



# **Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024**

**No. 2, 2024**

**An Act to amend the law relating to workplace relations, certain independent contractors, unfair contracts, the road transport industry and registered organisations, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)



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No. 2, 2024

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**An Act to amend the law relating to workplace relations, certain independent contractors, unfair contracts, the road transport industry and registered organisations, and for related purposes**

*[Assented to 26 February 2024]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

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No. 2, 2024

*Fair Work Legislation Amendment (Closing Loopholes No. 2) Act*  
2024

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	26 February 2024
2. Schedule 1, Part 1	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	26 August 2024
4. Schedule 1, Part 3	The day after this Act receives the Royal Assent.	27 February 2024
5. Schedule 1, Part 4	The day after this Act receives the Royal Assent.	27 February 2024
6. Schedule 1, Part 5	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
6A. Schedule 1, Part 5A	The day after this Act receives the Royal Assent.	27 February 2024
9. Schedule 1, Part 7, Division 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 August 2024
10. Schedule 1, Part 8	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	26 August 2024



Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
11. Schedule 1, Part 9	The day after this Act receives the Royal Assent.	27 February 2024
12. Schedule 1, Part 10	1 July 2024.	1 July 2024
13. Schedule 1, Part 11, Division 1	The later of: (a) the day after this Act receives the Royal Assent; and (b) 1 January 2024.	27 February 2024 (paragraph (a) applies)
14. Schedule 1, Part 11, Division 2	The later of: (a) immediately after the commencement of the provisions covered by table item 13; and (b) immediately after the commencement of Division 2 of Part 28 of Schedule 1 to the <i>Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	9 June 2024 (paragraph (b) applies)
15. Schedule 1, Part 11, Division 3	The later of: (a) the same time as the provisions covered by table item 13; and (b) the commencement of items 213 to 222 of Schedule 1 to the <i>Fair Work Legislation Amendment (Closing Loopholes) Act 2023</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	1 January 2025 (paragraph (b) applies)
16. Schedule 1, Part 12	The day after this Act receives the Royal Assent.	27 February 2024
17. Schedule 1, Part 13	The day after this Act receives the Royal Assent.	27 February 2024
21. Schedule 1, Part 15	A single day to be fixed by Proclamation.	26 August 2024

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**Commencement information**

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Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
21A. Schedule 1, Part 15A	The day after this Act receives the Royal Assent.	27 February 2024
22. Schedule 1, Part 16	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 August 2024
22A. Schedule 1, Part 16A	Immediately after the commencement of the provisions covered by table item 22.	26 August 2024
23. Schedule 1, Part 17	The day after this Act receives the Royal Assent.	27 February 2024
24. Schedule 1, Part 18	The day after this Act receives the Royal Assent.	27 February 2024
31. Schedule 5	The later of: (a) the day after this Act receives the Royal Assent; and (b) the day the withdrawal of the Mining and Energy Division of the Construction, Forestry, Maritime, Mining and Energy Union from that Union takes effect, as determined by the Federal Court of Australia under paragraph 109(1)(a) of the <i>Fair Work (Registered Organisations) Act 2009</i> .  However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	27 February 2024 (paragraph (a) applies)
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

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

### **4 Review of operation of amendments made by this Act**

- (1) The Minister must cause a review to be conducted of the operation of the amendments made by this Act, including but not limited to the new jurisdictions relating to regulated workers and the right to disconnect.
- (2) Without limiting the matters that may be considered when conducting the review, the review must:
- (a) consider whether the operation of the amendments made by this Act is appropriate and effective; and
  - (b) identify any unintended consequences of the amendments made by this Act; and
  - (c) consider whether amendments of the *Fair Work Act 2009*, or any other legislation, are necessary to:
    - (i) improve the operation of the amendments made by this Act; or
    - (ii) rectify any unintended consequences identified under paragraph (b).
- (3) The review must commence no later than 2 years after the day on which this Act receives the Royal Assent.
- (4) The persons who conduct the review must give the Minister a written report of the review within 6 months of the commencement of the review.
- (5) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## Schedule 1—Main amendments

### Part 1—Casual employment

#### *Fair Work Act 2009*

##### 1 Section 15A

Repeal the section, substitute:

##### 15A Meaning of *casual employee*

###### *General rule*

- (1) An employee is a ***casual employee*** of an employer only if:
- (a) the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work; and
  - (b) the employee would be entitled to a casual loading or a specific rate of pay for casual employees under the terms of a fair work instrument if the employee were a casual employee, or the employee is entitled to such a loading or rate of pay under the contract of employment.

Note: An employee who commences employment as a casual employee remains a casual employee until the occurrence of a specified event (see subsection (5)).

###### *Indicia that apply for purposes of general rule*

- (2) For the purposes of paragraph (1)(a), whether the employment relationship is characterised by an absence of a firm advance commitment to continuing and indefinite work is to be assessed:
- (a) on the basis of the real substance, practical reality and true nature of the employment relationship; and
  - (b) on the basis that a firm advance commitment can be in the form of the contract of employment or, in addition to the terms of that contract, in the form of a mutual understanding or expectation between the employer and employee not rising to the level of a term of that contract (or to a variation of any such term); and

- (c) having regard to, but not limited to, the following considerations (which may indicate the presence, rather than an absence, of such a commitment):
  - (i) whether there is an inability of the employer to elect to offer, or not offer, work or an inability of the employee to elect to accept or reject work (and whether this occurs in practice);
  - (ii) whether, having regard to the nature of the employer's enterprise, it is reasonably likely that there will be future availability of continuing work in that enterprise of the kind usually performed by the employee;
  - (iii) whether there are full-time employees or part-time employees performing the same kind of work in the employer's enterprise that is usually performed by the employee;
  - (iv) whether there is a regular pattern of work for the employee.

Note: A regular pattern of work does not of itself indicate a firm advance commitment to continuing and indefinite work. An employee who has a regular pattern of work may still be a casual employee if there is no firm advance commitment to continuing and indefinite work.

- (3) To avoid doubt:
  - (a) for the purposes of paragraph (2)(b), a mutual understanding or expectation may be inferred from conduct of the employer and employee after entering into the contract of employment or from how the contract is performed; and
  - (b) the considerations referred to in paragraph (2)(c) must all be considered but no single consideration is determinative and not all considerations necessarily need to be satisfied for an employee to be considered as other than a casual employee; and
  - (c) a pattern of work is regular for the purposes of subparagraph (2)(c)(iv) even if it is not absolutely uniform and includes some fluctuation or variation over time (including for reasonable absences such as for illness, injury or recreation).

*Exceptions to general rule*

- (4) Despite subsection (1), an employee is not a **casual employee** of an employer if:
- (a) the contract of employment includes a term that provides the contract will terminate at the end of an identifiable period (whether or not the contract also includes other terms that provide for circumstances in which it may be terminated before the end of that period); and
  - (b) the employee is a member of the academic staff or teaching staff of a higher education institution; and
  - (c) the employee is covered by one of the following modern awards:
    - (i) the Higher Education Industry-Academic Staff-Award 2020 as in force from time to time;
    - (ii) the Higher Education Industry-General Staff-Award 2020 as in force from time to time; and
  - (d) the employee is not a State public sector employee of a State within the meaning of subsection 30A(1).

Note 1: A modern award covers an employee if the award is expressed to cover the employee, even if the modern award does not apply to the employee because an enterprise agreement applies to the employee in relation to that particular employment (see subsection 57(1) which deals with interaction between modern awards and enterprise agreements).

Note 2: This means an employee on a fixed term contract who is not covered by paragraphs (4)(b) and (c) may be a casual employee or may be other than a casual employee, depending on whether the employee satisfies the requirements of subsections (1) to (3).

*Employees engaged as casual employees remain so until the occurrence of a specified event*

- (5) A person who commences employment as a casual employee within the meaning of subsections (1) to (4) remains a **casual employee** of the employer until:
- (a) the employee's employment status is changed to full-time employment or part-time employment under Division 4A of Part 2-2; or
  - (b) the employee's employment status is changed by order of the FWC under section 66MA or 739; or

- (c) the employee's employment status is changed to full-time employment or part-time employment under the terms of a fair work instrument that applies to the employee; or
- (d) the employee accepts an alternative offer of employment (other than as a casual employee) by the employer and commences work on that basis.

## **2 Paragraph 61(2)(ba)**

Repeal the paragraph, substitute:

- (ba) casual employment (Division 4A);

## **3 Subsection 65(2A)**

Omit "converted under Division 4A of Part 2-2", substitute "changed under Division 4A of Part 2-2".

## **4 Division 4A of Part 2-2 (heading)**

Repeal the heading, substitute:

### **Division 4A—Casual employment**

## **5 After section 66A**

Insert:

### **66AAA Object of this Division**

The object of this Division is to establish a framework for dealing with changes to casual employment status that:

- (a) is quick, flexible and informal; and
- (b) addresses the needs of employers and employees; and
- (c) provides for the resolution of disputes to support employee choice about employment status.

## **6 After Subdivision A of Division 4A of Part 2-2**

Insert:

## **Subdivision B—Employee choice about casual employment**

### **66AAB Employee notification**

A casual employee may give an employer a written notification under this section if:

- (a) having regard to subsections 15A(1) to (4) and the employee's current employment relationship with the employer, the employee believes that the employee no longer meets the requirements of those subsections; and
- (b) the employee does not have a dispute with the employer relating to the operation of Division 4A of Part 2-2 being dealt with under section 66M (including by way of arbitration under section 66MA) or under section 739; and
- (c) if the employer:
  - (i) is a small business employer at the time the notification is given—the employee has been employed by the employer for a period of at least 12 months beginning the day the employment started; or
  - (ii) is not a small business employer at the time the notification is given—the employee has been employed by the employer for a period of at least 6 months beginning the day the employment started; and
- (d) in the period of 6 months before the day the notification is given, the employee has not:
  - (i) received a response from the employer under section 66AAC not accepting a previous notification made under this section; or
  - (v) had a dispute with the employer relating to the operation of Division 4A of Part 2-2 resolved under section 66M (including by way of arbitration under section 66MA) or under section 739.

**Note:** This section does not prevent an employee changing to full-time employment or part-time employment other than under this Division (see paragraphs 15A(5)(c) and (d)).



## **66AAC Employer response**

### *Timing of response*

- (1) An employer must give an employee a written response to a notification given under section 66AAB within 21 days after the notification is given to the employer.

### *Information that must be included in response*

- (2) The response must be in writing and include the following:
  - (a) a statement that the employer:
    - (i) accepts the notification; or
    - (ii) does not accept the notification on one or more grounds referred to in subsection (4); and
  - (b) if the employer accepts the notification—the following information:
    - (i) whether the employee is changing to full-time employment or part-time employment;
    - (ii) the employee's hours of work after the change takes effect;
    - (iii) the day the employee's change to full-time employment or part-time employment takes effect;
  - (c) if the employer does not accept the notification—reasons for the employer's decision.

### *Consulting with employee*

- (3) Before giving a response under subsection (1), the employer must consult with the employee about the notification and must, if the employer is accepting the notification, discuss the matters the employer intends to specify for the purposes of subparagraphs (2)(b)(i) to (iii).

### *Grounds for employer to not accept notification*

- (4) For the purposes of subparagraph (2)(a)(ii), the employer may not accept the notification on any of the following grounds:
  - (a) having regard to subsections 15A(1) to (4) and the employee's current employment relationship with the

employer, the employee still meets the requirements of those subsections;

- (b) there are fair and reasonable operational grounds for not accepting the notification;
- (c) accepting the notification would result in the employer not complying with a recruitment or selection process required by or under a law of the Commonwealth or a State or a Territory.

Note 2: In relation to paragraph (4)(c), see (for example) the APS Employment Principle at paragraph 10A(1)(c) of the *Public Service Act 1999* (which deals with decisions based on merit) and any directions made under subsection 11A(2) of that Act in relation to that principle.

- (5) For the purposes of paragraph (4)(b), fair and reasonable operational grounds for not accepting the notification include the following:
  - (a) substantial changes would be required to the way in which work in the employer's enterprise is organised;
  - (b) there would be significant impacts on the operation of the employer's enterprise;
  - (c) substantial changes to the employee's terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee (as the case may be).

Note: For the purposes of paragraphs (5)(a) and (c), substantial changes include changes that significantly affect the way an employee would need to work.

## **66AAD Effect of employer acceptance of employee notification**

- (1) If an employer responds under section 66AAC that the employer accepts an employee's notification given under section 66AAB, the employee is taken to be a full-time employee or part-time employee (as the case may be) beginning on the day specified in the response.
- (2) The day specified in the response for the purposes of subsection (1) must be the first day of the employee's first full pay period that

starts after the day the employer response is given, unless the employer and employee agree to another day.

## **7 Subdivision B of Division 4A of Part 2-2**

Repeal the Subdivision.

## **10 Subdivision C of Division 4A of Part 2-2 (heading)**

Repeal the heading.

## **11 Sections 66F to 66J**

Repeal the sections.

## **12 Section 66K**

Repeal the section, substitute:

### **66K Effect of change**

To avoid doubt, an employee is taken, on and after the day specified in a notice for the purposes of subparagraph 66AAC(2)(b)(iii), to be a full-time employee or part-time employee of the employer for the purposes of the following:

- (a) this Act and any other law of the Commonwealth;
- (b) a law of a State or Territory;
- (c) any fair work instrument that applies to the employee;
- (d) the employee's contract of employment.

## **13 Subsection 66L(1)**

Repeal the subsection (not including the note), substitute:

- (1) An employer must not do any of the following in order to avoid any right or obligation under this Division:
  - (a) reduce or vary an employee's hours of work;
  - (b) change the employee's pattern of work;
  - (c) terminate an employee's employment.

## **14 Subsection 66L(2)**

Repeal the subsection, substitute:

- (2) Nothing in this Division:
- (a) requires an employee to change to full-time employment or part-time employment under this Division; or
  - (b) permits an employer to require an employee to change to full-time employment or part-time employment under this Division; or
  - (c) requires an employer to increase the hours of work of an employee who gives a notification to change to full-time employment or part-time employment under this Division.
- (3) To avoid doubt, each of the following is a workplace right within the meaning of Part 3-1:
- (a) giving an employer a notification under section 66AAB;
  - (b) receiving a response from an employer in accordance with section 66AAC;
  - (c) being taken to be a full-time employee or part-time employee under section 66AAD;
  - (d) receiving an offer or notice in accordance with sections 66B and 66C;
  - (e) accepting an offer and receiving a notice under section 66E;
  - (f) participating in a dispute about the operation of this Division in accordance with sections 66M and 66MA.

Note: The general protections provisions in Part 3-1 prohibit adverse action, coercion, undue influence or pressure, and misrepresentations because of a workplace right of an employee.

## **15 Section 66M**

Repeal the section, substitute:

### **66M Disputes about the operation of this Division**

*Application of this section to disputes about employee choice*

- (1) This section applies to a dispute between an employer and an employee about the operation of Subdivision B of this Division.

*Resolving disputes*

- (4) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level, by discussions between the parties.

Note 1: Modern awards and enterprise agreements must include a term that provides a procedure for settling disputes in relation to the National Employment Standards (see paragraph 146(b) and subsection 186(6)).

Note 2: Subsection 55(4) permits inclusion of terms that are ancillary or incidental to, or that supplement, the National Employment Standards. However, a term of a modern award or an enterprise agreement has no effect to the extent it contravenes section 55 (see section 56).

*FWC may deal with disputes*

- (5) If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the dispute to the FWC.
- (6) If a dispute is referred under subsection (5):
- (a) the FWC must first deal with the dispute by means other than arbitration, unless there are exceptional circumstances; and
  - (b) the FWC may deal with the dispute by arbitration in accordance with section 66MA.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).

*Representatives*

- (10) The employer or employee may appoint a person, or an employer organisation or employee organisation, that is entitled to represent the industrial interests of the employer or employee to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
  - (b) the FWC dealing with the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

*Procedural rules*

- (11) Without limiting section 609, the procedural rules may provide, in relation to a dispute between an employer and employee that has been referred to the FWC under subsection (5) of this section, for the joinder of the following as parties to the dispute:
- (a) any other employee that has a dispute to which this section applies with the same employer;
  - (b) any employee organisation that is entitled to represent the industrial interests of such an employee.

**66MA Arbitration**

*FWC may make any orders it considers appropriate*

- (1) For the purposes of paragraph 66M(6)(b), the FWC may deal with the dispute by arbitration, including by making any orders it considers appropriate, including (but not limited to) any order referred to in subsection (4) of this section.
- (2) However, the FWC must not make an order under this section unless the FWC considers that it would be fair and reasonable to make the order.

Note: The FWC must also take into account the object of this Act and the object of this Division (see paragraph 578(a)).

- (3) The FWC must not make an order under subsection (1) that would be inconsistent with:
- (a) a provision of this Act; or
  - (b) a term of a fair work instrument (other than an order made under that subsection) that, immediately before the order is made, applies to the employer and employee.

*Orders relating to employee choice*

- (4) For the purposes of paragraph (1)(a), the orders are the following:
- (a) that the employee continue to be treated as a casual employee;
  - (b) that the employee be treated as a full-time employee or part-time employee (as the case may be) from the first day of the employee's first full pay period that starts after the day

the order is made, or such later day that the FWC considers appropriate.

- (5) In considering whether to make, and the terms of, an order under subsection (1) (including an order referred to in subsection (4)) in relation to a dispute about the operation of Subdivision B of this Division (which deals with employee choice about casual employment), the FWC must:
- (a) have regard to whether substantial changes to the employee's terms and conditions would be reasonably necessary to ensure the employer does not contravene a term of a fair work instrument that would apply to the employee as a full-time employee or part-time employee; and
  - (b) disregard conduct of the employer and employee that occurred after the employee gave the notification under section 66AAB (which deals with employee choice notifications) to the employer.

*Contravening an order under subsection (1)*

- (8) A person must not contravene a term of an order made under subsection (1).

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

**16 Subsection 67(1A)**

Omit “converted under Division 4A of Part 2-2”, substitute “changed under Division 4A of Part 2-2”.

**17 Subsection 125A(2)**

Omit “and offers and requests for casual conversion”, substitute “and how this can be changed”.

**18 After paragraph 125A(2)(a)**

Insert:

- (aa) an employee who has completed 6 months of employment (12 months if a small business employer) can notify the employer if, having regard to the employee's current employment relationship with the employer, the employee believes that the employee no longer meets the requirements of subsections 15A(1) to (4);

- (ab) the grounds upon which an employer may not accept a notification given by an employee;

### **18A Paragraphs 125A(2)(b) to (da)**

Repeal the paragraphs.

### **19 Section 125B**

Repeal the section, substitute:

#### **125B Giving employees the Casual Employment Information Statement**

- (1) An employer must give a casual employee the Casual Employment Information Statement:
  - (a) before, or as soon as practicable after, the employee starts employment as a casual employee with the employer; and
  - (b) as soon as practicable after the employee has been employed by the employer for a period of 6 months beginning the day the employment started; and
  - (c) as soon as practicable after the following:
    - (i) the employee has been employed by the employer for a period of 12 months beginning the day the employment started;
    - (ii) the end of any subsequent period of 12 months for which the employee is employed by the employer.
- (2) However, paragraph (1)(b) and subparagraph (1)(c)(ii) do not apply if at the time the employer has employed the employee for the period referred to in that paragraph or subparagraph, the employer is a small business employer.
- (3) This section does not, apart from the operation of paragraph (1)(b), require the employer to give the employee the Statement more than once in any 12 months.

Note: This is relevant if the employer employs the employee more than once in the 12 months.

### **19A Paragraph 333E(1)(c)**

Repeal the paragraph, substitute:

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- (c) the employee is not a casual employee of the employer for whom the period referred to in paragraph (b) is identified by reference to the completion of the shift of work to which the contract relates; and

**19A After paragraph 341(2)(i)**

Insert:

- (ia) giving a notification, or receiving an offer or notice, under Division 4A of Part 2-2 (which deals with casual employment);

**20 Before section 357**

Insert:

**Subdivision A—Independent contracting**

**21 At the end of Division 6 of Part 3-1**

Add:

**Subdivision B—Casual employment**

**359B Dismissing to engage as casual employee**

An employer must not dismiss, or threaten to dismiss, an individual who:

- (a) is an employee of the employer; and
  - (b) performs particular work for the employer;
- in order to engage the individual as a casual employee to perform the same, or substantially the same, work.

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

**359C Misrepresentation to engage as casual employee**

A person (the *employer*) that employs, or has at any time employed, an individual to perform particular work other than as a casual employee must not make a statement that:

- (a) the employer knows is false; and
- (b) is made in order to persuade or influence the individual to enter into a contract for casual employment under which the

individual will perform the same, or substantially the same, work for the employer.

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

**22 Subsection 539(2) (after table item 5AA)**

Insert:

5AAA	66MA(8)	(a) an employee; (b) an employee organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	300 penalty units
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**23 Subsection 539(2) (before table item 12)**

Insert:

11B	359B 359C	(a) a person affected by the contravention; (b) an industrial association; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2)	300 penalty units
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**23A Subparagraphs 548(1B)(a)(i) to (iv)**

Repeal the subparagraphs.

**23B Subsection 548(1B) (note)**

Repeal the note.

**24 After subsection 548(1B)**

Insert:

- (1C) Proceedings are also to be dealt with as small claims proceedings under this section if:
- (a) a person applies for an order (other than a pecuniary penalty order) under Division 2 from a magistrates court or the

Federal Circuit and Family Court of Australia (Division 2) in connection with a dispute; and

- (b) the dispute relates to whether a person was a casual employee of an employer when the person commenced employment with that employer; and
- (c) the person applying for the order indicates, in a manner prescribed by the regulations or by the rules of the court, that the person wants the small claims procedure to apply to the proceedings.

Note: Orders that a court may make under Division 2 in relation to small claims proceedings under this subsection may include a declaration that the employee was a casual employee, a part-time employee or a full-time employee when the employee commenced employment with the employer.

## **25 After paragraph 675(2)(ab)**

Insert:

- (ac) an order under subsection 66MA(1) (which deals with casual employment);

## **Part 3—Enabling multiple franchisees to access the single-enterprise stream**

### ***Fair Work Act 2009***

#### **29 Subsection 172(3)**

After “related employers”, insert “, or that are all related employers mentioned in subsection (3A),”.

#### **30 After subsection 172(3)**

Insert:

- (3A) Two or more employers that are all related employers under paragraph (5A)(c) (whether or not those employers are also related employers under another paragraph of subsection (5A)) may make a multi-enterprise agreement under subsection (3).

#### **31 At the end of subsection 172(5A)**

Add:

- ; or (c) the employers carry on similar business activities under the same franchise and are:
- (i) franchisees of the same franchisor; or
  - (ii) related bodies corporate of the same franchisor; or
  - (iii) any combination of the above.

## **Part 4—Transitioning from multi-enterprise agreements**

### ***Fair Work Act 2009***

#### **32 Section 12 (definition of *voting request order*)**

Omit “and (2)”, substitute “, (2) and (4)”.

#### **33 Paragraph 58(2)(c)**

Repeal the paragraph, substitute:

(c) subsections (3), (4) and (5) do not apply;

#### **34 At the end of section 58**

Add:

*Special rule—single-enterprise agreement replaces single interest employer agreement*

(4) If:

(a) a single interest employer agreement applies to an employee in relation to particular employment; and

(b) a single-enterprise agreement that covers the employee in relation to the same employment comes into operation;

the single interest employer agreement ceases to apply to the employee when the single-enterprise agreement comes into operation, and can never so apply again.

*Special rule—single-enterprise agreement replaces supported bargaining agreement*

(5) If:

(a) a supported bargaining agreement applies to an employee in relation to particular employment; and

(b) a single-enterprise agreement that covers the employee in relation to the same employment comes into operation;

the supported bargaining agreement ceases to apply to the employee when the single-enterprise agreement comes into operation, and can never so apply again.

**35 At the end of paragraph 173(2)(d)**

Add “or”.

**36 Section 180A (at the end of the heading)**

Add “—proposed multi-enterprise agreements”.

**37 After section 180A**

Insert:

**180B Agreement of bargaining representatives that are employee organisations—certain proposed single-enterprise agreements**

- (1) This section applies to a proposed single-enterprise agreement (the *new agreement*) if:
  - (a) a single interest employer agreement or a supported bargaining agreement (each of which is an *old agreement*) applies to an employee in relation to particular employment; and
  - (b) the old agreement has not passed its nominal expiry date; and
  - (c) when the new agreement comes into operation, the old agreement will cease to apply to the employee in relation to that employment.
- (2) An employer must not request under subsection 181(1) that employees approve the new agreement by voting for it unless:
  - (a) each employee organisation to which the old agreement applies has provided the employer with written agreement to the making of the request; or
  - (b) a voting request order permits the employer to make the request.

Note: Voting request orders can be made where failure to provide written agreement to the making of a request is unreasonable in the circumstances (see section 240B).

**38 Subsection 188(2A)**

After “to which section 180A”, insert “or 180B”.

### **39 Subsection 188(2A)**

After “with section 180A”, insert “or 180B (as the case requires)”.

### **40 Paragraph 188(5)(ab)**

Omit “(which deals)”, substitute “or 180B (which deal)”.

### **41 After paragraph 191A(3)(b)**

Insert:

- (ba) if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—those employees;

### **42 Subsection 193(1)**

Repeal the subsection, substitute:

*When a non-greenfields agreement passes the better off overall test*

- (1) An enterprise agreement that is not a greenfields agreement ***passes the better off overall test*** under this section if the FWC is satisfied, as at the test time, that:
  - (a) each award covered employee, and each reasonably foreseeable employee, for the agreement would be better off overall if the agreement applied to the employee than if the relevant modern award applied to the employee; and
  - (b) if the agreement is a single-enterprise agreement that covers one or more employees (each of whom is an ***old agreement employee***) to whom a supported bargaining agreement or a single interest employer agreement applies—each old agreement employee would be better off overall if the single-enterprise agreement applied to the employee than if the supported bargaining agreement or single interest employer agreement (as the case requires) applied to the employee.

Note 1: ***Reasonably foreseeable employee*** is defined in subsection (5).

Note 2: Section 193A sets out rules for applying the better off overall test, including requiring the FWC to only have regard to patterns or kinds of work, or types of employment, that are reasonably foreseeable at the test time (see subsection 193A(6)).

- (1A) If an employee is, at the test time, both an old agreement employee and an award covered employee, the FWC must undertake an assessment against only paragraph (1)(b) for that employee.

#### **43 After subsection 193(2)**

Insert:

- (2A) If, under the flexibility term in the supported bargaining agreement or single interest employer agreement, an individual flexibility arrangement has been agreed to by an old agreement employee and his or her employer, the FWC must disregard the individual flexibility arrangement for the purposes of determining whether the single-enterprise agreement passes the better off overall test.

#### **44 Paragraphs 193A(2)(a) and (b)**

After “modern award”, insert “, supported bargaining agreement or single interest employer agreement (as the case requires)”.

#### **45 Paragraph 193A(3)(b)**

Repeal the paragraph, substitute:

- (b) if the agreement is not a greenfields agreement:
  - (i) the award covered employees for the agreement; and
  - (ii) if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—those employees;

#### **46 At the end of subsection 193A(4)**

Add:

- ; (c) if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—the bargaining representative or bargaining representatives of those employees (other than a bargaining representative that is not an employee organisation).

#### **47 Paragraph 193A(6A)(b)**

Repeal the paragraph, substitute:

- (b) if the agreement is not a greenfields agreement:
-



- (i) the award covered employees for the agreement; and
- (ii) if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—those employees;

**48 Subsection 193A(7)**

After “modern award”, insert “, supported bargaining agreement or single interest employer agreement (as the case requires)”.

**49 After paragraph 211(4A)(ac)**

Insert:

- (ad) paragraph (4)(c) were omitted; and

**50 Paragraph 227A(2)(a)**

Repeal the paragraph, substitute:

- (a) before approving the agreement the FWC had regard, under subsection 193A(6), to patterns or kinds of work, or types of employment engaged in, or to be engaged in, by:
  - (i) the award covered employees for the agreement; and
  - (ii) if the agreement is a single-enterprise agreement that covers one or more employees to whom a supported bargaining agreement or a single interest employer agreement applies—those employees; and

**51 Paragraph 227A(2)(b)**

After “subsection (4)”, insert “or (5)”.

**52 At the end of section 227A**

Add:

- (5) An employee is covered by this subsection if, on the assumption that the test time mentioned in section 193 were the time the application is made under subsection (1) of this section, the employee would be an employee referred to in subparagraph (2)(a)(ii).

**53 After paragraph 227B(2)(a)**

Insert:

- (aa) in the case of an agreement of a kind covered by paragraph 193(1)(b)—the condition that a supported bargaining agreement or a single interest employer agreement applies to the employees is satisfied in relation to an employee covered by subsection 227A(5); and

**54 After paragraph 227B(2)(f)**

Insert:

- (fa) paragraph 193A(4)(c) were omitted; and

**55 After subsection 236(1A)**

Insert:

- (1B) Despite subsection (1), a bargaining representative of an employee may not apply to the FWC for a determination if:
  - (a) a single interest employer agreement or a supported bargaining agreement applies to the employee; and
  - (b) the agreement has not passed its nominal expiry date.

**56 After subsection 238(1)**

Insert:

- (2) Despite subsection (1), a bargaining representative may not apply to the FWC for a scope order in relation to a proposed single-enterprise agreement if:
  - (a) a single interest employer agreement or a supported bargaining agreement applies to one or more employees who will be covered by the proposed single-enterprise agreement; and
  - (b) the single interest employer agreement or supported bargaining agreement has not passed its nominal expiry date.

**57 At the end of section 240A**

Add:

*Certain proposed single-enterprise agreements*

- (4) A bargaining representative for a proposed single-enterprise agreement (the ***new agreement***) may apply to the FWC for an order (also a ***voting request order***) permitting an employer to make

a request under subsection 181(1) that employees approve the new agreement by voting for it if all of the following apply:

- (a) a single interest employer agreement or a supported bargaining agreement (each of which is an *old agreement*) applies to one or more employees who will be covered by the new agreement;
- (b) the old agreement has not passed its nominal expiry date;
- (c) when the new agreement comes into operation, the old agreement will cease to apply to the employees;
- (d) it is after the notification time for the new agreement;
- (e) each employee organisation to which the old agreement applies has been asked to provide the employer with written agreement to the making of the request;
- (f) one or more of the employee organisations has failed to provide the written agreement.

**58 Section 240B**

Omit “or (2)”, substitute “, (2) or (4)”.

**59 Section 245**

Before “The”, insert “(1)”.

**60 At the end of section 245**

Add:

- (2) The FWC is taken to have varied a supported bargaining authorisation to remove an employee when the employee is covered by an enterprise agreement, or a workplace determination, that is in operation.

## Part 5—Model terms

### *Fair Work Act 2009*

#### 61 Subsection 202(5)

Repeal the subsection, substitute:

- (5) The FWC must determine the ***model flexibility term*** for enterprise agreements.
  - (6) In determining the model flexibility term, the FWC must:
    - (a) ensure that the model term is consistent with the requirements set out in subsection (1); and
    - (b) take into account the following matters:
      - (i) whether the model term is broadly consistent with comparable terms in modern awards;
      - (ii) best practice workplace relations as determined by the FWC;
      - (iii) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the FWC for consideration in determining the model term;
      - (iv) the object of this Act (see section 3), and the objects of this Part (see section 171);
      - (v) any other matters the FWC considers relevant.
- Note 1: The FWC must be constituted by a Full Bench to make the model flexibility term (see subsection 616(4A)).
- Note 2: For the variation of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (7) A determination under subsection (5) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

#### 62 Subsection 205(3)

Repeal the subsection, substitute:

- (3) The FWC must determine the ***model consultation term*** for enterprise agreements.
  - (4) In determining the model consultation term, the FWC must:
-

- (a) ensure that the model term is consistent with the requirements set out in subsections (1) and (1A); and
- (b) take into account the following matters:
  - (i) whether the model term is broadly consistent with comparable terms in modern awards;
  - (ii) best practice workplace relations as determined by the FWC;
  - (iii) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the FWC for consideration in determining the model term;
  - (iv) whether the model term would, or would be likely to have, the effect referred to in paragraph 195A(1)(a), (b), (c) or (d) (objectionable emergency management terms);
  - (v) the object of this Act (see section 3), and the objects of this Part (see section 171);
  - (vi) any other matters the FWC considers relevant.

Note 1: The FWC must be constituted by a Full Bench to make the model consultation term (see subsection 616(4A)).

Note 2: For the variation of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (5) To avoid doubt, subsections (1) and (1A) do not limit the matters the model consultation term may deal with.
- (6) A determination under subsection (3) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

### **63 After subsection 616(4)**

Insert:

#### *Model term determinations*

- (4A) A determination of any of the following model terms must be made by a Full Bench:
  - (a) a model flexibility term for enterprise agreements, under subsection 202(5);
  - (b) a model consultation term for enterprise agreements, under subsection 205(3);

- (c) a model term for enterprise agreements about dealing with disputes, under subsection 737(1);
- (d) a model term for copied State instruments about dealing with disputes, under subsection 768BK(1A).

## 64 Section 737

Repeal the section, substitute:

### 737 Model term about dealing with disputes

- (1) The FWC must determine a model term for dealing with disputes for enterprise agreements.
- (2) In determining the model term, the FWC must:
  - (a) ensure that the model term is consistent with the requirements set out in subsection 186(6); and
  - (b) take into account the following matters:
    - (i) whether the model term is broadly consistent with comparable terms in modern awards;
    - (ii) best practice workplace relations as determined by the FWC;
    - (iii) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the FWC for consideration in determining the model term;
    - (iv) the operation of subsections 739(3), (4), (5) and (6) and 740(3) and (4);
    - (v) the object of this Act (see section 3);
    - (vi) any other matters the FWC considers relevant.

Note 1: The FWC must be constituted by a Full Bench to make the model term dealing with disputes (see subsection 616(4A)).

Note 2: For the variation of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A determination under subsection (1) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

## 65 Section 768BK (after the heading)

Insert:

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*Model term required*

**66 Subsection 768BK(1)**

Omit “prescribed by the regulations”, substitute “determined under subsection (1A)”.

**67 After subsection 768BK(1)**

Insert:

*Model term determined by FWC*

(1A) The FWC must determine a model term for the purposes of subsection (1).

**68 Subsection 768BK(2)**

Omit “subsection (1), the model term prescribed”, substitute “subsection (1A), the model term determined”.

**69 Subsection 768BK(2)**

Omit “prescribed” (last occurring), substitute “determined”.

**70 At the end of section 768BK**

Add:

- (3) In determining the model term, the FWC must take into account the following matters:
- (a) whether the model term is broadly consistent with comparable terms in modern awards;
  - (b) best practice workplace relations as determined by the FWC;
  - (c) whether all persons and bodies have had a reasonable opportunity to be heard and make submissions to the FWC for consideration in determining the model term;
  - (d) the operation of subsections 739(3), (4), (5) and (6) and 740(3) and (4);
  - (e) the object of this Act (see section 3);
  - (f) any other matters the FWC considers relevant.

Note 1: The FWC must be constituted by a Full Bench to make the model term for settling disputes (see subsection 616(4A)).

**Schedule 1** Main amendments

**Part 5** Model terms

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Note 2: For the variation of a determination, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (4) A determination under subsection (1A) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.



## **Part 5A—Intractable bargaining workplace determinations**

### ***Fair Work Act 2009***

#### **70A At the end of subsection 270(3)**

Add:

Note: Any such terms must comply with section 270A.

#### **70B After section 270**

Insert:

#### **270A Terms dealing with matters at issue**

- (1) This section applies if, immediately before the determination is made, an enterprise agreement applies to one or more employees who will be covered by the determination.
- (2) A term that is included in the determination to comply with subsection 270(3), and that deals with a particular matter, must be not less favourable to each of those employees, and any employee organisation that was a bargaining representative of any of those employees, than a term of the enterprise agreement that deals with the matter.
- (3) If a term to be included in the determination is not less favourable to a class of employees to which a particular employee belongs, the FWC is entitled to assume, in the absence of evidence to the contrary, that the term is not less favourable to the employee.
- (4) Subsection (2) does not apply to a term that provides for a wage increase.

#### **70C Subsection 274(3)**

Repeal the subsection, substitute:

*Agreed term for an intractable bargaining workplace determination*

- (3) An **agreed term** for an intractable bargaining workplace determination is:
- (a) a term that the bargaining representatives for the proposed enterprise agreement concerned had agreed, at the time the application for the intractable bargaining declaration concerned was made, should be included in the agreement; and
  - (b) any other term, in addition to a term mentioned in paragraph (a), that the bargaining representatives had agreed, at the time the declaration was made, should be included in the agreement; and
  - (c) if there is a post-declaration negotiating period for the declaration—any other term, in addition to a term mentioned in paragraph (a) or (b), that the bargaining representatives had agreed, at the end of the period, should be included in the agreement.

Note: The determination must include an agreed term (see subsection 270(2)).

## **Part 7—Workplace delegates' rights**

### **Division 2—Amendments commencing 1 July 2024**

#### ***Fair Work Act 2009***

#### **86 Section 12**

Insert:

*associated regulated business* for a regulated worker: see subsection 350B(5).

#### **87 After section 350A**

Insert:

#### **350B Protection for workplace delegates—regulated workers**

- (1) The associated regulated business for a workplace delegate who is a regulated worker must not:
  - (a) unreasonably fail or refuse to deal with the workplace delegate; or
  - (b) knowingly or recklessly make a false or misleading representation to the workplace delegate; or
  - (c) unreasonably hinder, obstruct or prevent the exercise of the rights of the workplace delegate under this Act or a fair work instrument.

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

- (2) To avoid doubt, subsection (1) applies only in relation to the workplace delegate acting in that capacity.
- (3) The burden of proving that the conduct of the associated regulated business is not unreasonable as mentioned in subsection (1) lies on the associated regulated business.

*Exception—conduct required by law*

- (4) Subsection (1) does not apply in relation to conduct required by or under a law of the Commonwealth or a State or a Territory.

