Workplace Relations Amendment (A Stronger Safety Net) Act 2007

No. 107, 2007

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

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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Workplace Relations Amendment (A Stronger Safety Net) Act 2007

No. 107, 2007

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

[Assented to 28 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Workplace Relations Amendment (A Stronger Safety Net) Act 2007.
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.

<table>
<thead>
<tr>
<th>Provision(s)</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>28 June 2007</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>1 July 2007 (see F2007L01879)</td>
</tr>
<tr>
<td>3. Schedule 2</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>1 July 2007 (see F2007L01879)</td>
</tr>
<tr>
<td>4. Schedule 3</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>1 July 2007 (see F2007L01879)</td>
</tr>
<tr>
<td>5. Schedule 4</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>28 June 2007</td>
</tr>
<tr>
<td>6. Schedule 5</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence</td>
<td>1 July 2007 (see F2007L01879)</td>
</tr>
</tbody>
</table>
Commencement information

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<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Schedule 6</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>28 June 2007</td>
</tr>
<tr>
<td>8. Schedule 7, Parts 1 and 2</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>28 June 2007</td>
</tr>
<tr>
<td>9. Schedule 7, Part 3</td>
<td>Immediately after the commencement of Schedule 1.</td>
<td>1 July 2007</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

(1) Each Act, and each set of regulations, 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.

(2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.
Schedule 1—The Fairness Test

Part 1—Main amendments

Workplace Relations Act 1996

1 After Division 5 of Part 8

Insert:

Division 5A—The fairness test

Subdivision A—Preliminary

346B Definitions

(1) In this Division:

*business being transferred* has the same meaning as in Part 11.

*designated award*, in relation to an employee or employees whose employment is or may be subject to a workplace agreement, means an award determined by the Workplace Authority Director under section 346L, and includes an award taken to be so designated in relation to the employee or employees under section 346K (unless a different award has been designated in relation to the employee or employees under section 346L).

*enterprise award* means an award that regulates a term or condition of employment of an employee or employees by an employer in a single business specified in the award.

*industrial instrument* means any of the following:

(a) a pre-reform AWA;
(b) a pre-reform certified agreement (within the meaning of Schedule 7);
(c) a workplace determination;
(d) a section 170MX award (within the meaning of Schedule 7);
(e) an old IR agreement (within the meaning of Schedule 7).

*new employer* has the same meaning as in Part 11.
old employer has the same meaning as in Part 11.

protected award conditions has the same meaning as in subsection 354(4), subject to subsection (2) of this section.

reference award, in relation to an employee whose employment is subject to a workplace agreement, means:
(a) a relevant award in relation to the employee; or
(b) if there is no relevant award in relation to the employee—a designated award in relation to the employee.

relevant award, in relation to an employee whose employment is subject to a workplace agreement, means an award:
(a) that regulates, or would but for a workplace agreement or another industrial instrument regulate, any term or condition of employment of persons engaged in the same kind of work as that performed or to be performed by the employee under the workplace agreement; and
(b) that was binding on the employee’s employer immediately before the day on which the workplace agreement was lodged.

salary means gross basic salary and does not include the following:
(a) incentive-based payments and bonuses;
(b) loadings (other than casual loadings);
(c) monetary allowances;
(d) penalty rates;
(e) employer superannuation contributions;
(f) any other separately identifiable entitlements that are similar to those mentioned in paragraphs (a) to (d).

Note: Section 346G contains provisions relating to this definition.

time of transmission, in relation to a business being transferred, has the same meaning as in Part 11.

transferring employee has the same meaning as in Part 11.

transmission period, in relation to a business being transferred, has the same meaning as in Part 11.

(2) For the purposes of the definition of protected award conditions in subsection (1), the definition of protected allowable award matters...
in subsection 354(4) has effect as if it did not include the matter referred to in paragraph (i) of the latter definition.

Note: Paragraph (i) relates to outworker conditions. These conditions cannot be excluded or modified by a workplace agreement to provide a less favourable outcome for an employee in a particular respect—see subsection 354(3).

(3) Unless the contrary intention appears, this Division applies to a workplace agreement as varied in a corresponding way to the way in which it applies to a workplace agreement.

346C When protected award conditions apply to an employee

(1) For the purposes of this Division, protected award conditions apply to an employee whose employment is subject to a workplace agreement:

(a) if, but for that workplace agreement, a previous workplace agreement or another industrial instrument, the protected award conditions would have effect in relation to the employment of the employee under a relevant award in relation to the employee; or

(b) in a case where there is no relevant award in relation to the employee—if, assuming that the employee’s employer was bound by a designated award in relation to the employee, the protected award conditions would have effect in relation to the employment of the employee but for the workplace agreement, a previous workplace agreement or another industrial instrument.

(2) Protected award conditions that apply to an employee because of the operation of paragraph (1)(b) are not taken, for the purposes of paragraph 354(1)(b), to be protected award conditions that would have effect in relation to the employment of the employee.

346CA Industry or occupation usually regulated by State award before the reform commencement—extended operation of certain provisions

(1) For the purposes of a provision mentioned in subsection (2), an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by an employee are usually regulated by an award is taken to include an industry or
The Fairness Test  Schedule 1
Main amendments  Part 1

occupation in which the terms and conditions of the kind of work performed or to be performed by the employee:
(a) were, immediately before the reform commencement, usually regulated by a State award; or
(b) would, but for an industrial instrument or a State employment agreement, usually have been regulated by a State award immediately before the reform commencement.

(2) The provisions are as follows:
(a) subparagraph 346E(1)(b)(ii);
(b) subparagraph 346E(2)(b)(ii);
(c) subparagraph 346F(1)(b)(ii);
(d) subparagraph 346F(2)(b)(ii);
(e) paragraph 346K(2)(a);
(f) a provision referred to in paragraph (a), (b), (c) or (d), as referred to in section 346L.

346D Application of Division to workplace agreements

(1) The obligations imposed on the Workplace Authority Director by this Division in relation to a workplace agreement apply irrespective of whether the workplace agreement is in operation or has ceased to operate.

(2) For the purposes of applying this Division to a workplace agreement that has ceased to operate:
(a) a reference to an employee whose employment is subject to the workplace agreement is taken to include a reference to an employee whose employment was at any time subject to the workplace agreement; and
(b) a reference to a person or organisation who is bound by the workplace agreement is taken to include a reference to a person or organisation who was at any time bound by the workplace agreement.

(3) For the purposes of applying this Division to a workplace agreement, a reference to an employee whose employment is subject to the workplace agreement is, so far as the context permits, taken to include a reference to an employee whose employment may at a future time be subject to the workplace agreement.
346DA  Transmission of business—where no decision under section 346M at time of transmission

(1) This section applies if:
   (a) the Workplace Authority Director is required to decide under section 346M whether a workplace agreement passes the fairness test; and
   (b) before the Workplace Authority Director makes the decision, the workplace agreement becomes binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585.

(2) Subject to subsection (4), for the purposes of deciding under section 346M whether the workplace agreement passes the fairness test, references to the employer in section 346M and in the definition of relevant award are taken to be references to the old employer.

(3) If:
   (a) the Workplace Authority Director has been notified that the workplace agreement is binding on the new employer and the transferring employee or transferring employees; and
   (b) the Workplace Authority Director is required to give a notice under section 346J, 346P or 346U to the employer in relation to the workplace agreement;

the Workplace Authority Director must give the notice to both the old employer and the new employer.

(4) If the Workplace Authority Director decides under section 346M that the workplace agreement does not pass the fairness test:
   (a) references in section 346R to the employer bound by the workplace agreement are taken to be references to the new employer; and
   (b) to avoid doubt, if the new employer subsequently lodges a variation of the workplace agreement under section 346R then, for the purposes of deciding under section 346U whether the workplace agreement as varied passes the fairness test, references in section 346M to the employer are taken to be references to the old employer.

Note 1: The employment arrangements that have effect in relation to the new employer and the transferring employee or transferring employees are as set out in section 346YA.
Note 2: The compensation payable to the transferring employees under section 346ZD by both the old employer and the new employer is as specified in subsections 346ZD(2), (2A) and (2B).

346DB Transmission of business—where no decision on a varied agreement under section 346U at time of transmission

(1) This section applies if:
(a) the Workplace Authority Director is required to decide under section 346U whether a workplace agreement as varied passes the fairness test; and
(b) before the Workplace Authority Director makes the decision, the workplace agreement becomes binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585.

(2) For the purposes of deciding under section 346U whether the workplace agreement as varied passes the fairness test, references in section 346M to the employer are taken to be references to the old employer.

(3) If:
(a) the Workplace Authority Director has been notified that the workplace agreement is binding upon the new employer and a transferring employee or transferring employees; and
(b) the Workplace Authority Director is required to give a notice under section 346U to the employer in relation to the workplace agreement;
the Workplace Authority Director must give the notice to both the old employer and the new employer.

346DC Transmission of business—employees still employed by old employer

To avoid doubt, if a workplace agreement becomes binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585, this Division has effect, to the extent that the workplace agreement continues to bind the old employer, and an employee or employees who are not transferring employees, according to its terms.
Subdivision B—Workplace agreements to which the fairness test applies

346E  Workplace Authority Director must apply the fairness test to certain workplace agreements

(1) The Workplace Authority Director must decide under section 346M whether an AWA passes the fairness test if:
   (a) the AWA is lodged on or after 7 May 2007; and
   (b) on the date of lodgment:
      (i) the employer bound by the AWA is bound by an award in respect of the terms and conditions of the kind of work performed or to be performed by the employee; or
      (ii) the employee whose employment is subject to the AWA is employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee are usually regulated by an award, or would, but for a workplace agreement or another industrial instrument, usually be regulated by an award; and
   (c) on the date of lodgment:
      (i) in the case of a full-time employee, other than a full-time employee who is paid a piece rate of pay—the annual rate of salary payable to the employee under the AWA is less than $75,000; or
      (ii) in the case of a full-time employee who is paid a piece rate of pay—the annual full-time salary payable to the employee under the AWA, worked out in accordance with section 346G, is less than $75,000; or
      (iii) in the case of an employee not covered by subparagraph (i) or (ii)—the annual full-time equivalent amount of salary payable to the employee under the AWA, worked out in accordance with section 346G, is less than $75,000; and
   (d) the AWA excludes or modifies one or more protected award conditions that apply to the employee under a reference award in relation to the employee.

Note: Paragraph (d) will not be satisfied if there is no reference award in relation to the employee.
(2) The Workplace Authority Director must decide under section 346M whether a collective agreement passes the fairness test if:

(a) the collective agreement is lodged on or after 7 May 2007; and

(b) on the date of lodgment:

(i) the employer bound by the collective agreement is bound by an award in respect of the terms and conditions of the kind of work performed or to be performed by the one or more of the employees; or

(ii) one or more of the employees whose employment is subject to the collective agreement is employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employees are usually regulated by an award, or would, but for a workplace agreement or another industrial instrument, usually be regulated by an award; and

(c) the collective agreement excludes or modifies one or more protected award conditions that apply to one or more of those employees under a reference award in relation to the employee or employees.

Note: Paragraph (c) will not be satisfied if there is no reference award in relation to the employee.

346F Workplace Authority Director must apply the fairness test to certain workplace agreements as varied

(1) The Workplace Authority Director must decide under section 346M whether an AWA as varied under Division 8 passes the fairness test if:

(a) the variation of the AWA is lodged on or after 7 May 2007; and

(b) on the date of lodgment of the variation:

(i) the employer bound by the AWA as varied is bound by an award in respect of the terms and conditions of the kind of work performed or to be performed by the employee; or

(ii) the employee whose employment is subject to the AWA as varied is employed in an industry or occupation in
which the terms and conditions of the kind of work performed or to be performed by the employee are usually regulated by an award, or would, but for a workplace agreement or another industrial instrument, usually be regulated by an award; and

(c) on the date of lodgment of the variation:
   (i) in the case of a full-time employee, other than a full-time employee who is paid a piece rate of pay—the annual rate of salary payable to the employee under the AWA as varied is less than $75,000; or
   (ii) in the case of a full-time employee who is paid a piece rate of pay—the annual full-time salary payable to the employee under the AWA as varied, worked out in accordance with section 346G, is less than $75,000; or
   (iii) in the case of an employee not covered by subparagraph (i) or (ii)—the annual full-time equivalent amount of salary payable to the employee under the AWA as varied, worked out in accordance with section 346G, is less than $75,000; and

(d) the variation excludes or modifies one or more protected award conditions that apply to the employee under a reference award in relation to the employee.

Note: Paragraph (d) will not be satisfied if there is no reference award in relation to the employee.

(2) The Workplace Authority Director must decide under section 346M whether a collective agreement as varied under Division 8 passes the fairness test if:

(a) the variation of the collective agreement is lodged on or after 7 May 2007; and

(b) on the date of lodgment of the variation:
   (i) the employer bound by the collective agreement as varied is bound by an award in respect of the terms and conditions of the kind of work performed or to be performed by the one or more of the employees; or
   (ii) one or more of the employees whose employment is subject to the collective agreement as varied is employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employees are usually regulated by an award, or would, but for a workplace agreement...
or another industrial instrument, usually be regulated by an award; and

(c) the variation excludes or modifies one or more protected award conditions that apply to one or more of those employees under a reference award in relation to the employee or employees.

Note: Paragraph (c) will not be satisfied if there is no reference award in relation to the employee.

346G Provisions about annual rate of salary

(1) The amount mentioned in paragraph 346E(1)(c) or 346F(1)(c) may be increased by the regulations or in the manner prescribed by the regulations.

