwealth's legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia's obligations under:

- (a) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and
- (b) article 26 of the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
- (c) paragraph 2 of article 2, and articles 6 and 7, of the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5).

Note: The Conventions and the Covenant could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

#### 789HB Extension of anti-discrimination rules

- (1) Subsection (3) applies for the purposes of the operation of the provisions identified in subsection (2) in relation to breastfeeding, gender identity or intersex status.
- (2) The provisions are as follows:
  - (a) section 153;
  - (b) section 172A;
  - (c) section 195;
  - (d) section 351.

- (3) In applying sections 30H and 30S in relation to that operation of the provisions identified in subsection (2), assume that:
- (a) the matter to which that operation of those provisions relates is not an excluded subject matter for the purposes of:
    - (i) the State's referral law mentioned in sections 30H and 30S; and
    - (ii) Divisions 2A and 2B of Part 1-3; and
  - (b) the referral of that matter by that referral law results in the Parliament of the Commonwealth having sufficient legislative power for those provisions (to the extent of that operation) to have effect.

## **Division 2—Family and domestic violence**

### **789HC Constitutional basis of this Division**

This Division relies on the Commonwealth’s legislative powers under paragraph 51(xxix) (external affairs) of the Constitution as it relates to giving effect to Australia’s obligations under:

- (a) the ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation, done at Geneva on 25 June 1958; and
- (b) the ILO Convention (No. 190) concerning the elimination of violence and harassment in the world of work, done at Geneva on 21 June 2019.

Note: The Conventions could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

### **789HD Extension of anti-discrimination rules**

- (1) Subsection (3) applies for the purposes of the operation of the provisions identified in subsection (2) in relation to family and domestic violence.
- (2) The provisions are as follows:
  - (a) section 153;
  - (b) section 172A;
  - (c) section 195;
  - (d) section 351.
- (3) In applying sections 30H and 30S in relation to that operation of the provisions identified in subsection (2), assume that:
  - (a) the matter to which that operation of those provisions relates is not an excluded subject matter for the purposes of:
    - (i) the State’s referral law mentioned in sections 30H and 30S; and
    - (ii) Divisions 2A and 2B of Part 1-3; and

- (b) the referral of that matter by that referral law results in the Parliament of the Commonwealth having sufficient legislative power for those provisions (to the extent of that operation) to have effect.

## Part 6-5—Miscellaneous

### Division 1—Introduction

#### 790 Guide to this Part

This Part deals with miscellaneous matters such as delegations and regulations.

#### 791 Meanings of *employee* and *employer*

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

Note: See also Division 2 of Part 6-4A (TCF contract outworkers taken to be employees in certain circumstances).

## **Division 2—Miscellaneous**

### **792 Delegation by Minister**

- (1) The Minister may, in writing, delegate all or any of his or her functions or powers under this Act (except under section 32A) to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department.
- (2) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

### **793 Liability of bodies corporate**

#### *Conduct of a body corporate*

- (1) Any conduct engaged in on behalf of a body corporate:
  - (a) by an officer, employee or agent (an **official**) of the body within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an official of the body, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the official;

is taken, for the purposes of this Act and the procedural rules, to have been engaged in also by the body.

#### *State of mind of a body corporate*

- (2) If, for the purposes of this Act or the procedural rules, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is enough to show:
  - (a) that the conduct was engaged in by a person referred to in paragraph (1)(a) or (b); and

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- (b) that the person had that state of mind.

*Meaning of state of mind*

- (3) The *state of mind* of a person includes:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

*Disapplication of Part 2.5 of the Criminal Code*

- (4) Part 2.5 of Chapter 2 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

- (5) In this section, *employee* has its ordinary meaning.

## 794 Signature on behalf of body corporate

For the purposes of this Act, a document may be signed on behalf of a body corporate by an authorised officer of the body and need not be made under the body's seal.

## 795 Public sector employer to act through employing authority

*Employer to act through employing authority*

- (1) For the purposes of this Act and the procedural rules, the employer of an employee (a *public sector employee*) employed in public sector employment must act only through the employee's employing authority acting on behalf of the employer.

*Acts done by or to employing authority*

- (2) For the purposes of this Act and the procedural rules, anything done by or to a public sector employee's employing authority



acting on behalf of the employee's employer is taken to have been done by or to the employer (as the case may be).

*Application of subsections (1) and (2)*

- (3) Subsections (1) and (2) apply despite any other law of the Commonwealth, a State or a Territory.

*Meaning of public sector employment*

- (4) **Public sector employment** means employment of, or service by, a person in any capacity (whether permanently or temporarily, and whether full-time or part-time):
- (a) under the *Public Service Act 1999* or the *Parliamentary Service Act 1999*; or
  - (b) by or in the service of a Commonwealth authority; or
  - (c) under a law of the Australian Capital Territory relating to employment by that Territory, including a law relating to the Australian Capital Territory Government Service; or
  - (d) by or in the service of:
    - (i) an enactment authority as defined by section 3 of the *A.C.T. Self-Government (Consequential Provisions) Act 1988*; or
    - (ii) a body corporate incorporated by or under a law of the Australian Capital Territory and in which the Australian Capital Territory has a controlling interest;  
other than an authority or body prescribed by the regulations;  
or
  - (e) under a law of the Northern Territory relating to the Public Service of the Northern Territory; or
  - (f) by or in the service of a Northern Territory authority; or
  - (g) by or in the service of a person prescribed by the regulations;  
or
  - (h) under a law prescribed by the regulations.
- (5) However, **public sector employment** does not include:

Section 795A

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- (a) employment of, or service by, a person prescribed by the regulations; or
- (b) employment or service under a law prescribed by the regulations.

This subsection does not apply for the purposes of section 40.

Note: Section 40 deals with the interaction between fair work instruments and public sector employment laws.

*Meaning of **employing authority***

- (6) An **employing authority** of an employee is the person prescribed by the regulations as the employee's employing authority.

**795A The Schedules**

The Schedules have effect.

Note: The Schedules contain application, transitional and saving provisions relating to amendments of this Act.

**796 Regulations—general**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made under this Act prevail over procedural rules made under this Act, to the extent of any inconsistency.

**796A Regulations conferring functions**

The regulations may confer functions on the following:

- (a) the FWC;
- (b) the General Manager.

**797 Regulations dealing with offences**

- (1) The regulations may provide for offences against the regulations.
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- (2) The penalties for offences must not be more than 20 penalty units.

### **798 Regulations dealing with civil penalties**

- (1) The regulations may provide for civil penalties for contravention of the regulations.
- (2) The penalties for contravention must not be more than:
- (a) 20 penalty units for an individual; or
  - (b) 100 penalty units for a body corporate.

### **799 Regulations dealing with infringement notices**

#### *Infringement notices for offences*

- (1) The regulations may provide for a person who is alleged to have committed an offence against the regulations to pay a penalty to the Commonwealth as an alternative to prosecution.
- (2) The penalty must not exceed one-fifth of the maximum penalty prescribed by the regulations for that offence.

### **800 Regulations dealing with exhibiting fair work instruments**

The regulations may provide for the exhibiting, on the premises of an employer, of a fair work instrument or a term of a fair work instrument.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 1** Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

Clause 1

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## **Schedule 1—Application, saving and transitional provisions relating to amendments of this Act**

Note: See section 795A.

### **Part 1—Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012**

#### **1 Definitions**

In this Part:

*amended Act* means this Act as amended by the amending Act.

*amending Act* means the *Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012*.

*commencement* means the commencement of this Part.

*deemed employee* means a TCF contract outworker who is taken by section 789BB of the amended Act to be an employee.

*deemed employer* means a person who is taken by section 789BB of the amended Act to be the employer of a deemed employee.

#### **2 Section 789BB of amended Act applies to contracts entered into after commencement**

- (1) Section 789BB of the amended Act applies in relation to particular TCF work performed by a TCF contract outworker only if the contract for the provision of services, for the purpose of which the outworker performs the work, is entered into after commencement.

- 
- (2) Subclause (1) does not prevent regulations made for the purposes of section 789BC of the amended Act, or clause 7 of this Part, from dealing with the effect, in relation to a person who is taken by section 789BB of the amended Act to be an employee, of matters that occurred before commencement.

### **3 Effect on TCF contract outworker's entitlements**

*Accrued entitlements not affected*

- (1) The amendments made by the amending Act do not affect any entitlement that a TCF contract outworker had accrued before commencement.

*Effect of modern award term requiring National Employment Standards to be applied to TCF contract outworker*

- (2) To avoid doubt, if:
- (a) a term of a modern award requires the principal of a TCF contract outworker to apply the National Employment Standards to the outworker as if the outworker were an employee; and
  - (b) because of Division 2 of Part 6-4A of the amended Act, the outworker is taken to be an employee (being a national system employee) of the principal for the purposes of Part 2-2 of the amended Act (the National Employment Standards);

then, to the extent that the term gives the outworker an entitlement that is the same as an entitlement (the *NES entitlement*) of the outworker (as a national system employee) under the National Employment Standards, the term operates in parallel with the outworker's NES entitlement, but not so as to give the outworker a double benefit.

### **4 Fair work instruments etc. made before commencement**

- (1) This clause applies in relation to:

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 1** Amendments made by the Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012

## Clause 5

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- (a) a fair work instrument made before commencement; or
  - (b) a transitional instrument as continued in existence by Schedule 3 to the Transitional Act.
- (2) A reference in the instrument to an employee or an employer does not include a deemed employee or a deemed employer, unless the instrument is, after commencement, varied to make it clear that the reference is intended to include a deemed employee or deemed employer.
- (3) This clause is not to be taken to confer a power to vary the instrument.

## 5 Application of Division 3 of Part 6-4A of amended Act

For the purposes of Division 3 of Part 6-4A of the amended Act, an entity is not an indirectly responsible entity in relation to particular TCF work if the arrangement to which the entity is a party, being the arrangement because of which the work can be regarded as being performed indirectly for the entity, was entered into before commencement.

## 6 Application of subsection 203(2A) of amended Act

Subsection 203(2A) of the amended Act applies in relation to enterprise agreements made after commencement.

## 7 Regulations dealing with various matters

*Application, saving and transitional*

- (1) The regulations may make provisions dealing with matters of an application, saving or transitional nature relating to the amendments made by the amending Act.
- (2) The provisions of this Part have effect subject to any regulations that are made for the purpose of subclause (1).

*Application to TCF outworkers of provisions of the Transitional Act*

- (3) The regulations may make provisions dealing with how the Transitional Act applies in relation to TCF outworkers.
- (4) Without limiting subclause (3), regulations made for the purposes of that subclause may:
  - (a) provide that the Transitional Act applies with specified modifications; or
  - (b) otherwise make provision relating to how provisions of that Act apply.

*Retrospective application of regulations*

- (5) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to regulations made for the purposes of subclause (1) or (3) of this clause.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 2** Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

Clause 8

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## **Part 2—Amendments made by the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012**

### **8 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012*.

### **9 Application of sections 149A and 155A of amended Act**

Sections 149A and 155A of the amended Act apply in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.

### **10 FWC to vary certain modern awards**

- (1) This clause applies in relation to a modern award if the award:
  - (a) is made before 1 January 2014; and
  - (b) is in operation on that day; and
  - (c) immediately before that day, does not include a term (the *relevant term*) of the kind mentioned in section 149A of the amended Act.
- (2) The FWC must, by 31 December 2013, make a determination varying the modern award to include the relevant term.
- (3) A determination made under subclause (2) comes into operation on (and takes effect from) 1 January 2014.
- (4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.



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**11 FWC to update text of certain modern awards**

- (1) This clause applies in relation to a modern award if the award:
  - (a) is made before 1 January 2014; and
  - (b) is in operation on that day; and
  - (c) immediately before that day, includes a term (the *relevant term*) of the kind mentioned in section 155A of the amended Act that specifies a fund or scheme (a *non-complying fund or scheme*) that does not satisfy paragraph (1)(a) or (b) of that section.
- (2) The FWC must ensure that the text of the modern award as published by the FWC does not include a non-complying fund or scheme in the relevant term.
- (3) The FWC must do so by 1 January 2014 (despite section 155A of the amended Act).

**12 Application of paragraph 194(h) of amended Act**

Paragraph 194(h) of the amended Act applies in relation to an enterprise agreement that is approved by the FWC on or after 1 January 2014.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 3** Amendments made by the Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016

Clause 13

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## **Part 3—Amendments made by the Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016**

### **13 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016*.

*commencement* means the commencement of this Part.

### **14 Application of amendments—objectionable emergency management terms**

*Application of amendments*

- (1) The amended Act applies, after commencement, in relation to enterprise agreements approved, and workplace determinations made, before or after commencement.
- (2) Sections 254A and 281AA of the amended Act apply in relation to a matter that is before the FWC on or after commencement, even if the matter was before the FWC before commencement.

*Enterprise agreements approved before commencement—preservation of terms in accordance with amended Act*

- (3) If an enterprise agreement approved before commencement includes an objectionable emergency management term, a term of the agreement has effect after commencement to the extent that:
  - (a) the term can have effect in accordance with the amended Act;and

- (b) it would not exceed the Commonwealth's legislative power  
for the term so to have effect.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 4** Amendments made by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017

Clause 15

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## **Part 4—Amendments made by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017**

### **15 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Amendment (Protecting Vulnerable Workers) Act 2017*.

### **16 Application of amendments—unreasonable requirements to spend or pay amounts**

Subsections 325(1) and (1A) of the amended Act apply in relation to requirements made after this clause commences.

### **17 Saving of regulations—unreasonable deductions**

Regulations in force, immediately before the commencement of this clause, for the purposes of subsection 326(2) of the *Fair Work Act 2009* have effect after that commencement as if they had been made for the purposes of subsection 326(2) of the amended Act.

### **18 Application of amendments—increasing maximum penalties for contraventions of certain civil remedy provisions**

- (1) Sections 539, 557A and 557B of the amended Act apply in relation to conduct engaged in on or after the commencement of this Part.
- (2) If:
  - (a) conduct was engaged in by a person before and after that commencement; and
  - (b) the conduct is part of a course of conduct referred to in subsection 557(1);

Clause 19

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the conduct engaged in before that commencement is to be treated as constituting a separate contravention from the conduct engaged in after that commencement for the purposes of section 557.

- (3) However, a court may still consider a contravention of a civil remedy provision (whether or not the provision is referred to in subsection 557(2)) by a person that occurred before the commencement of this Part for the purposes of determining whether a person's conduct was part of a systematic pattern of conduct referred to in paragraph 557A(1)(b).

**19 Application of amendments—responsibility of responsible franchisor entities and holding companies**

- (1) Section 558B of the amended Act applies in relation to contraventions of civil remedy provisions by franchisee entities or subsidiaries that occur after the end of the period of 6 weeks beginning on the day this Part commences.
- (2) To avoid doubt, in determining for the purposes of paragraph 558B(1)(d) or (2)(c) of the amended Act whether a person could reasonably be expected to have had knowledge as referred to in that paragraph, a court may have regard to conduct that occurred, or circumstances existing, before the end of the period referred to in subclause (1).

**20 Application of amendments—hindering or obstructing the Fair Work Ombudsman and inspectors etc.**

Section 707A of the amended Act applies in relation to conduct engaged in at or after the commencement of this Part.

**21 Application of power to give FWO notices**

Sections 712A to 712F of the amended Act apply in relation to an FWO notice given after this Part commences, whether the investigation to which the notice relates is begun before or after the commencement of this Part.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 4** Amendments made by the Fair Work Amendment (Protecting Vulnerable Workers) Act 2017

Clause 22

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**22 Application of amendments relating to self-incrimination etc.**

Section 713 of the amended Act applies in relation to information given, records or documents produced or questions answered after the commencement of this Part.

**23 Application of requirement for reports not to include information relating to an individual's affairs**

Section 714A of the amended Act applies in relation to reports prepared after the commencement of this Part.

**24 Application of amendments—false or misleading information or documents**

Subsections 535(4) and 536(3) and section 718A of the amended Act apply in relation to conduct engaged in after the commencement of this Part.

**24A Application of amendments—presumption where records not provided**

Section 557C of the amended Act applies in relation to contraventions of civil remedy provisions that occur after the commencement of this Part.

## **Part 5—Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018**

### **Division 1—General**

#### **25 Definitions**

In this Part:

*4 yearly review of modern awards* has the meaning given by this Act, as in force immediately before the commencement of Schedule 1 to the amending Act.

*amended Act* means this Act as amended by the amending Act.

*amending Act* means the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018*.

*Schedule 1 commencement day* means the day on which Schedule 1 to the amending Act commences.

*Schedule 2 commencement day* means the day on which Schedule 2 to the amending Act commences.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 5** Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018

**Division 2** Amendments made by Schedule 1 to the amending Act

Clause 26

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## **Division 2—Amendments made by Schedule 1 to the amending Act**

### **26 Incomplete review of modern award**

#### *Scope*

- (1) This clause applies in relation to a review of a modern award conducted as part of a 4 yearly review of modern awards if:
  - (a) the review of the modern award commenced before the Schedule 1 commencement day; and
  - (b) immediately before that day, the review of the modern award had not been completed.

#### *Saving*

- (2) Despite the repeal of:
    - (a) Division 4 of Part 2-3 (which deals with 4 yearly reviews of modern awards); and
    - (b) paragraph 582(4)(a) (which deals with directions by the President); and
    - (c) subsections 616(2) and (3) (which deal with the FWC's functions etc. that must be performed by a Full Bench);by the amending Act, those provisions continue to apply, in relation to the review of the modern award, as if those repeals had not happened.
  - (3) Despite the repeal of paragraph 582(4)(a) (which deals with directions by the President) by the amending Act, a direction given by the President to an FWC Member under that paragraph that was in force immediately before the Schedule 1 commencement day continues to have effect, in relation to the review of the modern award, as if that repeal had not happened.
- (3A) If, after the commencement of Part 5 of Schedule 1 to the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*,



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the FWC is considering, under repealed Division 4 of Part 2-3 (as continued in force under subclause (2)), whether an amendment to a modern award is justified by work value reasons, the FWC's consideration of those work value reasons must:

- (a) be free of assumptions based on gender; and
- (b) include consideration of whether historically the work has been undervalued because of assumptions based on gender.

*Common issues*

- (4) For the purposes of this clause, it is immaterial whether the review of the modern award is conducted in relation to an issue that the modern award has in common with another modern award.

## **27 Dismissing applications**

- (1) On or after the Schedule 1 commencement day, the FWC may dismiss an application under section 158 to vary, revoke or make a modern award if the FWC is satisfied that the specific matters in relation to which the application is made were dealt with, or are being dealt with, in a 4 yearly review of modern awards.

Note: For another power of the FWC to dismiss applications under section 158, see section 587.

- (2) This clause does not limit when the FWC may dismiss an application under section 158.

*Sunset provision*

- (3) This clause ceases to have effect at the end of 2 years after the Schedule 1 commencement day.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 5** Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018

**Division 3** Amendments made by Schedule 2 to the amending Act

Clause 28

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## **Division 3—Amendments made by Schedule 2 to the amending Act**

### **28 Application of amendments—when employees have genuinely agreed to an enterprise agreement**

- (1) The amendments of section 188 of this Act made by Schedule 2 to the amending Act apply in relation to an application made under section 185 of this Act for approval of an enterprise agreement if the application is made:
  - (a) on or after the Schedule 2 commencement day; or
  - (b) before the Schedule 2 commencement day, if circumstances covered by subclause (2) apply.
- (2) The circumstances covered by this subclause are:
  - (a) on or before the Schedule 2 commencement day, the FWC had neither approved, nor refused to approve, the enterprise agreement; or
  - (b) before the Schedule 2 commencement day:
    - (i) the FWC approved, or refused to approve, the enterprise agreement; and
    - (ii) an application was made under section 604 for an appeal against the decision to approve, or refuse to approve, the enterprise agreement; and
    - (iii) the FWC had not yet made a final decision on the appeal; or
  - (c) all of the following apply:
    - (i) within 21 days before the Schedule 2 commencement day, the FWC approved, or refused to approve, the enterprise agreement;
    - (ii) immediately before the Schedule 2 commencement day, an application had not been made under section 604 for an appeal against the decision to approve, or refuse to approve, the enterprise agreement;

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and  
Other Measures) Act 2018 **Part 5**  
Amendments made by Schedule 2 to the amending Act **Division 3**

Clause 28

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- (iii) within 21 days after the FWC approved, or refused to approve, the enterprise agreement, an application is made under section 604 for an appeal against that decision.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 5** Amendments made by the Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018

**Division 4** Amendments made by Schedule 3 to the amending Act

Clause 29

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## **Division 4—Amendments made by Schedule 3 to the amending Act**

### **29 Application of section 641B of the amended Act**

Section 641B of the amended Act applies in relation to alleged misbehaviour or incapacity of an FWC Member occurring before or after the commencement of Schedule 3 to the amending Act.

## **Part 6—Amendments made by the Fair Work Amendment (Corrupting Benefits) Act 2017**

### **30 Disclosure by organisations and employers**

The amendments of Subdivision A of Division 4 of Part 2-4 made by Schedule 2 to the *Fair Work Amendment (Corrupting Benefits) Act 2017* apply in relation to a proposed enterprise agreement for which the access period under subsection 180(4) begins on or after the commencement of this Part.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 8** Amendments made by the Fair Work Amendment (Family and Domestic Violence Leave) Act 2018

Clause 39

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## **Part 8—Amendments made by the Fair Work Amendment (Family and Domestic Violence Leave) Act 2018**

### **39 Entitlement to unpaid family and domestic violence leave**

- (1) Subdivision CA of Division 7 of Part 2-2, as inserted by the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*, applies in relation to an employee whose employment started before the commencement of that Act as if the period:
  - (a) starting on that commencement; and
  - (b) ending on the first day after that commencement that is an anniversary of the day the employment started;were a 12 month period.
- (2) For the purposes of this clause, if an employee is employed by a particular employer:
  - (a) as a casual employee; or
  - (b) for a specified period of time, for a specified task or for the duration of a specified season;the start of the employee's employment is taken to be the start of the employee's first employment with that employer.