*Meaning of associated regulated business*

- (5) The *associated regulated business* for a workplace delegate who is a regulated worker is the regulated business that:
- (a) engaged the workplace delegate under a services contract; or
  - (b) arranged for, or facilitated entry into, the services contract under which the workplace delegate performs work.

**88 Subsection 350C(1)**

Omit “for members of the organisation who work in a particular enterprise”, substitute:

for either or both of the following:

- (a) members of the organisation who work in a particular enterprise;
- (b) members of the organisation who perform work for, or that has been arranged or facilitated by, a particular regulated business.

**89 Subsection 350C(2)**

Omit “their employer”, substitute “the employer or regulated business concerned”.

**90 Subparagraphs 350C(3)(b)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) in relation to employees—reasonable access to the workplace and workplace facilities where the enterprise concerned is being carried on; and
- (ii) in relation to regulated workers—reasonable access to the workplace facilities provided by the regulated business concerned; and
- (iii) if the workplace delegate is an employee—reasonable access to paid time, during normal working hours, for the purposes of related training, unless the workplace delegate is employed by a small business employer.

**91 Subsection 350C(4)**

Repeal the subsection, substitute:

- (4) The employer of, or associated regulated business for, the workplace delegate is taken to have afforded the workplace delegate the rights mentioned in subsection (3) if the employer or regulated business has complied with the delegates' rights term in the fair work instrument that applies to the workplace delegate.

**92 Paragraphs 350C(5)(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) the size and nature of the enterprise or regulated business;
- (b) the resources of the employer concerned or the regulated business;
- (c) the facilities available at the enterprise or provided by the regulated business.

**93 Subsection 539(2) (table item 11, column 1)**

After "350A(1)", insert "350B(1)".

## Part 8—Right to disconnect

### *Fair Work Act 2009*

#### 94 Section 12

Insert:

***right to disconnect term*** means a term in a modern award that provides for the exercise of an employee's rights set out in subsections 333M(1) and (2).

Note: Section 333M deals with the right to disconnect.

#### 95 At the end of Subdivision C of Division 3 of Part 2-3

Add:

#### 149F Right to disconnect

A modern award must include a right to disconnect term.

Note: ***Right to disconnect term*** is defined in section 12.

#### 96 At the end of section 321

Add:

Division 6 is about generally allowing an employee to refuse contact or attempted contact from their employer (or from a third party where the contact or attempted contact relates to their work) outside the employee's working hours. The FWC may deal with disputes between an employer and an employee about the right to disconnect, including by making orders to stop an employee from refusing contact or to stop an employer from taking certain actions.

#### 97 At the end of Part 2-9

Add:

## **Division 6—Employee right to disconnect**

### **Subdivision A—Employee right to disconnect**

#### **333M Employee right to disconnect**

- (1) An employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable.
- (2) An employee may refuse to monitor, read or respond to contact, or attempted contact, from a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours unless the refusal is unreasonable.
- (3) Without limiting the matters that may be taken into account in determining whether a refusal is unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:
  - (a) the reason for the contact or attempted contact;
  - (b) how the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
  - (c) the extent to which the employee is compensated:
    - (i) to remain available to perform work during the period in which the contact or attempted contact is made; or
    - (ii) for working additional hours outside of the employee's ordinary hours of work;
  - (d) the nature of the employee's role and the employee's level of responsibility;
  - (e) the employee's personal circumstances (including family or caring responsibilities).

Note: For the purposes of paragraph (c), the extent to which an employee is compensated includes any non-monetary compensation.

- (4) For the avoidance of doubt, each of the rights in subsections (1) and (2) is a workplace right within the meaning of Part 3-1.

Note: The general protections provisions in Part 3-1 also prohibit the taking of adverse action by an employer against an employee because of a workplace right of the employee under this Division.

- (5) For the avoidance of doubt, an employee's refusal to monitor, read or respond to contact, or attempted contact, from their employer, or from a third party if the contact or attempted contact relates to their work, will be unreasonable if the contact or attempted contact is required under a law of the Commonwealth, a State or a Territory.
- (6) For the avoidance of doubt, if:
  - (a) an employee is covered by an enterprise agreement; and
  - (b) the enterprise agreement includes a right to disconnect term that is more favourable to the employee than the rights in subsections (1) and (2);the right to disconnect term in the agreement continues to apply to the employee.

### **Subdivision B—Disputes about the employee right to disconnect**

#### **333N Disputes about the employee right to disconnect**

- (1) This section applies if:
  - (a) there is a dispute between an employer and an employee because the employee has refused to monitor, read or respond to contact or attempted contact under subsection 333M(1) or (2) and:
    - (i) the employer reasonably believes that the refusal is unreasonable; or
    - (ii) the employer has asserted that the refusal is unreasonable and the employee reasonably believes the refusal is not unreasonable; or
  - (b) there is another dispute between the employer and the employee about the operation of section 333M.

#### *Workplace level discussions*

- (2) In the first instance, the parties to the dispute must attempt to resolve the dispute at the workplace level by discussions between the parties.



*Application to FWC to deal with dispute*

- (3) If discussions at the workplace level do not resolve the dispute, a party to the dispute may apply for the FWC to do either or both of the following:
- (a) make an order under section 333P (orders to stop refusing contact or to stop taking certain actions);
  - (b) otherwise deal with the dispute.

*Representatives*

- (4) The employer or employee to the dispute may appoint a person or industrial association to provide the employer or employee (as the case may be) with support or representation for the purposes of:
- (a) resolving the dispute; or
  - (b) applying to the FWC to make an order under section 333P or otherwise deal with the dispute; or
  - (c) the FWC dealing with the dispute.

Note: A person may be represented by a lawyer or paid agent in a matter before the FWC only with the permission of the FWC (see section 596).

**Subdivision C—Orders to stop refusing contact or to stop taking certain actions**

**333P Orders to stop refusing contact or to stop taking certain actions**

- (1) If an application made under subsection 333N(3) includes an application to make an order under this section and the FWC is satisfied that either or both of the following apply:
- (a) an employee has unreasonably refused to monitor, read or respond to contact or attempted contact for the purposes of subsection 333M(1) or (2) and there is a risk the employee will continue to do so;
  - (b) an employee's refusal to monitor, read or respond to contact or attempted contact for the purposes of subsection 333M(1) or (2) is not unreasonable and there is a risk that the employer will:

- (i) take disciplinary or other action against the employee because of the employer's belief that the refusal is unreasonable; or
  - (ii) continue to require the employee to monitor, read or respond to contact or attempted contact despite the employee's refusal to do so;then the FWC may make an order under subsection (2).
- (2) The FWC may make any order it considers appropriate (other than an order requiring the payment of a pecuniary amount):
  - (a) if the FWC is satisfied that the circumstance set out in paragraph (1)(a) applies—to prevent the employee from continuing to unreasonably refuse to monitor, read or respond to contact or attempted contact; or
  - (b) if the FWC is satisfied that the circumstance set out in subparagraph (1)(b)(i) applies—to prevent the employer from taking the action; or
  - (c) if the FWC is satisfied that the circumstance set out in subparagraph (1)(b)(ii) applies—to prevent the employer from continuing to require the employee to monitor, read or respond to contact or attempted contact.
- (3) The FWC must:
  - (a) start to deal with an application, to the extent that it consists of an application for an order under this section, within 14 days after the application is made; and
  - (b) deal with the application as soon as is reasonably practicable after the FWC starts to deal with it.
- (4) Despite subsection (2), the FWC may dismiss an application made under subsection 333N(3), to the extent that it consists of an application for an order under this section, if the FWC considers that the application:
  - (a) is frivolous or vexatious; or
  - (b) might involve matters that relate to:
    - (i) Australia's defence; or
    - (ii) Australia's national security; or
    - (iii) 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

- (iv) 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 an application, see section 587.

- (5) If an employer considers an application made under subsection 333N(3) (the ***original application***) to be frivolous or vexatious, the employer may apply to the FWC:
  - (a) to have the original application dealt with expeditiously and efficiently; and
  - (b) a decision on the original application communicated by the FWC to the parties to the dispute in a timely way.

### **333Q Contravening an order**

A person to whom an order under section 333P applies must not contravene a term of the order.

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

### **333R 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 meaning of that Act) do not apply in relation to an application made under subsection 333N(3) that includes an application for an order under section 333P.

Note: Ordinarily, if a person makes an application under subsection 333N(3) for an order under section 333P in relation to particular conduct, 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 same conduct. This section removes that prohibition.

### **333S This Subdivision is not to prejudice Australia's defence, national security etc.**

Nothing in this Subdivision 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.

### **333T Declarations by the Director-General of Security**

- (1) Without limiting section 333S, the Director-General of Security may, by legislative instrument, declare that all or specified provisions of this subdivision 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.

### **333U Declarations by the Director-General of ASIS**

- (1) Without limiting section 333S, the Director-General of the Australian Secret Intelligence Service may, by legislative instrument, declare that all or specified provisions of this Subdivision 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.

## **Subdivision D—Dealing with disputes in other ways**

### **333V Dealing with disputes in other ways**

If an application made under subsection 333N(3) for the FWC to deal with a dispute does not consist solely of an application for an order under section 333P:

- (a) the FWC must deal with the dispute; and
- (b) if the parties notify the FWC that they agree to the FWC arbitrating the dispute—the FWC may deal with the dispute by arbitration.

Note: For the purposes of paragraph (a), the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)). See section 333P if the application also includes an application for an order under that section.

## **Subdivision E—Guidelines**

### **333W Guidelines**

- (1) The FWC must make written guidelines in relation to the operation of this Division.
- (2) Guidelines made under subsection (1) are not a legislative instrument.

### **98 Subsection 539(2) (after table item 10D)**

Insert:

10E	333Q	(a) a person affected by the contravention;	(a) the Federal Court;	60 penalty units
		(b) an industrial association;	(b) the Federal Circuit and Family Court of Australia (Division 2);	
		(c) an inspector	(c) an eligible State or Territory court	

## Part 9—Sham arrangements

### *Fair Work Act 2009*

#### **103 Subsection 357(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not apply if the employer proves that, when the representation was made, the employer reasonably believed that the contract was a contract for services.
- (3) In determining, for the purpose of subsection (2), whether the employer's belief was reasonable:
  - (a) regard must be had to the size and nature of the employer's enterprise; and
  - (b) regard may be had to any other relevant matters.

## **Part 10—Exemption certificates for suspected underpayment**

### ***Fair Work Act 2009***

#### **104 Subsection 481(1) (note 4)**

After “Subdivision”, insert “, or otherwise act in an improper manner”.

#### **105 Subsection 483A(1) (note 3)**

After “Subdivision”, insert “, or otherwise act in an improper manner”.

#### **106 Section 484 (note 2)**

After “Subdivision”, insert “, or otherwise act in an improper manner”.

#### **107 Subsection 492(3) (note 2)**

After “this section”, insert “, or otherwise act in an improper manner”.

#### **108 Section 500 (note 3)**

Omit “, exercising rights under this Part”, insert “exercising rights under this Part, or otherwise act in an improper manner”.

#### **109 Section 502 (at the end of the heading)**

Add “etc.”.

#### **110 At the end of subsection 502(1)**

Add “, or otherwise act in an improper manner.”.

#### **111 Subsection 502(2)**

Omit “hindering or obstructing a permit holder”, substitute “conduct referred to in subsection (1)”.

#### **112 Subsection 502(3)**

Omit “hindering or obstructing”, substitute “conduct”.

#### **113 After paragraph 508(2)(d)**

Insert:

- (da) requiring, for a specified period, some or all of the exemption certificates that might be issued in relation to the organisation on the ground mentioned in subparagraph 519(1)(b)(ii) (suspected underpayment) to be issued subject to specified conditions;

**114 After paragraph 508(2)(e)**

Insert:

- (ea) banning, for a specified period, the issue of exemption certificates on the ground mentioned in subparagraph 519(1)(b)(ii) (suspected underpayment) in relation to the organisation, either generally or to specified permit holders;

**115 Subdivision D of Division 5 of Part 3-4 (heading)**

After “**must**”, insert “**impose conditions on,**”.

**116 Section 510 (heading)**

After “**must**”, insert “**impose conditions on,**”.

**117 Subsection 510(1) (heading)**

After “*must*”, insert “*impose conditions on,*”.

**118 Subsection 510(1)**

After “subsection,”, insert “impose conditions on,”.

**119 Subsection 510(5) (at the end of the heading)**

Add “*if entry permit revoked or suspended*”.

**120 Subsection 510(5)**

Omit “takes action”, substitute “revokes or suspends an entry permit”.

**121 Paragraph 510(6)(a)**

Omit “action is taken”, substitute “entry permit is revoked or suspended”.

**122 Paragraph 519(1)(b)**

Repeal the paragraph, substitute:

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(b) either:

- (i) the FWC reasonably believes that advance notice of the entry given by an entry notice might result in the destruction, concealment or alteration of relevant evidence; or
- (ii) the FWC is satisfied that the suspected contravention, or contraventions, involve the underpayment of wages, or other monetary entitlements, of a member of the organisation whose industrial interests the organisation is entitled to represent and who performs work on the premises, and the FWC reasonably believes that advance notice of the entry given by an entry notice would hinder an effective investigation into the suspected contravention or contraventions.

### **123 After paragraph 519(2)(d)**

Insert:

- (da) if the exemption certificate is issued on the ground mentioned in subparagraph (1)(b)(ii) (suspected underpayment)—the names of any permit holders who may enter;

**Part 11—Penalties for civil remedy provisions**

**Division 1—Penalties**

*Fair Work Act 2009*

**124 Section 12**

Insert:

*selected civil remedy provision* means a provision referred to in column 1 of item 1, 2, 3, 4, 5, 7, 8, 9, 10, 10A, 11A, 29, 29AA, 29A, 32, 33, 33A or 34 in the table in subsection 539(2).

**134 Subsection 539(2) (table item 11, column 1)**

Omit “357(1)”.

**135 Subsection 539(2) (table item 11, column 1)**

Omit “358”.

**136 Subsection 539(2) (table item 11, column 1)**

Omit “359”.

**137 Subsection 539(2) (after table item 11)**

Insert:

11A	357(1)	(a) a person affected	(a) the Federal	60 penalty units
	358	by the	Court;	
	359	contravention;	(b) the Federal	
		(b) an industrial	Circuit and	
		association;	Family Court	
		(c) an inspector	of Australia	
			(Division 2)	

**142 Subsection 539(2) (table item 33, column 4)**

Omit “30 penalty units”, substitute “60 penalty units”.

**143 Subsection 546(2)**

Omit “The”, substitute “Subject to this section, the”.

**144 After subsection 546(2)**

Insert:

(2AA) Despite paragraph (2)(b), if:

- (a) the civil remedy provision is a selected civil remedy provision; and
- (b) the person is a body corporate; and
- (c) when the application for the order is made, the person is not a small business employer;

the pecuniary penalty must not be more than 5 times the amount worked out in accordance with paragraph (2)(b).

**145 Paragraph 557A(1)(a)**

Omit “and”, substitute “or”.

**146 Paragraph 557A(1)(b)**

Repeal the paragraph, substitute:

- (b) the person was reckless as to whether the contravention would occur.

**147 Subsection 557A(1) (example)**

Repeal the example, substitute:

Example: Generally, subsection 323(1) requires an employer to pay an employee the full amount payable to the employee in relation to the performance of work.

A contravention of subsection 323(1) is a serious contravention if the employer knowingly does not pay the employee in full or is reckless as to whether the failure would occur. It does not matter if the employer does not know the exact amount of the underpayment.

**148 Subsections 557A(2) to (5)**

Repeal the subsections, substitute:

(2) For the purposes of subsection (1), a person is reckless as to whether a contravention would occur if:

- (a) the person is aware of a substantial risk that the contravention would occur; and
- (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.

## Division 2—Contingent amendments

### *Fair Work Act 2009*

#### **149 Section 12 (definition of *selected civil remedy provision*)**

Omit “or 34”, substitute “, 34 or 34AAA”.

## Division 3—Underpayments

### *Fair Work Act 2009*

#### **150 Section 12**

Insert:

*associated with an underpayment amount*: see  
subsection 546A(1).

#### **151 Subsection 539(2) (after note 3)**

Insert:

Note 3A: The penalties referred to in column 4 of the table are adjusted for  
bodies corporate and for contraventions associated with underpayment  
amounts (see section 546).

#### **153 After subsection 546(2)**

Insert:

(2A) Despite paragraph (2)(b) and subsection (2AA), if:

- (a) the civil remedy provision is a selected civil remedy provision; and
- (b) the person is a body corporate; and
- (c) when the application for the order is made, the person is not a small business employer; and
- (d) the contravention is associated with an underpayment amount; and
- (e) the application specifies that the applicant wants the maximum penalty to be calculated based on a multiple of the underpayment amount; and

- (f) the person is not taken to have contravened the civil remedy provision under section 550 (person involved in a contravention);

the pecuniary penalty must not be more than the greater of the following:

- (g) the amount worked out in accordance with subsection (2AA);
- (h) 3 times the underpayment amount.

Note: For when contravention of a civil remedy provision is associated with an underpayment amount, see section 546A.

## **154 After section 546**

Insert:

### **546A Underpayment amounts associated with contravention of civil remedy provisions**

- (1) A contravention of a civil remedy provision is *associated with an underpayment amount* if:
  - (a) an employer is required to pay an amount (a *required amount*) to, on behalf of, or for the benefit of, an employee under this Act, a fair work instrument or a transitional instrument (as continued in existence by Schedule 3 to the Transitional Act); and
  - (b) the employer engages in conduct; and
  - (c) the conduct results in a failure to pay the required amount to, on behalf of, or for the benefit of, the employee in full on or before the day when the required amount is due for payment; and
  - (d) the failure is related to the contravention.
- (2) The *underpayment amount* the contravention is associated with is, to the extent it can be determined by the court, the difference between:
  - (a) the required amount mentioned in paragraph (1)(a); and
  - (b) the amount (including a nil amount) the employer actually paid to, on behalf of, or for the benefit of, the employee on account of the required amount.

## **Part 12—Compliance notice measures**

### ***Fair Work Act 2009***

#### **155 At the end of subsection 545(2)**

Add:

- ; (d) an order requiring a person to comply, either wholly or partly, with a notice (other than an infringement notice) given to the person by an inspector or the Fair Work Ombudsman.

#### **156 At the end of paragraph 716(2)(a)**

Add “(including to calculate and pay the amount of any underpayment)”.

## **Part 13—Withdrawal from amalgamations**

### ***Fair Work (Registered Organisations) Act 2009***

#### **157 Paragraph 92(a)**

Omit “(either under this Act or the *Workplace Relations Act 1996* as in force before the commencement of this Part)”, substitute “under this Act”.

#### **158 Paragraph 92(b)**

Omit “, divisions or parts”.

#### **159 Section 92A**

Repeal the section.

#### **160 Subsection 93(1) (definition of *amalgamated organisation*)**

Omit “of Part 2, or an equivalent provision of a predecessor law”.

#### **161 Subsection 93(1) (definition of *amalgamated organisation*)**

Omit “or a predecessor law”.

#### **162 Subsection 93(1) (paragraph (b) of the definition of *constituent member*)**

Omit “or a predecessor law”.

#### **163 Subsection 93(1) (subparagraph (b)(i) of the definition of *constituent part*)**

Omit “or a predecessor law”.

#### **164 Subsection 93(1) (definition of *designated official*)**

Repeal the definition.

#### **165 Subsection 93(1) (definition of *predecessor law*)**

Repeal the definition.

**166 Subsection 93(1) (paragraph (a) of the definition of *separately identifiable constituent part*)**

Omit “or a predecessor law”.

**167 Subsection 93(1) (paragraph (b) of the definition of *separately identifiable constituent part*)**

Omit “part; or”, substitute “part.”.

**168 Subsection 93(1) (paragraph (c) of the definition of *separately identifiable constituent part*)**

Repeal the paragraph.

**169 Subsection 93(1) (definition of *workplace or safety law*)**

Repeal the definition.

**170 Subsection 93(2)**

Omit “or a predecessor law” (wherever occurring).

**171 Subsection 93(3)**

Repeal the subsection.

**172 Subsection 93(4)**

Omit “or a predecessor law”.

**173 Subsection 94(1)**

After “secret”, insert “postal”.

**174 Paragraph 94(1)(a)**

Omit “or a predecessor law”.

**175 Sections 94A and 95A**

Repeal the sections.

**176 Subsection 100(1)**

After “secret”, insert “postal”.



**177 Paragraph 100(1)(ba)**

Repeal the paragraph.

**178 Subsection 100(4)**

Repeal the subsection (including the note).

**179 Subsection 102(1) (heading)**

Repeal the heading.

**180 Subsections 102(1A), (1B) and (1C)**

Repeal the subsections.

**181 Subsection 102(2) (heading)**

Repeal the heading.

**182 Subsection 102(2)**

Omit “In the case of a postal ballot, the ballot paper”, substitute “The ballot paper”.

**183 Paragraphs 102(2)(aa) and (ca)**

Repeal the paragraphs.

**184 Subsection 102(3)**

Omit “In any postal ballot”, substitute “In a ballot”.

**185 Subsection 102(3)**

Omit “, or designated official,”.

**186 Subsection 102(4)**

Repeal the subsection.

**187 Section 103 (heading)**

Omit “person conducting ballot”, substitute “electoral officials”.

**188 Subsection 103(1) (heading)**

Repeal the heading.

**189 Subsections 103(1A), (1B) and (1C)**

Repeal the subsections.

**190 Subsection 103(2) (heading)**

Repeal the heading.

**191 Subsection 103(2)**

Omit “or an order made under subsection (1C)”.

**192 Subsection 103(5) (heading)**

Repeal the heading.

**193 Subsection 103(7) (heading)**

Repeal the heading.

**194 Subsection 103(7)**

Omit “or (1A) is kept in electronic form, the electoral official, or designated official,”, substitute “is kept in electronic form, the electoral official”.

**195 Subsection 104(1)**

Omit “or (1A), or an order is made under subsection 103(1C),”.

**196 Subsection 104(1A)**

Repeal the subsection.

**197 Subsection 106(1)**

Omit “, or the designated official,”.

**198 Paragraph 106(1)(c)**

Omit “or designated official”.

**199 Subsections 106(2) and (3)**

Omit “or designated official”.

**200 Section 107 (heading)**

Omit “person conducting ballot”, substitute “AEC”.

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**201 Subsection 107(1)**

Omit “, or the designated official,”.

**202 Subsection 107(2)**

Omit “or designated official”.

**203 Subsection 107(4)**

Omit “or designated official” (wherever occurring).

**204 Paragraph 109(2)(a)**

Repeal the paragraph, substitute:

- (a) the assets and liabilities of the constituent part before it, or the organisation of which it was a State or Territory branch, was de-registered under Part 2 in connection with the formation of the amalgamated organisation; and

**205 Paragraph 109(2)(b)**

Omit “if paragraph (a) applies—”.

**206 Paragraph 109(2)(ba)**

Repeal the paragraph.

**207 Sections 110A and 110B**

Repeal the sections.

**208 Section 111 (heading)**

Omit “**Membership**”, substitute “**Choice**”.

**209 Paragraph 111(3)(b)**

Repeal the paragraph, substitute:

- (b) invite the person to give written notice, within a period of 28 days after being sent the statement (the *notice period*), to the amalgamated organisation or to the newly registered organisation that:
  - (i) the person wants to remain a member of the amalgamated organisation; or

- (ii) the person wants to become a member of the newly registered organisation; and
- (c) explain the effect of responding, or failing to respond, to the invitation.

## 210 Subsection 111(4)

Repeal the subsection, substitute:

- (4) As soon as practicable after the amalgamated organisation receives a notice under paragraph (3)(b), it must notify the newly registered organisation of the receipt.
- (5) As soon as practicable after the newly registered organisation receives a notice under paragraph (3)(b), it must notify the amalgamated organisation of the receipt.
- (6) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that the person wants to become a member of the newly registered organisation, the person:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day on which the notice is received by the amalgamated organisation or the newly registered organisation (as the case may be); and
  - (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a) of this subsection.
- (7) If a person referred to in subsection (2) gives written notice in accordance with paragraph (3)(b), within the notice period, that the person wants to remain a member of the amalgamated organisation, the person remains a member of the amalgamated organisation.
- (8) If a person referred to in subsection (2) fails to give written notice in accordance with paragraph (3)(b), the person:
  - (a) ceases, by force of this subsection, to be a member of the amalgamated organisation with effect from the end of the day after the end of the notice period; and

- (b) becomes, by force of this subsection and without payment of entrance fee, a member of the newly registered organisation with effect from the day after the day referred to in paragraph (a) of this subsection.
- (9) A person who ceases to be a member of the amalgamated organisation because of the operation of subsection (6):
  - (a) is not liable to make any payment because the person gave no notice, or insufficient notice, of ceasing to be such a member under the rules of the organisation; and
  - (b) otherwise, remains liable for such payments as are due in accordance with those rules.
- (10) Despite subsection (8), if a person to whom that subsection would apply, at any time before the day upon which the constituent part is registered as an organisation under section 110, gives notice in writing to the amalgamated organisation or to the applicant for a ballot under section 94 that the person wishes to remain a member of the amalgamated organisation after the registration of the constituent part as an organisation under section 110, the person remains a member of the amalgamated organisation.
- (11) As soon as practicable after the end of the notice period, the amalgamated organisation must notify the newly registered organisation of any notices under subsection (10) it has received.
- (12) As soon as practicable after the end of the notice period, the newly registered organisation must notify the amalgamated organisation of any notices under subsection (10) the applicant under section 94 has received.

## **211 Subsection 123(2)**

Repeal the subsection, substitute:

- (2) However, the rules must not permit a person to hold office after the later of:
  - (a) the day that would have been the person's last day of term in the constituent office if the withdrawal had not occurred; and
  - (b) the first anniversary of the withdrawal day.

## 212 Application of amendments

### *Definitions*

- (1) In this item:  
**old Act** means the *Fair Work (Registered Organisations) Act 2009*, as in force immediately before the commencement of this item.

### *Applications for withdrawal made before commencement*

- (2) Despite the amendments of the *Fair Work (Registered Organisations) Act 2009* made by this Part and subject to subitem (3), Part 3 of Chapter 3 of the old Act continues to apply as if those amendments had not been made, in relation to:
- (a) an application that was made to the FWC under section 94 of the old Act; and
  - (b) anything done in relation to the application (whether before or after the commencement of this item).
- (3) If:
- (a) an application was made to the FWC under section 94 of the old Act for a secret ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation; and
  - (b) either or both of the following apply:
    - (i) the application related to a constituent part of the amalgamated organisation that is a branch, division or part of the organisation referred to in paragraph (c) of the definition of ***separately identifiable constituent part*** in subsection 93(1) of the old Act;
    - (ii) the application was made after the end of the period referred to in paragraph 94(1)(c) of the old Act; and
  - (c) a certificate in relation to a ballot was not prepared, dated and signed under subsection 106(1) of the old Act before 1 July 2023;
- then:
- (d) the application is taken not to have been made; and
  - (e) anything that was done in relation to the application before the commencement of this item (including by the applicant, the FWC, the AEC or any other person):
-

- (i) is taken not to have been done; and
  - (ii) has no effect on or after the commencement of this item.
- (4) For the purposes of paragraph (3)(c), if a certificate in relation to a ballot was prepared, dated and signed under subsection 106(1) of the old Act before 1 July 2023, it does not matter if the FWC has made, or makes, an order under paragraph 108(2)(b) of the *Fair Work (Registered Organisations) Act 2009* that a fresh ballot be conducted in place of the ballot because of an irregularity.

## Part 15—Definition of employment

### *Fair Work Act 2009*

#### 237 After section 15

Insert:

#### 15AA Determining the ordinary meanings of *employee* and *employer*

- (1) For the purposes of this Act, whether an individual is an *employee* of a person within the ordinary meaning of that expression, or whether a person is an *employer* of an individual within the ordinary meaning of that expression, is to be determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person.
  - (2) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person:
    - (a) the totality of the relationship between the individual and the person must be considered; and
    - (b) in considering the totality of the relationship between the individual and the person, regard must be had not only to the terms of the contract governing the relationship, but also to other factors relating to the totality of the relationship including, but not limited to, how the contract is performed in practice.
- Note: This section was enacted as a response to the decisions of the High Court of Australia in *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.
- (3) Subsections (1) and (2) do not apply to the following provisions of this Act:
    - (a) Divisions 2A and 2B of Part 1-3;
    - (b) Part 3-1, to the extent that Part 3-1 applies only because of the operation of section 30G or 30R.



## **Part 15A—Provisions relating to the application of section 15AA**

### ***Fair Work Act 2009***

#### **237A Before section 15A**

Insert:

#### **15AB Individual may elect that section 15AA does not apply**

- (1) This section applies to a relationship between a person and an individual.

*Person may notify individual before the section 15AA commencement that they may give an opt out notice*

- (2) The person may give the individual a written notice before the section 15AA commencement stating that the individual may give the person an opt out notice, if the person considers that the relationship may, on the section 15AA commencement, become a relationship in which the person is the employer of the individual because of the operation of section 15AA.

*Person may notify individual on or after the section 15AA commencement that they may give an opt out notice*

- (3) The person may give the individual a written notice on or after the section 15AA commencement stating that the individual may give the person an opt out notice, if the person considers that the relationship may be a relationship in which the person is the employer of the individual because of the operation of section 15AA.

*Earnings requirement*

- (4) The person must not give the individual a notice under subsection (2) or (3) unless the person considers that, when the notice is given, the individual's earnings for work performed under the relationship exceed the contractor high income threshold.

*Individual may give an opt out notice*

- (5) The individual may give an opt out notice to the person, stating that the individual elects that section 15AA is not to apply to the relationship between the person and the individual:
  - (a) if the person has given a notice to the individual under subsection (2) or (3) of this section—within 21 days of the giving of the notice; or
  - (b) if the person has not given a notice to the individual under subsection (2) or (3) of this section—at any time after the commencement of this section.
- (6) The individual may give only one opt out notice in respect of the relationship.

*Opt out notice to include a statement about earnings*

- (7) The opt out notice must state that the individual considers that the individual's earnings for work performed under the relationship exceed the contractor high income threshold when the opt out notice is given.

*Definitions*

- (8) In this section, and in sections 15AC and 15AD:

***opt out notice*** means a notice under subsection (5).

***section 15AA commencement*** means the commencement of section 15AA of this Act.

Note: Section 15AA of this Act is inserted by item 237 of Schedule 1 to the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, which commences in accordance with item 21 of the table in subsection 2(1) of that Act.

**15AC Effect of an opt out notice**

- (1) This section applies if an individual gives an opt out notice to a person in respect of the relationship between the person and the individual in accordance with section 15AB.

*Opt out notice given before the section 15AA commencement*

- (2) If the opt out notice is given before the section 15AA commencement, and is not revoked before that commencement under section 15AD, then:
- (a) by force of this section, section 15AA does not start to apply to the relationship on that commencement; and
  - (b) section 15AA does not apply to the relationship after that commencement, unless the opt out notice is revoked.

*Opt out notice given on or after the section 15AA commencement*

- (3) If the opt out notice is given on or after the section 15AA commencement, then:
- (a) by force of this section, section 15AA ceases to apply to the relationship on the day on which the opt out notice is given; and
  - (b) section 15AA does not apply to the relationship on or after that day, unless the opt out notice is revoked.

Note: If an individual does not give an opt out notice to a person in accordance with section 15AB, section 15AA starts to apply, or continues to apply, (as applicable) to the relationship between the person and the individual.

### **15AD Opt out notice may be revoked by an individual**

- (1) An individual who has given an opt out notice to a person may (subject to subsection (4)), at any time after giving the opt out notice, revoke the opt out notice by giving written notice (a **revocation notice**) to the person that the individual elects that section 15AA is to apply to the relationship between the person and the individual.

*Revocation before the section 15AA commencement*

- (2) If an individual gives a revocation notice to a person before the section 15AA commencement, section 15AA applies, by force of this subsection, to the relationship between the person and the individual on and after that commencement.

**Schedule 1** Main amendments

**Part 15A** Provisions relating to the application of section 15AA

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*Revocation on or after the section 15AA commencement*

- (3) If an individual gives a revocation notice to a person on or after the section 15AA commencement, section 15AA applies, by force of this subsection, to the relationship between the person and the individual on and after the day on which the revocation notice is given.
- (4) An individual may give only one revocation notice in respect of a particular relationship.

## **Part 16—Provisions relating to regulated workers**

### **Division 1—Overarching road transport matters**

#### ***Fair Work Act 2009***

#### **238 After section 40B**

Insert:

### **Part 1-4—Road transport industry objective and advisory group**

#### **Division 1—Guide to this Part**

#### **40C Guide to this Part**

This Part deals with special provisions relating to the road transport industry.

Division 2 sets out the road transport objective.

The Expert Panel for the road transport industry must have regard to the road transport objective when performing functions and exercising powers under certain provisions of this Act. These functions and powers cover both employees and employers and regulated road transport contractors and road transport businesses.

Division 3 establishes the Road Transport Advisory Group. This Group includes representatives from the road transport industry. It has advisory functions under Chapter 3A (in relation to road transport minimum standards) and the prioritisation of the FWC's work so far as it relates to the road transport industry.

## Division 2—The road transport objective

### 40D The road transport objective

In performing a function or exercising a power under this Act, the Expert Panel for the road transport industry must take into account the need for an appropriate safety net of minimum standards for regulated road transport workers and employees in the road transport industry, having regard to the following:

- (a) the need for standards that ensure that the road transport industry is safe, sustainable and viable;
- (b) the need to avoid unreasonable adverse impacts upon the following:
  - (i) sustainable competition among road transport industry participants;
  - (ii) road transport industry business viability, innovation and productivity;
  - (iii) administrative and compliance costs for road transport industry participants;
- (c) the need to avoid adverse impacts on the sustainability, performance and competitiveness of supply chains and the national economy;
- (d) the need for minimum standards in road transport contractual chains.

This is the *road transport objective*.

Note: The matters that must be dealt with by the Expert Panel for the road transport industry are matters relating to modern awards relating to the road transport industry, road transport minimum standards orders and road transport contractual chain orders (see subsection 617(10B)). The President also has a discretion to direct the Expert Panel for the road transport industry to deal with a matter (see subsection 617(10D)).

## Division 3—Road Transport Advisory Group

### 40E Establishment of Road Transport Advisory Group

- (1) There is to be a Road Transport Advisory Group.

- (2) The function of the Road Transport Advisory Group is to advise the FWC in relation to matters that relate to the road transport industry including, but not limited to the following:
  - (a) the making and varying of modern awards that relate to the road transport industry;
  - (b) the making and varying of road transport minimum standards orders and road transport guidelines;
  - (ba) the making and varying of road transport contractual chain orders and road transport contractual chain guidelines;
  - (c) the prioritisation by the FWC of matters relating to the road transport industry;
  - (d) such other matters as are prescribed by the regulations.
- (3) Before advising the FWC in relation to a matter, the Road Transport Advisory Group must consult any relevant subcommittee established under section 40G.
- (4) The President must consult, and have regard to the views of, the Road Transport Advisory Group in determining priorities for the work of the FWC in relation to matters affecting the road transport industry.

#### **40F Membership of Road Transport Advisory Group**

- (1) The Road Transport Advisory Group consists of such members as the Minister from time to time appoints.
- (2) In appointing the members of the Road Transport Advisory Group, the Minister must ensure that the membership consists of persons who are members of or who are nominated by the following:
  - (a) an organisation that is entitled to represent the industrial interests of one or more regulated road transport contractors;
  - (b) an organisation that is entitled to represent the industrial interests of one or more road transport businesses.
- (3) A member of the Road Transport Advisory Group holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A member of the Road Transport Advisory Group is eligible for reappointment (see subsection 33(4A) of the *Acts Interpretation Act 1901*).

- (4) The Minister may revoke a person's appointment to the Road Transport Advisory Group.
- (5) The President may give the Road Transport Advisory Group directions as to the way in which the body is to carry out its functions.
- (6) The President may appoint a member of the Expert Panel for the road transport industry to chair the Road Transport Advisory Group.

#### **40G Road Transport Advisory Group subcommittees**

- (1) The Road Transport Advisory Group may establish subcommittees to advise it in relation to matters relevant to the performance of its functions.
- (2) A subcommittee may include persons who are not members of the Road Transport Advisory Group, but a subcommittee must be chaired by a member.
- (3) The Road Transport Advisory Group must establish a subcommittee under subsection (1) of which a majority of the members are owner drivers or representatives of owner drivers:
  - (a) if a proposed road transport minimum standards order or a proposed road transport contractual chain order will cover owner drivers; or
  - (b) if the FWC proposes to perform a function or exercise a power in relation to a road transport minimum standards order or a road transport contractual chain order that has, or may have, an effect upon owner drivers that is more than minor or technical.

### **Division 2—Expert Panel for the road transport industry**

#### ***Fair Work Act 2009***

#### **239 At the end of subsection 157(1) (after note 3)**

Insert:



Note 4: If the FWC is making, varying or revoking a modern award that the President considers might relate to the road transport industry, it must take into account the road transport objective (see section 40D).

## **240 After subsection 582(4)**

Insert:

(4A) If:

- (a) the President gives a direction that 2 or more matters be dealt with jointly; and
- (b) at least one of the matters:
  - (i) must be dealt with by an Expert Panel constituted to deal with a matter that relates to the road transport industry (see subsection 617(10B)); or
  - (ii) is a matter that the President considers might relate to the road transport industry and has directed be dealt with by an Expert Panel constituted for the purpose (see subsection 617(10D));

the direction that the matters be dealt with jointly must require that all the matters be dealt with by an Expert Panel constituted to deal with a matter that relates to the road transport industry.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1E).

(4B) Subsection (4A) does not limit the power of the President to direct that other matters be dealt jointly with by an Expert Panel.