(2) If an employee is paid a periodic rate of pay, the annual full-time equivalent amount of salary payable to the employee for the purpose of subparagraph 346E(1)(c)(iii) or 346F(1)(c)(iii) is the salary the employee would earn if the employee were employed on a full-time basis and paid at the employee’s periodic rate of pay.

(3) For the purposes of subsection (2), the salary the employee would earn is to be calculated for the 12 month period beginning on the date on which the AWA is lodged.

(4) If an employee is paid a piece rate of pay and the employee is a full-time employee, the annual full-time salary payable to the employee for the purpose of subparagraph 346E(1)(c)(ii) or 346F(1)(c)(ii) is the salary that the employer reasonably estimates the employee would earn.

(5) If an employee is paid a piece rate of pay and the employee is not a full-time employee, the annual full-time equivalent amount of salary payable to the employee for the purpose of subparagraph 346E(1)(c)(iii) or 346F(1)(c)(iii) is the salary that the employer reasonably estimates the employee would earn if the employee were employed on a full-time basis.

(6) The regulations may prescribe one or more methods (whether described, in relation to classes of employees paid piece rates of pay, by the kind of work performed by such employees, or otherwise) by which an employer may reasonably estimate the
salary the employee would earn for the purposes of subsections (4)
and (5).

(7) For the purpose of subsections (4) and (5), the salary the employee
would earn is to be estimated for the 12 month period beginning on
the date on which the AWA is lodged.

(8) The regulations may prescribe a different definition of salary for
the purposes of paragraph 346E(1)(c) or 346F(1)(c) in relation to
employees paid piece rates of pay.

### 346H Protected award conditions and designated awards—deemed
exclusion or modification

(1) For the purposes of paragraphs 346E(1)(d) and 346F(1)(d), an
AWA is taken to exclude or modify one or more protected award
conditions that apply to an employee under a designated award in
relation to the employee if the condition or conditions:

(a) do not have effect in relation to the employee under the
AWA; or

(b) have a different effect in relation to the employee than they
would have under the designated award.

(2) For the purposes of paragraphs 346E(2)(c) and 346F(2)(c), a
collective agreement is taken to exclude or modify one or more
protected award conditions that apply to an employee or employees
under a designated award in relation to the employee or employees
if the condition or conditions:

(a) do not have effect in relation to the employee or employees
under the collective agreement; or

(b) have a different effect in relation to the employee or
employees than they would have under the designated award.

### 346J Notice requirements

(1) If the Workplace Authority Director is required to decide under
section 346M whether a workplace agreement passes the fairness
test, the Workplace Authority Director must give a written notice
to that effect to:

(a) the employer in relation to the workplace agreement; and

(b) if the workplace agreement is an AWA—the employee
whose employment is subject to the AWA; and
(c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

(2) If the Workplace Authority Director is not required to decide under section 346M whether a workplace agreement passes the fairness test, the Workplace Authority Director must give a written notice to that effect to the persons referred to in paragraphs (1)(a), (b) and (c).

(3) A notice under this section is not required to be given at the same time as the copy of the receipt is given under section 345 in respect of the declaration for the workplace agreement concerned.

Note: Section 346ZE requires the employer to inform the employees concerned of the contents of a notice under this section in relation to a collective agreement.

346K Designated awards—before a workplace agreement or variation is lodged

(1) The Workplace Authority Director may, on application by an employer, determine that an award is a designated award in relation to an employee or employees of the employer.

Note: For specification by class, see section 46 of the Acts Interpretation Act 1901.

(2) The Workplace Authority Director may make a determination under this section only if the Workplace Authority Director is satisfied that:

(a) the employee or employees are or may be employed in an industry or occupation in which the terms and conditions of the kind of work performed or to be performed by the employee or employees:
   (i) are usually regulated by an award; or
   (ii) would, but for a workplace agreement or another industrial instrument, usually be regulated by an award; and

(b) there is no relevant award in relation to the employee or employees; and

(c) there is an award that satisfies the requirements specified in subsection (3).
(3) An award or awards determined by the Workplace Authority Director under this section:
   (a) must be an award or awards regulating, or that would, but for a workplace agreement or another industrial instrument, regulate, terms or conditions of employment of employees engaged in the same kind of work as the work performed or to be performed by the employee or employees; and
   (b) must, in the opinion of the Workplace Authority Director, be an award or awards that would be appropriate for the purposes referred to in subsection 346L(2) if a workplace agreement or a variation of a workplace agreement were lodged; and
   (c) must not be an enterprise award.

(4) An award determined under this section in relation to an employee or employees is taken to be the designated award determined by the Workplace Authority Director under section 346L in relation to the employee or employees if the employer later lodges a workplace agreement, or a variation of a workplace agreement, in relation to the employee or the employees.

(5) Despite subsection (4), the Workplace Authority Director may determine under section 346L that another award is a designated award in relation to the employee, or in relation to some or all of the employees, if the Workplace Authority Director is satisfied that it is necessary in all the circumstances to do so.

(6) The Workplace Authority Director may determine different awards under subsection (2) in relation to different employees.

(7) In this section, a reference to an employee or employees of an employer includes a reference to a person or persons who may become an employee or employees of the employer.

(8) A determination made under this section is not a legislative instrument.

346L Designated awards—after a workplace agreement or variation is lodged

(1) This section applies to a workplace agreement if:
   (a) in the case of an AWA:
(i) the AWA satisfies the requirements set out in paragraphs 346E(1)(a), (b) and (c); and
(ii) there is no relevant award in relation to the employee whose employment is subject to the AWA; or

(b) in the case of a collective agreement:
   (i) the collective agreement satisfies the requirements set out in paragraphs 346E(2)(a) and (b); and
   (ii) there is no relevant award in relation to one or more employees whose employment is subject to the collective agreement; or

(c) a variation of the workplace agreement was lodged on or after 7 May 2007, and:
   (i) if the workplace agreement is an AWA—the AWA as varied satisfies the requirements set out in paragraphs 346F(1)(b) and (c) and subparagraph (a)(ii) of this subsection; or
   (ii) if the workplace agreement is a collective agreement—the collective agreement as varied satisfies the requirements set out in paragraph 346F(2)(b) and subparagraph (b)(ii) of this subsection.

(2) The Workplace Authority Director must determine that an award is a designated award in relation to the employee or employees whose employment is subject to the agreement:
   (a) to ascertain whether or not the Workplace Authority Director is required to decide under section 346M whether the workplace agreement, or the workplace agreement as varied, passes the fairness test; and
   (b) if the Workplace Authority Director is so required, for the purpose of deciding whether the workplace agreement, or the workplace agreement as varied, passes the fairness test; unless the Workplace Authority Director is satisfied that there is no award that satisfies the requirements specified in subsection (3).

Note: For specification by class, see section 46 of the Acts Interpretation Act 1901.

(3) An award or awards determined by the Workplace Authority Director under this section:
   (a) must be an award or awards regulating, or that would, but for a workplace agreement or another industrial instrument, regulate, terms or conditions of employment of employees
engaged in the same kind of work as the work performed by
the employee or employees under the workplace agreement
concerned; and
(b) must, in the opinion of the Workplace Authority Director, be
appropriate for the purposes referred to in subsection (2); and
(c) must not be an enterprise award.

(4) The Workplace Authority Director may determine different awards
under subsection (2) in relation to different employees.

(5) A determination made under this section is not a legislative
instrument.

Subdivision C—The fairness test

346M  When does an agreement pass the fairness test?

(1) A workplace agreement passes the fairness test if:
(a) in the case of an AWA—the Workplace Authority Director is
satisfied that the AWA provides fair compensation to the
employee whose employment is subject to the AWA in lieu
of the exclusion or modification of protected award
conditions that apply to the employee; or
(b) in the case of a collective agreement—the Workplace
Authority Director is satisfied that, on balance, the collective
agreement provides fair compensation, in its overall effect on
the employees whose employment is subject to the collective
agreement, in lieu of the exclusion or modification of
protected award conditions that apply to some or all of those
employees.

Note: This section applies to a workplace agreement as varied in a
corresponding way to the way in which it applies to a workplace
agreement—see subsection 346B(3).

(2) In considering whether a workplace agreement provides fair
compensation to an employee, or in its overall effect on employees,
the Workplace Authority Director must first have regard to:
(a) the monetary and non-monetary compensation that the
employee or employees will receive under the workplace
agreement, in lieu of the protected award conditions that
apply to the employee or employees under a reference award
in relation to the employee or employees; and
(b) the work obligations of the employee or employees under the workplace agreement.

(3) In considering whether a workplace agreement provides fair compensation to an employee or in its overall effect on employees, the Workplace Authority Director may also have regard to the personal circumstances of the employee or employees, including in particular the family responsibilities of the employee or employees.

(4) In exceptional circumstances, and if the Workplace Authority Director is satisfied that it is not contrary to the public interest to do so, the Workplace Authority Director may, in addition to the matters specified in subsections (2) and (3), also have regard to the industry, location or economic circumstances of the employer and the employment circumstances of the employee or employees when considering whether a workplace agreement provides fair compensation to an employee or in its overall effect on employees.

(5) An example of a case where the Workplace Authority Director may be satisfied that it is not contrary to the public interest to have regard to the industry, location or economic circumstances of the employer is where the workplace agreement is part of a reasonable strategy to deal with a short-term crisis in, and to assist in the revival of, the employer’s business.

(6) In deciding whether a workplace agreement passes, or does not pass, the fairness test, the Workplace Authority Director may inform himself or herself in any way he or she considers appropriate including (but not limited to) contacting the employer and the employee, or some or all of the employees, whose employment is subject to the workplace agreement.

(7) In this section:

/non-monetary compensation/, in relation to an employee, means compensation (other than an entitlement to a payment of money):

(a) for which there is a money value equivalent or to which a money value can reasonably be assigned; and

(b) that confers a benefit or advantage on the employee which is of significant value to the employee.
346N  Agreements to be tested as at lodgment date

(1) In deciding whether a workplace agreement passes, or does not pass, the fairness test, the Workplace Authority Director must consider the agreement as in force immediately after lodgment.

(2) In deciding whether a workplace agreement as varied passes, or does not pass, the fairness test, the Workplace Authority Director must consider the agreement as in force immediately after the variation was lodged.

(3) If:
   (a) the Workplace Authority Director is required by section 346E to decide under section 346M whether a workplace agreement passes the fairness test; and
   (b) before the Workplace Authority Director decides whether the workplace agreement passes the fairness test, the Workplace Authority Director is required by section 346F to decide under section 346M whether the workplace agreement as varied passes the fairness test;

   then:
   (c) the Workplace Authority Director must consider the workplace agreement and the workplace agreement as varied as part of the same process; and
   (d) to avoid doubt, the Workplace Authority Director must consider, and make a separate decision in respect of, both the workplace agreement and the workplace agreement as varied.

346P  Workplace Authority Director must notify of decision

(1) If the Workplace Authority Director decides under section 346M that a workplace agreement passes the fairness test, the Workplace Authority Director must notify the following of the decision:
   (a) the employer in relation to the workplace agreement;
   (b) if the workplace agreement is an AWA—the employee whose employment is subject to the AWA;
   (c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

(2) If the Workplace Authority Director decides under section 346M that a workplace agreement does not pass the fairness test, the
Workplace Authority Director must notify the persons referred to in paragraphs (1)(a), (b) and (c) of the decision.

(3) If the Workplace Authority Director decides under section 346M that a workplace agreement does not pass the fairness test, the notice must also:

(a) in the case of a workplace agreement that is in operation on the date of issue specified in the notice—contain advice as to how the agreement could be varied to pass the fairness test (including by way of an undertaking); and

(b) in any case—state that compensation may be payable by the employer to the employee or employees under section 346ZD.

(4) If subsection 346N(3) requires the Workplace Authority Director to consider, and make a separate decision in respect of, both a workplace agreement and the workplace agreement as varied, the notice under this section must deal with both agreements.

(5) A notice under this section:

(a) must be in writing; and

(b) must specify the date of issue of the notice.

Note: Section 346ZE requires the employer to inform the employees concerned of the contents of a notice under this section in relation to a collective agreement.

Subdivision D—Consequences if a workplace agreement does not pass the fairness test

346Q Agreement does not pass fairness test—agreement not in operation

If:

(a) the Workplace Authority Director decides under section 346M that a workplace agreement does not pass the fairness test; and

(b) the workplace agreement is not in operation in relation to any employee immediately before the date of the decision; the employee or employees whose employment was at any time subject to the workplace agreement are, on and from the date of issue specified in the notice under section 346P in relation to the
workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.

346R Agreement does not pass fairness test—agreement in operation

(1) This section applies if:
   (a) the Workplace Authority Director decides under section 346M that a workplace agreement does not pass the fairness test; and
   (b) the workplace agreement is in operation immediately before the date of the decision.

(2) The employer who is bound by the workplace agreement may:
   (a) in the case of an AWA—lodge a variation of the AWA with the Workplace Authority Director; or
   (b) in the case of an AWA or a collective agreement—lodge a variation of the workplace agreement by giving to the Workplace Authority Director a written undertaking in relation to the AWA or collective agreement.

(3) If the employer does not take the action referred to in subsection (2) within the relevant period in relation to the workplace agreement, then at the end of that period:
   (a) the workplace agreement ceases to operate; and
   (b) the employee or employees whose employment was at any time subject to the workplace agreement are, after the end of the relevant period in relation to the workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.