### **40 Resolving uncertainties and difficulties about interaction between enterprise agreements and unpaid family and domestic violence leave**

- (1) On application by an employer, employee or employee organisation covered by an enterprise agreement that was made before the commencement of the *Fair Work Amendment (Family and Domestic Violence Leave) Act 2018*, the FWC may make a determination varying the agreement:

Clause 40

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- (a) to resolve an uncertainty or difficulty relating to the interaction between the agreement and the following (the ***unpaid family and domestic violence leave provisions***):
    - (i) the provisions of Subdivision CA of Division 7 of Part 2-2;
    - (ii) section 107, to the extent that it relates to taking leave under that Subdivision; or
  - (b) to make the agreement operate effectively with the unpaid family and domestic violence leave provisions.
- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 9** Amendments made by the Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020

Clause 41

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## **Part 9—Amendments made by the Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020**

### **41 Definitions**

In this Part:

*amending Act* means the *Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020*.

*Schedule 1 commencement day* means the day on which Schedule 1 to the amending Act commences.

*Schedule 2 commencement day* means the day on which Schedule 2 to the amending Act commences.

### **42 Amendments about stillbirth, death and hospitalisation of children**

*Unpaid parental leave*

- (1) The amendments of Division 5 (parental leave and related entitlements) of Part 2-2 made by Schedule 1 to the amending Act apply in relation to the stillbirth or death of a child on or after the Schedule 1 commencement day, subject to subclauses (2) to (4).
- (2) Section 78A (hospitalised children), as inserted by Schedule 1 to the amending Act, applies in relation to a child born on or after the Schedule 1 commencement day.
- (3) The amendment of section 84A (replacement employees) made by Schedule 1 to the amending Act applies if:



- (a) an employer engages the replacement employee on or after the Schedule 1 commencement day; and
- (b) the child in relation to whom the other employee is taking unpaid parental leave was not stillborn, or did not die, before that day.

*Unpaid special maternity leave*

- (4) The amendments of section 80 (unpaid special maternity leave) made by Schedule 1 to the amending Act apply to a pregnancy that ends on or after the Schedule 1 commencement day.

*Compassionate leave*

- (5) The amendments of Subdivision C (compassionate leave) of Division 7 of Part 2-2 made by Schedule 1 to the amending Act apply in relation to a permissible occasion that occurs on or after the Schedule 1 commencement day.

### **43 Amendments about flexible unpaid parental leave**

*Application provision*

- (1) The amendments of Division 5 of Part 2-2 made by Schedule 2 to the amending Act apply in relation to a child if the child's date of birth, or day of placement, is on or after the Schedule 2 commencement day.

*Transitional provision—giving notice of taking flexible unpaid parental leave*

- (2) If:
  - (a) before the Schedule 2 commencement day, an employee gives notice to an employer in accordance with subsection 74(1) of the taking of a period (the ***initial leave period***) of unpaid parental leave under section 71 or 72 in relation to a child; and

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 9** Amendments made by the Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020

Clause 43

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- (b) the child's date of birth or day of placement is on or after the Schedule 2 commencement day;
- then the employee may, during the 1-month period starting on the Schedule 2 commencement day, give the employer written notice of the taking of flexible unpaid parental leave.
- (3) The notice under subclause (2) must specify the number of days of flexible unpaid parental leave that the employee intends to take in relation to the child.
- (4) The employee may, in the notice under subclause (2), advise the employer of a change to the end date of the initial leave period, but only if the change is necessary to allow the employee to take the flexible unpaid parental leave for the number of days referred to in subclause (3).
- (5) If the employee gives notice in accordance with subclauses (2) and (3), then:
- (a) the notice is taken to be a notice given under subsection 74(1) in relation to the taking of flexible unpaid parental leave; and
  - (b) subsections 74(3A) and (3B) are taken to have been complied with in relation to the giving of that notice; and
  - (c) if the notice contains advice as referred to in subclause (4)—the employee is taken to have complied with subsection 74(4) in relation to the initial leave period.
- (6) The employee cannot take flexible unpaid parental leave before the end of 4 weeks starting on the day the notice under subclause (2) is given, despite subsection 74(4B).

## **Part 10—Amendments made by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021**

### **Division 1—Definitions**

#### **44 Definitions**

In this Part:

***amended Act*** means this Act as amended by the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*.

***amending Act*** means the *Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021*.

***commencement*** means the commencement of this Part.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 10** Amendments made by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

**Division 2** Amendments made by Schedule 1 to the amending Act

Clause 45

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## **Division 2—Amendments made by Schedule 1 to the amending Act**

### **45 Resolving uncertainties and difficulties about interaction between enterprise agreements and the definition of casual employee and casual conversion rights**

- (1) On application by an employer, employee or employee organisation covered by an enterprise agreement that was made before commencement, the FWC may make a determination varying the agreement:
  - (a) to resolve an uncertainty or difficulty relating to the interaction between the agreement and any of the following:
    - (i) the definition of *casual employee* in section 15A of the amended Act (including to deal with uncertainty or difficulty arising from the circumstances in which employees are to be employed as casual employees under the agreement);
    - (ii) the provisions of Division 4A of Part 2-2 of the amended Act; or
  - (b) to make the agreement operate effectively with that section or those provisions.
- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

### **46 Application of certain amendments**

- (1) Section 15A of the amended Act applies on and after commencement in relation to offers of employment that were given before, on or after commencement.
- (2) Subclause (1) does not apply in relation to a person who is an employee of an employer as a result of accepting an offer that was

made before commencement if either of the following apply in relation to that person:

- (a) a court made a binding decision before commencement that the person is not a casual employee of the employer;
  - (b) the person converted the employment before commencement to employment other than casual employment under a term of a fair work instrument or contract of employment.
- (3) In addition to subclause (1), section 15A of the amended Act (and the amendment made by item 1 of Schedule 1 to the amending Act) also applies before commencement in relation to offers of employment that were given before commencement, unless either of the following apply in relation to a person who is or was an employee of an employer as a result of accepting the offer:
- (a) a court made a binding decision before commencement that the person is not a casual employee of the employer;
  - (b) the person converted the employment before commencement to employment other than casual employment under a term of a fair work instrument or contract of employment.
- (4) To avoid doubt, if, apart from subclause (3), an employee could have made a claim for accrued relevant entitlements (within the meaning of subsection 545A(4) of the amended Act), the effect of that subclause is that the employee has not accrued, and cannot make a claim for, those entitlements.
- (5) Subject to clause 47, Division 4A of Part 2-2 of the amended Act applies in relation to periods of employment starting before, on or after commencement.
- (6) Section 545A of the amended Act applies in relation to entitlements that accrue, and loading amounts paid, on or after commencement.
- (7) In addition to subclause (6), section 545A of the amended Act also applies in relation to entitlements that accrue, and loading amounts paid, before commencement.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 10** Amendments made by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

**Division 2** Amendments made by Schedule 1 to the amending Act

#### Clause 47

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- (8) To avoid doubt, section 545A of the amended Act applies:
  - (a) to periods of employment starting before, on or after commencement (regardless of whether the employment period ended before commencement); and
  - (b) regardless of whether a person is, or is not, an employee of the relevant employer at the time a claim to which that section relates is made.
- (9) A reference to periods of employment as a casual employee in section 87, 96, 117, 119 or 121 of the amended Act applies to periods of employment starting before, on or after commencement.
- (10) A reference to a regular casual employee in section 23, 65, 67 or 384 of the amended Act applies to periods of employment starting before, on or after commencement.
- (11) To avoid doubt, nothing in subclause (1) is taken to change the time at which the person became an employee of the employer.

#### **47 Transitioning casual employees**

- (1) This clause applies in relation to an employee and an employer (other than a small business employer) if any or all of the following apply:
  - (a) the employee was, immediately before commencement (and disregarding subclause 46(3)), a casual employee of the employer;
  - (b) the employee was, immediately before commencement (and disregarding subclause 46(3)), designated as a casual employee by the employer for the purposes of:
    - (i) any fair work instrument that applies to the employee; or
    - (ii) the employee's contract of employment;
  - (c) the employee is a casual employee of the employer within the meaning of section 15A of the amended Act because of an offer of an employment made before commencement.

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Note: The effect of this application provision is to provide a requirement for an employer (other than a small business employer) to assess whether to offer conversion under Division 4A of Part 2-2 of the amended Act (as modified under this clause) to any employee who was, or may have been, a casual employee immediately before commencement, and to any employee who at commencement is a casual employee within the meaning of section 15A of the amended Act.

- (2) Division 4A (other than Subdivision C) of Part 2-2 of the amended Act is taken to apply in relation to the employee and employer for the period (the *transition period*) of 6 months after commencement only as if:
- (a) the employer was required under section 66B of the amended Act to assess, at a time during the transition period, whether the employer was required to make an offer to the employee under that section; and
  - (b) paragraph 66B(1)(a) of the amended Act were a requirement for the employee to have been employed by the employer for a period of 12 months ending the day the assessment is made; and
  - (c) paragraph 66B(2)(c) of the amended Act were a requirement to give the offer to the employee within 21 days after making the assessment; and
  - (d) subsection 66C(3) of the amended Act included a requirement to give a notice under that subsection if, when the assessment is made, the employee does not meet the requirement in paragraph (b) of this clause; and
  - (e) paragraph 66C(4)(c) of the amended Act were a requirement to give the notice within 21 days of making the assessment but no later than the end of the transition period.
- (3) Subdivision C of Part 2-2 of the amended Act does not apply in relation to the employee and employer for the transition period.
- (4) Division 4A (including Subdivision C) of Part 2-2 of the amended Act applies in relation to the employee and employer to whom paragraph (1)(a) or (b) applies after the transition period as if the employee were a casual employee of the employer within the meaning of section 15A of the amended Act.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 10** Amendments made by the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021

**Division 2** Amendments made by Schedule 1 to the amending Act

#### Clause 47A

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- (5) An employer referred to in subclause (1) must give an employee referred to in that subclause a Casual Employment Information Statement as soon as practicable after the end of the transition period.

#### **47A Casual employees of small business employers**

- (1) This clause applies in relation to an employee and a small business employer if any or all of the following apply:
- (a) the employee was, immediately before commencement (and disregarding subclause 46(3)), a casual employee of the employer;
  - (b) the employee was, immediately before commencement (and disregarding subclause 46(3)), designated as a casual employee by the employer for the purposes of:
    - (i) any fair work instrument that applies to the employee; or
    - (ii) the employee's contract of employment;
  - (c) the employee is a casual employee of the employer within the meaning of section 15A of the amended Act because of an offer of an employment made before commencement.
- (2) Division 4A, other than Subdivision B, of Part 2-2 of the amended Act applies in relation to the employee and employer to whom paragraph (1)(a) or (b) applies on and after commencement as if the employee were a casual employee of the employer within the meaning of section 15A of the amended Act.
- (3) An employer referred to in subclause (1) must give an employee referred to in that subclause a Casual Employment Information Statement as soon as practicable after commencement.

#### **48 Variations to modern awards**

- (1) If:
- (a) a modern award is made before commencement; and
  - (b) the modern award is in operation on commencement; and



- (c) immediately before commencement, the modern award includes a term (the *relevant term*) that:
- (i) defines or describes casual employment; or
  - (ii) deals with the circumstances in which employees are to be employed as casual employees; or
  - (iii) provides for the manner in which casual employees are to be employed; or
  - (iv) provides for the conversion of casual employment to another type of employment;
- then the FWC must, within 6 months after commencement, review the relevant term in accordance with subclause (2).
- (2) The review must consider the following:
- (a) whether the relevant term is consistent with this Act as amended by Schedule 1 to the amending Act;
  - (b) whether there is any uncertainty or difficulty relating to the interaction between the award and the Act as so amended.
- (3) If the review of a relevant term under subclause (1) finds that:
- (a) the relevant term is not consistent with this Act as amended by Schedule 1 to the amending Act; or
  - (b) there is a difficulty or uncertainty relating to the interaction between the award and the Act as so amended;
- then the FWC must make a determination varying the modern award to make the award consistent or operate effectively with the Act as so amended.
- (4) The determination must be made as soon as reasonably practicable after the review is conducted.
- (5) A determination under subclause (3) comes into operation on (and takes effect from) the start of the day the determination is made.
- (6) Section 168 applies to a determination made under subclause (3) as if it were a determination made under Part 2-3.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 11** Amendments made by the Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021

Clause 49

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## **Part 11—Amendments made by the Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021**

### **49 Orders to stop bullying**

#### *Scope*

- (1) This clause applies to an order that was in force under subsection 789FF(1) immediately before the commencement of this clause.

#### *Transitional*

- (2) Despite the repeal of that subsection by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*, that subsection continues to apply, in relation to the order, as if that repeal had not happened.

### **49A Applications for orders to stop sexual harassment**

The amendments of section 789FC made by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021* apply in relation to an application made under that section after the end of the 2-month period beginning at the commencement of this clause.

### **50 Orders to stop sexual harassment**

For the purposes of subparagraph 789FF(1)(b)(ii) (as amended by the *Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021*), it is immaterial whether the worker has been sexually harassed at work before, at or after the commencement of this clause.

## **Part 12—Amendments made by the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022**

### **51 Definitions**

In this Part:

*amending Act* means the *Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022*.

*pre-commencement enterprise agreement* means an enterprise agreement made before the commencement of Schedule 1 to the amending Act.

*small business employee* means an employee whose employer was, on the day Schedule 1 to the amending Act commences, a small business employer (whether or not the employee was employed by the employer on that day).

### **52 Entitlement to paid family and domestic violence leave**

*Non-small business employees*

- (1) The amendments made by Schedule 1 to the amending Act apply in relation to an employee, other than a small business employee, whose employment starts on or after the commencement of that Schedule.
- (2) The amendments made by Schedule 1 to the amending Act also apply, from the commencement of that Schedule, in relation to an employee, other than a small business employee, whose employment started before that commencement, as if the period:
  - (a) starting on that commencement; and

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 12** Amendments made by the Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022

### Clause 53

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(b) ending on the first day after that commencement that is an anniversary of the day the employment started;  
were a 12 month period.

#### *Small business employees*

- (3) The amendments made by Schedule 1 to the amending Act apply in relation to a small business employee whose employment starts on or after 1 August 2023.
- (4) The amendments made by Schedule 1 to the amending Act also apply, from 1 August 2023, in relation to a small business employee whose employment started before 1 August 2023, as if the period:
- (a) starting on 1 August 2023; and
  - (b) ending on the first day after 1 August 2023 that is an anniversary of the day the employment started;
- were a 12 month period.

#### *Start of casual employment*

- (5) For the purposes of this clause, if an employee is employed by a particular employer:
- (a) as a casual employee; or
  - (b) for a specified period of time, for a specified task or for the duration of a specified season;
- the start of the employee's employment is taken to be the start of the employee's first employment with that employer.

## **53 Resolving interactions between enterprise agreements and paid family and domestic violence leave**

- (1) On application by an employer, employee or employee organisation covered by a pre-commencement enterprise agreement, if:

Clause 53

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- (a) the agreement includes terms entitling employees to paid family and domestic violence leave within the ordinary meaning of that expression; and
  - (b) the FWC considers that the effect of those terms is detrimental when compared with the entitlement under Subdivision CA of Division 7 of Part 2-2 as amended by Schedule 1 to the amending Act (the *NES entitlement*);  
the FWC may make a determination varying the agreement to make the agreement consistent with the NES entitlement.
- (2) On application by an employer, employee or employee organisation covered by a pre-commencement enterprise agreement, the FWC may make a determination varying the agreement to make it operate effectively with the following:
- (a) the provisions of Subdivision CA of Division 7 of Part 2-2 as amended by Schedule 1 to the amending Act;
  - (b) section 107, to the extent that it relates to taking leave under that Subdivision.
- (3) A variation of a pre-commencement enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the determination is made.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 1** Definitions

Clause 55

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## **Part 13—Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022**

### **Division 1—Definitions**

#### **55 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

*amending Act* means the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*.

*commencement* means the commencement of this Part.

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay)  
Act 2022 **Part 13**  
Amendments made by Part 1 of Schedule 1 to the amending Act **Division 2**

Clause 56

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## **Division 2—Amendments made by Part 1 of Schedule 1 to the amending Act**

### **56 Appeal of decisions of the Registered Organisations Commissioner**

Divisions 3 and 4 of Part 5-1, as amended by Division 2 of Part 1 of Schedule 1 to the amending Act, have effect as if a reference to a decision made under the Registered Organisations Act by the General Manager included a reference to a decision made under the Registered Organisations Act before the commencement of Division 2 of Part 1 of that Schedule by the Registered Organisations Commissioner (including a delegate of the Commissioner), other than a decision under subsection 293H(3) of the Registered Organisations Act.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 3** Amendments made by Part 4 of Schedule 1 to the amending Act

Clause 57

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### **Division 3—Amendments made by Part 4 of Schedule 1 to the amending Act**

#### **57 Objects of the Act**

- (1) Sections 3 and 134 of the amended Act apply, after commencement, in relation to the FWC performing functions, or exercising powers, in relation to:
  - (a) a matter that arises after commencement; or
  - (b) a proceeding in the FWC that was on foot at commencement, or commences after commencement.
- (2) Section 284 of the amended Act applies, after commencement, in relation to an annual wage review conducted in:
  - (a) the financial year beginning on 1 July 2022; or
  - (b) a later financial year.



## **Division 4—Amendments made by Part 5 of Schedule 1 to the amending Act**

### **58 Equal remuneration**

- (1) Section 157 of the amended Act applies after commencement in relation to a determination or modern award made under that section after commencement.
- (2) Subsections 302(3A) to (4A) of the amended Act apply after commencement in relation to the FWC performing functions, or exercising powers, in relation to:
  - (a) a matter that arises after commencement; or
  - (b) a proceeding in the FWC that was on foot at commencement, or commences after commencement.
- (3) If an application under subsection 302(3) of this Act as in force immediately before commencement has not been finally determined at commencement, subsection 302(5) of the amended Act applies in relation to the application as if it were an application under paragraph 302(3)(b) of the amended Act.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 5** Amendments made by Part 7 of Schedule 1 to the amending Act

Clause 59

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## **Division 5—Amendments made by Part 7 of Schedule 1 to the amending Act**

### **59 Pay secrecy**

- (1) Section 333B of the amended Act applies after commencement in relation to an employee if:
    - (a) the employee’s contract of employment is entered into on or after commencement; or
    - (b) the employee’s contract of employment is entered into before commencement and does not include a term that is inconsistent with subsection 333B(1) or (2) of the amended Act.
  - (2) If:
    - (a) an employee’s contract of employment is entered into before commencement; and
    - (b) the contract includes a term that is inconsistent with subsection 333B(1) or (2) of the amended Act; and
    - (c) after commencement, the contract is varied at a particular time;section 333B of the amended Act applies in relation to the employee after that time.
  - (3) Section 333C of the amended Act applies after commencement in relation to a fair work instrument made before, on or after commencement.
  - (4) Section 333C of the amended Act applies after commencement in relation to a contract of employment if:
    - (a) the contract is entered into on or after commencement; or
    - (b) the contract is entered into before commencement and does not include a term that is inconsistent with subsection 333B(1) or (2) of the amended Act.
  - (5) If:
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- (a) a contract of employment is entered into before commencement; and
  - (b) the contract includes a term that is inconsistent with subsection 333B(1) or (2) of the amended Act; and
  - (c) after commencement, the contract is varied at a particular time;
- section 333C of the amended Act applies in relation to the contract after that time.
- (6) Section 333D of the amended Act applies after the 6-month period beginning on commencement in relation to a contract of employment entered into on or after commencement.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 6** Amendments made by Part 8 of Schedule 1 to the amending Act

Clause 60

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## **Division 6—Amendments made by Part 8 of Schedule 1 to the amending Act**

### **60 Prohibiting sexual harassment in connection with work**

- (1) Despite the amendments of Part 6-4B made by Schedule 1 to the amending Act, that Part, as in force immediately before the commencement of Division 1 of Part 8 of that Schedule, continues to apply, on and after that commencement, in relation to:
  - (a) the sexual harassment of a worker at work before that commencement; and
  - (b) the sexual harassment of a worker at work on or after that commencement, if the sexual harassment is part of a course of conduct that begins before that commencement.
- (2) Despite the repeal of subsection 789FF(1) by Schedule 1 to the amending Act, an order that was in force under that subsection immediately before the commencement of Division 1 of Part 8 of that Schedule continues in force (and may be dealt with) on and after that commencement as if that repeal had not happened.
- (3) Subsection 527D(1) does not apply in relation to sexual harassment of a worker if the sexual harassment is part of a course of conduct that begins before the commencement of Division 1 of Part 8 of Schedule 1 to the amending Act.

## **Division 7—Amendments made by Part 9 of Schedule 1 to the amending Act**

### **61 Anti-discrimination and special measures**

- (1) Subject to subclauses (2) and (3), the amendments made by Part 9 of Schedule 1 to the amending Act apply on and after commencement.
- (2) The amendments of sections 172A and 195 made by Part 9 of Schedule 1 to the amending Act apply in relation to enterprise agreements made on and after commencement.
- (3) The amendment of section 351 made by Part 9 of Schedule 1 to the amending Act applies in relation to adverse action taken on and after commencement.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 8** Amendments made by Part 10 of Schedule 1 to the amending Act

Clause 62

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## **Division 8—Amendments made by Part 10 of Schedule 1 to the amending Act**

### **62 Fixed term contracts**

Section 333E of the amended Act applies in relation to a contract of employment entered into on or after the commencement of Part 10 of Schedule 1 to the amending Act (whether or not a previous contract referred to in subsection 333E(4) of the amended Act was entered into before, on or after that commencement).