(4C) The President may give a direction that an FWC member deal with a matter that the President considers might relate to the road transport industry, if the FWC member has knowledge of, or experience in, the road transport industry, whether or not the President considers that the matter might relate to another industry or sector.

## **241 After subsection 617(10A)**

Insert:

*Expert Panel for road transport industry*

(10B) The following must be made by an Expert Panel constituted for that purpose:

- (a) a modern award made under Part 2-3 that the President considers might relate to the road transport industry;
  - (b) a determination made under subsection 157(1) varying or revoking a modern award that the President considers might relate to the road transport industry;
  - (c) a road transport minimum standards order made under paragraph 536JY(1)(b) or a determination made under subsection 536KQ(1) varying or revoking a road transport minimum standards order;
  - (ca) a deferral determination made under subsection 536KQJ(1) in relation to a road transport minimum standards order;
  - (cb) a suspension determination made under subsection 536KQP(1) in relation to a road transport minimum standards order;
  - (cc) a determination made under subsection 536KQ(1) varying or revoking a road transport minimum standards order to give effect to a decision to vary or revoke the minimum standards order under paragraph 536KQS(2)(a) or (b);
  - (cd) a decision made under paragraph 536KQS(2)(a), (b) or (c) as to whether or not to vary or revoke a road transport minimum standards order;
  - (d) road transport guidelines made under subsection 536KR(1) or a determination made under subsection 536KZ(1) varying or revoking road transport guidelines;
  - (da) a road transport contractual chain order made under section 536PD or a determination made under 536PT varying or revoking a road transport contractual chain order;
  - (db) road transport contractual chain guidelines made under section 536QP or a determination made under section 536QW varying or revoking road transport contractual chain guidelines;
  - (dc) a deferral determination made under subsection 536QB(1) in relation to a road transport contractual chain order;
  - (dd) a suspension determination made under subsection 536QG(1) in relation to a road transport contractual chain order;
  - (de) a determination made under subsection 536PT(1) varying or revoking a road transport contractual chain order to give effect to a decision to vary or revoke the road transport contractual chain order under paragraph 536QK(2)(a) or (b);
-

(df) a decision made under paragraph 536QK(2)(a), (b) or (c) as to whether or not to vary or revoke a road transport contractual chain order;

(e) such other instruments as are prescribed that the President considers might relate to the road transport industry.

Note 1: For the constitution of an Expert Panel for that purpose, see subsection 620(1E).

Note 2: The road transport objective is relevant to the functions of an Expert Panel referred to in this subsection, see section 40D.

*President's considerations*

(10C) For the purposes of subsection (10B), if the President considers that a determination or a modern award, or a prescribed instrument, might relate to the road transport industry, it does not matter if the President considers that the determination or modern award or prescribed instrument might relate to another industry or sector.

(10D) The President may direct that the following matters be dealt with by an Expert Panel constituted for the purpose:

- (a) an employee-like worker minimum standards order or a determination varying or revoking an employee-like worker minimum standards order, if the President considers that the order might relate to the road transport industry or sector;
- (b) employee-like guidelines or a determination varying or revoking employee-like guidelines, if the President considers that the guidelines might relate to the road transport industry;
- (c) any other prescribed instrument or matter that the President considers might relate to the road transport industry;

whether or not the President considers that the matter might also relate to another industry or sector.

Note: For the constitution of an Expert Panel for that purpose, see subsection 620(1E).

**242 At the end of subsection 617AA(4)**

Add:

- ; (e) performing a function or exercising a power under Chapter 3A;
- (f) dealing with a matter that the President considers might relate to the road transport industry.

**243 Subsection 617A(1)**

Omit “or (1D)”, substitute “, (1D) or (1E)”.

**244 Subsection 617A(1) (note)**

After “remuneration,”, insert “the road transport industry,”.

**245 After subsection 620(1D)**

Insert:

*Constitution of Expert Panel for the road transport industry*

(1E) An Expert Panel constituted under this subsection for a purpose referred to in subsection 617(10B) or (10D) must include (except as provided by section 622):

- (a) the President, or a Vice President or Deputy President appointed by the President to be the Chair of the Panel; and
- (b) at least one Expert Panel Member or other FWC Member who has knowledge of, or experience in, the road transport industry; and
- (c) subject to subsection (2A), such number (if any) of other FWC Members as the President considers appropriate.

*Additional requirement relating to the constitution of an Expert Panel for deferral or suspension of road transport minimum standards orders*

(1F) If an Expert Panel is constituted under subsection (1E) for a purpose referred to in paragraph 617(10B)(ca), (cb), (cc) or (cd) in relation to a road transport minimum standards order (which deal with deferral and suspension), a majority of the members of the Expert Panel must not be members of the Expert Panel that made the road transport minimum standards order concerned.

**245A Before subsection 620(2)**

*Additional requirement relating to the constitution of an Expert Panel for deferral or suspension of road transport contractual chain orders*

- (1G) If an Expert Panel is constituted under subsection (1E) for a purpose referred to in paragraph 617(10B)(dc), (dd), (de) or (df) in relation to a road transport contractual chain order (which deal with deferral and suspension), a majority of the members of the Expert Panel must not be members of the Expert Panel that made the road transport chain order concerned.

**246 Subsection 620(2A)**

Omit “or (1D)”, substitute “, (1D) or (1E)”.

**247 Subsection 620(2A)**

Omit “or paragraphs (1D)(b) and (c)”, substitute “, paragraphs (1D)(b) and (c) or paragraph (1E)(b)”.

**Division 3—Minimum standards for regulated workers and persons in a road transport contractual chain**

*Fair Work Act 2009*

**248 After section 15A**

Insert:

**Division 3A—Definitions relating to regulated workers and persons in a road transport contractual chain**

**Subdivision A—General**

**15B Meaning of *collective agreement***

A *collective agreement* means the following:

- (a) an employee-like worker collective agreement (see subsection 536MK(4));

- (b) a road transport collective agreement (see subsection 536MK(5)).

### 15C Meaning of *contractor high income threshold*

- (1) Subject to this section, the *contractor high income threshold* is the amount prescribed by, or worked out in the manner prescribed by, the regulations.
- (2) A regulation made for the purposes of subsection (1) has no effect to the extent that it would have the effect of reducing the amount of the contractor high income threshold.
- (3) If:
  - (a) in prescribing a manner in which the contractor high income threshold is worked out, regulations made for the purposes of subsection (1) specify a particular matter or state of affairs; and
  - (b) as a result of a change in the matter or state of affairs, the amount of the contractor high income threshold worked out in that manner would, but for this subsection, be less than it was on the last occasion on which this subsection did not apply;the contractor high income threshold is the amount that it would be if the change had not occurred.

### 15D Meaning of *minimum standards guidelines*

*Minimum standards guidelines* means the following:

- (a) employee-like worker guidelines (see subsection 536KR(2));
- (b) road transport guidelines (see subsection 536KR(3)).

### 15E Meaning of *minimum standards order*

A *minimum standards order* means the following:

- (a) an employee-like worker minimum standards order (see subsection 536JY(2));
- (b) a road transport minimum standards order (see subsection 536JY(3)).

### **15F Meaning of *regulated business***

A person is a ***regulated business*** if:

- (a) the person is a digital labour platform operator (see section 15M); or
- (b) the person is a road transport business (see subsection 15R).

### **15G Meaning of *regulated worker***

A person is a ***regulated worker*** if:

- (a) the person is an employee-like worker (see section 15P); or
- (b) the person is a regulated road transport contractor (see section 15Q).

### **15H Meaning of *services contract***

#### *General meaning*

- (1) A ***services contract*** is a contract for services:
  - (a) that relates to the performance of work under the contract by an individual; and
  - (b) that has the requisite constitutional connection specified in subsection (2) or (3).

Note: Conditions or collateral arrangements relating to a services contract may be taken to be part of the services contract: see subsection (4).

#### *The requisite constitutional connection*

- (2) A contract for services has the requisite constitutional connection if:
  - (a) at least one party to the contract is:
    - (i) a constitutional corporation; or
    - (ii) the Commonwealth or a Commonwealth authority; or
    - (iii) a body corporate incorporated in a Territory in Australia; or
  - (b) one or more of the following subparagraphs is satisfied:
    - (i) the work concerned is wholly or principally to be performed in a Territory in Australia;
    - (ii) the contract was entered into in a Territory in Australia;

- (iii) at least one party to the contract is a natural person who is resident in, or a body corporate that has its principal place of business in, a Territory in Australia;
- (iv) the work concerned is done in the course of constitutional trade or commerce.

Note: In this context, Australia includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of *Australia* in section 12).

- (3) For the purposes of Part 3A-2 (minimum standards for regulated workers), Part 3A-3 (unfair deactivation and unfair termination) and Part 3A-4 (collective agreements) to the extent to which those Parts relate to digital platform work, a contract for services also has the requisite constitutional connection if the contract was arranged or facilitated through or by means of a digital labour platform, where the operator of the digital labour platform is:
- (a) a constitutional corporation; or
  - (b) the Commonwealth or a Commonwealth authority; or
  - (c) a body corporate incorporated in a Territory in Australia; or
  - (d) a natural person who is resident in, or a body corporate that has its principal place of business in, a Territory in Australia.

Note: In this context, Australia includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands (see the definition of *Australia* in section 12).

*Conditions and collateral arrangements*

- (4) A condition or collateral arrangement that relates to a services contract is taken to be part of that services contract if, were the condition or arrangement itself a contract for services, it would have the requisite constitutional connection.

**15J Prospective regulated workers**

A reference to a regulated worker, in relation to a services contract, includes a reference to a person who may become a regulated worker for a services contract.



**15K Effect of Chapter in determining whether a person is an employee or an employer**

For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between an individual and a person for the purposes of determining:

- (a) whether the individual is an *employee* of the person within the ordinary meaning of that expression; or
- (b) whether the person is an *employer* of the individual within the ordinary meaning of that expression;

the effect upon the relationship of a minimum standards order, minimum standards guidelines or a collective agreement applying to, or covering, the individual or the person is to be disregarded.

**15KA Specific provision about the effect of certain provisions in determining whether a person is an employee or an employer**

- (1) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between an individual and a person, any steps taken by a digital labour platform operator to comply with its obligations under any of the following in relation to the individual are to be disregarded:

- (a) Part 3A-3;
- (b) the Digital Labour Platform Deactivation Code;
- (c) an order made under, or for the purposes of, Chapter 3A.

- (1A) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between an individual and a person, any steps taken by a road transport business to comply with its obligations under any of the following in relation to the individual are to be disregarded:

- (a) Part 3A-3;
- (b) the Road Transport Industry Termination Code;
- (c) an order made under, or for the purposes of, Chapter 3A.

- (2) An employee-like worker to whom an employee-like worker minimum standards order applies in relation to particular digital platform work is not an employee of any person in relation to that work.

- (3) A regulated road transport contractor to whom a road transport minimum standards order applies in relation to particular work in the road transport industry is not an employee of any person in relation to that work.

## Subdivision B—Digital platform work

### 15L Meaning of *digital labour platform*

- (1) A *digital labour platform* means an online enabled application, website or system operated to arrange, allocate or facilitate the provision of labour services, where:
- (a) the operator of the application, website or system:
    - (i) engages independent contractors directly or indirectly through or by means of the application, website or system; or
    - (ii) acts as an intermediary for or on behalf of more than one distinct but interdependent sets of users who interact with the independent contractors or the operator via the application, website or system; and
  - (b) any of the following processes payments referable to the work performed by the independent contractors:
    - (i) the operator of the application, website or system;
    - (ii) an associated entity of the operator;
    - (iii) a person contracted, whether directly or through one or more interposed entities, by the operator or an associated entity of the operator to process the payments.
- (2) A *digital labour platform* also means an online enabled application, website or system that is prescribed by the regulations for the purposes of this subsection.
- (3) A *digital labour platform* does not include an online application, website or system prescribed by the regulations for the purposes of this subsection.
- (4) For the purposes of this section:
- (a) an online application, website or system may be specified by name or by inclusion in a specified class or specified classes;

- (b) an online application, website or system may be specified in respect of all forms of digital platform work, or in respect of specified forms of digital platform work.

### **15M Meaning of *digital labour platform operator***

A ***digital labour platform operator*** means the operator of a digital labour platform, being an operator that enters into or facilitates a services contract under which work is performed by employee-like workers.

### **15N Meaning of *digital platform work***

- (1) ***Digital platform work*** means:
  - (a) work performed by an independent contractor, where:
    - (i) the work is performed under a services contract through or by means of a digital labour platform, or the services contract under which the work is performed was arranged or facilitated through or by means of a digital labour platform; and
    - (ii) payment is made for that work; or
  - (b) work prescribed by the regulations for the purposes of this subsection.
- (2) ***Digital platform work*** does not include work prescribed by the regulations for the purposes of this subsection.
- (3) For the purposes of paragraph (1)(b) and subsection (2), work may be specified by name or by inclusion in a specified class or specified classes.

### **15P Meaning of *employee-like worker***

- (1) A person is an ***employee-like worker*** if:
  - (a) the person is:
    - (i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or
    - (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a

- director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
- (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
  - (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and
- (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
  - (c) the work that the person performs under the services contract is digital platform work; and
  - (d) the person does not perform any work under the services contract as an employee; and
  - (e) the person satisfies 2 or more of the following:
    - (i) the person has low bargaining power in negotiations in relation to the services contract under which the work is performed;
    - (ii) the person receives remuneration at or below the rate of an employee performing comparable work;
    - (iii) the person has a low degree of authority over the performance of the work;
    - (iv) the person has such other characteristics as are prescribed by the regulations.
- (2) In this Part, a reference to an independent contractor includes a reference to an individual who is an employee-like worker within the meaning of subsection (1).
  - (3) Regulations made for the purposes of subparagraph (1)(e)(iv) may specify that a person must have all or only one or some of the characteristics prescribed.

- (4) For the purposes of determining whether an individual satisfies the criteria specified in paragraph (1)(e), the effect of a minimum standards order, minimum standards guidelines or a collective agreement applying to, or covering, the individual is to be disregarded.

## **Subdivision C—Road transport industry**

### **15Q Meaning of *regulated road transport contractor***

- (1) A person is a *regulated road transport contractor* if:
- (a) the person is:
    - (i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or
    - (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
    - (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
    - (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same partnership and performs work under the contract, whether or not the individual is a party to the contract; and
  - (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
  - (c) the person does not perform any work under the services contract as an employee; and
  - (d) the work performed under the services contract is work in the road transport industry; and

- (e) the person is not an employee-like worker who performs work in the road transport industry under the services contract.
- (2) In this Part, a reference to an independent contractor includes a reference to an individual who is a regulated road transport contractor within the meaning of subsection (1).

### 15R Meaning of *road transport business*

- (1) A person is a ***road transport business*** if the person:
  - (a) receives services under a services contract, where the services contract provides for the performance of work in the road transport industry; or
  - (b) is a constitutional corporation, or is included in a class of constitutional corporations, prescribed by the regulations for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(b), a business or undertaking may be specified by name or by inclusion in a specified class or specified classes.

### 15RA Meanings of *road transport contractual chain* and *in a road transport contractual chain*

- (1) A ***road transport contractual chain*** means a chain or series of contracts or arrangements:
  - (a) under which work is performed for a party to the first contract or arrangement in the chain or series by a regulated road transport contractor or a road transport employee-like worker under a services contract, or by an employee; and
  - (b) in which at least one party to the first contract or arrangement in the chain or series is a constitutional corporation.
- (2) A person is ***in a road transport contractual chain*** if:
  - (a) the person is a party (a ***primary party***) to the first contract or arrangement in the road transport contractual chain; or
  - (b) the person is a party (a ***secondary party***) to a subsequent contract or arrangement in the road transport contractual chain, being a contract or arrangement under which work is performed for the secondary party by a regulated road

- transport contractor or a road transport employee-like worker under a services contract, or by an employee; or
- (c) the person is a regulated road transport contractor or a road transport employee-like worker who performs work under a services contract in the road transport contractual chain.
- (3) Despite subsection (2), an individual is not ***in a road transport contractual chain*** in relation to:
- (a) the delivery of a thing to the individual by a regulated road transport contractor, a road transport employee-like worker or an employee, if the delivery of the thing is solely for the individual's private or domestic purposes; or
- (b) the consignment of a thing by the individual for delivery by a regulated road transport contractor, a road transport employee-like worker or an employee if the consignment of the thing is solely for the individual's private or domestic purposes; or
- (c) work performed by the individual in the capacity of an employee; or
- (d) work performed by the individual in an industry prescribed by the regulations for the purposes of this subsection.
- (4) For the purposes of paragraph (3)(d):
- (a) an industry may be specified by name or by inclusion in a specified class or specified classes; and
- (b) an industry may be specified in respect of work in the road transport industry, or in respect of specified forms of such work.
- (5) For the purposes of subsection (1), work performed by a regulated road transport contractor or a road transport employee-like worker under a services contract, or by an employee, in a chain or series of contracts or arrangements:
- (a) is taken to be performed for the person who engaged the regulated road transport contractor, road transport employee-like worker or employee; and
- (b) is also taken to be performed for each party to a contract or arrangement in the chain or series of contracts or arrangements.

- (6) This section also has the effect that it would have if it only applied to a secondary party to the extent that rights conferred on, and obligations imposed on, the secondary party by Chapter 3B have, or are likely to have, an impact on the business of the constitutional corporation that is a primary party to the first contract or arrangement in a road transport contractual chain.
- (7) This section also has the effect that it would have if it only applied to a secondary party to a contract or arrangement in a road transport contractual chain that:
  - (a) is a constitutional corporation; or
  - (b) is a party to a contract with a constitutional corporation; or
  - (c) is a national system employer to the extent that it engages national system employees to perform work in the road transport industry; or
  - (d) is a regulated business; or
  - (e) is engaged in constitutional trade or commerce; or
  - (f) is incorporated in a Territory; or
  - (g) is prescribed by the regulations.

**15RB Meaning of a road transport employee-like worker**

*A road transport employee-like worker* means an employee-like worker who performs work in the road transport industry.

**15S Meaning of road transport industry**

- (1) The *road transport industry* means:
  - (a) the *road transport and distribution industry* within the meaning of the Road Transport and Distribution Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
  - (b) the *long distance operations in the private road transport industry* within the meaning of the Road Transport (Long Distance Operations) Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
  - (c) the *waste management industry* within the meaning of the Waste Management Award 2020 as in force on 1 July 2024,



- with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
- (d) the *cash in transit industry* within the meaning of the Transport (Cash in Transit) Award 2020 as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
  - (e) the *passenger vehicle transportation industry* within the meaning of clause 4.2 of the Passenger Vehicle Transportation Award 2020, not including paragraph 4.2(c)), as in force on 1 July 2024, with such modifications (if any) as are prescribed by regulations for the purposes of this paragraph; and
  - (f) any other industry (however described) prescribed by the regulations for the purposes of this paragraph.
- (2) For the purposes of paragraph (1)(f), the regulations may prescribe an industry by applying, adopting or incorporating any matter contained in a modern award as in force or existing from time to time.

## **249 After Chapter 3**

Insert:

# **Chapter 3A—Minimum standards for regulated workers**

## **Part 3A-1—Core provisions for this Chapter**

### **Division 1—Introduction**

#### **536J Guide to this Part**

This Part is about the coverage and operation of the provisions of this Chapter.

Division 2 sets out when minimum standards orders, minimum standards guidelines and collective agreements cover regulated workers and regulated businesses.

Division 3 specifies the rules relating to the interaction of the provisions of this Chapter with State and Territory laws.

Division 3A deals with deferral and suspension of minimum standards orders by the Minister and deferral and suspension of road transport minimum standards orders by the FWC.

Division 3B deals with consultation before varying or revoking road transport minimum standards orders after deferral.

Division 3C deals with consultation before varying or revoking employee-like worker minimum standards orders after deferral.

### **536JA Meaning of employee and employer**

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

## **Division 2—Provisions relating to coverage and operation of minimum standards orders, minimum standards guidelines and collective agreements**

### **Subdivision A—Coverage and operation of minimum standards orders and guidelines**

#### **536JB Contravening a minimum standards order**

A person must not contravene a term of a minimum standards order.

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

Note 2: A person does not contravene a term of a minimum standards order unless the order applies to the person: see subsection 536JC(1).

#### **536JC The significance of a minimum standards order applying to a person**

- (1) A minimum standards order does not impose obligations on a person, and a person does not contravene a term of a minimum standards order, unless the order applies to the person.

- (2) A minimum standards order does not give a person an entitlement unless the order applies to the person.

**536JD When a minimum standards order *applies* to a person**

*When a minimum standards order **applies** to a regulated worker*

- (1) A minimum standards order **applies** to a regulated worker if:
- (a) the minimum standards order covers the regulated worker; and
  - (b) the minimum standards order is in operation; and
  - (c) no other provision of this Act provides, or has the effect, that the minimum standards order does not apply to the regulated worker.

*When an employee-like minimum standards order **applies** to a digital labour platform operator*

- (2) An employee-like minimum standards order **applies** to a digital labour platform operator if:
- (a) the employee-like minimum standards order covers the digital labour platform operator; and
  - (b) the employee-like minimum standards order covers employee-like workers; and
  - (c) the digital labour platform operator:
    - (i) directly or indirectly engages, under services contracts, employee-like workers covered by the employee-like minimum standards order who perform work through or by means of a digital labour platform operated by the digital labour platform operator; or
    - (ii) arranges or facilitates services contracts through or by means of a digital labour platform operated by the digital labour platform operator, under which work is performed by employee-like workers covered by the employee-like minimum standards order; and
  - (d) the employee-like minimum standards order is in operation; and
  - (e) no other provision of this Act provides, or has the effect, that the employee-like minimum standards order does not apply to the digital labour platform operator.

*When a road transport minimum standards order **applies** to a road transport business*

- (3) A road transport minimum standards order **applies** to a road transport business if:
- (a) the road transport minimum standards order covers the road transport business; and
  - (b) the road transport minimum standards order covers regulated road transport contractors; and
  - (c) the road transport business receives the services under a services contract of a regulated road transport contractor covered by the road transport minimum standards order; and
  - (d) the road transport minimum standards order is in operation; and
  - (e) no other provision of this Act provides, or has the effect, that the road transport minimum standards order does not apply to the road transport business.

*Minimum standards order applies in relation to services contracts*

- (4) A reference in this Act to a minimum standards order applying to a regulated worker is a reference to the order applying to the regulated worker in relation to a services contract.

**536JE When a minimum standards order covers a regulated worker or a regulated business**

- (1) A minimum standards order **covers** a regulated worker or a regulated business if the order is expressed to cover the regulated worker or the regulated business.

*Effect of other provisions of this Act, FWC orders or court orders on coverage*

- (2) A minimum standards order also **covers** a regulated worker or a regulated business if any of the following provides, or has the effect, that the order covers the regulated worker or the regulated business:
- (a) a provision of this Act;
  - (b) an FWC order made under a provision of this Act;

- (c) an order of a court.
- (3) Despite subsections (1) and (2), a minimum standards order does not cover a regulated worker or a regulated business if any of the following provides, or has the effect, that the order does not cover the regulated worker or the regulated business:
  - (a) a provision of this Act;
  - (b) an FWC order made under a provision of this Act;
  - (c) an order of a court.

*Minimum standards orders that have ceased to operate*

- (4) Despite subsections (1) and (2), a minimum standards order that has ceased to operate does not cover a regulated worker or a regulated business.

**536JF When a minimum standards order is in operation**

*When a minimum standards order comes into operation*

- (1) A minimum standards order comes into operation on the day specified in the order.
- (2) The specified day must not be earlier than the day on which the minimum standards order is made.
- (2A) The specified day for an employee-like worker minimum standards order must be a day that the FWC is satisfied will provide sufficient time for the FWC to undertake a reasonable period of consultation after the relevant notice of intent for the order was published, having regard to the unique nature of digital platform work.
- (3) The specified day for a road transport minimum standards order must not be earlier than 12 months after the relevant notice of intent for the order was published.
- (3A) Despite subsection (3), the specified day may be a day not earlier than 6 months after the relevant notice of intent for the order was published, if the FWC is satisfied that there are circumstances that urgently require specifying such a day.

*When a determination varying or revoking a minimum standards order comes into operation*

- (4) A determination varying or revoking a minimum standards order comes into operation on the day specified in the determination.
- (5) The specified day must not be earlier than the day on which the determination is made.

*Minimum standards orders operate until revoked*

- (6) A minimum standards order continues in operation until it is revoked.
- (6A) The **relevant notice of intent** for an employee-like worker minimum standards order is the notice of intent published under subsection 536KAA(1) at the same time as the draft of the employee-like worker minimum standards order is made.
- (7) The **relevant notice of intent** for a road transport minimum standards order is the notice of intent published under subsection 536KB(1) at the same time as the draft of the road transport minimum standards order is made.

**536JG When minimum standards guidelines *cover* a regulated worker or a regulated business**

- (1) Minimum standards guidelines **cover** a regulated worker or a regulated business if the guidelines are expressed to cover the regulated worker or the regulated business.

*Effect of other provisions of this Act, FWC orders or court orders on coverage*

- (2) Minimum standards guidelines also **cover** a regulated worker or a regulated business if any of the following provides, or has the effect, that the guidelines cover the regulated worker or the regulated business:
  - (a) a provision of this Act;
  - (b) an FWC order made under a provision of this Act;
  - (c) an order of a court.

- (3) Despite subsections (1) and (2), minimum standards guidelines do not cover a regulated worker or a regulated business if any of the following provides, or has the effect, that the guidelines do not cover the regulated worker or the regulated business:
- (a) a provision of this Act;
  - (b) an FWC order made under a provision of this Act;
  - (c) an order of a court.

*Minimum standards guidelines that have ceased to operate*

- (4) Despite subsections (1) and (2), minimum standards guidelines that have ceased to operate do not cover a regulated worker or a regulated business.

**536JH When minimum standards guidelines are in operation**

*When minimum standards guidelines come into operation*

- (1) Minimum standards guidelines come into operation on the day specified in the guidelines.
- (2) The specified day must not be earlier than the day on which the minimum standards guidelines are made.

*When a determination varying or revoking minimum standards guidelines comes into operation*

- (3) A determination varying or revoking minimum standards guidelines comes into operation on the day specified in the determination.
- (4) The specified day must not be earlier than the day on which the determination is made.

*Minimum standards guidelines operate until revoked*

- (5) Minimum standards guidelines continue in operation until they are revoked.

## Subdivision B—Coverage and operation of collective agreements

### 536JJ Contravening a collective agreement

A person must not contravene a term of a collective agreement.

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

Note 2: A person does not contravene a term of a collective agreement unless the agreement applies to the person: see section 536JK.

### 536JK The significance of a collective agreement applying to a person

- (1) A collective agreement does not impose obligations on a person, and a person does not contravene a term of a collective agreement, unless the agreement applies to the person.
- (2) A collective agreement does not give a person an entitlement unless the agreement applies to the person.

### 536JL When a collective agreement *applies* to a person

*When a collective agreement **applies** to a regulated worker*

- (1) A collective agreement **applies** to a regulated worker if:
  - (a) the collective agreement covers the regulated worker; and
  - (b) the collective agreement is in operation; and
  - (c) no other provision of this Act provides, or has the effect, that the collective agreement does not apply to the regulated worker.

*When a collective agreement **applies** to a regulated business*

- (2) A collective agreement **applies** to a regulated business if:
  - (a) the collective agreement covers the regulated business; and
  - (b) the collective agreement covers regulated workers; and
  - (c) if the regulated business is a digital labour platform operator:
    - (i) the digital labour platform operator directly or indirectly engages, under services contracts, employee-like workers covered by the collective agreement who



- perform work through or by means of a digital labour platform operated by the digital platform operator; or
- (ii) the digital labour platform operator arranges or facilitates services contracts, through or by means of a digital labour platform operated by the digital platform operator, under which work is performed by employee-like workers covered by the collective agreement; and
- (d) if the regulated business is a road transport business—the road transport business receives services under services contracts under which the regulated road transport contractors perform work; and
- (e) no other provision of this Act provides, or has the effect, that the collective agreement does not apply to the regulated business.

*Collective agreement applies in relation to services contracts*

- (3) A reference in this Act to a collective agreement applying to a regulated worker is a reference to the collective agreement applying to the regulated worker in relation to a services contract.

**536JM When a collective agreement *covers* a regulated worker, a regulated business or an organisation**

- (1) A collective agreement ***covers*** a regulated worker, a regulated business or an organisation if the agreement is expressed to cover the regulated worker, the regulated business or the organisation.

*Effect of other provisions of this Act, FWC orders or court orders on coverage*

- (2) A collective agreement also ***covers*** a regulated worker, a regulated business or an organisation if any of the following provides, or has the effect, that the agreement covers the regulated worker, the regulated business or the organisation:
- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

- (3) Despite subsections (1) and (2), a collective agreement does not cover a regulated worker, a regulated business or an organisation if any of the following provides, or has the effect, that the agreement does not cover the regulated worker, the regulated business or the organisation:
- (a) a provision of this Act;
  - (b) an FWC order made under a provision of this Act;
  - (c) an order of a court.

*Collective agreements that have ceased to operate*

- (4) Despite subsections (1) and (2), a collective agreement that has ceased to operate does not cover regulated worker, a regulated business or an organisation.

**536JN When a collective agreement is in operation**

*When a collective agreement comes into operation*

- (1) A collective agreement comes into operation:
- (a) on the day that is it is registered under subsection 536MS(1);  
or
  - (b) if a later day is specified in the collective agreement—on that later day.

*When a collective agreement is terminated*

- (2) A collective agreement is terminated:
- (a) at the end of the period of operation specified in the collective agreement as required by paragraph 536MS(3)(a);  
or
  - (b) if an earlier day is specified in a termination notice in relation to the collective agreement that is registered under subsection 536MW(1)—on that day.

*Collective agreements operate until terminated*

- (3) A collective agreement continues in operation until it is terminated.

*Interaction with minimum standards orders, etc.*

- (4) A term of a collective agreement has no effect in relation to a regulated worker in respect of a matter to the extent that the term is detrimental to the regulated worker in any respect, when compared to a minimum standards order or a law of a State or Territory that applies to the regulated worker in relation to that matter.

*References to State and Territory laws*

- (5) Without limiting any other provision of this Act, a reference in this section to a law of a State or Territory:
- (a) includes a reference to a regulation, rule or other instrument (however described) made pursuant to, or for the purposes of, a law of a State or Territory; and
  - (b) is a reference to a law of a State or Territory as in force from time to time.

### **Division 3—Exclusion of certain State and Territory laws**

#### **536JP Exclusion of certain State and Territory laws**

- (1) For the purposes of this Chapter, the rights, entitlements, obligations and liabilities of a regulated worker, a regulated business or a party to a services contract are not affected by a law of a State or Territory to the extent that the law would otherwise do one or more of the following:
- (a) take or deem the regulated business, regulated worker or party to be an employer or employee, or otherwise treat the regulated business, regulated worker or party as if the regulated business, regulated worker or party, as the case requires, were an employer or employee, for the purposes of a law that relates to one or more workplace relations matters (or provide a means for the regulated business, regulated worker or party to be so taken, deemed or treated);
  - (b) confer or impose rights, entitlements, obligations or liabilities on the regulated business, regulated worker or party in relation to matters that, in an employment relationship, would be workplace relations matters (or provide a means for rights, entitlements, obligations or liabilities in relation to such

matters to be conferred or imposed on the regulated business, regulated worker or party);

- (c) without limiting paragraphs (a) and (b)—expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:
  - (i) make an order or determination (however described) setting aside, or declaring to be void or otherwise unenforceable, all or part of the services contract;
  - (ii) make an order or determination (however described) amending or varying all or part of the services contract.

Note 1: For the meaning of *workplace relations matter*, see section 536JQ.

Note 2: For the meaning of *unfairness ground*, see section 536JR.

- (2) The rights, entitlements, obligations and liabilities of a regulated business, a regulated worker or a party to a services contract are not affected by a law of a State or Territory that is specified in regulations made for the purposes of this subsection, to the extent that the law is so specified.
- (3) Subsection (1) does not apply in relation to:
  - (a) a law of a State or Territory, to the extent that the law deals with matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers), other than matters mentioned in paragraph (1)(c); or
  - (b) any of the following laws:
    - (i) Chapter 6 of the *Industrial Relations Act 1996* (NSW) (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6);
    - (ii) the *Owner Drivers and Forestry Contractors Act 2005* (Vic.); or
  - (c) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.

Note: For interaction of these laws with minimum standards orders, see section 536JS.

- (4) To avoid doubt, subsection (2) has effect even if a law specified in regulations made under that subsection:

- (a) is a law referred to in paragraph (3)(a) or (3)(b); or
  - (b) deals with matters that, because of subsection 536JQ(2), are not workplace relations matters.
- (5) Without limiting any other provision of this Act, a reference in this section to a law of a State or Territory:
  - (a) includes a reference to a regulation, rule or other instrument (however described) made pursuant to, or for the purposes of, a law of a State or Territory; and
  - (b) is a reference to a law of a State or Territory as in force from time to time.

### **536JQ What are *workplace relations matters***

- (1) Subject to subsection (2), for the purposes of this Chapter, ***workplace relations matter*** means any of the following matters:
  - (a) remuneration, allowances or other amounts payable to employees;
  - (b) leave entitlements of employees;
  - (c) hours of work of employees;
  - (d) enforcing or terminating contracts of employment;
  - (e) making, enforcing or terminating agreements (not being contracts of employment) determining terms and conditions of employment;
  - (f) disputes between employees and employers, or the resolution of such disputes;
  - (g) industrial action by employees or employers;
  - (h) any other matter that is substantially the same as a matter that relates to employees or employers and that is dealt with by or under:
    - (i) this Act; or
    - (ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
    - (iii) a State or Territory industrial law;unless the matter is specified in regulations made for the purposes of this paragraph;
  - (i) any other matter specified in regulations made for the purposes of this paragraph.

- (2) For the purposes of subsection (1), none of the following is a ***workplace relations matter***:
- (a) prevention of discrimination or promotion of equal employment opportunity, but only if the State or Territory law concerned is neither a State or Territory industrial law nor contained in such a law;
  - (b) superannuation;
  - (c) workers' compensation;
  - (d) occupational health and safety;
  - (e) child labour;
  - (f) the observance of a public holiday, except the rate of payment of an employee for the public holiday;
  - (g) deductions from wages or salaries;
  - (h) industrial action affecting essential services;
  - (i) attendance for service on a jury;
  - (j) professional or trade regulation;
  - (k) consumer protection;
  - (l) taxation;
  - (m) any other matter specified in regulations made for the purposes of this paragraph.

### **536JR What is an *unfairness ground***

- (1) Subject to subsection (2), for the purposes of this Chapter, each of the following grounds is an ***unfairness ground*** in relation to a services contract:
- (a) the services contract is unfair;
  - (b) the services contract is harsh or unreasonable;
  - (c) the services contract is unjust;
  - (d) the services contract is against the public interest;
  - (e) the services contract is designed to, or does, avoid the provisions of:
    - (i) this Act; or
    - (ii) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or
    - (iii) a State or Territory industrial law; or

- (iv) an award, agreement or other instrument made under a law referred to in subparagraph (i), (ii) or (iii);
  - (f) the services contract provides for remuneration at a rate that is, or is likely to be, less than the rate of remuneration for an employee performing similar work;
  - (g) any other ground that is substantially the same as a ground specified in any of paragraphs (a) to (f);
  - (h) any other ground specified in regulations made for the purposes of this paragraph.
- (2) A ground specified in subsection (1) is not an ***unfairness ground*** in relation to a services contract to the extent that the ground relates to matters that, because of subsection 536JQ(2), are not workplace relations matters.

### **536JS Interaction of minimum standards orders with State and Territory laws**

- (1) A minimum standards order prevails over a law of a State or Territory, to the extent of any inconsistency.
- (1A) It is the intent of the Parliament that, for an employee-like worker or digital labour platform operator to whom an employee-like worker minimum standards order applies in relation to a services contract, this Chapter applies to the exclusion of the laws described in subsection 536JP(3) to the extent that those laws would otherwise affect the rights, entitlements, obligations and liabilities of the employee-like worker or digital labour platform operator in relation to the services contract.
- (2) Despite subsections (1) and (1A), a term of a minimum standards order applies subject to the following:
  - (a) a law of a State or Territory specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified;
  - (b) a law of a State or Territory that provides for rights or remedies by reference to a law described in paragraph (a).
- (3) Without limiting any other provision of this Act, a reference in this section to a law of a State or Territory:

- (a) includes a reference to a regulation, rule or other instrument (however described) made pursuant to, or for the purposes of, a law of a State or Territory; and
- (b) is a reference to a law of a State or Territory as in force from time to time.

**536JT Authorisation of conduct for the purposes of the *Competition and Consumer Act 2010***

*Conduct in accordance with order or collective agreement*

- (1) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, and the Competition Code within the meaning of that Act, anything done in accordance with a minimum standards order, minimum standards guidelines or a collective agreement by a person or entity covered by the order, guidelines or agreement is specified in and specifically authorised by this Act.

*Making a collective agreement*

- (2) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, and the Competition Code within the meaning of that Act, making a collective agreement by a person or entity is specified in and specifically authorised by this Act.

*Conduct in preparation for or incidental to making or applying for registration of a collective agreement*

- (3) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, and the Competition Code within the meaning of that Act, anything done by a person or entity in preparation for, or incidental to, making, or applying for registration of, a collective agreement is specified in and specifically authorised by this Act.

*Certain conduct not protected*

- (4) Despite subsections (1), (2) and (3), conduct referred to in those subsections is not specified in or specifically authorised by this Act if the conduct is:
  - (a) making a contract or arrangement, or arriving at an understanding, that is or contains a cartel provision that



satisfies the purpose condition in either paragraph 45AD(3)(a) or 45AD(3)(b) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act; or

- (b) boycott conduct within the meaning of subsection 87AA(2) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act; or
- (c) done in accordance with a term of a collective agreement, to the extent that the term has no effect because of subsection 536MX(1) or (2) of this Act (about matters in respect of which a collective agreement may not be made, or that are primarily of a commercial nature).