(4) Despite subsection (3), if:
   (a) because of subsection 346N(3), the Workplace Authority Director considered, and made a separate decision in respect of, both a workplace agreement and the workplace agreement as varied; and
   (b) the workplace agreement did not pass the fairness test, but the workplace agreement as varied passed the fairness test; the workplace agreement as varied continues in operation, and the employee or employees whose employment was at any time subject to the workplace agreement, whether before or after the
variation was lodged are, after the end of the relevant period in relation to the workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.

(5) For the purposes of paragraph (2)(a), Division 8 does not apply to the variation of an AWA, except for the following provisions:
   (a) subsection 373(1);
   (b) section 374.

(6) For the purposes of paragraph (2)(b), Division 8 does not apply to an undertaking given to the Workplace Authority Director in relation to an AWA or a collective agreement.

(7) In this section:

re relevant period, in relation to a workplace agreement, means:
   (a) the period of 14 days beginning on the date of issue specified in the notice under section 346P in relation to the workplace agreement; or
   (b) if a longer period is prescribed by the regulations for the purposes of this paragraph—that period; or
   (c) if the period referred to in paragraph (a) or (b) is extended under subsection (8) in relation to the workplace agreement—the period as extended.

(8) The Workplace Authority Director may extend the period referred to in paragraph (7)(a) or (b), as the case requires, in relation to a particular workplace agreement in circumstances prescribed by the regulations.

346S Lodging of variation documents with the Workplace Authority Director

(1) An employer lodges a variation with, or gives an undertaking to, the Workplace Authority Director under section 346R if:
   (a) the employer lodges a declaration under subsection (2); and
   (b) a copy of the variation or undertaking is annexed to the declaration.

(2) An employer lodges a declaration with the Workplace Authority Director if:
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(a) the employer gives it to the Workplace Authority Director; and
(b) it meets the form requirements mentioned in subsection (3).

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

(3) The Workplace Authority Director may, by notice published in the Gazette, set out requirements for the form of a declaration for the purposes of paragraph (2)(b). The requirements may be different for variations and undertakings.

(4) A declaration is given to the Workplace Authority Director for the purposes of subsection (2) only if the declaration is actually received by the Workplace Authority Director.

Note: This means that section 29 of the Acts Interpretation Act 1901 (to the extent that it deals with the time of service of documents) and section 160 of the Evidence Act 1995 do not apply to lodgment of a declaration.

346T  Operation of section 346R variations

(1) A variation of an AWA under paragraph 346R(2)(a) comes into operation when the variation is lodged with the Workplace Authority Director under that paragraph in accordance with section 346S.

(2) A variation of an AWA or a collective agreement by way of an undertaking under paragraph 346R(2)(b) comes into operation when the undertaking is given to the Workplace Authority Director under that paragraph in accordance with section 346S.

(3) For the purposes of this Act, an undertaking given by an employer to the Workplace Authority Director in relation to an AWA or a collective agreement is taken to be a variation of the AWA or collective agreement, as the case may be, lodged by the employer under section 346R.

346U  Workplace Authority Director must test varied agreement

(1) If an employer lodges a variation of a workplace agreement under section 346R, the Workplace Authority Director must decide under this section whether the workplace agreement as varied passes the fairness test set out in section 346M.
(2) If the Workplace Authority Director decides under subsection (1) that a workplace agreement as varied passes the fairness test, the Workplace Authority Director must notify the following of the decision:

(a) the employer in relation to the workplace agreement;
(b) if the workplace agreement is an AWA—the employee whose employment is subject to the AWA;
(c) if the agreement is a union collective agreement or a union greenfields agreement—the organisation or organisations bound by the agreement.

(3) If the Workplace Authority Director decides under subsection (1) that a workplace agreement as varied does not pass the fairness test, the Workplace Authority Director must notify the persons referred to in paragraphs (2)(a), (b) and (c) of the decision.

(4) A notice under this section must be in writing and must specify:

(a) the date of issue of the notice; and
(b) if the workplace agreement as varied passes the fairness test:
   (i) that the workplace agreement continues in operation; and
   (ii) that the workplace agreement was varied by way of a variation or a written undertaking, as the case may be; and
   (iii) that the employee or employees whose employment is, or was at any time, subject to the workplace agreement are, on and from the date of issue of the notice, entitled to any compensation payable to the employee or employees under section 346ZD; and
(c) if the workplace agreement as varied does not pass the fairness test:
   (i) that, if the workplace agreement was in operation immediately before the date of issue of the notice—the agreement ceases to operate on the date of issue of the notice; and
   (ii) that the employee or employees whose employment was at any time subject to the workplace agreement are, on and from the date of issue of the notice, entitled to any compensation payable to the employee or employees under section 346ZD.
Note: Section 346ZE requires the employer to inform the employees concerned of the contents of a notice under this section in relation to a collective agreement.

(5) In deciding under this section whether a workplace agreement passes, or does not pass, the fairness test, the Workplace Authority Director may inform himself or herself in any way he or she considers appropriate including (but not limited to) contacting the employer and the employee, or some or all of the employees, whose employment is subject to the workplace agreement.

346V Effect if varied agreement does not pass fairness test—agreement not in operation

If:

(a) the Workplace Authority Director decides under subsection 346U(1) that a workplace agreement as varied does not pass the fairness test; and

(b) the workplace agreement is not in operation in relation to any employee immediately before the date of the decision;

the employee or employees whose employment was at any time subject to the workplace agreement are, on and from the date of issue specified in the notice under section 346U in relation to the workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.

346W Effect if varied agreement does not pass fairness test—agreement in operation

If the Workplace Authority Director decides under subsection 346U(1) that a workplace agreement as varied does not pass the fairness test:

(a) the workplace agreement ceases to operate on the date of issue specified in the notice under that section in respect of the workplace agreement; and

(b) the employee or employees whose employment was at any time subject to the workplace agreement are, on and from the date of issue specified in the notice under section 346U in relation to the workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.
346X Effect if varied agreement passes fairness test—agreement in operation

If the Workplace Authority Director decides under subsection 346U(1) that a workplace agreement as varied passes the fairness test:

(a) the workplace agreement continues in operation; and
(b) the employee or employees whose employment is, or was at any time, subject to the workplace agreement are, on and from the date of issue specified in the notice under section 346U in relation to the workplace agreement, entitled to any compensation payable to the employee or employees under section 346ZD.

Note: Even though the workplace agreement has been varied so that it passes the fairness test, compensation may be payable in respect of the period when the agreement did not pass the fairness test.

346Y Employment arrangements that apply if a workplace agreement ceases to operate because it does not pass fairness test

(1) This section applies if, on a particular day (the cessation day), a workplace agreement (the original agreement) ceases to operate under section 346R or 346W because the original agreement does not pass the fairness test.

(2) The employer and the employee or employees who were bound by the original agreement immediately before the cessation day are taken, on and from the cessation day, to be bound by:

(a) the instrument or instruments that, but for the original agreement having come into operation, would have bound the employer and the employee or employees on and from the cessation day; or

(b) if there is no instrument of a kind referred to in paragraph (a) in relation to the employer and one or more of the employees—the designated award in relation to that employee or those employees, to the extent that the designated award contains protected award conditions.

Note: A workplace agreement binds all persons whose employment is, at any time when the agreement is in operation, subject to the agreement (see paragraph 351(b)). A collective agreement may therefore bind an employer in relation to existing and future employees.
(3) If the original agreement is a workplace agreement as varied under Division 8, the workplace agreement as in force before the variation was lodged is, despite section 346ZB, capable of being an instrument described in paragraph (2)(a).

(4) An instrument that has ceased to operate in relation to an employee or employees is capable of being an instrument described in paragraph (2)(a) only if the reason it ceased to operate was because the original agreement came into operation in relation to the employee or employees.

(4A) Despite subsection (2), if the original agreement is a workplace agreement that, after lodgment, becomes binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585, this section does not have the effect of binding the new employer and the transferring employee or transferring employees to an instrument or to a designated award.

Note: The employment arrangements that have effect in relation to the new employer and the transferring employee or transferring employees are as set out in section 346YA.

(5) In this section:

instrument means any of the following:

(a) a workplace agreement;
(b) an award;
(c) a workplace determination;
(d) an employment agreement (within the meaning of section 887);
(e) a pre-reform certified agreement (within the meaning of Schedule 7);
(f) a pre-reform AWA;
(g) a section 170MX award (within the meaning of Schedule 7);
(h) an exceptional matters order (within the meaning of Schedule 7);
(i) an old IR agreement (within the meaning of Schedule 7).

Note: Preserved State agreements and notional agreements preserving State awards are dealt with in Schedule 8.
346YA Employment arrangements if a workplace agreement ceases to operate because it does not pass fairness test—transmission of business

(1) This section applies if:

(a) on a particular day (the *cessation day*), a workplace agreement (the *original agreement*) ceases to operate under section 346R or 346W because the original agreement does not pass the fairness test; and

(b) during the period beginning when the original agreement was lodged and ending on the cessation day, the original agreement became binding upon a new employer and a transferring employee or transferring employees because of the operation of section 583 or 585 in relation to a business being transferred; and

(c) the cessation day occurs during the transmission period in relation to the business being transferred.

Note: If the cessation day occurs after the transmission period ends, the rules in Part 11 will have effect according to their terms.

(2) The new employer and the transferring employee or transferring employees who were bound by the original agreement immediately before the cessation day are taken, on and from the cessation day, to be bound by:

(a) the instrument:

(i) that, but for the original agreement having come into operation, would have bound the old employer and the transferring employee or transferring employees immediately before the time of transmission; and

(ii) that was capable of binding the new employer after the time of transmission under Part 11, Schedule 6 or Schedule 9; or

(b) if there is no instrument of a kind referred to in paragraph (a) in relation to the old employer and one or more of the transferring employees—the designated award in relation to that employee or those employees, to the extent that the designated award contains protected award conditions.

(3) If, but for the original agreement having come into operation, the old employer would have been bound, immediately before the time of transmission, under a designated provision by a redundancy
provision in relation to a transferring employee or transferring employees whose employment was subject to the original agreement, the new employer is taken:

(a) to be bound under section 598A or clause 27A of Schedule 9, as the case requires, on and from the cessation day, by the redundancy provision in relation to the transferring employee or transferring employees; and

(b) to continue to be so bound until the earliest of the following:
   (i) the end of the period of 12 months beginning on the first day on which the old employer became bound under a designated provision by the redundancy provision;
   (ii) the time when the employee ceases to be employed by the new employer;
   (iii) the time when another workplace agreement comes into operation in relation to the transferring employee or the transferring employees and the new employer.

(4) If the original agreement is a workplace agreement as varied under Division 8, the workplace agreement as in force before the variation was lodged is, despite section 346ZB, capable of being an instrument described in paragraph (2)(a).

(5) In this section:

*designated provision* has the same meaning as in section 346ZA.

*instrument* means any of the following:

(a) a workplace agreement;
(b) an award;
(c) a pre-reform certified agreement (within the meaning of Schedule 7);
(d) a pre-reform AWA.

Note: Preserved State agreements and notional agreements preserving State awards are dealt with in Schedule 8.

### 346Z  Effect of sections 346Y and 346YA in relation to instruments

(1) If, because of the operation of section 346Y, an employer and an employee or employees, as the case requires, are taken to be bound by an instrument, the instrument is taken, despite any other provision of this Act, to operate again, or to have effect again, as
the case requires, in relation to the employer and the employee or employees, on and from the cessation day.

Note 1: Subsections 347(7A), (8A) and (9A) modify the rule that an AWA or a collective agreement that has ceased to operate can never operate again.

Note 2: The following provisions operate in a similar way for other instruments:

(a) subsection 506(5) (workplace determinations);
(b) subsection 890(3) (employment agreements within the meaning of section 887);
(c) subclause 3(5A) of Schedule 7 (pre-reform certified agreements);
(d) subclause 18(5) of Schedule 7 (pre-reform AWAs);
(e) subclause 25(4) of Schedule 7 (section 170MX awards);
(f) subclause 27(2) of Schedule 7 (exceptional matters orders);
(g) subclause 28(5) of Schedule 7 (old IR agreements).

Note 3: An award has no effect in relation to an employee while a workplace agreement operates in relation to the employee (see section 349), but once the workplace agreement has ceased to operate, the award is capable of operating again.

(2) If, because of the operation of section 346YA, a new employer and a transferring employee or transferring employees are taken to be bound by an instrument, the instrument is taken, despite any other provision of this Act, to have effect in relation to the new employer and the transferring employee or employees throughout the period:

(a) beginning on the cessation day; and
(b) ending at the end of the transmission period in relation to the business being transferred;

as if the new employer and the transferring employee or transferring employees had become bound by the instrument under Part 11, Schedule 6 or Schedule 9, as the case requires.

346ZA Redundancy provisions and section 394 undertakings

(1) This section applies if, on a particular day (the cessation day), a workplace agreement (the original agreement) ceases to operate under section 346R or 346W because the original agreement does not pass the fairness test.

(2) If, immediately before the day on which the original agreement was lodged, the employer was bound under a designated provision
by a redundancy provision in relation to an employee whose employment was subject to the original agreement, the employer is taken:

(a) to be bound under the designated provision by the redundancy provision in relation to the employee on and from the cessation day; and

(b) to continue to be so bound until the earliest of the following:

(i) the end of the period of 12 months beginning on the first day on which the employer became bound under the designated provision by the redundancy provision;

(ii) the time when the employee ceases to be employed by the employer;

(iii) the time when another workplace agreement comes into operation in relation to the employee and the employer.

(3) If, immediately before the day on which the original agreement was lodged, the employer was bound by an undertaking under subsection 394(1) in relation to an employee whose employment was subject to the original agreement, the employer is taken:

(a) to be bound under section 394 by the undertaking in relation to the employee on and from the cessation day; and

(b) to continue to be so bound until the earlier of the following:

(i) the time when the employee ceases to be employed by the employer;

(ii) the time when another workplace agreement comes into operation in relation to the employee and the employer.