### **63 Resolving uncertainties and difficulties about interaction between enterprise agreements and the provisions of Division 5 of Part 2-9**

- (1) On application by an employer or employee covered by an enterprise agreement that was made before the commencement of Part 10 of Schedule 1 to the amending Act, the FWC may make a determination varying the enterprise agreement to resolve an uncertainty or difficulty relating to the interaction between the enterprise agreement and the provisions of Division 5 of Part 2-9.
- (2) A variation of an enterprise agreement under this clause operates from the day specified in the determination, which may be a day before the enterprise agreement is made.

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay)  
Act 2022 **Part 13**  
Amendments made by Part 11 of Schedule 1 to the amending Act **Division 9**

Clause 64

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## **Division 9—Amendments made by Part 11 of Schedule 1 to the amending Act**

### **64 Requests for flexible working arrangements**

The amendments made by Divisions 1, 3, 4 and 5 of Part 11 of Schedule 1 to the amending Act apply in relation to a request made under subsection 65(1) of this Act on or after the commencement of that Part.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 10** Amendments made by Part 12 of Schedule 1 to the amending Act

Clause 65

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## **Division 10—Amendments made by Part 12 of Schedule 1 to the amending Act**

### **65 Termination of enterprise agreements after nominal expiry date**

The amendments made by Part 12 of Schedule 1 to the amending Act apply in relation to an application for the termination of an enterprise agreement made under section 225:

- (a) on or after the commencement of that Part; or
- (b) before the commencement of that Part if, at that commencement, the FWC has neither terminated nor refused to terminate the agreement.



## **Division 11—Amendments made by Part 14 of Schedule 1 to the amending Act**

### **66 Genuine agreement in relation to enterprise agreements**

Despite the amendments made by Part 14 of Schedule 1 to the amending Act, Part 2-4 continues to apply, as if the amendments had not been made, in relation to:

- (a) any proposed enterprise agreement for which the notification time occurs before the commencement of Part 14 of that Schedule; and
- (b) any variation of an enterprise agreement for which the employer's request that affected employees for the variation approve the variation by voting for it occurs before that commencement.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 12** Amendments made by Part 16 of Schedule 1 to the amending Act

Clause 67

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## **Division 12—Amendments made by Part 16 of Schedule 1 to the amending Act**

### **67 The better off overall test**

The amendments made by Part 16 of Schedule 1 to the amending Act apply in relation to enterprise agreements made on and after the commencement of that Part.

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay)  
Act 2022 **Part 13**  
Amendments made by Part 17 of Schedule 1 to the amending Act **Division 13**

Clause 68

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## **Division 13—Amendments made by Part 17 of Schedule 1 to the amending Act**

### **68 Validation of approval of enterprise agreement**

Section 602A of the amended Act applies in relation to an approval given by the FWC before, at or after the commencement of that section.

### **69 Validation of approval of variation of enterprise agreement**

Section 602B of the amended Act applies in relation to an approval given by the FWC before, at or after the commencement of that section.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 14** Amendments made by Part 18 of Schedule 1 to the amending Act

Clause 70

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## **Division 14—Amendments made by Part 18 of Schedule 1 to the amending Act**

### **70 Serious breach declarations**

Despite the amendments made to the following provisions of this Act by Part 18 of Schedule 1 to the amending Act, those provisions continue to apply, in relation to an application made under section 234 of this Act before that Part commences, as if the amendments had not been made:

- (a) Subdivision B of Division 8 of Part 2-4;
- (b) Division 4 of Part 2-5;
- (c) section 274;
- (d) section 413.

### **71 Intractable bargaining declarations**

In making a declaration under section 235 of the amended Act, the FWC may have regard to conduct engaged in before or after the commencement of Subdivision B of Division 8 of Part 2-4 of the amended Act.

## **Division 15—Amendments made by Part 19 of Schedule 1 to the amending Act**

### **72 Industrial action**

- (2) The amendments of sections 437 and 440 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to an application made under subsection 437(1) of this Act on or after the commencement of that Division.
- (3) Subject to subclause (2) of this clause, the amendments of Part 3-3 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to a protected action ballot order if the application for the order is made under subsection 437(1) of this Act on or after the commencement of that Division.
- (4) The amendments of section 539 made by Division 2 of Part 19 of Schedule 1 to the amending Act apply in relation to a contravention, or proposed contravention, of a civil remedy provision referred to in item 18, 19 or 20 of the table in subsection 539(2) that occurs on or after the commencement of that Division.
- (5) The amendment made by Division 3 of Part 19 of Schedule 1 to the amending Act applies in relation to an application made under subsection 437(1) of this Act on or after the commencement of that Division.
- (6) The amendments of Part 3-3 made by Division 4 of Part 19 of Schedule 1 to the amending Act apply in relation to employee claim action if the application for the relevant protected action ballot order is made under subsection 437(1) of this Act on or after the commencement of that Division.
- (7) The amendments of Part 3-3 made by Division 5 of Part 19 of Schedule 1 to the amending Act apply in relation to a protected action ballot order if the application for the order is made under

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 15** Amendments made by Part 19 of Schedule 1 to the amending Act

**Clause 72**

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subsection 437(1) of this Act on or after the commencement of that Division.

## **Division 16—Amendments made by Part 21 of Schedule 1 to the amending Act**

### **73 Variation of single interest employer agreement to add employer and employees**

Subdivision AD of Division 7 of Part 2-4 of the amended Act, as inserted by Part 21 of Schedule 1 to the amending Act, applies in relation to variations of single interest employer agreements on or after the commencement of that Part of the amending Act, if the agreements were made after that commencement.

### **74 Application to existing applications for declarations**

- (1) This clause applies in relation to applications for declarations made under subsection 247(1) of the Act immediately before the commencement of Part 21 of Schedule 1 to the amending Act if, immediately before that commencement, the Minister had not made a decision on the application.
- (2) Despite the amendments of Division 10 of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply as if those amendments had not been made.

### **75 Application to existing Ministerial declarations where application for authorisation not made**

- (1) This clause applies in relation to declarations made under subsection 247(3) of the Act before the commencement of Part 21 of Schedule 1 to the amending Act if, immediately before that commencement, 2 or more of the employers to whom the declaration relates had not made an application for an authorisation.
- (2) If, after that commencement, those employers make an application for an authorisation, then, despite the amendments of Division 10

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 16** Amendments made by Part 21 of Schedule 1 to the amending Act

## Clause 76

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of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply in relation to the application as if those amendments had not been made.

### **76 Application to existing applications for authorisations**

- (1) This clause applies in relation to applications for authorisations made under subsection 248(1) of the Act immediately before the commencement of Part 21 of Schedule 1 to the amending Act if, immediately before that commencement, the FWC had not made a decision on the application.
- (2) Despite the amendments of Division 10 of Part 2-4 made by Part 21 of Schedule 1 to the amending Act, that Division continues to apply as if those amendments had not been made.

### **77 Effect of making a single interest employer authorisation**

Paragraph 172(5)(b) of the amended Act, as inserted by Part 21 of Schedule 1 to the amending Act, applies in relation to single interest employer authorisations on or after the commencement of that Part if the authorisation was made on or after that commencement.

### **78 Application to existing applications to vary authorisations**

The amendments to section 251 made by Part 21 of Schedule 1 to the amending Act do not apply in relation to applications for variations made before the commencement of that Part.

### **78A Application to authorisations in operation before commencement**

- (1) This clause applies in relation to 2 or more employers that were, immediately before the commencement of Part 21 of Schedule 1 to the amending Act, specified in a single interest employer authorisation made under subsection 249(1) that is in operation.



- (2) For the purposes of section 172 of the amended Act, the employers are taken to be related employers within the meaning of subsection 172(5A).

**78B Application to certain authorisations made after commencement**

If, because of the operation of clause 74, 75 or 76 of this Part, the FWC makes a single interest employer authorisation after the commencement of Part 21 of Schedule 1 to the amending Act:

- (a) Division 10 of Part 2-4 of this Act, as in force immediately before that commencement, continues to apply in relation to the authorisation; and
- (b) for the purposes of section 172 of the amended Act, the employers specified in the authorisation are taken to be related employers within the meaning of subsection 172(5A).

**78C Availability of scope orders**

Despite the repeal of subsection 238(2) of this Act by Part 21 of Schedule 1 to the amending Act, that subsection continues to apply after the commencement of that Part to proposed single-enterprise agreements in relation to which a single interest employer authorisation is in operation.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 17** Amendments made by Part 23 of Schedule 1 to the amending Act

Clause 80A

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## **Division 17—Amendments made by Part 23 of Schedule 1 to the amending Act**

### **80A Approval of enterprise agreement—requirement relating to genuine agreement of employers**

Subsection 186(2AA) of the amended Act applies in relation to an enterprise agreement made after the commencement of that subsection.

### **81 Approval of cooperative workplace agreement—requirement relating to representation**

Subsection 186(2A) of the amended Act applies in relation to a cooperative workplace agreement made after the commencement of that subsection.

### **82 Variation of cooperative workplace agreement to add employer and employees**

Subdivision AC of Division 7 of Part 2-4 of the amended Act applies in relation to a variation of a cooperative workplace agreement, if the agreement was made after the commencement of that Subdivision.

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay)  
Act 2022 **Part 13**  
Amendments made by Part 23A of Schedule 1 to the amending Act **Division 17A**

Clause 82A

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## **Division 17A—Amendments made by Part 23A of Schedule 1 to the amending Act**

### **82A Multi-enterprise agreements and general building and construction work**

Subsection 186(2B) of the amended Act, as inserted by Part 23A to the amending Act, applies in relation to:

- (a) the approval of an enterprise agreement, if the agreement is made after the commencement of that Part; and
- (b) the approval of a variation of an enterprise agreement, if the variation is made after the commencement of that Part.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 18** Amendments made by Part 24 of Schedule 1 to the amending Act

Clause 83

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## **Division 18—Amendments made by Part 24 of Schedule 1 to the amending Act**

### **83 Small claims procedure**

- (1) The following provisions apply in relation to small claims proceedings commenced on or after the commencement of Part 24 of Schedule 1 to the amending Act:
  - (a) the amendment of paragraph 548(2)(a) of this Act made by that Part;
  - (b) subsection 548(2A) as inserted by that Part.
- (2) Subsections 548(10) and (11), as inserted by Part 24 of Schedule 1 to the amending Act, apply in relation to:
  - (a) small claims proceedings commenced, but not finally determined, before the commencement of that Part; and
  - (b) small claims proceedings commenced after the commencement of that Part.

Application, saving and transitional provisions relating to amendments of this Act  
**Schedule 1**  
Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay)  
Act 2022 **Part 13**  
Amendments made by Part 25 of Schedule 1 to the amending Act **Division 19**

Clause 84

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## **Division 19—Amendments made by Part 25 of Schedule 1 to the amending Act**

### **84 Employment advertisements**

Division 4 of Part 3-6 of this Act, as inserted by Part 25 of Schedule 1 to the amending Act, applies in relation to employment advertised on or after the day that is one month after the commencement of Part 25 of Schedule 1 to the amending Act (whether the employment was first advertised before, on or after that day).

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 13** Amendments made by the Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022

**Division 20** Amendments made by Part 25B of Schedule 1 to the amending Act

Clause 85

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## **Division 20—Amendments made by Part 25B of Schedule 1 to the amending Act**

### **85 Requests for extension of period of unpaid parental leave**

The amendments made by Part 25B of Schedule 1 to the amending Act apply in relation to a request made under subsection 76(1) of this Act on or after the commencement of that Part.

## **Part 14—Amendments made by the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023**

### **Division 1—Definitions**

#### **86 Definitions**

In this Part:

***amended Act*** means this Act as amended by the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

***amending Act*** means the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023*.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 14** Amendments made by the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023

**Division 2** Amendments made by Schedule 2 to the amending Act

Clause 87

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## **Division 2—Amendments made by Schedule 2 to the amending Act**

### **87 Amendments about unpaid parental leave**

(1) The amendments made by Schedule 2 to the amending Act apply in relation to an employee in respect of a child if the child's date of birth, or day of placement, is on or after 1 July 2023.

(2) If:

- (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in accordance with subsection 74(1) of the taking of a period of unpaid parental leave under section 72 in relation to a child; and
- (b) the period of unpaid parental leave is covered by paragraph 72(3)(a) or (4)(a); and
- (c) the child's date of birth, or day of placement, is on or after 1 July 2023;

the period of unpaid parental leave is to be treated, after the commencement of Schedule 2 to the amending Act, as a continuous period of unpaid parental leave under section 71 of the amended Act.

(3) If:

- (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in accordance with subsection 74(1) of the taking of a period of concurrent leave under subsection 72(5) in relation to a child; and
- (b) the child's date of birth, or day of placement, is on or after 1 July 2023;

the period of concurrent leave is to be treated, after the commencement of Schedule 2 to the amending Act, as a period of



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flexible unpaid parental leave under section 72A of the amended Act.

(4) If:

- (a) before the commencement of Schedule 2 to the amending Act, an employee gave notice to the employee's employer in accordance with subsection 74(1) of the taking of a period of unpaid parental leave under section 71, 72 or 72A in relation to a child; and
- (b) the child's date of birth, or day of placement, is on or after 1 July 2023;

then:

- (c) the employee may give the employer a written notice (an **amendment notice**) that makes amendments to the subsection 74(1) notice that are consistent with the amended Act; and
- (d) if the employee gives an amendment notice to the employer in relation to the child:
  - (i) the amendments made by the amendment notice must not take effect until at least 4 weeks after the amendment notice is given to the employer; and
  - (ii) any requirement imposed by this Act (other than subsection 74(4) or (4B)) in relation to the period within which the employer is to be given written notice of the taking of unpaid parental leave is waived for the taking of the unpaid parental leave covered by the amendment notice; and
- (e) the employee is not entitled to give more than one amendment notice to the employer in relation to the child.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 14** Amendments made by the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023

**Division 3** Amendments made by Schedule 3 to the amending Act

Clause 88

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### **Division 3—Amendments made by Schedule 3 to the amending Act**

#### **88 Superannuation—reduction of employer’s liability to the extent of superannuation charge payments**

Subsection 149B(2), as inserted by Part 2 of Schedule 3 to the amending Act, applies in relation to an employer’s obligation to make superannuation contributions on behalf of an employee, whether the requirements of that subsection are satisfied before or after the commencement of that Part.

## **Division 4—Amendments made by Schedule 4 to the amending Act**

### **89 Interaction of a workplace determination with an earlier enterprise agreement**

The amendments made by Schedule 4 to the amending Act apply in relation to:

- (a) an enterprise agreement that applies to an employee in relation to particular employment before, on or after the commencement of that Schedule; and
- (b) a workplace determination that:
  - (i) covers the employee in relation to the same employment; and
  - (ii) comes into operation before, on or after the commencement of that Schedule.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 14** Amendments made by the Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023

**Division 5** Amendments made by Schedule 5 to the amending Act

Clause 90

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## **Division 5—Amendments made by Schedule 5 to the amending Act**

### **90 Employee authorised deductions**

- (1) An authorisation made for the purposes of paragraph 324(1)(a) that is in force immediately before the commencement of Schedule 5 continues in force, after the commencement, until it is withdrawn.
- (2) An authorisation covered by subclause (3) that is in force immediately before the commencement of Schedule 5:
  - (a) is taken to be, and taken always to have been, made in compliance with section 324 as in force immediately before the commencement; and
  - (b) continues in force, after the commencement, until it is withdrawn.
- (3) An authorisation is covered by this subclause if the authorisation:
  - (a) was purportedly made for the purposes of paragraph 324(1)(a) as in force immediately before the commencement of Schedule 5; and
  - (b) purportedly authorises multiple or ongoing deductions for amounts as varied from time to time; and
  - (c) would, after the commencement, comply with section 324 of the amended Act.
- (4) However, paragraph (2)(a) does not affect rights or liabilities arising between parties to proceedings:
  - (a) in which judgment is reserved by a court before the commencement of Schedule 5; or
  - (b) which have been heard and finally determined by a court before the commencement;to the extent those rights or liabilities arose from, or were affected by, an authorisation covered by subclause (3).

## **Part 15—Amendments made by the Fair Work Legislation Amendment (Closing Loopholes) Act 2023**

### **Division 1—Definitions**

#### **91 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

*amending Act* means the *Fair Work Legislation Amendment (Closing Loopholes) Act 2023*.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 15** Amendments made by the Fair Work Legislation Amendment (Closing Loopholes) Act 2023

**Division 2** Amendments made by Part 2 of Schedule 1 to the amending Act

Clause 92

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## **Division 2—Amendments made by Part 2 of Schedule 1 to the amending Act**

### **92 Application—section 121**

Despite the amendment made by item 28 of Part 2 of Schedule 1 to the amending Act, section 121, as in force immediately before the commencement of that item, continues to apply in relation to the termination of an employee's employment if any of the following occurred before that commencement:

- (a) the termination of the employee;
- (b) any other termination covered by that section as amended that caused the employer to become a small business employer.

## **Division 3—Amendments made by Part 6 of Schedule 1 to the amending Act**

### **93 Application of amendments—regulated labour hire arrangement orders**

*Application of requirement to pay protected rate of pay*

- (1) Section 306F of the amended Act (protected rate of pay payable to employees if a regulated labour hire arrangement order is in force) applies on and after 1 November 2024 regardless of whether any agreement resulting in the performance of work by a regulated employee is entered into before, on or after that day.

*Anti-avoidance provisions apply retrospectively in relation to certain conduct and schemes*

- (2) Division 4 of Part 2-7A of the amended Act (anti-avoidance) applies, on and after the introduction day, in relation to:
- (a) conduct engaged in; or
  - (b) a scheme that is entered into, begun to be carried out or carried out;
- on or after the introduction day.

- (3) In this section:

**introduction day** means the day on which the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* was introduced into the Parliament.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 15** Amendments made by the Fair Work Legislation Amendment (Closing Loopholes) Act 2023

**Division 4** Amendments made by Part 7 of Schedule 1 to the amending Act

Clause 94

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## **Division 4—Amendments made by Part 7 of Schedule 1 to the amending Act**

### **94 Application of section 149E of amended Act**

- (1) Section 149E (delegates' rights terms) of the amended Act applies in relation to a modern award that is in operation on or after 1 July 2024, whether or not the award was made before that day.
- (2) However, a modern award is not invalid on or after 1 July 2024 only because it does not include a delegates' rights term.

### **95 FWC to vary certain modern awards**

- (1) This clause applies in relation to a modern award if the award:
  - (a) is made before 1 July 2024; and
  - (b) is to be in operation on that day.
- (2) The FWC must, by 30 June 2024, make a determination varying the modern award to include a delegates' rights term.
- (3) A determination made under subclause (2) comes into operation on (and takes effect from) 1 July 2024.
- (4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.

### **96 Application of section 205A of amended Act**

- (1) Section 205A (enterprise agreements to include delegates' rights terms etc.) of the amended Act does not apply in relation to an enterprise agreement if:
  - (a) before 1 July 2024, the employer concerned asks the employees to approve the agreement by voting for it; and
  - (b) by that vote, the employees approve the agreement; and
  - (c) the FWC approves the agreement.



- (2) In deciding, after 1 July 2024, whether to approve the agreement mentioned in subclause (1) (in that form), the FWC must disregard section 205A.

**97 Application of subsections 273(6) and (7) of amended Act**

- (1) Subsections 273(6) and (7) (delegates' rights terms) of the amended Act apply in relation to a workplace determination made on or after 1 July 2024.
- (2) However, a workplace determination is not invalid on or after 1 July 2024 only because it does not include a delegates' rights term.

**Schedule 1** Application, saving and transitional provisions relating to amendments of this Act

**Part 15** Amendments made by the Fair Work Legislation Amendment (Closing Loopholes) Act 2023

**Division 5** Amendments made by Part 14 of Schedule 1 to the amending Act

Clause 98

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## **Division 5—Amendments made by Part 14 of Schedule 1 to the amending Act**

### **98 Offence relating to failure to pay certain amounts as required**

Subsection 327A(1) of the amended Act applies in relation to conduct that occurs after the commencement of Part 14 of Schedule 1 to the amending Act, including conduct that occurs after that commencement that is part of a course of conduct that began before that commencement.

## **Division 6—Amendments made by Part 14A of Schedule 1 to the amending Act**

### **99 Application of amendments**

- (1) The amendment of subsection 409(6A) of this Act made by Part 14A of Schedule 1 to the amending Act applies in relation to industrial action to the extent that the industrial action occurs, or is to occur, on or after the commencement of that Part.
- (2) However, the amendment does not apply in relation to doing any of the following before that commencement in relation to industrial action, even if the industrial action occurs, or was to occur, on or after that commencement:
  - (a) organising the industrial action;
  - (b) threatening to engage in the industrial action;
  - (c) threatening to organise the industrial action;
  - (d) engaging in any other conduct in relation to the industrial action.
- (3) For the purposes of subsection 409(6A) of this Act, as amended by Part 14A of Schedule 1 to the amending Act, it does not matter whether a contravention of an order made under section 448A of this Act occurred before, on or after the commencement of that Part.

Clause 1

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## **Schedule 2—Amendments made by the Fair Work Amendment (Transfer of Business) Act 2012**

Note: See section 795A.

### **1 Definitions**

In this Schedule:

***amending Act*** means the *Fair Work Amendment (Transfer of Business) Act 2012*.

***commencement*** means the commencement of this Schedule.

### **2 Application of the amendments made by the amending Act**

The amendments made by the amending Act apply in relation to a transfer of business referred to in Part 6-3A (as inserted by item 1 of Schedule 1 to the amending Act), but only if the connection between the old State employer and the new employer referred to in paragraph 768AD(1)(d) (as inserted by that item) occurs on or after commencement.

## **Schedule 3—Amendments made by the Fair Work Amendment Act 2012**

Note: See section 795A.

### **Part 1—Preliminary**

#### **1 Definitions**

In this Schedule:

*amending Act* means the *Fair Work Amendment Act 2012*.