## **Part 3A-2—Minimum standards for regulated workers**

### **Division 1—Introduction**

#### **536JV Guide to this Part**

This Part is about setting minimum standards for certain regulated workers, specifically, employee-like workers and regulated road transport contractors.

Division 2 of this Part sets out the minimum standards objective to which the FWC must have regard when performing a function or exercising a power under this Part.

Division 3 empowers the FWC to make minimum standards orders for regulated workers, which set minimum standards to which they are entitled in relation to certain matters including payment terms and working time.

Division 4 empowers the FWC to make minimum standards guidelines for regulated workers.

Division 5 provides for regulations to be made in relation to internal review of certain decisions.

### **536JW Meaning of employee and employer**

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

## **Division 2—The minimum standards objective**

### **536JX The minimum standards objective**

In performing a function or exercising a power under this Part, the FWC must take into account the need for an appropriate safety net of minimum standards for regulated workers, having regard to the following:

- (a) the need for standards that:
  - (i) are clear and simple; and
  - (ii) are fair and relevant; and
  - (iii) recognise the perspectives of regulated workers, including their skills, the value of the work they perform and their preferences about their working arrangements; and
  - (iv) do not change the form of the engagement of regulated workers from independent contractor to employee; and
  - (v) do not give preference to one business model or working arrangement over another; and
  - (vi) are tailored to the relevant industry, occupation or sector and the relevant business models; and
  - (vii) are tailored to the type of work, working arrangements and regulated worker preferences; and
  - (viii) reflect the differences in the form of engagement of regulated workers as independent contractors to the form of engagement of employees; and
  - (ix) have regard to the ability of regulated workers to perform work under services contracts for multiple businesses, and the fact that the work may be performed simultaneously;
- (b) in addition to the other matters provided for in this subsection, the need for standards that deal with minimum rates of pay that:

- (i) take into account costs necessarily incurred by regulated workers directly arising from the performance of a services contract; and
  - (ii) take into account safety net minimum standards that apply to employees performing comparable work; and
  - (iii) do not change the form of the engagement of regulated workers;
- (c) the need to avoid unreasonable adverse impacts upon the following:
- (i) sustainable competition among industry participants;
  - (ii) business costs, regulatory burden, sustainability, innovation, productivity or viability;
  - (iii) administrative and compliance costs for industry participants;
  - (iv) the national economy;
  - (v) persons or bodies that use or rely on the work performed by regulated workers, or the services received under services contracts for the performance of that work;
- (d) the need to consider other orders or instruments (however described) made under this Chapter and to avoid unnecessary overlap of such orders or instruments.

This is the *minimum standards objective*.

## **Division 3—Minimum standards orders**

### **Subdivision A—General matters**

#### **536JY Minimum standards orders**

- (1) The FWC may make an order (a *minimum standards order*) that sets standards for:
  - (a) employee-like workers; or
  - (b) regulated road transport contractors.
- (2) A minimum standards order for employee-like workers is an *employee-like worker minimum standards order*.
- (3) A minimum standards order for regulated road transport contractors is a *road transport minimum standards order*.

Note: The FWC must be constituted by an Expert Panel for the purposes of making a road transport minimum standards order (see subsection 617(10B)).

- (4) The FWC may make a minimum standards order under this section:
- (a) on its own initiative; or
  - (b) on application under subsection 536JZ(1).

### **536JZ Applications for minimum standards orders**

- (1) Any of the following may apply to the FWC for the making of a minimum standards order:
- (a) an organisation that is entitled to represent the industrial interests of one or more regulated workers who would be covered by the proposed minimum standards order;
  - (b) an organisation that is entitled to represent the industrial interests of one or more of the regulated businesses that would be covered by the proposed minimum standards order;
  - (c) a regulated business that is included in a class of regulated businesses that would be covered by the proposed minimum standards order;
  - (d) the Minister.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

#### *Matters to be specified in an application*

- (2) An application under subsection (1) must specify whether it is an application for an employee-like worker minimum standards order or a road transport minimum standards order.
- (3) An application for the making of a minimum standards order must specify the class of regulated workers to be covered by the order.
- (3A) An application for the making of a minimum standards order must specify the class of regulated businesses to be covered by the order.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (3) or (3A), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**Subdivision B—Matters relating to employee-like worker  
minimum standards orders**

**536K Particular matters FWC must take into account in making a  
decision on an employee-like worker minimum standards  
order**

- (1) This section applies to a decision to make or vary, or not to make or vary, an employee-like worker minimum standards order, other than a decision of the FWC to refuse to consider an application to make or vary such an order.
- (2) Before making a decision to which this section applies, the FWC must consider whether, on the whole, the persons included (or purportedly included) in the class of employee-like workers to be covered by the order, or the order as proposed to be varied, are employee-like workers.
- (3) If the FWC is not satisfied that, on the whole, the persons included (or purportedly included) in the class of employee-like workers to be covered by the minimum standards order, or the order as proposed to be varied, are employee-like workers, the FWC must decide to refuse to consider the application, or not to make or vary the order, as the case requires.
- (4) The FWC:
  - (a) must not make or vary the employee-like worker minimum standards order unless there has been genuine engagement with the parties to be covered; and
  - (b) must not make or vary the employee-like worker minimum standards order unless the consultation process set out in Subdivision BA has been followed; and
  - (c) must have regard to choice and flexibility in working arrangements in making or varying the employee-like worker minimum standards order.

**Subdivision BA—Consultation process for employee-like worker minimum standards orders**

**536KAA FWC to prepare and publish a draft of an employee-like worker minimum standards order**

- (1) Before making an employee-like worker minimum standards order, the FWC must:
  - (a) publish a notice (a *notice of intent*) stating that the FWC proposes to make an employee-like worker minimum standards order; and
  - (b) publish a draft of the proposed employee-like worker minimum standards order.
- (2) The FWC must publish the notice of intent and the draft of the employee-like worker minimum standards order on the FWC's website and by any other means the FWC considers appropriate.

**536KAB Affected entities to have a reasonable opportunity to make submissions on a draft employee-like worker minimum standards order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the draft of an employee-like worker minimum standards order published under subsection 536KAA(1)(b), having regard to the unique nature of digital platform work.
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
  - (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing

- anything that is confidential or commercially sensitive);  
or
- (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC’s website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (6) For the purposes of subsection (1), an *affected entity*, in relation to a draft employee-like worker minimum standards order published under paragraph 536KAA(1)(b), is:
- (a) a person or body likely to be affected by the making of an employee-like worker minimum standards order based on the draft; or
- (b) a person or body prescribed by the regulations, or belonging to a class of persons or bodies prescribed by the regulations.

### **536KAC Hearings in relation to draft order**

The FWC may, but is not required to, hold a hearing in relation to a draft employee-like worker minimum standards order.

### **536KAD Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft employee-like worker minimum standards order.
- (2) If changes made under subsection (1) are significant, the FWC must:
- (a) decide not to make the employee-like worker minimum standards order based on the draft; and
- (b) publish a subsequent notice of intent under subsection 536KAA(1) in relation to the revised draft

employee-like worker minimum standards order, and publish the revised draft; and

- (c) follow the process set out in section 536KAB in relation to the revised draft employee-like worker minimum standards order, with the period of consultation under that section to be a period that the FWC is satisfied is a reasonable period of consultation, having regard to the unique nature of digital platform work.

**536KAE Decision not to make order based on the draft**

The FWC may decide that no employee-like worker minimum standards order is to be made based on the draft. If the FWC does so, the FWC must publish notice of the decision on its website and by any other means the FWC considers appropriate.

**Subdivision C—Matters relating to road transport minimum standards orders**

**536KA Particular matters FWC must take into account in making a decision on a road transport minimum standards order**

- (1) This section applies if:
  - (a) an application is made for a road transport minimum standards order under subsection 536JZ(1) or for a variation of a road transport minimum standards order under section 536KP; or
  - (b) the FWC is considering making or varying a minimum standards order on its own initiative.
- (2) The FWC:
  - (a) must not make or vary the road transport minimum standards order unless there has been genuine engagement with the parties to be covered; and
  - (b) must not make or vary the road transport minimum standards order unless the Road Transport Advisory Group has been consulted; and
  - (c) must not make or vary the road transport minimum standards order unless the consultation process set out in Subdivision D has been followed; and



- (d) must have regard to the commercial realities of the road transport industry; and
- (e) must be satisfied that making or varying the road transport minimum standards order will not unduly affect the viability and competitiveness of owner drivers or other similar persons.

### **Subdivision D—Consultation process for road transport minimum standards orders**

#### **536KB FWC to prepare and publish a draft of a road transport minimum standards order**

- (1) Before making a road transport minimum standards order, the FWC must:
  - (a) publish a notice (a *notice of intent*) stating that the FWC proposes to make a road transport minimum standards order; and
  - (b) publish a draft of the proposed road transport minimum standards order.
- (2) The FWC must publish the notice of intent and the draft of the road transport minimum standards order on the FWC's website and by any other means the FWC considers appropriate.

#### **536KC Affected persons and bodies to have a reasonable opportunity to make and comment on a draft road transport minimum standards order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the draft of a road transport minimum standards order published under subsection 536KB(2).
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
  - (a) may decide not to publish the information; and

- (b) may instead publish:
  - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
  - (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC’s website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (6) For the purposes of subsection (1), an *affected entity*, in relation to a draft road transport minimum standards order published under paragraph 536KB(1)(b) is:
  - (a) a person or body likely to be affected by the making of a road transport minimum standards order based on the draft; or
  - (b) a person or body prescribed by the regulations, or belonging to a class of persons or bodies prescribed by the regulations.

#### **536KD Hearings in relation to draft order**

The FWC may, but is not required to, hold a hearing in relation to a draft road transport minimum standards order.

#### **536KE Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft road transport minimum standards order.
- (2) If changes made under subsection (1) are significant, the FWC must:
  - (a) decide not to make the road transport minimum standards order based on the draft; and

- (b) publish a subsequent notice of intent under subsection 536KB(1) in relation to the revised draft road transport minimum standards order, and publish the revised draft; and
- (c) follow the process set out in section 536KC in relation to the revised draft road transport minimum standards order (with the period of consultation under that section to be no shorter than 12 months starting when the subsequent notice of intent and the revised draft required by paragraph (b) of this subsection were published).

#### **536KF Decision not to make order based on the draft**

The FWC may decide that no road transport minimum standards order is to be made based on the draft. If the FWC does so, the FWC must publish notice of the decision on its website and by any other means the FWC considers appropriate.

### **Subdivision E—Decisions on minimum standards orders**

#### **536KG Decisions on applications for minimum standards orders**

- (1) If an application for a minimum standards order is made to the FWC under subsection 536JZ(1), the FWC may decide to:
  - (a) refuse to consider the application; or
  - (b) make a minimum standards order; or
  - (c) not make a minimum standards order; or
  - (d) if the FWC considers it appropriate to do so, instead make minimum standards guidelines under section 536KR, as if the application had been an application under subsection 536KS(1) for minimum standards guidelines in relation to the regulated workers covered by the application under subsection 536JZ(1).
- (2) Without limiting subsection (1), the FWC may refuse to consider the application if it is not consistent with a direction of the President under section 582(4D) (prioritisation).

**536KH Terms that must be included in an employee-like worker minimum standards order**

*Terms relating to coverage*

- (1) An employee-like worker minimum standards order must include terms setting out in accordance with this section:
  - (a) the digital platform work covered by the employee-like worker minimum standards order; and
  - (b) the digital labour platform operators covered by the employee-like worker minimum standards order; and
  - (c) the employee-like workers covered by the employee-like worker minimum standards order.
- (2) An employee-like worker minimum standards order must be expressed to cover:
  - (a) specified digital labour platform operators; and
  - (b) specified employee-like workers who:
    - (i) are engaged through or by means of a digital labour platform operated by a digital platform operator covered by the employee-like worker minimum standards order; or
    - (ii) perform work under a contract arranged or facilitated through or by means of a digital labour platform operated by a digital platform operator covered by the employee-like worker minimum standards order.
- (3) An employee-like worker minimum standards order must specify the digital labour platform operators that are primarily responsible for providing the entitlements of specified employee-like workers.
- (4) For the purposes of subsections (1), (2) and (3):
  - (a) digital labour platform operators must be specified by inclusion in a specified class or specified classes; and
  - (b) employee-like workers must be specified by inclusion in a specified class or specified classes.
- (5) Without limiting the way in which a class may be described for the purposes of subsection (4), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**536KJ Terms that must be included in a road transport minimum standards order**

*Terms relating to coverage*

- (1) A road transport minimum standards order must include terms setting out in accordance with this section:
  - (a) the work in the road transport industry covered by the road transport minimum standards order; and
  - (b) the regulated road transport contractors covered by the road transport minimum standards order; and
  - (c) the road transport businesses covered by the road transport minimum standards order.
- (2) A road transport minimum standards order must be expressed to cover:
  - (a) specified road transport businesses; and
  - (b) specified regulated road transport contractors.
- (3) For the purposes of subsection (2):
  - (a) road transport businesses must be specified by inclusion in a specified class or specified classes; and
  - (b) regulated road transport contractors must be specified by inclusion in a specified class or specified classes.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (3), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**536KK Term about settling disputes must be included in a minimum standards order**

A minimum standards order must include a term that provides a procedure for settling disputes about any matters arising under the order.

**536KL Terms that may be included in a minimum standards order**

- (1) A minimum standards order may include terms about any of the following matters:

- (a) payment terms;
  - (b) deductions;
  - (d) record-keeping in relation to matters covered by or required by this Act, or by an order or instrument made under this Act, being matters that concern regulated workers or regulated businesses;
  - (e) insurance;
  - (f) consultation;
  - (g) representation;
  - (h) delegates' rights;
  - (i) cost recovery.
- (2) The matters listed in subsection (1) do not limit the terms that may be included in a minimum standards order.

**536KM Terms that must not be included in a minimum standards order**

- (1) A minimum standards order must not include terms about any of the following matters:
- (a) overtime rates;
  - (b) rostering arrangements;
  - (c) matters that are primarily of a commercial nature that do not affect the terms and conditions of engagement of regulated workers covered by the minimum standards order;
  - (d) a term that would change the form of the engagement or the status of regulated workers covered by the minimum standards order including, but not limited to, a term that deems a regulated worker to be an employee;
  - (e) a matter relating to work health and safety that is otherwise comprehensively dealt with by a law of the Commonwealth, a State or a Territory;
  - (f) a matter prescribed by the regulations, or belonging to a class of matter prescribed by the regulations for the purposes of this paragraph.
- (3) For the purposes of paragraph (1)(e):
- (a) the regulations may specify that a particular matter, or a matter included in a class of matters, is, or is not, dealt with

comprehensively by a law of the Commonwealth, a State or a Territory; and

- (b) the regulations may prescribe one or more laws of the Commonwealth, a State or a Territory to which that paragraph does, or does not, not apply.

**536KMA Further terms that must not be included in an employee-like worker minimum standards order**

- (1) In addition to the matters in section 536KM, an employee-like worker minimum standards order must not include terms about any of the following matters:
  - (a) penalty rates for work performed at particular times or on particular days (including, but not limited to, loadings and shift allowances);
  - (b) payment for:
    - (i) time before the acceptance of an engagement on a digital labour platform; or
    - (ii) time in between the completion of an engagement and the commencement of the next engagement on a digital labour platform;
  - (c) minimum periods of engagement or a minimum payment referable to a period of minimum engagement.
- (2) Despite subsection (1), a term about a matter mentioned in subsection (1) may be included in an employee-like worker minimum standards order if the FWC is satisfied that the inclusion of the term is appropriate, having regard to:
  - (a) the type of work performed by the employee-like workers covered by the employee-like worker minimum standards order; and
  - (b) the digital labour platform operators covered by the employee-like worker minimum standards order.

**536KN Further terms that must not be included in a road transport minimum standards order**

- (1) In addition to the matters in section 536KM, a road transport minimum standards order must not include terms about any of the following matters:

- (a) a matter relating to road transport that is otherwise comprehensively dealt with:
    - (i) by the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld); or
    - (ii) by another law of the Commonwealth, a State or a Territory;
  - (b) a matter prescribed by the regulations, or belonging to a class of matter prescribed by the regulations.
- (2) For the purposes of paragraph (1)(b):
- (a) the regulations may specify that a particular matter, or a matter included in a class of matters, is, or is not, dealt with comprehensively by the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) or another law of the Commonwealth, a State or a Territory; and
  - (b) the regulations may prescribe one or more laws of the Commonwealth, a State or a Territory to which subparagraph (1)(a)(ii) does, or does not, not apply.

### **536KO Achieving the minimum standards objective**

A minimum standards order may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the minimum standards objective.

### **536KP Applications to vary or revoke minimum standards orders**

Any of the following may apply to the FWC for a determination varying or revoking a minimum standards order:

- (a) an organisation that is entitled to represent, or another body that represents, the industrial interests of one or more regulated workers covered by the minimum standards order or who would be covered by the minimum standards order as proposed to be varied;
- (b) an organisation that is entitled to represent, or another body that represents, the industrial interests of one or more of the regulated businesses covered by the minimum standards



- order, or that would be covered by the minimum standards order as proposed to be varied;
- (c) a regulated business covered by the minimum standards order or that would be covered by the proposed minimum standards order as proposed to be varied;
- (ca) a national or State council or federation that is effectively representative of a significant number of organisations or bodies mentioned in paragraph (a) or (b);
- (d) the Minister.

**536KQ FWC may vary or revoke minimum standards orders if consistent with the minimum standards objective**

- (1) The FWC may make a determination varying or revoking a minimum standards order if the FWC is satisfied that making the determination is consistent with the minimum standards objective.  
  

Note: In the case of a road transport minimum standards order, the FWC must also consider the road transport objective.
- (2) The FWC may make a determination varying a minimum standards order in such a way that not all of the elements of the variation sought in an application under section 536KP are implemented, including by refusing to make a variation to the extent that it would result in the order covering persons who are not regulated workers.
- (3) The FWC may make a determination varying a minimum standards order to remove an ambiguity or uncertainty or to correct an error.
- (4) The FWC may make a determination varying or revoking a minimum standards order:
  - (a) on its own initiative; or
  - (b) on application under section 536KP.
- (5) The FWC may also make a determination under subsection (1) varying or revoking a minimum standards order to give effect to a decision under paragraph 536KQS(2)(a) or (b) to vary or revoke the minimum standards order.

Note: Subsection 536KQS(1) requires the FWC to consider whether to vary or revoke a minimum standards order after a deferral declaration, a deferral determination, a suspension declaration or a suspension determination is made in relation to the order.

## Division 3A—Deferral and suspension of minimum standards orders

### Subdivision A—Ministerial declarations to defer or suspend minimum standards orders

#### 536KQA Minister may make a declaration deferring the operation or application of a minimum standards order

- (1) If the Minister considers it is in the public interest to do so, the Minister may, by notifiable instrument, make a declaration (a ***deferral declaration***) that defers:
  - (a) the coming into operation of a minimum standards order; or
  - (b) the application of:
    - (i) all of the terms of a minimum standards order to a specified class or specified classes of persons; or
    - (ii) specified terms of a minimum standards order to a specified class or specified classes of persons; or
    - (iii) specified terms of a minimum standards order to all persons.
- (2) A deferral declaration made under paragraph (1)(a) is a ***full deferral declaration***, and a deferral declaration made under paragraph (1)(b) is a ***part deferral declaration***, in relation to the minimum standards order to which the deferral declaration relates.
- (3) A deferral declaration in relation to a minimum standards order:
  - (a) comes into operation on the day on which it is made; and
  - (b) ceases to be in operation on the day on which the FWC decides under subsection 536KQS(2) whether or not to vary or revoke the minimum standards order.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.
- (5) The Secretary of the Department must publish a deferral declaration on the Department's website as soon as practicable after the deferral declaration is made.

### **536KQB Limitations on making a deferral declaration**

*No deferral of minimum standards order that is in operation*

- (1) The Minister must not make a deferral declaration in relation to a minimum standards order that has already come into operation.

*Only one full deferral declaration is permitted etc.*

- (2) The Minister:
- (a) may only make one full deferral declaration in relation to a particular minimum standards order; and
  - (b) must not make a full deferral declaration in relation to a particular road transport minimum standards order if a deferral determination (whether a full deferral determination or a part deferral determination) has previously been made by the FWC in relation to the road transport minimum standards order.

Note: The FWC may make deferral determinations in relation to road transport minimum standards orders under Subdivision B of this Division.

*More than one part deferral declaration is permitted*

- (3) Subject to subsection (4), the Minister may make more than one part deferral declaration in relation to a particular minimum standards order.
- (4) If more than one part deferral declaration or part deferral determination is made in relation to the same minimum standards order as permitted by subsection (3) of this section or subsection 536KQK(3), a later part deferral declaration must not have the effect of deferring, or purporting to defer, the application of a term or terms to any person:
- (a) to whom the terms already apply when the later part deferral declaration is made; or
  - (b) in relation to whom the application of the terms has previously been deferred.

### 536KQC Operation of a minimum standards order during deferral

A minimum standards order:

- (a) is not in operation during any period when a full deferral declaration in relation to the minimum standards order is in operation; and
- (b) is in operation during any period when a part deferral declaration in relation to the minimum standards order is in operation.

Note: Although a minimum standards order is in operation when a part deferral declaration is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

### 536KQD Minister may make a declaration suspending a minimum standards order

- (1) If the Minister considers it is in the public interest to do so, the Minister may, by notifiable instrument, make a declaration (a ***suspension declaration***):
  - (a) suspending the operation of a minimum standards order; or
  - (b) suspending the application of:
    - (i) all of the terms of a minimum standards order to a specified class or specified classes of persons; or
    - (ii) specified terms of a minimum standards order to a specified class or specified classes of persons; or
    - (iii) specified terms of a minimum standards order to all persons.
- (2) A suspension declaration made under paragraph (1)(a) is a ***full suspension declaration***, and a suspension declaration made under paragraph (1)(b) is a ***part suspension declaration***, in relation to the minimum standards order to which the suspension declaration relates.

*Suspension declaration must specify period of suspension*

- (3) A suspension declaration must specify the period of the suspension, which:
  - (a) must not be longer than 12 months; and

- (b) must not start before the day on which the suspension declaration is made.

*When period of suspension ends*

- (4) Subject to subsection (5), a period of suspension specified in a suspension declaration ends immediately after the end of the period specified in the suspension declaration under subsection (3).
- (5) If a period of suspension has not already ended under subsection (3) when the FWC makes a decision under subsection 536KQS(2) as to whether to vary or revoke the minimum standards order, the period of suspension ends on whichever of the following days is applicable:
  - (a) if the FWC decides to vary or revoke the minimum standards order—on the day that the determination made under subsection 536KQ(1) varying or revoking the minimum standards order comes into operation, which must not be later than 12 months after the day on which the suspension declaration was made;
  - (b) if the FWC decides not to vary or revoke the minimum standards order:
    - (i) 7 days after the day on which the decision is made; or
    - (ii) if a 7-day period would result in the suspension lasting longer than 12 months—such shorter period as is specified in the decision, which must be a period that would result in the suspension lasting 12 months or less.

*Classes*

- (6) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

*Orders*

- (7) If the Minister makes a suspension declaration, the FWC may make any orders it considers appropriate to ensure that no person is unfairly affected by the suspension.

*Publication*

- (8) The Secretary of the Department must publish a suspension declaration on the Department's website as soon as practicable after the suspension declaration is made.

*Accrued rights etc.*

- (9) The making of a suspension declaration does not affect any right or liability that a person acquired, accrued or incurred before the suspension declaration is made.

**536KQE Suspension declaration must be made within 12 months of certain dates**

*Full suspension declaration timing*

- (1) A full suspension declaration in relation to a minimum standards order must be made within 12 months of the day on which the minimum standards order came into operation.

*Part suspension declaration timing*

- (2) A part suspension declaration in relation to a minimum standards order must be made within 12 months of whichever of the following days is applicable:
- (a) if the part suspension declaration suspends the application of all of the terms of the minimum standards order to a specified class of persons—the day on which all of the terms of the minimum standards order first applied to the specified class of persons;
  - (b) if the part suspension declaration suspends the application of all of the terms of the minimum standards order to 2 or more specified classes of persons—the day on which all of the terms of the minimum standards order first applied to at least one of the specified classes of persons (even if all of the terms of the order did not apply to all of the specified classes on that day);
  - (c) if the part suspension declaration suspends the application of specified terms of the minimum standards order to a

specified class of persons—the day on which the specified terms first applied to the specified class of persons;

- (d) if the part suspension declaration suspends the application of specified terms of the minimum standards order to 2 or more specified classes of persons—the day on which the specified terms of the minimum standards order first applied to at least one of the specified classes of persons (even if the order did not apply to all of the specified classes on that day);
- (e) if the part suspension declaration suspends the application of specified terms of the minimum standards order to all persons—the day on which the specified terms first applied to all persons.

### **536KQF Operation of a minimum standards order during suspension**

A minimum standards order:

- (a) is not in operation during any period when a full suspension declaration in relation to the minimum standards order is in operation; and
- (b) is in operation during any period when a part suspension declaration in relation to the minimum standards order is in operation.

Note: Although a minimum standards order is in operation during a period when a part suspension declaration is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

### **536KQG Consultation requirements**

The Minister is not required to consult any person or body before making a deferral declaration or a suspension declaration.

**Subdivision B—FWC may defer or suspend road transport minimum standards orders**

**536KQH Applications for a deferral determination for a road transport minimum standards order**

- (1) An application may be made to the FWC for a determination under subsection 536KQJ(1) (a *deferral determination*) in relation to a road transport minimum standards order.
- (2) An application may be made under subsection (1) by any of the following:
  - (a) an organisation that is entitled to represent the industrial interests of one or more regulated road transport contractors covered by the road transport minimum standards order;
  - (b) an organisation that is entitled to represent the industrial interests of one or more of the road transport businesses covered by the road transport minimum standards order;
  - (c) a road transport business covered by the road transport minimum standards order.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

- (3) An application for a deferral determination must not be made in relation to a road transport minimum standards order that has already come into operation.

Note: If the road transport minimum standards order concerned comes into operation before the FWC considers the application, the FWC may treat it as a suspension application, see subsection 536KQL(2).

**536KQJ FWC may make a determination deferring the operation or application of a road transport minimum standards order**

- (1) The FWC may, on application under subsection 536KQH(1), make a deferral determination:
  - (a) that defers the coming into operation of a road transport minimum standards order; or
  - (b) that defers the application of:



- (i) all of the terms of a road transport minimum standards order to a specified class or specified classes of persons; or
  - (ii) specified terms of a road transport minimum standards order to a specified class or specified classes of persons; or
  - (iii) specified terms of a road transport minimum standards order to all persons.
- (2) A deferral determination made under paragraph (1)(a) is a **full deferral determination**, and a deferral determination made under paragraph (1)(b) is a **part deferral determination**, in relation to the road transport minimum standards order to which the deferral determination relates.
- (3) A deferral determination in relation to a road transport minimum standards order:
  - (a) comes into operation on the day on which it is made; and
  - (b) ceases to be in operation on the day on which the FWC decides under subsection 536KQS(2) whether or not to vary or revoke the road transport minimum standards order.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector.

### **536KQK Limitations on making a deferral determination**

*No deferral of road transport minimum standards order that is in operation*

- (1) The FWC must not make a deferral determination in relation to a road transport minimum standards order that has already come into operation.

*Only one full deferral determination is permitted etc.*

- (2) The FWC:
  - (a) may only make one full deferral determination in relation to a particular road transport minimum standards order; and

- (b) must not make a full deferral determination in relation to a particular road transport minimum standards order if a deferral declaration (whether a full deferral declaration or a part deferral declaration) has previously been made by the Minister in relation to the road transport minimum standards order.

Note: The Minister may make deferral declarations in relation to minimum standards orders under Subdivision A of this Division

*More than one part deferral determination is permitted*

- (3) Subject to subsection (4), the FWC may make more than one part deferral determination in relation to a particular road transport minimum standards order.
- (4) If more than one part deferral determination or part deferral declaration is made in relation to the same road transport minimum standards order as permitted by subsection (3) of this section or subsection 536KQB(3), a later part deferral determination must not have the effect of deferring, or purporting to defer, the application of a term to any person or class of persons:
  - (a) to whom the term already applies when the later part deferral determination is made; or
  - (b) in relation to whom the application of the terms has previously been deferred.

**536KQL Decision on an application for a deferral determination in relation to a road transport minimum standards orders**

- (1) If an application for a deferral determination in relation to a road transport minimum standards order is made, the FWC must:
  - (a) consider the application as soon as practicable; and
  - (b) consult the Road Transport Advisory Group before making a decision on the application.
- (2) If the road transport minimum standards order concerned comes into operation before the FWC makes a decision on the application, the FWC may treat the application as if it were an application for a suspension determination.
- (3) The FWC may:

- (a) make the deferral determination under subsection 536KQJ(1); or
  - (b) decide not to make the deferral determination.
- (4) The FWC must make the deferral determination if, and must not make the deferral determination unless, the FWC is satisfied that:
  - (a) the applicant has provided significant new facts or evidence that was not available at the time the FWC decided to make the road transport minimum standards order; and
  - (b) the significant new facts or evidence demonstrate that the road transport minimum standards order will not provide, or has not provided, an appropriate safety net of minimum standards for parties in the road transport industry, having regard to the minimum standards objective and the road transport objective.
- (5) In considering whether the FWC is satisfied as mentioned in subsection (4), the FWC may have regard to whether one or more previous applications for variation or revocation of the road transport minimum standards order concerned have previously been made.
- (6) The FWC must publish a deferral determination on the FWC's website and by any other means the FWC considers appropriate as soon as practicable after making the determination.

#### **536KQM Operation of a road transport minimum standards order during deferral**

A road transport minimum standards order:

- (a) is not in operation during any period when a full deferral determination in relation to the road transport minimum standards order is in operation; and
- (b) is in operation during any period when a part deferral determination is in operation in relation to the road transport minimum standards order.

Note: Although a road transport minimum standards order is in operation during a period when a part deferral determination is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

**536KQN Applications for a suspension determination for a road transport minimum standards order**

- (1) An application may be made to the FWC for a determination (a *suspension determination*) under subsection 536KQP(1) in relation to a road transport minimum standards order.
- (2) An application may be made under subsection (1) by any of the following:
  - (a) an organisation that is entitled to represent the industrial interests of one or more regulated road transport contractors covered by the road transport minimum standards order;
  - (b) an organisation that is entitled to represent the industrial interests of one or more of the road transport businesses covered by the road transport minimum standards order;
  - (c) a road transport business covered by the road transport minimum standards order.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

*Timing of application for full suspension determination*

- (3) An application for a full suspension determination in relation to a road transport minimum standards order must be made within 12 months of the day on which the order came into operation.

*Timing of application for part suspension determination*

- (4) An application for a part suspension determination must be made within 12 months of whichever of the following days is applicable:
  - (a) if the part suspension determination will suspend the application of all of the terms of the road transport minimum standards order to a specified class—the first day on which all of the terms of the road transport minimum standards order applied to the class of person;
  - (b) if the part suspension determination will suspend the application of all of the terms of the road transport minimum standards order to 2 or more specified classes of persons—the day on which all of the terms of the road transport minimum standards order first applied to at least one of the

specified classes of persons (even if all of the terms of the order did not apply to all of the specified classes on that day);

- (c) if the part suspension determination will suspend the application of specified terms of the road transport minimum standards order to a specified class of persons—the first day on which the specified terms applied to the specified class of persons;
- (d) if the part suspension determination will suspend the application of specified terms of the road transport minimum standards order to 2 or more specified classes of persons—the day on which the specified terms of the road transport minimum standards order first applied to at least one of the specified classes of persons (even if the order did not apply to all of the specified classes on that day);
- (e) if the part suspension determination will suspend the application of specified terms of the road transport minimum standards order to all persons—the first day on which the specified terms applied to all persons.

**536KQP FWC may make a determination suspending a road transport minimum standards order**

- (1) The FWC may, on application under subsection 536KQN(1), make a suspension determination:
  - (a) suspending the operation of a road transport minimum standards order; or
  - (b) suspending:
    - (i) the application of a road transport minimum standards order to a specified class or specified classes of persons; or
    - (ii) the application of specified terms of a road transport minimum standards order to a specified class or specified classes of persons; or
    - (iii) the application of specified terms of road transport minimum standards order to all persons.

Note 1: A person may also apply for a variation or revocation of a road transport minimum standards order under section 536KP.

Note 2: Judicial review of decisions of the FWC is available—see paragraph 39B(1A)(c) of the *Judiciary Act 1903*.

- (2) A suspension determination made under paragraph (1)(a) is a **full suspension determination**, and a suspension determination made under paragraph (1)(b) is a **part suspension determination**, in relation to the road transport minimum standards order to which the suspension determination relates.

*Suspension determination must specify period of suspension*

- (3) If the FWC makes a suspension determination in relation to a road transport minimum standards order, the suspension determination must specify the period for which the order is suspended, which:
- (a) must not be a period of more than 12 months; and
  - (b) must not start before the day on which the determination is made.

*When period of suspension ends*

- (4) Subject to subsection (5), a period of suspension specified in a suspension determination ends immediately after the end of the period specified in the suspension determination under subsection (3).
- (5) If the period of suspension has not already ended under subsection (4) when the FWC makes a decision under subsection 536KQS(2) as to whether to vary or revoke the road transport minimum standards order, the period of suspension ends on whichever of the following days is applicable:
- (a) if the FWC decides to vary or revoke the road transport minimum standards order—on the day that the determination made under subsection 536KQ(1) varying or revoking the minimum standards order comes into operation, which must not be later than 12 months after the day on which the suspension determination was made;
  - (b) if the FWC decides not to vary or revoke the road transport minimum standards order:
    - (i) 7 days after the day on which the decision is made; or
    - (ii) if a 7-day period would result in the suspension lasting longer than 12 months—such shorter period as is specified in the decision, which must be a period that would result in the suspension lasting 12 months or less.

*Classes*

- (6) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector.

**536KQQ Decision on an application for a suspension determination in relation to a road transport minimum standards orders**

- (1) If an application for a suspension determination in relation to a road transport minimum standards order is made, the FWC must:
- (a) consider the application as soon as practicable; and
  - (b) consult the Road Transport Advisory Group before making a decision on the application.
- (2) The FWC may:
- (a) make the suspension determination under subsection 536KQP(1); or
  - (b) decide not to make the suspension determination.
- (3) The FWC must make the suspension determination if, and must not make the suspension determination unless, the FWC is satisfied that:
- (a) the applicant has provided significant new facts or evidence that was not available at the time the FWC decided to make the road transport minimum standards order; and
  - (b) the significant new facts or evidence demonstrate that the road transport minimum standards order will not provide, or has not provided, an appropriate safety net of minimum standards for parties in the road transport industry, having regard to the minimum standards objective and the road transport objective.
- (4) In considering whether the FWC is satisfied as mentioned in subsection (3), the FWC may have regard to whether one or more previous applications for variation or revocation of the minimum standards order have previously been made.
- (5) If the FWC makes the suspension determination, the FWC may make any orders it considers appropriate to ensure that no person is unfairly affected by the suspension.

- (6) The FWC must publish a suspension determination on the FWC's website and by any other means the FWC considers appropriate as soon as practicable after making the determination.
- (7) The making of a suspension determination does not affect any right or liability that a person acquired, accrued or incurred before the suspension determination is made.

**536KQR Operation of a road transport minimum standards order during suspension**

A road transport minimum standards order:

- (a) is not in operation during any period when a full suspension determination in relation to the road transport minimum standards order is in operation; and
- (b) is in operation during any period when a part suspension determination is in operation in relation to the road transport minimum standards order.

**Note:** Although a road transport minimum standards order is in operation during a period when a part deferral determination is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

**Subdivision C—FWC must consider and decide whether or not to vary or revoke a deferred or suspended minimum standards order**

**536KQS FWC must consider whether to vary or revoke a minimum standards order that has been deferred or suspended**

- (1) This section applies if:
  - (a) the Minister makes a deferral declaration or a suspension declaration in relation to a minimum standards order; or
  - (b) the FWC makes a deferral determination or a suspension determination in relation to a road transport minimum standards order.
- (2) The FWC must, as soon as practicable, consider whether or not to vary or revoke the minimum standards order. The FWC must:



- (a) vary the minimum standards order under subsection 536KQ(1); or
- (b) revoke the minimum standards order under subsection 536KQ(1); or
- (c) decide not to vary or revoke the minimum standards order.

*General preconditions for variation or revocation*

- (3) The FWC:
  - (a) must not vary or revoke the minimum standards order unless there has been genuine engagement with the parties to be covered; and
  - (b) in the case of a road transport minimum standards order—must not vary or revoke the road transport minimum standards order unless the Road Transport Advisory Group has been consulted; and
  - (c) in the case of a road transport minimum standards order—must have regard to the commercial realities of the road transport industry; and
  - (d) in the case of a road transport minimum standards order—must be satisfied that the variation or revocation of the minimum standards order will not unduly affect the viability and competitiveness of owner drivers or other similar persons; and
  - (e) in the case of an employee-like worker minimum standards order—must have regard to choice and flexibility in working arrangements.

*Special preconditions for variation or revocation: road transport minimum standards order*

- (4) In addition to the matters mentioned in subsection (3), the FWC must not vary or revoke a road transport minimum standards order in relation to which a deferral declaration or a deferral determination has been made unless the FWC has followed the process set out in Division 3B of this Part in relation to the variation or revocation.

*Special preconditions for variation or revocation: employee-like worker minimum standards order*

- (5) In addition to the matters mentioned in subsection (3), the FWC must not vary or revoke an employee-like worker minimum standards order in relation to which a deferral declaration or a deferral determination has been made unless the FWC has followed the process set out in Division 3C of this Part in relation to the variation or revocation.

*Publication requirements*

- (6) The FWC must publish notice of the FWC's decision under subsection (2) on the FWC's website and by any other means the FWC considers appropriate.