(4) In this section:

*designated provision* means a redundancy provision within the meaning of any of the following:

(a) section 399A;

(b) clause 6A of Schedule 7;

(c) clause 20A of Schedule 7.

### 346ZB Operation of workplace agreements

A workplace agreement that has ceased to operate because it does not pass the fairness test can never operate again.
346ZC  Regulations may make provision for operation of provisions of revived instruments

The regulations may make provision for and in relation to the operation of instruments that are taken to bind an employer and the employees because of the operation of section 346Y or 346YA.

Subdivision E—Entitlement to compensation

346ZD  Employee is entitled to compensation in respect of fairness test period

(1) This section applies to an employee who is entitled to compensation under this section on and from a particular day because a workplace agreement binding on the employee’s employer did not pass the fairness test.

Note 1: Sections 346Q, 346R, 346V, 346W and 346X specify the day on which an employee’s entitlement to compensation takes effect.

Note 2: An employee may be able to recover compensation even where a workplace agreement that initially does not pass the fairness test is varied so that it subsequently passes the fairness test—see section 346X.

(2) If the amount worked out under paragraph (a) is less than the amount worked out under paragraph (b), the employer must pay to the employee the amount of the shortfall:

(a) the total value of the entitlements to which the employee was entitled, under the workplace agreement, and under any other applicable law, agreement or arrangement that operated in conjunction with the workplace agreement, in respect of one or more periods of employment during the fairness test period for the workplace agreement;

(b) the total value of the entitlements to which the employee would have been entitled, in respect of one or more periods of employment of the employee during the fairness test period, worked out in accordance with the assumptions set out in subsection (2A).
(2A) For the purposes of working out the total value of the entitlements to which the employee would have been entitled, in respect of one or more periods of employment of the employee during the fairness test period, it is to be assumed that, during that period or those periods of employment:

(a) the employee’s employment was subject to:
   (i) the instrument or instruments that, but for the workplace agreement, would have bound the employer in relation to that period or those periods of employment of the employee; or
   (ii) if there is no such instrument—the designated award in relation to the employee, to the extent that it contains protected award conditions; and

(b) the employer was bound, under a designated provision, by any redundancy provision that, but for the workplace agreement having come into operation, would have bound the employer in relation to the employee; and

(c) the employer was bound under section 394 by any undertaking that, but for the workplace agreement having come into operation, would have bound the employer in relation to the employee; and

(d) the employee’s employment was subject to any other applicable law, agreement or arrangement that would have operated in conjunction with the instrument or instruments referred to in subparagraph (a)(i), or the designated award referred to in subparagraph (a)(ii), as the case requires.

(2B) If, because of the operation of section 583 or 585, the workplace agreement bound an old employer and a new employer in relation to the employment of a transferring employee during the fairness test period:

(a) the transferring employee is entitled to be paid compensation by the old employer in respect of the period or periods during which the employee was employed by the old employer, worked out in accordance with the assumptions set out in subsection (2A); and

(b) the transferring employee is entitled to be paid compensation by the new employer in respect of the period or periods during which the employee was employed by the new employer, worked out in accordance with the assumptions set
out in subsection (2A), subject to the following modifications:

(i) subparagraph (2A)(a)(i) is taken to refer to the instrument described in paragraph 346YA(2)(a); and
(ii) a reference in paragraph (2A)(b) to a designated provision is taken to be a reference to section 598A or clause 27A of Schedule 9, as the case requires.

(3) An employer breaches this section if the employer does not pay to the employee the amount of the shortfall calculated under subsection (2) within whichever of the following periods is applicable:

(a) if the employee is entitled to compensation because of the operation of section 346Q in respect of the workplace agreement—the period of 14 days beginning on the date of issue specified in the notice under section 346P in relation to the workplace agreement;
(b) if the employee is entitled to compensation because of the operation of section 346R in respect of the workplace agreement—the period of 14 days beginning at the end of the relevant period (within the meaning of section 346R) in relation to the workplace agreement;
(c) if the employee is entitled to compensation because of the operation of section 346V, 346W or 346X in respect of the workplace agreement—the period of 14 days beginning on the date of issue specified in the notice under section 346U in relation to the workplace agreement.

Note: Compliance with this section is dealt with in Part 14—this section is an applicable provision within the meaning of section 717.

(4) In this section:

**designated provision** has the same meaning as in section 346ZA.

**fairness test period**, in relation to a workplace agreement, means:

(a) the period:

(i) beginning on the day on which the workplace agreement was lodged; and
(ii) ending on the day on which the workplace agreement ceased to operate (whether because of the operation of this Division or otherwise); or
(b) if the workplace agreement is continued in effect because of the operation of subsection 346R(4) or section 346X—the period:
   (i) beginning on the day on which the workplace agreement was lodged; and
   (ii) ending on the day on which the variation of the workplace agreement was lodged under section 346R or, if the workplace agreement had been varied before that day in such a way as to pass the fairness test, on that earlier day.

*instrument* has the same meaning as in section 346Y.

**Subdivision F—Civil remedy provisions**

**346ZE Employer must notify employees**

(1) An employer that has received a notice under section 346J, 346P or 346U in relation to a collective agreement must take reasonable steps to ensure that all persons whose employment is subject to the agreement when the employer receives the notice are given a copy of the notice as soon as practicable.

(2) Subsection (1) is a civil remedy provision.

Note: See Division 11 for provisions on enforcement.

**346ZEA Notice requirements in relation to transmission of business**

(1) This section applies if:
   (a) a new employer is bound by a workplace agreement (the *transmitted workplace agreement*) in relation to a transferring employee because of section 583 or 585; and
   (b) before the time of transmission in relation to the business being transferred, the Workplace Authority Director gave notice to the old employer under section 346J that the Workplace Authority Director must decide under section 346M or 346U whether the transmitted workplace agreement passes the fairness test; and
   (c) as at the time of transmission, the Workplace Authority Director has not yet decided whether the transmitted workplace agreement passes the fairness test under whichever of those sections is applicable.
(2) The old employer must take reasonable steps to give a written notice to the Workplace Authority Director that:
   (a) identifies the transmitted workplace agreement; and
   (b) states whether or not the old employer remains bound by the transmitted workplace agreement in relation to the employment of any employees; and
   (c) specifies the date on which the transmission period in relation to the business being transferred ends; and
   (d) specifies the name and address of the new employer.

(3) Subsection (2) is a civil remedy provision.
   Note: See Division 11 for provisions on enforcement.

346ZF Employer not to dismiss etc. employee because agreement does not pass the fairness test

(1) An employer must not:
   (a) dismiss an employee; or
   (b) threaten to dismiss an employee;
   if the sole or dominant reason for the employer dismissing, or threatening to dismiss, the employee is that a workplace agreement does not, or may not, pass the fairness test.

(2) Subsection (1) is a civil remedy provision.
   Note 1: An employee may still be entitled to compensation under section 346ZD if his or her workplace agreement does not pass the fairness test.
   Note 2: A breach of this provision is enforceable by a workplace inspector—see Division 11 for provisions on enforcement.

(3) In proceedings alleging a contravention of subsection (1) it is presumed that the employer’s sole or dominant reason was that the workplace agreement did not, or may not, pass the fairness test, unless the employer proves otherwise.
   Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

346ZG Other remedies for the contravention of section 346ZF

(1) The Court, on application by an eligible person, may make one or more of the following orders in relation to an employer who has contravened subsection 346ZF(1):
(a) an order requiring the employer to pay a specified amount to the employee as compensation for damage suffered by the employee as a result of the contravention;
(b) any other order that the Court considers appropriate.

Note: The employee may still be entitled to compensation under section 346ZD if his or her workplace agreement does not pass the fairness test.

(2) The orders that may be made under paragraph (1)(b) include:
(a) injunctions; and
(b) any other orders that the Court considers necessary to stop the conduct or remedy its effects.

(3) In this section:

eligible person means any of the following:
(a) a workplace inspector;
(b) an employee affected by the contravention;
(c) an organisation of employees that:
   (i) has been requested in writing, by the employee concerned, to apply on the employee’s behalf; and
   (ii) has a member employed by the employee’s employer; and
   (iii) is entitled, under its eligibility rules, to represent the industrial interests of the employee in relation to work carried on by the employee for the employer;
(d) a person prescribed by the regulations for the purposes of this paragraph.

(4) A regulation prescribing persons for the purposes of paragraph (d) of the definition of eligible person may provide that a person is prescribed only in relation to circumstances specified in the regulation.

346ZH Employer not to require employee to agree to exclude or modify a protected award condition

(1) An employer must not, in relation to a workplace agreement:
(a) take, or threaten to take, any action; or
(b) refrain, or threaten to refrain, from taking any action;
with intent to coerce an existing employee to agree, or not to agree, to excluding or modifying a protected award condition.

(2) Subsection (1) does not apply to protected action (within the meaning of section 435).

(3) Subsection (1) is a civil remedy provision.

Note: A breach of this provision is enforceable by a workplace inspector—see Division 11 for provisions on enforcement.
Part 2—Consequential amendments

Workplace Relations Act 1996

2 After paragraph 337(4)(c)

Insert:

(c) information about the circumstances in which the Workplace Authority Director is required to decide whether the agreement passes the fairness test set out in section 346M; and

3 Subsection 344(5)

After “this Part”, insert “(other than Division 5A)”.

4 After paragraph 347(4)(b)

Insert:

(b) the Workplace Authority Director decides under section 346M that the agreement does not pass the fairness test and the employer who is bound by the agreement does not take the action referred to in subsection 346R(2) within the relevant period (as defined in subsection 346R(7)) in relation to the agreement; or

(b) the Workplace Authority Director decides under section 346U that the agreement as varied does not pass the fairness test; or

5 After subsection 347(7)

Insert:

(7A) Despite subsection (7), an AWA that has ceased to operate can operate again if:

(a) the AWA ceased to operate because it was replaced by another AWA (the replacement AWA); and

(b) the replacement AWA later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

6 After subsection 347(8)
Insert:

(8A) Despite subsection (8), a collective agreement that has ceased to operate can operate again if:

(a) the collective agreement ceased to operate because it was replaced after its nominal expiry date by another collective agreement (the replacement collective agreement); and

(b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

7 After subsection 347(9)
Insert:

(9A) Despite subsection (9), a multiple-business agreement that has ceased to operate in relation to a single business (or part of a single business) can operate again if:

(a) the multiple-business agreement ceased to operate because it was replaced by another collective agreement (the replacement collective agreement) in accordance with subsection (6); and

(b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

8 At the end of subsection 354(2)
Add:

Note: A workplace agreement that excludes or modifies certain protected award conditions is subject to Division 5A (which relates to the fairness test).

9 After paragraph 367(2)(a)
Insert:

(aa) section 346R (which deals with agreements that do not pass the fairness test); or

10 Subsection 377(5)
After “this Part”, insert “(other than Division 5A)”.

11 At the end of section 394
Add:

(8) Despite subsection (7), undertakings that have ceased to operate can operate again under this section if:

(a) the undertakings ceased to operate because they were replaced by a workplace agreement (the replacement workplace agreement); and

(b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See section 346ZA.

12 At the end subsection 400(6)

Add “, other than in the circumstance described in subsection (6A)”.

13 After subsection 400(6)

Insert:

(6A) The circumstance referred to in subsection (6) is that:

(a) the first person mentioned in subsection (6) is a new employer; and

(b) the new employer requires another person to make an AWA; and

(c) the other person would, if employed by the new employer, be a transferring employee; and

(d) the requirement to make the AWA is a condition of the other person becoming employed in the business being transferred.

14 At the end of section 400

Add:

(8) In this section:

business being transferred has the same meanings as in section 579, clause 72C of Schedule 6 and subclause 4(2) of Schedule 9.

new employer has the same meanings as in section 579 and subclause 4(1) of Schedule 9, and includes a new transitional employer within the meaning of clause 72C of Schedule 6.
transferring employee has the same meanings as in section 579 and clause 3 of Schedule 9, and includes a transferring transitional employee within the meaning of clause 72C of Schedule 6.

15 After paragraph 407(2)(ja)

Insert:

(jb) for subsection 346ZE(1)—30 penalty units;
(jba) for subsection 346ZEA(2)—30 penalty units;
(jc) for subsection 346ZF(1)—60 penalty units;
(jd) for subsection 346ZH(1)—60 penalty units;

16 Paragraph 416(1)(a)

After “344(2),”, insert “346S(2),”.

17 Paragraph 416(1)(d)

After “subsection”, insert “346J(1) or (2), 346P(1) or (2), 346U(2) or”.

18 At the end of subsection 416(1)

Add:

; (g) a determination that an award is a designated award made by the Workplace Authority Director under section 346K or 346L.

19 Paragraph 417(1)(a)

After “344(2),”, insert “346S(2),”.

20 Paragraph 417(1)(g)

After “paragraph”, insert “346P(3)(a) or”.

21 Paragraph 417(1)(k)

After “subsection”, insert “346J(1) or (2), 346P(1) or (2), 346U(2) or”.

22 At the end of section 506

Add:

(5) To avoid doubt, a workplace determination that has ceased to operate because of subsection (4) can operate again if:
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(a) the workplace determination ceased to operate because it was replaced by a collective agreement (the replacement collective agreement); and
(b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z.