*doing a thing* includes making an instrument.

*FWA* (short for Fair Work Australia) means the body referred to in section 575, as in force immediately before the commencement of Part 1 of Schedule 9 to the amending Act.

## **Part 2—Default superannuation (Schedule 1)**

### **2 Schedule 1 to the amending Act**

- (1) Section 149B, subsection 149C(1) and section 149D (as inserted by Schedule 1 to the amending Act) apply in relation to a modern award that:
  - (a) is made on or after 1 January 2014; or
  - (b) is made before 1 January 2014 and that is varied on or after that day under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (2) Despite the repeal of sections 149A and 155A made by Schedule 1 to the amending Act, those sections continue in force in relation to a modern award that:
  - (a) is made before 1 January 2014; and
  - (b) is not varied on or after that day under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (3) The amendments made by items 15, 18, 19 and 20 of Schedule 1 to the amending Act apply in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.

### **2A Transitional provision—when first variations of default fund term take effect**

- (1) This clause applies to the first 4 yearly review of default fund terms of modern awards under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act).
- (2) In the review, determinations under that Division (whether made under section 156H or 156J) varying the default fund term of a modern award:
  - (a) must take effect at the same time; and
  - (b) must not take effect before 1 January 2015.

**2B Transitional provision—modern awards made on or after  
1 January 2014**

If a modern award is made in the period that starts on 1 January 2014 and ends on 31 December 2017, then, until the default fund term of the award is varied after that period under Division 4A of Part 2-3 (as inserted by Schedule 1 to the amending Act), this Act has effect in relation to the award as if subsection 149D(1A) (as inserted by that Schedule) were as follows:

*Superannuation funds offering employer MySuper products*

- (1A) A default fund term of a modern award must permit an employer covered by the award to make contributions, for the benefit of a default fund employee, to a superannuation fund that offers an employer MySuper product that relates to the employer.

## **Part 3—Modern awards (Schedule 3)**

### **3 Part 1 of Schedule 3 to the amending Act**

- (1) This clause applies if, before the commencement of Part 1 of Schedule 3 to the amending Act (which is about variation etc. of modern awards):
  - (a) a determination was made under subsection 160(1) (about varying a modern award); or
  - (b) an application was made under subsection 160(2) (about varying a modern award).
- (2) The determination and the application are as valid, and are taken always to have been as valid, as they would have been if paragraphs 160(2)(c) and (d) (as inserted by Part 1 of Schedule 3 to the amending Act) had been in force at the time the determination or application was made.



## **Part 4—Enterprise agreements (Schedule 4)**

### **4 Part 1 of Schedule 4 to the amending Act**

The amendment made by Part 1 of Schedule 4 to the amending Act (which is about enterprise agreements covering a single employee) applies in relation to enterprise agreements that are purportedly made after the commencement of that Part.

### **5 Part 2 of Schedule 4 to the amending Act**

The amendments made by Part 2 of Schedule 4 to the amending Act (which is about bargaining representatives) apply in relation to appointments of bargaining representatives that are made after the commencement of that Part.

### **6 Part 3 of Schedule 4 to the amending Act**

- (1) The amendment made by Part 3 of Schedule 4 to the amending Act (which is about unlawful terms) applies in relation to enterprise agreements that are made before or after the commencement of that Part.
- (2) However, if:
  - (a) an enterprise agreement that was made before the commencement of that Part included a term referred to in paragraph 194(ba) (as inserted by Part 3 of Schedule 4 to the amending Act); and
  - (b) a person made an election in accordance with that term before the commencement of that Part;then the amendment does not apply in relation to that person.

Clause 7

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**7 Part 4 of Schedule 4 to the amending Act**

The amendment made by Part 4 of Schedule 4 to the amending Act (which is about scope orders) applies in relation to applications for a scope order that are made after the commencement of that Part.

**8 Part 5 of Schedule 4 to the amending Act**

- (1) The amendments made by Part 5 of Schedule 4 to the amending Act (which is about notice of employee representational rights) apply in relation to notices of employee representational rights that are given after the commencement of that Part.
- (2) Regulations that:
  - (a) were made for the purposes of subsection 174(6) before the commencement of Part 5 of Schedule 4 to the amending Act; and
  - (b) were in force immediately before that commencement; continue in force (and may be dealt with) after that commencement as if they had been made for the purposes of subsection 174(1A) (as inserted by Part 5 of Schedule 4 to the amending Act).

## **Part 5—General protections (Schedule 5)**

### **9 Part 1 of Schedule 5 to the amending Act**

The amendment made by Part 1 of Schedule 5 to the amending Act (which is about time limits for making applications) applies in relation to dismissals that take effect after the commencement of that Part.

## **Part 6—Unfair dismissal (Schedule 6)**

### **10 Part 1 of Schedule 6 to the amending Act**

The amendment made by Part 1 of Schedule 6 to the amending Act (which is about time limits for making applications) applies in relation to dismissals that take effect after the commencement of that Part.

### **11 Part 2 of Schedule 6 to the amending Act**

The amendments made by Part 2 of Schedule 6 to the amending Act (which is about the power to dismiss applications) apply in relation to dismissals that take effect after the commencement of that Part.

### **12 Part 3 of Schedule 6 to the amending Act**

The amendments made by Part 3 of Schedule 6 to the amending Act (which is about costs orders against parties) apply in relation to dismissals that take effect after the commencement of that Part.

### **13 Part 4 of Schedule 6 to the amending Act**

The amendment made by Part 4 of Schedule 6 to the amending Act (which is about costs orders against lawyers and paid agents) applies in relation to dismissals that take effect after the commencement of that Part.

## **Part 7—Industrial action (Schedule 7)**

### **14 Part 1 of Schedule 7 to the amending Act**

The amendments made by Part 1 of Schedule 7 to the amending Act (which is about electronic voting in protected action ballots) apply in relation to applications for protected action ballot orders that are made after the commencement of that Part.

### **15 Part 2 of Schedule 7 to the amending Act**

The amendments made by Part 2 of Schedule 7 to the amending Act (which is about employees to be balloted in protected action ballots) apply in relation to applications for protected action ballot orders that are made after the commencement of that Part.

### **16 Part 3 of Schedule 7 to the amending Act**

The amendments made by Part 3 of Schedule 7 to the amending Act (which is about conducting protected action ballots) apply in relation to protected action ballot orders that are made after the commencement of that Part.

## **Part 8—The Fair Work Commission (Schedule 8)**

### **17 Part 1 of Schedule 8 to the amending Act**

The amendment made by Part 1 of Schedule 8 to the amending Act (which is about stay orders) applies in relation to orders under subsection 606(1) that are made after the commencement of that Part.

### **18 Part 2 of Schedule 8 to the amending Act**

The amendments made by Part 2 of Schedule 8 to the amending Act (which is about conflicts of interest) apply in relation to matters that an FWC member begins to deal with before or after the commencement of that Part.

### **19 Part 4 of Schedule 8 to the amending Act**

The amendments made by Part 4 of Schedule 8 to the amending Act (which is about appointing acting Commissioners) apply in relation to appointments that are made after the commencement of that Part.

### **20 Part 5 of Schedule 8 to the amending Act**

The amendments made by Part 5 of Schedule 8 to the amending Act (which is about appointing the General Manager) apply in relation to appointments and acting appointments that are made after the commencement of that Part.

### **21 Part 6 of Schedule 8 to the amending Act**

The amendments made by Part 6 of Schedule 8 to the amending Act (which is about Vice Presidents) apply in relation to appointments that take effect after the commencement of that Part.

**22 Part 7 of Schedule 8 to the amending Act**

The amendments made by Part 7 of Schedule 8 to the amending Act (which is about handling complaints) apply after the commencement of that Part in relation to a complaint about an FWC Member, regardless of whether:

- (a) the complaint is made before or after that commencement; or
- (b) the circumstances that give rise to the complaint occur before or after that commencement.

**23 Part 8 of Schedule 8 to the amending Act**

The amendments made by Part 8 of Schedule 8 to the amending Act (which is about engaging in outside work) apply in relation to paid work that is engaged in after the commencement of that Part.

## **Part 9—Changing the name of Fair Work Australia (Schedule 9)**

### **24 Transitional provision—President**

- (1) The person holding office as the President of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as the President of the FWC.
- (2) If, before that commencement, a thing was done by, or in relation to, the President of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the President of the FWC.
- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
  - (a) does not apply in relation to a specified thing done by, or in relation to, the President of FWA; or
  - (b) applies as if the reference in that subclause to the President of the FWC were a reference to the FWC; or
  - (c) applies as if the reference in that subclause to the President of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (5) A determination made under subclause (4) is not a legislative instrument.



## **25 Transitional provision—Deputy President**

- (1) Subject to subclause (2), a person holding office as a Deputy President of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as a Deputy President of the FWC.
- (2) If, immediately before that commencement, a person:
  - (a) is a member of a prescribed State industrial authority; and
  - (b) holds office as a Deputy President of FWA;the person continues to hold office as a Deputy President of the FWC for the balance of the person's term of appointment that remains immediately before that commencement.
- (3) If, before that commencement, a thing was done by, or in relation to, a Deputy President of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Deputy President of the FWC.
- (4) For the purposes of subclause (3), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (5) The Minister may, by writing, determine that subclause (3):
  - (a) does not apply in relation to a specified thing done by, or in relation to, a Deputy President of FWA; or
  - (b) applies as if the reference in that subclause to the Deputy President of the FWC were a reference to the FWC; or
  - (c) applies as if the reference in that subclause to the Deputy President of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (6) A determination made under subclause (5) is not a legislative instrument.

Clause 26

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**26 Transitional provision—Commissioner**

- (1) Subject to subclause (2), a person holding office as a Commissioner of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office as a Commissioner of the FWC.
- (2) If, immediately before that commencement, a person:
  - (a) is a member of a prescribed State industrial authority; and
  - (b) holds office as a Commissioner of FWA;the person continues to hold office as a Commissioner of the FWC for the balance of the person's term of appointment that remains immediately before that commencement.
- (3) If, before that commencement, a thing was done by, or in relation to, a Commissioner of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Commissioner of the FWC.
- (4) For the purposes of subclause (3), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (5) The Minister may, by writing, determine that subclause (3):
  - (a) does not apply in relation to a specified thing done by, or in relation to, a Commissioner of FWA; or
  - (b) applies as if the reference in that subclause to a Commissioner of the FWC were a reference to the FWC; or
  - (c) applies as if the reference in that subclause to a Commissioner of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (6) A determination made under subclause (5) is not a legislative instrument.

## **27 Transitional provision—Minimum Wage Panel Member**

- (1) A person holding office as a Minimum Wage Panel Member of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office:
  - (a) as a Minimum Wage Panel Member of the FWC; and
  - (b) for the balance of the person's term of appointment that remains immediately before that commencement.
- (2) If, before that commencement, a thing was done by, or in relation to, a Minimum Wage Panel Member of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, a Minimum Wage Panel Member of the FWC.
- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
  - (a) does not apply in relation to a specified thing done by, or in relation to, a Minimum Wage Panel Member of FWA; or
  - (b) applies as if the reference in that subclause to a Minimum Wage Panel Member of the FWC were a reference to the FWC; or
  - (c) applies as if the reference in that subclause to a Minimum Wage Panel Member of the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (5) A determination made under subclause (4) is not a legislative instrument.

Clause 28

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**28 Operation of laws—things done by, or in relation to, FWA**

- (1) If, before the commencement of Part 1 of Schedule 9 to the amending Act, a thing was done by, or in relation to, FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the FWC.
- (2) For the purposes of subclause (1), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subclause (1):
  - (a) does not apply in relation to a specified thing done by, or in relation to, FWA; or
  - (b) applies as if the reference in that subclause to the FWC were a reference to the President of the FWC; or
  - (c) applies as if the reference in that subclause to the FWC were a reference to another FWC member.A determination under this subclause has effect accordingly.
- (4) A determination made under subclause (3) is not a legislative instrument.

**29 Transitional provision—General Manager and staff of FWA**

*General Manager*

- (1) The person holding office as the General Manager of FWA immediately before the commencement of Part 1 of Schedule 9 to the amending Act continues to hold office:
  - (a) as the General Manager of the FWC; and
  - (b) for the balance of the person's term of appointment that remains immediately before that commencement.

- (2) If, before that commencement, a thing was done by, or in relation to, the General Manager of FWA, then, for the purposes of the operation of any law on or after that commencement, the thing is taken to have been done by, or in relation to, the General Manager of the FWC.
- (3) For the purposes of subclause (2), a thing done before that commencement under a provision amended by Part 1, 2 or 3 of Schedule 9 to the amending Act has effect from that commencement as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (4) The Minister may, by writing, determine that subclause (2):
- (a) does not apply in relation to a specified thing done by, or in relation to, the General Manager of FWA; or
  - (b) applies as if the reference in that subclause to the General Manager of the FWC were a reference to the Commonwealth.
- A determination under this subclause has effect accordingly.
- (5) A determination made under subclause (4) is not a legislative instrument.

*Staff*

- (6) A person who, immediately before that commencement, was a member of the staff of FWA, continues, on and after that commencement, as a member of the staff of the FWC.

**30 Operation of section 7 and subsection 25B(1) of the *Acts Interpretation Act 1901* not limited**

This Part and Schedule 9 to the amending Act do not limit the operation of section 7 or subsection 25B(1) of the *Acts Interpretation Act 1901*.

## **Part 10—Other amendments (Schedule 10)**

### **31 Part 1 of Schedule 10 to the amending Act**

The amendment made by Part 1 of Schedule 10 to the amending Act (which is about costs orders in court proceedings) applies in relation to proceedings commenced after the commencement of that Part.

## **Part 11—Regulations**

### **32 Regulations about application, transitional and saving matters**

- (1) The regulations may prescribe matters of an application, transitional or saving nature relating to the amendments and repeals made by the amending Act.
- (2) Without limiting subclause (1), the regulations may:
  - (a) provide that Part 9 of this Schedule or Part 4 of Schedule 9 to the amending Act applies with specified modifications; or
  - (b) provide that the Transitional Act applies with specified modifications.
- (3) The provisions referred to in subclause (2) have effect subject to regulations made for the purposes of this clause.
- (4) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to:
  - (a) regulations relating to the amendments and repeals made by Schedule 9 to the amending Act; and
  - (b) regulations made for the purposes of subclause (2).

Clause 1

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## **Schedule 4—Amendments made by the Fair Work Amendment Act 2013**

Note: See section 795A.

### **Part 1—Preliminary**

#### **1 Definition**

In this Schedule:

*amending Act* means the *Fair Work Amendment Act 2013*.



## **Part 2—Family-friendly measures (Schedule 1)**

### **2 Part 1 of Schedule 1 to the amending Act**

The amendments made by Part 1 of Schedule 1 to the amending Act apply in relation to a period of unpaid special maternity leave that starts after the commencement of that Part.

### **3 Part 2 of Schedule 1 to the amending Act**

The amendments made by Part 2 of Schedule 1 to the amending Act apply in relation to the taking of unpaid parental leave by members of an employee couple if the first taking of leave by either member of the employee couple occurs after the commencement of that Part.

### **4 Part 3 of Schedule 1 to the amending Act**

The amendments made by Part 3 of Schedule 1 to the amending Act apply in relation to a request that is made under subsection 65(1) after the commencement of that Part.

### **5 Part 4 of Schedule 1 to the amending Act**

#### *Application of amendments*

- (1) The amendment made by item 19 of Schedule 1 to the amending Act applies in relation to a modern award that is in operation on or after 1 January 2014, whether or not the award was made before that day.
- (2) The amendments made by items 20 and 21 of Schedule 1 to the amending Act apply in relation to an enterprise agreement that is made after the commencement of Part 4 of that Schedule.

Clause 6

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*Transitional provision*

- (3) If:
- (a) a modern award is made before 1 January 2014; and
  - (b) the modern award is in operation on that day; and
  - (c) immediately before that day, the modern award does not include a term (the **relevant term**) of the kind mentioned in section 145A (as inserted by item 19 of Schedule 1 to the amending Act);
- then the FWC must, by 31 December 2013, make a determination varying the modern award to include the relevant term.
- (4) A determination made under subclause (3) comes into operation on (and takes effect from) 1 January 2014.
- (5) Section 168 applies to a determination made under subclause (3) as if it were a determination made under Part 2-3.

**6 Part 5 of Schedule 1 to the amending Act**

The amendments made by Part 5 of Schedule 1 to the amending Act apply in relation to evidence that is given under section 81 after the commencement of that Part.

## **Part 3—Modern awards objective (Schedule 2)**

### **7 Schedule 2 to the amending Act**

The amendment made by Schedule 2 to the amending Act applies in relation to a modern award that is made or varied after the commencement of that Schedule.

## **Part 4—Anti-bullying measure (Schedule 3)**

### **8 Schedule 3 to the amending Act**

The amendments made by Schedule 3 to the amending Act apply in relation to an application that is made under section 789FC (as inserted by item 6 of that Schedule) after the commencement of that Schedule.

## **Part 4A—Conferences (Schedule 3A)**

### **8A Schedule 3A to the amending Act**

The amendments made by Schedule 3A to the amending Act apply in relation to a matter that arises before or after the commencement of that Schedule, whether or not a conference starts to be conducted in relation to the matter before or after that commencement.

## **Part 5—Right of entry (Schedule 4)**

### **9 Schedule 4 to the amending Act**

*Application of amendment relating to sections 492 and 492A*

- (1) The amendment made by item 7 of Schedule 4 to the amending Act applies in relation to interviews conducted and discussions held after the commencement of that item.

*Application of amendments relating to section 505A*

- (2) The amendments made by items 12 and 13 of Schedule 4 to the amending Act apply in relation to the frequency of entry after the commencement of those items.

*Application of amendments relating to accommodation arrangements and transport arrangements*

- (3) The amendments made by items 14 and 15 of Schedule 4 to the amending Act do not apply in relation to arrangements entered into before the commencement of those items.

## **Part 6—Consent arbitration for general protections and unlawful termination (Schedule 4A)**

### **10 Schedule 4A to the amending Act**

- (1) The amendments made by Part 1 of Schedule 4A to the amending Act apply in relation to dismissals that take effect after the commencement of that Schedule.
- (2) The amendments made by Part 2 of Schedule 4A to the amending Act apply in relation to employment that is terminated after the commencement of that Schedule.

## **Part 7—The FWC (Schedule 5)**

### **11 Item 4 of Schedule 5 to the amending Act**

The amendment made by item 4 of Schedule 5 to the amending Act applies in relation to an appointment made after the commencement of that Schedule.



## **Schedule 5—Amendments made by the Fair Work Amendment Act 2015**

Note: See section 795A.

### **1 Definition**

In this Schedule:

*amending Act* means the *Fair Work Amendment Act 2015*.

### **2 Part 1 of Schedule 1 to the amending Act**

The amendment made by Part 1 of Schedule 1 to the amending Act applies in relation to a request made after the commencement of that Part.

### **9 Part 5 of Schedule 1 to the amending Act**

The amendments made by Part 5 of Schedule 1 to the amending Act, so far as they concern proposed enterprise agreements, apply in relation to a proposed enterprise agreement if an employer agrees to bargain for the proposed enterprise agreement after the commencement of that Part.

### **11 Part 7 of Schedule 1 to the amending Act**

The amendment of section 437 made by Part 7 of Schedule 1 to the amending Act applies in relation to an application made under that section, if the application was made after the commencement of that Part.