*End of suspension period does not affect obligations under this section*

- (7) The end of a period of suspension of a minimum standards order under subsection 536KQD(4) or (5) or 536KQP(4) or (5) does not affect the FWC's obligation to consider whether or not to vary or revoke the minimum standards order.

### **Division 3B—Consultation before varying or revoking road transport minimum standards order after deferral**

#### **536KQT FWC to prepare and publish a notice relating to proposed variation or revocation of a road transport minimum standards order**

- (1) Before deciding to vary or revoke a road transport minimum standards order in relation to which a deferral declaration or a deferral determination has been made, the FWC must:
- (a) publish a notice (a ***notice of intent***) stating that the FWC proposes to vary or revoke the road transport minimum standards order; and
  - (b) if the proposal is to vary the road transport minimum standards order—publish a draft of the road transport minimum standards order as proposed to be varied.

- (2) The FWC must publish the notice of intent and the draft of the road transport minimum standards order as proposed to be varied (if applicable) on the FWC's website and by any other means the FWC considers appropriate as soon as practicable after making the determination.

**536KQU Affected entities to have a reasonable opportunity to make submissions and comment on a proposed variation or revocation of a road transport minimum standards order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the proposed variation or revocation of a road transport minimum standards order in relation to which a notice of intent has been published under paragraph 536KQT(1)(a).
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
- (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
    - (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC's website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).

- (6) For the purposes of subsection (1), an *affected entity*, in relation to a proposed variation or revocation of a road transport minimum standards order in relation to which a notice of intent has been published under paragraph 536KQT(1)(a), is:
  - (a) a person or body likely to be affected by the proposed variation or revocation; or
  - (b) a person or body prescribed by the regulations, or belonging to a class of persons or bodies prescribed by the regulations.
- (7) The FWC may, but is not required to, hold a hearing in relation to the following:
  - (a) a draft road transport minimum standards order as proposed to be varied;
  - (b) a proposed revocation of a road transport minimum standards order.

### **536KQV Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft road transport minimum standards order as proposed to be varied.
- (2) If changes proposed to be made under subsection (1) are significant, the FWC must:
  - (a) decide not to vary the road transport minimum standards order based on the draft; and
  - (b) publish a subsequent notice of intent under subsection 536KQT(1)(a) in relation to the revised draft road transport minimum standards order, and publish the revised draft; and
  - (c) follow the process set out in section 536KQU in relation to the revised draft road transport minimum standards order (with the period of consultation under that section to be no shorter than 12 months starting when the subsequent notice of intent and the revised draft required by paragraph (b) of this subsection were published).

### **Division 3C—Consultation process before varying or revoking employee-like worker minimum standards orders after deferral**

#### **536KQW FWC to prepare and publish a notice relating to a proposed variation or revocation of an employee-like worker minimum standards order**

- (1) Before deciding to vary or revoke an employee-like worker minimum standards order in relation to which a deferral declaration or a deferral determination has been made, the FWC must:
  - (a) publish a notice (a *notice of intent*) stating that the FWC proposes to vary or revoke the employee-like worker minimum standards order; and
  - (b) if the proposal is to vary the employee-like worker minimum standards order—publish a draft of the proposed employee-like worker minimum standards order as proposed to be varied.
- (2) The FWC must publish the notice of intent and the draft of the employee-like worker minimum standards order as proposed to be varied (if applicable) on the FWC's website and by any other means the FWC considers appropriate.

#### **536KQX Affected entities to have a reasonable opportunity to make submissions and comment on a proposed variation or revocation of an employee-like worker minimum standards order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the proposed variation or revocation of an employee-like worker minimum standards order in relation to which a notice of intent has been published under paragraph 536KQW(1)(a), having regard to the unique nature of digital platform work.
- (2) The FWC must publish submissions made to the FWC.

- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
  - (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
    - (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC’s website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (6) For the purposes of subsection (1), an *affected entity*, in relation to a proposed variation or revocation of an employee-like worker minimum standards order in relation to which a notice of intent has been published under paragraph 536KQW(1)(a), is:
  - (a) a person or body likely to be affected by the proposed variation or revocation; or
  - (b) a person or body prescribed by the regulations, or belonging to a class of persons or bodies prescribed by the regulations.
- (7) The FWC may, but is not required to, hold a hearing in relation to the following:
  - (a) a draft employee-like worker minimum standards order as proposed to be varied;
  - (b) a proposed revocation of an employee-like worker minimum standards order.

### **536KQY Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft employee-like worker minimum standards order as proposed to be varied.
- (2) If changes proposed to be made under subsection (1) are significant, the FWC must:
  - (a) decide not to vary the employee-like worker minimum standards order based on the draft; and
  - (b) publish a subsequent notice of intent under paragraph 536KQW(1)(a) in relation to the revised draft employee-like worker minimum standards order, and publish the revised draft; and
  - (c) follow the process set out in section 536KQX in relation to the revised draft employee-like worker minimum standards order (with the period of consultation under that section to be a period that the FWC is satisfied is reasonable having regard to the unique nature of digital platform work).

## **Division 4—Minimum standards guidelines**

### **536KR Minimum standards guidelines**

- (1) The FWC may make minimum standards guidelines under this section that set standards for regulated workers performing work under a services contract.
- (2) Minimum standards guidelines for employee-like workers are *employee-like worker guidelines*.
- (3) Minimum standards guidelines for regulated road transport contractors are *road transport guidelines*.
- (4) The FWC may make minimum standards guidelines under this section:
  - (a) on its own initiative; or
  - (b) on application under section 536KS.

**536KS Applications for minimum standards guidelines**

- (1) Any of the following may apply to the FWC for the making of minimum standards guidelines:
  - (a) an organisation that is entitled to represent the industrial interests of one or more regulated workers who would be covered by the proposed minimum standards guidelines;
  - (b) an organisation that is entitled to represent the industrial interests of one or more of the regulated businesses that would be covered by the proposed minimum standards guidelines;
  - (c) a regulated business that is included in a class of regulated businesses that would be covered by the proposed minimum standards guidelines;
  - (d) the Minister.

*Matters to be specified in an application*

- (2) An application for the making of minimum standards guidelines must specify the class of regulated workers to be covered by the guidelines.
- (2A) An application for the making of minimum standards guidelines must specify the class of regulated businesses to be covered by the guidelines.
- (3) Without limiting the way in which a class may be described for the purposes of subsection (2) or (2A), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**536KT Initial matter to be considered for employee-like worker minimum standards guidelines**

- (1) This section applies to a decision to make or vary, or not to make or vary, employee-like worker guidelines, other than a decision of the FWC to refuse to consider an application to make or vary such guidelines.
- (2) Before making a decision under section 536KU, the FWC must consider whether, on the whole, the persons included (or purportedly included) in the class of employee-like workers to be



covered by the minimum standards guidelines, or the guidelines as proposed to be varied, are employee-like workers.

- (3) If the FWC is not satisfied that, on the whole, the persons included (or purportedly included) in the class of employee-like workers to be covered by the minimum standards guidelines, or the guidelines as proposed to be varied, are employee-like workers, the FWC must decide to refuse to consider the application, or not to make or vary the guidelines, as the case requires.

#### **536KU Decisions on applications for minimum standards guidelines**

- (1) If an application for minimum standards guidelines is made to the FWC under subsection 536KS(1), the FWC may decide to:
- (a) refuse to consider the application; or
  - (b) make minimum standards guidelines; or
  - (c) not make minimum standards guidelines; or
  - (d) if the FWC considers it appropriate to do so, instead make a minimum standards order under subsection 536JY(1) instead, as if the application had been an application under subsection 536JZ(1) for a minimum standards order in relation to the regulated workers covered by the application under subsection 536KS(1).
- (2) Without limiting subsection (1), the FWC may refuse to consider the application if it is not consistent with a direction of the President under subsection 582(4D) (prioritisation).

#### **536KV Minimum standards guidelines not to be made if a minimum standards order is in operation**

The FWC must not make minimum standards guidelines that cover the same regulated workers and the same regulated businesses in relation to the same matters as a minimum standards order that is in operation.

**536KW Terms that must be included in minimum standards guidelines**

Minimum standards guidelines must include terms setting out the same matters in relation to minimum standards orders as set out in the following:

- (a) in the case of employee-like worker guidelines—in section 536KH;
- (b) in the case of road transport guidelines—in section 536KJ.

**536KX Terms that may be included in minimum standards guidelines**

Minimum standards guidelines may include terms about any of the matters that may be included in minimum standards orders under section 536KL.

**536KY Terms that must not be included in minimum standards guidelines**

Minimum standards guidelines must not include terms about any of the matters that must not be included in minimum standards orders as set out in the following:

- (a) in the case of employee-like worker minimum standards orders and road transport minimum standards orders—in section 536KM;
- (aa) in the case of employee-like worker minimum standards orders—in section 536KMA;
- (b) in the case of road transport minimum standards orders—in section 536KN.

**536KZ FWC may vary or revoke minimum standards guidelines if consistent with the minimum standards objective and the road transport objective**

- (1) The FWC may make a determination varying or revoking minimum standards guidelines if the FWC is satisfied that making the determination is consistent with:
  - (a) the minimum standards objective; and

- (b) if the President considers that the determination might relate to the road transport industry—the road transport objective.
- (2) The FWC may make a determination varying minimum standards guidelines in such a way that not all of the elements of the variation sought in an application under section 536L are implemented, including by refusing to make a variation to the extent that it would result in the guidelines covering persons who are not regulated workers.
- (3) The FWC may make a determination varying minimum standards guidelines to remove an ambiguity or uncertainty or to correct an error.
- (4) The FWC may make a determination varying or revoking minimum standards guidelines:
  - (a) on its own initiative; or
  - (b) on application under section 536L.
- (5) If the FWC makes a minimum standards order that covers the same regulated workers and the same regulated businesses in relation to the same matters as minimum standards guidelines, the FWC must revoke the minimum standards guidelines with effect on and from the day on which the minimum standards order comes into operation.
- (6) If the FWC makes a minimum standards order that covers some or all of the same regulated workers and the same regulated businesses in relation to some or all of the same matters as minimum standards guidelines, the FWC must vary the minimum standards guidelines so that the guidelines do not cover the regulated workers, regulated businesses or matters covered by the order, with effect on and from the day on which the order comes into operation.

### **536L Applications to vary or revoke minimum standards guidelines**

Any of the following may apply to the FWC for a determination varying or revoking minimum standards guidelines:

- (a) an organisation that is entitled to represent the industrial interests of one or more regulated workers covered by the

- minimum standards guidelines, or who would be covered by the minimum standards guidelines as proposed to be varied;
- (b) an organisation that is entitled to represent the industrial interests of one or more of the regulated businesses covered by the minimum standards guidelines, or that would be covered by the minimum standards guidelines as proposed to be varied;
  - (c) a regulated business covered by the minimum standards guidelines, or that would be covered by the minimum standards order as proposed to be varied;
  - (d) the Minister.

## **Part 3A-3—Unfair deactivation or unfair termination of regulated workers**

### **Division 1—Introduction**

#### **536LB Guide to this Part**

This Part is about:

- (a) unfair deactivation from digital labour platforms of employee-like workers; and
- (b) unfair termination of the services contracts of regulated road transport contractors.

Division 2 sets out when a person is protected from unfair deactivation or unfair termination.

Division 3 sets out the elements that make up unfair deactivation or unfair termination.

Division 4 sets out the remedies that the FWC can grant for unfair deactivation or unfair termination.

Division 5 is about the procedural aspects of getting remedies for unfair deactivation or unfair termination.

### **536LC Object of this Part**

- (1) The object of this Part is:
- (a) to establish a framework for dealing with unfair deactivation of employee-like workers, and unfair termination of regulated road transport contractors, that balances:
    - (i) the needs of regulated businesses; and
    - (ii) the needs of regulated workers; and
  - (b) to establish procedures for dealing with unfair deactivation and unfair termination that:
    - (i) are quick, flexible and informal; and
    - (ii) address the needs of regulated businesses and regulated workers; and
  - (c) to provide remedies if a deactivation or termination is found to be unfair, with an emphasis on reactivation or reinstatement, as the case requires.
- (2) The procedures and remedies referred to in paragraphs (1)(b) and (c), and the manner of deciding on and working out such remedies, are intended to ensure that a “fair go all round” is accorded to both the regulated businesses and regulated workers concerned.

Note: The expression “fair go all round” was used by Sheldon J in *in re Loty and Holloway v Australian Workers’ Union* [1971] AR (NSW) 95.

## **Division 2—Protection from unfair deactivation or unfair termination**

### **536LD When a person is protected from unfair deactivation**

A person is *protected from unfair deactivation* at a time if, at that time:

- (a) the person is an employee-like worker; and
- (b) the person:
  - (i) performs work through or by means of a digital labour platform operated by a digital labour platform operator; or
  - (ii) performs work under a services contract arranged or facilitated through or by means of a digital labour

platform operated by a digital labour platform operator;  
and

- (c) the person has been performing work through or by means of that digital labour platform, or under a contract, or a series of contracts, arranged or facilitated through or by means of the digital labour platform, on a regular basis for a period of at least 6 months.

### **536LE When a person is protected from unfair termination**

A person is *protected from unfair termination* at a time if, at that time:

- (a) the person is a regulated road transport contractor; and
- (b) a road transport business receives services under a services contract (whether or not the business is a party to the services contract) under which the person performs work in the road transport industry; and
- (c) the person has been performing work in the road transport industry under a services contract, or a series of services contracts, under which that road transport business receives services for a period of at least 6 months.

## **Division 3—What is an unfair deactivation or unfair termination**

### **Subdivision A—Unfair deactivation**

#### **536LF What is an unfair deactivation**

A person has been *unfairly deactivated* if the FWC is satisfied that:

- (a) the person has been deactivated from a digital labour platform; and
- (b) the deactivation was unfair; and
- (c) the deactivation was not consistent with the Digital Labour Platform Deactivation Code.

**536LG Meaning of *deactivated***

A person has been *deactivated* from a digital labour platform if:

- (a) the person performed digital platform work through or by means of the digital labour platform; and
- (b) the digital labour platform operator modified, suspended, or terminated the person's access to the digital labour platform; and
- (c) the person is no longer able to perform work under an existing or prospective services contract, or the ability of the person to do so is so significantly altered that in effect the person is no longer able to perform such work.

**536LH Criteria for considering whether a deactivation was unfair etc.**

- (1) In considering whether it is satisfied that a person's deactivation was unfair, the FWC must take into account:
  - (a) whether there was a valid reason for the deactivation related to the person's capacity or conduct; and
  - (b) whether any relevant processes specified in the Digital Labour Platform Deactivation Code were followed; and
  - (c) any other matters that the FWC considers relevant.
- (2) Despite subsection (1) and any other provision of this Part, a deactivation that occurs because of serious misconduct of the person who was deactivated is not unfair.
- (3) Despite subsection (1) and any other provision of this Part, a deactivation of a person from a digital labour platform is not unfair if:
  - (a) the deactivation is constituted by the modification or suspension of the person's access to the digital labour platform for a period of not more than 7 business days; and
  - (b) the FWC is satisfied that the digital labour platform operator concerned believes on reasonable grounds that one or more of the matters in subsection (4) is applicable.
- (4) For the purposes of subsection (3), the matters are as follows:

- (a) that the deactivation of the person is necessary to protect the health and safety of a user of the digital labour platform or member of the community;
- (b) that the person has engaged in fraudulent or dishonest conduct including, but not limited to, by misrepresenting or falsifying information provided to the digital labour platform operator;
- (c) that the person has not complied with licensing and accreditation requirements imposed by or under a law of the Commonwealth, a State or a Territory, whether:
  - (i) the requirements relate to the licensing or accreditation of the person; or
  - (ii) the requirements relate to the licensing or accreditation of the digital labour platform operator, and the person's conduct causes, or may cause, the digital labour platform operator to breach the requirements;
- (d) that the deactivation of the person is necessary to enable the digital labour platform operator to do one or more of the following in relation to a matter specified in paragraph (a), (b) or (c):
  - (i) conduct an investigation;
  - (ii) refer the matter to a law enforcement agency (however described) for the purposes of conducting an investigation.

**536LJ Minister to make a Digital Labour Platform Deactivation Code**

- (1) The Minister must, by legislative instrument, make code to be known as the Digital Labour Platform Deactivation Code.
- (2) Without limiting the matters covered by the Digital Labour Platform Deactivation Code, the code must deal with the following matters:
  - (a) the circumstances in which work is performed on a regular basis;
  - (b) matters that constitute or may constitute a valid reason for deactivation;
  - (c) rights of response to deactivations;



- (d) the internal processes of digital labour platform operators in relation to deactivation;
  - (e) communication between the employee-like worker and the digital labour platform operator in relation to deactivation;
  - (f) the accessibility in practice of the internal processes of digital labour platform operators in relation to deactivation;
  - (g) the treatment of data relating to the work performed by employee-like workers.
- (2A) Before the Minister makes a code under subsection (1), the Minister must be satisfied that there has been such public consultation in relation to the development of the code as the Minister considers appropriate.
- (2B) The Minister may, by legislative instrument, vary or revoke the Digital Labour Platform Deactivation Code.
- (2C) Before the Minister varies or revokes the Digital Labour Platform Deactivation Code under subsection (2B), the Minister must be satisfied that there has been such public consultation in relation to the variation or revocation as the Minister considers appropriate.
- (2D) Subsection (2C) does not apply in relation to a variation if the Minister considers the variation is minor or technical.
- (3) A person's deactivation was ***consistent with the Digital Labour Platform Deactivation Code*** if, at the time of the deactivation, the digital labour platform operator complied with the Digital Labour Platform Deactivation Code in relation to the deactivation.

## **Subdivision B—What is an unfair termination**

### **536LK What is an unfair termination**

A person has been ***unfairly terminated*** if:

- (a) the person was performing work in the road transport industry; and
- (b) the person has been terminated; and
- (c) the termination was unfair; and
- (d) the termination was not consistent with the Road Transport Industry Termination Code.

**536LL Meaning of *terminated***

A person has been *terminated* if:

- (a) the person performed work as a regulated road transport contractor under a services contract; and
- (b) a road transport business received services under the services contract; and
- (c) the services contract was terminated by, or as a result of conduct of, the road transport business.

**536LM Criteria for considering whether a termination was unfair etc.**

- (1) In considering whether it is satisfied that a termination was unfair, the FWC must take into account:
  - (a) whether there was a valid reason for the termination related to the person's capacity or conduct; and
  - (b) whether any relevant processes specified in the Road Transport Industry Termination Code were followed; and
  - (c) any other matters that the FWC considers relevant.
- (2) Despite subsection (1) and any other provision of this Part, a termination that occurs because of serious misconduct of the person who was deactivated is not unfair.

**536LN Minister to make Road Transport Industry Termination Code**

- (1) The Minister may, by legislative instrument, make a code to be known as the Road Transport Industry Termination Code.
- (2) Without limiting the matters covered by the Road Transport Industry Termination Code, the code must deal with the following matters:
  - (a) matters that constitute or may constitute a valid reason for termination;
  - (b) rights of response to terminations;
  - (c) the internal processes of road transport businesses in relation to a termination;

- (d) communication between the regulated road transport contractor and road transport business in relation to a termination.
- (3) A person's termination was *consistent with the Road Transport Industry Termination Code* if, immediately before the time of the termination, or at the time the person was given notice of the termination (whichever happened first), the regulated road transport business that terminated the services contract concerned or as a result of whose conduct the services contract concerned was terminated, complied with the Road Transport Industry Termination Code.

## **Division 4—Remedies**

### **Subdivision A—Remedies for unfair deactivation**

#### **536LP When the FWC may order remedy for unfair deactivation**

- (1) Subject to subsection (3), the FWC may order a person's reactivation if:
  - (a) the FWC is satisfied that the person was protected from unfair deactivation (see section 536LD) at the time of being deactivated; and
  - (b) the person has been unfairly deactivated (see Division 2).
- (2) The FWC may make the order only if the person has made an application under section 536LU.
- (3) The FWC must not order the payment of compensation to the person.

Note: Division 5 deals with procedural matters such as applications for remedies.

#### **536LQ Remedy—reactivation etc.**

##### *Reactivation*

- (1) An order for a person's reactivation must be an order that the digital labour platform operator who operated the digital labour platform at the time of the deactivation take measures to restore the

person to the position they would have been in but for the deactivation, including as follows:

- (a) if the person's access to the digital labour platform was suspended—by removing the suspension;
- (b) if the person's access to the digital labour platform was terminated—by reinstating the person's access to the digital labour platform;
- (c) by modifying the person's access to the digital labour platform so that the access is as it was before the person's access to the digital labour platform was terminated or suspended.

(2) If:

- (a) the digital labour platform (the *original digital labour platform*) from which the person was deactivated no longer exists; and
- (b) a similar digital labour platform (the *second digital labour platform*) is operated by an associated entity of the operator of the original digital labour platform;

the order under subsection (1) may be an order to the associated entity to provide access to the second digital labour platform on terms and conditions no less favourable than those immediately before the person's access to the original digital labour platform was terminated or suspended.

*Order to restore lost pay*

- (3) If the FWC makes an order under subsection (1) and considers it appropriate to do so, the FWC may also make any order that the FWC considers appropriate to cause the digital labour platform operator or the associated entity to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the deactivation.
- (4) In determining an amount for the purposes of an order under subsection (3), the FWC must take into account:
  - (a) the amount of any remuneration earned by the person from work of any kind during the period between the deactivation and the making of the order for reactivation; and

- (b) the amount of any remuneration reasonably likely to be so earned by the person during the period between the making of the order for reactivation and the actual reactivation.

## **Subdivision B—Remedies for unfair termination**

### **536LR When the FWC may order remedy for unfair termination**

- (1) Subject to subsection (3), the FWC may order that a new contract be entered into, or the payment of compensation to a person, if:
  - (a) the FWC is satisfied that the person was protected from unfair termination (see section 536LE) at the time of being terminated; and
  - (b) the person has been unfairly terminated (see Division 3).
- (2) The FWC may make the order only if the person has made an application under section 536LU.
- (3) The FWC must not order the payment of compensation to the person unless:
  - (a) the FWC is satisfied that entering into a new services contract would be inappropriate; and
  - (b) the FWC considers an order for payment of compensation is appropriate in all the circumstances of the case.

Note: Division 5 deals with procedural matters such as applications for remedies.

### **536LS Remedy—new contract, etc.**

#### *Reinstatement*

- (1) An order for a new contract must be an order that the road transport business at the time of the termination enter into a new contract in the same terms as the services contract at the time of the termination or with such variations as the FWC considers appropriate.
- (2) If:
  - (a) the road transport business at the time of the termination is no longer a road transport business; and

- (b) an associated entity of the road transport business is a road transport business;

the order under subsection (1) may be an order to the associated entity to enter into a new contract on terms and conditions no less favourable than the services contract immediately before the termination, with such variations as the FWC considers appropriate.

*Order to restore lost pay*

- (3) If the FWC makes an order under subsection (1) and considers it appropriate to do so, the FWC may also make any order that the FWC considers appropriate to cause the road transport business to pay to the person an amount for the remuneration lost, or likely to have been lost, by the person because of the termination.
- (4) In determining an amount for the purposes of an order under subsection (3), the FWC must take into account:
  - (a) the amount of any remuneration earned by the person from work of any kind during the period between the termination and the making of the order that the road transport business enter into a new services contract with the person; and
  - (b) the amount of any remuneration reasonably likely to be so earned by the person during the period between the making of the order that the road transport business enter into a new services contract with the person and when the new services contract is entered into.

**536LT Remedy—compensation**

*Compensation*

- (1) An order for the payment of compensation to a person must be an order that the road transport business at the time of the termination pay compensation to the person in lieu of entering into a new services contract.

*Criteria for deciding amounts*

- (2) In determining an amount for the purposes of an order under subsection (1), the FWC must take into account all the circumstances of the case including:
- (a) the effect of the order on the viability of the road transport business; and
  - (b) the remuneration that the person would have received, or would have been likely to receive, if the person had not been terminated; and
  - (c) the efforts of the person (if any) to mitigate the loss suffered because of the termination; and
  - (d) the amount of any remuneration earned by the person from work of any kind during the period between the termination and the making of the order for compensation; and
  - (e) the amount of any income reasonably likely to be so earned by the person during the period between the making of the order for compensation and the actual compensation; and
  - (f) any other matter that the FWC considers relevant.

*Misconduct reduces amount*

- (3) If the FWC is satisfied that misconduct of a person contributed to the road transport business's decision to terminate the person, the FWC must reduce the amount it would otherwise order under subsection (1) by an appropriate amount on account of the misconduct.

*Shock, distress etc. disregarded*

- (4) The amount ordered by the FWC to be paid to a person under subsection (1) must not include a component by way of compensation for shock, distress or humiliation, or other analogous hurt, caused to the person by the manner of the person's termination.

*Compensation cap*

- (5) The amount ordered by the FWC to be paid to a person under subsection (1) must not exceed the lesser of:
- (a) the amount worked out under subsection (6); and

- (b) half the amount of the contractor high income threshold immediately before the termination.
- (6) The amount is the total amount of remuneration received by the person or to which the person was entitled (whichever is higher) for any period during which the person performed work under the services contract during the 26 weeks immediately before the termination.

## **Division 5—Procedural matters**

### **536LU Application for unfair deactivation or unfair termination remedy**

- (1) A person who has been deactivated or terminated may apply to the FWC for an order under Division 4 granting a remedy.
  - Note 1: Division 4 sets out when the FWC may order a remedy for unfair deactivation or unfair termination.
  - Note 2: For application fees, see section 536LV.
  - Note 3: Part 6-1 may prevent an application being made under this Part in relation to a deactivation or termination if an application or complaint has been made in relation to the deactivation or termination other than under this Part.
- (2) A person must not make an application under subsection (1) unless the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the contractor high income threshold.
- (3) The application must be made:
  - (a) within 21 days after the deactivation or termination took effect; or
  - (b) within such further period as the FWC allows under subsection (4).
- (4) The FWC may allow a further period for the application to be made by a person under subsection (1) if the FWC is satisfied that there are exceptional circumstances, taking into account:
  - (a) the reason for the delay; and



- (b) whether the person first became aware of the deactivation or termination after it had taken effect; and
- (c) any action taken by the person to dispute the deactivation or termination; and
- (d) prejudice to the regulated business (including prejudice caused by the delay); and
- (e) the merits of the application; and
- (f) fairness as between the person and other regulated workers in a similar position; and
- (g) any processes specified in the Digital Labour Platform Deactivation Code or the Road Transport Industry Termination Code, as the case requires.

### **536LV Application fees**

- (1) An application to the FWC under this Division 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 this Division; 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.

### **536LW Initial matters to be considered before merits**

The FWC must decide the following matters relating to an application for an order under Division 4 before considering the merits of the application:

- (a) whether the application was made within the period required in subsection 536LU(3);
- (b) whether the person was protected from unfair deactivation or unfair termination, as the case requires;
- (c) whether the deactivation or termination was consistent with the Digital Labour Platform Deactivation Code or the Road Transport Industry Termination Code, as the case requires.

### **536LX Matters involving contested facts**

The FWC must conduct a conference or hold a hearing in relation to a matter arising under this Part if, and to the extent that, the matter involves facts the existence of which is in dispute.

### **536LY Conferences**

- (1) This section applies in relation to a matter arising under this Part if the FWC conducts a conference in relation to the matter.
- (2) Despite subsection 592(3), the FWC must conduct the conference in private.
- (3) The FWC must take into account any difference in the circumstances of the parties to the matter in:
  - (a) considering the application; and
  - (b) informing itself in relation to the application.
- (4) The FWC must take into account the wishes of the parties to the matter as to the way in which the FWC:
  - (a) considers the application; and
  - (b) informs itself in relation to the application.

### **536LZ Hearings**

- (1) The FWC must not hold a hearing in relation to a matter arising under this Part unless the FWC considers it appropriate to do so, taking into account:
  - (a) the views of the parties to the matter; and
  - (b) whether a hearing would be the most effective and efficient way to resolve the matter.
- (2) If the FWC holds a hearing in relation to a matter arising under this Part, it may decide not to hold the hearing in relation to parts of the matter.
- (3) The FWC may decide at any time (including before, during or after conducting a conference in relation to a matter) to hold a hearing in relation to the matter.

### **536M Dismissing applications**

- (1) The FWC may, subject to subsection (2), dismiss an application for an order under Division 4 if the FWC is satisfied that the applicant has unreasonably:
  - (a) failed to attend a conference conducted by the FWC, or a hearing held by the FWC, in relation to the application; or
  - (b) failed to comply with a direction or order of the FWC relating to the application; or
  - (c) failed to discontinue the application after a settlement agreement has been concluded.

Note 1: For another power of the FWC to dismiss applications for orders under Division 4, see section 587.

Note 2: The FWC may make an order for costs if the applicant's failure causes the other party to the matter to incur costs (see section 536MB).

- (2) The FWC may exercise its power under subsection (1) on application by a regulated business.
- (3) This section does not limit when the FWC may dismiss an application.

### **536MA Appeal rights**

- (1) Despite subsection 604(2), the FWC must not grant permission to appeal from a decision made by the FWC under this Part 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 this Part 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.

### **536MB Costs orders against parties**

- (1) The FWC may make an order for costs against a party to a matter arising under this Part (the *first party*) for costs incurred by the other party to the matter if 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 matter.

- (2) The FWC may make an order under subsection (1) only if the other party to the matter has applied for it in accordance with section 536MD.
- (3) This section does not limit the FWC's power to order costs under section 611.

**536MC Costs orders against lawyers and paid agents**

- (1) This section applies if:
  - (a) an application for an unfair deactivation or unfair termination remedy has been made under section 536LU; and
  - (b) a person who is a party to the matter has engaged a lawyer or paid agent (the *representative*) to represent the person in the matter; 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 matter 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 matter and it should have been reasonably apparent that the person had no reasonable prospect of success in the matter; or
  - (b) of an unreasonable act or omission of the representative in connection with the conduct or continuation of the matter.
- (3) The FWC may make an order under this section only if the other party to the matter has applied for it in accordance with section 536MD.
- (4) This section does not limit the FWC's power to order costs under section 611.

**536MD Applications for costs orders**

An application for an order for costs under section 611 in relation to a matter arising under this Part, or for costs under section 536MB or 536MC, must be made within 14 days after:

- (a) the FWC determines the matter; or
- (b) the matter is discontinued.

### **536ME 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:
  - (a) under section 611 in relation to a matter arising under this Part; or
  - (b) under section 536MB or 536MC;  
including expenses arising from the representation of a party by a person or organisation other than on a legal professional basis.
- (2) If a schedule of costs is prescribed for the purposes of subsection (1), then, in awarding costs under section 611 in relation to a matter arising under this Part, or awarding costs under section 536MB or 536MC, 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.

### **536MF Security for costs**

The procedural rules may provide for the furnishing of security for the payment of costs in relation to matters arising under this Part.

### **536MG Contravening orders under this Part**

A person to whom an order under this Part applies must not contravene a term of the order.

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

## **Part 3A-4—Collective agreements for regulated workers**

### **Division 1—Introduction**

#### **536MH Guide to this Part**

This Part is about collective agreements. A collective agreement is made between a regulated business, specifically a digital labour platform operator or a road transport business, and an organisation.

A collective agreement provides terms and conditions for the regulated workers to whom it applies.

Division 2 deals with the making of collective agreements and provides for the giving of consultation notices, and for the notification of regulated workers.

Division 3 deals with the registration of collective agreements by the FWC.

Division 4 deals with the variation of collective agreements.

Division 5 deals with the termination of collective agreements.

Division 6 deals with terms of a collective agreement that are of no effect.

#### **536MJ Object of this Part**

The object of this Part is to provide a simple, flexible and fair framework that enables collective agreements to be made by consent for:

- (a) employee-like workers;
- (b) regulated road transport contractors.

## **Division 2—Regulated workers and regulated businesses may make collective agreements**

### **536MK Making a collective agreement**

- (1) This section provides for the making of an agreement (a *collective agreement*) between a regulated business and an organisation that is entitled to represent the industrial interests of one or more regulated workers.

#### *Collective agreement for employee-like workers*

- (2) A collective agreement may be made between a digital labour platform operator and an organisation that is entitled to represent the industrial interests of one or more employee-like workers, in respect of the following:
- (a) the terms and conditions on which employee-like workers covered by the collective agreement perform digital platform work:
    - (i) under a services contract to which the digital labour platform operator is a party; or
    - (ii) under a services contract arranged or facilitated through or by means of the digital labour platform operated by the digital labour platform operator;
  - (b) how the collective agreement will operate.

Note: For when a collective agreement *covers* a digital labour platform operator, an employee-like worker or an organisation, see section 536JM.

#### *Collective agreement for regulated road transport contractors*

- (3) A collective agreement may be made between a road transport business and an organisation that is entitled to represent the industrial interests of one or more regulated road transport contractors, in respect of the following:
- (a) the terms and conditions on which regulated road transport contractors covered by the collective agreement perform work under services contracts to which the road transport business is a party;
  - (b) how the collective agreement will operate.

Note: For when a collective agreement ***covers*** a road transport business, a regulated road transport contractor or an organisation, see section 536JM.

- (4) A collective agreement referred to in subsection (2) is an ***employee-like worker collective agreement***.
- (5) A collective agreement referred to in subsection (3) is a ***road transport collective agreement***.

### **536ML Notice of consultation period for a proposed collective agreement**

- (1) The following entities may initiate a consultation period for a proposed collective agreement by giving a notice under this section (a ***consultation notice*** for the agreement):
  - (a) a regulated business that will be covered by the proposed collective agreement;
  - (b) an organisation that is entitled to represent the industrial interests of one or more regulated workers who will be covered by the proposed collective agreement.

*General matters to be specified in a consultation notice*

- (2) A consultation notice for a proposed collective agreement must specify the following:
  - (a) that the entity giving the notice (the ***notifying entity***) proposes to try to make a collective agreement under this Part;
  - (b) whichever of the following is applicable:
    - (i) if the notifying entity is a regulated business—the name of the organisation to which the consultation notice is given;
    - (ii) otherwise—the name of the organisation giving the consultation notice;
  - (c) the matters that are to be dealt with by the proposed collective agreement;
  - (d) the regulated business that will be covered by the proposed collective agreement;
  - (e) the class of regulated workers who will be covered by the proposed collective agreement.



**536MM Consultation notice to be given to FWC, etc.**

- (1) A consultation notice for a proposed collective agreement must be given on the same day:
  - (a) to the FWC; and
  - (b) to whichever of the following is applicable:
    - (i) if the notifying entity is a regulated business—to an organisation that is entitled to represent the industrial interests of the regulated workers who will be covered by the proposed collective agreement;
    - (ii) otherwise—to the regulated business that will be covered by the agreement.
- (2) The notifying entity for a consultation notice, and the entity to which the consultation notice is given, are the *negotiating entities* for the proposed collective agreement.
- (3) The FWC must publish a copy of the consultation notice on the FWC's website.

**536MN Notice to be given to regulated workers**

- (1) After a consultation notice has been given for a proposed collective agreement, either negotiating entity for the agreement must, with the consent of the other negotiating entity, make reasonable efforts to give a notice under this section to whichever of the following is applicable:
  - (a) for a proposed employee-like worker collective agreement—each eligible employee-like worker for the proposed collective agreement (see subsection (3));
  - (b) for a proposed road transport collective agreement—each eligible regulated road transport contractor for the proposed collective agreement (see subsection (4)).
- (2) A notice given under subsection (1) must specify the following:
  - (a) the regulated business that will be covered by the proposed collective agreement;
  - (b) the class of regulated workers that will be covered by the proposed collective agreement, and that the regulated worker to whom the notice is given is included in that class;

- (c) the organisation that will sign the proposed collective agreement on behalf of the regulated workers;
  - (d) the matters proposed to be dealt with in the proposed collective agreement.
- (3) For the purposes of this section, an ***eligible employee-like worker*** for a proposed employee-like worker collective agreement is an employee-like worker who, at any time during the period of 28 days before the consultation notice was given, was performing work under a services contract:
  - (a) through or by means of a digital labour platform operated by the digital labour platform operator that will be covered by the proposed collective agreement; or
  - (b) arranged or facilitated through or by means of a digital labour platform operated by the digital labour platform operator that will be covered by the proposed collective agreement.
- (4) For the purposes of this section, an ***eligible regulated road transport contractor*** for a proposed road transport collective agreement is a regulated road transport contractor who, at any time during the period of 28 days before the consultation notice was given, was performing work under a services contract to which a road transport business that will be covered by the proposed collective agreement is a party.

### **536MP Application for the FWC to deal with a dispute**

- (1) If the negotiating entities for a proposed collective agreement are unable to resolve a dispute about the making of the agreement, either negotiating entity may apply to the FWC for the FWC to deal with the dispute.
- (2) If an application is made under subsection (1), the FWC must deal with the dispute (other than by arbitration).

Note: For the purposes of this section, the FWC may deal with the dispute as it considers appropriate, including by mediation, conciliation, making a recommendation or expressing an opinion (see subsection 595(2)).
- (3) The FWC may dismiss an application under subsection (1) if the FWC is satisfied that there are no reasonable prospects of the negotiating entities for the proposed collective agreement making a collective agreement.

Note: For another power of the FWC to dismiss an application, see section 587.

**536MQ Negotiating entity may request that other negotiating entity sign a proposed collective agreement**

- (1) A negotiating entity for a proposed collective agreement may request the other negotiating entity for the agreement to sign the agreement.
- (2) A request under subsection (1) must not be made earlier than 30 days after the last day on which a notice was given to an employee-like worker or a regulated road transport contractor, as the case requires, under subsection 536MN(1) in relation to the proposed collective agreement.
- (3) The collective agreement is *made* when both of the negotiating parties for the agreement sign the agreement.

**Division 3—Registration of collective agreements by the FWC**

**536MR Application to the FWC to register a collective agreement**

- (1) If a collective agreement is made, a negotiating entity for the agreement that signed the agreement may, with the consent of the other negotiating entity for the agreement, apply to the FWC to register the agreement.