23 Section 717 (after paragraph (a) of the definition of applicable provision)
Insert:

(aa) section 346ZD (fairness test compensation); and

24 Subsection 718(1) (after item 5 of the table)
Insert:

5A section 346ZD (fairness test compensation) (a) an employee to whom section 346ZD applies;
(b) an organisation of employees (subject to subsection (6));
(c) an inspector

25 Subsection 718(2)
After “4,”, insert “5A,”.

26 After paragraph 718(6)(b)
Insert:

(ba) section 346ZD; or

27 At the end of section 890
Add:

(3) To avoid doubt, an employment agreement that has ceased to be in force because of subsection (2) can come into force again if:
(a) the employment agreement ceased to be in force because it was replaced by a workplace agreement (the replacement workplace agreement); and
(b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z.
28 **At the end of clause 89 of Schedule 6**

Add:

(3) If:

(a) a workplace agreement binds an employer and employees; and

(b) immediately before the day on which the workplace agreement was lodged, a common rule had the effect of regulating employers in respect of the employment of their employees;

then, Division 5A of Part 8 of this Act (which deals with the fairness test) has effect in relation to that workplace agreement as if:

(c) a reference in that Division to a relevant award included a reference to a common rule that has effect, or continues to have effect, because of this Subdivision; and

(d) the definition of *instrument* in subsection 346Y(5) included a reference to a common rule that has effect, or continues to have effect, because of this Subdivision.

29 **Clause 95 of Schedule 6**

Before “A”, insert “(1)”.

30 **At the end of clause 95 of Schedule 6**

Add:

(2) If:

(a) a workplace agreement binds an employer and an employee or employees; and

(b) immediately before the day on which the workplace agreement was lodged, the employer and employee or employees were bound by a transitional Victorian reference award in respect of the employee’s or employees’ employment;

then, Division 5A of Part 8 of this Act (which deals with the fairness test) has effect in relation to that workplace agreement as if:

(c) a reference in that Division to a relevant award included a reference to a transitional Victorian reference award; and
(d) the definition of instrument in subsections 346Y(5) and 346YA(5) included a reference to a transitional Victorian reference award.

31 **Clause 102 of Schedule 6**

Before “A”, insert “(1)”.

32 **At the end of clause 102 of Schedule 6**

Add:

(2) If:

(a) a workplace agreement binds an employer and employees; and

(b) immediately before the day on which the workplace agreement was lodged, a transitional award (other than a Victorian reference award) regulated the employer, being an excluded employer, in respect of the employment of employees in Victoria;

then, Division 5A of Part 8 of this Act (which deals with the fairness test) has effect in relation to that workplace agreement as if:

(c) a reference in that Division to a relevant award included a reference to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria; and

(d) the definition of instrument in subsections 346Y(5) and 346YA(5) included a reference to a transitional award (other than a Victorian reference award) to the extent that the award regulates excluded employers in respect of the employment of employees in Victoria.

33 **After subclause 3(5) of Schedule 7**

Insert:

(5A) Despite subclause (5), a pre-reform certified agreement that has ceased to operate because of subclause (1) can operate again if:

(a) the pre-reform certified agreement ceased to operate because it was replaced by a collective agreement (the replacement collective agreement); and
(b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

### 34 At the end of clause 18 of Schedule 7

Add:

(5) Despite subclause (4), a pre-reform AWA that has ceased to operate because of subclause (1) can operate again if:

(a) the pre-reform AWA ceased to operate because it was replaced by an AWA (the replacement AWA); and

(b) the replacement AWA later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

### 35 At the end of clause 25 of Schedule 7

Add:

(4) To avoid doubt, a section 170MX award that has ceased to operate because of subclause (2) can operate again if:

(a) the section 170MX award ceased to operate because it was replaced by a collective agreement (the replacement collective agreement); and

(b) the replacement collective agreement later ceased to operate because it did not pass the fairness test.

Note 1: See sections 346Y and 346Z.

Note 2: Under subclause (1), a section 170MX award has no effect in relation to an employee while an AWA operates in relation to the employee, but once the AWA has for any reason ceased to operate, the section 170MX award is capable of operating again.

### 36 Clause 27 of Schedule 7

Before “An”, insert “(1)”.

### 37 At the end of clause 27 of Schedule 7

Add:

(2) To avoid doubt, an exceptional matters order that has ceased to be in force because of subclause (2) can come into force again if:
(a) the exceptional matters order ceased to be in force because it was replaced by a workplace agreement (the replacement workplace agreement); and
(b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z.

38 At the end of clause 28 of Schedule 7
Add:

(5) Despite subclause (4), an old IR agreement that has ceased to operate because of subclause (2) can operate again if:
(a) the old IR agreement ceased to operate because it was replaced by a workplace agreement (the replacement workplace agreement); and
(b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y and 346Z.

39 At the end of clause 15G of Schedule 8
Add:

(4) Despite subclause (3), a preserved State agreement that has ceased operating because of subclause (2) can operate again if:
(a) the preserved State agreement ceased to operate because it was replaced by a workplace agreement (the replacement workplace agreement); and
(b) the replacement workplace agreement later ceased to operate because it did not pass the fairness test.

Note: See sections 346Y, 346YA and 346Z.

40 At the end of clause 38A of Schedule 8
Add:

(5) Despite subclause (4), a notional agreement that has ceased operating because of subclause (2) can operate again if:
(a) the notional agreement ceased to operate because it was replaced by a workplace agreement (the replacement workplace agreement); and
41 At the end of Division 6A of Part 2 of Schedule 8

Add:

25B Application of fairness test where employment was subject to preserved State agreement

(1) If:

(a) a workplace agreement binds an employer and an employee or employees; and

(b) immediately before the day on which the workplace agreement was lodged, the employer and employee or employees were bound by a preserved State agreement in respect of the employee’s or employees’ employment; and

(c) the workplace agreement contains protected preserved conditions because of paragraph 25A(2)(a) of this Schedule; then, Division 5A of Part 8 of this Act (which deals with the fairness test) has effect in relation to that workplace agreement as if:

(d) a reference in that Division to protected award conditions were a reference to protected preserved conditions; and

(e) a reference in that Division to a relevant award or a reference award were a reference to a relevant preserved State agreement; and

(f) paragraph 346C(1)(a) were substituted with the following paragraph:

“(a) if the protected preserved conditions are taken to be included in the workplace agreement because of paragraph 25A(2)(a) of Schedule 8.”; and

(g) paragraph 346C(1)(b) and subsection 346C(2) were omitted; and

(h) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b) were omitted; and

(i) sections 346H, 346K and 346L were omitted; and

(j) paragraphs 346Y(2)(b) and 346YA(2)(b) were substituted with the following paragraph:
“(b) if there is no instrument of a kind referred to in paragraph (a) in relation to the employer and one or more of the employees—protected preserved conditions that were taken to be contained in the original agreement as if those conditions were never excluded or modified by the agreement.”; and

(k) the definition of *instrument* in subsections 346Y(5) and 346YA(5) included a reference to a preserved State agreement; and

(l) the definition of *designated provision* in subsection 346ZA(4) included a reference to clauses 21A and 21D of Schedule 8; and

(m) subparagraph 346ZD(2A)(a)(ii) were substituted with the following subparagraph:

“(ii) if there is no such instrument—protected preserved conditions in relation to the employee.”.

(2) For the purpose of paragraphs 346Y(2)(b) and 346YA(2)(b) (as substituted by paragraph (1)(j) of this clause), Parts 6 and 14 of this Act apply to protected preserved conditions as if the conditions were:

(a) if the workplace agreement was an AWA—an AWA in operation; or

(b) if the workplace agreement was a collective agreement—a collective agreement in operation.

(3) In this clause:

*protected preserved condition* has the same meaning as in subclause 25A(4), subject to subclause (4) of this clause.

*relevant preserved State agreement*, in relation to an employee whose employment is subject to a workplace agreement, means a preserved State agreement that was binding on the employee’s employer immediately before the day on which the workplace agreement was lodged.

(4) For the purposes of the definition of *protected preserved conditions* in subclause (3), the definition of *protected allowable award matters* in subclause 25A(4) has effect as if it did not include the matter referred to in paragraph (i) of the latter definition.
42 At the end of Division 6 of Part 3 of Schedule 8

Add:

52AAA Application of fairness test where employment was subject to notional agreement preserving State awards

(1) If:

(a) a workplace agreement binds an employer and an employee or employees; and
(b) immediately before the day on which the workplace agreement was lodged, the employer and employee or employees were bound by a notional agreement preserving State awards in respect of the employee’s or employees’ employment; and
(c) the workplace agreement contains protected notional conditions because of paragraph 52(2)(a) of this Schedule; then, Division 5A of Part 8 of this Act (which deals with the fairness test) has effect in relation to that workplace agreement as if:

(d) a reference in that Division to protected award conditions were a reference to protected notional conditions; and
(e) a reference in that Division to a relevant award or a reference award were a reference to a relevant notional agreement preserving State awards; and
(f) paragraph 346C(1)(b) and subsection 346C(2) were omitted; and
(g) paragraphs 346E(1)(b) and (2)(b) and 346F(1)(b) and (2)(b) were omitted; and
(h) sections 346H, 346K and 346L were omitted; and
(i) paragraphs 346Y(2)(b) and 346YA(2)(b) were omitted; and
(j) the definition of instrument in subsections 346Y(5) and 346YA(5) included a reference to a notional agreement preserving State awards; and
(k) subparagraph 346ZD(2A)(a)(ii) were omitted.

(2) In this clause:
protected notional conditions has the same meaning as in subclause 52(3), subject to subclause (3) of this clause.

relevant notional agreement preserving State awards, in relation to an employee whose employment is subject to a workplace agreement, means a notional agreement preserving State awards that was binding on the employee’s employer immediately before the day on which the workplace agreement was lodged.

(3) For the purposes of the definition of protected notional conditions in subclause (2), the definition of protected allowable award matters in subclause 52(3) has effect as if it did not include the matter referred to in paragraph (h) of the definition.

Note: Paragraph (h) relates to outworker conditions. These conditions cannot be excluded or modified by a workplace agreement to provide a less favourable outcome for an employee in a particular respect—see subclause 52(2A).
Schedule 2—Workplace Authority

Part 1—Main amendments

Workplace Relations Act 1996

1  Part 5 (heading)

   Repeal the heading, substitute:

Part 5—Workplace Authority Director

2  Divisions 1 and 2 of Part 5

   Repeal the Divisions, substitute:

Division 1—Workplace Authority Director

Subdivision A—Establishment and functions

150A  Workplace Authority Director

   There is to be a Workplace Authority Director.

150B  Functions of Workplace Authority Director

   (1) The functions of the Workplace Authority Director are as follows:

      (a) to promote an understanding of Commonwealth workplace
          relations legislation, including by making available to the
          public general information and guidance about the operation
          of the legislation;

      (b) to provide education, assistance and advice to employees,
          employers and organisations in relation to their rights and
          obligations under Commonwealth workplace relations
          legislation;

      (c) to promote the making of workplace agreements;

      (d) to provide education, assistance and advice to employees,
          employers (especially employers in small business) and
          organisations in relation to workplace agreements;

      (e) to accept lodgment of:
(i) workplace agreements; and
(ii) notices about transmission of instruments;
(f) to decide under Division 5A of Part 8 whether workplace agreements pass the fairness test;
(g) to authorise multiple-business agreements in accordance with the regulations;
(h) to analyse workplace agreements;
(i) to refer matters to the Workplace Ombudsman and workplace inspectors;
(j) to perform any other function conferred on the Workplace Authority Director by Commonwealth workplace relations legislation, the Registration and Accountability of Organisations Schedule or another Act.

(2) In performing his or her functions relating to workplace agreements, the Workplace Authority Director must have particular regard to:

(a) the needs of workers in disadvantaged bargaining positions, including, for example, women, people from a non-English speaking background, young people, apprentices, trainees and outworkers; and
(b) encouraging parties to agreement-making to take account of those needs; and
(c) assisting workers to balance work and family responsibilities; and
(d) the need to prevent and eliminate discrimination because of, or for reasons including, race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

150C  Minister may give directions to Workplace Authority Director

(1) The Minister may, by legislative instrument, give written directions to the Workplace Authority Director about the performance of his or her functions.

(2) Directions given by the Minister under subsection (1) must be of a general nature only, and cannot relate to a particular case.
(3) The Minister must not direct the Workplace Authority Director in relation to the Workplace Authority Director’s performance of functions, or exercise of powers, as an Agency Head under the Public Service Act 1999.

(4) The Workplace Authority Director must comply with any direction given by the Minister under subsection (1).

(5) Section 42 (Disallowance of legislative instruments) of the Legislative Instruments Act 2003 applies to a direction given under subsection (1) of this section, despite section 44 of that Act.

Subdivision B—Appointment and terms and conditions

151A Appointment of Workplace Authority Director

(1) The Workplace Authority Director is to be appointed by the Governor-General by written instrument.

(2) The Governor-General must not appoint a person as the Workplace Authority Director unless the Minister is satisfied that the person:
   (a) has suitable qualifications or experience; and
   (b) is of good character.

(3) The Workplace Authority Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) The Workplace Authority Director holds office on a full-time basis.

151B Remuneration

(1) The Workplace Authority Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Workplace Authority Director is to be paid the remuneration that is prescribed.

(2) The Workplace Authority Director is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
151C Leave of absence

(1) The Workplace Authority Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Workplace Authority Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

151D Other terms and conditions

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

151E Outside employment

The Workplace Authority Director must not engage in paid employment outside the duties of the Workplace Authority Director’s office without the Minister’s approval.

151F Disclosure of interests

The Workplace Authority Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the Workplace Authority Director has or acquires that could conflict with the proper performance of the Workplace Authority Director’s functions.