### **14 Part 10 of Schedule 1 to the amending Act**

Paragraph 559(3A)(c) applies in relation to an amount that was paid to the Commonwealth under subsection 559(1) after the commencement of Part 10 of Schedule 1 to the amending Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous (prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
ed = editorial change	rep = repealed
exp = expires/expired or ceases/ceased to have effect	rs = repealed and substituted
F = Federal Register of Legislation	s = section(s)/subsection(s)
gaz = gazette	Sch = Schedule(s)
LA = <i>Legislation Act 2003</i>	Sdiv = Subdivision(s)
LIA = <i>Legislative Instruments Act 2003</i>	SLI = Select Legislative Instrument
(md) = misdescribed amendment can be given effect	SR = Statutory Rules
(md not incorp) = misdescribed amendment cannot be given effect	Sub-Ch = Sub-Chapter(s)
mod = modified/modification	SubPt = Subpart(s)
No. = Number(s)	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fair Work Act 2009	28, 2009	7 Apr 2009	s 3–40: 26 May 2009 (s 2(1) item 2) s 41–43, 50–54, 58, 169–281A, 300–327, 332, 333, 334–572, 719–740 and 769–800: 1 July 2009 (s 2(1) items 3, 5) s 44–49, 55–57A, 59–168, 282–299, 328–331, 333A and 741–768: 1 Jan 2010 (s 2(1) items 3, 5) s 573–718 and Sch 1: 26 May 2009 (s 2(1) items 4, 6) Remainder: 7 Apr 2009 (s 2(1) item 1)	
Fair Work (State Referral and Consequential and Other Amendments) Act 2009	54, 2009	25 June 2009	Sch 1 (items 1–12) and Sch 3: 25 June 2009 (s 2(1) items 2–4, 9) Sch 2 (items 52–63), Sch 5 (items 67–72, 80) and Sch 12 (items 1–3): 1 Jan 2009 (s 2(1) items 8, 15–18, 34) Sch 5 (items 81, 82): 5 Aug 2009 (s 2(1) items 19, 20)	Sch 20
<b>as amended by</b>				
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 14): 1 July 2009 (s 2(1) item 14)	—

*Fair Work Act 2009*

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009	55, 2009	25 June 2009	Sch 6 (items 18–28) and Sch 23 (items 3–7): 1 Jan 2010 (s 2(1) items 4, 10, 11) Sch 18 (items 21, 21A–21G, 22), Sch 22 (items 92–95, 405, 583, 584) and Sch 23 (items 1–2E, 8–22): 1 July 2009 (s 2(1) items 5, 8, 9, 12–16)	Act No 55, 2009 (as amended)
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (items 111–114): 1 Jan 2010 (s 2(1) item 8)	—
Fair Work Amendment (State Referrals and Other Measures) Act 2009	124, 2009	9 Dec 2009	Sch 1 (items 1–6, 8–12, 14, 15, 17–41), Sch 3 (items 1A, 4–17) and Sch 2 (items 125–132): 1 Jan 2010 (s 2(1) items 2, 4, 6, 8, 10, 11, 13) Sch 1 (item 7) and Sch 3 (items 1–3): 15 Dec 2009 (s 2(1) items 3, 13) Sch 1 (items 13, 16): 29 June 2009 (s 2(1) item 5, 7) Sch 1 (item 42): 9 Dec 2009 (s 2(1) item 9)	Sch 1 (item 42)
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (item 34): 1 Nov 2010 (s 2(1) item 7)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Sex and Age Discrimination Legislation Amendment Act 2011	40, 2011	20 June 2011	Sch 2 (items 11–13): 29 July 2011 ( <i>see</i> F2011L01552)	—
Fair Work Amendment (Textile, Clothing and Footwear Industry) Act 2012	33, 2012	15 Apr 2012	Sch 1: 1 July 2012 ( <i>see</i> F2012L01396) Remainder: Royal Assent	—
Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012	109, 2012	22 July 2012	Sch 2 (items 9–21): 23 July 2012	—
Navigation (Consequential Amendments) Act 2012	129, 2012	13 Sept 2012	Sch 2 (item 13): 1 July 2013 ( <i>see</i> s 2(1))	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 1 (items 122, 123): 1 Aug 2011 Sch 1 (item 124): 1 July 2012 (s 2(1) item 4) Sch 2 (item 14): 1 July 2009 (s 2(1) item 14)	—
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012	171, 2012	3 Dec 2012	Sch 4 (items 1–8): 1 Jan 2013 (s 2(1) item 19)	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Fair Work Amendment Act 2012	174, 2012	4 Dec 2012	Sch 1: 1 Jan 2014 Sch 2 (items 1–61): 1 July 2013 Sch 3–7 and Sch 8 (items 1–45, 57–76): 1 Jan 2013 ( <i>see</i> F2012L02450) Sch 9 (items 1–886, 1339–1383) and Sch 10: 1 Jan 2013 Sch 11: Royal Assent	—
<b>as amended by</b>				
Fair Work Amendment Act 2013	73, 2013	28 June 2013	Sch 6 (items 9–11, 14): ( <i>see</i> 73, 2013 below)	—
Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013	89, 2013	28 June 2013	Sch 3: Royal Assent	—
Fair Work Amendment (Transfer of Business) Act 2012	175, 2012	4 Dec 2012	Sch 1 (items 1–13, 16–67): 5 Dec 2012	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Sch 1 (items 234–246) and Sch 2 (item 1): 12 Apr 2013 (s 2(1) items 2, 3) Sch 3 (item 96): never commenced (s 2(1) item 19)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013	61, 2013	26 June 2013	Sch 1 (items 12B–12P): 1 Jan 2013 (s 2(1) item 8B)	—
Fair Work Amendment Act 2013	73, 2013	28 June 2013	Sch 1 (items 1–18, 22–30), Sch 3A, Sch 5 (items 3, 4) and Sch 6 (item 5): 1 July 2013 (s 2(1) items 2, 4, 6A, 10, 13) Sch 1 (items 19–21), Sch 2, Sch 3, Sch 4, Sch 4A and Sch 6 (item 1): 1 Jan 2014 (s 2(1) items 3, 5–7, 7A, 11) Sch 5 (item 1): 5 Dec 2012 (s 2(1) item 8) Sch 5 (item 2): 1 July 2012 (s 2(1) item 9) Sch 6 (items 2–4, 6–8) and Sch 7: 28 June 2013 (s 2(1) items 12, 14, 18) Sch 6 (items 9–14): 1 Jan 2013 (s 2(1) items 15–17)	—
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013	98, 2013	28 June 2013	Sch 1 (items 63C–63G): 1 Aug 2013 (s 2(1) item 2)	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (item 47): 29 June 2013 (s 2(1) item 2)	—

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax Laws Amendment (Fairer Taxation of Excess Concessional Contributions) Act 2013	118, 2013	29 June 2013	Sch 1 (items 3, 110): 29 June 2013 (s 2(1) items 2, 11)	Sch 1 (item 110)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 25–33): 24 June 2014 (s 2(1) item 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 6 (item 40), Sch 9 (items 3–11) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
<b>as amended by</b>				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
<b>as amended by</b>				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 209–215): 5 Mar 2016 (s 2(1) item 2)	—
Fair Work Amendment Act 2015	156, 2015	26 Nov 2015	Sch 1 (items 1, 19–52, 56) and Sch 2: 27 Nov 2015 (s 2(1) items 2, 5, 9) Sch 1 (items 79, 80): 1 Jan 2016 (s 2(1) item 8) Remainder: 26 Nov 2015 (s 2(1) item 1)	s 4
Law and Justice Legislation Amendment (Northern Territory Local Court) Act 2016	26, 2016	23 Mar 2016	Sch 1 (items 21, 34, 35): 1 May 2016 (s 2(1) item 2)	Sch 1 (items 34, 35)
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (items 51–56): 1 July 2016 (s 2(1) item 7)	—
Fair Work Amendment (Respect for Emergency Services Volunteers) Act 2016	62, 2016	12 Oct 2016	13 Oct 2016 (s 2(1) item 1)	—
Statute Law Revision (Spring 2016) Act 2016	67, 2016	20 Oct 2016	Sch 1 (item 27): 17 Nov 2016 (s 2(1) item 2)	—
Fair Work (Registered Organisations) Amendment Act 2016	79, 2016	24 Nov 2016	Sch 1 (items 1–5, 129–137): 1 May 2017 (s 2(1) item 2)	Sch 1 (items 129–137)
Fair Work Amendment (Corrupting Benefits) Act 2017	84, 2017	16 Aug 2017	Sch 1 and 2: 11 Sept 2017 (s 2(1) item 2)	—

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## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 1 (item 11): 20 Sept 2017 (s 2(1) item 2)	—
Fair Work Amendment (Protecting Vulnerable Workers) Act 2017	101, 2017	14 Sept 2017	15 Sept 2017 (s 2(1) item 1)	—
Fair Work Amendment (Family and Domestic Violence Leave) Act 2018	169, 2018	11 Dec 2018	12 Dec 2018 (s 2(1) item 1)	—
Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018	170, 2018	11 Dec 2018	Sch 1: 1 Jan 2018 (s 2(1) item 2) Sch 2, Sch 3 (item 1) and Sch 4: 12 Dec 2018 (s 2(1) item 3)	—
Timor Sea Maritime Boundaries Treaty Consequential Amendments Act 2019	57, 2019	7 Aug 2019	Sch 1 (items 72, 73): 30 Aug 2019 (s 2(1) item 2)	—
Coronavirus Economic Response Package Omnibus (Measures No. 2) Act 2020	38, 2020	9 Apr 2020	Sch 1 (items 1–5): 9 Apr 2020 (s 2(1) item 2) Sch 1 (items 6–10): 29 Mar 2021 (s 2(1) item 3)	Sch 1 (item 10)
<b>as amended by</b> Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020	81, 2020	3 Sept 2020	Sch 2 (item 1): 27 Sept 2020 (s 2(1) item 3) Sch 2 (items 47–51): 29 Mar 2021 (s 2(1) item 6)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act 2020	81, 2020	3 Sept 2020	Sch 2 (items 2–38): 4 Sept 2020 (s 2(1) item 4) Sch 2 (items 39–46): 28 Sept 2020 (s 2(1) item 5) Sch 2 (items 52–55): 29 Mar 2021 (s 2(1) item 6) Sch 2 (items 56–58): 16 Sept 2020 (s 2(1) item 7)	Sch 2 (items 46, 58)
Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Act 2020	105, 2020	26 Nov 2020	Sch 1 and 2: 27 Nov 2020 (s 2(1) items 2, 3)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 369–399): 1 Sept 2021 (s 2(1) item 5) Sch 4 (item 4): <u>awaiting commencement (s 2(1) item 8)</u>	—
Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2021	25, 2021	26 Mar 2021	Sch 1 (items 1–24) and Sch 7: 27 Mar 2021 (s 2(1) items 2, 2A, 18) Sch 1 (item 25): 1 Sept 2021 (s 2(1) item 2B)	—
Sex Discrimination and Fair Work (Respect at Work) Amendment Act 2021	104, 2021	10 Sept 2021	Sch 1 (items 4–28): 11 Sept 2021 (s 2(1) item 1)	—
Fair Work Amendment (Paid Family and Domestic Violence Leave) Act 2022	50, 2022	9 Nov 2022	Sch 1: 1 Feb 2023 (s 2(1) item 2) Sch 2: 9 <u>June 2024</u> (s 2(1) <u>item 3</u> )	—

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022	79, 2022	6 Dec 2022	Sch 1 (items 1–4, 7–11, 359–381, 385–423): 6 Mar 2023 (s 2(1) items 2, 11, 13) Sch 1 (items 346–358, 382–384, 426–437, 470–475, 522–524, 535, 536, 654–659AC, 660): 7 Dec 2022 (s 2(1) items 9, 10, 12, 15, 18, 21, 23, 32, 33) Sch 1 (items 424, 425, 672–675): 9 June 2024 (s 2(1) items 14, 37) Sch 1 (items 438–445): 6 Dec 2023 (s 2(1) item 16) Sch 1 (items 446–469A, 487–521, 524A–534B, 537–553, 561–651G, 659C–659ZC, 661–664): 6 June 2023 (s 2(1) items 17, 20, 22, 24–30A, 32B, 34) Sch 1 (items 651–653, 659A, 659B): 1 July 2023 (s 2(1) items 31, 32A) Sch 1 (items 670, 671): 1 Feb 2023 (s 2(1) item 36)	—

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## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Act 2023	4, 2023	10 Mar 2023	Sch 2 (item 15) and Sch 3 (items 1, 2): 26 Mar 2023 (s 2(1) item 1)	Sch 3 (items 1, 2)
Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023	43, 2023	30 June 2023	Sch 1, 2, Sch 3 (items 3, 4), Sch 4, 7 and 8: 1 July 2023 (s 2(1) items 2, 3, 5, 6, 9) Sch 3 (items 1, 2): <u>1 Jan 2024 (s 2(1) item 4)</u> Sch 5: 30 Dec 2023 (s 2(1) item 7)	—
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 3 (item 2) and Sch 4 (items 33–37): 18 Oct 2023 (s 2(1) item 3)	—
Fair Work Legislation Amendment (Closing Loopholes) Act 2023	120, 2023	14 Dec 2023	Sch 1 (items 26–28, 71–85, 94–102, 236A, 236B, 306A, 308): 15 Dec 2023 (s 2(1) items 3, 7, 8, 10, 20A, 22A, 24) Sch 1 (items 213–222, 225–235): <u>awaiting commencement (s 2(1) items 18, 20)</u> Sch 1 (items 223, 224): <u>14 June 2024 (s 2(1) item 19)</u>	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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Provision affected	How affected
<b>Chapter 1</b>	
<b>Part 1-1</b>	
<b>Division 2</b>	
s 3.....	am No 55, 2009; No 79, 2022
<b>Division 3</b>	
s 4.....	am Nos 33 and 174, 2012
s 5.....	am No 174, 2012; No 120, 2023
s 6.....	am No 84, 2017; No 79, 2022
s 8.....	am No 174, 2012
s 9.....	am Nos 33 and 175, 2012; No 73, 2013; No 104, 2021; <u>No 50, 2022</u> ; No 79, 2022
s 9A.....	ad No 33, 2012 rs No 175, 2012
<b>Part 1-2</b>	
<b>Division 1</b>	
s 11.....	am No 33, 2012
<b>Division 2</b>	
s 12.....	am No 54, 2009; No 55, 2009; No 124, 2009; No 40, 2011; No 33, 2012; No 109, 2012; No 129, 2012; No 171, 2012; No 174, 2012; No 175, 2012; No 13, 2013; No 73, 2013; No 31, 2014; No 156, 2015; No 26, 2016; No 33, 2016; No 62, 2016; No 84, 2017; No 101, 2017; No 169, 2018; No 170, 2018; No 57, 2019; No 105, 2020; No 13, 2021; No 25, 2021; No 104, 2021; No 50, 2022 ( <u>Sch 2 item 2</u> ); No 79, 2022; No 43, 2023; No 120, 2023 ( <u>Sch 1 item 213</u> )
<b>Division 3</b>	
s 13.....	am No 54, 2009; No 124, 2009
s 14.....	am No 54, 2009; No 124, 2009; No 126, 2015; No 33, 2016
s 14A.....	ad No 124, 2009 am No 175, 2012
s 15.....	am No 54, 2009; No 124, 2009

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 15A.....	ad No 25, 2021
<b>Division 4</b>	
s 17.....	am No 169, 2018; No 50, 2022
s 17A.....	ad No 33, 2012
s 20.....	am No 93, 2017
s 21.....	am No 174, 2012
s 22.....	am No 55, 2009
s 23.....	am No 25, 2021
s 23A.....	ad No 174, 2012
s 23B.....	ad No 79, 2022
<b>Part 1-3</b>	
<b>Division 1</b>	
s 24.....	rs No 54, 2009 am No 124, 2009
s 25.....	am No 33, 2012
<b>Division 2</b>	
s 27.....	am No 54, 2009; No 136, 2012; No 74, 2023
s 29.....	am No 62, 2016
<b>Division 2A</b>	
Division 2A heading.....	rs No 124, 2009
Division 2A.....	ad No 54, 2009
s 30A.....	ad No 54, 2009 am No 124, 2009
s 30B.....	ad No 54, 2009 am No 124, 2009
s 30C.....	ad No 54, 2009 am No 124, 2009
s 30D.....	ad No 54, 2009 am No 124, 2009
s 30E.....	ad No 54, 2009 am No 124, 2009

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 30F .....	ad No 54, 2009 am No 124, 2009
s 30G.....	ad No 54, 2009 am No 124, 2009
s 30H.....	ad No 54, 2009 am No 124, 2009
s 30J .....	ad No 54, 2009 rep No 124, 2009
<b>Division 2B</b>	
Division 2B.....	ad No 124, 2009
s 30K.....	ad No 124, 2009
s 30L .....	ad No 124, 2009
s 30M .....	ad No 124, 2009
s 30N.....	ad No 124, 2009
s 30P .....	ad No 124, 2009
s 30Q.....	ad No 124, 2009
s 30R.....	ad No 124, 2009
s 30S .....	ad No 124, 2009
<b>Division 3</b>	
s 31 .....	am No 126, 2015; No 33, 2016
s 32A.....	ad No 33, 2016
s 33.....	am No 57, 2019
<b>Division 4</b>	
s 37.....	am <u>No 120, 2023</u>
s 40.....	am No 174, 2012
s 40A.....	ad No 124, 2009
s 40B .....	ad No 43, 2023
<b>Chapter 2</b>	
<b>Part 2-1</b>	
<b>Division 1</b>	
s 42.....	am No 33, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
<b>Subdivision A</b>	
s 43.....	am No 175, 2012
<b>Subdivision B</b>	
s 44.....	am No 79, 2022
<b>Subdivision C</b>	
s 48.....	am No 55, 2009; No 174, 2012; No 175, 2012
s 49.....	am No 54, 2009; No 174, 2012
<b>Subdivision D</b>	
s 53.....	am No 55, 2009; No 174, 2012; No 175, 2012
s 54.....	am No 174, 2012; No 43, 2023
<b>Division 3</b>	
<b>Subdivision C</b>	
s 58.....	am No 79, 2022
<b>Part 2-2</b>	
<b>Division 1</b>	
s 59.....	am <u>No 50, 2022</u>
s 60.....	am No 33, 2012
<b>Division 2</b>	
s 61.....	am No 169, 2018; No 25, 2021; No 50, 2022; <u>No 43, 2023</u>
<b>Division 3</b>	
s 63.....	am No 55, 2009
s 64.....	am No 55, 2009
<b>Division 4</b>	
s 65.....	am No 73, 2013; No 25, 2021; No 79, 2022
s 65A.....	ad No 79, 2022
s 65B.....	ad No 79, 2022
s 65C.....	ad No 79, 2022
<b>Division 4A</b>	
Division 4A.....	ad No 25, 2021

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision A</b>	
s 66A.....	ad No 25, 2021
<b>Subdivision B</b>	
s 66AA.....	ad No 25, 2021
s 66B.....	ad No 25, 2021
s 66C.....	ad No 25, 2021
s 66D.....	ad No 25, 2021
s 66E.....	ad No 25, 2021
<b>Subdivision C</b>	
s 66F.....	ad No 25, 2021
s 66G.....	ad No 25, 2021
s 66H.....	ad No 25, 2021
s 66J.....	ad No 25, 2021
<b>Subdivision D</b>	
s 66K.....	ad No 25, 2021
s 66L.....	ad No 25, 2021
s 66M.....	ad No 25, 2021
<b>Division 5</b>	
<b>Subdivision A</b>	
s 67.....	am No 73, 2013; No 25, 2021; No 43, 2023
s 69.....	am No 105, 2020; No 43, 2023
<b>Subdivision B</b>	
s 70.....	am No 109, 2012; No 105, 2020
s 71.....	am No 109, 2012; No 73, 2013; No 105, 2020; No 43, 2023
s 72.....	am No 109, 2012, No 73, 2013; No 105, 2020; No 79, 2022 rep No 43, 2023
s 72A.....	ad No 105, 2020 am No 79, 2022; No 43, 2023
s 73.....	am No 73, 2013; No 105, 2020; No 43, 2023
s 74.....	am No 73, 2013; No 105, 2020; No 43, 2023
s 75.....	am No 73, 2013; No 105, 2020; No 43, 2023

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 76.....	am No 109, 2012; No 73, 2013; No 156, 2015; No 105, 2020; No 79, 2022; No 43, 2023
s 76A.....	ad No 79, 2022
s 76B.....	ad No 79, 2022
s 76C.....	ad No 79, 2022
s 77.....	am No 43, 2023
s 77A.....	ad No 109, 2012 rs No 105, 2020 am No 43, 2023
s 78.....	am No 109, 2012; No 105, 2020; No 43, 2023 ed C51
s 78A.....	ad No 105, 2020 am No 43, 2023
s 79.....	am No 105, 2020; No 43, 2023
s 79A.....	ad No 109, 2012 am No 105, 2020; No 4, 2023; No 43, 2023
s 79B.....	ad No 109, 2012 am No 43, 2023
<b>Subdivision C</b>	
s 80.....	am No 73, 2013; No 105, 2020; No 43, 2023
s 81.....	rs No 73, 2013 am No 43, 2023
s 81A.....	ad No 73, 2013
s 82A.....	ad No 73, 2013
s 83.....	am No 105, 2020
s 84.....	am No 105, 2020
s 84A.....	ad No 109, 2012 am No 174, 2012; No 105, 2020
s 85.....	am No 43, 2023
<b>Division 6</b>	
s 87.....	am No 174, 2012; No 25, 2021

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 7</b>	
Division 7 heading.....	am No 169, 2018; No 50, 2022
<b>Subdivision A</b>	
s 96.....	am No 25, 2021
s 97.....	am No 73, 2013; No 43, 2023
s 98.....	rs No 50, 2022
<b>Subdivision C</b>	
s 104.....	am No 105, 2020; No 104, 2021
s 105.....	am No 105, 2020; No 104, 2021
<b>Subdivision CA</b>	
Subdivision CA heading.....	am No 50, 2022
Subdivision CA.....	ad No 169, 2018
s 106A.....	ad No 169, 2018
	am No 50, 2022
s 106B.....	ad No 169, 2018
	am No 50, 2022; No 79, 2022
s 106BA.....	ad No 50, 2022
s 106C.....	ad No 169, 2018
	am No 50, 2022
s 106D.....	ad No 169, 2018
	am No 50, 2022 (Sch 2 items 4, 5)
s 106E.....	ad No 169, 2018
	am No 105, 2020
<b>Subdivision D</b>	
s 107.....	am No 169, 2018; No 50, 2022
<b>Division 9</b>	
s 113.....	am No 124, 2009; Nos 174 and 175, 2012
s 113A.....	am No 175, 2012
<b>Division 10A</b>	
Division 10A.....	ad <u>No 43, 2023</u>
s 116A.....	ad <u>No 43, 2023</u>

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 116B.....	ad <a href="#">No 43, 2023</a>
s 116C.....	ad <a href="#">No 43, 2023</a>
s 116D.....	ad <a href="#">No 43, 2023</a>
s 116E.....	ad <a href="#">No 43, 2023</a>
<b>Division 11</b>	
<b>Subdivision A</b>	
s 117.....	am No 25, 2021
<b>Subdivision B</b>	
s 119.....	am No 25, 2021
s 120.....	am No 174, 2012
s 121.....	am No 25, 2021; No 120, 2023
s 122.....	am No 174, 2012
<b>Division 12</b>	
Division 12 heading.....	rs No 25, 2021
s 124.....	am No 174, 2012
s 125A.....	ad No 25, 2021
s 125B.....	ad No 25, 2021
<b>Division 13</b>	
s 126.....	am No 174, 2012
<b>Part 2-3</b>	
<b>Division 1</b>	
s 132.....	am No 54, 2009; No 55, 2009; No 174, 2012; No 170, 2018
s 133.....	am No 33, 2012
<b>Division 2</b>	
s 134.....	am No 174, 2012; No 73, 2013; No 79, 2022
s 135.....	am No 70, 2009; No 174, 2012; No 170, 2018
<b>Division 3</b>	
<b>Subdivision B</b>	
s 140.....	am No 55, 2009
s 141.....	am No 174, 2012; No 170, 2018
s 141A.....	ad No 79, 2022