*Material to accompany the application*

- (2) The application must be accompanied by a signed copy of the collective agreement, which must identify the following:
  - (a) the regulated business covered by the collective agreement;
  - (b) the organisation covered by the collective agreement;
  - (c) the class of regulated workers covered by the collective agreement.
- (3) The application must be accompanied by a declaration signed by the regulated business and the organisation covered by the collective agreement, which must:

- (a) state that the regulated business and the organisation explained the terms of the agreement and their effect to the regulated workers covered by the agreement, and a description of the explanation; and
  - (b) state that the regulated business or the organisation, as the case requires, made reasonable efforts to give a notice under paragraph 536MN(1)(a) or (b) to the regulated workers referred to in whichever of those paragraphs is applicable; and
  - (c) state that none of the following were subject to any form of duress in relation to the making of the collective agreement:
    - (i) the regulated business covered by the collective agreement;
    - (ii) the organisation covered by the collective agreement;
    - (iii) a regulated worker to whom a notice was given under paragraph 536MN(1)(a) or (b); and
  - (e) if a minimum standards order is in operation that covers the same class of regulated workers as the collective agreement covers—specify:
    - (i) the minimum standards order; and
    - (ii) in relation to each matter dealt with by a term of the collective agreement that is also dealt with by a term of the minimum standards order—how the term of the collective agreement is more beneficial to the regulated workers covered by the collective agreement in relation to that matter than the term of the order in relation to that matter.
- (4) The application must be accompanied by any other declaration required by the procedural rules.

**536MS FWC must register collective agreement**

- (1) If an application for the registration of a collective agreement is made under subsection 536MR(1), the FWC must register the agreement if the requirements of section 536MR and subsections (2), (3) and (3A) of this section are met in relation to the agreement.

- (2) The FWC must be satisfied that the collective agreement includes a term that provides a procedure that requires or allows the FWC, or another person who is independent of the persons covered by the agreement, to settle disputes:
  - (a) about any matters arising under the collective agreement; and
  - (b) that allows for the representation of regulated workers covered by the collective agreement for the purposes of that procedure.
- (3) The FWC must be satisfied that the collective agreement includes the following:
  - (a) a term that provides for its period of operation;
  - (b) a term that provides for requirements in relation to terminating the collective agreement before the end of that period.
- (3A) The FWC must be satisfied that the operation of the agreement would not be contrary to the public interest, taking into account the object of this Part set out in section 536MJ.
- (4) The FWC must publish a copy of the collective agreement and the declaration referred to in subsection 536MR(3) on the FWC's website.

## **Division 4—Variation of collective agreements**

### **536MT Application for variation of a collective agreement**

- (1) The following may apply for a variation of a collective agreement that is in operation:
  - (a) the regulated business covered by the collective agreement;
  - (b) the organisation covered by the collective agreement.

#### *Material to accompany the application*

- (2) The application must be accompanied by a signed copy of the collective agreement as proposed to be varied, which must identify the following:
  - (a) the regulated business covered by the collective agreement;
  - (b) the organisation covered by the collective agreement;

- (c) the class of regulated workers covered by the collective agreement as proposed to be varied.
- (3) The application must be accompanied by a declaration signed by the regulated business and the organisation covered by the collective agreement, which must:
  - (a) state that the regulated business and the organisation explained the terms of the agreement and their effect to the regulated workers covered by the agreement as proposed to be varied, and a description of the explanation; and
  - (b) if a minimum standards order is in operation that covers the same class of regulated workers as the collective agreement as proposed to be varied—specify:
    - (i) the minimum standards order; and
    - (ii) in relation to each matter dealt with by a term of the collective agreement as proposed to be varied that is also dealt with by a term of the minimum standards order—how the term of the collective agreement as proposed to be varied is more beneficial to the regulated workers covered by the collective agreement as proposed to be varied, in relation to that matter, than the term of the order in relation to that matter; and
  - (c) that no regulated worker, regulated business or organisation covered by the collective agreement as proposed to be varied was subject to any form of duress in relation to the variation.
- (4) The application must be accompanied by any other declaration required by the procedural rules.

### **536MU FWC must vary collective agreement**

- (1) If an application for a variation of a collective agreement is made under subsection 536MT(1), the FWC must register the agreement as varied if the requirements of section 536MT and subsection (1A) of this section are met in relation to the variation.
- (1A) The FWC must be satisfied that variation of the agreement would not be contrary to the public interest, taking into account the object of this Part set out in section 536MJ.

- (2) The FWC must publish a copy of the collective agreement as varied and the declaration referred to in subsection 536MT(3) on the FWC's website.
- (3) The variation comes into operation when the agreement as varied is registered.

## **Division 5—Termination of collective agreements**

### **536MV FWC must be notified of termination**

- (1) This section applies if a collective agreement has been terminated in accordance with the process specified in the agreement for terminating the agreement before the end of its period of operation.
- (2) The regulated business or the organisation covered by the collective agreement must, with the consent of the other, notify the FWC of the termination on the date the agreement is terminated.

#### *Declaration that must accompany application*

- (3) The notice under subsection (2) must be accompanied by a declaration signed by the regulated business and the organisation covered by the collective agreement:
  - (a) stating that the collective agreement has been terminated in accordance with the process; and
  - (b) specifying the date of effect of the termination.
- (4) The notice must be accompanied by any other declaration required by the procedural rules.

### **536MW FWC must register termination notice**

- (1) If a notice is given to the FWC under subsection 536MV(2) in relation to a collective agreement, the FWC must register the termination by publishing a notice on the FWC's website:
  - (a) stating that the collective agreement has been terminated; and
  - (b) specifying the date of effect of the termination specified in the declaration under paragraph 536MV(3)(b).

- (2) The collective agreement ceases to operate on the date of effect of the termination specified in the declaration under paragraph 536MV(3)(b).

## Division 6—Other matters

### 536MX Terms of a collective agreement that are of no effect

- (1) A term of a collective agreement has no effect to the extent that it is a term about a matter other than a matter mentioned in subsection 536MK(2) or (3).
- (2) A term of a collective agreement has no effect to the extent that it deals with matters that are primarily of a commercial nature that do not affect the terms and conditions of engagement of regulated workers covered by the agreement.
- (3) However, if a collective agreement includes a term that has no effect because of subsection (1) or (2), the inclusion of the term does not prevent the agreement from being a collective agreement.

## Part 3A-5—Unfair contract terms of services contracts

### Division 1—Introduction

#### 536MY Guide to this Part

<p>This Part is about unfair contract terms of services contracts.</p> <p>It provides a framework for dealing with unfair contract terms.</p>
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#### 536MZ Meaning of employee and employer

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



## **Division 2—Object of Part**

### **536N Object of Part**

- (1) The object of this Part is:
  - (a) to establish a framework for dealing with unfair contract terms of services contracts that:
    - (i) balances the needs of principals and the needs of independent contractors; and
    - (ii) addresses the need for a level playing field between independent contractors and principals by creating disincentives to the inclusion of unfair contract terms in services contracts; and
    - (iii) recognises and protects the freedom of independent contractors to enter into services contracts; and
  - (b) to establish procedures for dealing with unfair contract terms that:
    - (i) are quick, flexible and informal; and
    - (ii) address the needs of principals and independent contractors; and
  - (c) to provide appropriate remedies if a term of a services contract is found to be unfair.
- (2) The procedures and remedies referred to in paragraphs (1)(b) and (c), and the manner of deciding on and working out such remedies, are intended to ensure that a “fair go all round” is accorded to both the principals and independent contractors concerned.

Note: The expression “fair go all round” was used by Sheldon J in *re Loty and Holloway v Australian Workers’ Union* [1971] AR (NSW) 95.

## **Division 3—Orders in relation to unfair contract terms of services contracts**

### **536NA When the FWC may make an order in relation to an unfair contract term of a services contract**

- (1) The FWC may make an order under this Part in relation to a services contract if the FWC is satisfied that the services contract includes one or more unfair contract terms which, in an

employment relationship, would relate to workplace relations matters.

- (2) The FWC may make the order only if a person has made an application under section 536ND in relation to the services contract.
- (3) The FWC must take into account fairness between the parties concerned in deciding whether to make an order under this Division, and the kind of order to make.

**536NB Matters to be considered in deciding whether a term of a services contract is an unfair contract term**

- (1) In determining whether a term of a services contract is an unfair contract term, the FWC may take into account the following matters:
  - (a) the relative bargaining power of the parties to the services contract;
  - (b) whether the services contract as a whole displays a significant imbalance between the rights and obligations of the parties;
  - (c) whether the contract term under consideration is reasonably necessary to protect the legitimate interests of a party to the contract;
  - (d) whether the contract term under consideration imposes a harsh, unjust or unreasonable requirement on a party to the contract;
  - (e) whether the services contract as a whole provides for a total remuneration for performing work that is:
    - (i) less than regulated workers performing the same or similar work would receive under a minimum standards order or minimum standards guidelines; or
    - (ii) less than employees performing the same or similar work would receive;
  - (f) any other matter the FWC considers relevant.
- (2) The matters in paragraphs (1)(b) to (f) are to be assessed as at the time the FWC considers the application.

### **536NC Remedy—order to set aside etc. contract**

The FWC may make an order under this section:

- (a) setting aside all or part of a services contract which, in an employment relationship, would relate to a workplace relations matter; or
- (b) amending or varying all or part of a services contract which, in an employment relationship, would relate to a workplace relations matter.

## **Division 4—Procedural matters**

### **536ND Application for unfair contract term remedy**

- (1) A person who is party to a services contract, or an organisation that represents the industrial interests of a person who is party to a services contract, may apply to the FWC for an order under Division 3 granting a remedy on the basis that the services contract contains a term that is unfair.
- (2) An application must not be made in relation to a services contract unless, in the year the application is made, the sum of the person's annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations, is less than the contractor high income threshold.

Note: Division 3 sets out when the FWC may order a remedy for an unfair contract term.

### **536NE Application fees**

- (1) An application to the FWC under this Division 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 this Division; 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.

### **536NF Conferences**

- (1) This section applies in relation to a matter arising under this Part if the FWC conducts a conference in relation to the matter.
- (2) Despite subsection 592(3), the FWC must conduct the conference in private.
- (3) The FWC must take into account any difference in the circumstances of the parties to the matter in:
  - (a) considering the application; and
  - (b) informing itself in relation to the application.
- (4) The FWC must take into account the wishes of the parties to the matter as to the way in which the FWC:
  - (a) considers the application; and
  - (b) informs itself in relation to the application.

### **536NG Hearings**

- (1) The FWC must not hold a hearing in relation to a matter arising under this Part unless the FWC considers it appropriate to do so, taking into account:
  - (a) the views of the parties to the matter; and
  - (b) whether a hearing would be the most effective and efficient way to resolve the matter.
- (2) If the FWC holds a hearing in relation to a matter arising under this Part, it may decide not to hold the hearing in relation to parts of the matter.
- (3) The FWC may decide at any time (including before, during or after conducting a conference in relation to a matter) to hold a hearing in relation to the matter.

### **536NH Dismissing applications**

- (1) The FWC may, subject to subsection (2), dismiss an application for an order under Division 3 if the FWC is satisfied that the applicant has unreasonably:

- (a) failed to attend a conference conducted by the FWC, or a hearing held by the FWC, in relation to the application; or
- (b) failed to comply with a direction or order of the FWC relating to the application; or
- (c) failed to discontinue the application after a settlement agreement has been concluded.

Note: For another power of the FWC to dismiss applications for orders under Division 3, see section 587.

- (2) The FWC may exercise its power under subsection (1) on application by a party to the matter or an organisation entitled to represent the industrial interests of a party to the matter.
- (3) This section does not limit when the FWC may dismiss an application.

### **536NJ Appeal rights**

- (1) Despite subsection 604(2), the FWC must not grant permission to appeal from a decision made by the FWC under this Part 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 this Part 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.

### **536NK Contravening orders under this Part**

A person must not contravene an order under this Part.

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

## Chapter 3B—Minimum standards for persons in a road transport contractual chain

### Part 3B-1—Core provisions for this Chapter

#### Division 1—Introduction

##### 536NL Guide to this Part

This Part is about the coverage and operation of the provisions of this Chapter.

Division 2 sets out when road transport contractual chain orders and road transport contractual chain guidelines cover persons in a road transport contractual chain.

Division 3 specifies the rules relating to the interaction of the provisions of this Chapter with State and Territory laws.

##### 536NM Meaning of *employee* and *employer*

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

##### 536NN FWC to have regard to minimum standards objective

The FWC must have regard to the minimum standards objective in performing a function or exercising a power under this Chapter.

Note: The FWC must also have regard to the road transport objective as required by section 40D.

## **Division 2—Provisions relating to coverage and operation of road transport contractual chain orders and road transport contractual chain guidelines**

### **Subdivision A—Coverage and operation of road transport contractual chain orders and guidelines**

#### **536NP Contravening a road transport contractual chain order**

A person must not contravene a term of a road transport contractual chain order.

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

Note 2: A person does not contravene a term of a road transport contractual chain order unless the order applies to the person: see subsection 536NQ(1).

#### **536NQ The significance of a road transport contractual chain order applying to a person**

- (1) A road transport contractual chain order does not impose obligations on a person, and a person does not contravene a term of a road transport contractual chain order, unless the order applies to the person.
- (2) A road transport contractual chain order does not give a person an entitlement unless the order applies to the person.

#### **536NR When a road transport contractual chain order *applies* to a person**

*When a road transport contractual chain order **applies** to a regulated road transport contractor or a road transport employee-like worker*

- (1) A road transport contractual chain order **applies** to a regulated road transport contractor or a road transport employee-like worker in a road transport contractual chain if:
  - (a) the road transport contractual chain order covers the regulated road transport contractor or road transport employee-like worker; and

- (b) the road transport contractual chain order is in operation; and
- (c) no other provision of this Act provides, or has the effect, that the road transport contractual chain order does not apply to the regulated road transport contractor or road transport employee-like worker.

*When a road transport contractual chain order **applies** to other persons in a road transport contractual chain*

- (2) A road transport contractual chain order **applies** to a person in a road transport contractual chain, other than a regulated road transport contractor or a road transport employee-like worker, if:
  - (a) the road transport contractual chain order covers the person; and
  - (b) a regulated road transport contractor or a road transport employee-like worker to whom the road transport contractual chain order applies, or an employee, performs work for the person; and
  - (c) the road transport contractual chain order is in operation; and
  - (d) no other provision of this Act provides, or has the effect, that the road transport contractual chain order does not apply to the person.

**536NS When a road transport contractual chain order *covers* a person in a road transport contractual chain**

- (1) A road transport contractual chain order ***covers*** a person in a road transport contractual chain if the order is expressed to cover the person.

*Effect of other provisions of this Act, FWC orders or court orders on coverage*

- (2) A road transport contractual chain order also ***covers*** a person in a road transport contractual chain if any of the following provides, or has the effect, that the order covers 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.



- (3) Despite subsections (1) and (2), a road transport contractual chain order does not **cover** a person in a road transport contractual chain if any of the following provides, or has the effect, that the order 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.

*Road transport contractual chain orders that have ceased to operate*

- (4) Despite subsections (1) and (2), a road transport contractual chain order that has ceased to operate does not **cover** a person in a road transport contractual chain.

**536NT When a road transport contractual chain order is in operation**

*When a road transport contractual chain order comes into operation*

- (1) A road transport contractual chain order comes into operation on the day specified in the order.
- (2) The specified day must not be earlier than the day on which the road transport contractual chain order is made.
- (3) The specified day must not be earlier than 12 months after the relevant notice of intent for the order was published.
- (4) Despite subsection (3), the specified day may be a day not earlier than 6 months after the relevant notice of intent for the order was published, if the FWC is satisfied that the circumstances urgently require it.

*When a determination varying or revoking a road transport contractual chain order comes into operation*

- (5) A determination varying or revoking a road transport contractual chain order comes into operation on the day specified in the determination.

- (6) The specified day must not be earlier than the day on which the determination is made.

*Road transport contractual chain orders operate until revoked*

- (7) A road transport contractual chain order continues in operation until it is revoked.

*Notice of intent*

- (8) The **relevant notice of intent** for a road transport contractual chain order is the notice of intent published under subsection 536PG(1) at the same time as the draft of the road transport contractual chain order was published.

**536NU When road transport contractual chain guidelines cover a person in a road transport contractual chain**

- (1) Road transport contractual chain guidelines **cover** a person in a road transport contractual chain if the guidelines are expressed to cover the person.

*Effect of other provisions of this Act, FWC orders or court orders on coverage*

- (2) Road transport contractual chain guidelines also **cover** a person in a road transport contractual chain if any of the following provides, or has the effect, that the guidelines 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.

- (3) Despite subsections (1) and (2), road transport contractual chain guidelines do not **cover** a person in a road transport contractual chain, if any of the following provides, or has the effect, that the guidelines do 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.

*Road transport contractual chain guidelines that have ceased to operate*

- (4) Despite subsections (1) and (2), road transport contractual chain guidelines that have ceased to operate do not **cover** a person in a road transport contractual chain.

**536NV When road transport contractual chain guidelines are in operation**

*When road transport contractual chain guidelines come into operation*

- (1) Road transport contractual chain guidelines come into operation on the day specified in the guidelines.
- (2) The specified day must not be earlier than the day on which the road transport contractual chain guidelines are made.

*When a determination varying or revoking road transport contractual chain guidelines comes into operation*

- (3) A determination varying or revoking road transport contractual chain guidelines comes into operation on the day specified in the determination.
- (4) The specified day must not be earlier than the day on which the determination is made.

*Road transport contractual chain guidelines operate until revoked*

- (5) Road transport contractual chain guidelines continue in operation until they are revoked.

**Division 3—Exclusion of certain State and Territory laws**

**536NW Exclusion of certain State and Territory laws**

- (1) For the purposes of this Chapter, the rights, entitlements, obligations and liabilities of a person in a road transport contractual chain are not affected by a law of a State or Territory to the extent that the law would otherwise do one or more of the following:

- (a) take or deem the person to be an employer or employee, or otherwise treat the person as if the person were an employer or employee, for the purposes of a law that relates to one or more workplace relations matters (or provide a means for the person to be so taken, deemed or treated);
- (b) confer or impose rights, entitlements, obligations or liabilities on the person in relation to matters that, in an employment relationship, would be workplace relations matters (or provide a means for rights, entitlements, obligations or liabilities in relation to such matters to be conferred or imposed on the person);
- (c) without limiting paragraphs (a) and (b)—expressly provide for a court, commission or tribunal to do any of the following in relation to a services contract on an unfairness ground:
  - (i) make an order or determination (however described) setting aside, or declaring to be void or otherwise unenforceable, all or part of the services contract;
  - (ii) make an order or determination (however described) amending or varying all or part of the services contract.

Note 1: For the meaning of *workplace relations matter*, see section 536NX.

Note 2: For the meaning of *unfairness ground*, see section 536NY.

- (2) The rights, entitlements, obligations and liabilities of a person in a road transport contractual chain are not affected by a law of a State or Territory that is specified in regulations made for the purposes of this subsection, to the extent that the law is so specified.
- (3) Subsection (1) does not apply in relation to:
  - (a) a law of a State or Territory, to the extent that the law deals with matters relating to outworkers (including entry of a representative of a trade union to premises for a purpose connected with outworkers), other than matters mentioned in paragraph (1)(c); or
  - (b) any of the following laws:
    - (i) Chapter 6 of the *Industrial Relations Act 1996* (NSW) (and any other provision of that Act to the extent that it relates to, or has effect for the purposes of, a provision of Chapter 6);

- (ii) the *Owner Drivers and Forestry Contractors Act 2005* (Vic.); or
  - (c) a law of a State or Territory that is specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified.
- (4) To avoid doubt, subsection (2) has effect even if a law specified in regulations made for the purposes of that subsection:
  - (a) is a law referred to in paragraph (3)(a) or (b); or
  - (b) deals with matters that, because of section 536NX, are not workplace relations matters.

*References to State and Territory law*

- (5) Without limiting any other provision of this Act, a reference in this section to a law of a State or Territory:
  - (a) includes a reference to a regulation, rule or other instrument (however described) made pursuant to, or for the purposes of, a law of a State or Territory; and
  - (b) is a reference to a law of a State or Territory as in force from time to time.

**536NX What are *workplace relations matters***

For the purposes of this Chapter, *workplace relations matter* has the same meaning as in section 536JQ.

**536NY What is an *unfairness ground***

For the purposes of this Chapter, an *unfairness ground* in relation to a services contract has the same meaning as in section 536JR.

**536NZ Interaction of road transport contractual chain orders with State and Territory laws**

- (1) A road transport contractual chain order prevails over a law of a State or Territory, to the extent of any inconsistency.
- (2) Despite subsection (1), a term of a road transport contractual chain order applies subject to the following:

- (a) a law of a State or Territory specified in regulations made for the purposes of this paragraph, to the extent that the law is so specified;
- (b) a law of a State or Territory that provides for rights or remedies by reference to a law described in paragraph (a).

*References to State and Territory law*

- (3) Without limiting any other provision of this Act, a reference in this section to a law of a State or Territory:
  - (a) includes a reference to a regulation, rule or other instrument (however described) made pursuant to, or for the purposes of, a law of a State or Territory; and
  - (b) is a reference to a law of a State or Territory as in force from time to time.

**536P Authorisation of conduct for the purposes of the *Competition and Consumer Act 2010***

*Conduct in accordance with order or guidelines*

- (1) For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, and the Competition Code within the meaning of that Act, anything done in accordance with a road transport contractual chain order or road transport contractual chain guidelines by a person or entity covered by the order or guidelines is specified in and specifically authorised by this Act.

*Certain conduct not protected*

- (2) Despite subsection (1), conduct referred to in that subsection is not specified in or specifically authorised by this Act if the conduct is:
  - (a) making a contract or arrangement, or arriving at an understanding, that is or contains a cartel provision that satisfies the purpose condition in either paragraph 45AD(3)(a) or (b) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act; or
  - (b) boycott conduct within the meaning of subsection 87AA(2) of the *Competition and Consumer Act 2010* or the Competition Code within the meaning of that Act.

## **Part 3B-2—Minimum standards for persons in a road transport contractual chain**

### **Division 1—Introduction**

#### **536PB Guide to this Part**

This Part is about setting minimum standards for persons in a road transport contractual chain.

Division 2 empowers the FWC to make road transport contractual chain orders, which set minimum standards to which certain regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain are entitled in relation to certain matters.

Divisions 3 and 4 deal with deferral and suspension of road transport contractual chain orders.

Division 5 empowers the FWC to make road transport contractual chain guidelines for persons in a road transport contractual chain.

#### **536PC Meaning of employee and employer**

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

### **Division 2—Road transport contractual chain orders**

#### **Subdivision A—General matters**

#### **536PD Road transport contractual chain orders**

- (1) The FWC may make an order (a ***road transport contractual chain order***) that sets standards for regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain.

Note: The FWC must be constituted by an Expert Panel for the purposes of making a road transport contractual chain order (see subsection 617(10B)).

- (2) A road transport contractual chain order cannot confer rights or impose obligations on a person in the capacity of an employee.
- (3) The FWC may make a road transport contractual chain order under this section:
  - (a) on its own initiative; or
  - (b) on application under subsection 536PE(1).
- (4) The FWC must not make a road transport contractual chain order that covers road transport employee-like workers unless the FWC considers it appropriate.

### **536PE Applications for road transport contractual chain orders**

- (1) Any of the following may apply to the FWC for the making of a road transport contractual chain order:
  - (a) an organisation that is entitled to represent the industrial interests of one or more persons in a road transport contractual chain;
  - (b) a regulated business in a road transport contractual chain;
  - (c) a person who is a primary party to the first contract or arrangement in a road transport contractual chain;
  - (d) the Minister;
  - (e) a person or body prescribed by the regulations.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

#### *Matters to be specified in an application*

- (2) An application for the making of a road transport contractual chain order must specify the classes of persons in a road transport contractual chain to be covered by the order.
- (3) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.



**Subdivision B—Matters relating to road transport contractual chain orders**

**536PF Particular matters FWC must take into account in making a decision on a road transport contractual chain order**

- (1) This section applies if:
  - (a) an application is made for a road transport contractual chain order under subsection 536PE(1) or for a variation of a road transport contractual chain order under section 536PS; or
  - (b) the FWC is considering making or varying a road transport contractual chain order on its own initiative.
- (2) The FWC:
  - (a) must not make or vary the road transport contractual chain order unless there has been genuine engagement with the parties to be covered; and
  - (b) must not make or vary the road transport contractual chain order unless the Road Transport Advisory Group has been consulted; and
  - (c) must not make or vary the road transport contractual chain order unless the consultation process set out in Subdivision C of this Division has been followed; and
  - (d) in deciding whether to make or vary the road transport contractual chain order, must have regard to the commercial realities of the road transport industry, including commercial practices in relation to part load, mixed load, no load, multi-leg and return trips; and
  - (e) must not make or vary the road transport contractual chain order unless the FWC is satisfied that making or varying the road transport contractual chain order will not unduly affect the viability and competitiveness of road transport businesses, owner drivers or other similar persons; and
  - (f) in deciding whether to make or vary the road transport contractual chain order, must take into account any current or proposed road transport contractual chain orders and any current or proposed minimum standards orders; and
  - (g) must take reasonable steps to ensure that the coverage of the road transport contractual chain order is clear.

**Subdivision C—Consultation process for road transport contractual chain orders**

**536PG FWC to prepare and publish a draft of a road transport contractual chain order**

- (1) Before making a road transport contractual chain order, the FWC must:
  - (a) publish a notice (a *notice of intent*) stating that the FWC proposes to make a road transport contractual chain order; and
  - (b) publish a draft of the proposed road transport contractual chain order.
- (2) The FWC must publish the notice of intent and the draft of the road transport contractual chain order on the FWC's website and by any other means the FWC considers appropriate.

**536PH Affected entities to have a reasonable opportunity to make submissions on a draft road transport contractual chain order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the draft of a road transport contractual chain order published under paragraph 536PG(1)(b).
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:
  - (a) may decide not to publish the information; and
  - (b) may instead publish:
    - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or

- (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC's website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (6) For the purposes of subsection (1), an *affected entity*, in relation to a draft road transport contractual chain order published under paragraph 536PG(1)(b), is:
  - (a) a person or body likely to be affected by the making of a road transport contractual chain order based on the draft; or
  - (b) a person or body prescribed by the regulations, or included in a class prescribed by the regulations.
- (7) The FWC may, but is not required to, hold a hearing in relation to a draft road transport contractual chain order.

#### **536PJ Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft road transport contractual chain order.
- (2) If changes made under subsection (1) are significant, the FWC must:
  - (a) decide not to make the road transport contractual chain order based on the draft; and
  - (b) publish a subsequent notice of intent under paragraph 536PG(1)(a) in relation to the revised draft road transport contractual chain order, and publish the revised draft; and
  - (c) follow the process set out in section 536PH in relation to the revised draft road transport contractual chain order (with the period of consultation under that section to be no shorter than 12 months starting when the subsequent notice of intent and

the revised draft required by paragraph (b) of this subsection were published).

- (3) Despite paragraph (2)(c), the FWC may reduce the consultation period mentioned in that paragraph to a period not shorter than 6 months if the FWC is satisfied that the circumstances urgently require it.

**536PK Decision not to make order based on the draft**

The FWC may decide that no road transport contractual chain order is to be made based on the draft. If the FWC does so, the FWC must publish notice of the decision on its website and by any other means the FWC considers appropriate.

**Subdivision D—Decisions on road transport contractual chain orders and related matters**

**536PL Decisions on applications for road transport contractual chain orders**

- (1) If an application for a road transport contractual chain order is made to the FWC under subsection 536PE(1), the FWC may decide to:
- (a) refuse to consider the application; or
  - (b) make a road transport contractual chain order under subsection 536PD(1); or
  - (c) not make a road transport contractual chain order; or
  - (d) if the FWC considers it appropriate to do so, instead make road transport contractual chain guidelines under section 536QP, as if the application had been an application under subsection 536QQ(1) for road transport contractual chain guidelines in relation to the persons in a road transport contractual chain covered by the application under subsection 536PE(1).
- (2) Without limiting subsection (1), the FWC may refuse to consider the application if it is not consistent with a direction of the President under subsection 582(4D) (prioritisation).

**536PM Terms that must be included in a road transport contractual chain order**

*Terms relating to coverage*

- (1) A road transport contractual chain order must include terms setting out in accordance with this section:
  - (a) the work in the road transport industry covered by the road transport contractual chain order; and
  - (b) the persons in a road transport contractual chain covered by the road transport contractual chain order.
- (2) A road transport contractual chain order must be expressed to cover persons in a road transport contractual chain, including specified regulated road transport contractors or road transport employee-like workers.
- (3) For the purposes of subsection (2):
  - (a) persons in a road transport contractual chain other than regulated road transport contractors or road transport employee-like workers may be specified by name or by inclusion in a specified class or specified classes; and
  - (b) regulated road transport contractors and road transport employee-like workers must be specified by inclusion in a specified class or specified classes.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (3), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**536PN Road transport contractual chain order must include term about interaction with minimum standards orders**

A road transport contractual chain order must include a provision that specifies the extent to which it prevails over, or is subject to, a minimum standards order to the extent of any inconsistency, and the road transport contractual chain order and the minimum standards order have effect according to the provision included in the road transport contractual chain order.

**536PP Term about settling disputes must be included in a road transport contractual chain order**

A road transport contractual chain order must include a term that provides a procedure for settling disputes about any matters arising under the order.

**536PQ Terms that may be included in a road transport contractual chain order**

- (1) A road transport contractual chain order may also include terms about any of the following matters:
  - (a) payment times;
  - (b) fuel levies;
  - (c) rate reviews;
  - (d) termination, including one way termination for convenience;
  - (e) cost recovery.
- (2) Subsection (1) does not limit the terms that may be included in a road transport contractual chain order.

**536PR Terms that must not be included in a road transport contractual chain order**

- (1) A road transport contractual chain order must not include terms about any of the following matters:
  - (a) overtime rates;
  - (b) rostering arrangements;
  - (c) a term that would change the form of the engagement or the status of a regulated road transport contractor or a road transport employee-like worker covered by the road transport contractual chain order including, but not limited to, a term that deems a regulated road transport contractor or a road transport employee-like worker to be an employee;
  - (d) a matter relating to work health and safety that is otherwise comprehensively dealt with by a law of the Commonwealth, a State or a Territory;
  - (e) a matter prescribed by the regulations, or included in a class of matter prescribed by the regulations.

- (2) A road transport contractual chain order must not include terms about any of the following matters:
  - (a) a matter relating to road transport that is otherwise comprehensively dealt with:
    - (i) by the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld); or
    - (ii) by another law of the Commonwealth, a State or a Territory;
  - (b) a matter prescribed by the regulations, or included in a class of matter prescribed by the regulations.
- (3) For the purposes of paragraph (1)(d):
  - (a) the regulations may specify that a particular matter, or a matter included in a class of matters, is, or is not, dealt with comprehensively by a law of the Commonwealth, a State or a Territory; and
  - (b) the regulations may prescribe one or more laws of the Commonwealth, a State or a Territory to which that paragraph does, or does not, not apply.
- (4) For the purposes of paragraph (2)(b):
  - (a) the regulations may specify that a particular matter, or a matter included in a class of matters, is, or is not, dealt with comprehensively by the Heavy Vehicle National Law as set out in the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld) or another law of the Commonwealth, a State or a Territory; and
  - (b) the regulations may prescribe one or more laws of the Commonwealth, a State or a Territory to which subparagraph (2)(a)(ii) does, or does not, not apply.

### **536PS Applications to vary or revoke road transport contractual chain orders**

Any of the following may apply to the FWC for a determination varying or revoking a road transport contractual chain order:

- (a) an organisation that is entitled to represent the industrial interests of one or more of the persons in the road transport

- contractual chain to which the order relates or to whom the order as proposed to be varied would relate;
- (b) a regulated business in the road transport contractual chain to which the order relates or to which the order as proposed to be varied would relate;
- (c) a person who is a primary party to the first contract or arrangement in the road transport contractual chain to which the order relates;
- (d) the Minister;
- (e) a person or body prescribed by the regulations.

**536PT FWC may vary or revoke road transport contractual chain orders**

- (1) The FWC may make a determination varying or revoking a road transport contractual chain order if the FWC is satisfied that making the determination is consistent with the minimum standards objective and the road transport objective.
- (2) The FWC may make a determination varying a road transport contractual chain order in such a way that not all of the elements of the variation sought in an application under section 536PS are implemented, including by refusing to make a variation to the extent that it would result in the order covering persons who are not regulated road transport contractors or road transport employee-like workers.
- (3) The FWC may make a determination varying a road transport contractual chain order to remove an ambiguity or uncertainty or to correct an error.
- (4) The FWC may make a determination varying or revoking a road transport contractual chain order:
  - (a) on its own initiative; or
  - (b) on application under section 536PS.
- (5) The FWC must not vary or revoke a road transport contractual chain order that covers road transport employee-like workers, or in such a way that it would begin to cover or cease to cover road transport employee-like workers, unless the FWC considers it appropriate.



- (6) The FWC may also make a determination under subsection (1) varying or revoking a road transport contractual chain order to give effect to a decision under paragraph 536QK(2)(a) or (b) to vary or revoke the road transport contractual chain order.

Note: Subsection 536QK(2) requires the FWC to consider whether to vary or revoke a road transport contractual chain order after a deferral declaration, a deferral determination, a suspension declaration or a suspension determination is made in relation to the order.

- (7) A road transport contractual chain order that is not in operation can only be revoked or varied under the process set out in Divisions 3 and 4.

### **Division 3—Deferral and suspension of road transport contractual chain orders**

#### **Subdivision A—Ministerial declarations to defer or suspend road transport contractual chain orders**

##### **536PU Minister may make a declaration deferring the operation or application of a road transport contractual chain order**

- (1) If the Minister considers it is in the public interest to do so, the Minister may, by notifiable instrument, make a declaration (a ***deferral declaration***) that defers:
- (a) the coming into operation of a road transport contractual chain order; or
  - (b) the application of:
    - (i) all of the terms of a road transport contractual chain order to a specified class or specified classes of persons; or
    - (ii) specified terms of a road transport contractual chain order to a specified class or specified classes of persons; or
    - (iii) specified terms of a road transport contractual chain order to all persons.
- (2) A deferral declaration made under paragraph (1)(a) is a ***full deferral declaration***, and a deferral declaration made under paragraph (1)(b) is a ***part deferral declaration***, in relation to the

road transport contractual chain order to which the deferral declaration relates.

- (3) A deferral declaration in relation to a road transport contractual chain order:
  - (a) comes into operation on the day on which it is made; and
  - (b) ceases to be in operation on the day on which the FWC decides under subsection 536QK(2) whether or not to vary or revoke the road transport contractual chain order.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.
- (5) The Secretary of the Department must publish a deferral declaration on the Department's website as soon as practicable after the deferral declaration is made.

#### **536PV Limitations on making a deferral declaration**

*No deferral of road transport contractual chain order that is in operation*

- (1) The Minister must not make a deferral declaration in relation to a road transport contractual chain order that has already come into operation.

*Only one full deferral declaration is permitted etc.*

- (2) The Minister:
  - (a) may only make one full deferral declaration in relation to a particular road transport contractual chain order; and
  - (b) must not make a full deferral declaration in relation to a particular road transport contractual chain order if a deferral determination (whether a full deferral determination or a part deferral determination) has previously been made by the FWC in relation to the road transport contractual chain order.

Note: The FWC may make deferral determinations in relation to road transport contractual chain orders under Subdivision B of this Division.

*More than one part deferral declaration is permitted*

- (3) Subject to subsection (4), the Minister may make more than one part deferral declaration in relation to a particular road transport contractual chain order.
- (4) If more than one part deferral declaration or part deferral determination is made in relation to the same road transport contractual chain order as permitted by subsection (3) of this section or subsection 536QC(3), a later part deferral declaration must not have the effect of deferring, or purporting to defer, the application of a term or terms to any person:
  - (a) to whom the terms already apply when the later part deferral declaration is made; or
  - (b) in relation to whom the application of the terms has previously been deferred.

**536PW Operation of a road transport contractual chain order during deferral**

A road transport contractual chain order:

- (a) is not in operation during any period when a full deferral declaration in relation to the road transport contractual chain order is in operation; and
- (b) is in operation during any period when a part deferral declaration in relation to the road transport contractual chain order is in operation.

**Note:** Although a road transport contractual chain order is in operation when a part deferral declaration is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

**536PX Minister may make a declaration suspending a road transport contractual chain order**

- (1) If the Minister considers it is in the public interest to do so, the Minister may, by notifiable instrument, make a declaration (a ***suspension declaration***):
  - (a) suspending the operation of a road transport contractual chain order; or

- (b) suspending the application of:
  - (i) all of the terms of a road transport contractual chain order to a specified class or specified classes of persons; or
  - (ii) specified terms of a road transport contractual chain order to a specified class or specified classes of persons; or
  - (iii) specified terms of a road transport contractual chain order to all persons.
- (2) A suspension declaration made under paragraph (1)(a) is a **full suspension declaration**, and a suspension declaration made under paragraph (1)(b) is a **part suspension declaration**, in relation to the road transport contractual chain order to which the suspension declaration relates.

*Suspension declaration must specify period of suspension*

- (3) A suspension declaration must specify the period of the suspension, which:
  - (a) must not be longer than 12 months; and
  - (b) must not start before the day on which the suspension declaration is made.

*When period of suspension ends*

- (4) Subject to subsection (5), a period of suspension specified in a suspension declaration ends immediately after the end of the period specified in the suspension declaration under subsection (3).
- (5) If a period of suspension has not already ended under subsection (3) when the FWC makes a decision under subsection 536QK(2) as to whether to vary or revoke the road transport contractual chain order, the period of suspension ends on whichever of the following days is applicable:
  - (a) if the FWC decides to vary or revoke the road transport contractual chain order—on the day that the determination made under subsection 536PT(1) varying or revoking the road transport contractual chain order comes into operation, which must not be later than 12 months after the day on which the suspension declaration was made;

- (b) if the FWC decides not to vary or revoke the road transport contractual chain order:
  - (i) 7 days after the day on which the decision is made; or
  - (ii) if a 7-day period would result in the suspension lasting longer than 12 months—such shorter period as is specified in the decision, which must be a period that would result in the suspension lasting 12 months or less.