151G Acting appointments

(1) The Minister may appoint a person to act as the Workplace Authority Director:

(a) during a vacancy in the office of Workplace Authority Director (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Workplace Authority Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

(2) The Minister must not appoint a person to act as the Workplace Authority Director unless the Minister is satisfied that the person:

(a) has suitable qualifications or experience; and
(b) is of good character.

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

151H Resignation

(1) The Workplace Authority Director may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

151J Termination of appointment

(1) The Governor-General may terminate the appointment of the Workplace Authority Director for misbehaviour or physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Workplace Authority Director if:
   (a) the Workplace Authority Director:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with his or her creditors; or
      (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
   (b) the Workplace Authority Director is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
   (c) the Workplace Authority Director engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or
(d) the Workplace Authority Director fails, without reasonable excuse, to comply with section 151F.

Division 2—Workplace Authority Deputy Directors

152A Workplace Authority Deputy Directors

The Workplace Authority Director is to be assisted by as many Workplace Authority Deputy Directors as are appointed from time to time.

152B Appointment of Workplace Authority Deputy Director

(1) A Workplace Authority Deputy Director is to be appointed by the Minister by written instrument.

(2) The Minister must not appoint a person as a Workplace Authority Deputy Director unless the Minister is satisfied that the person:
   (a) has suitable qualifications or experience; and
   (b) is of good character.

(3) A Workplace Authority Deputy Director holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) A Workplace Authority Deputy Director is to be appointed on a full-time or part-time basis.

152C Remuneration

(1) A Workplace Authority Deputy Director is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Workplace Authority Deputy Director is to be paid the remuneration that is prescribed.

(2) A Workplace Authority Deputy Director is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
152D Leave of absence

(1) A full-time Workplace Authority Deputy Director has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant a full-time Workplace Authority Deputy Director leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

(3) The Minister may grant a part-time Workplace Authority Deputy Director leave of absence on the terms and conditions as to remuneration or otherwise that the Minister determines.

152E Other terms and conditions

A Workplace Authority Deputy Director holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

152F Outside employment

(1) A full-time Workplace Authority Deputy Director must not engage in paid employment outside the duties of the Workplace Authority Deputy Director’s office without the Minister’s approval.

(2) A part-time Workplace Authority Deputy Director must not engage in any paid employment that conflicts or may conflict with the proper performance of the Workplace Authority Deputy Director’s duties.

152G Disclosure of interests

A Workplace Authority Deputy Director must give written notice to the Minister of all interests, pecuniary or otherwise, that the Workplace Authority Deputy Director has or acquires that could conflict with the proper performance of the Workplace Authority Deputy Director’s functions.
152H Resignation

(1) A Workplace Authority Deputy Director may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

152J Termination of appointment

(1) The Minister may terminate the appointment of a Workplace Authority Deputy Director for misbehaviour or physical or mental incapacity.

(2) The Minister must terminate the appointment of a Workplace Authority Deputy Director if:

(a) the Workplace Authority Deputy Director:
   (i) becomes bankrupt; or
   (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
   (iii) compounds with his or her creditors; or
   (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Workplace Authority Deputy Director is appointed on a full-time basis and is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Workplace Authority Deputy Director is appointed on a full-time basis and engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or

(d) the Workplace Authority Deputy Director is appointed on a part-time basis and engages in paid employment that conflicts or could conflict with the proper performance of the duties of his or her office; or

(e) the Workplace Authority Deputy Director fails, without reasonable excuse, to comply with section 152G.
Division 3—Staff, delegations etc.

153A Staff

The staff assisting the Workplace Authority Director in the performance of the Workplace Authority Director’s functions must be persons engaged under the Public Service Act 1999.

153B Workplace Authority

(1) The Workplace Authority is established by this subsection.

(2) The Workplace Authority consists of:
   (a) the Workplace Authority Director; and
   (b) the Workplace Authority Deputy Directors; and
   (c) the staff assisting the Workplace Authority Director.

(3) For the purposes of the Public Service Act 1999:
   (a) the Workplace Authority Director and the staff assisting the Workplace Authority Director together constitute a Statutory Agency; and
   (b) the Workplace Authority Director is the Head of that Statutory Agency.

153C Delegation

(1) The Workplace Authority Director may, in writing, delegate to a person appointed or employed by the Commonwealth any of the Workplace Authority Director’s powers or functions.

(2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Workplace Authority Director.

Division 3A—Workplace Relations Fact Sheet

154A Workplace Authority Director must issue Workplace Relations Fact Sheet

(1) The Workplace Authority Director must, by notice published in the Gazette, issue a document called the Workplace Relations Fact Sheet.
(2) The Workplace Relations Fact Sheet must contain the following:

(a) information about the Australian Fair Pay and Conditions Standard;
(b) information about protected award conditions;
(c) information about the fairness test;
(d) information about the role of the Workplace Authority Director and the Workplace Ombudsman.

(3) The regulations may prescribe other matters relating to the content, form, or manner of providing the Workplace Relations Fact Sheet.

(4) A Workplace Relations Fact Sheet issued under subsection (1) is not a legislative instrument.

154B Employer must give a Workplace Relations Fact Sheet to new employees

(1) If a person becomes an employee of an employer, the employer must take reasonable steps to ensure that the employee is given a copy of the Workplace Relations Fact Sheet issued under section 154A within the period of 7 days commencing on the day on which the person became an employee of the employer.

(2) Subsection (1) is a civil remedy provision.

154C Employer must give a Workplace Relations Fact Sheet to existing employees

(1) An employer must take reasonable steps to ensure that each person who is an employee of the employer on the day on which the Workplace Authority Director issues the first Workplace Relations Fact Sheet under section 154A is given a copy of the Workplace Relations Fact Sheet within the period of 3 months commencing on that day.

(2) Subsection (1) is a civil remedy provision.

154D Penalties for contravention of civil remedy provisions

(1) The Court may make an order imposing a pecuniary penalty on a person who has contravened section 154B or 154C on application by:
(a) a workplace inspector; or
(b) an employee affected by the contravention.

(2) The maximum penalty that may be imposed under subsection (1) is 1 penalty unit.

Note: Division 3 of Part 14 contains other provisions relevant to civil remedies.

3 Division 3 of Part 5 (heading)
Repeal the heading, substitute:

Division 4—Reporting and disclosing information

4 Before section 165
Insert:

Subdivision A—Reporting

163A Minister may require reports

(1) The Minister may, in writing, direct the Workplace Authority Director to give the Minister specified reports relating to the Workplace Authority Director’s functions.

(2) The Workplace Authority Director must comply with the direction.

(3) A direction made under subsection (1) is not a legislative instrument.

(4) If the report is made in writing, the report is not a legislative instrument.

163B Annual report

The Workplace Authority Director must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Workplace Authority during that year.

Note: See also section 34C of the Acts Interpretation Act 1901, which contains extra rules about annual reports.
163C Reports not to include information relating to an individual’s affairs

(1) Information relating to the affairs of an individual must not be included in a report under section 163A or 163B if:
   (a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or
   (b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual’s affairs) would be able to work out the identity of the individual to whom the information relates.

(2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual’s affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

Subdivision B—Disclosing information

164A Disclosure of information by workplace agreement officials

Disclosure that is necessary or appropriate

(1) A workplace agreement official may disclose information he or she acquired in the course of exercising powers, or performing functions, as such an official, if he or she considers on reasonable grounds that it is necessary or appropriate to do so in the course of exercising his or her powers, or performing his or her functions, as such an official.

Disclosure to Minister

(2) A workplace agreement official may:
   (a) provide aggregated statistical information to the Minister; and
   (b) give the Minister, in accordance with the regulations, information and copies of documents.

(3) Regulations made for the purposes of paragraph (2)(b) may require that documents given to the Minister are given with such deletions
as are necessary to prevent the identification of individuals to whom the documents refer.

Disclosure to Workplace Ombudsman and workplace inspectors

(4) A workplace agreement official may:
   (a) disclose information that relates to the functions of the Workplace Ombudsman to the Workplace Ombudsman in response to requests from the Workplace Ombudsman; and
   (b) disclose information that relates to the functions of workplace inspectors to workplace inspectors in response to requests from workplace inspectors; and
   (c) disclose information to the Workplace Ombudsman or workplace inspectors that the workplace agreement official considers on reasonable grounds is likely to assist the Workplace Ombudsman or workplace inspectors in performing their functions.

Disclosure authorised by regulations to prescribed persons

(5) The regulations may authorise a prescribed workplace agreement official to disclose information of the prescribed kind, to persons of the prescribed kind, for prescribed purposes.

Limits on disclosure

(6) Despite subsections (1), (2) and (4), a prescribed workplace agreement official is not authorised by whichever of those subsections is prescribed to disclose information of the prescribed kind, to persons of the prescribed kind, for prescribed purposes.

(7) Despite subsections (1), (2) and (5), a workplace agreement official is not authorised by any of those subsections to disclose to the Minister information relating to:
   (a) a decision under Division 5A of Part 8 whether a particular workplace agreement passes the fairness test; or
   (b) whether that Division requires the Workplace Authority Director to decide whether a particular workplace agreement passes the fairness test.
Relationship with the Privacy Act 1988

(8) To avoid doubt, a disclosure in accordance with this section of personal information (within the meaning of the Privacy Act 1988) is taken, for the purposes of that Act, to be authorised by law.

Relationship with section 165

(9) To avoid doubt, a disclosure in accordance with this section of protected information (as defined in section 165) is taken, for the purposes of that section, to be permitted by this Act.
Part 2—Consequential amendments

Division 1—Workplace Relations Act 1996

5 Subsection 4(1) (definition of Employment Advocate)
Repeal the definition.

6 Subsection 4(1)
Insert:

*member* of the Workplace Authority means a person covered by subsection 153B(2).

7 Subsection 4(1)
Insert:

*workplace agreement official* means:
(a) the Workplace Authority Director; or
(b) a Workplace Authority Deputy Director; or
(c) a member of the staff assisting the Workplace Authority Director; or
(d) a delegate of the Workplace Authority Director.

8 Subsection 4(1)
Insert:

*Workplace Authority Deputy Director* means a Workplace Authority Deputy Director holding office under Part 5.

9 Subsection 4(1)
Insert:

*Workplace Authority Director* means the Workplace Authority Director holding office under Part 5.

10 Paragraph 120(3)(e)
Repeal the paragraph, substitute:

(e) in the case of an appeal under paragraph (1)(d) in relation to an award—by:
(i) an employer, employee or organisation bound by the
award; or
(ii) the Workplace Authority Director; and

11 Subsection 165(2) (definition of workplace agreement
official)
Repeal the definition.

12 Sections 166, 332, 335, 337, 344, 345, 346A, 357 and 358
Omit “Employment Advocate” (wherever occurring), substitute
“Workplace Authority Director”.

Note: The headings to sections 166, 342, 344 and 345 are altered by omitting “Employment
Advocate” and substituting “Workplace Authority Director”.

13 Subsection 359(1)
Omit “Employment Advocate”, substitute “Workplace Authority
Director”.

14 Subsection 359(2)
Omit “Employment Advocate’s”, substitute “Workplace Authority
Director’s”.

15 Sections 360, 361, 363, 370, 377, 378, 380, 381, 384, 389,
390, 392, 393, 395, 396, 416, 417, 418, 578, 583, 585, 595,
598A, 603, 603B and 604
Omit “Employment Advocate” (wherever occurring), substitute
“Workplace Authority Director”.

Note 1: The headings to sections 360, 363, 375, 377, 378, 388, 389, 390, 395, 396, 603 and
603B are altered by omitting “Employment Advocate” and substituting “Workplace
Authority Director”.

Note 2: The headings to subsections 603(4) and 603B(3) are altered by omitting “Employment
Advocate” and substituting “Workplace Authority Director”.

Note 3: The heading to section 604 is altered by omitting “Employment Advocate” and
substituting “Workplace Authority Director”.

16 Section 6 of Schedule 1 (definition of Employment
Advocate)
Repeal the definition.

17 Subparagraph 337A(b)(ii) of Schedule 1
Repeal the subparagraph, substitute:
(ii) a workplace agreement official (as defined in the Workplace Relations Act);

18 Paragraphs 2(2)(m), (n) and (o) of Schedule 2
Repeal the paragraphs, substitute:
(m) paragraph 150B(1)(b);
(n) paragraph 150B(1)(d);

19 Paragraphs 3(2)(f), (g) and (h) of Schedule 2
Repeal the paragraphs, substitute:
(f) paragraph 150B(1)(b);
(g) paragraph 150B(1)(d);

20 Paragraphs 4(2)(m) and (n) of Schedule 2
Repeal the paragraphs, substitute:
(m) section 151E;
(ma) paragraph 151J(2)(c);
(n) subsections 152F(1) and (2);
(na) paragraph 152J(2)(c);
(nb) paragraph 152J(2)(d);

21 Clauses 72B, 72G, 72K and 72L of Schedule 6
Omit “Employment Advocate” (wherever occurring), substitute “Workplace Authority Director”.

Note 1: The heading to clause 72K of Schedule 6 is altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

Note 2: The heading to subclause 72K(4) of Schedule 6 is altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

Note 3: The heading to clause 72L of Schedule 6 is altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

22 Clauses 9 and 15B of Schedule 8
Omit “Employment Advocate”, substitute “Workplace Authority Director”.

23 Subclause 19(1) of Schedule 8
Schedule 2 Workplace Authority
Part 2 Consequential amendments

Omit “Employment Advocate”, substitute “Workplace Authority Director”.