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 143.....	am Nos 54, 2009; No 55, 2009; No 175, 2012
s 143A.....	ad No 55, 2009
s 143B.....	ad No 54, 2009
s 145A.....	ad No 73, 2013
s 146.....	am No 174, 2012; No 79, 2022
s 149.....	am No 174, 2012
s 149A.....	ad No 171, 2012 rep No 174, 2012
s 149B.....	ad No 174, 2012 am No 43, 2023
s 149C.....	ad No 174, 2012
s 149D.....	ad No 174, 2012
s 149E.....	ad No 120, 2023
<b>Subdivision D</b>	
s 151.....	rs No 101, 2017
s 153.....	am No 98, 2013; No 79, 2022; No 120, 2023
s 154.....	am No 174, 2012
s 155A.....	ad No 171, 2012 am No 61, 2013 rep No 174, 2012
Division 4.....	rep No 170, 2018
s 156.....	am No 174, 2012 rep No 170, 2018
<b>Division 4A</b>	
Division 4A.....	ad No 174, 2012
<b>Subdivision A</b>	
s 156A.....	ad No 174, 2012
<b>Subdivision B</b>	
s 156B.....	ad No 174, 2012
s 156C.....	ad No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 156D.....	ad No 174, 2012
s 156E.....	ad No 174, 2012
s 156F.....	ad No 174, 2012
<b>Subdivision C</b>	
s 156G.....	ad No 174, 2012
s 156H.....	ad No 174, 2012
s 156J.....	ad No 174, 2012
s 156K.....	ad No 174, 2012
<b>Subdivision D</b>	
s 156L.....	ad No 174, 2012
s 156M.....	ad No 174, 2012
s 156N.....	ad No 174, 2012
s 156P.....	ad No 174, 2012
s 156Q.....	ad No 174, 2012
s 156R.....	ad No 174, 2012
s 156S.....	ad No 174, 2012
s 156T.....	ad No 174, 2012
<b>Subdivision E</b>	
s 156U.....	ad No 174, 2012
<b>Division 5</b>	
Division 5 heading.....	rs No 170, 2018
<b>Subdivision A</b>	
s 157.....	am No 174, 2012; No 170, 2018; No 79, 2022
s 158.....	am No 174, 2012
<b>Subdivision B</b>	
s 159.....	am No 174, 2012
s 159A.....	ad No 174, 2012
s 160.....	am No 174, 2012
s 161.....	am No 54, 2009; No 70, 2009; No 40, 2011; No 174, 2012
<b>Division 6</b>	
s 162.....	am No 174, 2012

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 163.....	am No 174, 2012
s 164.....	am No 174, 2012
s 165.....	am No 174, 2012
s 166.....	am No 174, 2012
s 167.....	am No 174, 2012
s 168.....	am No 174, 2012
<b>Division 7</b>	
Division 7 .....	ad No 55, 2009
s 168A.....	ad No 55, 2009
s 168B.....	ad No 55, 2009 am No 174, 2012
s 168C.....	ad No 55, 2009 am No 174, 2012; No 175, 2012
s 168D.....	ad No 55, 2009 am No 174, 2012
<b>Division 8</b>	
Division 8 .....	ad No 54, 2009
s 168E.....	ad No 54, 2009 am No 124, 2009
s 168F.....	ad No 54, 2009 am No 174, 2012
s 168G.....	ad No 54, 2009 am No 174, 2012; No 175, 2012
s 168H.....	ad No 54, 2009
s 168J.....	ad No 54, 2009
s 168K.....	ad No 54, 2009 am No 174, 2012
s 168L.....	ad No 54, 2009 am No 174, 2012
<b>Part 2-4</b>	
<b>Division 1</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 169.....	am No 174, 2012; No 79, 2022; No 120, 2023
s 170.....	am No 33, 2012
s 171.....	am No 174, 2012
<b>Division 2</b>	
s 172.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 172A.....	ad No 79, 2022
<b>Division 3</b>	
s 173.....	am No 79, 2022
s 174.....	am No 174, 2012; No 79, 2022
s 176.....	am No 174, 2012; No 73, 2013; No 79, 2022
s 177.....	ad No 156, 2015
s 178.....	am No 156, 2015
s 178A.....	am No 156, 2015
s 178B.....	ad No 156, 2015
<b>Division 4</b>	
<b>Subdivision A</b>	
Subdivision A heading.....	am No 174, 2012
s 179.....	ad No 84, 2017 am No 79, 2022
s 179A.....	ad No 84, 2017
s 180.....	am No 84, 2017; No 79, 2022
s 180A.....	ad No 79, 2022
s 181.....	am No 79, 2022
s 182.....	am No 156, 2015
s 183.....	am No 174, 2012
s 185.....	am No 174, 2012; No 156, 2015
s 185A.....	ad No 156, 2015
<b>Subdivision B</b>	
Subdivision B heading.....	am No 174, 2012
s 186.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 187.....	am No 174, 2012; No 156, 2015

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 188.....	am No 174, 2012; No 170, 2018 rs No 79, 2022
s 188A.....	ad No 84, 2017 am No 79, 2022
s 188B.....	ad No 79, 2022
s 189.....	am No 174, 2012
s 190.....	am No 174, 2012; No 156, 2015
s 191.....	am No 174, 2012
s 191A.....	ad No 79, 2022
s 191B.....	ad No 79, 2022
s 192.....	am No 174, 2012; No 156, 2015
<b>Subdivision C</b>	
s 193.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 193A.....	ad No 79, 2022
<b>Subdivision D</b>	
s 194.....	am No 171, 2012; No 174, 2012; No 62, 2016
s 195.....	am No 98, 2013; No 79, 2022; No 120, 2023
s 195A.....	ad No 62, 2016
<b>Subdivision E</b>	
s 196.....	am No 174, 2012
s 197.....	am No 174, 2012
s 198.....	am No 174, 2012
s 199.....	am No 174, 2012
s 200.....	am No 174, 2012
<b>Subdivision F</b>	
s 201.....	am No 174, 2012; No 156, 2015; No 79, 2022; No 120, 2023
<b>Division 5</b>	
s 203.....	am No 33, 2012
s 205.....	am No 73, 2013; No 62, 2016
s 205A.....	ad No 120, 2023
<b>Division 7</b>	

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision A</b>	
Subdivision A heading.....	am No 79, 2022
s 207.....	am No 174, 2012
s 207A.....	ad No 79, 2022
s 210.....	am No 174, 2012
s 211.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 212.....	am No 174, 2012
s 213.....	am No 174, 2012
s 213A.....	ad No 79, 2022
s 213B.....	ad No 79, 2022
s 214.....	am No 174, 2012
s 215.....	am No 174, 2012
s 215A.....	ad No 79, 2022
<b>Subdivision AA</b>	
Subdivision AA.....	ad No 79, 2022
s 216A.....	ad No 79, 2022
s 216AAA.....	ad No 79, 2022
s 216AA.....	ad No 79, 2022
s 216AB.....	ad No 79, 2022
s 216AC.....	ad No 79, 2022
s 216AD.....	ad No 79, 2022
s 216AE.....	ad No 79, 2022
s 216AF.....	ad No 79, 2022
<b>Subdivision AB</b>	
Subdivision AB.....	ad No 79, 2022
s 216B.....	ad No 79, 2022
s 216BA.....	ad No 79, 2022
s 216BB.....	ad No 79, 2022
s 216BC.....	ad No 79, 2022
<b>Subdivision AC</b>	
Subdivision AC.....	ad No 79, 2022

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 216C .....	ad No 79, 2022
s 216CAA .....	ad No 79, 2022
s 216CA .....	ad No 79, 2022
s 216CB .....	ad No 79, 2022
s 216CC .....	ad No 79, 2022
s 216CD .....	ad No 79, 2022
s 216CE.....	ad No 79, 2022
<b>Subdivision AD</b>	
Subdivision AD .....	ad No 79, 2022
s 216D.....	ad No 79, 2022
s 216DAA .....	ad No 79, 2022
s 216DA.....	ad No 79, 2022
s 216DB .....	ad No 79, 2022
s 216DC .....	ad No 79, 2022
s 216DD.....	ad No 79, 2022
s 216DE .....	ad No 79, 2022
s 216DF.....	ad No 79, 2022
<b>Subdivision AE</b>	
Subdivision AE.....	ad No 79, 2022
s 216E .....	ad No 79, 2022
s 216EA .....	ad No 79, 2022
s 216EB.....	ad No 79, 2022
s 216EC.....	ad No 79, 2022
s 216ED .....	ad No 79, 2022
<b>Subdivision B</b>	
s 217.....	am No 174, 2012
s 217A.....	am No 174, 2012
s 218.....	am No 54, 2009; No 70, 2009; No 40, 2011; No 174, 2012
<b>Subdivision BA</b>	
Subdivision BA.....	ad No 79, 2022
s 218A.....	ad No 79, 2022

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 219.....	am No 174, 2012
s 222.....	am No 174, 2012
s 223.....	am No 174, 2012
<b>Subdivision D</b>	
s 225.....	am No 174, 2012
s 226.....	am No 174, 2012
	rs No 79, 2022
s 226A.....	ad No 79, 2022
<b>Division 7A</b>	
Division 7A.....	ad No 79, 2022
s 227A.....	ad No 79, 2022
s 227B.....	ad No 79, 2022
s 227C.....	ad No 79, 2022
s 227D.....	ad No 79, 2022
s 227E.....	ad No 79, 2022
<b>Division 8</b>	
Division 8 heading.....	am No 174, 2012
<b>Subdivision A</b>	
s 228.....	am No 156, 2015
s 229.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 230.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 231.....	am No 174, 2012
s 232.....	am No 174, 2012; No 156, 2015
<b>Subdivision B</b>	
Subdivision B.....	rs No 79, 2022
s 234.....	am No 174, 2012; No 156, 2015
	rs No 79, 2022
s 235.....	am No 174, 2012; No 156, 2015
	rs No 79, 2022
s 235A.....	ad No 79, 2022

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 236.....	am No 174, 2012; No 79, 2022
s 237.....	am No 174, 2012; No 43, 2023
s 238.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 239.....	am No 174, 2012
<b>Subdivision D</b>	
Subdivision D heading.....	am No 174, 2012
s 240.....	am No 174, 2012; No 156, 2015; No 79, 2022
<b>Subdivision E</b>	
Subdivision E.....	ad No 79, 2022
s 240A.....	ad No 79, 2022
s 240B.....	ad No 79, 2022
<b>Division 9</b>	
Division 9 heading.....	am No 79, 2022
s 241.....	am No 174, 2012; No 79, 2022
s 242.....	am No 174, 2012; No 79, 2022
s 243.....	am No 174, 2012 rs No 79, 2022
s 243A.....	ad No 79, 2022
s 244.....	am No 174, 2012; No 79, 2022
s 245.....	am No 174, 2012 rs No 79, 2022
s 246.....	am No 174, 2012; No 79, 2022
<b>Division 10</b>	
Subdivision A.....	rep No 79, 2022
s 247.....	rep No 79, 2022
Subdivision B heading.....	rep No 79, 2022
s 248.....	am No 174, 2012; No 79, 2022
s 249.....	am No 174, 2012; No 79, 2022
s 249A.....	ad No 79, 2022
s 250.....	am No 174, 2012; No 79, 2022

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 251.....	am No 174, 2012; No 79, 2022
s 251A.....	ad No 79, 2022
s 252.....	am No 174, 2012
<b>Division 11</b>	
s 253.....	am No 101, 2017
s 254A.....	ad No 62, 2016
s 255.....	am No 174, 2012; No 156, 2015
s 255A.....	ad No 156, 2015
<b>Part 2-5</b>	
<b>Division 1</b>	
s 258.....	am No 174, 2012; No 62, 2016; No 79, 2022
s 259.....	am No 33, 2012
Division 2 .....	rep No 79, 2022
s 260.....	am No 174, 2012 rep No 79, 2022
s 261.....	am No 174, 2012 rep No 79, 2022
s 262.....	am No 174, 2012 rep No 79, 2022
s 263.....	am No 174, 2012 rep No 79, 2022
s 264.....	am No 174, 2012 rep No 79, 2022
s 265.....	rep No 79, 2022
<b>Division 3</b>	
s 266.....	am No 174, 2012
s 267.....	am No 174, 2012
<b>Division 4</b>	
Division 4 heading.....	rs No 79, 2022
s 269.....	am No 174, 2012; No 156, 2015 rs No 79, 2022

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 270.....	am No 174, 2012; No 79, 2022
s 271.....	am No 79, 2022
s 271A.....	ad No 156, 2015 rep No 79, 2022
<b>Division 5</b>	
s 272.....	am No 174, 2012
s 273.....	am No 174, 2012; No 120, 2023
s 274.....	am No 79, 2022
s 275.....	am No 174, 2012; No 79, 2022
<b>Division 6</b>	
s 276.....	am No 43, 2023
s 277.....	am No 174, 2012
s 278.....	am No 43, 2023
s 279.....	am No 54, 2009; No 79, 2022
<b>Division 7</b>	
s 281AA.....	ad No 62, 2016
<b>Part 2-6</b>	
<b>Division 1</b>	
s 282.....	am No 174, 2012
s 283.....	am No 33, 2012
<b>Division 2</b>	
s 284.....	am No 174, 2012; No 79, 2022
<b>Division 3</b>	
<b>Subdivision A</b>	
s 285.....	am No 174, 2012
s 286.....	am No 174, 2012
s 287.....	am No 174, 2012
<b>Subdivision B</b>	
s 288.....	am No 174, 2012
s 289.....	am No 174, 2012
s 290.....	am No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 291.....	am No 174, 2012
s 292.....	am No 54, 2009; No 55, 2009; No 174, 2012
<b>Division 4</b>	
s 296.....	am No 174, 2012
s 297.....	am No 174, 2012
<b>Part 2-7</b>	
<b>Division 1</b>	
s 300.....	am No 174, 2012
s 301.....	am No 33, 2012
<b>Division 2</b>	
s 302.....	am No 174, 2012; No 79, 2022
s 303.....	am No 174, 2012
s 304.....	am No 174, 2012
s 306.....	am No 174, 2012
<b>Part 2-7A</b>	
Part 2-7A.....	ad No 120, 2023
<b>Division 1</b>	
s 306A.....	ad No 120, 2023
s 306B.....	ad No 120, 2023
s 306C.....	ad No 120, 2023
s 306D.....	ad No 120, 2023
<b>Division 2</b>	
<b>Subdivision A</b>	
s 306E.....	ad No 120, 2023
s 306EA.....	ad No 120, 2023
s 306EB.....	ad No 120, 2023
s 306EC.....	ad No 120, 2023
s 306ED.....	ad No 120, 2023
s 306EE.....	ad No 120, 2023
<b>Subdivision B</b>	
s 306F.....	ad No 120, 2023

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 306G.....	ad No 120, 2023
s 306H.....	ad No 120, 2023
<b>Subdivision C</b>	
s 306J.....	ad No 120, 2023
s 306K.....	ad No 120, 2023
s 306L.....	ad No 120, 2023
<b>Subdivision D</b>	
s 306M.....	ad No 120, 2023
s 306N.....	ad No 120, 2023
<b>Subdivision E</b>	
s 306NA.....	ad No 120, 2023
<b>Division 3</b>	
s 306P.....	ad No 120, 2023
s 306Q.....	ad No 120, 2023
s 306R.....	ad No 120, 2023
<b>Division 4</b>	
s 306S.....	ad No 120, 2023
s 306SA.....	ad No 120, 2023
s 306T.....	ad No 120, 2023
s 306U.....	ad No 120, 2023
s 306V.....	ad No 120, 2023
<b>Division 5</b>	
s 306W.....	ad No 120, 2023
<b>Part 2-8</b>	
<b>Division 1</b>	
s 307.....	am Nos 174 and 175, 2012
s 308.....	am No 33, 2012
<b>Division 2</b>	
s 312.....	am No 55, 2009; No 174, 2012
s 313.....	am No 174, 2012
s 314.....	am No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 315.....	am No 174, 2012
<b>Division 3</b>	
Division 3 heading.....	am No 174, 2012
s 317.....	am No 174, 2012
s 318.....	am No 174, 2012
s 319.....	am No 174, 2012
s 320.....	am No 174, 2012
<b>Part 2-9</b>	
Part 2-9 heading.....	rs No 55, 2009
<b>Division 1</b>	
s 321.....	am No 79, 2022; <u>No 120, 2023</u>
s 322.....	am No 33, 2012
<b>Division 2</b>	
Division 2 heading.....	rs No 101, 2017
<b>Subdivision A</b>	
Subdivision A heading.....	ad <u>No 120, 2023</u>
s 324.....	am No 174, 2012; No 43, 2023; <u>No 120, 2023</u>
s 325.....	am No 101, 2017
s 326.....	rs No 101, 2017
s 327.....	am No 101, 2017; <u>No 120, 2023</u>
<b>Subdivision B</b>	
Subdivision B.....	ad <u>No 120, 2023</u>
s 327A.....	ad <u>No 120, 2023</u>
s 327B.....	ad <u>No 120, 2023</u>
s 327C.....	ad <u>No 120, 2023</u>
<b>Division 3</b>	
s 332.....	am No 118, 2013
<b>Division 4</b>	
Division 4.....	ad No 79, 2022
s 333B.....	ad No 79, 2022
s 333C.....	ad No 79, 2022

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 333D.....	ad No 79, 2022
<b>Division 5</b>	
Division 5 .....	ad No 79, 2022
<b>Subdivision A</b>	
s 333E .....	ad No 79, 2022
s 333F .....	ad No 79, 2022
s 333G.....	ad No 79, 2022
s 333H.....	ad No 79, 2022
<b>Subdivision B</b>	
s 333J .....	ad No 79, 2022
s 333K.....	ad No 79, 2022
s 333L .....	ad No 79, 2022
<b>Chapter 3</b>	
<b>Part 3-1</b>	
<b>Division 1</b>	
s 334.....	am No 174, 2012; No 120, 2023
s 335.....	am No 33, 2012
s 336.....	am No 174, 2012
<b>Division 2</b>	
s 337.....	am No 54, 2009; No 124, 2009
<b>Division 3</b>	
s 341.....	am No 174, 2012; No 175, 2012
s 344.....	am No 109, 2012
<b>Division 4</b>	
s 350A.....	ad No 120, 2023
s 305C.....	ad No 120, 2023
<b>Division 5</b>	
s 351.....	am No 136, 2012; No 98, 2013; No 79, 2022; No 74, 2023; No 120, 2023
<b>Division 7</b>	
s 361.....	am No 73, 2013

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 8</b>	
<b>Subdivision A</b>	
s 365.....	am No 174, 2012; No 73, 2013
s 366.....	am No 174, 2012
s 367.....	am No 174, 2012
s 368.....	am No 174, 2012
	rs No 73, 2013
s 369.....	am No 174, 2012
	rs No 73, 2013
s 370.....	am No 174, 2012
	rs No 73, 2013
s 371.....	am No 55, 2009; No 174, 2012
	rep No 73, 2013
<b>Subdivision B</b>	
s 372.....	am No 174, 2012; No 73, 2013
s 373.....	am No 174, 2012
s 374.....	am No 174, 2012
s 375.....	am No 174, 2012
<b>Subdivision C</b>	
Subdivision C .....	rs No 73, 2013
s 375A.....	ad No 73, 2013
s 375B.....	ad No 73, 2013
s 376.....	am No 174, 2012
	rs No 73, 2013
s 377.....	am No 174, 2012
	rs No 73, 2013
s 377A.....	ad No 73, 2013
s 378.....	rs No 73, 2013
<b>Part 3-2</b>	
<b>Division 1</b>	
s 379.....	am No 174, 2012

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 380.....	am No 33, 2012
<b>Division 2</b>	
s 384.....	am No 25, 2021
<b>Division 3</b>	
s 385.....	am No 174, 2012
s 387.....	am No 174, 2012; No 104, 2021
<b>Division 4</b>	
s 390.....	am No 174, 2012
s 391.....	am No 174, 2012
s 392.....	am No 174, 2012
s 393.....	am No 174, 2012
<b>Division 5</b>	
s 394.....	am No 174, 2012
s 395.....	am No 174, 2012
s 396.....	am No 174, 2012
s 397.....	am No 174, 2012
s 398.....	am No 174, 2012
s 399.....	am No 174, 2012
s 399A.....	ad No 174, 2012
s 400.....	am No 174, 2012; No 73, 2013
s 400A.....	ad No 174, 2012
s 401.....	am No 174, 2012
s 402.....	am No 174, 2012
s 403.....	am No 174, 2012
<b>Part 3-3</b>	
<b>Division 1</b>	
s 406.....	am No 174, 2012
s 407.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s 409.....	am No 174, 2012; No 79, 2022; No 120, 2023

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 410.....	am No 174, 2012
s 411.....	am No 55, 2009; No 79, 2022; No 120, 2023
<b>Subdivision B</b>	
s 413.....	am No 79, 2022
s 414.....	am No 79, 2022
<b>Subdivision C</b>	
s 416A.....	ad No 55, 2009
<b>Division 3</b>	
s 417.....	am No 174, 2012; No 13, 2013; No 13, 2021; No 79, 2022
<b>Division 4</b>	
Division 4 heading.....	am No 174, 2012
s 418.....	am No 174, 2012
s 419.....	am No 174, 2012
s 420.....	am No 174, 2012
s 421.....	am No 13, 2013; No 13, 2021
<b>Division 5</b>	
s 422.....	am No 13, 2013; No 13, 2021
<b>Division 6</b>	
Division 6 heading.....	am No 174, 2012
s 423.....	am No 124, 2009; No 174, 2012
s 424.....	am No 124, 2009; No 174, 2012
s 425.....	am No 174, 2012
s 426.....	am No 124, 2009; No 174, 2012
s 427.....	am No 174, 2012
s 428.....	am No 174, 2012
s 430.....	am No 174, 2012
<b>Division 7</b>	
s 432.....	am No 174, 2012
<b>Division 8</b>	
<b>Subdivision A</b>	
s 435.....	am No 174, 2012