#### *Classes*

- (6) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

#### *Orders*

- (7) If the Minister makes a suspension declaration, the FWC may make any orders it considers appropriate to ensure that no person is unfairly affected by the suspension.

#### *Publication*

- (8) The Secretary of the Department must publish a suspension declaration on the Department's website as soon as practicable after the suspension declaration is made.

#### *Accrued rights, etc.*

- (9) The making of a suspension declaration does not affect any right or liability that a person acquired, accrued or incurred before the suspension declaration is made.

### **536PY Suspension declaration must be made within 12 months of certain dates**

#### *Full suspension declaration timing*

- (1) A full suspension declaration in relation to a road transport contractual chain order must be made within 12 months of the day on which the road transport contractual chain order came into operation.

*Part suspension declaration timing*

- (2) A part suspension declaration in relation to a road transport contractual chain order must be made within 12 months of whichever of the following days is applicable:
- (a) if the part suspension declaration suspends the application of all of the terms of the road transport contractual chain order to a specified class of persons—the day on which all of the terms of the road transport contractual chain order first applied to the specified class of persons;
  - (b) if the part suspension declaration suspends the application of all of the terms of the road transport contractual chain order to 2 or more specified classes of persons—the day on which all of the terms of the road transport contractual chain order first applied to at least one of the specified classes of persons (even if all of the terms of the order did not apply to all of the specified classes on that day);
  - (c) if the part suspension declaration suspends the application of specified terms of the road transport contractual chain order to a specified class of persons—the day on which the specified terms first applied to the specified class of persons;
  - (d) if the part suspension declaration suspends the application of specified terms of the road transport contractual chain order to 2 or more specified classes of persons—the day on which the specified terms of the road transport contractual chain order first applied to at least one of the specified classes of persons (even if the order did not apply to all of the specified classes on that day);
  - (e) if the part suspension declaration suspends the application of specified terms of the road transport contractual chain order to all persons—the day on which the specified terms first applied to all persons.

**536PZ Operation of a road transport contractual chain order during suspension**

A road transport contractual chain order:

- (a) is not in operation during any period when a full suspension declaration in relation to the road transport contractual chain order is in operation; and

- (b) is in operation during any period when a part suspension declaration in relation to the road transport contractual chain order is in operation.

Note: Although a road transport contractual chain order is in operation during a period when a part suspension declaration is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

### **536Q Consultation requirements**

The Minister is not required to consult any person or body before making a deferral declaration or a suspension declaration.

### **Subdivision B—FWC may defer or suspend road transport contractual chain orders**

#### **536QA Applications for a deferral determination for a road transport contractual chain order**

- (1) An application may be made to the FWC for a determination under subsection 536QB(1) (a *deferral determination*) in relation to a road transport contractual chain order.
- (2) An application may be made under subsection (1) by any of the following:
  - (a) an organisation that is entitled to represent the industrial interests of one or more persons in the road transport contractual chain;
  - (b) a regulated business in the road transport contractual chain;
  - (c) a person who is a primary party to the first contract or arrangement in the road transport contractual chain;
  - (d) a person or body prescribed by the regulations.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

- (3) An application for a deferral determination must not be made in relation to a road transport contractual chain order that has already come into operation.

Note: If the road transport contractual chain order concerned comes into operation before the FWC considers the application, the FWC may treat it as a suspension application: see subsection 536QD(2).

**536QB FWC may make a determination deferring the operation or application of a road transport contractual chain order**

- (1) The FWC may, on application under subsection 536QA(1), make a deferral determination:
  - (a) that defers the coming into operation of a road transport contractual chain order; or
  - (b) that defers the application of:
    - (i) all of the terms of a road transport contractual chain order to a specified class or specified classes of persons; or
    - (ii) specified terms of a road transport contractual chain order to a specified class or specified classes of persons; or
    - (iii) specified terms of a road transport contractual chain order to all persons.
- (2) A deferral determination made under paragraph (1)(a) is a **full deferral determination**, and a deferral determination made under paragraph (1)(b) is a **part deferral determination**, in relation to the road transport contractual chain order to which the deferral determination relates.
- (3) A deferral determination in relation to a road transport contractual chain order:
  - (a) comes into operation on the day on which it is made; and
  - (b) ceases to be in operation on the day on which the FWC decides under subsection 536QK(2) whether or not to vary or revoke the road transport contractual chain order.
- (4) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector.



### **536QC Limitations on making a deferral determination**

*No deferral of road transport contractual chain order that is in operation*

- (1) The FWC must not make a deferral determination in relation to a road transport contractual chain order that has already come into operation.

*Only one full deferral determination is permitted, etc.*

- (2) The FWC:
- (a) may only make one full deferral determination in relation to a particular road transport contractual chain order; and
  - (b) must not make a full deferral determination in relation to a particular road transport contractual chain order if a deferral declaration (whether a full deferral declaration or a part deferral declaration) has previously been made by the Minister in relation to the road transport contractual chain order.

Note: The Minister may make deferral declarations in relation to road transport contractual chain orders under Subdivision A of this Division.

*More than one part deferral determination is permitted*

- (3) Subject to subsection (4), the FWC may make more than one part deferral determination in relation to a particular road transport contractual chain order.
- (4) If more than one part deferral determination or part deferral declaration is made in relation to the same road transport contractual chain order as permitted by subsection (3) of this section or subsection 536PV(3), a later part deferral determination must not have the effect of deferring, or purporting to defer, the application of a term to any person or class of persons:
- (a) to whom the term already applies when the later part deferral determination is made; or
  - (b) in relation to whom the application of the terms has previously been deferred.

**536QD Decision on an application for a deferral determination in relation to a road transport contractual chain order**

- (1) If an application for a deferral determination in relation to a road transport contractual chain order is made, the FWC must:
  - (a) consider the application as soon as practicable; and
  - (b) consult the Road Transport Advisory Group before making a decision on the application.
- (2) If the road transport contractual chain order concerned comes into operation before the FWC makes a decision on the application, the FWC may treat the application as if it were an application for a suspension determination.
- (3) The FWC may:
  - (a) make the deferral determination under subsection 536QB(1); or
  - (b) decide not to make the deferral determination.
- (4) The FWC must make the deferral determination if, and must not make the deferral determination unless, the FWC is satisfied that:
  - (a) the applicant has provided significant new facts or evidence that was not available at the time the FWC decided to make the road transport contractual chain order; and
  - (b) the significant new facts or evidence demonstrate that the road transport contractual chain order will not provide, or has not provided, an appropriate safety net of road transport contractual chain for parties in the road transport industry, having regard to the road transport contractual chain objective and the road transport objective.
- (5) In considering whether the FWC is satisfied as mentioned in subsection (4), the FWC may have regard to whether one or more previous applications for variation or revocation of the road transport contractual chain order concerned have previously been made.
- (6) The FWC must publish a deferral determination on the FWC's website and by any other means the FWC considers appropriate as soon as practicable after making the determination.

**536QE Operation of a road transport contractual chain order during deferral**

A road transport contractual chain order:

- (a) is not in operation during any period when a full deferral determination in relation to the road transport contractual chain order is in operation; and
- (b) is in operation during any period when a part deferral determination is in operation in relation to the road transport contractual chain order.

Note: Although a road transport contractual chain order is in operation during a period when a part deferral determination is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

**536QF Applications for a suspension determination for a road transport contractual chain order**

- (1) An application may be made to the FWC for a determination (a *suspension determination*) under subsection 536QG(1) in relation to a road transport contractual chain order.
- (2) An application may be made under subsection (1) by any of the following:
  - (a) an organisation that is entitled to represent the industrial interests of one or more persons in the road transport contractual chain;
  - (b) a regulated business in the road transport contractual chain;
  - (c) a person who is a primary party to the first contract or arrangement in the road transport contractual chain;
  - (d) a person or body prescribed by the regulations.

Note: An Expert Panel can hear applications under this Act for the road transport industry together: see subsection 582(4).

*Timing of application for full suspension determination*

- (3) An application for a full suspension determination in relation to a road transport contractual chain order must be made within 12 months of the day on which the order came into operation.

*Timing of application for part suspension determination*

- (4) An application for a part suspension determination must be made within 12 months of whichever of the following days is applicable:
- (a) if the part suspension determination will suspend the application of all of the terms of the road transport contractual chain order to a specified class—the first day on which all of the terms of the road transport contractual chain order applied to the class of person;
  - (b) if the part suspension determination will suspend the application of all of the terms of the road transport contractual chain order to 2 or more specified classes of persons—the day on which all of the terms of the road transport contractual chain order first applied to at least one of the specified classes of persons (even if all of the terms of the order did not apply to all of the specified classes on that day);
  - (c) if the part suspension determination will suspend the application of specified terms of the road transport contractual chain order to a specified class of persons—the first day on which the specified terms applied to the specified class of persons;
  - (d) if the part suspension determination will suspend the application of specified terms of the road transport contractual chain order to 2 or more specified classes of persons—the day on which the specified terms of the road transport contractual chain order first applied to at least one of the specified classes of persons (even if the order did not apply to all of the specified classes on that day);
  - (e) if the part suspension determination will suspend the application of specified terms of the road transport contractual chain order to all persons—the first day on which the specified terms applied to all persons.

**536QG FWC may make a determination suspending a road transport contractual chain order**

- (1) The FWC may, on application under subsection 536QF(1), make a suspension determination:

- (a) suspending the operation of a road transport contractual chain order; or
- (b) suspending:
  - (i) the application of a road transport contractual chain order to a specified class or specified classes of persons; or
  - (ii) the application of specified terms of a road transport contractual chain order to a specified class or specified classes of persons; or
  - (iii) the application of specified terms of road transport contractual chain order to all persons.

Note 1: A person may also apply under section 536PS for a variation or revocation of a road transport contractual chain order.

Note 2: Judicial review of decisions of the FWC is available: see paragraph 39B(1A)(c) of the *Judiciary Act 1903*.

- (2) A suspension determination made under paragraph (1)(a) is a **full suspension determination**, and a suspension determination made under paragraph (1)(b) is a **part suspension determination**, in relation to the road transport contractual chain order to which the suspension determination relates.

*Suspension determination must specify period of suspension*

- (3) If the FWC makes a suspension determination in relation to a road transport contractual chain order, the suspension determination must specify the period for which the order is suspended, which:
  - (a) must not be a period of more than 12 months; and
  - (b) must not start before the day on which the determination is made.

*When period of suspension ends*

- (4) Subject to subsection (5), a period of suspension specified in a suspension determination ends immediately after the end of the period specified in the suspension determination under subsection (3).
- (5) If the period of suspension has not already ended under subsection (4) when the FWC makes a decision under subsection 536QK(2) as to whether to vary or revoke the road

transport contractual chain order, the period of suspension ends on whichever of the following days is applicable:

- (a) if the FWC decides to vary or revoke the road transport contractual chain order—on the day that the determination made under subsection 536PT(1) varying or revoking the road transport contractual chain order comes into operation, which must not be later than 12 months after the day on which the suspension determination was made;
- (b) if the FWC decides not to vary or revoke the road transport contractual chain order:
  - (i) 7 days after the day on which the decision is made; or
  - (ii) if a 7-day period would result in the suspension lasting longer than 12 months—such shorter period as is specified in the decision, which must be a period that would result in the suspension lasting 12 months or less.

*Classes*

- (6) Without limiting the way in which a class may be described for the purposes of subsection (1), the class may be described by reference to a particular industry or sector, or part of an industry or sector.

**536QH Decision on an application for a suspension determination in relation to a road transport contractual chain order**

- (1) If an application for a suspension determination in relation to a road transport contractual chain order is made, the FWC must:
  - (a) consider the application as soon as practicable; and
  - (b) consult the Road Transport Advisory Group before making a decision on the application.
- (2) The FWC may:
  - (a) make the suspension determination under subsection 536QG(1); or
  - (b) decide not to make the suspension determination.
- (3) The FWC must make the suspension determination if, and must not make the suspension determination unless, the FWC is satisfied that:

- (a) the applicant has provided significant new facts or evidence that was not available at the time the FWC decided to make the road transport contractual chain order; and
  - (b) the significant new facts or evidence demonstrate that the road transport contractual chain order will not provide, or has not provided, an appropriate safety net of road transport contractual chain for parties in the road transport industry, having regard to the road transport contractual chain objective and the road transport objective.
- (4) In considering whether the FWC is satisfied as mentioned in subsection (3), the FWC may have regard to whether one or more previous applications for variation or revocation of the road transport contractual chain order have previously been made.
- (5) If the FWC makes the suspension determination, the FWC may make any orders it considers appropriate to ensure that no person is unfairly affected by the suspension.
- (6) The FWC must publish a suspension determination on the FWC's website and by any other means the FWC considers appropriate as soon as practicable after making the determination.
- (7) The making of a suspension determination does not affect any right or liability that a person acquired, accrued or incurred before the suspension determination is made.

### **536QJ Operation of a road transport contractual chain order during suspension**

A road transport contractual chain order:

- (a) is not in operation during any period when a full suspension determination in relation to the road transport contractual chain order is in operation; and
- (b) is in operation during any period when a part suspension determination is in operation in relation to the road transport contractual chain order.

**Note:** Although a road transport contractual chain order is in operation during a period when a part deferral determination is in operation in relation to the order, the order as a whole will not apply to specified classes of persons, or specified terms of the order will not apply to all persons or specified classes of persons, during that period.

**Subdivision C—FWC must consider and decide whether to vary or revoke a deferred or suspended road transport contractual chain order**

**536QK FWC must consider whether to vary or revoke a road transport contractual chain order that has been deferred or suspended**

- (1) This section applies if:
  - (a) the Minister makes a deferral declaration or a suspension declaration in relation to a road transport contractual chain order; or
  - (b) the FWC makes a deferral determination or a suspension determination in relation to a road transport contractual chain order.
- (2) The FWC must, as soon as practicable, consider whether or not to vary or revoke the road transport contractual chain order. The FWC must:
  - (a) vary the road transport contractual chain order under subsection 536PT(1); or
  - (b) revoke the road transport contractual chain order under subsection 536PT(1); or
  - (c) decide not to vary or revoke the road transport contractual chain order.

*General preconditions for variation or revocation*

- (3) The FWC:
  - (a) must not vary or revoke the road transport contractual chain order unless there has been genuine engagement with the parties to be covered; and
  - (b) in the case of a road transport contractual chain order—must not vary or revoke the road transport contractual chain order unless the Road Transport Advisory Group has been consulted; and
  - (c) in the case of a road transport contractual chain order—must have regard to the commercial realities of the road transport industry; and



- (d) in the case of a road transport contractual chain order—must be satisfied that the variation or revocation of the road transport contractual chain order will not unduly affect the viability and competitiveness of owner drivers or other similar persons; and
- (e) in the case of a road transport contractual chain order that covers road transport employee-like workers—must have regard to choice and flexibility in working arrangements.

*Special preconditions for variation or revocation: road transport contractual chain order*

- (4) In addition to the matters mentioned in subsection (3), the FWC must not vary or revoke a road transport contractual chain order in relation to which a deferral declaration or a deferral determination has been made unless the FWC has followed the process set out in Division 4 of this Part in relation to the variation or revocation.

*Publication requirements*

- (5) The FWC must publish notice of the FWC's decision under subsection (2) on the FWC's website and by any other means the FWC considers appropriate.

*End of suspension period does not affect obligations under this section*

- (6) The end of a period of suspension of a road transport contractual chain order under subsection 536PX(4) or 536QG(4) does not affect the FWC's obligation to consider whether or not to vary or revoke the road transport contractual chain order.

**Division 4—Consultation before varying or revoking road transport contractual chain order after a deferral declaration or deferral determination**

**536QL FWC to prepare and publish a notice relating to proposed variation or revocation of a road transport contractual chain order**

- (1) Before deciding to vary or revoke a road transport contractual chain order in relation to which a deferral declaration or a deferral determination has been made, the FWC must:
  - (a) publish a notice (a *notice of intent*) stating that the FWC proposes to vary or revoke the road transport contractual chain order; and
  - (b) if the proposal is to vary the road transport contractual chain order—publish a draft of the road transport contractual chain order as proposed to be varied.
- (2) The FWC must publish the notice of intent and the draft of the road transport contractual chain order as proposed to be varied (if applicable) on the FWC’s website and by any other means the FWC considers appropriate as soon as practicable after making the determination.

**536QM Affected entities to have a reasonable opportunity to make submissions and comment on a proposed variation or revocation of a road transport contractual chain order**

- (1) The FWC must ensure that affected entities have a reasonable opportunity to make written submissions to the FWC for its consideration in relation to the proposed variation or revocation of a road transport contractual chain order in relation to which a notice of intent has been published under paragraph 536QL(1)(a).
- (2) The FWC must publish submissions made to the FWC.
- (3) However, if a submission made by an entity includes information that is claimed by the entity to be confidential or commercially sensitive, and the FWC is satisfied that the information is confidential or commercially sensitive, the FWC:

- (a) may decide not to publish the information; and
- (b) may instead publish:
  - (i) a summary of the information which contains sufficient detail to allow a reasonable understanding of the substance of the information (without disclosing anything that is confidential or commercially sensitive); or
  - (ii) if the FWC considers that it is not practicable to prepare a summary that would comply with subparagraph (i)—a statement that confidential or commercially sensitive information in the submission has not been published.
- (4) The publishing of material under subsections (2) and (3) must be on the FWC’s website and by any other means the FWC considers appropriate.
- (5) A reference in this Act (other than in this section) to a submission under this section includes a reference to a summary or statement referred to in paragraph (3)(b).
- (6) For the purposes of subsection (1), an ***affected entity***, in relation to a proposed variation or revocation of a road transport contractual chain order in relation to which a notice of intent has been published under paragraph 536QL(1)(a), is:
  - (a) a person or body likely to be affected by the proposed variation or revocation; or
  - (b) a person or body prescribed by the regulations, or belonging to a class of persons or bodies prescribed by the regulations.
- (7) The FWC may, but is not required to, hold a hearing in relation to the following:
  - (a) a draft road transport contractual chain order as proposed to be varied;
  - (b) a proposed revocation of a road transport contractual chain order.

### **536QN Finalising draft order**

- (1) The FWC may make any changes it thinks appropriate to a draft road transport contractual chain order as proposed to be varied.

- (2) If changes proposed to be made under subsection (1) are significant, the FWC must:
  - (a) decide not to vary the road transport contractual chain order based on the draft; and
  - (b) publish a subsequent notice of intent under paragraph 536QL(1)(a) in relation to the revised draft road transport contractual chain order, and publish the revised draft; and
  - (c) follow the process set out in section 536QM in relation to the revised draft road transport contractual chain order (with the period of consultation under that section to be no shorter than 12 months starting when the subsequent notice of intent and the revised draft required by paragraph (b) of this subsection were published).

## Division 5—Road transport contractual chain guidelines

### 536QP Road transport contractual chain guidelines

- (1) The FWC may make guidelines under this section (*road transport contractual chain guidelines*) that set standards for regulated road transport contractors, road transport employee-like workers and other persons in a road transport contractual chain.
- (2) The FWC may make road transport contractual chain guidelines under this section:
  - (a) on its own initiative; or
  - (b) on application under section 536QQ.

### 536QQ Applications for road transport contractual chain guidelines

- (1) Any of the following may apply to the FWC for the making of road transport contractual chain guidelines:
  - (a) an organisation that is entitled to represent the industrial interests of one or more of the persons that would be covered by the proposed road transport contractual chain guidelines;
  - (b) a regulated business that would be covered by the proposed road transport contractual chain guidelines;
  - (c) a person who is a primary party to the first contract or arrangement in a road transport contractual chain that would

- be covered by the proposed road transport contractual chain guidelines;
- (d) the Minister;
- (e) a person or body prescribed by the regulations.

*Matters to be specified in an application*

- (2) An application for the making of road transport contractual chain guidelines must specify the class of persons in a road transport contractual chain to be covered by the guidelines.
- (3) Without limiting the way in which a class may be described for the purposes of subsection (2), the class may be described by reference to a particular industry or sector, or part of an industry or sector, or particular kinds of work.

**536QR Decisions on applications for road transport contractual chain guidelines**

- (1) If an application for road transport contractual chain guidelines is made to the FWC under subsection 536QQ(1), the FWC may decide to:
  - (a) refuse to consider the application; or
  - (b) make road transport contractual chain guidelines under subsection 536QP(1); or
  - (c) not make road transport contractual chain guidelines; or
  - (d) if the FWC considers it appropriate to do so, instead make a road transport contractual chain order under subsection 536PD(1), as if the application had been an application under subsection 536PE(1) for a road transport contractual chain order in relation to the persons covered by the application under subsection 536QQ(1).
- (2) Without limiting subsection (1), the FWC may refuse to consider the application if it is not consistent with a direction of the President under subsection 582(4D) (prioritisation).

**536QS Road transport contractual chain guidelines not to be made if a road transport contractual chain order is in operation**

The FWC must not make road transport contractual chain guidelines that cover the same persons in a road transport contractual chain in relation to the same matters as a road transport contractual chain order that is in operation.

**536QT Terms that must be included in road transport contractual chain guidelines**

Road transport contractual chain guidelines must include terms setting out the same matters in relation to road transport contractual chain orders as set out in section 536PM.

**536QU Terms that may be included in road transport contractual chain guidelines**

Road transport contractual chain guidelines may include terms about any of the matters that may be included in road transport contractual chain orders under section 536PQ.

**536QV Terms that must not be included in road transport contractual chain guidelines**

Road transport contractual chain guidelines must not include terms about any of the matters that must not be included in road transport contractual chain orders as set out in section 536PR.

**536QW FWC may vary or revoke road transport contractual chain guidelines**

- (1) The FWC may make a determination varying or revoking road transport contractual chain guidelines if the FWC is satisfied that making the determination is consistent with the road transport objective and the minimum standards objective.
- (2) The FWC may make a determination varying road transport contractual chain guidelines in such a way that not all of the elements of the variation sought in an application under section 536QX are implemented, including by refusing to make a

variation to the extent that it would result in the guidelines covering persons who are not in a road transport contractual chain.

- (3) The FWC may make a determination varying road transport contractual chain guidelines to remove an ambiguity or uncertainty or to correct an error.
- (4) The FWC may make a determination varying or revoking road transport contractual chain guidelines:
  - (a) on its own initiative; or
  - (b) on application under section 536QX.
- (5) If the FWC makes a road transport contractual chain order that covers the same persons in a road transport contractual chain in relation to the same matters as road transport contractual chain guidelines, the FWC must revoke the road transport contractual chain guidelines with effect on and from the day on which the road transport contractual chain order comes into operation.
- (6) If the FWC makes a road transport contractual chain order that covers some or all of the same persons in a road transport contractual chain in relation to some or all of the same matters as road transport contractual chain guidelines, the FWC must vary the road transport contractual chain guidelines so that the guidelines do not cover the persons or matters covered by the order, with effect on and from the day on which the order comes into operation.

### **536QX Applications to vary or revoke road transport contractual chain guidelines**

Any of the following may apply to the FWC for a determination varying or revoking road transport contractual chain guidelines:

- (a) an organisation that is entitled to represent the industrial interests of one or more of the persons covered by the road transport contractual chain guidelines, or that would be covered by the road transport contractual chain guidelines as proposed to be varied;
- (b) a regulated business covered by the road transport contractual chain guidelines, or that would be covered by the road transport contractual chain guidelines as proposed to be varied;

- (c) a person who is a primary party to the first contract or arrangement in a road transport contractual chain covered by the road transport contractual chain guidelines, or that would be covered by the road transport contractual chain guidelines as proposed to be varied;
- (d) the Minister;
- (e) a person or body prescribed by the regulations.

## **Division 4—Consequential amendments**

### ***Fair Work Act 2009***

#### **250 After paragraph 3(c)**

Insert:

- (ca) ensuring a safety net of fair and relevant minimum terms and conditions for regulated workers through enforceable minimum standards orders and related measures; and
- (caa) ensuring a safety net of fair and relevant minimum terms and conditions for persons in a road transport contractual chain through enforceable road transport contractual chain orders and through road transport contractual chain guidelines; and
- (cb) providing appropriate remedies in relation to unfair terms of services contracts; and

#### **251 After paragraph 4(1)(b)**

Insert:

- (ba) provides for minimum terms and conditions for regulated workers (Chapter 3A); and
- (bb) sets out measures to deal with unfair terms of services contracts (Chapter 3A); and
- (bc) provides for minimum terms and conditions for persons in a road transport contractual chain (Chapter 3B); and

#### **252 At the end of subsection 4(2)**

Add:

- ; (c) certain matters relating to the road transport industry (Part 1-4).



## **253 After section 6**

Insert:

### **6A Rights and responsibilities of regulated workers, regulated businesses, organisations etc. (Chapter 3A)**

- (1) Chapter 3A sets out rights and responsibilities of certain regulated workers who perform work under services contracts, and of certain regulated businesses, organisations and others.
- (2) Part 3A-1 has the core provisions for the Chapter. It deals with compliance with the instruments made under the Chapter (minimum standards orders, minimum standards guidelines and collective agreements) and interaction issues.
- (3) Part 3A-2 is about minimum standards orders and minimum standards guidelines, which can be made for certain regulated workers.
- (4) Part 3A-3 deals with unfair termination and unfair deactivation of certain regulated workers, and the granting of remedies when that happens.
- (5) Part 3A-4 is about collective agreements. A collective agreement is made between a regulated business and an organisation. It provides terms and conditions for those regulated workers to whom it applies.
- (6) Part 3A-5 is about unfair contract terms of services contracts. It provides for certain remedies if a services contract includes an unfair term.

### **6B Rights and responsibilities of persons in a road transport contractual chain**

- (1) Chapter 3B sets out rights and responsibilities of persons in a road transport contractual chain.
- (2) Part 3B-1 has the core provisions for the Chapter. It deals with compliance with road transport contractual chain orders made under the Chapter and interaction issues.

- (3) Part 3B-2 is about road transport contractual chain orders and road transport contractual chain guidelines, which can be made for certain persons in a road transport contractual chain.

**254 Section 12 (after paragraph (b) of the definition of *applies*)**

Insert:

- (ba) in relation to a minimum standards order: see section 536JD; and
- (bb) in relation to a collective agreement: see section 536JL; and
- (bc) in relation to a road transport contractual chain order: see section 536NR; and

**255 Section 12**

Insert:

*collective agreement*: see section 15B.

*consistent with the Digital Labour Platform Deactivation Code*: see subsection 536LJ(3).

*consistent with the Road Transport Industry Termination Code*: see subsection 536LN(3).

*consultation notice* for a collective agreement: see subsection 536ML(1).

*contractor high income threshold*: see section 15C.

**256 Section 12 (after paragraph (c) of the definition of *covers*)**

Insert:

- (ca) in relation to a minimum standards order: see section 536JE; and
- (cb) in relation to minimum standards guidelines: see section 536JG; and
- (cc) in relation to a collective agreement: see section 536JM; and
- (cd) in relation to a road transport contractual chain order: see section 536NS; and
- (ce) in relation to road transport contractual chain guidelines: see section 536NU; and

## **256A Section 12**

Insert:

*deactivated*: see section 536LG.

*deferral declaration*, in relation to a minimum standards order: see subsection 536KQA(1).

*deferral determination*, in relation to a road transport minimum standards order: see subsection 536KQH(1).

*digital labour platform*: see section 15L.

*Digital Labour Platform Deactivation Code* means the code made under section 536LJ.

*digital labour platform operator*: see section 15M.

*digital platform work*: see section 15N.

*employee-like worker*: see section 15P.

*employee-like worker collective agreement*: see subsection 536MK(4).

*employee-like worker guidelines*: see subsection 536KR(2).

*employee-like worker minimum standards order*: see subsection 536JY(2).

## **257 Section 12 (paragraph (d) of the definition of *fair work instrument*)**

After “order”, insert “, including a minimum standards order or a road transport contractual chain order, but not including minimum standards guidelines or road transport contractual chain guidelines, even if the guidelines are made by order”.

## **258 Section 12**

Insert:

*full deferral declaration*, in relation to a minimum standards order: see subsection 536KQA(2).

***full deferral determination***, in relation to a road transport minimum standards order: see subsection 536KQJ(2).

***full suspension declaration***, in relation to a minimum standards order: see subsection 536KQD(2).

***full suspension determination***, in relation to a road transport minimum standards order: see subsection 536KQP(2).

***minimum standards guidelines***: see section 15D.

***minimum standards objective***: see section 536JX.

***minimum standards order***: see section 15E.

***opt out notice***: see subsection 15AB(8).

***part deferral declaration***, in relation to a minimum standards order: see subsection 536KQA(2).

***part deferral determination***, in relation to a road transport minimum standards order: see subsection 536KQJ(2).

***part suspension declaration***, in relation to a minimum standards order: see subsection 536KQD(2).

***part suspension determination***, in relation to a road transport minimum standards order: see subsection 536KQP(2).

***protected from unfair deactivation***: see section 536LD.

***protected from unfair termination***: see section 536LE.

***regulated business***: see section 15F.

***regulated road transport contractor***: see section 15Q.

***regulated worker***: see section 15G.

***Road Transport Advisory Group***: see section 40E.

***road transport business***: see section 15R.

***road transport collective agreement***: see subsection 536MK(5).

***road transport guidelines***: see subsection 536KR(3).

*road transport industry*: see section 15S.

*road transport industry contractual chain participant*: see section 40H.

*Road Transport Industry Termination Code* means the code made under subsection 536LN(1).

*road transport minimum standards order*: see subsection 536JY(3).

*section 15AA commencement*: see subsection 15AB(8).

*services contract*: see section 15H.

*suspension declaration*, in relation to a minimum standards order: see subsection 536KQD(1).

*suspension determination*, in relation to a road transport minimum standards order: see subsection 536KQN(1).

*terminated*: see section 536LL.

*unfairly deactivated*: see section 536LF.

*unfairly terminated*: see section 536LK.

*unfairness ground*: see section 536JR.

## **259 Section 12 (paragraph (b) of the definition of *workplace instrument*)**

Repeal the paragraph, substitute:

- (b) concerns the relationships between:
  - (i) employers and employees; or
  - (ii) digital labour platform operators and employee-like workers; or
  - (iii) road transport businesses and regulated road transport contractors; or
  - (iv) persons in a road transport contractual chain.

## **260 After section 19**

Insert:

### 19A Meaning of *industrial action*: regulated workers

- (1) This section applies to a regulated worker and to a regulated business if:
  - (a) the regulated worker is covered by a minimum standards order, or is mentioned in an application for a minimum standards order as a regulated worker who would be covered by the order if it is made; and
  - (b) the regulated business is covered by the same minimum standards order, or is mentioned in an application for the same minimum standards order as a regulated business that would be covered by the order if it is made; and
  - (c) if the regulated business is a digital labour platform operator—the regulated worker is an employee-like worker:
    - (i) from whom the digital labour platform operator receives services under a services contract; or
    - (ii) who performs services under a services contract that was arranged or facilitated through or by means of the digital labour platform operated by the digital labour platform operator; and
  - (d) if the regulated business is a road transport business—the regulated road transport contractor performs work under the services contract for the regulated business.
- (2) ***Industrial action***, in relation to the regulated worker and the regulated business, means action of any of the following kinds:
  - (a) the performance of work under the services contract by the regulated worker in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work by the regulated worker, the result of which is a restriction or limitation on, or a delay in, the performance of the work;
  - (b) a ban, limitation or restriction on the performance of work under the services contract by the regulated worker or on the acceptance of or offering for work by the regulated worker;
  - (c) a failure or refusal by the regulated worker to attend for work under the services contract or, if the regulated worker attends for work, a refusal to perform any work at all;
  - (d) the lockout of the regulated worker by the regulated business.

- (3) The action referred to in paragraph (2)(a), (b) or (c) must be directed against the regulated business (whether or not the regulated business is a party to the services contract).
- (4) However, industrial action does not include the following:
  - (a) action by a regulated worker that is authorised or agreed to by the regulated business that is covered by the same minimum standards order as the regulated worker;
  - (b) action by a regulated business referred to in paragraph (2)(d) that is authorised or agreed to by, or on behalf of, regulated workers covered by the same minimum standards order as the regulated business;
  - (c) action by the regulated worker, if:
    - (i) the action was based on a reasonable concern of the regulated worker about an imminent risk to the health or safety of the regulated worker; and
    - (ii) the regulated worker did not unreasonably fail to comply with a direction of the regulated business to perform other available work, whether at the same or another workplace, that was safe and appropriate for the regulated worker to perform.
- (5) A regulated business **locks out** a regulated worker if either or both of the following apply:
  - (a) the regulated business prevents the regulated worker from performing work under a services contract without terminating the contract;
  - (b) if the regulated business is a digital labour platform operator and the regulated worker is an employee-like worker—the digital labour platform operator modifies, limits or suspends the employee-like worker’s access to a digital labour platform operated by the digital labour platform operator.

## **261 Subsection 134(2) (note)**

Omit “Note”, substitute “Note 1”.

## **262 At the end of subsection 134(2)**

Add:

Note 2: Further, the FWC must take into account the road transport objective when performing certain functions: see section 40D and subsection 617(10B).

## 263 After section 338

Insert:

### 338A Meaning of *independent contractor*

A reference in this Part to an independent contractor includes a reference to a regulated worker.

Note: A regulated worker must be an individual: see section 15G and related definitions.

## 264 Subsection 342(1) (after table item 3)

Insert:

- |    |                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3A | a digital labour platform operator that has entered into a contract with an employee-like worker for use of, or access to, a digital labour platform against the employee-like worker | the digital labour platform operator:<br>(a) terminates the contract; or<br>(b) injures the employee-like worker in relation to the terms and conditions of the contract; or<br>(c) alters the position of the employee-like worker to the employee-like worker's prejudice; or<br>(d) refuses to make use of, or agree to make use of, services offered by the employee-like worker; or<br>(e) refuses to provide to the employee-like worker use of or access to the digital labour platform. |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## 265 Subsection 342(1) (after table item 4)

Insert:



- |    |                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 4A | a digital labour platform operator that proposes to enter into a contract with an employee-like worker for use of, or access to, a digital labour platform against the employee-like worker | the digital labour platform operator:<br>(a) refuses to agree to provide to the employee-like worker use of, or access to, the digital labour platform; or<br>(b) discriminates against the employee-like worker in relation to the terms and conditions on which the digital labour platform operator agrees to provide to the employee-like worker use of, or access to, the digital labour platform; or<br>(c) refuses to make use of, or agree to make use of, services offered by the employee-like worker. |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**266 Subsection 342(1) (after table item 6)**

Insert:

- |    |                                                                                                                                                                                       |                                                                                                |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|
| 6A | an employee-like worker against a digital labour platform operator that has entered into a contract with the employee-like worker for use of, or access to, a digital labour platform | the employee-like worker takes industrial action against the digital labour platform operator. |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------|

**267 Subsection 342(1) (at the end of the table)**

Add:

- |   |                                                                                                                  |                                                                                                                                                                                                                                                                      |
|---|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8 | an industrial association, or an officer or member of an industrial association, against an employee-like worker | the industrial association, or the officer or member of the industrial association, takes action that has the effect, directly or indirectly, of prejudicing the employee-like worker in relation to a contract for use of, or access to, a digital labour platform. |
|---|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**268 After subsection 350(2)**

Insert:

- (2A) A regulated business must not induce a regulated contractor to take, or propose to take, membership action.

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

**269 At the end of section 354**

Add:

- (3) A person must not discriminate against a regulated business because:
- (a) regulated workers in relation to the regulated business are covered, or not covered, by a particular type of workplace instrument (including a particular kind of workplace instrument within a type of workplace instrument); or
  - (b) it is proposed that regulated workers in relation to the regulated business are covered, or not covered, by a particular type of workplace instrument (including a particular kind of workplace instrument within a type of workplace instrument).

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

**270 Subsection 539(2) (table item 11, column 1)**

After “350(2)”, insert “350(2A)”.

**271 Subsection 539(2) (table item 11, column 1)**

After “354(1)”, insert “354(3)”.

**272 Subsection 539(2) (after table item 29AA)**

Insert:

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**Part 3A-2—Minimum standards for regulated workers**

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29A	536JB	(a) a regulated worker covered by the relevant minimum standards order;	(a) the Federal Court;	for a serious contravention —600 penalty units; or otherwise—60 penalty units
		(b) a regulated business covered by the relevant	(b) the Federal Circuit and Family Court of Australia (Division 2);	

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		minimum standards order; (c) an organisation; (d) an inspector	(c) an eligible State or Territory court	
<b>Part 3A-3—Unfair deactivation and unfair termination</b>				
29A C	536MG	(a) a party to the relevant services contract; (b) a digital labour platform operator that arranged or facilitated entry into the relevant services contract; (c) an organisation; (d) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units
<b>Part 3A-4—Collective agreements</b>				
29A D	536JJ	(a) a regulated worker covered by the collective agreement; (b) a regulated business covered by the collective agreement; (c) an organisation	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	for a serious contravention—600 penalty units; or otherwise—60 penalty units
<b>Part 3A-5—Unfair contract terms of services contracts</b>				
29A E	536NK	(a) a party to the relevant services contract; (b) an organisation; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units

Part 3B-2—Minimum standards for persons in a road transport contractual chain				
29A F	536NP	(a) a person (the <i>first person</i> ) covered by the relevant road transport contractual chain order; (b) an organisation entitled to represent the interests of the first person; (c) an inspector	(a) the Federal Court; (b) the Federal Circuit and Family Court of Australia (Division 2); (c) an eligible State or Territory court	60 penalty units

273 After subsection 540(7)

Insert:

*Regulated workers and regulated businesses*

- (7A) The following persons may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention:
- (a) a regulated worker;
  - (b) a regulated business.