24 Subclause 19(2) of Schedule 8
Omit “Employment Advocate’s”, substitute “Workplace Authority Director’s”.

25 Subclauses 19(3), (5), (9), (10), (11) and (12) of Schedule 8
Omit “Employment Advocate” (wherever occurring), substitute “Workplace Authority Director”.
Note: The headings to subclauses 19(3) and (9) of Schedule 8 are altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

26 Subclause 42(1) of Schedule 8
Omit “Employment Advocate”, substitute “Workplace Authority Director”.

27 Subclause 42(2) of Schedule 8
Omit “Employment Advocate’s”, substitute “Workplace Authority Director’s”.

28 Subclauses 42(3), (5), (9), (10), (11) and (12) of Schedule 8
Omit “Employment Advocate” (wherever occurring), substitute “Workplace Authority Director”.
Note: The headings to subclauses 42(3) and (9) of Schedule 8 are altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

29 Clauses 2, 7, 10, 19, 27A, 29, 29B and 30 of Schedule 9
Omit “Employment Advocate” (wherever occurring), substitute “Workplace Authority Director”.
Note 1: The headings to clauses 29 and 29B of Schedule 9 are altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.
Note 2: The heading to subclause 29B(3) of Schedule 9 is altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.
Note 3: The heading to clause 30 of Schedule 9 is altered by omitting “Employment Advocate” and substituting “Workplace Authority Director”.

70 Workplace Relations Amendment (A Stronger Safety Net) Act 2007 No. 107, 2007
Division 2—Other legislation

Coal Mining Industry (Long Service Leave Funding) Act 1992

30 Subsection 4(1) (definition of industrial authority)

After “Australian Industrial Relations Commission,”, insert “the Workplace Authority Director,”.

Financial Management and Accountability Regulations 1997

31 At the end of Part 1 of Schedule 1

Add:

146 Workplace Authority, comprising:
(a) the Workplace Authority Director; and
(b) the Workplace Authority Deputy Directors; and
(c) the staff assisting the Workplace Authority Director.

See Note B
Part 3—Transitional provisions

32 General transitional provision

(1) This item applies to anything done by or in relation to the Employment Advocate before the commencement of this Schedule.

(2) For the purposes of the operation of an Act, or an instrument (including regulations) or agreement made under an Act, in relation to a time on or after the commencement of this Schedule, the thing is taken to have been done by or in relation to the Workplace Authority Director.

(3) Subitem (2) does not affect the time the thing was done.

(4) This item does not affect the following items in this Part.

33 Substitution of parties to proceedings

From the commencement of this Schedule, the Workplace Authority Director is substituted for the Employment Advocate as a party in any proceedings that were pending in any court or tribunal immediately before that commencement.

34 Gazette notices of requirements

(1) This item applies to a requirement that:

   (a) was made under any of the following provisions of the *Workplace Relations Act 1996*:
      (i) paragraph 337(4)(d);
      (ii) subsection 344(3);
      (iii) paragraph 370(4)(d);
      (iv) subsection 377(3);
      (v) paragraph 384(3)(c);
      (vi) subsection 389(3);
      (vii) paragraph 392(5)(b);
      (viii) paragraph 392(5)(c);
      (ix) paragraph 393(5)(c);
      (x) paragraph 393(5)(d);
      (xi) subsection 395(3); and
(b) was made by notice published in the Gazette before the amendment of the provision by this Schedule; and
(c) was in force immediately before the amendment.

(2) The requirement has effect on and after the amendment as if it had been made under the provision as amended.

(3) This item does not prevent amendment or revocation of the requirement.

35 Workplace agreement officials

(1) For the purposes of the operation of section 165 of the Workplace Relations Act 1996 on and after the amendment of that section by this Schedule, a person is taken to be a workplace agreement official if the person was, at any time before that amendment, a workplace agreement official as defined in that section before that amendment.

(2) Subitem (1) does not limit the definition of workplace agreement official in subsection 4(1) of the Workplace Relations Act 1996 as amended by this Schedule.

36 Annual report on Employment Advocate’s operations

(1) Despite its repeal by this Schedule, section 155 (Annual report) of the Workplace Relations Act 1996 continues to apply in relation to each financial year that:
   (a) is the financial year (the repeal year) in which this Schedule commences or the financial year immediately before the repeal year; and
   (b) is a financial year for which the Employment Advocate had not given the Minister a report under that section before the repeal.

(2) However, that section applies as if it required the Workplace Authority Director (instead of the Employment Advocate) to prepare and give the report.
Schedule 3—Workplace Ombudsman

Part 1—Amendments

Division 1—Main amendments

Workplace Relations Act 1996

1 Subsection 4(1)

Insert:

Commonwealth workplace relations legislation means:

(a) this Act; or
(b) the Independent Contractors Act 2006; or
(c) regulations made under the Independent Contractors Act 2006.

Note: The definition of Commonwealth workplace relations legislation does not cover the Registration and Accountability of Organisations Schedule or regulations made under that Schedule, because the definition of this Act excludes them both (although it includes other regulations made under the Act).

2 Subsection 4(1)

Insert:

member of the Office of the Workplace Ombudsman means a person covered by subsection 166P(2).

3 Subsection 4(1) (definition of workplace inspector)

Repeal the definition, substitute:

workplace inspector means a person who is a workplace inspector under section 167.

4 Subsection 4(1)

Insert:

Workplace Ombudsman means the Workplace Ombudsman holding office under Part 5A.
5 After Part 5

Insert:

Part 5A—Workplace Ombudsman

Division 1—Establishment and functions

166A Workplace Ombudsman

There is to be a Workplace Ombudsman.

166B Functions of the Workplace Ombudsman

The functions of the Workplace Ombudsman are as follows:

(a) to assist employees and employers to understand their rights and obligations under Commonwealth workplace relations legislation;

(b) to promote compliance with Commonwealth workplace relations legislation, including by providing assistance and advice and disseminating information;

(c) to monitor compliance with Commonwealth workplace relations legislation;

(d) to investigate suspected contraventions of Commonwealth workplace relations legislation;

(e) to inquire into any act or practice that may be contrary to Commonwealth workplace relations legislation;

(f) to refer matters to relevant authorities;

(g) to institute proceedings to enforce Commonwealth workplace relations legislation;

(h) to appoint workplace inspectors;

(i) to give, as necessary, directions relating to the exercise or performance of appointed workplace inspectors' powers or functions;

(j) to represent employees who are, or might become, a party to proceedings under this Act, in situations where the Workplace Ombudsman considers that representing the employees will promote compliance with Commonwealth workplace relations legislation;
(k) any other functions conferred on the Workplace Ombudsman by Commonwealth workplace relations legislation.

Note: Among other things, the Workplace Ombudsman has the functions of a workplace inspector because section 167 makes the Workplace Ombudsman a workplace inspector.

166C Minister may give directions to Workplace Ombudsman

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

(2) Directions given by the Minister under subsection (1) must be of a general nature only, and cannot relate to a particular case.

(3) The Minister must not direct the Workplace Ombudsman in relation to the Workplace Ombudsman’s performance of functions, or exercise of powers, as an Agency Head under the Public Service Act 1999.

(4) The Workplace Ombudsman must comply with any direction given by the Minister under subsection (1).

(5) Section 42 (Disallowance of legislative instruments) of the Legislative Instruments Act 2003 applies to a direction given under subsection (1) of this section, despite section 44 of that Act.

Division 2—Appointment and terms and conditions

166D Appointment of Workplace Ombudsman

(1) The Workplace Ombudsman is to be appointed by the Governor-General by written instrument.

(2) The Governor-General must not appoint a person as the Workplace Ombudsman unless the Minister is satisfied that the person:
   (a) has suitable qualifications or experience; and
   (b) is of good character.

(3) The Workplace Ombudsman holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(4) The Workplace Ombudsman holds office on a full-time basis.
166E Remuneration

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

(2) The Workplace Ombudsman is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

166F Leave of absence

(1) The Workplace Ombudsman has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Workplace Ombudsman leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

166G Other terms and conditions

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

166H Outside employment

The Workplace Ombudsman must not engage in paid employment outside the duties of the Workplace Ombudsman’s office without the Minister’s approval.

166J Disclosure of interests

The Workplace Ombudsman must give written notice to the Minister of all interests, pecuniary or otherwise, that the Workplace Ombudsman has or acquires that could conflict with the proper performance of the Workplace Ombudsman’s functions.
166K Acting appointments

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

(2) The Minister must not appoint a person to act as the Workplace Ombudsman unless the Minister is satisfied that the person:
   (a) has suitable qualifications or experience; and
   (b) is of good character.

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

166L Resignation

(1) The Workplace Ombudsman may resign his or her appointment by giving the Governor-General a written resignation.

(2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

166M Termination of appointment

(1) The Governor-General may terminate the appointment of the Workplace Ombudsman for misbehaviour or physical or mental incapacity.

(2) The Governor-General must terminate the appointment of the Workplace Ombudsman if:
   (a) the Workplace Ombudsman:
(i) becomes bankrupt; or
(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(iii) compounds with his or her creditors; or
(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Workplace Ombudsman is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Workplace Ombudsman engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or

(d) the Workplace Ombudsman fails, without reasonable excuse, to comply with section 166J.

Division 3—Staff, delegations etc.

166N Staff

The staff assisting the Workplace Ombudsman in the performance of the Workplace Ombudsman’s functions must be persons engaged under the Public Service Act 1999.

166P Office of the Workplace Ombudsman

(1) The Office of the Workplace Ombudsman is established by this subsection.

(2) The Office of the Workplace Ombudsman consists of:

(a) the Workplace Ombudsman; and
(b) the staff assisting the Workplace Ombudsman in the performance of the Workplace Ombudsman’s functions; and
(c) the appointed workplace inspectors.

(3) For the purposes of the Public Service Act 1999:

(a) the Workplace Ombudsman and the staff assisting the Workplace Ombudsman in the performance of the Workplace Ombudsman’s functions together constitute a Statutory Agency; and
(b) the Workplace Ombudsman is the Head of that Statutory Agency.
166Q Delegation

(1) The Workplace Ombudsman may, in writing, delegate to an SES employee, or an acting SES employee, in the Office of the Workplace Ombudsman any of the Workplace Ombudsman’s functions and powers under Commonwealth workplace relations legislation.

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

(3) Subsection (1) does not apply to the functions and powers of a workplace inspector that the Workplace Ombudsman has because of section 167.

Note: If the Workplace Ombudsman wants an SES employee, or an acting SES employee, in the Office of the Workplace Ombudsman to have any of the functions or powers of a workplace inspector, the Workplace Ombudsman can appoint the SES employee or acting SES employee as a workplace inspector under section 167.

Division 4—Reporting and disclosing information

Subdivision A—Reporting to Minister

166R Minister may require reports

(1) The Minister may, in writing, direct the Workplace Ombudsman to give the Minister specified reports relating to the Workplace Ombudsman’s functions.

Note: Section 166T restricts the disclosure of personal information in a report.

(2) The Workplace Ombudsman must comply with the direction.

(3) A direction made under subsection (1) is not a legislative instrument.

(4) If the report is made in writing, the report is not a legislative instrument.
166S Annual report

The Workplace Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Office of the Workplace Ombudsman during that year.

Note: See also section 34C of the Acts Interpretation Act 1901, which contains extra rules about annual reports.

166T Reports not to include information relating to an individual’s affairs

(1) Information relating to the affairs of an individual must not be included in a report under section 166R or 166S if:
   (a) the individual is named, or otherwise specifically identified, in the report as the individual to whom the information relates; or
   (b) it is reasonably likely that people generally (other than people to whom the individual has disclosed information relating to the individual’s affairs) would be able to work out the identity of the individual to whom the information relates.

(2) For the purposes of applying paragraph (1)(b) to information relating to a particular individual’s affairs, the context in which the information appears, and information that is otherwise publicly available, must be taken into account (as well as any other relevant matter).

Subdivision B—Disclosing information

166U Disclosure of information by members of the Office of the Workplace Ombudsman

Disclosure that is necessary or appropriate

(1) A member of the Office of the Workplace Ombudsman may disclose information acquired by the member in the course of exercising powers, or performing functions, as such a member (including as a delegate of the Workplace Ombudsman), if the member considers on reasonable grounds that it is necessary or appropriate to do so in the course of exercising his or her powers, or performing his or her functions, as such a member.
Disclosure to migration officer

(2) A member of the Office of the Workplace Ombudsman may disclose information to an officer of the Department administered by the Minister who administers the Migration Act 1958 if the member considers on reasonable grounds that the disclosure of the information is likely to assist the officer in the administration of that Act.

Disclosure authorised by regulations to Commonwealth officers

(3) The regulations may authorise prescribed members of the Office of the Workplace Ombudsman to disclose information of the prescribed kind, to officers of the Commonwealth of the prescribed kind, for prescribed purposes.

Disclosure to State workplace relations official

(4) A member of the Office of the Workplace Ombudsman may disclose information to an officer of a State who has powers, duties or functions that relate to the administration of a workplace relations or other system relating to terms and conditions, or incidents, of employment, if the member considers on reasonable grounds that the disclosure of the information is likely to assist the officer in the administration of that system.

Disclosure to other officials and authorities

(5) A member of the Office of the Workplace Ombudsman may disclose information to:

(a) a person employed by, or appointed to an office of, the Commonwealth, a State or a Territory; or

(b) an authority of the Commonwealth, a State or a Territory; if the member considers on reasonable grounds that the disclosure of the information is likely to assist the person or authority in discharging a responsibility of the person or authority relating to the administration of a law of the Commonwealth, a State or a Territory.
Relationship with other laws

(6) To avoid doubt, a disclosure in accordance with this section of personal information (within the meaning of the Privacy Act 1988) is taken, for the purposes of that Act, to be authorised by law.