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision B</b>	
s 437.....	am No 174, 2012; No 156, 2015; No 79, 2022
s 437A.....	ad No 79, 2022
s 440.....	rs No 79, 2022
s 441.....	am No 174, 2012
s 442.....	am No 174, 2012
s 443.....	am No 174, 2012; No 79, 2022
s 444.....	am No 174, 2012; No 79, 2022
s 445.....	am No 174, 2012
s 446.....	am No 174, 2012
s 447.....	am No 174, 2012
s 448.....	am No 174, 2012
<b>Subdivision BA</b>	
Subdivision BA.....	ad No 79, 2022
s 448A.....	ad No 79, 2022
<b>Subdivision C</b>	
s 449.....	am No 174, 2012; No 79, 2022
s 450.....	am No 174, 2012
s 451.....	am No 174, 2012
s 452.....	am No 174, 2012
s 453.....	am No 174, 2012
s 454.....	am No 174, 2012
s 455.....	am No 174, 2012
s 457.....	am No 174, 2012
s 458.....	am No 174, 2012
<b>Subdivision D</b>	
s 459.....	am No 174, 2012
s 460.....	am No 174, 2012
s 461.....	am No 174, 2012
<b>Subdivision E</b>	
s 462.....	am No 174, 2012

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<b>Provision affected</b>	<b>How affected</b>
s 463.....	am No 174, 2012
<b>Subdivision G</b>	
s 467.....	am No 174, 2012
s 468A.....	ad No 79, 2022
s 469.....	am No 79, 2022
<b>Division 9</b>	
<b>Subdivision A</b>	
s 471.....	am No 174, 2012
s 472.....	am No 174, 2012
<b>Division 10</b>	
s 477.....	am No 79, 2022
<b>Part 3-4</b>	
<b>Division 1</b>	
s 478.....	am Nos 33 and 174, 2012; No 73, 2013
s 480.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s 481.....	am No 174, 2012
s 483AA.....	am No 174, 2012
<b>Subdivision AA</b>	
Subdivision AA heading.....	rs No 33, 2012
s 483A.....	am No 33, 2012; No 73, 2013
s 483B.....	am No 33, 2012
<b>Subdivision B</b>	
s 484.....	am No 33, 2012; No 73, 2013
<b>Subdivision C</b>	
s 487.....	am No 174, 2012
s 489.....	am No 174, 2012
s 491.....	am No 174, 2012
s 492.....	rs No 73, 2013
s 492.....	am No 174, 2012; No 73, 2013

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 492A.....	ad No 73, 2013
<b>Division 3</b>	
s 494.....	am No 120, 2023
s 499.....	am No 174, 2012
<b>Division 4</b>	
s 500.....	am No 73, 2013
<b>Division 5</b>	
Division 5 heading.....	am No 174, 2012
<b>Subdivision A</b>	
s 505.....	am No 174, 2012; No 73, 2013
s 505A.....	ad No 73, 2013
s 506.....	am No 73, 2013
<b>Subdivision B</b>	
s 507.....	am No 174, 2012
<b>Subdivision C</b>	
s 508.....	am No 174, 2012
<b>Subdivision D</b>	
Subdivision D heading.....	am No 174, 2012
s 510.....	am No 51, 2010; No 174, 2012
<b>Subdivision E</b>	
s 511.....	am No 174, 2012
<b>Division 6</b>	
<b>Subdivision A</b>	
s 512.....	am No 174, 2012
s 513.....	am No 174, 2012
s 514.....	am No 174, 2012
s 515.....	am No 174, 2012; No 73, 2013
s 516.....	am No 174, 2012
s 517.....	am No 174, 2012
<b>Subdivision B</b>	
s 518.....	am No 33, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 519.....	am No 174, 2012
<b>Subdivision D</b>	
s 520.....	am No 174, 2012
<b>Division 7</b>	
Division 7 .....	ad No 73, 2013
s 521A.....	ad No 73, 2013
s 521B.....	ad No 73, 2013
s 521C.....	ad No 73, 2013
s 521D.....	ad No 73, 2013
<b>Part 3-5</b>	
<b>Division 1</b>	
s 522.....	am No 174, 2012
<b>Division 3</b>	
s 526.....	am No 174, 2012
s 527.....	am No 174, 2012
<b>Part 3-5A</b>	
Part 3-5A.....	ad No 79, 2022
<b>Division 1</b>	
s 527A.....	ad No 79, 2022
s 527B.....	ad No 79, 2022
s 527C.....	ad No 79, 2022
	am <u>No 79, 2022</u>
s 527CA.....	ad No 79, 2022
<b>Division 2</b>	
s 527D.....	ad No 79, 2022
s 527E.....	ad No 79, 2022
<b>Division 3</b>	
<b>Subdivision A</b>	
s 527F.....	ad No 79, 2022
s 527G.....	ad No 79, 2022

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 527H.....	ad No 79, 2022
<b>Subdivision B</b>	
s 527J.....	ad No 79, 2022
s 527K.....	ad No 79, 2022
s 527L.....	ad No 79, 2022
s 527M.....	ad No 79, 2022
s 527N.....	ad No 79, 2022
s 527P.....	ad No 79, 2022
s 527Q.....	ad No 79, 2022
<b>Subdivision C</b>	
s 527R.....	ad No 79, 2022
s 527S.....	ad No 79, 2022
s 527T.....	ad No 79, 2022
<b>Part 3-6</b>	
<b>Division 1</b>	
s 528.....	am No 174, 2012; No 79, 2022
s 529.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision B</b>	
s 531.....	am No 174, 2012
s 532.....	am No 174, 2012
s 533.....	am No 174, 2012
<b>Division 3</b>	
s 535.....	am No 101, 2017
s 536.....	am No 109, 2012; No 101, 2017; No 50, 2022; No 79, 2022
<b>Division 4</b>	
Division 4.....	ad No 79, 2022
s 536AA.....	ad No 79, 2022
<b>Part 3-7</b>	
Part 3-7.....	ad No 84, 2017

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 1</b>	
s 536A.....	ad No 84, 2017
s 536B.....	ad No 84, 2017
s 536C.....	ad No 84, 2017
s 536CA.....	ad No 84, 2017
<b>Division 2</b>	
s 536D.....	ad No 84, 2017
s 536E.....	ad No 84, 2017
<b>Division 3</b>	
s 536F.....	ad No 84, 2017
s 536G.....	ad No 84, 2017
s 536H.....	ad No 84, 2017
<b>Chapter 4</b>	
<b>Part 4-1</b>	
<b>Division 1</b>	
s 537.....	am No 13, 2013; No 101, 2017; No 13, 2021
s 538.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s 539.....	am No 55, 2009; Nos 174 and 175, 2012; No 13 and 73, 2013; No 67, 2016; No 84, 2017; No 101, 2017; No 38, 2020; No 81, 2020; No 13, 2021 ( <u>Sch 4 item 4</u> ); No 104, 2021; <u>No 50, 2022</u> ; No 79, 2022 ( <u>Sch 1 item 672</u> ); No 120, 2023
s 540.....	am No 55, 2009; No 101, 2017
s 543.....	am No 13, 2013; No 13, 2021
s 544.....	am No 73, 2013; No 79, 2022
<b>Subdivision B</b>	
s 545.....	am No 13, 2013; No 13, 2021; No 79, 2022
s 545A.....	ad No 25, 2021
s 546.....	am No 13, 2013; No 13, 2021; No 79, 2022

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 3</b>	
s 548.....	am No 13, 2013; No 13, 2021; No 25, 2021; No 79, 2022
<b>Division 4</b>	
s 550.....	am No 101, 2017
s 557.....	am No 101, 2017; <u>No 50, 2022</u> ; No 79, 2022 ( <u>Sch 1 item 673</u> ); No 120, 2023
s 557A.....	ad No 101, 2017
s 557B.....	ad No 101, 2017
s 557C.....	ad No 101, 2017
	am No 79, 2022
s 558.....	am No 55, 2009
<b>Division 4A</b>	
Division 4A.....	ad No 101, 2017
s 558A.....	ad No 101, 2017
s 558B.....	ad No 101, 2017
	am No 79, 2022
s 558C.....	ad No 101, 2017
	am No 13, 2021
<b>Division 5</b>	
s 559.....	am No 156, 2015
<b>Part 4-2</b>	
<b>Division 1</b>	
s 560.....	am No 13, 2013
	rs No 13, 2021
s 561.....	am No 33, 2012
<b>Division 2</b>	
s 563.....	am No 13, 2013; No 13, 2021
s 565.....	am No 124, 2009
<b>Division 3</b>	
Division 3 heading.....	rs No 13, 2013
	am No 13, 2021

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 566.....	am No 13, 2013; No 13, 2021
s 567.....	am No 13, 2013; No 13, 2021
s 568.....	am No 13, 2013 rs No 13, 2021
<b>Division 4</b>	
s 569A.....	ad No 124, 2009
s 570.....	am No 124, 2009; No 174, 2012
<b>Chapter 5</b>	
<b>Part 5-1</b>	
Part 5-1 heading.....	rs No 174, 2012
<b>Division 1</b>	
s 573.....	am No 174, 2012
s 574.....	am No 33, 2012
s 574A.....	rep No 55, 2009
<b>Division 2</b>	
Division 2 heading.....	am No 174, 2012
<b>Subdivision A</b>	
Subdivision A heading.....	am No 174, 2012
s 575.....	am No 55, 2009; No 174, 2012; No 79, 2022
s 576.....	am No 55, 2009; No 174, 2012; No 175, 2012; No 13, 2013; No 73, 2013; No 79, 2016; No 38, 2020; No 13, 2021; No 104, 2021; No 79, 2022; No 120, 2023
s 577.....	am No 174, 2012; No 79, 2022
s 578.....	am No 174, 2012; No 98, 2013; No 79, 2022; No 120, 2023
s 579.....	am No 174, 2012
s 580.....	am No 174, 2012
<b>Subdivision B</b>	
s 581.....	am No 174, 2012
s 581A.....	ad No 174, 2012
s 581B.....	ad No 174, 2012
s 582.....	am No 174, 2012; No 170, 2018

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<b>Provision affected</b>	<b>How affected</b>
s 584.....	am No 174, 2012; No 73, 2013
<b>Subdivision C</b>	
Subdivision C .....	ad No 174, 2012
s 584B .....	ad No 174, 2012
<b>Division 3</b>	
Division 3 heading.....	am No 174, 2012
<b>Subdivision A</b>	
Subdivision A heading.....	am No 174, 2012
s 585.....	am No 174, 2012
s 586.....	am No 174, 2012
s 587.....	am No 174, 2012; No 79, 2022
s 588.....	am No 174, 2012
<b>Subdivision B</b>	
Subdivision B heading.....	am No 174, 2012
s 589.....	am No 174, 2012
s 590.....	am No 174, 2012
s 591.....	am No 174, 2012
s 592.....	am No 174, 2012; No 73, 2013; No 79, 2022
s 593.....	am No 174, 2012
s 594.....	am No 174, 2012
s 595.....	am No 174, 2012; No 73, 2013
<b>Subdivision C</b>	
s 596.....	am No 174, 2012; No 175, 2012
s 597.....	am No 174, 2012
s 597A.....	ad No 124, 2009 am No 174, 2012
<b>Subdivision D</b>	
Subdivision D heading.....	am No 174, 2012
s 598.....	am No 174, 2012; No 79, 2022
s 599.....	am No 174, 2012
s 600.....	am No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 601.....	am No 174, 2012; No 73, 2013; No 79, 2022
s 602.....	am No 174, 2012
s 602A.....	ad No 79, 2022
s 602B.....	ad No 79, 2022
s 603.....	am No 174, 2012; No 73, 2013
<b>Subdivision E</b>	
s 604.....	am No 124, 2009; No 174, 2012; No 175, 2012; No 79, 2016; No 79, 2022
s 605.....	am No 174, 2012
s 606.....	am No 174, 2012
s 607.....	am No 124, 2009; No 174, 2012; No 79, 2016; No 79, 2022
s 608.....	am No 174, 2012
<b>Subdivision F</b>	
s 609.....	am No 174, 2012; No 73, 2013; No 79, 2022
s 610.....	am No 174, 2012
s 611.....	am No 174, 2012
<b>Division 4</b>	
Division 4 heading.....	am No 174, 2012
<b>Subdivision A</b>	
Subdivision A heading.....	am No 174, 2012
s 612.....	am No 174, 2012
s 613.....	am No 124, 2009; No 174, 2012; No 175, 2012; No 79, 2016; No 79, 2022
s 615.....	am No 174, 2012
s 615A.....	ad No 174, 2012
	am No 79, 2022
s 615B.....	ad No 174, 2012
	am No 31, 2014
s 615C.....	ad No 174, 2012
	am No 31, 2014
s 616.....	am No 174, 2012; No 170, 2018; No 79, 2022

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<b>Provision affected</b>	<b>How affected</b>
s 617.....	am No 174, 2012; No 79, 2022
s 617AA.....	ad No 79, 2022
s 617A.....	ad No 79, 2022
s 617B.....	ad No 79, 2022
<b>Subdivision B</b>	
Subdivision B heading.....	rs No 174, 2012 am No 174, 2012
s 618.....	am No 174, 2012
s 619.....	am No 174, 2012
s 620.....	am No 174, 2012; No 79, 2022
s 621.....	am No 174, 2012
s 622.....	am No 55, 2009; No 174, 2012; No 31, 2014; No 79, 2022
s 623.....	am No 174, 2012
s 624.....	am No 174, 2012
<b>Subdivision C</b>	
Subdivision C heading.....	am No 174, 2012
s 625.....	am No 174, 2012
<b>Division 5</b>	
Division 5 heading.....	am No 174, 2012
<b>Subdivision A</b>	
Subdivision A heading.....	am No 174, 2012
s 626.....	am No 174, 2012
s 627.....	am No 174, 2012; No 13, 2013; No 13, 2021; No 79, 2022
s 628.....	am No 174, 2012
s 629.....	am No 174, 2012
<b>Subdivision B</b>	
Subdivision B heading.....	am No 174, 2012
s 629A.....	ad No 55, 2009
s 630.....	am No 174, 2012
s 632.....	am No 174, 2012; No 73, 2013
s 633.....	am No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 634.....	am No 174, 2012
s 637.....	am No 174, 2012
s 639.....	am No 174, 2012
s 640.....	am No 174, 2012; No 31, 2014
s 641.....	am No 174, 2012
s 641A.....	ad No 174, 2012
s 641B.....	ad No 170, 2018
	am No 13, 2021
s 642.....	am No 174, 2012
s 643.....	am No 174, 2012
s 644.....	am No 174, 2012 (as am by No 73, 2013)
s 645.....	am No 174, 2012
s 646.....	am No 174, 2012
s 647.....	am No 174, 2012
s 648.....	am No 174, 2012
<b>Division 6</b>	
s 649.....	am No 124, 2009; No 174, 2012
s 650.....	am No 174, 2012
<b>Division 7</b>	
s 651.....	am No 174, 2012
s 652.....	am No 174, 2012; No 62, 2014; No 79, 2022
s 653A.....	am No 174, 2012; No 13, 2013; No 13, 2021
s 654.....	am No 55, 2009; No 174, 2012
s 655.....	am No 174, 2012
<b>Division 8</b>	
<b>Subdivision A</b>	
s 656.....	am No 174, 2012
s 657.....	am No 174, 2012; No 79, 2022
s 658.....	am No 174, 2012; No 62, 2014; No 79, 2022
<b>Subdivision B</b>	
s 660.....	am No 174, 2012

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 663.....	am No 174, 2012
s 664.....	rs No 62, 2014
s 666.....	am No 174, 2012
s 668.....	am No 174, 2012
s 669.....	am No 174, 2012
<b>Subdivision C</b>	
s 670.....	am No 174, 2012; No 73, 2013
s 671.....	am No 174, 2012
s 672.....	am No 174, 2012
s 673.....	am No 174, 2012
<b>Subdivision D</b>	
s 673A.....	ad No 62, 2014
<b>Division 9</b>	
Division 9 heading.....	am No 174, 2012
s 674.....	am No 174, 2012
s 675.....	am No 174, 2012; No 73, 2013; No 38, 2020; No 104, 2021; No 79, 2022
s 676.....	am No 174, 2012
s 677.....	am No 174, 2012
s 678.....	am No 174, 2012
<b>Part 5-2</b>	
<b>Division 1</b>	
s 680.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision A</b>	
s 682.....	am No 174, 2012; No 79, 2022; <u>No 120, 2023</u>
s 683.....	am No 101, 2017
s 684.....	am No 126, 2015
s 685.....	am No 101, 2017
s 686.....	rs No 62, 2014 am No 101, 2017

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision B</b>	
s 690.....	am No 174, 2012
s 691.....	rep No 62, 2014
s 693.....	am No 174, 2012; No 62, 2014
<b>Division 3</b>	
<b>Subdivision A</b>	
s 696.....	am No 79, 2022
<b>Subdivision D</b>	
Subdivision D heading.....	rs No 101, 2017
s 703.....	am No 101, 2017
s 706.....	am <u>No 120, 2023</u>
s 707A.....	ad No 101, 2017
<b>Subdivision DA</b>	
Subdivision DA heading.....	ad No 101, 2017
s 709.....	am No 54, 2009
<b>Subdivision DB</b>	
Subdivision DB heading.....	ad No 101, 2017
s 711.....	am <u>No 120, 2023</u>
s 712A.....	ad No 101, 2017
s 712AA.....	ad No 101, 2017
	am No 104, 2021; No 79, 2022; <u>No 120, 2023</u>
s 712AB.....	ad No 101, 2017
s 712AC.....	ad No 101, 2017
s 712AD.....	ad No 101, 2017
s 712AE.....	ad No 101, 2017
s 712B.....	ad No 101, 2017
s 712C.....	ad No 101, 2017
s 712D.....	ad No 101, 2017
s 712E.....	ad No 101, 2017
s 712F.....	ad No 101, 2017
<b>Subdivision DC</b>	

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Subdivision DC heading.....	ad No 101, 2017
s 713.....	am No 54, 2009; No 103, 2013
	rs No 101, 2017
	am <u>No 120, 2023</u>
s 713A.....	ad No 54, 2009
	am <u>No 120, 2023</u>
s 713AA.....	ad No 101, 2017
s 714.....	am No 101, 2017
s 714A.....	ad No 101, 2017
<b>Subdivision DD</b>	
Subdivision DD heading.....	ad No 101, 2017
s 715.....	am No 13, 2013; No 13, 2021
s 716.....	am No 13, 2013; No 38, 2020; No 13, 2021; No 79, 2022
s 717.....	am No 13, 2013; No 13, 2021
<b>Subdivision DE</b>	
Subdivision DE.....	ad <u>No 120, 2023</u>
s 717A.....	ad <u>No 120, 2023</u>
s 717B.....	ad <u>No 120, 2023</u>
s 717C.....	ad <u>No 120, 2023</u>
s 717D.....	ad <u>No 120, 2023</u>
s 717E.....	ad <u>No 120, 2023</u>
s 717F.....	ad <u>No 120, 2023</u>
s 717G.....	ad <u>No 120, 2023</u>
<b>Subdivision F</b>	
Subdivision F.....	ad No 101, 2017
s 718A.....	ad No 101, 2017
<b>Chapter 6</b>	
<b>Part 6-1</b>	
<b>Division 1</b>	
s 720.....	am No 33, 2012
<b>Division 2</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 721.....	am No 174, 2012
s 722.....	am No 55, 2009; No 174, 2012
<b>Division 3</b>	
<b>Subdivision A</b>	
s 724.....	am No 174, 2012
<b>Subdivision B</b>	
s 727.....	am No 174, 2012; No 73, 2013
s 729.....	am No 174, 2012
s 730.....	am No 174, 2012; No 73, 2013
s 732.....	am No 70, 2009
<b>Subdivision C</b>	
s 734.....	am No 79, 2022
<b>Subdivision D</b>	
Subdivision D.....	ad No 79, 2022
s 734A.....	ad No 79, 2022
s 734B.....	ad No 79, 2022
<b>Part 6-2</b>	
<b>Division 1</b>	
s 735.....	am No 174, 2012
s 736.....	am No 33, 2012
<b>Division 2</b>	
<b>Subdivision B</b>	
s 739.....	am No 174, 2012; No 79, 2022
s 740.....	am No 174, 2012; No 79, 2022
<b>Part 6-3</b>	
<b>Division 1</b>	
s 741.....	am <u>No 50, 2022</u>
<b>Division 2</b>	
<b>Subdivision A</b>	
s 745.....	am No 79, 2022; No 43, 2023
<b>Division 2A</b>	