*Parties to services contracts*

- (7B) A person who is a party to a services contract to which an order under Division 4 of Part 3A-5 relates may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if the person is affected by the contravention, or will be affected by the proposed contravention.

*Persons in a road transport contractual chain*

- (7C) A person in a road transport contractual chain may apply for an order under this Division, in relation to a contravention or proposed contravention of a civil remedy provision, only if:

- (a) the person is affected by the contravention, or will be affected by the proposed contravention; and
- (b) the person is a party to a contract with another person covered by the relevant road transport contractual chain order, being a person who is alleged to have committed the contravention.

**274 After paragraph 557(2)(oa)**

Insert:

- (ob) section 536JB (which deals with contraventions of minimum standards orders);
- (oc) section 536JJ (which deals with contraventions of collective agreements);
- (od) section 536NK (which deals with contraventions of orders under Division 4 of Part 3A-5);
- (oe) section 536NP (which deals with contraventions of road transport contractual chain orders);

**275 After paragraph 576(1)(m)**

Insert:

- (ma) minimum standards for regulated workers (Part 3A-2);
- (mb) unfair deactivation or unfair termination of regulated workers (Part 3A-3);
- (mc) collective agreements for regulated workers (Part 3A-4);
- (md) unfair contract terms of services contracts (Part 3A-5);
- (me) minimum standards for persons in a road transport contractual chain (Part 3B-2);

**276 After paragraph 581(b)**

Insert:

- ; and (c) adequately serves the needs of persons covered by Chapter 3A; and
- (d) adequately serves the needs of persons covered by Chapter 3B.

**277 After paragraph 582(4)(ab)**

Insert:

- (ac) a direction about the exercise of powers under Part 3A-2 (which deals with minimum standards for regulated workers);
- (ad) a direction about the exercise of powers under Part 3B-2 (which deals with road transport contractual chains);

**278 Paragraph 582(4)(c)**

Omit “or one or more Full Benches”, insert “, one or more Full Benches or one or more Expert Panels”.

**279 Before subsection 582(5)**

Insert:

- (4D) In addition to giving a direction of a general nature under subsection (2), the President must give a direction as to how the FWC is to prioritise its work under Parts 3A-2 and 3B-2 including, but not limited to, prioritising types of orders under those Parts and specified cohorts of workers.
- (4E) The FWC must publish a direction under subsection (4D) on the FWC’s website, or by any other means that the FWC considers appropriate, as soon as reasonably practicable after the President gives the direction.

**280 Subsection 587(2)**

After “365”, insert “, 536LU”.

**281 Subsection 602(1)**

Omit “or national minimum wage order”, substitute “, national minimum wage order, minimum standards order, minimum standards guidelines, road transport contractual chain orders or road transport contractual chain guidelines”.

**282 At the end of subsection 602(1)**

Add:

- Note 3: The FWC corrects minimum standards orders and minimum standards guidelines under subsections 536KQ(3) and 536KZ(3) respectively, and corrects road transport contractual chain orders and road transport contractual chain guidelines under subsections 536PT(3) and 536QW(3) respectively.

**283 After paragraph 603(3)(g)**

Insert:

- (ga) a decision under Part 3A-2 (which deals with minimum standards orders);
- (gb) a decision under Part 3A-4 (which deals with collective agreements);
- (gc) a decision under Part 3B-2 (which deals with road transport contractual chain orders);

**284 Subsection 604(2) (note)**

After “section 400)”, insert “or for an unfair deactivation or an unfair termination (see section 536MA)”.

**285 Subsection 616(1)**

Omit “subsection 617(8)”, substitute “subsections 617(8) and (10B)”.

**286 Subsection 616(3B)**

Omit “subsection 617(8)”, substitute “subsections 617(8) and (10B)”.

**287 Subsections 616(3C) and (3D)**

After “(9)” (wherever occurring), insert “, (10B)”.

**288 Before subsection 616(5)**

Insert:

*Minimum standards orders*

- (4B) Subject to subsections 582(4A) and 617(10D), the following must be made under Chapter 3A by a Full Bench:
- (a) an employee-like worker minimum standards order;
  - (b) a determination under subsection 536KQ(1) varying or revoking an employee-like worker minimum standards order;
  - (c) employee-like worker minimum standards guidelines;
  - (d) a determination under subsection 536KZ(1) varying or revoking employee-like worker minimum standards guidelines.

- Note 1: A determination under subsection 536KQ(3) or 536KZ(3) (which deal with minor technical variations) does not need to be made by a Full Bench.
- Note 2: Subsection 617(10D) provides for the President to direct that certain matters relating to the road transport industry be dealt with by an Expert Panel for the road transport industry.

**289 Paragraph 622(2)(aa)**

Omit “or (1D)”, substitute “, (1D) or (1E)”.

**290 Subparagraph 622(2)(aa)(ii)**

Omit “or paragraphs (1D)(b) and (c)”, substitute “, paragraphs (1D)(b) and (c) or paragraph (1E)(b)”.

**291 Subsection 622(4)**

Omit “or (1D)”, substitute “, (1D) or (1E)”.

**292 Subsection 622(4)**

Omit “or paragraphs (1D)(b) and (c)”, substitute “, paragraphs (1D)(b) and (c) or paragraph (1E)(b)”.

**293 At the end of subsection 627(4)**

Add:  
; (k) the road transport industry.

**294 After paragraph 675(2)(k)**

Insert:  
; (l) a minimum standards order;  
(m) a road transport contractual chain order.

**295 Paragraph 682(1)(a)**

After “employers,”, insert “regulated workers, regulated businesses, persons in a road transport contractual chain,”.

**296 Paragraph 682(1)(f)**

After “employees” (wherever occurring), insert “, regulated workers,”.



**297 At the end of section 682**

Add:

- (3) The Fair Work Ombudsman has the functions of:
- (a) providing education, assistance and advice to regulated workers, regulated businesses and organisations, and persons in a road transport contractual chain, in relation to minimum standards guidelines and road transport contractual chain guidelines; and
  - (b) producing best practice guides in relation to minimum standards guidelines and road transport contractual chain guidelines.

**298 After subparagraph 712AA(1)(a)(vii)**

Insert:

- (viiia) the underpayment of monetary entitlements under a minimum standards order or a road transport contractual chain order; or
- (viiib) the unfair deactivation of an employee-like worker or the unfair termination of a regulated road transport contractor; or

**299 After paragraph 716(1)(fa)**

Insert:

- (fb) a term of a minimum standards order;
- (fc) a term of a road transport contractual chain order;

**299A At the end of Part 6-1**

Add:

**Subdivision DA—Actions relating to unfair deactivation or unfair termination**

**734BA Limitation on applications for remedy for unfair deactivation—other proceedings in progress**

- (1) An application under Division 5 of Part 3A-3 (unfair deactivation or unfair termination of regulated workers) in relation to deactivation of a person from a digital labour platform must not be

made if other deactivation proceedings have been commenced in relation to the person and the digital labour platform, unless the other deactivation proceedings:

- (a) have been discontinued by the person who commenced them;  
or
  - (b) have failed for want of jurisdiction.
- (2) If an application under Division 5 of Part 3A-3 has been made in relation to deactivation of a person (the **relevant worker**) from a digital labour platform, a person must not commence other deactivation proceedings in relation to the relevant worker and the digital labour platform unless:
- (a) the application has been discontinued by the person who made it; or
  - (b) the proceedings in relation to the application have failed for want of jurisdiction.
- (3) In this section:

***other deactivation proceedings*** means proceedings (if any) specified in regulations made for the purposes of this definition.

**734BB Limitation on applications for remedy for unfair termination—other proceedings in progress**

- (1) An application under Division 5 of Part 3A-3 (unfair deactivation or unfair termination of regulated workers) in relation to termination of a services contract must not be made if other termination proceedings have been commenced in relation to the services contract, unless the other termination proceedings:
- (a) have been discontinued by the person who commenced them;  
or
  - (b) have failed for want of jurisdiction.
- (2) A person must not commence other termination proceedings in relation to a services contract if an application under Division 5 of Part 3A-3 has been made in relation to termination of the services contract unless:
- (a) the application has been discontinued by the person who made it; or

- (b) the proceedings in relation to the application have failed for want of jurisdiction.
- (3) In this section:  
*other termination proceedings* means proceedings (if any) specified in regulations made for the purposes of this definition.

## **Subdivision E—Services contract actions**

### **734C Limitation on applications for review of services contracts— other proceedings in progress**

- (1) An application to review a services contract under Division 4 of Part 3A-5 (unfair contract terms) must not be made if other review proceedings have been commenced in relation to the services contract, unless the other review proceedings:
  - (a) have been discontinued by the person who commenced them; or
  - (b) have failed for want of jurisdiction.
- (2) A person must not commence other review proceedings in relation to a services contract if an application to review the contract has been made under Division 4 of Part 3A-5, unless:
  - (a) the application has been discontinued by the person who made it; or
  - (b) the proceedings in relation to the application have failed for want of jurisdiction.
- (3) In this section:  
*other review proceedings* means:
  - (a) proceedings under a provision of a law of a State or Territory that makes provision as mentioned in paragraph 536JP(1)(c) and is not affected by the exclusion provisions; or;
  - (b) proceedings in relation to a services contract under a provision of a law of the Commonwealth, or of a State or Territory, that is specified in regulations made for the purposes of this paragraph.

**300 Section 735**

After “their employers”, insert “, regulated workers and regulated businesses, and persons in a road transport contractual chain”.

**301 Section 735**

After “agreement”, insert “, instrument made under Chapter 3A or 3B”.

**302 After paragraph 738(b)**

Insert:

- (ba) a minimum standards order includes a term that provides a procedure for dealing with disputes; or
- (bb) a collective agreement includes a term that provides a procedure for dealing with disputes; or
- (bc) a road transport contractual chain order includes a term that provides a procedure for dealing with disputes; or

**Division 5—Amendment of the Independent Contractors Act 2006**

***Independent Contractors Act 2006***

**306 After subsection 12(2)**

Insert:

- (2A) An application must not be made in relation to a services contract unless, in the year the application is made, the sum of the independent contractor’s annual rate of earnings, and such other amounts (if any) worked out in relation to the person in accordance with the regulations made for the purposes of subsection 536ND(2) of the *Fair Work Act 2009*, is more than the contractor high income threshold within the meaning of the *Fair Work Act 2009*.

Note: Division 3 of Part 3A-5 of the *Fair Work Act 2009* sets out when the FWC may order a remedy for an unfair contract term.

## **Division 6—Digital Labour Platform Consultative Committee**

### ***National Workplace Relations Consultative Council Act 2002***

#### **306A Before section 1**

Insert:

### **Part 1—Introduction**

#### **306B Section 3**

Insert:

*Committee* means the Digital Labour Platform Consultative Committee.

*digital labour platform* has the meaning given by the *Fair Work Act 2009*.

*Digital Labour Platform Consultative Committee* means the committee established under Part 3.

*digital labour platform operator* has the meaning given by the *Fair Work Act 2009*.

*digital platform work* has the meaning given by the *Fair Work Act 2009*.

#### **306C Before section 4**

Insert:

### **Part 2—Establishment of the National Workplace Relations Consultative Council**

#### **306D Subsections 10A(1) to (3)**

Repeal the subsections, substitute:

- (1) The Minister may, after consulting the members of the Council or the Digital Labour Platform Consultative Committee (as the case

requires), invite a person, body or organisation to nominate a representative for the purposes of this section.

- (2) A representative so invited may participate in one or more meetings of one or more of the following, in accordance with the invitation, but does not become a member of the Council, or of a committee or subcommittee:
  - (a) the Council;
  - (b) committees of the Council, including the Digital Labour Platform Consultative Committee;
  - (c) a subcommittee of the Digital Labour Platform Consultative Committee.
- (3) If at any time the Minister terminates an invitation, the representative concerned ceases to be entitled to participate in meetings of the Council, its committees or any subcommittee of the Digital Labour Platform Consultative Committee.

**306E Before section 13**

Insert:

**Part 3—Establishment of the Digital Labour  
Platform Consultative Committee**

**12A Digital Labour Platform Consultative Committee**

- (1) There is established by this Part a committee by the name of the Digital Labour Platform Consultative Committee.
- (2) A member of the Committee is not entitled to any remuneration or allowances.
- (3) Subject to subsection (2), the Committee is taken to be a committee constituted for the purposes of section 12.

**12B Purpose of Committee**

- (1) The purpose of the Committee is to provide, in the public interest, a regular and organised means by which representatives of:
  - (a) the Government of the Commonwealth; and

- (b) digital labour platform operators; and
  - (c) workers performing digital platform work; and
  - (d) when the Minister considers it appropriate, other persons, bodies and organisations;
- may consult together on workplace relations matters relating to digital platform work.
- (2) It is the intention of this Act that:
- (a) meetings of the Committee will be conducted on a non-political basis; and
  - (b) the Committee will not interfere with the proper performance of the functions of industrial tribunals; and
  - (c) subject to the rights of persons participating in meetings of the Committee to report to the persons, bodies and organisations that they represent and to the right of the Committee to make announcements that those persons agree are in the public interest, the views expressed at those meetings will be kept confidential.
- (3) Subsection (1) does not limit the purposes of the Council under section 5.

## **12C Membership of Committee**

- (1) The Committee is to consist of the following members:
- (a) the Minister, who is to be the Chair of the Committee;
  - (b) at least 6 members appointed by the Minister under subsection (3) who the Minister is satisfied represent digital labour platform operators;
  - (c) at least 6 members appointed by the Minister under subsection (3) who the Minister is satisfied represent workers performing digital platform work.
- (2) Without limiting the sectors that may be represented for the purposes of paragraphs (1)(b) and (c), the Minister must be satisfied that the persons appointed under each of those paragraphs represent the following sectors:
- (a) the care economy sector;
  - (b) the on demand delivery sector;
  - (c) the rideshare sector.

- (3) The Minister may appoint a person for the purposes of paragraph (1)(b) or (c).
- (4) Subject to this Act, a member (except the Minister) holds office for such period, not exceeding 2 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

#### **12D Resignation of members**

An appointed member may resign by writing signed by the member and delivered to the Minister.

#### **12E Termination of appointment of members**

If, in relation to a member appointed for the purposes of paragraph 12C(1)(b) or (c), the Minister ceases to be satisfied as required by the relevant paragraph, the Minister must terminate the appointment of that member.

#### **12F Substitute members**

- (1) The Minister may nominate a person to attend a meeting of the Committee in the Minister's place, or in the place of an appointed member who is unable to be present at a meeting of the Committee.
- (2) A person nominated under subsection (1) to attend a meeting of the Committee in the place of a member of the Committee has, and may exercise, at that meeting all the rights of that member.

#### **12G Meetings of Committee**

- (1) During the first 24 months after this section commences, the Committee must meet:
  - (a) at least once each year during the period that begins on 1 January and ends on 30 June; and
  - (b) at least once each year during the period that begins on 1 July and ends on 31 December.

**Note:** A representative of a person, body or organisation may, under section 10A, be invited by the Minister to a meeting.



- (2) After that 24-month period, the Committee must meet at least once during each further 12-month period.
- (3) The Minister may, at any time, convene a meeting of the Committee and must do so whenever the holding of a meeting is necessary to comply with subsection (1) or (2).
- (4) The Minister must convene a meeting of the Committee whenever requested to do so by a majority of the members of the Committee.
- (5) The Minister must preside at all meetings of the Committee at which the Minister is present, and, in the Minister's absence from a meeting, the person nominated under subsection 12F(1) to attend that meeting in the place of the Minister must preside.
- (6) Subject to this section, the procedure to be followed at a meeting of the Committee must be determined by the Committee.

## **12H Subcommittees**

- (1) The Committee may, at any time, cause to be constituted a subcommittee to consider, and report to the Committee on, any matter relevant to the purpose of the Committee referred to it by the Committee.
- (2) A member of a subcommittee is not entitled to any remuneration or allowances.

## **Part 4—Other matters**

### **306F Application of amendments**

The amendments of the *National Workplace Relations Consultative Council Act 2002* made by this Division apply to:

- (a) the period beginning on 1 January and ending on 30 June, or beginning on 1 July and ending on 31 December, during which this Division commences; and
- (b) any later such period.

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## Part 16A—Consequential signpost definitions relating to road transport contractual chains

### *Fair Work Act 2009*

#### 306A Section 12

Insert:

*deferral declaration*, in relation to a road transport contractual chain order: see subsection 536PU(1).

*deferral determination*, in relation to a road transport contractual chain order: see subsection 536QA(1).

*full deferral declaration*, in relation to a road transport contractual chain order: see subsection 536PU(2).

*full deferral determination*, in relation to a road transport contractual chain order: see subsection 536QB(2).

*full suspension declaration*, in relation to a road transport contractual chain order: see subsection 536PX(2).

*full suspension determination*, in relation to a road transport contractual chain order: see subsection 536QG(2).

*in a road transport contractual chain*: see section 15RA.

*part deferral declaration*, in relation to a road transport contractual chain order: see subsection 536PU(2).

*part deferral determination*, in relation to a road transport contractual chain order: see subsection 536QB(2).

*part suspension declaration*, in relation to a road transport contractual chain order: see subsection 536PX(2).

*part suspension determination*, in relation to a road transport contractual chain order: see subsection 536QG(2).

*primary party*: see subsection 15RA(2).

*road transport contractual chain*: see section 15RA.

*road transport contractual chain guidelines*: see section 536QP.

*road transport contractual chain order*: see section 536PD.

*road transport employee-like worker*: see section 15RB.

*secondary party*: see subsection 15RA(2).

*suspension declaration*, in relation to a road transport contractual chain order: see subsection 536PX(1).

*suspension determination*, in relation to a road transport contractual chain order: see subsection 536QF(1).

## Part 17—Technical amendment

### *Fair Work Act 2009*

#### **307 Clause 27 of Schedule 1**

Repeal the clause.

## **Part 18—Application and transitional provisions**

### ***Fair Work Act 2009***

#### **308 In the appropriate position in Schedule 1**

Insert:

## **Part 16—Main amendments made by the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024**

### **Division 1—Definitions**

#### **100 Definitions**

In this Part:

*amended Act* means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

*amending Act* means the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

### **Division 2—Amendments made by Part 1 of Schedule 1 to the amending Act**

#### **101 Resolving uncertainties and difficulties about interaction between fair work instruments and the definition of casual employee and employee choice**

- (1) The FWC may make a determination varying a fair work instrument that is a modern award, enterprise agreement or workplace determination that was made before the commencement of this clause:
  - (a) for an enterprise agreement or workplace determination—on application by an employer, employee or employee organisation covered by the enterprise agreement or workplace determination; or

- (b) for a modern award:
    - (i) by the FWC on its own initiative; or
    - (ii) on application by an employer organisation or employee organisation entitled to represent the industrial interests of an employer or employee covered by the award.
- (2) The FWC may make a determination varying the instrument:
  - (a) to resolve an uncertainty or difficulty relating to the interaction between the instrument 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 instrument operate effectively with that section or those provisions.
- (3) A variation of a fair work instrument under this clause operates from the day specified in the determination, which may be a day before the determination is made.
- (4) If the determination relates to a modern award, the FWC must publish the award as varied as soon as practicable on the FWC's website or by any other means the FWC considers appropriate.

## **102 Application of amendments**

### *Application of definition of casual employee*

- (1) Section 15A of the amended Act applies on and after commencement in relation to employment relationships entered into before, on or after commencement.
- (2) Despite subclause (1), for the purposes of applying section 15A of the amended Act on and after commencement in relation to employment relationships entered into before commencement:
  - (a) conduct of an employer and employee that occurred before commencement is to be disregarded for the purposes of

applying subsections 15A(2) and (3) in relation to that employee; and

- (b) if an employee's contract of employment immediately before commencement included a term of a kind referred to in subsection 15A(4)—that subsection is taken not to apply in relation to the employee for the remainder of the term of that contract.

*Continuing casual employees*

- (3) For the purposes of subclause (1), an employee who was, immediately before commencement, a casual employee of an employer within the meaning of section 15A as in force at that time, is taken to be a casual employee of the employer within the meaning of section 15A of the amended Act on and after commencement.

*Application of employee choice and casual conversion provisions*

- (5) The amendments of Division 4A of Part 2-2 made by the amending Act apply on and after commencement in relation to employment relationships entered into before, on or after commencement.
- (6) For the purposes of applying subclause (5) in relation to employment relationships entered into before commencement:
  - (a) any period of employment as a casual employee that occurred before commencement is to be disregarded for the purposes of paragraphs 66AAB(c) and (d) of the amended Act; and
  - (b) paragraph 66AAB(d) of the amended Act is taken to include a requirement that in the period referred to in that paragraph the employee has not:
    - (ia) been given a notice before commencement under subsection 66C(3) that the employer is not required to make an offer to the employee under section 66B; or
    - (ib) been given a notice after commencement under subsection 66C(3) that the employer is not required to make an offer to the employee under section 66B (as those sections continue to apply because of subclauses (6AA) and (6AB)); or
    - (ic) declined before commencement, under section 66D, an offer made by the employer under section 66B; or

- (id) declined after commencement, under section 66D, an offer made by the employer under section 66B (as those sections continue to apply because of subclauses (6AA) and (6AB)); or
  - (i) been given a response before commencement by the employer under section 66G refusing a request made by the employee under section 66F; or
  - (ii) been given a response after commencement by the employer under section 66G refusing a request made by the employee under section 66F (as those sections continue to apply because of subclauses (6A) and (6B)).
- (6AA) Despite subclause (5), sections 66B and 66C as in force immediately before commencement continue to apply after commencement for a period of 6 months from commencement in relation to employment relationships entered into before commencement where the employer is not a small business employer at commencement.
- (6AB) Despite subclause (5), sections 66D and 66E as in force immediately before commencement continue to apply after commencement in relation to:
  - (a) an offer made before commencement by an employer under section 66B for which, immediately before commencement, a response under section 66D or a notice under section 66E had not been given; or
  - (b) an offer made after commencement by an employer under section 66B, or a notice given after commencement under subsection 66C(3) that the employer has decided not to make an offer to the employee under section 66B (as those sections continue to apply because of subclause (6AA)).
- (6A) Despite subclause (5), section 66F as in force immediately before commencement continues to apply after commencement in relation to employment relationships entered into before commencement for a period of:
  - (a) for an employer that is a small business employer at commencement—12 months from commencement; or
  - (b) for an employer that is not a small business employer at commencement—6 months from commencement.



- (6B) Despite subclause (5), sections 66G to 66J as in force immediately before commencement continue to apply after commencement in relation to:
- (a) a request made before commencement by an employee under section 66F for which, immediately before commencement, a response under section 66G or a notice under section 66J had not been given; or
  - (b) a request made after commencement by an employee under section 66F (as that section continues to apply because of subclause (6A)).
- (7) Despite subclause (5), sections 66M, 548 and 739 as in force immediately before commencement continue to apply after commencement to:
- (a) disputes that arose before commencement relating to the operation of Division 4A of Part 2-2; and
  - (aa) disputes that arise after commencement relating to the operation of sections 66B to 66E (as those sections continue to apply because of subclauses (6AA) and (6AB)); and
  - (b) disputes that arise after commencement relating to the operation of sections 66F to 66J (as those sections continue to apply because of subclauses (6A) and (6B)).

#### *Definitions*

- (8) In this clause:

**commencement** means the commencement of Part 1 of Schedule 1 to the amending Act.

### **103 Transitional provision**

For the purposes of applying section 66L of this Act during the period beginning when this clause commences and ending when Part 1 of Schedule 1 to the amending Act commences, the reference to “this Division” in that provision is taken to include a reference to that Division as amended by that Part.

## **Division 3—Amendments made by Part 4 of Schedule 1 to the amending Act**

### **104 Replacement agreements**

- (1) Subsections 58(4) and (5), as inserted by the amending Act, apply in relation to single-enterprise agreements made after the commencement of Part 4 of Schedule 1 to that Act, whether the single interest employer agreement or supported bargaining agreement was made before or after that commencement.
- (2) Section 180B and subsection 240A(4), as inserted by the amending Act, apply in relation to single interest employer agreements and supported bargaining agreements whether made before or after the commencement of Part 4 of Schedule 1 to that Act.
- (3) Subsections 236(1B) and 238(2), as inserted by the amending Act, apply in relation to applications made after the commencement of Part 4 of Schedule 1 to that Act, whether the single interest employer agreement or supported bargaining agreement was made before or after that commencement.

### **105 Variation of supported bargaining authorisations**

Subsection 245(2), as inserted by the amending Act, applies in relation to enterprise agreements and workplace determinations that come into operation before or after the commencement of Part 4 of Schedule 1 to that Act.

### **106 Application of better off overall test to replacement agreements**

Sections 193 and 193A, as amended by the amending Act, apply in relation to single-enterprise agreements made on or after the commencement of Part 4 of Schedule 1 to that Act, whether the supported bargaining agreement or single interest employer agreement was made before or after that commencement.

## **Division 4—Amendments made by Part 5 of Schedule 1 to the amending Act**

### **107 Model terms and enterprise agreements**

- (1) Despite the amendments made by Part 5 of Schedule 1 to the amending Act, sections 202, 205 and 737, as in force immediately before the commencement of that Part, continue to apply in relation to an enterprise agreement if:
  - (a) before that commencement, 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 the commencement of that Part, whether to approve the agreement mentioned in subclause (1) (in that form), the FWC must disregard the amendments made by that Part.

### **108 Model terms and copied State instruments**

Despite the amendments made by Part 5 of Schedule 1 to the amending Act, section 768BK, as in force immediately before the commencement of that Part, continues to apply in relation to a model term that is taken, before that commencement, to be a term of a copied State instrument.

### **109 Disallowance—model terms made before commencement**

Section 42 (disallowance) of the *Legislation Act 2003* does not apply to a determination made in the exercise of a power under subsection 202(5), 205(3), 737(1) or 768BK(1A) of the amended Act, before the commencement of Part 5 of Schedule 1 to the amending Act, relying on subsection 4(1) of the *Acts Interpretation Act 1901*.

Note: Subsection 4(1) of the *Acts Interpretation Act 1901* provides for the exercise of powers between the passing and commencement of an Act.

## **Division 5—Amendments made by Part 5A of Schedule 1 to the amending Act**

### **110 Application of amendments—intractable bargaining workplace determinations**

- (1) This clause applies to the following provisions:
  - (a) section 270A of the amended Act;
  - (b) subsection 274(3) of the amended Act.
- (2) The provisions apply in relation to determinations made on or after the commencement of Part 5A of Schedule 1 to the amending Act (including determinations in relation to which the declaration concerned, or the application for the declaration concerned, was made before that commencement).
- (3) The provisions also apply in relation to determinations made before that commencement, in the circumstances specified in clause 111.

### **111 Application of amendments to intractable bargaining workplace determinations made before commencement**

- (1) This clause applies in relation to an intractable bargaining workplace determination made before the commencement of Part 5A of Schedule 1 to the amending Act (the *original determination*).
- (2) On application by an employer, employee or employee organisation covered by the original determination, the FWC must make a determination (a *variation*) varying the original determination where required so as to give effect to the provisions to which clause 110 applies.
- (3) An application under subclause (2) must be made before the end of the period of 12 months commencing on the day Part 5A of Schedule 1 to the amending Act commences.
- (4) The FWC may make a variation despite paragraph 603(3)(c).
- (5) Any variation must be made by a Full Bench.

- (6) A variation operates from the day specified by the FWC in the variation, which must not be a day before the variation is made.

## **Division 5A—Amendments made by Part 8 of Schedule 1 to the amending Act**

### **111A Definitions**

In this Division:

**commencement** means the commencement of Part 8 of Schedule 1 to the amending Act.

### **111B Application of section 149F of the amended Act**

- (1) Section 149F (right to disconnect term) of the amended Act applies in relation to a modern award that is in operation on or after commencement, whether or not the award was made before commencement.
- (2) However, a modern award is not invalid on or after commencement only because it does not include a right to disconnect term.

### **111C FWC to vary certain modern awards**

- (1) This clause applies in relation to a modern award if the award:
- (a) is made before commencement; and
  - (b) is to be in operation on commencement.
- (2) The FWC must, by the day before commencement, make a determination varying the modern award to include a right to disconnect term.
- (3) A determination made under subclause (2) comes into operation on (and takes effect from) commencement.
- (4) Section 168 applies to a determination made under subclause (2) as if it were a determination made under Part 2-3.

**111D Application of amendments to small business employers**

The amendments made by Part 8 of Schedule 1 to the amending Act do not apply in relation to an employer that is a small business employer on the day of commencement, or an employee of the employer, for a period of 12 months beginning on that day.

**Division 6—Amendments made by Part 9 of Schedule 1 to the amending Act**

**112 Application of amendments**

Section 357, as amended by Part 9 of Schedule 1 to the amending Act, applies in relation to representations made on or after the commencement of that Part.

**Division 7—Amendments made by Part 10 of Schedule 1 to the amending Act**

**113 Application of amendments—right of entry**

The amendments of subsection 510(1) made by Part 10 of Schedule 1 to the amending Act apply in relation to each entry permit held by a permit holder whether issued before, on or after the commencement of that Part.

**Division 8—Amendments made by Part 11 of Schedule 1 to the amending Act**

**114 Penalties for contravention of civil remedy provisions**

*Changes to amounts of pecuniary penalties and serious contraventions*

- (1) The amendments of Part 4-1 made by Division 1 of Part 11 of Schedule 1 to the amending Act apply in relation to conduct engaged in after the commencement of that Division.

- (2) For the purposes of section 557, conduct engaged in before that commencement cannot constitute the same course of conduct as conduct engaged in after that commencement.

*Changes relating to underpayments*

- (3) The amendments of Part 4-1 made by Division 3 of Part 11 of Schedule 1 to the amending Act apply in relation to conduct engaged in after the commencement of that Division.
- (4) For the purposes of section 557, conduct engaged in before that commencement cannot constitute the same course of conduct as conduct engaged in after that commencement.

## **Part 17—Amendments made by Part 15 of Schedule 1 to the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024**

### **Division 1—Definitions**

#### **115 Definitions**

In this Part:

***amended Act*** means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

***amending Act*** means the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

***commencement*** means the commencement of item 237 of Part 15 of Schedule 1 to the amending Act.

***old Act*** means this Act as in force immediately before commencement.

## Division 2—Transitional provisions

### 116 Relationships in existence as at commencement or entered into on or after commencement

- (1) Subject to this Schedule and sections 15AB to 15AD of the amended Act, section 15AA of the amended Act applies on and after commencement to the following:
  - (a) a relationship between an individual and a person entered into before commencement that is in existence as at commencement;
  - (b) a relationship between an individual and a person entered into on or after commencement.
- (2) Despite section 40A, section 7 of the *Acts Interpretation Act 1901*, as in force from time to time, applies in relation to the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.

Note: Section 7 of the *Acts Interpretation Act 1901* provides for the effect of amendment and repeal of provisions of Acts, including in relation to rights, liabilities, penalties and forfeitures etc. accrued or incurred before the repeal.

### 117 References to employees etc. in fair work instruments made before commencement

- (1) This clause applies to a fair work instrument that:
  - (a) was made before commencement; and
  - (b) is in operation on or after commencement.
- (2) A reference in the fair work instrument to an employee or an employer is taken, on and after commencement, to include a reference to an employee or an employer, as the case requires, within the meaning of section 15AA of the amended Act, and, to avoid doubt, does not include a reference to an individual in respect of whom an opt out notice has been given and not revoked.

### 118 Entitlements determined by reference to length of a period of employment etc.

- (1) This clause applies if:



- (a) immediately before commencement, an individual was not an employee of a person within the ordinary meaning of that expression; and
  - (b) because of the operation of section 15AA of the amended Act, on commencement, the individual becomes an employee of the person, within the ordinary meaning of that expression, in respect of that relationship.
- (2) For the purposes of determining whether the individual has a right or entitlement under the amended Act or under a fair work instrument in respect of the employment of the individual, being a right or entitlement calculated by reference to:
  - (a) the individual's length of service (however described) as an employee; or
  - (b) a minimum period of employment (however described) of the individual;the nature of the relationship between the individual and the person in respect of a period or periods before commencement is to be ascertained in accordance with the old Act.

### **119 Old Act applies to proceedings on foot as at commencement**

- (1) Despite the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act, the old Act continues to apply, on and after commencement, as if that amendment had not been made, in relation to the following:
  - (a) an application made, or proceedings on foot, as at commencement, other than an application or proceedings prescribed by the regulations;
  - (b) an application for review of, or an appeal relating to, an application or proceedings referred to in paragraph (a) (whether the application for review was made, or the appeal proceedings were brought, before, on or after commencement).
- (2) For the purposes of paragraph (1)(a), an application or proceedings are on foot until all rights of review and appeal in relation to the application or proceedings have expired or have been exhausted.

**120 FWC power to deal with uncertainties or difficulties arising from the operation of section 15AA of the amended Act**

- (1) The FWC may make a determination varying a fair work instrument in order to resolve an uncertainty or difficulty relating to the operation or effect of the fair work instrument, being an uncertainty or difficulty arising as a result of, or in connection with, the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.
- (2) The FWC may make a determination under subclause (1) varying a modern award:
  - (a) on its own initiative; or
  - (b) on application by an employer, employee, organisation or outworker entity covered by the modern award; or
  - (c) on application by an organisation that is entitled to represent the industrial interests of one or more employers or employees covered by the modern award; or
  - (d) if the modern award includes outworker terms—on application by an organisation that is entitled to represent the industrial interests of one or more outworkers to whom the outworker terms relate.
- (3) The FWC may make a determination under subclause (1) varying an enterprise agreement or a workplace determination:
  - (a) on its own initiative; or
  - (b) on application by any of the following:
    - (i) one or more of the employers covered by the enterprise agreement or workplace determination;
    - (ii) an employee covered by the enterprise agreement or workplace determination;
    - (iii) an employee organisation covered by the enterprise agreement or workplace determination.
- (4) The FWC may make a determination under subclause (1) varying an FWC order:
  - (a) on its own initiative; or
  - (b) on application:
    - (i) by a person affected by the order; or

- (ii) if the FWC order is of a kind prescribed by the regulations—by a person prescribed by the regulations in relation to that kind of order.
- (5) A variation of a fair work instrument under this clause operates from the day specified in the determination, which may be a day before the determination was made.
- (6) The regulations may provide as follows:
  - (a) that this clause applies, or does not apply, to a specified fair work instrument or a specified class of fair work instrument;
  - (b) that this clause applies, or does not apply, to a specified uncertainty or difficulty, or a specified class of uncertainty or difficulty.

### **Division 3—Regulations about transitional matters**

#### **121 General power for regulations to deal with transitional etc. matters**

- (1) The regulations may make provisions of a transitional, application or saving nature in relation to the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.
- (2) The regulations may make provisions of a transitional, application or saving nature in relation to the following:
  - (a) a person becoming an employer because of the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act;
  - (b) an individual becoming an employee because of the amendment made by item 237 of Part 15 of Schedule 1 to the amending Act.

#### **122 Other general provisions about regulations**

- (1) This clause applies to regulations made for the purposes of this Part.
- (2) Subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* does not apply to the regulations.

(3) If:

- (a) regulations are expressed to commence from a date (the *registration date*) before the regulations are registered under the *Legislation Act 2003*; and
- (b) a person engaged in conduct before the registration date; and
- (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of this Act;

then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened a provision of this Act.

## Part 18—Amendments made by Part 16 of Schedule 1 to the Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024

### Division 1—Definitions

#### 123 Definitions

In this Part:

*amended Act* means this Act as amended by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

*amending Act* means the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*.

*commencement* means the commencement of item 238 of Part 16 of Schedule 1 to the amending Act.

*old Act* means this Act as in force immediately before commencement.

## **Division 2—Transitional provisions**

### **124 Unfair deactivation and unfair termination**

- (1) Part 3A-3 (unfair deactivation or unfair termination of regulated workers) applies to a deactivation or termination that occurs after commencement.
- (2) For the purposes of determining under paragraph 536LD(c) whether an employee-like worker has been performing work for a period of at least 6 months, a period or periods before commencement are not to be counted.
- (3) For the purposes of determining under paragraph 536LE(c) whether a regulated road transport contractor has been performing work for a period of at least 6 months, a period or periods before commencement are not to be counted.

### **125 New applications relating to unfair contracts**

An application in relation to a services contract may be made under section 536ND only if the contract was entered into on or after commencement.

### **126 Services contracts entered into before commencement**

- (1) This section applies to a services contract entered into before commencement.
- (2) Despite the amendments of the *Independent Contractors Act 2006* made by the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024*, the *Independent Contractors Act 2006* continues to apply to the services contract after commencement as if those amendments had not been made.

## **Schedule 5—Amendment of the Coal Mining Industry (Long Service Leave) Administration Act 1992**

### ***Coal Mining Industry (Long Service Leave) Administration Act 1992***

#### **1 Subsection 13(4)**

Omit “the Mining and Energy Division of the Construction, Forestry,  
Mining and Energy Union”, substitute “the Mining and Energy Union”.

#### **2 Subsection 13(7)**

Repeal the subsection.

#### **3 Savings provision—appointments of directors**

- (1) This item applies in relation to a person who, immediately before the day this Schedule commences (the ***commencement day***), held office under subsection 13(4) of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* as a Director of the Board of Directors of the Coal Mining Industry (Long Service Leave Funding) Corporation.
- (2) The person continues, on and after the commencement day, to hold office under subsection 13(4) of the *Coal Mining Industry (Long Service Leave) Administration Act 1992* as a Director of the Board of Directors of the Coal Mining Industry (Long Service Leave Funding) Corporation to represent the Mining and Energy Union:
  - (a) on the terms and conditions that applied to the person immediately before the commencement day; and
  - (b) for the balance of the person’s term of appointment that remained immediately before the commencement day.

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*[Minister's second reading speech made in—  
House of Representatives on 4 September 2023  
Senate on 4 December 2023]*

(171/23)

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