166V Directions about exercise of powers to disclose information

(1) The Workplace Ombudsman may, by legislative instrument, give written directions to the members of the Office of Workplace Ombudsman about the disclosure of information under section 166U.

(2) Directions given by the Workplace Ombudsman under subsection (1) must be of a general nature only.

(3) A member of the Office of Workplace Ombudsman must comply with any direction given by the Workplace Ombudsman under subsection (1).

6 After subsection 167(1)

Insert:

(1A) The Workplace Ombudsman is a workplace inspector by force of this subsection.

7 Subsection 167(2)

Omit “Minister”, substitute “Workplace Ombudsman”.

8 Subsections 167(7) and (8)

Repeal the subsections, substitute:

(7) In exercising powers or performing functions as a workplace inspector, a workplace inspector appointed under subsection (2) must comply with any directions of the Workplace Ombudsman.

(8) If a direction under subsection (7) is of general application, the direction is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

(9) If a direction under subsection (7) relates to a particular case, the direction is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.
9 **Subsection 168(1)**
Omit “Minister”, substitute “Workplace Ombudsman”.

10 **Subsection 168(1)**
Omit “prescribed form”, substitute “form approved by the Workplace Ombudsman”.

11 **Paragraph 168(3)(b)**
Omit “Secretary of the Department”, substitute “Workplace Ombudsman”.

12 **Section 170**
Repeal the section.

13 **Subparagraph 337A(b)(v) of Schedule 1**
Repeal the subparagraph, substitute:
   (v) a member of the Office of the Workplace Ombudsman
       (as defined in the Workplace Relations Act); and

14 **Before paragraph 2(2)(p) of Schedule 2**
Insert:
   (oa) paragraph 166B(a);
   (ob) paragraph 166B(j);

15 **Before paragraph 3(2)(i) of Schedule 2**
Insert:
   (ha) paragraph 166B(a);

16 **Paragraph 4(2)(o) of Schedule 2**
Repeal the paragraph, substitute:
   (o) section 166H;
   (oa) paragraph 166M(2)(c);
   (ob) subsection 166U(4);

**Division 2—Consequential amendment**

**Financial Management and Accountability Regulations 1997**
17 Part 1 of Schedule 1 (after table item 140AA)
Insert:

140AAA Office of the Workplace Ombudsman, comprising:
(a) the Workplace Ombudsman; and
(b) the staff assisting the Workplace
Ombudsman in the performance of the
Workplace Ombudsman’s functions;
and
(c) the workplace inspectors appointed
under section 167 of the Workplace
Relations Act 1996.

See Note B
Part 2—Transitional and application provisions

18 Workplace inspectors

(1) This item applies to an appointment if:
   (a) the appointment was made under subsection 167(2) of the Workplace Relations Act 1996; and
   (b) the appointment was in force immediately before the commencement of this Schedule.

(2) The appointment has effect, after the commencement of this item, as if it had been made under subsection 167(2) of the Workplace Relations Act 1996 as amended by this Schedule.

19 Identity cards

(1) Subitem (2) applies to an identity card if:
   (a) the identity card was issued under subsection 168(1) of the Workplace Relations Act 1996; and
   (b) the identity card was in force immediately before the commencement of this Schedule.

(2) The identity card has effect, after the commencement of this item, as if it had been issued under subsection 168(1) of the Workplace Relations Act 1996 as amended by this Schedule.

(3) The amendment of subsection 168(3) of the Workplace Relations Act 1996 made by this Schedule applies to persons ceasing to be inspectors after the commencement of this Schedule.

20 Disclosures qualifying for whistleblowers’ protection

(1) This item applies to a disclosure of information that qualified for protection under Part 4A of Chapter 11 of Schedule 1 to the Workplace Relations Act 1996, because of subparagraph 337A(b)(v) of that Schedule as in force before the repeal and substitution of that subparagraph by this Schedule.

(2) On and after the commencement of this Schedule, the disclosure qualifies for protection under that Part, despite that repeal and substitution.
Schedule 4—Prohibited content

Workplace Relations Act 1996

1 Subsection 4(2)
Omit “section 356”, substitute “paragraph 356(1)(f)”.

2 Section 356
Repeal the section, substitute:

356 Prohibited content

(1) For the purposes of this Act, each of the following is prohibited content:

(a) a provision that requires or permits any conduct that would contravene Part 16, or that would contravene that Part if Division 2 of that Part were disregarded;

(b) a provision that directly or indirectly requires a person:
   (i) to encourage another person to become, or remain, a member of an industrial association; or
   (ii) to discourage another person from becoming, or remaining, a member of an industrial association;

(c) a provision that indicates support for persons being members of an industrial association;

(d) a provision that indicates opposition to persons being members of an industrial association;

(e) a provision that requires or permits payment of a bargaining services fee;

(f) a matter specified in the regulations.

(2) An expression used in paragraph (1)(a), (b), (c), (d) or (e) that is also used in section 810 has the same meaning in that paragraph as it has in that section.

3 Transitional—regulations made for the purposes of section 356 of the Workplace Relations Act 1996
(1) This item applies to regulations that:
   (a) were made for the purposes of section 356 of the *Workplace Relations Act 1996*; and
   (b) were in force immediately before the commencement of this item;
but does not apply to subregulation 8.5(7) of the *Workplace Relations Regulations 2006*.

(2) The regulations have effect, after the commencement of this item, as if they had been made for the purposes of paragraph 356(1)(f) of the *Workplace Relations Act 1996* as amended by this Act.
Schedule 5—Membership requirements for registered organisations

Workplace Relations Act 1996

1 Section 6 of Schedule 1

Insert:

*constitutional trade or commerce* has the same meaning as in the Workplace Relations Act.

2 Section 6 of Schedule 1

Insert:

*designated Commonwealth authority* means:

(a) a body corporate established for a public purpose by or under a law of the Commonwealth; or

(b) a body corporate:

(i) incorporated under a law of the Commonwealth or a State or Territory; and

(ii) in which the Commonwealth has a controlling interest.

3 Section 6 of Schedule 1 (definition of federal system employee)

Repeal the definition, substitute:

*federal system employee* means:

(a) an individual so far as he or she is employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of *federal system employer*, by a federal system employer, except on a vocational placement; or

(b) an individual who is employed in Victoria, so long as the provisions of this Schedule that would apply to:

(i) the individual as a federal system employee; or

(ii) an association of which the individual is a member;
fall within the legislative power referred to the Commonwealth under the Commonwealth Powers (Industrial Relations) Act 1996 of Victoria; or

(c) an independent contractor who, if he or she were an employee performing work of the kind which he or she usually performs as an independent contractor, would be an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b).

4 Section 6 of Schedule 1 (definition of federal system employer)

Repeal the definition, substitute:

**federal system employer** means:

(a) a constitutional corporation, so far as it employs, or usually employs, an individual; or

(b) the Commonwealth, so far as it employs, or usually employs, an individual; or

(c) a designated Commonwealth authority, so far as it employs, or usually employs, an individual; or

(d) a person or entity (which may be an unincorporated club) so far as the person or entity, in connection with constitutional trade or commerce, employs, or usually employs, an individual as:
   (i) a flight crew officer; or
   (ii) a maritime employee; or
   (iii) a waterside worker; or

(e) a body corporate incorporated in a Territory, so far as the body employs, or usually employs, an individual; or

(f) a person or entity (which may be an unincorporated club) that carries on an activity (whether of a commercial, governmental or other nature) in a Territory in Australia, so far as the person or entity employs, or usually employs, an individual in connection with the activity carried on in the Territory; or

(g) an employer in Victoria, so long as the provisions of this Schedule that would apply to:
   (i) the employer as a federal system employer; or
   (ii) an association of which the employer is a member;
fall within the legislative power referred to the
Commonwealth under the Commonwealth Powers (Industrial

Note: In the context of paragraph (f), Australia includes the Territory of
Christmas Island and the Territory of Cocos (Keeling) Islands. See
paragraph 17(a) of the Acts Interpretation Act 1901.

5 Section 6 of Schedule 1

Insert:

_flight crew officer_ has the same meaning as in the Workplace
Relations Act.

6 Section 6 of Schedule 1

Insert:

_maritime employee_ has the same meaning as in the Workplace
Relations Act.

7 Section 6 of Schedule 1

Insert:

_vocational placement_ has the same meaning as in the Workplace
Relations Act.

8 Section 6 of Schedule 1

Insert:

_waterside worker_ has the same meaning as in the Workplace
Relations Act.

9 Paragraph 18A(1)(b) of Schedule 1

Omit “the majority”, substitute “some or all”.

10 Subsection 18A(2) of Schedule 1

Repeal the subsection.

11 Paragraph 18A(4)(b) of Schedule 1

Repeal the paragraph, substitute:

(b) it is not the case that some or all of the association’s
members are federal system employers.
12 Paragraph 18B(1)(b) of Schedule 1
Omit “the majority”, substitute “some or all”.

13 Subsection 18B(2) of Schedule 1
Repeal the subsection.

14 Paragraph 18B(5)(b) of Schedule 1
Repeal the paragraph, substitute:

(b) it is not the case that some or all of the association’s members are federal system employees.

15 Paragraph 18C(2)(b) of Schedule 1
Omit “the majority”, substitute “some or all”.

16 Subparagraph 18C(3)(c)(i) of Schedule 1
Repeal the subparagraph, substitute:

(i) an employee who could be characterised in either or both of the ways mentioned in paragraphs (a) and (b) of the definition of federal system employee in section 6;
and

17 Subsection 18D(1) of Schedule 1
Repeal the subsection, substitute:

Associations of employers

(1) If the Parliament would not have sufficient legislative power to provide for the registration of a particular association of employers if:

(a) a particular class of employers mentioned in paragraphs (a) to (g) of the definition of federal system employer in section 6 were included when working out whether some or all of the association’s members are federal system employers;

that definition applies as if it did not include a reference to that class of employers.

18 Subsection 18D(3) of Schedule 1
Repeal the subsection, substitute:
Associations of employees

(3) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:

(a) a particular class of individuals so far as they are employed, or usually employed, as described in paragraph (a), (b), (c), (d), (e) or (f) of the definition of federal system employer in section 6, by a federal system employer were included when working out whether some or all of the association’s members are federal system employees;

the definition of federal system employee in section 6 applies as if it did not include a reference to that class of employees.

(3A) If the Parliament would not have sufficient legislative power to provide for the registration of an association of employees if:

(a) a particular class of individuals mentioned in paragraph (b) or (c) of the definition of federal system employee in section 6 were included in working out whether some or all of the association’s members are federal system employees;

that definition applies as if it did not include a reference to that class of employees.
Schedule 6—Minor technical amendments

Workplace Relations Act 1996

1 Paragraph 354(1)(b)

After “but for the agreement”, insert “, a previous workplace agreement or another industrial instrument”.

2 Subsection 354(4)

Insert:

*industrial instrument* means any of the following:

(a) a pre-reform AWA;

(b) a pre-reform certified agreement (within the meaning of Schedule 7);

(c) a workplace determination;

(d) a section 170MX award (within the meaning of Schedule 7);

(e) an old IR agreement (within the meaning of Schedule 7).

3 Application

The amendments made by this Schedule apply to workplace agreements lodged on or after the day on which this Schedule commences.
Schedule 7—Preserved redundancy provisions

Part 1—Length of period of preservation

Workplace Relations Act 1996

1 Subsection 347(7) (note)
   Omit “12”, substitute “24”.

2 Paragraph 399A(3)(a)
   Omit “12”, substitute “24”.

3 Paragraph 598A(3)(a)
   Omit “12”, substitute “24”.

4 Subclause 3(4) of Schedule 7 (note)
   Omit “12”, substitute “24”.

5 Paragraph 6A(4)(a) of Schedule 7
   Omit “12”, substitute “24”.

6 Subclause 18(3) of Schedule 7 (note)
   Omit “12”, substitute “24”.

7 Paragraph 20A(4)(a) of Schedule 7
   Omit “12”, substitute “24”.

8 Paragraph 21A(4)(a) of Schedule 8
   Omit “12”, substitute “24”.

9 Paragraph 21D(4)(a) of Schedule 8
   Omit “12”, substitute “24”.

10 Paragraph 27A(3)(a) of Schedule 9
    Omit “12”, substitute “24”.

11 Application

The amendments made by this Part apply to agreements terminated after the commencement of item 31 of Schedule 3 to the Workplace Relations Legislation Amendment (Independent Contractors) Act 2006.
Part 2—Notice requirements

Workplace Relations Act 1996

12 Paragraph 603A(3)(c)
   Omit “12”, substitute “24”.

13 Paragraph 6B(3)(c) of Schedule 7
   Omit “12”, substitute “24”.

14 Paragraph 20B(2)(c) of Schedule 7
   Omit “12”, substitute “24”.

15 Paragraph 21B(3)(c) of Schedule 8
   Omit “12”, substitute “24”.

16 Paragraph 21E(2)(c) of Schedule 8
   Omit “12”, substitute “24”.

17 Paragraph 29A(3)(c) of Schedule 9
   Omit “12”, substitute “24”.

18 Application
   The amendments made by this Part apply to notices given after the commencement of this item.
Part 3—Contingent amendments

19  Subparagraph 346YA(3)(b)(i)
    Omit “12”, substitute “24”.

20  Subparagraph 346ZA(2)(b)(i)
    Omit “12”, substitute “24”.

[Minister’s second reading speech made in—
House of Representatives on 28 May 2007
Senate on 13 June 2007]

(100/07)