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Division 2A.....	ad <a href="#">No 50, 2022</a>
<b>Subdivision A</b>	
s 757A.....	ad <a href="#">No 50, 2022</a>
s 757B.....	ad <a href="#">No 50, 2022</a>
	am <a href="#">No 79, 2022</a>
s 757BA.....	ad <a href="#">No 50, 2022</a>
	rs <a href="#">No 79, 2022</a>
s 757C.....	ad <a href="#">No 50, 2022</a>
s 757D.....	ad <a href="#">No 50, 2022</a>
s 757E.....	ad <a href="#">No 50, 2022</a>
<b>Subdivision B</b>	
s 757F.....	ad <a href="#">No 50, 2022</a>
s 757G.....	ad <a href="#">No 50, 2022</a>
s 757H.....	ad <a href="#">No 50, 2022</a>
s 757J.....	ad <a href="#">No 50, 2022</a>
s 757K.....	ad <a href="#">No 50, 2022</a>
<b>Part 6-3A</b>	
Part 6-3A.....	ad No 175, 2012
<b>Division 1</b>	
s 768AA.....	ad No 175, 2012
s 768AB.....	ad No 175, 2012
<b>Division 2</b>	
s 768AC.....	ad No 175, 2012
s 768AD.....	ad No 175, 2012
s 768AE.....	ad No 175, 2012
<b>Division 3</b>	
<b>Subdivision A</b>	
s 768AF.....	ad No 175, 2012
<b>Subdivision B</b>	
s 768AG.....	ad No 175, 2012
s 768AH.....	ad No 175, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 768AI .....	ad No 175, 2012
s 768AJ .....	ad No 175, 2012
s 768AK.....	ad No 175, 2012
s 768AL .....	ad No 175, 2012
s 768AM .....	ad No 175, 2012
	am No 174, 2012
s 768AN.....	ad No 175, 2012
	am No 174, 2012
s 768AO.....	ad No 175, 2012
	am No 174, 2012
<b>Division 4</b>	
<b>Subdivision A</b>	
s 768AP.....	ad No 175, 2012
<b>Subdivision B</b>	
s 768AQ.....	ad No 175, 2012
s 768AR.....	ad No 175, 2012
<b>Subdivision C</b>	
s 768AS.....	ad No 175, 2012
	am No 174, 2012
s 768AT .....	ad No 175, 2012
	am No 174, 2012
<b>Subdivision D</b>	
s 768AU.....	ad No 175, 2012
	am No 174, 2012
<b>Division 5</b>	
<b>Subdivision A</b>	
s 768AV .....	ad No 175, 2012
<b>Subdivision B</b>	
s 768AW .....	ad No 175, 2012
s 768AX.....	ad No 175, 2012
	am No 174, 2012

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Subdivision C</b>	
s 768AY.....	ad No 175, 2012
<b>Division 6</b>	
Division 6 heading.....	am No 174, 2012
<b>Subdivision A</b>	
s 768AZ.....	ad No 175, 2012
	am No 174, 2012
s 768AZA.....	ad No 175, 2012
<b>Subdivision B</b>	
s 768BA.....	ad No 175, 2012
	am No 174, 2012
s 768BB.....	ad No 175, 2012
	am No 174, 2012
<b>Division 7</b>	
Division 7 heading.....	am No 174, 2012
<b>Subdivision A</b>	
s 768BC.....	ad No 175, 2012
	am No 174, 2012
s 768BCA.....	ad No 175, 2012
<b>Subdivision B</b>	
s 768BD.....	ad No 175, 2012
	am No 174, 2012
s 768BE.....	ad No 175, 2012
s 768BF.....	ad No 175, 2012
	am No 174, 2012
<b>Subdivision C</b>	
s 768BG.....	ad No 175, 2012
	am No 174, 2012
s 768BH.....	ad No 175, 2012
s 768BI.....	ad No 175, 2012
	am No 174, 2012

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 8</b>	
<b>Subdivision A</b>	
s 768BJ .....	ad No 175, 2012 am No 174, 2012
<b>Subdivision B</b>	
s 768BK .....	ad No 175, 2012
<b>Subdivision C</b>	
s 768BL .....	ad No 175, 2012
s 768BM .....	ad No 175, 2012
s 768BN .....	ad No 175, 2012
s 768BO .....	ad No 175, 2012 am No 174, 2012
s 768BP .....	ad No 175, 2012
s 768BQ .....	ad No 175, 2012
<b>Subdivision D</b>	
s 768BR .....	ad No 175, 2012
s 768BS .....	ad No 175, 2012 am No 174, 2012
s 768BT .....	ad No 175, 2012
s 768BU .....	ad No 175, 2012
s 768BV .....	ad No 175, 2012
s 768BW .....	ad No 175, 2012 am No 174, 2012
<b>Subdivision E</b>	
s 768BX .....	ad No 175, 2012
<b>Subdivision F</b>	
s 768BY .....	ad No 175, 2012 am No 174, 2012
<b>Subdivision G</b>	
s 768BZ .....	ad No 175, 2012

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 9</b>	
s 768CA.....	ad No 175, 2012
<b>Part 6-4</b>	
<b>Division 1</b>	
s 769.....	am No 174, 2012
<b>Division 2</b>	
s 771.....	am No 79, 2022; No 43, 2023
s 772.....	am No 98, 2013; No 79, 2022; No 43, 2023; No 120, 2023
s 773.....	am No 174, 2012
s 774.....	am No 174, 2012; No 73, 2013
s 775.....	am No 174, 2012
s 776.....	am No 174, 2012
	rs No 73, 2013
s 777.....	am No 174, 2012
	rs No 73, 2013
s 778.....	am No 174, 2012
	rs No 73, 2013
s 779.....	am No 55, 2009; No 174, 2012
	rs No 73, 2013
s 779A.....	ad No 73, 2013
s 780.....	am No 174, 2012
	rs No 73, 2013
s 781.....	am No 174, 2012
	rs No 73, 2013
s 781A.....	ad No 73, 2013
s 782.....	am No 73, 2013
s 783.....	am No 73, 2013
<b>Division 3</b>	
<b>Subdivision C</b>	
s 786.....	am No 174, 2012
s 787.....	am No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s 788.....	am No 174, 2012
<b>Part 6-4A</b>	
Part 6-4A.....	ad No 33, 2012
<b>Division 1</b>	
s 789AA.....	ad No 33, 2012
s 789AB.....	ad No 33, 2012
s 789AC.....	ad No 33, 2012
<b>Division 2</b>	
s 789BA.....	ad No 33, 2012 am No 175, 2012
s 789BB.....	ad No 33, 2012
s 789BC.....	ad No 33, 2012
<b>Division 3</b>	
s 789CA.....	ad No 33, 2012 am No 175, 2012
s 789CB.....	ad No 33, 2012
s 789CC.....	ad No 33, 2012 am No 136, 2012
s 789CD.....	ad No 33, 2012 am No 13, 2013; No 13, 2021
s 789CE.....	ad No 33, 2012 am No 13, 2013; No 13, 2021
s 789CF.....	ad No 33, 2012
<b>Division 4</b>	
s 789DA.....	ad No 33, 2012
s 789DB.....	ad No 33, 2012
s 789DC.....	ad No 33, 2012
s 789DD.....	ad No 33, 2012
s 789DE.....	ad No 33, 2012 am No 175, 2012; No 126, 2015

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 5</b>	
s 789EA .....	ad No 33, 2012
<b>Part 6-4B</b>	
Part 6-4B heading .....	am No 104, 2021; No 79, 2022
Part 6-4B .....	ad No 73, 2013
<b>Division 1</b>	
s 789FA .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FB .....	ad No 73, 2013
<b>Division 2</b>	
Division 2 heading .....	am No 104, 2021; No 79, 2022
s 789FC .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FD .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FE .....	ad No 73, 2013
s 789FF .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FG .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FH .....	ad No 73, 2013
	am No 104, 2021; No 79, 2022
s 789FI .....	ad No 73, 2013
s 789FJ .....	ad No 73, 2013
s 789FK .....	ad No 73, 2013
s 789FL .....	ad No 73, 2013
<b>Part 6-4C</b>	
Part 6-4C .....	ad No 38, 2020
<b>Division 1</b>	
s 789GA .....	ad No 38, 2020
	am No 81, 2020



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<b>Provision affected</b>	<b>How affected</b>
	rep No 38, 2020
s 789GB .....	ad No 38, 2020
	rep No 38, 2020
s 789GC .....	ad No 38, 2020
	am No 38, 2020; No 81, 2020
s 789GCA .....	ad No 81, 2020
	rs No 74, 2023
s 789GCB .....	ad No 81, 2020
s 789GCC .....	ad No 81, 2020
s 789GCD .....	ad No 81, 2020
Division 2 .....	rep No 38, 2020
s 789GD .....	ad No 38, 2020
	rep No 38, 2020
s 789GDA .....	ad No 38, 2020
	rep No 38, 2020
s 789GDB .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
Division 3 heading .....	am No 81, 2020
	rep No 38, 2020
Division 3 .....	rep No 38, 2020
s 789GDC .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
Division 4 heading .....	am No 81, 2020
	rep No 38, 2020
Division 4 .....	rep No 38, 2020
s 789GE .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
s 789GF .....	ad No 38, 2020

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<b>Provision affected</b>	<b>How affected</b>
	am No 81, 2020
	rep No 38, 2020
s 789GG .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
Division 5 .....	rep No 81, 2020
s 789GJ .....	ad No 38, 2020
	rep No 81, 2020
Division 5A.....	ad No 81, 2020
	rep No 38, 2020
s 789GJA .....	ad No 81, 2020
	rep No 38, 2020
s 789GJB.....	ad No 81, 2020
	rep No 38, 2020
s 789GJC.....	ad No 81, 2020
	rep No 38, 2020
s 789GJD .....	ad No 81, 2020
	rep No 38, 2020
s 789GJE.....	ad No 81, 2020
	rep No 38, 2020
s 789GJF .....	ad No 81, 2020
	rep No 38, 2020
Division 6 .....	rep No 38, 2020
s 789GK.....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
s 789GL .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
s 789GM .....	ad No 38, 2020
	am No 81, 2020

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<b>Provision affected</b>	<b>How affected</b>
	rep No 38, 2020
s 789GMA .....	ad No 81, 2020
	rep No 38, 2020
s 789GN .....	ad No 38, 2020
	rep No 38, 2020
s 789GP .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
s 789GQ .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
<b>Division 7</b>	
s 789GR .....	ad No 38, 2020
<b>Division 8</b>	
s 789GS .....	ad No 38, 2020
	am No 81, 2020
Division 9 .....	rep No 38, 2020
s 789GU .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
<b>Division 10</b>	
s 789GV .....	ad No 38, 2020
	am No 81, 2020
s 789GW .....	ad No 38, 2020
Division 11 .....	rep No 38, 2020
s 789GX .....	ad No 38, 2020
	am No 81, 2020
	rep No 38, 2020
<b>Division 12</b>	
s 789GXA .....	ad No 38, 2020
s 789GXB .....	ad No 81, 2020

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<b>Provision affected</b>	<b>How affected</b>
s 789GXC .....	ad No 81, 2020
s 789GXD .....	ad No 81, 2020
s 789GXE .....	ad No 81, 2020
s 789GY .....	ad No 38, 2020
	am No 81, 2020
s 789GZ .....	ad No 38, 2020
s 789GZA .....	ad No 38, 2020
<b>Division 13</b>	
s 789GZB .....	ad No 38, 2020
<b>Part 6-4D</b>	
Part 6-4D .....	ad No 79, 2022
s 789GZC .....	ad No 79, 2022
s 789GZD .....	ad No 79, 2022
s 789GZE .....	ad No 79, 2022
s 789GZF .....	ad No 79, 2022
s 789GZG .....	ad No 79, 2022
s 789GZH .....	ad No 79, 2022
s 789GZJ .....	ad No 79, 2022
s 789GZK .....	ad No 79, 2022
s 789GZL .....	ad No 79, 2022
s 789GZM .....	ad No 79, 2022
s 789GZN .....	ad No 79, 2022
s 789GZP .....	ad No 79, 2022
s 789GZQ .....	ad No 79, 2022
<b>Part 6-4E</b>	
Part 6-4E .....	ad No 79, 2022
<b>Division 1</b>	
Division 1 heading .....	ad No 120, 2023
s 789HA .....	ad No 79, 2022
	am No 120, 2023
s 789HB .....	ad No 79, 2022

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
Division 2 .....	ad No 120, 2023
s 789HC .....	ad No 120, 2023
s 789HD .....	ad No 120, 2023
<b>Part 6-5</b>	
<b>Division 1</b>	
s 791 .....	am No 33, 2012
<b>Division 2</b>	
s 792 .....	am No 33, 2016
s 793 .....	am <u>No 120, 2023</u>
s 794A .....	ad <u>No 120, 2023</u>
s 794B .....	ad <u>No 120, 2023</u>
s 794C .....	ad <u>No 120, 2023</u>
s 794D .....	ad <u>No 120, 2023</u>
s 795A .....	ad No 33, 2012
	rs No 175, 2012
s 796A .....	ad No 55, 2009
	am No 174, 2012
s 799 .....	am No 55, 2009
<b>Schedule 1</b>	
Schedule 1 .....	rep No 55, 2009
	ad No 33, 2012
<b>Part 1</b>	
c 1 .....	rep No 55, 2009
	ad No 33, 2012
c 2 .....	rep No 55, 2009
	ad No 33, 2012
c 3 .....	rep No 55, 2009
	ad No 33, 2012
c 4 .....	rep No 55, 2009
	ad No 33, 2012

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<b>Provision affected</b>	<b>How affected</b>
	am No 175, 2012
c 5 .....	rep No 55, 2009
	ad No 33, 2012
c 6 .....	rep No 55, 2009
	ad No 33, 2012
c 7 .....	rep No 55, 2009
	ad No 33, 2012
	am No 175, 2012; No 126, 2015
<b>Part 2</b>	
Part 2.....	ad No 171, 2012
c 8 .....	ad No 171, 2012
c 9 .....	ad No 171, 2012
c 10 .....	ad No 171, 2012
	am No 61, 2013
c 11 .....	ad No 171, 2012
	am No 61, 2013
c 12 .....	ad No 171, 2012
	am No 61, 2013
<b>Part 3</b>	
Part 3.....	ad No 62, 2016
c 13 .....	ad No 62, 2016
c 14 .....	ad No 62, 2016
<b>Part 4</b>	
Part 4.....	ad No 101, 2017
c 15 .....	ad No 101, 2017
c 16 .....	ad No 101, 2017
c 17 .....	ad No 101, 2017
c 18 .....	ad No 101, 2017
c 19 .....	ad No 101, 2017
c 20 .....	ad No 101, 2017
c 21 .....	ad No 101, 2017

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
c 22 .....	ad No 101, 2017
c 23 .....	ad No 101, 2017
c 24 .....	ad No 101, 2017
c 24A.....	ad No 101, 2017
<b>Part 5</b>	
Part 5.....	ad No 170, 2018
<b>Division 1</b>	
c 25 .....	ad No 170, 2018
<b>Division 2</b>	
c 26 .....	ad No 170, 2018 am No 79, 2022
c 27 .....	ad No 170, 2018 exp end of 31 Dec 2019 (Sch 1 (c 27(3)))
<b>Division 3</b>	
c 28 .....	ad No 170, 2018
<b>Division 4</b>	
c 29 .....	ad No 170, 2018
<b>Part 6</b>	
Part 6.....	ad No 84, 2017
c 30 .....	ad No 84, 2017
<b>Part 8</b>	
Part 8.....	ad No 169, 2018
c 39 .....	ad No 169, 2018
c 40 .....	ad No 169, 2018
<b>Part 9</b>	
Part 9.....	ad No 105, 2020
c 41 .....	ad No 105, 2020 am No 105, 2020
c 42 .....	ad No 105, 2020
c 43 .....	ad No 105, 2020
<b>Part 10</b>	

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Part 10.....	ad No 25, 2021
<b>Division 1</b>	
c 44 .....	ad No 25, 2021
<b>Division 2</b>	
c 45 .....	ad No 25, 2021
c 46 .....	ad No 25, 2021
c 47 .....	ad No 25, 2021
c 47A.....	ad No 25, 2021
c 48 .....	ad No 25, 2021
	am No 74, 2023
<b>Part 11</b>	
Part 11.....	ad No 104, 2021
c 49 .....	ad No 104, 2021
	am No 74, 2023
c 49A.....	ad No 104, 2021
	am No 74, 2023
c 50 .....	ad No 104, 2021
	am No 74, 2023
<b>Part 12</b>	
Part 12.....	ad No 50, 2022
c 51 .....	ad No 50, 2022
	am <u>No 50, 2022</u>
c 52 .....	ad No 50, 2022
c 53 .....	ad No 50, 2022
c 54 .....	ad <u>No 50, 2022</u>
<b>Part 13</b>	
Part 13.....	ad No 79, 2022
<b>Division 1</b>	
c 55 .....	ad No 79, 2022
<b>Division 2</b>	
c 56 .....	ad No 79, 2022

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
<b>Division 3</b>	
c 57 .....	ad No 79, 2022
<b>Division 4</b>	
c 58 .....	ad No 79, 2022
<b>Division 5</b>	
c 59 .....	ad No 79, 2022
<b>Division 6</b>	
c 60 .....	ad No 79, 2022
<b>Division 7</b>	
c 61 .....	ad No 79, 2022
<b>Division 8</b>	
c 62 .....	ad No 79, 2022
c 63 .....	ad No 79, 2022
<b>Division 9</b>	
c 64 .....	ad No 79, 2022
<b>Division 10</b>	
c 65 .....	ad No 79, 2022
<b>Division 11</b>	
c 66 .....	ad No 79, 2022
<b>Division 12</b>	
c 67 .....	ad No 79, 2022
<b>Division 13</b>	
c 68 .....	ad No 79, 2022
c 69 .....	ad No 79, 2022
<b>Division 14</b>	
c 70 .....	ad No 79, 2022
c 71 .....	ad No 79, 2022
<b>Division 15</b>	
c 72 .....	ad No 79, 2022
<b>Division 16</b>	
c 73 .....	ad No 79, 2022

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
c 74 .....	ad No 79, 2022
c 75 .....	ad No 79, 2022
c 76 .....	ad No 79, 2022
c 77 .....	ad No 79, 2022
c 78 .....	ad No 79, 2022
c 78A.....	ad No 79, 2022
c 78B.....	ad No 79, 2022
c 78C.....	ad No 79, 2022
<b>Division 17</b>	
c 80A.....	ad No 79, 2022
c 81 .....	ad No 79, 2022
c 82 .....	ad No 79, 2022
<b>Division 17A</b>	
c 82A.....	ad No 79, 2022
<b>Division 18</b>	
c 83 .....	ad No 79, 2022
<b>Division 19</b>	
c 84 .....	ad No 79, 2022
<b>Division 20</b>	
c 85 .....	ad No 79, 2022
<b>Part 14</b>	
Part 14.....	ad No 43, 2023
<b>Division 1</b>	
c 86 .....	ad No 43, 2023
<b>Division 2</b>	
c 87 .....	ad No 43, 2023
<b>Division 3</b>	
c 88 .....	ad No 43, 2023
<b>Division 4</b>	
c 89 .....	ad No 43, 2023
<b>Division 5</b>	

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
c 90 .....	ad No 43, 2023
<b>Part 15</b>	
Part 15 .....	ad No 120, 2023
<b>Division 1</b>	
c 91 .....	ad No 120, 2023
<b>Division 2</b>	
c 92 .....	ad No 120, 2023
<b>Division 3</b>	
c 93 .....	ad No 120, 2023
<b>Division 4</b>	
c 94 .....	ad No 120, 2023
c 95 .....	ad No 120, 2023
c 96 .....	ad No 120, 2023
c 97 .....	ad No 120, 2023
<b>Division 5</b>	
c 98 .....	ad No 120, 2023
<b>Division 6</b>	
c 99 .....	ad No 120, 2023
<b>Schedule 2</b>	
Schedule 2 .....	ad No 175, 2012
c 1 .....	ad No 175, 2012
c 2 .....	ad No 175, 2012
<b>Schedule 3</b>	
Schedule 3 .....	ad No 174, 2012
<b>Part 1</b>	
c 1 .....	ad No 174, 2012
<b>Part 2</b>	
c 2 .....	ad No 174, 2012
c 2A .....	ad No 174, 2012 (as am by No 89, 2013)
c 2B .....	ad No 174, 2012 (as am by No 89, 2013)

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 3</b>	
c 3 .....	ad No 174, 2012
<b>Part 4</b>	
c 4 .....	ad No 174, 2012
c 5 .....	ad No 174, 2012
c 6 .....	ad No 174, 2012
c 7 .....	ad No 174, 2012
c 8 .....	ad No 174, 2012
<b>Part 5</b>	
c 9 .....	ad No 174, 2012
<b>Part 6</b>	
c 10 .....	ad No 174, 2012
c 11 .....	ad No 174, 2012
c 12 .....	ad No 174, 2012
c 13 .....	ad No 174, 2012
<b>Part 7</b>	
c 14 .....	ad No 174, 2012
c 15 .....	ad No 174, 2012
c 16 .....	ad No 174, 2012
<b>Part 8</b>	
c 17 .....	ad No 174, 2012
c 18 .....	ad No 174, 2012
c 19 .....	ad No 174, 2012
c 20 .....	ad No 174, 2012
c 21 .....	ad No 174, 2012
c 22 .....	ad No 174, 2012
c 23 .....	ad No 174, 2012
<b>Part 9</b>	
c 24 .....	ad No 174, 2012
c 25 .....	ad No 174, 2012
c 26 .....	ad No 174, 2012

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
c 27 .....	ad No 174, 2012
c 28 .....	ad No 174, 2012
c 29 .....	ad No 174, 2012
c 30 .....	ad No 174, 2012
<b>Part 10</b>	
c 31 .....	ad No 174, 2012
<b>Part 11</b>	
c 32 .....	ad No 174, 2012 am No 126, 2015
<b>Schedule 4</b>	
Schedule 4.....	ad No 73, 2013
<b>Part 1</b>	
c 1 .....	ad No 73, 2013
<b>Part 2</b>	
c 2 .....	ad No 73, 2013
c 3 .....	ad No 73, 2013
c 4 .....	ad No 73, 2013
c 5 .....	ad No 73, 2013
c 6 .....	ad No 73, 2013
<b>Part 3</b>	
c 7 .....	ad No 73, 2013
<b>Part 4</b>	
c 8 .....	ad No 73, 2013
<b>Part 4A</b>	
c 8A.....	ad No 73, 2013
<b>Part 5</b>	
c 9 .....	ad No 73, 2013
<b>Part 6</b>	
c 10 .....	ad No 73, 2013
<b>Part 7</b>	
c 11 .....	ad No 73, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Schedule 5	
Schedule 5.....	ad No 156, 2015

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